

# Changing Tides? How Diversifying the Federal Bench Changes the Supreme Court Bar\*

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## Abstract

For decades, presidents have sought to increase gender representation on the federal bench. One such avenue to find potential female judges is the Supreme Court specialty bar – the elite attorneys that argue before the Court. However, does selecting nominees from this group come at the expense of the other, leading to less women arguing at the Supreme Court with potential long-term consequences for legal institutions and future judgeship pools? Combining data of 9,078 advocates and 2,193 federal judicial nominations from 1981-2024 we find the answer is no. Nominating women to federal judgeship does not come at the cost of diminishing the gender diversity of the Supreme Court advocacy pool.

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On January 2, 2025, then-President Joe Biden delivered remarks in the East Wing of the White House commemorating the historic 235 judicial nominees he shepherded to confirmation.<sup>1</sup> While the overall number of confirmations was a record high for a four-year administration, the group of judges confirmed was particularly notable for its representative breakdown (Mejia and Thomson-DeVeaux 2021); sixty-three percent of Biden’s nominees were women, 60 percent identified as racial or ethnic minorities, and 40 percent were women of color (Johnson 2025). As Biden noted at the time, “I have appointed the most demographically diverse slate of judicial nominees ever in the history of America that represents all of America and the best of America,” and he was correct. His focus on adding more women and racial and ethnic minorities to the bench capped a decades-long march to diversify the federal bench that began with President Jimmy Carter in the late 1970s (Goldman 1997). Presidents in both parties built on the gains of their partisan predecessors to increase the number of women and racial and ethnic minority judges on the federal bench (King, Schoenherr and Ostrander 2025), leading to Biden’s crowning achievement in 2025.

For presidents, diversifying the bench makes good politics. Public opinion polls regularly find support for increasing diversity among the nation’s judges (Solberg and Stout 2021). Indeed, presidents can even see boosts in *their own* standing with the public when they advance diverse slates of nominees (Badas and Stauffer 2023a). Research also suggests that women and minority nominees can garner higher levels of support from ideologically distant Americans who share the nominee’s gender or racial identity (Badas and Stauffer 2018). Beyond the potential public opinion benefits, presidents may also strategically nominate women and racial and ethnic minorities to the bench in order to gain support from different parties (Scherer, Bartels and Steigerwalt 2008; Valdini and Shortell 2016). Moreover, while nominees from diverse backgrounds may face greater scrutiny (Boyd, Collins Jr. and Ringhand 2023), research suggests that presidents are more likely to nominate women and racial and ethnic minorities to judgeships in times of gridlock because senators are rel-

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<sup>1</sup>The East Wing of the White House was demolished in the fall of 2025.

actively more likely to confirm them (Asmussen 2011). Simply put, presidents have many incentives to select women and minority nominees for judicial vacancies.

With that said, presidents have a limited number of pools from which to draw nominees who identify as women and racial and ethnic minorities. Logistical constraints and Senate norms force presidents to select nominees from the state where an open judgeship exists and give senators (and their legal networks) an outsized influence over who gets the call (Binder and Maltzman 2002; Howard and Hughes 2022; King and Ostrander 2025).<sup>2</sup> Beyond that, white men long dominated the traditional venues from which nominees get selected, including litigation (Lane and Schoenherr 2025), firm partnership (Rhode 2017), and professorships (Deo 2019). Both factors made it harder to find women and racial and ethnic minorities for judgeships, and both parties had to work to find nominees who promised to diversify the otherwise-mostly-white bench (Goldman 1997). With that said, recent pushes to diversify the legal profession as a whole have made identifying diverse nominees easier (Moyer, Harris and Solberg 2022), which is one of the reasons presidents have an easier time identifying diverse nominees today.

But what happens to institutional diversity when promotions pillage that institution's members? When presidents nominate women and racial and ethnic minorities to federal judgeships, they remove those lawyers from their professional pools, which could lead to pools that are *more* masculine and white. That is, presidents could be diversifying one institution at the expense of another, which could have long-term consequences for legal institutions and future judgeship pools. In this note, we explore this potential paradox through the lens of the Supreme Court oral advocate pool, with a particular focus on the gender diversity of the advocate pool and the federal judiciary.<sup>3</sup> The arguing members of the Supreme Court Bar represent the upper echelon of the legal elite (Nelson and Epstein 2022),

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<sup>2</sup>Since 2016, the "blue slip" process has broken down at the circuit level (Dinan 2019; Levine 2021), but remains in place for district nominations.

