

## A FOURTH CIRCUIT CONFIRMATION CAUTIONARY TALE\*

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*On July 3, 2024, President Joseph Biden selected Ryan Park, the North Carolina Solicitor General, to succeed United States Court of Appeals for the Fourth Circuit Judge James Wynn, who announced his intent to assume senior status earlier in 2024. On July 31, the United States Senate Committee on the Judiciary began analyzing the preeminent nominee by scheduling Park's confirmation hearing. Despite his stellar qualifications, Park's nomination died, rendering him a casualty of the relentless and pernicious "confirmation wars."*

*Part I of this Article recounts the applicable background of this troubling cautionary tale by evaluating how the judicial nomination and confirmation processes traditionally operated, how the contemporary processes function, and why these processes are critical.*

*Part II descriptively scrutinizes Park's confirmation experience by first reviewing the nominee's qualifications. It then assesses the constituents of his nomination and confirmation processes. Next, it emphasizes important, albeit checkered, interactions between the White House and North Carolina Republican Senators Thom Tillis and Ted Budd when Biden was deciding whom to name and their inability to reach consensus. Section II.B analyzes the Judiciary Committee hearing in which Park testified and Republican members, especially Tillis, questioned the nominee. It then explores the committee deliberations about Park's qualifications and the ballot which resulted in a party-line approval vote. Section II.C posits conclusions that may be derived from the processes.*

*Next, Part III explores how President Donald Trump has conducted the 2025 judicial selection process across the country and in North Carolina specifically. It undertakes a case study of Emil Bove's problematic nomination and confirmation to the Third Circuit, employing this as a representative example of*

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*the troubling nominations and confirmations realized thus far, by scrutinizing how Trump named and the Senate confirmed him to the Third Circuit.*

*Finally, Part IV concludes by evaluating the implications for judicial appointments that can be extracted from the increasingly contentious and extremely partisan nomination and confirmation processes currently unfolding around the United States and in North Carolina.*

INTRODUCTION.....	85
I. THE JUDICIAL NOMINATION AND CONFIRMATION PROCESS .....	86
A. <i>Traditional Confirmation Process</i> .....	87
B. <i>Contemporary Confirmation Wars</i> .....	91
II. PARK'S CONFIRMATION HEARING: A CAUTIONARY TALE .....	93
A. <i>Park's Qualifications</i> .....	94
B. <i>Park's Nomination and Confirmation Process</i> .....	96
C. <i>Aftermath</i> .....	103
III. NOMINATIONS AND CONFIRMATIONS IN	
TRUMP'S SECOND TERM .....	106
A. <i>Nominations and Confirmations Thus Far</i> .....	107
B. <i>The Case Study of Emil Bove</i> .....	107
IV. IMPLICATIONS AND SUGGESTIONS .....	115

## INTRODUCTION

On July 31, 2024, the United States Senate Judiciary Committee began considering Ryan Park, the North Carolina Solicitor General, for a judicial vacancy.<sup>1</sup> Nominated by President Joe Biden, Park was meant to succeed Judge James Wynn on the United States Court of Appeals for the Fourth Circuit.<sup>2</sup>

1. *Nomination Hearing*, U.S. SENATE COMM. ON THE JUDICIARY, at 24:02 (July 31, 2024), <https://www.judiciary.senate.gov/committee-activity/hearings/07/31/2024/nominations> [<https://perma.cc/W7HV-XXAY>] [hereinafter *Ryan Park July 31 Nomination Hearing*] (on file with the North Carolina Law Review). See generally Press Release, White House, President Biden Names Fifty-Second Round of Judicial Nominees (July 3, 2024) [hereinafter *Nominees Press Release*], <https://bidenwhitehouse.archives.gov/briefing-room/presidential-actions/2024/07/03/president-biden-names-fifty-second-round-of-judicial-nominees/> [<https://perma.cc/2HY6-5ZK7>] (announcing Park's nomination for the United States Court of Appeals for the Fourth Circuit).

2. *Nominees Press Release*, *supra* note 1; Katherine Zehnder, *Senate Makes Bipartisan Deal Impacting Park's Nomination*, CAROLINA J. (Nov. 22, 2024), <https://www.carolinajournal.com/senate-makes-bipartisan-deal-impacting-parks-nomination/> [<https://perma.cc/HH9D-Q9BS>]; Benjamin Weiss, *Senate Judiciary Advances Biden Nominees, but Punts on Circuit Pick Panned by GOP*, COURTHOUSE NEWS SERV. (Sep. 19, 2024), <https://www.courthousenews.com/senate-judiciary->

Notwithstanding Park's manifold skills, his appellate nomination ultimately became another casualty of the pernicious and relentless "confirmation wars." In President Donald Trump's second term, these confirmation wars seem to escalate and continue to produce troubling outcomes. This Article identifies and evaluates critical concerns about judicial nominee qualifications *and* the erosion of the confirmation process itself, as modern political brinksmanship undercuts candidates who might afford valuable contributions to the federal judiciary and supports the nomination and confirmation of people who may not improve the bench.

Part I outlines the judicial nomination and confirmation process, emphasizing the tension that arises in modern "confirmation wars." Part II tells the cautionary tale of Ryan Park, a dynamic nominee who withdrew his candidacy after a grueling confirmation process. Part III addresses 2025 judicial nominees, using Emil Bove's confirmation to the Third Circuit as a case study. Part IV scrutinizes the behavior which might explain the recent problems in the confirmation process and posits suggestions for how to prevent similar crucial difficulties, particularly those that arise in the Fourth Circuit and North Carolina's district courts.

## I. THE JUDICIAL NOMINATION AND CONFIRMATION PROCESS

Article II, Section 2, of the United States Constitution expressly states that the President nominates and "by and with the Advice and Consent of the Senate" confirms judges.<sup>3</sup> Thus, the Senate's role in federal court selection and confirmation is critical. The term "confirmation wars" describes the partisanship, polarization, and conflict that have attended the contemporary process of federal judicial selection. These confirmation wars are most salient in Supreme Court nominations, as many observers, practitioners, and students of this process trace the rise of confirmation wars to President Ronald Reagan's contentious nomination of D.C. Circuit Judge Robert Bork to the United States

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advances-biden-nominees-but-punts-on-circuit-pick-panned-by-gop/ [https://perma.cc/Y2YV-E9XN (staff-uploaded archive)] [hereinafter Weiss, *Senate Judiciary*].

For earlier developments, which involved North Carolina Fourth Circuit vacancies that prevented the Senate from confirming Judge Wynn whom President Bill Clinton nominated, which resembled Ryan Park's experience, and Wynn's later nomination and confirmation by President Barack Obama, as well as other relevant judicial selection machinations, see Carl Tobias, *Filling the Fourth Circuit Vacancies*, 89 N.C. L. REV. 2161, 2184–96 (2011) [hereinafter Tobias, *Filling the Fourth Circuit Vacancies*], and Carl Tobias, *Federal Judicial Selection in the Fourth Circuit*, 80 N.C. L. REV. 2001 *passim* (2002) [hereinafter Tobias, *Judicial Selection in the Fourth Circuit*].

3. U.S. CONST. art. II, § 2.

Supreme Court.<sup>4</sup> However, the term increasingly applies to describe conflicts regarding nominations for the U.S. Courts of Appeals and the U.S. District Courts.<sup>5</sup>

Today, the partisan wars often infect “postmodern” confirmations. While there were occasional skirmishes during the Clinton and Bush administrations, the “postmodern” confirmation wars apparently started in the last two years of the Obama administration, exemplified by the GOP Senate majority’s refusal to consider Supreme Court nominee D.C. Circuit Chief Judge Merrick Garland and began in earnest during President Donald Trump’s first administration.<sup>6</sup> They remained prevalent in much of President Joe Biden’s term and have continued in Trump’s second administration.<sup>7</sup> The wars’ different distinguishing characteristics manifest under each President, and appreciating the confirmation process is crucial to comprehending the sources and implications of the resultant tensions.

#### A. *Traditional Confirmation Process*

For most of the Republic’s first two centuries, the political branches engaged in a very circumscribed notion of confirmation wars. Under the traditional process, when a vacancy arose in the Supreme Court, the President usually consulted with Senate leaders and nominated a candidate who was acceptable to them.<sup>8</sup> For openings in appellate and district courts, the President

4. See JEFFREY TOOBIN, *THE NINE: INSIDE THE SECRET WORLD OF THE SUPREME COURT* 18–19 (2007). See generally MARK GITENSTEIN, *MATTERS OF PRINCIPLE: AN INSIDER’S ACCOUNT OF AMERICA’S REJECTION OF ROBERT BORK’S NOMINATION TO THE SUPREME COURT* (1992) (tracing the political battle over judicial philosophy surrounding the nomination of Robert Bork to the Supreme Court).

5. See Paul Kane, *How Judicial Confirmation Wars Consumed the Senate*, WASH. POST (Apr. 19, 2023), <https://www.washingtonpost.com/politics/2023/04/19/dianne-feinstein-senate-judicial-nominations/> [https://perma.cc/V33J-2GB2 (staff-uploaded, dark archive)] (asserting that “now the Senate is consumed with skirmishes over lower federal courts, whose controversial rulings can create a national stir”).

6. See Carl Tobias, *The Bush Administration and Appeals Court Nominees*, 10 WM. & MARY BILL RTS. J. 103, 105–06 (2001); Carl Tobias, *Choosing Federal Judges in the Second Clinton Administration*, 24 HASTINGS CONST. L.Q. 741, 746–47 (1997); Carl Tobias, *Senate Gridlock and Federal Judicial Selection*, 88 NOTRE DAME L. REV. 2233, 2242–44 (2013) [hereinafter Tobias, *Senate Gridlock*]; Tobias, *Filling the Fourth Circuit Vacancies*, *supra* note 2, at 2184–89; Carl Tobias, *Keep the Federal Courts Great*, 100 B.U. L. REV. ONLINE 196, 197–98, 206–07 (2020) [hereinafter Tobias, *Keep the Federal Courts Great*].

7. Carl Tobias, *How Biden Began Building Back Better the Federal Bench*, 78 WASH. & LEE L. REV. ONLINE 31, 31–34 (2021).

8. See Michael J. Gerhardt & Michael Ashley Stein, *The Politics of Early Justice: Federal Judicial Selection, 1789–1861*, 100 IOWA L. REV. 551, 561–63 (2015); Carl Tobias, *Filling the Judicial Vacancies in a Presidential Election Year*, 46 U. RICH. L. REV. 985, 996 (2012) [hereinafter Tobias, *Filling Judicial*].

generally consulted with senators who represented the state in which the vacancy materialized.<sup>9</sup> Home-state senators often tendered recommendations to the President, and Presidents and senators typically reached consensus on the strongest candidate, whom the President would then nominate for Senate confirmation.<sup>10</sup>

Once the Senate received the nomination, it was referred to the Senate Judiciary Committee, where the majority and minority staffs would commence evaluating the nominee's background and tendering a comprehensive questionnaire to seek information about the nominee's experience.<sup>11</sup> The nominee had several weeks to answer the questionnaire as comprehensively as possible.<sup>12</sup> When this paperwork was submitted and received by committee staff, they would schedule a nomination hearing.<sup>13</sup> Most nominees usually appeared with several other nominees—frequently from the same state or region.<sup>14</sup> At the hearing, the home-state politicians would introduce the nominees and praise their experience and qualifications, such as their strong

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*Vacancies*]; Carl Tobias, *Confirming Supreme Court Justices in a Presidential Election Year*, 94 WASH. U. L. REV. 1089, 1094 (2017) [hereinafter Tobias, *Confirming Supreme Court Justices*]; BARRY J. MCMILLION, CONG. RSCH. SERV., R44235, SUPREME COURT APPOINTMENT PROCESS: PRESIDENT'S SELECTION OF A NOMINEE 6 (2022) [hereinafter MCMILLION, PRESIDENT'S SELECTION].

9. See Tobias, *Keep the Federal Courts Great*, *supra* note 6, at 206–07. This Article uses the term “home-state senators” to simplify this concept. “Home-state senators” refers, for district court vacancies, to the senators from the state in which the court with the open judgeship is located, and for circuit court vacancies, to the senators from a state within the circuit when the open circuit judgeship has “historically been filled by a resident of the senator’s state.” BARRY J. MCMILLION & DENIS STEVEN RUTKUS, CONG. RSCH. SERV., RL34405, ROLE OF HOME STATE SENATORS IN THE SELECTION OF LOWER FEDERAL COURT JUDGES 5 (2013).

10. See Tobias, *Keep the Federal Courts Great*, *supra* note 6, at 206–07; Carl Tobias, *Judicial Selection in Congress’ Lame Duck Session*, 90 IND. L.J. SUPP. 52, 52 (2015) (observing that the President “assiduously consulted home state elected officials and urged their recommendation of impressive . . . picks”); Tobias, *Filling Judicial Vacancies*, *supra* note 8, at 989–90 (explaining that the President “aggressively consulted” home-state officials regarding nominations).

11. See Carl Tobias, *Senator Chuck Grassley and Judicial Confirmations*, 104 IOWA L. REV. ONLINE 31, 34 (2019) [hereinafter Tobias, *Senator Chuck Grassley*].

12. Carl Tobias, *Biden, Bennet, and Bipartisan Federal Judicial Selection*, 94 U. COLO. L. REV. ONLINE 11, 23–24 (2023).

13. ELIZABETH RYBICKI & MICHAEL GREENE, CONG. RSCH. SERV., RL31980, SENATE CONSIDERATION OF PRESIDENTIAL NOMINATIONS: COMMITTEE AND FLOOR PROCEDURE 4 (2025) (observing that Senate committees generally require nominees to submit written questionnaire responses before a hearing is scheduled).

14. Carl Tobias, *Filling Lower Court Vacancies in Congress’ Lame Duck Session*, 57 U. RICH. L. REV. ONLINE 47, 62 (2022) (discussing hearings with paired circuit nominees and multiple district nominees together).

ethics, independence, and temperament.<sup>15</sup> The nominees then made opening statements, introduced their families and other supporters, and welcomed the opportunity to answer questions from the committee members.<sup>16</sup>

In the traditional process for uncontroversial nominees, the hearings proceeded smoothly.<sup>17</sup> When members found nominees controversial, their questioning could be more probing and could even rise to the level of being contentious, although this infrequently happened.<sup>18</sup> Three or four weeks after hearings, the panel would schedule discussions or “markups” of nominees’ qualifications, and then the committee would vote.<sup>19</sup> Uncontroversial nominees usually received little discussion and were often approved unanimously.<sup>20</sup> In the rare cases where nominees were deemed controversial, there would be greater discussion and some votes against their nomination.<sup>21</sup> Any nominees who secured majority votes were then sent to the Senate floor.<sup>22</sup> Panel members had one week to submit questions for the record (“QFRs”), which probed issues from the hearing or posed questions that senators had lacked time to ask during

15. See *id.* at 56–58; see also Tobias, *Filling Judicial Vacancies*, *supra* note 8, at 1000.

16. See Paul M. Collins, Jr. & Lori A. Ringhand, *The Institutionalization of Supreme Court Confirmation Hearings*, 41 LAW & SOC. INQUIRY 126, 127, 135 (2016); *Nomination Hearing*, U.S. SENATE COMM. ON THE JUDICIARY, at 44:40 (Sep. 17, 2025), <https://www.judiciary.senate.gov/committee-activity/hearings/nominations-09-17-2025> [<https://perma.cc/SZ9U-2T8S>] [hereinafter *Sep. 17 Nomination Hearing*] (introducing nominees’ family members in confirmation hearing).

