

Federal Judicial Nominations and the Storied History of the Senate's Blue Slip Tradition

What is the Blue Slip?

The Senate's **blue slip policy** allows home-state senators to signal their approval or disapproval of a judicial nominee appointed to a seat in their state by filling out and returning a blue slip of paper to the Senate Judiciary Committee. The SJC practice started as an informal courtesy to incentivize the President to collaborate with home-state senators during the nominations process.

In modern day, it has morphed into a political tool of obstruction, asymmetrically used by Republicans to arbitrarily block Democratic administrations' nominees and rob the federal judiciary of highly qualified, diverse, and fair-minded district court judges in certain states. It can even be used preemptively, blocking potential nominees before they are even publicly nominated and thereby robbing the public of transparency over how they are being weaponized.

The blue slip process is not codified in the Senate Judiciary Committee's rules and is instead a policy set by the Chairperson of the SJC. Republicans did away with consideration of the blue slips for circuit court nominees in 2017 to fast-track the Trump Administration's extreme nominees. As of the 117th Congress, the SJC has not allowed any district court nominees to advance if even one home-state senator signals their opposition to the candidate. The result? Certain states have far more unfilled district court vacancies because the White House aims to nominate candidates who have home-state support. Republican senators' obstruction, via the blue slip process, has made it harder for residents in these states to access justice in a timely manner.

Racist History of the Blue Slip

The modern obstructionist usage of the blue slip has racist roots, in which segregationist lawmakers withheld it to undermine progress made in guaranteeing basic civil rights for Black Americans. More recently, obstructionists have also used the blue slip to block nominees with diverse demographic and professional backgrounds.

In 1956, the blue slip process became an obstructionist tool for racist lawmakers to prevent public school integration after the Supreme Court's 1954 ruling in *Brown v. Board of Education*. Mississippi Senator James O. Eastland, a staunch segregationist, became the chair of the SJC and mandated that any judicial nominee must receive two positive blue slips before their nomination could be considered by the committee.

Thus, a single home-state Senator could stop all committee action on a judicial nominee by either returning a negative blue slip or failing to return a blue slip to the committee at all—a practice that has continued, on-and-off, to this day. While Eastland never explicitly explained why he instituted a strict blue-slip policy, since the pace of integration was left up to district court judges' discretion, segregationist leaders now had a powerful tool to slow this progress. Over the years the blue slip process has gone back and forth from a courtesy to a requirement for a committee vote, depending often on the party in power.

In 2018, SJC Chairman Grassley **scrapped** the blue slip policy as it applied to circuit court nominees, **claiming** that “a negative or unreturned blue slip won’t necessarily prevent a circuit court nominee from receiving a hearing, unless the White House failed to consult with home-state senator. During this period, the Senate confirmed at least a dozen of the Trump administration’s circuit court nominees who did not receive at least one home state senator’s positive blue slip.

During the Biden Administration, SJC Chairman Durbin has **followed** the precedent set by Republicans and applied the blue slip tradition to only district court nominees, allowing circuit court nominees to advance without both home-state senators’ support.

Elimination of the Blue Slip

Throughout history, the blue slip has since been used to block demographically and professionally diverse nominees. Based on this problematic history, the blue slip practice is ripe for continued abuse.

In the interest of justice, the Senate Judiciary Committee should eliminate blue slips once and for all to ensure that the process is fair and that federal courts vacancies are filled with highly qualified, fair-minded jurists whose backgrounds reflect the country they serve.