



United States Bankruptcy Court
District of Massachusetts

Frank J. Bailey
United States Bankruptcy Judge

Diversity on the Bench
December 6, 2017



: I will cover today:

Part 1: How diverse are the judges on the Bankruptcy Bench?

Part 2: Why does it *matter* if the Bankruptcy Bench is diverse?

Part 3: What can we do to increase diversity on the Bankruptcy Court bench?

The U.S. system of bankruptcy is the best in the world

“As tough as the last few years have been, the American economy has responded a bit more effectively than other economies, and bankruptcy is a big part of that.”

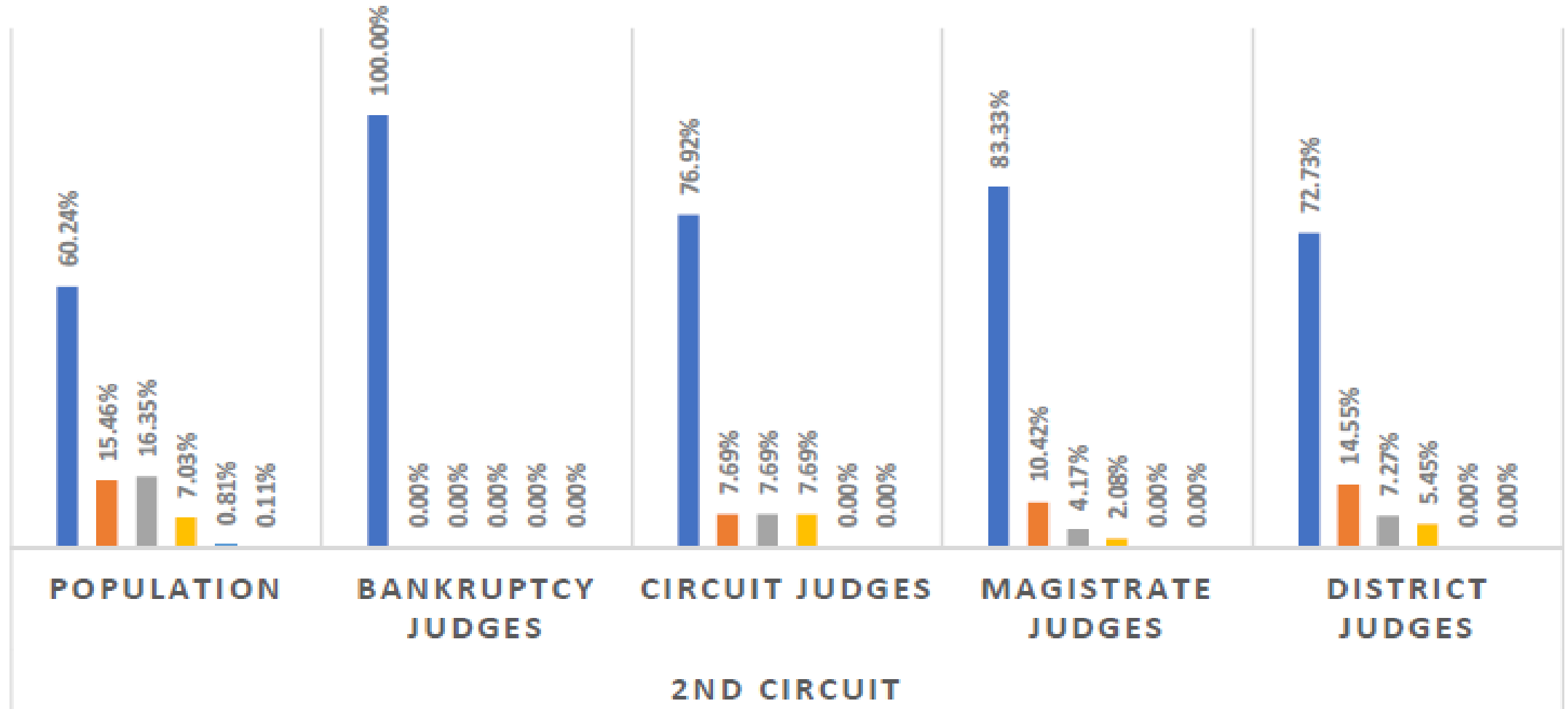
Prof. David Skeel, U. Penn. Law School

Part 1. Does the Bankruptcy Bench “Look Like” the Population It Serves?

- The NCFTJ/JD did a study: Compare the Racial Profile of Federal Judges to the Racial Profile of the general population
- Use 2013 Census Data and 2013 Data on Judges from the Administrative Office
- Please note: **we have made progress since 2013!**

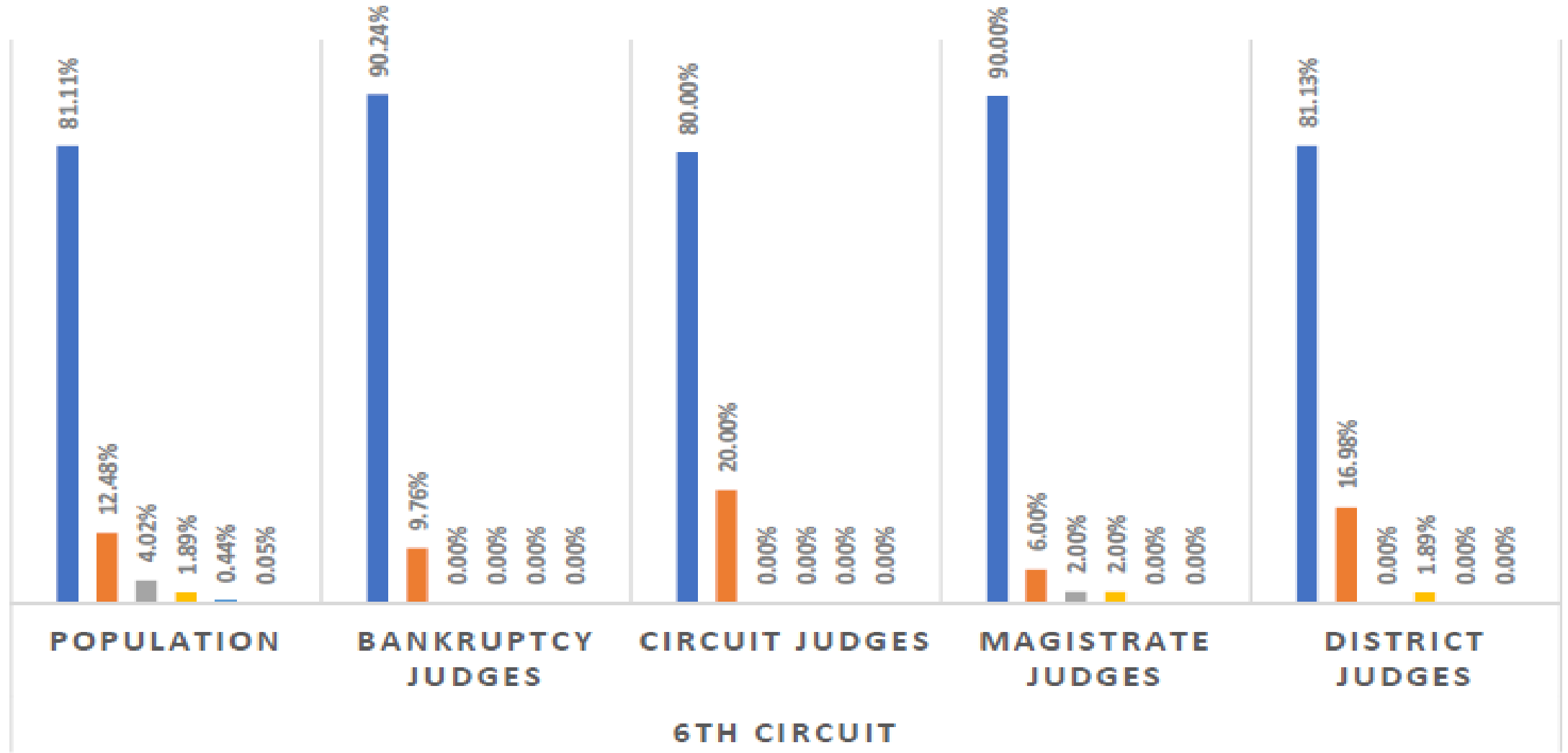
2ND CIRCUIT

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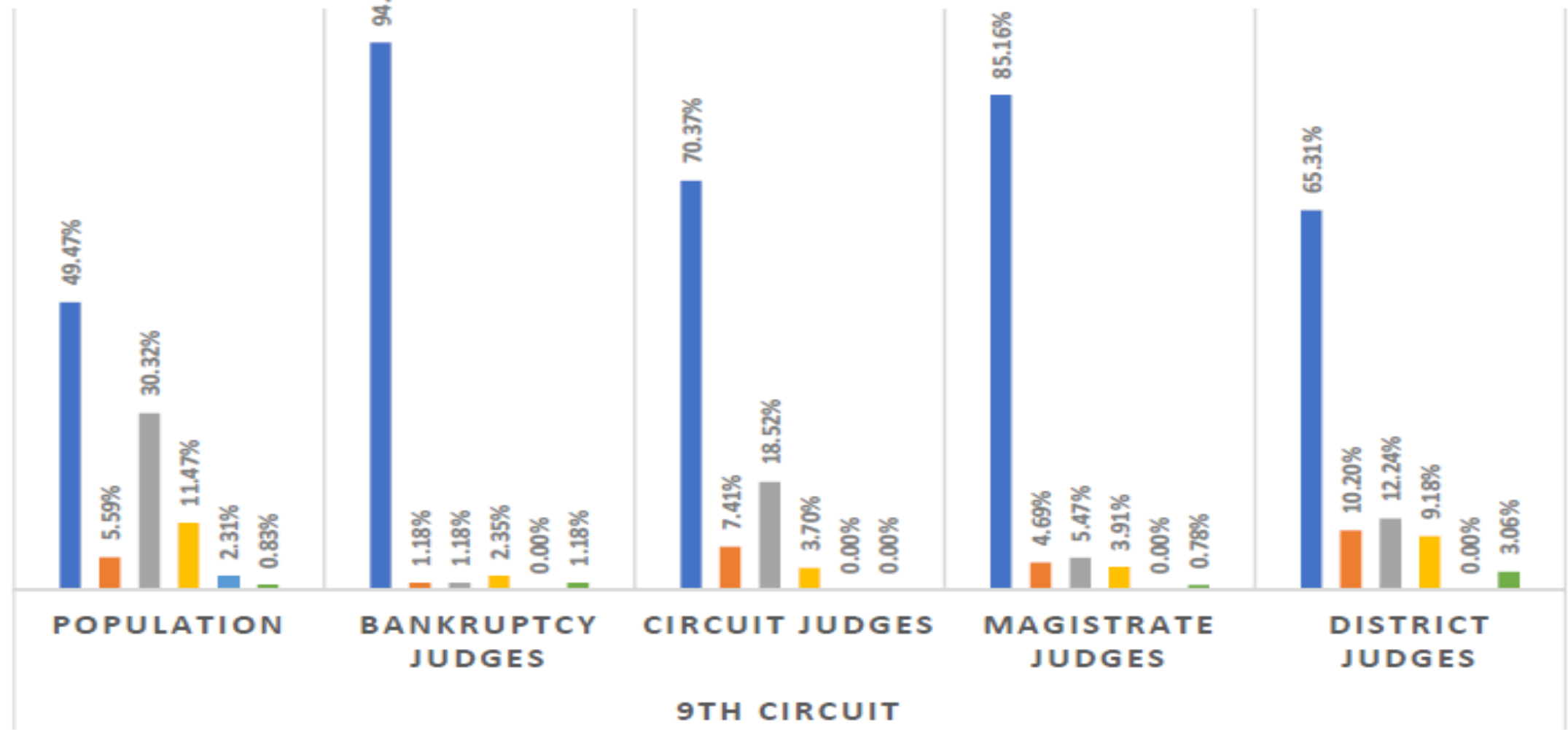
6TH CIRCUIT

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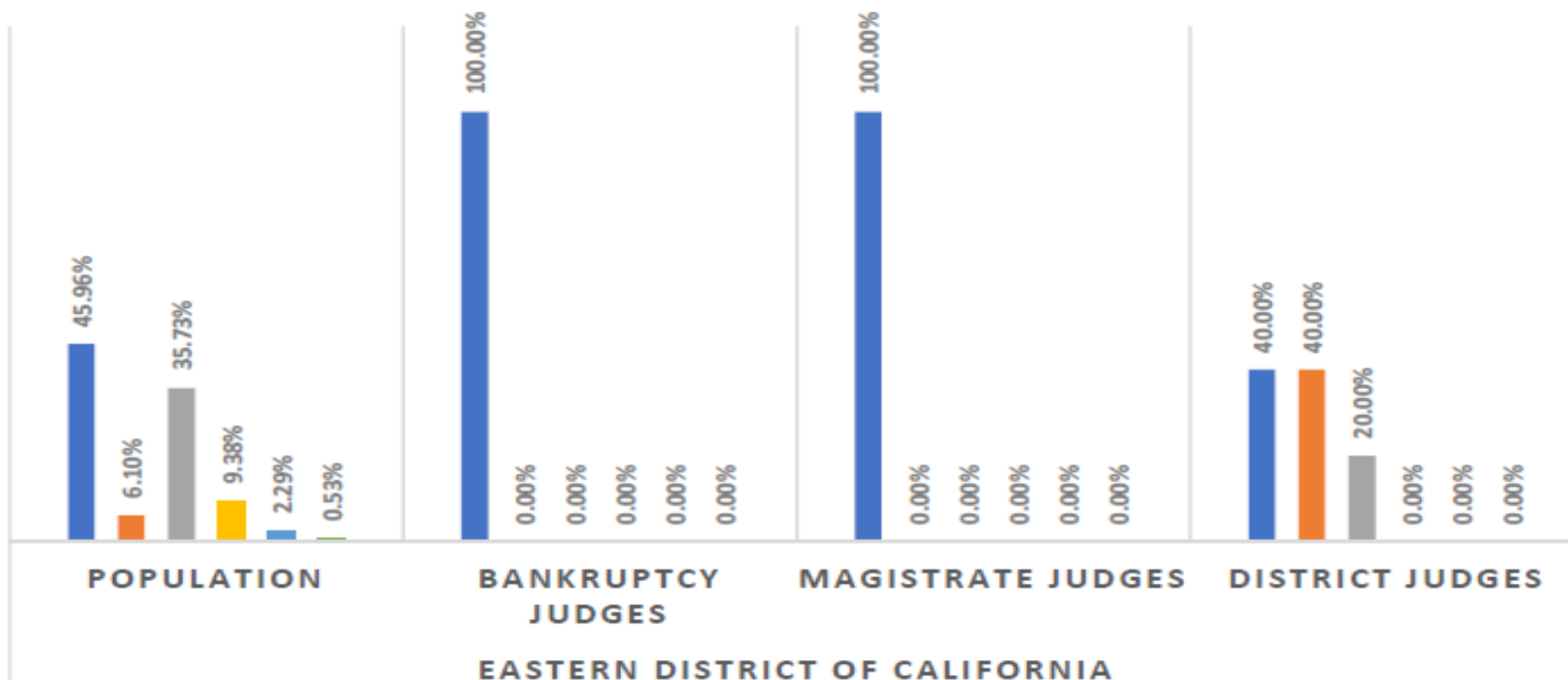
9TH CIRCUIT

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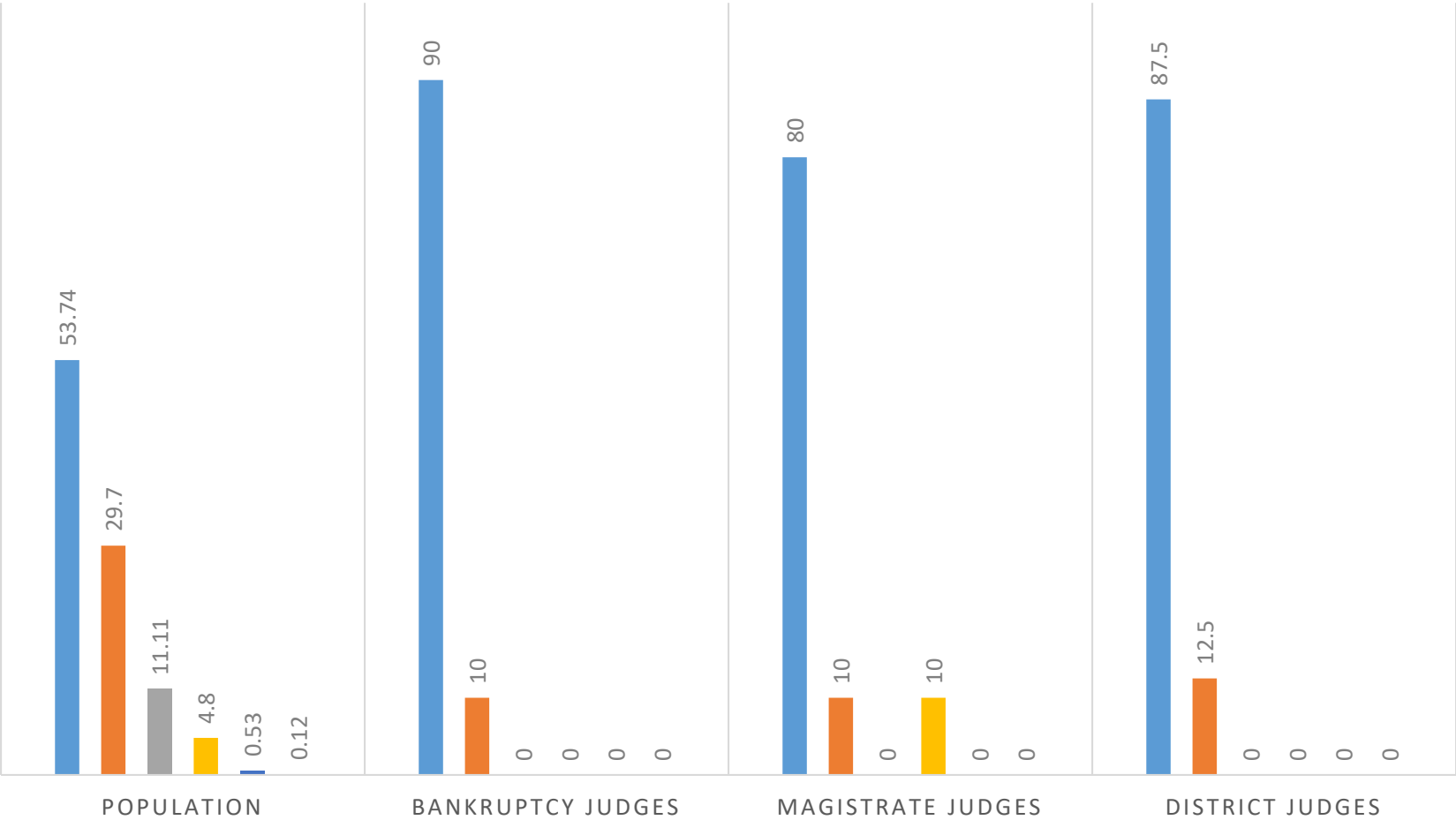
EASTERN DISTRICT OF CALIFORNIA (SACRAMENTO AREA)

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



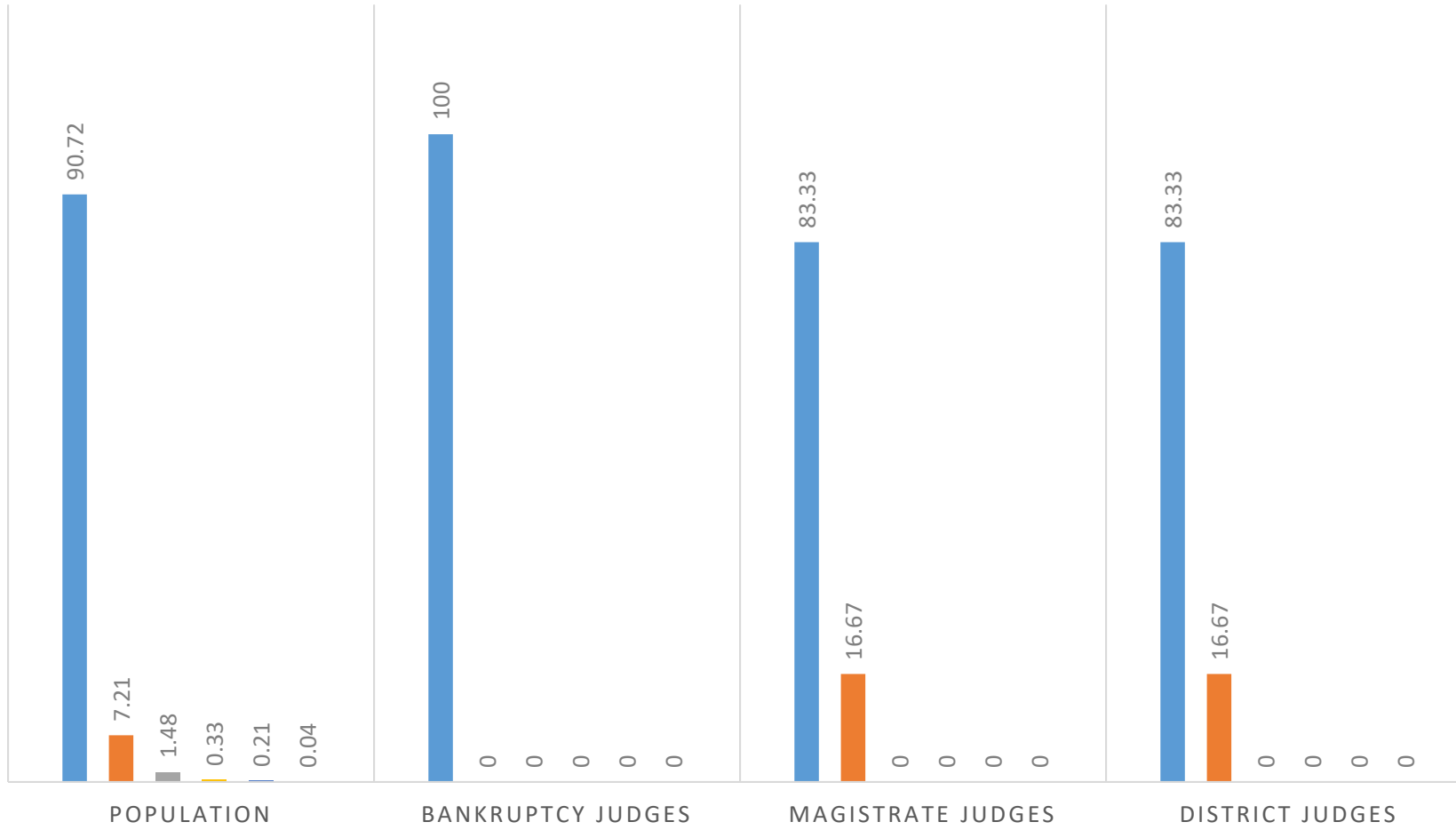
NORTHERN DISTRICT OF GEORGIA

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



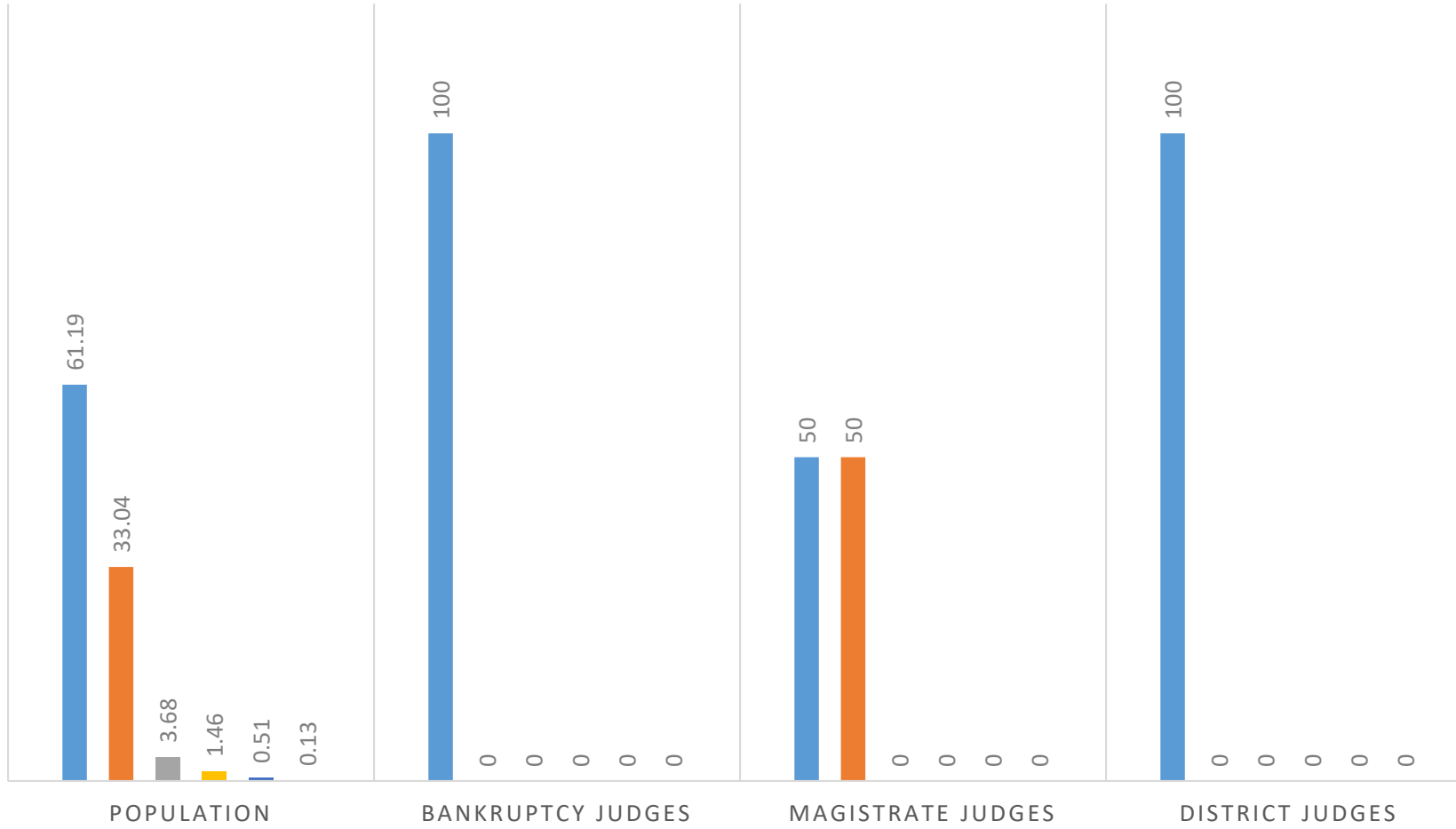
NORTHERN DISTRICT OF ALABAMA

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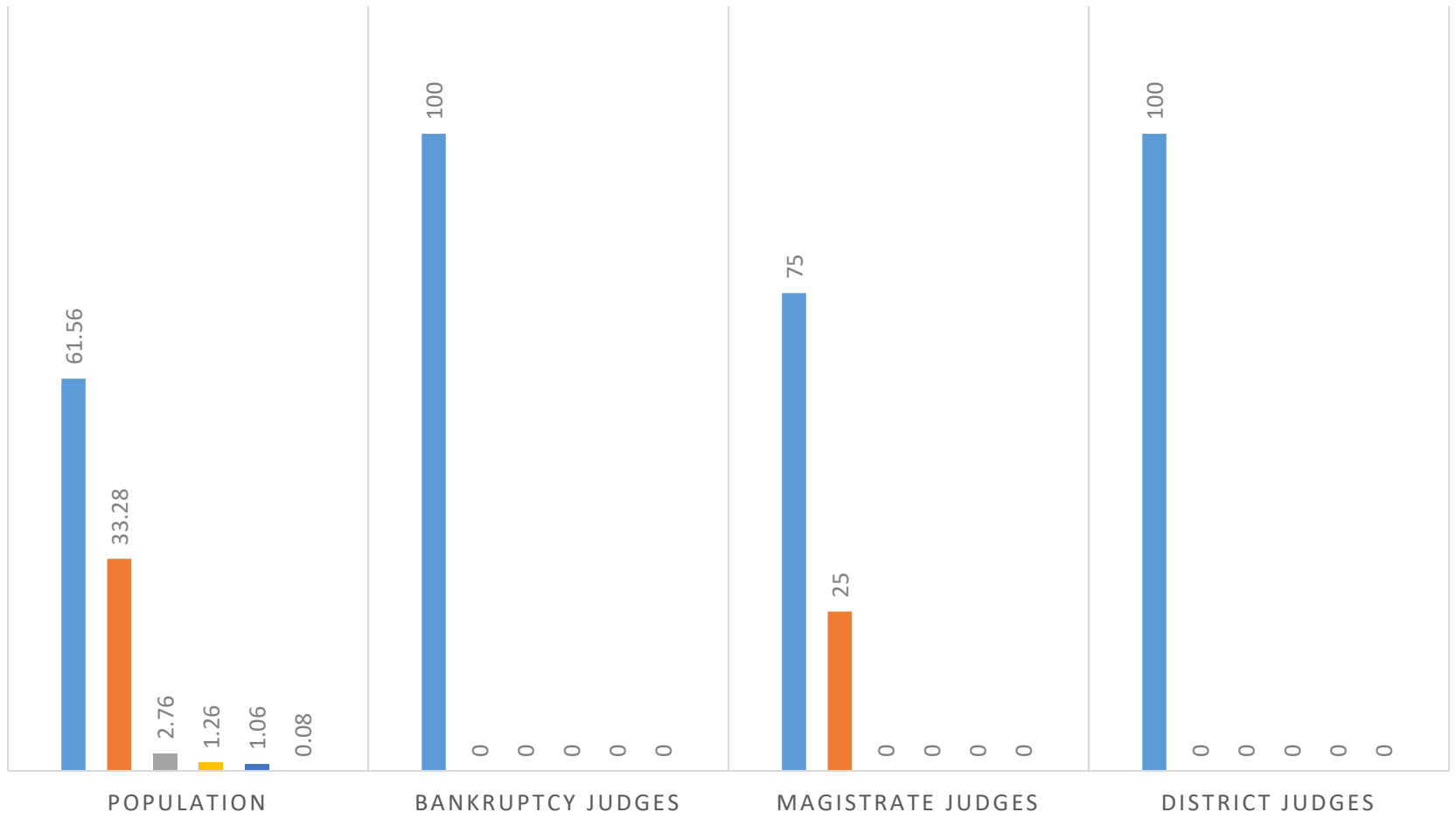
MIDDLE DISTRICT OF ALABAMA

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SOUTHERN DISTRICT OF ALABAMA

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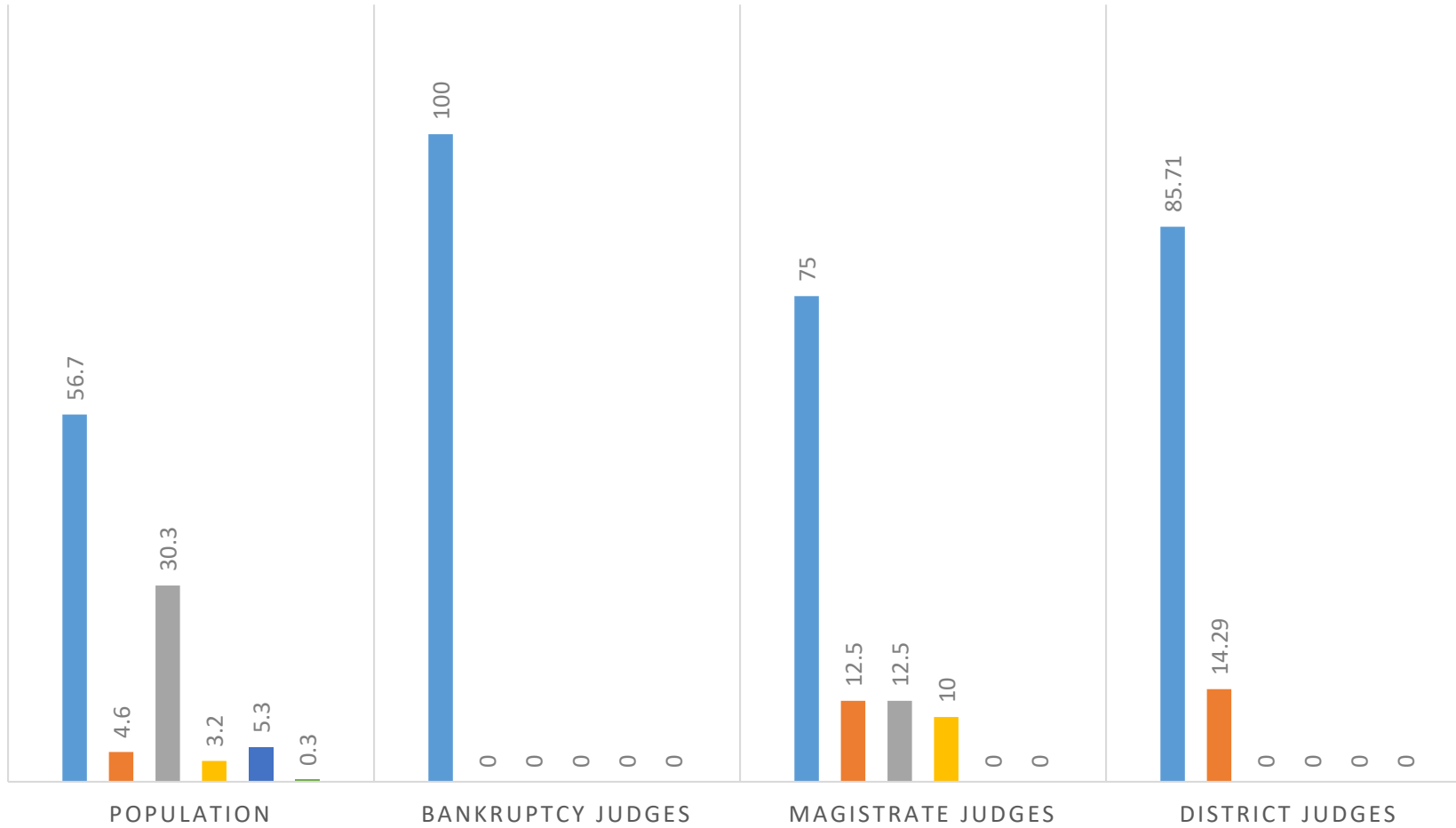
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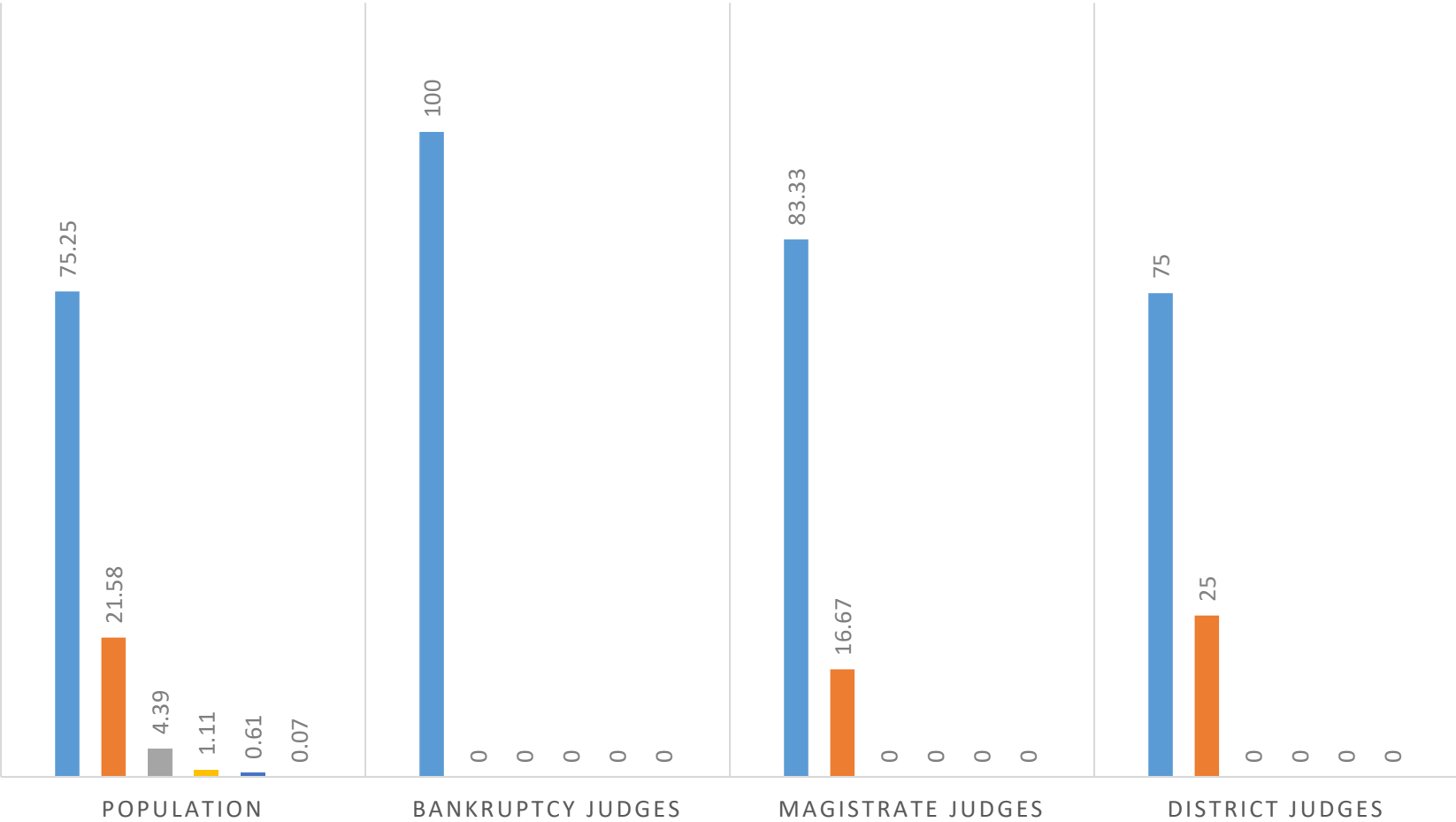
DISTRICT OF ARIZONA

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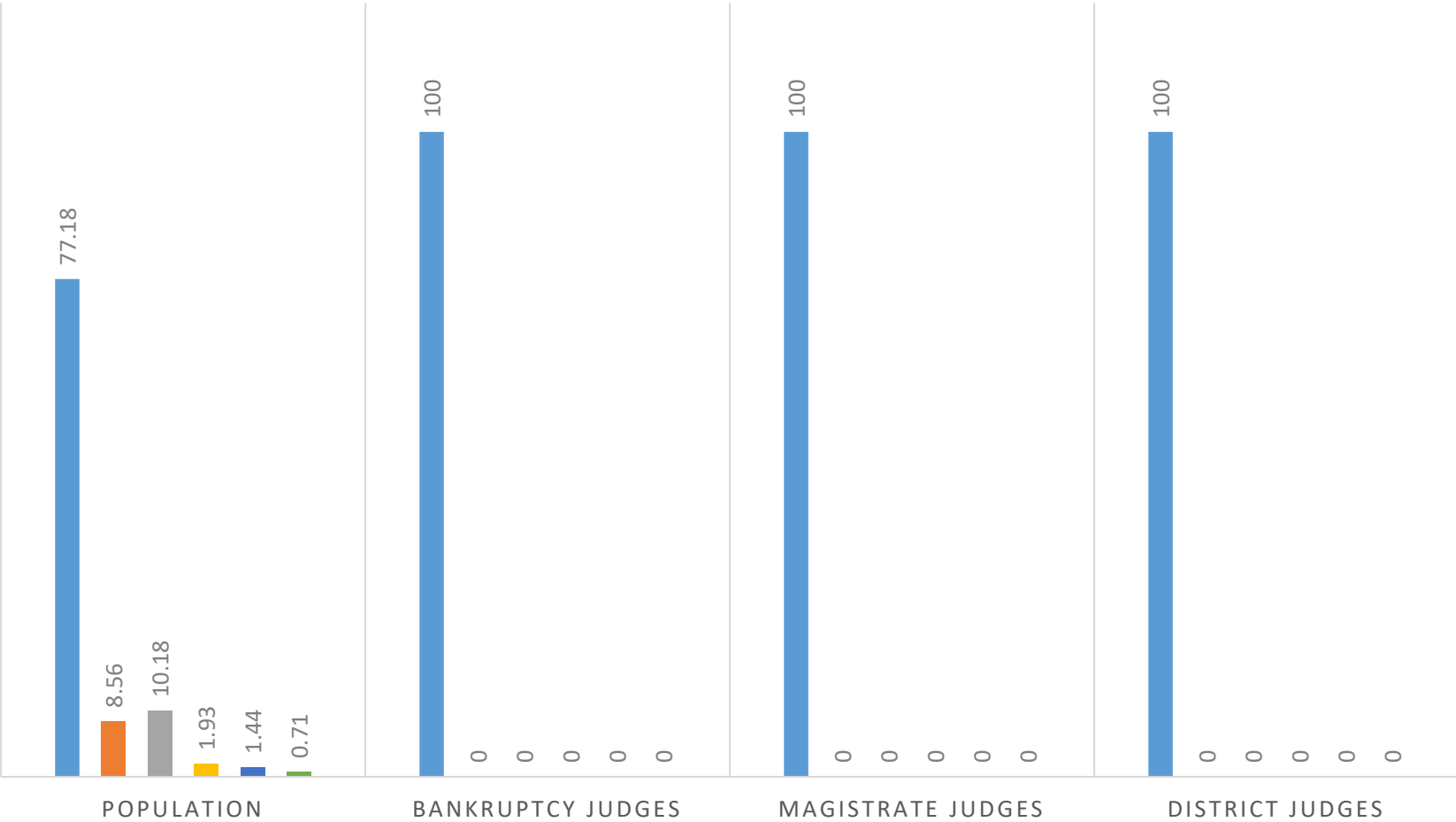
EASTERN DISTRICT OF ARKANSAS