17. Carl Tobias, *Filling the Seventh Circuit Vacancies*, 2017 WIS. L. REV. 225, 256 [hereinafter Tobias, *Filling the Seventh Circuit*] (observing that when the nominee is “highly competent, moderate, and not controversial . . . the session . . . normally proceeds smoothly”).

18. *Sep. 17 Nomination Hearing*, *supra* note 16, at 01:11:07; see also Carl Tobias, *Selecting District Judges in the 116th Senate Lame Duck Session*, YALE J. ON REG. (Dec. 4, 2020) [hereinafter Tobias, *Lame Duck Session*], <https://www.yalejreg.com/nc/selecting-district-judges-in-the-116th-senate-lame-duck-session-by-carl-tobias/> [<https://perma.cc/83QD-9G8K>] (discussing the less-routine, more contentious hearings for controversial nominees).

19. RYBICKI & GREENE, *supra* note 13, at 6. When a Senate committee meets to deliberate about a nominee, this is described as a committee markup, “because Senators quite literally ‘mark up’ legislation” as they discuss, debate, and vote. MICHAEL GREENE, CONG. RSCH. SERV., R48298, THE COMMITTEE MARKUP PROCESS IN THE SENATE 1 (2024).

20. Henry Paul Monaghan, *The Confirmation Process: Law or Politics?*, 101 HARV. L. REV. 1202, 1208–09 (1988).

21. Tobias, *Keep the Federal Courts Great*, *supra* note 6, at 198 (observing that recent practice “allow[s] most of the controversial nominees to attain party-line committee and confirmation ballots,” and that controversial nominees provoke more heated committee and floor consideration).

22. Michael A. Fragoso, Per Curiam, *The Judicial Appointment Process*, 24 HARV. J.L. & PUB. POL’Y 1, 8, 10 (2024).

the hearing, and nominees received several weeks to draft their responses to those QFRs.<sup>23</sup>

When nominees arrived on the Senate floor, the process moved to Senate-wide debates and voting on confirmation.<sup>24</sup> Traditionally, most nominees were essentially unopposed.<sup>25</sup> For nominees without opposition, senators often agreed by unanimous consent to a voice vote, which received few, if any, negative ballots.<sup>26</sup> For nominees who received some opposition, senators occasionally requested a cloture vote;<sup>27</sup> if a majority of senators agreed, the debate would end and they would proceed to a confirmation vote, in which a majority vote was required to confirm the nominee.<sup>28</sup> If the nominee failed to secure a majority, this typically ended consideration.<sup>29</sup> Supporters might change their votes and seek subsequent reconsideration, but that was rarely successful.<sup>30</sup>

23. *Id.* at 8. In practice, many nominees return their answers “on the Monday after they receive them [so that] they can then be listed on the markup notice Monday evening,” which expedites nominees’ panel deliberations and ballots. *See id.* Most relevant to this piece were the four North Carolina district nominees who received a September 17, 2025, hearing, an October 9 markup, and Senate confirmation the week of December 1. *See Sep. 17 Nomination Hearing, supra* note 16; *Executive Business Meeting*, U.S. SENATE COMM. ON THE JUDICIARY (Oct. 9, 2025), <https://www.judiciary.senate.gov/committee-activity/hearings/executive-business-meeting-10-09-2025> [<https://perma.cc/RJL7-3BJL>]; 171 CONG. REC. S8432 (daily ed. Dec. 2, 2025) (53–45 confirmation of David Bragdon); *id.* at S8433 (60–39 confirmation of Lindsey Freeman); *id.* at S8472 (daily ed. Dec. 3, 2025) (57–41 confirmation of Matthew Orso); *id.* at S8501 (daily ed. Dec. 4, 2025) (57–32 confirmation of Susan Courtwright Rodriguez); Julia Coin, *Trump’s Pick Is First Female Judge on Charlotte Bench*, CHARLOTTE OBSERVER, <https://www.charlotteobserver.com/news/politics-government/article313440634.html> [<https://perma.cc/45KG-6VU5>] (last updated Dec. 6, 2025, at 13:53 ET).

24. *See generally* Tobias, *Lame Duck Session, supra* note 18 (evaluating the judicial selection and appointment process in President Trump’s first term and Congress’ 115th and 116th sessions).

25. *See* BARRY J. MCMILLION, CONG. RSCH. SERV., R43762, THE APPOINTMENT PROCESS FOR U.S. CIRCUIT AND DISTRICT COURT NOMINATIONS: AN OVERVIEW 40 (2016) [hereinafter MCMILLION, THE APPOINTMENT PROCESS]. *See generally* Monaghan, *supra* note 20, at 1209; BARRY J. MCMILLION, CONG. RSCH. SERV., RL33225, SUPREME COURT NOMINATIONS, 1789 TO 2020: ACTIONS BY THE SENATE, THE JUDICIARY COMMITTEE, AND THE PRESIDENT 48 tbl. 2 (2022) (providing a statistical summary of Senate confirmation votes on Supreme Court nominees).

26. *See, e.g.*, BARRY J. MCMILLION, CONG. RSCH. SERV., R45622, JUDICIAL NOMINATION STATISTICS AND ANALYSIS: U.S. CIRCUIT AND DISTRICT COURTS, 1977-2024, at 34–40 (2025).

27. *Id.* at 25; *see also* MCMILLION, THE APPOINTMENT PROCESS, *supra* note 25, at 5, 28, 39 (2016).

28. RYBICKI & GREENE, *supra* note 13, at 8–11.

29. *Id.* at 15 (observing that “[n]ominations that are not confirmed or rejected are returned to the President” under U.S. SENATE RULE XXXI, paragraph 6).

30. S. COMM. ON RULES & ADMIN., 113TH CONG., STANDING RULES OF THE SENATE R. XXXI.3 (2013) (“When a nomination is confirmed or rejected, any Senator voting in the majority may move for a reconsideration . . .”). *But see* BARRY J. MCMILLION, CONG. RSCH. SERV., R44234, SUPREME COURT APPOINTMENT PROCESS: SENATE DEBATE AND CONFIRMATION VOTE 23

This traditional process—prior to the rise of confirmation wars—still applies today with uncontroversial nominees. Controversial nominees, however, receive different treatment.<sup>31</sup>

### B. *Contemporary Confirmation Wars*

Although some confirmations were contentious under earlier Presidents, Donald Trump’s first presidency marked the rise of a new kind of confirmation war, which has remained prevalent in each subsequent administration. Although the Senate has accorded the more traditional process to some nominees of both President Biden and President Trump, a significant percentage has experienced greater conflict.<sup>32</sup> Political tension arises across the entire confirmation process, often manifesting along party lines.

This is especially evident when the President and home-state senators belong to *different* parties, and those senators deem the nominees controversial.<sup>33</sup> For “controversial” nominees, home-state politicians have frequently retained “blue slips.”<sup>34</sup> Blue slips effectively give senators veto power over the nominee, which ends the confirmation process, because the Senate Judiciary Committee Chair will typically honor their retention.<sup>35</sup>

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(2021) [hereinafter MCMILLION, SENATE DEBATE AND CONFIRMATION VOTE] (“The Senate, it should be noted, has never adopted a motion to reconsider a Supreme Court confirmation vote.”).

31. Carl W. Tobias, *Postpartisan Federal Judicial Selection*, 51 B.C. L. REV. 769, 792–93 (2010) (observing that “venerable norms . . . suggest that nominees deserve hearings and votes by the full Senate” and that “to the extent that limited floor consideration” sufficed for uncontroversial nominees, the earlier pattern remained); Tobias, *Filling Judicial Vacancies*, *supra* note 8, at 1233 (evaluating the conventions that “have permitted the approval of many superb, uncontroversial district court nominees routinely” even in turbulent times).

32. See Tobias, *Keep the Federal Courts Great*, *supra* note 6, at 207, 212–16; Carl Tobias, *How Biden Can Continue Making the Federal Courts Better*, 25 N.Y.U. J. LEGIS. & PUB. POL’Y 43, 75–81 (2022).

33. See Tobias, *Keep the Federal Courts Great*, *supra* note 6, at 207, 212–16; see, e.g., *infra* Part II (describing Ryan Park’s nomination); *infra* Part III (describing Emil Bove’s nomination). When nominees are in states whose senators are members of the *same* political party as the President, the dynamics usually shift; those senators often staunchly support the President’s nominees, while the opposition party will closely scrutinize and frequently oppose them. See, e.g., Tobias, *Senate Gridlock*, *supra* note 6, at 2239–47 (describing judicial selection under President Obama).

34. Tobias, *Keep the Federal Courts Great*, *supra* note 6, at 225–26; see also BARRY J. MCMILLION, CONG. RSCH. SERV., R44975, THE BLUE SLIP PROCESS FOR U.S. CIRCUIT AND DISTRICT COURT NOMINATIONS: FREQUENTLY ASKED QUESTIONS 1, 3 (2017) [hereinafter MCMILLION, THE BLUE SLIP PROCESS] (“[W]hen a President nominates an individual to a U.S. circuit or district court judgeship, the chairman of the committee sends a blue-colored form to the Senators representing the home state of the nominee.”).

35. See MCMILLION, THE BLUE SLIP PROCESS, *supra* note 34, at 1 (“If . . . a Senator has some objection to the nominee and wants to prevent confirmation, he or she might decide not to return the blue slip or return it with a negative response. . . . Recently, there have been some years in which a

Confirmation wars appear different when nominees are in states whose senators are of the same political party as the President. In this situation, home-state senators powerfully support the president's nominees while opposition senators and their professional staffs perform a careful, comprehensive review of nominees' responses to the panel questionnaire and usually conduct additional, independent research.<sup>36</sup> In the hearing, minority party senators pose questions about issues on which the nominees might be vulnerable to attack.<sup>37</sup> These could include legal experience, client representations, writings, speeches, political activities, and important characteristics for judges, such as intelligence, diligence, ethics, independence, ideology, and temperament.<sup>38</sup> However, the five-minute rounds allotted for questioning complicate senators' efforts to comprehensively analyze nominees.<sup>39</sup> After this questioning, the Chair and majority party colleagues will attempt to defend the nominee—often criticizing and even attacking minority party senators' efforts.<sup>40</sup>

During the deliberations and balloting stage, opposition senators develop and present their criticisms of the nominee.<sup>41</sup> The senators' party colleagues will

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negative (or unreturned) blue slip precluded Judiciary Committee action on a nomination and, consequently, the nomination was not considered by the full Senate.”).

36. See MCMILLION, *THE APPOINTMENT PROCESS*, *supra* note 25, at 22–24. See generally VALERIE C. BRANNON & JOANNA R. LAMPE, *CONG. RSCH. SERV.*, R45300, *QUESTIONING JUDICIAL NOMINEES: LEGAL LIMITATIONS AND PRACTICE* (2022) (outlining general trends in judicial confirmation hearing questions and explaining historical practices in both questions and answers).

37. See MCMILLION, *THE APPOINTMENT PROCESS*, *supra* note 25, at 22–23. See generally BRANNON & LAMPE, *supra* note 36 (explaining this phenomenon).

38. Tobias, *Confirming Supreme Court Justices*, *supra* note 8, at 1094–95; Tobias, *Filling Judicial Vacancies*, *supra* note 8, at 996.

39. Tobias, *Keep the Federal Courts Great*, *supra* note 6, at 214.

40. See, e.g., Press Release, U.S. Senate Comm. on the Judiciary, Grassley: Exhaustive Efforts To Vet Emil Bove's Nomination Prove He's Fit for the Job (July 29, 2025), <https://www.judiciary.senate.gov/press/rep/releases/grassley-exhaustive-efforts-to-vet-emil-boves-nomination-prove-hes-fit-for-the-job> [<https://perma.cc/J7W2-XRGB>] [hereinafter Grassley Press Release] (criticizing “vicious rhetoric, unfair accusations and abuse” directed at nominee and expressing that nominee “will be a diligent, capable, and fair jurist”); Press Release, U.S. Senate Comm. on the Judiciary, Chairman Graham to Committee Democrats: “After the Treatment of Justice Kavanaugh I Now Have a Different View of the Judicial-Confirmation Process” (Sep. 21, 2020), <https://www.judiciary.senate.gov/press/rep/releases/chairman-graham-to-committee-democrats-after-the-treatment-of-justice-kavanaugh-i-now-have-a-different-view-of-the-judicial-confirmation-process> [<https://perma.cc/C4TC-VP3Z>] [hereinafter Graham Press Release] (criticizing partisan treatment of “excellent judicial nominees”).

41. See MCMILLION, *SENATE DEBATE AND CONFIRMATION VOTE*, *supra* note 30, at 11–13 (evaluating procedural tactics, such as extended debate, that opposing senators may capitalize on the deliberations and balloting stage); see also Press Release, U.S. Senate Comm. on the Judiciary, Feinstein Speaks Against Kavanaugh Nomination (Oct. 5, 2018), <https://www.judiciary.senate.gov/press/dem/>

frequently cooperate to articulate the most powerful contentions about why the panel should reject the nominee.<sup>42</sup> Senators who are members of the party which holds a majority then often defend the nominee by praising the individual's qualifications and criticizing the efforts of the minority.<sup>43</sup> Many of these ballots result in party-line lockstep voting in which the majority wins by a narrow margin.<sup>44</sup>

## II. PARK'S CONFIRMATION HEARING: A CAUTIONARY TALE

In early January 2024, after practically fourteen years of venerable court service, Fourth Circuit Judge James Wynn announced that he was prepared to become a senior jurist promptly upon a replacement's appointment.<sup>45</sup> Before ascending to federal court, Wynn had served as an esteemed member of the bench in North Carolina—one of the five states that comprise the Fourth

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releases/feinstein-speaks-against-kavanaugh-nomination [https://perma.cc/MV8B-P8J6] (describing nominee's "flagrant partisanship and open hostility").

42. See MCMILLION, SENATE DEBATE AND CONFIRMATION VOTE, *supra* note 30, at 2–6, 10 (observing that majority and minority parties have "floor managers" who present the party's position on the Senate floor, addressing, *inter alia*, the nominee's professional qualifications and ideology); *see, e.g., Schumer Floor Remarks Announcing Opposition to the Nomination of Judge Gorsuch*, SENATE DEMOCRATS (Mar. 23, 2017), <https://www.democrats.senate.gov/schumer-floor-remarks-announcing-opposition-to-the-nomination-of-judge-gorsuch> [https://perma.cc/23DV-MHEV] (urging colleagues to vote against the nominee due to nominee's "deep-seated conservative ideology" and "extreme deference to assertions of broad presidential power").

43. *See, e.g., Grassley Press Release*, *supra* note 40; *Graham Press Release*, *supra* note 40; *see also* Press Release, U.S. Senate Comm. on the Judiciary, Durbin Statement on the Successful Discharge Vote for Judge Ketanji Brown Jackson (Apr. 4, 2022), <https://www.judiciary.senate.gov/press/dem/releases/durbin-statement-on-the-successful-discharge-vote-for-judge-ketanji-brown-jackson-nominated-to-be-an-associate-justice-of-the-supreme-court> [https://perma.cc/EF8W-JEBH] (observing that, although "not a single Republican on the Judiciary Committee voted in favor of her nomination," the nominee is "outstanding" and "has the temperament, the acumen, [and] the skill" demanded of a Supreme Court nominee).

