

BUILDING A BETTER BENCH



A LOOK INTO PRESIDENT BIDEN'S FIRST TWO YEARS
OF JUDGES AND A ROADMAP FOR THE YEARS TO COME



ABOUT PPP:

People's Parity Project is a movement of attorneys and law students organizing for a democratized legal system which values people over profits, builds the power of working people, and opposes subordination of any form. Together, we are dismantling a profession that upholds corporate power and building a legal system that is a force for justice and equity. Our work focuses on building power for working people in the civil legal system through organizing, policy innovation, political education, and solidarity.

For more information about this report or the People's Parity Project, please visit www.peoplesparity.org or contact hello@peoplesparity.org.

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Judge Ketanji Brown Jackson is sworn in prior to testifying during a Senate Judiciary Committee confirmation hearing on her nomination to become an Associate Justice of the US Supreme Court on Capitol Hill in Washington, DC, March 21, 2022.

Saul Loeb | AFP | Getty Images

INTRODUCTION

In recent years, the question of what role federal judges play in our lives has become an increasingly urgent issue. With devastating Supreme Court rulings and lower court cases that have stripped people of their right to bodily autonomy, further diluted the votes of Black and brown people, and continued to protect corporate interests at the expense of real people, more attention is being paid to who is being appointed to the federal bench and what they're doing once there.

At the start of his administration, President Joe Biden was clear in his commitment to making judges a core part of his legacy. Unlike his predecessors, Biden called attention to the stark underrepresentation of public interest lawyers on the bench. In December 2020, former White House Counsel Dana Remus [sent a letter](#) to senators stating that the Biden administration “is focused on nominating individuals whose

legal experiences have been historically underrepresented on the federal bench including those who are public defenders, civil rights and legal aid attorneys, and those who represent Americans in every walk of life.” Two years later, the Biden administration—with the support of Senate Majority Leader Chuck Schumer, the Senate Judiciary Committee, and countless advocacy groups—has gotten [97 nominees](#) across the finish line to become federal judges, making history for the demographic and professional diversity of these nominees in the process.

With midterm elections over and Democrats still holding onto the Senate majority, President Biden has the extraordinary opportunity to cement his legacy as a president who reshaped the composition of our federal judiciary. To do that, he must boldly move forward by elevating even more professionally diverse candidates and encouraging Congress to prioritize every single judicial vacancy that arises. There has

been much good done on judges in the past two years, yet there remains significant potential to do even better in the next two years. In order to achieve this, there must be a willingness on the part of both the administration and the Senate to make some key changes. This report aims to assess the progress the administration has made thus far on these fronts, highlight areas of strength, and examine room for improvement.

WHY DOES PROFESSIONAL DIVERSITY EVEN MATTER?

As venues of justice, federal courts hear cases involving the U.S. Constitution or federal laws, making decisions with wide-ranging impacts on the lives of everyday people. The pivotal responsibility of deciding these causes ought to fall to the best the legal profession has to offer, but for too long it has not. The selection of federal judicial seats has been, practically speaking, open to only a small subset of the profession, marked not by their overall competence but instead by their adherence to a prescribed professional path. The federal judiciary has been over-saturated with judges who have prosecutorial and/or corporate backgrounds, centering the experiences of those who have represented the wealthy and powerful, not those who are most in need of true justice. Contrary to media and TV depictions, the legal profession is made up of many more legal jobs than those typically seen on Law & Order or Suits. In the “public interest community,” you can find a wide swath of incredible attorneys with experience fighting for the people, from voting rights attorneys, labor or union lawyers,

environmental justice attorneys, reproductive justice lawyers, legal aid advocates, plaintiffs'-side lawyers, and many more.

It is extremely limiting—and a great disservice to the public—to have an entire judiciary that is filled primarily with judges who incarcerated people for a living and represented corporations against everyday people. In a profession filled with so many different pathways to advocacy on so many different subject matter areas, it is nonsensical to have just two perspectives dominate case outcomes.

