Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Hearing on Nominations
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Good morning. Congratulations to all the nominees and to your families and welcome to the Committee.

Two weeks ago, I announced in a speech on the Senate floor that I'd hold a hearing for Minnesota Supreme Court Justice David Stras and former Louisiana Solicitor General Kyle Duncan despite not receiving two positive blue slips from home-state senators. I explained that nearly all Judiciary Committee Chairmen over the last 100 years allowed for hearings in such circumstances. And I explained that I too wouldn't treat blue slips as single-senator vetoes.

Some of my colleagues and liberal outside groups have accused me of abolishing the 100-year-old blue slip tradition. That's simply not true. I'm choosing to apply the blue slip policy that most of my predecessors had for the vast majority of this 100-year history. My critics seem to believe the blue slip's history started with Senator Leahy sixteen years ago. But, as I've explained, history is longer than that.

Critics also claim that I selectively applied Senator Leahy's strict blue slip policy in the last two years of the Obama Administration. They point to nine nominees who were supposedly denied hearings because of lack of two positive blue slips.

This is also not true. First of all, five of these nominees were district court nominees. I've already said that district court nominees typically require the return of two positive blue slips before a hearing. This applies equally to President Trump's district court nominees as it did to President Obama's.

The four circuit court nominees—on the other hand—weren't nominated until a presidential election year. As you know, I gave members nearly seven months to return blue slips on Justice Stras. I hoped they'd both be returned to avoid the situation we have today. I recognize that my policy differs somewhat from Senator Leahy's, so I gave my colleagues from Minnesota ample time before proceeding.

And I would've given my colleagues the same courtesy in 2016. But then we wouldn't have held a hearing until July at the earliest, when we were already into the political conventions. Under the Leahy-Thurmond Rule—recognized by both sides—the Senate typically doesn't confirm judges starting by the summer of a presidential election year. The nominations simply came too late to proceed without home-state senators' support.

Moreover, it was very apparent that even nominees with support of home-state senators and who were processed through the Committee weren't getting votes on the floor. Senator Durbin on several occasions questioned the wisdom of processing any nominees in such circumstances.

Despite this, I held hearings for nearly as many judicial nominees as Senator Leahy did in 2007-2008.

All in all, it would've been a waste of Committee resources to hold hearings on the four circuit court nominees nominated in 2016 without two blue slips.

Senator Leahy knows as well as anyone that there are multiple reasons we don't hold hearings for some nominees. In fact, Senator Leahy declined to schedule hearings for six of President Bush's circuit court nominees for reasons besides lack of positive blue slips. He denied hearings to three nominees to the Fourth Circuit—Steve Matthews, Robert Conrad, and Glen Conrad. These nominees had two positive blue slips from their home-state senators, and two were nominated more than a year before the 2008 presidential election.

Senator Leahy also refused to act on the nomination of Peter Keisler, President Bush's nominee to the D.C. Circuit, who was nominated in 2006. Obviously, blue slips were not the reason for my predecessor's decision to stall Mr. Keisler's nomination for more than two years.

Senator Leahy also declined to hold hearings for two Sixth Circuit nominees—Jeff Sutton and Deborah Cook—even though both Ohio senators returned positive blue slips. The two Democratic Senators from Michigan asked Senator Leahy to halt proceedings on all Sixth Circuit nominees. Senator Leahy honored this request and denied a hearing to the two nominees for the Ohio seats. This was the first time in history a chairman allowed out-of-state senators to halt Committee proceedings on nominees.

What my predecessor's actions show is that there are numerous reasons for a Chairman not to hold a hearing on a nominee besides blue slip problems. I myself did not proceed on several district court nominees who had two positive blue slips because it would have been a waste of Committee resources to go forward because these nominees weren't going to get confirmed anyway. It's simply false to say that any decision I made not to hold a hearing for President Obama's judicial nominees was based solely on blue slips.

