

# U.S. Circuit Court Vacancies: Overview and Comparative Analysis

September 14, 2016 (IN10569)

---

## Related Author

---

- [Barry J. McMillion](#)

---

Barry J. McMillion, Analyst in American National Government ([bmcmillion@crs.loc.gov](mailto:bmcmillion@crs.loc.gov), 7-6025)

---

This Insight provides comparative historical data related to [U.S. circuit court](#) vacancies that existed at the beginning of the three most recent presidencies (Obama, George W. Bush, Clinton), as well as the number of vacancies that existed on September 1 of each President's eighth year in office. Data are also provided for the last day of the George W. Bush and Clinton presidencies (and the percentage change in the number of vacancies from the beginning to the end of each presidency). Note that this Insight does not reflect any possible changes to judicial vacancies data that have occurred after September 1, 2016.

This Insight also provides a geographic overview of the location of circuit court vacancies that existed on September 1 of President Obama's eighth year in office, as well as the location of vacancies deemed "judicial emergencies" by the [Administrative Office of U.S. Courts](#).

At present, Congress has authorized 179 circuit court judgeships. Vacant judgeships typically arise when a judge voluntarily retires, but can also occur as a result of a judge being elevated to the Supreme Court or dying while in office, being impeached or removed from office, or when new judgeships are authorized by Congress.

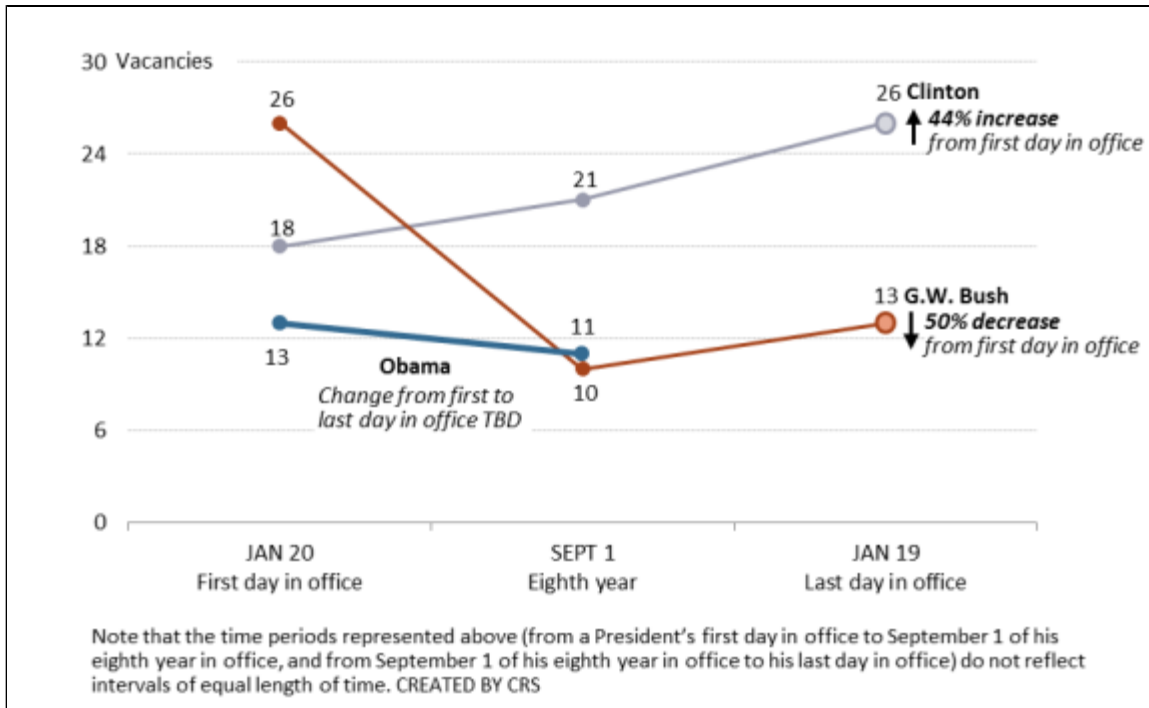
## Historical Vacancy Data

As shown by [Figure 1](#), the number of circuit court vacancies during the Obama presidency decreased from January 20 (of his first year in office) to September 1 (of his eighth year). There were 13 circuit court vacancies on January 20, 2009, and 11 such vacancies on September 1, 2016—a 15% decrease. As also shown by the figure, the number of circuit court vacancies decreased from January 20 of the first year in office to September 1 of the eighth year for President George W. Bush (decreasing from 26 to 10, a 62% decrease), and increased over the corresponding time period for President Clinton (increasing from 18 to 21, a 17% increase).