Importantly, we know that judges' professional backgrounds influence the outcomes of the cases in front of them. In one recent example, research from Professor Joanna Shepherd shows that judges with prosecutorial and corporate backgrounds are less likely to [side with workers](#) when their cases are brought. Further, appointing primarily corporate attorneys and prosecutors to the bench has reinforced the notion that prosecutors and corporate attorneys are the lawyers most capable of being “neutral,” which their defenders claim is a requirement of any prospective judge. The alleged neutrality of these lawyers is presented as in contrast to the legal practice of public interest attorneys, whose lawyering is portrayed as “advocacy” that is somehow more difficult to set aside as a judge. Claims repeating this false dichotomy have been repeatedly and aggressively made by Republican senators on the Senate Judiciary Committee during the noticeably more intense confirmation hearings of nominees with public interest backgrounds.

Finally, the over-saturation of prosecutors and corporate attorneys on the federal bench reinforces the message to law students that these career paths are the only ones they should consider. As New York University [law students](#) Melanie Nault and Jack Travis wrote, “Stacking the courts with prosecutors and corporate lawyers pushes students away from careers in public defense, legal aid, and legal services for the indigent.”

Prior to the strides made by the Biden administration, a [2019 study](#) showed that 60 percent of sitting judges on the U.S. Circuit Courts had a corporate law background. And a [2020 study](#) revealed that, at the time, people spending a majority of their career in private practice or as federal prosecutors comprised over 70 percent of the active federal appellate bench.

Regardless of how much we expect judges to set aside their priors when deciding cases before them, research and common sense tell us that judges bring their personal and professional backgrounds to the bench and that perspective often colors how a judge applies and interprets the law. Just as we know that former prosecutors and corporate attorneys are more likely to side against workers, we've begun to see the positive impacts former public interest attorneys can have on the bench.

The following is just a small sample of notable cases decided or joined by Biden-appointed judges that ruled in favor of individuals and civil rights organizations:

- In [Stamey v. Forest River Inc.](#), Judge Candace Jackson-Akiwumi of the Seventh Circuit, a former public defender, cast the deciding vote overturning a district court judge in an age discrimination case filed by a 61-year-old worker. The plaintiff, an electrical worker, alleged that he was subjected to a relentless and ruthless campaign of age-based harassment and insults. Beyond verbal harassment, Mr. Stamey claimed he was the target of disturbing acts that interfered with his work, including the defacement of his workstation. Judge Jackson-Akiwumi's vote allowed Mr. Stamey's claim to be sent back to the lower court to proceed in a trial.

- In [Chilcoat v. San Juan County](#), Judge Veronica Rossman, a former federal defender, of the Tenth Circuit authored a 2-1 decision allowing an environmental activist to amend her complaint in order to prove a county commission retaliated against her by holding a “secret, closed meeting” and “getting a county attorney to file criminal charges against her” because of her political views.

- In [Marshall Todman, et al. v. the Mayor and City Council of Baltimore, et al.](#), Judge Deborah Boardman, also a former federal defender, ruled that a Baltimore city ordinance classifying all personal property left at the time of an eviction as “abandoned” violated the constitutional due process rights of tenants. The plaintiffs in the lawsuit had lost a number of their personal belongings, including cremated remains and family photographs, after being evicted from their home in 2019. Judge Boardman reasoned that the ordinance didn't provide the plaintiffs with proper notice of their impending eviction, adequate notice that their personal property

was at risk, or an opportunity to retrieve those belongings. Now, evicted tenants in Baltimore can sue the city to return their property.

- Also in Maryland, Judge Lydia Kay Griggsby, a former Senate staffer and attorney with the Department of Justice, released an order blocking Baltimore County from enacting its recently drawn map of County Council districts. In [Baltimore County NAACP et al v. Baltimore County et al.](#), Judge Griggsby ruled that the map would dilute Black voters' ability to elect a representative of their choosing. At the time, the proposed map had only one majority-Black district out of seven, in a county where Black residents account for nearly one-third of the population.

