



IndivisibleEB.org

Senator Kamala Harris  
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**To:** Senator Kamala Harris  
**From:** Indivisible East Bay  
**Date:** June 5, 2018  
**Subject:** Resisting the Trump Agenda (Judicial Nominations and Criminal Justice Reform)

## JUDICIAL NOMINATIONS

**Report on Stacking Courts:** We thank Sen. Harris for her work on the report on “Republican efforts to stack the federal courts.” (5/10/18) We hope this report will be the source of social media memes and sound bites to publicize this problem to voters this fall.

**Disregard of Blue Slip Custom:** We also encourage the senator’s communications to Republicans about how their current disregard of the blue slip custom will negatively impact them someday when they are in the minority. Meanwhile, however, we have a problem with the Republicans’ blatant disregard of the blue slip for some pending nominees, i.e., Ryan Bounds nominated for the 9th Circuit and David Porter for the 3rd Circuit. We’re asking the senator to consult with her colleagues on ways to block these nominations, or at a minimum, to express a more unified and forceful disapproval. There is some discussion among groups (besides IEB) to ask Democratic senators to withhold their votes against all judicial nominees in protest of the Republicans’ disregard of the blue slip. We believe this proposal has some merit while we acknowledge its risks. We’re asking the Senator to put this proposal on the table for consideration.

**Compromise on Judicial Nominees:** There has been at least one news article<sup>[1]</sup> that Senators Feinstein and Harris are negotiating a compromise deal with the White House on a group of nominees for the federal courts in California. Senators from other states have cut these deals. Usually the package involves a group of centrist nominees tilting left or right. We understand why some senators would do this. We can count the number of Republican votes versus Democratic votes in the Senate. However, we are concerned about (1) what is considered an “acceptable” nominee that the White House desires, and (2) the fact that these deals isolate Democratic senators who might want to resist White House nominees selected for their states. This dealmaking gives the appearance of “every Senator for himself” (or herself), the law of the jungle in the Trump era, and we would like to see more coordination and unified Democratic resistance to the White House’s selection of judicial nominees. Furthermore, the label of “compromise” on a nominee does not necessarily mean the nominee would be acceptable to us and other like-minded activists. We will examine every nominee for the federal courts in California on his/her own merits.

**Cancellation of August Recess:** McConnell canceled the August recess on 6/5/18 citing Democratic “obstruction” of nominees as the reason. If the Republicans were not engaged in a historic level of court packing with undesirable nominees, there wouldn’t be a problem. It is too bad that there will be no August recess. However, we support the decision of Senate Democrats to protect our judiciary as much as possible.

**Issue for Midterm Elections:** A fruitful path might be to link the Republicans’ confirmation of unfit judges to the upcoming midterm elections, and the need for Democrats to vote and to take back the Senate. Any public

statements from the Senator along these lines would be welcome. This issue would have to be coordinated with the Democratic Party at the national level, and we hope it corresponds to a more unified strategy by Democrats in handling Trump's judicial nominees.

**Votes against Nominees:** Among the nominations currently before the Judiciary Committee, we're asking the Senator to vote against (1) **Britt Grant**, nominated for the 11th Circuit, and (2) **Patrick Wyrick**, nominated for federal district court in OK. Grant has an extremely conservative and partisan record, as well as scanty if prestigious-sounding experience as a judge. We believe she is unfit to be a federal appeals court judge. Wyrick was mentored by Scott Pruitt, then OK Attorney General, to ignore environmental protection in favor of the fossil fuels industry. His record shows extreme conservatism as well. Wyrick should never be a judge.

**Questions:**

- What can you tell us about communication with the White House regarding the vacancies in California?
- What can Sen. Harris do to hold the Democrats together to oppose undesirable nominees and encourage a more unified front by Democrats against the Republicans who are steamrolling nominees through confirmation?

**Criminal Justice Reform:** We were encouraged to see that Sen. Harris co-sponsored Senator Grassley's Sentencing Reform and Corrections Act of 2017 [2], and that it has a lot of bipartisan support. Though we agree with its aims, we have some concerns about the details of the bill, in particular, the specifications for the risk assessment system. Reliance on proprietary software to determine the risk of recidivism, and hence sentencing, without any path for appeal of the software's [3] outputs is deeply concerning to us. We're also concerned about the lack of requirements for testing of the software's output as well as review of the software systems' source code and input data and how that might encode bias[4], especially against already vulnerable populations. We'd like to see more concrete safeguards against bias as part of any reform initiative.

**Questions:**

- Has the senator looked into the issue of algorithmic bias?
- Will the senator call for an SJC hearing on algorithmic bias in criminal procedure and ways to address it?
- If the bill moves forward and there is an opportunity, would she offer amendments to resolve the issue?

**Sources:**

1. Cadei E. Dianne Feinstein, Kamala Harris try to cut a deal with Trump [Internet]. sacbee. The Sacramento Bee; 2018 [cited 2018 Jun 5]. Available from: <http://www.sacbee.com/news/politics-government/capitol-alert/article211603954.html>
2. Grassley C. Sentencing Reform and Corrections Act of 2017 [Internet]. S.1917 Feb 15, 2018. Available from: <https://www.congress.gov/bill/115th-congress/senate-bill/1917>
3. Dressel J, Farid H. The accuracy, fairness, and limits of predicting recidivism. Sci Adv [Internet]. 2018;4:eaa05580. Available from: <http://dx.doi.org/10.1126/sciadv.aao5580>
4. Lohr S. Facial Recognition Is Accurate, if You're a White Guy. The New York Times [Internet]. 2018 Feb 9 [cited 2018 Jun 3]; Available from: <https://www.nytimes.com/2018/02/09/technology/facial-recognition-race-artificial-intelligence.html>