

AFJ NOMINEE REPORT

PAUL MATEY



U.S. Court of Appeals for the Third Circuit

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INTRODUCTION

On April 12, 2018, President [Trump nominated](#) Paul B. Matey to the U.S. Court of Appeals for the Third Circuit to fill the seat of Judge [Julio M. Fuentes](#), who assumed senior status in 2016.

New Jersey's senators, Cory Booker and Bob Menendez, were not meaningfully consulted and have not returned their blue slips for Matey's nomination. Consistent with Senate practice for nearly a century, without a blue slip from either home-state senator, the Judiciary Committee should not proceed with a nomination. The Congressional Research Service has found no known instance in which a nominee has *ever* been confirmed over the objections of both home-state senators.¹ The Senate must not allow Matey to be the first.

As Senator Orrin Hatch [said](#) in 2014, “[w]eakening 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 ‘advice and consent’ role knows how disastrous such a move would be.”

BIOGRAPHY

Matey received his B.A. from the University of Scranton in 1993 and his J.D. from Seton Hall University Law School in 2001. After law school, he clerked for Judge John C. Lifland, a federal judge in New Jersey, and Judge Robert E. Cowen on the U.S. Court of Appeals for the Third Circuit. While a law clerk for Judge Cowen, Matey wrote a law review article – *Abundant Media, Viewer Scrutiny: A Marketplace Alternative to First Amendment Broadcast Rights and the Regulation of Televised Presidential Debates* – advocating that the FCC depart from the historical “public interest” standard in favor of a competition-focused approach in regulating broadcast networks.²

Matey was an associate at Kellog, Hansen, Todd, Figel & Frederick PLLC in Washington, D.C. and then served as an assistant U.S. attorney in New Jersey. Matey then worked for New Jersey Governor Chris Christie for five years in a variety of roles, including as assistant counsel, senior counsel, and deputy chief counsel. He then worked at University Hospital in Newark, most recently as senior vice president. He is currently a lawyer at Lowenstein Sandler LLP in New Jersey.³

Like many Trump nominees, Matey is a member of the Federalist Society. He has been a member for 17 years and has served the organization in several roles, including as a member of the State Courts Project and as the New Jersey Chapter leader. Matey has also been a member of the Republican National Lawyers Association for over 13 years.

Despite his active involvement in the Federalist Society and the Republican National Lawyers Association, Matey has refrained from committing any time to pro bono or volunteer activities. In his Senate Judiciary Questionnaire, Matey lists only one pro bono case he worked on as a law student over 17 years ago.⁴ Aside from this one case, and listing his membership in the Knights of Columbus, Matey lists zero examples of volunteer activities or other kinds of community service.

NOMINATION PROCESS

Matey, who has been described as a “[protégé](#)” of Christie, explained how Christie recommended him to the White House. Conspicuously absent from Matey’s description of his selection process is any outreach or

negotiation with New Jersey’s Democratic senators:

On or about February 17, 2017, I was contacted by Governor Chris Christie, who advised that he had recommended me as a possible candidate for judicial service to White House [sic]. Since February 19, 2017, I have been in contact with officials from the White House Counsel’s Office. On February 23, 2017, I was interviewed by attorneys from the White House Counsel’s Office and the Office of Legal Policy at the Department of Justice. On April 12, 2018, the President submitted my nomination to the Senate.⁵

This decision by the White House to meaningfully consult with one former Republican governor, instead of the two sitting home-state senators, on this Court of Appeals nomination subverts basic Senate norms.

CONSUMER RIGHTS

Matey’s record raises serious concerns as to whether he would be a judge who favors corporations and special interests at the expense of consumers and workers.

Matey published two articles with now Supreme Court Justice Neil Gorsuch regarding securities fraud class actions. In one [article](#), Matey and Gorsuch criticize what the authors consider “frivolous securities fraud class actions” and argue that “[t]oday, economic incentives unique to securities litigation encourage class action lawyers to bring meritless claims and prompt corporate defendants to pay dearly to settle such claims.”⁶ Instead of siding with consumers who have been harmed, Matey and Gorsuch express concern solely for corporations. They argue that the class action rules are too lenient for consumers and when “[f]aced with such daunting prospects, businesses are frequently forced to comply with all but the most outrageous of settlement demands.”⁷

