



**MEMORANDUM**

August 4, 2015

**To:** Honorable Patrick Leahy  
Attention: Maggie Whitney, Chief Counsel for Nominations

**From:** Barry J. McMillion, Analyst on the Federal Judiciary, 7-6025

**Subject:** **U.S. Court of Federal Claims: Background Information and Analysis of Pending Nominations**

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In response to your request, this memorandum provides background information about the U.S. Court of Federal Claims, as well as an analysis of nominations to that court which are now pending before the Senate on the *Executive Calendar*, including historical comparisons. Information in this memorandum is of general interest to Congress. As such, all or part of this information may be provided in other CRS written products.

### **Background Information**

The U.S. Court of Federal Claims, formerly the U.S. Claims Court, has nationwide jurisdiction over certain types of monetary 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.”<sup>1</sup> Over time, the court’s docket has been “increasingly characterized by complex, high-dollar demand, and high profile cases.”<sup>2</sup>

The number of cases filed with the Court of Federal Claims has increased in recent years. For example, over the past five years,<sup>3</sup> from September 30, 2009 to September 30, 2014,<sup>4</sup> annual filings with the court increased by 21% (from 497 to 600; note that this does not include filings in vaccine compensation cases—see below for further discussion). During this same period there was a 38% increase in filings related to bid protests (from 69 to 95), arguably one of the most complex types of cases handled by judges on the court.

While filings increased, the number of pending cases decreased by 80% from 2009 to 2014. The decline in pending cases is largely the result of an 82% decrease in pending vaccine compensation cases during this

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<sup>1</sup> Federal Judicial Center, *U.S. Court of Federal Claims, 1982-Present*, available online at [http://www.fjc.gov/history/home.nsf/page/courts\\_special\\_cfc.html](http://www.fjc.gov/history/home.nsf/page/courts_special_cfc.html).

<sup>2</sup> United States Court of Federal Claims, *The People’s Court*, available online at [http://www.uscfc.uscourts.gov/sites/default/files/court\\_info/Court\\_History\\_Brochure.pdf](http://www.uscfc.uscourts.gov/sites/default/files/court_info/Court_History_Brochure.pdf).

<sup>3</sup> This five-year period corresponds to the five most recent 12-month periods during the Obama presidency in which the Administrative Office of U.S. Courts provided data ending on September 30.

<sup>4</sup> Data reported for the 12-month period ending September 30, 2009 is available online at <http://www.uscourts.gov/statistics/table/g-2a/judicial-business/2009/09/30>. Data reported for the 12-month period ending September 30, 2014 is available online at <http://www.uscourts.gov/statistics/table/g-2a/judicial-business/2014/09/30>.

period (from 5,633 to 1,023). Such cases, however, are handled primarily by special masters serving within a specific office of the Court of Federal Claims and not by judges appointed to the court.<sup>5</sup> Excluding these cases, the number of pending cases decreased, from 2009 to 2014, by 11% (from 1,610 to 1,427).

There are sixteen authorized judgeships for the Court of Federal Claims. Judges are nominated by the President and confirmed by the Senate for a term of 15 years.

## Previous Nominations

Since the court was established by the Federal Courts Improvement Act of 1982<sup>6</sup> (and following the initial appointment of 16 judges who began serving in 1982), there have been 42 individuals nominated to the Court of Federal Claims. Of the 42 nominees, 40 (95%) were confirmed by the Senate. The two nominees not confirmed were Sarah L. Wilson, a recess appointee of President Clinton, and Robert P. Charrow, nominated by President Reagan.

Since 1982, every nominee to the court that has been reported by the Senate Judiciary Committee has also been confirmed (the two unsuccessful nominees were not reported). At present, there are five nominees to the Court of Federal Claims whose nominations were reported by the committee and are now pending on the *Executive Calendar*. If one or more of these nominations are not approved by the Senate, it will be the first time during this period that a nominee to the Court of Federal Claims has been reported by the committee and not eventually approved by the Senate.

## Pending Nominations

**Table 1** provides, for nominees to the court by presidency since 1982, the average number of days from (1) nomination to committee hearing, (2) committee report to final action, and (3) nomination to final action. Two groups of nominees are listed for President Obama—nominees currently pending (for whom July 29, 2015, is used as a cut-off date for certain calculations) and nominees already confirmed. For the purposes of **Table 1**, if a nominee was nominated more than once, the first nomination date is used. Similarly, if a nominee was reported more than once by the Judiciary Committee prior to final action by the Senate, the first report date is used.

