Submitted for the Record by
Ranking Member Feinstein
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Statement on the Nomination of Daniel Bress
Senate Judiciary Committee
Executive Business Meeting
June 20, 2019

Thank you, Mr. Chairman. Today's agenda has 17 judicial nominees, including Daniel Bress, a nominee to the Ninth Circuit in California.

I have spoken on several occasions about Mr. Bress's nomination. As I've said before, and I will say again, I cannot support Mr. Bress's nomination because he is not a California attorney. He has lived and practiced law in the Washington, D.C. area for almost his entire adult life.

I did not reach this conclusion lightly. My staff and I have closely examined Mr. Bress's record and analyzed his ties to California. I also met with Mr. Bress to discuss my concerns. It is clear to me from his record that Mr. Bress does not have the connection to California needed to represent the state on the Ninth Circuit.

I am disappointed that the White House nominated Mr. Bress over the objections of myself and Senator Harris. Mr. Chairman, you said at Mr. Bress's hearing that "[w]e could not find somebody that had a more California connection than Mr. Bress, and I have waited 8 months to try to find somebody." That is not accurate.

First, there are more than 170,000 attorneys in the state of California to choose from. It is simply untrue to say that the White House could not find someone with "a more California connection" than an out-of-state attorney based in Washington, D.C.

Second, Senator Harris and I worked in good faith with the White House to find nominees acceptable to the President and whom we could support. We identified two Republican candidates and suggested them to the White House – and they were rejected. Then when the White House counsel reached out in January, we informed him there were several other nominees who were identified and selected by the White House that we would support.

In fact, the White House asked us to support a specific nominee of their choosing and Senator Harris and I agreed.

We were not at an impasse.

For reasons still unknown to us, the White House abandoned our negotiations and nominated Mr. Bress to this seat instead.

I am disappointed by this Committee's decision to schedule a vote on Mr. Bress's nomination despite his lack of connections to California.

Mr. Chairman, at Mr. Bress's nominations hearing you said that you have "come to believe that [Mr. Bress] is sufficiently California enough." While I don't know what 'sufficiently California enough' means, I do know Mr. Bress is not a California attorney, does not live there and hasn't except for one year since high school, and his connections are weak at best.

As California's Senators, Senator Harris and I are in the best position to evaluate whether someone has sufficient ties to California to represent our state on the Ninth Circuit. We know our state, we know our constituents, and we know the challenges they face. This is why the blue slip is so important.

Blue Slips

On the topic of blue slips, I want to address claims made by Republicans on this Committee at Mr. Bress's confirmation hearing. My Republican colleagues claimed that the blue slip is not an "inexorable command" and that a "single Senator" should not have "veto over a Presidential selection."

At that hearing, one of my colleagues said this of blue slips: "[T]his crazy idea that one Senator can somehow veto the President's nomination has really gotten completely out of hand." How times have changed.

During President Obama's administration, every Republican Senator signed a letter stating that no nominee should move forward unless they had the support of the home-state Republican senator or senators.

But this wasn't just a hollow statement.

Senators Cornyn and Cruz took advantage of Chairman Leahy's policy of honoring blue slips and used the process to ensure President Obama could not fill Fifth Circuit vacancies.

My colleagues from Texas did in fact use the blue slip as a veto — holding open for more than three and four years, respectively, two seats on the Fifth Circuit that became vacant in December of 2013 and August of 2012.

The White House — honoring Chairman Leahy's process and home-state Senators' prerogative — never nominated candidates for these vacancies because it knew that without the Texas Senators' approval, they would not be confirmed.

It is extremely disappointing that the Republican Chairmen of this Committee have refused to treat Democrats with the same deference they were provided by Senator Leahy when they were in the minority.

There has been a steady and increasing disregard for Senate norms and traditions by the majority since President Trump took office. I know my colleagues on the other side of the aisle like to point out that Senator Reid changed the rules on the filibuster. And we can debate the merits of that decision.

However, if you think it was a bad decision I'm not sure I understand the logic of two wrongs make a right.

Importantly, I think it is also worth noting that Senator Reid changed the rules in year five of the Obama Administration after there had been a historic number of judges and nominees

blocked by Republicans. In fact, there had been almost as many nominees blocked in five years of the Obama Administration as there had been in all of history.

In this situation, Leader McConnell changed the rules on cloture of Supreme Court nominees within three months of Trump being inaugurated.

