



*United States Senate*  
WASHINGTON, DC 20510-0504  
<http://feinstein.senate.gov>

November 16, 2017

The Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Grassley,

I understand you plan to hold a judicial nomination hearing next Wednesday, November 29, immediately following the Thanksgiving holiday with two circuit court nominees—David Stras for the Eighth Circuit and Kyle Duncan for the Fifth Circuit. I am writing to respectfully ask that you reconsider and treat Committee Democrats the same way Committee Republicans were treated during the Obama Administration.

As you know, the Committee has already had three hearings with two circuit court nominees in the last six months. If you again move forward with a hearing with two circuit court nominees, the Committee will have had more hearings with two circuit court nominees than were held in all eight years of the Obama Administration. The reason this is rare is because of the significant vetting that needs to occur for these important lifetime positions.

Mr. Chairman, we both understand the importance of circuit court nominations. Given how few cases the United States Supreme Court hears each year, circuit courts are frequently the courts of last resort for the vast majority of litigants in the country. It is precisely because these positions are so important that Republicans insisted that the Committee's biweekly nominations hearings should include just one circuit court nominee at a time. Mr. Duncan and Justice Stras have collectively produced over ten thousand pages of material to the Committee, and hours of video.

In fact, we have already seen problems arise because of the quick pace of moving nominees through the Committee. For example, just this week, the

Committee learned about the existence of a document Steven Grasz produced to the American Bar Association but was not disclosed to the Committee. The ABA has stated that the document demonstrates Mr. Grasz used confidential information in violation of state law. Additionally, recent press reports about district court nominees Thomas Farr and Brett Talley have suggested that these nominees neglected to disclose material information to the Committee—in Mr. Talley’s case, numerous blog posts on legal and social issues, as well as a potential conflict of interest. This type of information is necessary for the Committee to properly evaluate judicial nominees. Rushing the process and cutting short the vetting does a disservice to the nominee and the Senate.

More specifically, the two nominees who are being considered for a hearing immediately after Thanksgiving pose unique concerns that deserve consideration and review. My understanding is that one of the nominees has not received a blue slip from one of the home state Senators, and the other has both blue slips but one home state Senator wrote “my return of the blue slip should in no way be construed as an indication that I will vote for [the nominee].”

As you are aware, every Republican Senator wrote to President Obama in March 2009 and stated that “Regretfully, if we are not consulted on, and approve of, a nominee from our states, the Republican Conference will be unable to support moving forward on that nominee.” Chairman Leahy respected this and you continued this policy during the Obama Administration. In fact, there were nine nominees (four circuit court nominees and five district court nominees) who were nominated in the last two years of President Obama’s Administration who did not have blue slips from home-state Senators and you did not allow these nominees to receive a hearing. In addition, in April 2015 you wrote in the Des Moines Register,

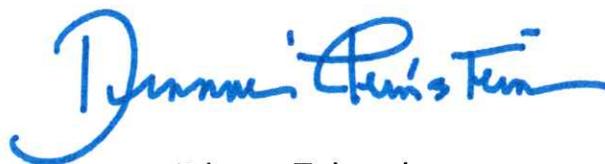
“For nearly a century, the chairman of the Senate Judiciary Committee has brought nominees up for committee consideration only after both home-state senators have signed and returned what’s known as a “blue slip.” This tradition is designed to encourage outstanding nominees and consensus between the White House and home-state senators. Over the years, Judiciary Committee chairs of both parties have upheld a blue-slip process, including Sen. Patrick Leahy of Vermont, my immediate predecessor in chairing the committee, who steadfastly honored the tradition even as some in his own party called for its demise. I appreciate the value of the blue-slip process and also intend to honor it.”

Separately, each circuit court nominee deserves to have their own hearing and review by the Committee. I understand Mr. Duncan was nominated a month ago and has provided approximately 2,000 pages of material to the Committee to review, and hours of video as well. The review of Mr. Duncan's record has just begun and we are just starting to learn about his experience. He was the lead attorney on the Hobby Lobby case and has been involved with a number of controversial cases that Senators on our side will want to fully review and ask questions. I know your members felt the same way when President Obama's controversial circuit court judges like Nina Pillard, Pamela Harris and David Barron were put forward.

As I mentioned, in the time since Mr. Duncan has been nominated, the Committee has had hearings for four other Circuit Court nominees—three already in November alone. If we were to move forward as you propose with a third nominations hearing and two additional circuit court nominees it will not be possible for members to effectively review the records and prepare. Again, during the last Administration, the Judiciary Committee never held hearings for five circuit court nominees in a single month.

The Senate is already rapidly processing judicial nominees. In fact, eight Circuit Court nominees have been confirmed in less than a year – the most in the first year of a presidency since the Nixon Administration. Mr. Chairman, all we are asking is for equal treatment. We believe the standard for how many circuit court nominees are considered in a hearing be the same for Republican Administrations as it was for Democratic Administrations. We are not asking for special treatment – just fair and equal treatment.

Sincerely,

A handwritten signature in blue ink that reads "Dianne Feinstein". The signature is written in a cursive, flowing style.

Dianne Feinstein

DF/ph