<sup>3</sup>Supreme Court oral advocates have historically been white men, but firms have been putting more women into advocacy positions since the mid-2010s (Meyer and Raji 2022). The bar remains overwhelmingly white, however, and we thus lack the data to analyze advocates who identify as racial and ethnic minorities.

and presidents should (and do) draw from this group when filling judicial vacancies.<sup>4</sup> Using data on every oral advocate who appeared before the Court between the 1981 and 2024 terms and every person nominated to a judgeship in that same period, we examine what (if any) effect presidents' increasing elevation of women from this pool has for the composition of the Supreme Court Bar. Our results suggest that presidents rarely pull judicial nominees from the bar, nominating around eight advocates per administration to the federal bench. But, importantly, we find that when a woman leaves Supreme Court advocacy for a judgeship, women maintain their gains in the advocate pool. These findings suggest institutions are finding ways to maintain their gender diversity as women leave to join the federal bench.

## Balancing Diversity

Presidential attention to the descriptive representation of women may inadvertently come at the cost of women being descriptively represented in the oral advocate pool. This is because two factors shape the identity of the oral advocate pool. First, advocates *exiting* the pool via elevation, retirement, or death affect its descriptive look. When presidents elevate women out of the pool of oral advocates, their absence necessarily makes the advocate pool more masculine than it was before the nomination. Second, new *entries* to the pool also affect its descriptive identity. If incoming cohorts of oral advocates increasingly include women, it is possible they descriptively replace or add to individuals who leave the pool, allowing for the maintenance or increase of diversity in the advocacy pool. Indeed, as Figure 1 shows, the overall number and proportion of total female oral advocates before the Supreme Court has somewhat steadily increases since 1979.

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<sup>4</sup>Requirements to join the Supreme Court bar are minimal and being a member offers professional perks, so many attorneys join it without expecting to argue a case before the Court. Supreme Court oral advocates must be members of the bar, but they are a fraction of the total bar (McGuire 1993).

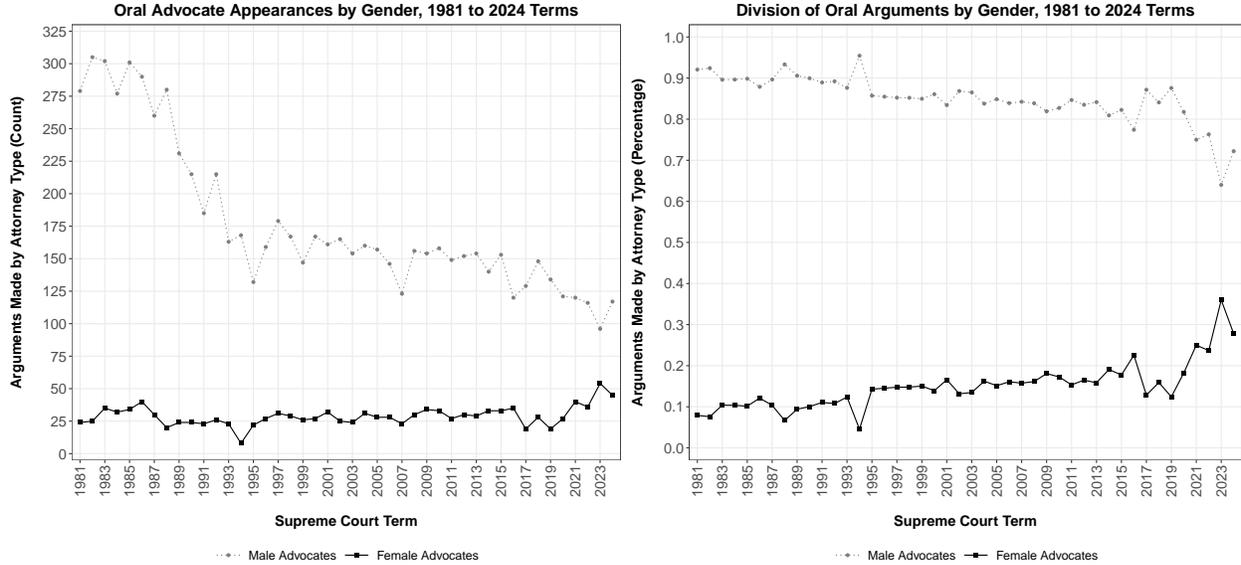


Figure 1: Breakdown of oral advocates between the 1979 and 2024 terms by gender. Left graph shows the number of male (grey dots) and female (black squares) advocates, while the right graph shows the percentage of total advocates that were men and women.

