

**NELA Lobby Day 2018: Raising Our Voices For Change
The 115th Congress Judicial Nominations—NELA Messaging Document**

Working people are profoundly affected by the role of the federal judiciary.

The federal judiciary plays a critical role in our democracy and the lives of workers. Every day, working people turn to the courts when they face wage theft, workplace discrimination or harassment, retaliation for being whistleblowers, or other unfair and illegal treatment on the job.

Federal circuit courts are the second highest courts in the nation. Indeed, because the United States Supreme Court hears only a very limited number of cases each year, federal circuit courts' decisions are often the final word. Federal appellate judges make decisions on issues affecting every aspect of our lives including our rights as workers; freedom of speech; women's rights; LGBT rights; immigration; health and safety; clean air and water; voting rights; and more. Their decisions profoundly affect the lives of tens of millions of people and the development of the law.

NELA calls on senators to vote “no” on the nominees listed below. (A letter about each nominee is included in your participant packet and in the Senate leave-behind packets.)

- **NELA opposes the confirmation of Thomas A. Farr** to serve on the U.S. District Court for the Eastern District of North Carolina.
- **NELA opposes the confirmation of Matthew Kacsmaryk** to serve on the U.S. District Court for the Northern District of Texas.
- **NELA objects to advancing the confirmation of Michael Brennan** to serve on the U.S. Court of Appeals for the Seventh Circuit in Wisconsin because of the Senate Judiciary Committee (SJC) Chair Grassley's failure to honor the withheld blue slip of Senator Tammy Baldwin (D-WI) and the failure of the White House to honor the outcome of the Wisconsin Federal Judicial Commission's consideration of the nominee. The Commission considered and did not recommend Mr. Brennan.

Every senator should call on Chair Grassley to uphold the “blue slip” tradition. Discarding the tradition diminishes the voice of every U.S. senator and every constituent.

The judiciary was designed to be nonpartisan, impartial, and independent. To ensure that the judiciary lives up to its promise, it is imperative that the Senate honor traditions of bipartisanship and act in good faith in fulfilling its constitutional duty to provide “advice and consent,” (Article II, Section 2 of the U.S. Constitution) regarding federal judicial selection.

The 100-year tradition of honoring home-state senators' objection to a nominee for a seat in that senator's home state is an important aspect of bipartisanship and serves as a moderating force in a process that is intended to be nonpartisan. Senate Judiciary Committee Chair Chuck Grassley (R-IA) himself said that the blue slip tradition was “designed to encourage outstanding nominees and consensus between the White House and home-state senators...” Judiciary Committee chairs of both parties have

upheld the blue slip process. Former SJC Chair Patrick Leahy (D-VT) and Chair Grassley each rigorously upheld the tradition while President Obama was in office. Neither ever proceeded with a hearing on a judicial nominee in the absence of consent (a returned blue slip) from **both** home state senators.

Chair Grassley honored the bipartisan blue-slip tradition during Obama's term:

- He strictly observed the blue slip tradition during the Obama presidency resulting in the denial of hearings and votes for 18 of President Obama's judicial nominees.

Since President Trump took office, Chair Grassley:

- Proceeded with a hearing and gained confirmation of Judge David Stras to serve as U.S. Court of Appeals judge for the Eighth Circuit over the objection of former Senator Al Franken (D-MN).
- Proceeded with a hearing on Michael Brennan, Trump's nominee to serve as a U.S. Court of Appeals judge for the Seventh Circuit in Wisconsin—over the objection of Senator Tammy Baldwin (D-WI), and despite the fact that Mr. Brennan did not receive the requisite five votes necessary for recommendation by the 40-year-old bipartisan Wisconsin Federal Judicial Nominations Commission.

Every senator should call on Chair Grassley not to rush the judicial nominations process for political ends and schedule hearings to ensure adequate time for SJC review of nominees' records.

The paramount concern of *every* senator should be to ensure confirmation of highly qualified, nonpartisan, fair-minded, impartial judges who will act independently and in accordance with law and the Constitution. The SJC members play a critical role by reviewing voluminous information about nominees and examining the nominees at a hearing.

Two bipartisan Senate traditions with respect to scheduling reflect the gravity of the Committee's role in advancing or objecting to advancement of a nominee for a lifetime appointment as a federal judge. First, leaders of both parties have generally scheduled hearings to examine just *one* circuit court nominee per hearing. Second, hearings have typically been scheduled far enough apart in time to allow senators enough time to complete a full review of the next nominee or group of nominees being considered.

Chair Grassley has broken both traditions frequently and sped up the nominations process in the past year. He has scheduled many hearings with more than one circuit court nominee per hearing and has scheduled many hearings in rapid succession. The [viral video of Matthew Peterson's confirmation hearing](#) demonstrates that either the SJC leadership doesn't care about nominees' qualifications, or had inadequate time to review the record of the nominee. Neither is acceptable.

Chair Grassley scheduled hearings for five circuit court nominees in the month of November, 2017—a month that includes the Thanksgiving holiday recess. By contrast, during the last *two years* of Obama's presidency Grassley held hearings on a total of five circuit court nominees. The failure to provide adequate preparation time limits the input

of Committee members and diminishes the role of the senators who serve on the Committee. The chair of the Senate Judiciary Committee should not use the schedule to make it more difficult for thorough vetting of each nominee for a lifetime appointment to the federal bench.

SJC members must have adequate time to address concerns about nominees who lack basic experience, are ideological extremists, and/or failed to include significant and required background information in their submissions to the Committee. All of these issues have arisen in recent months. Rushing the process does not comport with the responsibility of the Chair of the SJC to oversee the confirmation of highly qualified, nonpartisan, independent individuals to the federal judiciary.

We call on every senator to insist that diversity on the federal bench is essential to ensuring the core American values of fairness, inclusivity, and justice are part of the federal judiciary.

The federal courts serve all Americans and the judiciary should reflect the diversity of the nation, yet the nominees coming from the White House and being advanced by the Republican leadership reflect neither demographic diversity nor diversity of thought. By way of illustration, currently 49 percent of the federal judiciary are white men; 24 percent are white women; 8 percent are black men; 5 percent are black women; 9 percent are categorized as “other men”; and 5 percent are categorized as “other women.”

In the first year of his presidency Trump nominated 69 individuals to the federal judiciary, compared with 34 nominations by Obama, 64 by G.W. Bush, 48 by Clinton, 22 by G.H.W. Bush, and 43 by Regan. Of Trump’s nominees, 71 percent have been white men and 21 percent have been white women.¹ Fifty-five percent of President Trump’s nominees are members of the conservative Federalist Society. President Trump’s nominees demonstrate at a minimum, a profound lack of concern for the importance of diversity in the federal judiciary. There are numerous highly qualified attorneys from diverse backgrounds who would make excellent federal judges. There is no good reason that the diversity of our nation should not be reflected on the federal bench.

¹ Kate Harloe, *These Charts Show How White, Male, and Conservative Trump’s Judicial Nominees Have Been*, Mother Jones (Mar. 16, 2018), <https://www.motherjones.com/politics/2018/03/these-charts-show-how-white-male-and-conservative-trumps-judicial-nominees-have-been/>