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The Blue Slip Process for U.S. Circuit and District Court Nominations: Frequently Asked Questions

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Summary

The blue slip process used by the Senate Judiciary Committee (the committee) for U.S. circuit and district court nominations has received renewed interest from Senators. The committee's use of the blue slip has been, since at least 1917, a feature of its consideration of U.S. circuit and district court nominations. After a President selects a nominee for a U.S. circuit or district court judgeship, the chairman sends a blue-colored form to the Senators representing the home state of the nominee. The form seeks the home state Senators' assessment of the nominee. If a home state Senator has no objection to a nominee, the blue slip is returned to the chairman with a positive response. If, however, a home state Senator objects to a nominee, the blue slip is either withheld or returned with a negative response.

Since the use of blue slips is not codified or included in the committee's rules, the chairman of the committee has the discretion to determine the extent to which a home state Senator's negative, or withheld, blue slip stops a President's judicial nomination from receiving a committee hearing and a committee vote and, consequently, whether it reaches the Senate floor. Over the century of the use of the blue slip, different chairmen have used the blue slip in different ways. During some years, a chairman has required a nominee to receive two positive blue slips from his or her home state Senators. This particular blue slip policy, for example, was in place during the eight years of the Obama presidency and much of the George W. Bush presidency—during periods of both unified and divided party control.

During other years, a chairman's blue slip policy has allowed for a nomination to proceed in committee—and, at times, to the Senate floor—even if the nominee did not have the support of one or both home state Senators. Since at least 1956, however, regardless of the particular blue slip policy used by the committee to process judicial nominations, it has been relatively rare for the Senate to confirm a nominee not supported by his or her home state Senators.

Historically, a committee's blue slip policy has applied to both U.S. circuit and district court nominations. Senators, however, have traditionally exerted less influence over the selection of circuit court nominees than over district court nominees. The lesser role for Senators, and the more independent role of the President, in the selection of circuit court nominees is well established by custom. While home state Senators have historically exerted less influence over the selection of circuit court nominees, they have nonetheless often retained certain prerogatives under the committee's blue slip policy once a circuit court nominee is selected by a President. For example, during the Obama presidency and much of the George W. Bush presidency, a circuit court nomination did not proceed in committee unless it had received two positive blue slips from a nominee's home state Senators.

Future changes to the committee's blue slip policy, whether during the current presidency or a future one, might have several consequences—some of which might be viewed as adverse, others which might be viewed as beneficial—to the institutional role of the Senate, as well as to the judicial confirmation process itself.

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Introduction

The blue-slip process for U.S. circuit and district court nominations refers to a practice by the Senate Judiciary Committee (the committee) for use in the confirmation of federal judges and other positions.[1] Specifically, when a President nominates an individual to a U.S. circuit or district court judgeship, the chairman of the committee sends a blue-colored form to the Senators representing the home state of the nominee.[2] A home state Senator, if he or she has no objection to a nominee, returns the blue slip with a positive response. If, however, a Senator has some objection to the nominee and wants to prevent confirmation, he or she might decide not to return the blue slip or return it with a negative response.[3]

Recently, there have been some years in which a negative (or unreturned) blue slip precluded Judiciary Committee action on a nomination and, consequently, the nomination was not considered by the full Senate.[4] This policy, for example, characterizes how blue slips were used during the entirety of the Obama presidency and much of the George W. Bush presidency—during years of unified party control, as well as during years of divided party control.[5]

There have also been recent years, however, during which the committee's blue slip policy prevented, at times, a single Senator from having an absolute veto over the fate of judicial nominees from his or her state.[6] These modifications generally prevented a President's nominees from being routinely blocked by Senators not belonging to the President's party. It has nonetheless been relatively rare, at least since 1981, for the full Senate to confirm judicial nominees who did not have the support of both of their home state Senators.

The blue slip process is not codified in the Judiciary Committee's rules, and is instead a policy set by the chairman of the committee. At times, the blue slip policy of a chair "may be different in practice than what is stated [by the chair]. Thus, determining a particular policy at any given time can be complicated because of the way blue slips are implemented."[7] Along these lines, this report relies on Senators' statements and public news accounts as to the blue slip policy that was in place during a particular year or presidency.

Additionally, because data regarding whether home state Senators returned negative or positive blue slips (or withheld a blue slip) is not often made public, the information and analysis provided in this report is limited to that information which is publicly available regarding blue slips returned or withheld by Senators.[8] Based on available information, a President's nominees who

[1] These other positions are U.S. attorney and U.S. marshal positions, which are not addressed by this report.

[2] Throughout this report, these Senators are referred to as a nominee's "home state Senators."

[3] Occasionally, a Senator might indicate on the blue slip that he or she has "reserved judgment" on a nomination. The blue slip policy set by the chairman of the Judiciary Committee determines whether the committee will act on such a nomination.

[4] For example, during the Obama presidency and select years of the G.W. Bush presidency.

[5] For the purposes of this report, unified party control occurs when the party of the President is the same as the majority party in the Senate (regardless of the majority party in the House). Divided party control occurs when the party of the President is different than the majority party in the Senate.

[6] For example, during select years of the G.W. Bush presidency.

[7] Mitchel A. Sollenberger, "The Blue Slip: A Theory of Unified and Divided Government, 1979-2009," *Congress and the Presidency*, vol. 37, 2010, p. 130 (hereinafter cited as Sollenberger, *The Blue Slip*).

[8] A recent exception to a nominee's blue slips not being publicly available was during select years of the G.W. Bush presidency—specifically from 2001-2004 during the 107th and 108th Congresses—when the status of a nominee's blue slips was posted online by the Department of Justice's Office of Legal Policy.

receive at least one negative blue slip have been a relatively small percentage of those he nominates to the federal bench.

Recently, during the 115th Congress, several Senators have commented on whether or how the blue slip policy should be changed from the most recent policy that was in place during the 114th Congress and other recent congresses.[9] Some of the issues discussed by Senators include whether the Judiciary Committee should move forward on a judicial nomination if it receives at least one negative blue slip from a nominee's home state Senator; what constitutes adequate consultation between the President and home state Senators during the pre-nomination phase of selecting a judicial nominee; and whether U.S. circuit court nominations should be subject to blue slips in the same manner as district court nominations.