44. *See* Tobias, *Senator Chuck Grassley*, *supra* note 11, at 33; *see, e.g.,* Carl Tobias, *Filling the Federal District Court Vacancies*, 22 N.Y.U. J. LEGIS. & PUB. POL'Y 421, 440–41 (2020).

45. The "Rule of 80" permits judges who are on active status, have attained the age of sixty-five, and complete fifteen years of service to become senior judges, a form of semi-retirement in which jurists typically are responsible for a half caseload. *See* 28 U.S.C. § 371 (2024); *Future Judicial Vacancies for February 2024*, ADMIN. OFF. OF THE U.S. CTS. (Feb. 1, 2024), <https://www.uscourts.gov/judges-judgeships/judicial-vacancies/archive-judicial-vacancies/2024/02/future> [https://perma.cc/9NBU-S3T9] (providing 2024 vacancy data); Danielle Battaglia, *Reduced Role for Judge James Wynn, an NC Native, Will Let Biden Nominate a New Judge*, NEWS & OBSERVER (Jan. 9, 2024, at 14:07 ET), <https://www.newsobserver.com/news/politics-government/article284019888.html> [https://perma.cc/TG5Q-TEU7 (staff-uploaded, dark archive)] [hereinafter Battaglia, *Reduced Role*].

Circuit—where he sat on the state supreme court and court of appeals for nearly two decades.<sup>46</sup>

Nominated to assume Wynn’s place in the Fourth Circuit and to honor the jurist’s impressive legacy was Ryan Park<sup>47</sup>—a candidate whose dedication and capability were exceedingly well-suited to the task. Park had clerked for distinguished federal judges, litigated cutting-edge matters in private practice, and simultaneously assembled a sterling public service record, especially as the Solicitor General of North Carolina for a half-decade.<sup>48</sup> These achievements showed that the nominee promised to be a worthy successor to Judge Wynn.

Nevertheless, striking partisanship, stunning politicization, and miscomprehension—or even ignorance—of the nomination and confirmation processes outweighed Park’s enormous abilities. This resolution deprived North Carolinians, federal jurists, courts, and staff of a particularly competent, smart, ethical, and independent circuit judge who promised to be a valuable servant of the public.

#### A. *Park’s Qualifications*

On July 3, 2024, Biden nominated Ryan Park to fill the Fourth Circuit vacancy.<sup>49</sup> Park offered significant, valuable experience to the court. From 2020 to 2025, Park served as the North Carolina Solicitor General.<sup>50</sup> In this capacity, he represented North Carolina in appeals to the state’s courts, the federal appellate court, and the U.S. Supreme Court.<sup>51</sup> As Solicitor General, Park

46. Tobias, *Filling the Fourth Circuit Vacancies*, *supra* note 2, at 2174. President Bill Clinton nominated Judge Wynn to a North Carolina Fourth Circuit vacancy. *Judicial Vacancy List for December 1999*, ADMIN. OFF. OF THE U.S. CTS., <https://www.uscourts.gov/judges-judgeships/judicial-vacancies/archive-judicial-vacancies/1999/12/vacancies> [<https://perma.cc/RF7L-BS36>] (providing 1999 vacancy data); Tobias, *Judicial Selection in the Fourth Circuit*, *supra* note 2, at 227. However, Republican Senator Jesse Helms blocked Wynn. Deborah Sontag, *The Power of the Fourth*, N.Y. TIMES, Mar. 9, 2003, <https://www.nytimes.com/2003/03/09/magazine/the-power-of-the-fourth.html> [<https://perma.cc/N763-KLZD> (staff-uploaded, dark archive)]. The five states within the Fourth Circuit are Maryland, South Carolina, Virginia, West Virginia, and North Carolina. 8 U.S.C. § 41 (2024).

47. Nominees Press Release, *supra* note 1.

48. *See id.*

49. Nominees Press Release, *supra* note 1; *see* Lucy Marques, *Biden Picks NC Solicitor General as Nominee for 4th Circuit Appeals Court Vacancy*, CHARLOTTE OBSERVER (July 3, 2024), <https://www.charlotteobserver.com/news/politics-government/article289711714.html> [<https://perma.cc/52RU-NFW8> (staff-uploaded, dark archive)].

50. Marques, *supra* note 49.

51. *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 24:00–25:40; Nominees Press Release, *supra* note 1; Marques, *supra* note 49; *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2153 (2023); *see* *State v. Oldroyd*, 380 N.C. 613, 613, 869 S.E.2d 193,

oversaw discrete matters of substantive law, spanning a comprehensive political, ethical, and ideological spectrum. For example, in 2022, Park defended the University of North Carolina (“UNC”) against a major challenge to the school’s affirmative action policy; in the same year, he persuaded the Supreme Court of North Carolina to uphold a murder accomplice’s conviction.<sup>52</sup>

Park’s qualifications speak for themselves. After graduating summa cum laude from Harvard Law School in 2010, Park clerked in the Southern District of New York for Judge Jed Rakoff, then in the Court of Appeals for the Second Circuit for Judge Robert Katzmann.<sup>53</sup> From 2012 to 2013, Park worked for the highly respected U.S. State Department Legal Adviser.<sup>54</sup> The following year, he clerked for U.S. Supreme Court Justices Ruth Bader Ginsburg and David Souter.<sup>55</sup> He then worked as an associate for well-regarded law firm Boies Schiller Flexner.<sup>56</sup> From 2017 until 2022, Park was deputy solicitor general.<sup>57</sup> He taught state constitutional law at the University of North Carolina School of Law and appellate practice at Duke Law School.<sup>58</sup> As a judge, Park would have supplemented the Fourth Circuit’s robust experiential, ideological, and ethnic diversity.<sup>59</sup> The ABA unanimously rated Park well-qualified, which is

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193 (2022); *Ryan Park—Nominee to the U.S. Court of Appeals for the Fourth Circuit*, VETTING ROOM (July 29, 2024), <https://vettingroom.org/2024/07/29/ryan-park/> [<https://perma.cc/CW84-96QN>] [hereinafter *Ryan Park—Nominee*]; Courtney Bublé, *Ryan Park Withdraws Nomination for 4th Circ. Bench*, LAW360.COM (Dec. 12, 2024, at 18:35 ET), <https://www.law360.com/articles/2273402/ryan-park-withdraws-nomination-for-4th-circ-bench> [<https://perma.cc/CEJ8-8Q7U> (staff-uploaded, dark archive)]; see also Kyle Ingram, *Attorney General-Elect Jeff Jackson Names Top Staff, Including Former Biden Judge Nominee*, NEWS & OBSERVER (Dec. 27, 2024, at 12:26 ET), <https://www.newsobserver.com/news/politics-government/article297645758.html> [<https://perma.cc/ZN7P-C9ZG> (staff-uploaded, dark archive)].

52. *Students for Fair Admissions*, 143 S. Ct. at 2153; *Oldroyd*, 380 N.C. at 613–14, 869 S.E. 2d at 194–95; see *Ryan Park—Nominee*, *supra* note 51.

53. See Nominees Press Release, *supra* note 1.

54. See *id.*

55. See *id.*

56. See *id.*

57. Press Release, N.C. Off. of the Att’y Gen., *Ryan Park Leaves Department of Justice After Eight Years, Five as Solicitor General* (Apr. 30, 2025), <https://ncdoj.gov/attorney-general-jeff-jackson-announces-new-solicitor-general/> [<https://perma.cc/Y6ZY-4FPK>].

58. Marques, *supra* note 49; see *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 24:00–25:40; Nominees Press Release, *supra* note 1; *Ryan Park—Nominee*, *supra* note 51. In May of 2025, Park joined McGuireWoods as a partner in their Appeals and Issues practice group. *Ryan Y. Park*, MCGUIRE WOODS, <https://www.mcguirewoods.com/people/p/ryan-y-park/> [<https://perma.cc/J329-6EBC> (staff-uploaded archive)].

59. Park would have been the Fourth Circuit’s first Asian American judge. *Ryan Park—Nominee*, *supra* note 51; see Carl Hulse, *Democrats See a Chance to Beat Trump on Judicial Confirmations*, N.Y. TIMES (Sep. 27, 2024), <https://www.nytimes.com/2024/09/27/us/politics/trump-democrats-judges.html>

the highest possible rating.<sup>60</sup> Accordingly, Park's skills and experience demonstrate that the nominee was highly qualified for prompt confirmation.<sup>61</sup>

B. *Park's Nomination and Confirmation Process*

The White House conducted an in-depth review of nominees before submitting Park—a talented, mainstream prospect. They consulted North Carolina GOP Senator Thom Tillis, an active, long-time Judiciary Committee member, as well as Republican Senator Ted Budd.<sup>62</sup> The Senators proposed several fine candidates whom President Biden surveyed ahead of choosing

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[<https://perma.cc/V7D3-N3RK> (staff-uploaded, dark archive)]. *But cf. Ryan Park July 31 Nomination Hearing*, *supra* note 1 (former Virginia Solicitor General Toby Heytens was the court's first judge who had served as a state solicitor general).

60. *Ratings of Article III and Article IV Judicial Nominees 118th Congress*, ABA (Nov. 19, 2024), [https://www.americanbar.org/content/dam/aba/administrative/federal\\_judiciary/118th-web-ratings-chart.pdf](https://www.americanbar.org/content/dam/aba/administrative/federal_judiciary/118th-web-ratings-chart.pdf) [<https://perma.cc/8HTJ-USJU> (staff-uploaded archive)]. Clerks from the “high court’s liberal and conservative wings called Park ‘eminently qualified,’” echoing the American Bar Association and many in law enforcement. Mike Scarcella, *Senators Grill US Appeals Court Nominee Over ‘Activist’ Legal Work*, REUTERS (July 31, 2024), <https://www.reuters.com/legal/government/senators-grill-us-appeals-court-nominee-over-activist-legal-work-2024-07-31/> [<https://perma.cc/PLC3-UBBB> (staff-uploaded archive)]; *accord* Marques, *supra* note 49. The ABA is America’s largest professional organization for lawyers. The entity has evaluated and rated judicial nominees since the Eisenhower Administration, while its ratings have long been deemed the “gold standard.” However, Trump and Attorney General of the United States Pamela Bondi essentially barred the ABA from participating in the process, which has made it considerably more difficult for senators to secure all of the information which they need to advise and consent. Tiana Headley, *Bondi Eliminates ABA Role in Vetting Trump Judicial Picks*, BLOOMBERG L., <https://news.bloomberglaw.com/us-law-week/bondi-eliminates-abas-role-in-vetting-trump-judicial-nominees> [<https://perma.cc/QS9N-5MQY> (staff-uploaded, dark archive)] (last updated May 29, 2025, at 17:21 ET); Letter from ABA President William Bay to U.S. Att’y Gen. Pamela Bondi (June 10, 2025), <https://aldia.microjuris.com/wp-content/uploads/2025/06/aba-response-re-judicial-nominations-rev.pdf> [<https://perma.cc/5VDY-D5BG>].

61. *See* Nominees Press Release, *supra* note 1.

62. Danielle Battaglia, *Sen. Tillis Threatens ‘Consequences’ After Democrats Vote to Advance NC Nominee As Judge*, CHARLOTTE OBSERVER (Nov. 15, 2024), <https://www.charlotteobserver.com/news/politics-government/article295572704.html> [<https://perma.cc/79MH-QHGY> (staff-uploaded, dark archive)] [hereinafter Battaglia, *Consequences*]; *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 32:14–32:57; *see* Nominees Press Release, *supra* note 1; *Judicial Vacancy List for December 1999*, *supra* note 46; Marques, *supra* note 49. *But see* Benjamin Weiss, *As Senate Advances Fourth Circuit Nominee, Tillis Threatens To Burn Down the House*, COURTHOUSE NEWS SERV. (Nov. 14, 2024), <https://www.courthousenews.com/as-senate-advances-fourth-circuit-nominee-tillis-threatens-to-burn-down-the-house/> [<https://perma.cc/6RTU-F9RT> (staff-uploaded archive)] [hereinafter Weiss, *Burn Down the House*]; Press Release, Tillis and Budd Joint Statement on 4th Circuit Nomination (July 3, 2024), <https://www.tillis.senate.gov/2024/7/tillis-and-budd-joint-statement-on-4th-circuit-nomination> [<https://perma.cc/48CD-G39A>] [hereinafter Tillis and Budd Press Release].

Park.<sup>63</sup> However, despite the White House's diligence, Tillis and Budd released a press statement staunchly opposing Park's candidacy the same day he was nominated.<sup>64</sup> Tillis concomitantly threatened to not help fill the three open in-state district positions because of Park's nomination.<sup>65</sup> He also claimed that executive branch officers pervasively "tried to jam him on a Fourth Circuit nominee," a description that a White House official challenged, given that the "administration sought Tillis' input on vacancies in North Carolina and the Fourth Circuit."<sup>66</sup>

Despite Park's stellar qualifications and testimony, the Senate Judiciary Committee hearing was grueling and contentious. Chair Richard Durbin (D-IL) started by enthusiastically introducing Park and reemphasizing the nominee's stellar experience,<sup>67</sup> but the situation deteriorated quickly when Durbin asked Tillis to speak.<sup>68</sup> Tillis adopted the rare practice of showing a

63. *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 32:27–32:43. For Tillis' perspectives on the senator's picks, Biden's review of the candidates, and the nomination and confirmation processes, White House views of them, and Biden's choice of Park, see *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 24:00–32:43; Nominees Press Release, *supra* note 1; Gerhardt & Stein, *supra* note 8, at 561–63; Tobias, *Filling Judicial Vacancies*, *supra* note 8, at 996; Tobias, *Confirming Supreme Court Justices*, *supra* note 8, at 1094; MCMILLION, PRESIDENT'S SELECTION, *supra* note 8, at 6.

64. "This nomination is a non-starter and the White House has already been informed they do not have the votes." Tillis and Budd Press Release, *supra* note 62. While the White House failed to engage "the advice and consent process in good faith for North Carolina's judicial vacancies, we still hope to work together to find a consensus nominee who can earn bipartisan support and be confirmed." *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 32:27–32:43. See generally Julia Coin, *As NC Federal Court Vacancies Drag On, Tillis and Budd Show No Sign of Interest*, CHARLOTTE OBSERVER (June 28, 2024, at 05:00 ET), <https://www.charlotteobserver.com/news/local/crime/article289246165.html> [<https://perma.cc/QKD6-T68N> (staff-uploaded archive)] (providing background on North Carolina federal court vacancies and Tillis and Budd's approaches regarding how to fill the vacancies).

65. Tiana Headley & Suzanne Monyak, *Standoff Risks Leaving North Carolina US Court at Half Capacity*, BLOOMBERG L. (Aug. 5, 2024), [https://www.bloomberglaw.com/bloomberglawnews/us-law-week/XDMOSM04000000?bna\\_news\\_filter=us-law-week#jcite](https://www.bloomberglaw.com/bloomberglawnews/us-law-week/XDMOSM04000000?bna_news_filter=us-law-week#jcite) [<https://perma.cc/DPA4-8J24> (staff-uploaded, dark archive)] ("Tillis said he will hold up any movement on federal trial court vacancies in his state over the White House's treatment of his suggestions during the Fourth Circuit nomination process. 'If they can't negotiate with somebody who has a record of supporting Obama nominees and Biden nominees, and they treat me like this, they need not waste their time on talking about the district vacancies.'"); Weiss, *Senate Judiciary*, *supra* note 2.