Additionally, critics have argued that only three nominees in recent decades have been confirmed over blue slip objections. But the question is not whether the nominees before us today will be confirmed. The question is whether they should receive a hearing. Home-state senators are entitled to lobby against confirmation, but they can't deny a nominee a hearing for political or ideological reasons.

But the Democrats abolished an important tool for blocking confirmation of judges who don't have support of their home-state senators. In 2013, the Democrats abolished the filibuster. The filibuster is what allowed senators to enforce the preferences of home-state senators on the Senate floor. For example, the Democrats filibustered Carolyn Kuhl, Henry Saad, and other nominees of President Bush's who didn't have two positive blue slips. But the blue slips did not prevent these nominees from having hearings.

Critics have also pointed to a letter sent to President Obama by the Republican Senate conference in 2009 which said we expected to be consulted and approve of all home-state judicial nominees. That letter wasn't just about the blue slip. It was meant to show President Obama that the Republican conference was united—that we'd collectively filibuster nominees for whom there was not a consensus.

Of course, the Democrats relinquished the ability to filibuster nominees four years ago. We also believed the Democrats needed to hold Obama nominees to the same standard they forced on President Bush.

It's also worth mentioning that my Democratic colleagues in recent years have a record of using the blue slip aggressively to block highly qualified nominees. Yet they accuse Republicans of blocking 18 of President Obama's nominees through the blue slip. Leaving aside that many of these nominees didn't receive hearings for reasons besides the blue slip, Democrats used the blue slip to try to block hearings for 27 of President Bush's nominees.

Republicans blocked none of President Obama's nominees via the blue slip during the first two years of his presidency. We are less than a year into President Trump's first term, and already my Democratic colleagues have tried to block a number of his highly qualified nominees.

This brings me to my final point. Some of my colleagues and outside groups have criticized me for allegedly abolishing a Senate tradition. As I've explained, that's not true. I'm restoring the traditional policy and practice of the vast majority of my predecessors over the past 100 years.

But it's also revealing that these same colleagues and groups supported abolishing the filibuster for lower court nominees in 2013—a Senate rule that was more longstanding and established than my immediate predecessor's strict blue-slip policy.

After today's first panel, we'll hear from Mr. Rodriguez, nominated to the Southern District of Texas, who will be introduced by the Texas Senators.

And in addition to the judicial nominees, we also have before us today Andrei Iancu, who has been nominated to be Under Secretary of Commerce and Director of the U.S. Patent and Trademark Office.

Intellectual property is critical to our national economy because it encourages the innovation that improves lives and creates jobs. The U.S. Patent and Trademark Office (PTO) plays a crucial role in fostering innovation by protecting intellectual property rights, so it's important that the PTO have strong and accountable leadership.

However, the PTO has been criticized for its implementation of the America Invents Act. Some in the intellectual property community are happy with the PTO's process for weeding out weak patents and the reforms made by the America Invents Act.

Others believe the America Invents Act has undermined intellectual property rights and the PTO has gone too far in eroding patent protections for innovators. Earlier this week, the U.S. Supreme Court heard oral argument in the *Oil States* case, which addresses whether the post-grant review process created by the America Invents Act is unconstitutional.

It's clear that Mr. Iancu possesses strong legal qualifications. He has a proven record in the field of intellectual property law, and is well respected in the legal community. His intellectual property practice covers a wide array of subject areas, and he successfully has represented clients in cutting edge litigation like the *TiVo* and *Ariosa* cases.

However, as a practitioner, Mr. Iancu hasn't expressed his personal opinions on many issues currently facing the PTO. I'm interested in learning what the nominee believes are the biggest challenges for the U.S. intellectual property system and for U.S. innovators.

I'm looking forward to hearing Mr. Iancu's thoughts on these issues and how he intends to lead the U.S. Patent and Trademark Office. After the introductions, I'll allow Senators Franken and Kennedy to make short statements regarding their blue slips if they'd like to.

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