

United States Senate

WASHINGTON, DC 20510

November 9, 2018

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley:

We write to respond to the letter you sent us Wednesday, November, 7, 2018 regarding the nomination of Paul Matey to the United States Court of Appeals for the Third Circuit. We wish to express our concerns and correct the record on certain assertions contained in your letter. Most importantly, we wish to refute the claim that “the White House attempted to engage in meaningful consultation” with us regarding the selection of Mr. Matey for the Third Circuit.

First, your characterization of the blue-slip policy is contrary to the historical practices of the Senate, including during your chairmanship of this Committee.

From 1979 until the start of the Trump Administration, the Senate confirmed just three judicial nominees—out of more than 2,000—without positive blue slips from both of their home-state Senators.¹ Even those three nominees, all from the 1980s, had the support of one home-state Senator.² During this time, the Senate *never* confirmed a judicial nominee over the objections of *both* home-state Senators.³

What’s more, during the Obama Administration, with Democratic and then Republican majorities in the Senate, the Chairs of this Committee *required* judicial nominees to receive positive blue slips from both of their home-state Senators.⁴ As Senator Hatch stated in 2014, for instance, “Weakening or eliminating the blue slip process would sweep aside the last remaining check on the president’s judicial appointment power. Anyone serious about the Senate’s constitutional ‘advice and consent’ role knows how disastrous such a move would be.”⁵ You insisted on this requirement during the first two years of your chairmanship, from 2015 to 2016.⁶ At the outset you praised how your predecessor, Senator Leahy, had “steadfastly honored the tradition” of the blue-slip

¹ BARRY J. McMILLION, CONG. RESEARCH SERV., R44975, THE BLUE SLIP PROCESS FOR U.S. CIRCUIT AND DISTRICT COURT NOMINATIONS: FREQUENTLY ASKED QUESTIONS 8 & n.47 (2017), <http://www.crs.gov/Reports/pdf/R44975>.

² *Id.* at 8.

³ *Id.*

⁴ *Id.* at 4.

⁵ Orrin Hatch, *Protect the Senate’s Important ‘Advice and Consent’ Role*, HILL (Apr. 11, 2014), <https://thehill.com/opinion/op-ed/203226-protect-the-senates-important-advice-and-consent-role>.

⁶ McMILLION, *supra* note 1, at 4.

process, and you stated that you “intend[ed] to honor it.”⁷ Based on this very policy, you refused to schedule hearings for several of President Obama’s nominees precisely because they lacked blue slips from both of their home-state Senators.⁸

Sadly, during the last two years this body has witnessed a degradation of this century-old tradition. Several of President Trump’s nominees have been pushed through over the objections of home-state Senators. Mr. Matey is apparently set to become the latest example.

Second, your letter stated that you believe that “the White House engaged in meaningful consultation with [us] regarding the Third Circuit vacancy in New Jersey.” This is an incorrect characterization of our conversations with the White House. In fact, the White House did not seek our input in any process leading to the selection of Mr. Matey for the Third Circuit vacancy. The White House informed us that President Trump intended to nominate Mr. Matey for this seat, and it was apparent to us that recommendations made after that conclusion was reached would be fruitless. Your letter stated that we “did not even meet with Mr. Matey during the course of a nearly one-year consultation period.” In fact, the Trump Administration never offered us a meeting with Mr. Matey. The Administration did not make an offer for such a meeting before his nomination in April 2018. The Administration did not do so during the period after his nomination. The Administration did not do so before a Judiciary Committee hearing on his nomination was scheduled. And it has not done so to date. We have been, and continue to be, open to meeting with Mr. Matey, should the Administration follow the standard process of contacting senators to arrange a meeting. While we welcome the chance to meet, at this point, a meeting with Mr. Matey cannot be reasonably considered to be anything more than a symbolic courtesy extended after the fact.

Finally, your letter does not recognize that Mr. Matey still has not received a rating from the American Bar Association’s Standing Committee on the Federal Judiciary. It has been nearly seven months since President Trump nominated Mr. Matey. No other federal judicial candidate nominated earlier than Mr. Matey is still awaiting an ABA rating, and many others nominated more recently have received their ratings.⁹ This nomination is one more piece in a troubling pattern in which this Committee has moved forward with a hearing even though the ABA has barely been able to complete its assessment of a nominee’s record.

In closing, we wish to reaffirm that we will not be returning our blue slips on Mr. Matey’s nomination. We believe him to be a highly partisan attorney who will not be an impartial jurist. The process that has led to next week’s scheduled hearing on this nomination represents the latest break from a century-old tradition in this body. In light of this information, we hope you now understand that the White House in fact did not meaningfully consult with us on Mr. Matey’s nomination to the Third Circuit.

⁷ Chuck Grassley, *Working To Secure Iowa’s Judicial Legacy*, DES MOINES REGISTER (Apr. 14, 2015), <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2015/04/15/working-secure-iowas-judicial-legacy/25801515>.

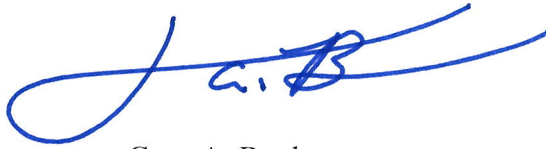
⁸ Press Release, Office of Senator Dianne Feinstein, Feinstein on Grassley Blue Slip Decision (Nov. 16, 2017), <https://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=5AD46958-977F-4A7C-A662-CB238539997D>.

⁹ Standing Comm. on the Fed. Judiciary, Am. Bar Ass’n, *Ratings of Article III and Article IV Judicial Nominees, 115th Congress*, <https://www.americanbar.org/content/dam/aba/uncategorized/GAO/Web%20rating%20Chart%20Trump%20115.pdf> (last updated Oct. 23, 2018).

Sincerely,



Robert Menendez
United States Senator



Cory A. Booker
United States Senator

CC: Dianne Feinstein
Ranking Member, Committee on the Judiciary, United States Senate