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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, Chief Counsel and Staff Director
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November 7, 2018

VIA ELECTRONIC TRANSMISSION

The Honorable Robert Menendez
The Honorable Cory Booker
United States Senate
Washington, DC 20510

Dear Senators Menendez and Booker:

The President has nominated Paul Matey for a New Jersey-based seat on the United States Court of Appeals for the Third Circuit. After the nomination was referred to the Senate Judiciary Committee on April 12, 2018, my office issued you blue slips asking for your opinion on Mr. Matey. I have not yet received your blue slips.

Mr. Matey appears to be a highly qualified and well-regarded nominee. He is currently a partner at Lowenstein Sandler LLP. He previously served as Senior Vice President and General Counsel of University Hospital in Newark, New Jersey. Before that, he served as Deputy Chief Counsel to Governor Chris Christie and as an Assistant United States Attorney for the District of New Jersey. Mr. Matey also clerked on the Third Circuit and the U.S. District Court for the District of New Jersey. He received his law degree, *summa cum laude*, from Seton Hall, where he was Editor-in-Chief of the *Seton Hall Law Review*.

As I explained to the full Senate last year, the blue-slip courtesy exists for a specific purpose: to ensure that the White House consults with home-state senators before nominating an individual to the bench. I explained that negative or unreturned blue slips will not preclude a hearing for a circuit-court nominee unless the White House failed to consult with home-state senators regarding the nomination. This is consistent with the policies of all but two of the previous eighteen Judiciary Committee Chairmen.

Because you have not returned your blue slips, I instructed my staff to discuss the nomination process with the White House Counsel's Office to determine whether you were adequately consulted regarding this nomination. It is my understanding that the White House attempted to begin the consultation process in April 2017. On May 18, 2017, then-White House Counsel Don McGahn met with both of you to discuss the Third Circuit vacancy and three vacancies on the district court. Mr. McGahn stated that the President was willing to nominate three individuals to the district court selected by you, assuming they passed background vetting—as well as re-

nominate the U.S. Marshal strongly supported by Senator Menendez—if you would agree to return your blue slips for Mr. Matey.

The White House promptly interviewed the three district court candidates that you proposed. On July 11, 2017, the White House agreed to nominate Senator Booker’s preferred candidate, Julien Neals, if Senator Booker agreed to return his blue slip for Mr. Matey. The White House reiterated this offer on several occasions. But, by the time Mr. Matey was nominated on April 10, 2018, Senator Booker had not agreed to return his blue slip for Mr. Matey.

The White House was not able to nominate the two individuals suggested by Senator Menendez because of background issues. But the White House expressed its continued willingness to nominate two individuals preferred by Senator Menendez and encouraged him to propose other individuals for the White House to consider. In January 2018, after the White House made nearly a half-dozen attempts to reach Senator Menendez, Senator Menendez’s staff responded that “Senator Menendez doesn’t think it makes sense to have additional discussions at this time.” Two months later, Senator Menendez’s staff reached out to the White House to schedule a phone call between Mr. McGahn and Senator Menendez. Without advance notice, Senator Menendez cancelled the scheduled call and did not attempt to reschedule it. The White House had been prepared to offer Senator Menendez his choice of three nominees for the five district court vacancies that then existed in New Jersey.

My preliminary conclusion is that the White House attempted to engage in meaningful consultation with you regarding this nomination, but this effort was not reciprocated. For nearly one year, the White House sought to reach an agreement with you regarding all the federal court vacancies in New Jersey. Indeed, the White House’s offer to allow you to select all the district court nominees was one of the most generous I have seen during my 38 years on the Judiciary Committee. Despite this, you did not agree to return your blue slips for Mr. Matey. Further, during this nearly one-year period, neither you nor your staffs even bothered to interview Mr. Matey. And neither of you offered an alternative candidate during this lengthy consultation period.

Moreover, the White House maintains that the only reason you offered for not supporting Mr. Matey’s nomination was that he is “too conservative.” I have said repeatedly that I will not allow senators to abuse the blue-slip courtesy by withholding the blue slip for political or ideological reasons. While the blue slip does not authorize a senator to unilaterally veto a nomination, neither is it necessarily an indication as to whether the senator will ultimately support the nominee on the Senate floor. Rather, it is an acknowledgement that the nominee should have a hearing before the Committee. It is a President’s prerogative to select his preferred judicial nominees for the Senate to consider. And it is your prerogative to vote against the nominee on the Senate floor if you do not think the nominee is qualified. But there are 98 other senators who also should have the opportunity to vote on this judicial nominee.

Based on this set of facts, I believe that the White House engaged in meaningful consultation with you regarding the Third Circuit vacancy in New Jersey. The White House proposed a very generous agreement regarding all federal court vacancies in New Jersey. Despite that, you did not even meet with Mr. Matey during the course of a nearly one-year consultation period. Nor did you suggest another candidate for the Third Circuit. If you have additional pertinent information for

me to consider, please disclose it to me by November 8. If you do not, I ask that you return your blue slips for Mr. Matey.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley

Chairman