- In [Walsh v. Safe Haven Assisted Living of Haslett, LLC et al.](#), Judge Jane Beckering of Michigan, who spent much of her career as a plaintiffs'-side attorney, issued a consent judgment ordering an assisted living facility to pay over \$15,000 in back wages and damages after failing to pay six of its healthcare workers overtime pay. The assisted living facility did not pay workers when their work responsibilities overlapped with meal breaks.

- Last October, Judge Eunice Lee of the Second Circuit, a former appellate defender in New York City, issued an order in [Antonyuk v. Hochul](#) temporarily restoring a New York gun safety law imposing restriction on when and where people can carry guns in the state.

- In [Taylor v. Board of Regents](#), Judge Sarah Geraghty of Georgia, a former attorney with the Southern Center for Human Rights, denied a university's motion to dismiss, allowing the

plaintiff, a university graduate student, to move forward with his race discrimination claim. The plaintiff, along with another Black student, was never provided with a faculty advisory committee—although it was university policy to do so. In denying the university's motion, Judge Geraghty allowed the plaintiff's claim of racial discrimination to move forward.

BIDEN NOMINEES & JUDGES

In the first two years of his administration, President Biden has shown that he intends to make judges a part of his presidential legacy. At the end of his second year, President Biden surpassed former president Donald Trump's record of 85 people appointed to the bench with an impressive 97 confirmations, showing that there's a serious effort to rebalance the judiciary underway. And he hasn't been alone in this effort: senators have also played a key role in answering the call from President Biden to prioritize professionally diverse candidates when making their judicial recommendations. In Georgia, Senators Raphael Warnock and Jon Ossoff [established](#) a notably diverse judicial nominating commission including civil rights advocates—a perspective that is often missing from these commissions—to flag potential candidates for the senators to recommend to the White House.

The nominees that have come out of Georgia, like Judge Victoria Calvert, Judge Sarah Geraghty, and 11th Circuit nominee Nancy Abudu, have overwhelmingly come from professionally diverse backgrounds. Similarly,

Senators Patty Murray and Maria Cantwell of Washington [expanded](#) their nominating commission to include more civil rights and criminal defense perspectives. Consequently, professionally diverse individuals like now-Judges Tana Lin and David Estudillo have been elevated to the federal bench in Washington.

Of the judicial nominees the Senate has confirmed, [53.6 percent, or more than half](#), have some type of professionally diverse career path. When it comes to demographic diversity, 64.9 percent of Biden's nominees have been people of color, and 66.2 percent of his nominees have been women. On that list, 11 Black women were confirmed to the circuit courts, more than those confirmed under all previous presidents combined. Additionally, there have been 9 former public defenders confirmed to the circuit courts, also more than those confirmed under all previous presidents.

To see how remarkable these records are, and in practice what these nominees bring to the bench, the following is just a small sample of the incredible nominees President Biden has nominated in the past two years:

- [Jennifer Sung](#), who is now a judge on the Ninth Circuit Court of Appeals, worked as a labor attorney who served on the Oregon Employment Relations Board. Before then, Judge Sung worked in private practice representing the likes of the Oregon Federation of Nurses and Health Professionals and professors at Portland State University in labor relations matters. Early in her career, she was an organizer with SEIU. Her confirmation made Judge Sung only the third AAPI woman

to serve on a U.S. Court of Appeals.

- [Sarah Geraghty](#), who was confirmed to the U.S. District Court for the Northern District of Georgia, practiced as a civil rights attorney at the Southern Center for Human Rights before becoming a judge. Prior to that, Judge Geraghty worked in the Office of the Appellate Defender in New York. Her confirmation made her only the second public defender to serve on the District Court of Northern Georgia.

- [Candace Jackson-Akiwumi](#), who was confirmed to the U.S. Court of Appeals for the Seventh Circuit, was a career public defender before being elevated to the bench. For a decade, Judge Jackson-Akiwumi worked as a staff attorney with the Federal Defender Program for the Northern District of Illinois. Her confirmation made her only the second Black person to become a judge on the Seventh Circuit and the only non-white active judge on the court.

