

May 3, 2023

Chair Dick Durbin
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chair Durbin:

President Biden and Senate Democrats are making historic progress toward bringing balance to our federal courts. We celebrate the 122 judicial confirmations thus far, and we continue to underscore the importance of nominating more demographically and professionally diverse nominees to fill the more than 100 announced vacancies. We are concerned that Republican obstruction is slowing the Judiciary Committee's efforts.

Republicans have blocked district court nominees by withholding their blue slips, and 41 of the 45 district court vacancies subject to Republican blue slips – 91% – still do not have nominees. This is, to our knowledge, in spite of your efforts to work in good faith with your Republican colleagues for more than two years. We are concerned that the current blue slip practice, which has always been based on the Chair's prerogative, is contributing to this obstruction by giving home state senators more power than they have had through much of modern history, and if unchanged, it will prevent President Biden from filling dozens of judicial vacancies. The blue slip policy should be reformed or discontinued to ensure a fair process and stop Republicans from blocking highly-qualified Biden judicial nominees.

First, we urge you to adopt the blue slip process used by then-Judiciary Chair Biden, who [issued](#) the following as the first formal, written statement by a Chair on the blue slip policy:

“The return of a negative blue slip will be a significant factor to be weighed by the committee in its evaluation of a judicial nominee, but it will not preclude consideration of that nominee unless the Administration has not consulted with both home state Senators prior to submitting the nomination to the Senate.”

Biden's standard was neutrally applicable, as a Democratic-controlled Senate confirmed a George H. W. Bush district court nominee over the objection of a Democratic home state Senator. Adopting this even-handed approach today would preserve home state senators' role in the process while not allowing Republicans to delay or veto candidates in bad faith.

Second, we urge you to reinstitute a deadline by which negative blue slips must be returned in order to be weighed by the Committee. According to the Congressional Research Service, for most of the history of the blue slip—from 1922 to 1998 and again under Chair Leahy in the early 2000s—blue slips clearly [stated](#) “unless a reply is received from you within a week from this date, it will be assumed that you have no objection to this nomination.” The Judiciary Committee routinely processes judicial nominees for hearings within 28 days, and home state senators should be required to respond within that time frame as well, so they cannot indefinitely delay consideration.

Third, we urge you to require greater transparency in the blue slip process, including public explanations for any negative blue slips. Home state senators’ concerns can only be fairly weighed if they are clearly and publicly stated. When senators are allowed to use their blue slips to block judicial nominees without justification, the process is undermined. **Further, the status of whether blue slips have been returned should once again be public information,** a reform originally adopted in 2001 by then-Chair Leahy and then-Ranking Member Hatch, who issued a [joint letter](#) that stated, “We both believe that such openness in the confirmation process will benefit the Judiciary Committee and the Senate as a whole.” Restoring this critical transparency will provide greater accountability with respect to home state senators engaging in good faith with respect to their blue slips.

We believe that the full Judiciary Committee, and ultimately the full Senate, must be allowed to debate and consider President Biden’s district court nominees. Federal district courts are vital to ensuring access to justice for all, but Republican abuse of the blue slip courtesy is creating a two-tiered system of justice and civil rights in our country and exacerbating the backlog cases, especially in districts designated as judicial emergencies. As Republicans delay and block highly-qualified, diverse Biden judicial nominees, we are counting on you to act to limit their bad faith and to implement the necessary reforms to ensure that President Biden can fill every judicial vacancy with highly qualified, fair-minded jurists whose personal and professional backgrounds reflect the country they serve.

Sincerely,

Alliance for Justice
American Atheists
American Constitution Society
American Humanist Association
Center for Disability Rights
Center for Popular Democracy Action
Climate Hawks Vote
Committee for a Fair Judiciary (CFJ)

Demand Justice
Earthjustice
End Citizens United//Let America Vote Action Fund
Feminist Majority Foundation
Freshwater Future
Friends of the Earth
Government Information Watch
Hip Hop Caucus
Indivisible
Lambda Legal
LatinoJustice PRLDEF
Lawyers Defending American Democracy
League of Conservation Voters
MALDEF (Mexican American Legal Defense and Educational Fund)
National Center for Transgender Equality
National Council of Jewish Women
Network for Responsible Public Policy
People For the American Way
People Power United
People's Parity Project
Reclaim Democracy!
Revolving Door Project
Stand Up America
Take Back the Court Action Fund
We Said Enough