As shown by the table, there is variation across presidencies in the average number of days nominees waited for a committee hearing or for final Senate action. For example, President G.W. Bush's nominees waited the greatest average number of days for a committee hearing (and, as of this writing, for final action), while President G.H.W. Bush's nominees waited the least amount of time for a hearing or final action. Of nominees already confirmed, President Obama's nominees have waited the longest, on average, from committee report to final action.

The five nominees with nominations currently pending before the Senate waited, on average, the least amount of time for a committee hearing (48.4 days), while also waiting longer, on average, than any other group of nominees—including President Obama's previous nominees—for final Senate action. Specifically, from first committee report to July 29, 2015, the five nominees have waited, on average, 375.6 days (or approximately

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<sup>5</sup> Information related to the Office of Special Masters for the United States Court of Federal Claims is available online at <http://www.uscfc.uscourts.gov/vaccine-programoffice-special-masters>.

<sup>6</sup> P.L. 97-164, 96 Stat. 37, 28 U.S.C. §1295.

12 months), while from nomination to July 29, 2015, the five nominees have waited, on average, 450.4 days (or nearly 15 months).

**Table I. Nominations to the U.S. Court of Federal Claims**  
(1982 to Present)

President	Number of Nominees	Average Number of Days from		
		Nomination to Committee Hearing	Committee Report to Final Action	Nomination to Final Action
Reagan	15	55.1	4.9	92.8
G.H.W. Bush	2	50.0	1.0	58.5
Clinton	8	160.7	22.9	171.6
G.W. Bush	9	325.6	51.2	398.2
Obama	3	51.7	127.0	200.7
Obama ( <i>pending</i> )	5	48.4	<i>Committee Report to 7/29/15</i>	<i>Nomination to 7/29/15</i>
			375.6	450.4

**Source:** Congressional Research Service compilation of data provided by the Legislative Information System (LIS) of the U.S. Congress

### *Time from First Committee Report to Final Action for Pending Nominations*

As requested, **Figure 1** identifies the ten nominees from whom the greatest number of days elapsed from first committee report to final action (including upcoming final action).

Once final action occurs on the five pending nominations, the nominations will rank as the top five in terms of the length of time that elapsed from committee report to final action (e.g., at least 405 days, from first committee report to final action, for Thomas L. Halkowski and Nancy B. Firestone). Of the five nominees, one (Judge Firestone) previously served as an active judge on the court; she was nominated by President Clinton and confirmed by voice vote by the Senate in 1998.

The five pending nominations were first reported in 2014 during the 113<sup>th</sup> Congress and returned to the President at the end of the 113<sup>th</sup> Congress because the nominations were not considered by the full Senate prior to adjournment. The nominations were resubmitted at the beginning of the 114<sup>th</sup> Congress, reported again by the Judiciary Committee, and are currently pending on the *Executive Calendar*.

Of the remaining 5 nominees that round out the top 10 in terms of the length of time that elapsed from committee report to final action on their nominations, all occurred within the two most recent presidencies—3 were Obama nominees and 2 were G.W. Bush nominees (each of the 5 was confirmed by the Senate).

**Figure I. Ten Nominees to the U.S. Court of Federal Claims with Greatest Number of Days from Committee Report to Final Action (1982 to Present)**

President	Nominee	Days from First Report to Final Action	Outcome
Obama	Halkowski, Thomas L.	At least 405*	TBD
Obama	Firestone, Nancy B.	At least 405*	TBD
Obama	McCarthy, Patricia M.	At least 377*	TBD
Obama	Somers, Jeri K.	At least 377*	TBD
Obama	Bonilla, Armando O.	At least 314*	TBD
Obama	Griggsby, Lydia K.	175	Confirmed (Voice)
Bush, G.W.	Williams, Mary E.C.	104	Confirmed (Voice)
Bush, G.W.	Wolski, Victor J.	104	Confirmed (54-43)
Obama	Campbell-Smith, Patricia E.	103	Confirmed (Voice)
Obama	Kaplan, Elaine D.	103	Confirmed (64-35)

\* As of July 29, 2015.

TBD: To be determined

**Source:** Congressional Research Service compilation of data provided by the Legislative Information System (LIS) of the U.S. Congress