Various factors will determine whether President Obama has fewer circuit court vacancies that exist at the end of his presidency than at the beginning (which, as [Figure 1](#) shows, would be consistent with the George W. Bush presidency and a change from the Clinton presidency). At present, there are 11 vacancies. Additionally, [two circuit court judges](#) have announced their intention to step down from active service prior to President Obama leaving office. Whether there

are fewer vacancies when he leaves office than when President Obama assumed office (i.e., fewer than 13) will depend upon whether there are any unexpected vacancies, as well as upon whether any additional circuit court nominations are approved by the Senate prior to the end of the Obama presidency.

Figure 1. U.S. Circuit Court Vacancies on Specified Dates During the Obama, G.W. Bush, and Clinton Presidencies



### Vacancies on September 1 of President Obama's Eighth Year in Office

At least one U.S. circuit court vacancy exists for over half of the nation's regional U.S. courts of appeals. Specifically, as of September 1, 2016, there were 11 vacant circuit court judgeships across 8 of the 12 regional circuits. [Figure 2](#) shows the location of these vacancies, including the three circuits (the 3<sup>rd</sup>, 5<sup>th</sup>, and 7<sup>th</sup>) with multiple vacancies—each with two.

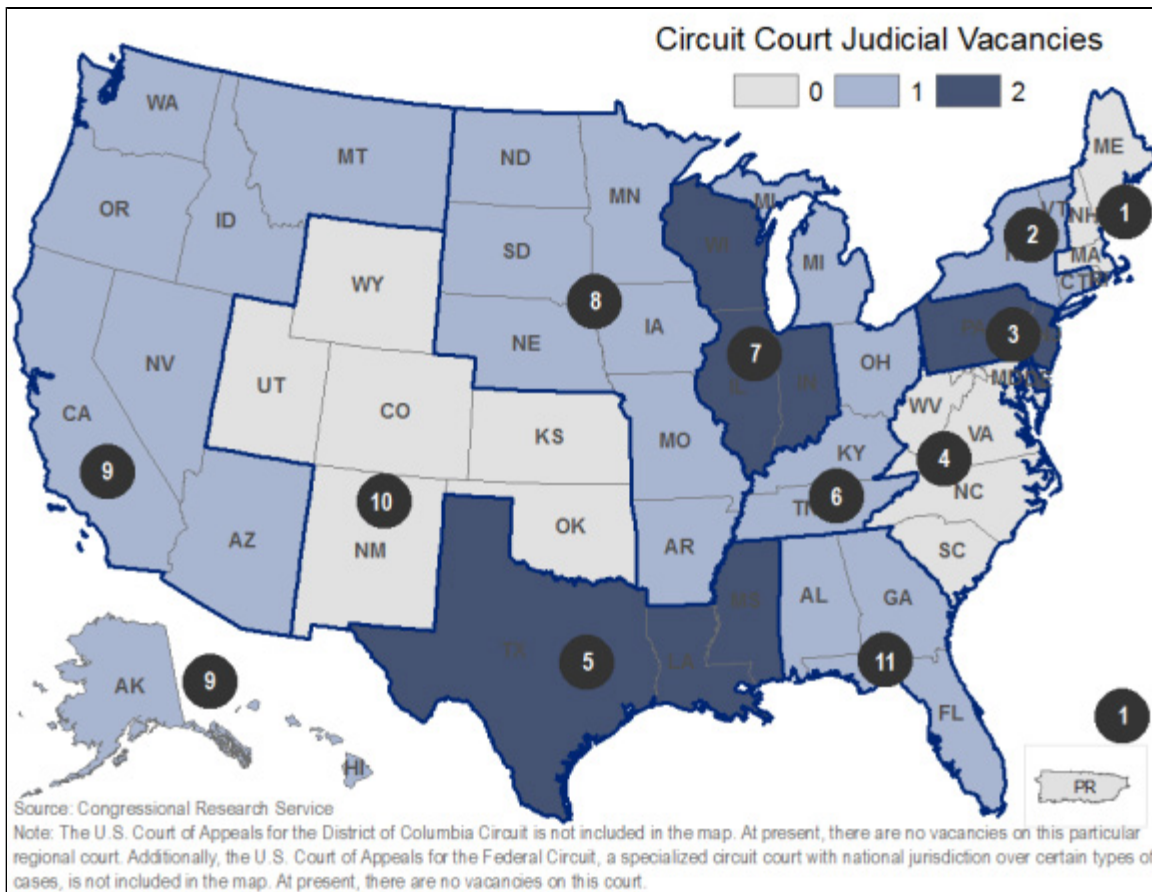
Of the 11 vacancies, 5 have a nominee pending before the [Senate Judiciary Committee](#) (these 5 nominations have been pending before the committee, as of September 1, 2016, for an average of 193 days and a median of 189 days). At present, there are also two circuit court nominations pending on the [Senate Executive Calendar](#) (these 2 nominations have been pending on the *Calendar*, as of September 1, 2016, for an average, and median, of 63 days).

