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Checks on Trump's Court Picks Fall Away

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The Republican head of the Senate Judiciary Committee has curtailed one of the last legislative limits on a president's power to shape the federal courts, giving Donald Trump more freedom than any U.S. president in modern times to install his judges of choice, legal experts said. Last week, Sen. Chuck Grassley (R., Iowa) reined in a tradition that empowered senators to block federal appeals-court nominees from their home state. His decision came about four years after Democrats, citing Republican filibusters of President Barack Obama's circuit-court nominees, eliminated a Senate rule that required the majority party to mount 60 votes to advance a nominee to a confirmation vote.

Together, the threat of a filibuster—or delaying tactic—and use of “blue slips”—so-named because senators indicate support or opposition to nominees on blue slips of paper—guarded against lifetime appointments for nominees deemed far outside the mainstream, court experts said. Getting rid of these checks could foment distrust in judges' work if Mr. Trump and later presidents prioritize ideology over experience or legal talent, some of the experts said. “When judges lose legitimacy in the public eye, they lose the ability to enforce unpopular decisions,” said Arthur Hellman, an expert on the federal judiciary and law professor at the University of Pittsburgh. “And that's when you see an unraveling in the rule of law.” Others said the changes were part of a natural progression away from Senate traditions that allowed the minority party to stall nominations for partisan reasons.

“If you're not a fan of the Senate-wide filibuster, you're probably not a fan of a filibuster by one senator,” said Ilya Shapiro, a senior fellow in constitutional studies at the Cato Institute, referring to the practice of senators blocking nominees from their states.

So far, the Republican-controlled Senate Judiciary Committee has approved two nominees pronounced unfit to serve by the American Bar Association, including Brett Talley, a Justice Department lawyer who has never argued a motion in federal court and whose wife is the chief of staff for the top White House lawyer.

“If Senate Republicans will confirm him, then there is no realistic sense of checks and balances,” said Christopher Kang, who worked on judicial nominations in the Obama White House. The White House declined to address criticisms of Mr. Talley.

The ABA's Standing Committee on the Federal Judiciary has deemed two other Trump nominees “not qualified”—ratings Republicans on the Senate Judiciary Committee dismissed as the product of what they called a liberal advocacy group.

The ABA has rejected that criticism, saying it has rated potential judges for more than 60 years, drawing on dozens and sometimes hundreds of interviews with a nominee's colleagues and other peers.

Hogan Gidley, a White House spokesman, said Mr. Trump has delivered on his promise to nominate "highly qualified judges."

"We appreciate the hard work of Chairman Grassley and Leader McConnell, and we urge the Senate to confirm all of the remaining nominees because it's what the American people deserve," he said in an emailed statement.

Mr. Grassley said on Thursday that he would hold a hearing on two nominees—David Stras, a nominee to the midwestern Eighth U.S. Circuit Court of Appeals, and Kyle Duncan, a nominee to the Fifth Circuit in New Orleans—over the objections of home-state senators Al Franken of Minnesota, a Democrat, and John Kennedy of Louisiana, a Republican.

The blue-slip practice began in the 1910s and, for a large portion of its history, "gave Senators the ability to determine the fate of their home-state judicial nominations," the Congressional Research Service, a research arm Congress, said in a 2003 report.

Mr. Grassley said that after his recent move, a negative blue slip would be a "significant factor" for the committee to consider but wouldn't prevent a hearing, a break with the practice of Senate Judiciary Committee chairmen since at least 2005.

He blamed the Democrats for abusing the blue slip after eschewing the filibuster. "The Democrats seriously regret that they abolished the filibuster, as I warned them they would. But they can't expect to use the blue-slip courtesy in its place. That's not what the blue slip is meant for," he said on the Senate floor last week.

Mr. Grassley also has parted with common practice by stacking two circuit court nominees in a single confirmation hearing, reducing time for preparation and questions, and holding hearings before the ABA finished its judicial evaluations.

"Taken together, it's clear that Republicans want to remake our courts by jamming through President Trump's nominees as quickly as possible," said Sen. Dianne Feinstein (D., Calif.), the ranking member of the Senate Judiciary Committee, in an emailed statement.

The median time from nomination to Senate confirmation for circuit-court nominees was less than a month in the administrations of presidents Lyndon Johnson and Richard Nixon, said Russell Wheeler, a visiting fellow at the Brookings Institution who studies federal courts. That number rose through the 1980s and 1990s and ballooned to 229 days during President Barack Obama's two terms, he said.