With that said, the data do not make it clear that replacement is happening. Indeed, research suggests there are many reasons women will continue to be underrepresented the pool of oral advocates even among newer cohorts. First, institutional factors mean that women have less access to elite legal positions that would position them to become oral advocates (Rhode 2017). Gendered hiring practices and public attitudes about women mean that women are underrepresented among clerks to the Supreme Court, partners in elite law firms, and state attorneys general (Badas, Sanders and Stauffer 2024; Lane and Schoenherr 2025). Beyond these institutional barriers, women are also less likely to express ambition to pursue elite positions in the legal world (Badas and Stauffer 2023b), meaning they may ultimately never get considered for oral advocacy positions. Beyond that, the well-documented preference for “repeat players” who have argued before the Court before makes it difficult for new attorneys to break into these elite ranks even when they are ready for them (Nelson and Epstein 2022). Thus, while presidents have been increasing the number of women nominees over time, it is not clear that firms and governments have followed suit and asked more women to appear at oral argument. In other words, presidents may be nominating

more women out of the pool of oral advocates than firms and governments are putting into advocate positions. This dynamic may be especially prevalent during Democratic administrations, as Democrats have placed a greater emphasis on judicial diversity relative to Republicans (King, Schoenherr and Ostrander 2025).

“Masculanizing” the pool of oral advocates may seem like a reasonable price to pay to have women on the federal bench, but such a shift could have real consequences for the federal judiciary. For one thing, fewer women advocates could eventually lead to fewer female judges, which would affect the substance of many decisions. Though gender is not always predictive of judicial behavior, research suggests that in at least some circumstances – often those where gender is highly salient – women judges render different decisions (Boyd 2013; Haire and Moyer 2015). For another thing, having fewer women advocates makes it harder for women to succeed in the judiciary. While less attention has been given to gender differences in attorney behavior or the crafting of legal arguments (but see Collins, Dumas and Moyer 2017), the research that does exist suggests judges hold female advocates to different (gendered) standards (Gleason, Jones and McBean 2019; Gleason and Smart 2023), at least in part because their presence is so rare; the only way to break the gap is to ensure women advocates appear before judges more frequently. Consequently, if women leave the oral advocate pool at a rate that outpaces their replacement, the nature and content of the law will shift in meaningful ways. In other words, while the judiciary may “look like America,” the courts would not produce arguments that sound like America.

## **Data and Descriptive Analysis**

To better understand the relationship between the bench and bar, we decided to examine how offering a Supreme Court advocate a federal judgeship modifies the composition of the advocate pool in subsequent terms. We utilized two different data sources to do this. To identify the gender composition of the Supreme Court bar, we updated Black and Owens’s (2020) data on oral argument advocates up through the 2024 Supreme Court term.

This update allowed us to examine bench-and-bar gender dynamics over a more than forty year period, from the start of the Reagan administration in 1981 to the end of the Biden administration in 2024.<sup>5</sup> To identify the judicial nominees who came from the Supreme Court bar, we used nominations data from King and Ostrander (2025) and King, Schoenherr and Ostrander (2025) to match advocate names to nominee names.<sup>6</sup> In all, we examined 4,453 unique advocates who appeared before the Court for a total of 9,078 individual arguments in that time period.

For the sake of this analysis, we separated advocates into several different categories. Most obviously for our present purposes, we separated them by gender. Additionally, and perhaps less obviously, we also separated advocates into one of two different groups: first-timers and repeat players. We do this to see if the removal of one advocate creates opportunities for attorneys to approach the Court, or if it simply shifts the load to more experienced advocates. We show the breakdown of these different advocates across the span of our data in Figure 2, which shows the number of arguments each profile of advocate made each term.