The purpose of this report is to provide historical information and analysis as to how blue slips have been used in the past for judicial nominations, with a focus on the various blue slip policies used during recent presidencies. This report also discusses potential changes that might occur in the Senate and in the confirmation process for judicial nominees if there is a lesser role for home state Senators in approving some, or all, of a President's judicial nominees from their respective states. This report does not take a position on whether the blue slip policy should be modified from the current policy of requiring two positive blue slips for a nomination or make recommendations about the issues discussed herein.

What are the historical origins and evolution of the blue slip process for judicial nominations?

The precise date on which the Judiciary Committee first used the blue slip procedure is not known. Prior CRS research conducted at the National Archives suggests that the blue slip procedure began sometime in the mid- to late 1910s during the chairmanship of Senator Charles A. Culberson of Texas.[10]

The first known appearance of the blue slip is from the 65th Congress (1917-18).[11] At the time, Senator Culberson was chairman of the Judiciary Committee, a role he served in from the 63rd through the 66th Congress (i.e., from 1913 through 1919). The documentary evidence from this time period suggests that Senator Culberson may have created the blue slip.[12] From the 65th Congress onward nearly every judicial nominee's file includes a blue slip. Prior to this period, the files of judicial nominees reveal no evidence of blue slips.

Judiciary Committee materials at the National Archives do not provide a specific explanation for the creation of the blue slip. The historical and political context, however, in which the blue slip was first used, might help illuminate the rationale for its early use. For instance, although the White House and Senate were both controlled by the Democrats in 1917, there was nonetheless

[9] See, for example, statements reported by Carl Hulse, "As G.O.P. Moves to Fill Courts, McConnell Takes Aim at an Enduring Hurdle," *The New York Times*, September 13, 2017, online; by Niels Lesniewski, "Grassley Signals Deference to White House on Circuit Judges," *Roll Call*, July 31, 2017, online; and by Lydia Wheeler, "GOP talks of narrowing 'blue-slip' rule for judges," *The Hill*, May 20, 2017, online.

[10] CRS Report RL32013, *The History of the Blue Slip in the Senate Committee on the Judiciary, 1917-Present*, by Mitchel A. Sollenberger. This report was last updated in 2003 and is available from the author to congressional clients upon request.

[11] Ibid.

[12] Ibid

periodic tension between the two branches. Consequently, inter-branch relations may have been a factor in the blue slip's creation.[13]

The first known example of a Senator using a blue slip to oppose a judicial nomination was in 1917 during the 65th Congress. President Woodrow Wilson had nominated U.V. Whipple to a judgeship for the Southern District of Georgia. Senator Thomas W. Hardwick returned a negative blue slip, stating "I object to this appointment—the same is personally offensive and objectionable to me, and I cannot consent to the confirmation of the nominee."[14] At that time, a negative blue slip did not necessarily prevent committee action on a nomination. As such, Whipple's nomination was reported, albeit adversely, to the full Senate. The nomination was rejected by the Senate without a recorded vote on April 23, 1917.[15]

From 1917 to 1955 the blue slip was used "to merely request the opinion of senators, regardless of political party, about judicial nominations in their home-states.... no chair of the Judiciary Committee allowed even one negative blue slip to automatically veto a nomination."[16] In contrast, from 1956 through 1978—under the chairmanship of Senator James O. Eastland—a nominee was required to receive two positive blue slips from his home state Senators before the nomination was to be considered by the committee.

During this period, which encompassed both unified and divided party control of the presidency and the Senate, if a home state Senator had some objection to the nominee and wanted to stop committee action, he or she could decide not to return the blue slip or return it with a negative response. Under such circumstances the withholding of a blue slip or a single negative response would halt all further action on a nomination.

Since 1979, the blue slip policy used by the Judiciary Committee has varied. The remainder of the report focuses on the period since 1979, with an emphasis on discussing the policies used during recent presidencies.

When has a negative blue slip on a U.S. circuit or district court nomination stopped consideration of the nomination by the Senate Judiciary Committee?

There have been recent years when the blue slip policy used by the Senate Judiciary Committee stopped consideration of any nomination for which a home state Senator did not return a positive blue slip. When this is the committee's policy, a home state Senator's opposition to a judicial nomination through use of a negative or withheld blue slip prevents it from being reported out of committee (in effect, preventing the nomination from being approved by the full Senate), unless the Senator can be persuaded to drop his or her opposition to the nomination.

[13] Ibid.

[14] National Archives and Records Administration, 1917-58, Record Group 46, Records of the U.S. Senate. Records of Executive Proceedings, Nomination Files, Judiciary Committee.

[15] CRS Report RL32013, *The History of the Blue Slip in the Senate Committee on the Judiciary, 1917-Present*, by Mitchel A. Sollenberger.

[16] Sollenberger, *The Blue Slip*, p. 127.

The Obama Presidency

During the Obama presidency, the policy of both Senator Patrick Leahy (chairman of the Judiciary Committee from 2009-2014)[17] and Senator Chuck Grassley (chairman from 2015-2016)[18] was to preclude consideration of a U.S. circuit or district court nomination by the committee if the nomination did not receive two positive blue slips from the nominee's home state Senators.

This eight-year period encompassed both unified party control (i.e., when Democrats controlled the presidency and held the majority in the Senate from 2009 through 2014) and divided party control (i.e., when Republicans held the majority in the Senate, from 2015 through 2016, during the final two years of the Obama presidency).

From 2009 through 2014, the period of unified party control, there are 11 known nominees for whom a home state Senator either returned a negative blue slip or withheld a blue slip (thereby stopping committee consideration of the nomination).[19] Additionally, from 2015 through 2016, the period of divided party control, there are 9 known nominees for whom a home state Senator either returned a negative blue slip or withheld a blue slip (similarly stopping committee consideration of the nomination).[20]

Of the 20 known nominees during the Obama presidency who experienced blue slip issues,[21] 2 were ultimately confirmed after home state Senators withdrew their opposition to the nominations. The remaining 18 nominees with blue slip issues, representing 4.6% of all individuals nominated by President Obama for either a U.S. circuit or district court judgeship from 2009 through 2016, were subsequently returned to the President (i.e., not confirmed).

The George W. Bush Presidency

During the George W. Bush presidency, Senator Leahy—who also served as chairman of the Judiciary Committee during 2001-2002 and 2007-2008[22]—similarly did not permit, during those two periods, a U.S. circuit or district court nomination to advance in committee without receipt of two positive blue slips from a nominee's home state Senators. During the former period, from 2001 through 2002, there are 7 known nominees[23] for whom a home state Senator either returned a negative blue slip or withheld a blue slip (thereby stopping committee action on the

[17] Specifically, from January 3, 2009, to January 3, 2015.