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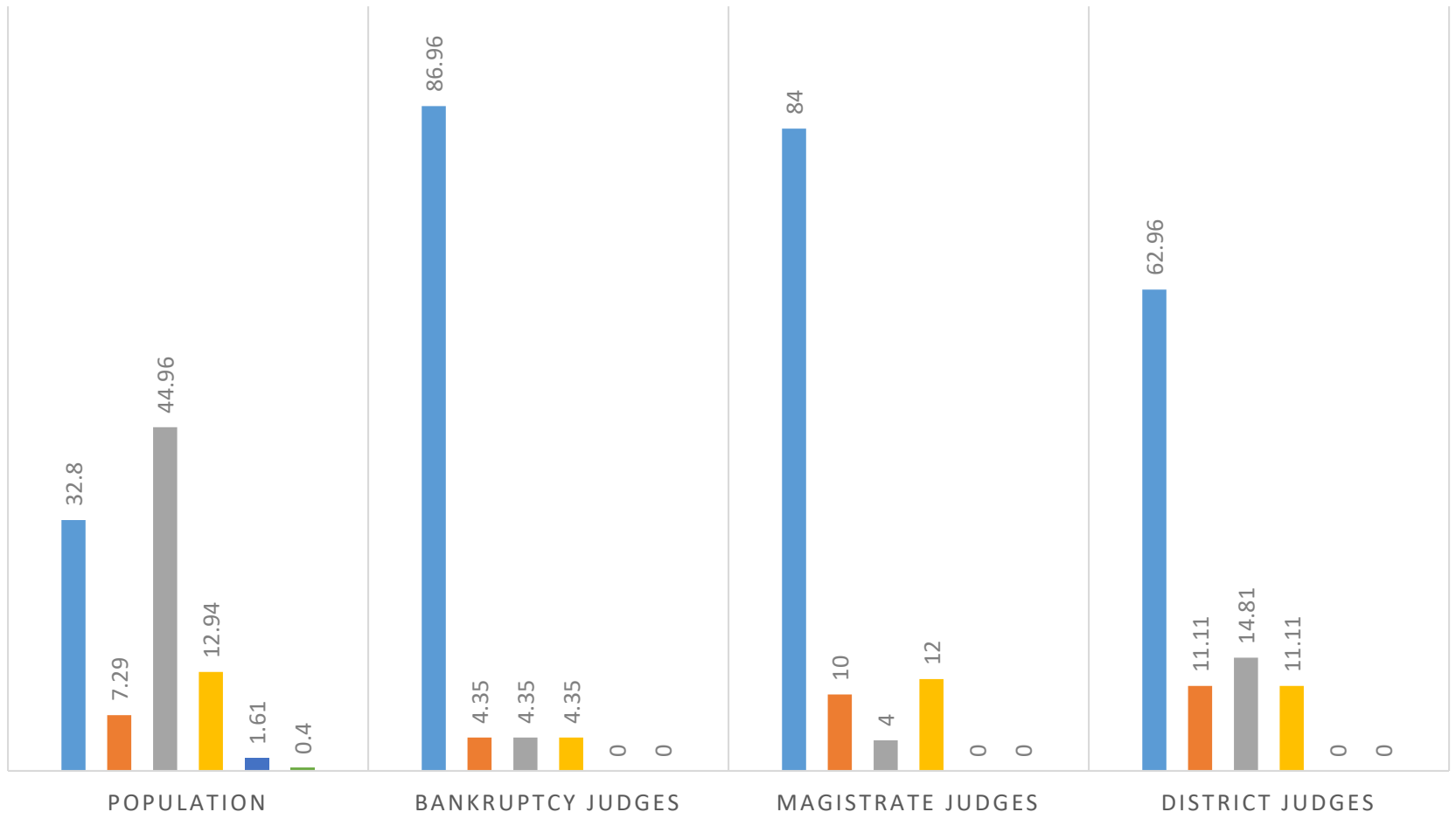
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Caucasian African American Latino/Hispanic Asian Native American Pacific Islander



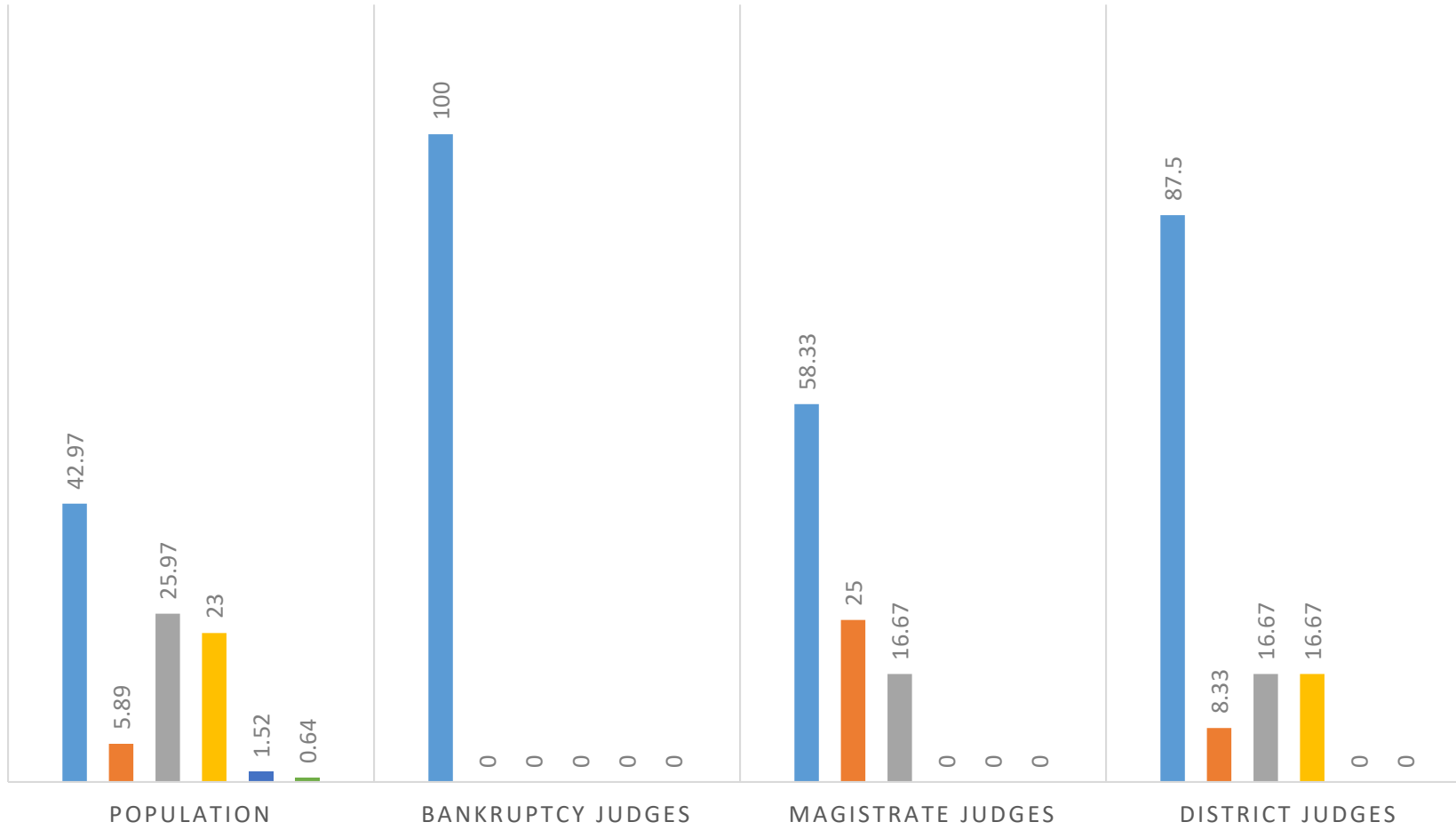
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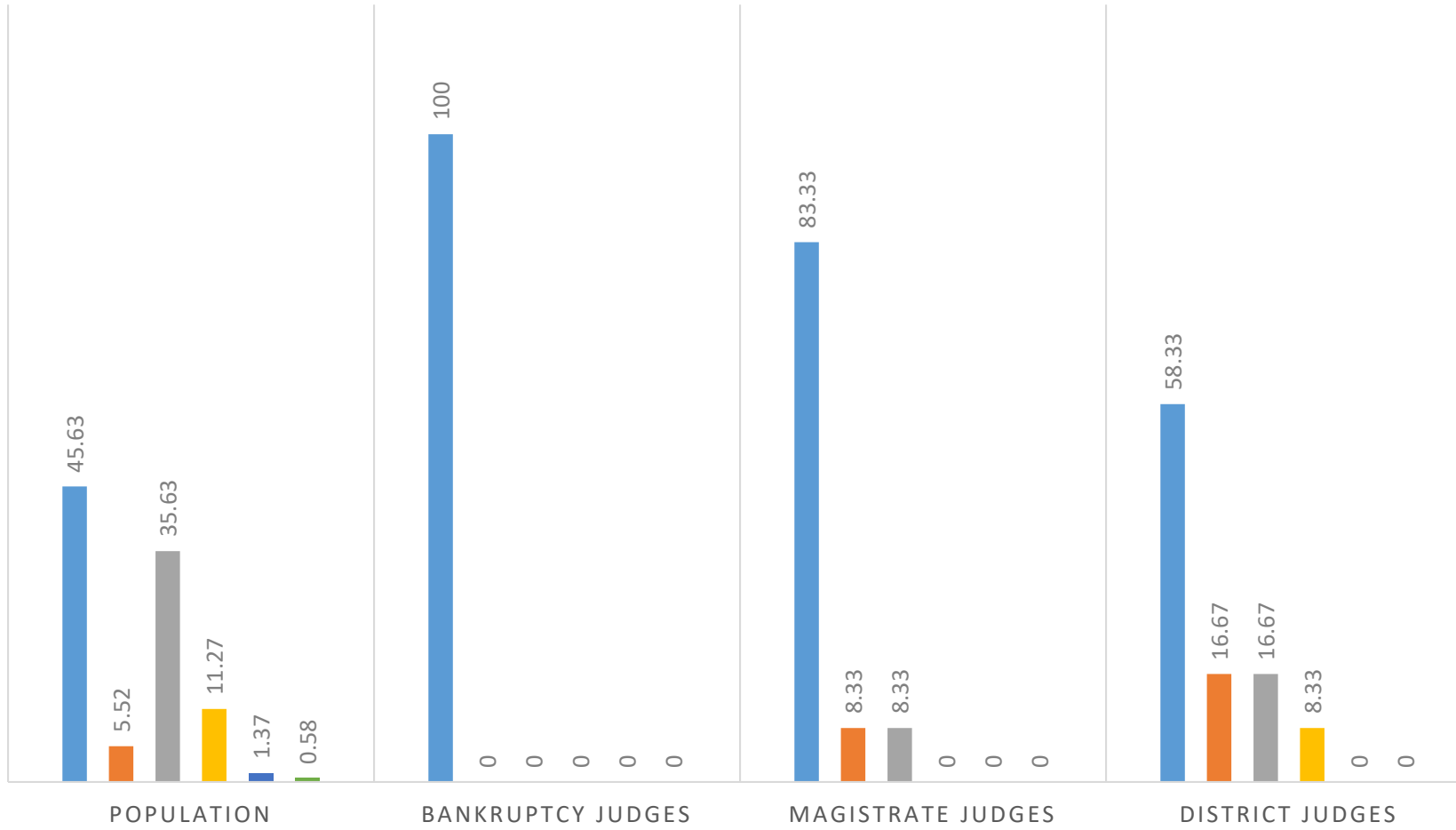
NORTHERN DISTRICT OF CALIFORNIA

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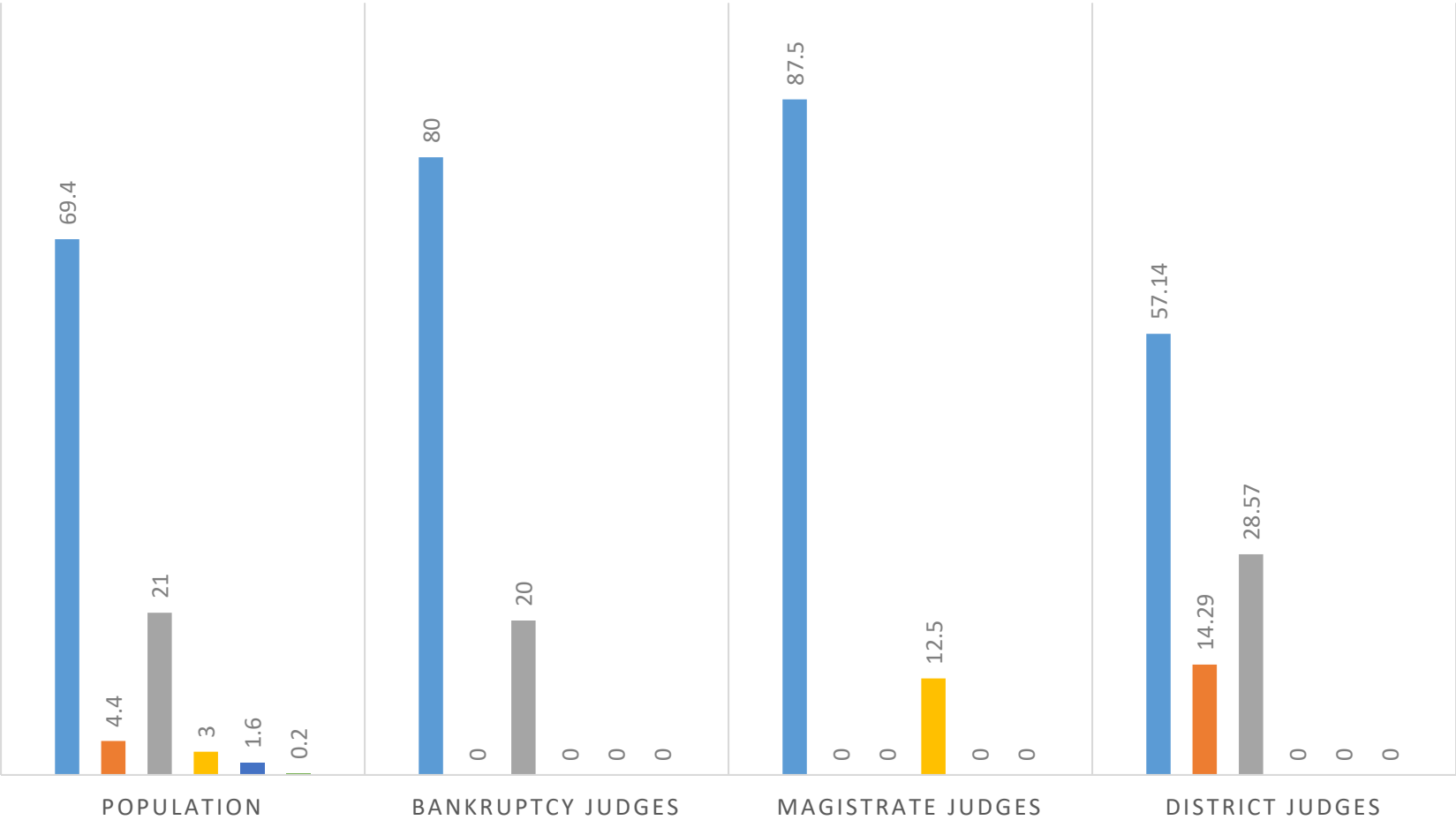
SOUTHERN DISTRICT OF CALIFORNIA

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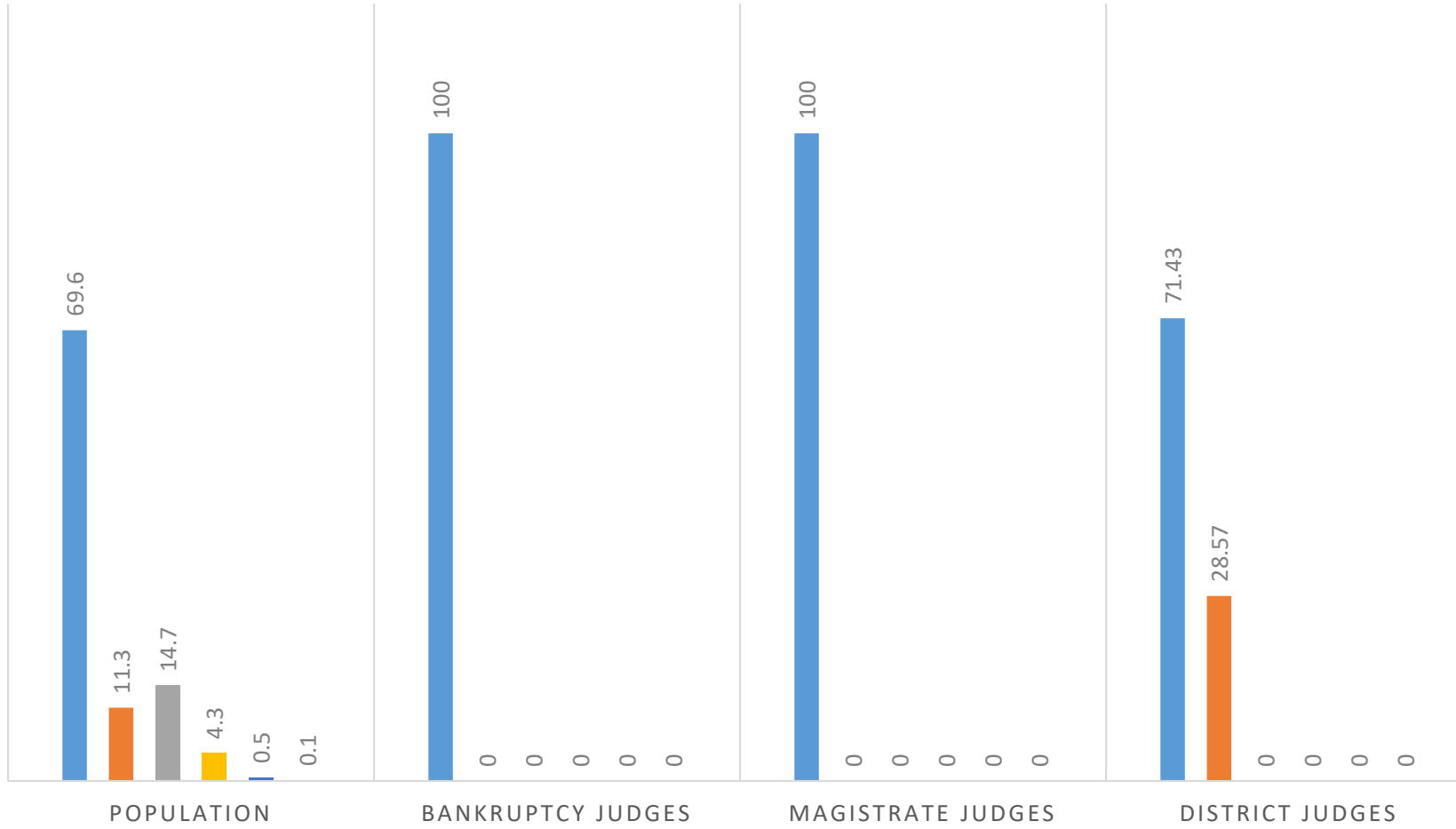
DISTRICT OF COLORADO

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



DISTRICT OF CONNECTICUT

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



DISTRICT OF DELAWARE

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



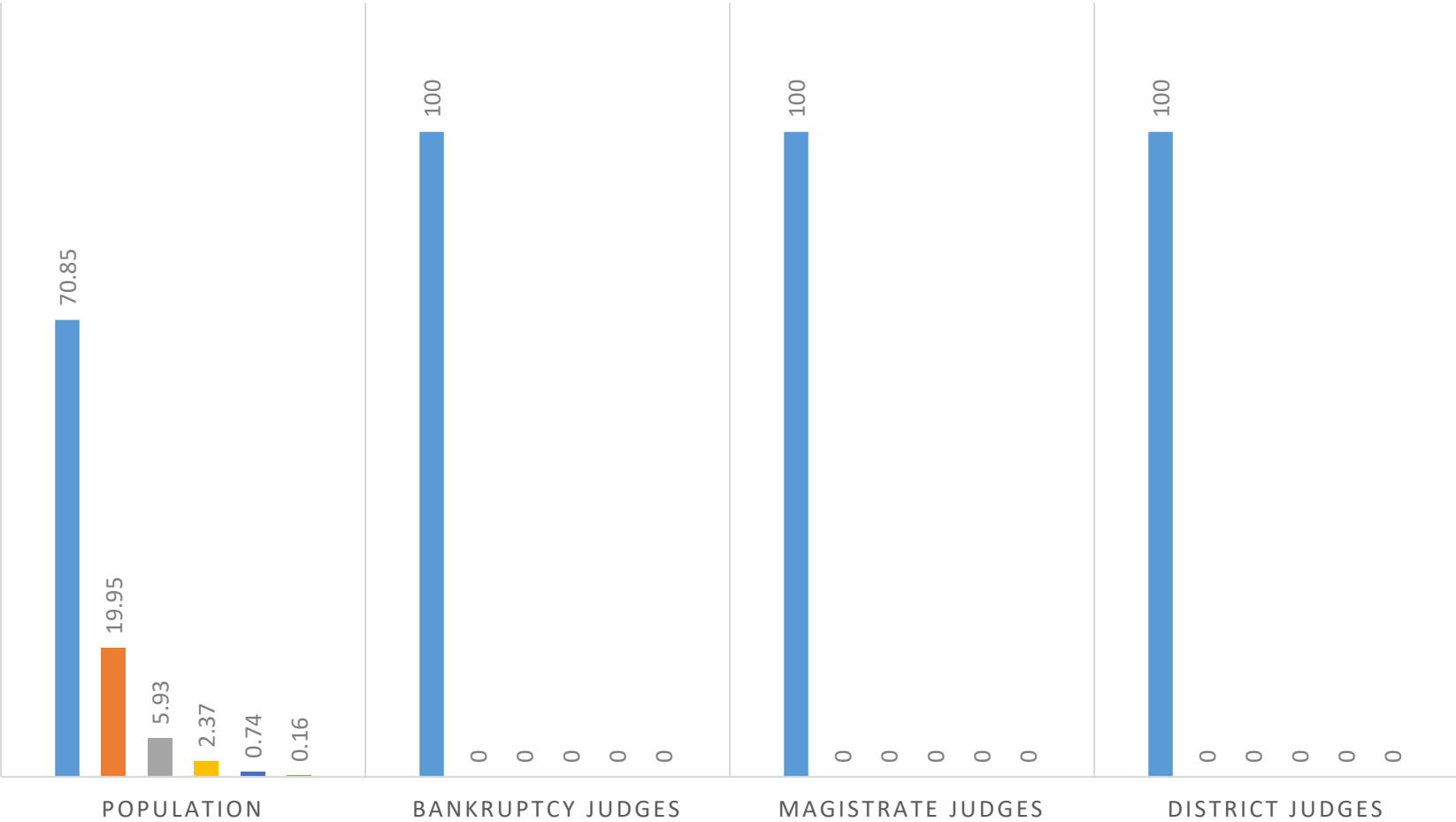
DISTRICT OF COLUMBIA

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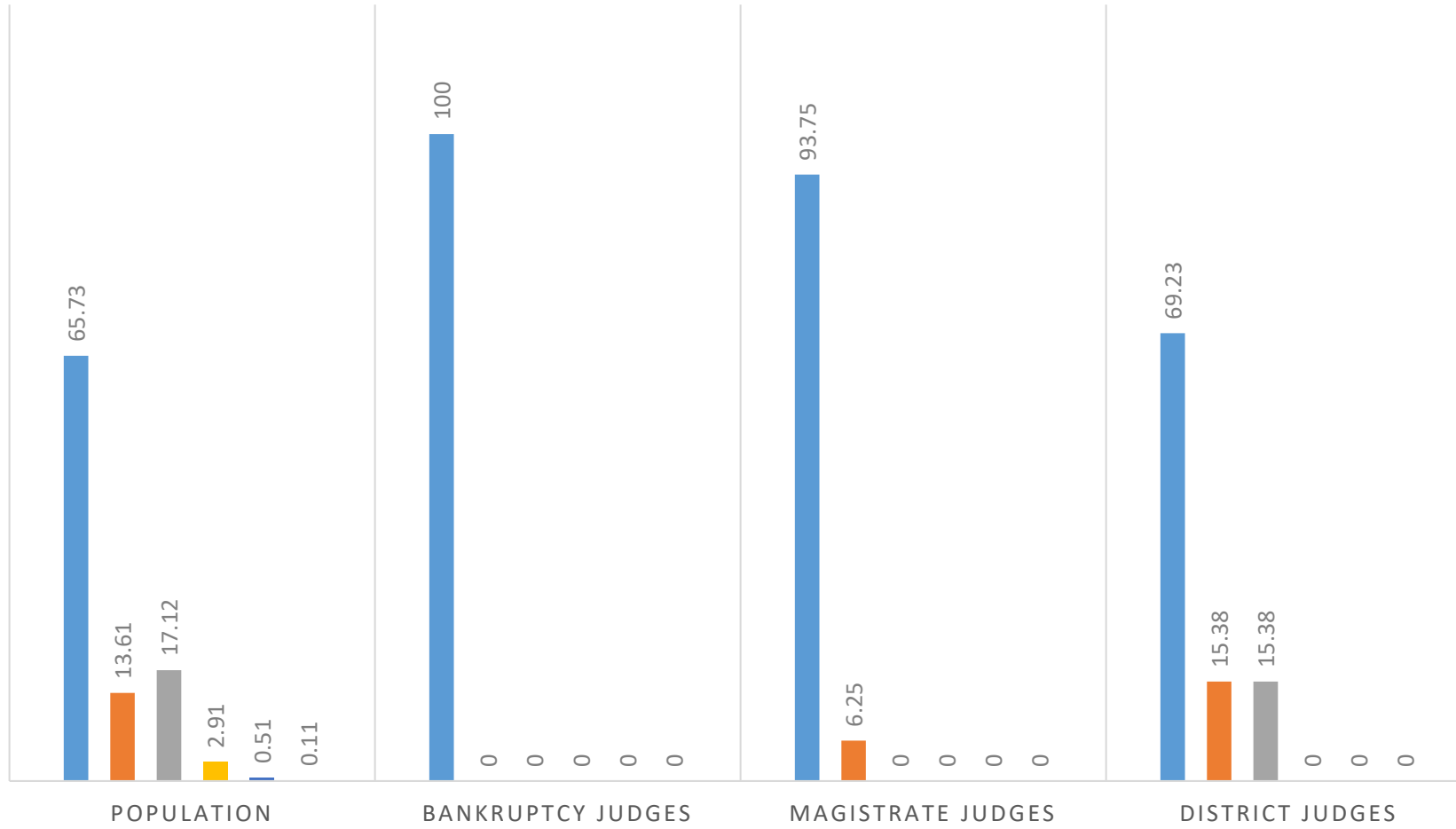
NORTHERN DISTRICT OF FLORIDA

Caucasian African American Latino/Hispanic Asian Native American Pacific Islander



MIDDLE DISTRICT OF FLORIDA

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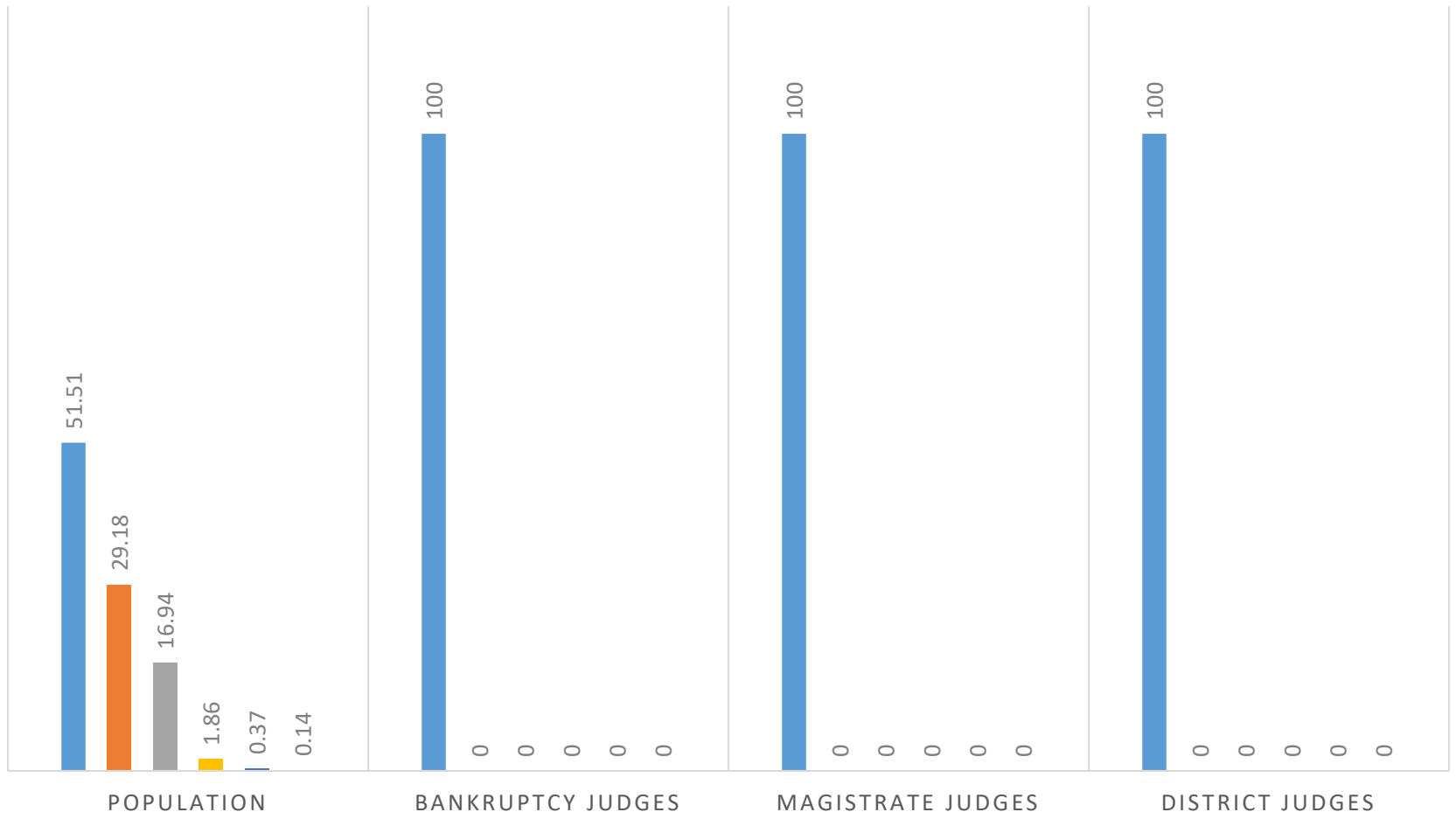
MIDDLE DISTRICT OF GEORGIA

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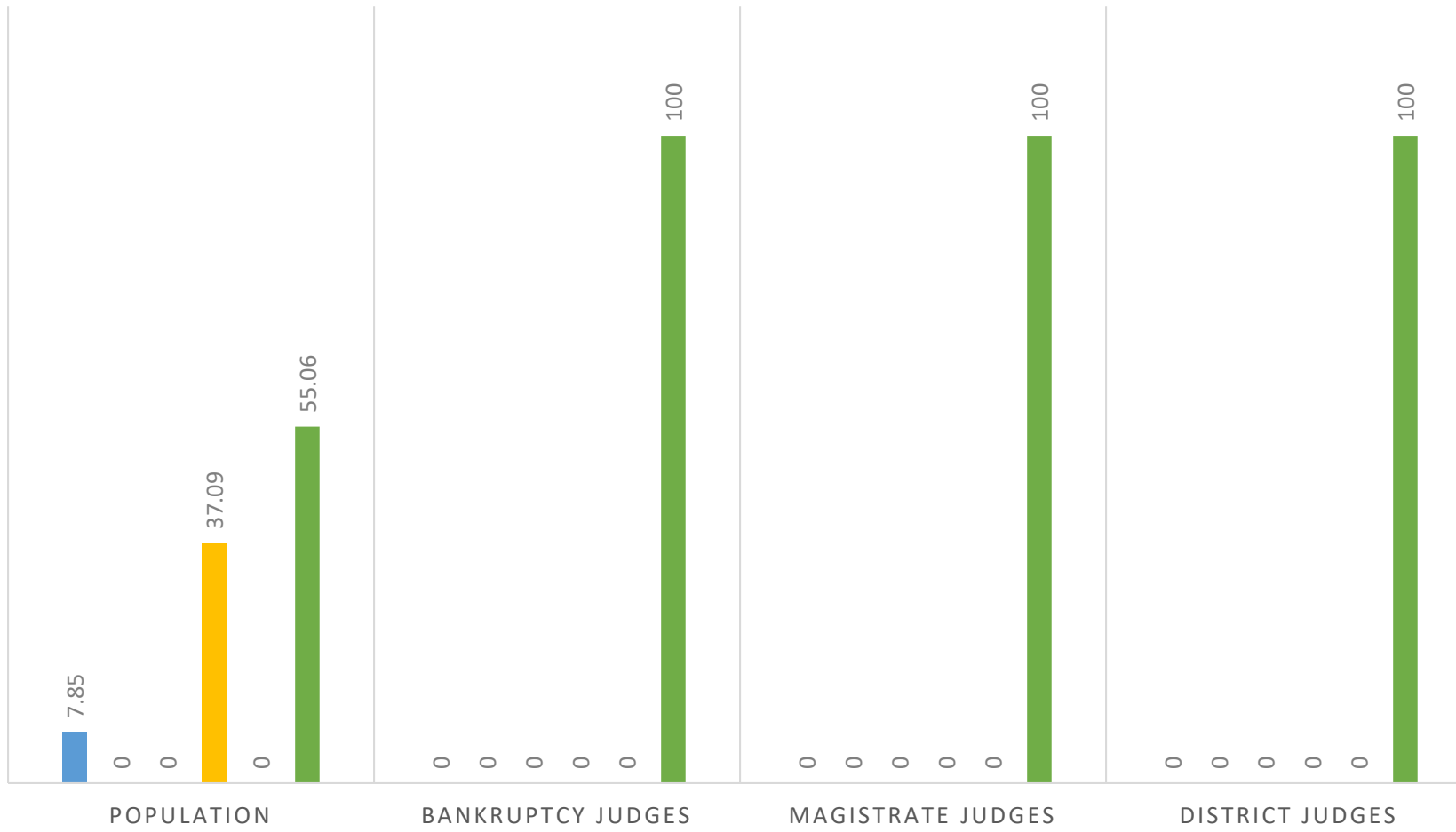
SOUTHERN DISTRICT OF GEORGIA

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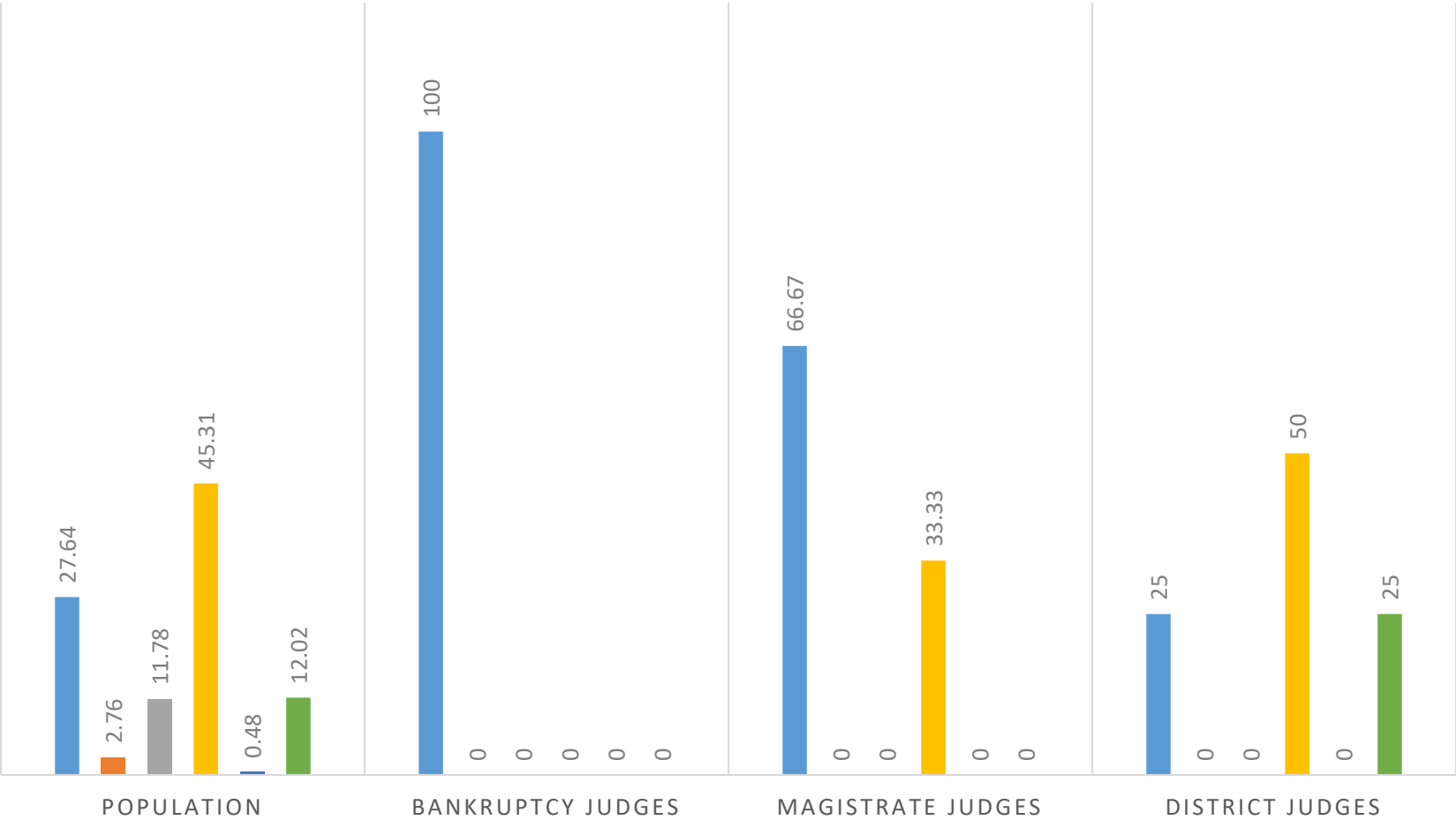
DISTRICT OF GUAM

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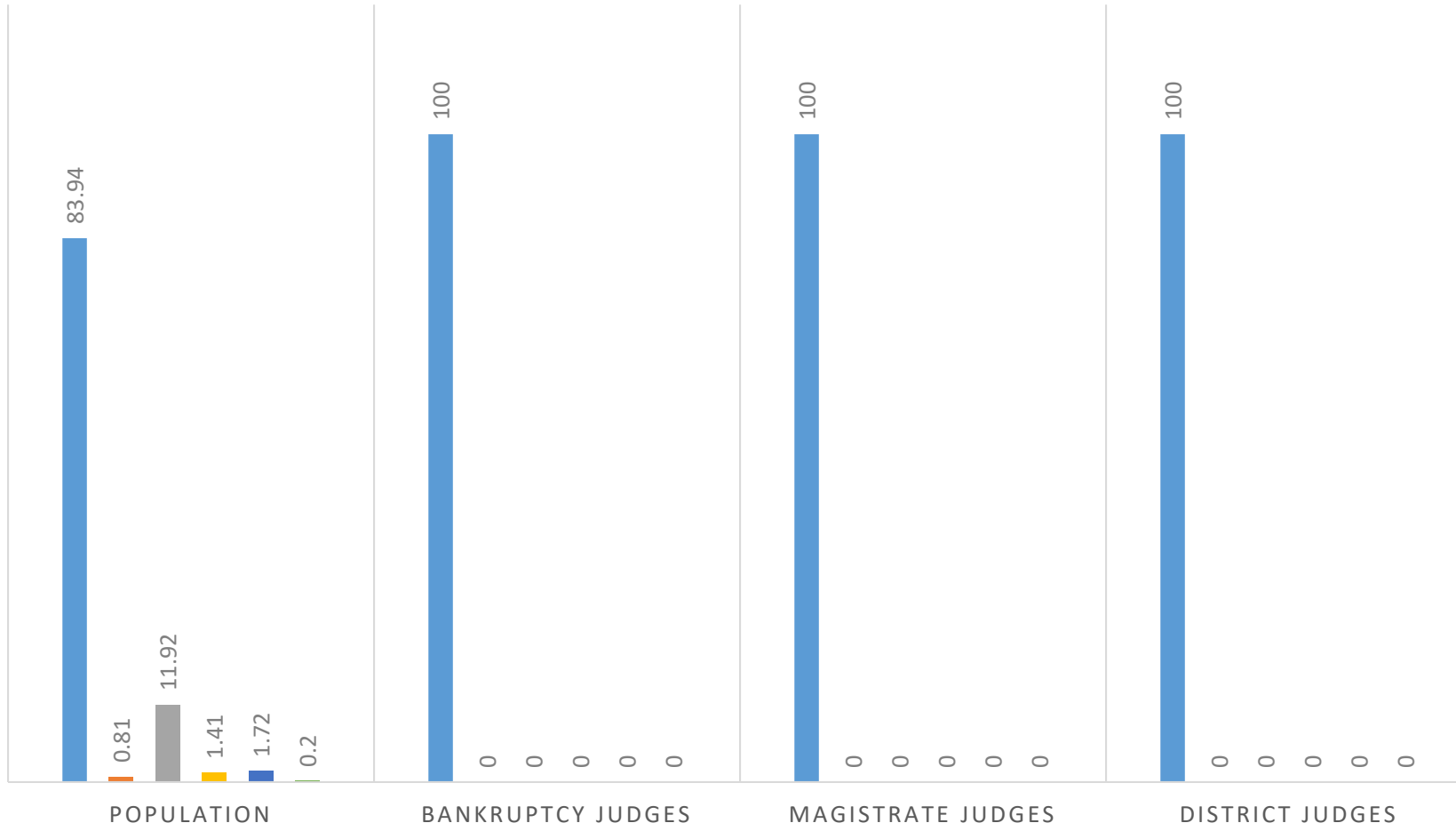
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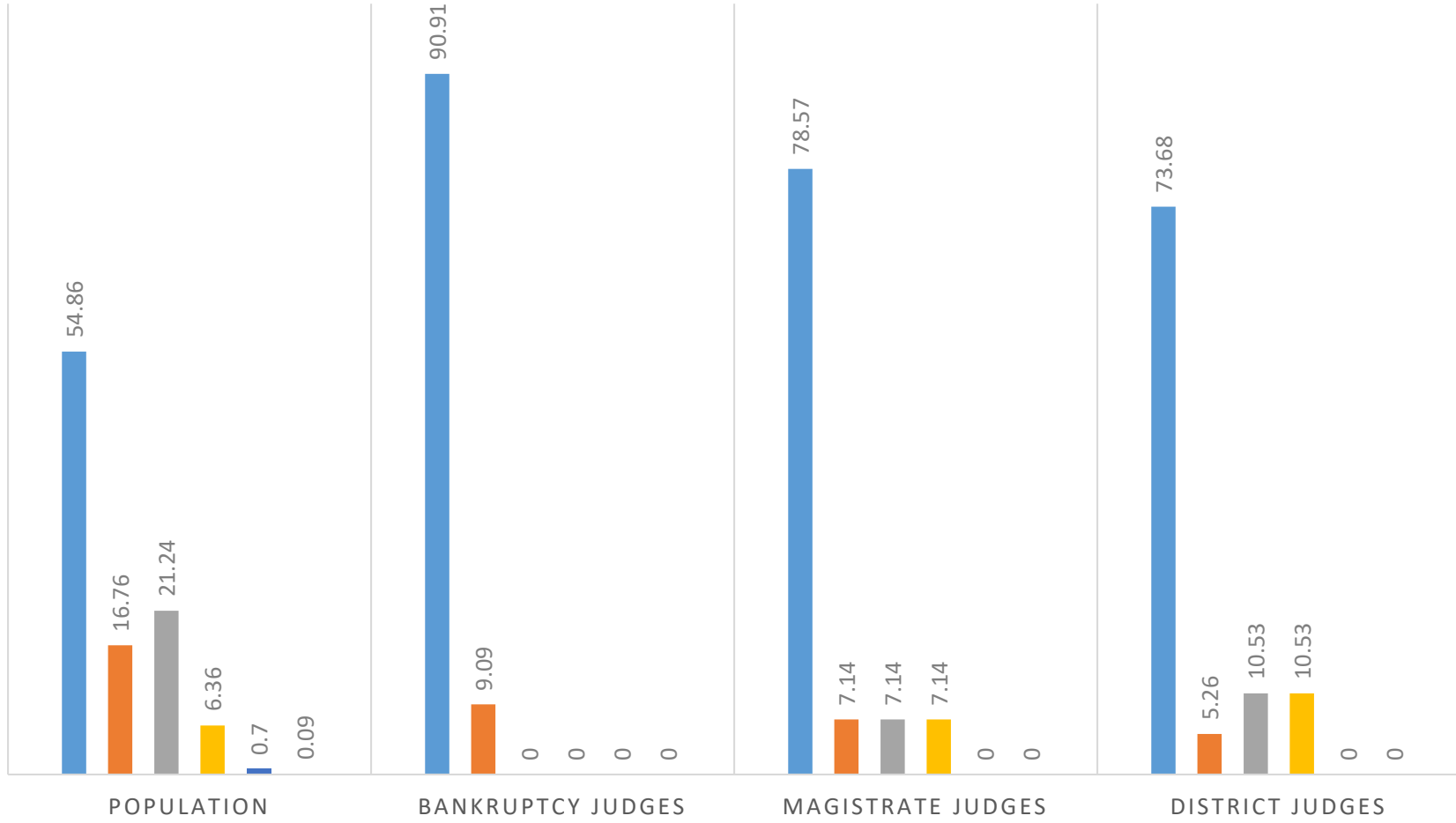
DISTRICT OF IDAHO

