

# **One Nation, Two Systems of Justice**

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**Why It's Time to Reform the Blue Slip Practice**



# Introduction

America cannot have two systems of justice. Our Constitution and civil rights laws are supposed to protect *everyone*. But increasingly, in red states, federal courts don't protect people's rights.

An old Senate tradition lets senators have some influence over who is selected to be federal district court judges in their states. It is called the "blue slip" tradition, because the chair of the Judiciary Committee gives home-state senators a blue slip of paper to say whether they support a nominee in their state.

But Republicans are abusing this tradition to unilaterally block the Senate from even considering judicial nominees in their states under a Democratic president. In so doing, they are blocking the appointment of federal judges who will protect the rights of all people in their states, not just wealthy people, corporate interests, and people with a particular subset of conservative Christian beliefs who support the Republican Party.

Increasingly, for people living in states with Republican senators, the judicial system is rigged. This is enormously important, because when we have fair courts:

- abusive law enforcement officials are held accountable for unjustified violence;
- our right to vote is protected from attack;
- laws protecting consumers and working people are enforced;
- people have better access to legally protected health care, including abortion care;
- we can better protect our communities from dangerous toxins and more effectively address climate change;
- and more.

The Far Right has long recognized that to undermine our Constitution and civil rights laws – to impose their dangerous political, social, and economic agenda on the rest of us – they must control the courts. That is why they:

- illegitimately prevented President Obama from replacing the late Justice Antonin Scalia;
- engaged in a deeply corrupt process to get Brett Kavanaugh confirmed;
- jammed Amy Coney Barrett's confirmation through even as the American people were already voting to reject Trump's bid for reelection.

But those were just their most headline-grabbing actions. They have done so much more, with much less public attention, over the years. And now they are abusing the blue slip tradition to keep federal courts in their states under the control of right-wing judges. Without fair judges, there is no justice.

In the past, People For the American Way has strongly supported the current blue slip tradition. But the repeated Republican abuses carried out during the Obama and Trump years to stack the courts with far-right extremists requires a vigorous response. To adhere to old positions in disregard of new circumstances makes no sense, especially when the cost is so high.

## Part I: Blue Slips Are Being Abused

When the president nominates someone to a federal district court, the chair of the Judiciary Committee asks the home state senators in writing if they support the nominee. This is done via a blue slip of paper, hence the name “blue slip.” This isn’t a Senate or committee rule, but simply a tradition the chair chooses to exercise.

Under current practice, the chair does not hold a hearing on a district court nominee unless he or she is supported by both home state senators. (As discussed in Part II below, this is a significant departure from how blue slips were originally intended and used.)

This veto power gives presidents an incentive to consult with home state senators before making a nomination. And it gives senators who aren’t of the president’s party a level of influence over the nomination that they might not have otherwise. Unfortunately, it only works when both parties are committed to fair courts and work together in good faith.

### Blue Slips in the Biden Era

At the end of President Biden’s second year, the nation justly celebrated the [huge strides made in restoring our federal courts](#), with the confirmation of 97 lifetime judges. But there was a gaping hole in that progress: Almost all of the confirmations had been for vacancies in states with two Democratic senators. Only one confirmed district judge was from a red state (Iowa). Eight were from the purple states of Pennsylvania and Ohio, where retiring Sens. Pat Toomey and Rob Portman worked with their Democratic colleagues and the White House to identify nominees.



President Joe Biden

Of the 33 currently pending district court nominees, only four come from red states: Indiana, Idaho, Kansas, and Mississippi. This is not because there are no vacancies in red states. Quite the opposite is true. As of March 2, 2023, there are 58 district court vacancies without nominees. Two-thirds of them (37 of 58) are in states with Republican senators.

In most cases, senators have had plenty of time to work in good faith with the White House to fill these vacancies. Judges planning to step down often give notice many months in advance, sometimes even a year. They do this to give senators and the president time to have their replacement ready to serve as soon as possible once the judge steps down.

Most of the nation’s most longstanding district court vacancies without nominees are in red states. In January 2021, the month Biden took office, district court judges in Alabama, Arkansas, Florida, Louisiana, South Dakota, and Texas had either taken senior status or announced their intention to do so. Later in 2021, similar announcements were made for vacancies in Alaska, Oklahoma, Utah, and Wyoming. Yet as of March 2, 2023, there have still been no nominations for any district courts in these red states.

## Blue Slips in the Trump Era

Democrats in the Trump era did exactly the opposite of what Republicans are doing now in the Biden era. When Donald Trump was president, Democratic senators generally worked with the White House on district court nominees. It was often very difficult, but there was agreement on nominees to fill the overwhelming majority of district court vacancies during the Trump era. According to Judiciary Committee Chair Durbin, [Democrats submitted 130 blue slips for 84 Trump district court nominees](#). In stark contrast, there have been a mere 12 blue slips from Republican senators for President Biden's district court nominees.