66. *Ryan Park—Nominee*, *supra* note 51. Biden actually sought considerable input that included "four candidates for the North Carolina senators' consideration and considering four of their candidates" but "chose to proceed with one of [his] candidates." *Id.*; see *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 26:36–27:35.

67. *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 24:00–25:40; see *supra* Section II.A.

68. *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 25:40–26:10; see Battaglia, *Consequences*, *supra* note 62.

video, which castigated Park for his actions on “controversial” questions.<sup>69</sup> Then, Tillis alleged that while he effectively favored most nominees whom Biden mustered in committee and for confirmation, Biden named Park over Tillis’s clear dissent.<sup>70</sup>

Durbin then decided to review blue slips’ problematic history and the minimally defensible “circuit exception” articulated by Senator Chuck Grassley (R-IA) when he served as panel chair in fall 2017.<sup>71</sup> Over blue slips’ century-long history, panel chairs have exercised their discretion in applying the concept to appellate and district vacancies, but more often the latter. Because Republicans had abandoned tradition during President Trump’s first term and proceeded to confirm eighteen appellate court nominees over the objections of

69. *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 27:50–29:58; see Courtney Bubl , *NC Sens. Continue Fight Against 4th Circ. Nom.*, LAW360.COM (July 31, 2024, at 16:20 ET), [https://www.law360.com/pulse/courts/articles/1863724?utm\\_source=shared-articles&utm\\_medium=email&utm\\_campaign=shared-articles](https://www.law360.com/pulse/courts/articles/1863724?utm_source=shared-articles&utm_medium=email&utm_campaign=shared-articles) [<https://perma.cc/N48Y-E6JV> (staff-uploaded, dark archive)].

70. Benjamin Weiss, *North Carolina Senator Vows To Sink Fourth Circuit Nominee in Judiciary Scrap with White House*, COURTHOUSE NEWS SERV. (July 31, 2024), <https://www.courthousenews.com/north-carolina-senator-vows-to-sink-fourth-circuit-nominee-in-judiciary-scrap-with-white-house/> [<https://perma.cc/LHZ6-PA4M> (staff-uploaded archive)]; see *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 27:15–27:35.

71. *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 30:25–32:55 (statement of Sen. Durbin). Blue slips are a century-old custom which allows home-state senators to veto nominees for vacancies in their state, so that the best people are named. *Id.* (statement of Sen. Durbin); see Tobias, *Senator Chuck Grassley*, *supra* note 11, at 32, 54–56; Tiana Headley, *Fourth Circuit Pick Is at Center of Senate Blue Slips Debate*, BLOOMBERG L. (July 21, 2024, at 12:56 ET), <https://news.bloomberglaw.com/us-law-week/fourth-circuit-pick-is-at-center-of-senate-blue-slips-debate> [<https://perma.cc/N3YG-XCFW> (staff-uploaded, dark archive)]; Weiss, *Senate Judiciary*, *supra* note 2. This enabled the Republican Senate majority to ignore slips for eighteen circuit nominees whom then-President Donald Trump quickly appointed, “despite objections from home-state Democratic senators.” *Future of NC Solicitor General’s Federal Nomination Uncertain After Hearing*, CAROLINA J. (Aug. 2, 2024), <https://www.carolinajournal.com/future-of-nc-solicitor-generals-federal-nomination-uncertain-after-hearing/> [<https://perma.cc/N58B-ARSL>]; see Benjamin S. Weiss, *What Are Blue Slips? The Century-Old Senate Tradition Trump Wants Trashed*, COURTHOUSE NEWS SERV. (July 30, 2025), <https://www.courthousenews.com/what-are-blue-slips-the-century-old-senate-tradition-trump-wants-trashed/> [<https://perma.cc/W5WM-9W7J> (staff-uploaded archive)] [hereinafter Weiss, *Blue Slips*]; *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 30:00–32:00 (statement of Sen. Durbin). The panel Chair enjoys much discretion to modify blue slip practice. Thus, in autumn 2017 when Trump urged Grassley to alter blue slips, so he might confirm more circuit nominees, the Chair created a “circuit exception,” which lacked persuasive support, because more Chairs honored district than circuit slips, especially in recent years. This allowed Trump to fill eighteen appellate court vacancies in blue states, although circuit blue slips were honored in all eight Obama years, especially the last two when the GOP majority allowed confirmation of merely one regional circuit nominee.

Democrats, Durbin refused to permit one stricture for the GOP and “another for Democratic nominees,” so he peremptorily retained the circuit exception.<sup>72</sup>

Next Park testified, and panel members generally seemed pleased with his answers.<sup>73</sup> The nominee complimented Tillis and Budd<sup>74</sup> and was “happy” to address Tillis’s video, especially its critique of Park’s time as Solicitor General.<sup>75</sup> He contextualized the bipartisan role played by Solicitors General, invoking multiple constructive litigation efforts related to opioids and offshore drilling which Park cooperatively instigated alongside Republican legal executive officers from other states.<sup>76</sup> The nominee demonstrated bipartisanship by stressing that he consistently honored North Carolina GOP political officials’ requests to represent them and filed supportive certiorari petitions on questions of interest to the state lawmakers.<sup>77</sup> Park also cited examples of solicitors general who appropriately became celebrated federal appeals court jurists, asserting this

72. *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 31:25–31:40 (statement of Sen. Durbin). Senator Durbin often repeated the need for Republicans and Democrats to apply the same rules after he became Chair in 2021, adding that both senators “may have preferred another individual for the vacancy but the White House and committee practice here is consistent with the [GOP] precedent set” in Trump’s first term. *Id.* at 32:45–33:00 (statement of Sen. Durbin); Weiss, *Senate Judiciary*, *supra* note 2; Avalon Zoppo, *Durbin Says He’s Open to Talks on Reviving Circuit Blue Slips—But Is a Return Likely?*, LAW.COM (May 10, 2024, at 15:42 ET), <https://www.law.com/therecorder/2024/05/10/durbin-says-hes-open-to-talks-on-reviving-circuit-blue-slips-but-is-a-return-likely/> [<https://perma.cc/PM9E-WSVV> (staff-uploaded, dark archive)].

73. *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 36:04–1:23:35.

74. *Id.* at 33:40–33:55 (statement of nominee Ryan Park).

75. *Id.* at 35:55–37:00 (statement of nominee Ryan Park).

76. *Id.* at 36:45–38:00 (statement of nominee Ryan Park). Park also posited that solicitors general are certainly not policymakers, but comprise staff for attorneys general who clearly are policymakers, referencing much probative testimony from Eleventh Circuit Judge Andrew Brasher, the competent former Alabama Solicitor General. *Id.* at 39:05–39:35 (statement of nominee Ryan Park); see *Nomination Hearing*, U.S. SENATE COMM. ON THE JUDICIARY, at 1:46:45–1:49:00 (June 6, 2018), <https://www.judiciary.senate.gov/committee-activity/hearings/06/06/2018/nominations> [<https://perma.cc/TGX5-6J2Y>] (on file with the North Carolina Law Review) (statement of nominee Andrew Brasher); *Nomination Hearing*, U.S. SENATE COMM. ON THE JUDICIARY, at 46:40–47:05 (Dec. 4, 2019), <https://www.judiciary.senate.gov/committee-activity/hearings/12/04/2019/nominations> [<https://perma.cc/P257-C5ED>] (on file with the North Carolina Law Review) (statement of nominee Andrew Brasher). Brasher earned appointment to the Middle District of Alabama in 2019 and elevation to the Eleventh Circuit during 2020. *Judicial Confirmations for June 2019*, ADMIN. OFF. OF THE U.S. CTS. (June 1, 2019), <https://www.uscourts.gov/judges-judgeships/judicial-vacancies/archive-judicial-vacancies/2019/06/confirmations> [<https://perma.cc/NB7Z-66AE>]; *Judicial Confirmations for March 2020*, ADMIN. OFF. OF THE U.S. CTS. (Mar. 1, 2020), <https://www.uscourts.gov/judges-judgeships/judicial-vacancies/archive-judicial-vacancies/2020/03/confirmations> [<https://perma.cc/6G8E-SC4Q>].

77. *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 39:30–41:00 (statement of nominee Ryan Park).

important expertise can prepare nominees to resolve legal issues “as neutral arbiters.”<sup>78</sup> Despite Park’s comprehensive replies, Tillis maintained that he and Senator Budd would do everything possible “to block [Park’s] confirmation on the floor,” arguing that Biden rejected the Senators’ proffered candidates almost “out of hand.”<sup>79</sup>

Senators John Kennedy (R-LA) and Josh Hawley (R-MO) marshaled confrontational queries. Senator Kennedy asked whether the nominee may “lie to the committee to be confirmed.”<sup>80</sup> Park swiftly answered with a denial.<sup>81</sup> Kennedy then attacked Park by specifically claiming he was an “activist,” which Park responded was not “a fair description of [his] record.”<sup>82</sup> Kennedy also said that Park deliberately lost a case, gratuitously contended that Park failed to mount a rigorous defense of North Carolina’s abortion ban, and alleged that Park seemed to lack candor with a judge and the panel, all of which Park categorically and calmly refuted.<sup>83</sup> Senator Josh Hawley then questioned Park about his representation of Democratic Governor Roy Cooper before specific jurists who shuttered houses of worship during the COVID-19 pandemic, while the Senator accused Park of striving to keep Walmart open.<sup>84</sup> Park responded that he adhered to U.S. Supreme Court Chief Justice John Roberts’s *South Bay United Pentecostal Church v. Newsom*<sup>85</sup> concurring opinion, the leading precedent at that time.<sup>86</sup>

78. *Id.* at 49:40–52:12. Other examples are Fourth, Fifth, and Sixth Circuit Judges Toby Heytens, James Ho, and Jeffrey Sutton. *Judicial Confirmations for December 2021*, ADMIN. OFF. OF THE U.S. CTS. (Dec. 1, 2021), <https://www.uscourts.gov/judges-judgeships/judicial-vacancies/archive-judicial-vacancies/2021/12/confirmations> [<https://perma.cc/MEJ8-CPUA>]; *Judicial Confirmations for December 2018*, ADMIN. OFF. OF THE U.S. CTS. (Dec. 1, 2018), <https://www.uscourts.gov/judges-judgeships/judicial-vacancies/archive-judicial-vacancies/2018/12/confirmations> [<https://perma.cc/YZK3-MX2Y>]; *Judicial Confirmations in the 108th Congress*, ADMIN. OFF. OF THE U.S. CTS. (Dec. 1, 2003), [https://www.uscourts.gov/sites/default/files/vacancies\\_documents/2003\\_12/2003\\_12jdarvac2.pdf](https://www.uscourts.gov/sites/default/files/vacancies_documents/2003_12/2003_12jdarvac2.pdf) [<https://perma.cc/2RPS-P5AR>].

79. *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 45:10–48:50 (statement of Sen. Tillis).

80. *Id.* at 54:15–54:25 (statement of Sen. Kennedy).

81. *Id.* at 54:20–54:25 (statement of nominee Ryan Park).

82. *Id.* at 54:40–54:50 (statements of Sen. Kennedy, nominee Ryan Park).

83. *Id.* at 00:55:40–1:02:50 (statements of Sen. Kennedy, nominee Ryan Park).

84. *Id.* at 1:09:45–1:15:25 (statement of Sen. Hawley).

85. 141 S. Ct. 716 (2021).

86. *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 1:14:00–1:16:45 (statement of nominee Ryan Park); see *S. Bay United Pentecostal Church*, 141 S. Ct. at 716–17 (Roberts, C.J., concurring in the partial grant of application for injunctive relief); Adam Liptak, *Supreme Court, in 5–4 Decision, Rejects Church’s Challenge to Shutdown Order*, N.Y. TIMES (June 15, 2020), <https://www.nytimes.com/2020/05/30/us/supreme-court-churches-coronavirus.html> [<https://perma.cc/2J4G-Y578> (staff-uploaded, dark archive)].

In the final week of September 2024, the panel cancelled short discussion of, and a vote on, Park, even though he could have been approved in committee and confirmed by the Senate.<sup>87</sup> When the chamber approached late September's recess to campaign across the United States, the panel had no time to dutifully consider him, and then-Majority Leader Chuck Schumer (D-NY) lacked adequate temporal resources for pursuing cloture.<sup>88</sup> Thus, the Senate duly required that Park's discussion and ballot occur when the chamber returned for a lame duck session that began November 12 and remarkably concluded on December 21.<sup>89</sup>

Durbin saliently reiterated Park's sterling qualifications, particularly his clerkships at the Supreme Court and powerful, bipartisan support from: (1) law clerks for Justices whom Democratic *and* Republican Presidents had confirmed; (2) many Solicitors General across the country whom prominent state Attorneys General in both parties correspondingly hired; and (3) law enforcement groups, specifically the National Fraternal Order of the Police.<sup>90</sup> Moreover, Durbin claimed that the robust consultation which Biden afforded the North Carolina senators "far exceeded" the consultation which Trump had provided Democratic senators.<sup>91</sup>

The rescheduled panel discussion and vote, featuring Chair Durbin and Senator Tillis presenting claims similar to those in the July 31 hearing, seemed more contentious, yet Park secured an eleven-to-ten party-line ballot.<sup>92</sup> Tillis

87. *Cancellation Notice of Committee Executive Business Meeting*, U.S. SENATE COMM. ON THE JUDICIARY (Sep. 25, 2024), <https://www.judiciary.senate.gov/committee-activity/hearings/09/26/2024/executive-business-meeting> [<https://perma.cc/S3QZ-DS5W>].

88. The necessity to campaign for the presidency and the Senate majority left no time for a panel discussion and vote or for cloture and confirmation debates and votes.

89. *Tentative 2024 Legislative Schedule*, U.S. SENATE (Nov. 17, 2023), [https://www.senate.gov/legislative/2024\\_schedule.htm](https://www.senate.gov/legislative/2024_schedule.htm) [<https://perma.cc/6WCN-VKL9>]; Carl Hulse, *In Late Push, Senate Democrats Narrowly Top Trump on Judicial Confirmations*, N.Y. TIMES (Dec. 20, 2024), <https://www.nytimes.com/2024/12/20/us/politics/senate-democrats-judges-biden.html> [<https://perma.cc/BXN2-9SB4> (staff-uploaded, dark archive)]. Senators narrowly averted a government shutdown.

90. *Executive Business Meeting*, U.S. SENATE COMM. ON THE JUDICIARY, at 27:00–28:00 (Nov. 14, 2024), <https://www.judiciary.senate.gov/committee-activity/hearings/11/14/2024/executive-business-meeting> [<https://perma.cc/7M8E-QARU>] [hereinafter *Nov. 14 Executive Business Meeting*] (on file with the North Carolina Law Review) (statement of Sen. Durbin); Battaglia, *Consequences*, *supra* note 62.

91. *Nov. 14 Executive Business Meeting*, *supra* note 90, at 29:00–29:15 (statement of Sen. Durbin). Biden's staff and the legal press glowingly praised his numerous efforts. Weiss, *Burn Down the House*, *supra* note 62 (comprehensively scrutinizing Biden and Tillis accounts and finding Biden treated Tillis more fairly than Trump treated Democratic senators).

