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Practical Politics:

Explaining Duration Variation in the Federal Judicial Appointment Process

By

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Bachelor of Arts, Emory University, 2009

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An abstract of a dissertation submitted to the Faculty of the
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Abstract

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By Rebecca A. Hartsough

In the realm of American judicial politics, scholars have consistently explored the selection and appointment of federal judges. In recent decades, however, much of the work on the federal judicial appointment process has been concerned with the perceived delays in the process, both at the presidential nomination stage and the Senate confirmation stage. Thus far, these scientists have attributed the variation in appointment durations to partisan gridlock and changing political conditions. In this dissertation, I present the argument that judiciary-specific conditions and the functioning of federal courts play a role in how political actors approach judicial selection. Of course, this is not to say that politics do not matter, rather that politics alone fails to capture the dynamics conditioning the timing of federal judicial nominations and confirmations. This dissertation replicates and assesses the effects of political variables scholars have previously identified as influencing appointment durations as well as introduces and evaluates the impact of judiciary-specific variables on presidential nomination and Senate confirmation timing. On the whole, this study confirms that political institutions still impact the speed of the appointment process, but also reveals so too do the previously unidentified judiciary-specific variables. The evidence suggests that presidents and senators do factor in the operations and functioning of the federal courts as they proceed in their constitutional appointment roles.

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When I began graduate school, many students before me equated the program to a marathon—the most extraordinary mental, physical marathon I would ever experience. That comparison was entirely accurate, and it feels nothing short of surreal to be putting together a copy of my dissertation. Honestly, I cannot imagine the person I would have become without my graduate school experiences. The knowledge acquired, the relationships formed, the complete test of my endurance—every failure and success has shaped my character and perspective on the world. I am eternally grateful to so many people who made completing this life goal a reality.

Emory has been my home since I was eighteen years old. I always knew I loved politics, and considered majoring in political science very early in my undergraduate career. But my decision to do so was fully cemented in my sophomore year. It was in Constitutional Law that I encountered the person who would inspire me to become a professor. Thomas G. Walker is undoubtedly the most talented lecturer I have ever encountered. So many of his students and colleagues alike share this same sentiment. His command of knowledge, his acerbic wit, and his commitment to the university, his students, and the department is unparalleled. He actually makes you want to come to class at 8:30am as a second semester senior. I took every class he taught, and upon my election to Phi Beta Kappa, I chose him to attend the faculty/student dinner. To say he is my favorite teacher and mentor is a serious understatement.

Somewhere along the way, I realized I really wanted to inspire students to love the study of American government just as he had inspired me. My desire to explore American politics, especially judicial politics, is a passion first ignited in those Constitutional Law classes. Since beginning graduate school, Dr. Walker has been a constant source of support, knowledge, humor, and tough love when I really needed it. Any measure of success I have had as a teacher and scholar is a credit to him. He thoughtfully guided me throughout the entirety of this research, and as such, has my deep appreciation. I cannot say thank you enough times. But I will promise to try and teach students as well as he has taught me—with a heavy dose of sarcasm added in for good measure.

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your way. Thank you for always displaying such determination; I am so proud to be your sister. I love you.

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Without a doubt, none of my accomplishments would have been possible without the overwhelming support of my parents, Greg and Susan Hartsough. I do not know of any parents more loving or generous with their children. From the time I entered into this world, they have told me that I was capable of achieving any goal, provided I worked hard and maintained a positive outlook. I only hope that I can foster that sense of dedication in my future children someday. With every professional and personal endeavor, my mom and dad have been there alongside making my goals more attainable. They sacrifice their time and their resources every day to ensure that I am in the best possible position to make my dreams a reality. I hope that with the completion of this dissertation they can be proud of the work they have done to make my doctorate possible. I love you both more than I could ever express. This dissertation is for you.

For my parents

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Chapter 1

Introduction

"The Judicial System is the chief Pillar upon which our national Government must rest."
--George Washington, 1789

On February 13, 2016, the United States Supreme Court lost a most colorful personality and conservative anchor with the passing of Antonin Scalia. A Reagan appointee and senior associate justice at the time of his death, Justice Scalia served on the Court for nearly thirty years. He was a champion of constitutional originalism and an author of many significant conservative opinions, making him equally revered and reviled. His death left his devotees at a terrible loss—to be sure, his ideological bent and articulation would be missed. Yet the timing of his passing left perhaps greater implications for the Supreme Court on the whole. His passing presented a liberal president with the rare opportunity to markedly shift the ideological balance of the Court. Liberals rejoiced at the chance, conservatives shrieked at the possibility.

That fear of a Court change is undoubtedly what motivated the following comments by Senate Majority Leader Mitch McConnell (R-KY) just hours after news broke of Scalia's death, "Today our country lost an unwavering champion of a timeless document that unites each of us as Americans…Justice Scalia's fidelity to the Constitution was rivaled only by the love of family…The American people should have a voice in the selection of their next Supreme Court Justice.

Therefore, this vacancy should not be filled until we have a new President"
(Everett and Thrush, 2016).

With that statement, McConnell threw down the proverbial political gauntlet.
He, along with other Senate Republicans controlling the Senate, were committed
to preventing President Obama from filling a Supreme Court vacancy in his last
year in office. McConnell and Republican leaders maintained their stance—they
would not hold a vote, whether in committee or on the floor, on any nomination
made for Scalia's vacant seat.

In the end, the Republicans were victorious. Judge Merrick Garland,
President Obama's nominee for replacement, never did receive a Senate Judiciary
Committee hearing, committee vote, or floor vote. The conservatives both hoped
for and banked on the election of a Republican president who would then
nominate a more ideologically preferable candidate. With the election of Donald
Trump and the nomination of Neil Gorsuch, Republicans finally received the
nominee they had been waiting for, and the party leaders moved quickly to confirm
Gorsuch. However, Gorsuch's nomination was met with substantial opposition on
the Democratic side. Senate Minority Leader Chuck Schumer (D-NY) threatened
to filibuster, noting that "Judge Gorsuch was unable to sufficiently convince
[Schumer] he'd be an independent check on a president who has shown almost no
restraint from executive overreach" (Associated Press, 2017).

On April 7, 2017, Neil Gorsuch was confirmed to the Supreme Court by a
vote of 54-45. Only three Democrats supported the nominee in the end, and
Republicans were forced to invoke the nuclear option rule to hold the confirmation

vote.[1] The political showdown between Democrats and Republicans over the confirmation battle consistently made headlines, but perhaps the more important and overlooked issue, until recent times, is the length of time Justice Scalia's seat remained vacant. The Supreme Court operated with eight justices for nearly fourteen months. This is not to say the Court has not functioned with less than a full bench before, but that the turmoil over filling Justice Scalia's seat is indicative of a larger problem: the delays in staffing the *entire* judicial branch.

Without question, a position on the Supreme Court has far reaching implications, and in recent decades, any nominee for the Court has received substantial scrutiny. Politics certainly matter, and with ever growing levels of polarization, the politics of filling Supreme Court vacancies has hit unprecedented heights. Yet the delay in filling judicial vacancies has become widespread across all tiers of the judicial branch, and most frequently at the district court level. Historically, seats on the district courts have not been viewed as politically significant as those at the Supreme Court or Circuit Courts of Appeals levels—the decisions of district judges only affect a region within a state, not the entire country or large region of the country. With presidents and senators moving more slowly to fill seats across all court levels, existing judges must work harder to compensate for empty seats, and litigants must wait longer for resolutions.

Of the fifty-five district court vacancies occurring in 2015, just twenty-five received nominations from the president (forty-five percent), and only eleven of those nominations (forty-four percent) received confirmation from the Senate

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[1] The nuclear option is a parliamentary procedure that allows the United States Senate to override a rule or precedent by a simple majority of 51 votes, instead of by a supermajority of 60 votes.

(Congressional Research Service, 2016). In the span of one year, the executive

and legislative branches took care of just twenty percent of the district court

vacancies arising in 2015—an unprecedented low (Congressional Research

Service, 2016). Presidents' and senators' failure to staff adequately the third

branch has implications for government altogether. Appointment delays coupled

with budgetary cuts have left federal judges in a poor position to fulfill the

expectations of their jobs. According to Chief Justice John Roberts,

> "The cuts have hit us particularly hard because we are made up of people.
> That is what the judicial branch is. It is not like we are the Pentagon where
> you can slow up a particular procurement program or a lot of the other
> agencies. When we have sustained cuts that means people have to be
> furloughed or worse and that has a more direct impact on the services that
> we can provide" (Lithwick, 2013).

Yet if failure to fill judicial seats is simply a story about partisan politics and

a separation of powers battle between Congress and the president, then why do

we observe those actors filling any judicial vacancies whatsoever? What explains

why presidents choose to submit nominations for certain judicial seats, and what

explains how the Senate proceeds in choosing which nominations to confirm?

What were the characteristics and dynamics of those eleven seats that facilitated

the cooperation of both branches?

The selection and appointment of federal judges has long been a fruitful

topic for research and debate. Recently, however, scholars have focused more

specifically on the delay issue. Many scholars argue that the federal appointment

process has always been politicized, but that the rising incidence of delay can be

attributed to the aforementioned increase in polarization. By and large, these

accounts have blamed the delays on a highly partisan Senate that continues to

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stall nominees at the confirmation stage. In addition to the confirmation analyses, a few scholars have examined the increasing length of time presidents have taken to submit nominations to the Senate.

Confounding the delay issue is the significant variation we observe in the time required for the president and the Senate to act. As with those twenty-five nominations made in 2015, presidents move quickly to submit nominations for some judgeships, but fail to act quickly towards others, leaving some vacancies lingering for many months, even years. Similarly, we observe certain nominees moving through the Senate confirmation stage much more rapidly than others. What explains this variation on both sides of the appointment process?

While existing theories do provide some understanding of what political factors contribute to the speed of the nomination and confirmation stages, I find that the current literature overlooks any practical aspects regarding the state of the judiciary that may factor into presidents' and senators' decision calculuses. After all, the fact remains that of one of the six reasons cited in the Constitution's Preamble for the creation of the new government was "to establish justice." The establishment of justice ultimately requires a functioning court system, for which the Constitution makes several provisions: first, Article III of the Constitution created the Supreme Court and gave Congress the power to create the lower courts; second, Article I grants the president and the Senate shared power to appoint judges to staff the courts; third, the Congress, subject to the president's veto power, has the responsibility to fund and maintain the court system.

All of these directives signify that the Constitution places an obligation on the legislative and executive branches to guarantee a well functioning judiciary; therefore, it is important to explore the question of whether the political branches are taking this obligation seriously by responding to nonpolitical, operational factors critical to the functioning of the courts. The existing literature has not systematically researched this relevant side of the judicial process. Examining how efficiently the political branches respond to the staffing needs of the district courts will provide a significant indicator of how well the legislative and executive branches are satisfying their constitutional obligation.

My dissertation seeks to explore whether the burdens on court operations caused by unfilled judgeships affect how both presidents and senators pursue filling judicial vacancies. I advance the argument that certain practical conditions surrounding vacancies create a larger workload for other active district court judges, and those conditions play a substantially important role in how political actors approach the appointment process. This assertion is not to say that politics do not matter, but rather that politics alone cannot account for why we observe such different outcomes in the process. Leaving out the practical characteristics of vacancies in these analyses paints a picture that the functioning of the court system plays little or no role at all in the appointment process story. Clearly, our efforts to understand the staffing of the federal courts is incomplete without giving consideration to the operational conditions under which the judiciary functions. My primary objective is to complete this story--a story that incorporates the political

components we already understand along with the working elements that scholars have yet to consider.

This dissertation begins with an examination of the existing literature on the lower courts appointment process. From there, I discuss my theoretical expectations and present an empirical test that assesses the effects of both political and practical factors on the process. Here, I find evidence in support of my theoretical expectations and discuss how these findings can provide the field with better insight into the dynamics of the judicial appointment process.

Chapter 2

Literature Review

"Laws are a dead letter without the courts to expound and define their true meaning and operation."
--Alexander Hamilton, 1787, The Federalist Papers, Number 22

The federal judicial appointment process has long been a popular and fruitful area of research for political scientists and historians alike. For decades, the questions surrounding how presidents and senators proceed in selecting members of the third branch have continued to intrigue judicial scholars. More recently, however, the scholars studying judicial selection have expanded their focus to include not only the dynamics of the appointment process but also the delays we have observed in that process. Given that a working legal system is a principal feature of a democracy and that the staffing of federal judiciary requires the attention and agreement of the other two branches, determining the causes of delay continues to be an important and necessary task.

The scholars studying appointment delays typically begin their analyses at the confirmation stage in the sequence, where the Senate has received a nomination from the president. Without a doubt, the Senate's constitutional role to provide advice and consent to the president significantly affects the appointment process and outcomes. However, the Senate cannot proceed in its role until the president submits a nomination for a judicial vacancy. Those studies neglecting the nomination side of the process provide an insufficient account of the dynamics involved in the appointment process.

While the existing literature on the presidential selection of Supreme Court nominees is voluminous, scholars have devoted less time to studying the decision-making processes concerning lower court nominees. District court nominees are typically considered less consequential than those for the higher courts, and as a result generate less public and political interest. But the fact remains that lower court judges are the work horses of the judiciary and crucial to its functioning. Excessive vacancies on these courts substantially increase the dockets of working judges and effectively stall legal processes all the way up the judicial chain.

The Nomination Stage

In order to proceed with an analysis of the delays of lower court nominations, the logical first step is to begin with an overview of the nomination stage. The sequence of events, the relevant actors, and dynamics of the this stage play a substantially important role in why we observe variation in the appointment process both with respect to outcomes and time frames. What is constant across time is the initial presence of vacant judgeships. Upon his inauguration, the president immediately inherits a collection of vacant judgeships for which he has to submit nominations. While the number of inherited vacancies varies from one administration to the next, the outgoing president typically fails to fill all of the vacancies that arise very late into his term (Goldman 1997). It is reasonable to assume that vacancies arising in November and December of an outgoing presidential administration are inherently less likely to receive a nomination.

So at the onset, the newly elected president already has a starting list of judgeships to fill. Yet the first few months of a president's tenure are devoted to organizing the administration. Consequently, the president may not submit judicial nominations for a number of months.

Figure 2-1

Presidential Responsiveness to District Court Vacancies
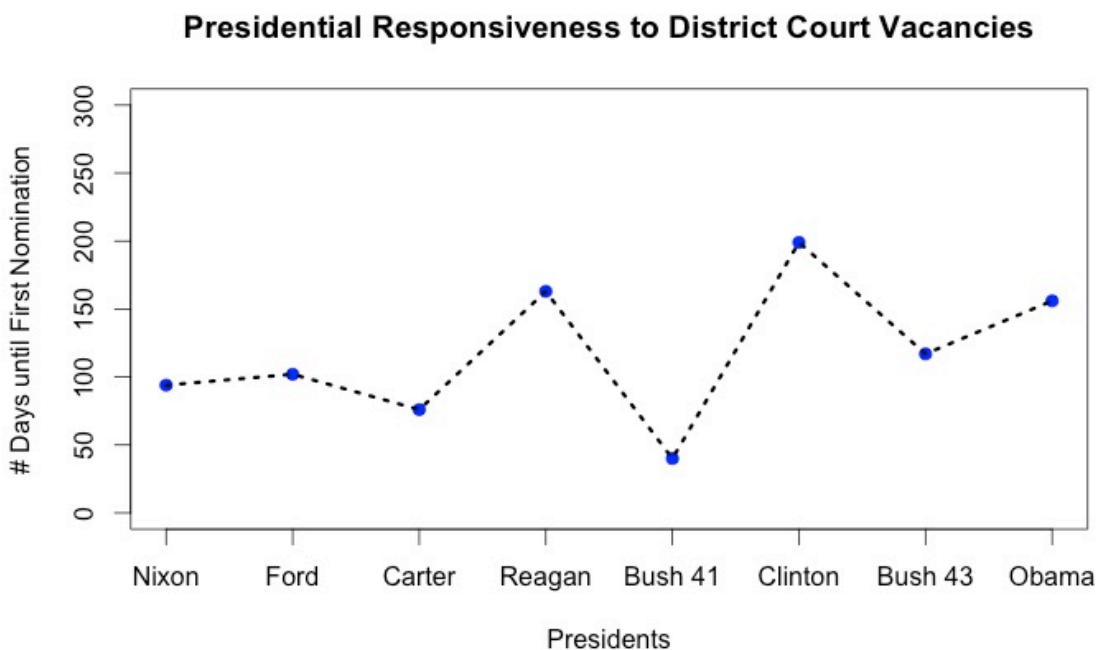
For example, Bill Clinton did not submit his first district court nominee to the Senate until August 6, 1993, 199 days after taking the oath of office. (U.S. Courts 2017, Statistics). Presidents Richard Nixon and George W. Bush moved considerably quicker, with Nixon announcing his first district court nomination on April 23, 1969, 94 days after taking office and George W. Bush on May 9, 2001, 109 days after taking office. President Obama announced his first nominee on June 25, 2009, 159 days after his inauguration (U.S. Courts 2017, Statistics). Figure 2-1 illustrates the number of days each president included in this study took

to make their first judicial nomination. What is important to note is that during these initial months in office, more and more vacancies enter the pool. So, the questions arise: how does the administration choose which vacancies to submit nominations for first, and who in the administration controls the selection process?

The answers to the above questions have varied over time, so a brief historical overview of the actors and motivations is particularly relevant. From 1789 to 1853, the State Department handled all judicial nominations, including the nominations to the Supreme Court all the way down to the lower courts (Sollenberger 2011). The State Department's involvement in the process ceased upon the creation of the Justice Department in 1870, and since then, the U.S. Attorney General and his deputies have significantly influenced the selection and vetting of candidates. From the Eisenhower administration through the Ford administration, the deputy Attorney General's tasks included "recommendations for the Attorney General with respect for judicial office" (Chase, 1972, 17). In fact, the deputy attorney general's office housed a "presidential appointment unit" which handled the screening and processing potential nominees (Goldman, 1997, 9). Clayton's (1992) study on the Attorney General and Justice Department captures the sequence and dynamics:

> "The systemic process that began under Eisenhower remained the norm through the Kennedy, Johnson, Nixon, and Ford administrations. Screening continued to be handled from the Deputy Attorney General's office. Although they emphasized different steps, each administration worked closely with the Senate and party leaders to identify candidates, with the FBI and American Bar Association to investigate them, and with the Senate Judiciary Committee before and during confirmation. Although Presidents would occasionally take an interest in a particular judgeship, there was little regular or formal White House involvement in lower court nominations (61)."

The norms of the process changed drastically at the onset of the Carter administration. Throughout his presidential campaign, Carter regularly conveyed his desire to change the nomination process from one of patronage to one of merit (Goldman 1997; Sollenberger 2011). President Carter's primary goal was to diversify the bench. To be sure, Carter wanted liberal, progressive candidates, but more importantly, he wanted more of those judicial candidates to be women and minorities. To accomplish this goal, he issued an Executive Order establishing 13 circuit court nominating panels and an additional Executive Order encouraging senators to create meritorious nominating commissions (Sollenberger 2011). The goal was for senators to "advise and consent" by collecting more diverse and accomplished candidates from their home states rather than maintain the norm of selecting close friends, donors, and allies. Some senators took heed of President Carter's wishes, but many did not. Perhaps most importantly, Carter's nominating commissions took the sole power over the nomination process out of the Justice Department's hands. The Justice Department still participated in vetting nominees suggested by the commissions, but the deputy attorney general no longer controlled the selection process.

In the 1980s, the Reagan administration reverted to pre-Carter administration practices, delegating back much of the control to the Justice Department. President Reagan disassembled the nominating commissions, and his Attorney General William Smith created the Office of Legal Policy (OLP) to better coordinate the nomination process. In addition to the OLP, the administration gave substantial candidate screening power to the White House

counsel (Clayton 1992). The Reagan officials included a formal ideological component in the screening process. Although presidents usually preferred like-minded judicial candidates, the extent to which the Reagan administration pursued conservative nominees exceeded that of previous administrations (Goldman 1997).

Since the Reagan administration, the White House Counsel has continued to play a significant role in the nomination process. The White House Counsel leads the Judicial Selection Committee, which was established during Reagan's second term (Sollenberger 2011). The Judicial Selection Committee is a collective effort between the Justice Department's OLP and the Office of the White House Counsel to find ideal candidates as well as to assess the dynamics of the confirmation process. In the words of former Associate White House Counsel Brett Kavanaugh, the committee "gets together and discusses just where we stand on both the nominations side and the confirmation side" (Goldman et al., 2003, 285).

Once the committee determines a candidate for a vacancy, it seeks initial approval from the president, and if given, the OLP begins the first stage of the investigation process. In the event a district court vacancy occurs in a state where a senator is of the president's party, historically, senatorial courtesy is invoked (Goldman 1997; Binder and Maltzman 2002; Binder and Maltzman 2009; Epstein and Segal 2005). When senatorial courtesy is invoked, the administration grants the home-state senator(s) input on the nominee for a particular vacancy. In recent decades, the senator sends over a list of preferred nominees for that vacancy (Goldman 1997). If senatorial courtesy is in play, the Judicial Selection Committee takes into account the senator's preferences.

In the event that senatorial courtesy is not present, the liaisons proceed similarly as above, though they many not consult the home-state senator (Goldman 1997). However, administrations have been known to consult influential home-state Congressmen and state party officials (Scherer 2005; Binder and Maltzman 2009; Sollenberger 2011). For example, President George H.W. Bush was known for consulting with House Minority Leader Robert Michel on judicial candidates for his home-state of Illinois (Sollenberger 2011). George W. Bush allowed elites within the New Jersey Republican Party to submit suggestions for judicial vacancies in that state (Mansnerus 2001).

The OLP interviews potential candidates' colleagues, family members, and close friends. The candidate in question must also fill out two lengthy questionnaires, one being a financial disclosure report and the other being a personal data file. In the case that the candidate is already a judge, his or her published opinions are reviewed as well as any other published material (Goldman et al. 2003). Robert Nash, who served as the Director of the Office of Presidential Personnel under President Clinton, summarized the process as such,

> "Whenever a vacancy opened, we would look at a hundred names…always looking at 'Is this person qualified, do they have the interest, do they have the knowledge, do they have the experience?'…Then we come down to a list of twenty-five, and …we get to a list where…we'll start making telephone calls, where they worked, checking references…Depending upon the complexity of what they're going to do, that takes some time…It's all this kind of work back and forth" (Nash, 2000, 6-7).

Once the OLP completes this task, the FBI executes its own screening of the candidate. The FBI's role in the nomination screening process began during President Hoover's administration with the vetting of all potential nominees

becoming the norm in Richard Nixon's presidency. Each administration after has

involved the FBI to the same degree. During the investigation, FBI agents may

interview "Federal and state judges, attorneys, associates, government officials,

business and civic leaders, religious and civil rights leaders, neighbors and

personal physicians" (Sollenberger, 2011, 80).

The FBI also collects the judicial candidate's Internal Revenue Service

(IRS) files as well as a credit report. To be considered for a nomination, a

candidate must sign a waiver allowing the IRS to check his or her tax returns and

any other relevant financial information (Goldman 1997). The FBI's separate

screening of candidates can take up to four to six weeks, which provides another

stage in the nomination process that can contribute to delay and variation

(Goldman and Slotnick 1999). Once the FBI completes their investigation, the

agency disseminates the information to the OLP and the White House. Then, the

White House and the OLP analyze the FBI dossier, and they determine whether or

not to proceed with the candidate (Chase 1972). If the candidate clears both the

FBI and OLP investigations, the White House begins the candidate's interview

process.

According to Viet Dinh, head of the OLP during George W. Bush's

administration, the interviews are collaborative, involving both White House staff

and OLP staff (Goldman et al. 2003). Per Dinh, "There's not a separate

Department of Justice interview and then a White House interview. There's a joint

interview, with joint input, with joint assessment that is not divided between politics

and qualifications" (Goldman et al., 2003, 285). After the White House conducts

the interviews, the Judicial Selection Committee evaluates all the information gathered by the OLP, the FBI, the information from interviews, and any other relevant material to determine the candidate's fate.

The American Bar Association's (ABA) opinion on judicial candidates has been significantly important over the history of the nominee selection process. In fact, the ABA has enjoyed a "near veto" over candidates in multiple administrations (Sollenberger, 2011, 81). The group's power began to diminish with the advent of nominating commissions in President Carter's term, and virtually disappeared in both President Reagan's and George W. Bush's administrations (Goldman 1997, Goldman et al. 2003, Sollenberger 2011). Bill Clinton and Barack Obama both returned to the practice of clearing potential candidates with ABA, but the group did not regain the "near veto" it once possessed in either administration (Sollenberger 2011).

After all the principal groups have been consulted and the committee is satisfied with the candidate, they move forward and submit their recommendation to the president. The president himself is not involved in the process, particularly in appointments to the lower courts, until the very end of the nomination stage. As former Associate White House counsel Kavanaugh stated, "Obviously, you don't discuss things with a president, this president or any president, until you have everything refined and the recommendation and options tied up in a way that's appropriate for his time, particularly now since there are a number of issues on his plate, since September 11th" (Goldman et al., 2003, 289). Provided the president

agrees with the collective analysis and recommendation, he submits the formal nomination to the Senate for confirmation.

Now that the stages and actors in the nomination process have been elucidated, we can turn to the factors scholars have deemed important to the dynamics governing the first stage of the appointment process. What we know is that the president is a political actor who possesses policy objectives. More specifically, Goldman (1997) argues that the president has a personal agenda, partisan agenda, and policy agenda. As the anecdotal and empirical evidence suggests, the president has expectations for the role and ideological makeup of the judiciary upon which he will base his nominations. As described above, it is those expectations that dictate how his administration proceeds to fill judicial vacancies.

Recently, political and legal elites have noted George W. Bush's use of the judicial selection process as a vehicle to pursue the President's public policy agenda (Goldman, Slotnick, Schiavoni 2011). In an anonymous interview with Goldman, an expert on the judicial selection process remarked, "To read the Bush record is absolutely breathtaking. Bush knew how to play out the active communicative role of the presidency on this issue...The Bush people have thrown down a gauntlet for others to emulate" (Goldman, Slotnick, Schiavoni, 2011, 271).

These facts present some interesting implications. In the end, the administration has only so many resources and so much political capital to spend on judicial nominees. As Curt Levey, the Executive Director for the Committee for Justice said, "You [the president] can only make so many things priorities...There

is limited board time, limited speech time" (Goldman, Slotnick, Schiavoni, 2011, 273). Considering the time and resources required to submit nominations, the question becomes: what factors help reduce the administration's costs in the appointment process?

While some administrations have moved quickly to submit nominations, others have taken more time overall. Figure 2-2 illustrates the average time contemporary presidents have taken to submit nominations. Massie, Hansford, and Songer's (2004) "The Timing of Presidential Nominations to the Lower Federal Courts" is one of the few studies that examines the duration of the nomination stage and provides some insight into the answer to the above question. In this study, the scholars look at the timing of presidential nominations for both district and circuit court vacancies occurring from 1977-1999. They highlight that as time has gone on, presidents have taken a longer time select nominees. In addition, the scholars note that the duration of time from when a vacancy occurs to when a president submits a nomination takes much longer overall than the confirmation stage. Using their data, the scholars find the mean number of days from the occurrence of vacancy to a nomination announcement is 317 days, while the average number of days from nomination submission to confirmation by the Senate is 44 days.

Figure 2-2

Presidential Responsiveness to District Court Vacancies
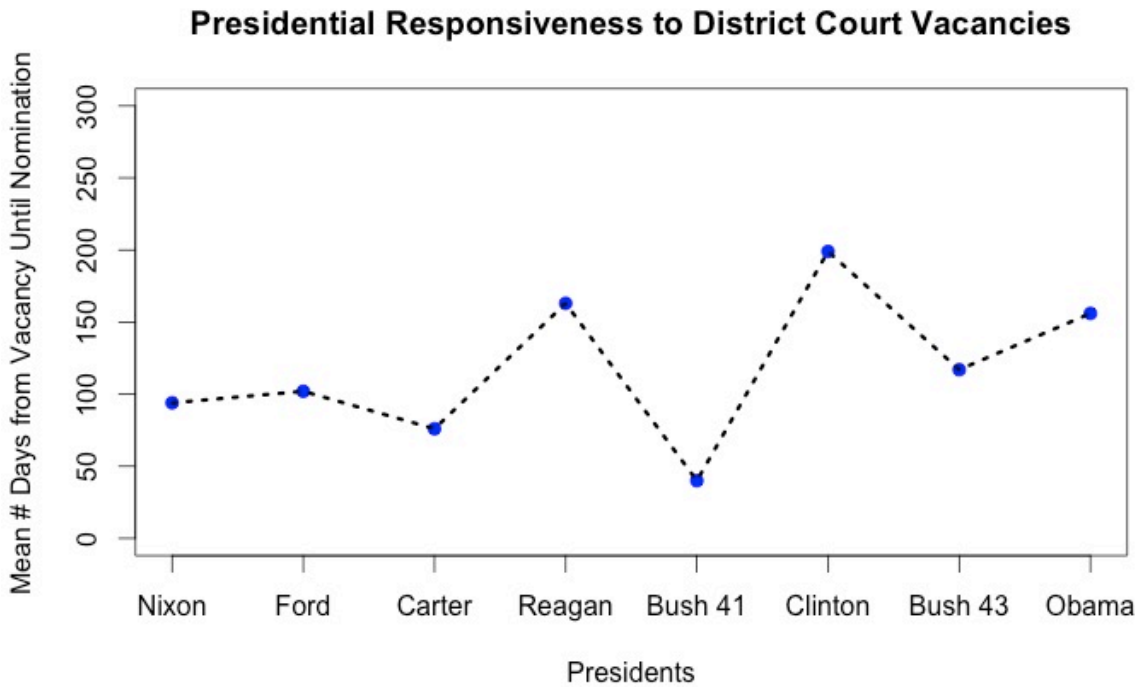
In terms of cost reduction, Massie, Hansford, and Songer (2004) find that the home-state senator's ideological distance from the president has the most substantively significant effect on speeding up the nomination rates for district court vacancies. The greater the ideological distance, the less likely it is for a district court vacancy to receive a nomination on any given day. In effect, the more ideologically divergent the president and home-state senator are, the slower the nomination process will be for a particular vacancy.

Also, the scholars find that a second presidential term has the effect of speeding up the nomination process. This result is likely a function of an already in place administration who needs less time "to set up shop." For both district nominations and court of appeals nominations, presidents tend to nominate more

quickly during their second terms and more slowly at the onset of a new administration (Massie, Hansford, Songer 2004).

Binder and Maltzman's *Advice and Dissent* (2009) also notes the important role of home-state senators' in the nomination process. Their study, which focuses on six decades of judicial confirmation dynamics, devotes one chapter to the judicial nomination stage. These scholars find that senatorial courtesy has the most substantive impact on expediting the nomination stage. In their duration analysis, the presence of divided government substantively and significantly slows down the nomination stage. In addition to senatorial courtesy and divided government, Binder and Maltzman's analysis also finds that presidents are much slower to nominate during a presidential election year. Election years are arguably more contentious than other years in the term, and as such, presidents anticipate extra resistance to their agenda and nominees during their last year in office. Over the course of history, presidents have been met with greater resistance during periods of divided government.

Hollibaugh (2015) explores the timing of presidential nominations to both judicial vacancies and positions within executive agencies. Through interviews and research, Hollibaugh determines that the primary objective of White House officials is to vet all potential candidates carefully even if the nomination stage is seemingly delayed by doing so. This level of circumspection is both an effort to ensure the appointment of quality candidates as well as to prevent the administration from any potential scandal or negative consequence arising from an inadequately vetted individual. Hollibaugh sets out to determine why delaying a nomination

might be advantageous for president, and why delaying a confirmation might be advantageous for the Senate. While vetting takes time, the process also provides the executive and legislative branches with better information about the potential candidates, with respect to their competence, ideological tendencies, and relevant personal information.

Through formal modeling, Hollibaugh finds that executive delay occurs when the internal vetting process of the nomination stage reveals that the candidate in question is "sufficiently incompetent" or when the entire pool of candidates under consideration is "sufficiently competent" (227). In effect, an individual is either less than ideal and a replacement candidate must be found, or there are so many capable candidates to choose from that the task of selecting one becomes more time-consuming. Hollibaugh also finds that as time goes on and the end of presidential term nears, the legislature is more inclined to confirm less-competent and more ideologically divergent nominees. Here, executives can capitalize on that time frame and potentially achieve the confirmation of a more ideologically aligned, but potentially less competent individual.

Scherer (2005) advances the theory that judicial appointment process, both in the nomination stage and the confirmation stage, has shifted from one of patronage to one of policy. The increasing politicization of the appointment process can be attributed to elite mobilization. According to Scherer, politicians have always used lower court appointments to curry favor with and support from party elites. The switch from patronage to policy occurred as the result of the two major changes in American politics. First, the old party system began to break

down, and secondly, beginning in the 1950s, the federal courts became the branch of government most willing to expand civil liberties. Scherer argues that the interaction of these two changes precipitated a shift from the historical norm of swift appointments. The "gentleman's agreement" whereby senators and presidents nominated and confirmed quickly was replaced with a system inundated with partisan gridlock and score-keeping tendencies (5).

In Scherer's study, the delays and obstruction we observe are a function of presidents and senators efforts to win over party activists. For presidents, efforts to satisfy party elites may result in a longer nomination stage where the search for a satisfying candidate takes longer. On the confirmation side, a senator may wage a war or obstruct a nominee simply to curry favor with relevant supporters. While this study illustrates a phenomenon that has largely been unexplored, the studying of the "elite role" is particularly difficult to measure in a quantitative analysis. Scherer relies heavily on interviews and anecdotal evidence to support her theory, though she does conduct an empirical test of judicial candidates voting behavior in light of elite mobilization theoretical expectations.

Considering that the president is a political actor, we can safely assume that his deputies will condition selection decisions on the costs associated with each lower court nomination. Not all vacancies are created equal. Given the actors and parties involved, the act of filling some judgeships requires more time and resources than others, and some judgeships generate more political payoffs and repercussions than others. Indeed, certain political and practical conditions may mitigate or increase the costs of submitting a nomination for a vacancy. But before

exploring these conditions, we must first examine the dynamics and sequence of events at the confirmation stage.

The Confirmation Stage

Article II of the Constitution explicitly states the President shall nominate and appoint judges by and with the "advice and consent" of the Senate. According to Sollenberger (2011), "No president can refuse to consult members of Congress for long and continue to enjoy a successful legislative and appointment agenda" (83). No appointment can be made without Senate approval, and senators have their own collections of preferences for judicial nominees.

While presidents and their administrations have some information about the chamber's overall preferences, they certainly have extensive information about the preferences of the most important actors in the confirmation process: the senators of the state in which the vacancy has occurred (in case of a district vacancy), the Senate Judiciary Committee Chair, and the Senate Majority Leader. In light of this knowledge, the administration can anticipate the likelihood of a potential nominee's success at least to some degree. Nevertheless, once the president submits his nomination to the Senate, he has no formal control over how the Senate proceeds with the nomination. The Senate Judiciary Committee may schedule hearings whenever it chooses, submit committee votes at any time, and the Senate Majority Leader can subsequently schedule floor votes at any point. The only formal action available for a president to take post-nomination is to withdraw a nomination. Of course, the president still reserves his skills of

persuasion—skills that historically have helped coax senators during judicial and executive confirmations.

The confirmation stage of the appointment process is objectively more systematic than the nomination stage. Once the president submits a judicial nomination, the Senate executive clerk refers that nomination to the Judiciary Committee. Given the nature of checks and balances, the committee members exert considerable democratic controls over the fate of the nomination. Prior to holding the nominee's hearing, the Senate provides the potential for more delay. Even in the absence of senatorial courtesy, the Senate grants both home-state senators a blue slip for each judicial nominee, i.e. in the event of a Republican president, both Democratic senators from California receive a blue slip for each of the president's nominees for California.

A blue slip, so-called because of its color, is a signal of consent for a judicial nominee. Should a home-state senator not return the blue slip to the Judiciary Committee, the institutional norm is for the committee to abstain from scheduling a hearing for the nominee (Goldman 1997; Binder and Maltzman 2002, Epstein and Segal 2005; Binder and Maltzman 2009; Sollenberger 2011). While the specific regulations concerning blue slips have changed since its institutionalization in 1917, the act of not returning a blue slip effectively communicates a senator's objections to the nominee. Historically, the Senate as a whole has behaved with a great deal of deference to home-state senators for district court nominees (Binder and Maltzman 2002; Binder and Maltzman 2009; Goldman 1997). According to Harold Chase (1972),

"senators from the First Congress on have recognized that one or two senators have a much greater stake in a particular appointment than others. It is, of course, exceedingly helpful to a senator to be able to reward supporters with good posts in the federal government. Conversely, it is enormously damaging to a senator's prestige if a president of his own party ignores him when it comes to making an appointment from or to the senator's own state…It was easy for senators to see that if they joined together against the president to protect their individual interests in appointments, they could to a large degree assure that the president could only make such appointments as would be palatable to them as individuals (6)."

Ultimately, senators are collectively incentivized to preserve their institutional checks on the president, and the blue-slip provides senators with one of those checks. As such, executives are equally incentivized to consult with home-state senators prior to submitting nominations since the check grants the opportunity for delay regardless of a senator's affiliation with either the majority or minority party.[1]

In tandem with offering blue slips to home-state senators, the committee opens up an inquiry on the nominee. Beginning with Senator Edward Kennedy's tenure as Chair of the Senate Judiciary Committee in 1979, the committee has required each nominee to complete a detailed questionnaire about any and all professional activities (Goldman 1997). The nominee must also fill out an additional financial disclosure report. Even though the candidate has already filled

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[1] Maybe more interesting is what could be interpreted as presidential reactions to withheld blue slips. On June 23, 2011, President Obama submitted the nomination for Rosemary Marquez to replace Arizona District Judge Frank Zapata (U.S. Courts 2016, Judicial Vacancies). Upon receiving the nomination, both of Arizona's Republican Senators John Kyl and John McCain withheld their blue slips for Marquez (National Law Journal 2011). On January 3, 2011, an additional Arizona judgeship opened, but President Obama waited until September 9, 2013 to submit a nomination for that vacancy as well as for additional Arizona vacancies (U.S. Courts 2016, Judicial Vacancies). The withholding of nominations suggests that the administration was not willing to commit any more resources towards Arizona vacancies in light of Senators Kyl and McCain's obstructionist behavior. All else considered, why would the liaisons exert any more effort to confront a state's vacancy problem where resources could be better spent on other states with more agreeable senators? The administration was able to negotiate successfully with the Arizona senators only after Senator Kyl retired from office and Jeff Flake replaced him.

out similar forms in the nomination stage, the Judiciary Committee requires an additional set of documents.[2] Although Senator Orrin Hatch, former Chairman of the Senate Judiciary Committee, conceded, "most of the real work in the nomination and confirmation process is done before the actual nomination is made," Hatch noted the greater need for legislative checks on the executive as the scope of investigations on nominees continues to increase (Hatch, 2003, 474). Since Senator Kennedy's tenure as Chairman, an increasing number of committee staffers have been delegated to conduct nominee background checks (Sollenberger 2011).