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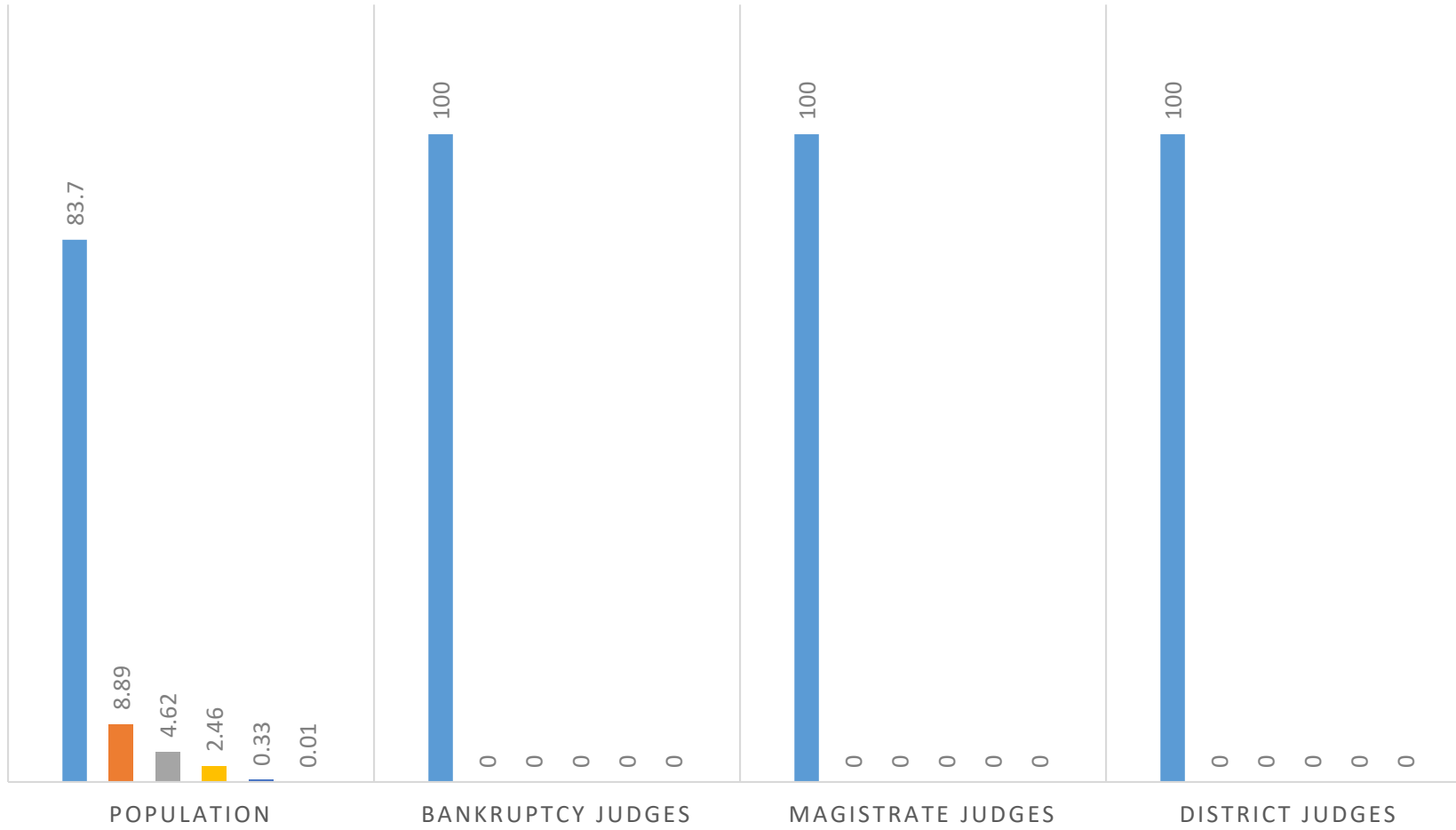
NORTHERN DISTRICT OF ILLINOIS

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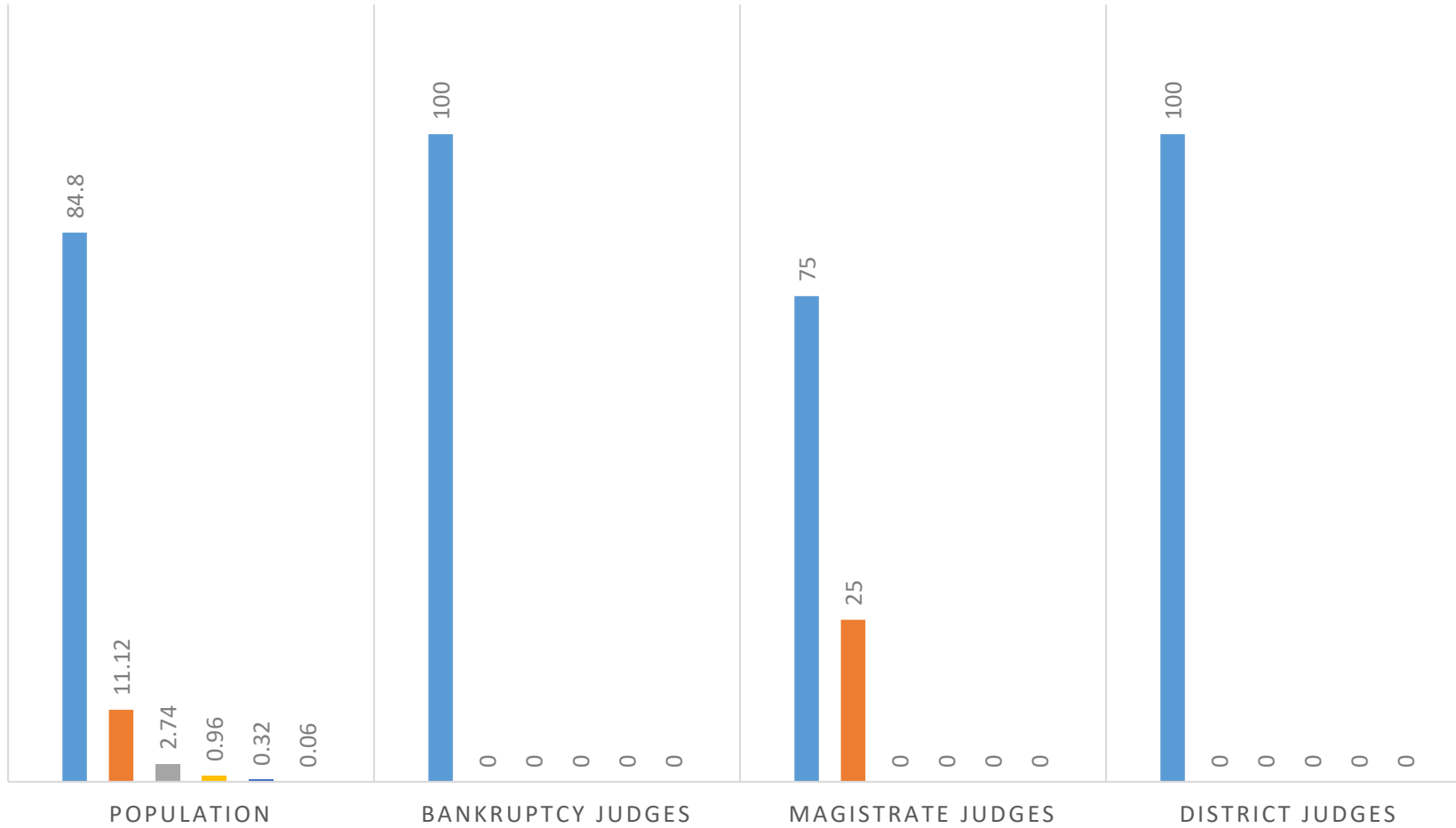
CENTRAL DISTRICT OF ILLINOIS

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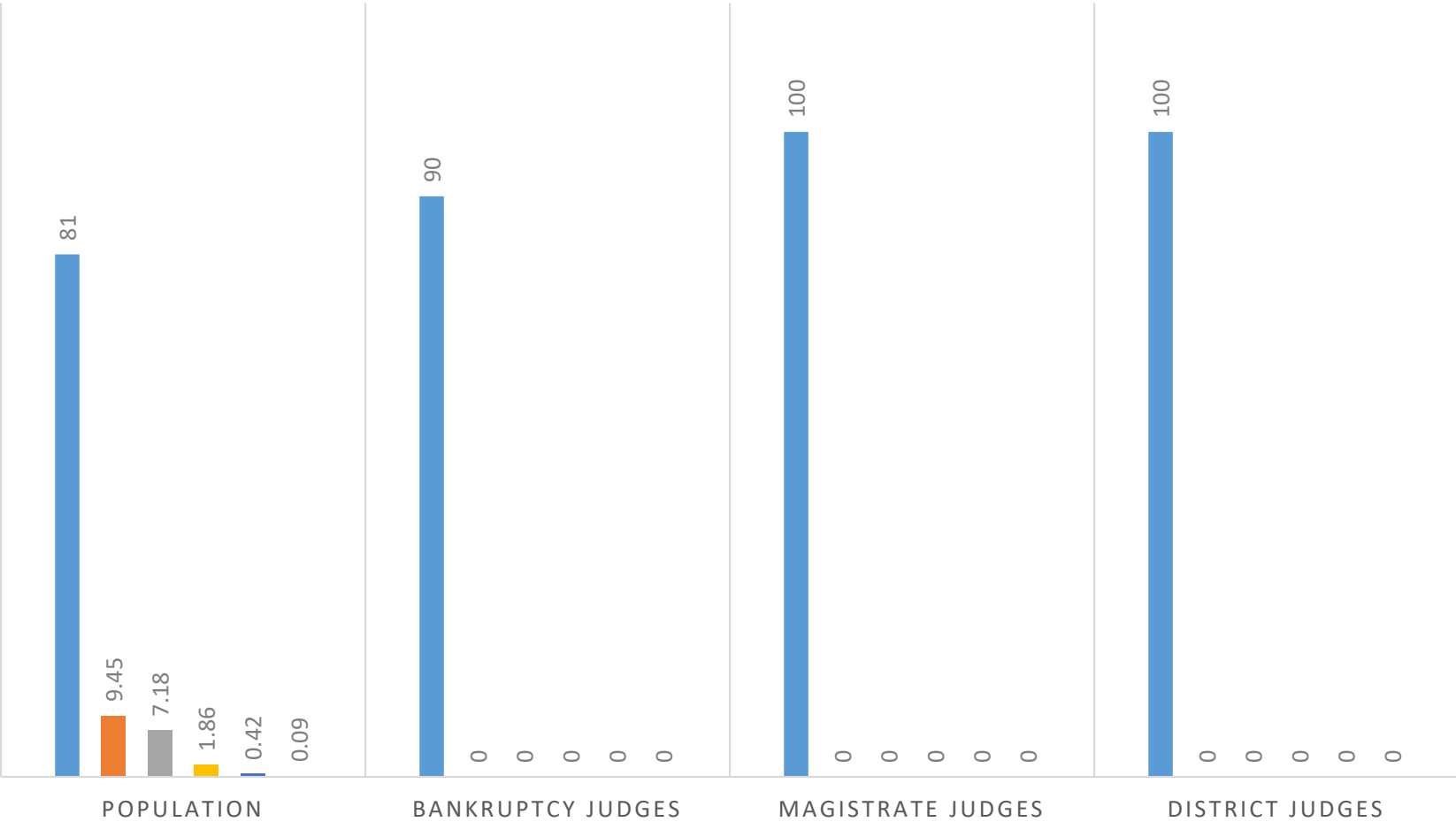
SOUTHERN DISTRICT OF ILLINOIS

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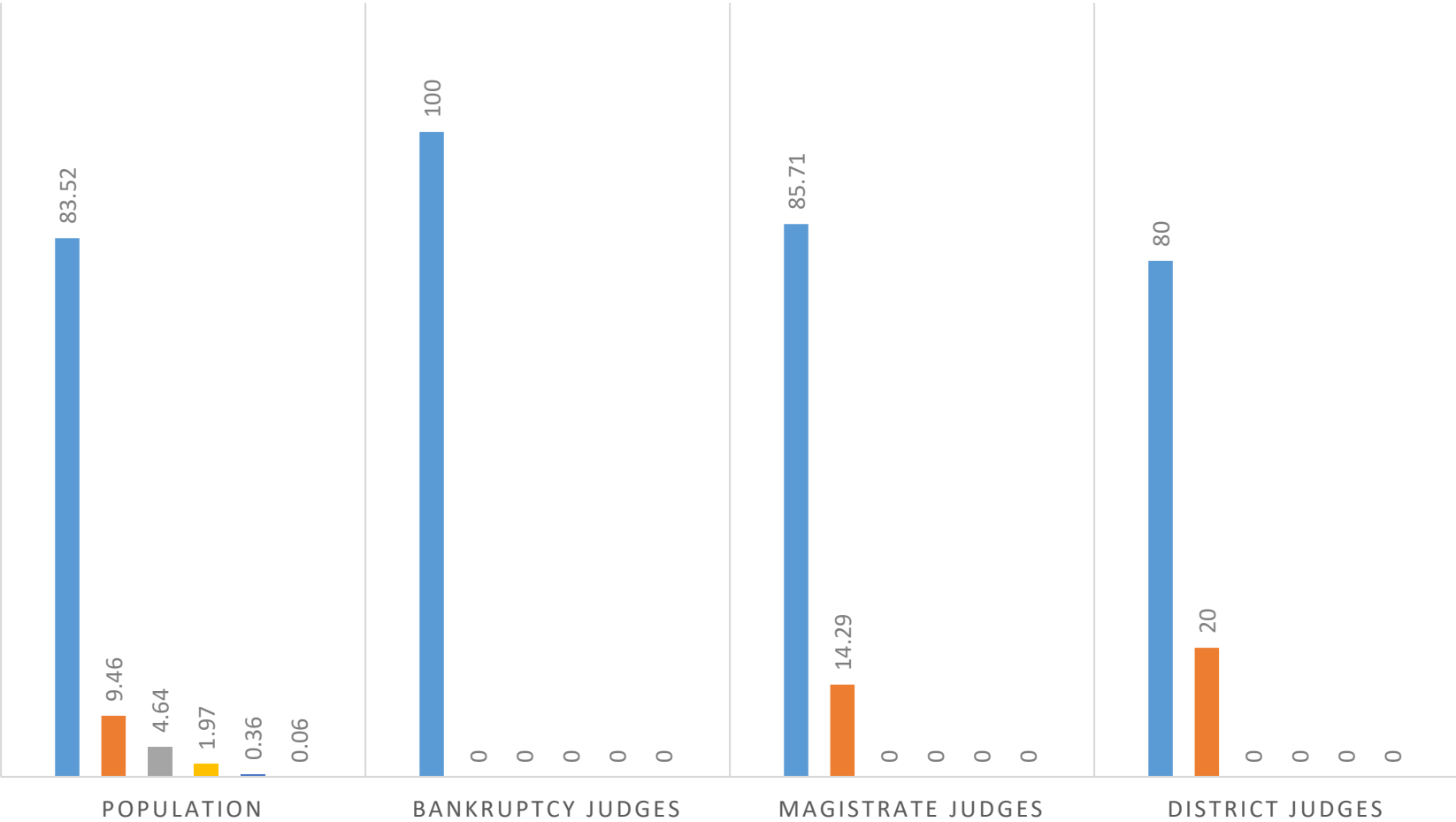
NORTHERN DISTRICT OF INDIANA

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



SOUTHERN DISTRICT OF INDIANA

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NORTHERN DISTRICT OF IOWA

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



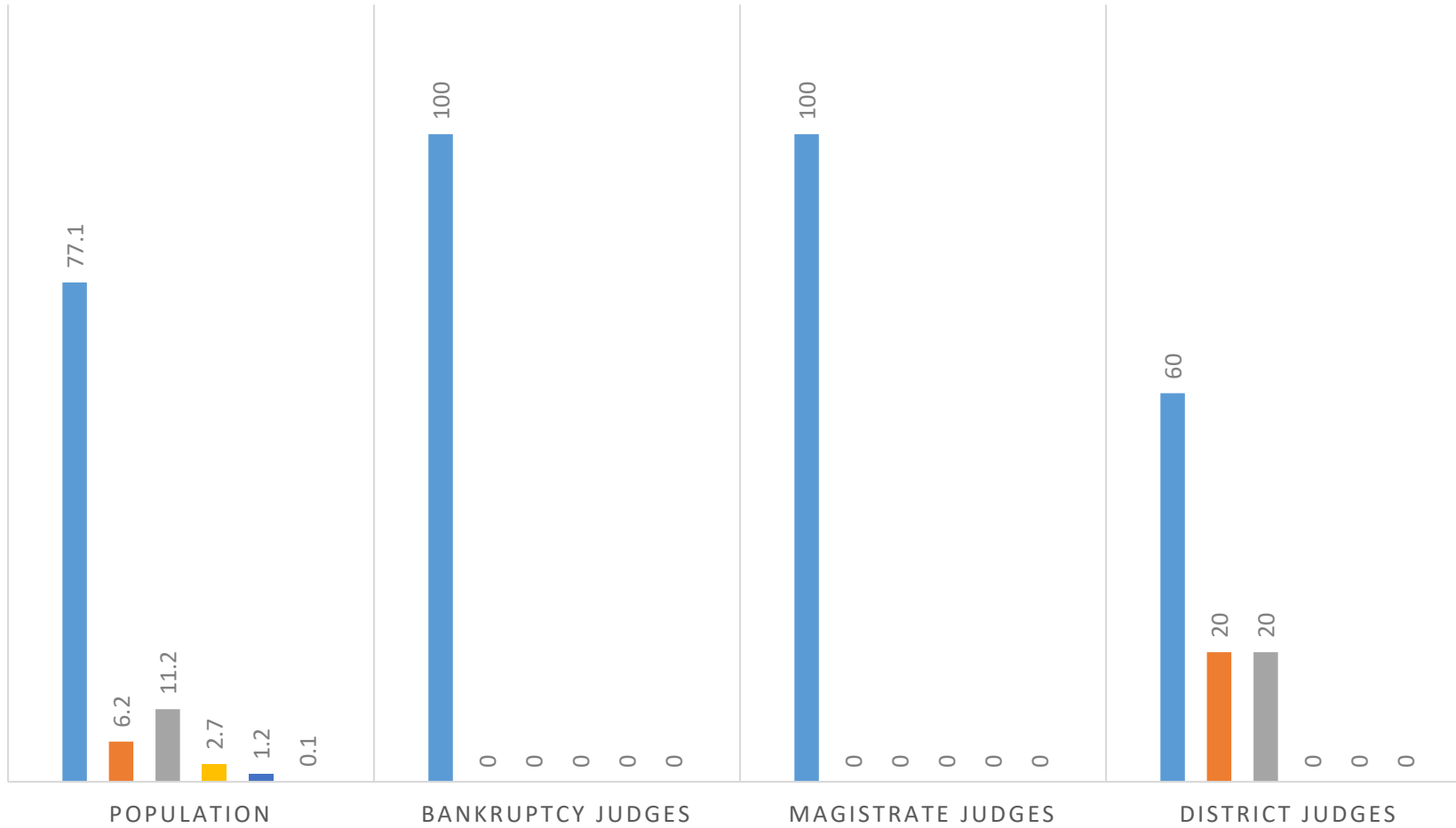
SOUTHERN DISTRICT OF IOWA

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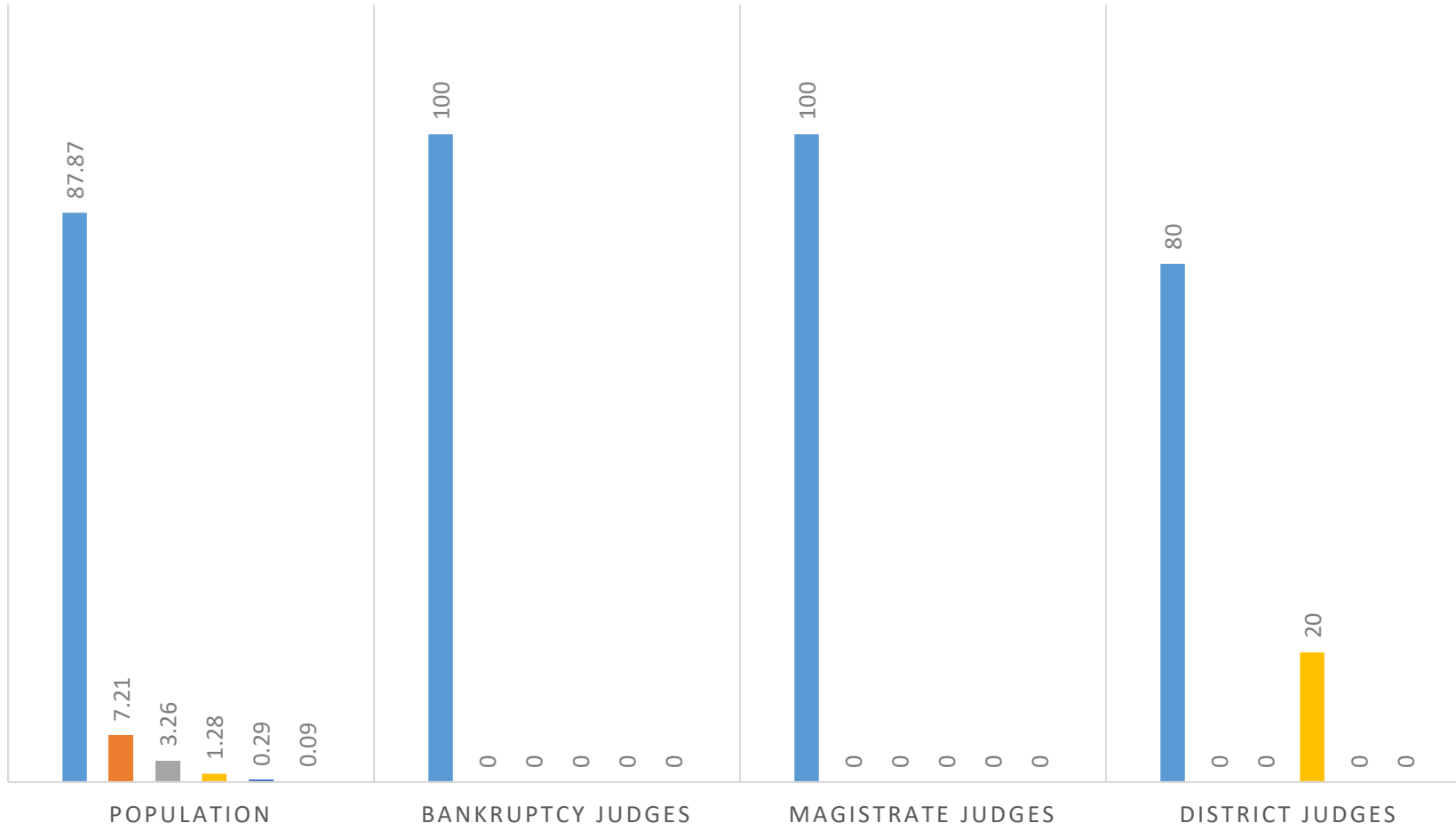
DISTRICT OF KANSAS

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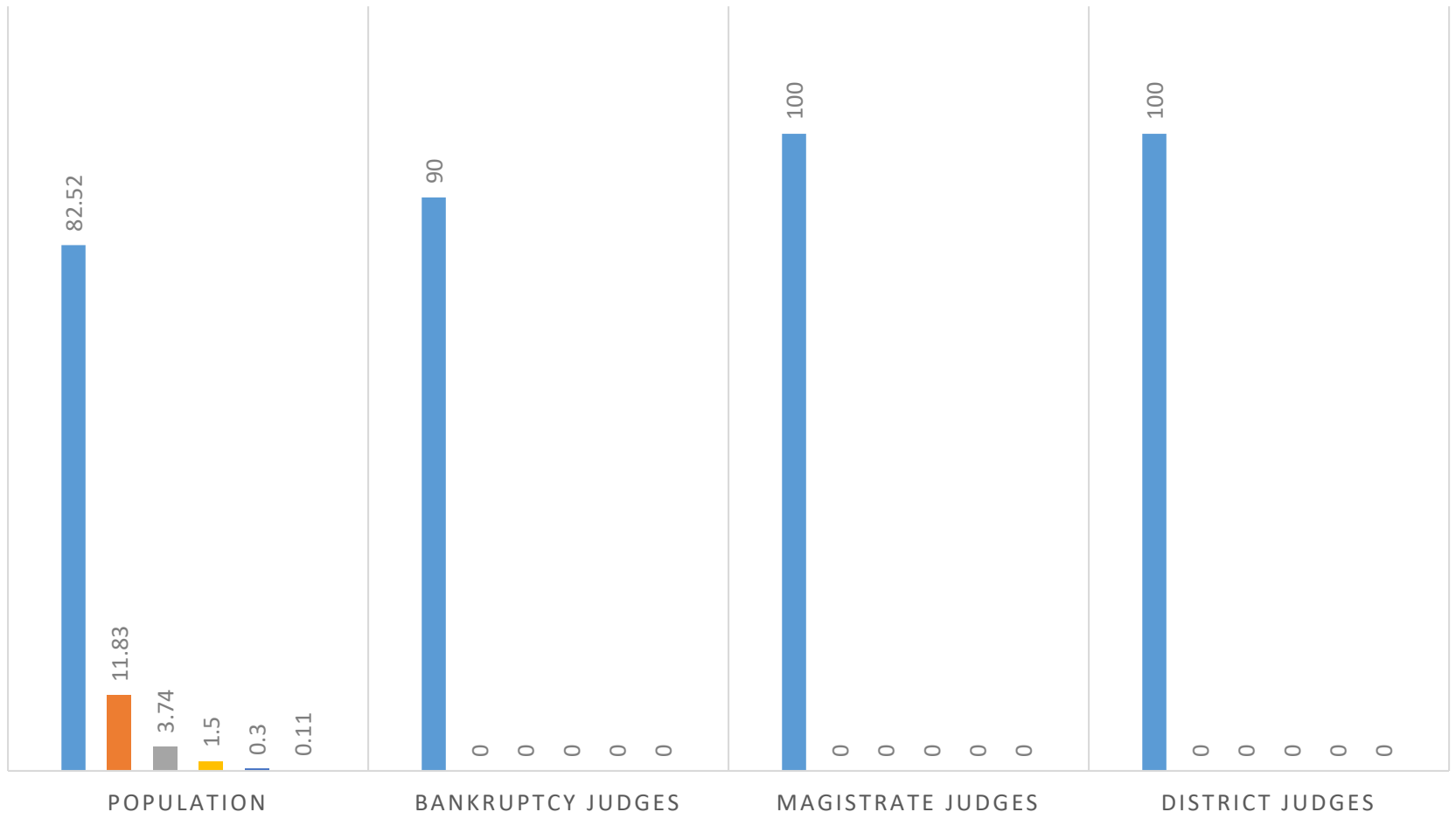
EASTERN DISTRICT OF KENTUCKY

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



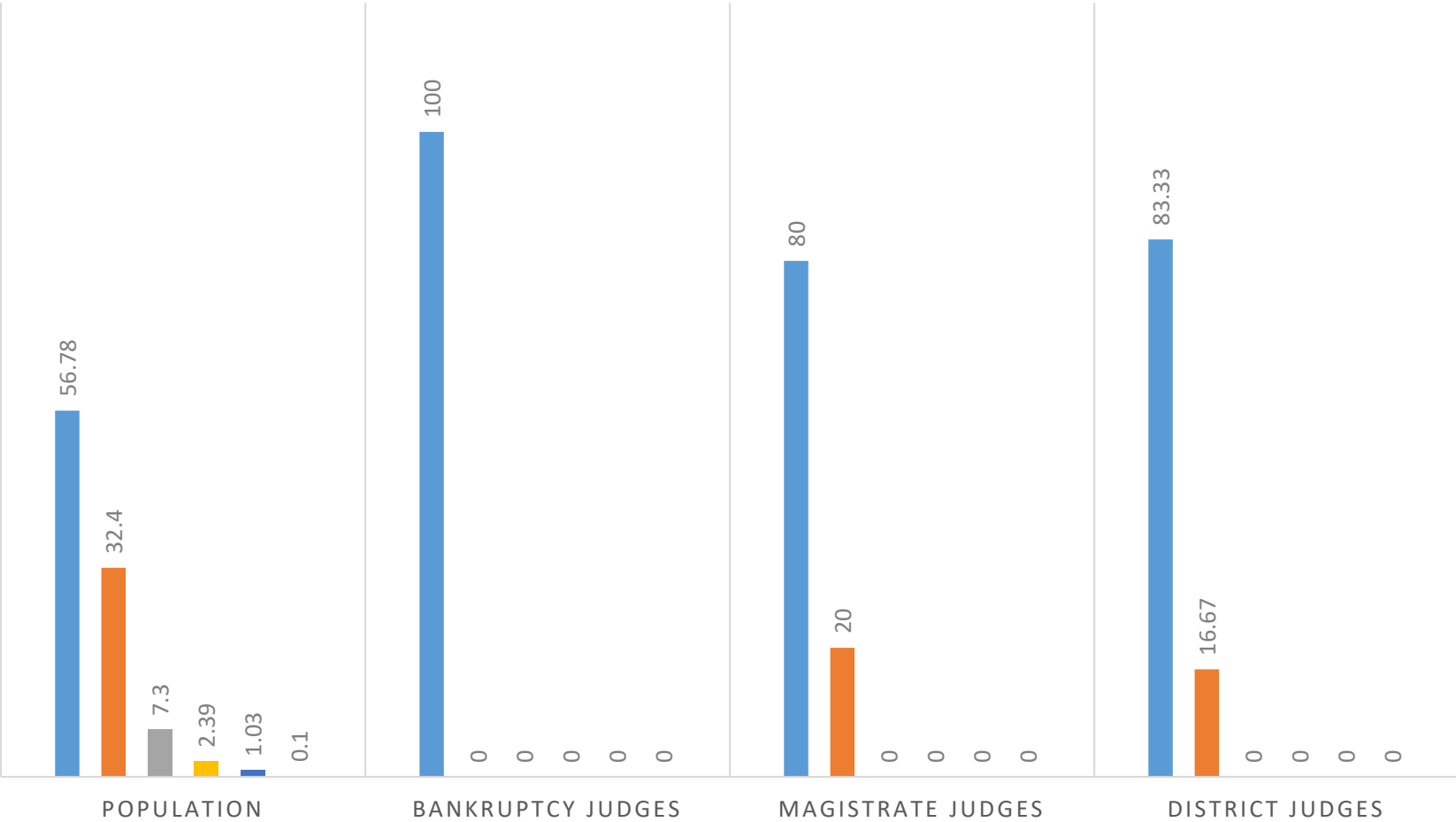
WESTERN DISTRICT OF KENTUCKY

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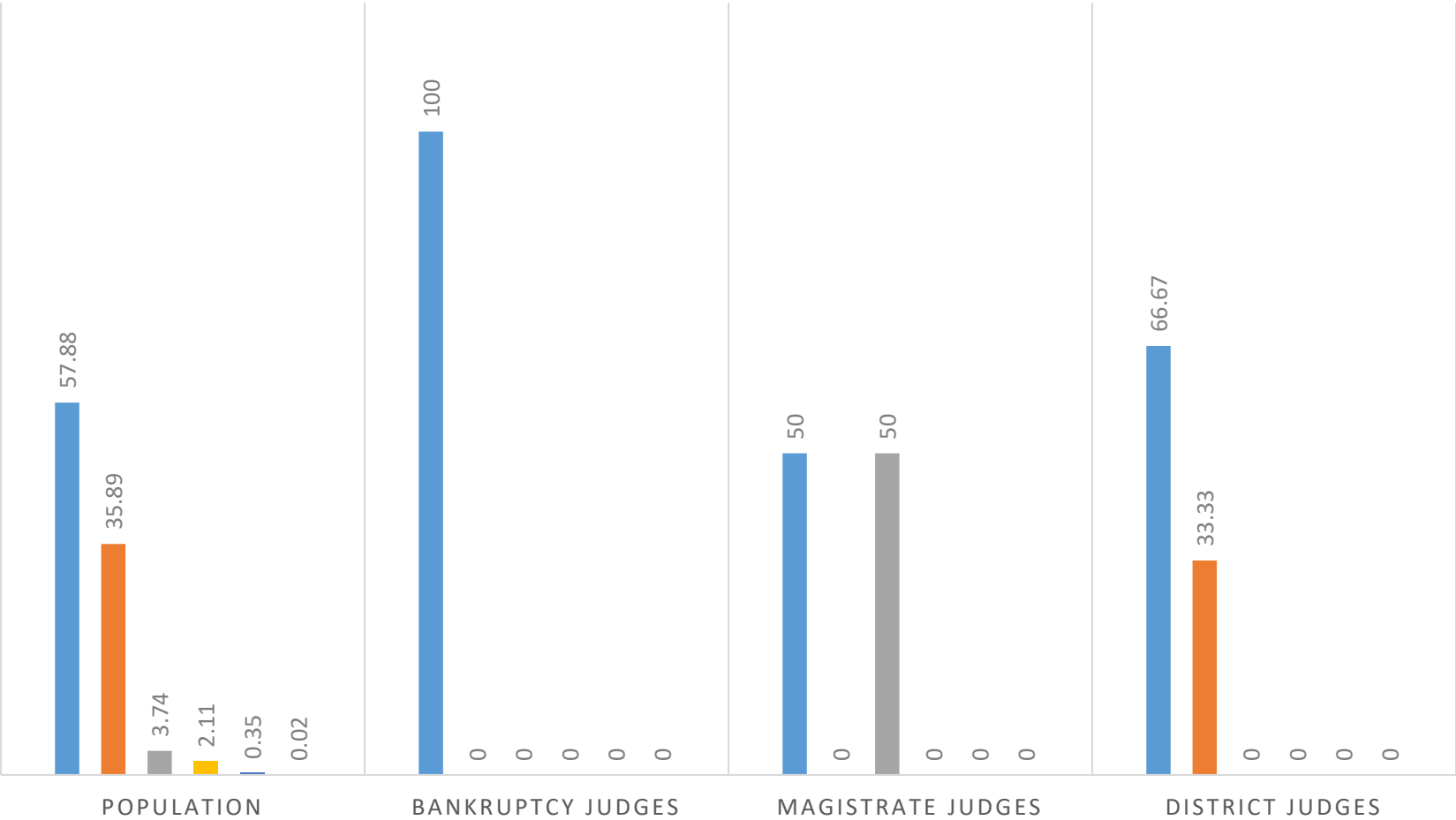
EASTERN DISTRICT OF LOUISIANA

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



MIDDLE DISTRICT OF LOUISIANA

Caucasian African American Latino/Hispanic Asian Native American Pacific Islander



WESTERN DISTRICT OF LOUISIANA

Caucasian African American Latino/Hispanic Asian Native American Pacific Islander



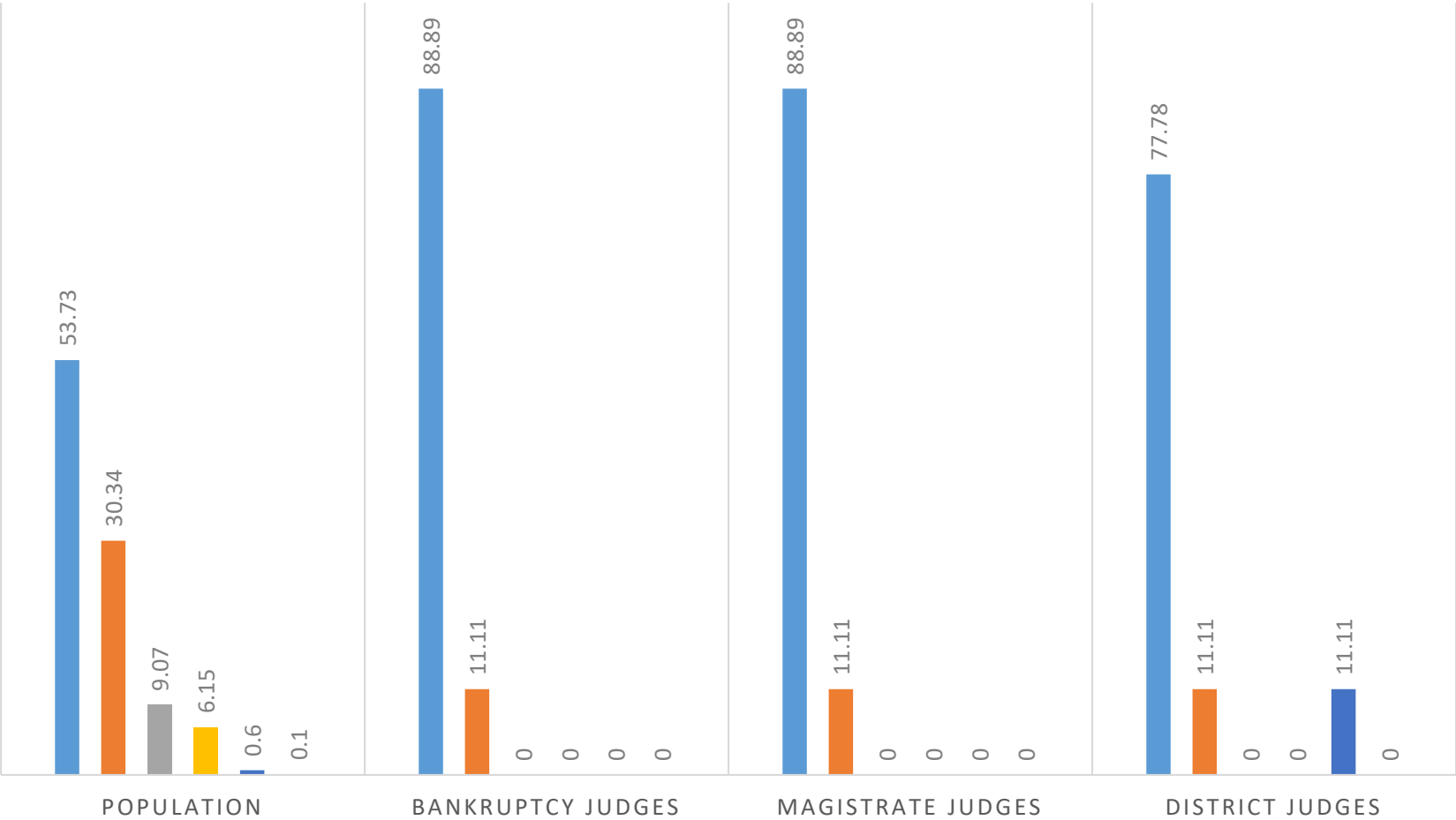
DISTRICT OF MAINE

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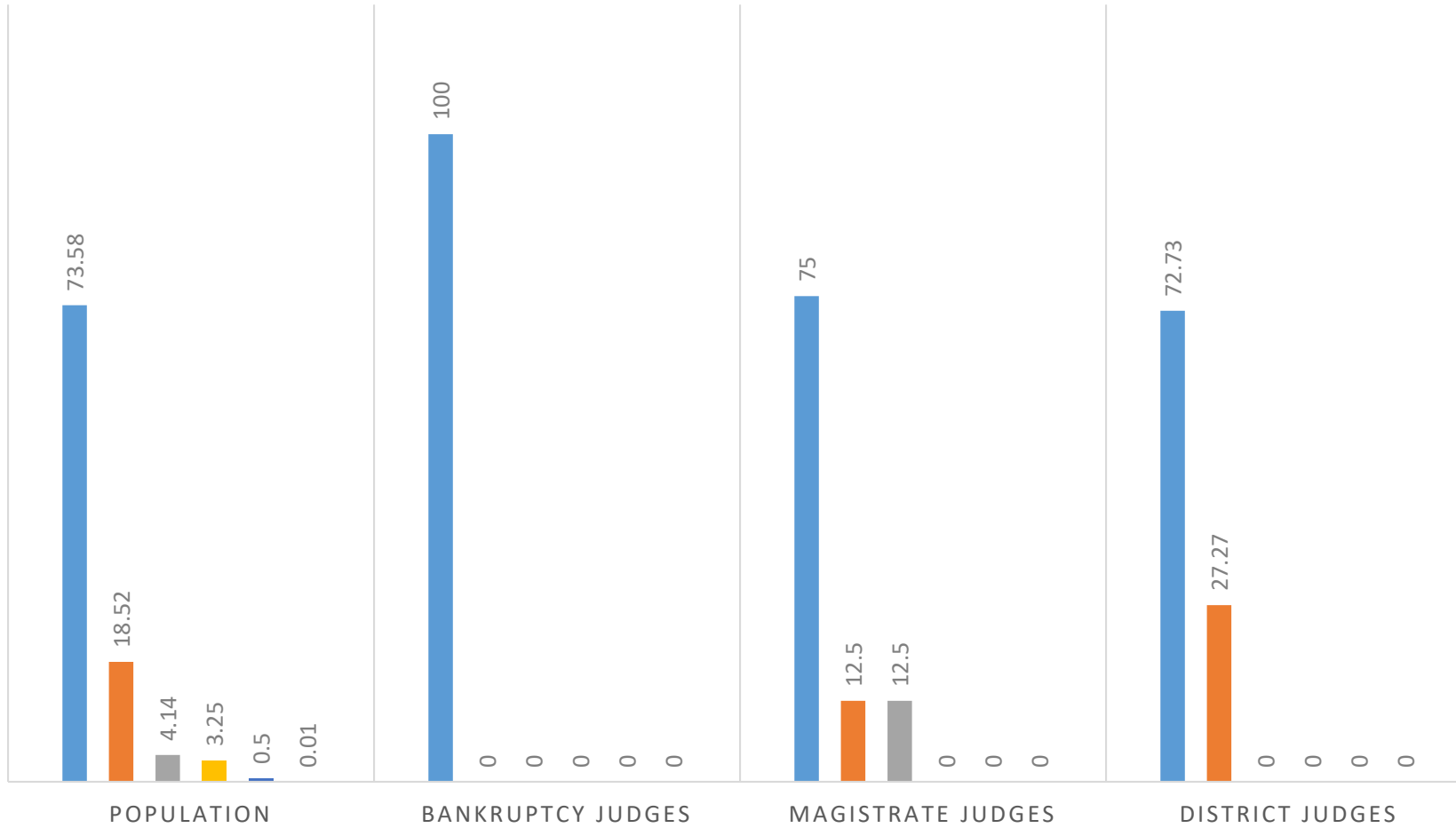
DISTRICT OF MARYLAND