Former President Donald Trump

Since the Democrats were behaving constructively, they made sure vacancies in their states were filled. And they were generally not filled by the kinds of extremists that Trump was able to appoint to circuit court positions in blue states. By the end of Trump's fourth year, he had gotten more district court judges confirmed than any other president at that same point in his term since Jimmy Carter, 40 years earlier.

## Blue Slips in the Obama Era

There were also numerous vacancies in red states where President Obama never made a nomination, due to the inability to reach an agreement with Republican senators. By the end of his presidency in January 2017, these included:

- Alabama: five vacancies, two of them dating back to 2013
- Kentucky: two vacancies, dating back to 2013 and 2014
- Texas: six vacancies, including one dating back to 2011

President Obama also made a number of district court nominations that were opposed by Republican home state senators – sometimes after the senators themselves had recommended the nominee. Because of the strict blue slip policy, the Judiciary Committee never held hearings on them.

Sometimes, the senators gave no reasons for their opposition. Other times, they gave reasons that were ludicrous or obviously false. The absence of a hearing left nominees unable to explain their record or address any concerns the senators might have had. And the senators were able to block nominations without ever having to stand up publicly and defend their position. Among the highly qualified Obama nominees who were blocked that way were:

- Elissa Cadish of Nevada, whose nomination was [wrecked by Republican Dean Heller](#) because she correctly described caselaw on the Second Amendment before the Supreme Court changed it;

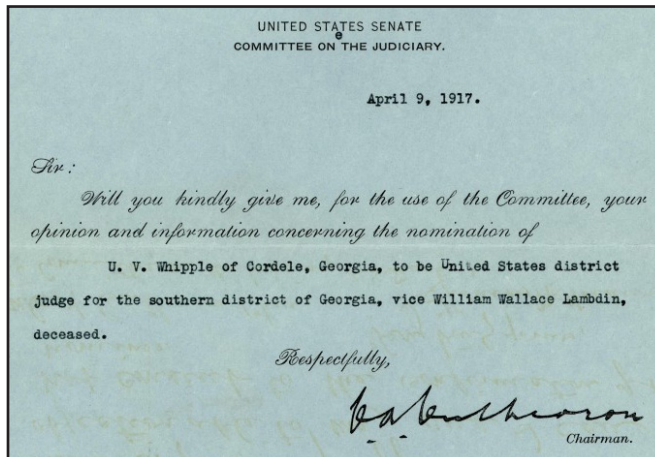
- William Thomas of Florida, who had no way to respond while [Marco Rubio shamefully distorted his record](#) in the media; and
- North Carolinians Jennifer May Parker and Patricia Timmons Goodson, both blocked from being the Eastern District’s first Black judge by Richard Burr [for reasons he never had to explain](#). In fact, Burr eventually [admitted](#) that he would block anyone nominated by President Obama to fill that vacancy.

These and similarly blocked Obama district court nominees are listed in [Appendix A](#), attached.

## Part II: Historically, Blue Slips Have Not Been an Absolute Veto

According to the Congressional Research Service, the first time a Judiciary Committee chair solicited the opinions of a judicial nominee’s home state senators was in 1917.<sup>1</sup> This formalized request for input has never been required by a Senate or Judiciary Committee rule. Instead, it has simply been a voluntary practice of the chairs, who decide for themselves what importance to give the blue slips. And that importance has shifted substantially over the years.

**1917-1955:** In its first few decades, committee chairs used the blue slip to solicit the senators’ opinions, but not necessarily to block the committee from considering the nominee. That is clear from the very first known example of a senator returning a blue slip opposing a nominee.



A blue slip from 1917 regarding Ulysses V. Whipple

When Ulysses V. Whipple was nominated for the Southern District of Georgia, in 1917, one of the Georgia senators returned a negative blue slip opposing him. Committee Chair Charles Culberson then held a hearing and a committee vote on the nomination, and the full Senate considered the nomination. All senators were free to consider the home state senator’s opposition when casting their votes.

Home state senators understood that the blue slip gave them an opportunity to discuss the nomination with committee members.

For instance, negative blue slips from the 1950s have been found in which the home state senators specifically wrote that they wanted to appear before the Judiciary Committee to explain their opposition. In those cases, the chair held hearings and let the committee vote on the nominations. (For more details than what is below, see [Appendix B](#), attached.)

<sup>1</sup> For detailed history of the blue slip practice, see “The History of the Blue Slip in the Senate Committee on the Judiciary, 1917-Present,” Congressional Research Service Report RL32013 (2003); “Role of Home State Senators in the Selection of Lower Federal Court Judges,” Congressional Research Service Report RL34405 (2008); and “Evolution of the Senate’s Role in the Nomination and Confirmation Process: A Brief History,” Congressional Research Service Report RL31948 (2005).

**Sen. Eastland's Segregationist Policy:** Things changed when notorious segregationist James Eastland of Mississippi led the committee, which he ran from 1956-1978. He chose not to let the committee process any judicial nomination without the affirmative support of both home state senators. In the wake of *Brown v. Board of Education* and other civil rights advances, Eastland's policy gave immense power to segregationist senators in Southern states to prevent the appointment of judges who would take civil rights seriously.

