



Written by [Luis Miguel](#) on February 24, 2023

Democrats Want to End This Custom so Biden Can Appoint More Judges

Democrats seek to undo President Donald Trump's gains on judges, knowing that deciding who fills the courts will influence federal policy for decades to come.

As part of their effort to give Joe Biden a pathway to getting more of his appointees confirmed in the Senate, Democratic leaders are [threatening to bulldoze](#) over a long-running Senate tradition that presently gives members of the chamber the ability to block judicial nominees.

Under the practice that has come to be known as "blue slips," the leadership of the Senate Judiciary Committee, as a courtesy, allows senators to either approve or sign a blue slip "vetoing" federal district court judges who are being considered in their home states.

It is up to the judiciary committee chairman to decide whether to honor these blue slips. Normally, they have been honored automatically as a form of courtesy. And Senate Judiciary Chairman Sen. Dick Durbin (R-Ill.) has said the practice will remain.

"I'm sticking with it. We've made it work," Durbin has assured in the past.

But this month, Durbin added that he's willing to refuse Republicans' blue slips if they don't align with his ideological agenda:

"I won't honor a blue slip that I believe discriminates because of race, gender, or sexual discrimination. So we'll see how this develops," he told NBC News.

Sen. Richard Blumenthal (D-Conn.) also said he's willing to kill the blue slip practice "if we're seeing the purposeful use of blue slips to obstruct without real reason related to merits of judges, and it happens repeatedly."

"I can't tell you what the magic number is — but the misuse and abuse of this process means we have to move forward," Blumenthal added. "I'm certainly of a mind that this practice becomes anachronistic and antithetical if it is misused."

Sen. Lindsey Graham (R-S.C.) shot back at his Democratic colleagues, saying that doing away with blue slips would "be terrible for the body" and that appointment of judges is a "two-way street" between the administration and Republican senators.

Sen. Marsha Blackburn (R-Tenn.) also chimed in, calling on the committee's leadership to reconsider, arguing that "the blue slip is essential to the Senate's constitutional obligation to provide advice and consent."



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The potential change in Democrats' handling of blue slips comes at a time when Biden has successfully gotten 100 judges confirmed in the Senate. The White House is making a concerted effort to surpass Trump's 234 judges, and thus remake the judicial branch in Democrats' favor.

Up to this point, Democrats have honored the blue-slip policy, driven in part by the political expediency of being statesmanlike prior to the midterms, and also because many of the judicial vacancies during Biden's first two years in office weren't threatened by the custom. But now Democrats see an opportunity to cement their ideology within the judicial branch before their hold over the Senate and the White House is possibly taken away in the 2024 election.

As NBC News reports:

The 2022 midterm elections are also a factor in Democrats' shifting tactics on blue slips. The party defied the odds in the midterm elections, preserving the Senate majority that allows them to keep confirming Biden-picked judges. And Republicans won control of the House, leaving few options for legislative achievements.

[New York's Democratic Senator Chuck] Schumer is determined to fill every vacancy — currently, there are nine on appeals courts and 72 on district courts, according to the Administrative Office of the U.S. Courts. Dozens of those district vacancies are in states with at least one GOP senator, who Democrats fear will use the courtesy to block any Biden nominee.

Of course, Durbin's rhetoric about race and gender smacks of the typical left-wing tactic of accusing their opponents of racism.

Carrie Severino, leader of the conservative Judicial Crisis Network, made this point in [challenging](#) Durbin to provide actual examples of Republicans using blue slips to disrupt judicial nominations on the basis of race or gender. She called on the senator to "not paint his colleagues with the broad brush of bigotry."

Former Wisconsin Democratic Sen. Russ Feingold, who is now in charge of the leftist American Constitution Society, blasted Republicans, who under Mitch McConnell eliminated the blue-slip practice for the courts of appeals, leaving it in place only for district courts.

"When Republicans had the advantage, they just didn't hesitate to eliminate blue slips for the courts of appeals, which are an even higher court," said Feingold. "The Democrats would be chumps to not get rid of it for this Congress, in order to allow them some opportunity to make up for the very aggressive tactics used by Republicans over the prior four years."

Chastising Republicans for having "weaponized" the blue-slip tradition for "partisan reasons," Feingold said it is "essential" for the custom to be gotten rid of so that Biden can meet his goal of surpassing Trump's number of judicial appointments.

As always for liberals, tradition must give way to political expediency and uninhibited self-interest.



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