

July 12, 2023



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The Honorable Richard Durbin
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Durbin:

At the beginning of President Biden's term, he made a commitment to nominate a diverse slate of judicial candidates, particularly from the civil rights community, who represent a wide range of experiential, racial, ethnic, and gender diversity to reshape the federal judiciary. The Congressional Black Caucus ("CBC"), a longstanding partner of the Senate Judiciary Committee, worked collaboratively with you and the Biden Administration to ensure the creation of such a judiciary by working with Senators to advance well qualified nominees. The CBC writes to commend your work in changing the face of the judiciary by confirming 136 judges, including Justice Ketanji Brown Jackson, the first Black woman to sit on the Supreme Court. Under your leadership, the Judiciary Committee confirmed a record number of diverse lawyers to the judiciary, like Nancy Abudu, who is the first Black woman to sit on the Eleventh Circuit overseeing Alabama, Florida, and Georgia. Without your diligent efforts, these historic appointments would not be possible.

However, the CBC would be remiss if we fail to acknowledge that Senator Chuck Grassley's decision to eliminate the Blue Slip custom for appellate judges made historic nominations like Nancy Abudu's possible. In 2017, when Senator Grassley was Chairman of the Judiciary Committee, he reasoned that Blue Slips should not operate as "single-senator vetoes" allowing Democrat Senators to singlehandedly prevent the appointment of nominees they did not support on ideological grounds. The Grassley policy cleared the way for the Trump Administration to stack the judiciary with the Senate confirming 234 federal judges, including three Supreme Court judges, during Trump's presidency.

Despite the exception for circuit court judges, the Blue Slip continues to operate as a "single-senator veto" undermining efforts to diversify the judiciary, protect critical civil rights and liberties, and reestablish fair courts with ideological balance, particularly in the South where reform is needed the most for our constituents and Black Americans. The continued misuse of the arcane Blue Slip as a tool for procedural obstruction and the failure to meaningfully engage CBC Members who have a jurisdictionally vested interest in nominations will undermine our joint endeavor to make a dramatic mark on the judiciary. **As such, the CBC opposes the Senate and Judiciary Committee's consideration of nominees to the Eastern and Western District of Louisiana until you act boldly, exercising your power as the Chairman of the Senate Judiciary Committee to institute the following reforms immediately:**

- Waive the Blue Slip custom for U.S. attorneys and U.S. marshals;
- Require the return of only one Blue Slip from a home-state Senator for each nominee;

- Require Senators who refuse to return a Blue Slip for a nominee to state their basis of objection with particularity (ex. state why the nominee is unqualified, etc.) as a measure of accountability and to ensure the opposition is nondiscriminatory; and
- Memorialize a process to engage CBC Members with a jurisdictionally vested interest in the nomination.

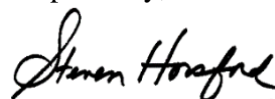
As you know, the Blue Slip custom was created by segregationist Senator James Eastland of Mississippi to prevent school integration after *Brown v. Board of Education*, maintain white supremacy, and entrench Jim Crow by blocking the nomination of judges who would respect *Brown* as precedent and enforce desegregation orders. With segregationist roots that can and have led to racist outcomes in our courts, the Blue Slip custom has prevented several highly qualified, demographically, and professionally diverse individuals from serving on the federal bench while Republican Senators continue to systematically abuse the custom to advance a radical agenda, arbitrarily changing the policy as it suited their party's political ends over the years.

Not only is the Blue Slip a fundamentally undemocratic vestige of Jim Crow, its use has a substantial effect on the Black community as decisions made by federal judges play a critical role in determining the scope of individual civil rights and liberties. **Judges matter, and the opinion of a few can impact the lives of many.** For example, an ideological Trump appointed district court judge in Texas used his power to invalidate the Food and Drug Administration's 23 year old approval of a widely used abortion pill, threatening access to life saving healthcare services for millions. 69 years after *Brown*, hundreds of school districts throughout the country remain under federal desegregation orders, brought by the Department of Justice, which district court judges preside over. Trump appointed appellate judges in Arkansas and Mississippi, reversed those orders which were designed to remedy school segregation and discrimination, entrenching racial inequities in education.

Currently, 32 Mississippi school districts are under desegregation orders, and Scott Colom, a civil rights attorney and former prosecutor from Columbus, Mississippi, nominated by the Biden Administration, could have overseen one of those cases, but his home-state senator, Senator Cindy Hyde-Smith, opposed his nomination on frivolous grounds, refusing to return a Blue Slip. Beyond important questions of constitutionality, the number of judicial vacancies in southern states also prevents the prompt and timely administration of justice in the federal courts, with delays in resolution most keenly felt by Black litigants, including criminal defendants languishing in prison and civil plaintiffs who cannot recover damages for discrimination, injuries, or abuses of corporate power. Courts matter and judges can serve as a counterweight to the increasingly partisan judiciary, protecting the rights of historically excluded communities and individuals, affirming democratic principles, and centering racial equity in each decision by applying the Constitutional principles of fairness and equality.

The CBC's influence on and participation in the nominations process is not new and remains unwavering. At this juncture, it is incumbent upon both the Senate Judiciary Committee and Biden Administration to prioritize the nomination of judges and law enforcement officers who demonstrate a commitment to fairness and equality, as enshrined in our Constitution, and respect for binding legal precedent as lives, quite literally, depend on it. We look forward to working with you and the Biden Administration to restrain the obstructionist use of the Blue Slip and continue changing the face of the federal judiciary.

Respectfully,



Steven Horsford
Chairman
Congressional Black Caucus

cc: Jeff Zients Stuart Delery
 Chief of Staff Chief Counsel
 White House Office of White House Counsel