**Sen. Kennedy's Reform:** When Eastland retired after the 1978 elections, new committee chair Edward Kennedy reformed the blue slip practice. He announced that home state senators would no longer have an absolute veto. Kennedy made clear that his goal was to let "the Federal courts ... become more representative of the people of this Nation." This enhanced President Carter's efforts to integrate the federal bench. Over the objection of segregationist Sen. Harry Byrd of Virginia, Kennedy held a hearing for James Sheffield to be that state's first Black federal judge since Reconstruction. Byrd had refused the White House's request that he recommend a Black individual for a judgeship.<sup>2</sup>

**Strom Thurmond and the Reagan Era:** Beginning in 1981, Republicans held both the Senate and the White House for the first time in decades. Judiciary Committee Chair Strom Thurmond generally let one senator's objection block committee consideration of a nominee, but he made exceptions. In 1983, the Senate confirmed John Vukasin to be a district judge in California over the objection of home state Sen. Alan Cranston. And in 1985, Thurmond held a hearing on Hawaii nominee Albert Moon over the objection of both Hawaii senators.

**Joe Biden as Chair (1987-1994):** When Joe Biden chaired the Judiciary Committee, he continued the tradition of not letting senators exercise an absolute veto over district judges in their state. In 1989, the committee held a hearing and a vote on Vaughn Walker, who was opposed by California's Alan Cranston. Concerns about Walker's record were thoroughly debated in public hearings in both 1988 (when Reagan nominated him) and in 1989 (when President Bush renominated him). Walker was confirmed by the full Senate later that year.

**1995-the Present:** Republicans won the Senate in 1994 during the Clinton presidency, and Chair Orrin Hatch adopted the Eastland policy of giving home state senators an absolute veto over all judicial nominees in their states.



Senator Joe Biden in 1987

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2 "Senator Byrd of Virginia to Fight Carter on Black Named as Judge," *New York Times*, April 10, 1980.

He changed his practice when George W. Bush was president, and he allowed some circuit court nominees to be processed over Democratic senators' home state opposition. But for district court nominees, he still required both senators to approve. Similarly, Republican chair Chuck Grassley let blue slips veto Obama circuit court nominees but not Trump circuit court nominees. But for district court nominees, all chairs since the 1990s have given home state senators veto power.

## Part III: Abuse of Blue Slips Has Harmed Access to Justice, Especially in Red States

Federal district courts are crucial to providing access to justice for Americans. People enter the federal court system through the district courts. Around [400,000](#) cases are filed in district courts each year, compared to some [50,000](#) in the appeals courts and less than a hundred heard by the Supreme Court. About [80%](#) of all federal cases are heard in district court, and most end there.

Bad district judges can cause serious harm to justice, extending far beyond their individual courtrooms, as shown by the worst of Trump's district judges. This is particularly true given the ability of far-right advocates to "[judge-shop](#)" and get cases with national effects in front of particular district judges, especially judges appointed under Trump. For example:



Aileen M. Cannon, US District Judge, Southern District of Florida

- Even though the case about classified documents kept by Donald Trump was pending in a different district court, Trump lawyers managed to get a complaint he filed before a hand-picked Trump judge, Aileen Cannon in Florida. Since she is the only judge at the Fort Pierce Division of the Southern District, they knew she would automatically be assigned the case if they filed it there. As they anticipated, she consistently ruled for Trump and stopped the Justice Department from continuing much of its investigation of Trump misconduct. Although the court of appeals ultimately [reversed and repudiated](#) Cannon, her rulings harmed justice by delaying DOJ for months.
- Trump-appointed Texas district judge [Matthew Kacsmaryk](#) has issued a number of rulings with nationwide impact that have seriously harmed people's rights. He is the only judge stationed in Amarillo, so far-right activists file there in order to guarantee that he will get their case. Previous Kacsmaryk orders, some of which higher courts continue to review, have forced the continuation of harsh Trump immigration policies, significantly limited access to federally funded birth control, and ruled that health care providers can discriminate against LGBTQ+ people despite federal anti-bias provisions. He is expected to rule shortly on a dangerous far-right lawsuit that calls for judicial [repeal of the FDA's approval](#) more than twenty years ago of an important abortion pill. This would devastate reproductive rights in blue as well as red states, since people use the pill in half of all abortions.

In contrast, fair-minded district judges put on the bench by President Biden and the Senate have issued important rulings that have helped protect people’s rights. This includes judges in some states like Ohio where Republican as well as Democratic senators have cooperated and returned blue slips. Examples of such rulings include:

- Judge Sarah Geraghty in Georgia upheld the [right of consumers](#) to sue corporations for injuries caused by product defects.
- Judge Jennifer Rochon in New York [dismissed](#) a challenge to a health care company’s affirmative action program seeking to promote diversity in employment.
- Judge Bridget Brennan in Ohio [upheld](#) the right of homeowners to seek relief against unfair debt collection practices.
- Judge Charlotte Sweeney in Colorado authorized a citizens’ group to go forward with a lawsuit concerning what they claim is [harmful limestone mining](#), despite an effort to dismiss the case.
- Judge Regina Rodriguez in Colorado upheld an important federal [gun safety law](#) that prohibits those convicted of felonies from possessing firearms
- In another case, Judge Geraghty rejected a motion to dismiss and authorized a [race discrimination](#) claim by a Black former graduate student against the University of Georgia.

