

# Current Vacancies on the U.S. Court of Federal Claims: Overview and Historical Context

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Over the past several decades, there has been ongoing Senate interest in appointments to the [United States Court of Federal Claims](#). This Insight provides information related to the number of current vacancies on the court, and how long these particular vacancies have existed. It also provides, for historical context, similar information for past vacancies on the court.

The Court of Federal Claims was [established by Congress in 1982](#), assuming the original jurisdiction of the [U.S. Court of Claims](#), which had been in existence since 1855 (and which was abolished in 1982 by the same statute that created the Court of Federal Claims). The jurisdiction of the Court of Federal Claims includes hearing disputes involving money claims against the federal government. Typical cases for the court "[involve disputes concerning tax refunds, federal contracts, federal takings of private property, or government employees' pay.](#)"

The act of 1982 authorized 16 judgeships for the Court of Federal Claims. The court was also designated by Congress as being established under [Article I of the U.S. Constitution](#). Consequently, unlike judges appointed to [U.S. circuit or district court judgeships \(under Article III\)](#), judges appointed to the court do not have what amounts to life tenure on the court. Instead, these judges are appointed for fixed 15-year terms (with the possibility of reappointment for an additional 15 years). The principal seat of the court is in Washington, DC, but the court has the authority, as needed, to hold proceedings in other locations.

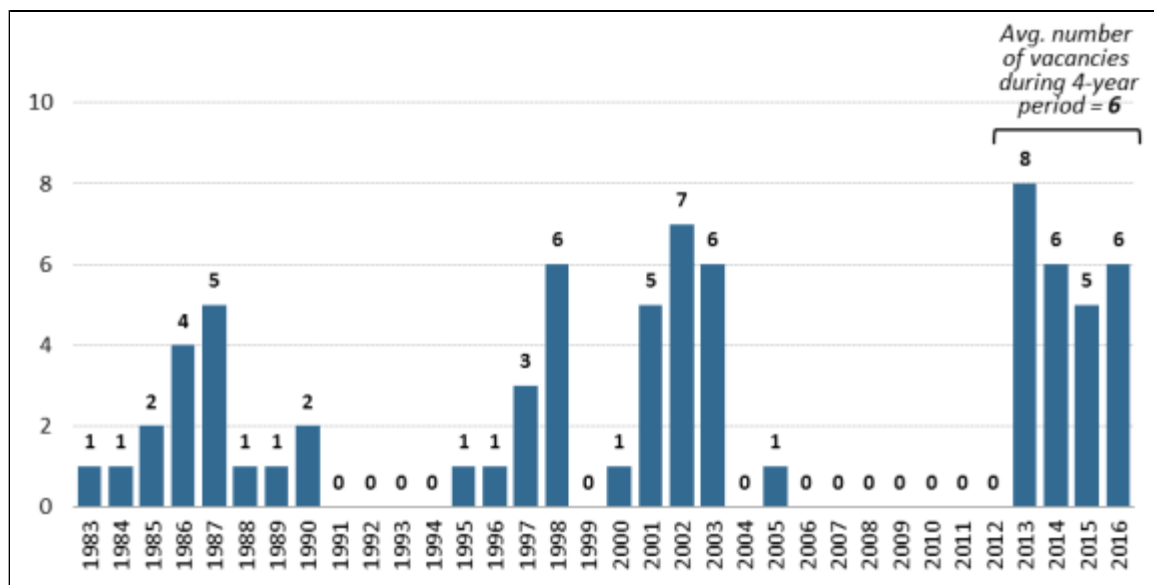
Appointees to the court are nominated by the President and confirmed by the Senate. Since the court's inception in 1982 (not including the service of 15 original appointees who received statutory appointments to the court nor the five nominations currently pending on the [Executive Calendar](#)), there have been a total of 45 nominations to the court. Of these 45 nominations, 44 (98%) have been approved by the Senate. The sole exception was the nomination of [Sarah L. Wilson](#) by President Clinton on January 3, 2001, approximately two weeks prior to the President leaving office, for a vacancy that was created on July 10, 2000. Her nomination was subsequently withdrawn by President George W. Bush on March 19, 2001.

Number of Current Vacancies

At present, there are [six vacancies on the Court of Federal Claims](#) (representing 37% of the 16 authorized judgeships). As shown by **Figure 1**, there have been five other years in which there have been six or more vacancies on the court—1998 (6 vacancies), 2002 (7), 2003 (6), 2013 (8), and 2014 (6).

Additionally, as shown by the figure, the four-year period, from 2013 to the present, has been the sole four-year period during which the average number of vacancies was at least six (i.e., over one-third of the judgeships on the court have been vacant, on average, since 2013). As shown by **Figure 2** (below) this is due, in part, to the relatively long period of time that five of six current vacancies on the court have existed.

Figure 1. Number of Vacancies on the U.S. Court of Federal Claims (1983-Present)



Source: Congressional Research Service.

