

History of Blue Slips in the Senate

Federal Judicial Nominations and the Storied History of the Senate's Blue Slip Tradition

Article II of the U.S. Constitution directs the President to nominate federal judges and the Senate to provide advice and consent before confirming the nominees to the bench. In practice, after the President announces federal nominees, the process of confirmation begins in the Senate Judiciary Committee ("SJC") before the full Senate votes on the nominees. The SJC investigates the nominees' credentials, holds public hearings, and votes on what type of recommendation to make to the full Senate.

What is the Blue Slip?

The Senate's **blue slip policy** allows home-state senators to signal their approval or disapproval of a judicial nominee appointed to a seat in their state by filling out and returning a blue slip of paper to the SJC. The SJC practice started as an informal courtesy to incentivize the President to collaborate with home-state senators during the nominations process. **In modern day, the process has morphed into a political tool of obstruction, asymmetrically used by Republicans to arbitrarily block a Democratic administrations' nominee and rob the federal judiciary of highly qualified, diverse, and fair-minded district court judges in certain states. The blue slip can even be used preemptively, blocking potential nominees before they are even publicly nominated and thereby robbing the public of transparency over how they are being weaponized.**

The blue slip process is not codified in the Senate Judiciary Committee's rules and is instead a policy set by the Chairperson of the SJC. As of the 117th Congress, the SJC has not allowed any district court nominees to advance if even one home-state senator signals their opposition to the candidate. The result? Certain states have far more unfilled district court vacancies because the White House aims to nominate candidates who have home-state support. Republican senators' obstruction, via the blue slip process, has made it harder for residents in these states to access justice in a timely manner.

History of the Blue Slip

The modern usage of the blue slip process as a tool of obstruction has racist roots, in which segregationist lawmakers used the process to undermine progress made in guaranteeing basic civil rights for Black Americans.

More recently, obstructionists have also used the blue slip to block nominees with diverse demographic and professional backgrounds from taking the bench.

This fact sheet explores the history of the blue slip policy, including the segregationist roots of how the policy is implemented today.¹

Humble Beginnings: 1917-1956

Although the precise date of when Senate Judiciary Committee (SJC) started to use the blue slip process is unknown, according to the Congressional Research Service the first known appearance of the process was during the 65th Congress (1917-18). Since then, for more than four decades, the blue slip process had been used by home-state Senators to state their objections to a particular nominee.

Notably, during that time, while objections were made SJC could still move forward with the nomination voting process for both district and circuit court nominees.

Segregationist Obstructionism: 1956-1979

In 1956, the blue slip process became an obstructionist tool for racist lawmakers to prevent public school integration after the Supreme Court's 1954 ruling in *Brown v. Board of Education*. Mississippi Senator James O. Eastland, a staunch segregationist, became the chair of the SJC and mandated that any judicial nominee must receive two positive blue slips before their nomination could be considered by the committee. **Thus, a single home-state Senator could stop all committee action on a judicial nominee by either returning a negative blue slip or failing to return a blue slip to the committee at all—a practice that has continued, on-and-off, to this day.**

According to former Lyndon Johnson aide Joseph Califano, Senator Eastland was a strict segregationist who fiercely opposed civil rights laws and was adamant that federal judges confirmed under his watch would not implement racial integration. While Eastland never explicitly explained why he instituted a strict blue-slip policy, since the pace of integration was left up to district court judges' discretion, segregationist leaders now had a powerful tool to slow this progress. Eastland's maximalist approach to the blue slip policy remained in effect until 1979. Over the years the blue slip process has gone back and forth from a courtesy to a requirement for a committee vote, depending often on the party in power.

Senator Ted Kennedy's Changes: 1979-1981

At the start of the 96th Congress, Senator Ted Kennedy (D-MA) became the new chairman of the SJC and established the first post-Eastland changes to the blue slip system. Under Chairman Kennedy's leadership, a home-state senator's failure to return a blue slip would not necessarily prevent committee action on a nominee and instead the full committee would vote on whether to proceed.

¹: Based on the Congressional Research Service Reports on Blue-Slips from [2017](#) and [2003](#).