[18] Specifically, from January 3, 2015, to January 3, 2017.

[19] This includes 3 U.S. circuit court nominees and 8 U.S. district court nominees.

[20] This includes 4 U.S. circuit court nominees and 5 U.S. district court nominees.

[21] The 20 nominees were identified by CRS through Senators' statements and public news accounts. See, for example, Craig Gilbert, "Wisconsin seat on U.S. appeals court remains a symbol of partisan judicial wars," *Milwaukee Journal Sentinel*, August 14, 2017, at http://www.jsonline.com/story/news/politics/2017/08/14/now-they-power-repblican/560803001; Staff and Wire Reports, "At Kansas senators request, committee will not consider Steve Six's nomination to the U.S. Court of Appeals," *Lawrence Journal-World*, July 28, 2011, at http://www2.ljworld.com/news/2011/jul/28/kansas-senators-request-committee-will-not-conside; and Karoun Demirjian, "Cadish pulls out of contention to become a federal judge," *Las Vegas Sun*, March 8, 2013, at https://lasvegassun.com/news/2013/mar/08/cadish-abandons-bid-become-federal-judge.

[22] Specifically, from June 6, 2001, to January 15, 2003, and from January 3, 2007, to January 3, 2009 (i.e., from the 111th Congress through the 113th Congress).

[23] This includes 5 U.S. circuit court nominees and 2 U.S. district court nominees. Sollenberger, *The Blue Slip*, p. 142.

nomination). Additionally, from 2007 through 2008, there are 16 known nominees[24] for whom a home state Senator either returned a negative blue slip or withheld a blue slip.

Also during the George W. Bush presidency, from 2005-2006 when Senator Arlen Specter was chairman of the Judiciary Committee,[25] the committee did not move forward with any nomination during the 109th Congress that did not receive two positive blue slips from a nominee's home state Senators.[26] During this period, there are 12 known nominees[27] for whom a home state Senator either returned a negative blue slip or withheld a blue slip (thereby stopping committee action on the nomination).[28]

Of the 37 known nominees[29] during the George W. Bush presidency who experienced blue slip issues (including during the tenure of Senator Orrin Hatch as chair of the committee in 2001 and from 2003-2004),[30] 15 were ultimately confirmed after home state Senators withdrew their opposition to the nominations. The remaining 22 nominees with negative or withheld blue slips, representing approximately 5.9% of all individuals nominated by President George W. Bush for either a U.S. circuit or district court judgeship from 2001 through 2008, were subsequently returned to the President (i.e., not confirmed).

As the discussion above illustrates, recent blue slip policies that required positive blue slips from a nominee's home state Senators in order for the nomination to advance in committee did not always mean that a nominee, who initially lacked the support of one or both home state Senators, was not ultimately confirmed by the Senate.[31] In total, of the 57 known nominees with blue slip issues during the Obama and George W. Bush presidencies (representing 7.5% of all the individuals nominated during the two presidencies), 17 (or 30%) were ultimately confirmed.

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[24] This includes 6 U.S. circuit court nominees and 10 U.S. district court nominees. Sollenberger, *The Blue Slip*, p. 150.

[25] From January 3, 2005, to January 3, 2007 (i.e., the 114th Congress).

[26] One senior Republican committee staffer has explained that Senator Specter, wanting to bypass any nomination that would experience confirmation problems, "started with the nominees who were easy to move and then just ran out of time with the others." The staffer also remarked that Senator Specter sought to avoid battles over nominees opposed by their home state Senators because "he was very concerned about moving through some of his legislative priorities," and that Senator Specter "very much sees the Congress, and the Senate in particular, as an equal branch and a check on the executive." Additionally, Senator Specter's blue slip policy was probably influenced by the compromise agreement drafted by the bipartisan "Gang of 14" regarding the use of filibusters on lower federal court nominations, as well as the need of the Judiciary Committee to manage three Supreme Court nominations (thereby diverting resources that would typically have been used on lower court nominations). Sollenberger, *The Blue Slip*, p. 148.

[27] This includes 4 U.S. circuit court nominees and 8 U.S. district court nominees. Sollenberger, *The Blue Slip*, p. 147.

[28] As both the past chairmanships of Senator Leahy and Senator Specter show, the committee's blue slip policy has not always been determined by whether the party that controls the presidency is also the majority party in the Senate.

[29] Sollenberger, *The Blue Slip*, pp. 142, 144, 147, 150.

[30] Senator Orrin Hatch's blue slip policy during the George W. Bush presidency is discussed in the next section of this report. Senator Hatch was chairman of the Judiciary Committee from January 20, 2001, to June 5, 2001, and from January 15, 2003, to January 6, 2005. His chairmanship is included in this part of the analysis in order to provide a summary of the G.W. Bush presidency, and also because there were multiple nominees during the Bush presidency who were considered by the Judiciary Committee under different chairmanships (i.e., under the chairmanships of Senators Leahy, Hatch, and/or Specter).

[31] Under a blue slip policy that requires both home state Senators to return positive blue slips, a President also has the option of withdrawing an objectionable nomination and resubmitting a new nomination that is acceptable to the White House and both home state Senators. For example, in 2008, the last year of the G.W. Bush presidency, President Bush in three instances—each time facing opposition from home state Senators to specific circuit court nominations—withdrew the nominations and selected new nominees recommended by the Senators. See CRS Report RL34405, *Role of Home State Senators in the Selection of Lower Federal Court Judges*, by Barry J. McMillion and Denis Steven Rutkus, footnote 84, p. 24.

The nominees who initially experienced blue slip issues during these two presidencies but who were nonetheless later confirmed by the Senate were sometimes included as part of an agreement or compromise between the White House and Senators to advance judicial nominations to the full Senate for consideration.[32]

When has a negative blue slip on a U.S. circuit or district court nomination *not* stopped consideration of the nomination by the Senate Judiciary Committee?

There have also been recent years during which the policy of the Judiciary Committee has been to allow, in some instances, committee consideration of a judicial nomination that received a negative blue slip, or no blue slip, from one or both of the nominee's home state Senators (as long as the President has consulted with a nominee's home state Senators). This type of policy has been used to prevent home state Senators from having a "veto" over the fate of a nominee from his or her state.

