

DECEMBER 4, 2024 | REGULATORY & GOVERNMENT OVERSIGHT

Trump Administration 2.0: The Impact on the Federal Judiciary

By: [Mark M. Trapp](#) and [Kara M. Maciel](#)

With his recent re-election, former President Donald Trump will once again become President Trump. Given his significant shaping of the federal courts during his first term, it is worth considering what additional impact he could have on the Article III judiciary during a second term. The answer may be, in the short term, probably slightly less than his first term, but in the long run, potentially very significant indeed.

[During his first term](#), President Trump had 234 of his picks for the federal judiciary confirmed, a number that included more than 170 U.S. District judges, 54 U.S. Court of Appeals judges and three U.S. Supreme Court justices (Justices Gorsuch, Kavanaugh and Barrett). That number marked the second most judicial appointments of any president in a single term, and undoubtedly moved the federal judiciary as a whole towards a more conservative bench. Several Circuits “flipped,” and Republican appointees now make up the majority on six of the 12 nation’s circuit courts.

President Trump’s first-term impact was perhaps a bit outsized because when he took office in January 2017, there were 108 pending federal judicial vacancies, the most for an incoming president since President Clinton in the early 1990s. By way of comparison, there are currently less than half the judicial vacancies than when Trump began his first term – approximately 40 seats currently vacant, and maybe another 20 that are expected to open up in the near future, assuming those judges keep their plans to take “senior status,” a form of semi-retirement that allows their slot to be filled while they continue to work a reduced caseload.

While President Trump’s second term may not match his first term numbers, he will probably have a real opportunity to cement his conservative legacy on the federal courts. As he begins his second term, President Trump will have another opportunity to fill some immediate vacancies, although less than the first time around. As noted above, there are three to four dozen seats that can be filled right away, and at least 25 circuit judges expected to become eligible for retirement in 2025. Under any count, it can be expected that enough judges will turn over to allow President Trump the chance to lock in conservative majorities on some circuit courts and narrow or even flip other courts.

And the next four years will see plenty of opportunity to further reshape the lower courts, as well. The American Constitution Society, a progressive organization, has determined that 247 total judges, district and circuit, will be

eligible to take senior status during the next four years – however, just 116 of those were appointed by Republicans and so could reasonably be considered more likely to assume senior status during Trump’s second term.

The Supreme Court may be something of a wildcard, but even here Trump will likely have an opportunity to lock in a conservative majority for a significant period of time. Many observers have already speculated that one or both of the Court’s two oldest (and probably most conservative) judges, Clarence Thomas (age 76) and Samuel Alito (age 74) may choose to retire in President Trump’s first two years to assure a solid conservative nominee is confirmed to their seat. There is also some speculation that Justice Sotomayor may not stay on the Court for another four years for health-related reasons. And no one can predict the future of any justice with certainty. So while it was certainly unusual to have three Supreme Court slots to fill in a single term, and that should not be expected, it could happen.

That said, President Trump’s impact on the Supreme Court may be more ideological and long-lasting. With his three picks during his first term, the Supreme Court shifted to become a somewhat center-right court, with three “liberal” justices, three more moderate “center right” justices, and three “conservative” justices. Interestingly, all three of President Trump’s Supreme Court picks in his first term have displayed at least some “independence” on various issues and have shown a willingness to go against the typical or perhaps expected “conservative” position when they think the law requires it. But if Trump can pick replacements for Justices Thomas and Alito, he could lock in that judicial mindset for decades to come.

And Republicans are set to have an easier time with confirmation votes. Having flipped senate seats in Ohio, Montana, West Virginia and Pennsylvania, the GOP will control the Senate by a margin (53-47) that allows for some defections while still assuring confirmation. So, two Republican senators (Lisa Murkowski, R-Alaska, and Susan Collins R-Maine) who have held influence in some situations in the past will surely play a diminished role in judicial appointments in President Trump’s second term. And even a 50-50 tie could be broken by new incoming Vice President J.D. Vance, allowing even more wiggle room for President Trump’s picks to be confirmed. Recently, the Washington Post quoted Democrat Senator Richard Blumenthal (D-Connecticut) as saying, [“Our powers are very limited against judicial nominees in an era when 51 votes is enough to approve new judges.”](#)

Finally, long-standing Republican leader Mitch McConnell (R-Ky.) has decided to step back from his leadership role. The new majority will be led by John Thune (R-S.D.), and Chuck Grasley (R-Iowa) will helm the Senate Judiciary Committee, and both are expected to prioritize confirming President Trump’s judicial appointees.

Given this new political reality, the bottom line is this – President Trump has a real opportunity to continue reshaping the federal judiciary over the next four years, with an impact likely to last decades.