As a result of Republican abuse of blue slips, however, serious inequalities exist between many red states and others where Democratic and Republican Senators have cooperated on nominations. Problems also result within such red states.

In five states represented by two Republican senators (Alabama, Florida, Louisiana, Missouri, and Texas), there are 19 current or expected vacancies but absolutely no nominees. This imposes serious inequalities and problems within these states as well.



The Alabama federal building in Tuscaloosa

For example, in the Northern and Middle Districts of Alabama, despite substantial minority populations and important current and historic cases concerning civil rights and other issues, there are 9 judges, all white, and 2 vacancies with no nominations. Similarly, with comparable demographic and case profiles, there are 4 vacancies with no nominations in the Northern and Eastern Districts of Louisiana, and all 15 judges are white. There is also no professional diversity among these judges. A more comprehensive analysis is contained in [Appendix C](#) to this report.

Right-wing advocates like Carrie Severino of the Judicial Crisis Network are strongly defending Republican use of the blue slip to block Biden judges and urging Senate Republicans to continue to do so. For example, in early February she strongly [criticized](#) Senator Durbin for appearing to consider reforming the blue slip in order to “appease the left-wing dark money groups” and urged Republican Senators to pay “close attention” and take action.



## Conclusion

The principle of consultation with home-state senators on filling district court seats can and usually does help produce better judicial nominees. But the Republican abuse of the blue slip process has created serious problems that must be addressed. We call upon Senate Democratic leadership to reform the blue slip process so that vacant district court judgeships will be filled and access to justice can be provided to people in red as well as blue states.

## Appendix A:

### Obama District Court Nominees Who Were Blocked By Blue Slips

## Florida

#### William Thomas (Southern District)

- Openly gay Black man, nominated in 2012, would have been the nation's first openly gay African American federal judge. Had been a public defender, then a state judge.
- Rubio originally recommended Thomas to the White House, then withdrew his support.
- When Rubio finally gave reasons for his opposition, they were inconsistent with the facts and were obviously false (see PFAW blog [Rubio Should Not Have the Last Word on Florida Nominee](#)). But he never had to face public questioning pointing that out, and the nominee never got to defend himself.

#### Mary Barzee Flores (Southern District)

- Nominated in 2015. Spent more than a decade as a public defender early in her legal career.
- Rubio had recommended her to the White House. After she was nominated, Rubio said he would not return his blue slip, but he did not explain why.

## Georgia

#### Dax López (Northern District)

- López would have been the first Latino federal judge in Georgia.
- López was nominated in July 2015 with the support of area conservatives and Republicans. However, his nomination was [opposed within days](#) by Phil Kent – a member of the state's Immigration Enforcement Review Board – because Judge López was a member of Georgia Association of Latino Elected Officials (GALEO). Kent had [called](#) multiculturalism a virus that's destroying America and had [asked](#) “[w]hat will be the values and ideas of a multicultural America? What will it mean to be white after ‘whiteness’ no longer defines the cultural mainstream?” Kent's attacks were [quickly criticized](#) by legal and political figures in the state.
- Several months after the nomination, then-Sen. Perdue (R) [announced his opposition](#). (In contrast then-Sen. Isakson [supported](#) a hearing.)

## Natasha Perded Silas (Northern District)

- Black woman.
- Nominated in Jan 2011 with Linda Walker (also a Black woman), as a package. Then-Sens. Chambliss and Isakson supported Walker, but not Silas. They did not explain their opposition. Since the committee would only consider them as a package, both nominations failed.

## Nevada

### Elissa Cadish

- Nominated in 2012. State judge. Blocked by then-Sen. Heller (R).
- Heller opposed her because of something she had said about the Second Amendment. In 2008, before the Supreme Court ruled otherwise later that year, Cadish correctly stated that, under then-current law, gun ownership was not a personal right under the Second Amendment.

### Anne Traum

- Nominated in April 2016. Spent several years as a public defender and at the Justice Department's Office for Access to Justice.
- Sen. Dean Heller (R) did not submit his blue slip.
- The vacancy remained open for Trump, but he never reached agreement with Sens. Cortez Masto and Rosen on a nominee for this vacancy. After Trump lost, Biden renominated Traum.