Consequently, when such a policy has been in effect, a Senator's negative blue slip, or failure to return a positive slip, did not always foreclose the possibility of the committee reporting the nomination to the Senate—as occurred on five occasions during the 108th Congress.[33] It likely did, however, at least, draw the committee's attention to the concerns of the home state Senator and to the question of what degree of courtesy the Members of the committee owe that Senator's concerns.[34]

The George W. Bush Presidency

Most recently, from 2003-2004[35] during the George W. Bush presidency, the policy of Senator Hatch was to "give great weight to negative blue slips"[36] but, in some instances, to allow a nomination opposed by home state Senators to receive a committee hearing and committee vote (which could result in the nomination being reported to the full Senate without the support of one or both home state Senators). During this two-year period, there were 13 nominees with blue slip issues, 5 of whom received a committee hearing and committee vote.[37] This particular period

[32] See, for example, Statement of Chairman Patrick Leahy, Senate Judiciary Committee, Hearing on Judicial Nominations, May 7, 2008, available at https://www.judiciary.senate.gov/imo/media/doc/Leahy%20Member%20Statement%20050708a.pdf. See also, Daniel Malloy, "End in sight for Georgia's federal judicial vacancy logjam," *The Atlanta Journal-Constitution*, July 25, 2013, online.

[33] The nominations reported by the Judiciary Committee were each for circuit court judgeships, and include the nominations of Richard A. Griffin (to the Sixth Circuit), Carolyn B. Kuhl (Ninth Circuit), David McKeague (Sixth Circuit), Susan B. Neilson (Sixth Circuit), and Henry W. Saad (Sixth Circuit).

[34] Additionally, this type of blue slip policy, while occasionally allowing a nomination to advance without the support of both home state Senators, did not lead to a relatively large number of nominations advancing in the Senate without the support of both home Senators.

[35] Specifically, from January 15, 2003, to January 6, 2005.

[36] Sollenberger, *The Blue Slip*, p. 144.

[37] Of the five nominees, three were later confirmed during the 109th Congress. The nominations of the two other nominees were returned to President Bush (and not resubmitted for Senate consideration).

reflected unified party control, during which there was a Republican President and a Republican majority in the Senate.

Other Past Presidencies

Prior to the George W. Bush presidency, there were other times in which a nominee's nomination was considered by the Judiciary Committee (and, in a few cases, by the full Senate itself) without the support of one or both the nominee's home state Senators. In 1989, at the beginning of the George H.W. Bush presidency—and during a period of divided party control—Senator Joe Biden issued the first policy letter by a Judiciary Committee chairman regarding the use of blue slips to process U.S. circuit and district court nominations. He stated that "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."[38]

While it is not known how many nominees during the George H.W. Bush presidency had blue slip issues, there are two known examples of Senator Biden moving forward on a judicial nomination that received a negative blue slip from a nominee's home state Senator (in both cases from Senator Alan Cranston). For one circuit court nomination, the committee held hearings and a vote. The committee rejected the nomination, thereby not sending it to the full Senate.[39] And for one district court nomination, the committee held hearings and a vote—approving the nomination and sending it to the full Senate for consideration. The nomination was approved by voice vote.[40]

Additionally, under the chairmanship of Senator Strom Thurmond from 1981-1986 during the Reagan presidency (and a period of unified party control),[41] judicial nominations that received negative blue slips or had blue slips withheld by home state Senators were sometimes considered by the Judiciary Committee and, in a few cases, by the full Senate. As is the case with the George H.W. Bush presidency, it is not known how many nominees during the Reagan presidency had blue slip issues.

During the six-year period he served as chairman of the committee, Senator Thurmond moved forward on three known nominations that had received one negative blue slip and on one known nomination for which a home state Senator had not returned a blue slip. Of the four, two were confirmed by the Senate.[42]

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[38] Sollenberger, *The Blue Slip*, p. 135.

[39] Ibid. The nomination was that of Bernard Siegan, of California, to the Ninth Circuit. The Judiciary Committee rejected the Siegan nomination by an 8-to-6 vote.

[40] The nomination was that of Vaughn R. Walker, of California, to the Northern District of California. The Judiciary Committee approved the Walker nomination by an 11-to-2 vote, sending the nomination to the full Senate (which confirmed the nomination by voice vote). For more details, see Sollenberger, *The Blue Slip*, p. 136.

[41] Specifically, from January 3, 1981, to January 3, 1987.

[42] In 1981, Senator Proxmire of Wisconsin returned a negative blue slip for the district court nomination of John Shabaz to the Western District of Wisconsin. "Despite the negative blue slip, [Senator] Thurmond moved Shabaz's nomination through committee. This action marked the first known instance in more than thirty years in which a blue-slipped nomination made it to the Senate floor. Once through committee, the Senate confirmed Shabaz." Sollenberger, *The Blue Slip*, p. 134. In 1982, Senator Proxmire also returned a negative blue slip for the nomination of John L. Coffey to the Seventh Circuit. The negative assessment by Proxmire "was ignored when a hearing and committee vote were held less than a month after Reagan made the nomination." Ibid., p. 134. Coffey was subsequently confirmed by the Senate. Also in 1982, Senator Thurmond held a hearing for Sam Bell, a district court nominee for the Northern District of Ohio, even though Senator Metzenbaum had not yet returned a blue slip on the nomination (he eventually did and Bell was confirmed by the Senate). Ibid. Finally, in 1985, Democratic Senators Daniel Inouye and Spark Matsunaga of

The blue slip policy used during the last two years of the Carter presidency (and during a period of unified party control), under the chairmanship of Senator Edward Kennedy from 1979-1980,[43] no longer prevented committee action on a nomination that was not supported by a home state Senator. Senator Kennedy altered the blue slip policy that was used during his predecessor's tenure (a policy that required a nominee to receive two positive blue slips), stating an interest in increasing gender and racial diversity among judicial nominees.[44]

During the two-year period he served as chairman of the committee, Senator Kennedy moved forward on one known nomination that had received a negative blue slip.[45] The nominee received a hearing but the committee took no additional action on his nomination. The hearing itself was the first reported instance, since the early 1950s, where the Judiciary Committee moved forward on a nomination that had received a negative blue slip from a home state Senator.[46]

Overall, since 1979, there are three known nominees who were approved by the Senate after having received a negative blue slip by one, but not both, of the nominee's home state Senators.[47] This number may be greater than reported here because, as discussed previously, information regarding the status of a nominee's blue slips is not always publicly available.