The questionnaire, largely unchanged since its introduction, provides the committee with information on the nominee's "education, employment record, draft status, bar association memberships, published writings, public statements, court cases (if a judge), public offices held, political affiliations, legal career, financial holdings, and various other concerns" (Sollenberger, 2011, 106). The document also includes a question concerning whether or not the nominee has been asked by executive branch officials about hypothetical legal positions the nominee might take if confirmed as a judge. The goal of this question, of course, is to ensure that the administration has not violated the separation of powers principle by unduly

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[2] Many legal scholars and past nominees have called on the White House and the Senate Committee on the Judiciary to streamline nominee paperwork requirements and allow vetting to be carried out more transparently and efficiently. The duplicate nature of the documentation causes more delay in the overall process as well as an additional expense for nominees. Stephen Rattner, who served in the Treasury Department as an Obama appointee, noted in his recent book that he paid over $400,000 in legal fees to a law firm for their help in filling out all the necessary nomination and confirmation paperwork (2010). Senior White House aide to George W. Bush, Tevi Troy, noted "one fellow colleague hired a Washington law firm to fill out his paperwork before he joined the Bush administration—a wise and not outrageous precaution—and was hit with a bill for $38,000" (91). Per Troy (2011), "…To avoid unnecessary duplication, nominees should have to fill out only one disclosure form and questionnaire, which could be completed electronically and would be available to the relevant executive-branch vetting agencies as well as to the relevant committees" (96).

influencing a nominee. Just as in the nomination stage, the candidate must fully and respectfully address all concerns on the questionnaire and disclosure forms. A nominee's failure to be less than forthcoming has resulted in multiple confirmation catastrophes.

In addition to the Senate Judiciary Committee, interest groups participate in the pre-committee hearing and committee hearing stage of the confirmation process. The American Bar Association's (ABA) Standing Committee on the Federal Judiciary has exerted a longstanding influence on nominees' outcomes. The ABA rates every judicial nominee as "Well Qualified," "Qualified," or "Not Qualified." In the event that the ABA has expressed doubts about a particular nominee, historically, the Senate Judiciary Committee has taken the group's concerns seriously and further investigated the nominee (Goldman 1997, Bell 2002). However, it must be stated that at different points in time both political parties have expressed reservations about the influence of the ABA on the judicial appointment process.[3]

Following the Senate Judiciary Committee's investigation, the Chairman decides whether or not to hold a committee hearing for the nominee. The Chairman can schedule the hearing at any time during the congressional session, which provides yet another opportunity to delay the confirmation process. The hearing grants the committee members, of both parties, the opportunity to ask the nominee any questions they deem relevant.

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[3] Over the years, the ABA has been called to the carpet for what some lawyers and activists call discriminatory behavior. That is to say, these critics note the frequency with which female and minority candidates receive lower qualification ratings as relative to their male peers. These activists accuse the ABA of discriminatory behavior (Bell 2002). Also, Moran (1987) notes that Republicans have accused the ABA of discrimination as conservative think tanks and groups cite the ABA for "consistently rating perceived conservative judges as lower qualified than perceived liberal judges" (3).

From the aforementioned questionnaire, the committee has ample information with which to interrogate the nominee. The hearing also provides an opportunity for the panel to hear witnesses both in favor of and opposed to the confirmation of any given nominee. After the question and answer session is over, the committee chair holds a vote on whether to move a nominee forward or to return that nominee to the president. If passed, the full Senate must then hold a vote to confirm or reject the nominee. From here, the Senate Majority Leader retains the power to hold a confirmation vote, and can call the vote at any time of his or her choosing. A simple majority vote in favor of the candidate is required for a successful completion of the appointment process.

Since Senator Kennedy's introduction of the judicial questionnaire, the Senate has evaluated nominees with much greater scrutiny, hitting unprecedented levels with President Reagan's Supreme Court nomination of Robert Bork in 1988 (Goldman 1997; Epstein and Segal 2005; Epstein et al. 2006). The increasing attention that the Senate has given Supreme Court nominees has since extended to include all judicial nominees, even down to the district court level.

A former aide to Senator Jeff Sessions, past member of the Senate Judiciary Committee, commented on this fact. She stated,

> "They [the Judiciary Committee members] have approached district court nominees with the same exacting inquiry standards that used to be reserved for the Supreme Court and controversial circuit court nominees, not even all circuit court nominees. But now it extends to every lifetime appointment. You hear Senator Sessions talk about it, he talks about 'these are lifetime appointments. It's not a blank check, a rubber stamp...' It used to be that district court nominees, unless quite extreme, quite unusual, were accorded a different path forward. And now, that's changed" (Goldman, Slotnick, Schiavoni, 2011, 280).

Some nominees move through the confirmation stage very quickly while others wait months, even years simply for a Senate Judiciary Committee hearing, much less a vote on the Senate floor. Perhaps more importantly, the time the Senate has taken to confirm or reject nominees from the very day presidents have submitted nominations has steadily risen over the last forty years. Nixon and Goss (2001) note that the "average duration of a lower court vacancy skyrocketed during the Clinton presidency, prompting Chief Justice Rehnquist to declare the situation a 'crisis'" (246). Figure 2-3 illustrates the increase in the average number of days the Senate has taken to confirm or reject judicial nominees for each administration in this study.

Figure 2-3

Senate Responsiveness to District Court Vacancies
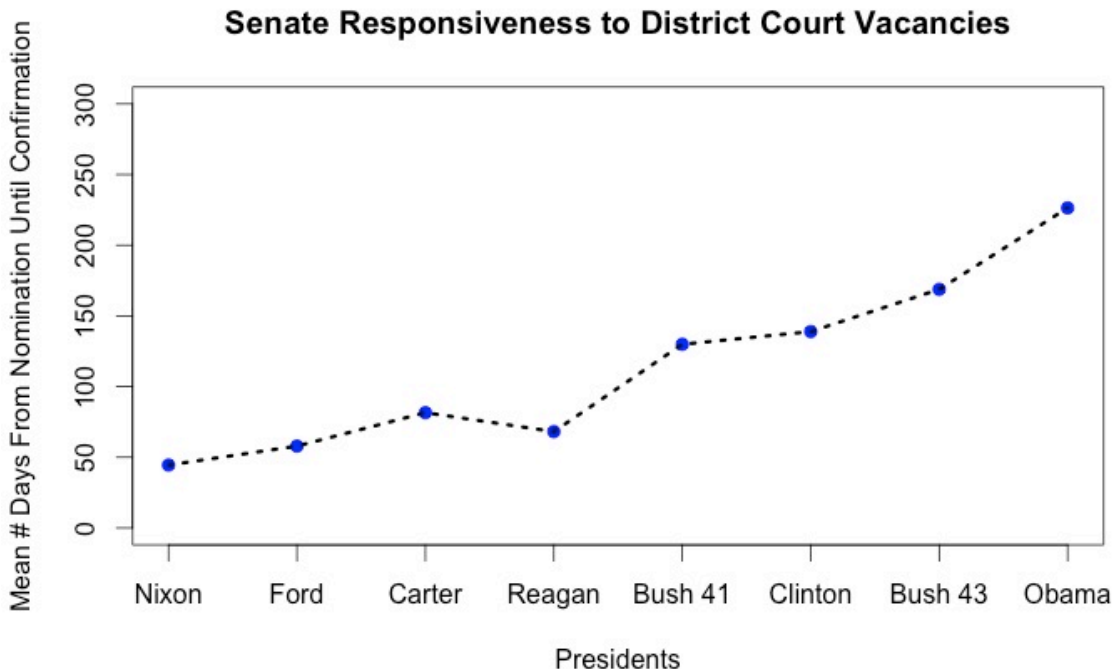
So, what factors help to explain the variation we observe in confirmation length? With respect to confirmation rates, we actually have a great deal of information. As previously mentioned, much of the existing literature on the appointment process focuses directly on the confirmation stage. Consequently, we know many of the political conditions that contribute to the duration of this stage of the process.

Arguably the most current and extensive study on confirmation delays is Binder and Maltzman's (2002) analysis on the fates of Court of Appeals nominees from 1947-1998. With a host of independent variables including ideological distance of the nominees to home-state senators, ideological distance from the president to the Senate, divided government, the dynamics of presidential election years, and negative blue slip potential, the scholars seek to establish what conditions affect the time it takes (in days) for the Senate to confirm or reject a nominee. Utilizing a Cox Proportional Hazard model, these scholars find that the conditions of divided government and the agenda-setting power of the majority party have the most substantial effects on delaying the confirmation process. During the condition of divided government, the majority party exploits its ability to schedule committee hearings and floor votes to avoid swift confirmations of the presidents' nominees. Countering Binder and Maltzman, Krutz, Fleisher, and Bond (1998) find no evidence that divided government negatively affects a nominee's inherent likelihood of confirmation. Instead, they find that the more relevant factors for confirmation success or failure are the nature of the position (high profile vs. low profile) and the actual timing of the nominations.

Primo, Binder, and Maltzman (2008) examine the outcomes of circuit and

district court nominees occurring from 1975-2006. Considering the differences in

the perceived importance of these courts as well as the different set of actors

involved in these courts' appointment processes, the authors seek to distinguish

among the conditions that most affect the outcomes for nominees at different

levels. For appellate nominees, Primo, Binder, and Maltzman find that the

preferences of the majority party median as well as the filibuster pivot exert the

most substantive effect in the confirmation process, both in their capacity to reject

nominees and in their power to delay the process. With respect to district court

nominees, the study lends support to the home-state senator model, where the

home-state senator possesses perhaps the greatest power in determining the

nominee's outcome as well as the duration of the confirmation process. In light of

the evidence of senatorial courtesy's importance in the nomination process, it is

unsurprising that the home-state senator wields such a powerful influence on the

confirmation process.

Along with home-state senators, scholars have also found that senators

serving on the Committee on the Judiciary play a pivotal role in speeding up or

slowing down the confirmation process. Bell (2002) analyzes all judicial

nominations beginning from 1979 and ending in 1998. Per her analysis, when a

vacancy and subsequent nomination occur in the state of a "'champion' or home-

state senator sitting on the Senate Judiciary Committee," the confirmation stage

takes less time (602). Simply stated, having a home-state senator on the Judiciary

Committee of either the minority or majority party speeds up the confirmation

process. The effect of a "champion" senator holds during both conditions of unified and divided government. In contrast, Bell finds that the confirmation rate slows down for "orphan nominees"—nominees to vacancies occurring in states where there is no senatorial courtesy or Judiciary Committee member to help drive the process. Martinek, Kemper, and Van Winkle (2002) account for the proportion of Senate Judiciary Committee members who do not belong to the president's political party. The scholars find an inverse relationship—as the proportion of non-presidential party members increases, the confirmation rate decreases. Judicial nominees experience more confirmation delay when there is greater partisan opposition from committee members.

Institutional norms impact the confirmation process. In *Advice and Dissent,* Binder and Maltzman (2009) analyze the changing dynamics of the confirmation stage of the appointment process. The scholars examine the staffing of the federal judiciary at large, carefully analyzing institutional features of the courts, executive branch, and Senate that help to explain these temporal changes. Of primary importance are the "institutional vetoes" that develop and evolve in unanticipated ways. Binder and Maltzman focus in on the historical evolution and consequences of blue slips and senatorial courtesy. According to their analysis, these two institutional norms supply senators with the most power to affect outcomes and duration in both the nomination stage and the confirmation stage. However, utilizing these checks comes at a political cost, forcing senators to exercise them efficiently in order to maximize their impact. Normatively speaking, the scholars observe that the evolution of the institutional checks has negatively impacted the

appointment process. The informal vetoes have delayed confirmation, which in turn increases the workload of judges remaining on the bench as they compensate for the prolonged vacancies. In the end, foresight is so often blind. The political players creating institutional rules and features rarely foresee each one's full spectrum of consequences and resulting path dependency.

Interest groups also play a powerful role in the confirmation stage. Scherer (2005) analyzes the importance of elite mobilization in the confirmation process as well as in the nomination process. According to her research, the roles played by interest groups and think tanks are dependent upon which political party controls the White House. In the event of Democratic White House, Scherer finds that conservative groups take the first steps to single out ideologically divergent nominees. Liberal groups then respond to the criticisms. The roles are reversed under the opposing conditions. Umbrella and issue-oriented groups all concede that they must choose wisely who to target as they cannot afford to dispose of time and resources on all judicial candidates. These groups initiate grassroots campaigns in efforts to lobby congressional leaders, feed newsworthy information to the relevant media outlets, and apply pressure to the current administration in efforts to help or hinder nominees through the process.

Additionally, interest groups have been found to counteract the delaying effect of divided government. Although the presence of divided government has been found to slow the confirmation rates of both circuit and district court nominees, the participation of interest groups during divided government can offset that delay (Bell 2002). In fact, the presence of interest groups can speed up

the confirmation stage (Bell 2002). For example, after President Clinton nominated then New York District Court Judge Sonia Sotomayor to the Second Circuit Court of Appeals, her nomination remained untouched by the Senate for many months. In response to the Senate's stalling, multiple Hispanic interest groups organized a petition drive in New York State, which ultimately motivated New York Senator Al D'Amato to push the Republican leadership to bring Sotomayor's nomination to a vote. Bell (2002) finds that in the event interest groups press senators early on the confirmation stage, the groups can help expedite a nominee through the multiple stages in the process.

The timing of nominations is important. To clarify, the date in which the nomination falls relative to the beginning or end of a presidential term, can impact a nominee's inherent probability of confirmation as well as the time it takes to complete the process. Krutz, Fleisher, and Bond (1998) find that presidents enjoy greater probability of confirmation success early in their first term, or what they label the "honeymoon period" (874). Martinek, Kemper, and Van Winkle (2002) also find evidence of a "honeymoon" effect, with presidents enjoying greater latitude in the beginning of their terms. In contrast, nominations made during presidential election years (which are also congressional election years) are inherently less likely to succeed (Martinek, Kemper, Van Winkle 2002; Binder and Maltzman 2004; Bell 2002). Ostrander (2015) finds evidence of senatorial delay in presidential election years for nominations made to both executive and judicial positions. Bell (2002) and Binder and Maltzman (2004) both note that the anticipation of changes in party control and campaign workload demands can slow

down the confirmation process in those years. In addition to presidential election years, Martinek, Kemper, and Van Winkle (2002) also find that the Senate is much less receptive to the nominees of a second term president. The judicial nominations made during second presidential terms obtain confirmation more slowly than nominations made in first terms. In light of this finding, the evidence seems to suggest that even though presidents may enjoy a honeymoon with Congress in the beginning of their terms, by the second term Congress begins to feel the proverbial seven-year itch.[4]

The existing literature also supports longstanding claims that women and racial minorities face greater obstacles in the confirmation process. Nixon and Goss (2001) complete a duration analysis of Appeals Court nominations sent to the Senate from April 1892 to December 1994. What Nixon and Goss find most compelling with respect to duration is that female and minority nominees are only confirmed after "unusually long vacancies." Although the slow confirmations may be the product of racist and sexist attitudes, they may be also the result of a limited number of qualified candidates. The scholars note that the Reagan administration expressed disappointment over the smaller pool of qualified, conservative minority and female attorneys and judges (254). The long durations suggest that the Senate Judiciary Committee and Senate as a whole are in turn more critical of those nominees. Martinek, Kemper, and Van Winkle (2002) also factor in race and gender in their duration analysis of lower court confirmations. For district court nominations, race matters. Minority judicial candidates

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[4] According to Merriam-Webster, there is no antonym for the word "honeymoon." Just a little interesting fact I thought I would share.

experience slower confirmations than their white counterparts. However, gender does not seem to affect the time frame for district court nominees. Interestingly, Bell (2002) finds that confirmation delay occurs for minorities and females only under the condition of divided government.

Finally, the existing workload of senators plays an important role in the delay story. Ostrander (2015) analyzes senatorial delay in all executive nominations occurring from 1987 to 2012. While the study does not confine itself to judicial appointments, Ostrander does provide insight into the confirmation stage of the process. According to his findings, delay occurs for two primary reasons: one, senators delay confirmations in an attempt to protect executive agencies from extreme ideological shifts; two, senators just have too much work to do, inevitably stalling other duties. Ostrander finds that confirmation delay is more likely to occur during periods of high roll-call votes.

As it stands, the current confirmation story factors in the influence of political conditions and a few Senate-specific institutional conditions. The question remains whether or not senators consider factors outside of the legislative-executive power struggle in their decision-making process.

Chapter 3

Theory

What is it that makes us trust our judges? Their independence in office and manner of appointment.
--Chief Justice John Marshall

Trust. Today the concept of trust, especially in the context of government, seems idealistic even suspect. Yet the Great Chief Justice honed in on an interesting feature of American democracy that has long undergirded the government's legitimacy. While elections serve as the selection mechanism for presidents and members of Congress, prospective members of the judiciary only attain office if and when the two other branches come to a consensus. Just as Marshall stated, judges are thought to be independent entirely because they do not arrive onto the bench by appealing to the electorate; further, judges retain that independence since they do not require the electorate to stay there. These notions likely contribute to the reasons why Americans consistently rank the federal judiciary and Supreme Court as the most legitimate and highly regarded branch of the government (Pew Research 2017). More than their presidents, more than their congressional representatives, Americans trust their judges.

Oddly enough, it was trust that the Framers' placed in presidents and senators when designing judicial selection. Without executive and congressional agreement, the entire third branch could collapse altogether. Delays alone to the branch's staffing present significant implications for timely justice and effective government. Given that presidents and senators today are taking a longer time

than in previous eras to fulfill their constitutional roles, the question becomes: why? What contributes to the variation we see in the duration of the judicial appointment process? Why are some seats filled quickly and others slowly?

In this chapter, I present my theory on the timing of presidential nominations and Senate confirmations. The first part of the chapter is devoted to exploring previously considered factors that have been shown to contribute to the delay or rapidity of judicial appointments. The second part highlights conditions previously unidentified in the existing literature that I believe play roles in the appointment process story.

Political Conditions

Previous studies of delays have identified several mechanisms that can speed up or slow down both the nomination and confirmation stages. The presence or absence of senatorial courtesy, divided government, ideological distance between nominees and senators, the dynamics of election years and presidential honeymoons, membership on the Senate Judiciary Committee, and minority and female candidates have all been cited as relevant to the process. As such, any further analysis would be incomplete without incorporating these conditions. Reviewing and replicating these political conditions allows for the direct comparison of their impact against the practical conditions that affect the operational functioning of the judiciary. Prior to this analysis, however, scholars have often lumped district court and appellate court vacancies together or have neglected consider all these variables at both stages of the appointment process.

The Historical Importance of Senatorial Courtesy

When a judicial vacancy occurs in a state where a senator is of the same political party as the president, the Chief Executive historically has granted that senator considerable input in filling the vacancy (Massie, Hanford, Songer 2002; Goldman 1997; Binder and Maltzman 2002; Binder and Maltzman 2008; Primo, Binder, and Maltzman 2002; Epstein and Segal 2005). This institutional norm, referred to as senatorial courtesy, originated in George Washington's first presidential term.[1]

On August 3, 1789, President Washington submitted a list of nominees for port agents; these agents were tasked with the job of collecting import taxes in the newly established federal ports along the U.S. coastline. The new government desperately needed money, and import taxes were viewed as both a guaranteed and steady source of revenue. But of all the nominees on the seven-page list, only one failed to receive Senate approval. Benjamin Fishbourn, a nominee for Naval Officer of the Port of Savannah, became the first failed presidential nominee in American history.

Embarrassed by the rejection, President Washington traveled directly to the Senate to inquire about the failed vote. There, he was greeted by Senator James Gunn of Georgia, who informed Washington about his issues with Fishbourn. Given the outcome and the constitutional provision of "advice and consent", the president decided to consult with senators prior to submitting any further nominations. As Washington saw it, consultation at the nomination stage would

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[1] Talk about path dependency—the norm of senatorial courtesy began in 1790 and is still in existence today.

help him avoid any additional embarrassment in the confirmation stage as well as promote greater governmental efficiency (Sollenberger 2011). In the end, pride and pragmatism converged to generate one of the most enduring informal checks on executive power. Senatorial courtesy continues to shape congressional and executive relations to this day.

With respect to vacancies occurring on district courts, the prevailing norm well into the twentieth century was for a senator to propose the nomination of one person, typically a friend or political patron (Goldman 1997). From here, the nominee was properly vetted, usually by the Justice Department, and unless some sort of controversy arose, the senator's choice was submitted to the Senate for confirmation (Goldman 1997).

In the case that both senators from the state were of the president's party, there exists a bit more heterogeneity in the use of senatorial courtesy. In states such as Texas, both senators would submit a name to the president, and ultimately the president chose among the two (Goldman 1997). Historically, New York senators would alternate in submitting nominees to the president for judgeships. From there, the same vetting process by the Justice Department would ensue, and more often than not the president sent the nomination to the Senate.

In the 1970s, President Carter pushed for a more merit-based nomination system (Goldman 1997; Epstein and Segal 2005). The Carter administration made it a political objective to see a more qualified and diverse federal judiciary (Scherer 2005). Consequently, the executive branch suggested that Democratic senators

employ the use of nomination committees. The goal of these committees was to ensure the vetting of the most qualified candidates in the state, rather than the home-state senator simply selecting a nominee out of political patronage, which had become a norm up to that point in history. Some senators heeded Carter's suggestions and established these committees. Many did not. In end, however, the senator via his committee still submitted just one nominee to the president.

Yet this practice would undergo some changes during the Reagan presidency. While Reagan did not push for senators to use their own vetting committees, the administration did urge Republican senators to submit more than just one nominee for consideration (Goldman 1997). Once the Justice Department completed the vetting process, the White House liaisons chose their preferred nominee from the list whose name the president submitted to the Senate. This new practice of requiring multiple nominees gave the administration slightly more discretion in its choice than it previously enjoyed. Subsequent presidents have maintained this practice of requesting multiple names. Granted, exceptions are made in certain cases, but by and large this is the current practice.[2]

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[2] It must be noted that many presidents have solicited the American Bar Association (ABA) to vet all judicial nominees at this stage. The ABA Standing Committee on the Federal Judiciary assigns each judge a ranking, either "well qualified," "qualified," or "not qualified." Those intimately involved in the nomination and confirmation process have cited the ABA's involvement as an additional source of delay on the presidential side (Goldman, Slotnick, Schiavoni 2011).

While senatorial courtesy is certainly a mechanism by which presidents curry favor with party members, this informal institution also serves a practical purpose. Rather than spending time and allocating resources to find potential nominees, senatorial courtesy provides the relevant actors in the administration with a starting list. Senatorial courtesy effectively cuts down information costs associated with judicial selection. The list in and of itself is more efficient. In *Advice and Dissent*, Binder and Maltzman (2009) note that senatorial courtesy most dramatically speeds up the rate at which presidents submit nominations for vacancies. On balance, without senatorial courtesy, presidents and their administrations more often than not, divert extra resources toward identifying a set of potential nominees as well as spend more political capital to foster support for nominees once they are submitted to the Senate. Also, the home-senator is more likely to support these nominees as they move through the confirmation process, so the president can expect to retain the senator as an advocate for the nomination.

Given this information, we come to my first hypothesis. H1: We expect that presidents will move to fill the vacancies where senatorial courtesy is present more quickly than where it is not present; and H2: we should observe that the Senate confirms nominations more quickly when senatorial courtesy is present than when it is not present;

Divided Government

Another especially influential political factor at both the nomination and confirmation stages is whether or not the president's party controls the Senate. Depending on unified or divided party control, the administration has some baseline expectation of a judicial nominee's success or failure. Historically, a president's judicial nominees have enjoyed more confirmation success under the conditions of unified government than during divided government (Goldman 1997; Binder and Maltzman 2002). But even before a vote on the Senate floor takes place, party control of the chamber presents other opportunities for the Senate's delay or quick action.

If the president's party is in control, the Chairman of the Judiciary Committee, who schedules the hearings for the president's nominees, is a party member. The evidence suggests that in the case of party alignment, the committee chair schedules hearings in a more timely fashion than when a committee chair is a member of the opposing political party, provided, of course, that the home-state senators have returned their blue slips to the committee (Primo, Binder, and Maltzman 2008). As previously mentioned, after a nominee's hearing, the committee chairman then takes a vote on whether to move a nomination forward or return the nomination to the president. Yet the vote does not have to occur immediately after the nominee's hearing. Instead, the chair can take and report the vote at a much later date, potentially causing more delay. Ultimately, the Senate majority leader cannot move to hold a final vote on the nominee if the committee has not reported its decision. Historically, Judiciary

Committee chairmen of the president's party have reported the committee's vote more quickly (Goldman 1997; Binder and Maltzman 2009).

The last particularly relevant step in the sequence is the Senate floor vote. Here, the Senate Majority Leader has control over the agenda, and can move to hold a vote on the nominee. Scholars have shown majority leaders of the president's party move more swiftly to hold a vote on nominees (Goldman 1997; Binder and Maltzman 2009).[3] A majority leader of the opposing party may be more likely to stall--deciding not to take immediate action on a nomination.

We do know that the presence of divided government affects how the president selects nominees. When Republicans controlled the Senate during President Clinton's second term, the general consensus of the administration, in the words of one aide, was to, "Put up nominees, don't ruffle any feathers. Don't provoke organizations either to the left or the right. Find middle of the road candidates. And try to maneuver the process under the radar screen" (Goldman, Slotnick, Schiavoni, 2011). The likelihood that the president's nominee will incur strict scrutiny, potentially even obstruction, seemingly influences the types of candidates he ultimately chooses to fill vacancies.

Per multiple scholars, divided government can significantly hinder the appointment process (Goldman 1997; Binder and Maltzman 2009; Primo, Binder, and Maltzman 2008). Under these conditions, presidents must be more thorough and calculating when selecting a nominee who will likely face a skeptical or

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[3] Historically, in the event of unified government, the Senate majority leader has moved quickly to vote on judicial nominees. However, delay plagued the most recent time of unified Senate and Executive control. Many scholars noted the Majority Leader Harry Reid's delay in scheduling judicial confirmation floor votes. Some scholars attributed his delay to competitive elections, while others blame his refusal to broker deals with Republicans and vice versa (Goldman, Slotnick, Schiavoni 2011).

hostile Senate. These facts generate the following hypotheses: H3: presidents will submit judicial nominations more slowly in times of divided government than in times of united government; and H4: the Senate will be slower to confirm nominees submitted during divided government than those submitted under united government;

Ideological Distance

As previously discussed, the senators of the state where a district court vacancy occurs wield considerable influence over the appointment process. In the event that a senator is a member of the president's party, the conditions of senatorial courtesy are satisfied and that senator can influence the initial choice of the nominee. During the confirmation stage, the home-state senator wields even more institutional power over the nominee's outcome. Even in the absence of senatorial courtesy, the Senate provides each home-state senator with the opportunity to consent informally to the district nominee. Once the nomination has announced by the president, home-state senators choose either to return or withhold the nominee's "blue-slip" to the Judiciary Committee. Returning a nominee's "blue-slip" is effectively a sign of approval for the president's nominee. However, if a senator objects to the nominee, historically, he or she has withheld the nominee's blue slip. When a withholding has occurred, traditionally, the Judiciary Committee has refrained from holding a hearing on that nominee (Goldman 1997; Binder and Maltzman 2002, Epstein and Segal 2005; Scherer 2005; Binder and Maltzman 2009).

Given this specific institutional power and the overarching agenda-setting power of the majority party, the president is incentivized to consider the ideological positions of home-state senators as well as the majority party. Should the president fail to take into account these ideologies, his nominee will potentially face opposition and subsequent delays in the confirmation process. Binder and Maltzman (2002) find that the ideological distance between home-state senators and presidents as well as the distance between the nominee and majority party median do affect the rate of confirmation. Considering the importance of senatorial courtesy, the scholars follow the steps of Giles, Hettinger, and Peppers by using the ideological positions (calculated using the first dimension of DW-NOMINATE scores) of home-state senator(s) of the president's party as proxies for the ideological position of district nominees. When the conditions of senatorial courtesy are not satisfied, the president's ideological position is used as a proxy for the nominee's ideological position. From here, the scholars calculate the difference between the district nominee's ideological position and the ideological position of the Senate median. An increase in that distance during times of divided government slows down the rate of confirmation. During times of divided government, the median member of the Senate is more likely to be a member of the opposing party of president, hence the magnified effect of ideology on delay.

In the end, presidents must consider the ideological positions of home-state senators and the Senate median member when selecting nominees. Thus, we expect that: H5: presidents will submit judicial nominations more slowly as the

ideological distance between home-state senator(s) and the president increases; and H6: the Senate will be slower to confirm nominees as the ideological distance between the nominee and Senate median increases;

Presidential Election Years--The Thurmond Rule

An informal Senate institution that may also affect the nomination and confirmation stages is the so-called "Thurmond Rule." While the Thurmond Rule does not necessarily concern specific preferences of senators, it remains important simply due to frequency with which it is used, especially by members not of the president's political party.

The term "Thurmond Rule" was coined in response to Senator Strom Thurmond's opposition to President Lyndon Johnson's effort to elevate Associate Justice Abe Fortas to Chief Justice of the United States. It was the summer of 1968 during the last six months of President Johnson's term. The President's close relationship to Fortas was quite troubling for many legislators but none more than Senator Thurmond, who took the opportunity to filibuster the nomination. Eventually, the opposition and ethical concerns raised about Fortas induced his retirement from the Court altogether just one year later.

Since that time, senators have periodically invoked the "Thurmond Rule" which stipulates that the president should not submit judicial nominations in the last six months of a lame-duck presidency, or that presidents should not move to nominate judges without the support of other political actors in the last six months of a presidential term. In effect, the rule can be seen as an effort by parties in

opposition to prevent the president from stacking the bench prior to vacating office.

In more recent years, we have observed multiple incidents of senators citing the Thurmond Rule in response to presidential nominations to the bench. In the last six months of Bill Clinton's second term, Republican leaders found fault with the Senate for proceeding with judicial appointments. Democratic senators also objected to judicial nominees toward the end of George W. Bush's second term. President Obama encountered similar objections to his nominations in the summer before his re-election in 2012.

This pattern of behavior from opposing parties lends evidence to the likelihood that presidents will face a greater level of opposition to judicial nominees in the final months of a presidential election year. Consequently, presidents likely spend more political capital to overcome the potential obstruction informally institutionalized by the Thurmond Rule. Perhaps more importantly, if the president does in fact submit a nomination, the efforts behind the nomination have greater potential to be wasted.

Binder and Maltzman (2002) found that presidential election years have a delaying effect on the confirmation process. Consequently, it is important to control for this period of time at the end of a president's term. Hence, we have our next set of hypotheses. H7: In the last six months of a presidential term, we expect presidents to move much slower to submit nominations for vacancies than in the time prior to those six months; and H8: we expect that the Senate will

confirm nominees at a slower rate in the last six months of a president's term than in the previous three and half years.

First Year of Presidency

Perhaps nature's way of balancing out the Thurmond Rule and dynamics of a presidential election year is the observed latitude presidents are typically given in their first year in office. Although nominees may be received poorly in election years, scholars have found that nominations made during the first year of a presidential term are generally better received than in the second, third, or fourth years (Krutz, Fleisher, and Bond 1998; Holmes and Hartley 2002; Martinek, Kemper, and Van Winkle 2002). Furthermore, scholars have observed that nominations made in the last year of a second presidential term fare worse than nominations made in any other year (Martinek, Kemper, Van Winkle 2002).

The argument for a presidential honeymoon seems altogether reasonable. Provided there are no unforeseen events, the current president will be in office for at least four years, and the Senate must withstand dealing with that president for an extended period of time. In the end, senators cannot avoid presidential appointments forever—after all, they have a constitutional duty to perform as well as constituents to please. An effort to dodge those duties for what is perceived as too long of a time may be viewed poorly by those who matter to a senator.

Perhaps more compelling is that the Senate's duty to ensure a well-functioning court system may be more pronounced in the first year of a presidential term than in the second, third, or fourth year. Due to political

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conditions, administrative issues, and congressional scheduling, judicial

vacancies often pile up towards the end of an outgoing president's tenure. So,

the incoming president must deal with two sets of vacancies: the ones that come

about in his first months of office as well as those that arise in the final months of

the previous administration. More vacancies means more workload for existing

judges on the bench, and as such, senators may be pushed to alleviate those

burdens by more swiftly confirming nominees. Regardless of the reasons, the

literature suggests that the Senate is more receptive to the pool of judicial

nominees made in the first year. Ironically, however, presidents are usually

slower to submit nominations in the very beginning of a first term. As previously

mentioned, the incoming administration needs time to "set up shop," so the White

House typically takes a longer time to submit nominations in that first year.

With evidence that nominations are confirmed more quickly in the first

year of presidential terms, we derive our next set of hypotheses: H9: we expect

that the president will submit nominations vacancies more slowly during their first

year in office; but H10: we expect the Senate to confirm those first year

nominations more quickly than nominations made later in the term;

Female & Minority Candidates

For the better part of the twentieth century, few women and minorities

received appointments to the federal bench. In 1928, President Calvin Coolidge

successfully nominated the first woman, Genevieve Cline, to the federal bench;

sadly, just a handful of women followed behind Cline until the equal rights

movement of the 1970s. The Senate did not confirm the first African-American

Justice to the Supreme Court, Thurgood Marshall, until August 30, 1967. On the

whole, women and minorities were virtually unable to make any dents in the

overwhelmingly white male judiciary until the Civil Rights Act of 1964 and the

enactment of Title IX in 1972.[4] Soon thereafter, a fortuitous congressional

overhaul of the courts system came about with the passing of the Omnibus

Judgeship Act of 1978. With the act establishing over one hundred new

judgeships, President Carter was given a major opportunity to shape the overall

makeup of the bench. In a memo sent to Carter about the huge volume of seats,

his policy aides noted,

> "[the legislation] will constitute a critical part of the legacy of your
> Administration. Equally important, the process of filling these judgeships
> provides an instrument to redress an injustice: of the 525 active Federal
> Judges, only twenty are black or Hispanic and only six are women. By
> using the Omnibus Judgeship Act to appoint a substantial number of
> qualified minority and female lawyers, as well as capable white males, the
> Administration will begin to bring some balance into this area" (Goldman,
> 1997, 242).

Carter agreed with his aides' sentiment and proposal; he charged the

head of his Circuit Court Nominating Commission with the task of identifying

qualified minority and female nominees for Circuit Court positions. Additionally,

he pressed senators to submit the names of qualified minorities and women for

district court positions arising within the senators' home states (Goldman 1997).

However, the administration's efforts were met with resistance on the Hill as well

as with outside interest groups, and the existing literature is rife with anecdotal

evidence of that struggle.

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[4] Before the enactment of Title IX, states could exclude women from the legal professional. Title IX made
doing so illegal.

While the conditions and models have varied, multiple appointment analyses substantiate the claims that minorities and women face longer confirmations than male or white candidates (Nixon and Goss 2001; Martinek, Kemper, Van Winkle 2002; Bell 2002). Martinek, Kemper, and Van Winkle (2002) find race to be a more important factor for delay at the district court level than at the circuit court level.

As of 2017, thirty-three percent of U.S. District Court judges are women, and women account for thirty-six percent judges as the appellate level (Pew Research 2017). Just fifteen percent of district court level judges identify as minorities (Pew Research 2017). Granted, these percentages are much higher in recent decades than they have been in the past, but the evidence suggests difficulties and delay persist. People of color and women remain a relevant factor for the study of variation in the appointment process. Given what we know, H11: we expect that the president will take longer to submit the nominations of female or minority candidates; and H12: we expect the Senate to confirm female or minority nominations more slowly than others;

Senate Judiciary Committee

To be sure, senators, both individually and collectively, possess the power to stall and expedite nominees through the appointment process. While the influence of the home-state senator has been discussed at length in prior sections, the power wielded by senators serving on the Senate Judiciary Committee has yet to be given serious attention.

As with every executive appointment, the relevant Senate committee enjoys oversight, and the members of the Senate Judiciary Committee have always exercised control over nominees' outcomes (Goldman 1997). From those nominated to the Supreme Court to those on the District Court level, the committee members wield the right to move any nominee forward.

On the whole, senators of both parties serve on the committee; while the party in control of Senate determines the party affiliation of the committee chairman, there is always a ranking member of the out-of-power party who carries considerable weight. Aforementioned, the committee holds hearings for each judicial nominee once home-state senators have returned blue slips to the committee, which tacitly signal home-state approval. Armed with the information given on the questionnaire, the committee members are afforded the opportunity to ask any and all questions they think are relevant—questions concerning the nominee's judicial philosophy, ideological bent, any personal or professional problems, the list goes on.

While nominations to the Supreme Court are given the greatest attention, nominations made to the lower levels courts have also generated considerable interest, particularly those nominations that have experienced exceeding delay. Upon the nomination of Goodwin Liu to the Ninth Circuit Court of Appeals, Republican members of the Senate Judiciary Committee overwhelmingly showcased their dissatisfaction with President Obama's nominee:

> "Sen. Orrin G. Hatch (R-Utah) suggested that Liu endorsed allowing judges to disregard the plain meaning of statutes in favor of their personal views. 'Do you really think that judges should have this much power over the law?' Hatch asked…Liu later responded, 'Whatever I may

have written in the books and the articles would have no action on my bearing as a judge   (Pershing, Washington Post, April 17, 2010).'"

Liu also received harsh criticism for failing to disclose 117 of his more controversial speeches and writings in his paperwork submitted to the committee. Ultimately, Republican members of the committee requested multiple postponements to Liu's hearing and committee vote. Liu became the first of President Obama's judicial nominees to receive a filibuster on the Senate floor, whereby the California attorney subsequently withdrew his name from consideration for the vacancy.

Multiple scholars have noted the importance of the Senate Judiciary Committee in the appointment process (Goldman 1997; Sollenberger 2011; Bell 2002; Martinek, Kemper, Van Winkle 2002). Nominees who are perceived as less than forthcoming usually receive rough treatment by the members (Goldman 1997). With the advent of cable news and constant media stream, senators on the committee are given a higher-profile platform to voice opposition or support for the current administration's nominees (Sollenberger 2011).

In her duration analysis on judicial confirmations, Bell (2002) finds those nominees who appear to have a "champion," or a home-state senator who also serves on the Judiciary Committee significantly speeds up the nominee's confirmation process. Martinek, Kemper, and Van Winkle (2002) analyze the effects of the Senate Judiciary Committee but in an alternative fashion. The scholars find that as the number of opposing party members (to the president) the confirmation process slows for nominees. In the end, both of these analyses

demonstrate the committee's capacity to either accelerate or apply the brakes to the appointment process.

This information leads to the next set of hypotheses: H13: We expect that the president will submit nominations more quickly in the event that a vacancy occurs in a state with a home-state senator serving on the Judiciary Committee; and H14: we expect the Senate to confirm those nominations more quickly.

Conditions Affecting the Judiciary's Functional Operations

Thus far, every existing account of the rise in delays fails to consider the institutional maintenance of the judiciary. Put more simply, the state of the judiciary, the workload of district court judges, and whether cases are moving through the system efficiently, plays no role at all in the story of how executive and legislative actors approach the appointment process. I argue that neglecting caseload management and the judiciary's capacity to process cases efficiently produces an incomplete account for why we observe both presidents moving more quickly or slowly to submit nominations, and senators moving more quickly or slowly to confirm nominees. After all, the court system plays an integral role in governmental effectiveness and efficacy. In fact, the judiciary has certain institutions in place that may help to explain why we see variation in the length of time presidents and senators take in their decision-making process.