Chairman Ted Kennedy said that his purpose of modifying the blue slip policy was to “allow the Federal courts [to]...become more representative of the people of this Nation.”² In 1980, against the wishes of Virginia Senator Harry Byrd, President Jimmy Carter’s nominee, James E. Sheffield, became the first nominee since 1951 that the SJC voted on despite a home-state negative blue slip.

Republican Hypocrisy: 1981-1989

Senator Strom Thurmond (R-SC) changed the blue slip policy slightly when he became chairman in 1981. Chairman Thurmond decided that a home-state senator could stop all committee action on any judicial nominee if they returned a negative blue slip, but if a senator simply failed to return a blue slip, the committee could move forward with the nomination. **However, Chairman Thurmond did not implement this policy as a hard-and-fast rule and made significant exceptions when it suited his political party’s interests.** For example, in 1983, when California Senator Alan Cranston returned a negative blue slip for President Reagan’s nominee, John P. Vukasin Jr, to the District Court of Northern California, Senator Thurmond moved forward with the nomination and Vukasin was confirmed by the full Senate.³

The Biden Era: 1989-2001

In 1989, then-Senator Joe Biden became chairman of the SJC. In a letter outlining the new process, Chairman Biden explained that one negative blue slip would be a “significant factor” but would not preclude consideration of the nominee, unless the administration had not consulted with both home-state senators. If both home-state Senators returned negative blue slips, the committee would take no action, regardless of presidential consultation. **Notably, Chairman Biden’s letter was the first time a Judiciary Committee chairman issued a formal written statement on the blue-slip procedure, bringing much needed transparency and consistency to the process.** Additionally, by making the SJC’s standards for considering blue slips public, he placed the pre-nomination selection process at the forefront of the confirmation process, incentivizing bipartisan cooperation between the White House and home-state senators.

When the Republican party gained control of the Senate and the White House in 1994, Senator Orrin Hatch (R-UT) decided to continue Senator Biden’s blue slip policy, adding in more detail about what kind of “meaningful consultation” the White House was required to undertake with home-state senators. Chairman Hatch continued this practice into the Democratic Clinton Administration, warning that “if any of our [Republican] colleagues here want to veto the President’s constitutional prerogative to make his appointments...I think [that]

2: U.S. Congress, Senate Committee on the Judiciary, Hearings: *Selection and Confirmation of Federal Judges*, p. 4.

3: In 1985, Chairman Thurmond even moved forward on a nomination in which both home-state senators returned negative blue slips. President Reagan had selected Albert Moon to be a U.S. District Court judge for Hawaii and both Hawaii senators, Daniel Inouye and Spark Matsunaga, opposed the nomination. However, after the hearing, the committee took no further action and the Senate failed to confirm Moon.

diverges from the policy of the [SJC] since as far back to...[when] Senator Kennedy was Chairman of this committee.”⁴

One-Sided Aggressive Obstructionism: Bush and Obama years: 2001-2018

From 2001-2002 and 2007-2008, Senator Leahy (D-VT) was as chairman of the SJC, during which time he did not permit any nominees who did not receive two positive blue slips from home-state senators to advance in the nomination process. Chairman Leahy and Ranking Member Hatch also agreed that blue slips would now be public information, as they were previously kept confidential. Because blue slip use was kept confidential before this period, we will likely never know the full extent to which they were used in a racially discriminatory manner throughout the 20th Century. Similarly, from 2005-2006 Senator Arlen Specter did not move forward with any nomination without two positive blue slips.

However, during Senator Hatch’s chairmanship tenure from 2003-2004, while he claimed to give “great weight” to negative blue slips, in some instances he allowed the committee to consider nominees who were opposed by the home-state senators—particularly for circuit court nominees. **During this period when Republicans controlled the White House and the Senate, of the 13 nominees with negative blue slip issues, five received a committee hearing and vote.**

From 2009 to 2018, it was the policy of both Senator Leahy (SJC Chairman from 2009-2014) and Senator Grassley (SJC Chairman from 2015-2018) to not advance any nominee without two positive blue slips from the nominee’s home-state senators. **Notably, from 2009-2014, when the Democrats controlled both the Senate and the White House, the SJC still maintained the two positive blue slip tradition.**

