

May 7, 2018

VIA EMAIL

Dear Senator,

On behalf of the National Women's Law Center (the Center), an organization that has fought to promote women's legal rights and protections for 45 years, I write to urge you to uphold a 100-year old Senate tradition. Under longstanding Senate norms, federal judicial nominees have not moved through the Senate's confirmation process without the support of both home-state Senators. Now, the Senate is poised to eliminate Senators' ability to determine whether particular individuals should serve in lifetime positions on the federal courts in their home states.

Senate Majority Leader McConnell is abandoning this long-standing Senate tradition by scheduling a vote on the nomination of Michael Brennan, nominated to the U.S. Court of Appeals for the Seventh Circuit, without first receiving a "blue slip" from Senator Tammy Baldwin, one of the home-state Senators for the seat to which Mr. Brennan has been nominated. The "blue slip" tradition respects Senators' constitutional role of advice and consent to nominees and ensures meaningful consultation by the President. As Senator Grassley, Chairman of the Senate Judiciary Committee, stated only three years ago:

For nearly a century, the chairman of the Senate Judiciary Committee has brought nominees up for committee consideration only after both home-state senators have signed and returned what's known as a "blue slip." This tradition is designed to encourage outstanding nominees and consensus between the White House and home-state senators. Over the years, Judiciary Committee chairs of both parties have upheld a blue-slip process, including Sen. Patrick Leahy of Vermont, my immediate predecessor in chairing the committee, who steadfastly honored the tradition even as some in his own party called for its demise. I appreciate the value of the blue-slip process and also intend to honor it.¹

Indeed, Republican robustly enforced the blue slip practice during the Obama Administration, when 18 judicial nominees did not receive a hearing or a vote because of objections from home-state Republican Senators.

The Senate should not let partisan politics upend nearly a century of important Senate practice respecting home-state senators' voices in the constitutional role of advice and consent. The utter disregard for process by which home-state Senators provide advice and consent on

¹ Chuck Grassley, *Working to Secure Iowa's Judicial Legacy*, DES MOINES REGISTER (Apr. 14, 2015), <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2015/04/15/working-secure-iowas-judicial-legacy/25801515/>.

judicial nominees is particularly galling because the seat to which Mr. Brennan has been nominated was held open because of the blue slip process – with Brennan’s strong support. In 2011, Wisconsin Republican Senator Ron Johnson withheld his blue slip, objecting that he had not participated in the process to nominate President Obama’s nominee, Victoria Nourse. Mr. Brennan, then in private practice, co-wrote an op-ed supporting Senator Johnson’s refusal to return his blue slip and made the point that “[t]here are now two senators from Wisconsin from different political parties, so to exclude Johnson and those citizens who voted for him would be a purely partisan move.”² We agree, and strongly believe that the Committee should forego this blatantly partisan move.

Federal courts play a critically important role in women’s lives. Over the last four decades, their decisions have shaped and given meaning to many of our fundamental legal rights—from the right to make personal decisions about reproductive health, to equal protection under law, to freedom from discrimination at work and at school. It is crucial that the majority continue to respect Senators’ ability to provide advice and consent on the individuals who will fill lifetime seats on the federal bench in their home states. Scheduling Mr. Brennan’s nomination for a vote places ideology over constitutional principles, and the Center urges you to stand firm against this abuse of process. Please feel free to contact me, or Rachel Easter, Counsel at the Center, at (202) 588-5180, should you have any questions.

Sincerely,



Fatima Goss Graves

President and CEO, National Women’s Law Center

² Michael B. Brennan, et al., *Sen. Johnson Only Wants to Have His Say on Nourse Nomination*, J. SENTINEL (July 23, 2011), <http://archive.jsonline.com/news/opinion/126042043.html/>.