The Type of Vacancy

When a vacancy lingers for many months and even years, home state

senator(s) regardless of party alignment with the president may be pressured by

various interests to address the problem (Bell 2002). Krutz, Fleisher, and Bond

(1998) note that senators cannot ignore their duty to confirm nominees "because

these positions must be filled to have a well-functioning government" (871). In the

end, senators have a constituency to satisfy. If the workload of judges in a

senator's state is too burdensome, and the processing of cases slow, certain

sectors of a senator's constituency, especially corporations, high-powered legal

elite, and interest groups may voice concerns should the senator not undertake

the necessary steps to fill those vacancies. Such constituents may be very

important to the senator in terms of campaigning and fundraising.

Should a political actor, whether a senator or an interest group,

communicate with the president or other administration officials about the need

for a judge in a particular district, this effort communicates a sense of urgency.

Also, if senators are pushing the president to act, then we can assume the

nomination, provided it is not controversial, will move through the confirmation

process more quickly and with more support. So the question arises: how do we

determine if one vacancy is more in need of filling than another? The logical next

step is to review the multiple ways vacancies occur in the first place, a set of

phenomena the extant literature often overlooks.

Most simply, a vacancy can occur when a judge dies, retires, resigns, or

has been elevated to a higher court or other political office. In the event of any of

the preceding conditions, the judgeship is left open, and perhaps more importantly, without a designated working judge. As a result, caseloads for other judges in that district automatically increase in an attempt to compensate for this vacancy.

Vacancies can also occur in the event that Congress has created a new judgeship. The Judicial Conference of the United States conducts a survey of both the district and circuit courts every other year. The primary goal of the survey is to assess whether or not additional judgeships are necessary in each district (U.S. Courts 2017, Judicial Conference). Generally, new positions are created when the weighted filings per judge exceed a threshold set by the Conference (U.S Courts 2017, Judicial Conference). Congress has the discretion to act upon the Conference's recommendations and may pass legislation that formally creates new positions.

Most commonly, however, judicial vacancies arise from the institution of senior status (Congressional Research Service 2016). In 1919, Congress created the option for judges to assume senior status rather than retire from the courts altogether (Holmes, Spill-Solberg, Haire 2012). Prior to its creation, lower court judges could retire at the age of seventy and receive a pension for the remainder of their lives (Holmes, Spill-Solberg, Haire 2012). Over time, Congress modified the regulations surrounding senior status with the most recent change occurring in 1984. During that year, Congress established the "Rule of Eighty." In order to qualify for senior status, the sum of the judge's age and tenure must add up to eighty, the judge must be at least sixty-five years old, and he or she

must have served on the federal bench for at least ten years (U.S. Courts, FAQs, 2017). Judges who meet these conditions may choose to elect senior status retiring from "active service" while remaining on the bench. While these senior judges may retire from "active service," they may still hear cases and carry caseloads at any level they desire. Senior status continues even in the event that the president fills that judge's vacancy with an active judge. If a senior status judge annually hears a caseload equivalent to at least a three-month active judge's caseload, he or she receives the same salary as an active judge as well as any pay increases given to active judges (U.S. Courts 2017, FAQs).

Perhaps more interesting is that judges meeting this "Rule of 80" criteria are financially incentivized to take senior status. Despite outcries from top figures in the legal community, federal judges' salaries remain relatively low when compared to salaries of those with legal careers in the private sector (Greenhouse, January 1, 2007). However, senior judges do enjoy one financially beneficial advantage: their salaries are not subject to federal FICA and Medicare taxes (Block 2007). This exemption affords judges with additional income that they would not enjoy as an active judge, which likely contributes to why we observe the vast majority of judges electing senior status on the very first day of eligibility (Block 2007).

Even though senior judges may work at whatever level they desire, more often than not, they work in excess of what is required by law both after electing senior status and after they have been replaced by an active judge (Holmes, Spill-Solberg, Haire 2012). In 2012, a total of 965 judges served at the U.S.

District level, and over 36 percent (354) of those judges were senior judges (U.S. Courts 2014, Statistics). These senior judges disposed of 19 percent (70,200) of the 376,170 cases terminated by all district judges (U.S. Courts, Statistics, 2014). In a study conducted by the Eastern District of New York (EDNY), surveyors found that EDNY senior judges had larger caseloads on average than active judges (Block 2007).

Because a judge who takes senior status may continue to hear cases at some level, the vacancy created is only a partial one. That is, the district may not lose the equivalent of a full judge's productivity when an active judge moves into the semi-retirement category of senior status. As opposed to these senior status or "partial" vacancies, some vacancies have more serious implications for the functioning of the district. We might call these "full" vacancies because the entire workload of that authorized judgeship is left for the remaining judges to handle. Full vacancies occur when a judge dies in office, resigns from the judgeship, retires without taking senior status, is impeached, or is promoted to a higher court. Full vacancies place a greater burden on the other judges in that district which inherently reduces the functional capacity of the court. Full vacancies, therefore, may demand more expeditious actions by administrative officials and the Senate than do partial vacancies.

The type of vacancy may suggest different levels of urgency, and that urgency may indicate senators will be more receptive to a nominee. These considerations lead to the following hypotheses: H15: we expect that the president will submit nominations for full vacancies more quickly than for partial

vacancies; and H16: we expect the Senate to confirm those nominations more quickly than nominations for partial vacancies;

Number of Existing District Vacancies

The number of existing vacancies in a district also has implications for caseload management. Excessive vacancies in a district present a problem similar to those of full vacancies. Presumably, the increasing number of vacancies a district has, the greater the workload becomes for active judges. As colleagues either depart the bench entirely or reduce their workload by taking senior status, the additional workload is dispersed among those sitting judges. As the number of unfilled vacancies in a given district rises, so too does the workload for the remaining judges. In addition, the district's case backlog may lengthen.

It is not unreasonable to suppose that excess vacancies in a district may generate greater attention from political actors in the appointment process. Should cases linger in a district for an extended number of months or years, elite groups of constituents are likely to push for quicker nominations and confirmations. Time and again, we have observed interest groups and elites efforts to "grease the wheel" in the confirmation stages (Bell 2002; Scherer 2005). Whether pushing the administration to submit nominations or encouraging home-state senators to plug and push a nomination through the confirmation stages, interest group and elite mobilization are powerful forces in the appointment process.

The localized nature with which vacancies occur on the lower courts as well as the importance of home-state senators in the appointment process call for a more refined measure of the lower courts' status. Prior to this analysis, scholars have neglected to look at conditions existing in specific districts. This dissertation aims to fill that gap by examining each district and assessing how many of the district's judgeships remain unfilled when a vacancy occurs. Across the country, districts vary in size and in number of case filings. Districts in less densely populated areas, for example the District of Idaho or District of Vermont, have fewer judges and dispense of fewer cases than districts in states like California, New York, and Texas. As a result, we are more likely to see multiple vacancies occur in these larger, more densely populated districts. Regardless of district size, one can imagine that as vacancies pile up in a district both the executive and legislative branches will be more motivated to act on vacancies in that district.

H17: We expect that the president will submit nominations more quickly as the proportion of existing vacancies rises in any given district; and H18: we expect the Senate to confirm those nominations more quickly than others;

District Court Vacancies Nationwide

In addition, the total number of district court vacancies system-wide may also affect the speed of the appointment process. While the existing number of vacancies in a district provides a measure of each district's status, the number of vacancies on the district level throughout the country may determine the extent to which judicial staffing has become a national problem.

Just as when the number of vacancies in a particular district rises, when the number of vacancies in the federal trial courts increases, more and more sitting judges are impacted. Rising levels of vacancies on the district level implies that more district court judges have larger caseloads. Larger caseloads indicate that judges on the whole are resolving disputes at a slower rate, which stalls legal processes all the way up the judicial chain.

In the past, interest groups such as the American Bar Association (ABA) and the American Civil Liberties Union (ACLU) have brought to light the burden federal judges' operate under, and have pressed legislators to alleviate those burdens either by establishing more judgeships or increasing administrative staff (Bell 2002; Troy 2011). In addition, the Chief Justice of the United States, who serves as the head of the United States Judicial Conference, presents an annual report to Congress about the business operations of the court system. This report provides workload statistics for all federal courts as well as communicates any existing problems in the courts system. The problems often discussed include rising caseloads and the low pay of federal judges relative to private practice (U.S. Courts 2016). The Chief Justice on behalf of the Judicial Conference recommends solutions to these problems in the annual evaluation. This type of activity by organizations within the judiciary and outside groups may generate more attention to the appointment process from both administrations and senators.

In addition to providing insight into the workload of judges across the country, including a measure for nationwide vacancies also accounts for the

expanding size of the federal judiciary over time. While scholars have previously considered the existing number of nationwide vacancies, they have only done so in the form of a simple count variable. However, at multiple stages in my research thus far, Congress created dozens of additional judgeships. Given this fact, a total count measure of existing vacancies may not be equivalent over time. For example, thirty vacancies in January of 1980 may not be theoretically equivalent to thirty vacancies in January of 2010. I will account for the expansion effect by calculating the proportion of vacant district judgeships relative to the total number of district judgeships for every month of the analysis. This endeavor requires combing through all 89 districts in the 50 states for every year of the analysis, and assessing the size of each district as it may change in any given year. With the size of the federal judiciary changing over time, a proportional measure better portrays the current vacancy situation in the federal courts as well as the appointment scenarios facing both the president and the Senate.

This information leads to the next set of hypotheses: H19: We expect that the president will submit nominations more quickly as the proportion of vacancies rises on the district court level nationwide; and H20: we expect the Senate to confirm more quickly those nominations as the proportion of vacancies rises on the district court level.

Omnibus Judgeship Act

With exception to the establishment of the Supreme Court and the position of the Chief Justice of the United States, the framers' did little to set up the early

foundations of the American Judiciary; they left that task to Congress. Fulfilling a promise made by the delegates of the Constitutional Convention, the First United States Congress passed the Judiciary Act of 1789 (Sollenberger 2011). It was in the Judiciary Act that the early statesmen provided the blueprint for a comprehensive federal court system. The newly elected senators and representatives fixed the Supreme Court justice number to six (including the Chief Justice), the Judiciary Act of 1789 created three circuit courts of appeals and thirteen district courts.[5] With the entrance of additional states into the Union and with the result of population shifts, those numbers have changed drastically. As of today, the federal courts system consists of a total of nine Supreme Court justices, 179 appellate judges from 13 circuit courts, and 667 authorized judges in the 94 district courts.

Perhaps more relevant to this study, however, is the origin of the largest expansion of the federal judiciary in American history. Since 1789, Congress has created judgeships for new states and territories, growing states, and burgeoning regions. Yet no resolution by Congress has enlarged the federal judiciary quite drastically as the Omnibus Judgeship Act of 1978 (Goldman 1997; Scherer 2005). As previously stated, the U.S. Courts and federal judicial appointment process underwent significant changes during President Carter's administration. Arguably the most important change, however, was the exponential increase in the number of authorized federal judgeships—a direct result of the Omnibus Judgeship Act's passing.

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[5] The number of Supreme Court justices would go on to change during the life of the United States, with as little as five to as many as ten. The number has not moved from nine since the Judiciary Act of 1869 (Sollenberger 2011).

The Act created 117 new positions at the district level and thirty-five seats at the circuit level, increasing the number of active federal judges at that time by one-third (Goldman 1997; Coe 1979). This massive injection of seats into the courts system presented both the White House and the Senate with a substantial administrative challenge. Filling such a high volume of seats along with already existing vacancies no doubt presented its share of obstacles. To find and vet nominees, to schedule and hold so many hearings--one could reasonably assert that these conditions presented the opportunity for a delayed appointment process.

Moreover, Congress has continued to pass bills since 1978 that have resulted in large numbers of newly created judgeships. Up until this time, no scholar has controlled for these large clusters of seats and their potential effects on the duration of the appointment process. I plan to account for this mechanism by controlling for the seats created by Omnibus bills in 1978, 1981, 1984, 1985, 1989, 1990, 1991, 1993, 1999, 2001, and 2003.

The dynamics of the Omnibus Judgeship Act and large addition of judgeships thereafter set up the next set of hypotheses; H21: we expect that the president will submit nominations more slowly in the event the vacancy was created by the Omnibus Judgeship Act; and H22: we expect the Senate to confirm those nominations more slowly than others;

Final Remarks

In 1789, George Washington wrote, "The Judicial System is the chief Pillar upon which our national Government must rest." The country's first president attached those words to the end of the papers designating his first nominees to the United States Supreme Court. Even then, the founders' understood how vital a functioning courts system is to a stable democracy. Those same men also realized the judicial branch's capacity to shape the federal government and its political practices, which is likely why we saw the Federalist party's successful attempt to stack the bench with ideological allies as they lost dominance in both the executive and legislative branches.

Without a doubt, the judicial appointment process has always been characterized by politics—the politics of those in power, those challenging the people or party with the power. Yet battles and delays over filling judicial vacancies have largely been confined to the Supreme Court or Circuit Court level, making them sparing. Given the enormous number of district court seats relative to the appellate courts, the delay and variation we see in the district appointment process has arguably affected federal legal processes more so than any other phenomenon.

As the literature stands, judicial scholars have focused largely on political factors and separation of powers. To be sure, gridlock and polarization affect the appointment process, but politics alone cannot account for why we observe certain outcomes, both speedy ones and slow ones. I seek to rectify what I believe to be a glaring oversight on the part of current scholars. This dissertation

will replicate the factors scholars have previously identified and put them together with new operational factors I believe are working to both slow and speed up the processes.

Chapter 4

Data & Models

In order to test my theoretical expectations empirically, I have compiled an original data set on U.S. District Court vacancies occurring from Richard Nixon's second presidential term through Barack Obama's first presidential term. My decision to begin with the vacancies occurring during President Nixon's second term stems from the Senate's decision to create 117 new district court seats in 1978 during President Carter's administration (Epstein and Segal 2005; Sollenberger 2011). As one of the principle goals of this analysis is to account for how the expansion of judiciary has affected the appointment process, beginning with the vacancies in Nixon's presidency provides a better control to determine how these expansions may or may not have affected nomination and confirmation rates.

I collected information on 1,583 vacancies, and of those vacancies, 1,464 received replacement nominations from presidents. Given the replication and original research components of this dissertation, these data constitute the most politically and practically comprehensive data set on district vacancies up to this time. The goal is for the data set alone to be a contribution to the field.

The data have been assembled primarily from four sources: the Congressional Research Service (CRS) reports on the judicial nominations of each president, the U.S. Courts' online archive of judicial vacancies, the Federal Judicial Center's (FJC) Biographical Directory of Federal Judges, and the Congressional Directory. For vacancies occurring prior to 1980, I collected the

information by hand as federal judicial records dating before 1980 are not currently digitized. The U.S. Courts archive provided the primary information about vacancies, the dates at which they occurred, the judge who vacated the position, and the reason for the vacancy, i.e. the type. The CRS reports include the information about each president's nomination to a vacancy, with the most important being the date of the nomination, the hearing date, the committee report date, and the date of confirmation. Any information not found in either of the CRS reports or the online archive has been supplemented with the FJC Biographical Data.

The data set accounts for the date that the vacancy occurred, the state and district in which it occurred, the type of vacancy, i.e. full vs. partial, the date that the president submitted a nomination for the vacancy, the dates for each sequence of events in the Senate (hearing date, committee vote reported, and confirmation dates) as well as all political and non-political conditions present in the theoretical section. In addition, I also accounted for the party affiliation of the home-state senators at the time the vacancy occurred and at the time of nomination and confirmation. I inserted dummy variables for each president as well as for vacancies that occur in a state where one senator of that state serves on the Judiciary Committee.

Empirical Analyses

The empirical section includes two principal independent models, each one with a different unit of analysis and dependent variable. The first model

assesses the presidents' responsiveness in submitting nominations for vacancies while the second assesses the Senate's responsiveness in confirming nominees.

Presidential Model

District court vacancies that occur during each president's tenure in office serve as the unit of analysis for this model. Even though all vacancies did not receive a presidential nomination for replacement, each vacancy is treated as an observation in the data set. The dependent variable of this model is the time to nomination.[1] The time to nomination is the number of calendar days from the time that a judge leaves active service until the day the president submits a nomination for that vacancy to the Senate. In the event that the previous president failed to fill a vacancy and that vacancy was inherited by his successor, the vacancy repeats in the data set, and January 20 of the incoming president's inaugural year serves as the starting date. In the event that the Senate rejects or returns a nominee, or that a nominee withdraws his or her name during the confirmation stage, this situation creates an additional vacancy in the data set. Since that vacancy remains open, it is still subject to another nomination. For this new observation, the date of return, rejection, or withdrawal serves as its starting date. If and when the president submits a nomination for that vacancy, that date serves as the nomination date. In the event that Congress has created a new judgeship, the date of creation or bill's signing into law serves as the

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[1] Technically, the dependent variable in a Cox Proportional Hazard Model is the hazard function at a given time. The time to nomination is necessary to estimate that function.

vacancy date.[2] Table 4-1 illustrates the statistics on the time from the creation of

a vacancy to the submission of a presidential nomination. The descriptive

statistics have been broken down by each presidential administration included in

the data set.

Table 4-1

Descriptive Statistics--The Number of Days from Vacancy to Nomination

President	Mean	Median	Min[3]	Max	sd
Nixon	206.13	164	0*	1135	198.80
Ford	164.03	134	0*	565	138.28
Carter	250.35	226	0*	698	148.77
Reagan	264.34	226	0*	1083	183.17
Bush 41	294.13	252	0*	1026	174.10
Clinton	321.92	280	0*	1460	239.37
Bush 43	219.67	187	0*	838	182.31
Obama	339.60	279	0*	1441	288.18

Senate Model

District court nominations submitted by presidents to the Senate serve as

the unit of analysis for this model. Each nomination is an observation in the data

set. The dependent variable in this model is the time to confirmation.[4] The time

to confirmation is the number of calendar days from the time the administration

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[2] In the rare event that a president failed to submit a nomination for a vacancy, the nomination date will become December 31 of the president's outgoing year. These vacancies will be right-censored in the analysis.

[3] There are instances where a president submits a nomination on the very day that a vacancy arises in a district. Typically, these vacancies come about due to a judge electing senior status or due to an elevation of a judge to the Circuit Courts of Appeals. In these situations, the judge creating the vacancy has notified the necessary political actors about his or her upcoming retirement, or the necessary actors begin the vetting and nomination process for a replacement judge in anticipation the vacating judge's elevation to a higher court. In either case, the vacancy receives a nomination immediately hence the minimum number of days being zero.

[4] Technically, the dependent variable in a Cox Proportional Hazard Model the hazard function at a given time. The time to confirmation is necessary to estimate that function.

submits the nomination to the date when the Senate confirmed the nominee.[5] In

the case that a nominee failed his or her confirmation, the date the Senate

rejected the nominee serves as the final date of analysis for that observation. In

the event the Senate returned the nomination to the president, the date of return

will be listed as the final date for that observation. If a nominee withdraws from

the confirmation stage, the date of withdrawal serves as the final date. These

failed, withdrawn, or returned nominees are right-censored in the data. However,

if the president submitted a new nomination for that same seat where a nominee

was rejected, returned, or withdrawn, that additional nomination is included in the

analysis. The date that the president submits another individual over the Senate

serves as the nomination date for that observation. Table 4-2 includes the

descriptive statistics on the time from nomination to Senate confirmation. Just as

with the nomination statistics, the confirmation statistics have been broken down

by presidential administrations.

Table 4-2

Descriptive Statistics--The Number of Days from Nomination to Confirmation

President	Mean	Median	Min	Max	sd
Nixon	42.06	28	10	382	62.61
Ford	57.96	34	6	316	66.14
Carter	81.79	62	3	572	76.39
Reagan	68.14	41	3	540	79.59
Bush 41	129.93	114	0	566	89.79
Clinton	138.89	106.5	0	648	111.93
Bush 43	160.87	139	30	653	97.27
Obama	226.4	215	0	660	90.12

Independent Variables

The following section describes in detail the operationalization of each independent variable.

Political Variables

The measurements of political variables affecting the judicial nomination and confirmation proceedings have been informed by the methodology of previous studies.

Senatorial Courtesy. For vacancies in states where no senators were affiliated with a president's party, the vacancies are coded as not having senatorial courtesy (0), and vacancies where at least one senator was of the president's party are coded as satisfying that condition (1).

Divided Government. The presence of divided government simply entails including a dummy variable. In the event the Senate is controlled by the same party as the president in office, the variable is coded as unified (0), and in the event the Senate is controlled by the opposing party of the president, the variable is coded as divided (1).

Ideological Distance. Ideological distance has been calculated in the following ways: For the nomination process, I used the first dimension of the president's and home-state senator(s) DW-Nominate score, and calculated the distance between those two positions. In the event that two home-state senators are members of the president's party, I averaged the two scores and calculated the difference between that average and the president's score. In the event

senatorial courtesy has not been satisfied, we can assume the president is not constrained by the preferences of home-state senators, however, he may be constrained by the preferences of the Senate chamber overall. In these cases, I have calculated the absolute difference between the president's DW-NOMINATE score and the median Senate NOMINATE score.

In keeping with Giles, Hettinger, and Pepper's (N.d.) work, I have calculated ideological positions on the confirmation analysis the following way: In the event that senatorial courtesy is satisfied, the home-state senator's DW-NOMINATE score (first dimension) has been used as a proxy for the nominee's ideological position. Like in the nomination analysis, if two home-state senators hail from the president's party, their scores have been averaged together to become the nominee's ideological position. If senatorial courtesy is not satisfied, then the president's DW-NOMINATE score has been used as the proxy for the nominee. From here, I have calculated the absolute distance from the "nominee's" position from the median Senate NOMINATE score. The original ideological scores in the both the presidential nomination data and the Senate confirmation data range from -0.52 to 0.56.

Thurmond Rule. In the event that a vacancy or a nomination occurs from July 1st through January 19th of a presidential election year, the variable has been listed as the satisfying the Thurmond Rule condition (1), but for all those vacancies and nominations not occurring in those six months of a presidential election year, the variable has not satisfied the condition and is coded (0).

First Year of Presidency. Those vacancies and any subsequent nominations occurring in the first year of the presidency have been coded as satisfying the condition (1), while those vacancies and nominations not occurring in the first year of a president's term have been coded as not satisfying the condition (0). To clarify, the vacancies and nominations taking place in the first year of a re-elected president's second term are listed as not satisfying the condition (0). Additionally, the start date for vacancies occurring in a presidential election year is January 1, not January 20.[5]

Female & Minority Candidates. All information regarding the gender and minority status of judicial candidates was determined through the use of the FJC's Biographical Data as well by Legal Organizations focusing on minority causes. For this variable, the female or minority status of the outgoing judge creating the vacancy was used for the presidential model. With respect to the Senate model, the variable concerns presidential nominations of female or minority candidates to vacant judgeships. To qualify as a minority, the candidate or vacating judge in question had to identify with a minority racial group, e.g., African-Americans, Hispanic, Asian, Native American.

In the event that a woman created a vacancy, the variable was coded as (1). For all those vacancies not satisfying the condition, they were coded as (0). In the Senate model, in the event a president nominated a female to a vacant judgeship, the variable was coded as (1), and nominations of men were coded as

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[5] This start date is consistent with other data. I found only one "recess appointment", Judge Walter Meheula Heen, a nomination made by President Carter to a long-term district court vacancy in Hawaii. Incidentally, Judge Heen's nomination was never confirmed by the Senate. Other than the Heen appointment, I found no other evidence in the data set of presidents making nominations after December in an election year in which that president did not win re-election. President Clinton made one recess appointment for a Circuit Court of Appeals vacancy, and President George W. Bush made two recess appointments for appellate vacancies.

(0). Vacancies created by minorities were coded as (1) in the presidential model, and vacancies not satisfying that condition were coded as (0). Presidential nominations of minority candidates were coded as satisfying the condition (1) in the Senate model, and all those nominations of individuals not satisfying the condition were coded as (0).

Senate Judiciary Committee. In the event a vacancy and subsequent nomination have occurred in the home-state of senator(s) who serves on the Judiciary Committee, the presence of the condition is categorized in three different ways. In keeping with Bell (2002), this variable is measured in order to effectively capture the influence of majority and minority members on the committee. If a vacancy and nomination occur in a state where a senator serves on the Judiciary Committee as a majority party member, the condition is satisfied (1). Those vacancies and nominations occurring in a state where there is no senator serving on the Judiciary Committee as a majority party member are listed as not satisfying the condition (0). The second categorization captures the role of minority members on the Senate Judiciary Committee: if a vacancy and nomination occur in a state where a senator serves on the Judiciary Committee as a minority party member, the condition is satisfied (1). Those vacancies and nominations without a minority member on the Judiciary Committee are coded as (0). Finally, the third categorization simply classifies whether or not there is the presence of a home-state senator on the Senate Judiciary Committee regardless of the senator's minority or majority party member status. Those vacancies and nominations occurring in states where there is a senator serving on the

committee are coded as (1), and those vacancies and nominations that do not

satisfy the condition are listed as (0).

Operational Variables

As previously stated, no scholar has systematically assessed how the

functioning of the federal courts affects appointment decision calculuses and

nomination and confirmation timings. Given that, the operational variables and

their measurements are new to the field and are detailed in the following section.

The Type of Vacancy. Those vacancies where a judge has died, been

elevated or promoted, chose to retire, was impeached, or chose to resign are

categorized as full vacancies (1).[6] In the event that a judge elected senior status

or in the event Congress created a new judgeship, the vacancies are coded as

partial vacancies (0).[7]

Existing Vacancies in District. The data set includes a measurement

accounting for the proportion of existing vacancies in a district when each

vacancy occurs. Given that districts vary in size across the country, the values for

this variable have a wide range. When a vacancy occurs, that vacancy has been

added to any additional vacancies already in existence in the district. The size of

judicial districts in the data set range fro 1 to 28 judgeships. The number of

vacancies in a given district in the presidential nomination data range from 1 to

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[6] The difference between elevation and promotion is that a judge who has been elevated has moved on to a higher-level court in the system like the Circuit Courts of Appeals. Promoted district court judges moved onto an arguably more prestigious position within or associated to the courts system such as Director of the Federal Judicial Center (FJC). This type of promotion occurs rarely in the data.

[7] While the creation of a new judgeship signifies a workload problem of some urgency in the district, vacancies created by new judgeships do not add to the existing duties of continuing judges in the districts. In the event that a judge leaves the bench altogether, the impact of that departure is felt immediately in that district since the remaining judges experience an automatic increase in their workload as the departing judge's caseload is dispersed among them.

10, and the number of vacancies in a given district in the Senate confirmation data range from 1 to 13. From here, I calculated the proportion of vacant district judgeships by dividing the existing number of district-specific vacancies by the total number of authorized district-specific judgeships.

District Court Vacancies Nationwide. In addition to coding for the number of vacancies in a given district, I have also accounted for the proportion of district court judgeships that are vacant relative to the total number of available judgeships. I have calculated the proportion of vacancies for every month in the data set. In a cursory review, the number of nationwide vacancies varies substantially month to month both increasing and decreasing. However, the total number of district court vacancies in any given month in the presidential nomination data range from 1 to 120. In the Senate confirmation data, the total number of district court vacancies in any given month range from 2 to 120. Using these numbers, I calculated the proportion of nationwide vacancies by dividing the total number of existing U.S. District Court vacancies by the total number of authorized U.S. District Court judgeships.

Omnibus Judgeship Act. I have inserted a dummy variable for vacancies created by the Omnibus Judgeship Acts in 1978, 1981, 1984, 1985, 1989, 1990, 1991, 1993, 1999, 2001, and 2003. Those vacancies that satisfy the condition have been given (1) and those vacancies that do not are listed as (0) for this variable.

Model Estimation

For the initial analysis, I have estimated two Cox proportional hazard models: one for presidential responsiveness and one for Senate responsiveness. Both models include all the independent variables and controls listed above. The choice of this model is a logical one as proportional hazard models are useful to assess the effects of multiple covariates on the rate of the nomination and confirmation times, i.e., does each variable of interest slow down or speed up the rate at which presidents nominate and the Senate confirms? Also, I have no prior expectations about the functional form of the underlying hazard risk, making the choice of the Cox model a natural one. In addition, hazard models are best equipped to handle right-censored data, which include those vacancies for which no nominations or confirmations ever occurred. The incidence of vacancies not receiving nominations or nominations without confirmations is not too frequent, but nonetheless happens. Furthermore, previous studies have used a Cox proportional hazard model (Binder and Maltzman 2002; Massie, Hansford, Songer 2004; Binder and Maltzman 2009), and considering the replication component of this project, using the same type of model provides a degree of consistency and mode for direct comparison.

Extensions of the Model

First, I examined the interactive effects of these political and non-political variables. Certain combinations of vacancy conditions may or may not generate greater attention from both presidents and senators. Additionally, I controlled for

particular conditions, especially unified versus divided government, in order to explore how the change in political climate may shift the importance of certain variables relative to one another.

Second, I have broken down the first model by date ranges. I have included all the variables and controls from the first model, but have broken down the data by two key date ranges, 1972-1992, and 1993-2012. The goal with this extension is to analyze potential trends and or shifts over time. The importance of politics or practical operations varies depending upon certain conditions. In times directly following large expansions of the judiciary, the functioning of the courts may be far more important than the political factors in terms of filling seats. In times when the districts courts have very few vacancies, indicating that the system is working well, perhaps political factors are far better predictors of the time variation for nomination and confirmations. The analysis chapters will thoroughly explore all the above hypothetical conditions and phenomena.

The Interviews

With regard to the interviews included in the dissertation, it is necessary to discuss their intention and the nature with which they were conducted. First, I must emphasize that the interviews are not for the purpose of establishing research findings, but for the much more limited purpose of speaking to the results of the quantitative analyses from the perspective of knowledgeable actors inside the selection system. These actors and their commentary provide a nuanced understanding of and relevant reaction to what the quantitative results

reveal—the interviews add material to the story that the numbers do not tell on their own.

My goal was to interview federal judges, congressional staffers who work with the selection process, and executive branch officials knowledgeable of appointment dynamics. All those who received an interview request were well positioned to provide the necessary commentary. While I was able to speak with judicial and congressional affiliates, unfortunately no executive branch official responded to my requests. In the end, I interviewed six individuals, three who had worked in the legislative branch, and three from the judicial branch. Two individuals of the judicial branch were active federal judges, and the third continues to work as a senior judge. Two individuals preside over federal districts in the Sixth Circuit, and third judge hears cases in a district within the Fifth Circuit. Regarding the legislative staffers, I interviewed two individuals who have worked in key advisory positions for Democratic senators, and one staffer who aids a Republican Senate leader.

Per Emory's requirements, I fulfilled all Institutional Review Board (IRB) criteria for the interviews, both in applying to conduct them and in the actual practice of interviews. The exchanges began with open-ended questions about the nomination and confirmation stages of the appointment process. From there, I asked follow-up questions based upon the subjects' comments as well as specific questions regarding the results of the quantitative analyses. Per their request, I will honor and maintain the interviewees' anonymity indefinitely, a wish each person requested in exchange for their testimonial.

In the end, the analysis chapters provide greater insight into the

contributing factors affecting the federal judicial appointment process. With the

replication of already known factors and the addition of new operational variables,

the models uncover some previously unknown features of each stage of the

process. As I have stated before, politics matter—but to what degree they matter

given these new operational characteristics becomes a fruitful discussion in the

upcoming chapters.

Chapter 5

Presidential Nomination Analysis

Without question, the president possesses significant power to shape the federal judiciary. This power derives from the framers' constitutional designation as well from the inherent influence the White House exerts over political actors. Even though the Senate retains the right to confirm or reject the president's nominees, the fact remains that the president always enjoys the "first move," which one can easily argue is a significant advantage in the game of judicial appointments. Senators expect that the White House will select and promote ideologically akin judicial candidates, and even during states of heightened partisanship, senators have confirmed the majority of the presidents' nominees. Whether that practice continues in the future remains to be seen, but given what we have observed over time, we should take care to examine what factors contribute to how presidents proceed in selecting nominees. More specifically, do the factors discussed at length in earlier chapters speed up or slow down the nomination segment of the judicial appointment process?

This chapter begins with a review of all the vacancy data collected for the presidential analysis, and then proceeds with an explication of the main presidential nomination analysis model. From there, I explore the data further by creating four separate models, two of which examine the effects of unified and divided government, and two of which explore the potential changes in variables' influences over time. This extension portion reviews the data breakdown, model explication, and each model's results. The final section of the chapter comprises

an overview of the models' findings in the context of information gathered through interviews with key staff members to Senate leaders and with members of the judiciary.

Presidential Nomination Model—First Iteration

In this first section of the chapter, we will explore the dynamics governing judicial nominations and presidential decision-making as it applies to all the data in the analysis. The primary objective of this endeavor is to examine the effects of the independent variables over a forty-year time frame. The analyzed data include all U.S. District Court vacancies and presidential nominations occurring from the beginning of 1973 through the end of 2012. Given the expansive date range, I have broken down the descriptive statistics by each variable as well as created graphs illustrating nomination durations for each president. Table 5-1 showcases the relevant values—the means, medians, minimums, maximums, and standard deviations of each independent variable as well as for the dependent variable, the number of days from the beginning of a vacancy to the date of nomination.

Data Overview

Given that the majority of the independent variables are dichotomous (having values of 0 or 1), the mean values of all but three independent variables are readily interpretable in terms of the presence or absence of particular conditions. Of the 1,583 vacancies in the data, 74.7 percent (0.747) of them

Table 5-1
Presidential Nomination Model Descriptive Statistics

Independent Variable	Mean	Median	Min	Max	sd	N[1]
Political Variables						
Senatorial Courtesy[2]	0.747	-	0	1	0.434	1184
Divided Government	0.401	-	0	1	0.490	635
Ideological Distance[3]	0.042	0.045	-0.521	0.596	0.330	1583
Thurmond Rule	0.079	-	0	1	0.269	125
First Year of Presidency	0.361	-	0	1	0.481	572
Female Candidate	0.060	-	0	1	0.238	95
Minority Candidate	0.040	-	0	1	0.198	65
Judiciary Majority Member	0.201	-	0	1	0.401	318
Judiciary Minority Member	0.149	-	0	1	0.356	235
Operational Variables						
Full/Partial Vacancy	0.217	-	0	1	0.412	343 (full)
Existing District Vacancies[4]	0.073	0.000	0	0.833	0.102	1583
District Vacancies Nationwide[4]	0.094	0.007	0.001	0.245	0.056	1583
Omnibus Judgeship	0.191	-	0	1	0.393	302
Number of Days From Vacancy to Nomination	273.3	233	0	1465	209.463	1583

[1] Here, N stands for the number of vacancies that satisfied the presence (1) of each independent variable.
[2] All but three variables are dichotomous, meaning that they are present (1) or not (0). Here, the mean value of 0.747 indicates that 74.7 percent of vacancies in the data satisfied the condition of senatorial courtesy. For all other dichotomous variables, the same logic prevails.
[3] The measure for Ideological Distance is transformed into absolute values for the models, but these values represent the original range.
[4] The measures for Existing District Vacancy and District Vacancies Nationwide have been transformed into proportions for the models.

arose when a sitting senator was of the president's party, thereby satisfying the conditions of senatorial courtesy. Just over 40 percent (0.401) of the vacancies occurred under conditions of divided government with nearly 60 percent arising during unified government.

Perhaps more interesting is that 36 percent (0.361) of the all the vacancies arose during the first year of a president's tenure. While at first glance the average seems large, the statistic becomes more reasonable once one takes into account the consistency with which presidents inherit dozens of vacancies from their predecessor. While many of those inherited vacancies arose in the remaining months of the outgoing president's term, some inherited vacancies are simply ones for which the outgoing president never submitted nominations as well as nominations that were never confirmed by the Senate. Over 20 percent (0.201) of vacancies arise in states where senators serve as majority members of the Judiciary Committee, and just under 15 percent (0.149) of vacancies occur when a home-state senator is a minority member of the Judiciary Committee. The mean values for the minority and female independent variables illustrate the severe underrepresentation of women and people of color on the federal bench. Women and racial minorities vacated only six percent and four percent of district court judgeships, respectively.

For the operational variables, nearly 22 percent (0.217) of district judgeships were vacated altogether by active judges, thereby designating them as full vacancies. The remaining 78.3 percent of nominations failed to satisfy the conditions of full vacancies. Of those partial vacancies, over 75.4 percent were

created by a judge's election of senior status, and the remaining 24.6 percent were created by default of the authorization of new judgeships. Nearly 20 percent (0.191) of district vacancies came about from the creation of judgeships by omnibus bills.

Figures 5-1 through 5-8 illustrate the nomination rates by each of the presidents during the period studied. The heights of the bars of the histograms show the patterns with which presidents submit nominations for district judgeships. Sometimes presidents take relatively few days (from the day the seat becomes open) to send the Senate a nomination, and on some occasions vacancies persist for a very long time.