## North Carolina

### Jennifer May Parker (Eastern District)

- Black woman. Nominated in June 2013 to fill a vacancy that had been open since 2005. She would have been the first Black judge ever in the Eastern District.
- Then-Sen. Burr (R) had written to the White House in 2009 saying he would support her if she were nominated, which she later was.
- Sen. Burr [did not explain](#) why he was not submitting the blue slip, but his defense — that he didn't discuss pending judicial nominations — was [shown to be false](#), since he had frequently done so in the past (including discussing blue slips in particular).

## Patricia Timmons-Goodson (Eastern District)

- Black woman. Nominated April 2016. This was Obama’s second effort to fill a vacancy that had been open since 2005. She would have been the first Black judge ever in the Eastern District.
- Vice Chair of the United States Commission on Civil Rights; previously a justice on the state supreme court.
- Neither Sen. Tillis (R) nor then-Sen. Burr (R) submitted a blue slip.
- The day after Timmons-Goodson was nominated, [Burr released a statement](#) saying that he would not only block her from having a hearing, but he would also block any person that President Obama nominated, no matter who it might be. He claimed the White House had not consulted with him or Sen. Tillis, and he called the effort to fill a decade-long vacancy with an experienced nominee with the ABA’s highest rating as “an election season stunt.”

## Oklahoma

### Arvo Mikkanen (Northern District)

- Native American man, nominated in 2011, assistant U.S. Attorney in Oklahoma City.
- As soon as he was nominated, Oklahoma Sen. Coburn (R) said [he had not been consulted](#), and that Mikkanen was “unacceptable for the position” without further explanation. Neither he nor Sen. Inhofe (R) submitted blue slips.

## South Carolina

### Alison Lee

- State judge, Black woman, nominated in 2013.
- Lee was the first African American woman to be elected as a state circuit judge in South Carolina.
- Sens. Graham (R) and Scott (R) denied blue slips. They were [reportedly concerned](#) about two bail decisions she had made, in which the people released later were accused of killing someone. Because she was not allowed to have a hearing, she never had a chance to explain her decisions.

## Donald Beatty

- Black man, nominated Feb. 2016. Former state legislator and state judge.
- Neither senator submitted a blue slip. This was not because it was an election year, since they gave blue slips to someone else who had been [nominated on the same day](#).

## Wisconsin

### Louis Butler (Western District)

- Black man, former state supreme court justice. Business interests [spent](#) over \$1 million to defeat him when he ran for reelection in 2008.
- Nominated in 2009 with the support of then-Sen. Feingold (D). He had a hearing and committee vote but did not get confirmed before the 2010 elections.
- Renominated in 2011, but the newly elected Ron Johnson (R) did not give a blue slip.

There were also numerous vacancies where Obama never made a nomination, due to the inability to reach an agreement with Republican senators. By the end of his presidency in January 2017, these included:

- Alabama: five vacancies, two of them dating back to 2013.
- Kentucky: two vacancies, dating back to 2013 and 2014.
- Texas: six vacancies, including one dating back to 2011.

## Appendix B: History of an Outdated Practice

The blue slip is a way for home state senators to share information about nominees from their states. But it is also the committee chairman's method of granting "senatorial courtesy," an informal tradition that dates back to **1789**:

- The Senate rejected President George Washington's nominee to a naval position in Georgia out of deference to that state's senators.
- There were no allegations that the nominee wasn't qualified. But the Georgia senators wanted to give the job to someone else back home.
- This isn't a written rule and it certainly isn't in the Constitution.
- As the phrase itself suggests, "senatorial courtesy" is a relic of a genteel Senate that has little resemblance to the bare-knuckles partisan battleground that is the modern Senate.

Starting around **1917**, the chair of the Judiciary Committee adopted the practice of soliciting the opinions of home state senators via blue slips of paper.

- It's up to the chair to decide what importance to give it.
- It is simply a practice that's up to each chair, rather than a committee rule.

In its first few decades, it was meant to solicit the senators' opinions, but not necessarily to block the committee from considering the nominee.

- In the very first known example of a senator returning a blue slip opposing a nominee (nominee Ulysses V. Whipple for the Southern District of Georgia, in 1917), Committee Chair Charles Culberson still held a hearing and a committee vote.
  - The committee vote went against the nominee, then the full Senate voted to reject the nomination. But the important thing is that the committee and full Senate were allowed to act.
- Other examples from the first few decades show that home state senators used blue slips as an opportunity to share information, but not necessarily to freeze all committee action:

- **1950:** IA-S.D. nominee Carroll Switzer. President Truman had given him a recess appointment in 1949. Home state Sens. Guy Gillette and Sen. Bourke Hickenlooper opposed him. Hickenlooper wrote on his blue slip that he “vigorously object[ed]” to the nominee, and that he would “be glad to appear before your committee on this matter.” Chair Pat McCarran held a hearing in April 1950. He allowed a committee vote, which was unanimous against the nominee.
- **1950:** GA-N.D. nominee M. Neil Andrews had received a recess appointment by President Truman, who nominated him to make it permanent. Home state Sen. Richard Russell led the opposition, supported by fellow Sen. Walter George. Russell asked if he could “appear before the Committee and present some of the circumstances relating to this nomination before the Committee reports it to the Senate, as I am opposed to his confirmation.” The senators said they had nothing against the nominee’s character or legal qualifications, but that they had not been consulted; they had someone else they wanted Truman to pick. The committee was allowed to vote on the nomination, which they rejected 9-1. The full Senate voted the nomination down.
- **1951:** Joseph J. Drucker and Cornelius J. Harrington (Illinois district court nominees). Both were opposed by home state Sen. Paul Douglas. Even so, the Judiciary Committee held votes on the nominees (which the nominees lost).