92. *Nov. 14 Executive Business Meeting*, *supra* note 90; *see supra* text accompanying notes 67–72.

appeared even more combative than he seemed during Park's hearing.<sup>93</sup> The Senator first castigated the administration's legislative counsel for being "absolutely incompetent"<sup>94</sup> and alleged that the list of potential nominees proposed by the White House was unserious.<sup>95</sup> Tillis also observed that when he sent a purported slate of four aspirants, the President deemed the candidates unqualified and refused to consider any for three district openings.<sup>96</sup> The Senator then reminded Democrats that he cast more "tough" votes favoring Biden and Obama nominees than GOP colleagues,<sup>97</sup> warned that Republicans had ample ballots to defeat Park's confirmation,<sup>98</sup> advised that he would only be confirmed were Schumer to engage in vote manipulation,<sup>99</sup> and threatened numerous paybacks once Republicans became the Senate majority.<sup>100</sup> The chamber should have quickly accorded Park cloture, scheduled a floor debate, and confirmed Park as a worthy replacement for Judge Wynn. However, on November 21, the regrettable consequences of the confirmation wars materialized: Democrats and Republicans consummated a "deal" in which the GOP agreed to limit its obstruction of trial level confirmations, while Democrats pledged to forgo seeking appointments votes on multiple talented appellate court nominees, including Park.<sup>101</sup>

93. Contrast *Nov. 14 Executive Business Meeting*, *supra* note 90, at 29:15–32:15 (statement of Sen. Tillis) (appearing exasperated and raising his voice), with *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 43:00–48:45 (statement of Sen. Tillis) (appearing irritated yet nonetheless collected); see *supra* text accompanying notes 67–72.

94. *Nov. 14 Executive Business Meeting*, *supra* note 90, at 29:45–29:55 (statement of Sen. Tillis); see Battaglia, *Consequences*, *supra* note 62.

95. *Nov. 14 Executive Business Meeting*, *supra* note 90, at 29:55–30:15 (statement of Sen. Tillis); see Battaglia, *Consequences*, *supra* note 62; Weiss, *Burn Down the House*, *supra* note 62.

96. *Nov. 14 Executive Business Meeting*, *supra* note 90, at 30:15–30:22 (statement of Sen. Tillis); see Battaglia, *Consequences*, *supra* note 62; Weiss, *Burn Down the House*, *supra* note 62.

97. *Nov. 14 Executive Business Meeting*, *supra* note 90, at 29:25–29:45 (statement of Sen. Tillis).

98. *Nov. 14 Executive Business Meeting*, *supra* note 90, at 30:45–30:55 (statement of Sen. Tillis); see Battaglia, *Consequences*, *supra* note 62.

99. *Nov. 14 Executive Business Meeting*, *supra* note 90, at 30:35–30:45 (statement of Sen. Tillis); see Battaglia, *Consequences*, *supra* note 62.

100. Tillis remarked that "elections and votes have consequences, and [Democrats are] about to see the consequences." *Nov. 14 Executive Business Meeting*, *supra* note 90, at 30:55–32:15 (statement of Sen. Tillis); see Battaglia, *Consequences*, *supra* note 62. Graham repeatedly stated that "elections have consequences" to justify his vote for Biden nominees and to encourage Republican colleagues to cast similar votes for Biden nominees. Press Release, Lindsey Graham, Elections Have Consequences (Nov. 14, 2024), <https://www.lgraham.senate.gov/public/index.cfm/press-releases?ID=B101FC93-5410-4150-A36E-17F969D0D842> [<https://perma.cc/G5JS-758K>].

101. Danielle Battaglia, *Overnight Deal Helps Tillis, Republicans Block Biden's NC Nominee for Judge*, NEWS & OBSERVER (Nov. 21, 2024, at 18:30 ET), <https://www.newsobserver.com/news/politics-government/article295946219.html> [<https://perma.cc/SZRL-Q4QE> (dark archive)]; Tobi Raji, *Senate*

C. *Aftermath*

In Ryan Park's December 13 withdrawal letter, he sincerely thanked President Biden for conferring on him the honor of a lifetime and vowed to continue public service.<sup>102</sup> Tillis responded by calling Biden's putative failure to act in good faith when leaving North Carolina's slots empty "unfortunate."<sup>103</sup> On that same day, Wynn wrote Biden that he decided to productively remain on active status while carefully apologizing for inconvenience that this determination may have caused.<sup>104</sup> Tillis, who stridently admonished Wynn to not "unretire," excoriated the highly regarded jurist: "Wynn's brazenly partisan decision to rescind his retirement is an unprecedented move that demonstrates some judges are nothing more than politicians in robes."<sup>105</sup> Tillis gratuitously added:

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*Democrats Drop 4 Appeals Court Picks So They Can Confirm 12 Judges*, WASH. POST (Nov. 21, 2024), <https://www.washingtonpost.com/national-security/2024/11/21/biden-trump-judges-senate-deal/> [<https://perma.cc/9ZL4-76VK> (staff-uploaded, dark archive)]; see Press Release, Sen. Thom Tillis, Tillis Statement on Bipartisan Deal Impacting Fourth Circuit Vacancy (Nov. 21, 2024), <https://www.tillis.senate.gov/2024/11/tillis-statement-on-bipartisan-deal-impacting-fourth-circuit-vacancy> [<https://perma.cc/44KB-KZKR>] ("The Senate yesterday reached a deal to not bring President Biden's four pending circuit nominees for a vote, which will allow President Trump to replace them. This includes the Fourth Circuit vacancy. I expect that the judges who submitted their retirements will not play partisan politics with a presidential transition and a bipartisan Senate deal by going back on their word to retire. No judges did this during the previous lame duck because the judiciary needs to be above partisan politics.")

102. Letter from Ryan Park to President Joseph Biden (Dec. 13, 2024) (on file with the North Carolina Law Review); Avalon Zoppo, *NC Solicitor General Withdraws His Fourth Circuit Nomination*, LAW.COM (Dec. 12, 2024, at 19:02 ET), <https://www.law.com/nationallawjournal/2024/12/12/nc-solicitor-general-park-withdraws-his-4th-circuit-nomination/> [<https://perma.cc/WD55-5CXC> (staff-uploaded, dark archive)]; see Jennifer Bendery, *Ryan Park, Court Pick Stalled in the Senate, Withdraws His Nomination*, HUFF POST (Dec. 13, 2024, at 14:56 ET), [https://www.huffpost.com/entry/ryan-park-biden-judicial-nominee\\_n\\_675b2ea2e4b0608c642cb80c](https://www.huffpost.com/entry/ryan-park-biden-judicial-nominee_n_675b2ea2e4b0608c642cb80c) [<https://perma.cc/9N5K-NSX3>].

103. Press Release, Sen. Thom Tillis, Tillis Statement on Fourth Circuit Nominee's Withdrawal (Dec. 14, 2024), <https://www.tillis.senate.gov/2024/12/tillis-statement-on-judge-wynn-s-partisan-and-unprecedented-decision-to-rescind-his-retirement> [<https://perma.cc/JT2S-MP67>]; see *supra* notes 62–65 and accompanying text.

104. Letter from Judge James Wynn to President Joseph Biden (Dec. 13, 2024) (on file with the North Carolina Law Review); see Danielle Battaglia, *After NC's Tillis Blocked Appellate Judge's Replacement, Judge Cancels Retirement*, NEWS & OBSERVER (Dec. 14, 2024, at 17:32 ET), <https://www.newsobserver.com/news/politics/after-nc-s-tillis-blocked-appellate-judge-s-replacement-judge-cancels-retirement/ar-AA1vS1Lc> [<https://perma.cc/42RU-U23C>]; Tiana Headley, *Wynn Reverses Retirement Plans, Denies Trump Vacancy*, BLOOMBERG L. (Dec. 14, 2024, at 21:22 ET), <https://news.bloomberglaw.com/us-law-week/fourth-circuits-wynn-disappears-from-judicial-vacancy-list> [<https://perma.cc/DKZ7-DWQM>].

105. Sen. Thom Tillis (@SenThomTillis), X (Dec. 14, 2024, at 16:18 ET), <https://x.com/SenThomTillis/status/1868042972497096943> [<https://perma.cc/FU5S-S8GW>].

Judge Wynn clearly takes issue with the fact that [Donald Trump] was just elected President . . . The Senate Judiciary Committee should hold a hearing on his blatant attempt to turn the judicial retirement system into a partisan game, and he deserves the ethics complaints and recusal demands . . . heading this way.<sup>106</sup>

Several days later, a conservative advocacy entity clearly answered Tillis's plaintive call by filing a complaint against Wynn in the Fourth Circuit.<sup>107</sup>

Tillis's mention of pursuing ethics complaints and recusal demands echoed a number of Senate floor remarks by Republican Leader Mitch McConnell (R-KY) in early December, which threatened jurists pondering unretirement with analogous "significant ethics complaints . . . followed by serial recusal demands."<sup>108</sup> The Republican Leader insisted that "these judges do the right thing and enjoy their well-earned retirements."<sup>109</sup> Those improper, disrespectful, thinly veiled threats, which target Democratic confirmees, are eerily reminiscent of numerous McConnell public comments during Trump's opening term which urged that numbers of GOP appointees contemplate

106. *Id.*

107. Letter from Mike Davis, President & Founder, The Article III Project, to Albert Diaz, C.J., 4th Cir. (Dec. 16, 2024) (on file with the North Carolina Law Review); see Tiana Headley, *Ethics Complaint Filed Against US Circuit Judge Who 'Unretired,'* BLOOMBERG L. (Dec. 16, 2024, at 17:39 ET), [https://news.bloomberglaw.com/us-law-week/ethics-complaint-filed-against-us-circuit-judge-who-unretired?utm\\_source=https://perma.cc/PB6E-NWT8](https://news.bloomberglaw.com/us-law-week/ethics-complaint-filed-against-us-circuit-judge-who-unretired?utm_source=https://perma.cc/PB6E-NWT8) (staff-uploaded, dark archive)]. *But see* Suzanne Monyak, *Judges who 'Unretired' After Trump Win Didn't Breach Ethics Code,* BLOOMBERG L. (Dec. 5, 2025, at 11:14 ET), <https://news.bloomberglaw.com/us-law-week/judges-who-unretired-after-trump-win-didnt-breach-ethics-code> [https://perma.cc/BK2W-D9PF (staff-uploaded, dark archive)]; Avalon Zoppo, *Misconduct Complaint Dismissed for Judge Who Dropped Retirement Plans After Trump Win,* LAW.COM (Dec. 4, 2025, at 16:33 ET), <https://www.law.com/nationallawjournal/2025/12/04/misconduct-complaint-dismissed-for-judge-who-dropped-retirement-plans-after-trump-win/> [https://perma.cc/88DA-JMLH (staff-uploaded, dark archive)]; Avalon Zoppo, *Judges' 'Unretirements' After Trump Win Spark Dubious Complaints,* LAW.COM (Dec. 18, 2024, at 18:21 ET), <https://www.law.com/nationallawjournal/2024/12/18/judges-unretirements-after-trumps-win-spark-dubious-ethics-complaints/?slreturn=20241220181330> [https://perma.cc/T8J3-AHJB (staff-uploaded, dark archive)] ("Michael J. Gerhardt, a University of North Carolina at Chapel Hill law professor who studies judicial ethics, said the complaints improperly put the burden on the judges to prove their innocence. . . . 'There's nothing unethical about it at all. A judge is allowed in the system that we have to change their mind.'").

108. 170 CONG. REC. S6745 (daily ed. Dec. 2, 2024) (statement of Sen. McConnell); see J P Collins, *Judges Who Refuse To Retire Under Trump Are Not "Playing Politics,"* BALLS & STRIKES (Dec. 10, 2024), <https://ballsandstrikes.org/nominations/mitch-mcconnell-judges-playing-politics/> [https://perma.cc/8BDC-M2AF].

109. McConnell urged that judges "leave the politics to the political branches." 170 CONG. REC. S6745 (daily ed. Dec. 2, 2024) (statement of Sen. McConnell).

becoming senior jurists, thus permitting Trump to seat additional conservative, younger judges.<sup>110</sup>

It was notable that Wynn's post had effectively remained open since his January decision to possibly semi-retire.<sup>111</sup> The prolonged period during which his seat stayed vacant increased pressure on Wynn and his colleagues as they attempted to resolve their large and complex caseload. In addition to the burden imposed on judges seeking retirement, nominees who must wait protracted times for appointments may be forced to place their careers and lives on hold or abandon their dreams of serving on the federal bench.<sup>112</sup>

North Carolina Solicitor General Ryan Park was a highly qualified, remarkably experienced nominee for a North Carolina vacancy on the Fourth Circuit; he clearly would have made valuable contributions to the storied court. Unfortunately, tension between the North Carolina GOP senators and the Biden White House prompted a confirmation battle that resulted in the Fourth Circuit, its judges, court staff, lawyers, and the people of North Carolina losing a dedicated public servant who could have served with distinction.

110. Devan Cole & Ted Barrett, *Sen. Lindsey Graham Encourages Senior Judges To Step Aside Ahead of Election*, CNN (May 28, 2020), <https://www.cnn.com/2020/05/28/politics/lindsey-graham-conservative-judges-trump-election> [<https://perma.cc/95FR-QAEW>]; Carl Hulse, *McConnell Has a Request for Veteran Federal Judges: Please Quit*, N.Y. TIMES (Mar. 16, 2020), <https://www.nytimes.com/2020/03/16/us/politics/mcconnell-judges-republicans.html> [<https://perma.cc/A577-YXNB> (staff-uploaded, dark archive)]. These actions could threaten judicial independence. See JOHN G. ROBERTS, JR., 2024 YEAR END REP. ON THE FED. JUDICIARY 6 (2024), <https://www.supremecourt.gov/publicinfo/year-end/2024year-endreport.pdf> [<https://perma.cc/JDW5-H5EC>].

111. *Future Judicial Vacancies for February 2024*, ADMIN. OFF. OF THE U.S. CTS. (Feb. 1, 2024), <https://www.uscourts.gov/judges-judgeships/judicial-vacancies/archive-judicial-vacancies/2024/02/future> [<https://perma.cc/4NNB-7MZ2>] (showing Wynn vacancy was open from the January 5, 2024, vacancy notification date); see Battaglia, *Reduced Role*, *supra* note 45.

112. Before Nov. 19, 2024, three nominees had awaited confirmation over a year. Further, two nominees had awaited confirmation over nine months, one over eight months, and three over seven months. *Judicial Confirmations for December 2024*, ADMIN. OFF. OF THE U.S. CTS. (Dec. 31, 2024), <https://www.uscourts.gov/judges-judgeships/judicial-confirmations/archive-judicial-vacancies/2024/12/confirmations> [<https://perma.cc/NM4U-363B>] (providing 2023–2024 confirmation data for those nominees who were eventually confirmed); *Judicial Nominations*, U.S. SENATE COMM. ON THE JUDICIARY (July 30, 2025), <https://www.judiciary.senate.gov/nominations/judicial> [<https://perma.cc/4JQV-N9QQ>] (Select “Filter” and filter by the 118th or 117th Congress; then click on an entry to expand the information for a particular nominee; then click the “Nomination Number” button to see the nomination history of each nominee; note that some nominees who were not confirmed during the 117th Congress were later renominated for the 118th Congress, thus extending their total waiting time).