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<sup>5</sup>Before oral arguments, Supreme Court advocates to complete a form that, among other things, asks them to identify their preferred honorific of “Mr.” or “Ms.” The Chief Justice uses this information when he invites attorneys to the lectern for oral argument. Consequently, identifying an advocate’s gender simply involves checking the transcript. To date, only one transgender advocate has approached the justices (Chase Strangio at the ACLU), and he uses male pronouns, so utilizing a gender dichotomy remains appropriate.

<sup>6</sup>We made a conscious choice to examine judicial nominees, rather than strictly focusing on the people who were confirmed. Our reason for this is simple: getting nominated to a judgeship takes advocates out of the advocacy pool and, as far as we can tell, most advocates do not return to it, even if their nomination never turned into a judgeship.

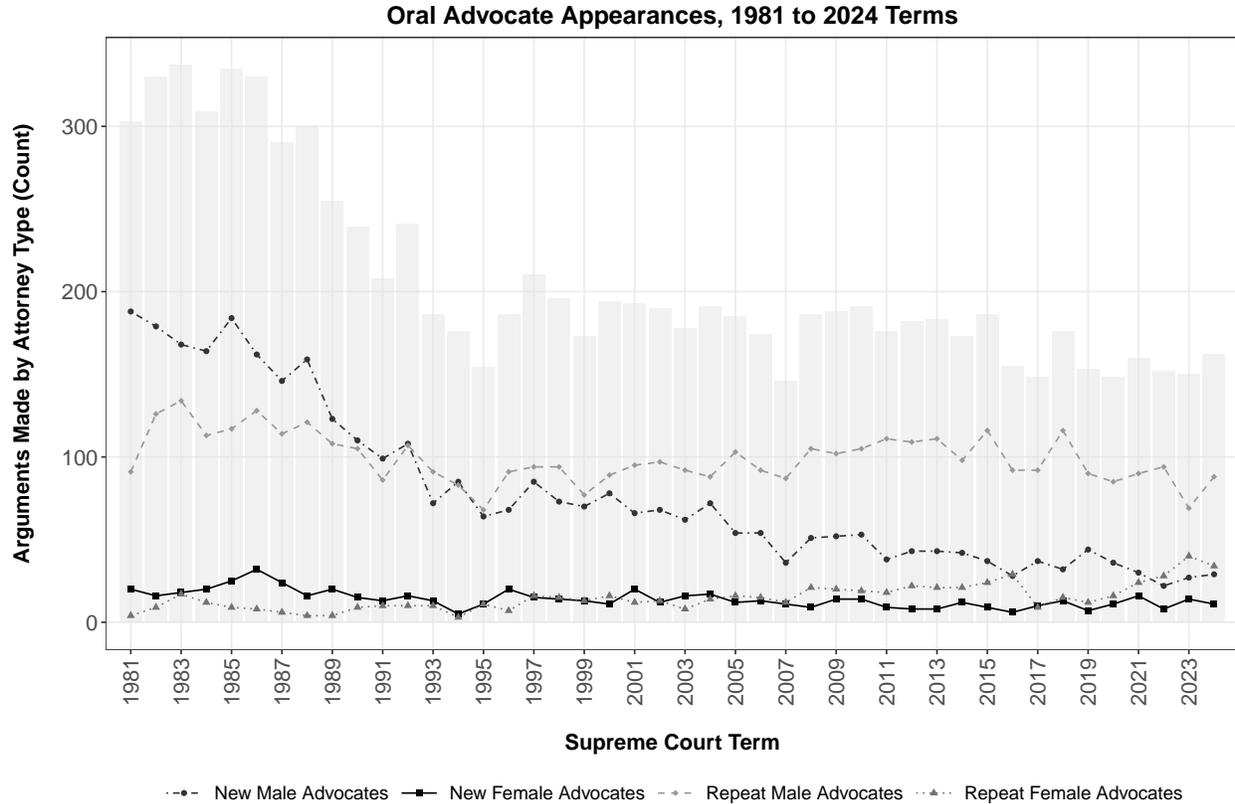


Figure 2: Number of arguments made each term between 1979 and 2024 by new male advocates (dark grey circles), new female advocates (black squares), repeat male advocates (lightest grey diamonds), and repeat female advocates (middle grey triangles). Bars show total arguments made each term.