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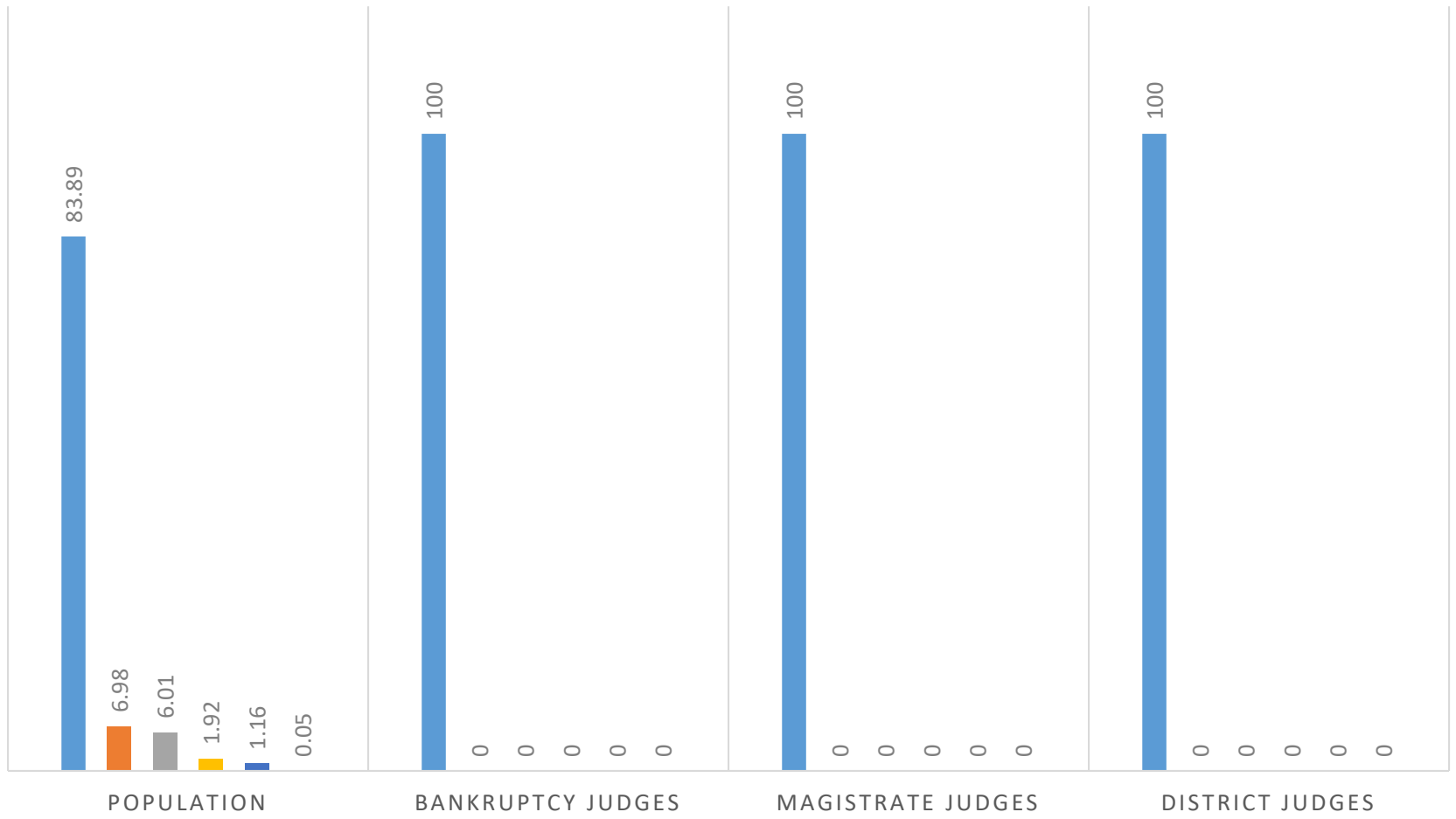
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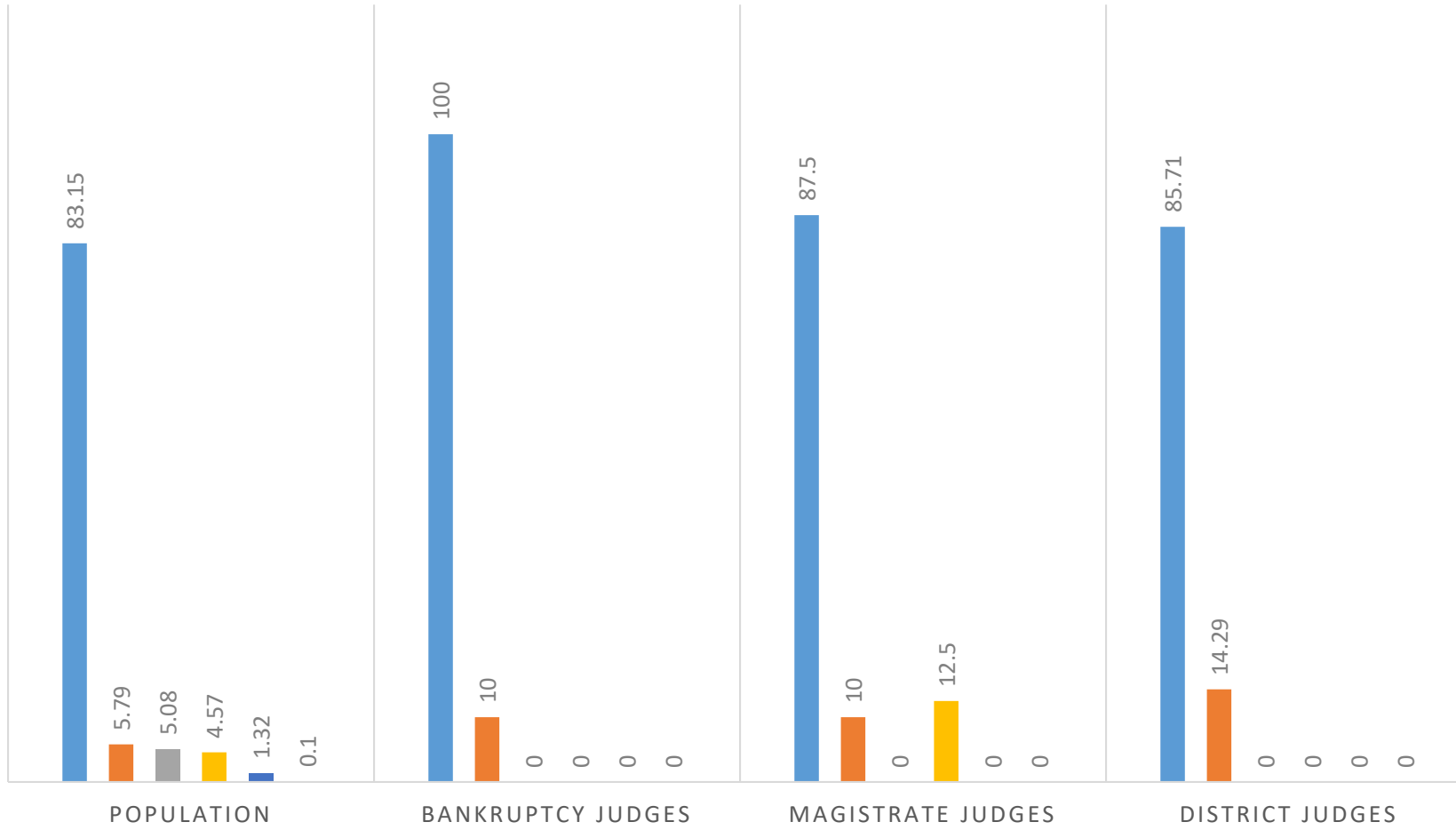
WESTERN DISTRICT OF MICHIGAN

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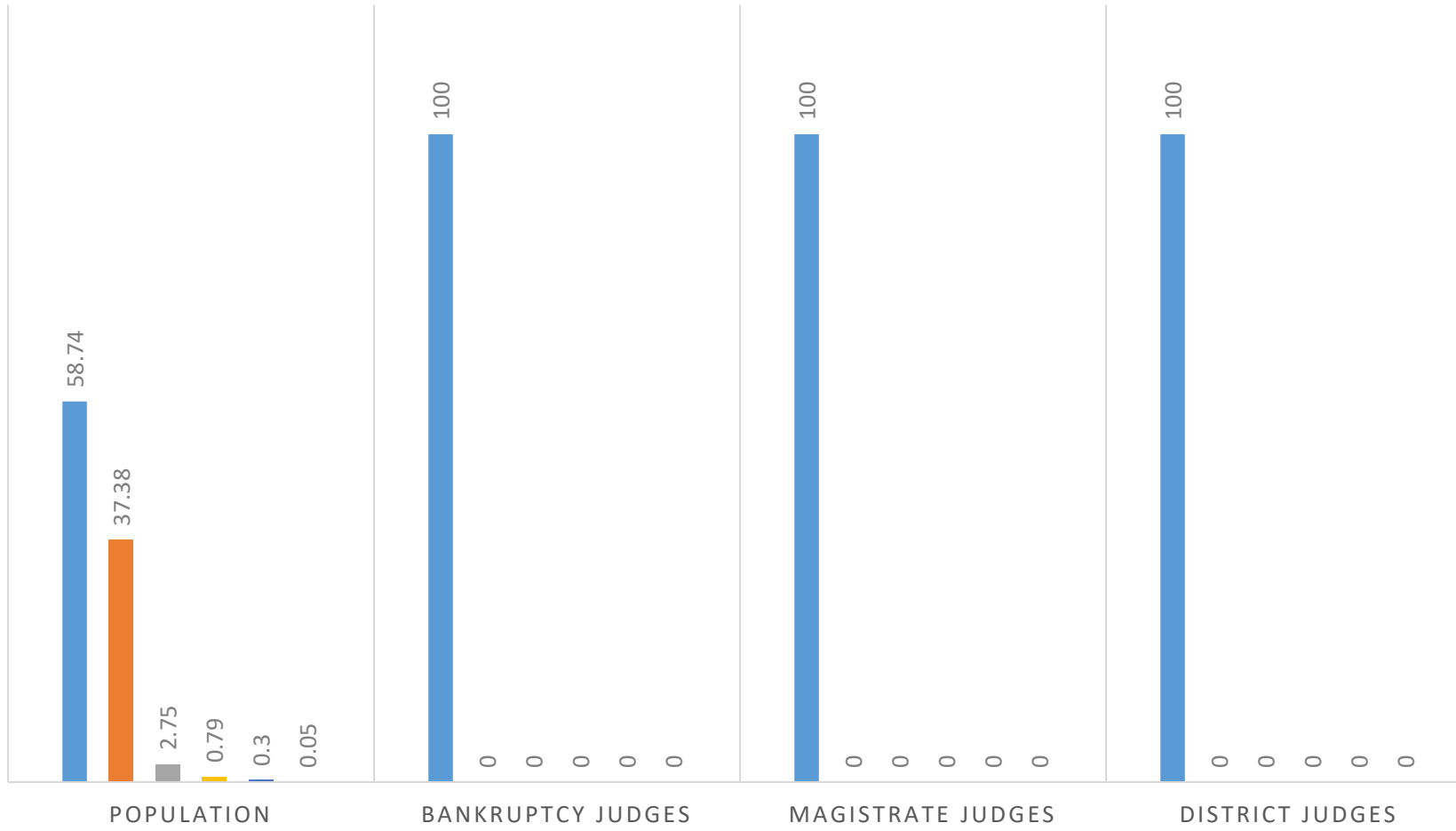
DISTRICT OF MINNESOTA

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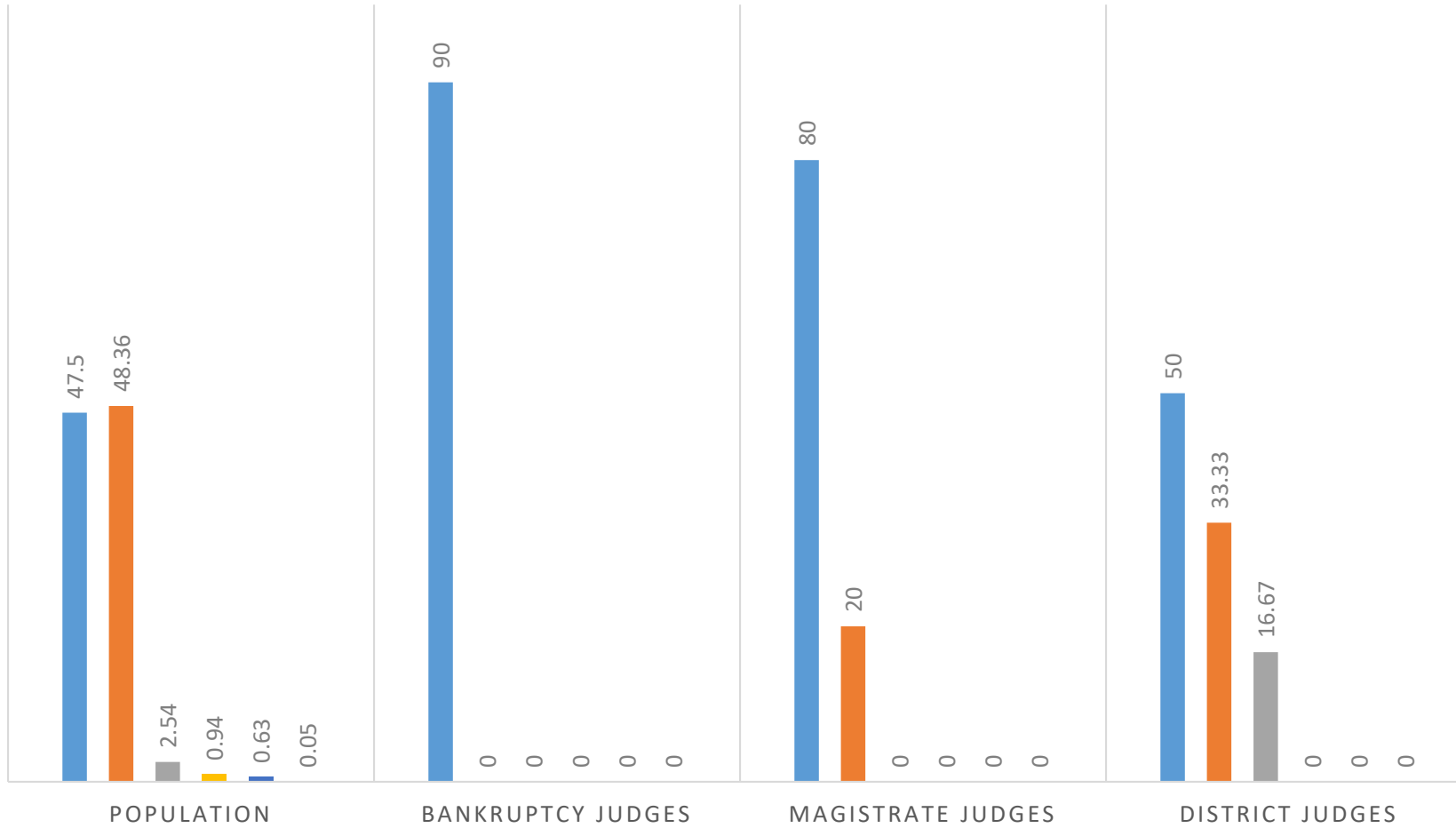
NORTHERN DISTRICT OF MISSISSIPPI

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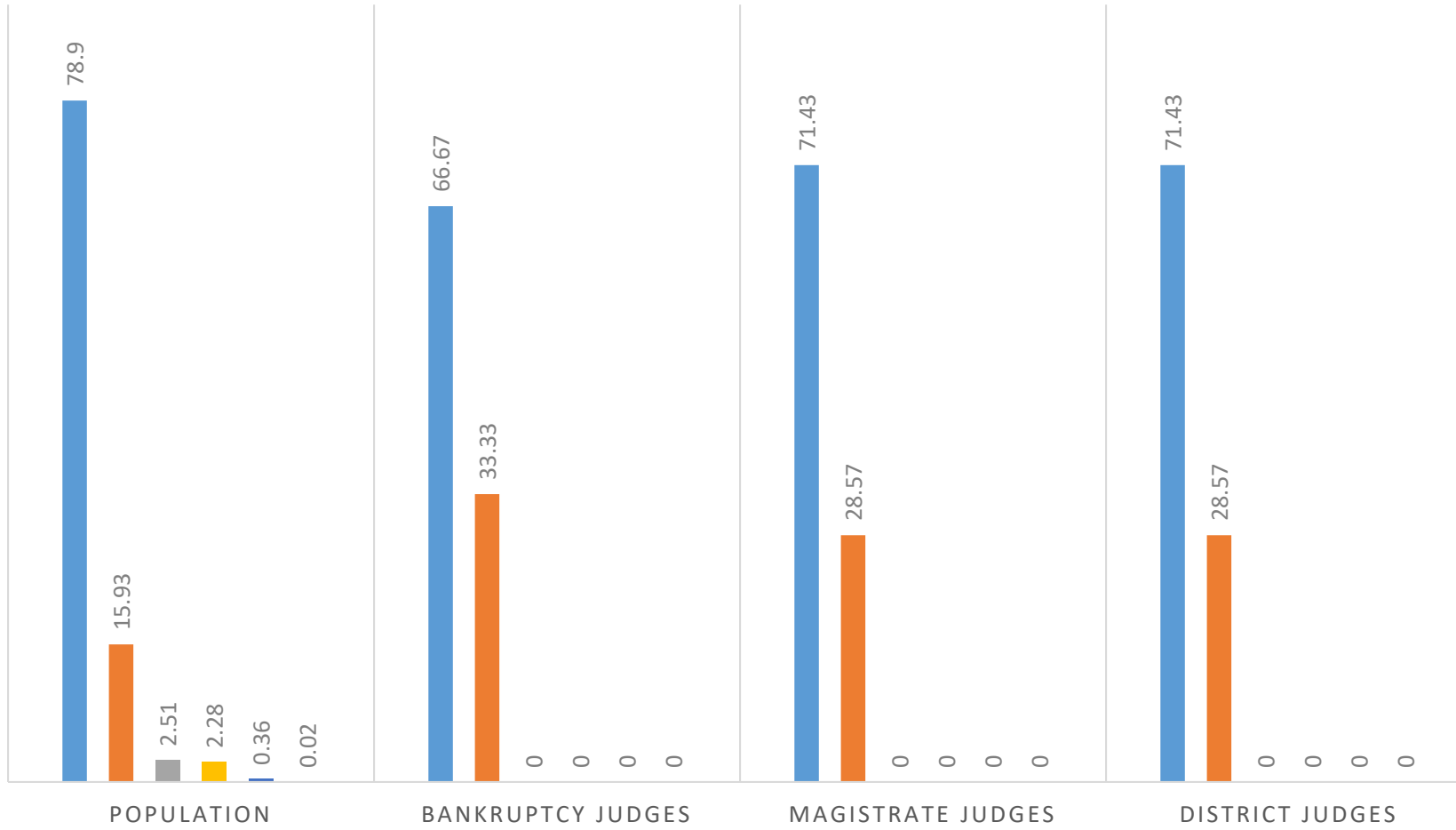
SOUTHERN DISTRICT OF MISSISSIPPI

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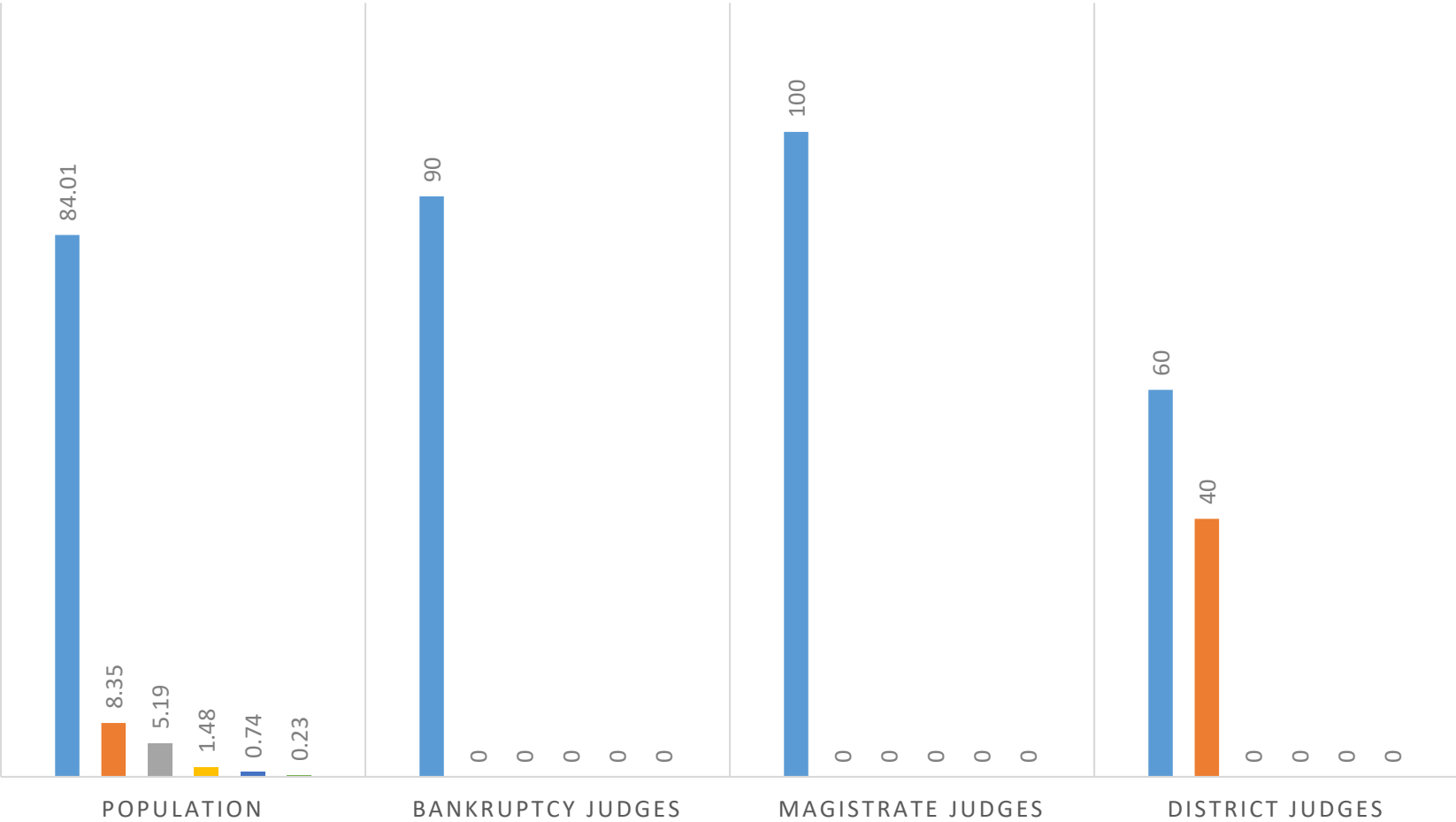
EASTERN DISTRICT OF MISSOURI

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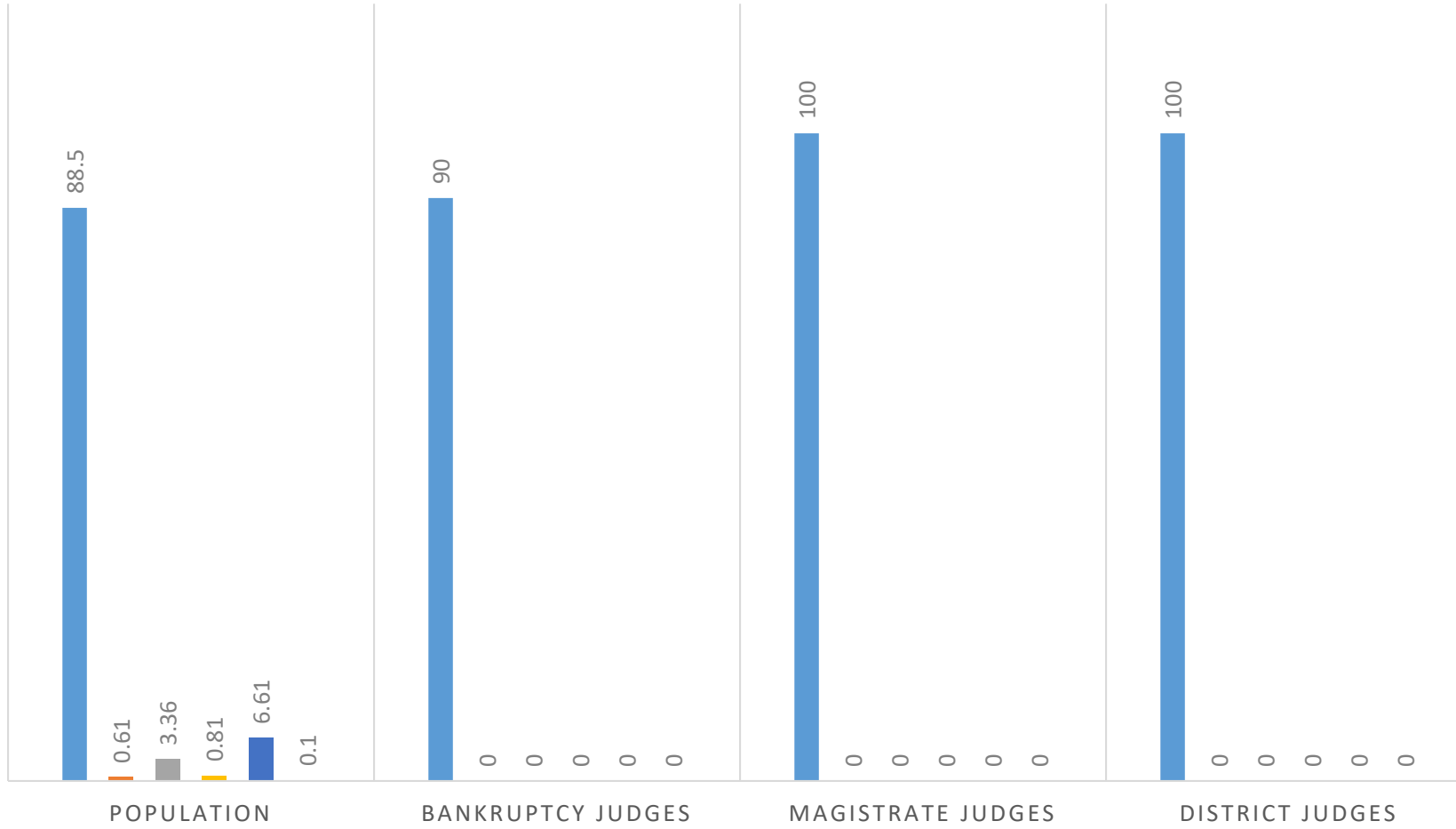
WESTERN DISTRICT OF MISSOURI

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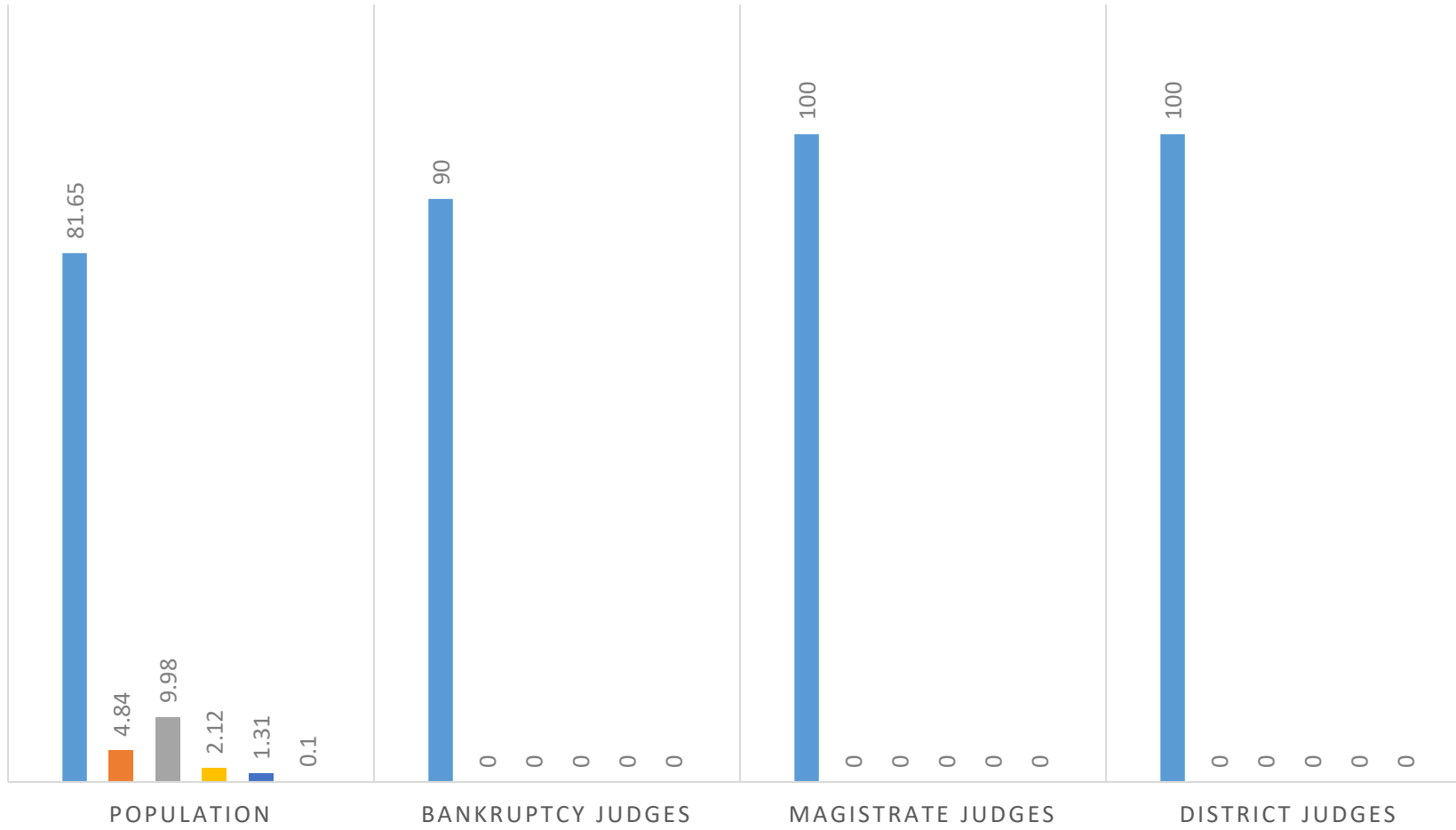
DISTRICT OF MONTANA

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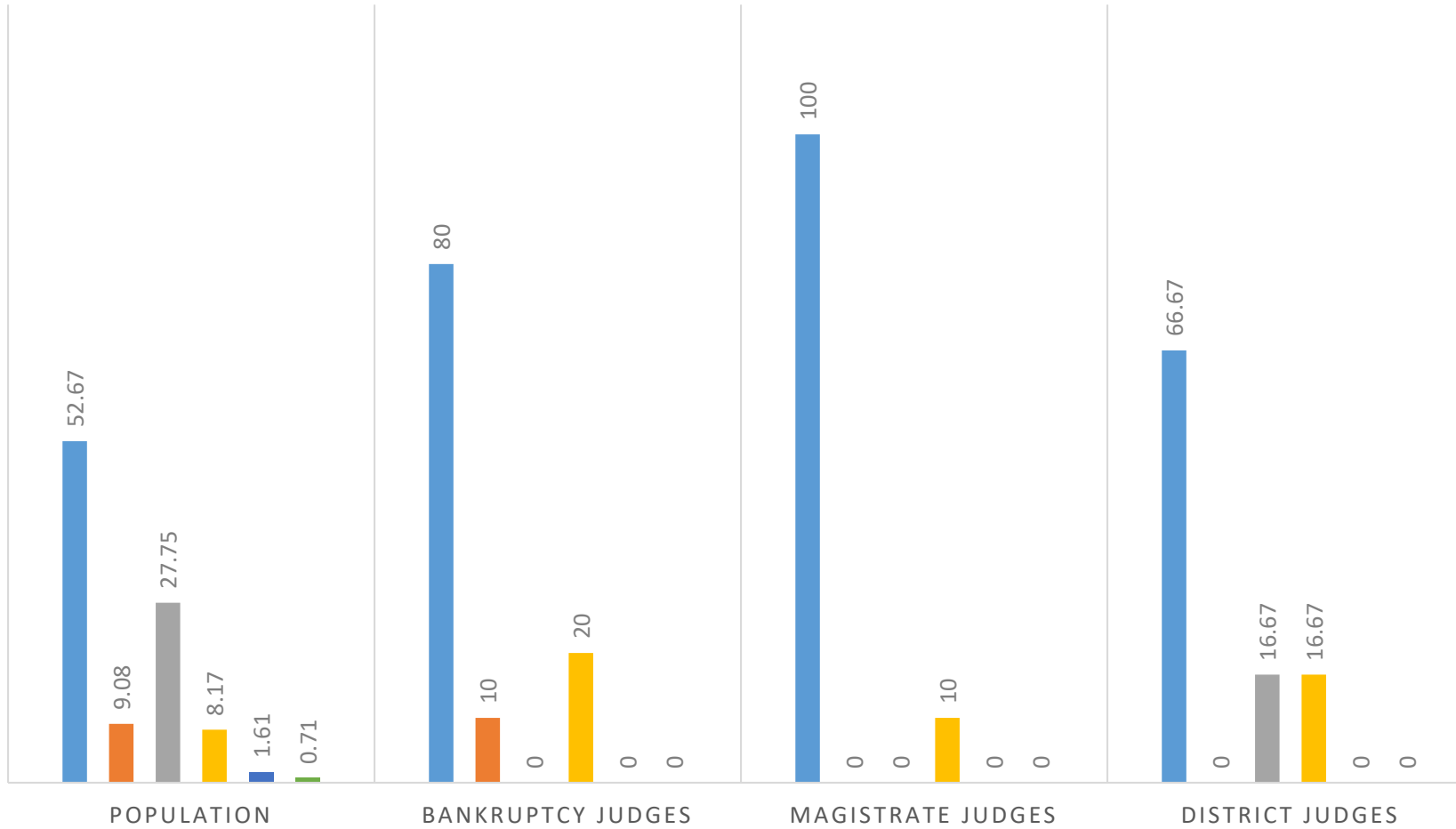
DISTRICT OF NEBRASKA

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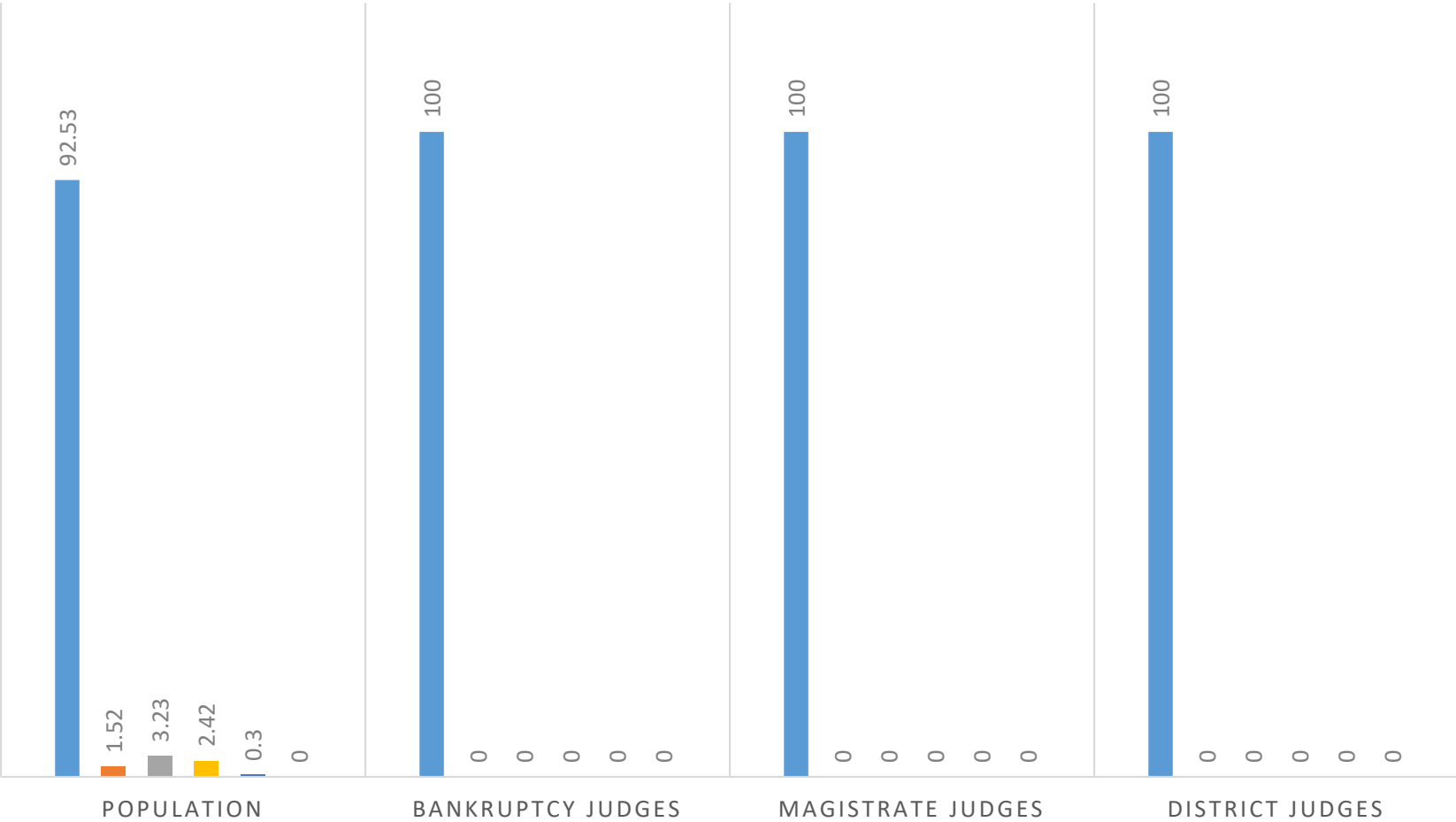
DISTRICT OF NEVADA

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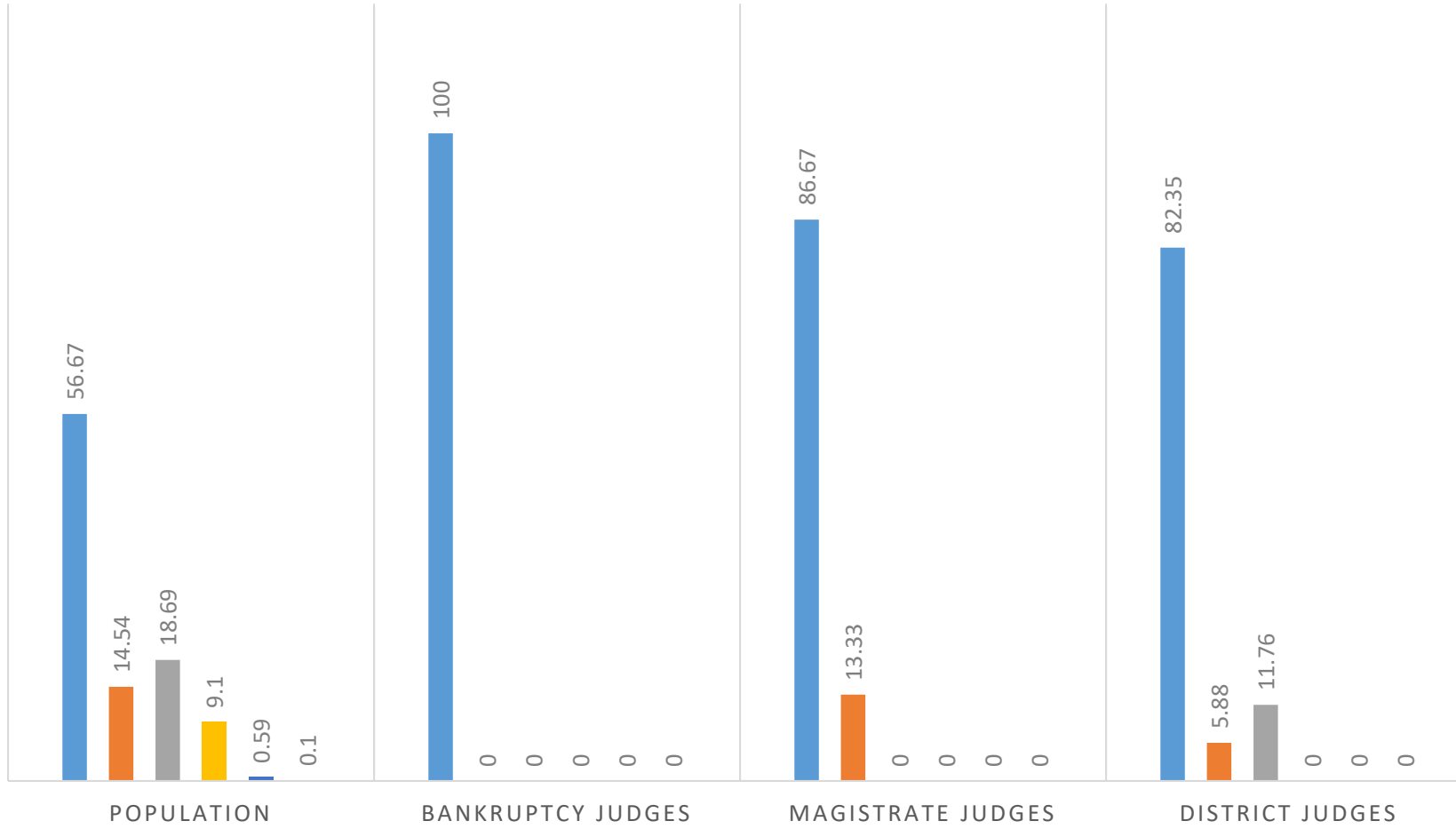
DISTRICT OF NEW HAMPSHIRE

Caucasian African American Latino/Hispanic Asian Native American Pacific Islander