Figure 5-3 as compared to Figure 5-1 and Figure 5-2 demonstrate the marked shift in presidential nomination rates. The time necessary to designate a nominee rose substantially under Jimmy Carter. During his administration, a majority of judgeships were vacant for more than 200 days before a replacement was named. These delays were significantly longer than had occurred under his two predecessors. The principal culprit for this marked shift was the Omnibus Judgeship Act, which undoubtedly created an administrative bottleneck on both the nomination and confirmation processes. The addition of more than 100 district seats and the vetting and constitutional processes attached to those judgeships simply required more time. The increase in the length of nomination time continued under President Reagan, when for the first time, a number of vacancies did not receive a nominee for more than 700 days. The progressive

Figure 5-1

Richard Nixon Nomination Rates

Figure 5-2

Gerald Ford Nomination Rates

Figure 5-3

Jimmy Carter Nomination Rates
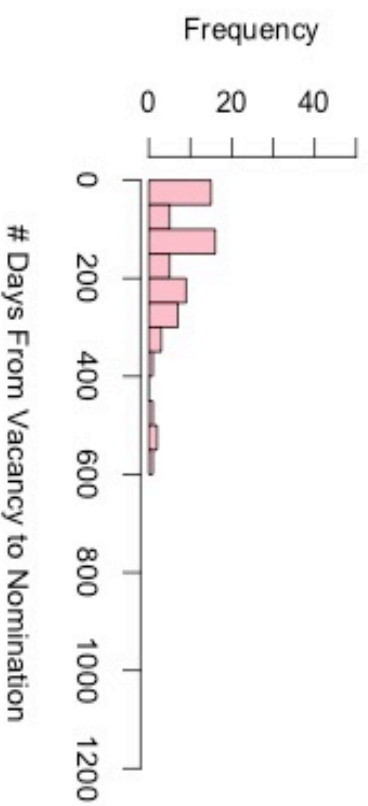
Figure 5-4

Ronald Reagan Nomination Rates

88
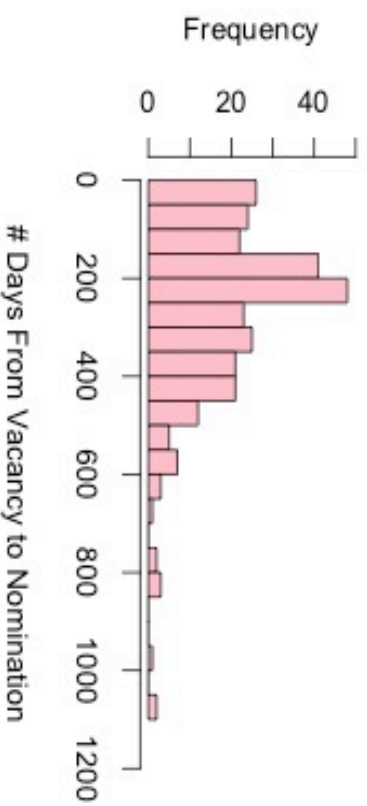
George H.W. Bush Nomination Rates

Figure 5-5

Bill Clinton Nomination Rates
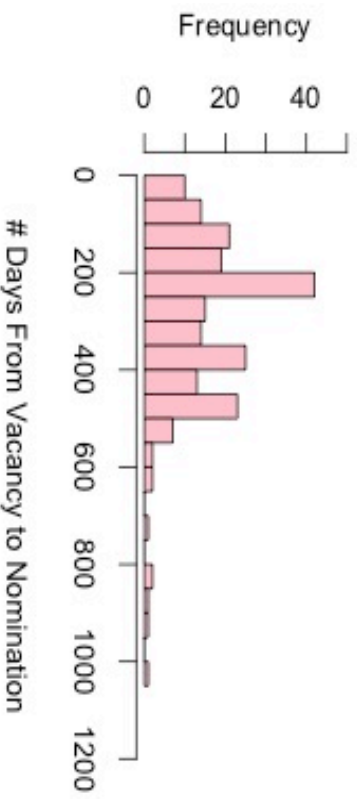
Figure 5-6

George W. Bush Nomination Rates
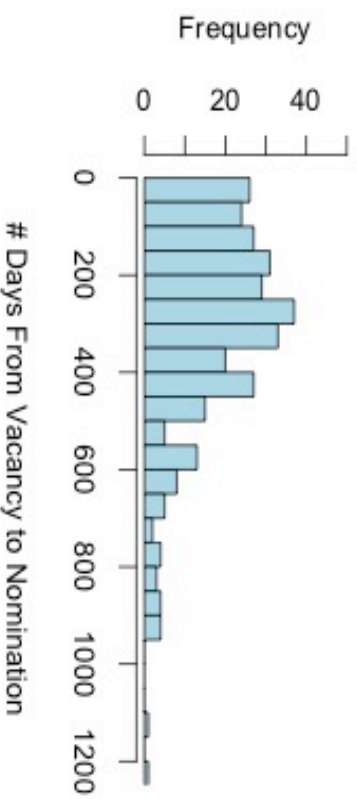
Figure 5-7

Barack Obama Nomination Rates

Figure 5-8

89
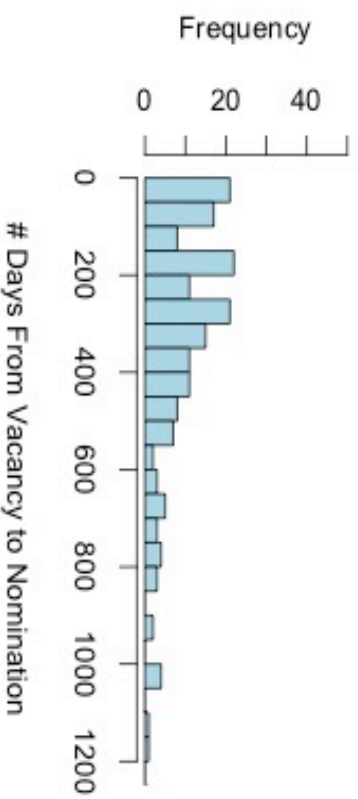
increase in the length of the nomination process continued through the Bush I and

Clinton years.

However, George W. Bush's presidency reversed the trend that began

under Carter. The anecdotal evidence reflects the extent to which Bush and his

staff viewed the judiciary as a vehicle for policy change (Goldman, Slotnick,

Schiavoni 2011). Additionally, scholars have noted the administrative efficiency of

the Bush team as they approached the nomination process (Hollibaugh 2015). The

data here provide further support for those claims, as Figure 5-7 demonstrates that

the Bush administration moved with relative speed to submit nominations for

vacancies. President Obama, however, returned to a nomination pattern similar to

President Clinton's.

The box plots in Figure 5-9 show the median number of days each

president has taken to submit a nomination, the first and second standard

deviations from the mean number of days, and the outliers in the range. The

circles represent the outliers or extreme values in each president's nomination

pattern. The box plots show the consistent increase in range, median number of

days, and standard deviations from the mean through the first term of the Obama

administration.

Main Presidential Nomination Model Explication

As discussed in the research design, I estimated a Cox proportional hazard

model. Using the number of days from when the vacancy first occurred until the

Number of Days from Vacancy to Nomination

Nomination Descriptive Statistics By Administration

Figure 5-9

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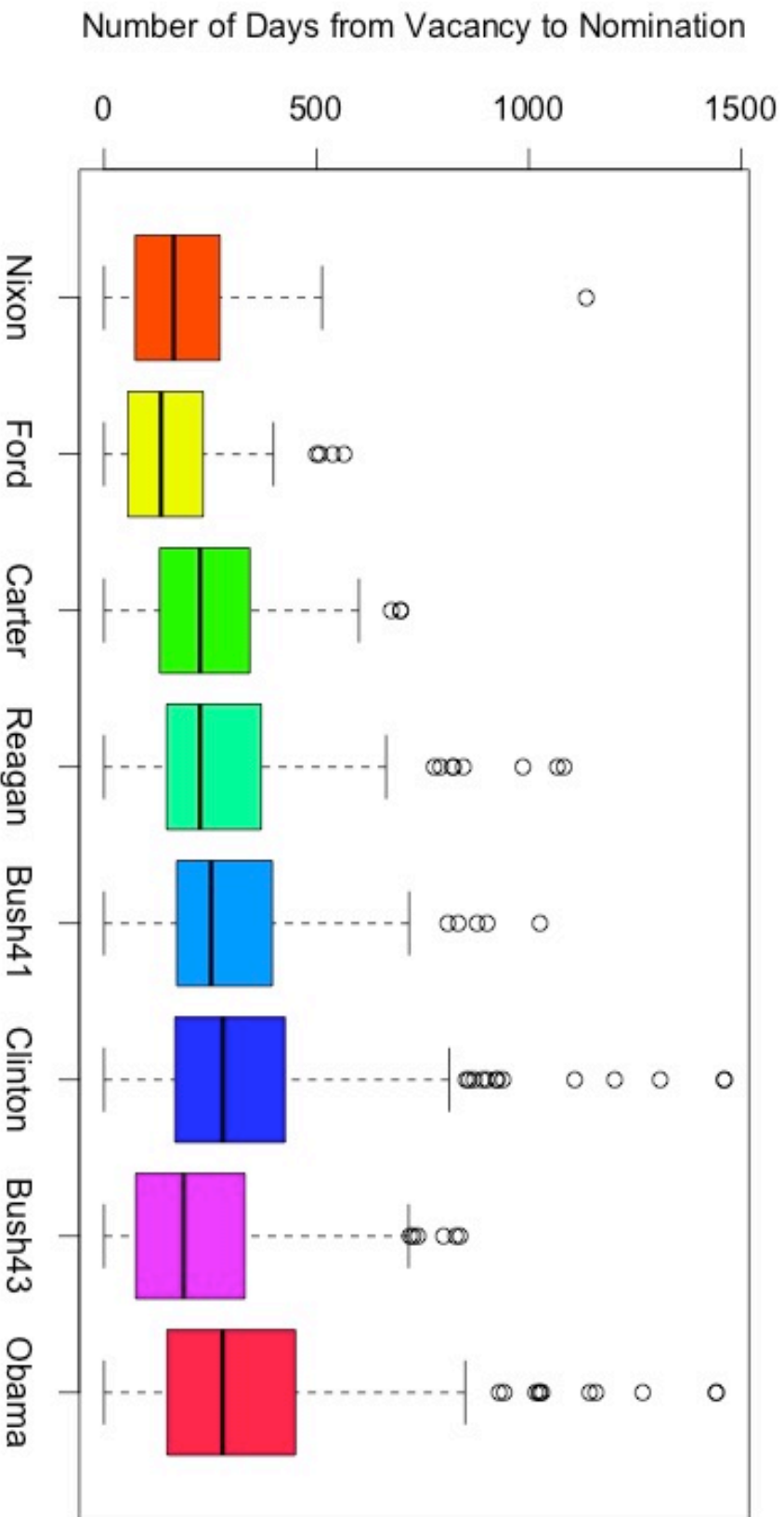
day that vacancy received a nomination, I was able to calculate the baseline

hazard rate. Essentially, the model uses which day, e.g. day one or day 100,

each vacancy received a nomination. The date of nomination serves as the

failure date. Of the 1,583 vacancies in the nomination model data, 117 in the

sample never received nominations, and consequently are included in the model

as never having failed. The goal of the model is to assess the impact of the

covariates on the hazard rate, calculated using the following equation:

$$h(t) = h_0(t) \; X \; exp(b_1 x_1 + b_2 x_2 + ... + b_p x_p)$$

where t represents the survival time;
$h(t)$ is the hazard function determined by a set of p covariates ($x_1, x_2, ...,$ x_p);
the coefficients (b_1, b_2, b_p) measure the impact of the covariates;
where h_0 represents the baseline hazard;

Over time, the baseline risk of receiving a nomination increases. Vacancies are

more likely to receive nominations on day 500 than on day 100. Figure 5-10

illustrates the cumulative hazard function for the model—take note that as the

numbers of days increase so too does the hazard rate. Figure 5-11 illustrates the

survival rate for the vacancies in the nomination sample. The plot shows that

over 95 percent of vacancies survive, i.e. do not fail, on day zero (the date at

which the vacancy occurs).[1] The Greek or equilateral crosses on the plot lines in

both graphs indicate the failure of a vacancy (meaning the vacancy has exited

the sample by receiving a nomination).

---

[1]In the event that a vacancy receives a nomination before or on the date the judgeship becomes vacant, the length of time from the vacancy to the nomination is zero days. As previously stated, nominations occurring before or on the date the seat becomes vacant typically occur when a district judge has been elevated.

Figure 5-10

Cumulative Nomination Hazard Rate
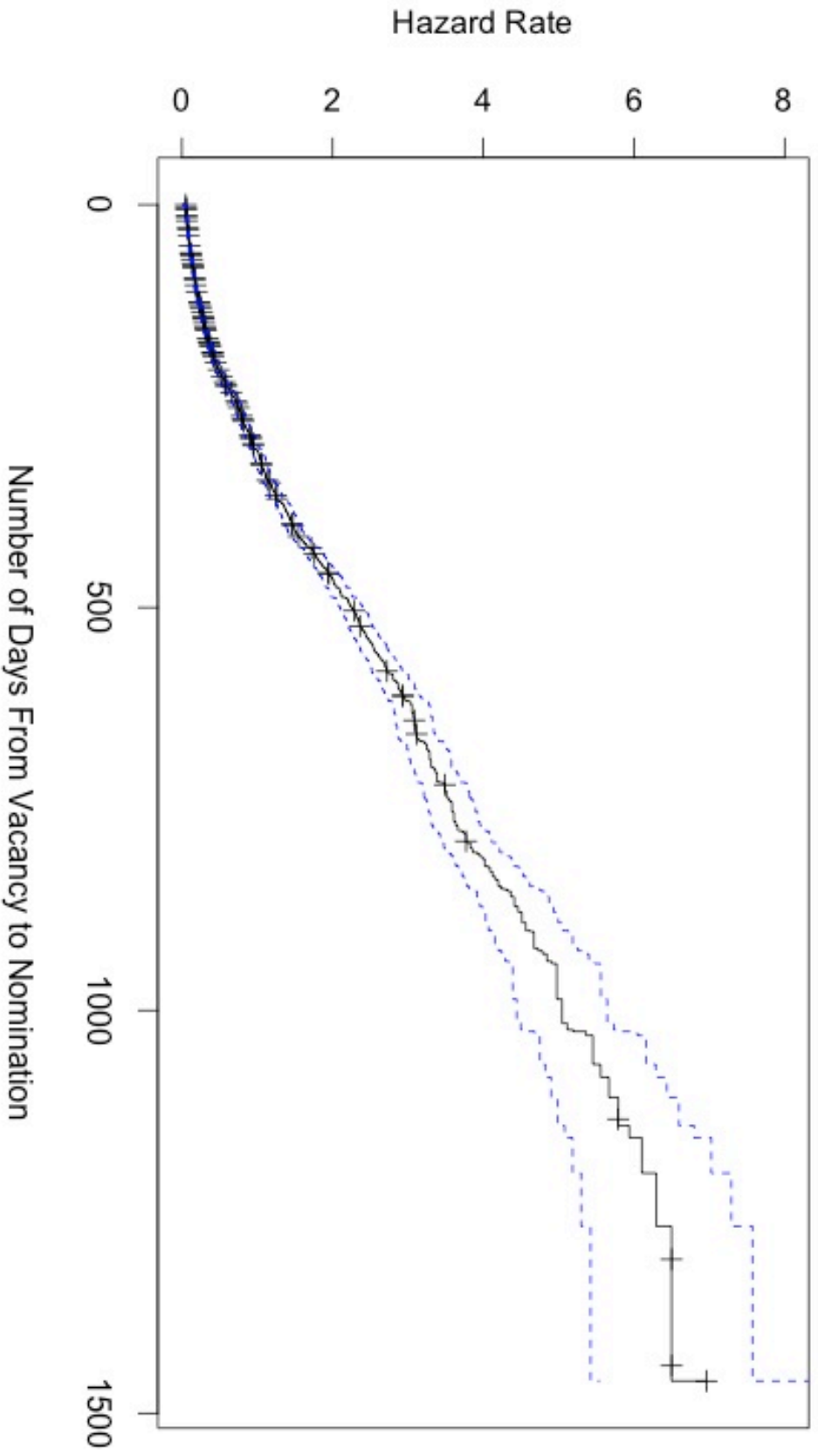
Figure 5-11

Vacancy Survival Over Time
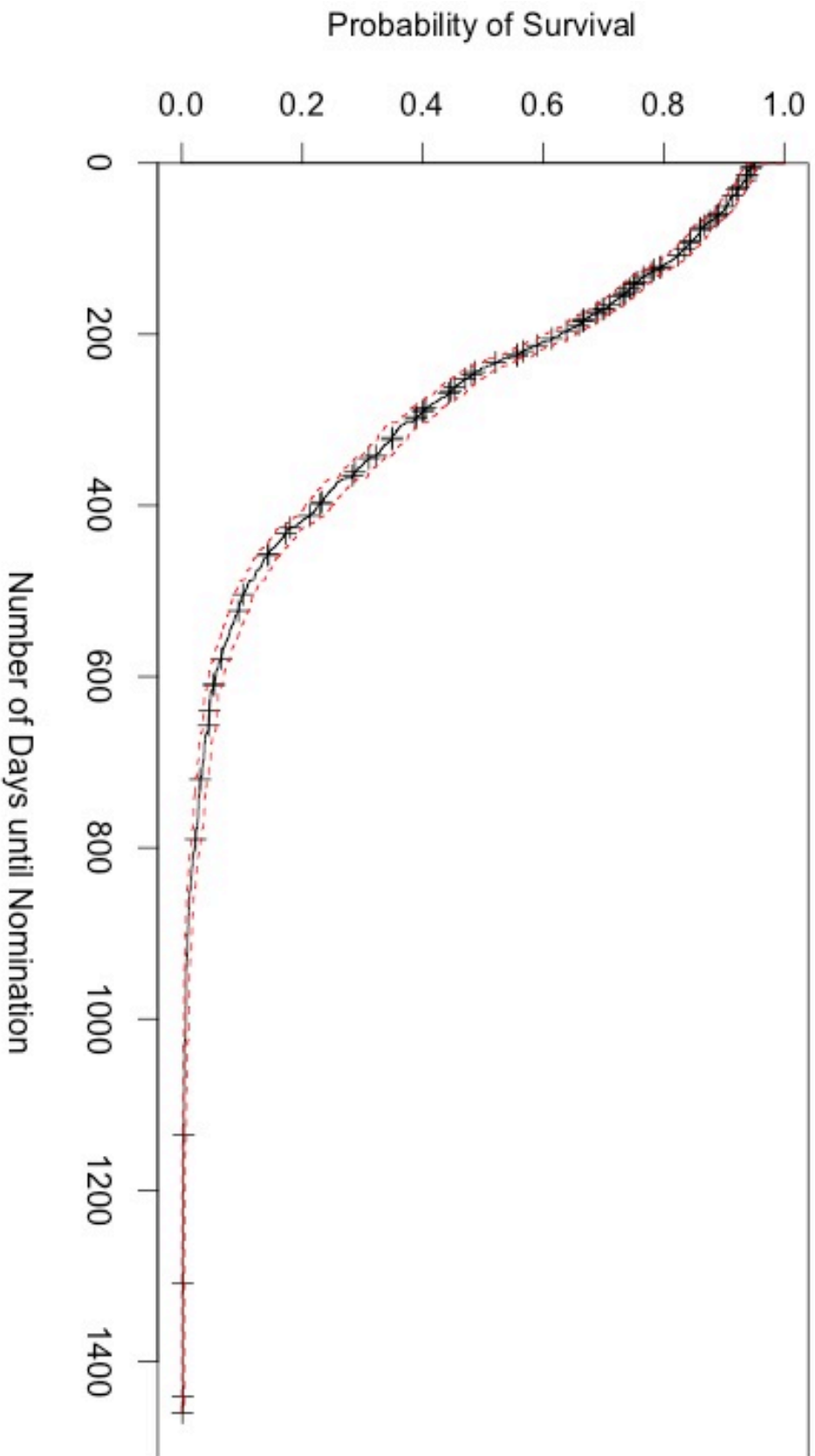
At day 500, only 11 percent of vacancies run the risk of a nomination as approximately 89 percent of the vacancies have already exited the sample. Having this knowledge, we can now assess the impact of the covariates on this hazard rate over time. Effectively, we measure how the covariates affect the risk of receiving a nomination on day one, day 100, and so on. Do they increase the hazard rate, decrease the hazard rate, or have no affect at all?

Main Presidential Nomination Model Results

Table 5-2 displays the results of the presidential nomination model. The overall fit of the model is good, as we can safely reject the hypothesis that the coefficients are jointly 0. Simply stated, positive coefficients have the effect of speeding up the rate at which vacancies fail, i.e. vacancies receive nominations. Negative coefficients have the opposite impact—they decrease the rate at which vacancies receive nominations.

Of all 14 covariates, nine are statistically significant. Contrary to expectations, four independent variables do not affect the rate at which presidents submit nominations. The variables controlling for vacancies created by females and vacancies created by minorities failed to achieve statistical significance at the 95 percent confidence level. Additionally, the variables accounting for vacancies created in states where a senator(s) served as a member of the Judiciary

Table 5-2
Presidential Nomination Model Results

Independent Variables	Expected Sign	Coefficient	Exponential (Coef)	SE[1]	SD	Transformed Coefficient	Transformed Exp(Coef)
Political Variables							
Senatorial Courtesy	+	0.328	1.388	0.067***	-	-	-
Divided Government	-	-0.177	0.837	0.058***	-	-	-
Ideological Distance⁺	-	-0.349	0.705	0.150*	0.192	-0.067	0.935
Thurmond Rule	-	-0.561	0.570	0.104***	-	-	-
First Year of Presidency	+	-0.523	0.593	0.059***	-	-	-
Female Candidate	-	0.045	1.046	0.116	-	-	-
Minority Candidate	-	0.109	1.116	0.135	-	-	-
Judiciary Majority Member	+	-0.187	0.829	0.069	-	-	-
Judiciary Minority Member	+	0.076	1.079	0.076	-	-	-
Operational Variables							
Full/Partial Vacancy	+	0.185	1.202	0.068**	-	-	-
Existing District Vacancies⁺	+	0.828	2.279	0.193***	0.102	0.084	1.088
District Vacancies Nationwide⁺	+	-4.905	0.007	0.685***	0.056	-0.274	0.760
Omnibus Judgeship	-	0.231	1.259	0.091*	-	-	-

[1] P-values of <0.05 are denoted with one asterisk (*), p-values of <0.01 are denoted with two asterisks (**), and p-values of <0.001 are denoted with three asterisks (***).

⁺ Denotes this variable is continuous and has been transformed according to the methodology in the text.

Committee, either as a majority or minority member, did not attain statistical significance.

In order to assess the substantive impact of the nine influencing variables, it is easiest to interpret the effects through the exponential estimate. As previously stated, the model calculates a baseline hazard rate, which the covariates either speed up or slow down by default of their presence or magnitude of their scale. For the dichotomous variables, the results are readily understandable. While the positive or negative sign of the coefficient indicates whether or not the variable speeds up or slows down the nomination process, the exponential coefficient indicates the extent to which the variable increases or decreases the risk of a vacancy receiving a nomination at any given day, provided the vacancy has not already failed in the sample. For statistically significant variables with exponential coefficients greater than one, the risk of nomination is exactly the numbers following the decimal point. To clarify, a variable with an exponential coefficient of 1.25 would increase a vacancy's risk of nomination by 25 percent. Exponential coefficients less than one have the opposite effect—the risk of nomination is reduced by 1 minus the exp(coef). For example, an exponential coefficient with the value of 0.75 reduces the risk of nomination by 25 percent (1.00-0.75).

Now that the method for understanding the dichotomous variables has been explained, we can begin the analysis on those variables. First, we turn to the dichotomous political variables. In keeping with my theoretical expectations, in the event senatorial courtesy is present, the risk of receiving a nomination is 38.8 percent higher provided that the vacancy has not already terminated in the study.

In contrast, the condition of divided government reduces the rate at which we observe nominations occurring. When different parties control the White House and Senate, a vacancy's risk of receiving a nomination is 16.3 percent lower than during times of unified control (1-0.837 (divided government exponential coefficient)). The Thurmond Rule also reduces a vacancy's risk of nomination. In the event that a vacancy occurs in the last six months of a presidential election year, the risk of a presidential nomination reduces by 43 percent. The first year of presidential tenure considerably affects the risk of nomination. While the existing literature suggests that presidents' enjoy an appointment honeymoon in the first year of the presidency, on the nomination side of the process, the time required to "grease the wheels" and vet nominees reduces the risk of nomination by 40.7 percent.

Both of the dichotomous operational variables substantively affect the nomination rate. The conditions of a full vacancy exert a substantively significant effect on the nomination process. This operational variable, which has not been examined in the research literature previously, increases a vacancy's risk of nomination by 20.2 percent. This result falls in line with theoretical expectations. Vacancies left altogether by a previous judge, receive quicker attention than partial vacancies created by judges who elect senior status or semi-retirement. Contrary to my theoretical expectations, however, vacancies created by omnibus bills increase the risk of nomination by 25.9 percent. Perhaps in these cases, administrative staffs move more quickly through the vetting process and or are preparing in advance of the establishment of these new judgeships. An alternative

explanation for this result is that new judicial seats have fewer political

expectations attached to them versus older seats in need of replacement.

For the continuous variables, the substantive effect is not as readily

interpretable. This difficulty arises because these variables are measured on a

scale rather than operating as a function of the absence or presence of a particular

condition. For example, ideology is measured across a spectrum, and the

numbers of vacancies in both individual districts and in the nation as a whole

increase incrementally. Simply put, how do those incremental increases or

decreases across the variables' ranges affect the rate of nomination?

Given their scaled nature, the variables were transformed to make their

effects more intuitively understandable. Per the current literature, the variables'

effects on the risk of nomination are better grasped by calculating the risk at every

standard deviation increase from the mean (Mills 2011; Box-Steffensmeier and

Jones 2004). This process requires that each continuous variable coefficient be

multiplied by the standard deviation of that specific variable and then

exponentiated. To clarify, the transformed coefficients in Table 5-2 were derived

from replicating the following process for each continuous variable:

For ideological distance (ID),

1) original coefficient (ID) X standard deviation (ID)= transformed coefficient (ID)

$$-0.349 \text{ X } 0.192 = -0.067$$

2) (transformed coefficient (ID))^{exp} = transformed exp(coef)

$$(-0.067)^{exp} = 0.935$$

Now that the transformation method has been addressed in detail, the substantive effects of those continuous variables are easily interpretable, with Figure 5-12 illustrating both the continuous and dichotomous variables' effects. The variables with lines above the black colored baseline speed up the rate at which we observe presidents making nominations for vacancies, and the lines of variables below the baseline slow down presidential nomination rates. For the continuous political ideology variable, the model results conform to my theoretical expectations. As the absolute distance between the home-state senator(s) and president increases, the speed of nomination decreases. For every standard deviation increase in the mean of ideological distance, there is a 6.5 percent decrease in the risk of nomination. For every one standard deviation increase in the mean proportion of district-specific vacancies, there is an 8.8 percent increased risk of nomination. In contrast, for every standard deviation increase in the proportion of district vacancies across the nation, there is a 24 percent decrease in the risk of a vacancy receiving a nomination. These opposing results paint a picture that the necessary political actors are moving more quickly to address vacancy and judicial staffing problems at a "local" level rather than a national level. In the event that there is a district-specific need, perhaps White House liaisons are better equipped to handle vacancies on a one-by-one basis. Or, possibly home-state senators are pressuring at the president to act quickly. As vacancies multiply across the nation, the model results indicate that politicians cannot easily combat the selection process backlog. Then again, the results could also suggest that administrations and other political actors are less concerned

Effect of Independent Variables on Nomination Hazard Rate

Figure 5-12

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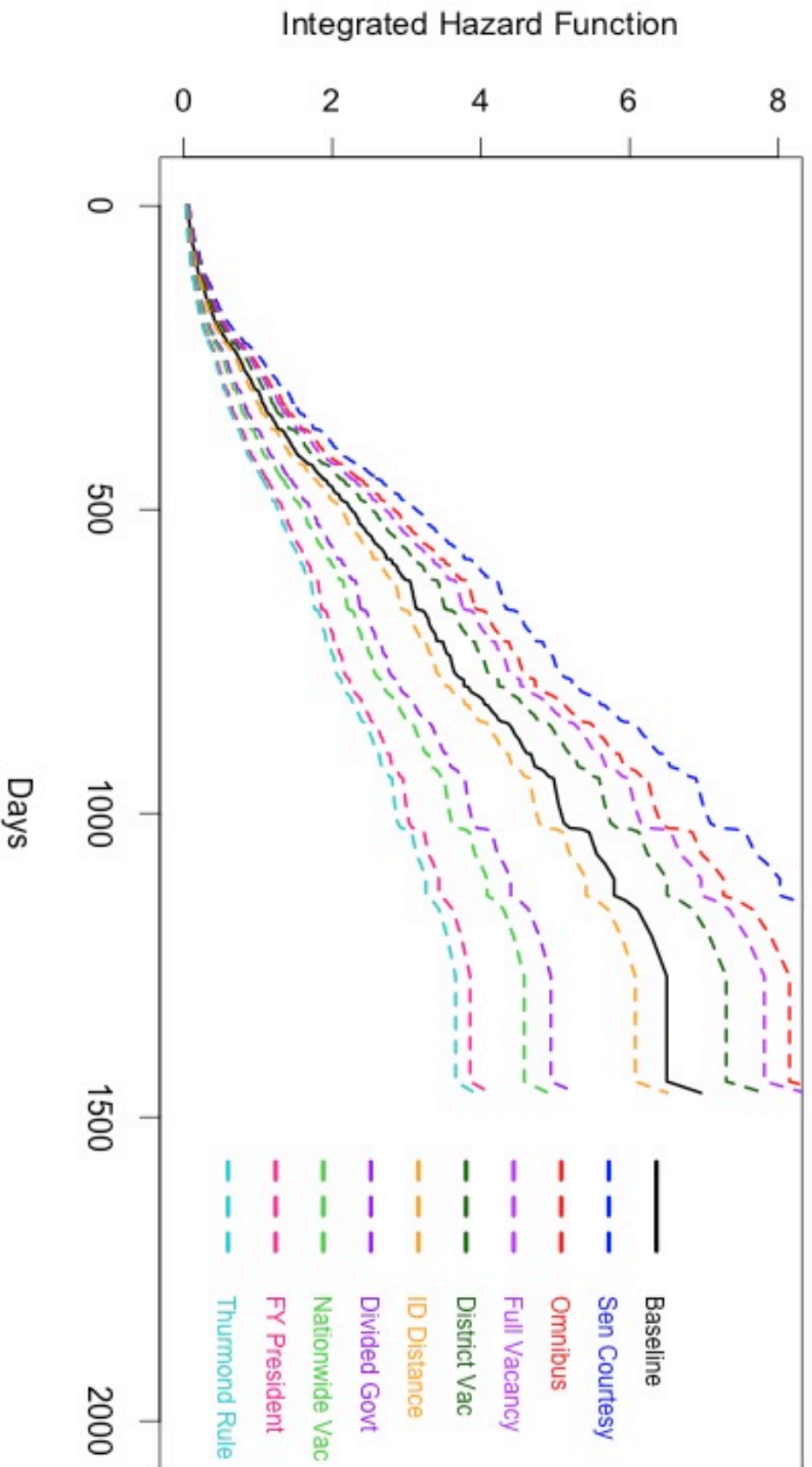
about judicial vacancies on a broader level.

Presidential Nomination Extension—Divided vs. Unified Government

Now we turn to the first extension of the presidential nomination analysis. Given the importance of gridlock and polarization in the existing literature, any further study would not be sufficient without examining the variables and their impact under divided versus unified control. By default of constitutional appointment processes, unified party control creates the most ideal conditions for both the president and the Senate in their nomination and confirmation roles. Yet we still observe delay in times of aligned party control. Why? Which variables help or hinder the nomination stage during unified control? In contrast, which variables have more substantive impact when a Republican controls the White House and Democrats control the Senate or vice versa?

Data Overview

Comparing the descriptive statistics in Tables 5-3 and 5-4 readily showcases some curious differences between the two conditions. Surprisingly, the mean value for the time to nomination is lower in divided government (255.8 days) than in unified government (285.2 days)—presidents take on average about one month less to submit nominations for vacancies when their political party lacks majority control in the Senate. However, the range for nomination time is larger during divided control (1460 days) than during unified government (1441 days), but the difference is nearly negligible.

The contrast in the number of omnibus judgeships is also particularly intriguing. During unified government, Congress authorized the creation of 222 judgeships through omnibus bills. In times of divided government, Congress authorized just 80 judgeships via omnibus bills. At first glance, the substantial difference suggests that Congress and the president may view unified control not only as an opportunity to expand the size of the judiciary but also to increase the number of like-minded judges on the bench.

Divided vs. Unified Government Nomination Model Explication

From here, we proceed with the model design and analysis. To complete this step, I estimated two separate Cox Proportional Hazard models, one controlling for all the vacancies occurring during times of unified government and another controlling for all the vacancies occurring during times of divided government. Of the 1,583 vacancies in the analysis, 59.8 (947) percent arose during unified party control, whereas 40.2 (636) percent arose under divided control. Figure 5-13 shows the survival curves for vacancies occurring during both conditions. Over 95 percent of vacancies survive, i.e. no nominee has been selected, on day zero (the date at which the vacancy occurs) during unified government, and 96 percent of vacancies survive on day zero during divided government. Essentially, vacancies arising at times of unified government have a one percent increase in their risk of nomination at the immediate onset versus those developing during divided government. The median values for vacancy survival in unified versus divided government are 249 days and 213 days,

respectively. Unified vacancies on the whole survive the pool, i.e. do not receive

nominations, longer than divided government vacancies—a finding we could

immediately perceive through the descriptive statistics. Figure 5-14 demonstrates

the hazard rates for both conditions. Although survival on the whole is longer for

unified vacancies, after a vacancy has been in existence for 500 or more days, the

hazard rate for unified vacancies speeds up faster than the hazard rate for divided

government vacancies.

Table 5-3
Divided Government Nomination Model Descriptive Statistics

Independent Variable	Mean	Median	Min	Max	sd	N[1]
Political Variables						
Senatorial Courtesy[§§2]	0.696	-	0	1	0.460	443
Ideological Distance[3]	0.076	0.114	-0.521	0.596	0.322	636
Thurmond Rule	0.079	-	0	1	0.269	50
First Year of Presidency	0.239	-	0	1	0.427	152
Female Candidate	0.055	-	0	1	0.228	35
Minority Candidate	0.043	-	0	1	0.202	27
Judiciary Majority Member	0.183	-	0	1	0.387	116
Judiciary Minority Member	0.151	-	0	1	0.359	96
Operational Variables						
Full/Partial Vacancy	0.232	-	0	1	0.422	148 (full)
Existing District Vacancies[4]	0.054	0	0	0.400	0.080	132
District Vacancies Nationwide[4]	0.076	0.064	0.001	0.163	0.041	48
Omnibus Judgeship	0.126	-	0	1	0.332	80
Number of Days From Vacancy to Nomination	255.6	213	0	1460	216.442	636

---

[1] Here, N stands for the number of vacancies that satisfied the presence (1) of each independent variable.

[2] All but three variables are dichotomous, meaning that they are present (1) or not (0). Here, the mean value of 0.696 indicates the proportion of nominations that came under the condition of senatorial courtesy. For all other dichotomous variables, the same logic prevails.

[3] The measure for Ideological Distance is transformed into absolute values for the models, but these values represent the original range.

[4] The measures for Existing District Vacancy and District Vacancies Nationwide have been transformed into proportions for the models.

Table 5-4
Unified Government Nomination Model Descriptive Statistics

Independent Variable	Mean	Median	Min	Max	sd	N[1]
Political Variables						
Senatorial Courtesy[2]	0.783	-	0	1	0.413	742
Ideological Distance[3]	0.019	-0.064	-0.521	0.596	0.333	947
Thurmond Rule	0.083	-	0	1	0.277	79
First Year of Presidency	0.443	-	0	1	0.497	420
Female Candidate	0.063	-	0	1	0.244	60
Minority Candidate	0.040	-	0	1	0.196	38
Judiciary Majority Member	0.214	-	0	1	0.410	203
Judiciary Minority Member	0.147	-	0	1	0.355	140
Operational Variables						
Full/Partial Vacancy	0.207	-	0	1	0.405	(full)
Existing District Vacancies[4]	0.086	0	0	0.833	0.112	947
District Vacancies Nationwide[4]	0.105	0.088	0.001	0.245	0.061	947
Omnibus Judgeship	0.234	-	0	1	0.424	222
Number of Days From Vacancy to Nomination	285.2	247	0	1441	203.911	947

[1] Here, N stands for the number of vacancies that satisfied the presence (1) of each independent variable.
[2] All but three variables are dichotomous, meaning that they are present (1) or not (0). Here, the mean value of 0.783 indicates the proportion of nominations that came under the condition of senatorial courtesy. For all other dichotomous variables, the same logic prevails.
[3] The measure for Ideological Distance is transformed into absolute values for the models, but these values represent the original range.
[4] The measures for Existing District Vacancy and District Vacancies Nationwide have been transformed into proportions for the models.

Figure 5-13

Unified Government
Vacancy Survival Over Time

Divided Government
Vacancy Survival Over Time

Figure 5-14

Cumulative Nomination Hazard Rate
Divided Government

Number of Days From Vacancy to Nomination

Cumulative Nomination Hazard Rate
Unified Government

Number of Days From Vacancy to Nomination

Divided vs. Unified Government Nomination Results

Transitioning to the assessment of the covariates' effects on the hazard rate, the variables accounting for senatorial courtesy, the Thurmond Rule, first year of the presidency, existing district vacancies, and district vacancies nationwide achieved statistical significance at the 95 percent confidence level in both the divided and unified models. Yet the impact of some variables is different across conditions as some achieved statistical significance where others did not. The variable measuring ideological distance between home-state senators and presidents reached significance in the divided government model, but not in the unified government model. Omnibus judgeship vacancies are substantively significant to the nomination stage during times of united party control. All other variables not listed above failed to achieve statistical significance in either the divided or unified model.

Given that several of the variables are relevant in both models, assessing their impact during different political conditions provides additional insight into the dynamics of the nomination stage of the appointment process. Figures 5-15 and 5-16 illustrated either the slowing or speeding effects of the significant variables during divided government and unified government, respectively. Senatorial courtesy increases the risk of nomination significantly in during divided and unified government, however, the effect is far more important during divided government. Vacancies satisfying the conditions of senatorial courtesy in unified government are at 39.4 percent higher risk of receiving a nomination, whereas vacancies with senatorial courtesy during divided government are at a 60.3 percent higher risk of receiving a nomination from the president. Vacancies arising during the last six

months of a presidential term are at lower risk of receiving a nomination in both times of divided government and unified government. Those vacancies satisfying the Thurmond Rule are 33.4 percent less likely to receive a nomination during divided government, and 54.6 percent less likely in times of unified government. The effects of the first year of presidential tenure are relatively similar across unified and divided party control. Vacancies developing during the first year of a president's term are at a significantly lower risk of receiving nominations across both conditions, with divided vacancies at 39.3 percent less risk and unified at 34 percent less risk. The presence of a full vacancy as opposed to a partial vacancy has a sizeable influence on the nomination stage during both unified and divided government. The divided control results show that the presence of a full vacancy increases the risk of nomination by 26.7 percent, while the presence of a full vacancy increases the risk of nomination by 30.9 percent during unified government.

Regarding the effects of the variables accounting for the proportion of existing district vacancies and for the proportion of district vacancies nationwide, recall that the coefficients are not as readily interpretable as dichotomous variables and as such require manipulation. Multiplying these coefficients by their standard deviation and then exponentiating those numbers yields more easily intuitive effects. I calculated the values in this model exactly as I demonstrated on page 99 for the original presidential nomination model. For every standard deviation increase in the mean number of district-specific vacancies, there is a 10.3 percent increased risk of nomination for vacancies occurring during divided government and a 9.5 percent increased risk of nomination for vacancies

occurring during unified government. These results suggest that the development of additional vacancies at the district level speeds up the nomination process more quickly during divided control than during unified control. The effect of a standard deviation increase in the mean proportion of vacancies at the nationwide level has the opposite effect on the nomination process; that increase slows down the nomination stage. During divided government, a one standard deviation increase in the mean proportion of nationwide vacancies reduces the risk of nomination by 23.8 percent. The effect is similar in times of unified control where a one standard deviation increase in the mean proportion decreases the risk of nomination by 25.8 percent.

As previously mentioned, two variables attained significance in either the divided control model or the unified control model, but not both. The continuous variable measuring the ideological distance between presidents and home-state senators or presidents suggests that for every standard deviation increase in the mean of that distance the risk of nomination decreases by 11.9 percent for vacancies occurring during divided government. However, the unified government model results indicate that ideological distance plays no role at all in speeding up or slowing down the nomination process. Vacancies created by omnibus judgeship bills substantially influence the nomination stage during unified party control of the White House and Senate. A district level judicial vacancy created by an omnibus bill has a 52.1 percent higher risk of nomination as opposed to vacancies not created by omnibus bills.