Looking first at the new advocates, Figure 2 shows that until the last decade, more men (dark grey circles) got the opportunity to make their first argument than women (black squares) did. Interestingly, however, the number of new male advocates steadily declined between the 1981 and 2011 terms before stabilizing, while the number of new women advocates has remained fairly steady over the period of our analysis. Notably, the data suggest that new male advocates lost opportunities as the Court’s docket shrank (as indicated by the grey bars in the background of the figure), while women maintained small but steady opportunities to approach the bench. As expected, repeat players dominate the bench today, with men (light grey diamonds) receiving the most opportunities while female repeat players (middle grey diamonds) have slowly increased their presence.

Who are the advocates who leave to become judges? Between 1981 and 2024, 2,193 people were nominated to the federal bench (district, circuit, or Supreme courts), and 91 of those nominees (19 women and 72 men) argued before the Supreme Court at least once before their nominations.<sup>7</sup> Table 1 shows the nomination breakdown by presidential term. The results in Table 1 suggest that different presidents pull nominees from the oral advocacy bar at different rates. While President Donald Trump pulled 22 nominees from the bar in four years (21 of whom were men), every other president pulled far fewer nominees from the bar. On the whole, our analysis shows presidents tended not to use the bar as a proving ground for judges, despite its obvious possibility.

Table 1: Oral Advocates Nominated to the Federal Bench, 1981 to 2024

<b>Administration</b>	<b>Female Advocates Nominated</b>	<b>Male Advocates Nominated</b>	<b>Total</b>
Reagan I	0	3	3
Reagan II	1	7	8
H.W. Bush I	2	4	6
Clinton I	2	5	7
Clinton II	4	6	10
W. Bush I	1	9	10
W. Bush II	0	5	5
Obama I	1	4	5
Obama II	5	3	8
Trump I	1	21	22
Biden I	2	5	7
<b>Total</b>	<b>19</b>	<b>72</b>	<b>91</b>

Of course, even a small number of removals can have a big impact on the composition of the bar if the conditions are right. To that end, we turn next to Figures 3 and 4, which show the number of female and male advocates and nominees over time.<sup>8</sup> Looking first at Figure 3,

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<sup>7</sup>For people like Chief Justice John Roberts, who was an advocate, got nominated to a judgeship, did not get confirmed, went back to his advocacy job, and got nominated again later, we relied on the later set of nominations.

<sup>8</sup>The Supreme Court has its own calendar, where terms start in October and run through the subsequent June but get labeled by the starting date (e.g., the 2023 term runs from October 2023 to June 2024). To compensate for this difference, we pair the calendar year (e.g., 2024) with the *previous* Supreme Court term (i.e., the 2023 term) in our analyses.

we see that since the early 2000s, about the same number of new female (dark grey triangles) and repeat female (light grey circles) advocates approach the bench. Suggestively, we also see that in the year following a woman getting nominated to the bench (black squares), the number of new and repeat advocates tends to drop. Interestingly, however, they appear to rebound in subsequent terms, indicating that getting the call for a promotion decreases the gender diversity of the bar for a short time but does ultimately rebound. Notably, during the Biden administration, when few women in the advocacy pool got nominated for federal judgeships, the number of new and repeat advocates actually increased.

