

JUDICIAL NOMINATIONS: A BROKEN PROCESS

Immediately upon assuming office, President Trump began nominating individuals for judicial vacancies who would, in the words of his advisor Leonard Leo, make the courts “unrecognizable.” He started by filling the stolen Supreme Court seat which was held open by Senate Republicans after they refused to consider President Obama’s nominee, Chief Judge Merrick Garland. He quickly nominated and the Senate confirmed Justice Neil Gorsuch. But the impact the President has had on the courts extends far beyond the Supreme Court. Indeed, Senate Republicans held open more than 100 lower court vacancies that the President is now filling.

Since 2017, the Senate Majority has confirmed more nominees to lifetime appointments, than during the first two years of President Obama’s Administration. In order to reach such break-neck speed, the White House and Senate have broken the very process used to identify and confirm well-qualified nominees.

White House Refusal to Consult with Senators

According to the Constitution, the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint” judges. Because the Senate plays such a critical role in the process, Presidents consult with and seek agreement from Senators who represent the states where a potential nominee would serve. In fact, most Senators have a formal process by which they select potential nominees for consideration by the President.

Since President Trump took office, he has repeatedly failed to respect Senators’ advice and consent responsibilities and the established processes by which they make recommendations. For example, President Trump nominated [Ryan Bounds](#) to the U.S. Court of Appeals for the Ninth Circuit, located in Oregon, without prior consultation with Senators Merkley and Wyden (D-Or.). He also nominated [Michael Brennan](#) to the U.S. Court of Appeals for the Seventh Circuit, located in Wisconsin, over objection by Senator Baldwin (D-Wis.) whose process was ignored. Senator Kennedy (R-La.) similarly noted that the White House was adamant in proceeding with the nomination of [Kyle Duncan](#) to the U.S. Court of Appeals for the Fifth Circuit, located in Louisiana, despite his opposition during negotiations. In another instance of ignoring a home-state Senator, the President nominated and the Senate confirmed [David Porter](#) to the U.S. Court of Appeals for the Third Circuit, located in Pennsylvania, despite longstanding opposition from Senator Casey (D-Pa.).

Senate Judiciary Committee Chair Refuses to Honor Blue Slips

In addition to providing pre-nomination consultation, for decades home-state Senators have submitted a physical blue piece of paper to the Senate Judiciary Committee signaling support for or opposition to nominees for judicial vacancies in their states. The long-standing tradition of the Senate Judiciary Committee is that the Chair would only proceed with a confirmation hearing for those nominees who receive both of their home-state Senators’ support.

However, the Senate Judiciary Committee Chair, Senator Grassley (R-Iowa), has scheduled hearings for multiple nominees over objections of home-state Senators. Having ignored senators concerns and authority, Senator Grassley is now the final arbiter of how and when the blue slip is respected.

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Ratings by the ABA Standing Committee on the Federal Judiciary Ignored

Since 1989, all but one Administration provided the American Bar Association's Standing Committee on the Federal Judiciary an opportunity to independently review of potential nominees' professional qualifications in terms of integrity, competence, and temperament, simultaneous to the White House's review. Largely because of this, only four nominees have received unanimous Not Qualified ratings in the Standing Committee's history before President Trump took office.

The Trump Administration refuses to follow this tradition. In the President's first year, three nominees received unanimously Not Qualified ratings, including [L. Steven Grasz](#), who the Senate confirmed to serve in the U.S. Court of Appeals for the Eighth Circuit. Over a dozen additional nominees have received partially Not Qualified ratings from the Standing Committee.

Lack of Thorough Vetting

There is significant evidence that the Trump Administration is favoring speed of nominations over thorough vetting of nominees. For example, Brett Talley, nominated to serve in the U.S. District Court for the Middle District of Alabama, did not include in his questionnaire for the Senate Judiciary Committee his wife's employment in the Office of White House Counsel or his extensive blogging arguing the purity of the KKK's founding. Embarrassed by this, the Senate urged the White House to reconsider this nomination and [his nomination is not moving forward](#).

Matthew Petersen, nominated to serve in the U.S. District Court for the District of D.C., also displayed his appalling lack of legal experience and knowledge during his Senate Judiciary Committee hearing. [His nomination is also not moving forward](#). These examples demonstrate how the White House and Senate Majority are willing to cut corners to promote less qualified and extreme ideologues.

Packing Hearings to Limit Inquiry

To speed up confirmation of the President's judicial nominees, Senator Grassley routinely packs hearings with multiple Circuit Court nominees, providing limited and insufficient time for Committee members to question nominees. Since 2017, Senator Grassley has already scheduled seven hearings that included multiple U.S. Circuit Court of Appeals nominees. By comparison, this only occurred three times in the entirety of President Obama's tenure.

To learn more, visit judicialnominations.org.