Based on available information, CRS has not identified any instances—since at least 1979—of a nominee being confirmed by the Senate after having received negative blue slips from both of a nominee's home state Senators.[48]

How have Senators viewed the role of "consultation" with a President in the blue slip process used for U.S. circuit and district court nominations?

While the specific blue slip policy used by the Judiciary Committee has varied over the years, a consistent principle throughout has been the importance of consultation between a President and

Hawaii opposed the district court nomination of Albert Moon. "Even though both Hawaiian senators opposed Moon, Thurmond held a hearing which marked the first reported instance since the 1950s that the committee acted on a nomination with two negative blue slips. After the hearing, Thurmond took no further action and Moon's nomination was returned at the end of the Congress." Ibid.

[43] Specifically, from January 3, 1979, to January 3, 1981.

[44] Senator Kennedy stated that he had a "particular concern ... to guarantee that the Federal courts are more representative of all the people of this Nation." Sollenberger, *The Blue Slip*, p. 131.

[45] Senator Harry Byrd Jr., of Virginia, had returned a negative blue slip on the district court nomination of James E. Sheffield. In another instance, and "the only known example of a nomination dispute between Kennedy and a Republican Senator," a positive blue slip on the nomination was eventually returned. Sollenberger, *The Blue Slip*, pp. 132-133.

[46] Sollenberger, *The Blue Slip*, p. 132.

[47] Since 1979, there have been over 2,000 individuals confirmed by the Senate for U.S. circuit and district court judgeships. During this period, the three known nominees who were confirmed by the Senate without the support of one home state Senator are John Shabaz (confirmed in 1981), John L. Coffey (1982), and Vaughn R. Walker (1989).

[48] This includes only those nominees for whom a home state Senator did not later withdraw his or her opposition. Similarly, CRS had not identified, based on available information, any instances since 1979 in which a nominee received one negative blue slip and had one blue slip withheld—or had both blue slips withheld by a nominee's home state Senators.

the Senate in the judicial selection process. During this process, one of the key considerations of many Senators, including committee chairmen and Senators in the minority party, is that they have the opportunity to consult with a President regarding potential nominees for U.S. circuit and district court vacancies associated with their states.

Past chairmen of the Judiciary Committee, regardless of political party, have emphasized the need for consultation and inter-branch cooperation between a President and home state Senators in considering potential U.S. circuit and district court nominees. In 1989, Senator Biden stated that "I have long emphasized the need for consultation, which, in my view, is part of the 'advice' component of the Senate's advice and consent responsibility under the Constitution. I believe that the nomination process will function more effectively if consultation is taken seriously."[49] Senator Hatch, in 2001, stated that "the Senate expects genuine good faith consultation by the administration with home state senators before a judicial nomination is made, and the administration's failure to consult in genuine good faith with both home state senators is grounds for a senator's return of a negative blue slip."[50] And, in 2009, Senator Leahy noted that requiring "the support of home State Senators is a traditional mechanism to encourage the White House to engage in meaningful consultation with the Senate."[51] The lack of consultation between a President and home state Senators has, at times, resulted in nominees not being considered by the Judiciary Committee.[52]

The importance of consultation has also been emphasized by other Senators, more generally. For example, in 2009, 41 Republican Senators submitted a letter to President Obama, emphasizing that,

> the process of federal appointments is a shared constitutional responsibility. We respect your responsibility to nominate suitable candidates for the federal bench. And as a former colleague, we know you appreciate the Senate's unique constitutional responsibility to provide or withhold its Advice and Consent on nominations. The principle of senatorial consultation (or senatorial courtesy) is rooted in this special responsibility, and its application dates to the Administration of George Washington. Democrats and Republicans have acknowledged the importance of maintaining this principle, which allows individual senators to provide valuable insights into their constituents' qualifications for federal service.[53]

Additionally, during the presidency of George W. Bush, the nine Democratic Senators on the Judiciary Committee submitted a letter to the administration emphasizing the need for consultation between the White House and Senators belonging to the minority. The letter stated that,

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[49] Mitchel A. Sollenberger, *Judicial Appointments and Democratic Controls* (Durham: Carolina Academic Press, 2011), p. 102 (hereinafter cited as Sollenberger, *Judicial Appointments*).

[50] Ibid., p. 103. Note that Senator Hatch also emphasized that "if any of our colleagues here want to veto the President's constitutional prerogative to make his appointments with the advice and consent of the Senate, that is a different matter, and one which I think diverges from the policy of this Committee from as far back as I can remember, ... " Senator Hatch's assessment, one scholar notes, was challenged by Democratic Senators at the committee hearing at which it was made. Sollenberger, *The Blue Slip*, p. 140.

[51] Ibid., p. 104.

[52] For example, during several years of the Clinton presidency there were a number of nominations that reportedly did not move forward because of a lack of support from home state Senators. Specifically, 17 nominations reportedly lacked the support of home state Senators, in part, because the White House did not consult with Senators regarding the nominations. Sollenberger, *The Blue Slip*, p. 138.

[53] Letter To The President On Judges, March 2, 2009, available at https://www.republican.senate.gov/public/index.cfm/blog?ID=3C522434-76E5-448E-9EAD-1EC214B881AC.

> As you know, there has been a long history of consultation between the White House and the Senate on potential nominations. The Senate's recent practice fully recognized that the interests of Senators in judicial nominations are not limited to those in the same political party as the President. With an evenly divided Senate, we think it is of utmost importance that the Administration coordinate closely with Democrats in the Senate, especially those from the home state of potential nominees and those on the Judiciary Committee.[54]

Factors Indicative of Consultation (or the Lack of Consultation)

At times, committee leaders have identified factors they considered important to, or indicative of, the consultative process between a President and home state Senators. During the Clinton presidency, and a period of divided government, Senator Hatch identified five circumstances that would "demonstrate an absence of good faith consultation" by the White House in communicating with home state Senators.[55] These circumstances were identified in a letter to Charles Ruff, counsel to the President, and included the following:

> (1) failure to give serious consideration to individuals proposed by home state Senators as possible nominees;
>
> (2) failure to identify to home state Senators and the Judiciary Committee an individual the President is considering nominating with enough time to allow the Senator to provide meaningful feedback before any formal clearance (i.e., by the [American Bar Association] or [Federal Bureau of Investigation]) on the prospective nominee is initiated;
>
> (3) after having identified the name of an individual the President is considering nominating, failure to (a) seek a home state Senator's feedback, including any objections the Senator may have to the prospective nominee, at least two weeks before any formal clearances are initiated, and (b) give that feedback serious consideration;
>
> (4) failure to notify a home state Senator, and the Judiciary Committee, that formal clearance on a prospective nominee is being initiated despite the Senator's objections; and
>
> (5) failure to notify home state Senators, and the Judiciary Committee, before a nomination is actually made, that the President will nominate an individual.[56]

The letter released by Senator Hatch also included his rationale for identifying the five circumstances that demonstrated an absence of good faith consultation by the White House. He stated that "over the past several months, I have received complaints from a number of my colleagues that they have not had the benefit of any sort of good faith consultation that is expected with respect to judicial nominees, and I am concerned that this may lead to difficulties in the confirmation process that could be avoided."[57]

At the beginning of the George W. Bush presidency, Senator Leahy, then ranking minority member of the Judiciary Committee, sent a letter to Alberto Gonzales, counsel to the President, recommending that "the Administration undertake to incorporate the following consultative procedures into its selection, vetting and nomination processes."[58] These procedures included:

> 1. The Administration shall give serious consideration to individuals proposed by home state Senators as possible nominees;

[54] Letter to the Honorable Alberto R. Gonzales, Counsel to the President, April 27, 2001, author's files.

[55] Letter to the Honorable Charles C.F. Ruff, Counsel to the President, April 16, 1997, author's files.

[56] Ibid.

[57] Ibid.

[58] Letter to the Honorable Alberto R. Gonzales, Counsel to the President, April 27, 2001, author's files.

> 2. The Administration shall consult with home state Senators and the Judiciary Committee (both majority and minority) regarding individuals the President is considering nominating with enough time to allow Senators to consider the potential nominee and provide a meaningful response to the Administration before any formal clearance (i.e., by the [Federal Bureau of Investigation]) on the prospective nominee is initiated;
>
> 3. Should the Administration choose to begin a formal clearance process of a nominee despite a home state Senator's objection, the Administration shall notify the home state Senators and the Judiciary Committee that this is the case before the clearance process starts;
>
> 4. When the President has made the final decision to nominate an individual, home state Senators and the Judiciary Committee shall be given at least one week's notice before the formal nomination is made;
>
> 5. When a nominee is sent to the Senate, supporting documentation for the nomination shall be simultaneously sent to the Senate in order to expedite the Senate's evaluation of the nominee;
>
> 6. The nominee shall be directed by the Administration to cooperate fully with Senators who seek information regarding that nomination.[59]

When Senator Leahy later became chairman of the Judiciary Committee in 2001, he had "the opportunity to" require "these consultative procedures through a strengthened blue slip policy."[60] As discussed above, this policy—which required both home state Senators to return positive blue slips on a nomination in order for it to be considered by the committee—was also utilized during his time as chair of the committee during the Obama presidency.

Recently, Senator Grassley—the current chairman of the Judiciary Committee—also emphasized the importance of consultation between a President and home state Senators. He stated that "I think it's very important that the White House work very closely with senators, both Republican and Democrat. But particularly those states where they have two Democratic senators, and I think that a big factor for me is the extent to which those Democratic senators make sure that they have adequate communication with the White House."[61]

Has there been a lesser role for Senators when recommending U.S. Circuit Court candidates?

Senators have generally exerted less influence over the selection of circuit court nominees than over the selection of district court nominees. The lesser role for Senators, and the more

[59] Ibid.

[60] Sollenberger, *The Blue Slip*, p. 142.

[61] Niels, Lesniewski, "Grassley Signals Deference to White House on Circuit Judges," *Roll Call*, July 31, 2017, at https://www.rollcall.com/politics/grassley-shows-flexibility-blue-slips-appellate-vacancy. Similarly, Senator Dianne Feinstein—the current ranking member on the Judiciary Committee—has stated that "the purpose of the blue slip is to ensure consultation between the White House and home-state senators on judicial nominees from their states." Noting that judicial nominees who lacked the support of both home state Senator were not considered by the Senate during the Obama presidency, she also stated that "if a nominee does not receive blue slips from both [home state] senators], the committee should not move forward" on the nomination. Alexander Bolton, "Franken objects to Trump judicial pick in test of Senate tradition," *The Hill*, September 5, 2017, at http://thehill.com/homenews/senate/349333-franken-objects-to-trump-judicial-pick-in-test-of-senate-tradition.

independent role of the President, in the selection of circuit court nominees is well established by custom.[62]

While Senators usually have not been the dominant or decisive players in the process of selecting circuit court nominees, they, nonetheless, have enjoyed certain prerogatives in the process. Senators of the President's party, in particular, generally "expect judgeships on the federal courts of appeals going to persons from their states to be 'cleared' by them."[63] If the home state Senators are not of the President's party, they nonetheless also generally have expectations—based on the Senate Judiciary Committee long-standing blue slip policy (and regardless of whether a particular policy allows a nomination to proceed without their support)—that they, too, will be consulted in a meaningful way by the Administration on their views about the prospective nominee.

The degree of influence a home state Senator has over a President's selection of a judicial nominee is distinct from the prerogatives given to Senators by a blue slip policy after the nomination is formally submitted to the Senate. In other words, depending on the blue slip policy used at the time, the lesser role for Senators in recommending potential circuit court nominees to a President has not necessarily meant that the role of home state Senators is diminished once the circuit court nomination is actually submitted to the Senate. That role of a home state Senator once the nomination is submitted is determined by the chairman's blue slip policy. For example, as discussed above, the blue slip policy used by Senators Leahy and Grassley during the Obama presidency provided a home state Senator with a powerful tool to oppose a circuit court nomination he or she found objectionable after it was formally submitted to the Senate.

Has any past blue slip policy distinguished between circuit and district court nominations?

There has not been a past blue slip policy used by the Judiciary Committee that explicitly (or formally) distinguished between U.S. circuit and district court nominations. As discussed above, Senators have traditionally had less of a role in recommending circuit court nominations—but this is a distinct question from whether a past blue slip policy formally treated circuit court nominations differently from district court nominations.