## III. NOMINATIONS AND CONFIRMATIONS IN TRUMP'S SECOND TERM

So far, the court nomination and confirmation processes during Trump's second term have exacerbated the increasingly acrimonious state of judicial confirmations. For example, during his second administration, Trump initially commenced the judicial nomination and confirmation process slower than earlier presidents had and slower than he had during his first term.<sup>113</sup> The White House rarely consults home-state senators, especially in "blue states," a practice that has recently provoked concerns and objections from commentators, while Trump has yet to nominate a single candidate for a district vacancy in any of those jurisdictions.<sup>114</sup> The White House has also recently neglected to make public the identity of nominees until shortly before they testify in confirmation hearings.<sup>115</sup>

The Republican Senate majority has rushed nominees through the confirmation process. The Judiciary Committee has approved most nominees on party-line lockstep votes with minimal discussion of their qualifications,

113. Carl Hulse, *Trump Gets A Slow Start on Judges After Setting a Record Pace in First Term*, N.Y. TIMES (May 2, 2025), <https://www.nytimes.com/2025/05/02/us/politics/trump-judges-nominations.html> [<https://perma.cc/VK5R-R4SC> (staff uploaded, dark archive)] [hereinafter Hulse, *Slow Start*]; see Carl Hulse, *Democrats Slow G.O.P. Rush to Confirm Trump Nominees*, N.Y. TIMES (Jan. 2, 2025), <https://www.nytimes.com/2025/01/22/us/politics/democrats-trump-nominees.html> [<https://perma.cc/BM39-8DQ5> (staff uploaded, dark archive)].

114. See, e.g., Benjamin S. Weiss, *Dems Accuse White House of Sidelining Them on First, Third Circuit Nominees*, COURTHOUSE NEWS SERV. (July 30, 2025), <https://courthousenews.com/dems-accuse-white-house-of-sidelining-them-on-first-third-circuit-nominees/> [<https://perma.cc/45ZD-CK49>]. Trump did nominate and confirm Joshua Dunlap for a Maine First Circuit vacancy, Emil Bove for a New Jersey Third Circuit vacancy, Jennifer Mascott for a Delaware Third Circuit vacancy, Whitney Hermandorfer for a Tennessee Sixth Circuit vacancy, Rebecca Taibleson for a Seventh Circuit vacancy, and Eric Tung for a California Ninth Circuit vacancy. *Id.* Before November 19, 2024, three nominees had awaited confirmation over a year. Further, two nominees had awaited confirmation over nine months, one over eight months, and three over seven months. *Judicial Confirmations for December 2024*, *supra* note 112.

115. JP Collins, *The White House Is Trying To Hide Its Judicial Nominees from You*, BALLS & STRIKES (Oct. 13, 2025), <https://ballsandstrikes.org/nominations/trump-nominees-less-time-judges/> [<https://perma.cc/BTB2-BWG9>]; Tiana Headley, *Trump Changes How Judicial Nominees Get Publicly Revealed*, BLOOMBERG L. (Oct. 10, 2025, at 04:45 ET), <https://news.bloomberglaw.com/us-law-week/trump-changes-how-judicial-nominees-get-publicly-revealed> [<https://perma.cc/4KZY-C8PN> (staff-uploaded archive)]. An instructive example was the White House decision to send the Senate the district nominations of David Clay Fowlkes, Nicholas Jon Ganjei, and Aaron Christian Peterson on November 18, 2025, for a hearing that the Judiciary Committee convened on November 19. Press Release, White House, Nominations Sent to the Senate (Nov. 18, 2025), <https://www.whitehouse.gov/presidential-actions/2025/11/nominations-sent-to-the-senate-d2ae/> [<https://perma.cc/BG26-9PRN>] (announcing three district nominees); *Nomination Hearing*, U.S. SENATE COMM. ON THE JUDICIARY (Nov. 19, 2025), <https://www.judiciary.senate.gov/committee-activity/hearings/nominations-11-19-2025> [<https://perma.cc/PE32-GUBS>] (on file with North Carolina Law Review).

while the majority has confirmed many on similar confirmation ballots following truncated or no debates.

A. *Nominations and Confirmations Thus Far*

As of December 15, 2025, the Senate had confirmed six of President Trump's circuit court nominees: Whitney Hermandorfer (Sixth Circuit), Emil Bove (Third Circuit), Jennifer Mascott (Third Circuit), Rebecca Taibleson (Seventh Circuit), Joshua Dunlap (First Circuit), and Eric Tung (Ninth Circuit).<sup>116</sup> The chamber had also confirmed twenty district court nominees, including two appointees to the District Court for the Middle District of North Carolina—David A. Bragdon and Lindsey Ann Freeman<sup>117</sup>—and two nominees for the Western District of North Carolina—Matthew Orso and Susan Courtwright Rodriguez.<sup>118</sup>

There are forty current, and eight future, district court vacancies,<sup>119</sup> and there are no current circuit court vacancies, but there is one future vacancy on the Eighth Circuit Court of Appeals.<sup>120</sup> Judge Wynn and other circuit judges will eventually transition to senior status. When they do, it would be unfortunate for North Carolina and the Fourth Circuit to be deprived of other superb candidates as it was of Ryan Park. However, the future appears bleak: in Trump's second administration, confirmation was seem to be escalating, which raise crucial concerns about nominee qualifications *and* about the continuous erosion of the confirmation process.

B. *The Case Study of Emil Bove*

Emil Bove was a highly controversial Third Circuit nominee—principally because of actions he instituted as Acting Attorney General of the United States before the Senate confirmed Pamela Bondi as United States Attorney General

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116. *Confirmation Listing*, ADMIN. OFF. OF THE U.S. CTS., <https://www.uscourts.gov/data-news/judicial-vacancies/confirmation-listing> [<https://perma.cc/CA7H-9ULF>] (last updated Dec. 15, 2025).

117. *See id.*

118. *Current Judicial Vacancies*, ADMIN. OFF. OF THE U.S. CTS., <https://www.uscourts.gov/data-news/judicial-vacancies/current-judicial-vacancies> [<https://perma.cc/RJ5A-VWE5>] (last updated Dec. 15, 2025).

119. *Id.*; *Future Judicial Vacancies*, ADMIN. OFF. OF THE U.S. CTS., <https://www.uscourts.gov/data-news/judicial-vacancies/future-judicial-vacancies> [<https://perma.cc/9CHZ-K8CD>] (last updated Dec. 15, 2025).

120. *Future Judicial Vacancies*, *supra* note 119.

and Todd Blanche as Deputy Attorney General.<sup>121</sup> On June 25, the Judiciary Committee provided a confirmation hearing for Bove and five Florida District Court nominees.<sup>122</sup> Similarly to the processes for the Hermandorfer Sixth Circuit, and the Missouri district, nominees, the committee focused primarily on Bove, the circuit nominee. Numerous Democratic senators, particularly Richard Blumenthal (D-CT), Cory Booker (D-NJ), Richard Durbin (D-IL), and Sheldon Whitehouse (D-RI), queried Bove about how the nominee had administered the Department of Justice when the second Trump administration initially came into office and Bove was the acting deputy attorney general.<sup>123</sup> One major focus of criticism was Bove's leadership in attempting to conclude the Department of Justice's efforts in prosecuting New York Mayor Eric Adams.<sup>124</sup> Democrats also criticized Bove for making similar requests of DOJ

121. Bondi, Bove, and Blanche had also served as personal attorneys for Trump and exhibited loyalty to the recently reelected President. *See, e.g.*, Joe Patrice, *Justice Department Rebrands as Trump's Personal Law Firm*, ABOVE THE L. (Feb. 6, 2025, at 13:08 ET), <https://abovethelaw.com/2025/02/justice-department-rebrands-as-trumps-personal-law-firm/> [<https://perma.cc/HPS2-E82H>].

122. *Nomination Hearing*, U.S. SENATE COMM. ON THE JUDICIARY, at 1:00:26–03:04:59 (June 25, 2025) [hereinafter *June 25 Nomination Hearing*], <https://www.judiciary.senate.gov/committee-activity/hearings/nominations-06-25-2025> [<https://perma.cc/LA68-KPG4>] (on file with the North Carolina Law Review).

123. *See id.*; Devlin Barrett, *Bove Denies Suggesting Justice Dept. Ignore Court Orders*, N.Y. TIMES (June 25, 2025) [hereinafter Barrett, *Bove Denies*], <https://www.nytimes.com/2025/06/25/us/politics/emil-bove-confirmation.html> [<https://perma.cc/SP73-8B6R> (staff-uploaded, dark archive)]; Perry Stein, *Trump Judicial Nominee Emil Bove Denies Whistleblower Allegations at Hearing*, WASH. POST (June 25, 2025), <https://www.washingtonpost.com/national-security/2025/06/25/trump-judicial-nominee-emil-bove-confirmation-hearing/> [<https://perma.cc/RLZ9-RBMN> (staff-uploaded, dark archive)]; *see* Benjamin Weiss, *Democrats Rage as Senate GOP Steamrolls Vote on Third Circuit Nominee Bove*, COURTHOUSE NEWS SERV. (July 17, 2025) [hereinafter Weiss, *Democrats Rage*], <https://www.courthousenews.com/democrats-rage-as-senate-gop-steamrolls-vote-on-third-circuit-nominee-bove/> [<https://perma.cc/WH3K-VNMU>] (suggesting that Bondi and Blanche attended the hearing to pressure GOP senators).

124. *June 25 Nomination Hearing*, *supra* note 122, at 1:04:42–1:09:30, 1:33:01–1:42:55, 1:52:50–1:56:43, 2:19:50–2:22:39, 2:52:03–2:54:23; *see* Shayna Jacobs & Jeremy Roebuck, *Acting Deputy AG Emil Bove Defends Move To Drop Eric Adams Case*, WASH. POST (Feb. 19, 2025), <https://www.washingtonpost.com/national-security/2025/02/19/eric-adams-court-hearing-corruption-justice-department/> [<https://perma.cc/22LS-D9SG> (staff-uploaded, dark archive)]; Willam K. Rashbaum, Dana Rubinstein, Glenn Thrush, Michael Rothfeld & Jonah E. Bromwich, *Push to Drop Adams Charges Reveals a Justice Dept. Under Trump's Sway*, N.Y. TIMES (Feb. 14, 2025), <https://www.nytimes.com/2025/02/10/nyregion/eric-adams-charges-doj-trump.html> [<https://perma.cc/8CEW-MHB4> (staff-uploaded, dark archive)]. Democrats questioned why Bove had mandated that Danielle Sassoon, the Interim Southern District of New York U.S. Attorney, dismiss the criminal case against Adams, to which she responded by tendering her resignation. *June 25 Nomination Hearing*, *supra* note 122, at 1:37:42–1:42:55; *see* Devlin Barrett, *Why Bove Wants Someone Else to Request the Adams Charges Be Dismissed*, N.Y. TIMES (Feb. 14, 2025), <https://www.nytimes.com/2025/02/14/nyregion/>

lawyers in the Washington, D.C., Justice Department headquarters.<sup>125</sup> Those lawyers refused his demands and resigned—or were fired—while Bove eviscerated the Department’s public integrity section, which had professionally served as the crown jewel for revering and upholding the idea that prosecutors behave “without fear or favor.”<sup>126</sup> Finally, Democrats powerfully emphasized the remarkable disdain, if not contempt, that Bove acutely showed for the federal judiciary when he repeatedly encouraged DOJ attorneys to not comply with federal judges’ orders, or even to defy them, stating “they might need to say ‘f\*\*k you’ to Federal courts that issue orders this administration does not agree with.”<sup>127</sup>

During the committee’s combative panel deliberations on Bove, Senator Booker persuasively stated that he and New Jersey Senate colleague Andy Kim informed the White House that they wished to cooperate in finding a highly

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bove-adams-charges-dismissal.html [https://perma.cc/L6YT-2854 (staff-uploaded, dark archive)] [hereinafter Barrett, *Why Bove Wants Someone Else*]; see William K. Rashbaum, Benjamin Weiser, Jonah E. Bromwich & Maggie Haberman, *Order To Drop Adams Case Prompts Resignations in New York and Washington*, N.Y. TIMES (Feb. 13, 2025), https://www.nytimes.com/2025/02/13/nyregion/danielle-sassoon-quit-eric-adams.html [https://perma.cc/T4BL-38GV (staff-uploaded, dark archive)]; see Michael Rothfeld & William K. Rashbaum, *Why Prosecutors Accused Their Bosses of Offering Adams a Quid Pro Quo*, N.Y. TIMES (Feb. 14, 2025), https://www.nytimes.com/2025/02/14/nyregion/adams-sassoon-bove-immigration.html [https://perma.cc/C556-YUNV (staff-uploaded, dark archive)]. Bove then assumed the case and eventually appeared in district court alone, to pursue the litigation, because other DOJ attorneys refused to behave as he commanded. Southern District of New York Judge Dale E. Ho severely criticized DOJ and Bove for filing the case, describing its pursuit and the dismissal request as “smack[ing] of a bargain” in exchange for New York’s cooperation with the Trump administration immigration policy. *United States v. Adams*, 777 F. Supp. 3d 185, 192 (S.D.N.Y. Apr. 2, 2025); *June 25 Nomination Hearing*, *supra* note 122, at 1:55:20–1:56:35; see Jacobs & Roebuck, *supra*; Rashbaum et al., *supra*; Rothfeld & Rashbaum, *supra*.

125. *June 25 Nomination Hearing*, *supra* note 122, at 2:29:40–2:22:37; see Barrett, *supra* note 124; Jacobs & Roebuck, *supra* note 124; Rashbaum et al., *supra* note 124; Kimberly Atkins Stohr, *Emil Bove and the Kavanaugh Rule: Loyalty to Trump Dictates Judicial Confirmations, Not Qualifications*, BOS. GLOBE (July 30, 2025), https://www.bostonglobe.com/2025/07/30/opinion/emil-bove-politicization-federal-judiciary-brett-kavanaugh/ [https://perma.cc/9X68-33RP (staff-uploaded, dark archive)].

126. *June 25 Nomination Hearing*, *supra* note 122, at 2:29:40–2:22:37; see Barrett, *supra* note 123; Jacobs & Roebuck, *supra* note 123; Rashbaum et al., *supra* note 123; Stohr, *supra* note 124.