- [Dale Ho](#), who was recently renominated to the U.S. District Court for the Southern District of New York, is a renowned voting rights attorney. Currently, he leads the ACLU's voting rights litigation as the director of the organization's Voting Rights Project. Before joining the ACLU, he was a litigator for the NAACP Legal Defense and Educational Fund, Inc. If confirmed, Mr. Ho would be the only active AAPI man serving on the court and just the second in the court's history.

- [Arianna Freeman](#), who was confirmed to the U.S. Court of Appeals for the Third Circuit, was a career defender before becoming a judge. She practiced for over a decade in the Federal Community Defender office for the Eastern

District of Pennsylvania. Her confirmation made her the first Black woman and woman of color to serve on the Third Circuit.

- [Natasha Merle](#), who was recently renominated to the U.S. District Court for the Eastern District of New York, is currently the Deputy Director of Litigation at the NAACP Legal Defense and Educational Fund. Prior to joining LDF, Ms. Merle was a federal public defender with the Federal Public Defender for the District of Arizona and an attorney with the Gulf Region Advocacy Center. If confirmed, she would become the first Black woman with public defender experience to serve on the court.

- [Margaret Strickland](#), who was confirmed to the U.S. District Court for the District of New Mexico, practiced as an esteemed civil rights and criminal defense attorney. Judge Strickland was a founding partner at a firm dedicated to civil rights advocacy and representing survivors of sexual assault and police brutality. Prior to that, she was a public defender with the New Mexico Public Defender.

- [Araceli Martínez-Olguín](#), who was recently renominated to the U.S. District Court for the Northern District of California, is an immigration attorney. Currently, she supervises attorneys at the National Immigration Law Center. Prior to that, Ms. Martínez-Olguín was the managing attorney at the Immigrant Rights' Project at Community Legal Services. She also has legal experience working with the ACLU and Legal Aid at Work's National Origin and Immigrants' Rights Program. If confirmed, she would be only the second Latina to serve on the court.

- [Nina Morrison](#), who was confirmed to the U.S. District Court for the Eastern District of New York, spent most of her career working for the Innocence Project. During her time with the Innocence Project, she started serving as the Executive Director and subsequently as Senior Litigation Counsel. Judge Morrison's confirmation made her the second openly LGBTQ+ judge on the court.

- [Tiffany Cartwright](#), who was recently renominated to the U.S. District Court for the Western District of Washington, is a civil rights attorney. In her current practice, she focuses on civil rights and employment litigation with a focus on cases involving police misconduct, gender discrimination, and sexual harassment. She has led civil rights cases like [West v. City of Montesano](#), which resulted in a \$3 million settlement for the family of a man shot in his home while experiencing a mental health crisis.

- [Charlotte Sweeney](#), who was confirmed to the U.S. District Court for the District of Colorado, was previously a plaintiffs' lawyer who focused on employment law. During her time as an attorney, she [represented](#) a group of women professors who alleged they weren't being paid on par with their male colleagues—a suit that ended in a \$2.66 million settlement and pay raises for the women professors. She also had a hand in drafting Colorado's 2019 Equal Pay Act. Her confirmation made her the first openly LGBTQ+ judge in Colorado.

While the statistics showing an increase in professionally diverse judicial nominees are stunning (and in some ways disappointing, as they speak to the egregious lack of demographic and professional diversity in the judicial

nominations from previous administrations), it's worth exploring two things President Biden, Leader Schumer and Senate Judiciary Committee Chairman Dick Durbin can do to be even more effective in their approach to judges: (1) expanding the scope of the professional diversity of future nominees, and (2) eliminating the blue slip process.

DIVERSIFYING DIVERSITY

The Biden administration's commitment to more professional diversity amongst federal judges has rightfully earned the praise of many, and the recent rise in public interest attorneys-turned-federal judges has been a positive step in the effort to rebalance our judiciary. Individuals like Candace Jackson-Akiwumi, Jennifer Sung, and Arianna Freeman have certainly broadened the perspectives represented on the bench. However, it is also true that the net must be cast even wider when the administration makes its federal judicial selections.

