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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

Chief Judge Timothy Corrigan
U.S. District Court for the Middle District of Florida
Bryan Simpson United States Courthouse
300 North Hogan Street
Jacksonville, Florida 32202

April 1, 2021

Dear Chief Judge Corrigan:

As you are well aware from your experience, under the Constitution the President selects judicial nominees who are then appointed with the Advice and Consent of the Senate. At its most basic level, this process involves three discretionary steps: *first*, the President selects a nominee; *second*, the Senate votes to confirm that nominee; and, *third*, the President appoints him or her.

What happens between the first and second steps is a political process. In order to secure confirmation, the White House frequently must consult with home-state senators both as a matter of Judiciary Committee custom and practical vote-counting. Indeed, I wrote to President Biden early in his administration reminding him of this fact and urging him to consult with home-state senators of both parties—just as I so urged President Trump—as the most effective way of ensuring the speedy confirmation of district judges, U.S. Attorneys, and U.S. Marshals.

Different state senatorial delegations have different approaches to consultation. Some employ bipartisan commissions (e.g. Ohio), while others divide seats among senators (e.g. Pennsylvania), while still others at times invite cross-party members of House delegations to consult (e.g. Oregon). But these decisions are all made *by members of the United States Senate*, in which the Constitution vests the sole power of Advice and Consent.

This can be controversial. At times presidential administrations might not wish to deal with home-state senators of an opposing party. At times home-state senators might not wish to deal with a presidential administration of an opposing party. At times House members may feel entitled to have a seat at the table if their home-state senators are from the opposing party. All such cases result in political disputes. If a House member feels entitled to vet candidates and send them to the White House for consideration, that is a question of intrabranch and interbranch political conflict, nothing more and nothing less.

I was therefore alarmed to have it brought to my attention that your Court appears to have interposed itself in one such political conflict. The website of the Middle District of Florida recently posted a notice: “Florida Federal JNC Accepting Applications.”¹ The website provides information for how candidates can apply to a *House-based* Judicial Nominating Commission for federal judicial offices in Florida. The “Commission” has no relation at all to Senators Rubio and Scott. I’ll note the audacity of a judicial “Commission” being chaired by a former federal judge who was impeached and removed from office. Yet perhaps more audacious still are the facts that this “Commission” has been purportedly stood up in direct contravention of the wishes of Florida’s two U.S. Senators, and that your Court has allowed itself to be dragged into a conflict between home-state senators and a House member seeking to usurp the constitutional authority of Senators Rubio and Scott.

By posting this notice, your Court is giving credibility to the “Commission” against the stated views of Senators Rubio and Scott. For example, there is no similar announcement for how interested parties can reach out to Florida’s U.S. Senators. The Middle District of Florida is, therefore, taking a side in a pending, partisan political dispute. As a result the federal judiciary has found itself in the middle of a purely political conflict between the House, the Senate, and the President. This bodes ill for its perceived independence.

I have the following questions for you.

1. At whose request did you place this notice on the Middle District’s website?
2. Were you aware that Florida’s Senior Senator, Marco Rubio, said of this “Commission,” “We can’t stop Joe Biden from consulting with whomever he wants in picking nominees, but this effort has no legitimacy in our eyes with regards to our advise-and-consent role.”²
3. Were you aware that Florida’s Junior Senator, Rick Scott, upon hearing of this “Commission,” wrote to President Biden to oppose this “attempt[] [by House Democrats] to insert themselves into the nomination process”?³
4. Did you consult with either Senator Rubio or Scott before issuing your Court’s announcement about the “Commission”?
5. What, if any, ethics advice did you receive before announcing the House “Commission” on the Middle District’s website?

¹ See, *Florida Federal JNC Accepting Applications*, U.S. District Court for the Middle District of Florida (March 24, 2021), <https://www.flmd.uscourts.gov/announcements/florida-federal-jnc-accepting-applications>.

² Ed Whelan, *Senator Rubio Opposes Wasserman Schultz’s Effort to Erode Blue Slip for District Nominees*, National Review Online (March 3, 2021), <https://www.nationalreview.com/bench-memos/senator-rubio-opposes-wasserman-schultzs-effort-to-erode-blue-slip-for-district-nominees/>.

³ Sen. Rick Scott, Ltr. to President Joe Biden, Feb. 26, 2021, *available at* <http://eppc.org/wp-content/uploads/2021/03/Sen.-Scott-ltr-to-WH-re-FL-noms.pdf>.

6. Will you agree to take remedial action in order to prevent the appearance of partisan political activity on the part of your Court? In particular, will you (a) remove the notice about the House "Commission" and (b) issue a further notice that the Court takes no part in or position on the nomination process for federal office in Florida? If not, why not?

Thank you.


Chuck Grassley
Ranking Member
Judiciary Committee