At least one past chairman of the Judiciary Committee, however, has suggested that a negative blue slip from a home state Senator might not be as consequential for circuit court nominations. Senator Hatch stated, in 2003, that "I'll give great weight to negative blue slips, but you can't have one senator holding up, for instance, circuit nominees."[64]

Several Senators have stated that perhaps the committee's blue slip policy should distinguish between circuit court and district court nominations. Circuit court nominations, they argue, are distinct from district court nominations in that the former are for regional appellate courts with jurisdiction over more than one state.[65] Another argument in favor of distinguishing between the

[62] For further discussion of this issue, see CRS Report RL34405, *Role of Home State Senators in the Selection of Lower Federal Court Judges*, by Barry J. McMillion and Denis Steven Rutkus, pp. 22-26.

[63] Ibid., p. 25.

[64] Sollenberger, *The Blue Slip*, p. 144. Also note the Judiciary Committee, while Senator Hatch was chairman, reported out of committee five circuit court nominees with blue slip problems but did not report out any district court nominations with blue slip problems. Ibid., p. 145.

[65] Lydia Wheeler, "GOP talks of narrowing 'blue slip' rule for judges," *The Hill*, May 20, 2017, at http://thehill.com/homenews/senate/334296-gop-talks-of-narrowing-blue-slip-rule-for-judges.

two types of judgeships is that Senators have traditionally exercised less influence over who a President selects for a circuit court vacancy than for a district court vacancy—and that a blue slip policy ought to recognize this difference.[66]

Other Senators have suggested, however, that the committee's blue slip policy should not distinguish between circuit and district court nominations. One argument against treating the two types of nominations differently is that it might cede too much institutional power to a President, regardless of his party affiliation.[67] The selection process might also become more heavily influenced by interest groups at the expense of a particular state's legal community.[68] Relatedly, treating the nominations differently might infringe upon the use of existing bipartisan processes already established in some states for identifying potential circuit court nominees.[69]

What are some of the possible consequences for the Senate and the confirmation process of possible changes to the blue slip policy?

During the 114th and other recent Congresses, the blue slip policy used by the Judiciary Committee enabled a home state Senator to block committee consideration of U.S. circuit and district court nominations that he or she considered objectionable. The blue slip policy, however, has changed over time and may change at some point during the current presidency, or during a future one, in ways that reduce the role of home state Senators in the blue slip process for U.S. circuit and district court nominations.[70]

A blue slip policy that lessens or eliminates the ability of home state Senators to block, at least occasionally, judicial nominees they oppose might have consequences for the Senate as an institution, as well as consequences for the judicial confirmation process itself. These consequences could exist beyond the presidency and Congress during which any change in the blue slip process occurs. Some of the potential consequences may be viewed by some observers as adverse, while other potential consequences may be viewed by some observers as beneficial—the discussion below considers each in turn.

Less Consultation Between a President and Home State Senators

Restricting or eliminating the role of home state Senators in the blue slip process used by the Judiciary Committee could diminish the likelihood that consultation would occur between a President and home state Senators during the pre-nomination stage of selecting a nominee for a vacancy. As one scholar has observed, "without a blue slip policy, a president may very well have

[66] Ibid.

[67] Carl Hulse, "As G.O.P. Moves to Fill Courts, McConnell Takes Aim at an Enduring Hurdle," *The New York Times*, September 13, 2017, at https://www.nytimes.com/2017/09/13/us/politics/mcconnell-federal-judges-trump.html.

[68] Carl Hulse, "Senate Custom Could Trip Up G.O.P.'s March to Reshape Courts," *The New York Times*, May 9, 2017, at https://www.nytimes.com/2017/05/09/us/politics/senators-blue-slip-veto-judicial-nominees-democrats-gop.html.

[69] Carl Hulse, "As G.O.P. Moves to Fill Courts, McConnell Takes Aim at an Enduring Hurdle," *The New York Times*, September 13, 2017, at https://www.nytimes.com/2017/09/13/us/politics/mcconnell-federal-judges-trump.html.

[70] See, for example, Todd Ruger, "Senators Could Lose 'Blue Slip' Input on Circuit Judges," *Roll Call*, September 13, 2017, at https://www.rollcall.com/news/politics/senators-blue-slip-judges.

little incentive to consult with the Senate and its members would be cut out of the pre-nomination process."[71]

The reinterpretation of Senate Rule XXII (discussed further below), combined with any future change in the Judiciary Committee's blue slip policy, could further lessen the likelihood of a President consulting in a meaningful way with home state Senators, particularly those not belonging to the President's political party.[72]

Additionally, if there is little incentive to consult with home state Senators, a President—of either party—may also be more likely to submit nominees who are considered by one side or the other as ideologically extreme, lacking in professional qualifications, or not widely supported by the legal community in his or her home state.

Increase in Number of Nominees Confirmed Without the Support of Home State Senators

Traditionally, if a committee chair allowed committee action to proceed on a nomination that did not have the support of one or both home state Senators—and the nomination was reported by the committee to the full Senate—there was the option available to those Senators (or others) to place a hold, which could lead leadership to delay or forgo bringing the nomination to the floor.[73] In effect, home state Senators could require cloture to be invoked on the nomination, by a three-fifths supermajority of the entire Senate, in order for an "up-or-down" vote to occur on the nomination.

Given, however, the reinterpretation of Senate Rule XXII in 2013 (and the continued applicability of that reinterpretation during the 115th Congress), the vote threshold by which cloture is invoked on U.S. circuit and district court nominations is now a simple majority of those Senators voting on a cloture motion (rather than a three-fifths supermajority of the Senate [that is, 60, if no more than one vacancy]).[74]

Consequently, home state Senators, of either party, might have fewer institutional tools at their disposal in stopping judicial nominations that they consider objectionable when such nominations are reported by the Judiciary Committee.[75] As a result, this could lead to a greater number of judicial nominees receiving life-time appointments without the support of one or both home state Senators.[76] Given that relatively few nominees have been confirmed without the support of one or

[71] Sollenberger, *Judicial Appointments*, p. 104.

[72] The blue slip process has, according to some accounts, traditionally provided the tool to encourage inter-branch consultation regarding judicial nominees. As one scholar notes, "with the backing of the committee chair, the blue slip can be a powerful tool that does much to encourage executive branch consultation with home state senators in the pre-nomination process which is why the enforcement of a negative blue slip usually hinges on whether such an action occurred." Sollenberger, *Judicial Appointments*, p. 102.