127. Many individuals and groups publicly stated even in Bove’s hearing that he frequently invoked the f bomb when instructing DOJ lawyers how they should approach courts and judges. *June 25 Nomination Hearing*, *supra* note 122, at 2:48:05–2:49:36 (statement of Sen. Schiff); see Katelyn Polantz & Annie Grayer, *Documents Back up DOJ Whistleblower’s Claim that Top Official Intended to Ignore Court Orders Top Judiciary Democrat Says*, CNN POL. (July 10, 2025), https://www.cnn.com/2025/07/10/politics/justice-department-ignore-court-orders-emil-bove-erez-reuveni [https://perma.cc/QTL8-FX9W] (Erez Reuveni’s complaint said Bove stated that DOJ would need to consider telling the courts “f\*\*k you” and ignore any orders to stop migrants’ hasty deportation.).

qualified, mainstream nominee for the Third Circuit vacancy.<sup>128</sup> However, Booker characterized what occurred as a completely perverted process.<sup>129</sup> The Senator recounted numerous concerns about the procedures, stating that Bove provided misleading answers and possibly lied to the committee, invoking ample criticisms of Bove from prosecutors and others who had served with him or were aware of Bove's problematic conduct.<sup>130</sup> Booker voiced concern about the "false [sense of] urgency" to confirm Bove, invoking the seventy-five former federal and state judges as well as prosecutors, who explicitly urged the panel and the chamber to reject Bove.<sup>131</sup>

On July 22, Minority Leader Schumer opened floor debate on Bove with scathing criticisms of Trump's judicial appointments record, the nominee, and the confirmation process.<sup>132</sup> Schumer distinctly reminded colleagues that "Trump has a history of rushing shockingly unqualified and politically motivated nominees to the Federal bench," yet Bove is "perhaps Donald Trump's worst judicial nominee to date" because he is "hostile to the rule of law, hostile to democratic norms, but religiously obedient to Donald Trump."<sup>133</sup> The Minority Leader accused the GOP of not "applying so much as a whisper of scrutiny" because Grassley "cut off debate on Mr. Bove and refused to let Democrats speak . . . during Mr. Bove's hearing," even though the nominee's "entire career has been built on one thing . . . fealty to Donald Trump."<sup>134</sup> He labeled Bove "the extreme of the extreme" who is "not a jurist but, rather, a

128. *Executive Business Meeting*, U.S. SENATE COMM. ON THE JUDICIARY (July 17, 2025), <https://www.judiciary.senate.gov/committee-activity/hearings/executive-business-meeting-07-17-2025> [<https://perma.cc/89HG-E4H2>] [hereinafter *July 17 Executive Business Meeting*]; see Weiss, *Democrats Rage*, *supra* note 123 (discussing the progression of the meeting from a debate into a "breakdown"). *July 17 Executive Business Meeting*, *supra*, at 00:55:15–00:56:30.

129. *July 17 Executive Business Meeting*, *supra* note 128, at 00:55:15–00:56:30.

130. *Meeting on July 17, 2025*, *supra* note 128, at 00:56:20–01:03:00. For example, he invoked the whistleblower, Southern District prosecutors who had relevant information about exculpatory evidence that Bove withheld, AUSAs who said that Bove "undercut efforts to prosecute the J6 defendants," and federal prosecutors and public defenders who "described him as a drunk driver." 171 CONG. REC. S4616–17 (daily ed. July 23, 2025).

131. See *July 17 Executive Business Meeting*, *supra* note 128, at 01:03:50–01:07:15.

132. 171 CONG. REC. S4516 (daily ed. July 22, 2025) (statement of Sen. Schumer).

133. See *id.*

134. "He handled Donald Trump's dirty laundry, first as his personal attorney and, then, as his hit man at the Justice Department." 171 CONG. REC. S4516 (daily ed. July 22, 2025); *id.* at S4516–17; see Devlin Barrett, *Grassley, a Champion of Whistle-Blowers, Spurns Them in a Fight Over Bove*, N.Y. TIMES (July 29, 2025), <https://www.nytimes.com/2025/07/29/us/politics/grassley-whistle-blowers-emil-bove.html> [<https://perma.cc/DH2V-VPJZ> (staff-uploaded, dark archive)].

Trumpian henchman” whose “past shows he seeks not to be impartial but rather to settle scores.”<sup>135</sup>

Numerous Democratic Judiciary Committee members echoed Schumer’s criticisms of Bove.<sup>136</sup> Senator Blumenthal described the resolution of Bove’s nomination as “one of the most important decisions” that the Senate will make related to the future of American justice, contending that the nominee is “as unfit and unqualified as any judicial nominee to come before the [chamber] in my 15 years here.”<sup>137</sup> He contended that Bove engaged in a “pattern of lawlessness and recklessness, a violation of individual rights and liberties, a pattern of corruption unprecedented in [DOJ] history.”<sup>138</sup> “Bove is in a different category” because “he is corrupt” and “[h]e is dangerous, vindictive, and revengeful in a way that this administration has made a pattern of doing.”<sup>139</sup> Senior Judiciary Committee member Whitehouse emphasized Bove’s “three significant instances of prosecutorial misconduct” within the span of half a year at DOJ.<sup>140</sup> The Senator asserted that the GOP panel majority departed from tradition and disregarded “constitutional powers of oversight and advice and consent,”<sup>141</sup> to “grease Bove through the committee.”<sup>142</sup> Finally, Whitehouse suggested that Attorney General Bondi and Deputy Attorney General Blanche even attended the hearing “to give committee Republicans the eyeball,” which

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135. See 171 CONG. REC. S4517 (daily ed. July 22, 2025). Schumer claimed that “[a]ll of the accusations against him suggest he holds deep hostility against the very bench he will soon be considered for.” See *id.*

136. All emphatically opposed Bove’s confirmation. In this Article, I emphasize ideas that Schumer did not treat or which are particularly compelling.

137. 171 CONG. REC. S4607 (daily ed. July 23, 2025).

138. See *id.* He claimed Bove “has been integral to it, participating actively in it.” *Id.*

139. *Id.* He continued:

[Bove] epitomizes [Trump’s demand for fealty] above all else to him, a sense that he has the power to do what no ordinary American can expect from judges or from prosecutors; that they will, in effect, rig the system in his favor, as Mr. Bove has done while representing, supposedly, the [DOJ] because he was—like Pam Bondi and others who have taken senior positions—a lawyer . . . for President Trump . . . representing him against claims in his personal capacity before he took this role in [DOJ].

*Id.* He urged colleagues to “stand with us and oppose this nomination,” because the “record here speaks powerfully . . . to our conscience and conviction.” See *id.*

140. 171 CONG. REC. S4612 (daily ed. July 23, 2025) (statement of Sen. Whitehouse); see *supra* notes 113–18, 125, 154, 156 (describing the instances of Bove’s misconduct at the DOJ).

141. 171 CONG. REC. S4612 (daily ed. July 23, 2025).

142. *Id.* “[H]aving made that astounding concession, [the panel] then didn’t even follow the rules for assertions of these supposed privileges, neither as to their scope . . . nor as to what it takes to actually claim them.” *Id.*

“more resembled a racketeering from ‘The Godfather’ than a nominations hearing from a circuit judgeship.”<sup>143</sup> Whitehouse warned that if senators actually kept “rubberstamping Trump’s lawless nominees, he will just continue lowering the bar, further degrading the judicial system.”<sup>144</sup>

Booker—as a “home-state” senator—implored Republican senators to follow committee rules, practices, and traditions during the July 17 Executive Business Meeting.<sup>145</sup> Senator Booker pleaded with his colleagues to scrutinize Bove’s record, proclaiming that the nominee has incessantly shown “disrespect for the very office he seeks to hold.”<sup>146</sup> Booker believed that others, not merely Democrats, “but career prosecutors [and] public defenders— . . . judges, and . . . so many people . . . [from] both sides of the aisle . . . [were beginning to think] that it would be wrong” to confirm Bove.<sup>147</sup> He claimed this body, which is meant to be deliberative, “and to advise and consent, should not” proceed, if the Senate is to honor its members’ duty.<sup>148</sup> Booker next provided several examples of how the panel and chamber were acting too fast on substantive matters: (1) The GOP panel majority denied a hearing for the whistleblower and quickly rammed Bove’s vote through the committee; (2) the many prosecutors who took the unprecedented step of alerting Bove’s supervisors to his unethical prosecutorial conduct, labeling Bove the “drunk driver of prosecutors;”<sup>149</sup> (3) “credible information” about Bove’s role when burying evidence regarding the Epstein files;<sup>150</sup> and (4) Bove’s attempt to “erase the tragic events of the January 6 attack on the Capitol” by helping Trump pardon nearly 1,600 individuals who attacked the Capitol and by firing many “federal prosecutors and FBI agents who worked on the January 6 investigation.”<sup>151</sup>

Booker admitted there was much pressure to hastily confirm someone who cannot be trusted, to “rubberstamp nominees,” and “to look the other way even

143. 171 CONG. REC. S4613 (daily ed. July 23, 2025). “Obviously, there in court, under oath, real answers would be achieved.” *Id.*; see Weiss, *Democrats Rage*, *supra* note 123.

144. *Id.*

145. See 171 CONG. REC. S4615 (daily ed. July 23, 2025); see *supra* notes 128–31.

146. 171 CONG. REC. S4616 (daily ed. July 23, 2025) (statement of Sen. Booker). Booker reiterated that Bove said “f you” to judges’ orders, withheld exculpatory evidence, violated his code of conduct and “broke his ethics,” advised on January 6 pardons, fired “dedicated law enforcement agents,” and has crucial information regarding Epstein’s files. *Id.*; see *supra* notes 147–51 and accompanying text.

147. 171 CONG. REC. S4616–17 (daily ed. July 23, 2025).

148. *Id.*

149. *Id.*; see *supra* note 130.

150. 171 CONG. REC. S4616 (daily ed. July 23, 2025). He said, “It would be unconscionable for the Senate to move forward with [Bove’s] confirmation” absent provision for analysis of Bove’s role. *Id.*

151. *Id.*

though the evidence is clear.”<sup>152</sup> He expressed gratitude to Republican colleagues who “are standing up and doing the right thing,” despite Trump’s enormous pressure and reminded colleagues of “profiles in courage” during the first Trump administration.<sup>153</sup> Booker could recall no other time in his fourteen years as senator when “someone so unqualified for the bench [was] before [them],” so he urged GOP senators to muster the courage of their convictions to call it like it is, to do their constitutional duty, to look squarely at this nominee’s qualifications and to “not let [Bove] go forward.”<sup>154</sup>

In the July 24 Executive Business Meeting, Chair Grassley and Ranking Member Durbin basically agreed to disagree regarding what had transpired one week earlier.<sup>155</sup> Both presented different perspectives of the relevant committee history, but they recounted that the Democratic and Republican staffs had met and discussed what Grassley characterized as miscommunication and Durbin perceived as truncating Democrats’ opportunity to discuss the nominee.<sup>156</sup> Following spirited debate principally recounted by Durbin on July 29,<sup>157</sup> Bove earned a 50–48 cloture vote, marking the final hours of debate.<sup>158</sup> The Senate then confirmed Bove in a 50–49 vote, despite allegations that “every time there has been an abuse of power at the Justice Department, Emil Bove either directed it, supervised it, or carried it out himself.”<sup>159</sup>

152. 171 CONG. REC. S4616 (daily ed. July 23, 2025).

153. *Id.* He invoked memories of Senators Bob Corker and Jeff Flake and other colleagues, “who in times of great distress . . . voted against judges who were not fit.” *Id.*

154. 171 CONG. REC. S4617 (daily ed. July 23, 2025).

155. *Executive Business Meeting*, U.S. SENATE COMM. ON THE JUDICIARY (July 24, 2025), <https://www.judiciary.senate.gov/committee-activity/hearings/executive-business-meeting-07-24-2025> [<https://perma.cc/9K54-CHBC>] [hereinafter *July 24 Executive Business Meeting*] (on file with the North Carolina Law Review).

156. *See id.* at 22:50. Grassley asserted that the short three-day work week made scheduling difficult and urged return to a five-day week. *See id.* at 34:21–34:58.

157. Durbin emphasized the whistleblower claims that contradicted Bove’s testimony, which the GOP refused to hear, Bove’s involvement in terminating federal career prosecutors who brought the cases against the January 6 defendants, his leadership of DOJ efforts to cut a corrupt deal with Mayor Adams, and Bove’s loyalty to Trump. 171 CONG. REC. S4789–90 (daily ed. July 29, 2025).

158. 171 CONG. REC. S4696 (daily ed. July 24, 2025); *see* Benjamin Weiss, *Third Circuit Nominee Emil Bove Clears Final Senate Hurdle Ahead of Confirmation Vote*, COURTHOUSE NEWS SERV. (July 24, 2025), <https://www.courthousenews.com/third-circuit-nominee-emil-bove-clears-final-senate-hurdle-ahead-of-confirmation-vote/> [<https://perma.cc/UMN3-U3Z4> (staff-uploaded archive)] [hereinafter Weiss, *Third Circuit Nominee*].

159. 171 CONG. REC. S4614 (daily ed. July 23, 2025) (statement of Sen. Schiff); *see* Devlin Barrett, *Senate, Rejecting Whistle-Blower Alarms, Confirms Bove to Appeals Court*, N.Y. TIMES (July 29, 2025), <https://www.nytimes.com/2025/07/29/us/politics/emil-bove-confirmed-appeals-judge.html> [<https://perma.cc/LEX6-P9FL> (staff-uploaded, dark archive)]; Perry Stein & Theodor Meyer, *Senate Confirms Controversial Nominee Emil Bove As Federal Judge*, WASH. POST (July 31, 2025),

Emil Bove's machinations stand out as a quintessential example of how partisan confirmation wars are changing the landscape of judicial nominations and confirmations. Yet the process exemplified here by his story is merely representative of a substantial change in procedure that has already seriously undermined many confirmations and will continue to plague evaluation of future nominees.<sup>160</sup>

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<https://www.washingtonpost.com/national-security/2025/07/29/emil-bove-senate-vote-trump-nominee-federal-judge/> [<https://perma.cc/A8FQ-R8L7> (staff-uploaded, dark archive)].

160. While a comprehensive review of each example is beyond the scope of this Article, clear instances have already emerged from the First, Third, and Ninth Circuits.

On June 4, 2025, the Judiciary Committee convened a confirmation hearing for Sixth Circuit nominee Hermandorfer and four District of Missouri nominees, during which the panel devoted most of the time to Hermandorfer. *Nominations Hearing*, U.S. SENATE COMM. ON THE JUDICIARY, at 50:30–2:20:28 (June 4, 2025) [hereinafter *June 4 Nominations Hearing*], <https://www.judiciary.senate.gov/committee-activity/hearings/06/04/2025/nominations> [<https://perma.cc/AAX2-S2YN>] (on file with the North Carolina Law Review). Democratic Senators Blumenthal, Booker, Chirs Coons (DE), Durbin, and Whitehouse questioned Hermandorfer's dearth of practical legal experience and probed her views regarding whether litigants must comply with federal judges' orders. *Id.*; see, e.g., Tiana Headley, *Trump Appellate Pick Says Court Orders 'Bind' the Parties*, BLOOMBERG L., <https://news.bloomberglaw.com/us-law-week/senate-judiciary-leaders-remain-committed-to-blue-slips> [<https://perma.cc/68GN-7CFA> (staff-uploaded, dark archive)] (last updated June 4, 2025, at 17:29 ET); see also Lisa Rubin, *What Can We Expect From Trump's Judicial Nominees?*, MSNBC (June 4, 2026, at 19:44 ET), <https://www.msnbc.com/opinion/analysis/trump-judicial-nominees-whitney-hermandorfer-senate-rcna211015> [<https://perma.cc/6QLJ-6KKA>]. The committee's June 26 discussion and vote closely mirrored the hearing. *Executive Business Meeting*, U.S. SENATE COMM. ON THE JUDICIARY, at 28:29–31:50 (June 26, 2025), <https://www.judiciary.senate.gov/committee-activity/hearings/executive-business-meeting-06-26-2025> [<https://perma.cc/6XDW-KXND>] (on file with the North Carolina Law Review) [hereinafter *June 26 Executive Business Meeting*]; see Suzanne Monyak, *Senate Panel Advances Trump's First Appeals Court Nominee*, BLOOMBERG L., <https://news.bloomberglaw.com/us-law-week/senate-judiciary-panel-advances-trumps-first-circuit-court-pick> [<https://perma.cc/3TMU-ENN6> (staff-uploaded, dark archive)] (last updated June 26, 2025, at 11:12 ET). For instance, Durbin criticized the nominee's "MAGA credentials" and reiterated her lack of experience. *Id.* Hermandorfer possessed merely a decade of experience—of which four years had been dedicated to clerking in federal courts—but the panel ultimately approved her on a 12–10 party-line vote. *June 26 Executive Business Meeting*, *supra*, at 29:53–31:32; see Monyak, *supra*. In the nominee's floor debate, the minority party senators again repeated their now-extensively-aired criticisms of the nominee; however, she prevailed in a 46–42 confirmation vote essentially along party lines. 171 CONG. REC. S4301–04 (daily ed. July 10, 2025); *id.* at S4325–27, 4332 (daily ed. July 14, 2025); see Carl Hulse, *Senate Approves First Judge of Trump's Second Term*, N.Y. TIMES (July 14, 2025), <https://www.nytimes.com/2025/07/14/us/politics/senate-first-federal-judge-trump-second-term.html> [<https://perma.cc/W9F6-HRKT> (staff-uploaded, dark archive)]; Avalon Zoppo, *Senate Confirms Trump's 1st Second-Term Judicial Pick Whitney Hermandorfer*, LAW.COM (July 14, 2025, at 23:26 ET), <https://www.law.com/nationalalljournal/2025/07/15/senate-confirms-trumps-1st-second-term-judicial-pick-whitney-hermandorfer/?slreturn=20250828134607> [<https://perma.cc/8JP4-B78X> (staff-uploaded, dark archive)]. Democrats also possessed minimal time to question the District of Missouri nominees, who were rather well-qualified but very ideologically conservative.

