

United States Senate
WASHINGTON, DC 20510

November 17, 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,

We write to object, in the strongest possible terms, to your announcement that you are eliminating the longstanding Senate precedent of honoring a home-state Senator's "blue slip" on circuit court nominees. The blue slip tradition has lasted for nearly one hundred years precisely because it protects both institutional and home-state interests that are important to the integrity of the Senate and the judiciary.

As each member of the Senate recognizes, the states we represent are diverse. The blue slip was instituted to ensure that those nominated for lifetime appointments reflect our home states' particular needs and the legal bar in our communities. Moreover, the blue slip encourages meaningful cooperation and consensus on nominees – allowing individual Senators to provide valuable insights into nominees whose decisions will directly impact our constituents. As was stated in the letter to President Obama from Senate Republicans referenced below, Democrats and Republicans have recognized the importance of maintaining this principle.

In 2009, within two months of President Obama taking office, the Republican caucus wrote to him about blue slips. The letter asserted that all Senate Republicans expected the "practice of observing senatorial courtesy...to be observed, even-handedly and regardless of party affiliation." In addition, Senate Republicans concluded "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." Notably, no distinction was drawn between circuit court and district court nominees in the letter.

Six years later, when you took over the Chairmanship of the Judiciary Committee, you stated you would continue to honor the blue slip. In fact, there were nine nominees—four circuit court nominees and five district court nominees—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.

This commitment to honor the blue slip was not simply conveyed in letters and op-eds. Members of the Republican caucus frequently exercised the leverage the blue slip provided. For example, Leader McConnell used the blue slip to block the nomination of Kentucky Supreme Court Justice Lisabeth Hughes after being consulted by the White House and publicly stating that "I've had a back and forth with the [Obama] Administration for a year and a half or two over that particular seat on the Sixth Circuit and I'm not going to support the person they've sent up." And in 2014, Senators Chambliss and Isakson from Georgia and Senators McCain and Flake from Arizona negotiated packages of consensus judicial nominees after protracted negotiations with the White House.

The blue slip was honored even when Republican Senators blocked nominees they had previously recommended to the White House, as happened with two district court nominees from Florida. Republicans also used blue slips to simply delay nominations for years. For example, Jill Pryor, who was nominated for the Eleventh Circuit, waited more than two years to receive a hearing after being nominated. Chairman Leahy never even scheduled a hearing for any nominee unless that nominee had blue slips returned by both home state Senators – and Chairman Grassley, you followed the exact same principle – until now.

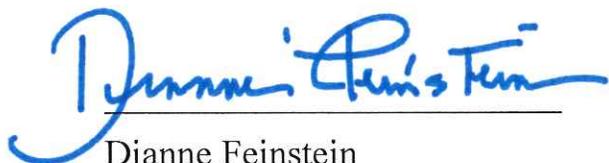
Our respective caucuses have pointed fingers for some time about who is to blame for the erosion of bipartisanship on judicial nominations, culminating with

the elimination of the sixty-vote threshold for Supreme Court nominees earlier this year. On the issue of blue slips, however, it is indisputable that during Democratic Administrations, Democratic Chairs of the Judiciary Committee respected Republican Senators' blue slips. Most recently, Chairman Leahy followed this principle under Republican and Democratic Presidents. We ask for nothing more than equal treatment.

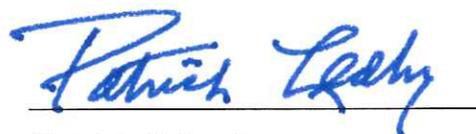
As Senator Hatch observed in 2014, "Weakening or eliminating the blue slip process would sweep aside the last remaining check on the president's judicial appointment power. Anyone serious about the Senate's constitutional 'advice and consent' role knows how disastrous such a move would be." We wholeheartedly agree. There is no reason to have a different standard simply because the person who sits in the White House has changed.

We ask that you reconsider your decision to further upend our institutional norms and senatorial courtesy by undoing a century of tradition.

Sincerely,



Dianne Feinstein
Ranking Member



Patrick J. Leahy
United States Senator



Richard J. Durbin
United States Senator



Sheldon Whitehouse
United States Senator



Amy Klobuchar
United States Senator



Al Franken
United States Senator



Christopher A. Coons
United States Senator



Richard Blumenthal
United States Senator



Mazie K. Hirono
United States Senator