**1956-1978:** Segregationist Chair James Eastland of Mississippi changed the policy:

- Without support from both home state senators, he would not let the committee even process the nomination. No hearings, no committee votes.
- This gave immense power to segregationist senators in Southern states to prevent judges who would take civil rights seriously.

**1979-1980:** Sen. Edward Kennedy reformed the blue slip practice in his one year as chair, under Jimmy Carter:

- Kennedy told colleagues that if a home state senator opposed a nominee or did not return a positive blue slip “within a reasonable time,” he would let the Judiciary Committee vote on whether to consider the nomination anyway.
- Kennedy’s stated goal was to let “the Federal courts ... become more representative of the people of this Nation.”
- **1980:** James E. Sheffield (VA-E.D.) was opposed by home state Sen. Harry Byrd, who sent a negative blue slip. Sen. Kennedy held a hearing anyway in August 1980. (No committee vote was held.)

**1981-1986 (Reagan era):** Although Chair Strom Thurmond (R) generally allowed one senator’s objection to block committee action, he made exceptions. In at least two cases, he allowed committee action for district court nominees over the objections of a home state senator.

- **1983:** John Vukasin (CA-N.D.) was opposed by home state Sen. Alan Cranston. The chair held a hearing. The chair also allowed a committee vote, which was positive (and party-line). Vukasin was confirmed.
- **1985:** Albert Moon (HI) was opposed by both Hawaii senators. The chair held a hearing anyway. However, he did not hold a committee vote.

**1987-1994 (Reagan-Bush-Clinton):** Chair Joe Biden (D) stated that home state senator opposition would not block committee action unless the administration had failed to consult with home state senators in advance.

- Biden was the first chair to publicly clarify the importance of “consultation.”
- **1989:** Bush nominee Vaughn Walker (CA-N.D.) was opposed by home state senator Alan Cranston. The main issues were Walker’s membership in a discriminatory club and his representing the Olympics when they sued the Gay Olympics. The issues were thoroughly aired and debated in a hearing, Vaughn got a committee vote, and he was confirmed by the full Senate by voice vote.

**1995-2001, 2003-2006 (Clinton and Bush):** When Clinton was president, Chair Orrin Hatch did not process nominees unless both home state senators gave their support; this gave Republican senators veto power over Clinton nominees. Hatch changed his practice when Bush was president, and he allowed some circuit court nominees to be processed over Democratic senators’ home state opposition. But for district court nominees, he still required both senators to approve.

**2001-2002, 2007-2014 (Bush and Obama):** Chair Patrick Leahy let blue slips be an absolute bar to committee action. Without the support of both home state senators, the committee would not hold a hearing or a vote. Unlike the Republican chairs who preceded and succeeded him, he did not change his practice depending on which party held the presidency. As a result, many good Obama nominees were blocked. In addition, many vacancies remained without nominees at all while he tried to negotiate with Republican senators.

**2015-2020 (Obama and Trump):** Chairman Chuck Grassley followed Leahy’s practice for Obama nominees, letting home state senators veto nominations. But when Trump became president, Grassley eliminated the requirement for home state approval for circuit courts. He and his successor Lindsey Graham kept the requirement for district court nominees.



## Appendix C: Characteristics of District Courts and Areas Served in Alabama, Florida, Louisiana, Missouri, and Texas

In these five states – all with only Republican senators – there are 19 current or expected vacancies but absolutely no nominees. This imposes serious inequalities. For example, in the Northern and Middle Districts of Alabama, despite substantial communities of color and important current and historic cases concerning civil rights and other issues, there are nine<sup>9</sup> judges, all white, and two 2 vacancies with no nominations. Similarly, with similar demographic and case profiles, there are 4 vacancies with no nominations in the Northern and Eastern Districts of Louisiana, and all 15 judges are white. This Appendix contains details on all five of these states, their district courts, their demographics, and the types of cases that are being neglected due to unfilled vacancies.

### Alabama

- [Overall population](#): 66% White, 27% Black, 5% Latino
- Federal courts in Alabama have provided and continue to provide important forums for redressing civil rights and other problems. Historic examples of cases starting in Alabama federal district courts include [Gomillion v Lightfoot](#) (voting); [Gilmore v Montgomery](#) (segregation); [Paradise v Allen](#) (job discrimination and segregation); and [Smith v YMCA](#) (discrimination in public accommodations). As reflected in district court [dockets](#) and pending [ACLU cases](#), cases continue to be filed in these courts raising issues of job discrimination, discriminatory government action, disability rights, LGBTQ rights, women's rights, and more.
- Total vacancies in Alabama: two (both district).