Table 5-5
Divided Government Nomination Model Results

Independent Variables	Expected Sign	Divided Coefficient	Divided Exponential (Coef)	SE[1]	SD	Divided Transformed Coefficient	Divided Transformed Exp(Coefficient)
Political Variables							
Senatorial Courtesy	+	0.472	1.603	0.107***	-	-	-
Ideological Distance	-	-0.603	0.547	0.234**	0.210	-0.127	0.881
Thurmond Rule+	-	-0.406	0.666	0.172*	-	-	-
First Year of Presidency	-	-0.499	0.607	0.107***	-	-	-
Female Candidate	-	0.235	1.264	0.195	-	-	-
Minority Candidate	-	0.106	1.112	0.214	-	-	-
Judiciary Majority Member	+	0.099	1.104	0.121	-	-	-
Judiciary Minority Member	+	-0.318	0.969	0.124	-	-	-
Operational Variables							
Full/Partial Vacancy	+	0.237	1.267	0.111*	-	-	-
Existing District Vacancies+	+	1.164	3.203	0.393**	0.084	0.098	1.103
District Vacancies Nationwide+	+	-6.635	0.001	1.446***	0.041	-0.272	0.762
Omnibus Judgeship	-	0.038	1.039	0.158	-	-	-

[1] P-values of <0.05 are denoted with one asterisk (*), p-values of <0.01 are denoted with two asterisks (**), and p-values of <0.001 are denoted with three asterisks (***).
+ Denotes this variable is continuous and has been transformed according to the methodology in the text.

Table 5-6
Unified Government Nomination Model Results

Independent Variable	Expected Sign	Unified Coefficient	Unified Exponential (Coef)	SE[1]	SD	Unified Transformed Coefficient	Unified Transformed Exp(Coefficient)
Political Variables							
Senatorial Courtesy	+	0.332	1.394	0.097**	-	-	-
Ideological Distance⁺	-	0.282	0.326	0.229	0.169	0.050	1.05
Thurmond Rule	-	-0.788	0.454	0.143***	-	-	-
First Year of Presidency	-	-0.415	0.660	0.088***	-	-	-
Female Candidate	-	-0.390	0.676	0.205	-	-	-
Minority Candidate	-	0.230	1.259	0.241	-	-	-
Judiciary Majority Member	+	-0.263	0.768	0.112	-	-	-
Judiciary Minority Member	+	0.221	1.247	0.112	-	-	-
Operational Variables							
Full/Partial Vacancy	+	0.269	1.309	0.105*	-	-	-
Existing District Vacancies⁺	+	0.817	2.264	0.249**	0.112	0.092	1.095
District Vacancies Nationwide⁺	+	-4.878	0.007	0.848***	0.061	-0.298	0.742
Omnibus Judgeship	-	0.419	1.521	0.122***	-	-	-

[1] P-values of <0.05 are denoted with one asterisk (*), p-values of <0.01 are denoted with two asterisks (**), and p-values of <0.001 are denoted with three asterisks (***).

⁺ Denotes this variable is continuous and has been transformed according to the methodology in the text.

Figure 5-15

Effect of Independent Variables on Nomination Hazard Rate
Divided Government
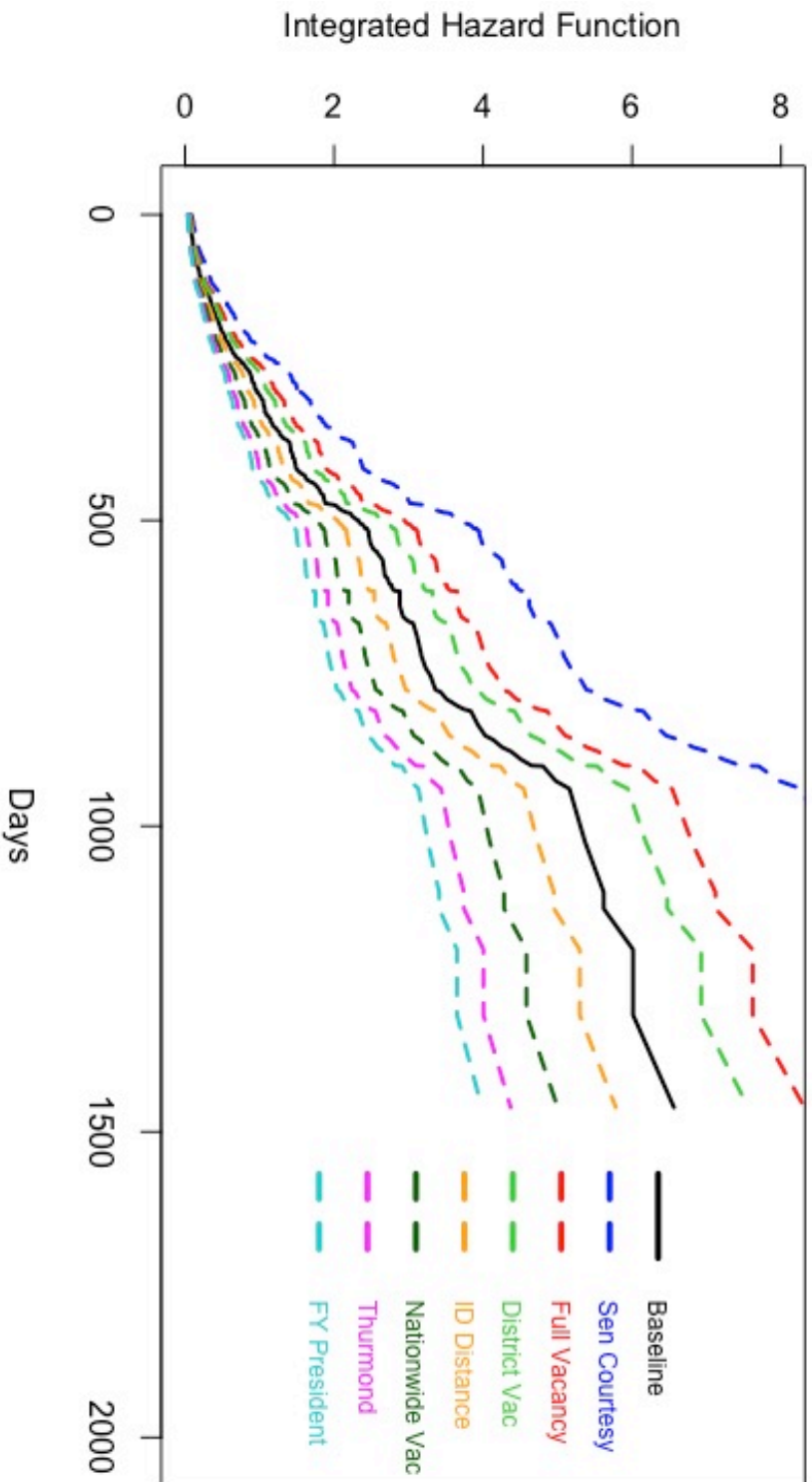
Figure 5-16

Effect of Independent Variables on Nomination Hazard Rate
Unified Government
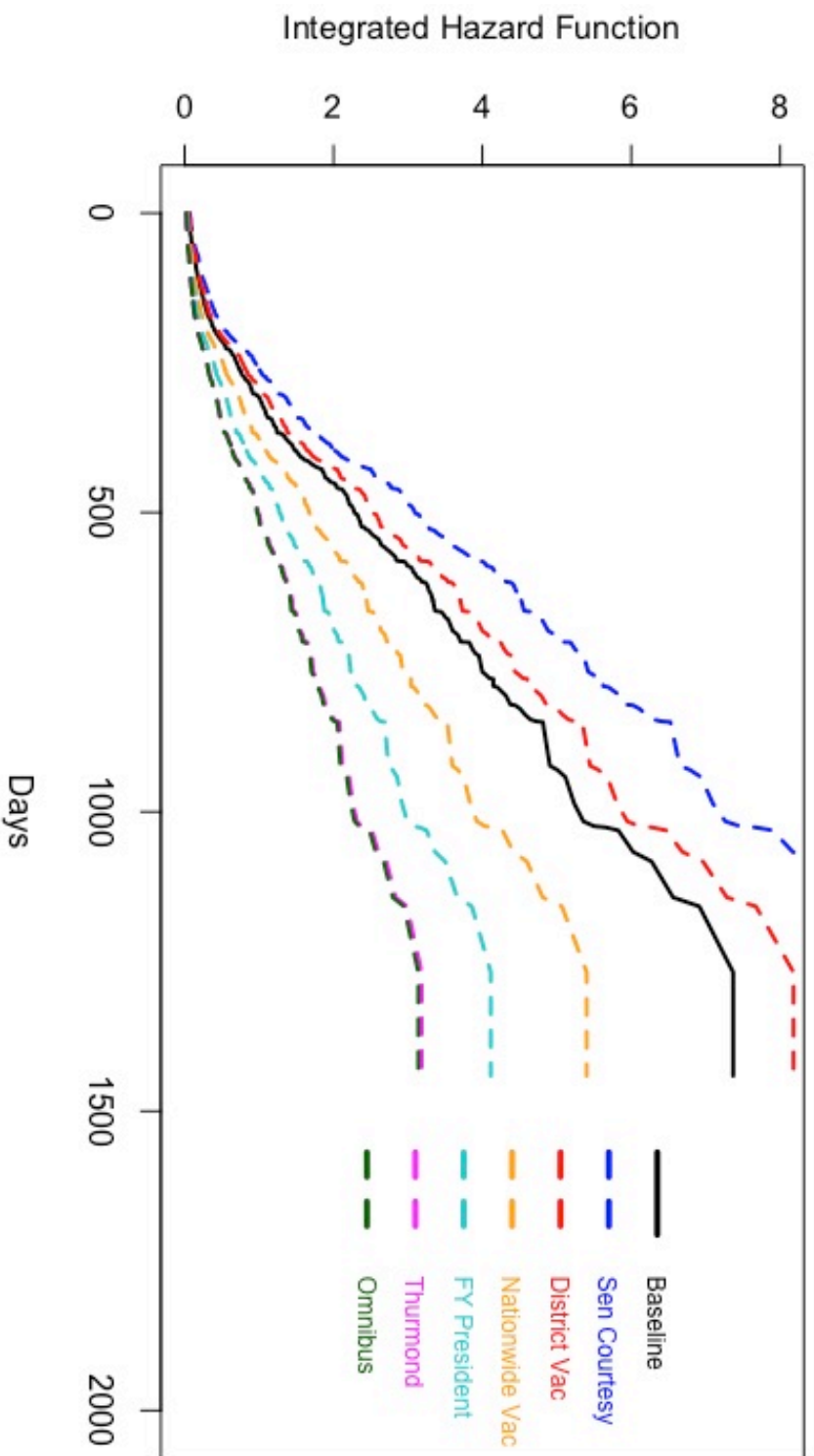
Presidential Nomination Model Extension—1973-1992 vs. 1993-2012

In efforts to improve insight into past and current trends of the nomination process, I estimated two additional models that separate the data by twenty-year time periods. The first model of this extension examines all the vacancies occurring from 1973 to 1992, and the second model surveys each vacancy transpiring from 1993 to 2012. More often than not, nomination and confirmation analyses incorporate observations occurring over a forty to fifty-year time period. Rarely does a scholar break down the study of nominations and confirmations by shorter time frames. Given the expansion of the judiciary in the 1970s as well as the increasing frequency with which scholars find delay occurs, a closer inspection of potential shifts over time is necessary. To say that a variable exerts a constant effect on the nomination stage of the process over a long duration seems naïve. Certain conditions may be more relevant and influential to politics of the past or politics of the current tide.

Data Overview

The division of the vacancies over the two twenty-year date ranges is fairly even—51.4 percent (814) fall in the earlier time frame, and 48.6 percent (769) percent fall in the later date range. With respect to the effects of variables over time, some conditions experience considerable shifts between the two time frames. The frequency with which vacancies occur in the first year of presidencies has increased markedly between the earlier and later time frames. The 1993-2012 collection of presidents inherited and observed 13.7 percent more vacancies in

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their first year than their 1973-1992 counterparts (331 of 769) versus (243 of 814)). The earlier time frame oversaw far more judgeships created by omnibus judgeships bills (248 versus 54). Perhaps most interestingly, the measures for existing district vacancies and nationwide vacancies do not increase overtime. In fact, the proportion of district-specific seats that are vacant as well as the proportion of nationwide seats that vacant is less in the 1993 to 2012 period than the 1973 to 1992 time frame. The median proportion for existing vacant seats at the district level is 8.4 percent in the earlier period, and 7.2 percent in the more recent decades. Similarly, the median proportion of vacant seats at the nationwide level is 8 percent for the 1973-1992 data, and 7.5 percent for the 1993-2012 data. Essentially, the amount of vacancies both at the district level and national level has not significantly altered over time. This is not to say that delay has not affected the "vacancy problem," but perhaps what scholars assert as a persistently high number of vacancies is not a distinct shift or deviation from the historical norm. The evidence from this extension suggests that the number of vacancies and the time to nomination have been fairly consistent over the past four decades.

1973-1992 vs. 1993-2012 Model Explication

To perform this analysis, I estimated two Cox Proportional Hazard models, one controlling for all vacancies arising from 1973 to 1992, and another controlling for the 1993 through 2012 vacancies. Figure 5-17 shows that over 96.5 percent of 1973 to 1992 vacancies survive, i.e. do not fail, on day zero (the date at which the vacancy occurs), and also illustrates that only 92.4 percent of 1993-2012

vacancies survive on day zero. In effect, Presidents Clinton, George W. Bush, and Obama collectively made 58 nominations for 58 judgeships the very first day each one became vacant. Their predecessors, however, submitted only 28 nominations for judgeships on their very first day of vacancy. This finding suggests that the Clinton, Bush 43, and Obama administrations not only were better apprised of federal judges' upcoming retirements but also acted more quickly to replace those impending vacancies. Figure 5-18 shows the hazard rates for both time ranges. One can easily observe that the x-axis for the 1973-2012 plot is shorter than that of the x-axis for the 1993-2012 plot. This difference indicates that the range of nomination times from 1973-1992 is shorter than the 1993-2012 range ((day zero to 1135 vs. day zero to 1460). The descriptive statistics for both models are located in Tables 5-7 and 5-8. Contrary to claims, the data suggest that the time presidents have taken to submit nominations for vacancies has not increased substantially in recent decades—the median values for nomination time from 1973 to 1992 and 1993 to 2012 are 228 days and 244 days, respectively.

Table 5-7
1973-1992 Nomination Model Descriptive Statistics

Independent Variable	Mean	Median	Min	Max	sd	N[1]
Political Variables						
Senatorial Courtesy[2]	0.783	-	0	1	0.412	637
Ideological Distance[3]	0.136	0.187	-0.502	0.596	0.306	814
Thurmond Rule	0.107	-	0	1	0.309	87.098
First Year of Presidency	0.295	-	0	1	0.456	240
Female Candidate	0.026	-	0	1	0.159	21
Minority Candidate	0.014	-	0	1	0.116	11
Judiciary Majority Member	0.144	-	0	1	0.351	117
Judiciary Minority Member	0.099	-	0	1	0.427	81
Operational Variables						
Full/Partial Vacancy	0.236	-	0	1	0.425	192 (full)
Existing District Vacancies[4]	0.084	0	0	0.750	0.130	814
District Vacancies Nationwide[4]	0.103	0.075	0.001	0.245	0.069	814
Omnibus Judgeship	0.305	-	0	1	0.461	242
Number of Days From Vacancy to Nomination	257	228	0	1135	173.793	814

[1] Here, N stands for the number of nominations that satisfied the presence (1) of each independent variable.
[2] All but three variables are dichotomous, meaning that they are present (1) or not (0). Here, the mean value of 0.783 indicates that 78.3 percent of vacancies in the data satisfied the condition of senatorial courtesy. For all other dichotomous variables, the same logic prevails. The N represents the
[3] The measure for Ideological Distance is transformed into absolute values for the models, but these values represent the original range.
[4] The measures for Existing District Vacancy and District Vacancies Nationwide have been transformed into proportions for the models.

Table 5-8
1993-2012 Nomination Model Descriptive Statistic

Independent Variable	Mean	Median	Min	Max	sd	N[1]
Political Variables						
Senatorial Courtesy[2]	0.710	-	0	1	0.454	546
Ideological Distance[3]	-0.057	-0.226	-0.521	0.561	0.324	769
Thurmond Rule	0.049	-	0	1	0.217	38
First Year of Presidency	0.432	-	0	1	0.496	331
Female Candidate	0.096	-	0	1	0.294	74
Minority Candidate	0.070	-	0	1	0.256	54
Judiciary Majority Member	0.263	-	0	1	0.440	205
Judiciary Minority Member	0.202	-	0	1	0.355	155
Operational Variables						
Full/Partial Vacancy	0.196	-	0	1	0.398	151 (full)
Existing District Vacancies[4]	0.072	0	0	0.500	0.123	769
District Vacancies Nationwide[4]	0.083	0.080	0.002	0.159	0.034	769
Omnibus Judgeship	0.070	-	0	1	0.256	54
Number of Days From Vacancy to Nomination	290.6	244	0	1460	204.465	769

[1] Here, N stands for the number of nominations that satisfied the presence (1) of each independent variable

[2] All but three variables are dichotomous, meaning that they are present (1) or not (0). Here, the mean value of 0.710 indicates that 71.0 percent of vacancies in the data satisfied the condition of senatorial courtesy. For all other dichotomous variables, the same logic prevails.

[3] The measure for Ideological Distance is transformed into absolute values for the models, but these values represent the original range.

[4] The measures for Existing District Vacancy and District Vacancies Nationwide have been transformed into proportions for the models.

Figure 5-17

Vacancy Survival Over Time 1973-1992

Vacancy Survival Over Time 1993-2012
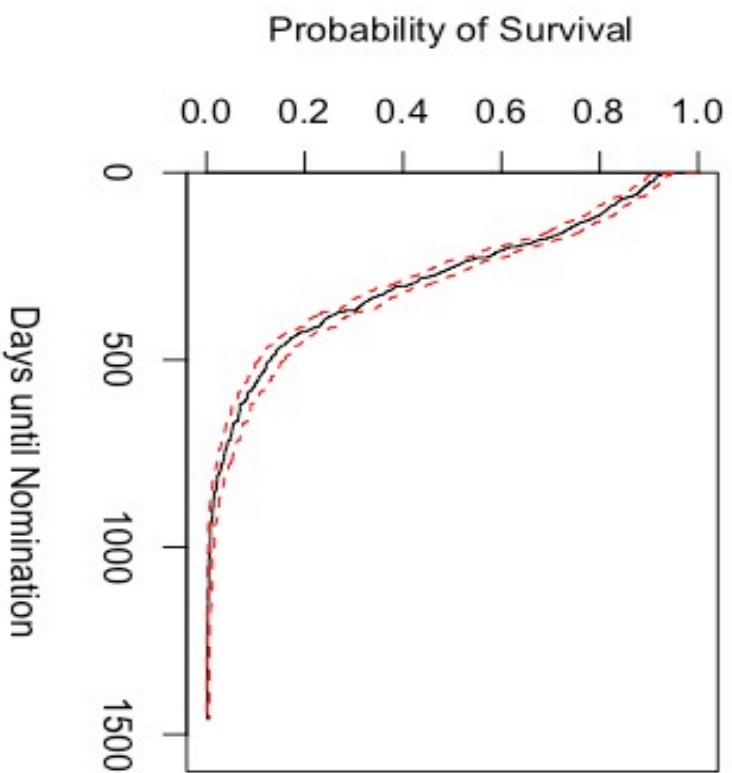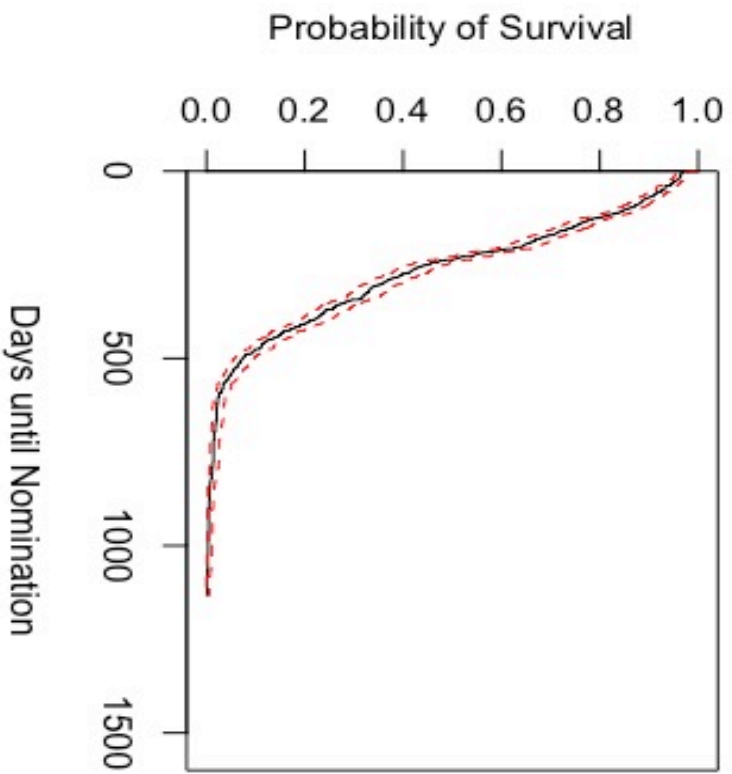
Figure 5-18

Cumulative Nomination Hazard Rate
1973-1992
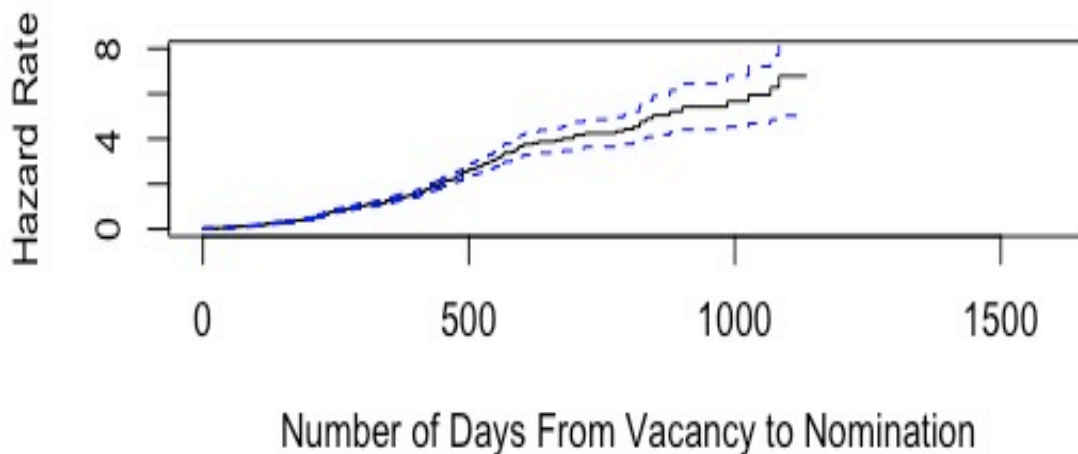
Cumulative Nomination Hazard Rate
1993-2012
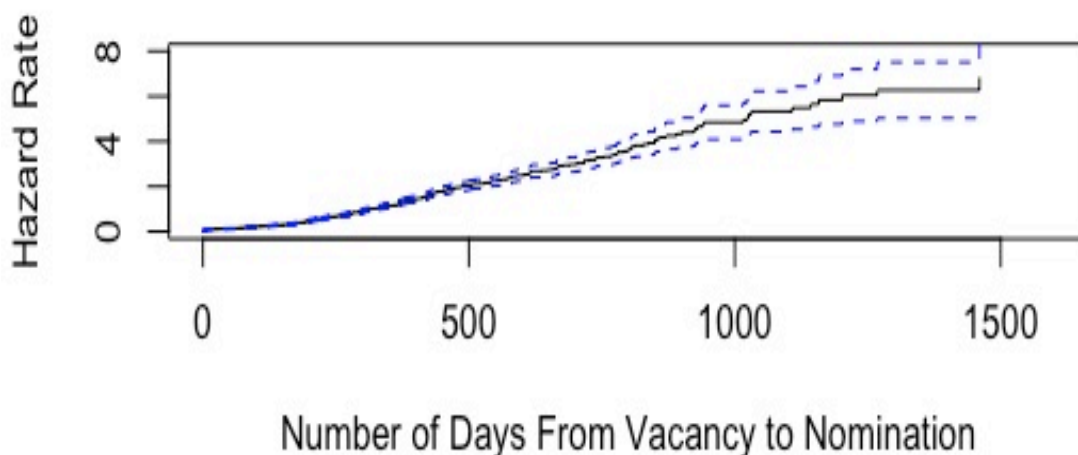
1973-1992 vs.1993-2012 Model Results

 Tables 5-9 and 5-10 showcase the results of the 1973-1992 model and

1993-2012 model, respectively. Five variables achieved statistical significance in

both models; senatorial courtesy, ideological distance, first year of the presidency,

existing district vacancies, and district vacancies nationwide are statistically

significant at the 95 percent confidence level in both the earlier and later date

ranges. However, the variables accounting for the Thurmond Rule and full

vacancy only exerted a statistically significant impact on the earlier model, while

divided government, majority member of the Senate Judiciary Committee, and

omnibus judgeships only reached significance in the 1993 to 2012 model. All other

variables not listed above failed to achieve statistical significance in either the

1973 to 1992 model or the 1993 to 2012 model.

 As scholars and journalists continue to stress the delay with which recent

presidents submit nominations, breaking down the data into earlier and later date

ranges allows the opportunity to directly compare the baseline hazard rates and

variables' effects over time. Figures 5-19 and 5-20 illustrate the baseline hazard

rates for each model as well as the accelerating or decelerating effects of each

variable on the baseline hazard rates. Senatorial courtesy increases the risk of

nomination relatively similarly in both the earlier and later date ranges. Vacancies

satisfying the conditions of senatorial courtesy in the 1973-1992 model are at 40.2

percent higher risk of receiving a nomination, and vacancies with senatorial

courtesy in the 1993-2012 model are at a 46.7 percent higher risk of receiving a

nomination from the president. Vacancies arising in the first year of a presidential

term are at lower risk of receiving a nomination across time though the effect is

almost doubled in the later model. The 1973 through 1992 vacancies satisfying the first-year condition are 28 percent less likely to receive a nomination, where as the 1993 to 2012 vacancies are 50 percent less likely to receive a nomination. Here, we do observe a dramatic shift as the results suggests recent presidents are submitting nominations at a historically slower rate.

Additionally, each of the three continuous variables exerts a substantively significant effect in both models. A one standard deviation increase in the mean value of ideological distance decreases the risk of nomination by 12.3 percent in the earlier model, and a 2.7 percent decrease in the risk of nomination in the later model. In this case, disparate political ideology mattered more in the past than in more recent times. A one standard deviation increase in the mean proportion of district vacancies speeds up the risk of nomination by 16.7 percent for earlier vacancies, and increases the risk of nomination by 3.8 percent for vacancies in the later date range. The proportion of district vacancies at the national level is important across time. For vacancies falling in the 1973 to 1992 date range, a one standard deviation increase in the proportion of district vacancies at the national level decreases the risk of nomination by 17.5 percent. The effect is similar for vacancies falling in the 1993 to 2012 date range—a one standard deviation increase in the proportion of vacancies at the national level increases the risk of nomination by 18.1 percent. Overall, vacancy increases at the national level has a negative consequence on the rate of nomination.

As previously mentioned, two variables attained significance in the earlier model but not in the later model. The Thurmond Rule has seemingly lost its effect on the nomination stage in more recent decades, but undoubtedly affected the

nomination rate from 1973-1992. Vacancies arising in the last six months of presidential election years had a 38.2 percent lower risk of nomination than vacancies not occurring during that time frame (in the earlier model). Additionally, full vacancies speed up the rate of nomination by 26.6 percent in the 1973 to 1992 model, but fail to affect the nomination rate for the 1993 to 2012 model.

As previously mentioned, three variables rose to prominence in the later time period but failed to affect the nomination stage in the earlier decades. Divided government reduces the risk of nomination by 29.8 percent. Perhaps surprisingly, and certainly contrary to my theoretical expectations, vacancies occurring in a state where a senator sits as a majority member on the Senate Judiciary Committee reduces the risk of nomination by 27.8 percent. The potential reasons for this result will be explored in more detail later. Finally, vacancies created by omnibus judgeships, i.e., new district seats created by omnibus bills, speed up the rate of presidential nominations by 29.1 percent. Perhaps presidents delight in the opportunity to increase the size of the judiciary with more ideologically aligned judges.

Table 5-9
1973-1992 Nomination Model Results

Independent Variables	Expected Sign	Coefficient	Exponential (Coef)	SE¹	SD	Transformed Coefficient	Transformed Exp(Coefficient)
Political Variables							
Senatorial Courtesy	+	0.338	1.402	0.117**	-	-	-
Divided Government⁺	-	-0.120	0.887	0.081	-	-	-
Ideological Distance	-	-0.671	0.511	0.220**	0.195	-0.131	0.877
Thurmond Rule	-	-0.482	0.618	0.136***	-	-	-
First Year of Presidency	-	-0.326	0.722	0.093***	-	-	-
Female Candidate	-	-0.415	0.660	0.255	-	-	-
Minority Candidate	-	-0.429	0.651	0.362	-	-	-
Judiciary Majority Member	+	0.547	1.728	0.599	-	-	-
Judiciary Minority Member	+	0.855	2.351	0.596	-	-	-
Operational Variables							
Full/Partial Vacancy	+	0.236	1.266	0.096*	-	-	-
Existing District Vacancies⁺	+	1.005	2.733	0.242***	0.154	.154	1.167
District Vacancies Nationwide⁺	+	-2.786	0.062	0.889**	0.069	-0.192	0.825
Omnibus Judgeship	-	-0.100	0.905	0.126	-	-	-

¹ P-values of <0.05 are denoted with one asterisk (*), p-values of <0.01 are denoted with two asterisks (**), and p-values of <0.001 are denoted with three asterisks (***).

+ Denotes this variable is continuous and has been transformed according to the methodology in the text.

Table 5-10
1993-2012 Nomination Model Results

Independent Variables	Expected Sign	Coefficient	Exponential (Coef)	SE[1]	SD	Transformed Coefficient	Transformed Exp(Coefficient)
Political Variables							
Senatorial Courtesy	+	0.383	1.467	0.089***	-	-	-
Divided Government	-	-0.352	0.702	0.094***	-	-	-
Ideological Distance⁺	-	-0.178	0.837	0.257	0.154	-0.027	0.973
Thurmond Rule	-	-0.548	0.578	0.176**	-	-	-
First Year of Presidency	-	-0.684	0.502	0.096***	-	-	-
Female Candidate	-	-0.217	1.242	0.133	-	-	-
Minority Candidate	-	0.249	1.283	0.148	-	-	-
Judiciary Majority Member	+	-0.259	0.772	0.093**	-	-	-
Judiciary Minority Member	+	-0.992	2.697	0.592	-	-	-
Operational Variables							
Full/Partial Vacancy	+	0.112	1.119	0.099	-	-	-
Existing District Vacancies⁺	+	0.301	1.351	0.319	0.123	0.037	1.038
District Vacancies Nationwide⁺	+	-6.158	0.002	1.316***	0.034	-0.209	0.811
Omnibus Judgeship	-	0.536	1.709	0.152***	-	-	-

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[1] P-values of <0.05 are denoted with one asterisk (*), p-values of <0.01 are denoted with two asterisks (**), and p-values of <0.001 are denoted with three asterisks (***).

+ Denotes this variable is continuous and has been transformed according to the methodology in the text.

Figure 5-19

Effect of Independent Variables on Nomination Hazard Rate
1973-1992

Legend:
- Baseline
- Sen Courtesy
- Full Vacancy
- District Vac
- ID Distance
- Nationwide Vac
- FY President
- Thurmond Rule
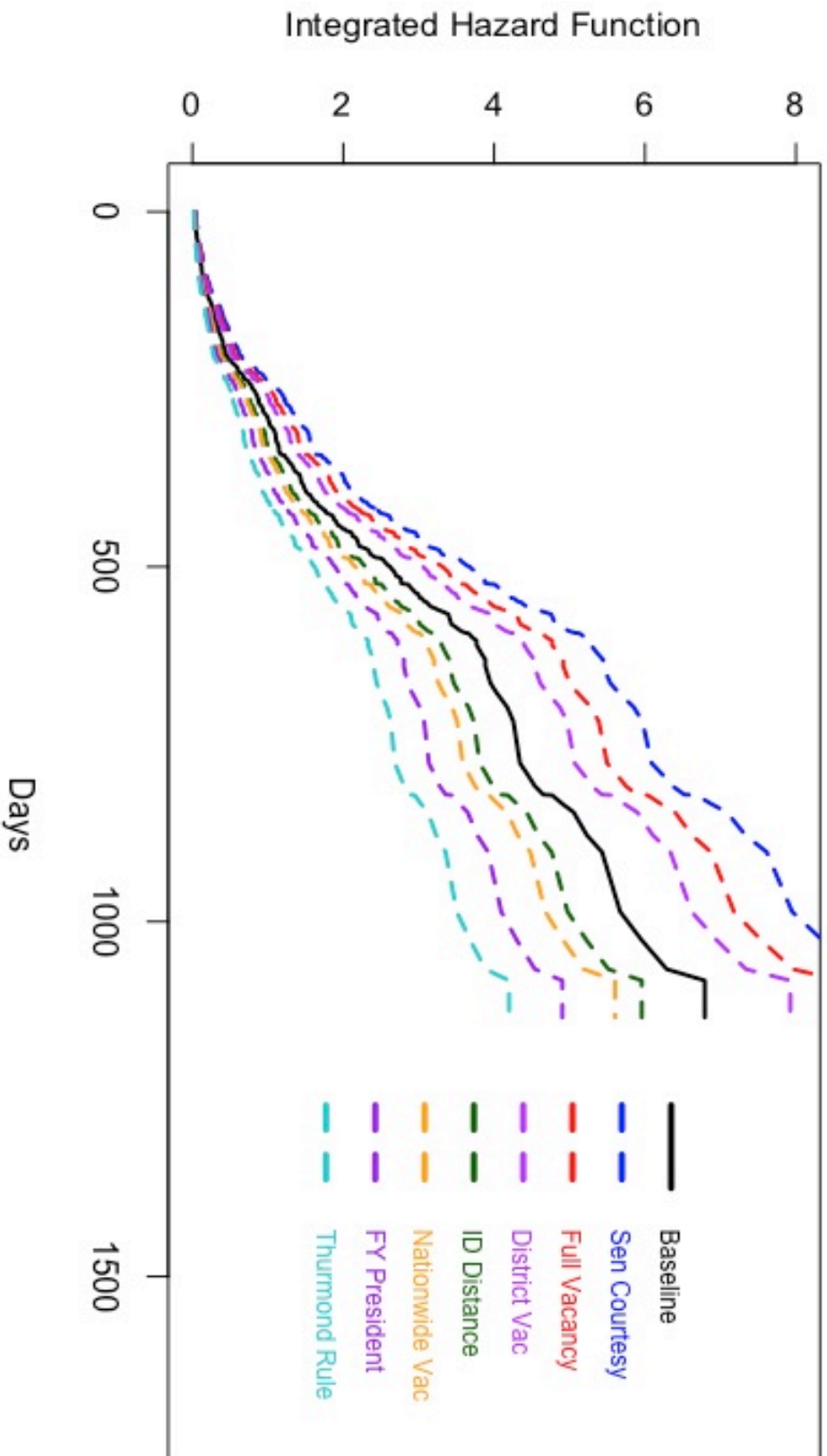
Figure 5-20

Effect of Independent Variables on Nomination Hazard Rate
1993-2012

129
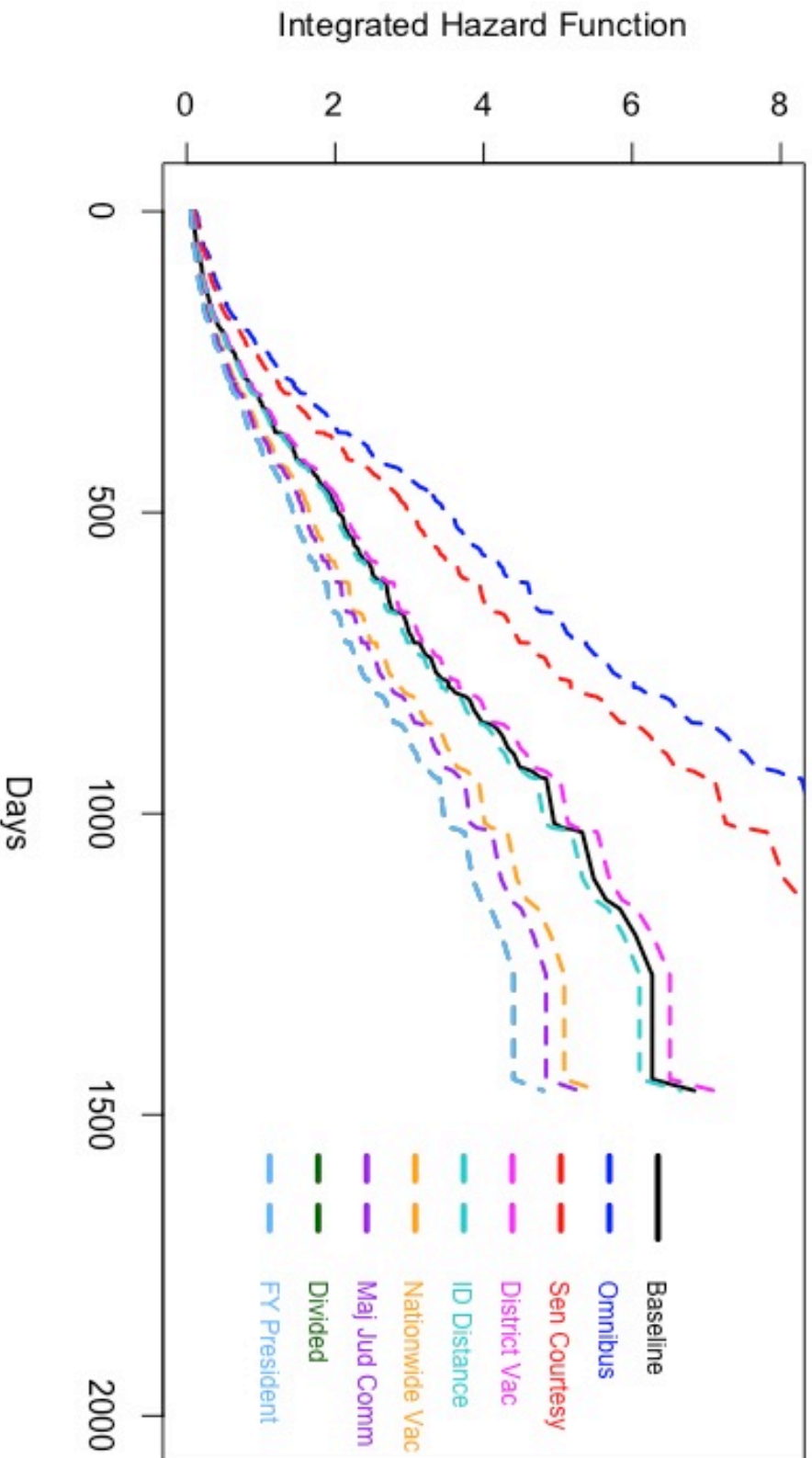
<center>Summation</center>

The results of the primary nomination analysis and its extensions tell a
story of presidential action and inaction. Given the different political conditions
and specific time frames, the results from each model showcase both
consistency and variation. We observed that a few independent variables affect
the nomination process in the same way under every condition and time frame,
albeit their impacts fluctuate to some degree. The primary objective of this
section of the chapter is to review the independent variables' effects in light of
interviews conducted with both members of the judiciary and staff members of
key Senate leaders. While the information garnered from the interviews is
anecdotal in its function, the conversations did illuminate many of the results,
particularly those results that run contrary to my theoretical expectations.

