

# [***At a time of uncertainty, LGBTQ+ community sees meaningful representation in latest Biden judicial nominees***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6B8Y-C851-JBSS-S00X-00000-00&context=1516831)

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**Body**

(CNN) &#8212; The Biden administration has nominated two LGBTQ+ women to the federal bench in a patternthat advocates and scholars say can help build public trust ina community that has faced political and legal threats.

If Nicole Berner and Melissa DuBose are confirmed, the Biden administration will have appointed 11 LGBTQ+ judges to lifetime positions, tying the record set under the Obama administration, according to [*data analyzed*](https://civilrightsdocs.info/pdf/Openly-LGBTQ-Federal-Judges.pdf) by TheLeadership Conference on Civil and Human Rights, a lobbying group**.**

The Senate is expected to vote on Berner's nomination to the US Court of Appeals for the Fourth Circuit,while DuBose, who would serve as the US District Court for the District of Rhode Island, is waiting for her Senate Judiciary Committee hearing.

Lena Zwarensteyn, senior director of the fair courts program at The Leadership Conference, said Berner and DuBose's nominations come at a time when LGBTQ rights are under attack.

"As LGBTQ rights are being subject to litigation across the country, it is increasingly clear that we need judges at all levels of the judiciary who understand what's at stake and who know that many of these cases are fundamentally about the ability of queer people in America to live authentically and with dignity," Zwarensteyn said.

Berner, a longtime union lawyer, is currently general counsel to the Service Employees International Union,which represents workers in the healthcare, public services and property services sectors. She previously spent years working as staff attorney for Planned Parenthood Federation of America to protect safe access to reproductive health care, according to a biography shared by the White House.

A coalition of labor unions, including the AFL-CIO and the Service Employees International Union, released a statement in support ofBerner's nomination.

Berner **"**exemplifies the type of diverse representation that is important in our justice system," the statement said. "If confirmed, Ms. Berner will bring to the bench her life experience as a Jewish, LGBTQ woman, and will be the first openly LGBTQ judge on the United States Court of Appeals for the Fourth Circuit."

DuBose is an associate judge on the [*Rhode Island District Court*](https://opengov.sos.ri.gov/GOVDirectoryPublic/ViewGOVDirectoryDetails?RelationID=5021&EntityID=874&page=DetailJudge) in Providence and aformer prosecutor for the Rhode Island Attorney General's Office. Before becoming an attorney, she taught high school for nearly a decade.

If confirmed, DuBose would become the first person of color and first judge who identifies as LGBTQto serve on the US District Court for the District of Rhode Island, according to Democratic Sens. Jack Reed and Sheldon Whitehouse, who [*recommended*](https://www.reed.senate.gov/news/releases/reed-and-whitehouse-announce-recommendation-of-judge-melissa-dubose-to-the-us-district-court-for-rhode-island) DuBose.

A gap in LGBTQ+ representation

Berner and DuBose's nominations come as the Biden administration continues to emphasize increasing demographic and professional diversity in the courts.

While there has been progress in LGBTQ+ representation on the federal bench in recent years, civil rights advocates say more is needed to reflect the diversity of the country.

There are 21 LGBTQ+ judges on US federal courts but there are a total of 870 federal judgeships, [*according to a tally*](https://civilrightsdocs.info/pdf/Openly-LGBTQ-Federal-Judges.pdf) by The Leadership Conference.

Eleven federal judges who identified as LGBTQ+ were confirmed to lifetime appointments during the Obama administration and two judges were confirmed during the Trump administration, the organization said. So far, nine judges who identify as LGBTQ+ have been confirmed during the Biden administration.

While federal judges who identify as LGBTQ+ make up about 2.4% of the overall federal judiciary, a 2022 Gallup survey shows the percentage of adults who identified as LGBTQ in the US has [*doubled in the past decade*](https://www.cnn.com/2022/02/17/us/lgbtq-population-increase-gallup-cec/index.html) to 7.1% of Americans.

Zwarensteyn said shehopes the potential confirmation of Berner and DuBose will help "inspire more people from underrepresented and historically excluded communities to see that there is a path to the bench."

Don Haider-Markel, a professor of political science at the University of Kansas and author of "Out and Running: Gay and Lesbian Candidates, Elections, and Policy Representation," said while having LGBTQ+ judges doesn't guarantee a certain outcome in court, judges from underrepresented communities bring their diverse experiences to the bench.

"We've seen these judges do have a pattern of decision-making that differs from the typical White male decision-making we see out of judges," Haider-Markel said.

"We would expect something similar from LGBTQ judges in that their decision-making will look different than the typical cisgender White male," he added.

During her confirmation hearing before the Senate Judiciary Committee, Berner said although she has "zealously advocated on behalf of millions of working men and women" she understands her role as a federal judge would be "a very different role than the role of an advocate."

"I've served on both the federal court of appeals and on the federal district court and I saw firsthand the importance of approaching every case with an open mind, of studying the record of a case deeply and thoroughly, of understanding the relevant and binding precedent, and to fairly applying precedent to the law without regard to prior representation or personal opinions on any issue," she said.

"That would be my commitment were I to be so fortunate as to be confirmed."

LGBTQ+ rights under attack

Berner and DuBose's nominations come at a time when LGBTQ+ rights have been at the center of ***politics***. At least 510 anti-LGBTQ+ bills were introduced in state legislatures last year and a number of laws are currently being challenged in courts, according to [*American Civil Liberties Union data*](https://www.aclu.org/legislative-attacks-on-lgbtq-rights?impact=).

Haider-Markel said the country has seen an increasing backlash against the LGBTQ+ movement as it expanded to include transgender people and other "sexual minorities."

"It has had really negative consequences, especially for LGBTQ youth who are an at-risk population to begin with," he said. "Oftentimes, these youth are not accepted by their families and communities if they try to come out as LGBTQ. On top of that, we've seen especially at the state level, legislation that directly targets these youth in terms of their ability to access restrooms that coincide with their gender identity, to participate in athletics, to receive medical treatment for their conditions that helps to affirm their gender identity."

Civil rights andLGBTQ+rights groups, like the Leadership Conference, have been calling for increased representation on the federal bench, arguing the country needs judges who understand "the real consequences that their decisions carry."

Ethan Rice is a senior attorney for the Fair Courts Project at Lambda Legal, a US-based organization thatadvocates for the LGBTQ+ community people living with HIV in the courts.

He said having more LGBTQ+ judges can help ensure the public is treated with dignity and can view the court's decisions as legitimate.

Rice said "there's always a concern that someone who is on the bench doesn't understand or won't be able to see from different viewpoints."

The attorney, who conductseducational programs, said he's seen growing interest from state and local judges in learning more about transgender people and LGBTQ+ rights over theyears.

Rice said he believes the courts see the need to understand "what's going on across the country" before it comes to their courtrooms.

Zwarensteyn, with The Leadership Conference, said if Berner and DuBose are confirmed it "should be a moment of pride for the nation and for the judiciary" but "we must not settle for only the progress we're making right now."

"The vital work of building an equal justice judiciary that represents and works for all people in our nation must continue," she said. "We need more openly LGBTQ judges, including trans and non-binary judges - and we need judges from all of our communities who will respect the rights of all of us."

By Nicole Chavez, CNN

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