#### [Middle District of Alabama:](#)

- One vacancy, which opened up more than three years ago (when then-district Judge Andrew Brasher was elevated to the 11th Circuit in February, 2020).
- Two active judges, none people of color, one man and one woman; no professional diversity.
- Includes several cities with substantial numbers of people of color, including [Montgomery](#) (39% Black) and [Opelika](#) (38% Black).

### Northern District of Alabama:

- One vacancy, which was announced in advance on April 5, 2022. Judge Abdul Kallon – the district’s only Black judge – resigned on August 31, 2022.
- Seven active, non-senior judges, no people of color, four men, three women; no professional diversity.
- Includes several cities with substantial numbers of people of color, including [Birmingham](#) (68% Black) and [Tuscaloosa](#) (41% Black).

## Florida

- [Overall population](#): 58% White, 15% Black, 27% Latino.
- Federal courts in Florida have provided and continue to provide an important forum for redress of civil rights and other problems. Based on general [federal](#) docket and [ACLU](#) docket, current and recent federal cases cover areas including workers’ rights, job discrimination, voting rights, reproductive rights, and disability rights. Some [historical](#) cases from Florida federal courts include Singleton v Bd of Comm (ND Fla 1964 challenge to racial segregation in training schools); Bobles v Lane (1960 challenge to segregation in Tampa parks and recreation).
- Total vacancies in Florida: seven (all district), with three judicial emergencies.

### Southern District of Florida:

- Four vacancies (three are current, two of them judicial emergencies).
  - One was already vacant when Biden took office (opened July 2020). Judicial emergency.
  - One was announced on Feb. 10, 2021, and opened May 2, 2021. Judicial emergency.
  - One opened July 15, 2022, with no advance notice.
  - One was announced May 18, 2022, but won’t open until October 2023.
- 15 active judges, 10 men and five women: two Black men, three Latino men, one AAPI man, two Latina women; two judges with public defender experience, one with DOJ Civil Rights Division experience.

- Includes [Miami-Dade County](#) (69% Latino, 14% Black), [Broward County](#) including Ft. Lauderdale (31% Latino, 26% Black), [West Palm Beach](#) (31% Black, 25% Latino), and Ft. Pierce (38% Black, 25% Latino).

### **Middle District of Florida:**

- Three vacancies (one is current, and it is a judicial emergency).
  - The oldest of these was announced in May 2022; a judge took senior status two months later, in July 2022. Judicial emergency.
  - The others were announced in October and November 2022 and will become vacant in December 2023.
- 14 active judges, eight men and six women: three are Black, one Black man and two Black women, two are Latino, one Latino man and one Latina woman; none are AAPI; two have public defender experience.
- Includes [Ft. Myers](#) (32% Black, 20% Latino), [Tampa](#) (21% Black, 26% Latino), [Jacksonville](#) (31% Black, 10% Latino), and [Orlando](#) (25% Black, 26% Latino).

## **Louisiana**

- [Overall population](#): 59% White, 33% Black, 7% Latino.
- Federal courts in Louisiana have provided and continue to provide important forums for redress of civil rights and other problems. [Historical](#) examples include *Bush v Orleans Parish School Bd* (desegregation of New Orleans public schools 1956-63); *Morrison v Davis* (1958)(striking down segregation in New Orleans public transit); [Brown v Louisiana](#) (1966) (silent sit-in protesting segregation was protected by First Amendment); *Broussard v Perez* (1976)(upholding VRA challenge to reapportionment of parish school district and other boundaries); *Oncale v Sundowner* (1995-98) (holding that same-sex harassment is illegal under Title VII). According to current [ACLU](#) and [court](#) dockets, current cases cover such subjects as job discrimination, disability rights, reproductive rights, and abuse by government agencies.
- Total vacancies in Louisiana: four (all district), two of which are judicial emergencies.

### **Western District of Louisiana:**

- Two vacancies, both judicial emergencies.

- The older of these was announced more than two years ago (in January 2021). The judge gave a full year's advance notice so that a replacement could be found in a timely manner. She took senior status in January 2022 and there is still no nominee.
- The other vacancy has been open for more than a year, when the judge took senior status in February 2022 without advance notice due to a disability.
- Five active judges, no people of color, no women, no professional diversity.
  - Judge Terry Doughty, a notorious pro-Trump anti-Biden judge, is the only judge in Monroe Division, facilitating judge-shopping.
- Includes [Baton Rouge](#) (54% Black), [Monroe](#) (63% Black), and [Alexandria](#) (55% Black).

### Eastern District of Louisiana:

- Two vacancies, one over a year old.
  - The older vacancy has been open for over a year, since the death of the previous judge in January 2022.
  - The other vacancy has not been open as long (January 2023), and was only announced a month in advance (December 2022).
- 10 active judges, five men and five women: one is Black (a woman), none are Latino or AAPI, no professional diversity.
- The primary city served is [New Orleans](#) (54% Black, 8% Latino).
- The median time for a civil case (as of September 2022) is 69.4 months, the longest in the nation. This is six times longer than the national median time of 11.5 months.