Senatorial Courtesy

Senatorial courtesy continues to serve as one the major influencing
factors on the nomination stage of the appointment process. In every model
iteration, the presence of senatorial courtesy substantially sped up the rates at
which presidents submit nominations for judicial vacancies.

Effect	Overall	Divided	Unified	1973-1992	1993-2012
(exp) estimate %	**↑38.5%**	**↑60.3%**	**↑39.4%**	**↑40.2%**	**↑46.7%**

The effect of senatorial courtesy is most pronounced under the conditions of
divided government, accelerating a vacancy's risk of nomination by 60.3 percent.
Additionally, the results of the 1993-2012 model indicate that the importance of
home-state senator and presidential alignment is even more important in the

<center>130</center>

recent political climate than in the past. During my interviews with congressional

staffers, one aide to a Democratic member of the Judiciary Committee noted,

"Senatorial courtesy makes everything about the process easier. We generally have a good idea about which judges are going to retire next, and we keep a running list of potential nominees. When we receive the notification, I immediately send over the list of preferred candidates to my point person in the White House. It's incredibly easy when you have one of your own guys over there, and we usually get our way with the selection. On the other hand, what I've experienced in the past year is a different story. Now with Trump in office, we have to wait for a call from the White House soliciting our opinion. Of course, that's not to say they're going to nominate any of our preferred people anyhow, but there still is at least a call made to us out of consideration. With blue slip potential and the committee position, they can't completely forego asking for the Senator's opinion. There's some deference there, but it's minimal compared to what we experienced with President Obama. My friends and colleagues in other Democratic offices would say the same thing."

This interview elucidates that senatorial courtesy in this case served two

purposes--the norm facilitated both information and expediency. Here, upon

learning of a district judge's retirement, the staffer immediately took action and

contacted a liaison in the executive branch. When senatorial courtesy is satisfied,

the waiting time diminishes between seat openings and nominations simply

because the lines of communication are open and friendly; protocol is in place.

The administration has the green light to vet, and the home-state senator

provides the liaisons and Justice Department with a collection of candidates to

vet, thereby expediting the entire process.

Furthermore, an interview with an active Sixth Circuit judge echoed the

views of the congressional staffer regarding the deference home-state senators

are still given in the nomination stage for district court seats. The judge stated,

"It was really simple. When my now-predecessor gave notice he was going to elect senior status in the next year, I got a phone call directly from the Senator himself. To be honest, it was kind of crazy. He just asked me if I would

be interested in the job. Of course, I was, but I knew it would be a process. At the time, I think I was more shocked that he had called me and asked me outright. But the man got things done. Given his leadership position and the fact that he was close to the president, I guess he felt as if he had the final say as to who got the job. Obviously, I had known the senator for a long time, and he told me how much he respected me and the work I had done. I know many people have had torturous experiences in both the vetting process and during confirmation. It can be so tedious, and so expensive. But not for me—and the only reason I can think of is because of the senator's position and because there was really nothing controversial in my career to point to as a problem."

The importance of senatorial courtesy in the divided government model showcases how meaningful home-state senators can be to the president's decision-making process. Regardless of political control vis-à-vis the White House and the Senate, and no matter the time frame, senators serve as informational tools for the president and his staff. In the end, the expectation is that the home-state senator will have a vote to confirm or reject a nominee, so in the case of senatorial courtesy, the evidence suggests that presidents continue to capitalize not only on those senators' positions of power but also their knowledge of personnel in their home states. These results and interviews reveal that what began as an informal norm has continued to gain influence over the years—to the point that senatorial courtesy has become virtually institutionalized.

Divided Government

Divided and unified government continue to affect the speed with which presidents submit nominations for judicial vacancies, but only under certain conditions. According to the primary model results, unified party control of the Senate and White House sets the stage for a quicker nomination process, whereas divided control of the executive branch and legislative chamber have

the default effect of slowing down the nomination stage. However, a major shift in the nomination dynamics has occurred. Results from the 1973-1992 model show that divided government had no impact on the duration of that time period's nomination stage since the variable failed to attain statistical significance. The results of the 1993-2012 model stand in direct contrast to the null result of the earlier model. Divided government matters much more in the recent decades of the nomination process—the exponential coefficient shows a 29.8 percent decrease in a vacancy's risk of nomination. These results lend support to the charges that polarization and increased gridlock have detrimentally affected the judicial appointment process.

Effect	Overall	Divided	Unified	1973-1992	1993-2012
(exp) Estimate %	↓16.3%	NA	NA	*failed*	↓29.8%

One chief staff member to a Republican leader explained in detail why divided government creates obstacles for the nomination stage of the process. He described the following dynamics:

"Divided government no doubt slows down the nomination stage. It's like a game of anticipation—the president knows that nominations will inherently face an uphill battle. No control of the Senate, no control of the committee—he's [the president] at the mercy of the chairman and the opposing party leader to schedule hearings and floor votes. That's just less likely to happen. In an elementary sense, they're not friends, they're not playing for the same team…In a perfect world, we like to think of judges as being apolitical, but we just know that's not the case anymore. I think senators used to act or give judges the benefit of the doubt that they were, but getting ideologues on the bench just seems to happen more often than it used to…The one real benefit of divided government is that it does force presidents to consult more with home-state senators. In the case that there's divided government and senatorial courtesy in place, that senator usually works to get a reasonable candidate through the vetting process, and then down the line through confirmation. But when there's no senatorial courtesy, that's when things get hairy…sometimes presidents are more agreeable to an opposing party senator's choices, but I've also seen cases where those vacancies just linger on and on. That happens either because the

president won't negotiate with the home-state senator(s) on the front-end or because the leadership is just less inclined to move quickly…and they can do that by default of their agenda control powers. It's a game of advice and consent—and senators take that power very seriously."

The staff member to a Democratic Judiciary Committee member reiterated the above commentary. In her words,

"It's just a power game for Senate leadership—if they can delay scheduling judicial hearings and floor votes, and there's no one in the party taking issue with it, then the leadership will do so. Agenda control is crucial, and the president and his staff have to work harder to avoid the opposing party's abuse of that power. Depending on what the administration's priorities are, this is the part where bargaining chips come into play. You have to put all your cards on the table and play the best ones given your key objectives…Nothing in Washington happens in a vacuum."

These interviews emphasize the importance of agenda control, compromise, and incentives. Presidents and senators both share appointment powers, and in these heighted partisan times, neglecting, or worse, rejecting the wishes and expectations of the controlling party of the Senate is likely to result in delayed judicial appointment processes, at both stages. Any further analysis of the judicial appointment process might be helped by a closer examination of presidential favors. Either way, divided government will likely continue conditioning the rates at which we observe the president making nominations for available judicial seats.

Ideological Distance

With polarization on the rise, any appointment analysis that fails to consider the effects of ideology would be insufficient. Scholars have continued to advance the argument that increasing ideological extremism plays a part in the

delay story of the appointment process—and not just the judicial appointment process. Exponentiating the product of the coefficient and standard deviation of the variables enabled a more readily accessible effect of the covariate on the hazard rate. Every standard deviation increase in the mean of ideological distance (between the home-state senators and the president) yielded a decrease in the hazard rate of presidential nominations. The variable achieved statistical significance in all but two model iterations, with the most substantial effects occurring during divided government and in the 1973-1992 model. One must remember that the effects are cumulative—if a home-state senator stands two standard deviations away from the mean distance, then there is a 23.8 percent reduction in the risk of nomination during divided government or a 24.6 percent reduction in the 1973-1992 vacancy period. Interviews supported the evidence from the models as both congressional staffers and district judges emphasized the significance of ideology in the process.

Effect	Overall	Divided	Unified	1973-1992	1993-2012
(exp) Estimate %	↓6.5%	↓11.9%	*failed*	↓12.3%	*failed*

As the staffer to a Republican party leader stated,

"Every party wants like-minded judges, but at times, that endeavor can come at a price. Senators who are extremely ideologically distant from the president will have a hard time getting nominees who look like them for vacancies in their states. Unless of course, that senator's party enjoys control of the Senate…in that case, he can just delay, delay. But that comes at a cost too. Sometimes these districts really need judges, and the opposing party will confirm one in those cases, but it's rarer."

A Democratic staffer noted the after effects of "presidential attempts to politicize the Judiciary,"

"What we observed in the Bush (II) administration was a strategic effort to use the Judiciary as a policy tool. We hated it—but we were impressed by it. More importantly, we learned from it. We will scrutinize any judge who comes off as extreme to the right, especially in the cases where there's no senatorial courtesy or when we're in control of the chamber. The dossiers and information required for nominees does a great job of spelling out the nominee's past behavior, which is likely to be their future behavior. The best predictor of someone's future is their past."

One active judge of the Fifth Circuit noted the facility with which he arose to the bench, but noted the difficulties experienced by other federal district judge colleagues,

"My nomination and confirmation process were fairly easy, but I think that's only a function of the senator and president being so ideologically akin. Of course, I've made friends on the bench now, and I'll be honest, I'm feeling pretty lucky given their experiences. And I'm feeling luckier just watching what goes on a decade later. My colleagues were tough—they're good judges, but the political dynamics were just a little more difficult for them. Interrogations were rougher, confirmation took longer. You have to write down every detail—every membership, every opinion, it seems. The whole thing. I'm not saying theirs' were anything like Clarence Thomas's—no Anita Hill's coming out of the woodwork, but just more challenging than mine."

In the end, the data and anecdotal evidence suggest that ideological distance will continue to affect the nomination stage of the process in the future—the extent of the impact remains the question.

Thurmond Rule

The political dynamics characterizing the last six months before a presidential election decreased the hazard rate for nominations to judicial vacancies in all but one model. Perhaps ironically, the decelerating effect was most pronounced during periods of unified government—the time when conditions are seemingly most ideal to fill open seats. Nonetheless, we observe a

56.8 percent reduction in the rate of nomination during unified party control.

Additionally, the variable failed to achieve statistical significance in the 1993 to

2012 iteration. The null result suggests that the Thurmond Rule has lost some of

its previously cited influence in affecting presidential decision-making. The

interviews yielded some interesting and fairly mixed responses regarding the

dynamics of presidential election years and their impact on the nomination

process.

Effect	Overall	Divided	Unified	1973-1992	1993-2012
(exp) Estimate %	↓43.7%	↓33.4%	↓54.6%	↓39.2%	*failed*

The chief staff member to a key Republican leader stated,

"Election years are just different—especially presidential election years. We operate under different parameters. For a president to send over a bunch of judicial nominations in those last remaining months, especially if the race appears to be close, is a bad idea in the sense that the nominations aren't likely to be confirmed. But in this day and age, they [presidents] still nominate because it sends a signal. You saw what happened to Merrick Garland—of course that was a Supreme Court seat, and district vacancies are not nearly as politicized. But it's all the same. Even if the White House knows we won't confirm, that doesn't mean they don't want to make us [the Senate] look like jerks for not confirming. There's an image component to this appointment equation—make yourself look like the responsible steward of good government, and make the other guys look like they have a flagrant disregard for it. Political calculation…"

A sixth circuit judge who received his commission in 1997 commented,

"The seat I was eventually appointed to became vacant during a presidential election year. I was tapped for the job fairly quickly after my predecessor declared his retirement, but my nomination didn't come forward until after the president won re-election. But I knew that was going to be the case because the senator told me so. In his words, 'Everything will run much more smoothly if we push for you after November. There's no sense in submitting a nomination for confirmation that's just going to sit there, and then have to be resubmitted in January.' So, I waited. All the vetting had been done months before, but the final piece of the puzzle didn't come forward until next February."

The Democratic operative working for a judiciary committee member

observed,

"In those last six months, nobody really cares about anything but re-election. Of course, not all the senators are up for re-election, but the dynamic of the chamber changes dramatically. We take care of absolutely necessary business, but anything that doesn't fall under that category, and you could say judicial appointments do, is less of a priority during that time frame."

On the whole, the last six months of presidential election years exerted a

detrimental effect on judicial nomination rates. But as the interviews intimate,

there is a great deal of political calculation happening on Pennsylvania Avenue

and in the Capitol. Perhaps painting the Senate as a slow, ineffective body has

become more important than making nominees wait for timely confirmations.

With changing model results, we have to consider, have the types of

considerations and calculations changed from decades before?

First Year President

The first year of presidential terms presented substantial obstacles for

concurrent district vacancies. The effects were felt in every model iteration—the

variable achieved statistical significance at the 95 percent confidence level each

time. Additionally, the first year appears to be more important now than in

decades past. The variable reduced the risk of nomination by nearly 50 percent

in the 1993 to 2012 model.

Effect	Overall	Divided	Unified	1973-1992	1993-2012
(exp) Estimate %	**↓40.7%**	**↓39.3%**	**↓44.2%**	**↓27.8%**	**↓49.8%**

The interviews provided additional understanding to the forces at work

during executive transitions. According to one former chief of staff to a

Democratic leader,

"There's nothing really to it—it just takes longer. The first few months of
presidential administrations are like the building of a new, fancy sports car. The
goal is to have a beautiful, well-oiled machine in the end, but it takes a lot of
effort and many skilled hands to get there. Even in times of unified government or
when senatorial courtesy is in place, the incoming administration still needs a few
months to get up to speed with everything. Appointments included. Of course,
some administrations are quicker than others, but even the most efficient still
take more time in that first year than say after re-election."

The general counsel to a Democratic member of the Senate Judiciary

Committee reiterated,

"As I've said before, we keep a running list of potential nominees for
judicial seats. As soon as a vacancy happens, in unified control or with senatorial
courtesy, I call over to submit names. But my experience with the Obama
administration is that they weren't even ready to receive names for the first three
months in office. There are so many people in need of debriefing and education
that it just takes a longer time even under ideal circumstances."

A key staff member to a Senate Republican leader remarked,

"You have to remember, the last twenty-five, thirty years of presidential
politics have witnessed pretty frequent turnover of the White House. There are no
nominations in the executive hamper that the incoming administration can
immediately send out. Bush Senior certainly benefitted from that situation—the
Reagan people had nominations to ready to go when he took office. In that case,
continuity really helped him."

In keeping with the current literature and my theoretical expectations, the

results imply that incoming administrations require more time to "grease the

wheels." Building an effective, well-organized team takes time in any area, no

less the presidency. The results of the 1993-2012 are hardly surprising given that

it took the three administrations at least four months to send out their first district

nomination. The consequences are such that vacancies occurring in those first

months linger on longer than they would under an already working administration.

Females and Minorities

In the realm of presidential nominations and judicial vacancies, women and minorities seem to matter very little, if at all. Both variables controlling for seats vacated by females and by people of color failed to achieve statistical significance at the 95 percent confidence level in every model iteration. Contrary to my theoretical expectations, the evidence suggests that gender and racial diversity do not affect how quickly or slowly presidents proceed to fill district judgeships.

The results, however, did pose interesting questions for interviews with those individuals close to the process. I informed every congressional staff member interviewed of my results for these particular variables, and two staffers provided interesting insights about the difficulties in both the legal hierarchy itself as well as the inherent problems with diversity in Congress.

Chief counsel to a Democratic senator serving on the Judiciary Committee discussed potential causes for the lack of diversity on the courts. She noted,

"To be sure, there aren't enough women and people of color on the federal bench, and we've certainly made efforts to change that situation. Given that women represent over 50 percent of Americans, I find the situation practically appalling…but you have understand that we're operating from a more limited pool of candidates. When senatorial courtesy is in play, we definitely make an effort to advance women and minority candidates—but those candidates are just fewer and farther in between than male candidates—I hate to say it. The qualifications component also poses a problem because we've realized all too late that the organizations we've long trusted for reliable qualification data are biased in their own right. The ABA—so many of those organizations have a hierarchical structure that's just more difficult for women

and people of color to break into, to receive accolades from or achieve positions of leadership within them. You could say that just as are we're working to diversify the federal bench, we're simultaneously combatting the problem from within the legal world itself."

The chief of staff to a Republican Senate leader highlighted the lack of gender diversity in Congress itself. He stated,

"Diversity is certainly a goal—we want the Judiciary to reflect the multiracial and ethnic history of America. But the core pool of diversity candidates is smaller, so it's just tougher on our end to rectify the situation. In some states with larger cities and more urban areas, it's far easier to find qualified female and minority candidates. But in states and regions where there are smaller minority populations, it's just harder. I can't really defend the lack of women on the federal bench—we've just failed to promote enough women to reflect society. Sadly, I'm not surprised by that fact—c'mon look at the gender breakdown of the senators…"

The infrequency with which women and minorities vacated judicial seats likely contributed to an absence of effect on the models, but the status of women and minorities on the federal bench is an area scholars should continue to examine. More people of color and females were nominated to the bench than the number who retired from the bench—so it remains to be seen whether or not each group affects the rates of confirmation. As the gender and racial gap continues to decrease on the federal bench, perhaps we will be able to discern an effect in the near future.

Judiciary Committee—Majority and Minority Members

The Senate Committee on the Judiciary is one of the oldest, most prestigious committees for which a senator can serve upon in Congress. The chairman and ranking member positions have been consistently held by more prominent senators over the course of history. Senators Edward Kennedy, Joseph Biden, Orrin Hatch, Strom Thurmond, to name a few, have occupied the

chairman position. Given the committee's role in reviewing judicial nominees, the notion that a home-state senator serving on the committee might affect presidential decision-making processes is not unreasonable. Surprisingly, however, each variable controlling for vacancies occurring in states where a senator serves on the committee, either in a majority or minority position failed to achieve statistical significance in all but one Cox proportional hazard model.

Effect	Overall	Divided	Unified	1973-1992	1993-2012
Majority Committee	***failed***	***failed***	***failed***	***failed***	**↓22.8%**
Minority Committee	***failed***	***failed***	***failed***	***failed***	***failed***

According to the results, a home-state senator serving in a majority capacity on the committee had the effect of slowing down the presidential nomination rate by 22.8 percent for vacancies occurring from 1993 to 2012. The result begs the question: what reasons would compel a senator to slow down the nomination process for judicial vacancies? The interviews shed some light on potential reasons for the overarching null results.

The general counsel to a Senate Democrat serving on the Judiciary Committee noted,

"Just by default, Senate Judiciary Committee members hold significant power over the appointment process. The chairman schedules the hearing for each nominee and moves to push the nomination on the floor. There's no way to get around scheduling—simple scheduling. Even if the president wanted to—control is something everyone is Washington enjoys having, and wielding. Committee chairmen aren't going to budge without some sort of incentive. Of course, that's in cases where there's a Democrat versus a Republican, or vice versa. But you watch members of the president's own party wield that power as a bargaining tool as well—that's not to say that the president's nominees won't eventually make it through the process, but that it might take more time because the chairman has an additional objective he wishes to address. Historically, the judiciary committee is a prestigious post, so more than likely, your committee

member has more power elsewhere in the Senate. Remember—no committee is just a committee—every bill, every move, every position are all working in tandem with one another."

Chief of a staff to the Republican Senate leader commented,

"Most of these judiciary committee members don't need to sling their weight around in the nomination part because they've already been consulted in their role as home-state senators. The only cases where I've seen judiciary committee members insert themselves into pre-confirmation situations have been when the proposed nominee is so unappealing or downright unacceptable to that home-state senator/judiciary committee member that he or she makes the effort to sabotage the nomination."

Both accounts illustrate the potential and likelihood for power struggles

and bargaining between the executive and committee members. Both the

president and home-state senators want judges with similar preferences, and

senators and presidents do not always share the same preferences. The results

supplemented with the interviews indicate that majority committee members may

delay nomination proceedings because that member wants some other carrot or

prize.

Full Vacancy

This analysis marks the first time a judicial scholar has examined the

different types of vacancies and their effects on the presidential nomination

process. Recall that a full vacancy is any vacancy created by a judge's death,

elevation to another Court or position, impeachment, or full retirement from the

bench. Partial vacancies are those incidents where a judge elects senior status,

or where Congress has authorized a new judgeship. The logic proposed is that

full vacancies create greater workload problems for remaining judges and as a

result should receive swifter nominations. According to the results, full vacancies

speed up the rates at which we observe presidents submitting judicial

nominations in four out of five models. The effects of the variable are most

pronounced in the unified government iteration, the divided government, and the

1973 to 1992 iteration, where the variable speeds up the rate of nomination by

30.9 percent and 26.7 percent, respectively. Contrary to my expectations, the

variable failed to achieve statistical significance in the 1993 to 2012 iteration,

suggesting that full vacancies may be less influential to the nomination decision-

making process in current times. However, the interviews did provide additional

insight into potential reasons for this result.

Effect	Overall	Divided	Unified	1973-1992	1993-2012
(exp) Estimate %	↑20.2%	↑26.7%	↑30.9%	↑26.7%	*failed*

According to the Chief of Staff for a Democratic senator,

"We are notified immediately when a vacancy comes up, and we can
certainly plan better for vacancies that come about by senior status. We typically
receive senior status notice months or even a year in advance of it happening. In
those cases, the nomination can be submitted even before the retirement date,
and the waiting time between vacancy and replacement is virtually nothing.
However, those seats that come available through deaths or flat out
retirements…as you no doubt know, federal judges don't make a lot of money
relative to the private sector...those can be harder to prepare for. But we are
more concerned about what those vacancies do to other judges in the district.
Workloads go up drastically in these situations, and we hear about workload
issues on every rung of the federal bench. It's a consistent problem. We try to do
our best to fill those needier seats more quickly, but on the nomination front,
they're just harder to anticipate.

In this case, the interviewee noted the frequency with which senators are

notified of an upcoming senior status election. In those cases, the senators can

present potential nominees to the executive in advance of the actual vacancy

date so that the time frame is shortened in the nomination stage. Given that

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deaths of judges comprise the majority of full vacancies, the ability to submit

nominations in advance of such events becomes more problematic; the staff

member cited the difficulties in predicting judges' deaths.[2] However, the

interviews also uncovered that full vacancies have the potential to be used as

leverage in congressional proceedings.

As the Chief of staff to a Republican Senate leader stated,

"Deaths, elevations, judicial emergencies—they're bargaining tools. When it's an emergency or a death—something like that situation—senators have more leverage to go to one another in advance of the nomination or during confirmation proceedings. They all know those seats present more problems for the districts altogether. Even in when they're not of the same party, the unifying factor is that they've all been in similar situations before. They've all needed judges in their states. There's still a lot of deference given to home-state senators…you extend the courtesy to your colleague on the basis that you want the same consideration given to you. There's a quid pro quo still in existence— maybe less now than back in the day. Circuit seats are a different story—but district seats—your home state is under your purview (and your fellow home-state senator). Going home to a constituency with judicial problems is never good—unless of course, your voters don't want the current president making those replacements."

The revelations in this interview help to illustrate why we observe the

results from the divided government model. Perhaps in times of divided party

control, senators lobby for the judicial seats they are more likely to succeed in

filling, both on the nomination side and on the confirmation side. This excerpt

suggests that senators consider deaths, elevations, and emergencies to be more

consequential to the federal workload, and as such bargain harder to prevent

those seats from impacting their districts. Another interview with a Sixth Circuit

judge revealed a few reasons why active judges are induced to elect senior

status very quickly upon their eligibility. The judge noted,

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[2] I couldn't help myself…hehe.

"There are definite benefits of taking senior status. We're encouraged to do so as soon as we can, and for lots of reasons. One, there are financial incentives. More tax deductions for us. Two, a lot of us want some more time with our families, but we don't want to retire altogether—hell, I don't know what I'd do with all that time. But a lighter caseload is great. We are still useful to our colleagues and can continue to keep our minds sharp. As far as my district is concerned, the sooner I take senior status, the sooner they get another judge in here to help with cases. So that's three. With my semi-retirement, you get an active judge plus a pretty hardworking senior judge. We often say, if you can't get another seat, then make way for another judge."

In light of anecdotal evidence and model results, full vacancies matter for presidential nominations, but only under certain conditions. The interviews suggest that full vacancies do serve as a signal for need, which is in line with my theoretical expectations. However, political actors capitalize on this signal only when they really need to do so. These interviews also suggest that the "time element" advantage for senior status vacancies could be masking a good bit of the overall importance of the full versus partial variable.

Existing District Vacancies

The proportion of existing vacancies in a district seemingly matters to presidents as they approach filling judicial seats. The variable achieved statistical significance at the 95 percent confidence level in all but the 1993 to 2012 time frame model. Recall that the effect of the variable is cumulative; for every one standard deviation increase in the mean proportion of vacancies in a given district, there is a 12.3 percentage increase in the nomination hazard rate. That is to say, under the conditions of divided government, if the proportion of a district's existing vacancies is two standard deviations above the mean proportion of existing vacancies (across all districts), then there is a 30.4 percent increase in

the risk of nomination for that specific district's new vacancy. The interviews

were particularly illustrative as to why we observe these results in reality.

Effect	Overall	Divided	Unified	1973-1992	1993-2012
(exp) Estimate %	↑12.3%	↑15.2%	↑11.0%	↑16.7%	*failed*

A Democratic operative noted the attention legislators give to the

Judiciary,

"Of course, we care about the courts. Look at the makeup of Congress—
the majority of them were lawyers at some point…the overload of cases in
federal courts is not lost on them. They want judges to be happy. But I must
admit, we also have donors—and sometimes it seems like they care more about
the courts operating efficiently than anyone else does. So, if we're not getting
calls from judges complaining about the status of their district's, we're getting
calls from donors complaining about their cases not making it through fast
enough."

This exchange serves as another account of elitist mobilization with regard

to judicial vacancies. According to the interviews, senators do care about the

courts simply by default of many having been a part of the legal world at some

point in their careers. However, those senators seem to care a little more once

the donors with large pockets become concerned about the status of their cases

in the courts system. In this case, elite mobilization helps combat the workload

problem and delayed hearings for American citizens overall.

Additionally, a staff member to ranking Republican senator discussed the

need for urgency as multiple vacancies pile on in specific districts.

"Multiple vacancies in the same district are a serious problem. If we didn't
have institutionalized semi-retirement, we'd be in real trouble. Senior judges
carry a ton of weight, but maybe that's a good thing. What may seem odd is that
many of them take senior status for the specific purpose of getting another judge
to help with the workload. It's a smart move. We pay attention—and we push for
quick turnarounds when we have multiple vacancies in the same district. More
importantly, we feel entitled to do so, even when we don't have White House
control. In those cases, you have the media at your disposal. You can release a

statement saying that the president is not moving quickly enough to address federal caseload issues in your state. We've done it before. Provided you have your constituency on your side, it's actually effective.

Interviews with judges also provided additional insights into how court members act as their own advocates to the necessary lawmakers. An active judge on the Fifth Circuit detailed how retirements affect workloads. He recalled,

"A couple of years ago, we lost two judges at virtually the same time—one to senior status and another to impeachment…odd, I know. And you talk about caseload problems. The senior judge was working in a reasonable capacity for semi-retirement, but with two full-time active judges gone, we just couldn't keep up within reason. I have to hand it to our senators though, one was a Democrat and one was a Republican, and they worked together to get those nominations and confirmations churned out really quickly. We were back to normal levels within six months."

A senior judge working in the Sixth Circuit discussed the frequency with which he contacted home-state senators about lingering vacancies. He said,

"Excuse the expression, but if only I had a nickel for every time I've called up my representatives and senators to complain about long-time vacancies and workload issues. My colleagues and I pressed for years to get another seat— took nearly a decade—but we got one. The system is just inundated with cases, and we do the best we can given the number of active judges, senior judges, and support staff. Some years are tougher than others.

Prior to this analysis, no scholar had examined federal districts and their vacancies in a localized manner. The primary objective to was determine whether additional vacancies increased the level of attention, and by default, the speed of nominations and confirmations, a vacancy might receive given that there may be other seats already vacant in that district. The results indicate that any additional vacancy is at higher risk of receiving a nomination when there is another district seat open for replacement. This analysis also determined judicial vacancies at the district level are not as problematic in the most recent decades

as they were in the past. By creating a proportional measure accounting the increases to the size of the federal judiciary, we can determine that the mean proportion of district vacancies was .084 in the 1973 to 1992 model, and .072 in the 1993 to 2012 model. This statistic means that on average, more of a district's seats were vacant in the past than in modern day times. Accounting for the changes in the size judiciary shows that recent presidents seem to be addressing the vacancy problem relatively well compared to their predecessors. Or, perhaps judges are working for longer periods of time, thereby limiting turnover. Exploring the changes in judicial terms is an area for further exploration.

District Vacancies Nationwide

The proportion of district vacancies on a national level has a substantial effect on the rates at which we observe presidents submit judicial nominations. Just as with ideological distance and existing district vacancies, the effect is cumulative. For every standard deviation increase in the mean proportion of district vacancies across the nation, there is a 40.7 percent decrease in presidential nomination rates. My theoretical expectations hypothesized that presidents move more quickly to submit nominations when the proportion of vacancies increases substantially, but the result indicate quite the opposite. For the 1993 to 2012 model, a one standard deviation increase in the mean proportion of district vacancies (nationwide) reduces a vacancy's risk of nomination by 49.8 percent. This result shows that as vacancies increase in large

numbers, presidents move at a much slower rate overall to submit nominations.

What reasons contribute to this result?

Effect	Overall	Divided	Unified	1973-1992	1993-2012
(exp) Estimate %	↓40.7%	↓39.3%	↓44.2%	↓27.8%	↓49.8%

The excerpt below from an exchange with the chief of staff to a

Republican leader introduces a potential cause for increased vacancies that I

had yet to consider. She commented,

"You know, everyone talks about a vacancy problem, and that's not to say there isn't one, but I feel like there's more to the story than just political antics. Like with so many issues, in the last decade or so, we've started to see the baby boomer generation retire. They elect senior status and their seats are up for replacement. It may sound simple—but there are a lot of those guys; they've represented the vast majority the federal bench for the past twenty or thirty years. We're inevitably going to have more seats to fill in a smaller time range just because of that situation. It's an issue the White House confronts, and it's an issue we confront on the Senate side. Logistics are a real thing."

According to this congressional staff member, the retirements of a

sizeable sector of the population may be contributing to the increasing frequency

of federal vacancies. To be sure, baby boomers represent a large portion of the

overall U.S. population and undoubtedly comprise a significant portion of the

federal bench. Perhaps more judges are satisfying the Rule of 80 in a shorter

period of time than in past times. This idea certainly provides an additional

avenue for research.

Given the discontinuity between my results for district specific vacancies

and district vacancies nationwide (recall that increases in district-specific

vacancies speed up nomination rates, overall), I asked one staff member if he

could offer any ideas as to the reason for the difference. He provided the

following commentary,

"It's always easier to confront issues on a smaller scale—that's why you're probably getting your results. One or two senators can mobilize a heck of a lot easier and faster than a whole chamber. Sometimes, we think of proposing regular confirmation dates, just so we have more efficient schedules during the entire year. But there are so many variables to consider—the White House, the dates of the committee hearings and votes, the floor votes. There are just a lot of steps to this process, on both sides of the equation—and that always makes for complications."

Considering the results in light of the interviews, substantial increases in

judicial vacancies do present administration obstacles for presidential

administrations. As that proportion increases to level beyond the first deviation,

we observe significant reductions in a single vacancy's nomination rate.

However, the model iteration does present to objectively good normative results.

The argument that the "vacancy problem" is worse than ever may be

faulty—the descriptive statistics between the 1973-1992 and 1993-2012 model

illustrate that the proportion of the judiciary consistently in need of nominations

and confirmations is actually higher pre-1992 than post 1992. The 1973 to 1992

model indicates that on average 10 percent of district seats were vacant

nationwide, while just 8 percent of district seats (nationwide) were consistently

vacant in the 1993 to 2012 model.

Omnibus Judgeships

Omnibus judgeships are judicial seats created by and typically authorized

en masse by Congress. More often that not, Congress adds dozens of district

seats every few years or on an as needed basis. As previously stated, the largest

number of district seats was created through the Omnibus Judgeship Act of 1978. Given the sizeable number and subsequent administrative concerns, my expectation was that the president would take a longer time to fill these seats. However, I was wrong—omnibus seats are at greater risk of receiving nominations in all but one model iteration. The effect is extremely strong in the 1993 to 2012 model; judgeships created by omnibus bills increase the nomination hazard rate by 70.9 percent. Interestingly, the difference between the covariate's impact on divided versus unified government are what we might expect. Under the ideal conditions of party alignment between the presidency and Senate, vacancies created by new judgeships (from omnibus bills) are 50 percent more at risk of receiving a nomination. That risk reduces all the way to 3.9 percent during divided government—the evidence suggests that presidents are moving much more quickly under objectively better political conditions. All in all, the variable achieves statistical significance in every iteration except the 1973-1992 model. So, the question becomes, why does omnibus judgeships receive such quick attention from presidential administrations?

Effect	Overall	Divided	Unified	1973-1992	1993-2012
(exp) Estimate %	**⬆25.9%**	**⬆3.9%**	**⬆52.1%**	***failed***	**⬆70.9%**

The general counsel to a Democratic senator serving on the Judiciary Committee discussed the uniqueness of omnibus bills. She stated,

"Omnibus judgeships are a different animal altogether. You have to understand, Congress doesn't authorize the creation of new judgeships unless they are necessary. There's a lot of thought and consideration that goes into where new seats are established. Caseload statistics come into play, pleas from judges throughout every level, the Chief Justice's yearly report, senators'

assessments—they all serve a purpose in educating legislators about the status of the Judiciary. Every bit of that information affects where seats go—the taking away, the adding."

The chief of staff to a Republican Senate leader commented,

"Presidents, by and large, view new judicial seats as an opportunity to achieve policy goals. Using the judiciary as a strategic tool is even more commonplace since Bush Junior—that's not to say presidents haven't aimed to do so before, but he was just more successful. Omnibus seats are certainly a way to do that, and it's politically easier to do so. These are new seats, there are no political entrenchments. No political or ideological bents of earlier judges. You could say that even in cases where senatorial courtesy isn't in play, presidents still enjoy some measure of deference."

A senior judge of the Sixth Circuit discussed the efforts judges go to gain

an additional seat in their districts. He noted,

"My colleagues and I have pushed several times for an extra judgeship in our district. I think it took us about six years or so, but we got it. The irony was that it took relatively no time for a nomination or for confirmation—I guess we had bided our time long enough that everyone pushed through our new judge fairly quickly."

These accounts illustrate a situation counter to what I had originally

anticipated in my theoretical section. New judgeships are created for the explicit

purpose that they are necessary, and as the evidence suggests, those

judgeships receive immediate attention from presidents. Perhaps the motivations

are different in the White House and the Senate—presidents may see the seats

as an opportunity to shift the ideological makeup of the judiciary—yet the result is

the same. The variable in the 1973-2012 model may have failed as a result of my

original theory. The addition of over 100 seats in the earlier period may have

presented a serious administration backlog at the time, but subsequent additions

have been significantly smaller in number. As a result, more recent omnibus

judgeships may be easier to fill; fifteen to twenty seats are certainly easier to address than 120.

Final Remarks

The president's responsibility to nominate judges for the third branch is an important political role with significant implications. This analysis has uncovered previously unstudied factors influencing the decision-making process as well as illustrated how already known conditions have continued or not continued to affect that process. Political norms and institutions still matter, but the evidence shows that the functioning of the courts also matters to presidents. Certain vacancies are viewed as more urgent than others—whether because departures from the bench have significantly affected a district's workload or because the creation of a seat by an omnibus bill has served as a signal that the current number of judges are failing to meet workload demands. The pressing question is whether or not the Senate behaves in a similar fashion. That very question is what we will exam in the next chapter.

Chapter 6

Senate Confirmation Analysis

In the previous chapter, we spent substantial time exploring which factors affect presidential decision-making processes in the nomination stage of the appointment process. In this chapter, we turn to explore the factors affecting the second component of the appointment equation: the Senate. Here, the question becomes: what factors discussed in the theoretical chapters speed up or slow down the rates at which senators confirm or reject presidential nominations?

Similar to the presidential analysis, this chapter begins with a review of all the nomination data collected for the confirmation analysis, and then proceeds with an explication of the main Senate confirmation model. From there, I explore the data further by creating four separate models, two of which examine the effects of unified and divided government, and two of which explore the potential changes in the variables' influences over time. The extension portion reviews the data breakdown, model explications, and each model's findings. The final section of the chapter seeks to examine the results of each model within the context of information gathered through interviews with members of the judiciary and key staff members to Senate leaders.

Senate Confirmation Model—First Iteration

In this first section of the chapter, we explore the dynamics governing judicial nominations and Senate decision-making as it applies to all the data in

the confirmation analysis. The primary goal is to evaluate the impact of the independent variables over a forty-year time frame. The data include all U.S. District Court nominations submitted to the Senate, and Senate confirmations and rejections from the beginning of 1973 through the end of 2012. Just as in the nomination analysis, I have broken down the descriptive statistics by each variable as well as created graphs illustrating Senate confirmation durations for each president. Table 6-1 showcases the relevant values—the means, medians, minimums, maximums, standard deviations, and frequency of occurrence for each independent variable as well as for the dependent variable, the number of days from the date of submission to the Senate to the date of confirmation or rejection by the Senate.

Table 6-1
Senate Confirmation Model Descriptive Statistics

Independent Variable	Mean	Median	Min	Max	sd	N[1]
Political Variables						
Senatorial Courtesy[2]	0.758	-	0	1	0.428	1111
Divided Government	0.369	-	0	1	0.482	541
Ideological Distance[3]	0.041	0.041	-0.521	0.596	0.330	1465
Thurmond Rule	0.051	-	0	1	0.220	75
First Year of Presidency	0.242	-	0	1	0.428	354
Female Candidate	0.195	-	0	1	0.396	285
Minority Candidate	0.121	-	0	1	0.327	178
Judiciary Majority Member	0.199	-	0	1	0.399	292
Judiciary Minority Member	0.152	-	0	1	0.358	223
Operational Variables						
Full/Partial Vacancy	0.215	-	0	1	0.411	315 (full)
Existing District Vacancies[4]	0.075	0.000	0	0.833	0.103	1465
District Vacancies Nationwide[4]	0.095	0.079	0.001	0.245	0.056	1465
Omnibus Judgeship	0.201	-	0	1	0.401	587
Number of Days From Nomination to Confirmation	125.1	99.0	3	660	104.358	1465

[1] Here, N stands for the number of nominations that satisfied the presence (1) of each independent variable.
[2] All but three variables are dichotomous, meaning that they are present (1) or not (0). Here, the mean value of 0.758 indicates the proportion of nominations that came under the condition of senatorial courtesy. For all other dichotomous variables, the same logic prevails.
[3] The measure for Ideological Distance is transformed into absolute values for the models, but these values represent the original range.
[4] The measures for Existing District Vacancy and District Vacancies Nationwide have been transformed into proportions for the models.