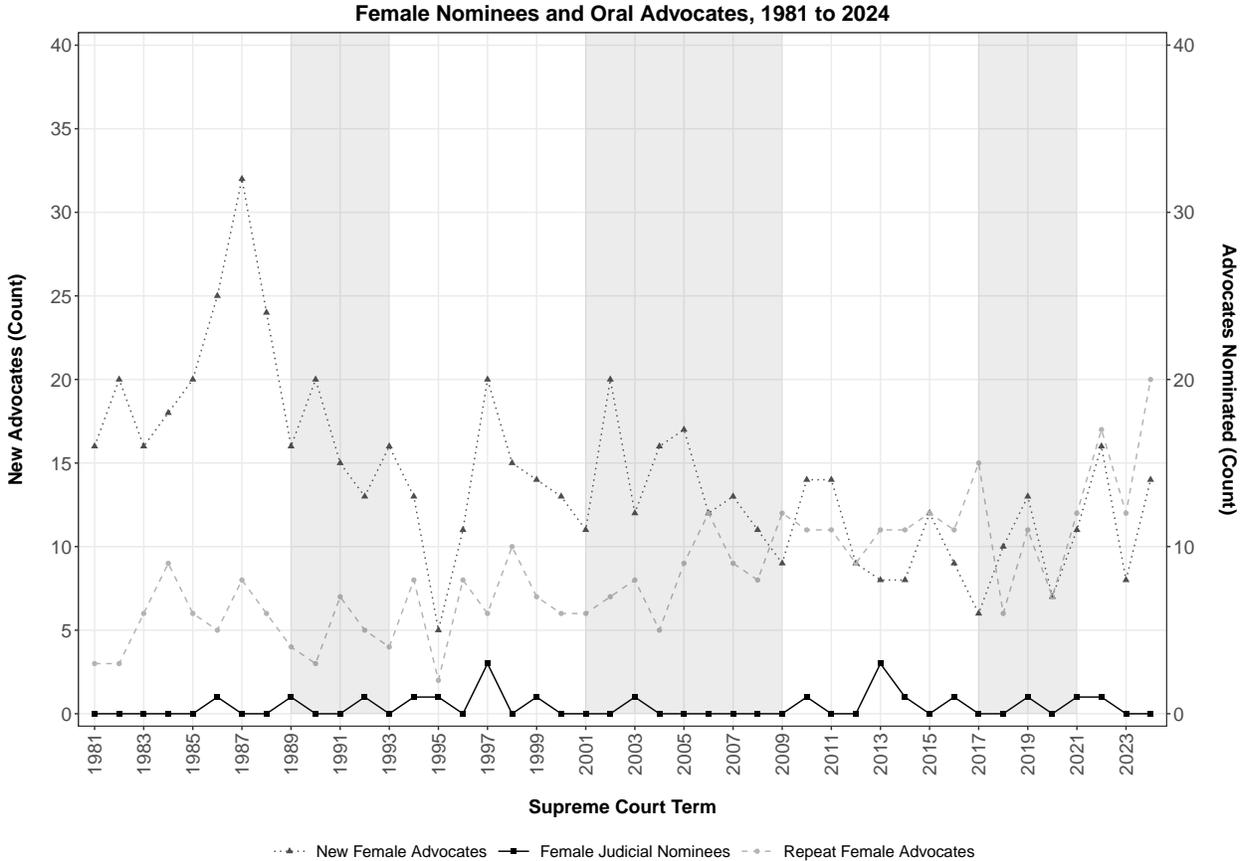


Figure 3: Number of women making their first arguments before the Supreme Court (grey triangles) and appearing as as repeat advocates (light grey circles) each term, compared to the number of female advocates leaving the bar for the federal bench each year (black squares), between 1981 and 2024. Grey background boxes separate presidential administrations.

Interestingly, the over time analysis in Figure 4 suggests that new male advocates

(dark grey triangles) have a decreasing presence at the Court’s lectern regardless of removal from the pool for a judgeship (black squares). Indeed, the figure suggests (and the literature confirms, see Biskupic, Roberts and Shiffman 2014) that repeat male advocates (light grey circles) dominate the bar. Unlike Figure 3, which suggests women’s removal might affect the diversity of the bar in the short term, Figure 4 seems to indicate that male attorneys’ presence at the bar changes based on forces that have little to do with judgeships.