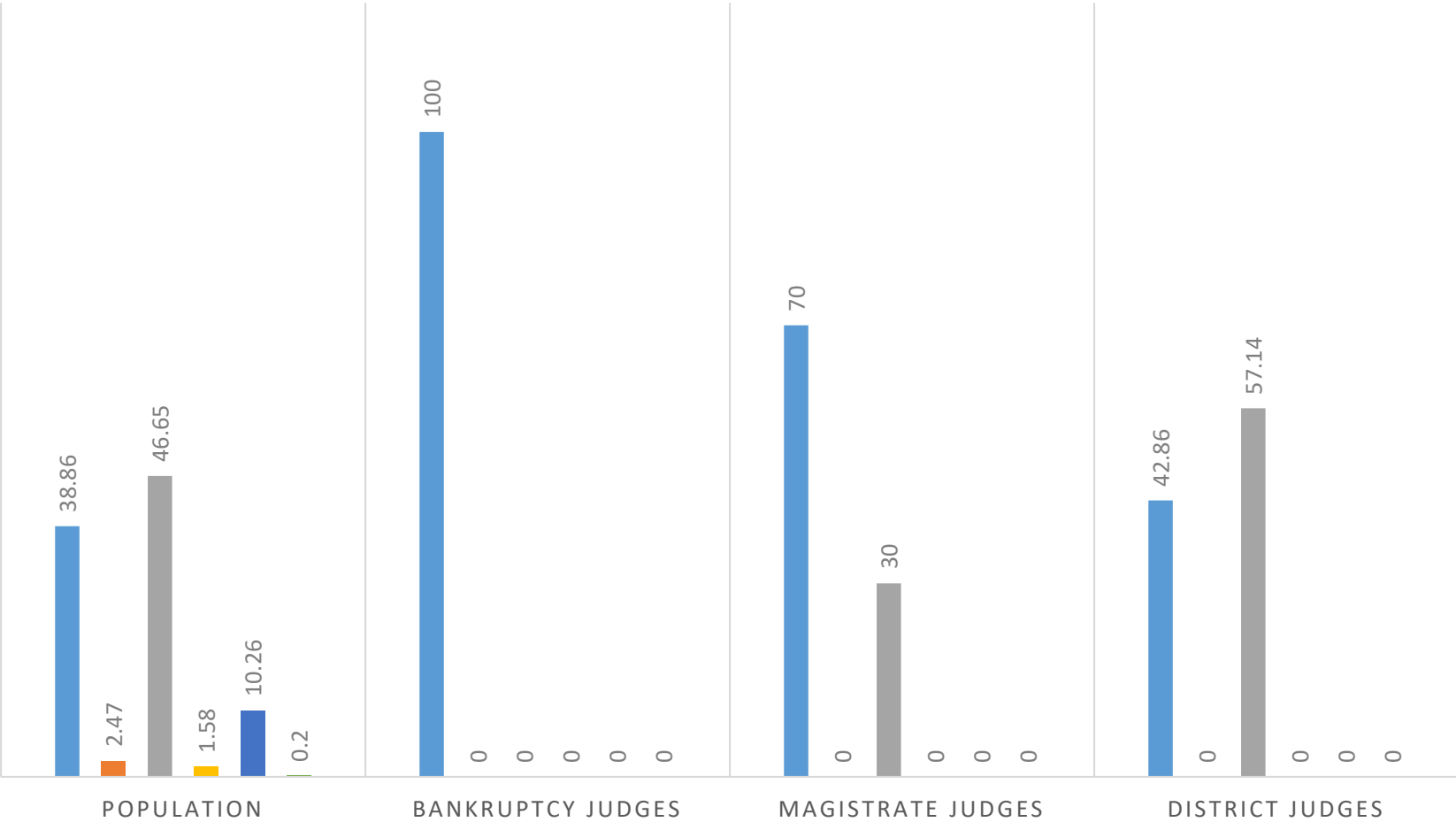
DISTRICT OF NEW JERSEY

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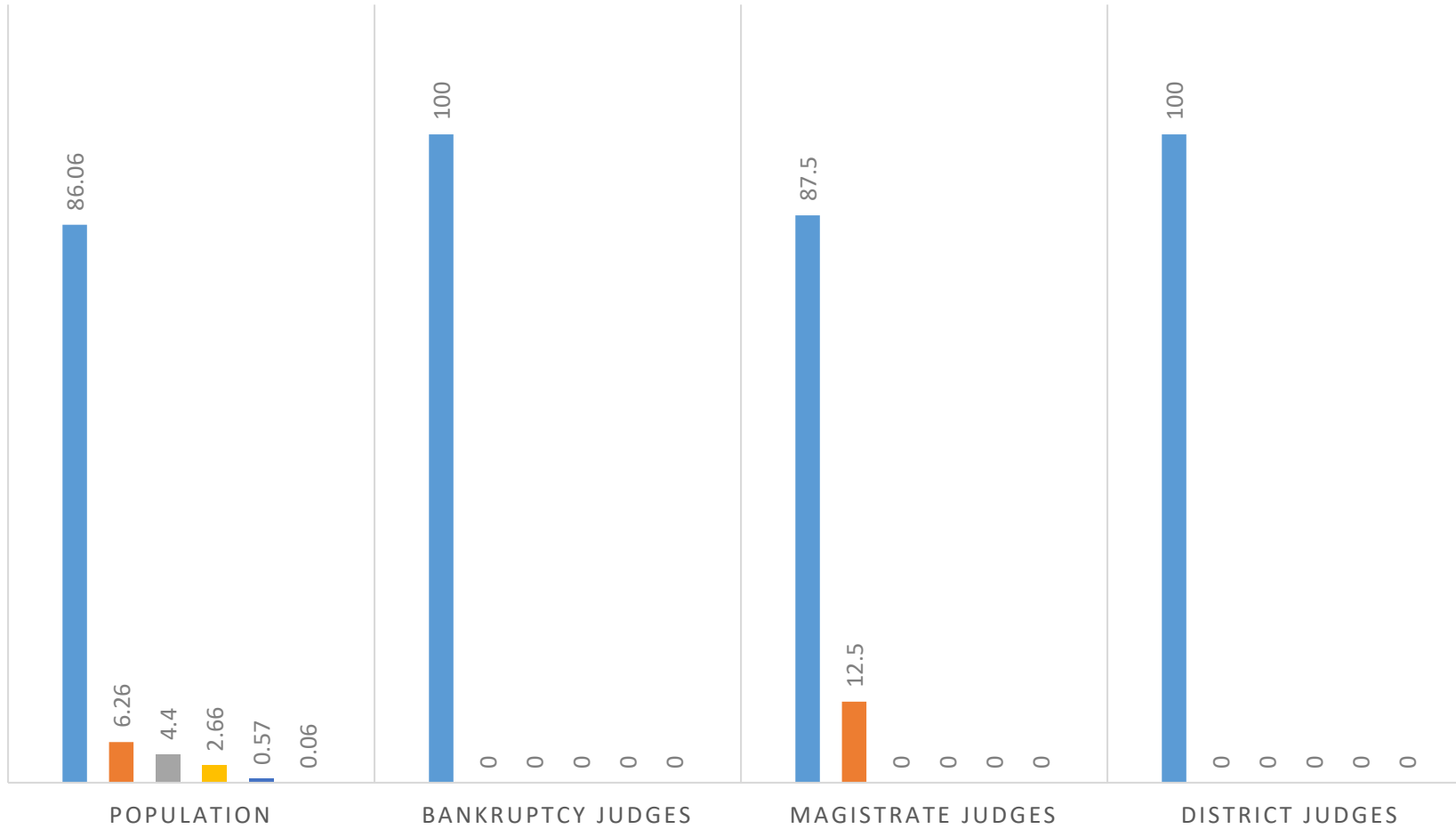
DISTRICT OF NEW MEXICO

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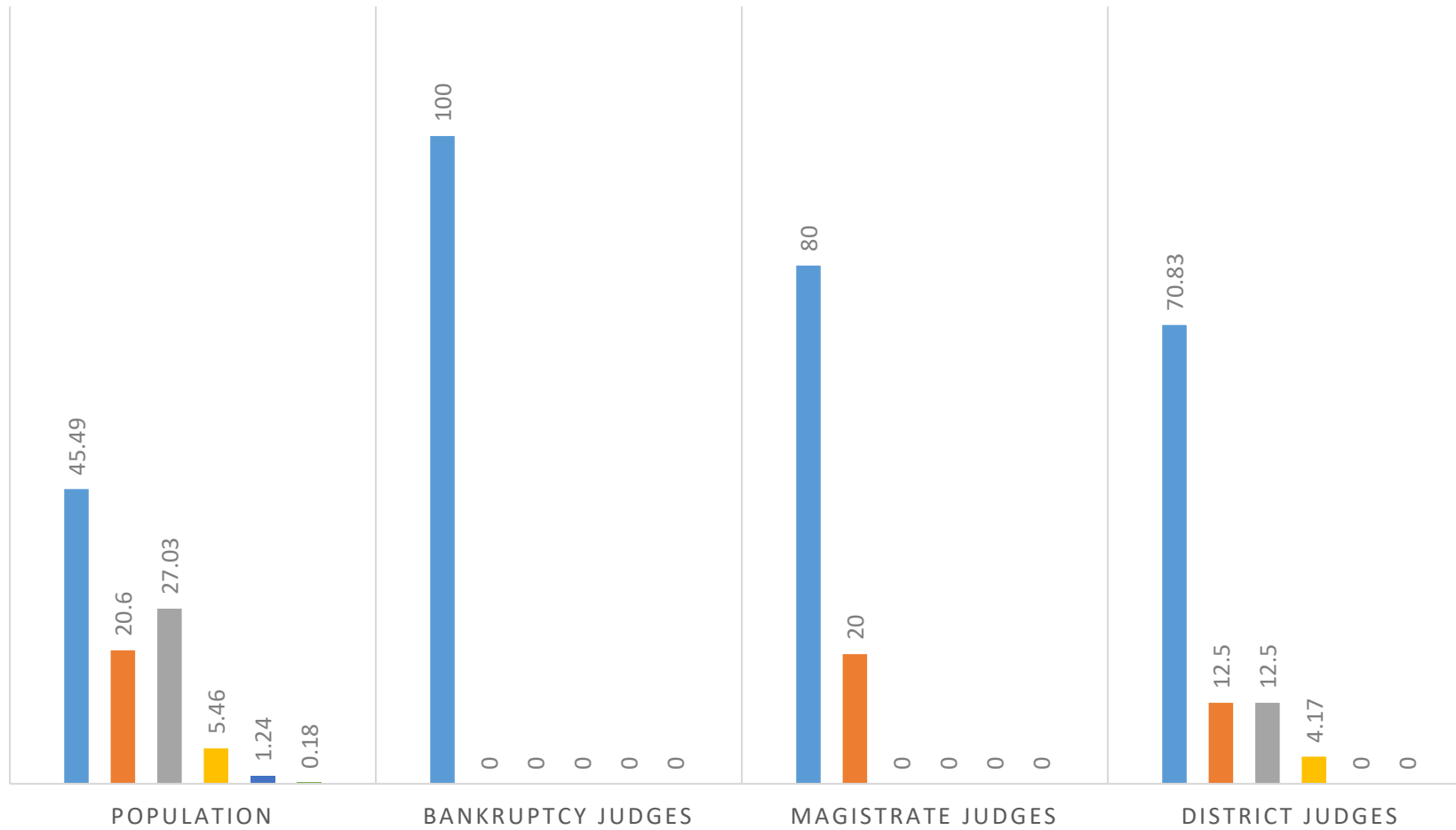
NORTHERN DISTRICT OF NEW YORK

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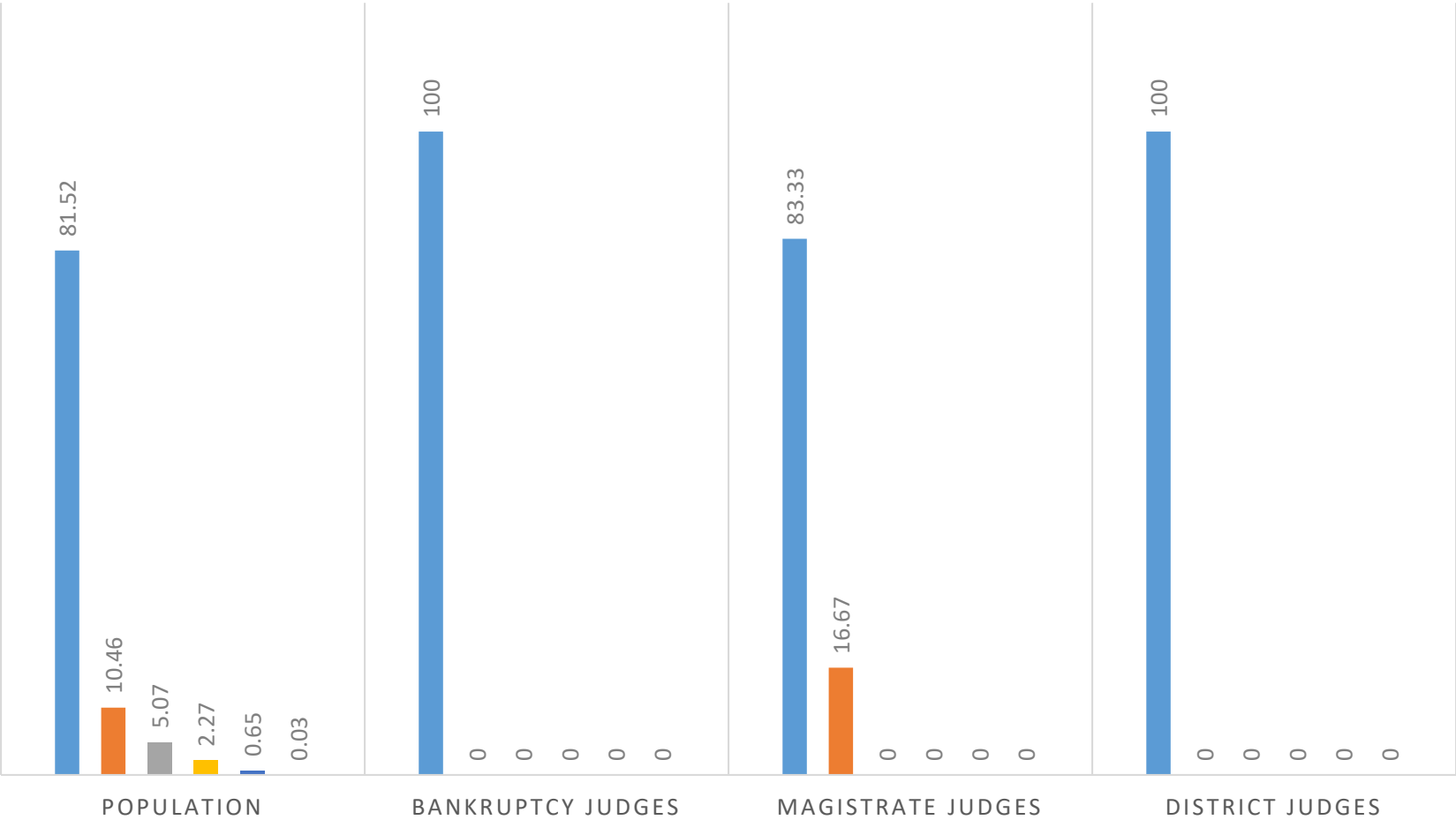
SOUTHERN DISTRICT OF NEW YORK

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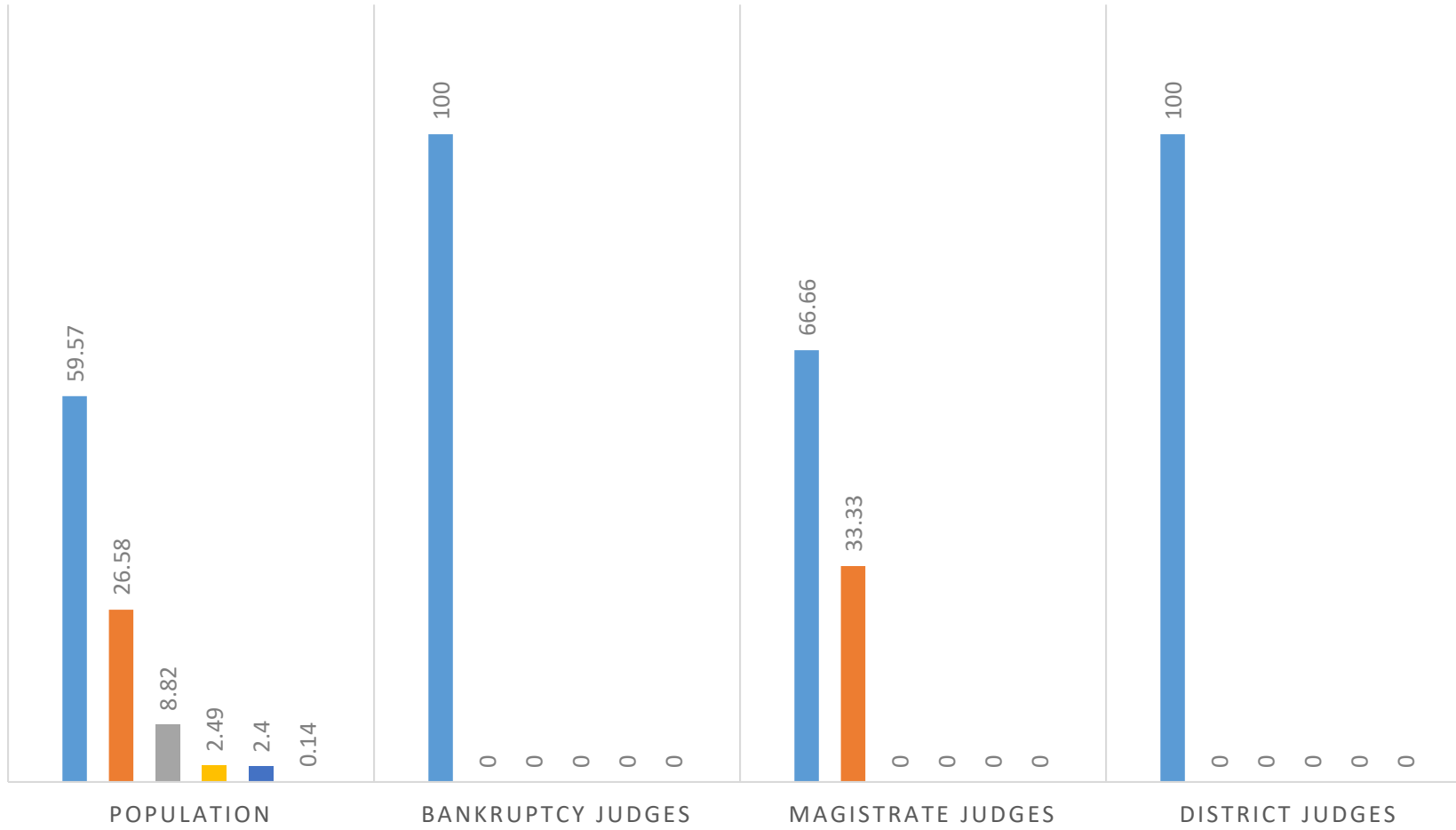
WESTERN DISTRICT OF NEW YORK

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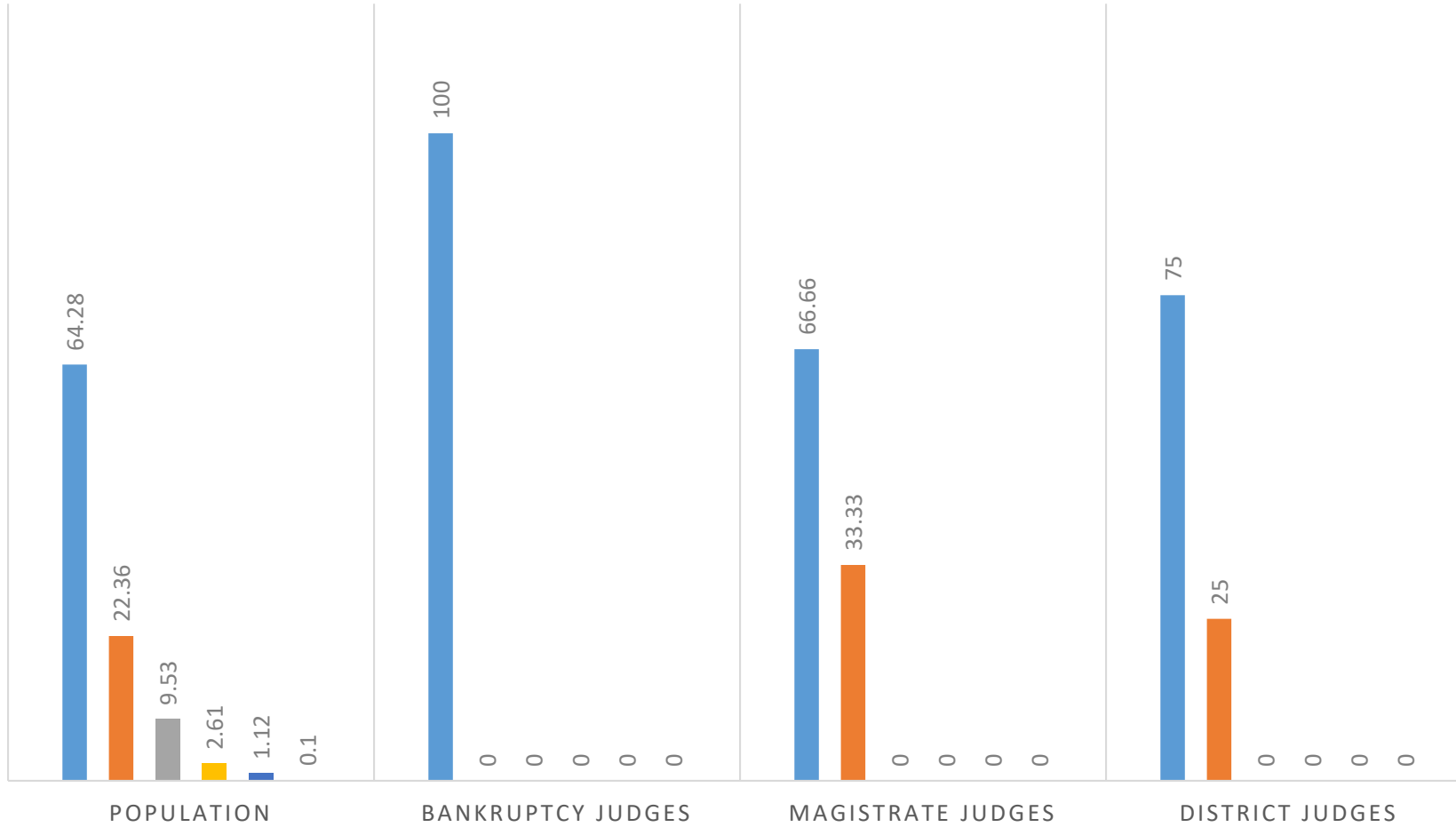
EASTERN DISTRICT OF NORTH CAROLINA

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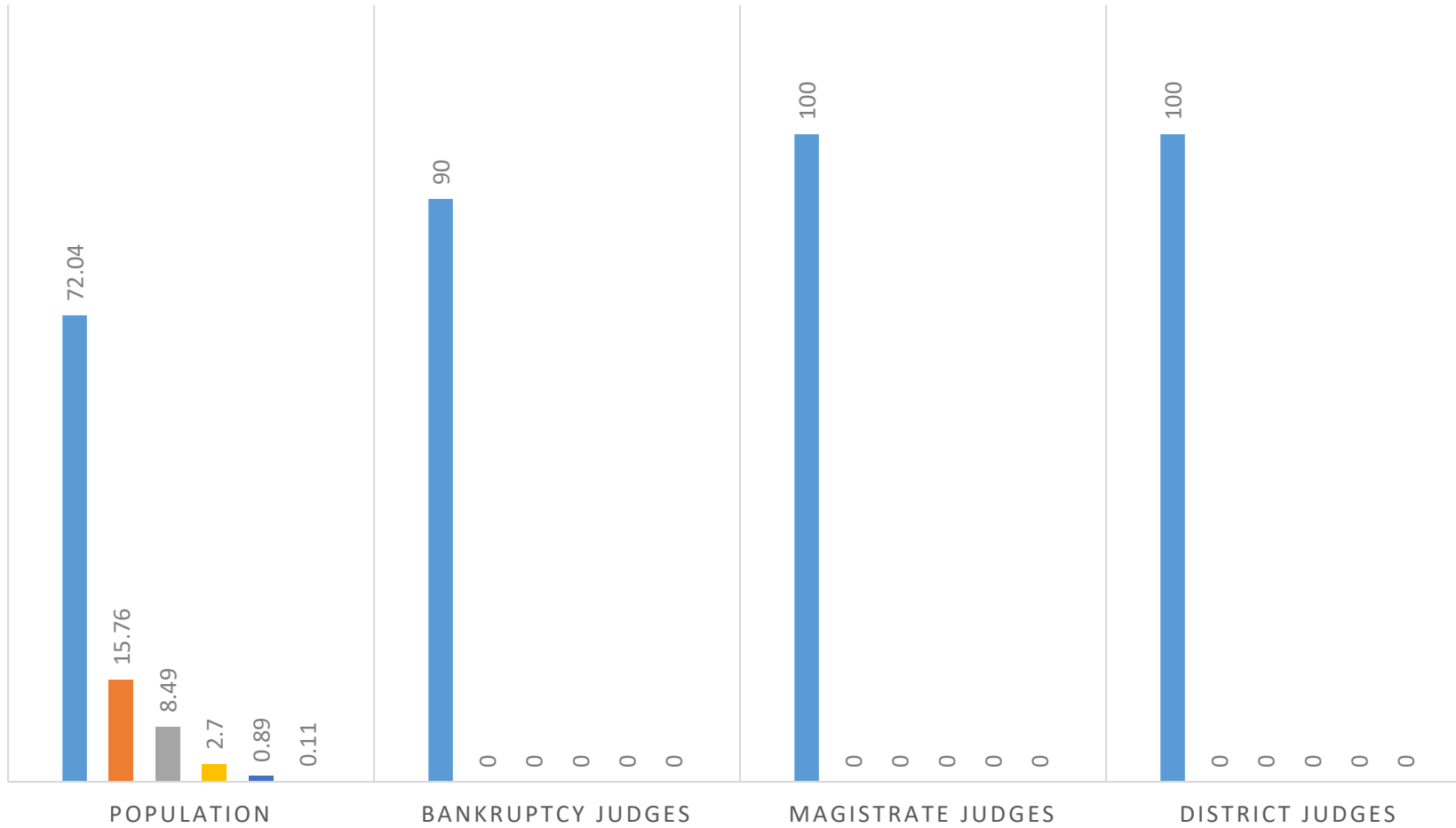
MIDDLE DISTRICT OF NORTH CAROLINA

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



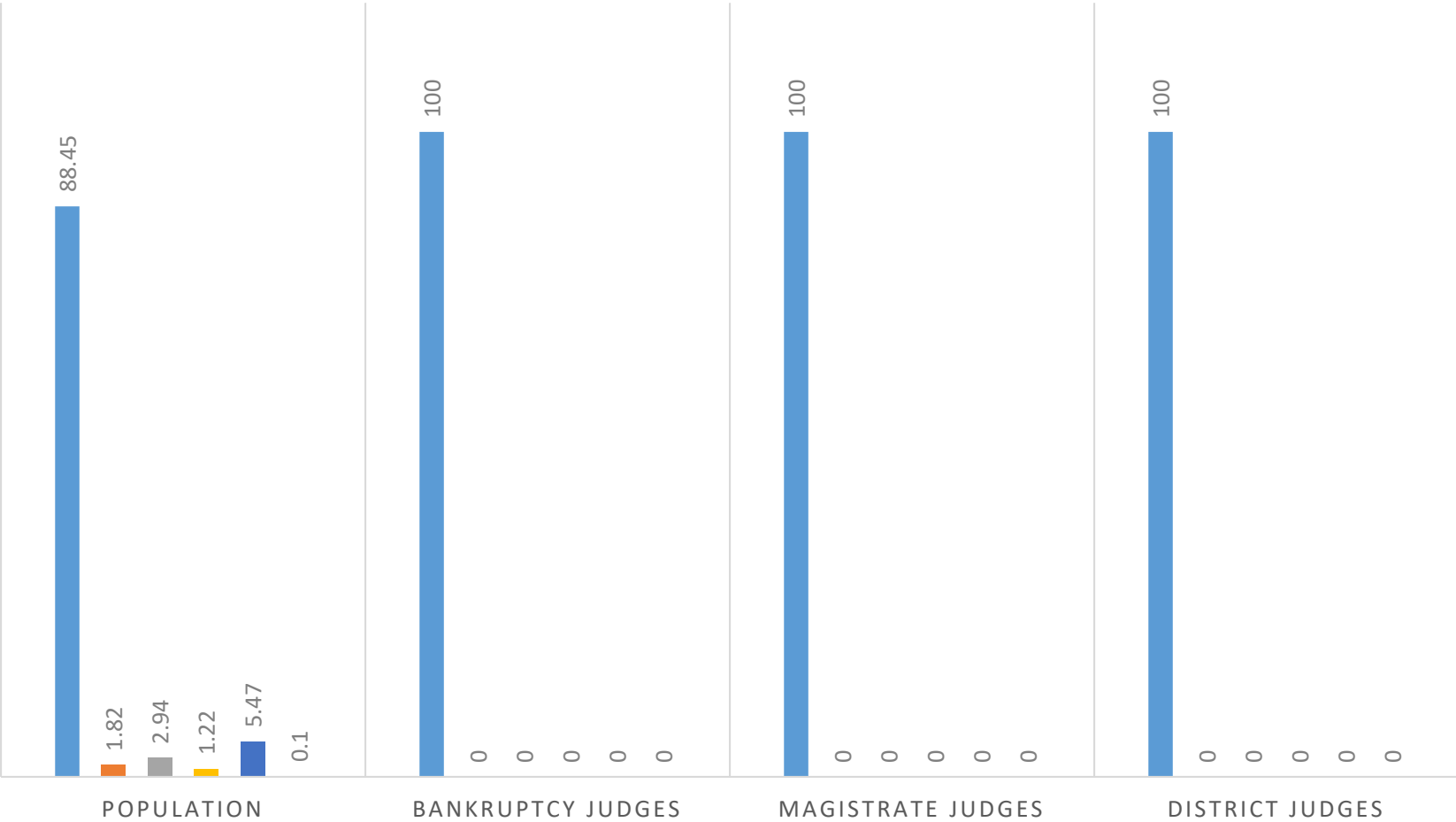
WESTERN DISTRICT OF NORTH CAROLINA

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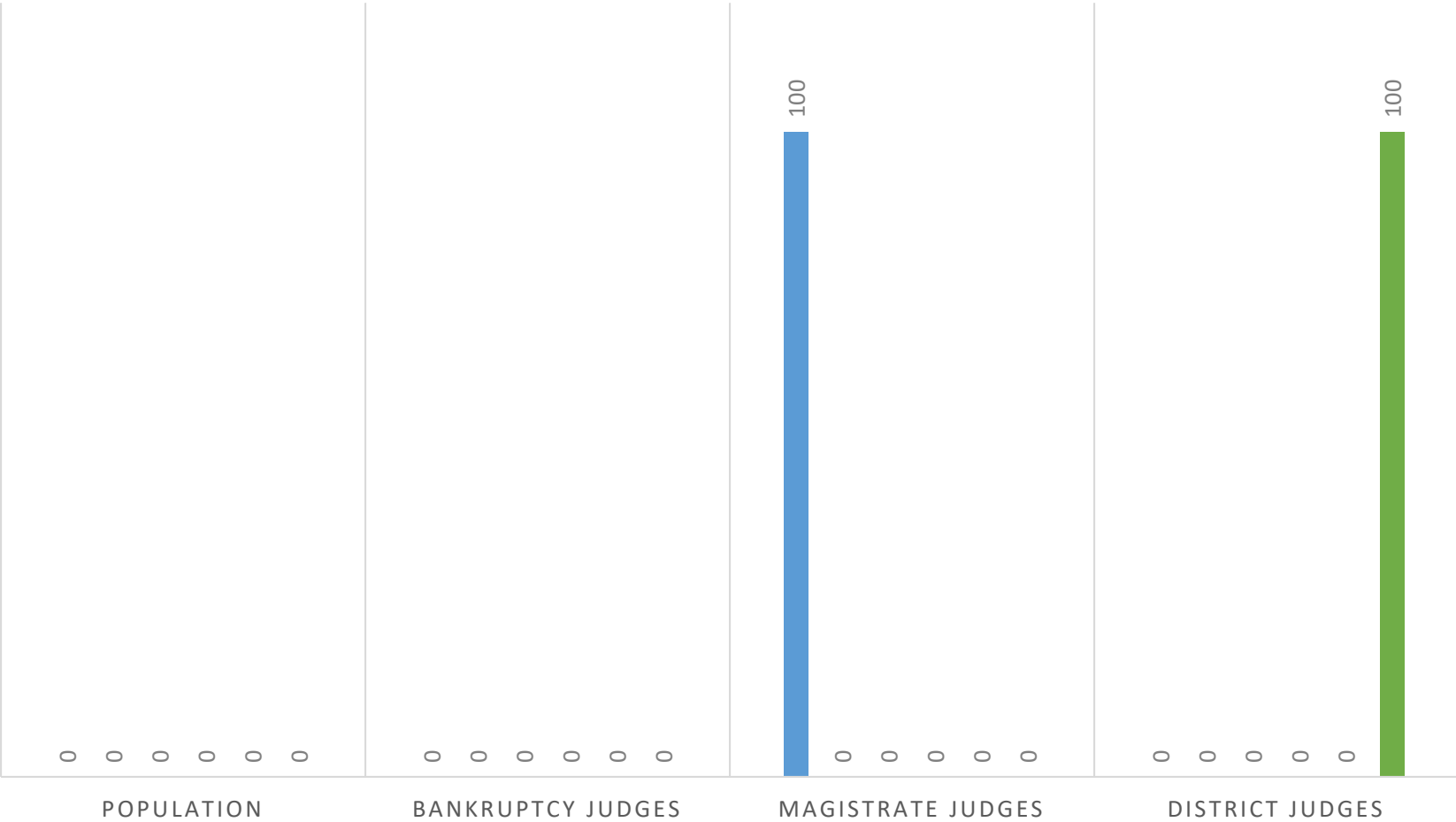
DISTRICT OF NORTH DAKOTA

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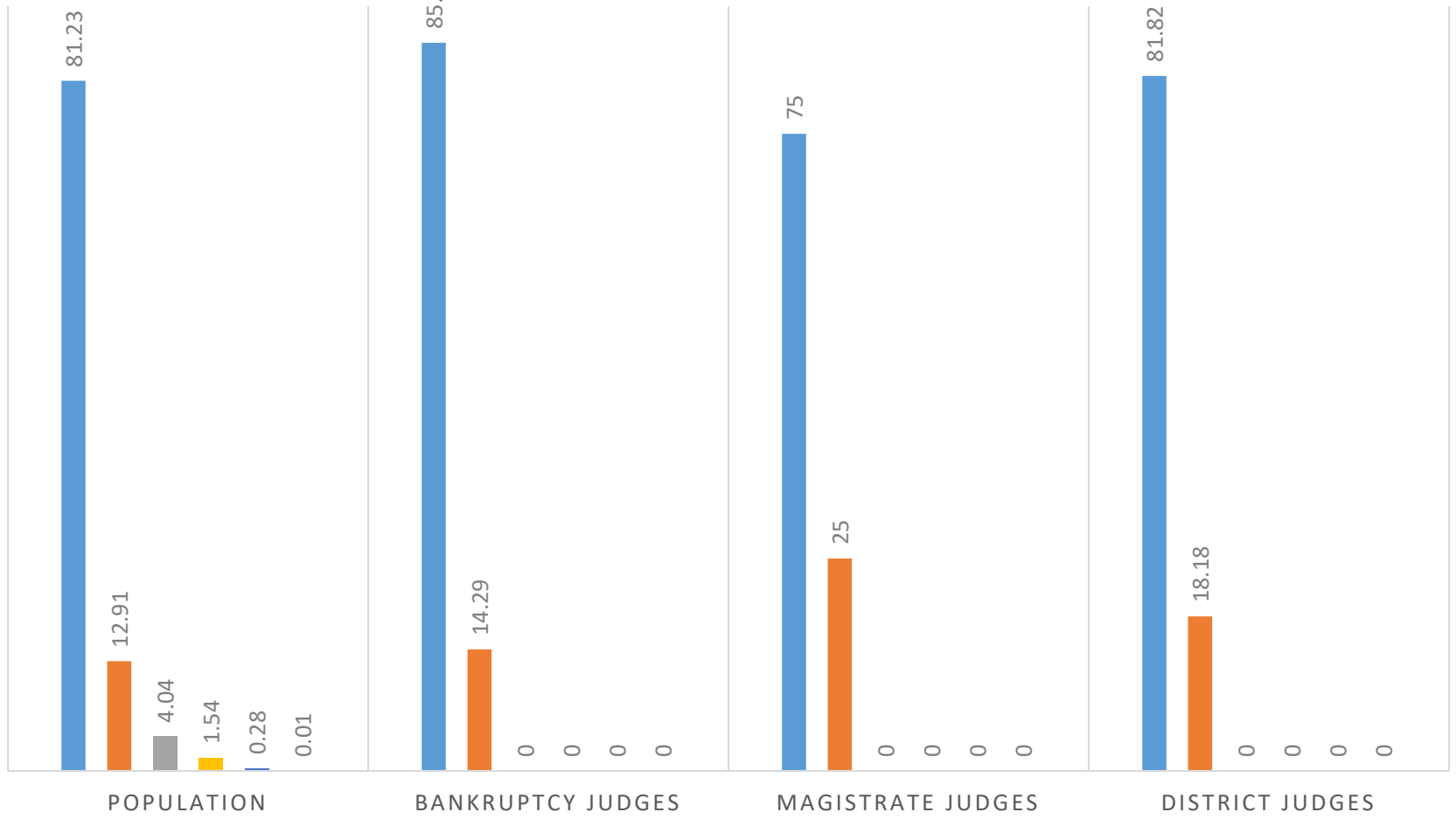
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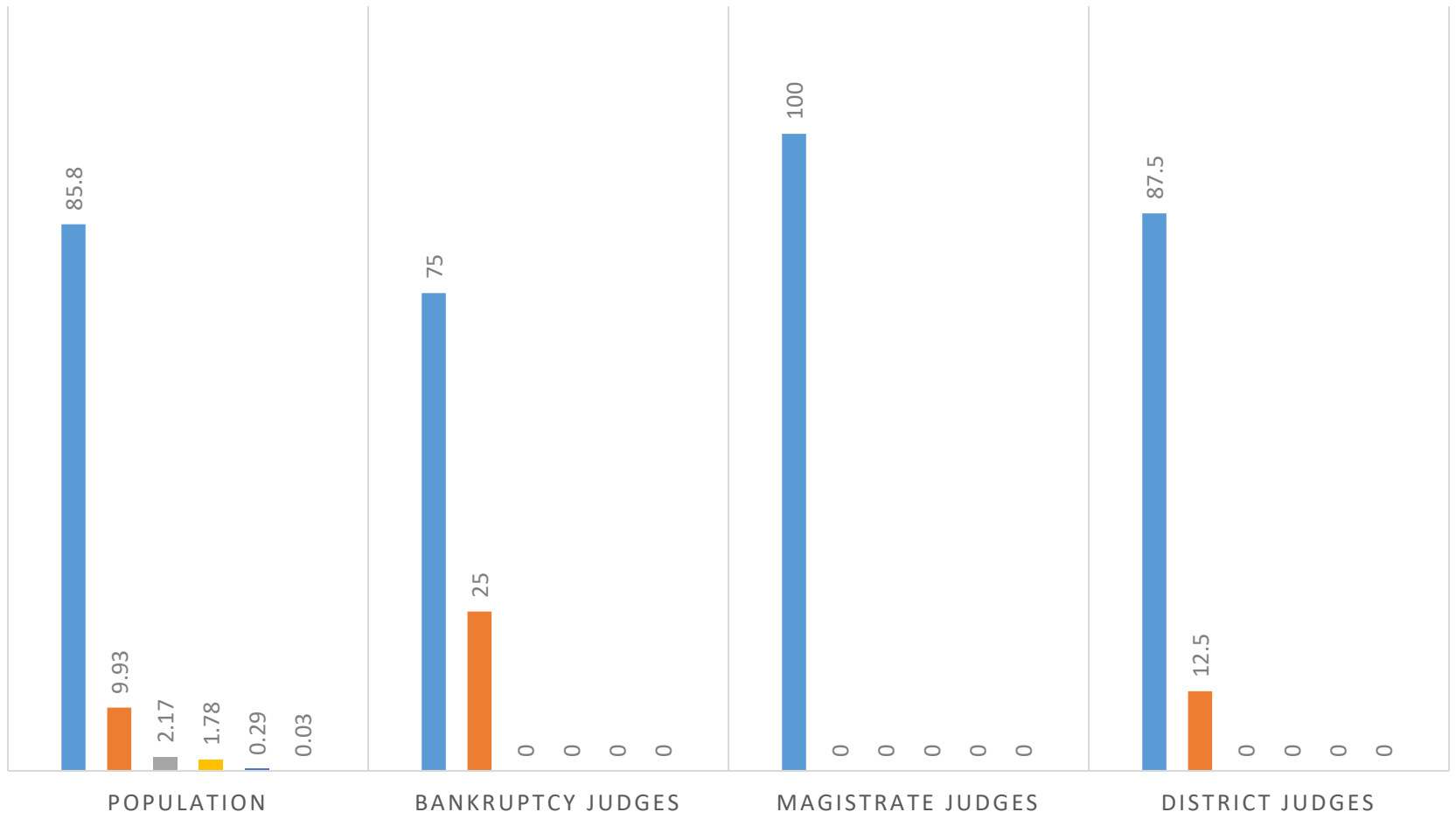
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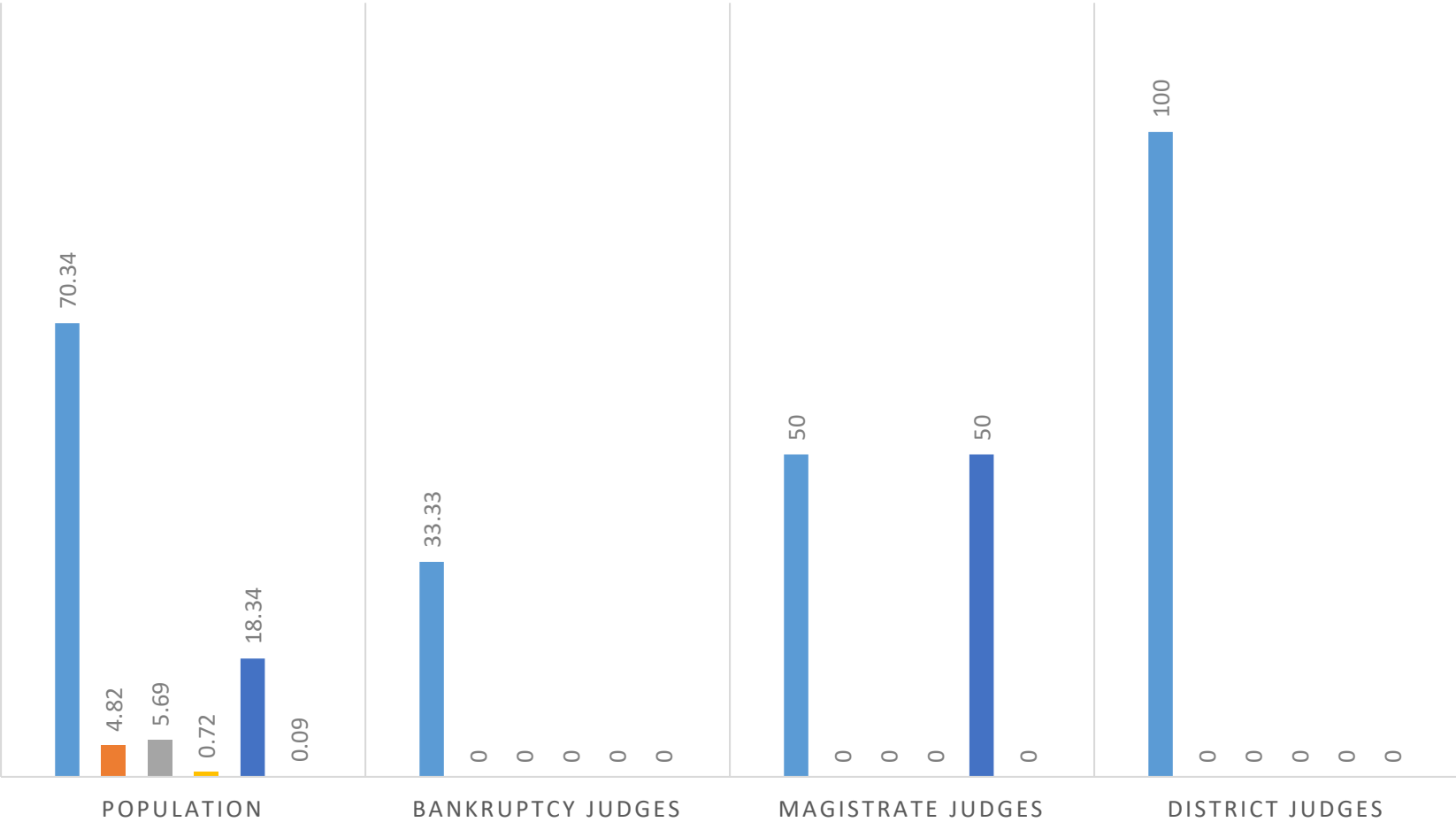
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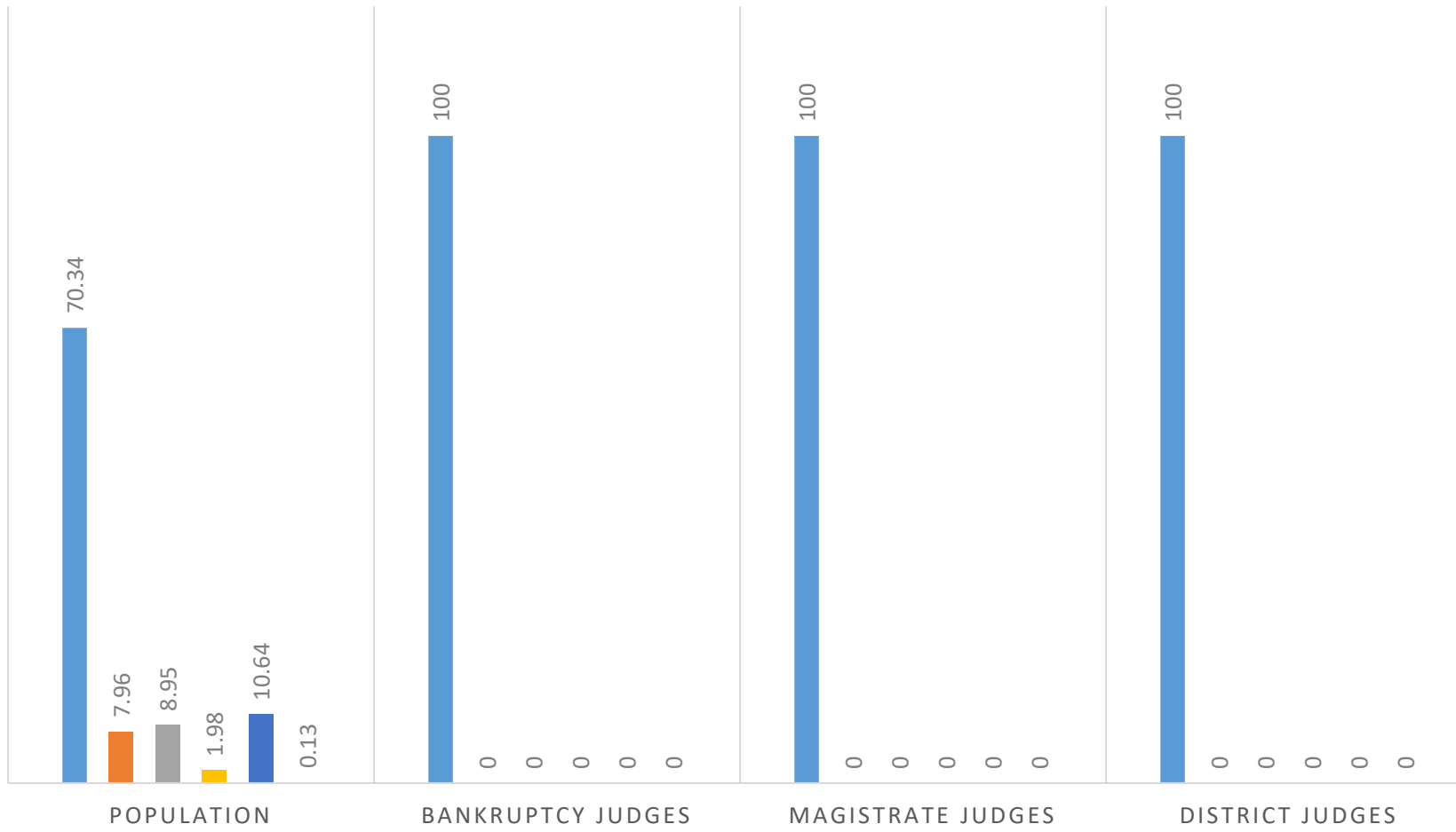
EASTERN DISTRICT OF OKLAHOMA

