



Primer: Time to Give the Blue Slip the Pink Slip

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The Senate “blue -slip” tradition appears nowhere in the Constitution, nowhere in federal statute, and nowhere in the standing rules of the Senate. It is a relic that made sense in an era in which the executive branch was given deference in nominations and the filibuster mandated a consensus-based process. Today, that conventional senatorial courtesy functions as an extra-constitutional veto over the President’s power to staff the federal law enforcement and judiciary. By insisting on preserving this practice for both United States Attorney and judicial nominations, Senate Republicans on the Judiciary Committee have effectively granted opposition-party senators the ability to block the president’s chief federal prosecutors in key states. The immediate result has been foreclosing any realistic prospect of criminal prosecutions of James Comey and Letitia James in their home jurisdictions, and undermining the president’s broader law-enforcement agenda. Continuing to honor the blue slip is a choice. It should be ended.

History of the Blue Slip

The Appointments Clause vests the nomination power in the President, with the Senate given authority to provide or withhold consent by open vote.¹ The constitutional design does not contemplate a sub-senatorial committee veto exercised by one or two home-state senators at the committee gatekeeping stage. The blue slip process, as explained by the Congressional Research Service, is simply an internal practice of the Senate Judiciary Committee that began in 1917, under which the chairman sends blue colored forms to home-state senators asking their views on a President’s nominee for a circuit or district judgeship and certain other positions like U.S. Attorneys and marshals.² The blue slip was intended as a means for the Judiciary Committee chair to obtain local knowledge regarding district-level nominees, since home-state senators often personally knew or had direct dealings with those candidates; fast forward to 2025, and the process no longer serves such an altruistic purpose.

¹ U.S. CONST. art. II, § 2, cl. 2.

² Cong. Research Serv., R44975, *The Blue Slip Process for U.S. Circuit & District Court Nominations 1917 to Present* 1–3 (Nov. 20, 2025), https://www.congress.gov/crs_external_products/R/PDF/R44975/R44975.11.pdf.

The blue slip process is not codified in the Judiciary Committee's rules and is instead a policy unilaterally set by the committee chair.³ From 1956 to 2016, almost no circuit or district court nominee advanced without support from both home-state senators, even when the chair nominally claimed a more flexible policy.⁴ No nominees have ever been confirmed without the consent of both home-state senators, and only four have been confirmed with one home-state senator opposition.⁵ In recent years, the committee modified its policy so that circuit-court nominations no longer require two positive blue slips for hearings and votes, but it left intact the older practice for district-court nominees and U.S. attorneys.⁶

Appointment Fights in Virginia and New Jersey

The current fight over appointments underlines how a supposedly bipartisan norm has become partisan leverage against the executive. In Virginia, the prospective nomination of Lindsay Halligan as U.S. Attorney for the Eastern District put her on a collision course with the blue slip power of Democratic Senators Mark Warner and Tim Kaine. The nomination did not advance with neither senator returning positive blue slips, which under Judiciary Committee practice effectively halted consideration of her appointment at the committee level.⁷ Under Judiciary Committee practice, the committee does not proceed to hearings or votes on U.S. Attorney nominees until both home-state senators return positive blue slips, which in a state like Virginia effectively transfers the real appointment power from the President and the full Senate to two senators.⁸ Because of that, the administration used other interim appointment measures upon which the courts held that Halligan's service exceeded statutory limits and dismissed the actions taken during her tenure.⁹ The practical effect was that blue slip opposition prevented any lawful and confirmed U.S. attorney from being appointed to carry out and administer legal enforcement in the Eastern District of Virginia.

New Jersey offers an even starker example. After the President installed his former personal lawyer, Alina Habba, as interim U.S. Attorney for the District of New Jersey, the state's Democratic senators refused to return blue slips on her prospective nomination, and Judiciary Committee Republicans declined to advance her through normal confirmation in the absence of

³ Cong. Research Serv., *supra*, at 1.

⁴ *Id.*, 13-14

⁵ *Id.*

⁶ *Id.* at 12-13.

⁷ Theodor Meyer, 'Trump's U.S. Attorney Pick Could Put Him on Collision Course With Senate,' *Wash. Post* (Sept. 23, 2025)

<https://www.washingtonpost.com/politics/2025/09/23/trump-halligan-siebert-us-attorney-virginia-blue-slip-senate/>.