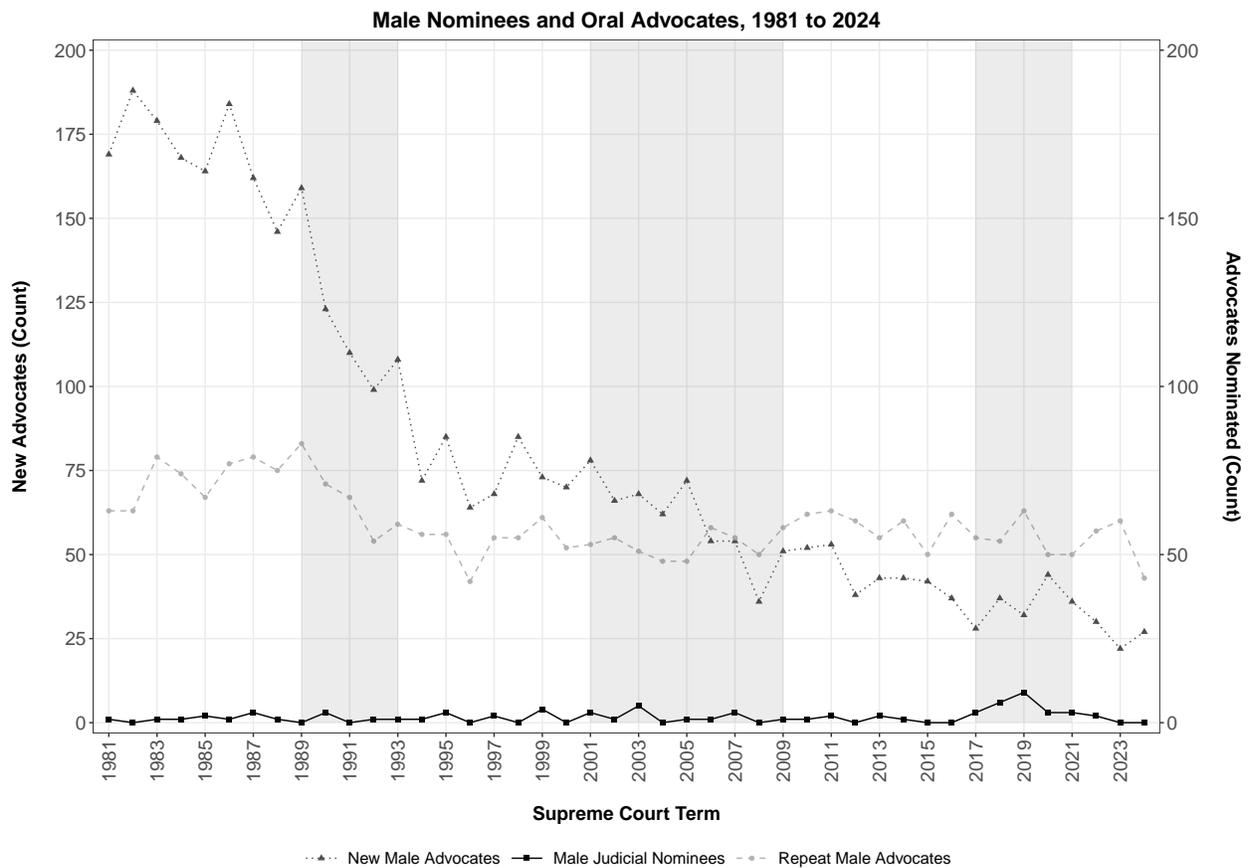


Figure 4: Number of men making their first arguments before the Supreme Court (grey triangles) and appearing as as repeat advocates (light grey circles) each term, compared to the number of male advocates leaving the bar for the federal bench each year (black squares), between 1981 and 2024. Grey background boxes separate presidential administrations.

## Regression Analysis

Given the suggestions in our descriptive analysis, we sought to more definitively address whether nominating Supreme Court advocates to federal judgeships actually creates opportunities for new advocates to approach the justices. To do this, we turn the variables we just discussed – the number of new male and female advocates, along with the total number of male and female advocates – into dependent variables, and use ordinary least squares regression to examine whether nominating a male or female advocate to the federal bench increased the number of men or women arguing before the Court in the subsequent term. To determine the influence of nominating Supreme Court advocates and its impact on the Supreme Court advocate bar, we include a lagged variable (1 year) of when a female or male advocated is nominated to the federal bench. Further, to account for differing gendered nominating strategies by party, we include a variable for the party of the nominating president (Asmussen 2011; King, Schoenherr and Ostrander 2025). We provide these results in Tables 2 and 3 below.

Table 2: Predicting the Number of Female Supreme Court Advocates Each Term (OLS)

	New Female Advocates		Total Female Advocates	
Female Advocate Nominated (lagged)	-0.902 (1.169)	-1.155 (1.292)	-0.293 (1.208)	-0.648 (1.347)
Male Advocate Nominated (lagged)	-0.213 (0.464)	0.289 (0.903)	-0.394 (0.479)	0.381 (0.942)
Republican President		-1.992 (2.712)		-0.714 (2.828)
Female Advocate Nominated (lagged) × Republican President		-2.690 (4.250)		-1.434 (4.431)
Male Advocate Nominated (lagged) × Republican President		-0.181 (1.114)		-0.725 (1.162)
Constant	14.849* (1.185)	14.997* (1.521)	23.372* (1.224)	23.069* (1.586)
Observations	43	43	43	43
R <sup>2</sup>	0.024	0.086	0.021	0.065