Data Overview

The majority of the independent variables are dichotomous (having values of 0 or 1), making the mean values of all but three variables easily interpretable. Of the 1,465 nominations in the data, 75.8 percent (0.758) of them arose when a sitting senator was of the president's party and represented the state in which the vacancy occurred, thereby satisfying the conditions of senatorial courtesy. Divided government was in effect during 36.9 percent (0.401) of nomination submissions, thereby leaving 73.1 percent occurring under the conditions of unified government.

Just over 24 percent of nominations occurred during the first year of a president's tenure. Less than 20 percent (0.199) of nominations were made for vacancies in states where a senator served as a majority member of the Judiciary Committee, while over 15 percent (0.152) of nominations were submitted for vacancies in states where a home-state senator was a minority member of the Judiciary Committee. The descriptive statistics for women and racial minorities reveal the higher representation of these types of candidates on the Senate side versus the presidential side; of all the nominations, presidents' proposed female candidates just under twenty percent (19.5) of the time, and racial minorities a little over twelve percent (12.1) of the time. These statistics are nearly double of those in the presidential analysis—considerably fewer women and racial minorities vacated judicial seats than were nominated to judicial seats in this time range. This increase is likely the consequence of presidents' and home-state senators' efforts to diversify the federal bench.

For the operational variables, 21.5 percent of nominations were made to judicial seats vacated altogether by active judges, thereby designating the nominations as ones for full vacancies. The remaining 78.5 percent of nominations failed to satisfy the conditions of full vacancies. Of those partial vacancies, over 75.2 percent were created by a judge's election of senior status, and the remaining 24.8 percent were created by default of the authorization of new judgeships. Just over 20 percent of all nominations were proposed for district judgeships created by omnibus bills.

The statistics for vacancies on the district level and on the nationwide level illustrate the wide range and inconsistencies in judicial staffing. At any given time, a district was fully staffed or had up to ten vacant judgeships. The mean value of existing district vacancies is 0.075, but the maximum value is 0.833 suggesting that more often than not, the districts had the necessary personnel to function properly, but in some cases, districts were severely understaffed and likely incapable of handling workloads efficiently.

The range for nationwide vacancies is also very large—in 1973 only one district judgeship was in need of a replacement. With a mean value of 0.095, the data indicate that approximately 10 percent of district judgeships across the country were vacant. The minimum and maximum values reveal that the nationwide vacancy average has been anywhere from one percent to nearly 25 percent (.245)—a statistic that readily communicates staffing deficiencies.

Figures 6-1 through 6-8 illustrate the confirmation rates for Senate chambers during every presidential administration included in the data set.[1] The heights of the bars of the histograms show the patterns with which the Senate acts to confirm or reject nominations for district judgeships. On some occasions, the Senate takes relatively few days (from the day the nomination is sent over) to act on presidential nominations, and sometimes the Senate delays until the end of a congressional term. On the whole, however, the pattern of Senate action is readily interpretable—the chamber has taken a longer time during more recent administrations to confirm or reject nominations.

The box plots in Figure 5-9 show the median number of days the Senate took to act on a nomination, the first and second standard deviations from the mean number of days, and the outliers in the range. The box plots demonstrate the consistent increases in the lengths of time senators have taken to make final decisions on presidential nominees. Even with the addition of over one hundred district seats, the Senate moved to confirm or reject the vast majority of President Carter's nominees in less than 100 days. In contrast, the Senate took over 100 days to decide upon the majority of President George W. Bush's and President Obama's district judicial nominations. These findings generate many questions as to why the Senate's behavior has changed so radically over time. From here, we move to review the main Senate confirmation model.

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[1] Here, is it necessary explain exactly what I define as the term "confirmation rate." Given that the vast majority of nominations for district vacancies are confirmed and very few are rejected, the term "confirmation rate" refers to the time the Senate takes to make a final decision on a nomination (confirmation or rejection).

Figure 6-1

Richard Nixon Confirmation Rates

Figure 6-2

Gerald Ford Confirmation Rates

Figure 6-3

Jimmy Carter Confirmation Rates
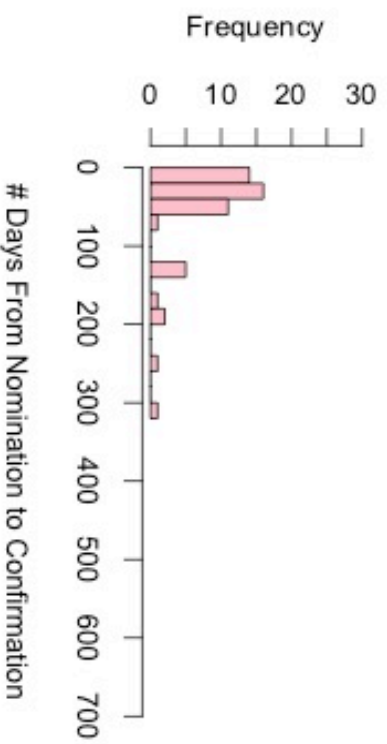
Figure 6-4

Ronald Reagan Confirmation Rates
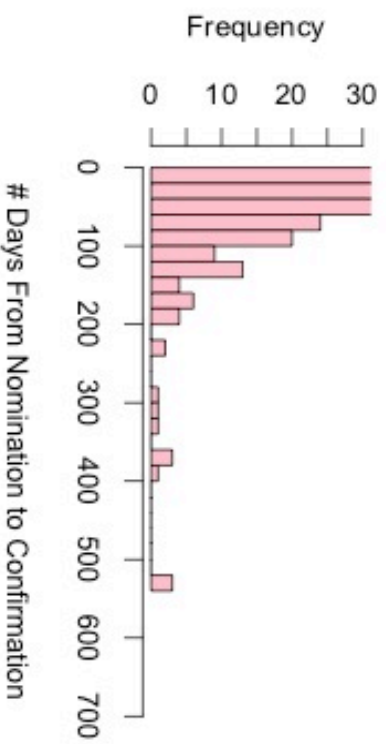
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Figure 6-5

George H.W. Bush Confirmation Rates

Figure 6-6

Bill Clinton Confirmation Rates

Figure 6-7

George W. Bush Confirmation Rates

Figure 6-8

Barack Obama Confirmation Rates

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Number of Days from Nomination to Confirmation

Confirmation Descriptive Statistics By Administration

Figure 6-9

163
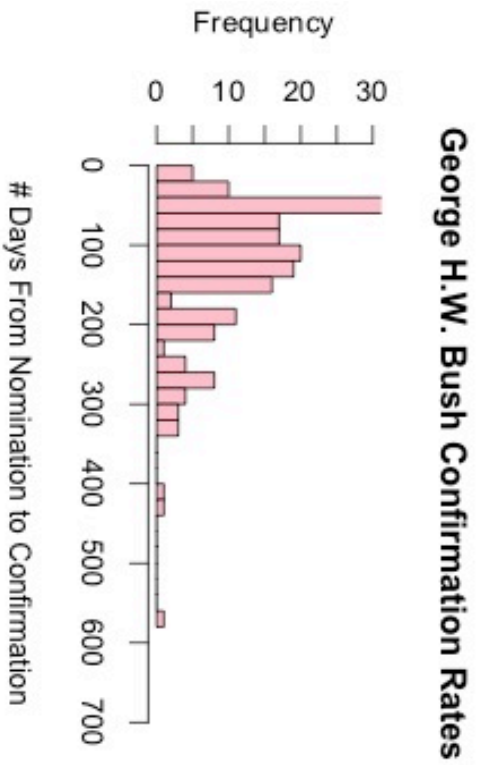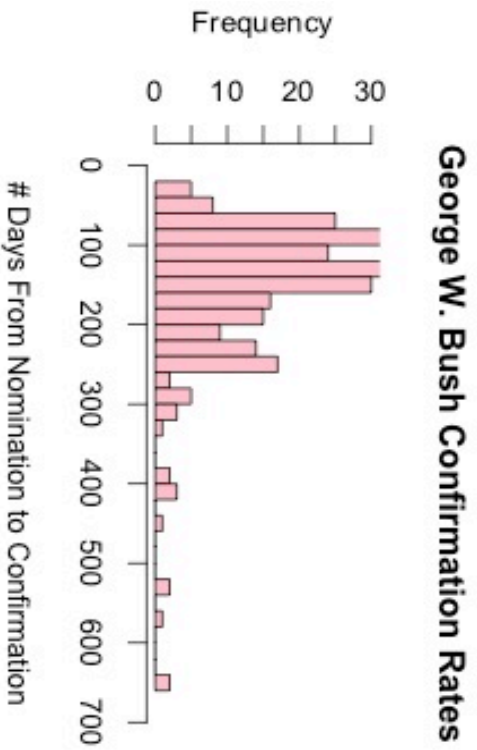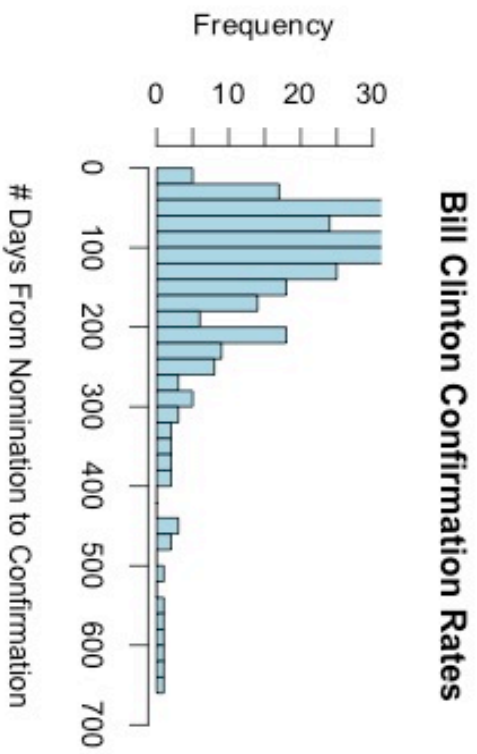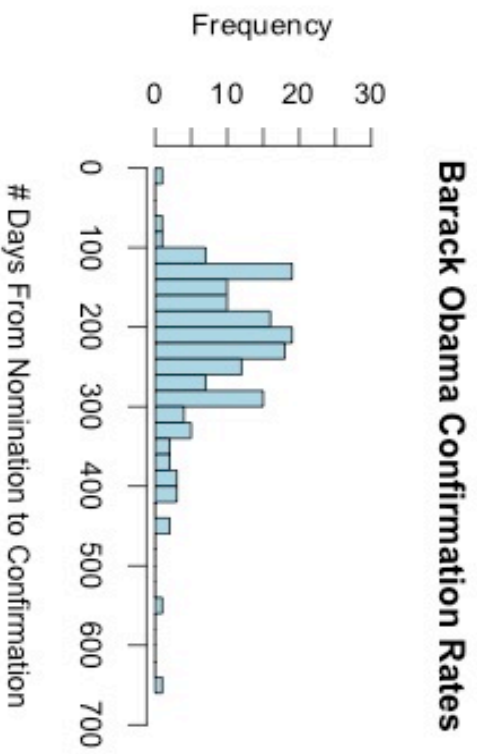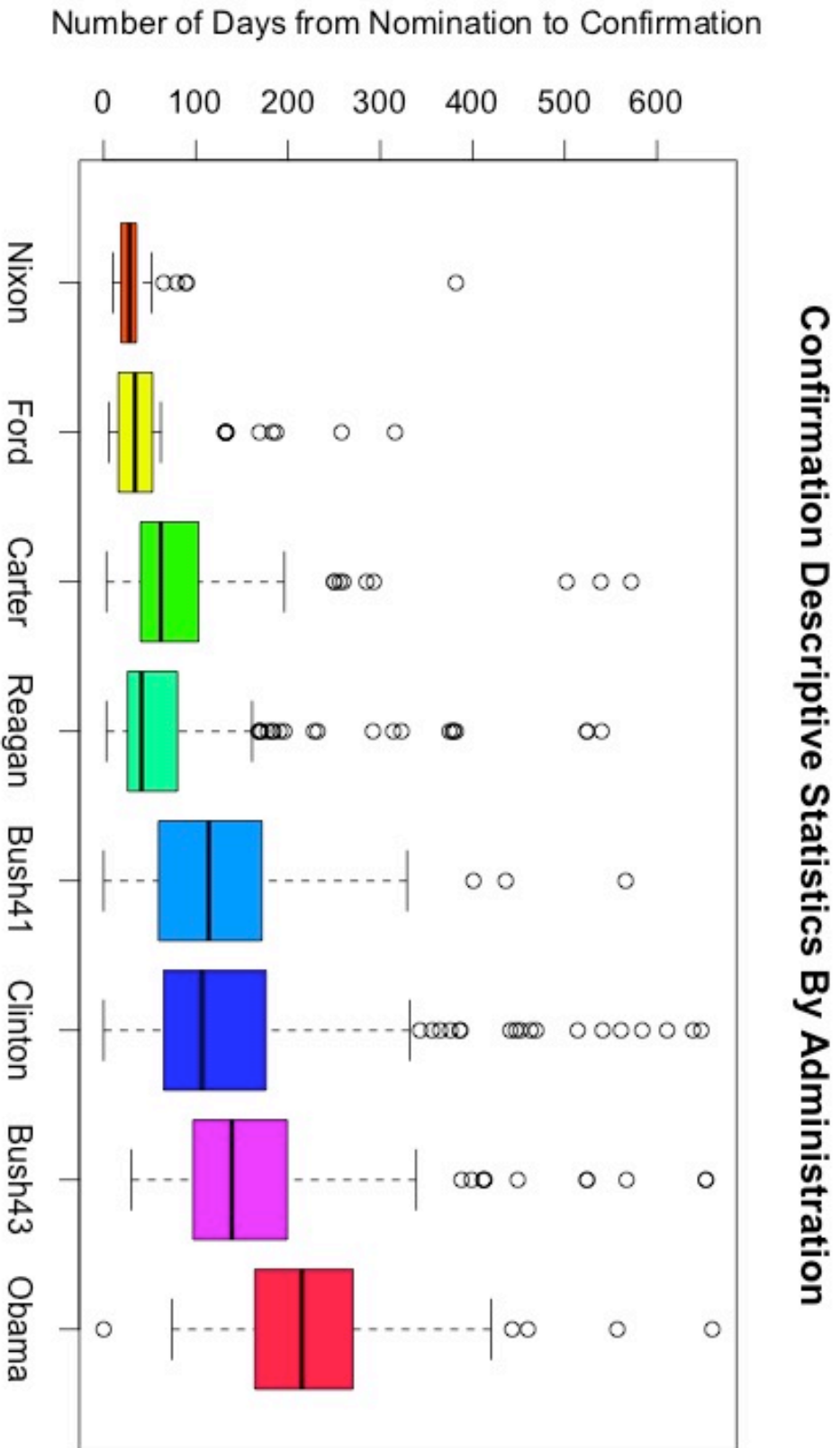
Main Senate Confirmation Model Explication

Just as in the presidential analysis, I estimated a Cox proportional hazard model to assess the covariates' effects on Senate confirmation rates. In this model, the baseline hazard rate is calculated by using the number of days from when the nomination was first submitted to the Senate until the day the nomination received a final confirmation (or rejection) vote.[2] The model uses the day, e.g., day one or day 100, each nomination receives a final determination. The date of confirmation (or rejection) serves as the failure date. Of the 1,465 nominations in the confirmation model data, 145 in the sample are right-censored, and consequently are included in the model as never having failed. Right-censored nominations were either withdrawn by the president or never acted upon by the Senate (i.e. returned).[3] Similarly to the presidential model, the Senate model is calculated using the following equation:

$$h(t) = h_0(t) \ X \ \exp(b_1 x_1 + b_2 x_2 + \ldots + b_p x_p)$$

where t represents the survival time;
$h(t)$ is the hazard function determined by a set of p covariates $(x_1, x_2, \ldots, x_p)$;
the coefficients (b_1, b_2, b_p) measure the impact of the covariates;
where h_0 represents the baseline hazard;

---

[2] It is important to note that even a vote to reject a presidential nominee is still considered a final decision vote for an observation (1). Nominations that fail to receive a confirmation or rejection vote are considered right-censored data (0). These nominations are either never acted upon by the Senate (default returns) or withdrawn by the president. In keeping with the current literature (Binder and Maltzman 2002; Binder and Maltzman 2008) the withdrawn nominations are considered right-censored.

[3] Even though the right-censored nominations were neither confirmed nor rejected by the Senate, we still assess their duration as an integral part of the hazard rate. In these cases, a nomination's time to confirmation is calculated by determining the number of days between the dates on which the nomination was submitted to the Senate and the date the nomination was last "at risk" for confirmation. Typically, the last "at risk" date is the last day the Senate was in session for each Congress. For the withdrawn nominations, the last "at risk" day is the date the president withdrew the nomination.

Just as the baseline risk of receiving a nomination increases over time, so too does the baseline risk of receiving a confirmation. Nominations are more likely to receive confirmations on day 200 than on day 100. Figure 6-10 illustrates the cumulative hazard function for the model—take note that as the numbers of days increase so too does the hazard rate. Figure 6-11 shows the survival rate for the nominations in the confirmation sample. Counter to the vacancy data, 100 percent of nominations survive, i.e. do not fail, on day zero (the date at which the nomination occurs). To simplify, the Senate never confirmed a nomination on the very day the president submitted that specific nomination for approval. The Greek or equilateral crosses on the plot lines in both Figure 6-10 and Figure 6-11 represent a "failed nomination," or a nomination that has received a final decision from the Senate. Because the principle goal of the model is to measure how the covariates affect the risk of receiving a confirmation vote on day one, day 100, and so on, we move to assess their individual impact on Senate decision-making processes. Which independent variables speed up confirmation rates, slow down confirmation rates, and which variables do not affect the confirmation hazard rate either way?

Cumulative Confirmation Hazard Rate
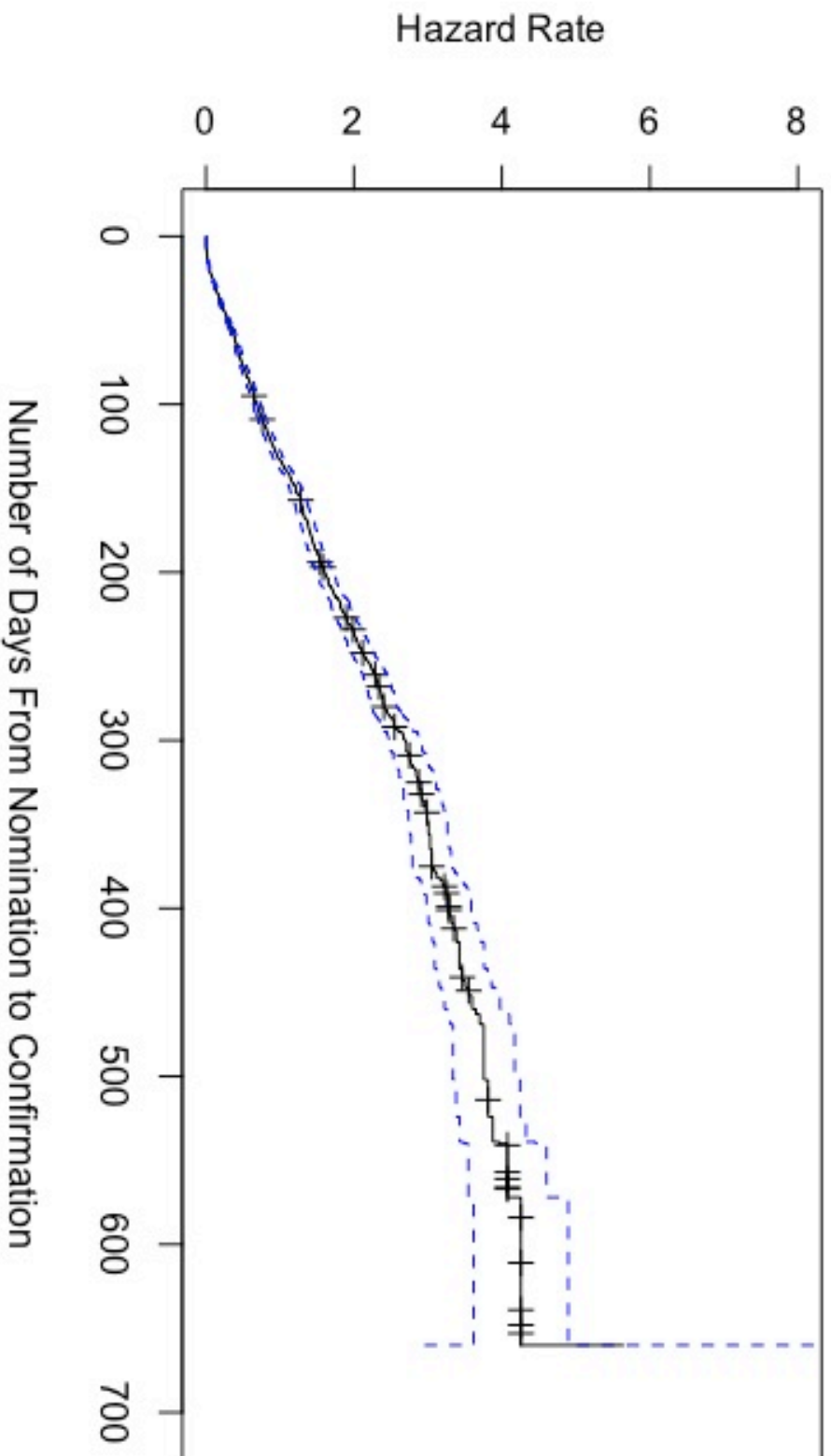
Figure 6-10

Figure 6-11

Nomination Survival Over Time
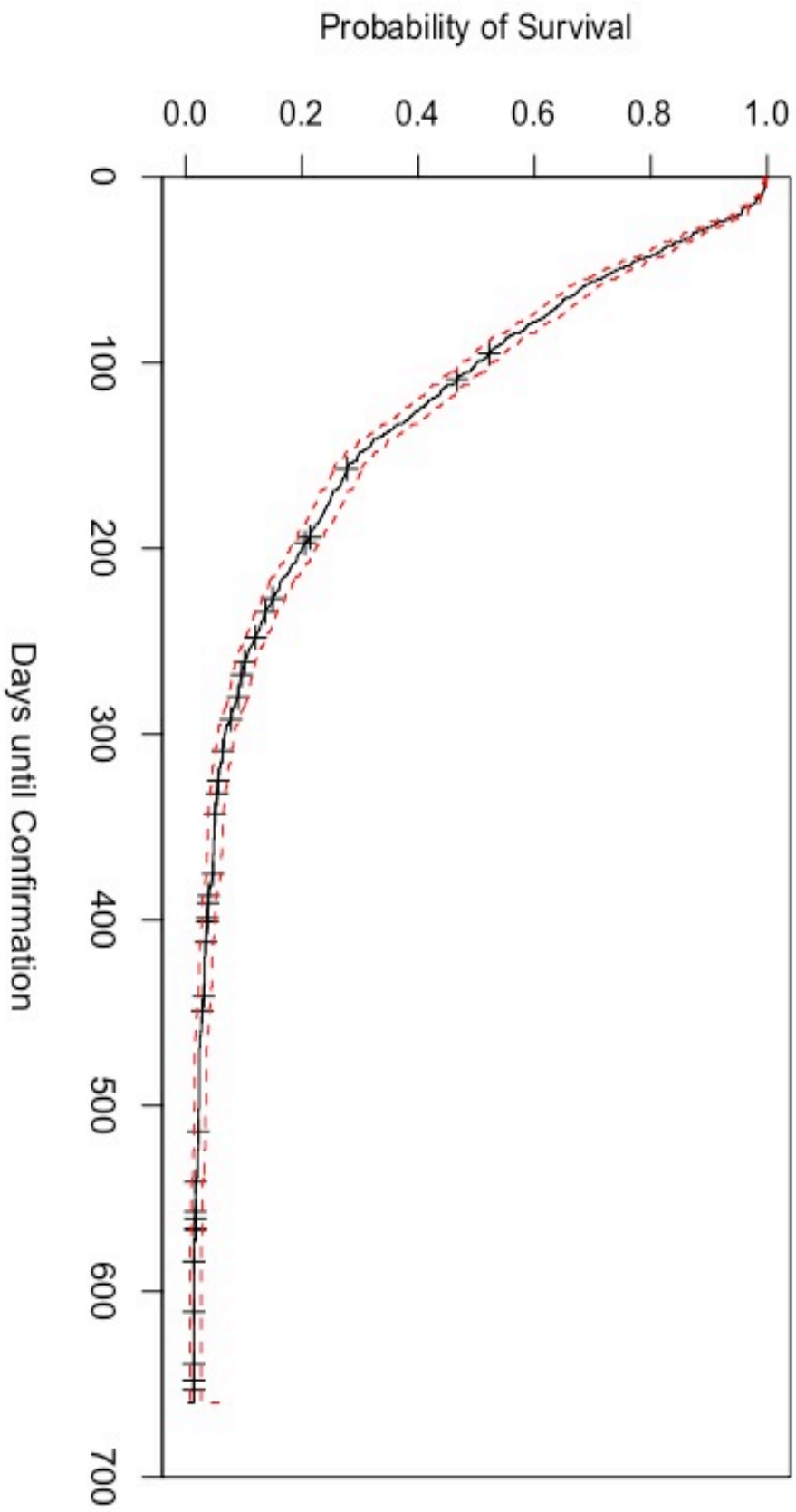
Main Senate Confirmation Model Results

Table 6-2 displays the results of the Senate confirmation model. The overall fit of the model is good, as we can safely reject the hypothesis that the coefficients are jointly 0. The covariates' effects are interpreted exactly the same as in the presidential analysis. Positive coefficients have the effect of speeding up the rate at which vacancies fail, i.e. nominations receive confirmations. Negative coefficients have the opposite impact—they decrease the rate at which nominations receive confirmations. Nine of the independent variables achieved statistical significance at the 95 percent confidence level, whereas four covariates failed to do so.

Unexpectedly, four independent variables do not affect the rate at which senators confirm presidential nominations. The variables accounting for ideological distance between home-state senators and presidents, for nominations submitted during the last six months of a presidential term (Thurmond Rule), and for the proportion of district vacancies nationwide did not attain statistical significance at the 95 percent confidence level. Additionally, the variable accounting for nominations made for vacancies in states where a senator(s) served as a minority member of the Judiciary Committee failed to achieve statistical significance. To determine the variables' effects, we immediately look to the baseline hazard rate and the covariates' exponential estimates. The independent variables either speed up or slow down the baseline hazard rate by default of their presence or magnitude of their scale. Figure 6-12 illustrates these effects.

Table 6-2
Senate Confirmation Model Results

Independent Variables	Expected Sign	Coefficient	Exponential (Coef)	SE[1]	SD	Transformed Coefficient	Transformed Exp(Coef)
Political Variables							
Senatorial Courtesy	+	0.302	1.352	0.071***	-	-	-
Divided Government	-	-0.203	0.816	0.068**	-	-	-
Ideological Distance+	-	0.172	1.188	0.181	0.190	0.033	1.033
Thurmond Rule	-	-0.054	0.947	0.105	-	-	-
First Year of Presidency	+	0.497	1.644	0.067***	-	-	-
Female Candidate	-	-0.244	0.783	0.071***	-	-	-
Minority Candidate	-	-0.242	0.782	0.086**	-	-	-
Judiciary Majority Member	+	-0.154	0.857	0.072*	-	-	-
Judiciary Minority Member	+	-0.058	0.943	0.079	-	-	-
Operational Variables							
Full/Partial Vacancy	+	0.354	1.423	0.099***	-	-	-
Existing District Vacancies+	+	0.654	1.924	0.254**	0.144	0.094	1.098
District Vacancies Nationwide+	+	-0.867	0.420	0.951	0.056	-0.049	0.952
Omnibus Judgeship	-	0.319	1.375	0.124***	-	-	-
						Log Likelihood	p=<0.001

[1] P-values of <0.05 are denoted with one asterisk (*), p-values of <0.01 are denoted with two asterisks (**), and p-values of <0.001 are denoted with three asterisks (***).

+ Denotes this variable is continuous and has been transformed according to the methodology in the text.

The variables with lines above the black colored baseline speed up the rate at which we observe senators confirm judicial nominees, and the lines of variables below the baseline slow down the rates at which senators confirm nominees. Just as in the presidential analysis, the results are readily understandable for the eleven dichotomous variables. While the positive or negative sign of the coefficient indicates whether or not the variable speeds up or slows down the confirmation process, the exponential coefficient indicates the extent to which the variable increases or decreases the risk of a nomination receiving a confirmation vote at any given day, provided the nomination has not already failed in the sample. For statistically significant variables with exponential coefficients greater than one, the risk of confirmation is exactly the numbers following the decimal point. Simply stated, a variable with an exponential coefficient of 1.18 would increase a nomination's risk of confirmation by 18 percent. Exponential coefficients less than one have the opposite effect—the risk of confirmation is reduced by 1 minus the exp(coef). For example, an exponential coefficient with the value of 0.65 reduces the risk of nomination by 35 percent (1.00-0.65).

With the method of interpretation explained, we can begin the analysis of the dichotomous variables. We start with the political variables. In keeping with my theoretical expectations, in the event senatorial courtesy has been satisfied, the risk of receiving confirmation is 30 percent higher given that the nomination has not already terminated in the study. As expected, the condition of divided government reduces the rate at which we observe senators confirming

nominations. A nomination's risk of receiving confirmation is 18.4 percent lower during divided control than during unified control (1-0.816 (divided government exponential coefficient)). The first year of a president's tenure markedly affects the risk of confirmation. Senators do seem to give the incoming president a major appointment honeymoon—nominations made in the first year of tenure are at a 64 percent higher risk of confirmation.

The dichotomous operational variables also impact the Senate's rate of confirmation. Nominations for full vacancies exert a substantively significant effect on the confirmation hazard rate. This operational variable, which has not been examined in the research literature previously, increases a nominee's risk of confirmation by 42 percent. This result falls in line with theoretical expectations. Vacancies left altogether by a previous judge, receive significantly quicker attention from both presidents and senators. Similar to the results of the presidential analysis, vacancies created by the Omnibus Judgeship Act also increase the risk of confirmation. These new judgeships receive confirmations 37.5 percent more quickly all things being equal. One possible explanation for this result stems from the fact that the Constitution explicitly grants Congress the power to create any new federal judgeships. However, Congress's decisions to make additional judgeships typically come from recommendations and requests made by the Judicial Conference of the United States. The Judicial Conference provides both the executive and legislative branches with information regarding the status of the federal judiciary. Given legislators' constitutional role in authorizing new judgeships, perhaps senators are highly attuned to the needs of

the judiciary, and confirm new seats more quickly as a result of demonstrated need. Or, as previously mentioned, omnibus judgeships may be confirmed more quickly because new judicial seats have fewer political expectations attached to them relative to existing seats in need of replacement.

As we move to the continuous variables, it is necessary to recall that the substantive effect is not as readily interpretable. Reflecting back on the presidential analysis, this difficulty arises because these variables exist on a scale. For example, we do not think of ideology as being present or absent, we think of ideology as existing on a scale. So, how do those incremental changes across the variables' ranges affect the rate of confirmation?

In this model, only one continuous variable reached statistical significance at the 95 percent confidence level. In keeping with the current literature, the coefficient for the proportion of existing district vacancies was transformed to calculate the risk of confirmation at every standard deviation increase from the mean (Mills 2011; Box-Steffensmeier and Jones 2004). This process requires the variable coefficient be multiplied by its standard deviation and then exponentiated. Refer to the transformation method below:

For the proportion of existing district vacancies (EDV),
1) original coefficient (EDV) X standard deviation (EDV)= transformed coefficient (EDV)

$$0.654 \text{ X } 0.144 = 0.094$$

2) (transformed coefficient (EDV))exp = transformed exp(coef)

$$(0.094) \text{ exp} = 1.098$$

With the transformation method explicated, the substantive effect of the significant continuous variable is readily interpretable. For every one standard deviation increase in the mean proportion of district-specific vacancies, there is a near 10 percent (9.8) increased risk of confirmation. Senators behave similarly to presidents in that they both move more quickly to address district-specific vacancy problems. The effect is cumulative—as that proportion of existing district vacancies rises, so too does the rate of confirmation. At face value, home-state senators may be working harder to address multiple vacancy issues within districts in their respective states.

Figure 6-12

Effect of Independent Variables on
Confirmation Hazard Rate

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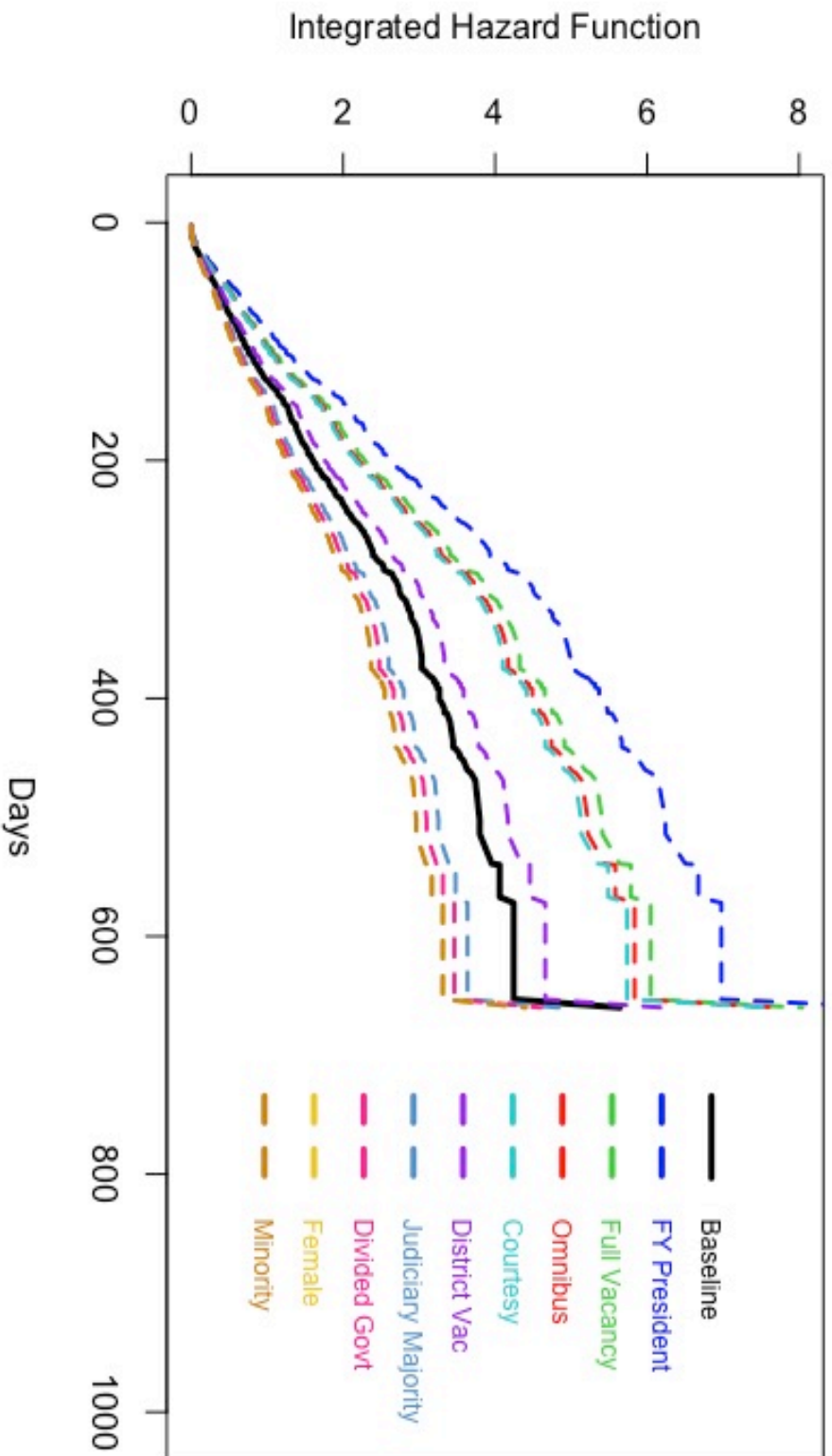
Senate Confirmation Model Extension—Divided vs. Unified Government

We begin the extension section of the Senate confirmation analysis by breaking down the data into two classifications: nominations that occurred under unified government and nominations that were made under conditions of divided government. Scholarly analyses and media accounts continue to paint the Senate as an intractable body unwilling to confirm presidential nominees, unless of course, the political conditions are ideal. Therefore, any further analysis must explore the potential differences unified and divided party control present for the confirmation stage.

Data Overview

Comparing the descriptive statistics in Tables 6-3 and 6-4 readily showcases some interesting differences between the two conditions. Of the 1,465 nominations in the analysis, 63.1 (924) percent arose during unified party control, whereas 36.9 (541) percent arose under divided control. To be expected, the mean value for the time to confirmation is slightly lower during unified government (120.1 days) than during divided government (133.5 days). The range for confirmation time is fairly similar between the two conditions with nominations taking anywhere between six and 663 days for confirmation during divided control and nominations taking between three and 660 days during unified government.

The difference between the numbers of nominations for omnibus judgeships is readily discernable. During divided government, presidents submitted nominations for 73 district seats created by omnibus bills. The

numbers for unified government are three times higher—presidents submitted

nominations for 222 seats created by omnibus bills. These statistics more than

suggest that legislators favor creating new seats during optimal political

conditions. The probability of obtaining more desirable judicial outcomes, i.e. like-

minded judges, is higher in times of party alignment.

Unified vs. Divided Confirmation Model Explication

Next, we proceed with the model design and analysis. Just as in the

presidential analysis, I estimated two separate Cox Proportional Hazard models,

one controlling for all the nominations occurring during times of unified

government and another controlling for all the vacancies occurring during times

of divided government. Figure 6-13 displays the survival curves for nominations

occurring during both conditions. Regardless of conditions, every nomination

survives on its first day. The median values for nomination survival in unified

versus divided government are 92 days and 108 days, respectively. Nominations

survive in the pool, i.e. do not receive confirmations, longer during divided

government periods—a finding we could immediately perceive through the

descriptive statistics. Figure 6-14 demonstrates the hazard rates for both

conditions. The hazard rate for unified nominations is consistently higher than the

hazard rate for divided government nominations.