For the most part, professional diversity in President Biden's nominees has been largely confined to former public defenders. Of the nominees and confirmed judges with professionally diverse backgrounds under the Biden administration so far, nearly 50 percent have some experience as a public defender or criminal defense attorney. While it is fantastic—and long overdue—that our judiciary includes more criminal defense perspectives, it is critical for President Biden to avoid making the same mistake he's trying to fix. The legal profession captures so many different areas of expertise, and the president has thus far missed a valuable

opportunity to nominate highly qualified individuals who collectively cover that broad spectrum of public interest legal experience. The Biden administration has made a start, but can and must do more when it comes to nominating economic justice attorneys, reproductive justice lawyers, and immigration and legal aid advocates. Attorneys with housing and disability specialty areas are also extremely underrepresented in not just the federal judiciary as a whole, but specifically in President Biden's nominees. The president has the next two years to keep working at the mission of diversifying the backgrounds of judges on the federal bench, and he should use that time to expand what professional experiences are reflected amongst his nominees.

Further, while the groundwork has been laid for normalizing a path to the bench for some public interest lawyers, President Biden has continued to nominate a substantial number of prosecutors and corporate attorneys to federal judgeships. The understandable focus on President Biden's efforts to prioritize professional diversity in judicial nominees has simultaneously dimmed the spotlight on—and scrutiny of—nominees who bring already over-represented backgrounds to the bench.

Of the 97 nominees confirmed thus far, 47, or nearly half, of President Biden's confirmed judges have corporate or prosecutorial backgrounds. Yet just a few of these nominees have received attention for their controversial and troubling professional backgrounds.

Among those few nominees who did [draw opposition](#) from advocates and organizations on the basis of their professional records are

now-Judges Christine O'Hearn and Jennifer Rearden. Before taking the bench in New Jersey, Judge O'Hearn spent most of her career opposing workers as a management-side attorney. While working at Brown Connery, a [firm](#) whose "attorneys have particular expertise in representing corporate and public entities in both union and non-union settings," Judge O'Hearn represented employers in union-related matters before the National Labor Relations Board, in cases relating to petitions for certification, union elections, unfair labor practices, collective bargaining negotiations, grievances, and arbitration.

Before taking the bench in New York, Judge Rearden was a partner at one of the largest and most [notorious](#) law firms in the world, Gibson, Dunn & Crutcher. During her confirmation process, 32 public interest organizations publicly opposed her nomination. In [a letter](#) to the Senate Judiciary Committee, the coalition of groups cited litigation she was involved in to justify their opposition: "Rearden's record litigating cases [defending](#) housing discrimination, seeking to [overturn](#) worker protections, and [challenging improved access](#) to transportation for wheelchair users makes her unsuitable for this appointment." Despite concerns, both Rearden and O'Hearn were moved through the committee with minimal pushback from senators and ultimately confirmed in final floor votes.

Judges O'Hearn and Rearden weren't the only ones to spark concern and outrage about their nominations. Just one day before the Supreme Court overturned *Roe v. Wade*, it was [reported](#) that President Biden intended to nominate Chad Meredith, a staunch conservative and

Federalist Society member, to the federal bench. President Biden's intent to nominate Mr. Meredith was particularly concerning to groups because of his defense, as chief deputy general counsel for Governor Matt Bevin, of a 2017 Kentucky abortion law mandating that physicians who perform abortions first perform an ultrasound and describe the image to the patient. It wasn't until Republican Senator Rand Paul of Kentucky announced he [wouldn't support](#) Meredith's nomination that the Biden administration backtracked.

As time has progressed, President Biden's judicial picks have trended more towards attorneys with prosecutorial or corporate backgrounds. In his [two most recent](#) slates of judicial nominations, 70 percent of the nominees have backgrounds as prosecutors and/or corporate lawyers.

As we celebrate the push for a more diverse federal judiciary, it's important to hold the administration accountable when it falls into a pattern of naming large numbers of prosecutors and corporate attorneys to the bench. If the goal is to reshape the judiciary, President Biden must prioritize his own push for professional diversity with every judicial nomination, especially in jurisdictions that are sorely lacking it.

BLUE SLIPS

There are over 100 judicial vacancies waiting to be filled and at least 40 of those vacancies are in states with Republican senators—something for which we can thank the blue slip tradition.