At present, 4 of the 11 vacancies have not yet had a nominee submitted to the Senate by the President. These judgeships have been vacant, on average, for 636 days (or a median of 510 days).

### Vacancies Existing for More than One Year

Of the 11 vacancies, 8 have existed for at least one year, while 5 have existed for at least two years—with the longest vacant judgeship located in the [Seventh Circuit \(vacant since January 7, 2010\)](#). Of the eight vacancies that have existed for at least one year, six have a nomination pending before the Senate (including two on the *Executive Calendar*) and two have not yet had a nomination submitted to the Senate. The longest vacancy, on the Seventh Circuit, [currently has a nomination pending on the \*Executive Calendar\*](#).

Figure 2. U.S. Circuit Court Vacancies (as of September 1, 2016)



### Judicial Emergencies

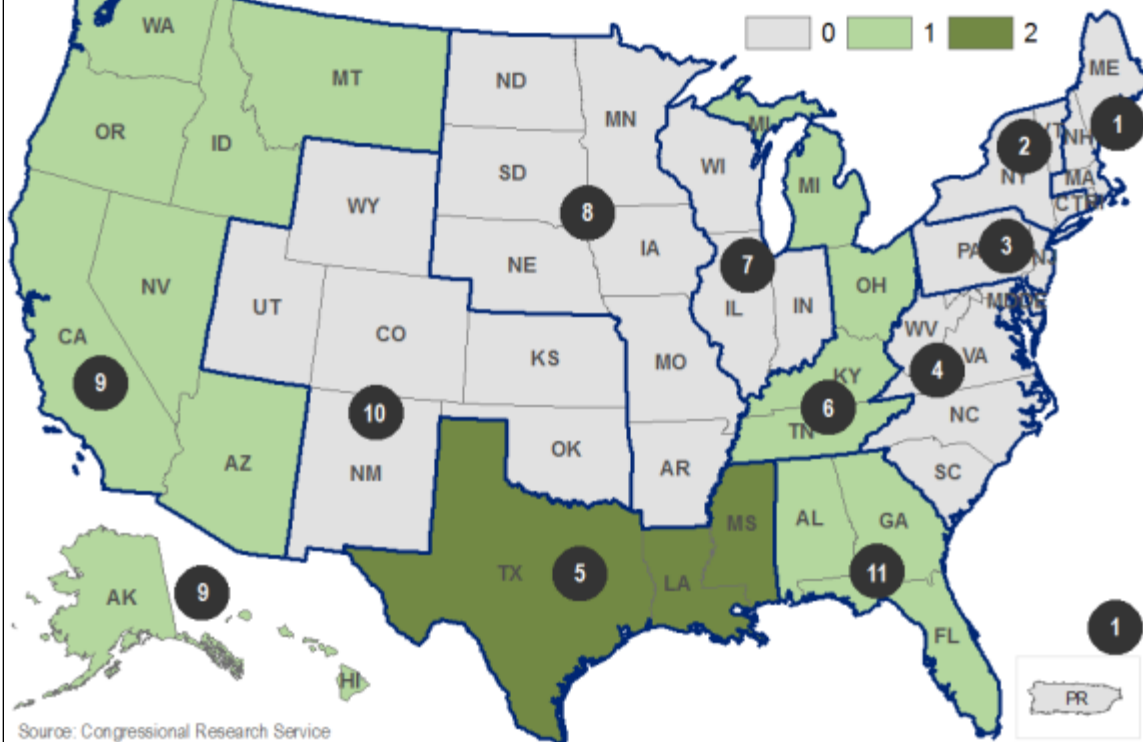
Vacancies are classified as "judicial emergencies" by the Administrative Office of U.S. Courts [based on various criteria](#), including the number of case filings per judgeship and the length of time a particular vacancy has existed. [Figure 3](#) shows the location of vacancies, as of September 1, 2016, considered judicial emergencies.

Of the 11 vacancies, 5 are classified as judicial emergencies. Of the five, two are on the U.S. Court of Appeals for the Fifth Circuit (comprised of Louisiana, Mississippi, and Texas). The Fifth Circuit, at present, is the sole circuit with multiple vacancies considered judicial emergencies.

Of the five vacancies considered judicial emergencies, three have a nominee pending before the Senate Judiciary Committee. No nomination has yet been submitted for either of the two vacancies on the Fifth Circuit.

Figure 3. U.S. Circuit Court Vacancies Considered Judicial Emergencies (as of September 1, 2016)

### Circuit Court Judicial Emergencies



Source: Congressional Research Service

Note: The U.S. Court of Appeals for the District of Columbia Circuit is not included in the map. At present, there are no vacancies (and, consequently, no judicial emergencies) on this particular regional court. Additionally, the U.S. Court of Appeals for the Federal Circuit, a specialized circuit court with national jurisdiction over certain types of cases, is not included in the map. At present, there are no vacancies (or judicial emergencies) on this court.