### Length of Current Vacancies

Five of the six current vacancies on the Court of Federal Claims have been vacant for at least 1,000 days (or at least 2.7 years). As shown by **Figure 2**, when the Senate returns for the lame duck session of the 114<sup>th</sup> Congress which, at present, is [scheduled to begin on November 14, 2016](#), these vacancies will have lasted between 1,119 and 1,195 days.

As the figure also notes, each of these five vacancies currently has a nomination pending on the [Executive Calendar](#). Each of these nominations was placed on the *Calendar* on February 26, 2015 (and, thus, will have been pending on the *Calendar* for 627 days, or approximately 1.7 years, on November 14, 2016).

If these nominations are not approved by the Senate prior to the adjournment of the 114<sup>th</sup> Congress, it will be the first time since the court was established in 1982 that vacancies that arose prior to the eighth year of one presidency were filled during a different presidency. Specifically, each of the five vacancies for which a nomination is currently pending arose in 2013, President Obama's sixth year in office.

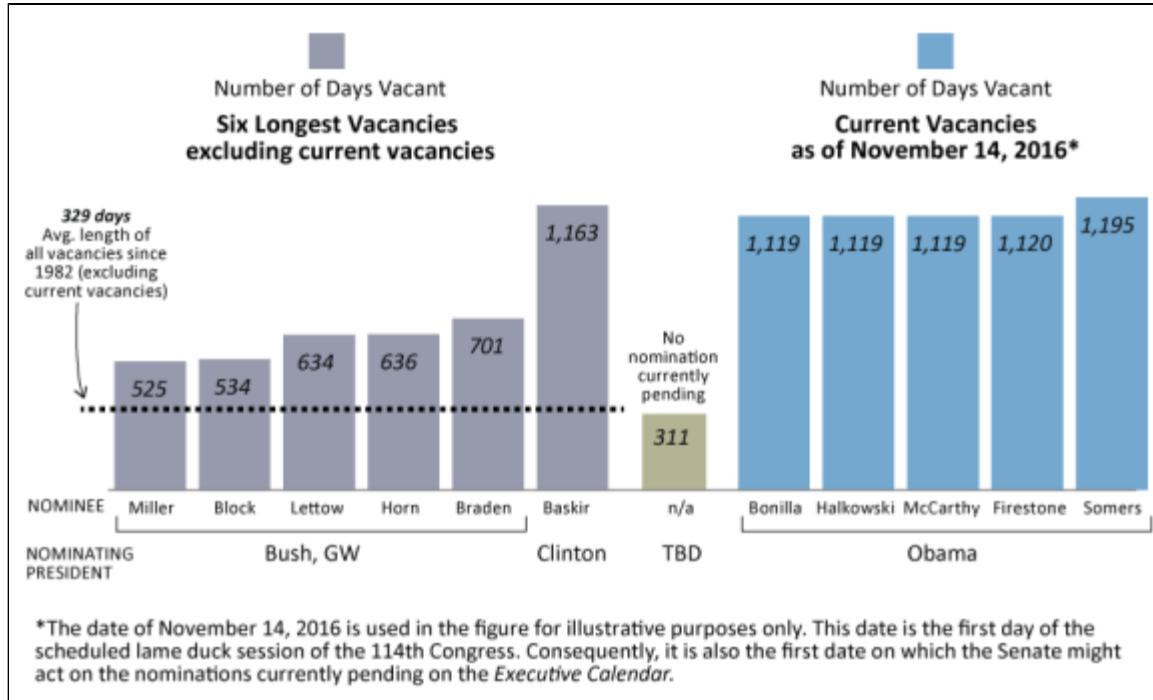
The other current vacancy on the court, for which no nomination is currently pending, will have been vacant, as of November 14, 2016, for 311 days. This vacancy arose on January 8, 2016, as a result of the retirement of [Judge Lawrence J. Block](#). The five vacancies for which nominees are currently pending had been vacant, on average, for 210 days prior to having a nomination submitted to the Senate.

**Figure 2** also shows the six previous vacancies that lasted the greatest number of days prior to having a nominee approved by the Senate. Five of the six vacancies occurred during the George W. Bush presidency and one of the

vacancies occurred during the Clinton presidency. These vacancies ranged in duration from 525 days (or 1.4 years, filled by [George W. Miller](#)) to 1,163 days (or 3.2 years, filled by [Lawrence M. Baskir](#)). Overall, of the 11 longest vacancies on the court (whether filled previously or currently vacant), 10 occurred during either the George W. Bush or Obama presidencies.

The figure also shows, with the dotted reference line, that the average length of all other vacancies (not including the six longest vacancies) was 231 days, or approximately 7.6 months. Note that the six current vacancies that have not yet been filled are not included in this calculation. Additionally, this average does not include five instances in which a retiring judge's successor was confirmed by the Senate prior to the incumbent judge stepping down from active service.

Figure 2.Length of Selected Past and Current Vacancies on the U.S. Court of Federal Claims (1983-Present)



Source: Congressional Research Service.