The blue slip process is not a formal rule that the Senate is required to follow; it is instead an arcane rule traditionally considered a senatorial courtesy. As stated on the [Senate Judiciary Committee website](#), “a blue slip is a piece of paper that the Senate Judiciary Committee uses to solicit views of home state senators after a person is nominated to be a Federal judge in their state.” A senator’s failure to return a blue slip on a nominee signifies that for whatever reason, that nominee isn’t satisfactory to a senator and will likely not receive their support. Traditionally, nominees who don’t receive blue slip approval from their home state senators have not been confirmed to the bench. In the current era of minority-party obstruction, this amounts to an automatic veto power over judges for home state senators in red states.

Of 37 vacancies in states with two Republican senators, only one was filled in the first two years of the Biden administration. It is unacceptable for an outdated Senate tradition to be the reason that we essentially abandon countless everyday working people in red states who have the same rights as those in blue states to rely on our courts to seek access to justice in areas including voting rights, environmental justice, workers’ rights, reproductive justice, and so many others.

Failing to fill vacancies in red states exacerbates an existing access-to-justice crisis. Courts are already overwhelmed and struggling to clear their backlogs because we don’t have full benches. It has been decades since Congress has added seats to the federal courts of appeals and district courts. Despite the number of cases filed in the courts of appeals increasing by [20 percent](#)

since 1990, there’s been no expansion since then. To put it more into perspective, judges on the Eleventh Circuit Court of Appeals are responsible for up to a stunning [450](#) cases per judgeship. The issue of excessive caseload with understaffed benches persists in our district courts. Notwithstanding caseloads rising by nearly [14 percent](#), seats haven’t been added to district courts since 2003 and a sole district court judge can be responsible for more than [600](#) cases a year. Multiple pieces of legislation, including a [bipartisan bill](#), have been introduced in recent years to address the backlog in our courts, yet these have not received the serious consideration they are due. In an already overwhelmed legal system, a failure to fill vacant seats in states with two Republican senators is an egregious miscarriage of justice. Senators must acknowledge that one immediate way to address our overwhelmed courts is to eliminate the blue slip practice, a blockade to efficiently confirming nominees who can fill openings.

The longer it takes to fill vacancies in red states, the more litigants and lawyers will be encouraged to forum shop in courts and states in ways that all but guarantee favorable outcomes for their causes. The practice of “[forum shopping](#),” which is strongly discouraged in legal practice, is a tactic some lawyers use to game the system. It occurs in instances in which there is overlapping jurisdiction of a matter “between courts in different states, between federal and state courts in the same state, or between courts in different countries” in an effort to end up in a court that will likely give the most favorable outcome based on who’s sitting on the respective bench. If this administration leaves seats vacant in red states while they wait for approval from uncooperative senators that is

unlikely to come, more conservative individuals, organizations, and corporations will do their best to have their cases heard in the states being neglected, where they can virtually guarantee that their case will be heard in front of a judge predisposed to support their cause.

Since the blue slip courtesy is not a formal rule in the Senate, it need not be followed or respected—as conservatives have taken advantage of in the past. With President Obama’s nominees alone, Republicans used the blue slip to [delay](#) dozens of confirmations and block 18, including four circuit court picks in 2016 alone. Yet when Republicans controlled the Senate during Donald Trump’s presidency, they disregarded blue slips from Democratic senators on circuit court nominees, ensuring that Trump’s circuit court nominees were swiftly confirmed, regardless of objections from their home state senators.

If Chairman Durbin hopes to meaningfully transform the federal judiciary, he must stop abiding by the blue slip tradition. Yet on the use of blue slips, he recently [said](#), “I want to respect the blue slips, and I’ve said the only exceptions will be if there’s a case which clearly demonstrates a disregard for a nominee’s qualifications because of race, gender, or sexual orientation.” Setting such a high bar for what constitutes an appropriate scenario to bypass a blue slip only incentivizes conservatives, particularly those who have already [shown](#) extreme contempt toward nominees of color, to continue disrespecting and abusing the already grueling process and the nominees who are required to participate in it.

