



November 9, 2018

**OPPOSE THE CONFIRMATION OF PAUL MATEY TO THE
U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT**

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, I write in opposition to the confirmation of Paul Matey to the U.S. Court of Appeals for the Third Circuit.

Mr. Matey is a conservative ideologue who lacks the neutrality to serve as a fair-minded jurist. His home-state senators from New Jersey oppose his nomination, which historically would have stopped it from proceeding, but Senate Judiciary Committee Chair Chuck Grassley has jettisoned this tradition, and others, in his haste to pack the federal courts with Trump extremists. The Senate must oppose Mr. Matey's nomination.

Ideological Affiliations: Mr. Matey has been a member of the Federalist Society since 2001, and he served as the head of the Federalist Society New Jersey chapter from 2001 to 2003 and 2005 to 2009. This out-of-the-mainstream legal organization represents a sliver of America's legal profession – just four percent – yet more than 80 percent of President Trump's circuit court nominees, and a significant number of his district court nominees, have been Federalist Society members. Mr. Matey is also a longtime member of the hyperpartisan Republican National Lawyers Association ("RNLA"), having joined in 2005. The RNLA opposed the Sonia Sotomayor and Elena Kagan nominations to the Supreme Court, supported voter suppression efforts such as photo ID laws, and waged an ideological attack on the Obama Justice Department's Civil Rights Division.

Lack of Pro Bono Work: Mr. Matey indicated he has performed no pro bono work since becoming an attorney, in response to Question 25 on his Senate questionnaire.¹ This question is included in the Senate questionnaire because the ABA Code of Professional Responsibility calls for every lawyer "regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged."² The fact that Mr. Matey has performed no pro bono work is alarming, and it is in stark contrast to other nominees. Of the 84 judicial nominees who have been confirmed under President Trump, every single one provided examples of pro bono work or community service in response to Question 25 of their Senate questionnaire. Mr. Matey is the sole Trump judicial nominee

¹ <https://www.judiciary.senate.gov/imo/media/doc/Matey%20SJQ.pdf>.

² *Id.*

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who has done nothing during his legal career to serve the disadvantaged. That is deeply troubling and should itself be disqualifying.

Lack of ABA Rating: Mr. Matey is being given a hearing before the ABA has had a chance to finish its evaluation of him, which will seriously compromise the ability of senators to properly vet his suitability for the Third Circuit. Chairman Grassley has demonstrated sheer hypocrisy in ignoring ABA ratings when he schedules nomination hearings, but touting ABA ratings when they are favorable. Chairman Grassley has defied the tradition of not scheduling hearings until ABA ratings are completed in his rush to pack the courts with Trump's judicial nominees. The fact that Mr. Matey was nominated in April but still lacks an ABA rating seven months later, suggests that he may have been found Not Qualified during his first ABA evaluation, which would trigger a second evaluation.³

Possible Role in Ethical Scandals: Mr. Matey served as Deputy Chief Counsel to New Jersey Governor Chris Christie in 2013, when Governor Christie's advisors masterminded the Fort Lee lane closures as political retribution against the Fort Lee mayor who declined to endorse him for reelection. According to press reports, Mr. Matey was involved in the decision to fire Bridget Kelly for her role in conspiring to shut down the bridge lanes.⁴ Senators should ask Mr. Matey about his full role in the Bridgegate scandal, as well as other ethical problems of the Christie administration.

Lack of Home-State Senator Support: Mr. Matey lacks the support of Senators Menendez and Booker, his home-state senators, who were not meaningfully consulted about the nomination. In light of the home-state senators' opposition, Mr. Matey should not be granted a committee hearing or vote. During the Obama presidency, Chairman Grassley did not grant a hearing or vote to any nominee unless they had support from both home-state senators. In 2015, Chairman Grassley pledged:

For nearly a century, the chairman of the Senate Judiciary Committee has brought nominees up for committee consideration only after both home-state senators have signed and returned what's known as a "blue slip." This tradition is designed to encourage outstanding nominees and consensus between the White House and home-state senators. Over the years, Judiciary Committee chairs of both parties have upheld a blue-slip process, including Sen. Patrick Leahy of Vermont, my immediate predecessor in chairing the committee, who steadfastly honored the tradition even as some in his own party called for its demise. I appreciate the value of the blue-slip process and also intend to honor it.⁵

During the Trump presidency, Chairman Grassley has made the hypocritical decision to give a hearing to eight circuit court nominees who lacked the support of one or both home-state senators: David Stras, Michael Brennan, Ryan Bounds, David Porter, Eric Murphy, Chad Readler, Eric Miller, and Mr. Matey. The Congressional Research Service has identified only three known instances during the 101-year history of the blue slip – prior to the Trump presidency – in which a judicial nominee was confirmed over

³ <https://www.americanbar.org/content/dam/aba/unategorized/GAO/Backgrounder.authcheckdam.pdf>.

⁴ <https://njmonthly.com/articles/jersey-living/exclusive-inside-bridgegate/>.

⁵ <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2015/04/15/working-secure-iowa-judicial-legacy/25801515/>.



the objections of a home-state senator, and there are no known instances in which a nominee has ever been confirmed over the objections of both home-state senators.⁶ The Senate must not let Mr. Matey be the first, or it will strip senators of their constitutional role of providing advice and consent for appellate appointments in their states from this and all future administrations.

Over the years, when the Senate majority placed partisan loyalty to the president over the Senate's institutional interest in independently carrying out its constitutional responsibilities, the blue slip served as a vital corrective. This institutional check has arguably never been more important than today, with a president who undermines the legitimacy of judges and their rulings, and who prioritizes loyalty to him over fealty to the law. As Senator Hatch astutely observed in 2014: "Weakening or eliminating the blue slip process would sweep aside the last remaining check on the president's judicial appointment power. Anyone serious about the Senate's 'advice and consent' role knows how disastrous such a move would be."⁷

Stunning Lack of Diversity: Mr. Matey and the other nominees listed above who have been opposed by home-state senators are all conservative white men. More generally, President Trump's lack of commitment to diversity on the federal judiciary is deeply disturbing. He has appointed the least diverse group of nominees in decades.⁸ Of his 43 appellate nominations, none are African-American. None are Latino. Only eight are women. Our nation's great diversity should be reflected in its government institutions, especially the federal judiciary, which serves as the guardian of our rights and liberties. At a time when the legal profession has more women and attorneys of color than ever before, President Trump's record on judicial diversity is truly appalling.

For the foregoing reasons, The Leadership Conference urges you to oppose the confirmation of Paul Matey to the U.S. Court of Appeals for the Third Circuit. Thank you for your consideration of our views. If you have any questions or would like to discuss this matter further, please contact Mike Zubrensky, Chief Counsel, at (202) 466-3311.

Sincerely,

Vanita Gupta
President & CEO

⁶ <https://fas.org/sgp/crs/misc/R44975.pdf>.

⁷ <https://thehill.com/opinion/op-ed/203226-protect-the-senates-important-advice-and-consent-role>.

⁸ <https://www.usatoday.com/story/news/politics/2018/02/13/trumps-87-picks-federal-judges-92-white-just-one-black-and-one-hispanic-nominee/333088002/>.