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November 16, 2017

The Honorable Chuck Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Grassley,

We write today to urge you to preserve the Senate's constitutional role to provide advice and consent on judicial nominations and uphold the Judiciary Committee's longstanding "blue slip" policy, which requires the approval of home-state Senators before the Committee considers a nominee from their state. This is the same policy that was strictly enforced, at the request of Senate Republicans, throughout President Obama's eight years in office. To weaken it now – and remove the last meaningful check on President Trump's power to unilaterally pack the judiciary – would further politicize the courts, erode judicial diversity, and undermine public confidence in the judiciary's ability to provide fair and impartial justice.

For 100 years, blue slips have been a vital part of the Senate's shared constitutional responsibility to appoint federal judges. According to the Congressional Research Service,¹ only three judges have ever been confirmed over the objection of a home-state Senator (the last was in 1989 when President George H.W. Bush appointed a district judge in California over the objection of a Democratic Senator), and no judge has ever been confirmed over the objections of both home-state Senators. During the entirety of President Obama's tenure, including his last two years while you served as Judiciary Committee Chairman, not a single nominee received a hearing without two favorable blue slips.

Indeed, Senate Republicans were staunch defenders of blue slips throughout the Obama Administration. In 2009, the full Republican Caucus signed a letter urging President Obama to include them in the judicial selection process and stated their expectation that, because of "the profound impact that life-tenured federal judges can have in our society," the "Committee's practice of observing senatorial courtesy" will be "observed, even-handedly and regardless of party affiliation."² In 2014,

¹ CRS Report for Congress, *The History of the Blue Slip in the Senate Committee on the Judiciary, 1917-Present* (Oct. 22, 2013), <https://fas.org/sgp/crs/misc/RL32013.pdf>.

² Letter from All Senate Republicans to President Barack H. Obama (March 2, 2009), <https://www.republican.senate.gov/public/index.cfm/blog?ID=3C522434-76E5-448E-9EAD-1EC214B881AC>.

Republican Senator Orrin Hatch, a current Member of the Judiciary Committee, wrote that weakening or eliminating the “blue slip veto” would be “disastrous” and “ultimately produce a more politicized judiciary.”³

Your predecessor, Democratic Senator Patrick Leahy, strictly honored these requests. This principled approach was not without consequence. Republican Senators used blue slips to block 18 Obama nominees. Of those nominees, 12 were people of color and only one was a white male. They included nominees who would have added historic diversity to the federal bench. Judge Abdul Kallon, for example, would have been the first African American from Alabama to serve on the Eleventh Circuit. Justice Myra Selby would have been the first African American from Indiana to serve on the Seventh Circuit. Rebecca Haywood would have been the first African-American woman from any state to serve on the Third Circuit. All three were blocked by blue slips, and all three have since been replaced by white nominees. Enhancing the power of President Trump to unilaterally appoint judges will only exacerbate the dearth of diversity in the judiciary.

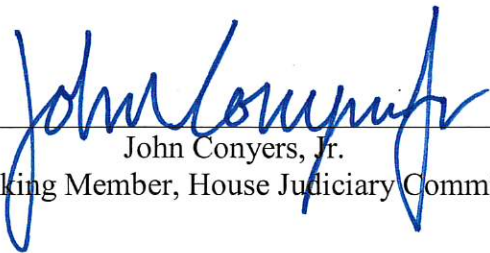
Given this history, dissolving blue slips now would be nothing more than a raw political power play, done solely to make it easier for President Trump to politicize the courts. There can be no credible claim that blue slips have created a “bottleneck” of judicial nominees or that Senate Democrats are obstructing judges. At this point, President Trump’s judicial appointments outpace President Obama’s, and the Judiciary Committee has already held confirmation hearings for four circuit court nominees from states with a Democratic Senator.

Last Congress, with a Democratic President in the White House, you made no exceptions to the blue slip policy. You lauded the process as a “tradition . . . designed to encourage outstanding nominees and consensus between the White House and home-state senators,” and you pledged to “honor it.”⁴ We ask that you keep that pledge now for the sake of our independent courts and the rule of law.

Sincerely,



Cedric L. Richmond
Chair, Congressional Black Caucus



John Conyers, Jr.
Ranking Member, House Judiciary Committee



Eleanor Holmes Norton
Chair, CBC Judicial Nominations Working Group

³ Sen. Orrin Hatch, *Protect the Senate’s Importance ‘Advice and Consent’ Role*, THE HILL (Apr. 11, 2014), <http://thehill.com/opinion/op-ed/203226-protect-the-senates-important-advice-and-consent-role>.

⁴ Sen. Chuck Grassley, *Working to Secure Iowa’s Judiciary*, DES MOINES REGISTER (Apr. 14, 2015), <http://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2015/04/15/working-secure-iowas-judicial-legacy/25801515/>.