

Democrats scramble to fill federal judgeships in Massachusetts, appeals court

By [Shelley Murphy](#) Globe Staff, Updated November 15, 2024, 12:25 p.m.

Police stood outside Moakley Federal Courthouse in Boston. JOHN TLUMACKI/GLOBE STAFF

A judgeship vacancy on the federal appeals court that oversees much of New England and another on the US District Court for Massachusetts are among about 40 seats on the

federal judiciary that Democrats are [scrambling to fill](#) before President-elect Donald Trump takes office in January.

Democratic leadership has vowed to push nominations for the vacancies through the Senate in the waning days of President Joe Biden's administration, but there's some uncertainty as lawmakers weigh other priorities before Republicans assume majority control, according to legal specialists.

"We are working fast in the time remaining in this Congress to confirm a slate of well-qualified judicial nominees," US Senator Ed Markey said in a statement Wednesday, noting that a "historically diverse and experienced group of judges" were appointed during the Biden administration.

Senators typically have large sway in judicial appointments within their own states, regardless of political affiliation. But the scramble to fill vacancies before Trump takes office represents a greater concern that he will look to [imprint his own ideological philosophies](#) on the courts, similarly to how he shaped the US Supreme Court in his first term in office.

"It's imperative that we keep filling as many vacant seats with judges that will uphold the rule of law and protect our rights during the second Trump administration and beyond," Markey said.

In March, Biden [nominated Worcester attorney Brian E. Murphy](#) to serve on the US District Court for Massachusetts, and in June he [nominated Julia Lipez](#), a Maine state court judge, to fill a vacancy on the US First Circuit Court of Appeals, which sits in Boston and hears cases from Massachusetts, New Hampshire, Rhode Island, Maine and Puerto Rico.

The Senate Judiciary Committee approved both nominations with an 11-10 vote along party lines and forwarded them to the Senate for confirmation, however Murphy has been waiting on a final vote since May 9 and Lipez has been waiting since Aug. 1.

“Who knows what’s going to happen with a lame duck,” Carl Tobias, a professor at the University of Richmond School of Law who focuses on federal judicial selections, said. “The Republicans would like to save as many as they can for Trump of course, but the only thing they can really do is vote no.”

He predicted both Lipez and Murphy will be confirmed.

However, other legal observers said there’s a risk that the nominations will be derailed, giving Trump an opportunity to leave his stamp on a local judiciary that has a reputation for being liberal. With Democrats holding a slim Senate majority of 51-49, all votes are crucial in a partisan battle over confirmations.

“Those appointments are highly sought after by every administration,” said Brian T. Kelly, a Boston criminal defense attorney and former federal prosecutor. He described Murphy and Lipez as “well-qualified” for federal judgeships, but said, “the positions may be subject to horse-trading with other nominations.”

Kelly said judicial appointments are “enormously important and many people vote for a president simply because of his or her power to shape the judiciary.”

During Trump’s first term, he transformed the US Supreme Court by selecting three conservative justices who were key in overturning Roe v. Wade to end the national right to abortion, and in expanding gun rights and ending affirmative action in college admissions. He was also able to shape federal courts across the country with the appointments of 54 appeals court judges and 174 district court judges. None of those appointments were in Massachusetts.

The First Circuit Court of Appeals is the only one of the nation’s 12 circuit courts that [does not have a Trump appointee](#). Trump’s effort to fill a vacancy on that court after he lost the election in 2020 was rejected by the Senate Judiciary Committee, and the seat was later filled by Biden. More than 200 federal judges have been appointed during

Biden's term, including several this week. Trump filled 231 seats on the federal district, circuit, and Supreme courts during his first term.

There are currently no Republican appointees among the five fully active members of the First Circuit appeals court: four of the judges were appointed by Biden, and one by President Barack Obama. The court also includes six "senior status" judges, who are semi-retired and take on a reduced case load. Two of those were selected by Republican presidents — one by Ronald Reagan and the other by George W. Bush.

"We've been so lucky in not having ideological extremists appointed to one of the best district courts in the country," said Boston attorney Martin G. Weinberg. "The risk is that the ideological test that has been used to select judges in other parts of the country gets followed here rather than our history of having very experienced, capable and moderate Republicans nominated to our bench and nominated as US attorneys."

Lipez is the daughter of Kermit Lipez, a senior judge on the First Circuit Court of Appeals who sits on some cases while semi-retired. He will step down if she is confirmed. Julia Lipez is a former federal prosecutor who was appointed to the Maine Superior Court in 2022.

Murphy began his legal career as a public defender and is the managing partner of Murphy & Rudolf LLP in Worcester, a law firm he cofounded in 2011.

If Murphy and Lipez are confirmed, that would still leave Trump with at least one judicial vacancy to fill on the US District Court for Massachusetts next year. Chief Judge F. Dennis Saylor IV, who was nominated by President George W. Bush in 2003, recently announced his plan to take senior status in July, meaning he will still preside over cases but not hold one of the 13 seats authorized for full-time judges. Of the 13 judges in Massachusetts, two are Republican appointees. The court has six senior judges, including three who were selected by President Ronald Reagan.

Nancy Gertner, a former federal judge, chaired a bipartisan committee created by US Senators Elizabeth Warren and Markey during the Obama administration that helped fill eight vacancies on the US District Court in Massachusetts by reviewing candidates and recommending nominees to the senators. Historically, presidents have gone along with recommendations from a state's two US senators when selecting a nominee to the district court, she said.

“It’s an illusion to say Democrats put liberals on the bench and Republicans put conservatives on the bench,” Gertner said. “It’s really not the case. Democrats and other Republicans put moderates on the bench and it’s Trump that has changed that mold.”

Gertner said she believes Trump will have little direct impact on the federal judiciary in Massachusetts because it’s likely Murphy and Lipez will be confirmed by the Senate, leaving Trump with only one vacancy to fill on the District Court next year.

Trump will also be appointing a new US Attorney for Massachusetts and other districts across the country. The state’s top federal prosecutor will be tasked with following the priorities handed down by the Justice Department. A surge in immigration cases is expected in the wake of Trump’s campaign promise to crackdown on illegal immigration.

During Trump’s first term, he tapped a career prosecutor, Andrew E. Lelling, [to serve as US Attorney for Massachusetts](#). Lelling spent 12 years in the Boston office, in the economic crimes unit and as senior litigation counsel. He resigned after Trump lost his bid for reelection.