[73] For a discussion of the past use of holds by some Senators to block judicial nominations after nominations were reported by the Judiciary Committee, see Sollenberger, *The Blue Slip*, p. 139.

[74] For further discussion of the reinterpretation of Senate Rule XXII and lower federal court nominations, see CRS Report R43762, *The Appointment Process for U.S. Circuit and District Court Nominations: An Overview*, by Denis Steven Rutkus.

[75] This argument assumes that it would be easier for the Senate to invoke cloture on a nomination when the threshold is a simple majority of Senators voting on a cloture motion rather than a supermajority of the Senate.

[76] As discussed above, based on available information, there have been 3 nominees confirmed from 1979 to the present (out of over 2,000 nominees confirmed during the same period) who had not received two positive blue slips.

both of their home state Senators, this would represent a historically notable change in the confirmation process for U.S. circuit and district court nominees.

Increase in the Number of Judicial Nominees Confirmed by Party-Line or Near Party-Line Votes

A blue slip policy that diminishes or eliminates the role of home state Senators, particularly those not belonging to the President's political party, might increase—especially during periods of unified party control—the frequency by which a President's nominees are approved in the Senate by party-line or near party-line votes.

While partisanship has sometimes had a role in how Senators vote on a President's judicial nominees, the roll call votes taken to appoint individuals to federal judgeships could become reflexively more partisan—even for those nominees considered non-controversial—if home state Senators and their colleagues in the minority use the vote on a nomination to express their dissatisfaction with the process by which a nominee was selected (rather than as an assessment of the nominee's qualifications to be a judge, as has historically been most commonly the case).

It is also possible that the confirmation process could become lengthier if a Senator withholds unanimous consent[77] from Senate consideration of a U.S. circuit or district court nomination and, consequently, the nomination is subject to the cloture process.[78]

There are other potential consequences to changing the blue slip process that might be considered beneficial or desirable, particularly from the perspective of a President (regardless of his party) and his supporters in the Senate—these potential consequences are discussed below.

Nominations Processed More Quickly by the Judiciary Committee

If the role of home state Senators is restricted or eliminated by a change to the blue slip policy, the pre-nomination selection process, as well as committee action on circuit or district court nominations, might become more efficient or occur more quickly.

In the past, a blue slip policy that provided a home state Senator with the prerogative to block a nominee he or she considered objectionable, at least initially, might have lengthened the time from nomination to final action for some of a President's judicial nominees. This may have occurred even for nominees who were considered non-controversial and who were ultimately approved by the Senate.[79] Additionally, from the perspective of a President, regardless of his political party, his supporters in the Senate, and the nominees themselves, it might be desirable that the nomination is more quickly reported to the full Senate for consideration.

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[77] Customarily, most U.S. circuit and district court nominations have reached confirmation under the terms of unanimous consent agreements. On this procedural track, the Senate by unanimous consent not only takes up nominations for floor consideration, but also arranges for them to either receive up-or-down confirmation votes or be confirmed simply by unanimous consent. If a roll call vote is asked for, a simple majority of Senators voting, with a minimal quorum of 51 being present, is required to approve a nomination. The procedural track for moving forward without unanimous consent on a nomination customarily has involved the Senate voting on a cloture motion to bring floor debate on the nomination to a close. For further discussion, see CRS Report R43762, *The Appointment Process for U.S. Circuit and District Court Nominations: An Overview*, by Denis Steven Rutkus.

[78] For further discussion of this process, see CRS Report R43762, *The Appointment Process for U.S. Circuit and District Court Nominations: An Overview*, by Denis Steven Rutkus.

[79] For example, the time from nomination to confirmation for David W. McKeague, a circuit court nominee during the George W. Bush presidency, was 1309 days. Mr. McKeague was eventually confirmed by the Senate by a vote of 96-0.

Greater Number of a President's Judicial Nominees Confirmed

It might be the case that a blue slip policy that lessens or eliminates the role of home state Senators leads to a greater number of a President's judicial nominees being confirmed by the Senate. A single Senator, for example, might no longer be able to block Senate consideration of a nominee based on personal or political reasons.[80] Additionally, for any nominee who has the support of one home state Senator, but not the other, a nominee might nonetheless be confirmed by the Senate.

A President, as well as some Senators, might view a blue slip policy that gives a home state Senator the prerogative to block objectionable nominees as infringing on the President's constitutional power to select judges (or as an unacceptable tool used by Senators to extract unreasonable concessions from a President). Consequently, a policy that lessens or eliminates the role of home state Senators and leads to an increase in the number of a President's judicial nominees confirmed by the Senate, might be viewed by some observers as consistent with a President's constitutional prerogatives.

Fewer Long-Lasting Judicial Vacancies

Limiting the role of home state Senators in the blue slip process might decrease the number of long-lasting judicial vacancies. If a committee's blue slip policy provides a home state Senator with the ability to block a President's judicial nominees from his or her state, a disagreement between the President and one or both home state Senators can create a political and institutional stalemate that potentially lasts for years (including beyond a single presidency).[81] By contrast, if a home state Senator does not have the ability to block a nomination by either returning a negative blue slip or withholding a blue slip, it might be less likely that such stalemates arise in the first place—and, as a result, such long-lasting vacancies might become less common.

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[80] This occasionally occurs when there is a "split" delegation, i.e., one Democratic Senator and one Republican Senator. See, for example, "So what is this blue slip holding up the Cadish nomination?" *Las Vegas Sun*, April 20, 2012, at https://lasvegassun.com/blogs/ralstons-flash/2012/apr/20/so-what-blue-slip-holding-cadish-nomination.

[81] For example, as of this writing, a district court vacancy on the Eastern District of North Carolina has existed since December 31, 2005. This vacancy has not been filled, in part, because of a stalemate between different Presidents and home state Senators. See Jeff Tiberii, "Judicial Seat In NC's Eastern District Remains Open After More Than A Decade," *WUNC*, June 8, 2016, at http://wunc.org/post/judicial-seat-ncs-eastern-district-remains-open-after-more-decade#stream/0. See also Gary D. Robertson, "Farr Gets Another Crack at North Carolina Federal Judgeship," *Associated Press*, July 13, 2017, at https://www.usnews.com/news/best-states/north-carolina/articles/2017-07-13/farr-gets-another-crack-at-north-carolina-federal-judgeship.

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