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



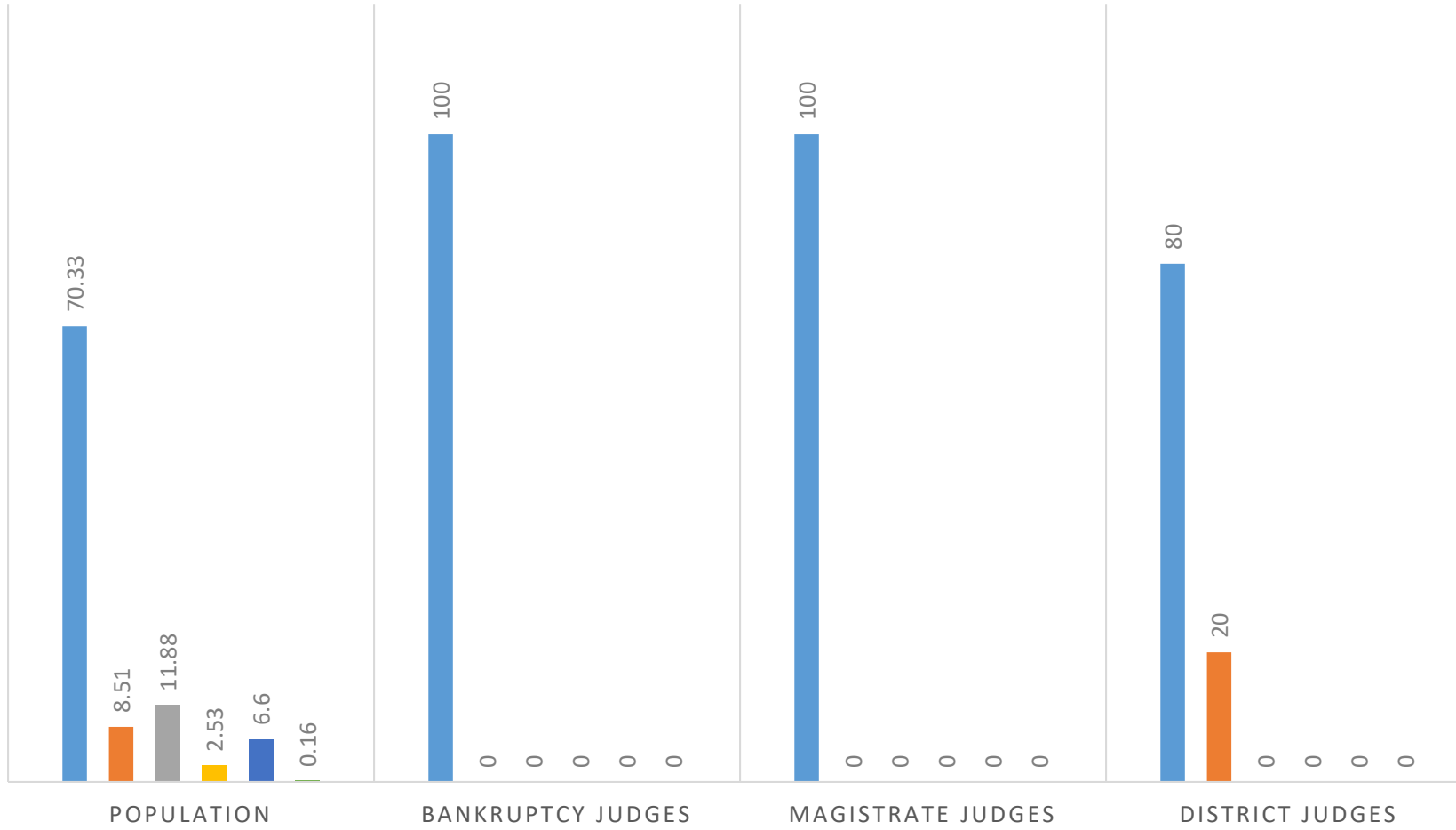
NORTHERN DISTRICT OF OKLAHOMA

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



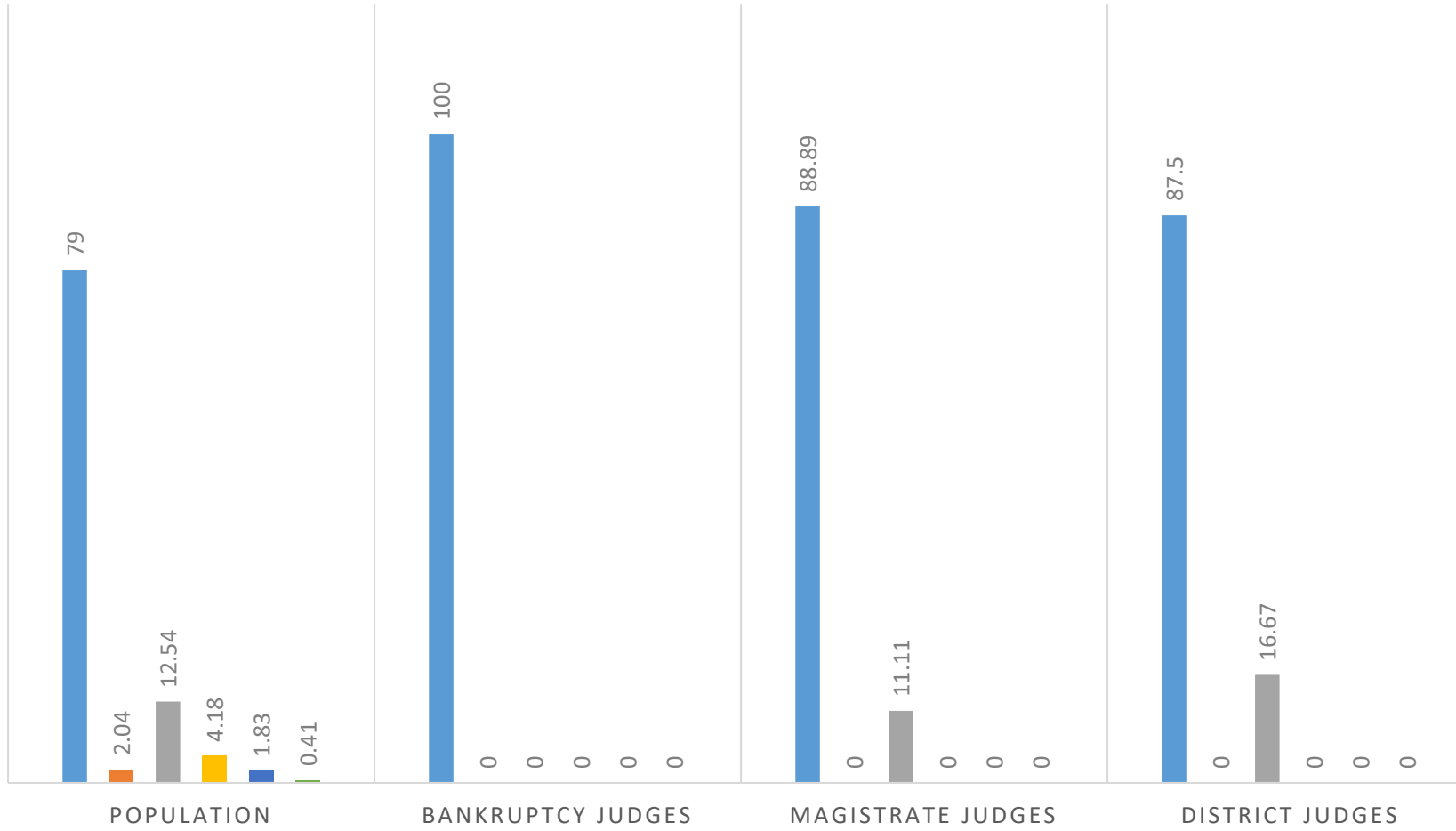
WESTERN DISTRICT OF OKLAHOMA

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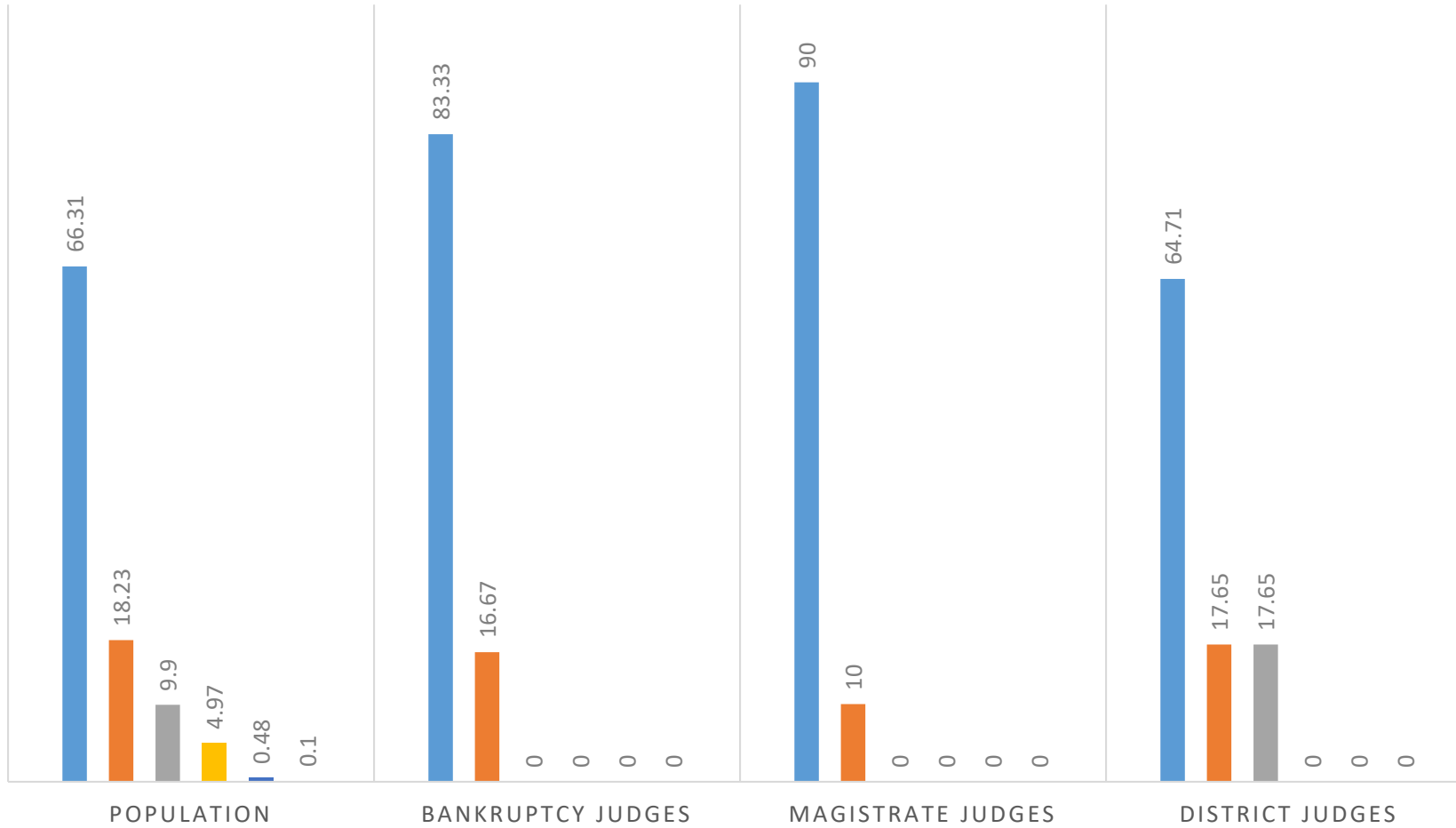
DISTRICT OF OREGON

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



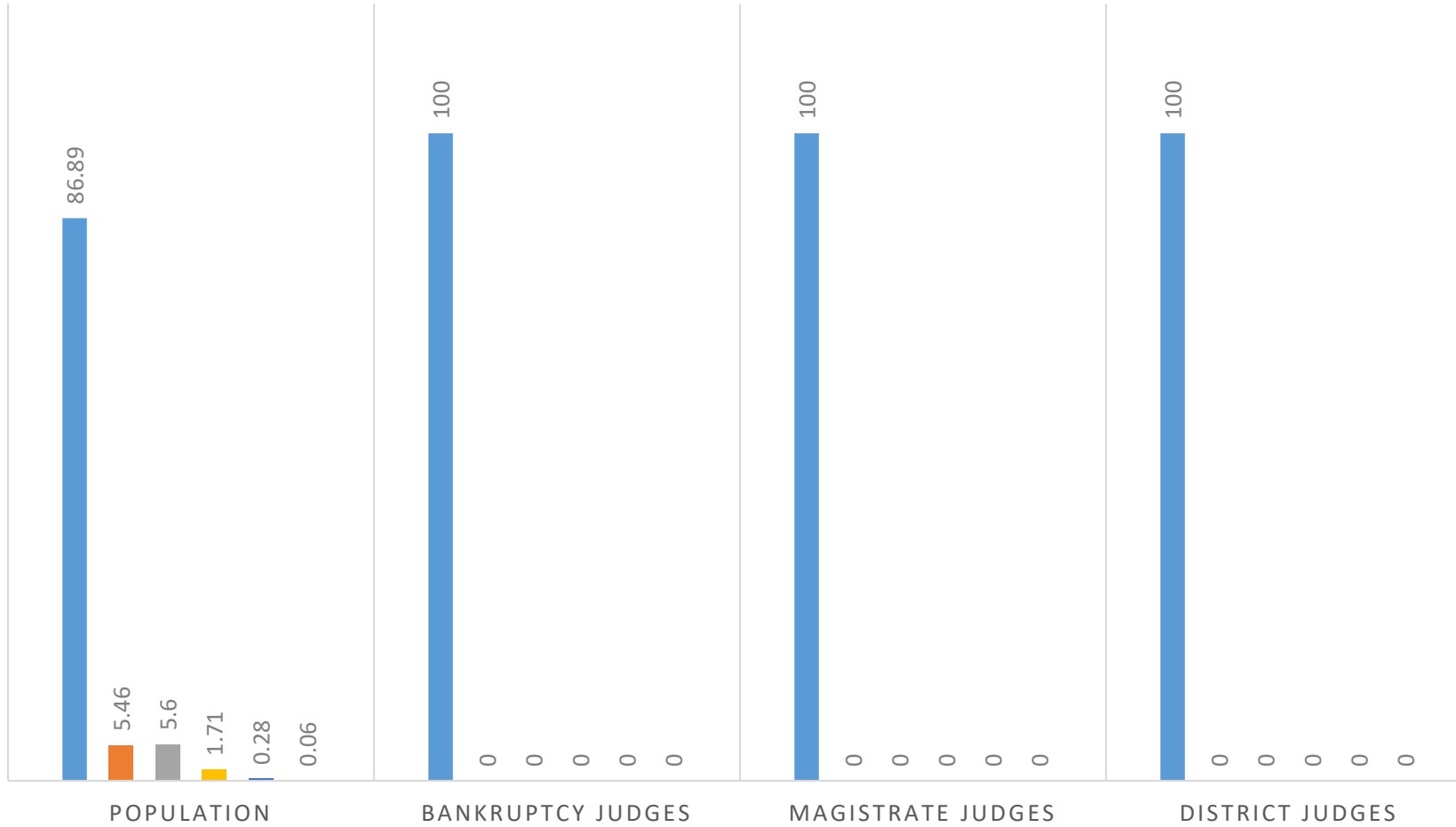
EASTERN DISTRICT OF PENNSYLVANIA

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



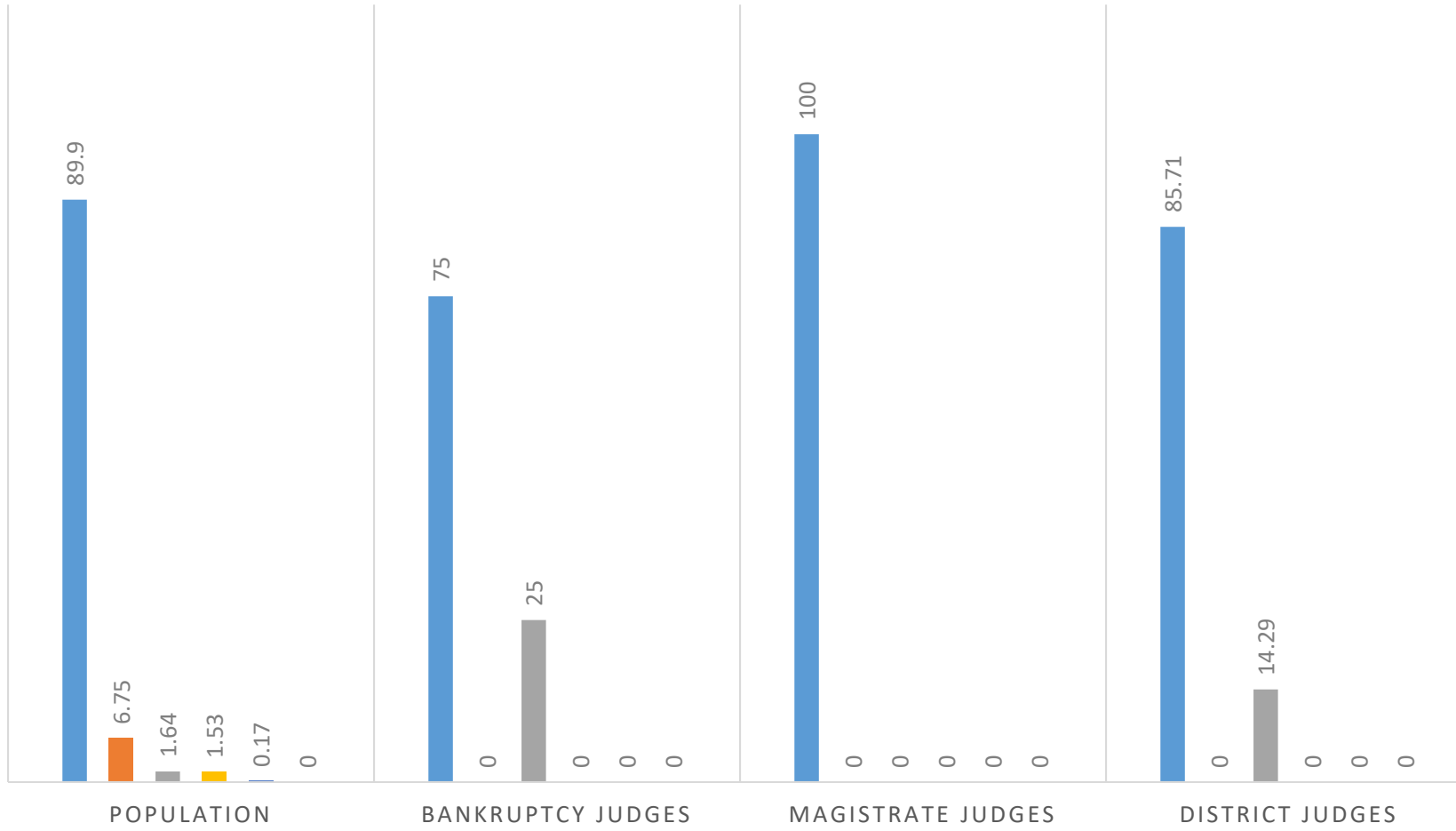
MIDDLE DISTRICT OF PENNSYLVANIA

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



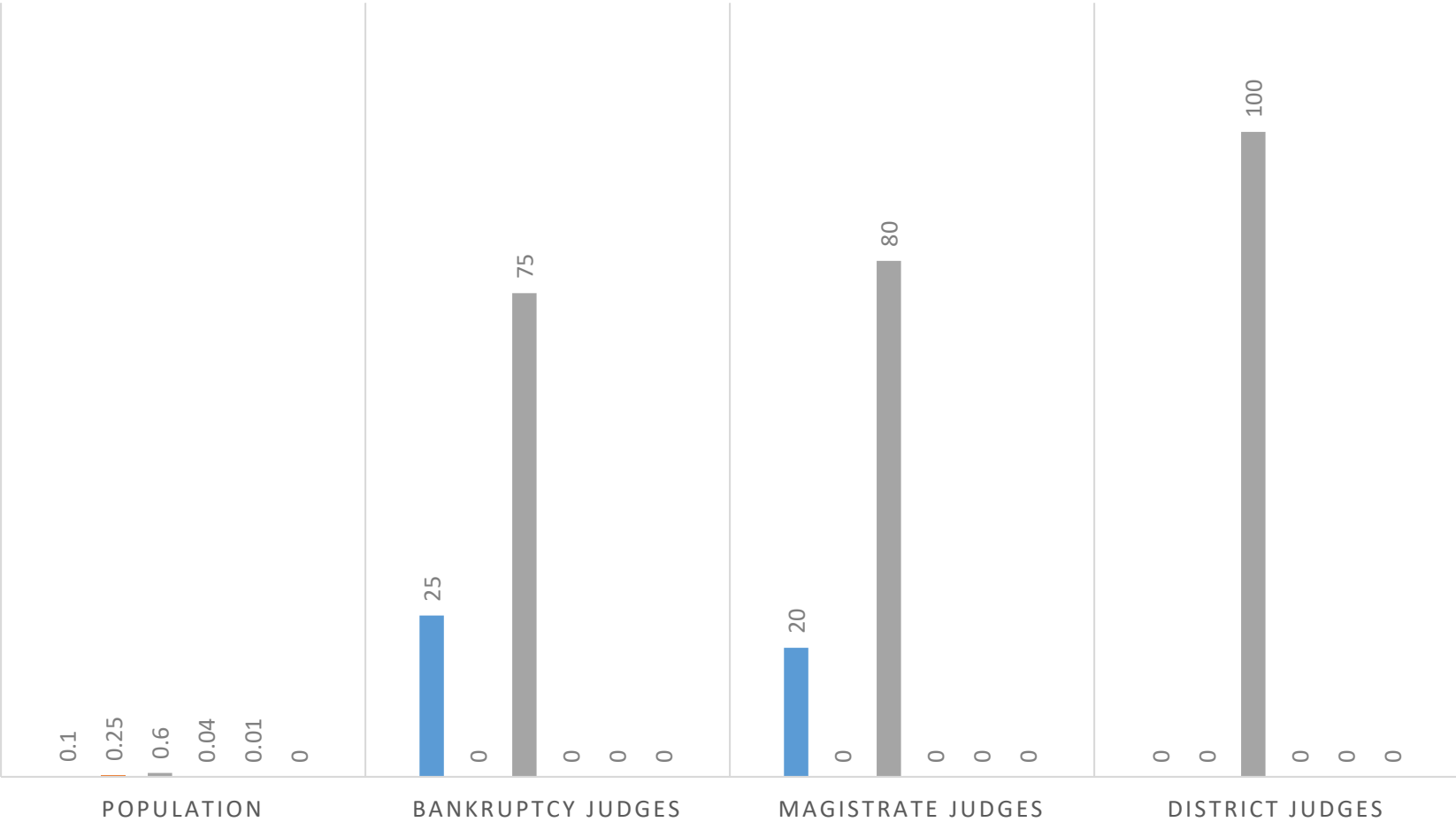
WESTERN DISTRICT OF PENNSYLVANIA

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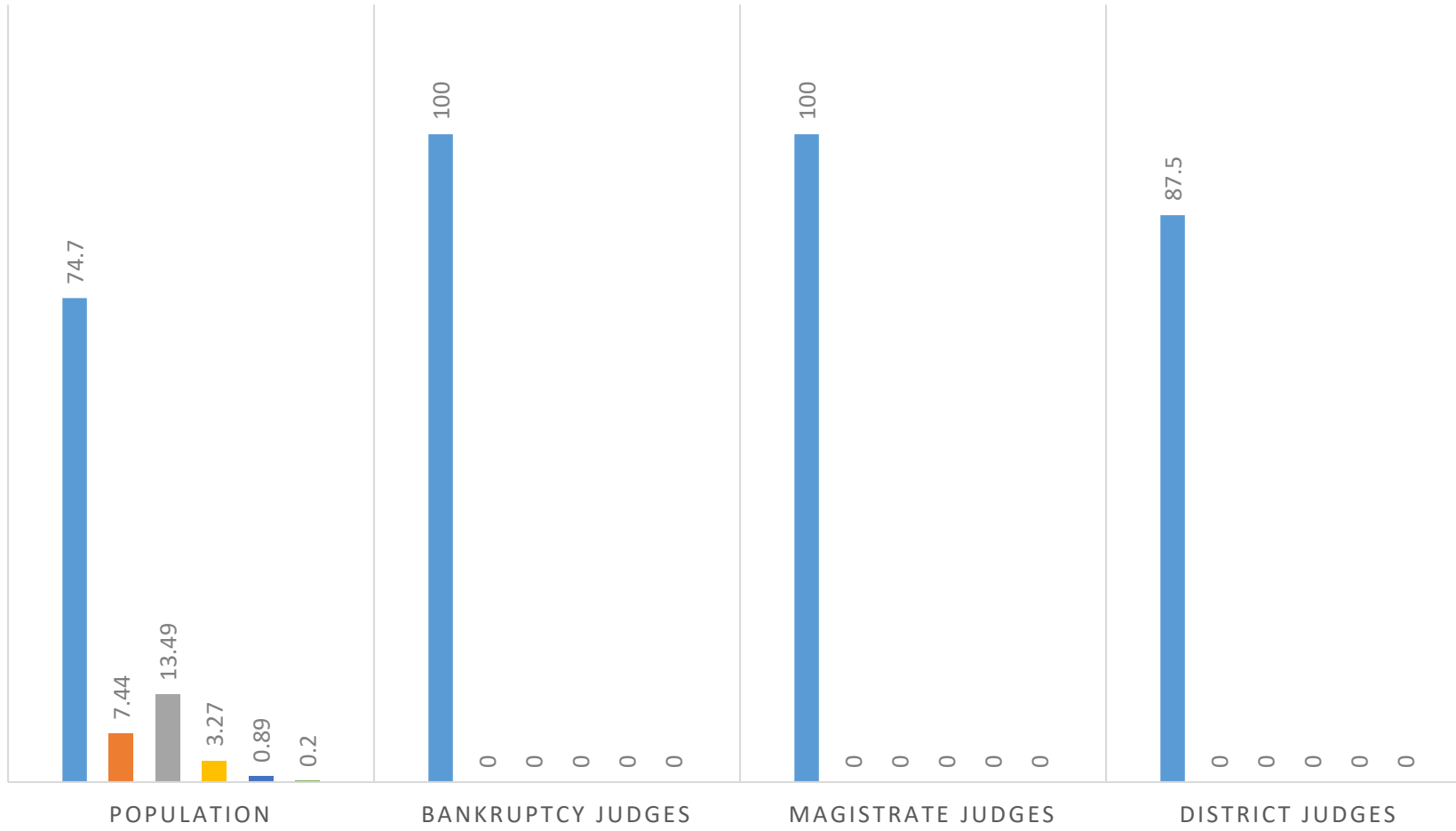
DISTRICT OF PUERTO RICO

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



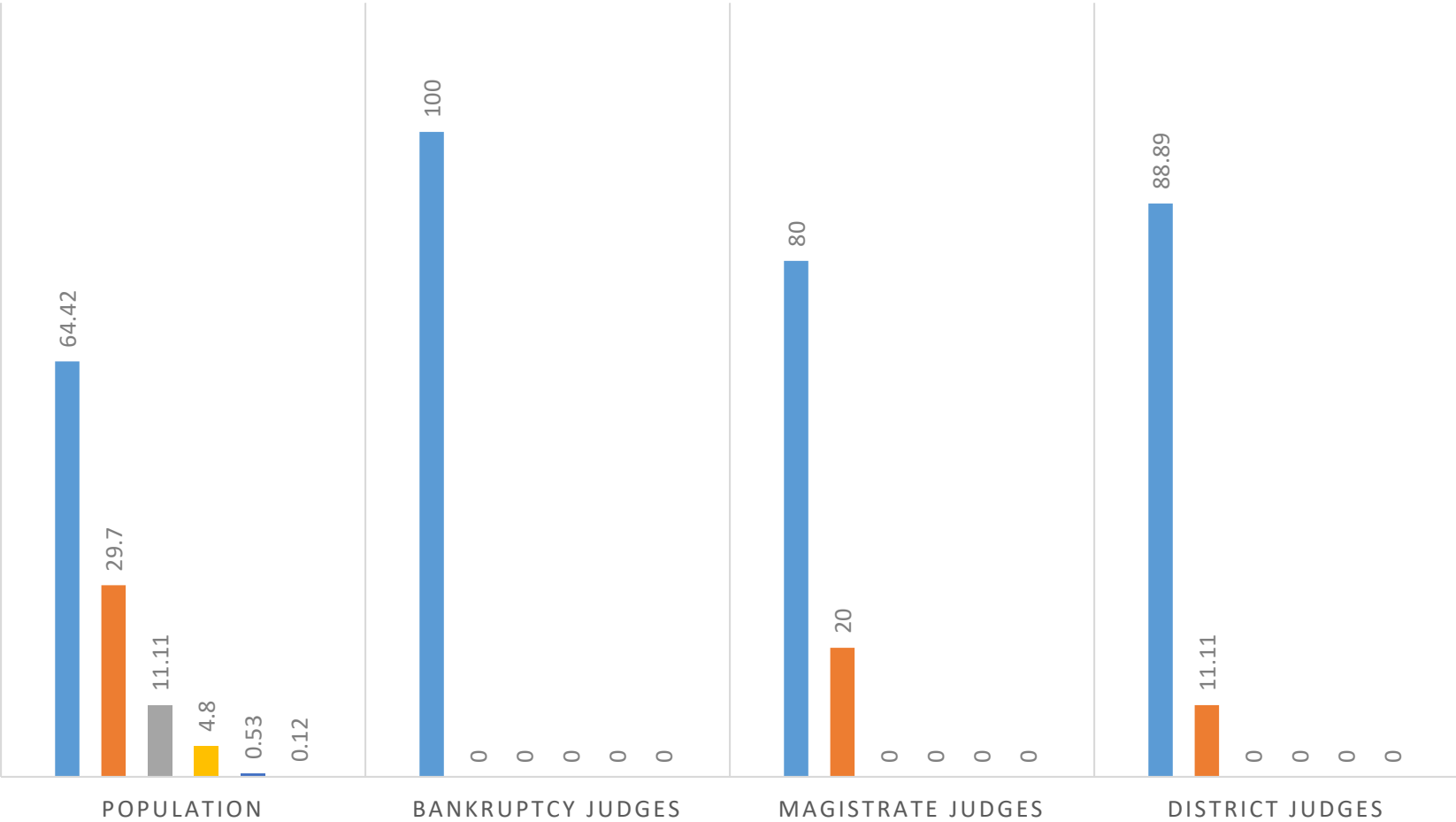
DISTRICT OF RHODE ISLAND

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



DISTRICT OF SOUTH CAROLINA

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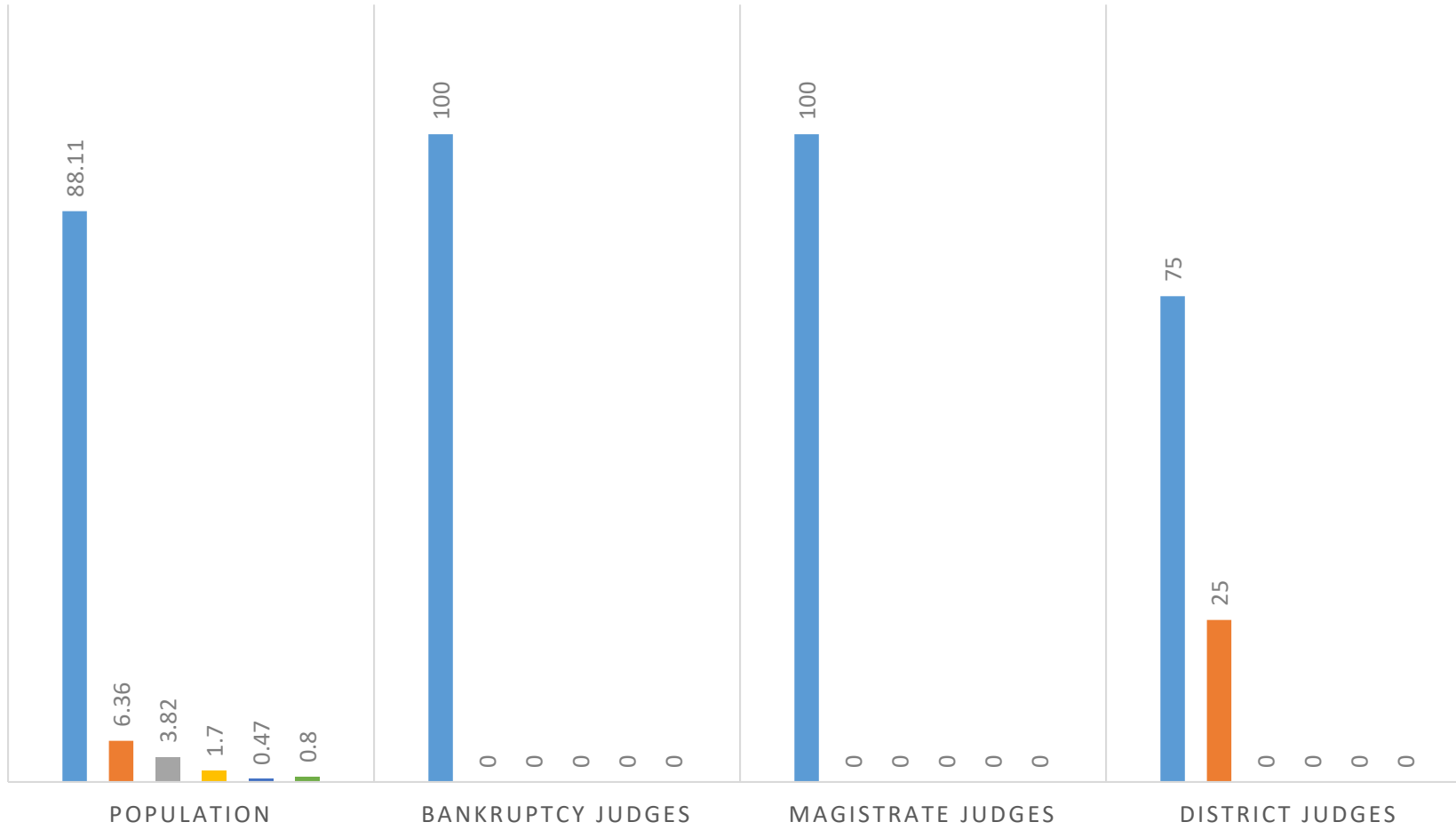
DISTRICT OF SOUTH DAKOTA

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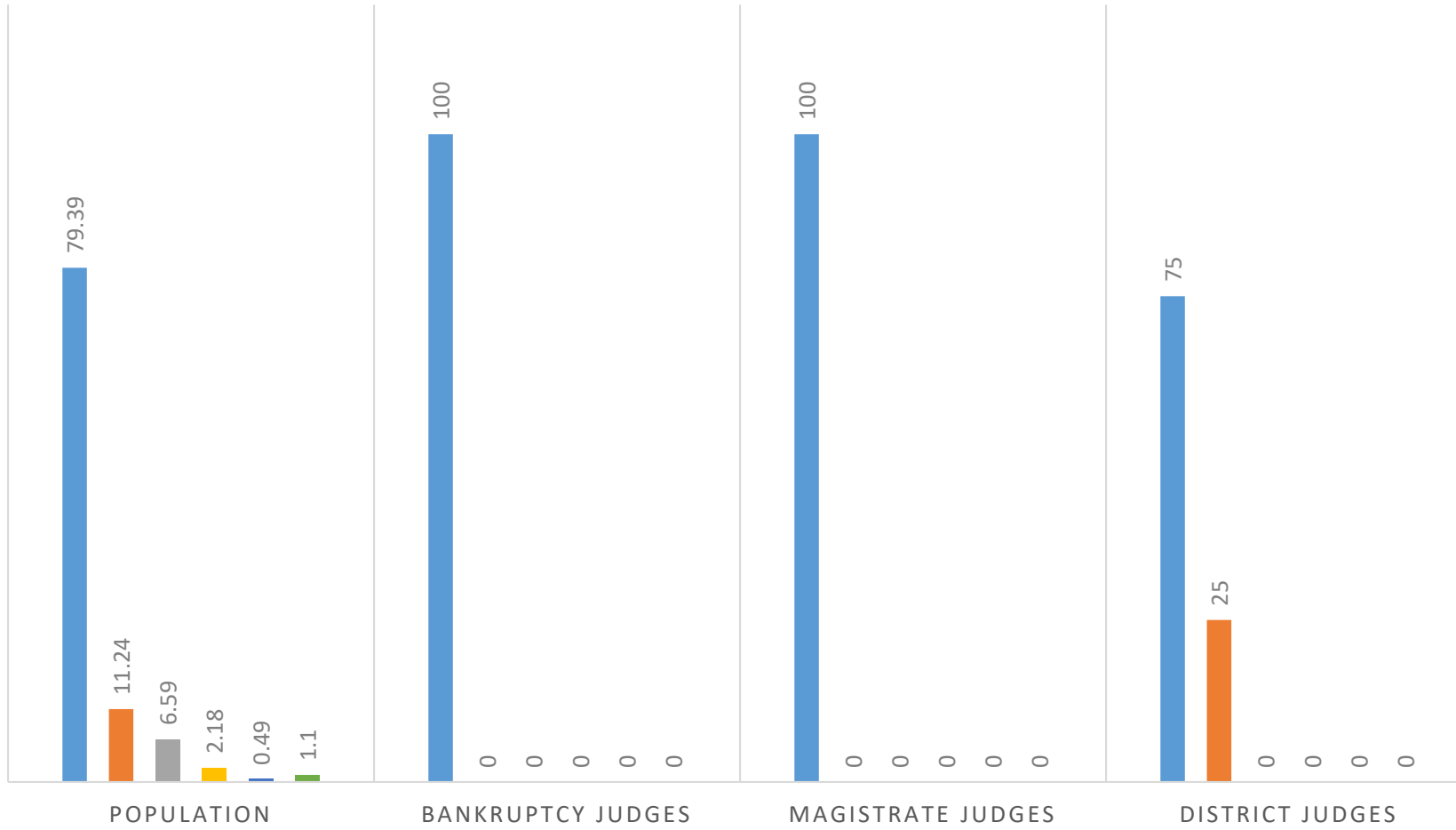
EASTERN DISTRICT OF TENNESSEE