In fact, on July 30, 2025, the panel convened a hearing for First Circuit nominee Dunlap and Ninth Circuit nominee Tung as well as Eastern District of Kentucky nominee Chad Meredith and District of Montana nominee William Mercer.<sup>161</sup> Because the hearing immediately followed Bove's controversial appointment, the effects of the treatment which the GOP majority accorded Democrats in the committee and the chamber appeared to continue and perhaps worsen. For example, Bove refused to answer many questions that Democrats posed in the hearing and provided evasive responses to others.<sup>162</sup> This conduct seemingly affected the First and Ninth Circuit nominees' behavior and may have influenced the district nominees. The conduct is extremely likely to continue exacerbating the partisan chaos that epitomizes the confirmation wars.

#### IV. IMPLICATIONS AND SUGGESTIONS

It ultimately seems that Ryan Park's failed nomination was a casualty of the destructive confirmation wars and a harbinger of the nomination and confirmation processes in the second Trump administration. These confirmation wars erode regard for the President, the Senate, judges, and the process of selection, while Park's terrible chamber treatment also dissuades promising aspirants from contemplating bench service. Stark politicization, staunch partisanship, and apparent misunderstanding of the nomination and confirmation processes, together with the many special rules and customs which distinctly govern practices of selection, overrode Park's superlative abilities. This resolution denied North Carolina's populace, jurists, tribunals, and staff a highly capable and intelligent judge with a distinguished record of public

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161. See *Nomination Hearing*, U.S. SENATE COMM. ON THE JUDICIARY, at 35:31 (July 30, 2025), <https://www.judiciary.senate.gov/committee-activity/hearings/nominations-07-30-2025> [<https://perma.cc/67BS-JQY7>] (on file with the North Carolina Law Review).

162. See, e.g., Hailey Fuchs & Erica Orden, *Bove Denies Advising Anyone To Flout Court Orders*, POLITICO (June 25, 2025, at 11:41 ET), <https://www.politico.com/live-updates/2025/06/25/congress/bove-adams-judiciary-00423252> [<https://perma.cc/836M-H8PL> (staff-uploaded archive)]. This was a trend continued from his questionnaire that he provided before the hearing. See Scott MacFarlane, *Emil Bove Declines To Rule Out 3rd Trump Term or Denounce Jan. 6 Rioters in Senate Questionnaire*, CBS NEWS, <https://www.cbsnews.com/news/emil-bove-senate-questionnaire-trump-third-term-january-6/> [<https://perma.cc/E723-YTXF> (staff-uploaded, dark archive)] (last updated July 11, 2025, at 16:27 ET).

service.<sup>163</sup> In the months since Park received nomination, the process has exponentially deteriorated, especially for appellate court nominees.<sup>164</sup>

Bove's confirmation illuminates the confirmation wars: despite deeply problematic, pervasive, and well-substantiated concerns about the candidate, the Senate ultimately rushed to confirmation. The cases of Park and Bove show a confirmation process that has grown more combative but less functional—one in which unrelenting partisan loyalty, not careful evaluation of merit, determines who reaches the bench. In abandoning long-standing selection-process courtesies and good-faith consideration of legitimate perspectives across party lines, the Senate is sidelining outstanding candidates and accelerating the advancement of troubling nominees to the detriment of the federal bench's quality and credibility.

Democratic and Republican politicians should collect, evaluate, and synthesize pertinent ideas, which rectify or decrease the counterproductive, relentless, downward-spiraling confirmation wars punctuated by systematic polarization. Lawmakers could appropriately consult Tillis's musing in the Park nominee hearing and executive session.<sup>165</sup> Tillis wondered if the chamber might restore the dynamic, efficacious notion of "regular order," which Democrats and Republicans constantly invoke, especially when they are the minority party.<sup>166</sup> Neither party completely or specifically defines the term, yet legislators in both parties appreciate what the construct means: the requirements and conventions that govern the selection process.<sup>167</sup> The blue slip affords a quintessential

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163. 156 CONG. REC. S6991 (daily ed. Aug. 5, 2010). The three nominees in addition to Park were the First Circuit's Julia Lipez, the Third Circuit's Adeel Mangi, and the Sixth Circuit's Karla Campbell. *See generally* Letter from Adeel Mangi to President Joseph Biden (Dec. 16, 2024) (on file with the North Carolina Law Review) (providing highly qualified, mainstream nominee's scathing criticism of his shoddy treatment); 170 CONG. REC. S7167–71 (daily ed. Dec. 18, 2024) (statement by Sen. Booker regarding Mangi); *see supra* notes 114, 116 (discussing President Trump's nomination of Whitney Hermandorfer to the Tennessee Sixth Circuit vacancy); Battaglia, *Reduced Role*, *supra* note 45.

164. *Supra* Part III.

165. *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 43:15 (statements of Sens. Durbin and Tillis); *Nov. 14 Executive Business Meeting*, *supra* note 90, at 27:00–32:15 (statements of Sens. Durbin and Tillis).

166. *Ryan Park July 31 Nomination Hearing*, *supra* note 1, at 43:15 (statement of Sen. Tillis). *See generally* Carl Tobias, *Senate Blue Slips and Senate Regular Order*, YALE L. & POL'Y REV. INTER ALIA (Nov. 20, 2018), [https://ylpr.yale.edu/inter\\_alia/senate-blue-slips-and-senate-regular-order](https://ylpr.yale.edu/inter_alia/senate-blue-slips-and-senate-regular-order) [<https://perma.cc/5JB9-CN6H>] (providing an overview of the historic importance of blue slips as a safeguard to regular order in the Senate).

167. *See generally* Tobias, *Senator Chuck Grassley*, *supra* note 11 (explaining how Republicans have complained the judicial confirmation process is delayed without 'regular order'); Carl Tobias, *The Republican Senate and Regular Order*, 101 IOWA L. REV. ONLINE 12 (2016) (explaining how Republicans promised to restore 'regular order' of normal judicial selection procedures).

example, notwithstanding the concept's inconsistent history across the last century. In an effort to restore order in the selection process, Chair Durbin announced that he would be pleased to craft effective rules which treat slips fairly for Republicans *and* Democrats and define regular order, during the 119th Congress.<sup>168</sup>

Tillis's criticism should have targeted GOP colleagues instead of President Biden's consultation across Park's selection process. For instance, Grassley's 2017 peremptory articulation of the "circuit exception" to slips lacked persuasive support.<sup>169</sup> Durbin retained the mechanism, because he rejected numerous differing requirements for the Democratic and Republican conferences.<sup>170</sup> Upon gaining the Senate majority in 2020, Biden and Democratic senators provided GOP senators greater and more nuanced cooperation than President Trump and the Republican chamber majority afforded Democratic senators.<sup>171</sup>

This goodwill was not reciprocated upon when Republicans recaptured the majority in 2024. Rather than cooperate with their Democratic colleagues, Senators Tillis and Budd rapidly proposed nominees to fill the current Middle and Western District of North Carolina vacancies, which they specifically premised on marshaling Wynn's replacement.<sup>172</sup> For example, in Trump's first administration, Senator Tillis had seemed to dutifully recommend accomplished, centrist designees whose essential attribute was competence to expeditiously, inexpensively, and equitably resolve numerous cases.<sup>173</sup> Illustrative were Western District Judge Kenneth Bell and Eastern District Judge Richard Myers, whom Trump confirmed during his initial term.<sup>174</sup>

168. This may have been tongue in cheek. *Executive Business Meeting*, U.S. SENATE COMM. ON THE JUDICIARY (May 9, 2024) at 1:02:10–1:02:59, <https://www.judiciary.senate.gov/committee-activity/hearings/05/09/2024/executive-business-meeting> [<https://perma.cc/5APL-9EQK>] (on file with the North Carolina Law Review) (statement of Sen. Durbin).

169. See *supra* notes 71–72 and accompanying text.

170. See *supra* note 72 and accompanying text.

171. See *supra* note 72 and accompanying text.

172. See *supra* notes 62–64 and accompanying text.

173. See Press Release, Ted Budd, Budd, Tillis Applaud Nomination of Four NC Judges (Aug. 22, 2025) [hereinafter Ted Budd Press Release], <https://www.budd.senate.gov/2025/08/22/budd-tillis-applaud-nomination-of-four-nc-judges/> [<https://perma.cc/BKP6-V348>]; see, e.g., *Matthew Emile Orso*, ALL. FOR JUST., <https://afj.org/nominee/matthew-emile-orso/> [<https://perma.cc/6TW2-VLRU>] (staff-uploaded archive)]; *Susan Courtwright Rodriguez*, ALL. FOR JUST., <https://afj.org/nominee/susan-courtwright-rodriguez/> [<https://perma.cc/XZQ9-HKGA>] (staff-uploaded archive)] (describing the qualifications and legal experience of two candidates recommended by Senators Tillis and Budd whom Trump recently nominated and confirmed in the Western District of North Carolina).

174. 165 CONG. REC. S3039 (daily ed. May 22, 2019) (confirmation vote for Bell); 165 CONG. REC. S6873 (daily ed. Dec. 5, 2019) (confirmation vote for Myers). Judge Myers notably resolved the protracted litigation that North Carolina Court of Appeals Judge Jefferson Griffin pursued which

Despite not publicly recommending candidates to fill the Middle and Western District vacancies themselves in 2025, Tillis and Budd issued press releases that glowingly praised the four candidates whom the White House nominated to those seats.<sup>175</sup> Indeed, Tillis' release stated that the "four nominees are well-qualified to fill these important judicial vacancies in North Carolina, and I have confidence they will serve our great state with distinction," and he wanted to "thank the White House for their partnership in working to select these outstanding nominees and look[ed] forward to getting them through the Judiciary Committee and confirmed on the Senate floor."<sup>176</sup> There are numerous models that senators have dutifully created, implemented, and refined for jurisdictions across the country which are very diverse—notably California, Georgia, Texas, Virginia, and Wisconsin—and the North Carolina Senators may have consulted them.<sup>177</sup>

After the President formally nominated the four candidates for the Middle and Western Districts of North Carolina, Senators Tillis and Budd apparently offered assistance to the nominees in helping them prepare for the confirmation process, especially for the hearings in which Judiciary Committee members would ask them questions. At the September 17 hearing, the home-state politicians introduced the nominees to Senate colleagues and encouraged them to support the prospects in the Judiciary Committee and on the Senate floor,

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sought to overcome Justice Allison Riggs' 734-vote majority in the race for her Supreme Court seat. *Griffin v. Riggs*, No. 25-1397, 2025 WL 1167649 (4th Cir. Apr. 22, 2025); see also Eduardo Medina & Emily Cochrane, *Judge Orders North Carolina to Certify Win by Democrat*, N.Y. TIMES, May 7, 2025, at A17.

175. Ted Budd Press Release, *supra* note 173; see Kyle Ingram, *Trump Nominates Four Federal Judges to Fill Longstanding Vacancies in NC Courts*, NEWS & OBSERVER (Aug. 26, 2025, at 11:08 ET), <https://www.newsobserver.com/news/politics-government/article311839768.html> [<https://perma.cc/D2TN-AJ6V>].

176. Brandon Kingdollar, *Trump Names Four Nominees for North Carolina District Court Vacancies*, NC NEWSLINE (Aug. 25, 2025, at 17:00 ET), <https://ncnewsline.com/2025/08/25/trump-names-four-nominees-for-north-carolina-district-court-vacancies/> [<https://perma.cc/R4T9-E3XP> (staff-uploaded archive)].

177. See, e.g., Carl Tobias, *Filling the California Federal District Court Vacancies*, 11 CALIF. L. REV. ONLINE 68, 77–82 (2020), <https://static1.squarespace.com/static/640d6616cc8bbb354ff6ba65/t/644079f6b6e72852fd76b857/1681947126620/Tobias-30-firstpages-68-90-ONLINE.pdf> [<https://perma.cc/5V79-GA55>]; Carl Tobias, *Senator Raphael Warnock, Georgia's Runoff and Judicial Selection*, GA. L. REV. ONLINE (Dec. 1, 2022), <https://perma.cc/A2NY-33VZ> [<https://perma.cc/Y55A-HEDP> (staff-uploaded archive)]; Carl Tobias, *Filling the Texas Federal Court Vacancies*, 95 TEX. L. REV. 170, 179–85 (2017); see also Carl Tobias, *Fill the Virginia Federal District Court Vacancies*, 57 U. RICH. L. REV. ONLINE 69, 75–78 (2023) (describing Senators Mark Warner and Tim Kaine's role in the confirmation process for the Eastern and Western Districts of Virginia); Tobias, *Filling the Seventh Circuit*, *supra* note 17, at 235–36 (explaining Wisconsin Senator Ron Johnson's attempted revamp of the highly effective Wisconsin Judicial Evaluation Commission).

while Budd and Tillis lavished praise on the nominees for their broad experience and qualifications and on Trump for nominating them.<sup>178</sup> This process starkly contrasts to the experience of Ryan Park; despite Park's valuable qualifications, the Senate never afforded the nominee a smooth confirmation process because of the partisan confirmation wars that enveloped his candidacy. Not only is this disparity unfair and disrespectful to qualified candidates, but it also heightens partisan tension and—most importantly—deprives the federal bench of jurists who are supremely qualified, collegial, and supply experiential, ideological, ethnic, gender, and sexual orientation diversity.

The Senate treatment of highly qualified, mainstream Fourth Circuit nominee Ryan Park is a salient cautionary tale about the downward spiraling trajectory of the modern confirmation wars. If the President and the Senate aspire to confirm federal appellate and district jurists for courts, especially in the Fourth Circuit and North Carolina, who match this nominee's capability to be superb judges, Trump and the chamber must restore regular order to the nomination and confirmation processes. It is past time that the destructive and unnecessary confirmation wars rapidly cease before they eviscerate the nomination and confirmation processes and undermine the appointment of highly qualified, mainstream, diverse judges.

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178. *Sep. 17 Nominations Hearing*, *supra* note 16.