The number of circuit court judges on a hearing was changed within five months, the blue slips for circuit court nominees were disregarded within 11 months. In fact, since Trump took office there have been more than a dozen norms and practices that have been thrown out in a quest to pack the federal courts.

Let's be clear – there was not a problem that needed to be solved. There was not an impasse that could not be addressed that had been going on for years – let alone dozens as was the case during the Obama Administration.

Rather, within days of President Trump's election the groups on the right began pushing a strategy to pack the federal courts at any cost – and within weeks it was under way.

As I highlighted earlier, Senator Harris and I were willing and tried to work with the White House to find a consensus pick for this vacancy – as have numerous other Democrats. However, the White House has learned that they don't need to negotiate or work with Democrats on Circuit Court seats.

Unfortunately, with today's nominee, the White House is also learning that they no longer need to take into account the interests of a state, its population, and its Senators when nominating someone to the Circuit Court.

Bress's California Ties

I want to make sure there is no confusion on this. There have been various arguments that have been made about Mr. Bress and his ties to California.

I believe many of those have been exaggerated to justify the White House's decision to move forward with a non-California nominee.

As I mentioned earlier, my staff and I have studied his record extensively, and I would like to run through some of what we have found:

- Mr. Bress claims to spend a substantial amount of time working in his law firm's San Francisco office. However, as recently as November 2018, Mr. Bress's profile on the Kirkland & Ellis LLP website listed him as an attorney working exclusively in the firm's Washington, D.C. office.

  His profile page likewise provided contact information — phone and fax — only for the Washington, D.C. office. At some point after he was nominated, this information was revised to list him as an attorney in both the Washington, D.C. and San Francisco, California offices of the firm.

- According to a review conducted by my staff, every public legal filing signed by Mr. Bress lists his office as located in Washington, D.C. This includes legal filings submitted in California courts.

- Mr. Bress has never had an oral argument before the Ninth Circuit.

- The Chairman entered a letter into the record at Mr. Bress's hearing identifying 26 cases in California courts that Mr. Bress has been involved in. According to Mr. Bress's Senate Judiciary Questionnaire, 11 of these 26 cases were asbestos lawsuits for a single client, the chemical company BASF Catalyst.

  Another four cases were products liability lawsuits involving a single client, the air-conditioning manufacturer United Technologies Corporation. This is hardly the wide breadth of California court experience that I expect of a Ninth Circuit nominee.

- Mr. Bress does not belong to any legal organizations in California, his children do not attend school in California, he has not voted in a California election for over a decade, and he does not have a California driver's license.

- Mr. Bress also does not appear to own any property in California. Some of my colleagues have said he does and used this as an argument to bolster his connection. However, upon examination and when we questioned Mr. Bress about his property ownership – we learned this consisted of owning one share of his family business ventures.

These are the facts.

This is not a debate about whether his views are within the legal mainstream or what his opinions are on various issues.

This is a factual debate about whether he is a California attorney. The facts are clear. He is not.

Prior Out-of-State Nominees

Some of my Republican colleagues have cited past instances when an attorney living and practicing law in one state had been nominated and confirmed to a seat in another state. There are a few things I want to say about this.

First, this is highly unusual. Republicans have only provided four examples of this occurring in the last 20 years. In the rare instances where an out-of-state nominee has been selected, it has always been with the support and approval of home-state senators. This is a critical difference.

Second, Republicans have suggested that Governor Jerry Brown's decision to appoint Justice Leondra Kruger to the California Supreme Court, even though she lived out-of-state at the time, means that Senator Harris and I should support Mr. Bress.

Justice Kruger's appointment to the California Supreme Court is a matter of state law and has no bearing on the work of this Committee. I am not the Governor and his decisions are his own.

My state is home to over 40 million people. Our economy is the fifth largest in the world. We have the largest agriculture industry in the country. We have three mega-ports, which helped process more than $552 billion in imports that came through California last year.

We share a border with Mexico where more than $200 million in trade goes through every day. According to the California Coastal Commission, our coast line is 1100 miles long, and that does not even include parts of the San Francisco Bay.

In short, California is a diverse state with significant legal challenges that come up every day.

But even if we were all small states that had fewer than a million people and one main industry driving our economy, as Senators we have the right to demand that an individual being nominated to represent our state on the Circuit Court actually be a practicing lawyer based in our state.

Unfortunately, with the nomination of Daniel Bress to a California seat on the Ninth Circuit we are seeing this practice and norm thrown out the door.

While I hope this Committee will reevaluate its decision to move forward on non-consensus nominees, I fear that we have hit a point of no return.