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



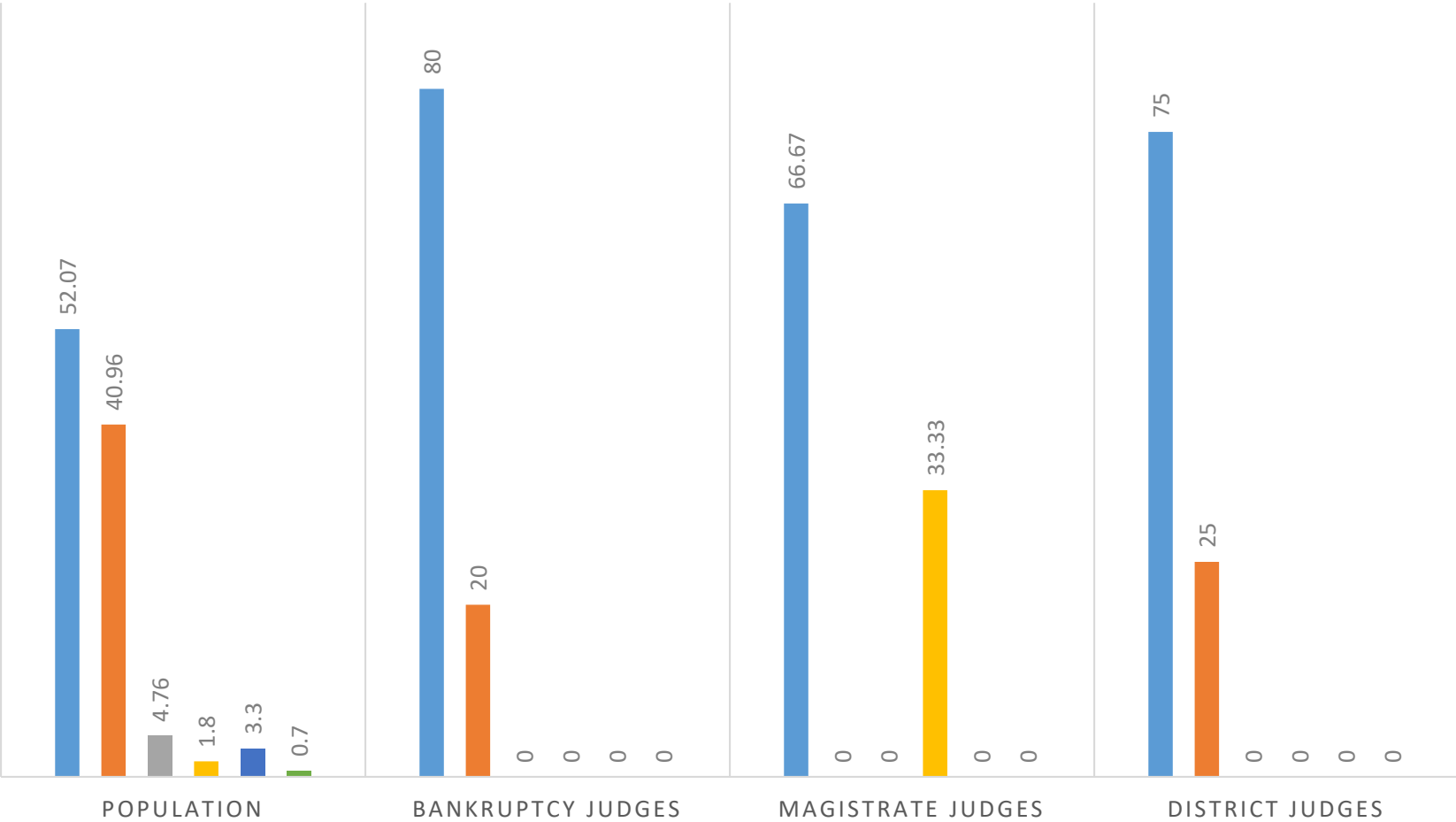
MIDDLE DISTRICT OF TENNESSEE

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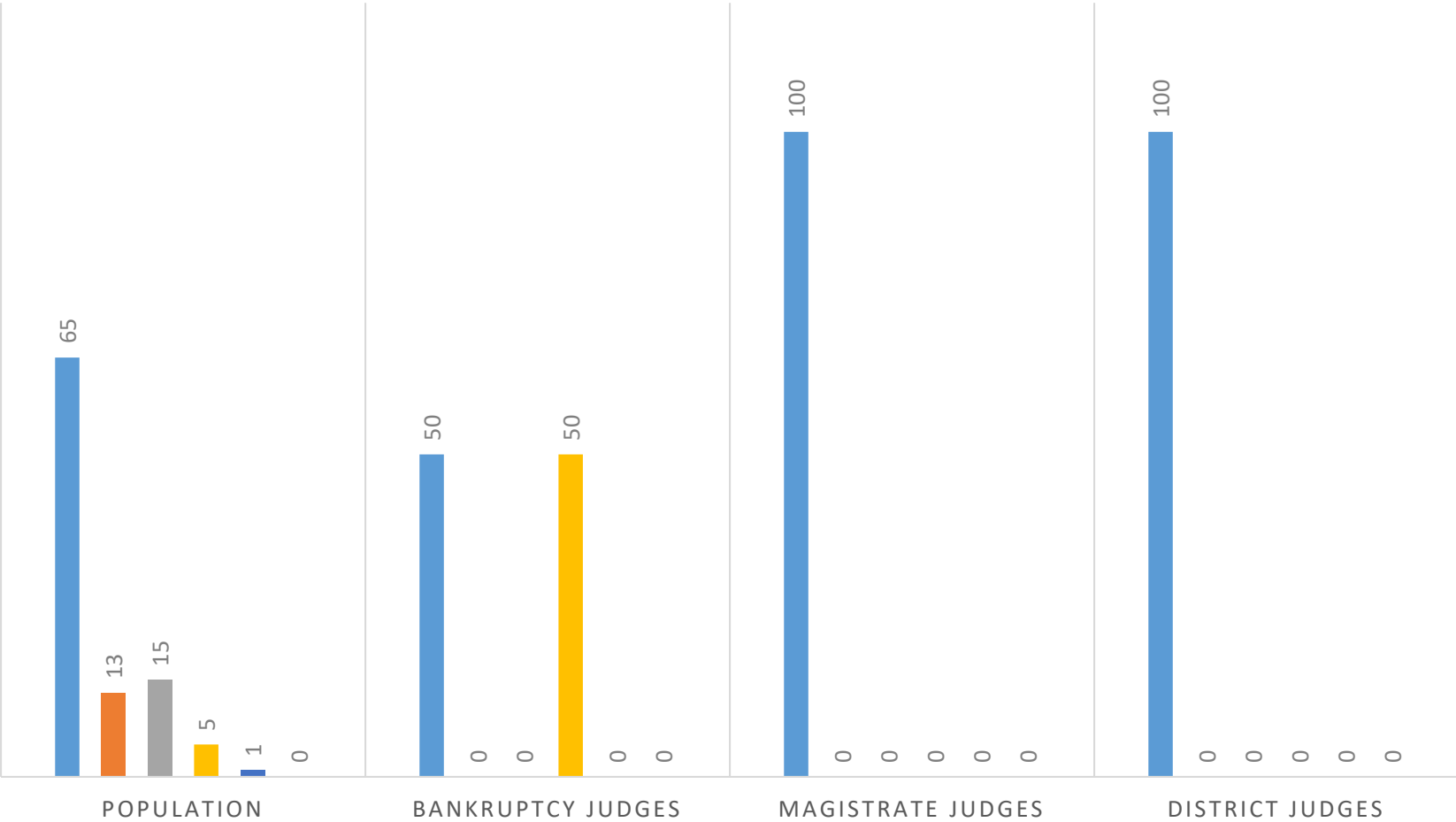
WESTERN DISTRICT OF TENNESSEE

Caucasian African American Latino/Hispanic Asian Native American Pacific Islander



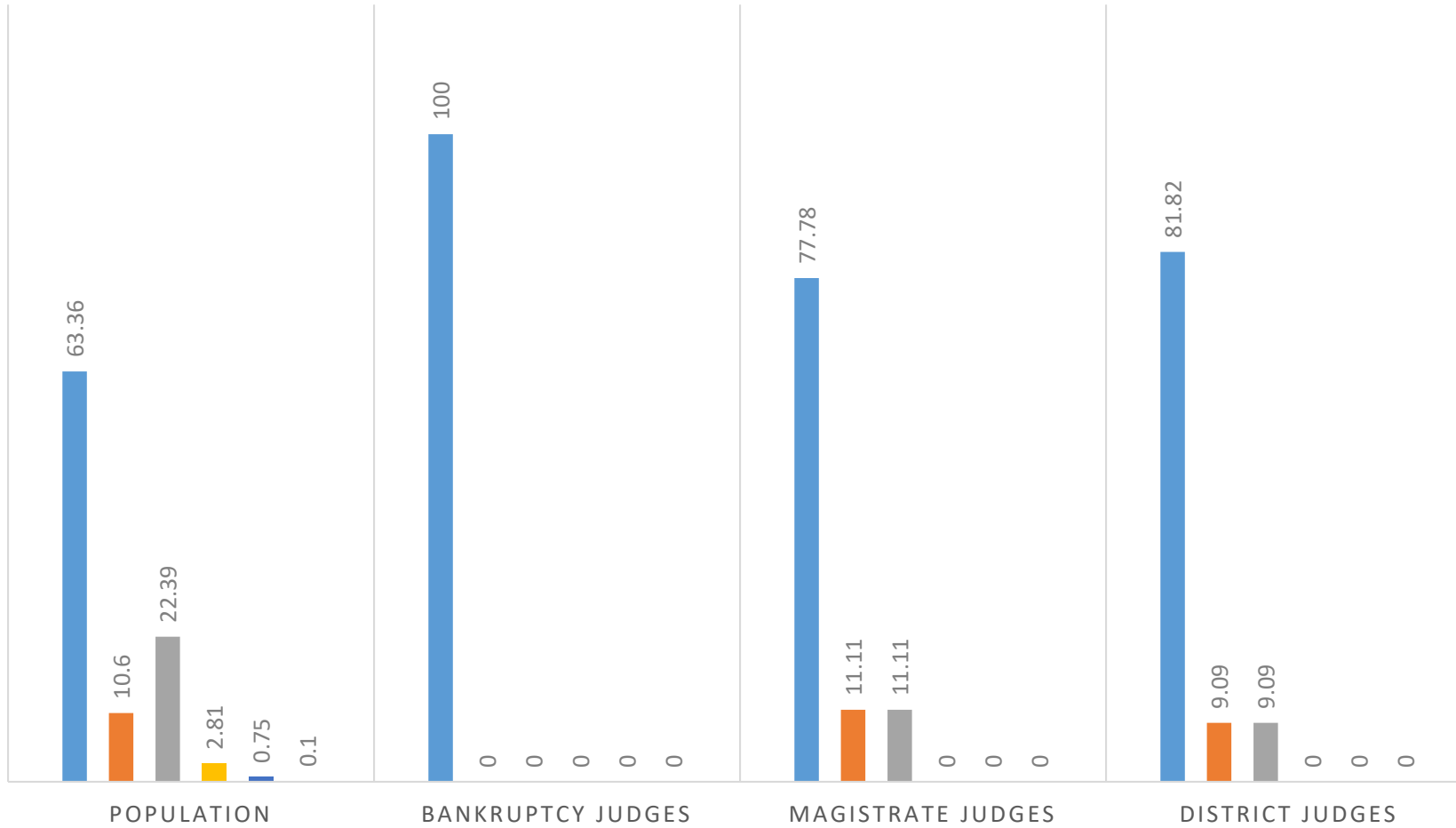
EASTERN DISTRICT OF TEXAS

Caucasian African American Latino/Hispanic Asian Native American Pacific Islander