The blue slip tradition exacerbates the ability of individual senators to play games with judicial nominees, wasting time and preventing qualified candidates from being seated on the federal bench. Expecting this to change in the 118th Congress seems futile given the behavior on display over the last two years. Take, for example, the actions of Senator Ron Johnson who, along with Senator Tammy Baldwin, [recommended](#) Judge William Pocan, a candidate for a district court seat, only to ultimately revoke his support once Judge Pocan was nominated. This type of back-and-forth game bred by the blue slip process unfairly subjects nominees to absurd treatment and deprives everyday people of the opportunity to have broader representation reflected on our courts. Had Senator Johnson stayed true to his word, Judge Pocan, someone with extensive consumer protection experience, would have advanced through the process and possibly been confirmed to [become](#) the first LG BTQ+ federal judge in Wisconsin. But because of the blue slip process, that won’t happen.

President Biden has a role that he can play in this debate and thus far, he hasn’t chosen to test Senator Durbin’s commitment to blue slips by putting forward a substantive number of nominees in red states. Judge Pocan, who was not renominated, is the only district court nominee to date in a state with a Republican senator who has failed to move forward as a result of a formal failure to return a blue slip, largely because there are very few nominees who have been named in states with Republican senators. In states with two Republican senators, there were only two district court nominees put forth by the president at the end of the last Congress. One of those nominees, Scott Colom,

who was renominated to a seat on the U.S. Northern District of Mississippi after being stalled in last year's Congress, is finally receiving a [promise of approval](#) from one of Mississippi's senators, Roger Wicker. Senator Cindy Hyde-Smith, Mississippi's other home state senator, has yet to indicate whether she would follow suit. It is unclear whether his confirmation will be permitted to proceed should Hyde-Smith not commit her support to the nominee.

One or two senators do not need to be permitted to block the confirmation of qualified, competent jurists. Take, for example, the case of now-Judge Andre Mathis, who last year was confirmed to the Sixth Circuit Court of Appeals. Both of Judge Mathis's home state senators, Republicans Marsha Blackburn and Bill Hagerty, failed to signal their approval for his confirmation, stating that they weren't consulted in advance of the nomination. During Mathis's confirmation hearing, Senator Blackburn [attributed](#) her reluctance to what she called his "rap sheet" of three prior speeding

tickets. Despite that disturbing dog whistle, Judge Mathis was ultimately able to become a circuit court judge because Chairman Durbin has chosen to ignore the blue slip courtesy for circuit court nominees. The only distinction between who gets railroaded by blue slips and who can move forward in the face of home state senator obstruction is what level within our federal court system they have been nominated to. Not only is this system fundamentally unfair, but it sends the message that one level of our courts is more important than the other—something that would certainly be news to the thousands of people around the country, particularly in red states, waiting for their day in district court. Even at the "lower-level" of our courts, judges have the authority and discretion to stop the perpetuation of harm to everyday communities through their rulings. It matters that we have high-quality judges in every seat at every level; wanting to honor senatorial tradition is an insufficient reason to deny the most vulnerable true access to justice.

NOMINATIONS

While much can be said about the harm currently being caused by our federal courts, this is in many ways an incredibly exciting moment. More attention than ever is being paid to the role courts play in our society and how judges function within that system. President Biden's explicit commitment to diversifying the federal judiciary and his ongoing dedication to making judges a top priority has put a federal judiciary filled with public interest attorneys within reach. However, the president, along with Leader Schumer and Chairman Durbin, can and should use the remaining two years of this presidency to maximize efforts to professionally diversify our federal benches. By expanding the scope of professionally diverse backgrounds that are represented in nominees and encouraging home state senators to reflect that in their recommendations, there's an incredible opportunity to build an even more truly diverse federal bench. Eliminating the blue slip tradition will ease the workload of judges on understaffed benches and give every day people the opportunity to access true venues of justice, regardless of where they live. There remains much work to be done if we want our federal courts to reflect the very best that our country has to offer, but it's work that can be done with a renewed commitment from each of us who cares about making sure our courts provide access to justice for all.