*Note: \* $p < 0.05$*

Beginning with Table 2, we see that neither female nor male advocates nominated to

the federal bench significantly influence whether there are new female advocates before the Court or the total number of female advocates.<sup>9</sup> Furthermore, the party of the nominating president does not influence the pool of female Supreme Court advocates. Regardless of whether Republican or Democratic presidents nominate previous female or male advocates to the federal bench, we find this does not influence neither the number of new female advocates nor does it influence the total number of female advocates. In other words, the number of female advocates before the Supreme Court remains stable even with presidents nominating from the Supreme Court advocacy pool.

Table 3: Predicting the Number of Male Supreme Court Advocates Each Term (OLS)

	New Male Advocates		Total Male Advocates	
Female Advocate Nominated (lagged)	-7.788 (10.522)	-14.468 (11.300)	-9.029 (12.125)	-16.729 (12.918)
Male Advocate Nominated (lagged)	-4.880 (4.177)	-0.805 (7.901)	-5.727 (4.813)	-1.354 (9.032)
Republican President		-39.361 (23.722)		-49.172 (27.119)
Female Advocate Nominated (lagged) × Republican President		8.755 (37.169)		7.113 (42.490)
Male Advocate Nominated (lagged) × Republican President		-1.011 (9.745)		-0.165 (11.141)
Constant	90.961* (10.663)	98.216* (13.303)	152.114* (12.288)	161.543*** (15.207)
Observations	43	43	43	43
R <sup>2</sup>	0.055	0.165	0.057	0.179

Note: \* $p < 0.05$

Turning our attention to Table 3, we see that, similar to our findings for female Supreme Court advocates in Table 2, presidents nominating female or male Supreme Court advocates does not influence the number of new or total number of male advocates. Additionally, the party of the nominating president, again, does not change the gendered makeup of Supreme Court advocates. Taken together, our results from Tables 2 and 3 demonstrate that presidents nominating elite attorneys – those select few that have argued in front of the

<sup>9</sup>Discussions of significance are with respect to two-tailed tests where  $p < 0.05$ .

Supreme Court – does not alter the gender of the advocate pool. That is, efforts by presidents to increase the gendered diversity of the federal bench has not decreased the gendered diversity of Supreme Court advocates.

## Discussion and Conclusion

Diversifying the federal bench and maintaining that diversification has been a presidential goal for fifty years, and presidents have accomplished that goal with room to spare (Goldman 1997). Today, about one-third of the federal judiciary is female, and nearly every district and circuit court has at least one woman, if not several, on it.<sup>10</sup> Presidents and the senators who contribute to the judicial selection process identified networks in which potential female nominees work, and they drew on those networks to great success (King, Schoenherr and Ostrander 2025). In this paper, we wondered what happens to those networks when presidents pillage them for judgeships. Do the women who leave get replaced? Or are presidents essentially robbing Peter to pay Paul, creating a more diverse judiciary at the expense of the feeder institutions' diversity? Using more than forty years of nominee and advocate data, we find that after a short-term loss of women in the advocacy pool, the oral advocate group tends to rebound and more women get the chance to argue. That is, removing women from the advocacy pool does not significantly decrease the number of women in that group. Diversifying a higher institution does not come at the expense of the lower ones, suggesting that diversification at all levels is useful and permanent.

As with any paper, there are limitations and places for growth. For one thing, the pool we opted to study, Supreme Court oral advocates, is not a well-used one. While it might seem obvious that presidents would select judges from the advocacy pool – to wit, four Supreme Court justices were advocates before joining the federal bench, including generational advocate John G. Roberts (Toobin 2008) – presidents and senators appear to

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<sup>10</sup>See <https://tinyurl.com/4xwb74vr>.

draw on this pool less than others, including state courts and lower-level litigators (Vining Jr. and Wilhelm 2023). Consequently, we encourage scholars to look at the exit-and-return patterns in these other institutions. Additionally, given the whiteness of the Supreme Court oral advocacy bar (Biskupic, Roberts and Shiffman 2014), we could not look at the racial and ethnic diversification of the federal bench (Moyer, Harris and Solberg 2022). Once again, we think analysis of other pools and feeder institutions could be useful here, and we encourage scholars to continue building on this work.

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