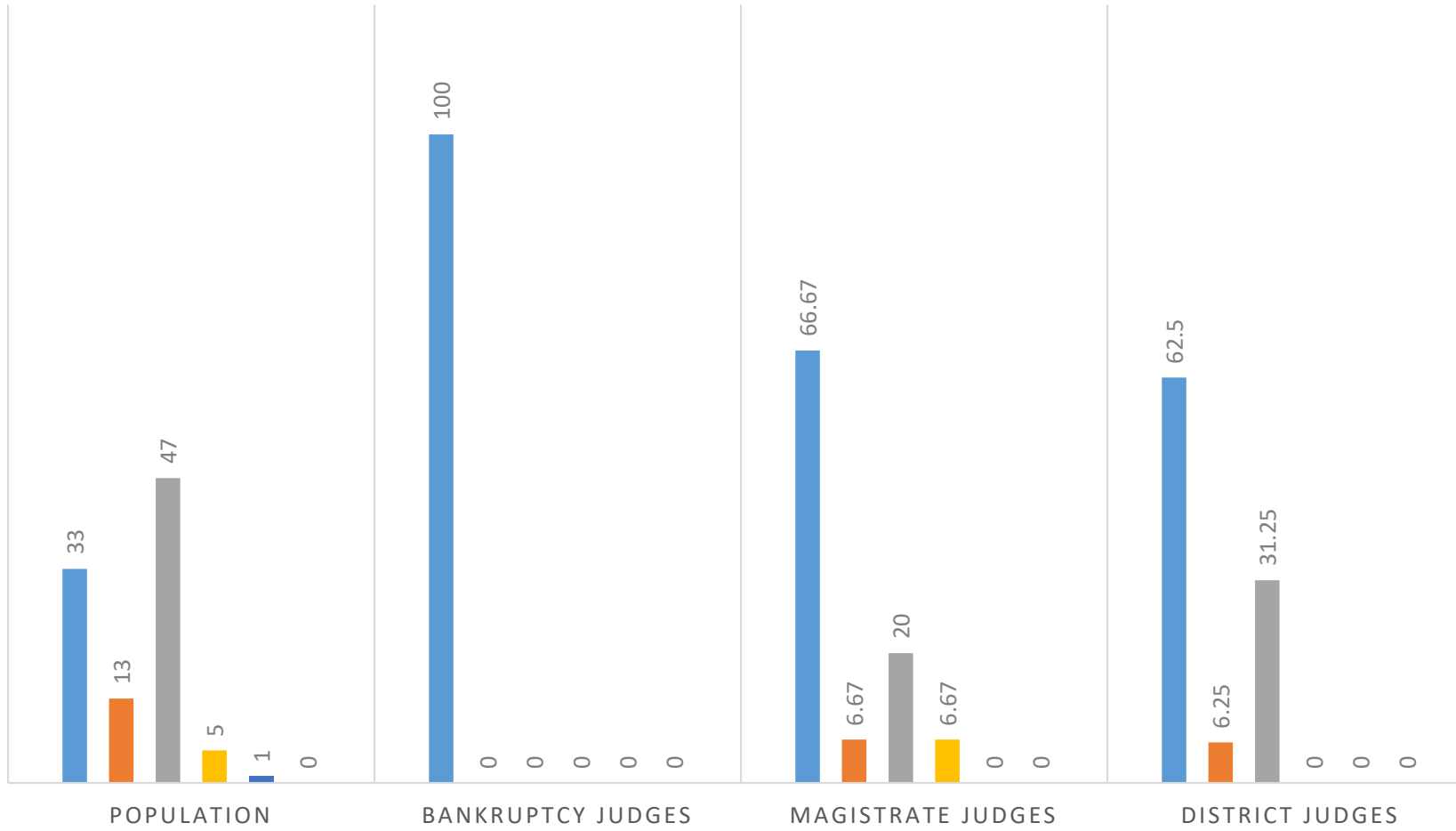
NORTHERN DISTRICT OF TEXAS

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



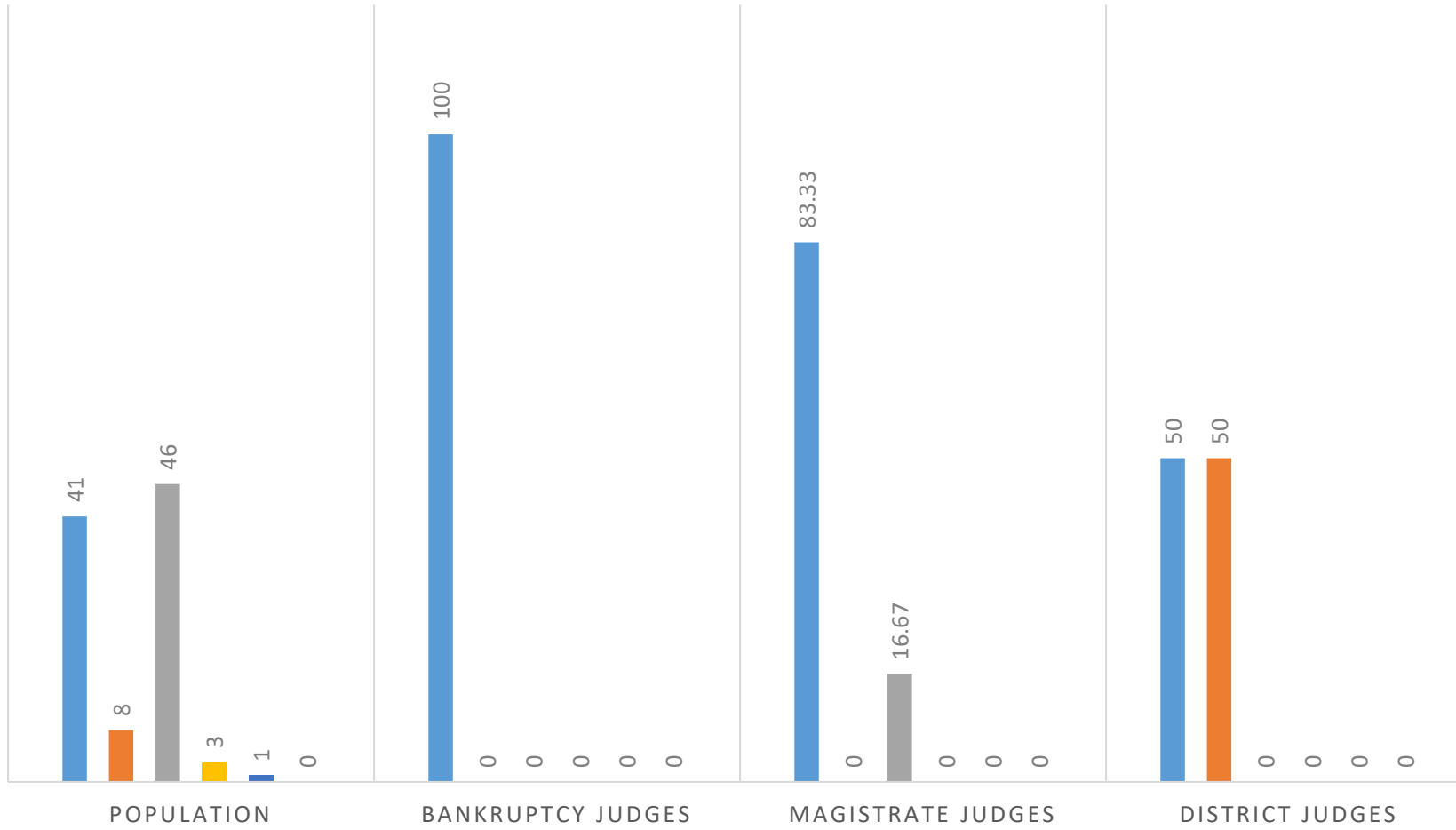
SOUTHERN DISTRICT OF TEXAS

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



WESTERN DISTRICT OF TEXAS

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



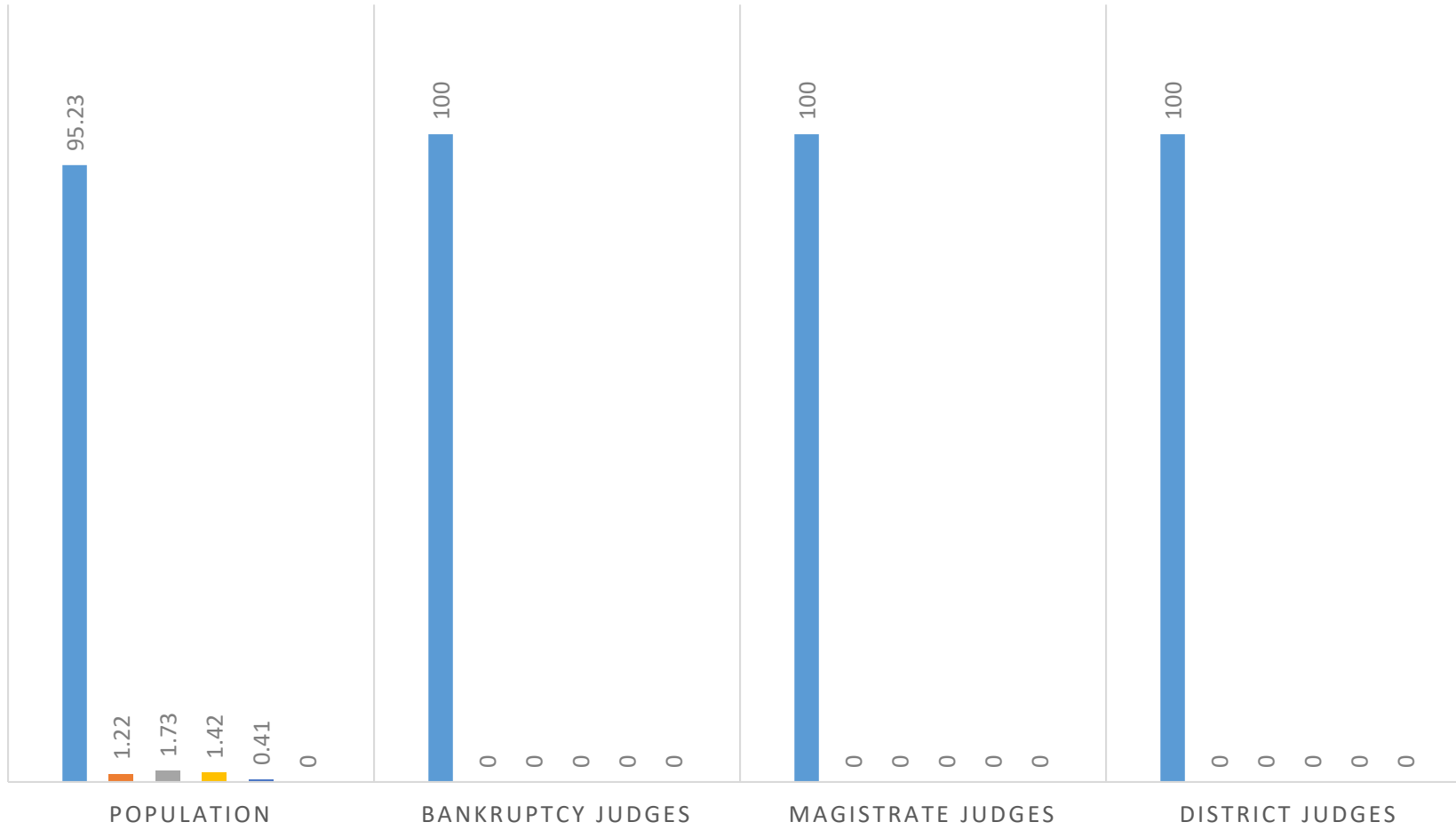
DISTRICT OF UTAH

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



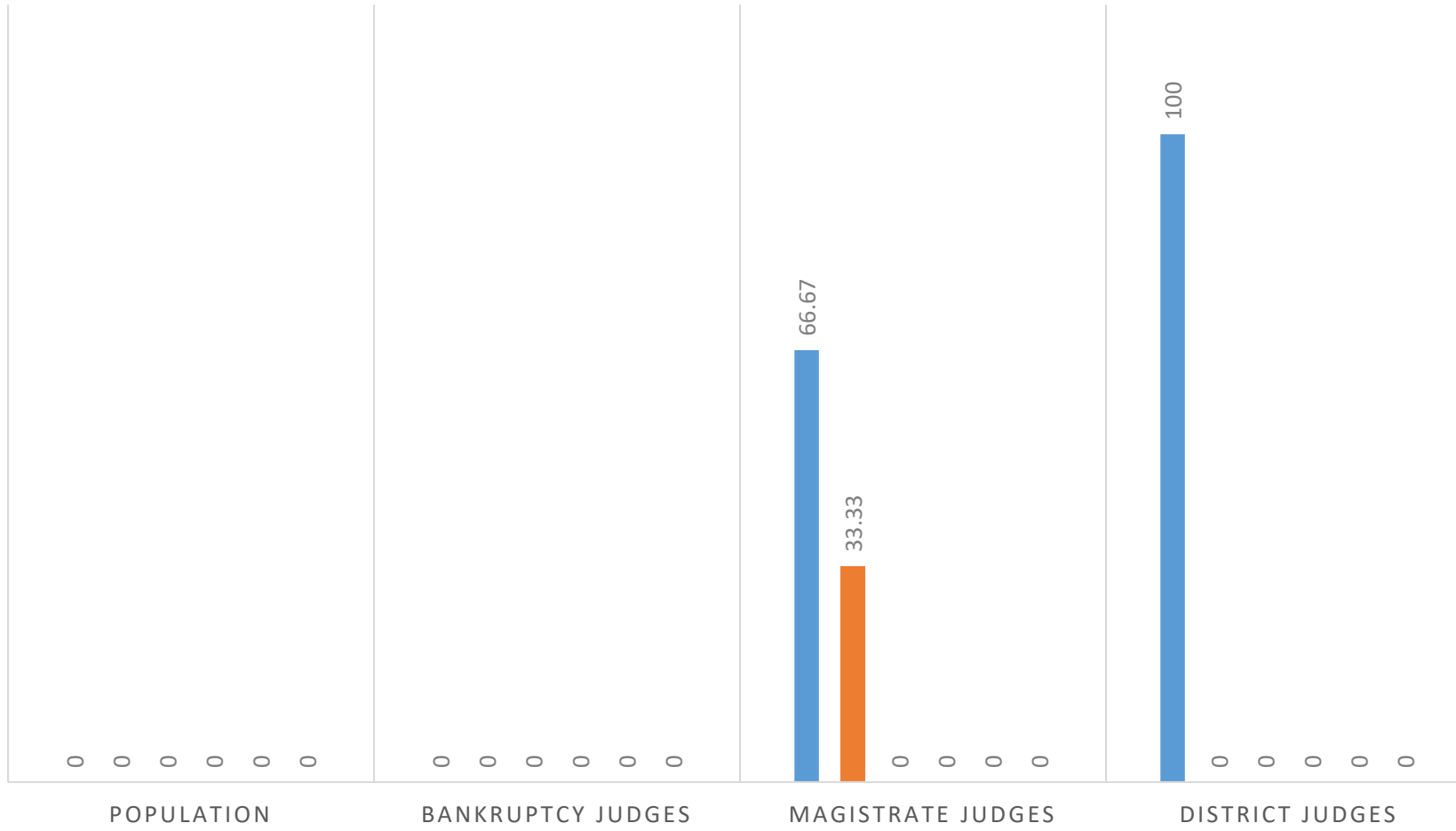
DISTRICT OF VERMONT

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



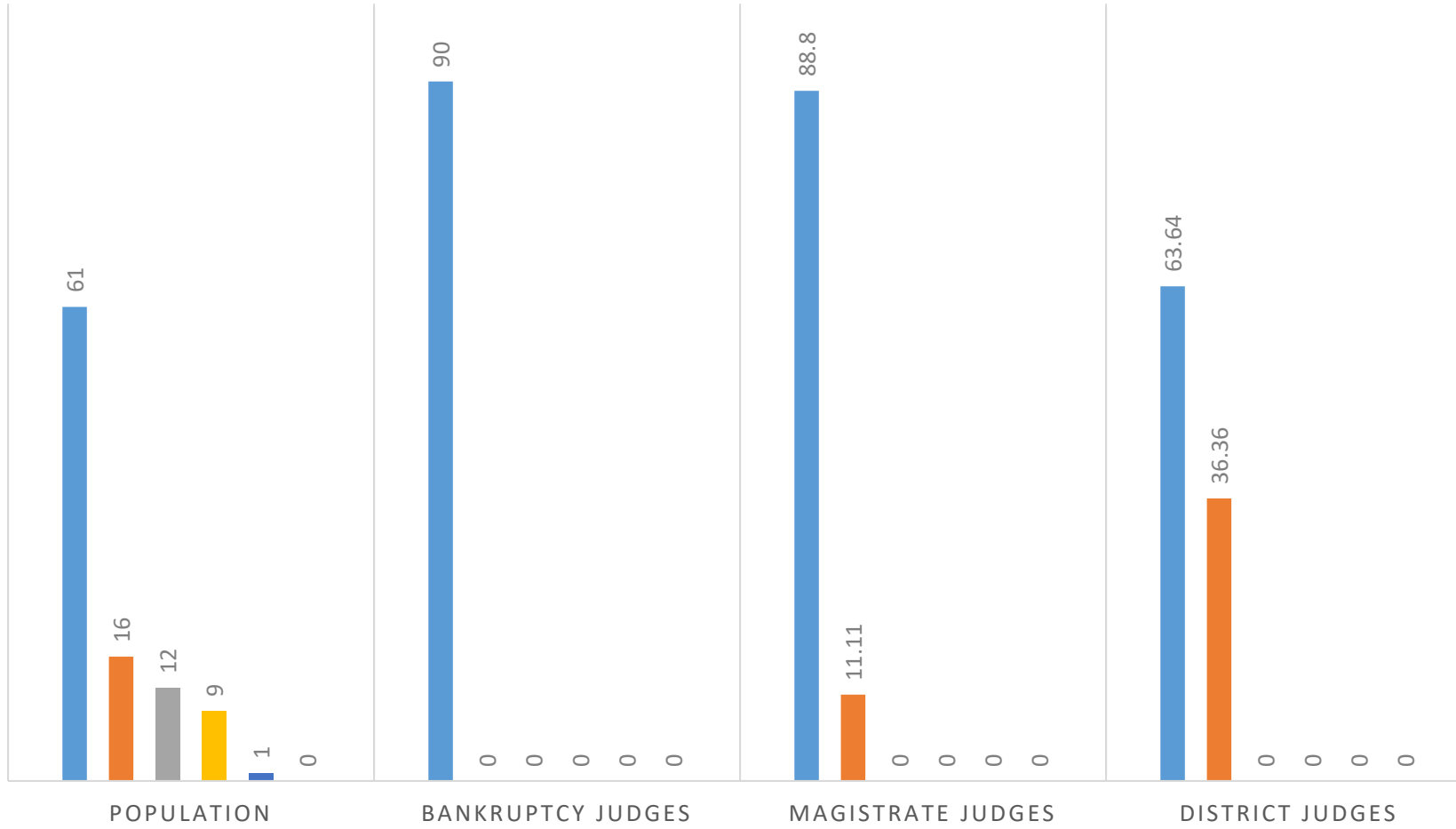
DISTRICT OF THE VIRGINS ISLANDS

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



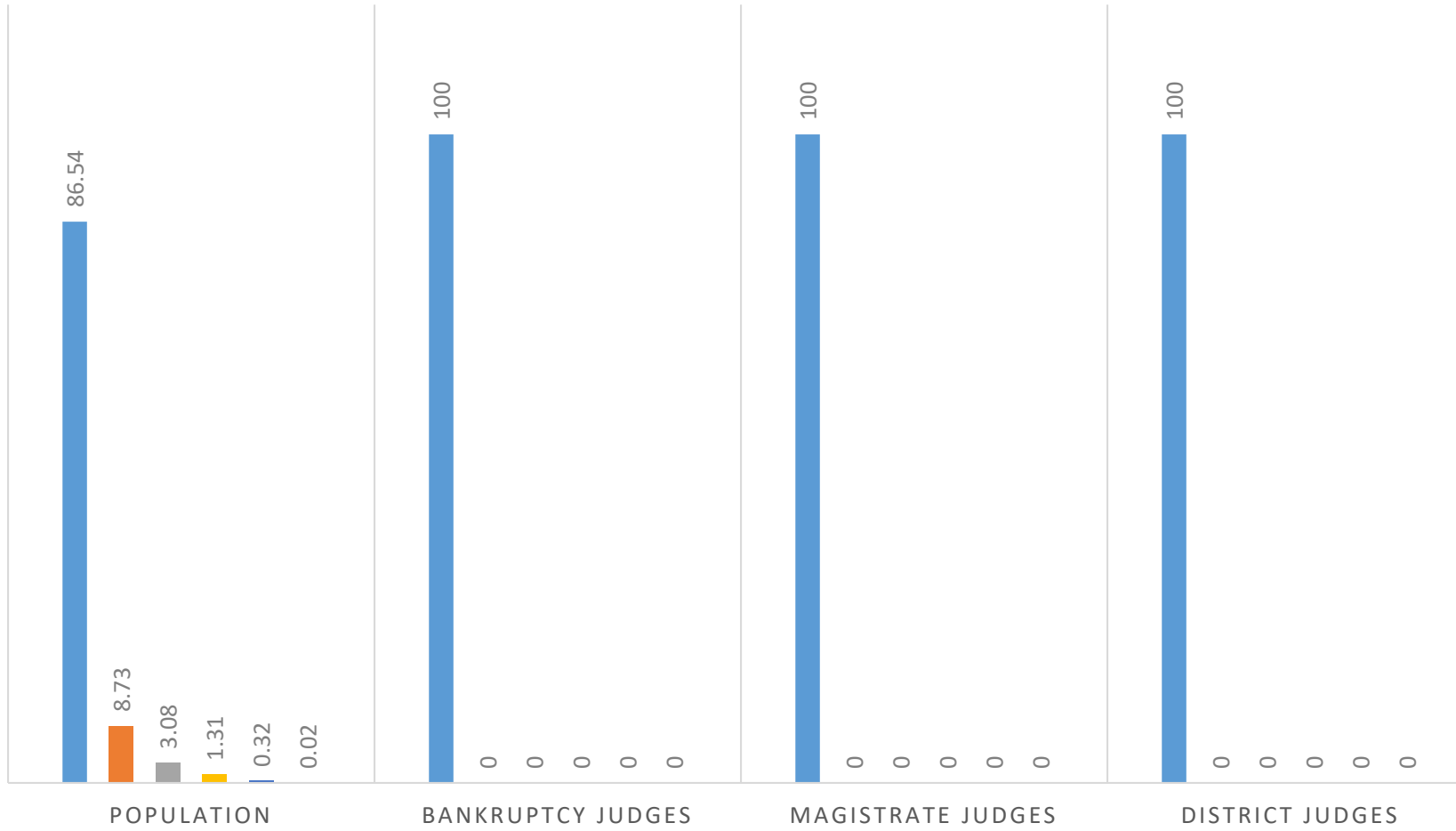
EASTERN DISTRICT OF VIRGINIA

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



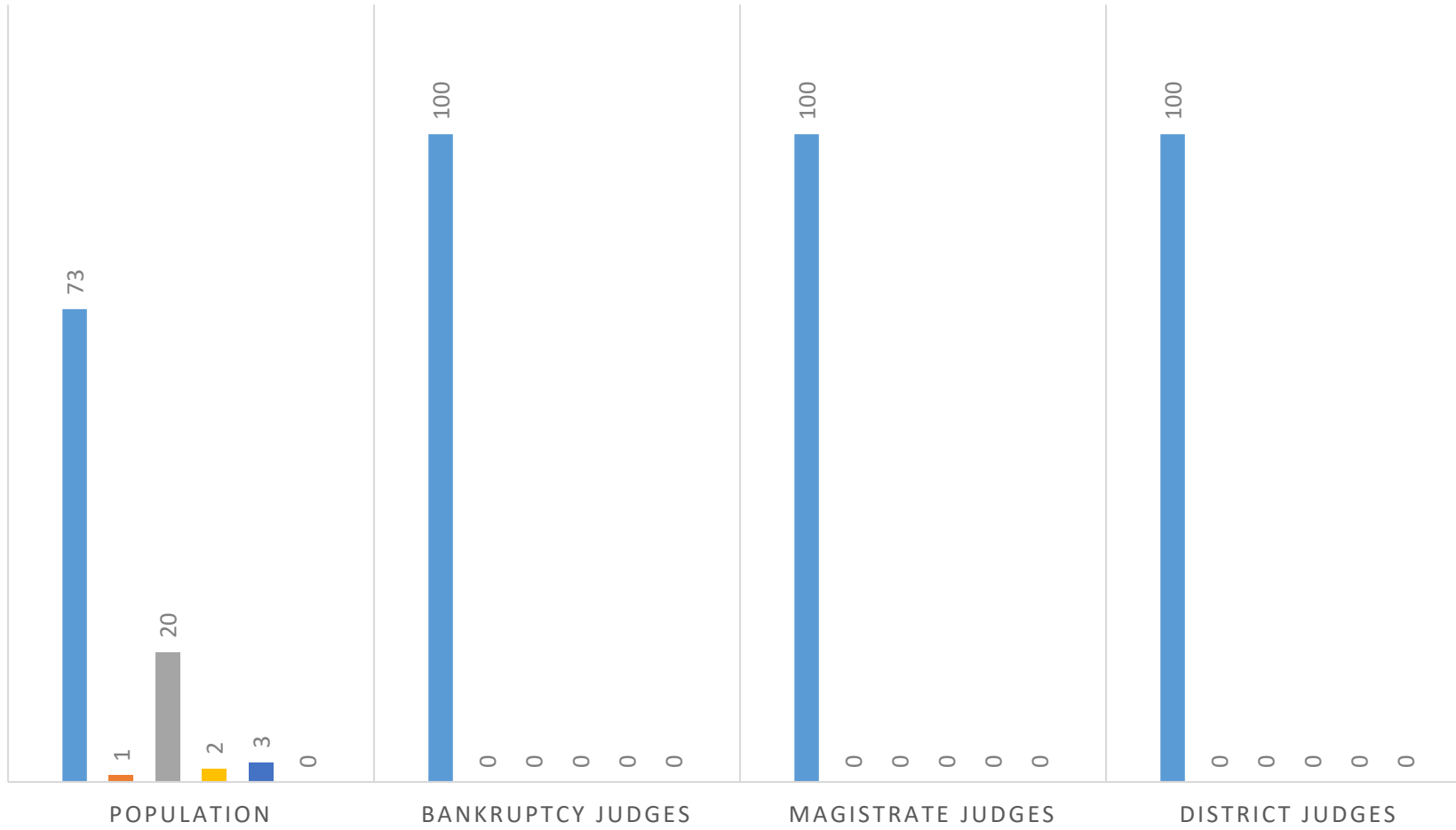
WESTERN DISTRICT OF VIRGINIA

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



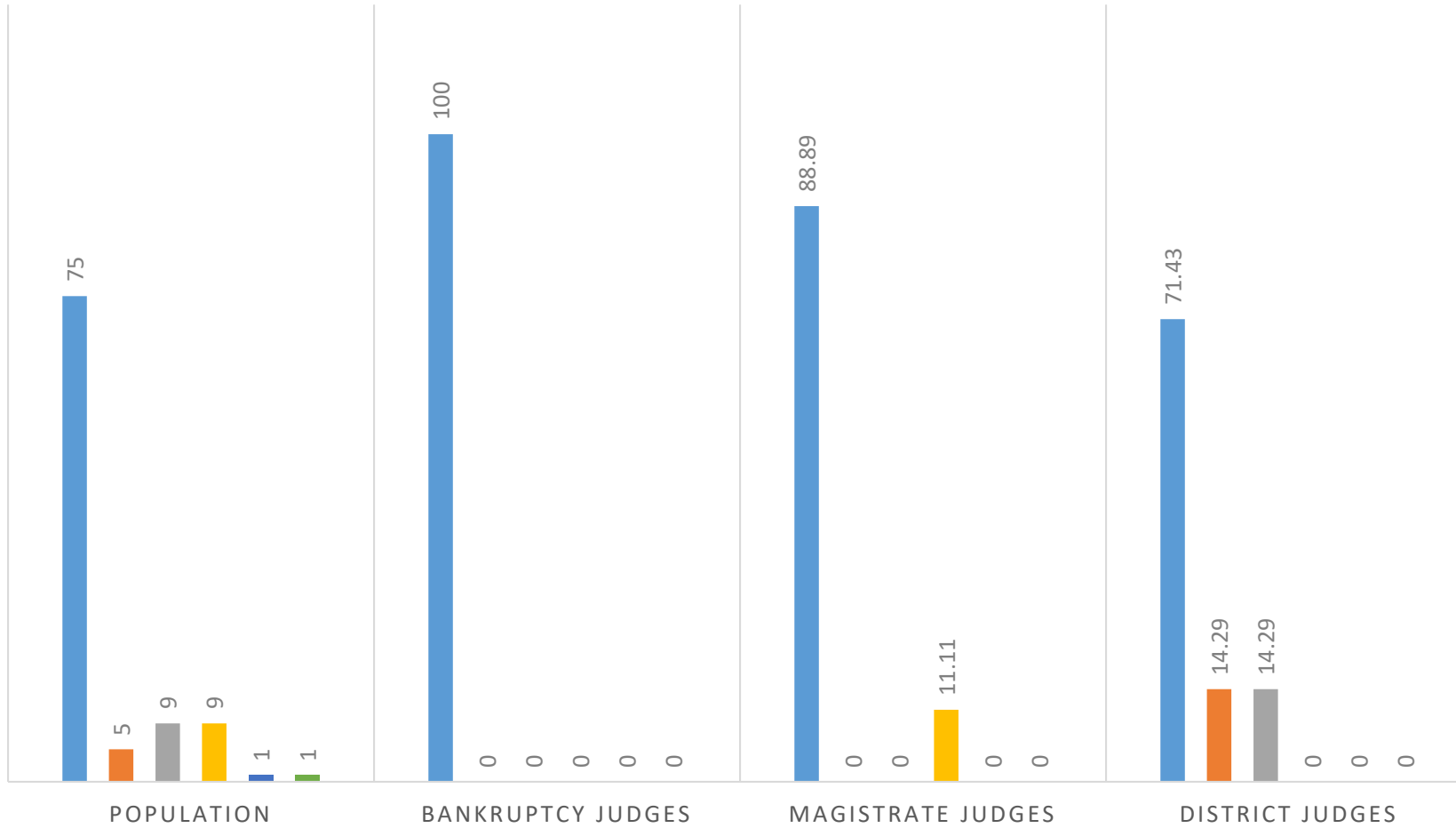
EASTERN DISTRICT OF WASHINGTON

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



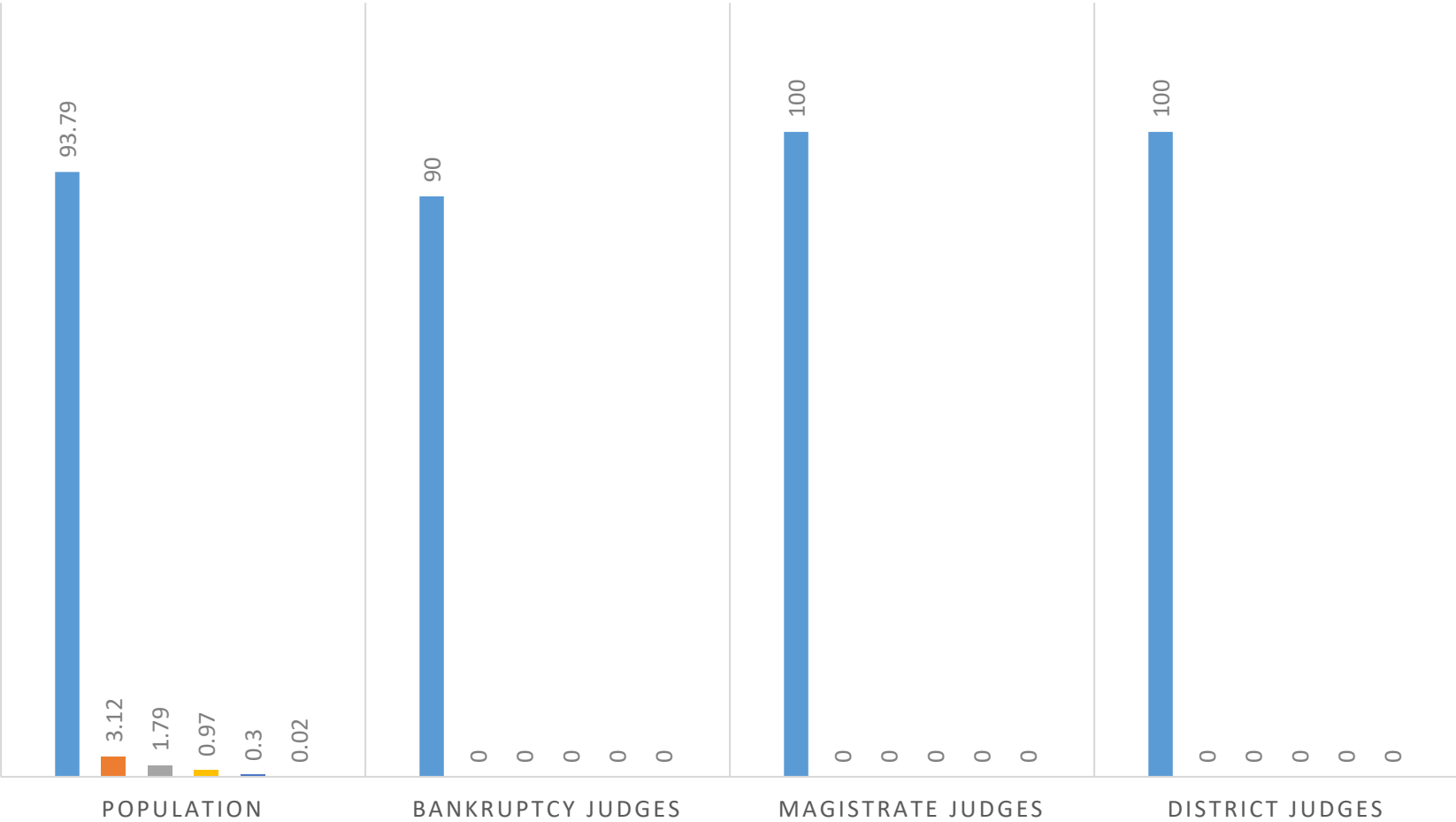
WESTERN DISTRICT OF WASHINGTON

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



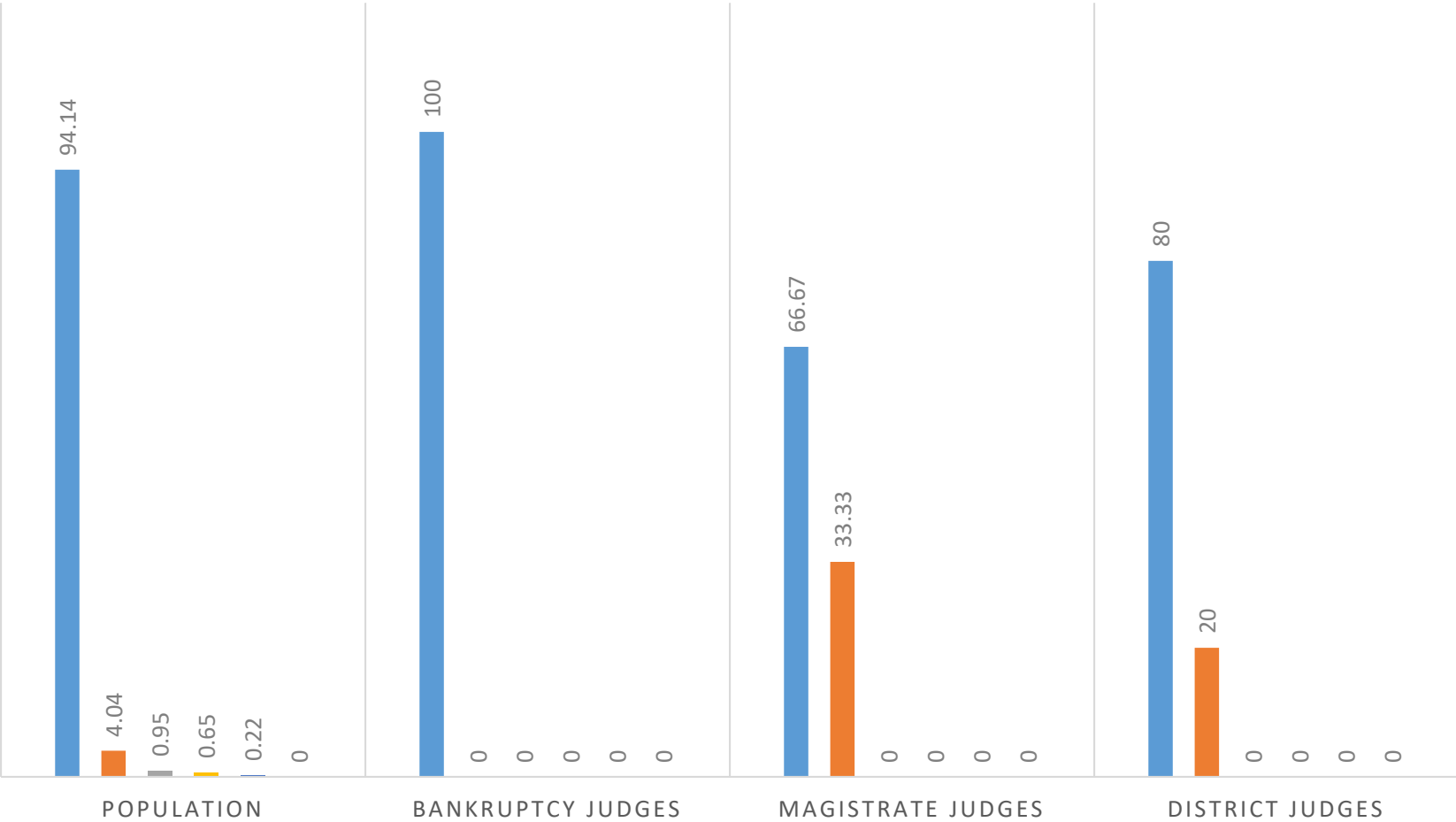
NORTHERN DISTRICT OF WEST VIRGINIA

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



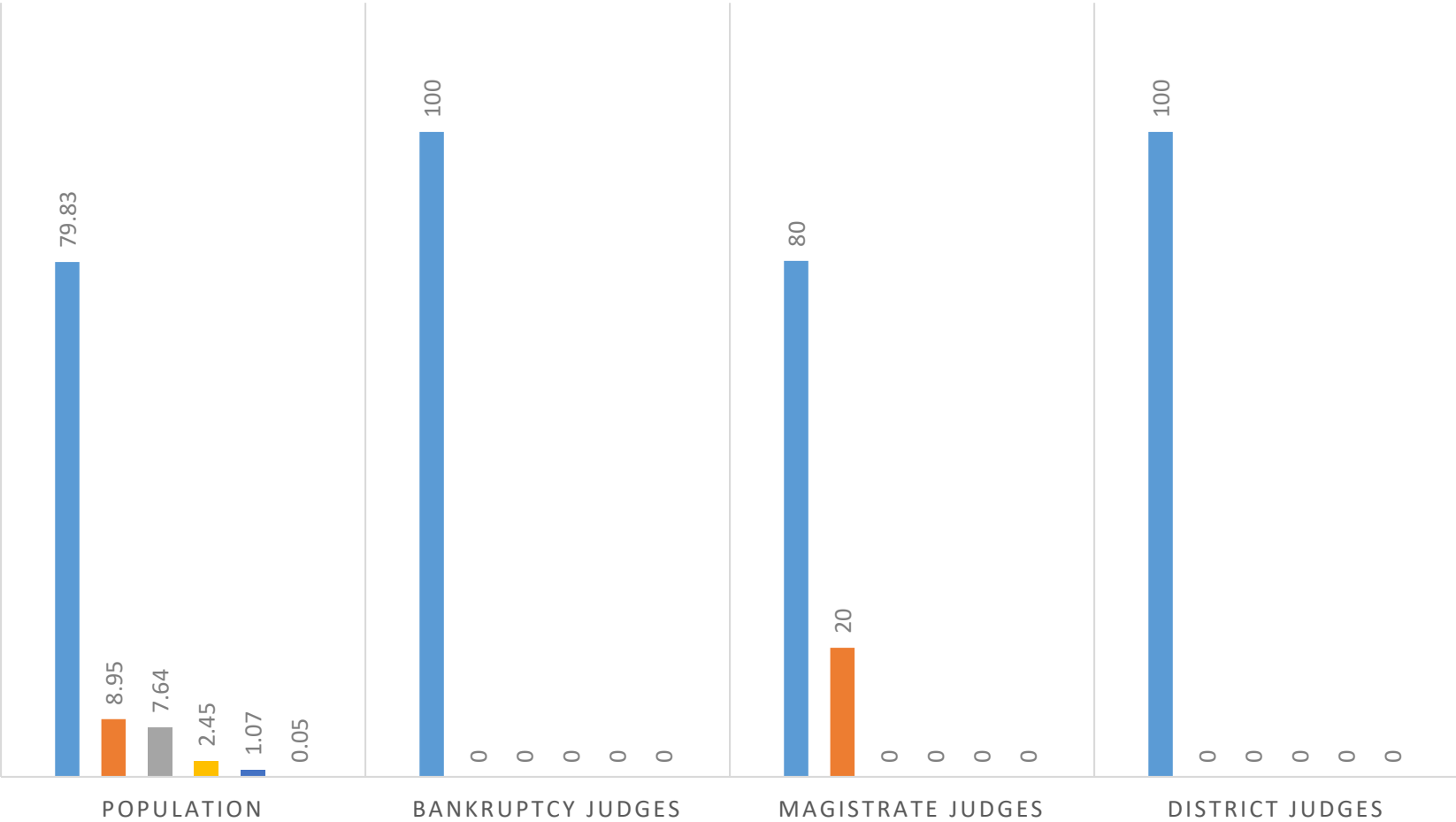
SOUTHERN DISTRICT OF WEST VIRGINIA

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



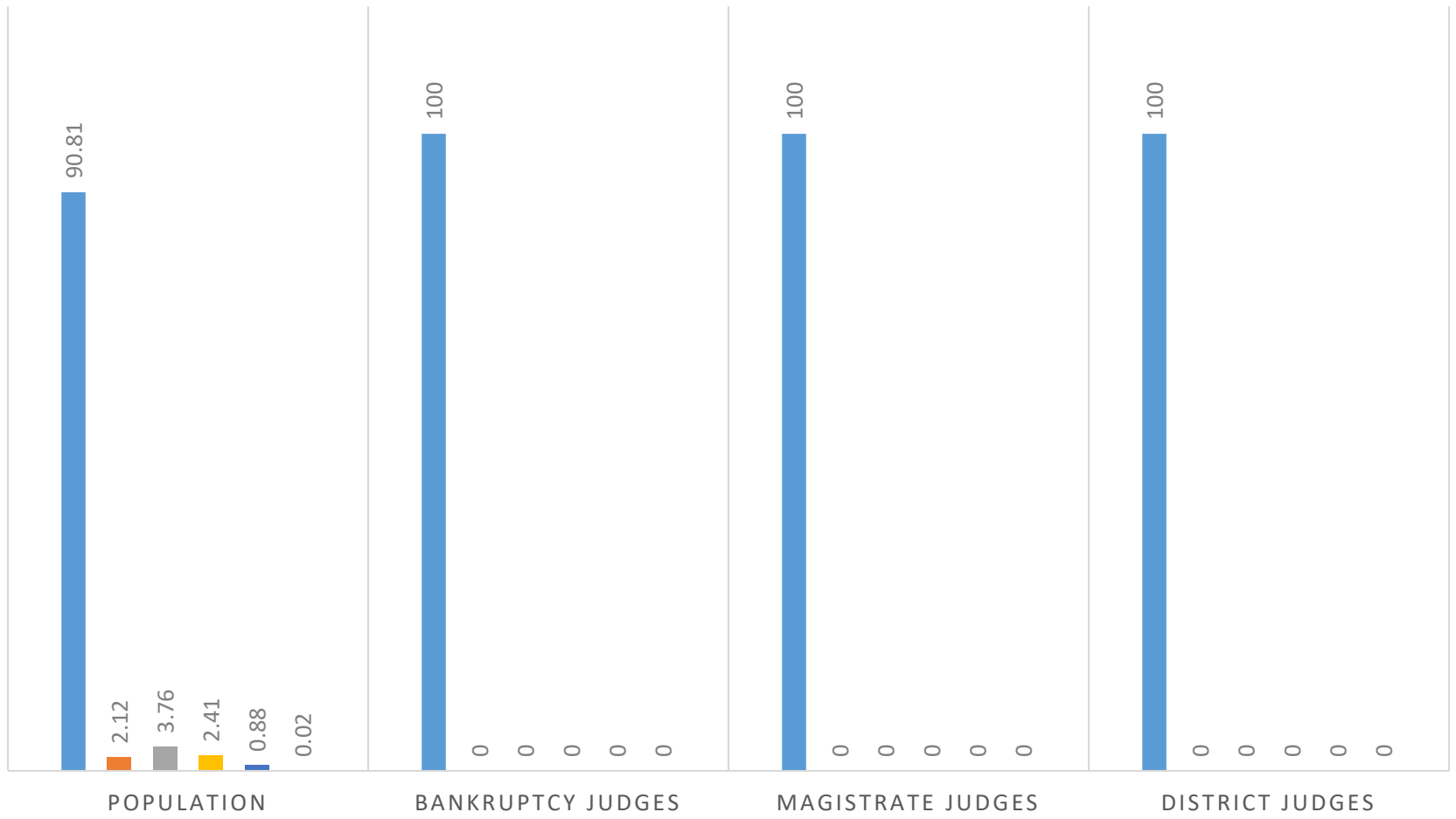
EASTERN DISTRICT OF WISCONSIN

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



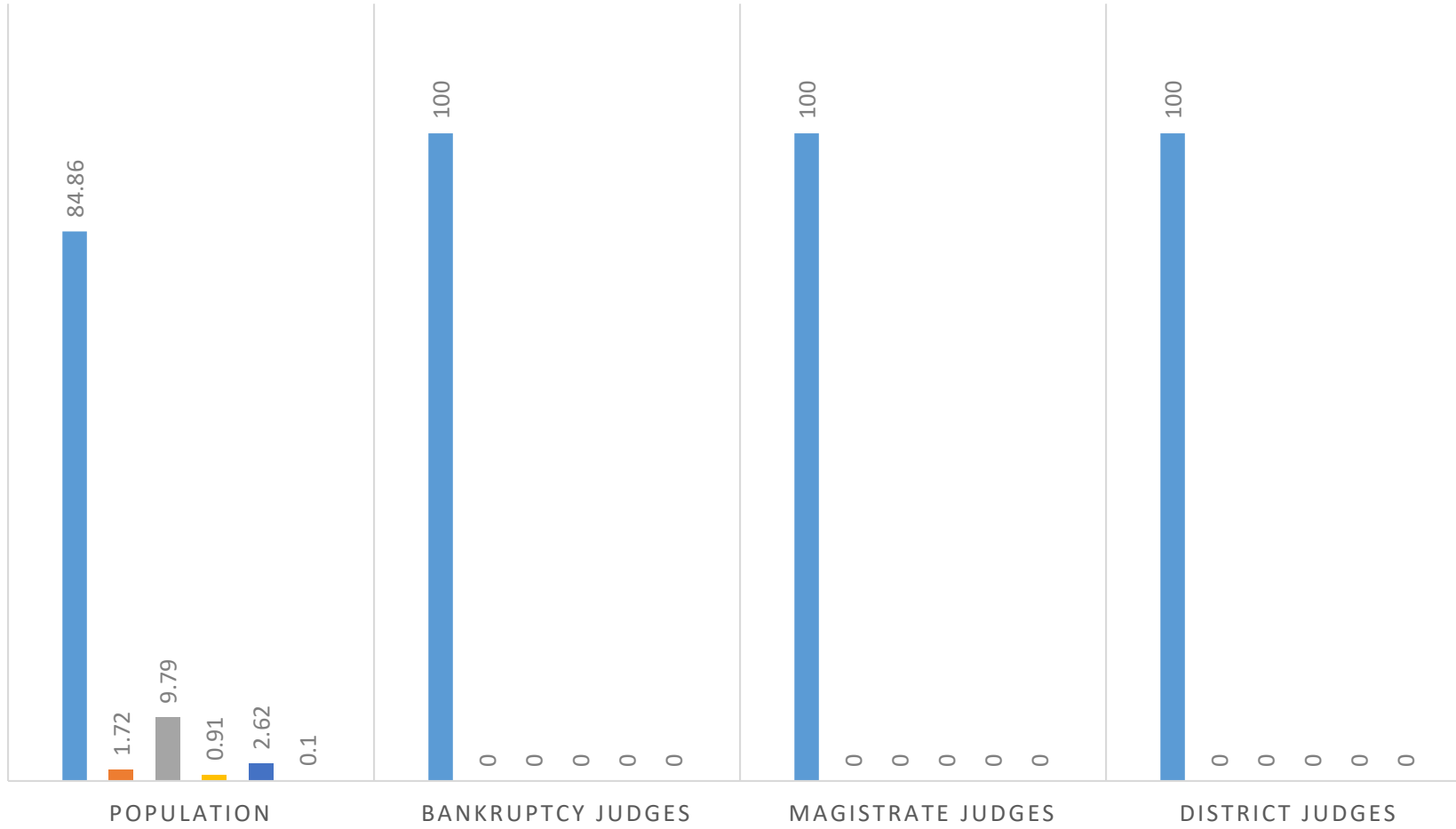
WESTERN DISTRICT OF WISCONSIN

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



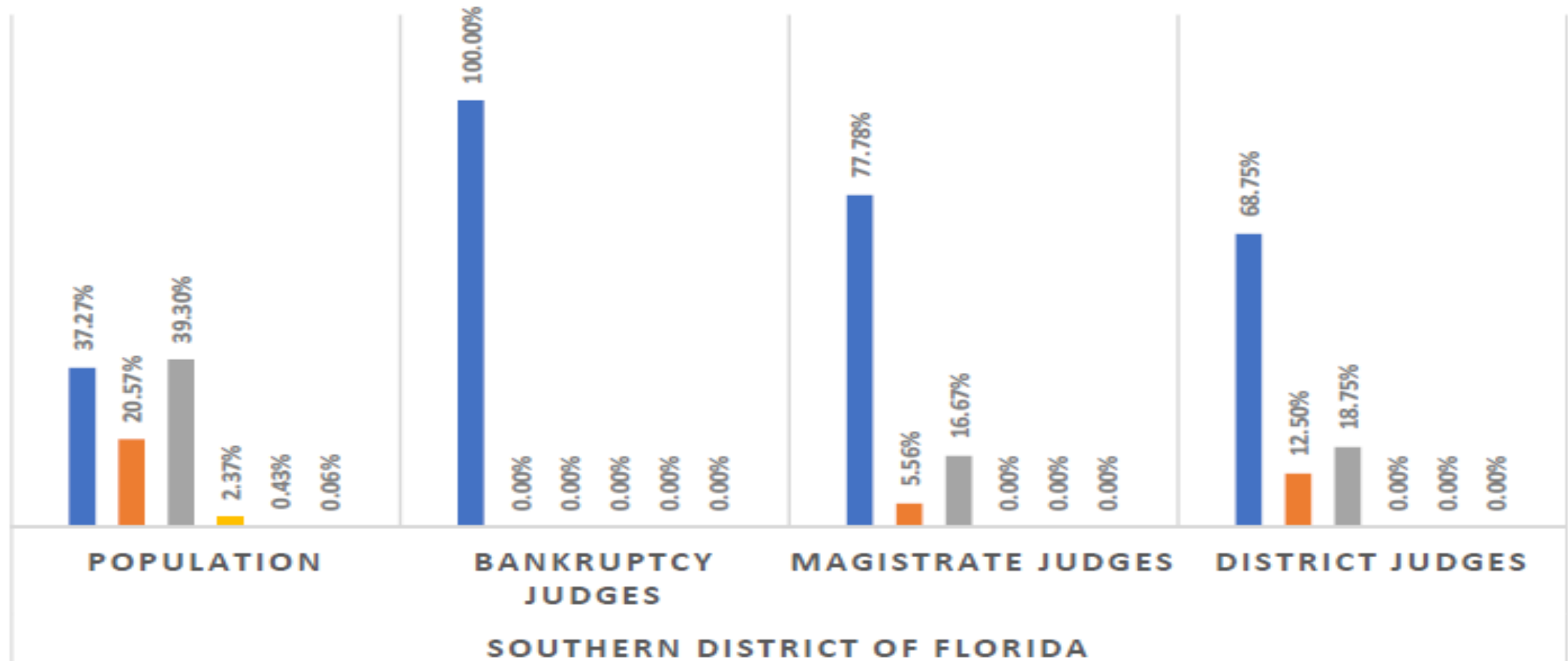
DISTRICT OF WYOMING

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



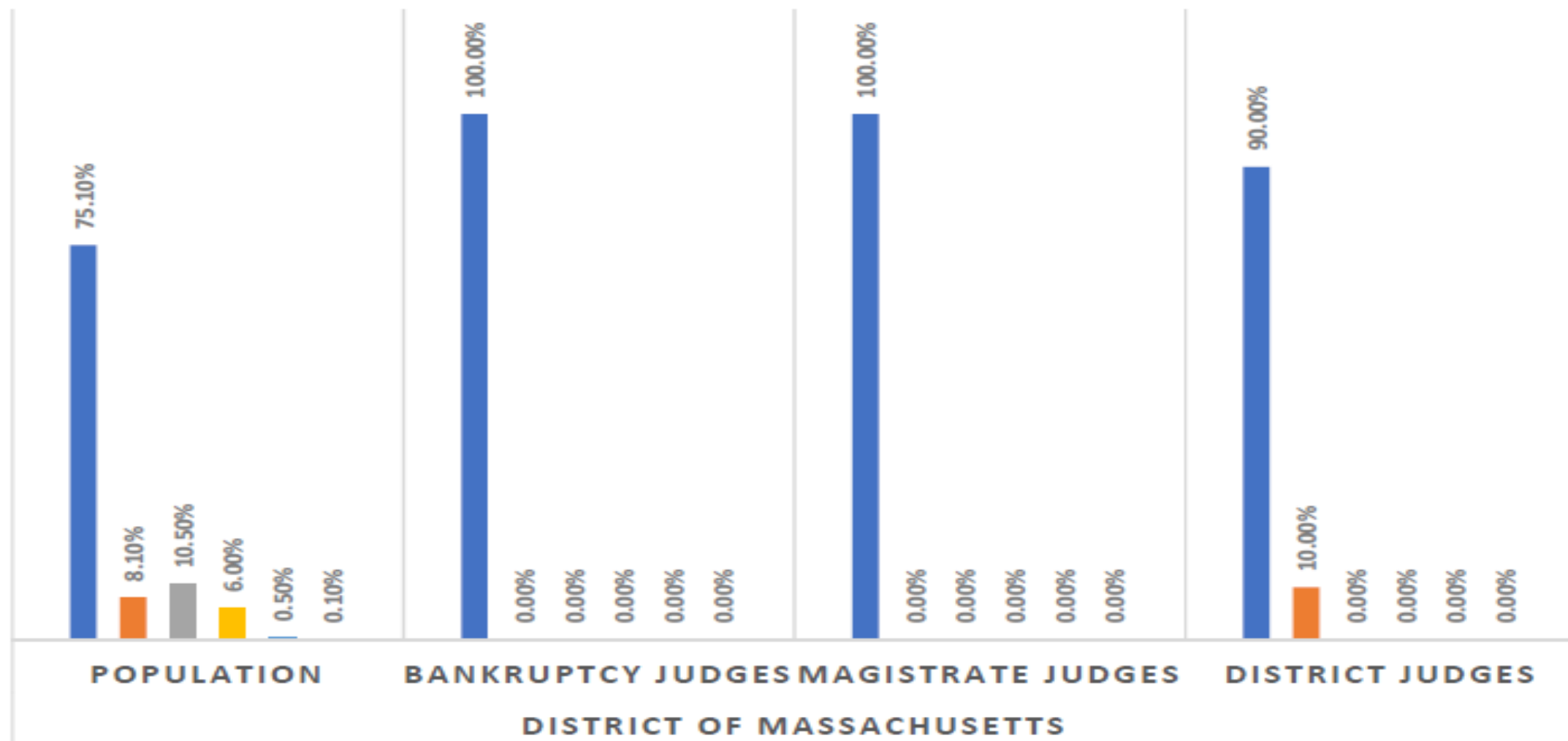
SOUTHERN DISTRICT OF FLORIDA (MIAMI AREA)

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



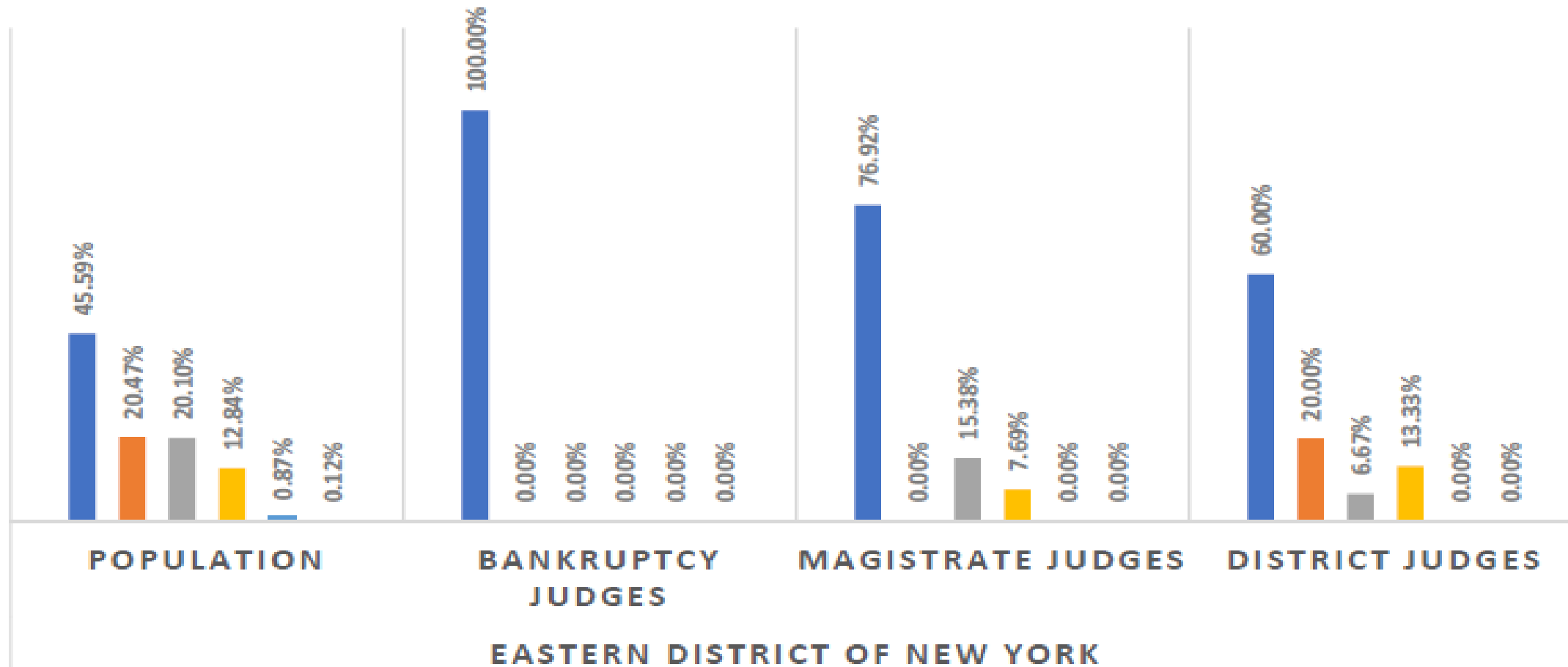
DISTRICT OF MASSACHUSETTS

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



EASTERN DISTRICT OF NEW YORK (NEW YORK CITY AREA)

■ Caucasian ■ African American ■ Latino/Hispanic ■ Asian ■ Native American ■ Pacific Islander



PART 1 CONCLUSIONS:

- ❖ No, the judges on the Bankruptcy Bench *do not* look like the populations they serve – and are not close to doing so.
- ❖ Federal District Judges and Circuit Judges look **a lot more** like the populations they serve.
- ❖ Federal Magistrate Judges are also lagging behind on this metric

Part 2. DOES HAVING A DIVERSE BAR AND BENCH MATTER?

Proposition: Diversifying the Bankruptcy Bench will help diversify the bankruptcy bar – “Pipeline Down”

Recent study: African American citizens receive *different* treatment from White lawyers than they do from African American lawyers

They are directed to ch. 13, while White debtors are directed to ch. 7, which *may be less advantageous (not always)*

See *HOW THE BANKRUPTCY SYSTEM IS FAILING BLACK AMERICANS*, by Paul Kiel (ProPublica and Atlantic, September 2017).

7 vs. 13

Chapter 7 is:

- Quick
- Cheaper
- More relief

Chapter 13 is:

Slower

More expensive

Less relief

Case Study: Novasha Miller, Memphis, TN

- Age 32, single mom, teenage sons, African American
- Job: food service worker, \$10.50/hour
- Does not own a home; high credit card debt
- She signed a one-year lease on an apartment that was so filled with mold (son has asthma) she had to break the lease
- Ended up with a \$5,500 judgment (plus attorneys fee) to pay and *shocking* collection efforts
- Garnishment of her paycheck

Can Bankruptcy Help Ms. Miller?

- Chapter 7: after a few months the Debtor gets a *discharge* of almost all debts; **BUT** cost is \$1,000 up front
- Chapter 13: no up front cost, **BUT** costs \$3,000 over 5 years
- Ch. 13: *No discharge* unless she pays for 5 years
- In Memphis, where Ms. Miller lives, African American citizens are directed to chapter 13 at **5 times** the rate of White citizens with similar financial profiles
- And across the US, African American debtors are **more than twice** as likely to file chapter 13 as white debtors

But, what if the lawyer is African American?

- Jerome Payne is one of very few African American debtor attorneys in Memphis
- His clientele is almost entirely African American and he files **mostly** chapter 7 cases for them
- **Very few ch. 13 debtors end up with a discharge**

“Me being African American, and me understanding my community, maybe I’ve been more successful in showing them that this (chapter 13) is not the way you ought to go.”

Jerome Payne

PART 2 cont'd: Another Study

- Approximately 1,000,000 bankruptcy petitions filed per year
- 30% chapter 13 filings
- African Americans are *more likely* than debtors of other races to file Ch. 13
- Let's see why?

Race, Attorney Influence, and Bankruptcy Chapter Choice (Lawless Study)

- Chapter choice (ch. 7 v. ch.13) – begins in the attorney’s office
- Attorney is the guiding force in the type of chapter filing decision
- Local Legal Culture – attorneys’ values drive chapter recommendation
 - What’s best for the client *viewed through lenses of attorneys’ values*
 - Morality and client’s self-esteem – chapter 13
 - Best financial deal for clients – chapter 7



Race and Attorney Influence

- STUDY 1 – 2007 data from the Consumer Bankruptcy Project (race as independent variable)

Chapter 13 Rates by Race

<u>Race</u>	<u>Chapter 13 Rate</u>
African-American	54.7%
White	28.6%
Asian	24.4%
Other	23.8%
Hispanic	21.7%

Race and Attorney Influence

Chapter 13 Filing Choice by Race (selected Judicial Districts)

<u>Judicial District:</u>	<u>Cases:</u>	African	African	Non-African	Non-African
		American	Americans	American	Americans
		<u>in chapter 13:</u>	<u>cases:</u>		<u>in chapter 13:</u>
Tennessee, Western	28		79%	19	58%
Alabama, Northern	16	75%	25		36%
Ohio, Southern	15		67%	47	32%
Mississippi, Southern	16		63%	11	18%
Georgia, Middle	15		60%	13	38%
Illinois, Northern	38		53%	45	16%
Georgia, Northern	27		52%	37	27%
Michigan, Eastern	35		37%	97	31%
Districts w/ 15 or more					
African-American					
respondents		190		58%	294
Districts w/ 1-14					
African-American					
respondents		321		53%	1,260
All Districts w/ no					
African American					
respondent					200
					16%

Race and Attorney Influence

Ch. 13 is also *less effective* for African Americans than for others

10 -14 months after filing, African Americans chapter 13 plans had a ***dismissal*** rate of 36.2% versus 25.5%.

Race and Attorney Influence

- STUDY 2 Survey – How bankruptcy attorneys might guide people of different races into different chapters

Random sample of bankruptcy attorneys

Same profiles for two couples, except hints as to race

1/3 had “Todd and Allison” who attended First United Methodist church

1/3 had “Reggie and Latisha” who attended Bethel A.M.E. church

1/3 had debtors with initials “R. and L.” who attended a “church”

Race and Attorney Influence

- STUDY 2 Finding – Attorneys contribute significantly to the racial gap in chapter choice

Couple:

Recommendation for Ch. 13 Filing:

“Reggie and Latisha” who attend
Bethel A.M.E. church

47.4%

“R. and L.” who attend a church

36.2%

“Todd and Allison” who attend
First United Methodist church

32.1%

Race and Attorney Influence

Lawyers were provided goals in the study

Moral Obligation (repaying creditors under ch.13) v. Fresh Start (ch.7)

Lawyers Concluded:

- African Americans viewed as “people of good values” when chose to repay creditors (chapter 13)
- White debtors viewed as “people of good values” when chose the “clean slate” (chapter 7)

Race and Attorney Influence

STUDY 2 - Competence by Race and Chapter Preference
on scale of 1-9 (higher = more competent)

	<u>Expressed Preference for</u>	<u>Competence Index</u>
African-American ("Reggie and Latisha")	Chapter 7	4.88
	None	4.51
	Chapter 13	5.31
No Race Specified ("R & L")	Chapter 7	4.70
	None	4.50
	Chapter 13	4.47
White ("Todd & Allison")	Chapter 7	5.36
	None	4.76
	Chapter 13	4.32

Back of the Envelope Math Costs to Debtors per Prof. Lawless

	<u># of Af/Am in Wrong Ch</u>	<u>Excess Cost in Att'y Fees</u>
2010	72,494	\$144,988,109
2013	47,942	\$95,883,554
2014	42,265	\$84,530,142
2015	38,046	\$76,091,896

Part 2: CONCLUSIONS

Foregoing studies seem to tell us:

- African Americans may not get the same advantages from bankruptcy as non-African Americans
- African American lawyers may be better equipped to properly advise African American debtors

Proposition: we need to encourage more African American lawyers to enter bankruptcy practice area. But how?

BLACKS FACE BIAS IN BANKRUPTCY, STUDY SUGGESTS

A DISPARITY IN FINANCE

By TARA HIGGINS BERNARD

Blacks are about twice as likely as whites to wind up in the more costly bankruptcy as they try to dig out from their debts, a new study has found.

The disparity persisted even when the researchers adjusted for income, home ownership, years and education. The evidence suggested that lawyers were disproportionately steering blacks into a process that was not as good for them financially, in part because of bias, smaller networks or otherwise.

The vast majority of debtors file under Chapter 7 of the bankruptcy code, which typically allows people to avoid most debts in a matter of months. It tends to favor a higher income rate and to be less expensive than the alternative, Chapter 13, which requires debtors to dedicate their disposable income to paying back their debtors for several years.

The study of racial differences in bankruptcy filings was written by Robert M. Lownes, a bankruptcy expert and law professor, and Dan Cohen, a psychology professor, both with the University of Illinois, and Jean Stricker, a law professor at the University of Toronto.

A survey conducted as part of their research found that black Chapter 7 debtors are much more likely to choose this route than white Chapter 13 debtors. However, even when they had identical financial situations, the lawyers, the survey found, were still more likely to steer blacks into having "hard outcomes," which they interpreted as a preference for Chapter 13.

"Unfortunately, I'm not surprised with these results," said Paul Ellington, executive vice president of Consumer Solutions Services, a credit counseling agency in Raleigh, N.C. "The same underlying biases that created the problem in mortgage lending, with minorities getting higher interest rates or their

Justices Reject Election Maps By U.S. Court

Texas Case May Affect Control of the House

By MICHAEL W. SCHARF

WASHINGTON — The Supreme Court on Friday rejected election maps drawn by a federal court in Texas that had favored Democratic candidates there.

The unanimous decision said that redistricting is primarily a job for elected state officials and that the federal court had overstepped its authority in imposing its own plan. The justices said the case left in the lower court, pending the uncertainty surrounding the congressional elections.

The new map is to be drawn by the lower court, which may play a role in determining control of the House of Representatives. Texas voters used a red map of 21 seats to take back the House from the Republicans, and both parties are fighting for every advantage in the battle for the House majority.

The court's decision is expected to be a landmark case in federal election law. It is expected to be a landmark case in federal election law. It is expected to be a landmark case in federal election law.

The court's decision is expected to be a landmark case in federal election law. It is expected to be a landmark case in federal election law.



Mitt Romney (left) and another man (right) on a stage with a basket of apples. Romney is wearing a dark jacket and blue jeans, and the other man is wearing a dark jacket and dark pants. They are standing on a wooden stage in front of a backdrop that says "Romney".

TIGHTENING RACE IS ABRUPT BLOW TO ROMNEY TEAM

SOUTH CAROLINA BATTLE

As His Rivals Advance, Victory Is Far Cry From a Sure Bet

This article is by Dan Malachuk, Andrew Parker and Jeff Leach.

With Mitt Romney leading the Republican challenge to the presidential nomination, he was expected to win the South Carolina primary.

After arriving here last week fresh off of what seemed to be two victories in early Wisconsin and New Hampshire, Mr. Romney was suddenly confronting the prospect of losing on the winner of only one of the two states with swing electors.

Having been dropped at the voters' tables on Thursday after a week that gave him little to brag about, Mr. Romney now is in danger of being defeated in Saturday's primary, held by South Carolina, which had been declared dead and buried last week.

The great year, including New York two weeks ago when he finished fifth in that state, as well as a new Clinton University poll of South Carolina voters released on Friday showed Mr. Clinton with a 10-point lead over Mr. Romney. It was within the survey's margin of sampling error but captured a dynamic shifting in Mr. Romney's favor.

In this stage of a primary election, campaign events, such as package distributions on campaign trails, are the best possible way to get the best possible face on the actual voting results.

But, as Mr. Romney faced attacks from all sides, repeated questions about his own character and whether he is someone the enough for the grass roots of his party, there was a real sense of apprehension swirling through the campaign.

Flour/Camp (left) and his wife (right) at a campaign event. Flour/Camp is wearing a dark jacket and blue jeans, and his wife is wearing a dark jacket and dark pants. They are standing on a wooden stage in front of a backdrop that says "Romney".



For Gingrich, Wives Always at Center of Career

By SHEILA KRYGZELMAN

WASHINGTON — When David Gingrich was three years old, his mother would routinely tell him of his alleged father in the Capitol and that an unexpected letter would be in the mail for him.

Like the wife who preceded her and the one who succeeded her, Marianne Gingrich was her husband's political sounding board. "You had David and David's mom," he once said. "As a young congressman, he took her to his own sessions with David A. Stockman, Ronald Reagan's budget director, and to a dinner in Washington with Richard M. Nixon, the former president.

The Unlikely Sounding Board

ingapore always, several told me because she seemed to feel comfortable about it, and sometimes had little to say. When Speaker Gingrich first showed her "Fence One" in 1994 for the funeral of Virginia Susan Marianne, her wife's name.

Now the second Mrs. Gingrich is making news with her alleged bid, denied by her former husband, that he asked for an "open marriage," which he said Collette took to heart, with her leaving an affair. Her remarks on ABC News have forced Mr. Gingrich's marital history — his partners of including one wife with another, younger one — into the spotlight.

in the case of the South Carolina primary just as he took the Republican presidential nomination to neighboring states.

But even there a jolted speaker, Marianne Gingrich, sat in a window into the contemplative profile of a man who, three weeks before this year, seems to lead a modest life. Friends and colleagues offer that for all the ego and bravado — "Grandiosity has never been a problem with David Gingrich," one of his former political rivals, Mark Warner, declared at Thursday's presidential debate — Mr. Gingrich has stayed on his terms to help protect his status of himself.

"I think David is very depressed and is having the support of someone, and obviously he has other women," said Mr. Kelly, a

Continued on Page A22

PART 3: STRIVING FOR JUDICIAL DIVERSITY

How about developing the “pipeline” up?
(recruit diverse lawyers and law students)

How about developing the “pipeline” down?
(a diverse judge as role model)

STRIVING FOR JUDICIAL DIVERSITY

Judiciary Should Reflect (approx.):

- the demographic characteristics of the population it serves
 - gender, race, ethnicity, national origin, sexual orientation, gender identity, parental status, physical ability, religious affiliation or lack thereof, socio-economic background, veteran status and geography
- the diversity of the legal profession
 - broad experience across all areas of the law
 - representing clients along the socio-economic spectrum

STRIVING FOR JUDICIAL DIVERSITY

Reviewing: Where Do We Stand?

Women – 50% of U.S. population, but only 33% of magistrate & bankruptcy judges

People of Color – 40% of population, but

- only 15% of magistrate judges
- only **7%** of bankruptcy judges

BRENNAN/ABA MANUAL, a resource for appointing judges

Strategy #1: Diversifying the Applicant Pool

Pipeline Building “Up”:

- Reach not only into law schools, but also target under-served and minority high school and college students
- Targeted Outreach to Young Attorneys – early consideration of doing bankruptcy practice and later career on the bench

BRENNAN/ABA MANUAL

Diversifying the Applicant Pool

Recruitment of Candidates:

- Start Early – often times vacancies can be anticipated months in advance
- Identify and Task a Court Official with Coordination Recruitment Efforts
 - engage the Court staff and set recruitment goals
 - reach out to leadership at minority and affinity bar associations
 - reach out to community groups, law school alumni associations etc.
 - organize a panel of current judges discussing their work and pathway to the bench

BRENNAN/ABA MANUAL

Diversifying the Applicant Pool

Vacancy Description and Dissemination:

- Develop a detailed vacancy description
- Post the vacancy before the Merit Panel Assembles (90 days to report results of search)
- Disseminate the Posting Widely
 - court websites
 - national, state, and local bar associations, minority and women's bar association
 - national and state affinity groups such as criminal defenders, prosecutors, government attorneys, and civil rights attorneys
 - alumni networks of national and local law schools, including minority and specialized student groups
 - national and local law firms
- Conduct outreach to Bar Leadership

BRENNAN/ABA MANUAL

Diversifying the Applicant Pool

Merit Selection Panel Composition:

- Solicit diverse Merit Selection Panel Members
- Involve the Chief Judge
- Consider Increasing the Panel's size
- Make a Merit Selection Panel Members' Names Public
- Consult with Magistrate and Bankruptcy Judges on suggesting potential panel members

BRENNAN/ABA MANUAL

Strategy #2: Vetting & Selection (Clear & Transparent Process)

- Schedule organizational meeting to set clear goals before receiving applications:
 - formalize selection procedures – evaluation criteria, re-publication of notice, interviewing, voting
 - affirm judicial diversity as a goal
 - familiarize the panel with the work of the Court (duties can vary per jurisdiction)
 - **schedule Implicit Bias Training**
 - recent studies show all individuals are susceptible to unconscious biases
 - implicit bias training can mitigate biases

BRENNAN/ABA MANUAL

Vetting & Selection (Clear & Transparent Process)

- Interviews:
 - develop uniform interview questions
 - include a question facilitating a discussion of greater life experience
 - “Is there any aspect of your personal or professional background that you believe will be a particular asset to this court?”
 - provide ample time for a meaningful interview and standardize the length (at least 30 minutes)
 - take notes during interview

BRENNAN/ABA MANUAL

Vetting & Selection (Clear & Transparent Process)

- Deliberation and Voting:
 - review the definition of diversity, values, and evaluation criteria
 - carefully weigh experiences and recommendations
 - weigh skills and experience, not the candidate's title
 - no single legal experience should be determinative
 - avoid placing undue weight on the ranking of an applicant's law school
 - standardize conversations with references (checklist of questions)
 - articulate reasons for recommending candidates

THANK YOU!

Diverse College Students: Go to law school

Diverse Law Students: Practice bankruptcy law for a rewarding career

Diverse Lawyers: Apply for and become a Bankruptcy Judge!