In another article written by Matey and Gorsuch, the authors proposed that plaintiffs should bear a higher burden of establishing loss causation in security fraud claims. The article focuses on the case of [Dura Pharmaceuticals v. Broudo](#), 544 U.S. 336 (2005), where shareholders sued a pharmaceutical company for a sharp decrease in share value because of misrepresentations by the company. Matey and Gorsuch explained their view that the Supreme Court had “an opportunity to curb frivolous fraud claims merely by enforcing the

simple and straightforward causation requirement.”⁸ The authors launched into an attack on plaintiffs’ lawyers for using such cases as vehicles for “free ride[s] to fast riches.” They concluded that the cases involve “frivolous claims . . . [that] impose[] an enormous toll on the economy, affecting virtually every public corporation in America at one time or another and costing businesses billions of dollars in settlements every year.”⁹

In addition to his problematic stance on consumer protections, Matey’s tenure as legal counsel for University Hospital raises concerns regarding his record and concern for consumer safety. When Matey was serving as the hospital’s senior vice president, a nationwide investigation grading hospital safety raised severe concerns about University Hospital’s patient safety standards: “Out of roughly 2,500 hospitals ranked nationally in the report, only 22 received an ‘F.’ University Hospital in Newark is one of them.”¹⁰ The director of the group [investigating](#) explained the “F” rating was due to numerous factors, including that “they had a very high rate of foreign objects left in after surgery.”¹¹ University Hospital also “had a high rate of some of the infections that we look at, particularly central line associated bloodstream infections. These are infections that patients can acquire in a hospital that can very

often be fatal if they're not caught and treated immediately."¹²

BRIDGEGATE

After joining the governor's office in 2010, Matey rose quickly through the ranks in Christie's administration and became one of the governor's top lawyers.

Matey described how in his role as Christie's deputy chief counsel he was "the second most senior attorney in the Governor's Office."¹³ Significantly, Matey served as the deputy chief counsel [during](#) Christie's "[Bridgegate](#)" scandal, in which Christie and several of his associates were [accused](#) of purposefully closing lanes on a busy bridge in order to cause traffic jams that would harm a local Democratic mayor. During the course of the investigation, Matey was one of the members of Christie's staff who was [interviewed](#) by a law firm conducting the investigation. Matey was also [involved](#) in "ferret[ing] out" what charges were being considered around the scandal. Matey seems to have [interviewed](#) other members of Christie's staff in efforts to find out who played a role in the lane closures. While the law firm's investigation cleared Christie and much of his staff of any wrongdoing, many people have expressed [concerns](#) regarding the

legitimacy of the investigation because several former Christie associates have been criminally [sentenced](#) for fraud as a result of their involvement in Bridgegate.

The Senate should carefully examine Matey's ties to and any involvement in the Bridgegate scandal, especially considering the role that Christie played in Matey's nomination process.

CONCLUSION

Given the lack of meaningful consultation with home-state senators and no returned blue slips, AFJ opposes Matey's confirmation.

ENDNOTES

- 1 Senate Report of the Senate Judiciary Committee Minority Members Review of Republican Efforts to Stack Federal Courts, 115th Cong., 25 (May 10, 2018), available at https://www.feinstein.senate.gov/public/_cache/files/b/7/b783e2d9-38be-4798-a7fb-e89ff11fd47c/A233636E649CB9CD98B0555FB3D18C88.judiciary-dems-final-judges-report-5.10.18-.pdf.
- 2 Paul B. Matey, *Abundant Media, Viewer Scarcity: A Marketplace Alternative to First Amendment Broadcast Rights and the Regulation of Televised Presidential Debates*, 36 Ind. L. Rev. 101 (2003).
- 3 Sen. Comm. on the Judiciary, 115th Cong., Paul Brian Matey Questionnaire for Judicial Nominees, 2, available at <https://www.judiciary.senate.gov/imo/media/doc/Matey%20SJO.pdf>.
- 4 *Id.* at 26.
- 5 *Id.* at 27.
- 6 Paul B. Matey and Neil M. Gorsuch, *Settlements in Securities Fraud Class Actions: Improving Investor Protection*, 2, 32 (Wash. Legal Found, Working Paper No. 128, 2005).
- 7 *Id.* at 32.
- 8 Neil M. Gorsuch & Paul B. Matey, *No Loss, No Gain*, Legal Times, Jan. 31, 2005.
- 9 *Id.*
- 10 Leah Mishkin, *NJ Hospitals Slip in Safety Rankings*, NJTV News, Apr. 26, 2018, <https://www.njtvonline.org/news/video/nj-hospitals-slip-safety-rankings>.
- 11 *Id.*
- 12 *Id.*
- 13 Sen. Comm. on the Judiciary, 115th Cong., Paul Brian Matey Questionnaire for Judicial Nominees, 13.