⁸ *Id.*

⁹ Dan Mangan, 'Former Trump lawyer Alina Habba resigns as New Jersey U.S. attorney after disqualification,' *CNBC* (Dec. 8, 2025),

<https://www.cnn.com/2025/12/08/trump-alina-habba-new-jersey-prosecutor.html>.

blue slips.¹⁰ The administration responded by cycling Habba through acting and special appointments that bypassed Senate confirmation. Courts ultimately held she had been serving without lawful authority since July 2025 and disqualified her from acting as U.S. Attorney.¹¹ Similar to Virginia, the administration used acting and special-appointment devices to bypass Senate confirmation for Habba, which ultimately failed when federal courts ruled those maneuvers unlawful and disqualified her from serving.¹²

The net result of these two political upheavals is that because Senate Republicans chose to preserve the blue slip for U.S. Attorney nominations, opposition senators could bar Senate consideration of the president's preferred nominees, while courts simultaneously invalidated efforts to install those nominees through unilateral acting appointments. In practical terms, that combination gave opposition senators a veto over the President's ability to put qualified prosecutors in place in exactly the districts where the administration sought to pursue investigations of former FBI Director James Comey and New York Attorney General Letitia James.¹³

Why the Blue Slip Must be Removed

Several structural objections follow. First, a single senator's silent refusal to return a blue slip is not a constitutional check on the president's appointments. The Appointments Clause considers that the Senate's check will be exercised through transparent institutional processes: public hearings, committee votes, floor debate, and recorded yea or nay votes on confirmation.¹⁴ A non-public form before the committee chair, never debated in open session, cannot be reconciled with that model of accountability.

Second, the blue slip collapses the distinction between advice and consent. Genuine advice consists of consultation prior to nomination, sharing of local knowledge, and vetting of candidates. The president is free to heed or ignore that advice. Consent or its denial comes later when the Senate votes on the nomination. The blue slip merges these stages and permits home-state senators to convert a failure of pre-nomination consultation or a policy disagreement with the president into a pocket-veto with no recorded vote. That dynamic is especially troubling when the office at stake is an Article II prosecutor who is supposed to answer to the president as head of the executive branch. This could be considered senatorial fiat over the president, which is unconstitutional.

Third, U.S. Attorneys serve at the pleasure of the president and can be removed at will. Why should this role remain subject to senatorial vetting when the chief federal prosecutor whom the

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *See* U.S. CONST. art. II, § 2, cl. 2.; *see also* U.S. CONST. art. I, § 5, cl. 2.

public associates directly with the incumbent administration's law-enforcement priorities can be removed at will? Blue slips serve only as unconstitutional distortions of the Appointments Clause and the duties of the unitary executive.

Finally, it belies reason, logic, and history to believe that some future Democratic Chairman of the Senate Judiciary Committee will honor the unitary veto power of a Republican Senator over a Democratic president's executive nominees. The blue slip will end, the only questions are when and whether President Trump's constitutional powers are fully realized before it does.

How to Remove the Blue Slip as a Defective Norm

Given this history and these structural problems there is a strong legal and institutional case for eliminating the blue slip tradition entirely. Because the blue slip is not part of the Constitution, not part of federal law, and not even part of the Judiciary Committee's formal rules, the Committee chairman can repeal it through a single policy statement.¹⁵ The chairman could announce that for nominations home-state senators' views will be solicited but that a withheld or negative blue slip will no longer stand in the way of hearings and votes. Home-state senators would retain full power to oppose nominees in open session and to vote against them on the floor. What they would lose is the ability to veto nominees behind closed doors and thereby thwart the President's constitutional prerogative to appoint.

Short of outright abolition, the Senate could adopt a formally limited and transparent rule for blue slips on nominations. For example, the Senate could treat blue slips as strictly advisory, require that any objection be made in writing, and commit to advancing nominees to hearing and floor vote within a fixed period regardless of blue slip status. That approach would restore the blue slip's original informational purpose while ending its use as an unreviewable veto.

The Senate has historically changed its own confirmation procedures by majority vote when a supermajority requirement, or filibuster, proved politically unsustainable as we saw in 2013 for most nominations and then again in 2017 for Supreme Court nominations. These changes show that nothing in the Constitution or statute permanently locks in procedural traditions like cloture threshold, post-cloture debate time, or the practical norms governing how nominations move forward. All it would take to remove the blue slip process is through a simple ruling from the Judiciary Committee chairman that the committee will proceed to hearings and votes on nominations regardless of whether home-state senators return approval slips, thereby establishing a new governing precedent for the committee. Because the blue slip is not a constitutional requirement but rather an internal Senate custom, the same institutional logic that allowed the Senate to repurpose cloture rules applies, making this kind of reform both lawful and within Senate procedural authority.

¹⁵ See Cong. Research Serv., *supra*, at 1.

Conclusion

The blue slip tradition for nominations is a vestige of a bygone era in which informal courtesies served a useful political purpose and were thought to be harmless ornaments on the constitutional tree. In the current partisan environment with vacancies limiting the use of interim appointees and courts increasingly enforcing statutory limits on acting authority, the blue slip is no longer harmless. It is a powerful weapon that allows individual senators in the minority party to nullify a President's selections of his own federal prosecutors and judges, and thereby to insulate political allies from potential federal charges or undesired legal rulings. By clinging to this tradition, the Senate Judiciary Committee voluntarily cedes to opposition-party senators a veto over some of the President's most consequential appointments. That result is neither constitutionally required nor structurally sound. The blue slip tradition is a custom not a command, and customs that undermine the separation of powers should be discarded. It is time to abolish the blue slip entirely and unbind the senate's constitutional duty.