By contrast, when Republicans controlled the Senate during President Obama’s administration, Senator Grassley and his Republican colleagues **managed** to block 17 of Obama’s nominees via blue slip, preventing demographically diverse candidates from taking the bench and leaving vacancies open for the Trump administration to fill with radical right-wing extremists. For example, Obama’s nominee to the Eleventh Circuit, Judge Abdul Kallon, would have been the first Black person from Alabama on any federal court of appeals. Justice Myra Selby, who Obama nominated to the Seventh Circuit, would have been the first Black person from Indiana to serve on that circuit. Rebecca Haywood, an Obama nominee from Pennsylvania, would have been the first Black woman jurist to serve on the Third Circuit. **Clearly, the blue slip was used primarily to block diverse nominees from taking the bench, considering that of Obama’s 17 blocked nominees, 10 were women and 10 were African American.**

⁴: U.S. Congress, Senate Committee on the Judiciary, Hearings: *Confirmation Hearing on the Nominations of Larry D. Thompson to be Deputy Attorney General and Theodore B. Olson to be Solicitor General of the United States*, 107th Cong., 1st Sess., (Washington: GPO, 2001), p. 139.

Trump Era: Elimination of Blue Slip Policy for Circuit Court Nominees

In 2018, Chairman Grassley **scrapped** the blue slip policy as it applied to circuit court nominees, **claiming** that “a negative or unreturned blue slip won’t necessarily prevent a circuit court nominee from receiving a hearing, unless the White House failed to consult with home-state senators.” after Minnesota Senator Al Franken refused to return his blue slip for the Eighth U.S. Circuit Court of Appeals nominee, Justice David Stras. In this stunning change of policy, Justice Stras became the first circuit court nominee since 1982 to be confirmed without both home state senators returning the blue slips. **During this period, the Senate confirmed at least a dozen of the Trump administration’s circuit court nominees who did not receive at least one home state senator’s positive blue slip.** The Senate even confirmed multiple nominees who **failed** to receive a positive blue slip from either of their home-state senators, even though Democrats **returned** more than 100 blue slips for Trump’s judicial nominees during this four-year period.

Current State of the Blue Slip: 2020-Present

Chairman Durbin has **followed** the precedent set by Republicans and applied the blue slip tradition to only district court nominees, allowing circuit court nominees to advance without both home-state senators’ support. For example, Arianna Freeman became the first black woman confirmed to the United States Court of Appeals for the Third Circuit, despite Senator Pat Toomey’s **opposition** to her nomination on the basis of her career as a public defender. Similarly, Andre Mathis was confirmed as the first Black man to sit on the United States Court of Appeals for the Sixth Circuit, over the **objection** of both Tennessee senators. Notably, Sen. Blackburn (R-TN) was **accused** of unfairly characterizing traffic citations Mathis had received as a “rap sheet.”

The blue slip process has prevented the confirmation of highly qualified and diverse district court candidates from taking the bench in states represented by conservative Senators. Further, the Biden administration has also chosen not to nominate anyone to fill certain district court vacancies where the home-state senators would likely prevent the process from moving forward, which at the time of this writing, includes 5 district court seats in Texas, 4 in Louisiana, and 7 in Florida. This has allowed Republican Senators to weaponize the blue slip without ever having to be held publicly accountable for having used it.

District court nominee William Pocan nominated to the Eastern District of Wisconsin, who would be the first federal judge in Wisconsin to openly identify as LGBTQ+, is the only Biden administration nominee who has not advanced due to a blue slip issue. Senator Ron Johnson, who had initially recommended Pocan to the White House, later announced that he would **withhold** his blue slip.

Justice Requires Eliminating the Blue Slip

Despite its innocuous original purpose, to incentivize presidents to cooperate with home state senators, the Senate's modern blue-slip tradition has been tainted by bigoted obstructionism. **With segregationist roots and racist outcomes, the policy has since prevented highly qualified, demographically and professionally diverse individuals from serving on the federal bench.** Specifically, Republicans have systematically abused the practice to advance a radical, right-wing agenda into the federal court system, arbitrarily changing the policy as it suited their party's political ends over the years. Based on this problematic history, the blue slip practice is ripe for continued abuse. Furthermore, the Senate Judiciary Committee should eliminate blue slips once and for all to ensure that the process is fair and that federal courts vacancies are filled with highly qualified, fair-minded jurists whose backgrounds reflect the country they serve.