## Missouri

- [Overall population](#): 81% White, 12% Black, 2% AAPI.

- Federal courts in Missouri have provided and continue to provide important forums for redress of civil rights and other problems. Prime historical examples include decades-long cases concerning school and housing segregation in and around [St. Louis](#) (in which litigation remains pending) and [Kansas City](#). In [Dixon v St Louis](#), a district court granted an injunction against St. Louis's use of high bail that confined people in substandard prison conditions, although the 8th Circuit later reversed it. According to [ACLU](#) and [federal court](#) dockets, more current and pending cases concern tenants' rights, absentee voting, voter ID, reproductive rights, employment discrimination, and disability rights.
- Total vacancies in Missouri: three (all in the Eastern District).

### [Eastern District of Missouri:](#)

- Three vacancies, the oldest of which was announced in advance in January 2022.
  - The judge for the oldest vacancy gave more than a full year's advance notice. He announced his plans on January 21, 2022, and took senior status on January 28, 2023.
  - A future vacancy was announced a year in advance on April 14, 2022. It will open on April 14, 2023.
  - Another future vacancy was announced on November 15, 2022, and will open on June 9, 2023.
- Seven active judges, (five men and two women): two are Black men, none are Latino or AAPI, one has public defender experience.
- The largest city in the district is [St. Louis](#) (47% Black).

## Texas

- [Overall population](#): majority minority with 39% Latino, 13% Black, 6% AAPI.

- Federal courts in Texas have provided and continue to provide important forums for redress of civil rights and other problems. Many focus on issues confronting Latino people. Historical examples include [Plyler v Doe](#), where the Supreme Court struck down a state law denying funding for education of undocumented immigrant children; [San Antonio Independent School District v Rodriguez](#), where the Court rejected a challenge to Texas’s school funding system; and [Veasey v Abbott](#), a largely successful challenge to a discriminatory Texas voter ID law. According to dockets of the [ACLU](#), [voting rights](#) groups, and the [federal courts](#), more recent and pending examples concern polling place and other election issues, LGBTQ issues, employment discrimination, and disability rights.
- Total vacancies: six district vacancies (four judicial emergencies) plus one circuit vacancy (also a judicial emergency).

### **Southern District of Texas:**

- Three vacancies, one a judicial emergency that was known in advance more than two years ago.
  - On January 21, 2021, Judge Vanessa Gilmore announced her plans to retire a year later, on January 2, 2022. This is a judicial emergency. Although Judge Gilmore announced her intentions in January of 2021, Sens. Cornyn and Cruz waited until March 11, 2022, to announce that they were [accepting applications](#) for this vacancy.
  - On June 22, 2022, Judge Micaela Alvarez (stationed in the McAllen Division) announced her plans to take senior status a year later, on June 8, 2023.
  - On February 12, 2023, Judge Lynn Hughes took senior status with no advance notice. This is a judicial emergency.
- 17 active judges: 12 men and five women: two Black men, five Latino men, four Latina women, no AAPI, one has federal public defender experience.
- All cities with courthouses/clerks’ offices are majority minority, mainly Latino: [Houston](#) (44% Latino, 22% Black, 7% AAPI), [Brownsville](#) (94% Latino, 3% Asian), [Victoria](#) (52% Latino, 7% Black, 2% AAPI), [Laredo](#) (95% Latino, 3% AAPI), and [Galveston](#) (29% Latino, 3% AAPI), and [Corpus Christi](#) (61% Latino, 4% Black, 2% AAPI).

### **Western District of Texas:**

- Three vacancies, two of which are judicial emergencies, one open for two years.

- On February 26, 2021, Judge Philip Martinez passed away. He had been stationed in the El Paso Division, but Sens. Cornyn and Cruz plan for his replacement to be in the Del Rio Division. Although Judge Martinez died in February 2021, Sens. Cornyn and Cruz waited until March 11, 2022, to announce that they were [accepting applications](#) for this vacancy.
- On October 12, 2022, Judge Frank Montalvo announced that he would be taking senior status on December 1, 2022.
- On June 1, 2022, Judge David Guaderrama gave a year's notice that he will be taking senior status on May 27, 2023.
- 11 active judges, nine men and two women: one Black man, three Latino men, two Latina women, no AAPI; one judge has public defender experience.
- Most cities served are majority minority, with a Latino plurality: [San Antonio](#) (64% Latino, 7% Black, 3% AAPI), [Alpine](#) (49% Latino, 2% Black), [Austin](#) (33% Latino, 7% Black, 9% AAPI), [Del Rio](#) (84% Latino,), [El Paso](#) (83% Latino, 3% Black), [Pecos](#) (86% Latino, 2% Black), and [Waco](#) (32% Latino, 19% Black, 3% AAPI).