Table 6-3
Divided Government Confirmation Model Descriptive Statistics

Independent Variable	Mean	Median	Min	Max	sd	N[1]
Political Variables						
Senatorial Courtesy[2]	0.709	-	0	1	0.080	443
Ideological Distance[3]	0.067	0.114	-0.521	0.596	0.322	541
Thurmond Rule	0.089	-	0	1	0.285	48
First Year of Presidency	0.137	-	0	1	0.343	74
Female Candidate	0.177	-	0	1	0.382	96
Minority Candidate	0.105	-	0	1	0.307	57
Judiciary Majority Member	0.179	-	0	1	0.383	97
Judiciary Minority Member	0.161	-	0	1	0.368	87
Operational Variables						
Full/Partial Vacancy	0.231	-	0	1	0.422	125 (full)
Existing District Vacancies[4]	0.056	0.000	0	0.400	0.080	30
District Vacancies Nationwide[4]	0.077	0.064	0.001	0.163	0.041	42
Omnibus Judgeship	0.135	-	0	1	0.342	73
Number of Days From Nomination to Confirmation	133.5	108	6	653	109.156	541

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[1] Here, N stands for the number of nominations that satisfied the presence (1) of each independent variable.
[2] All but three variables are dichotomous, meaning that they are present (1) or not (0). Here, the mean value of 0.709 indicates that 70.9 percent of vacancies in the data satisfied the condition of senatorial courtesy. For all other dichotomous variables, the same logic prevails.
[3] The measure for Ideological Distance is transformed into absolute values for the models, but these values represent the original range.
[4] The measures for Existing District Vacancy and District Vacancies Nationwide have been transformed into proportions for the models.

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Table 6-4
Unified Government Confirmation Model Descriptive Statistics

Independent Variable	Mean	Median	Min	Max	sd	N[1]
Political Variables						
Senatorial Courtesy[2]	0.787	-	0	1	0.409	727
Ideological Distance[3]	0.026	-0.057	-0.521	0.596	0.333	924
Thurmond Rule	0.029	-	0	1	0.169	27
First Year of Presidency	0.303	-	0	1	0.459	280
Female Candidate	0.205	-	0	1	0.404	189
Minority Candidate	0.131	-	0	1	0.338	121
Judiciary Majority Member	0.211	-	0	1	0.408	195
Judiciary Minority Member	0.146	-	0	1	0.353	135
Operational Variables						
Full/Partial Vacancy	0.206	-	0	1	0.404	190(full)
Existing District Vacancies[4]	0.085	0.000	0	0.833	0.113	924
District Vacancies Nationwide[4]	0.106	0.089	0.001	0.245	0.061	924
Omnibus Judgeship	0.240	-	0	1	0.427	222
Number of Days From Nomination to Confirmation	120.1	92	3	660	101.178	924

[1] Here, N stands for the number of nominations that satisfied the presence (1) of each independent variable.
[2] All but three variables are dichotomous, meaning that they are present (1) or not (0). Here, the mean value of 0.787 indicates that 78.7 percent of vacancies in the data satisfied the condition of senatorial courtesy. For all other dichotomous variables, the same logic prevails.
[3] The measure for Ideological Distance is transformed into absolute values for the models, but these values represent the original range.
[4] The measures for Existing District Vacancy and District Vacancies Nationwide have been transformed into proportions for the models.

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Figure 6-13

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Figure 6-14

Cumulative Confirmation Hazard Rate
Divided Government

Hazard Rate

Number of Days From Nomination to Confirmation

Cumulative Confirmation Hazard Rate
Unified Government

Hazard Rate

Number of Days From Nomination to Confirmation

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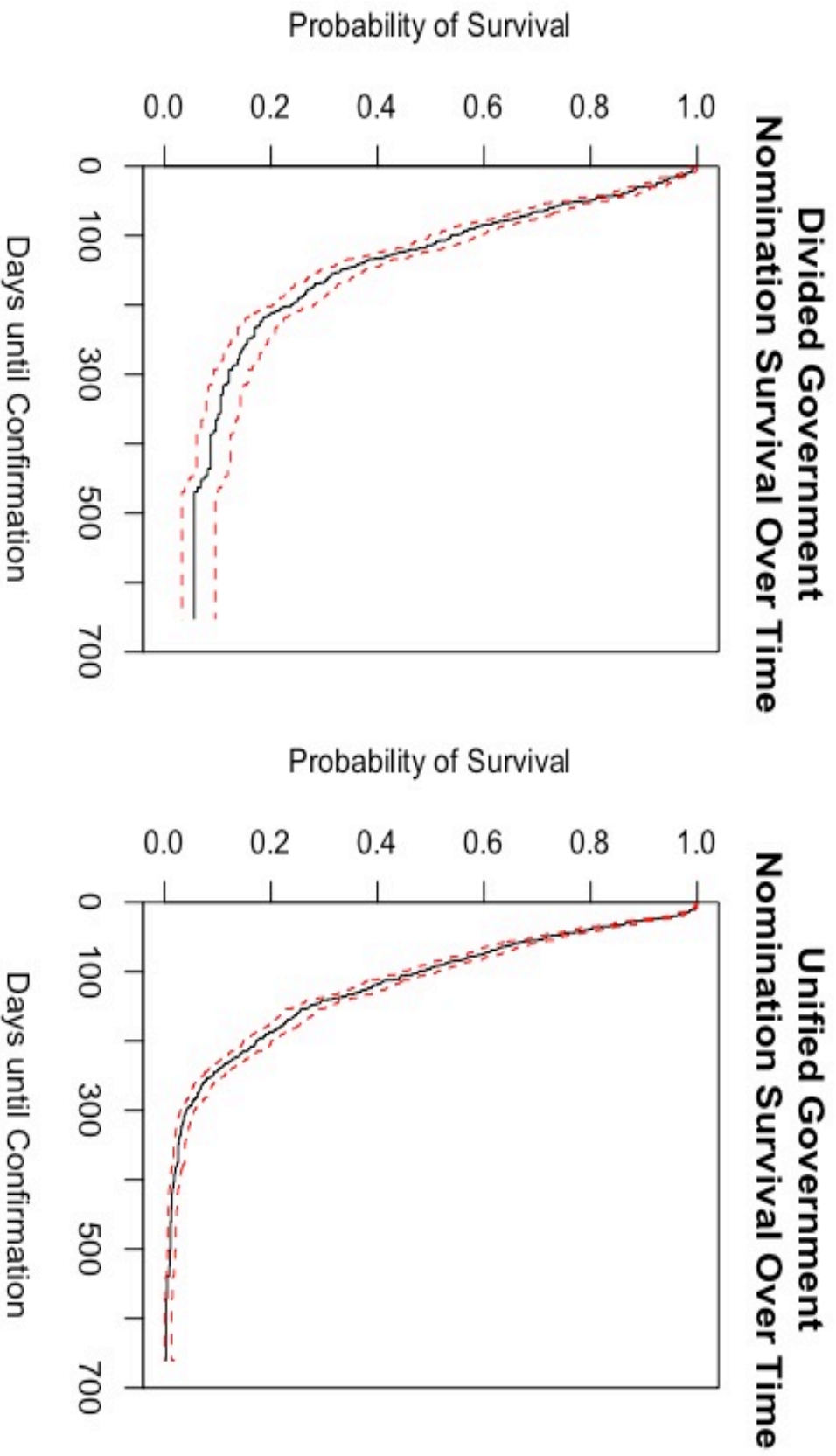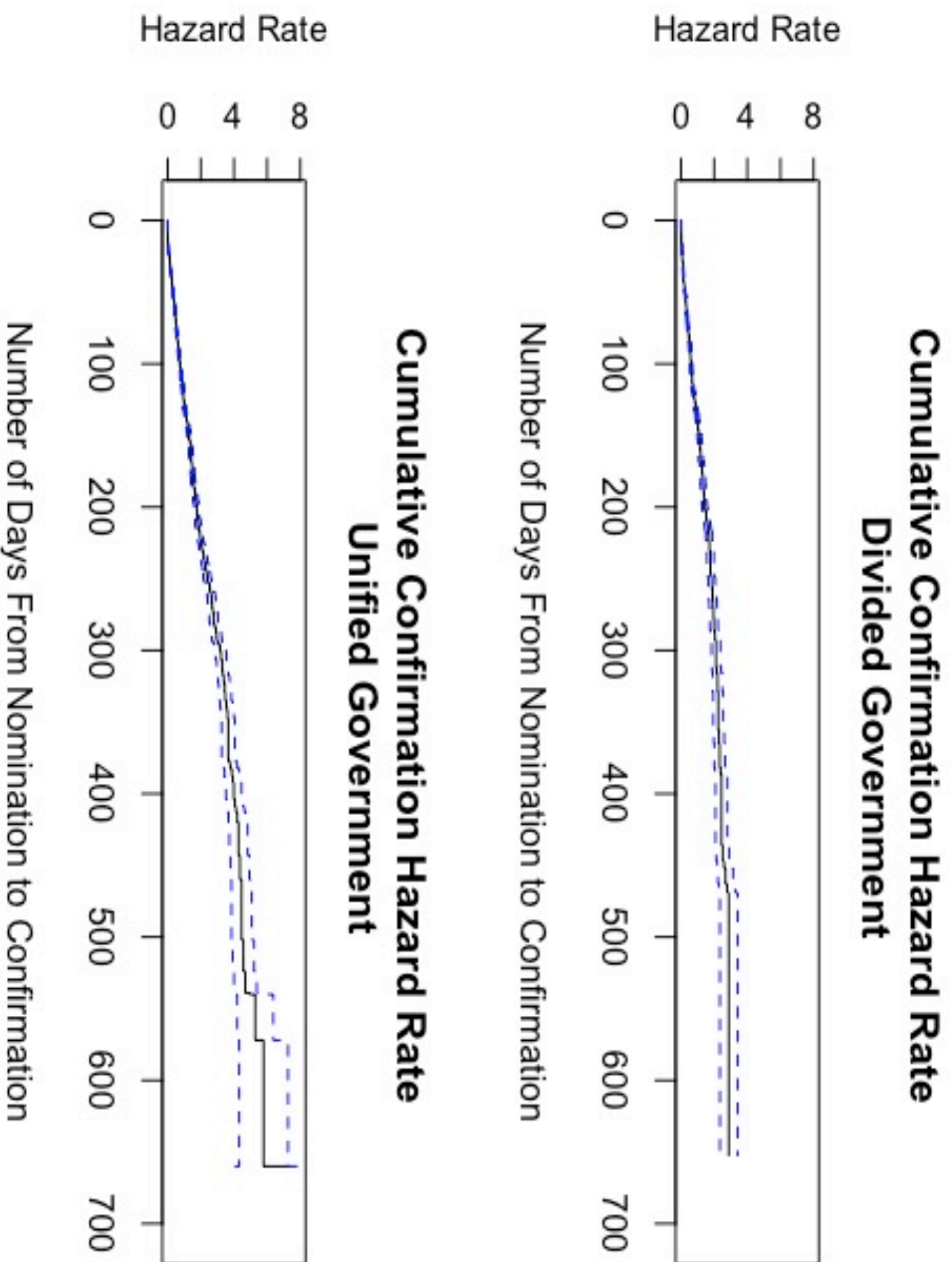
Divided vs. Unified Government Confirmation Results

As we look to the independent variables' effects on the hazard rate, the factors accounting for full vacancies and omnibus judgeships achieved statistical significance at the 95 percent confidence level in both the divided and unified models. However, the covariates share very little overlap across both models; the results clearly indicate the extent to which party alignment impacts the confirmation stage. Perhaps most interesting is that during divided government each operational variable succeeded in attaining statistical significance while every political variable failed to do so. The variables accounting for senatorial courtesy, first-year of a presidency, female nominees, minority nominees, and majority members of the Judiciary Committee are substantively significant to the confirmation stage during times of united party control. All other variables not listed above failed to achieve statistical significance in either the divided or unified model.

Figures 6-15 and 6-16 illustrate either the slowing or speeding effects of the significant variables during divided government and unified government, respectively. In the case of unified government, nominations satisfying the condition of senatorial courtesy are at 58.2 percent greater risk of confirmation. Additionally, nominations made during the first year of a president's tenure are also at a higher risk of confirmation during unified government. The finding is a logical one; party alignment presents the ideal conditions for obtaining like-minded judicial replacements. These first-year nominations are receive confirmations 77.6 percent more quickly than those occurring in other years. Contrary to the null

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findings of the presidential analysis, women and people of color do affect the rates of confirmation during unified government. The results indicate that the Senate takes longer to deliberate on female or minority judicial nominees as females and minorities are at a 20.4 percent and 23.6 percent delayed risk of confirmation, respectively. Counter to expectations, senators serving as majority members of the Judiciary Committee delay the confirmation rate by 19 percent. Full vacancies and omnibus judgeships accelerate confirmation rates during unified government by 32.5 percent and 32.4 percent.

Given that only the operational variables achieved statistical significance in the divided government model, the results seem to imply that the functioning of the judiciary does matter to senators even under less than ideal political conditions. Nominations for fully vacant seats are a 49 percent higher risk of confirmation during divided government than those nominations for partial vacancies. Omnibus judgeships are also important—nominations for newly created seats are at a 58.6 percent higher risk of confirmation. To determine the impact of the variables accounting for the proportion of existing district vacancies and for the proportion of district vacancies nationwide, recall that the coefficients are not as readily interpretable as dichotomous variables and as such require manipulation. Multiplying these coefficients by their standard deviation and then exponentiating those numbers yields more easily intuitive effects. I calculated the values in this model exactly as I demonstrated on page 171 for the original Senate confirmation model. For every standard deviation increase in the mean proportion of nominations for district specific vacancies, there is a 17.1 percent increased risk of

confirmation. The effect of a standard deviation increase in the mean proportion of vacancies at the nationwide level has the opposite effect on the confirmation process; that increase slows down the confirmation stage. During divided government, a one standard deviation increase in the mean proportion of nationwide vacancies reduces the risk of confirmation by 28.6 percent. Just as presidents appear to have difficulty contending with large numbers of vacancies, senators, too, seem to have difficulty confirming a large number of nominations in a timely fashion.

Table 6-5
Divided Government Confirmation Model Results

Independent Variables	Expected Sign	Divided Coefficient	Divided Exponential (Coef)	SE[1]	SD	Divided Transformed Coefficient	Divided Transformed Exp(Coefficient)
Political Variables							
Senatorial Courtesy	+	0.092	1.096	0.118	-	-	-
Ideological Distance+	-	0.229	0.257	0.299	0.184	-0.029	0.971
Thurmond Rule	-	-0.206	0.813	0.217	-	-	-
First Year of Presidency	-	0.177	1.194	0.138	-	-	-
Female Candidate	-	-0.241	0.785	0.127	-	-	-
Minority Candidate	-	-0.212	0.809	0.157	-	-	-
Judiciary Majority Member	+	-0.030	0.970	0.134	-	-	-
Judiciary Minority Member	+	0.001	1.001	0.133	-	-	-
Operational Variables							
Full/Partial Vacancy	+	0.399	1.491	0.117***	-	-	-
Existing District Vacancies+	+	1.266	3.547	0.380***	0.124	0.158	1.171
District Vacancies Nationwide+	+	-8.356	0.000	1.661***	0.040	-0.337	0.714
Omnibus Judgeship	-	0.461	1.586	0.183*	-	-	-

[1] P-values of <0.05 are denoted with one asterisk (*), p-values of <0.01 are denoted with two asterisks (**), and p-values of <0.001 are denoted with three asterisks (***).
+ Denotes this variable is continuous and has been transformed according to the methodology in the text.

Table 6-6
Unified Government Confirmation Model Results

Independent Variable	Expected Sign	Unified Coefficient	Unified Exponential (Coef)	SE[1]	SD	Unified Transformed Coefficient	Unified Transformed Exp(Coefficient)
Political Variables							
Senatorial Courtesy	+	0.459	1.582	0.098**	-	-	-
Ideological Distance+	-	0.297	1.346	0.235	0.166	0.049	1.05
Thurmond Rule	-	-0.054	0.947	0.216	-	-	-
First Year of Presidency	-	-0.575	1.776	0.080***	-	-	-
Female Candidate	-	-0.228	0.796	0.087**	-	-	-
Minority Candidate	-	0.269	0.764	0.103**	-	-	-
Judiciary Majority Member	+	-0.209	0.811	0.089*	-	-	-
Judiciary Minority Member	+	0.032	1.032	0.103	-	-	-
Operational Variables							
Full/Partial Vacancy	+	0.282	1.325	0.088**	-	-	-
Existing District Vacancies+	+	0.287	1.332	0.244	0.152	0.043	1.044
District Vacancies Nationwide+	+	0.939	2.559	0.780	0.062	0.058	1.059
Omnibus Judgeship	-	0.281	1.324	0.104**	-	-	-

[1] P-values of <0.05 are denoted with one asterisk (*), p-values of <0.01 are denoted with two asterisks (**), and p-values of <0.001 are denoted with three asterisks (***).
+ Denotes this variable is continuous and has been transformed according to the methodology in the text.

Effect of Independent Variables on Confirmation Hazard Rate
Divided Government
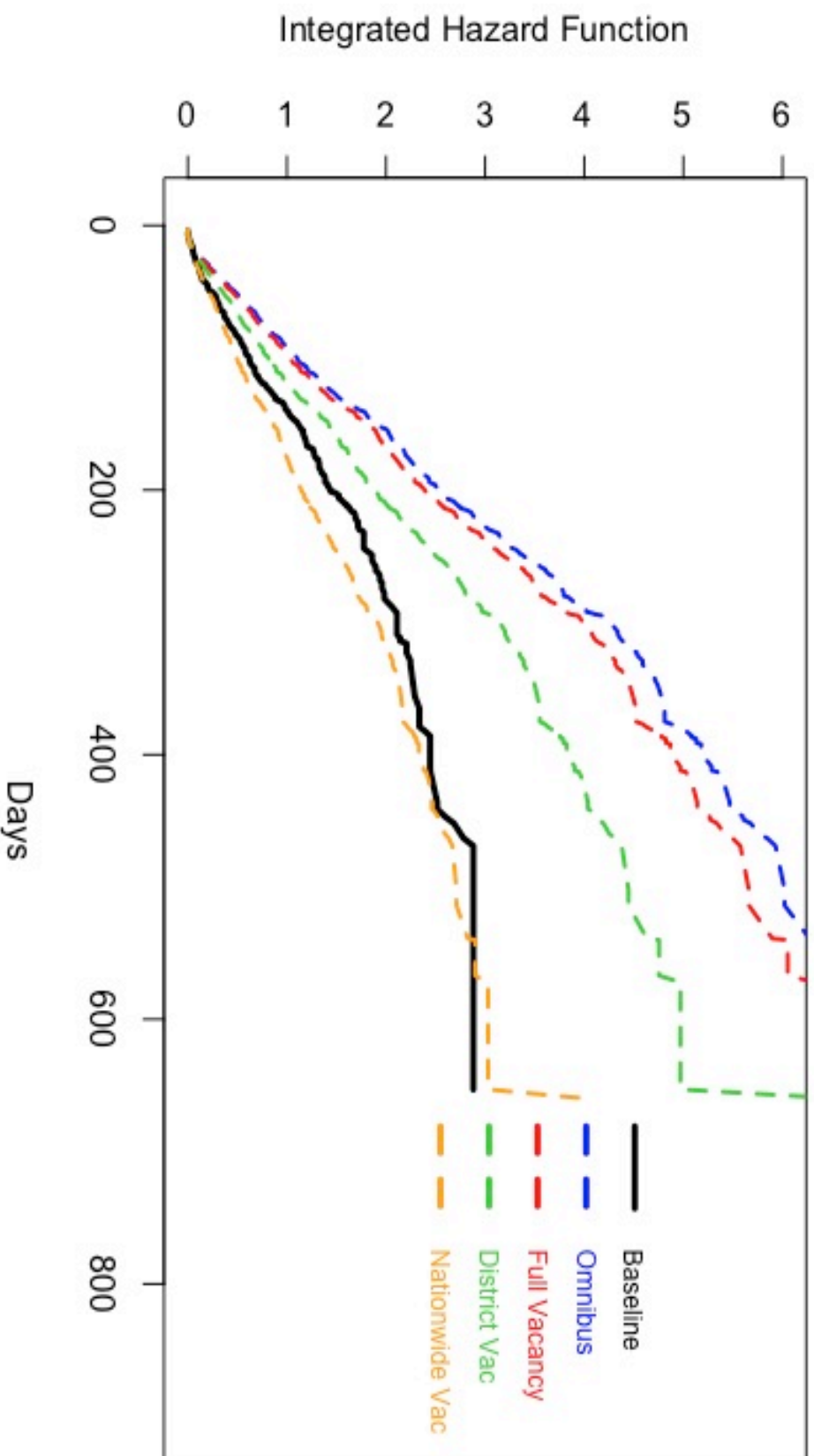
Figure 6-15

Figure 6-16

Effect of Independent Variables on Confirmation Hazard Rate

Unified Government

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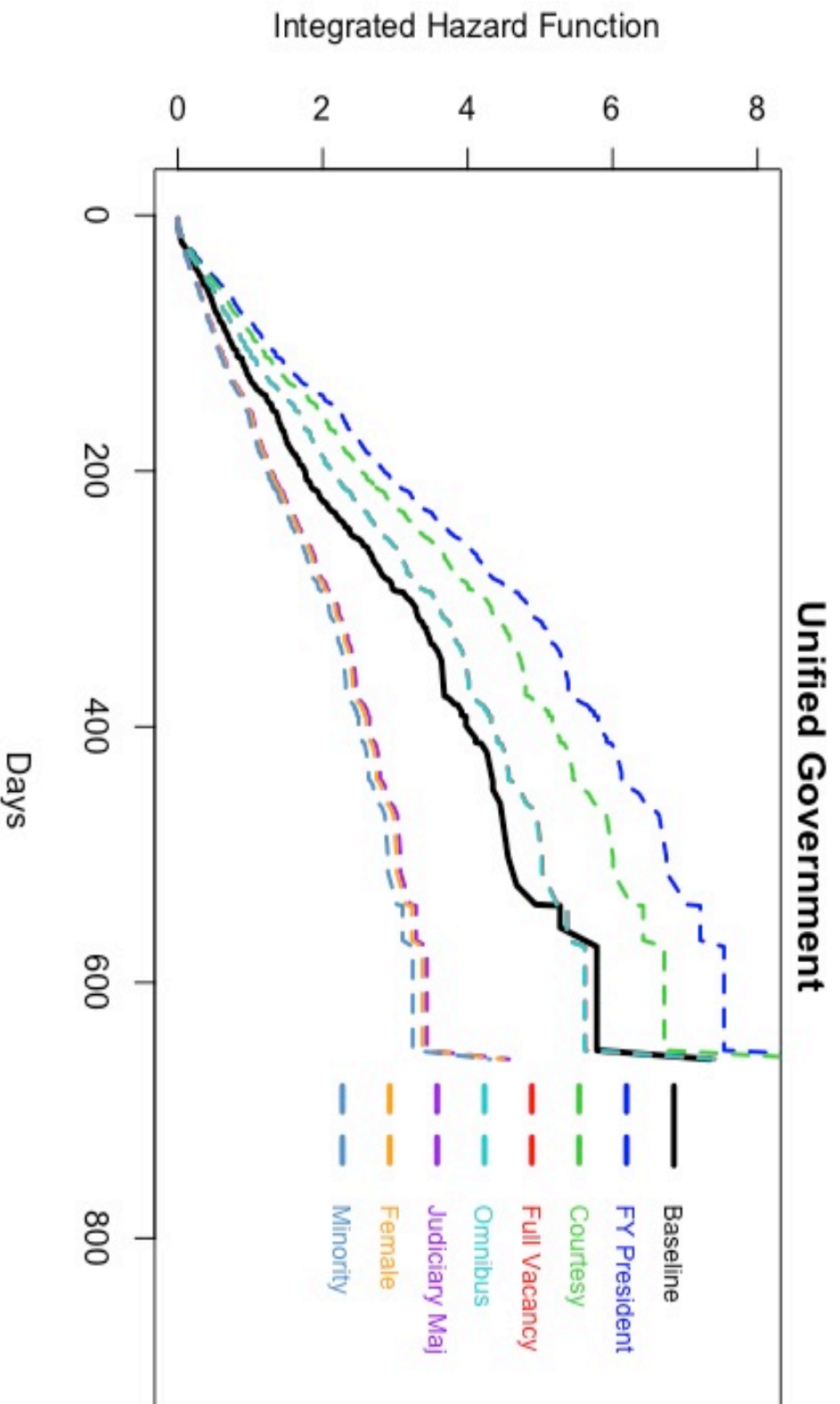
Senate Confirmation Model Extension—1973-1992 vs. 1993-2012

Replicating the steps of the presidential analysis, I estimated two

additional models that separate the confirmation data by twenty-year time

periods. This first model of this extension examines all the nominations

submitted from 1973 to 1992, and the second model surveys each nomination

made from 1993 to 2012. Both the existing literature and theoretical chapters

extensively discuss the informal changes made to Senate confirmation

proceedings during the last forty years. The most significant change was

undoubtedly the amount of information nominees must provide to the Judiciary

Committee and the level of time the Judiciary Committee takes to evaluate each

candidate. Moreover, confirmation durations have virtually doubled in the past

four decades—a phenomenon commonly attributed to increased polarization. It is

the combination of these institutional and political shifts that necessitate a more

thorough analysis of the variables' impacts over time.

Data Overview

The descriptive statistics for both models are located in Tables 6-7 and 6-

8. The division of the nominations over the two twenty-year date ranges is fairly

even—51.1 percent (749) fall in the earlier time frame, and 48.9 percent (716)

percent fall in the later date range. The claims that the Senate is taking longer to

confirm nominations are valid—the data reveal that the median values for

confirmation times have increased from 55 days during the 1973 to 1992 period

to 167 days during the 1993 to 2012 time frame. This finding confirms that

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presidents, on the whole, are no longer receiving immediate stamps of approval for their district nominees.

Turning to the variables themselves, some conditions experience considerable shifts between the two time frames. The earlier time frame oversaw far more nominations made for judgeships created by omnibus judgeships bills (242 versus 38). Additionally, the data bring to light the considerable changes in the variables accounting for nominations of female and minority candidates. In the 1973-1992-time period, only 11.6 percent of nominees for district seats were females, whereas women constituted 27.7 percent of the nominee pool in the 1993-2012 confirmation data. People of color also represented a much larger proportion of the judicial nominee pool in the later time range (18.7 percent as compared to 5.9 percent).

Looking at nominations for existing district vacancies and for district vacancies nationwide, we observe some similarities and differences. The differences are minimal in the proportional measures for nominations to existing district vacancies between the earlier and later time frame (0.076 versus 0.073). However, the measures for the proportion of nominations to vacancies at the national level decreased over time. In the 1973 to 1992 time frame, the mean proportion was .106 whereas in the 1993 to 2012 time period, the mean proportion was .084, suggesting that the proportion of seats in need of judges is less now than in the past.

Table 6-7
1973-1992 Confirmation Model Descriptive Statistics

Independent Variable	Mean	Median	Min	Max	sd	N[91]
Political Variables						
Senatorial Courtesy[2]	0.793	-	0	1	0.405	594
Ideological Distance[3]	0.132	0.187	-0.502	0.596	0.309	749
Thurmond Rule	0.051	-	0	1	0.219	38
First Year of Presidency	0.268	-	0	1	0.443	201
Female Candidate	0.116	-	0	1	0.321	87
Minority Candidate	0.059	-	0	1	0.235	44
Judiciary Majority Member	0.141	-	0	1	0.349	106
Judiciary Minority Member	0.101	-	0	1	0.302	76
Operational Variables						
Full/Partial Vacancy	0.234	-	0	1	0.423	175 (full)
Existing District Vacancies[4]	0.076	0	0	0.833	0.108	749
District Vacancies Nationwide[4]	0.106	0.075	0.001	0.245	0.069	749
Omnibus Judgeship	0.323	-	0	1	0.468	242
Number of Days From Nomination to Confirmation	84.93	55	3	572	84.137	749

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[1] Here, N stands for the number of nominations that satisfied the presence (1) of each independent variable.
[2] All but three variables are dichotomous, meaning that they are present (1) or not (0). Here, the mean value of 0.793 indicates that 79.3 percent of vacancies in the data satisfied the condition of senatorial courtesy. For all other dichotomous variables, the same logic prevails.
[3] The measure for Ideological Distance is transformed into absolute values for the models, but these values represent the original range.
[4] The measures for Existing District Vacancy and District Vacancies Nationwide have been transformed into proportions for the models.

Table 6-8
1993-2012 Confirmation Model Descriptive Statistics

Independent Variable	Mean	Median	Min	Max	sd	N[1]
Political Variables						
Senatorial Courtesy[2]	0.722	-	0	1	0.448	546
Ideological Distance[3]	-0.054	-0.226	-0.521	0.561	0.324	716
Thurmond Rule	0.052	-	0	1	0.221	38
First Year of Presidency	0.214	-	0	1	0.410	331
Female Candidate	0.277	-	0	1	0.448	74
Minority Candidate	0.187	-	0	1	0.390	54
Judiciary Majority Member	0.259	-	0	1	0.438	205
Judiciary Minority Member	0.202	-	0	1	0.403	155
Operational Variables						
Full/Partial Vacancy	0.196	-	0	1	0.397	151 (full)
Existing District Vacancies[4]	0.073	0	0	0.500	0.098	716
District Vacancies Nationwide[4]	0.084	0.082	0.002	0.159	0.035	716
Omnibus Judgeship	0.074	-	0	1	0.262	38
Number of Days From Nomination to Confirmation	167.0	140.5	8	660	204.465	716

1 Here, N stands for the number of nominations that satisfied the presence (1) of each independent variable.
2 All but three variables are dichotomous, meaning that they are present (1) or not (0). Here, the mean value of 0.722 indicates that 72.2 percent of vacancies in the data satisfied the condition of senatorial courtesy. For all other dichotomous variables, the same logic prevails.
3 The measure for Ideological Distance is transformed into absolute values for the models, but these values represent the original range.
4 The measures for Existing District Vacancy and District Vacancies Nationwide have been transformed into proportions for the models.
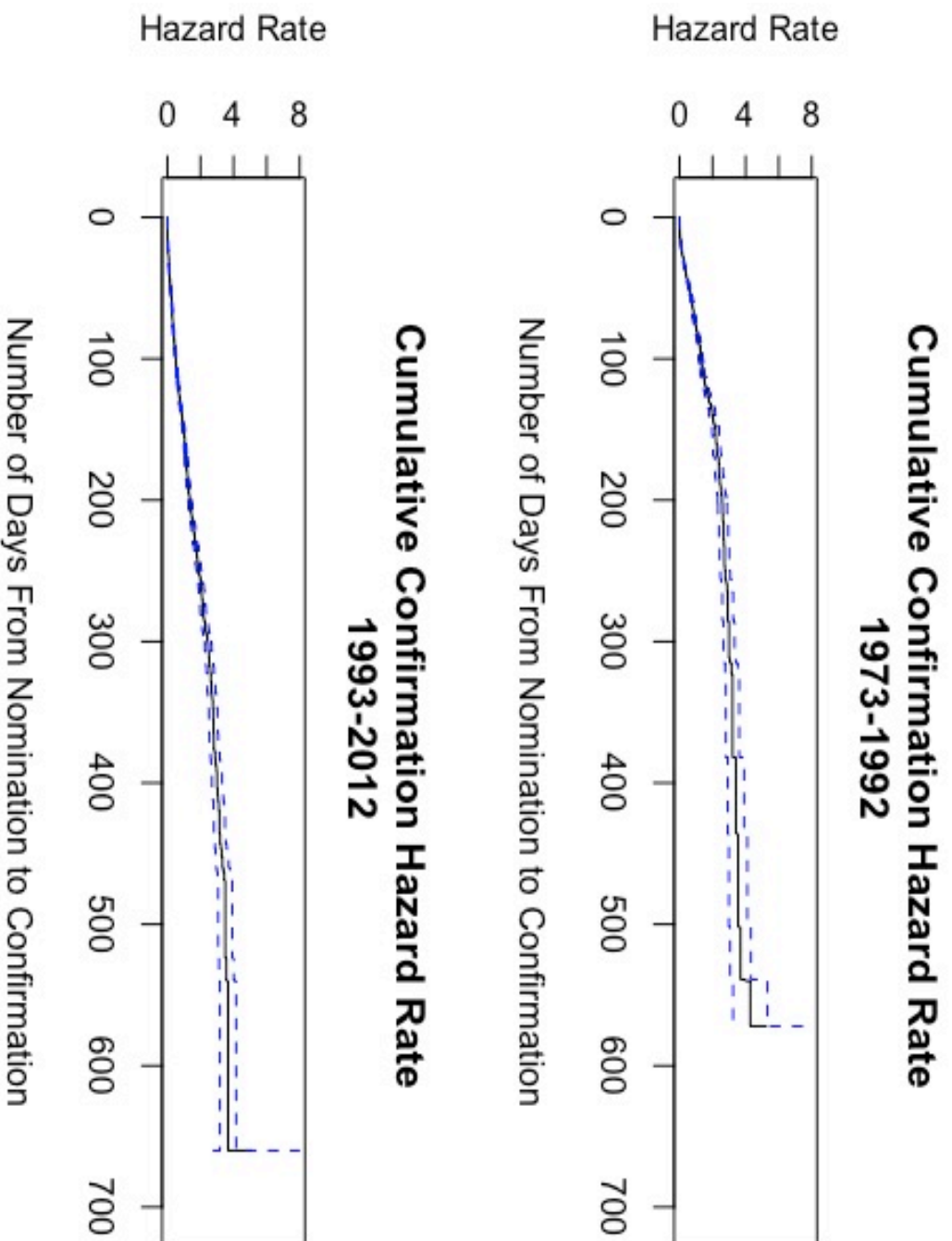
Figure 6-17

Cumulative Confirmation Hazard Rate
1973-1992

Cumulative Confirmation Hazard Rate
1993-2012

Figure 6-18

1973-1992
Nomination Survival Over Time

1993-2012
Nomination Survival Over Time

193
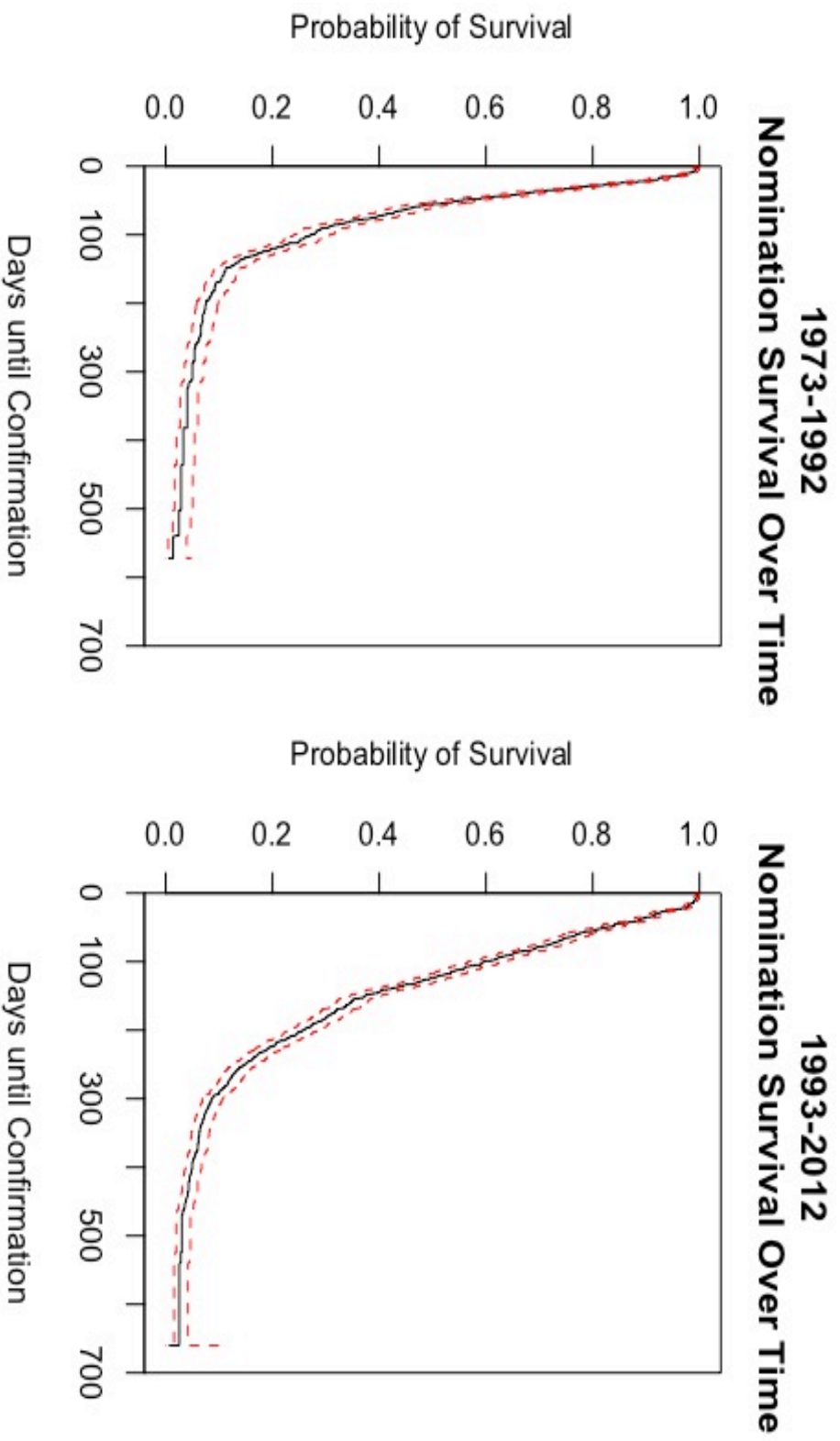
1993-1972 vs. 1993-2012 Confirmation Model Explication

In effort to assess the variables' effects, I estimated two Cox Proportional

Hazard models, one controlling for all nominations made from 1973 to 1992, and

another controlling for the 1993 through 2012 nominations. Figure 6-17 shows the

hazard rates for both time ranges. For the hazard rate, one can easily observe that

the x-axis for the 1973-2012 plot is shorter than that of the x-axis for the 1993-

2012 plot. This difference indicates that the range of confirmation times from 1973-

1992 is shorter (day 3 to 572) than the 1993-2012 range (8 to 660). Figure 6-18

illustrates the survival of each nomination in the analysis.

1973-1992 vs. 1993-2012 Confirmation Model Results

Now, we turn to the results of the models. Tables 6-9 and 6-10 display the

findings of the 1973-1992 model and 1993-2012 model, respectively. Four

variables achieved statistical significance in both models; senatorial courtesy,

divided government, district vacancies nationwide, and omnibus judgeships are

statistically significant at the 95 percent confidence level in both the earlier and

later time periods. However, the variables accounting for the minority members of

the Judiciary Committee and district-specific vacancies only exerted a statistically

significant impact on the earlier model, while ideological distance, first-year

presidencies, and full vacancies only reached significance in the 1993 to 2012

model. All other variables not listed above failed to achieve statistical significance

in either the 1973 to 1992 model or the 1993 to 2012 model.

Figures 5-19 and 5-20 illustrate the baseline hazard rates for each model as well as the accelerating or decelerating effects of each variable on the baseline hazard rates. Senatorial courtesy increases the risk of confirmation relatively similarly in both the earlier and later date ranges. Nominations satisfying the conditions of senatorial courtesy in the 1973-1992 model are at 25.6 percent higher risk of confirmation, while nominations with senatorial courtesy in the 1993-2012 model are at a 20.6 percent higher risk of Senate confirmation. Nominations submitted during divided government are inherently less at risk of confirmation. The 1973 to 1992 nominations are 46.6 percent less risky, and the 1993 to 2012 nominations at 13.6 percent less risky. These statistics are particularly noteworthy, as the effect of divided government has seemingly reduced over time. The proportion of district vacancies nationwide has the effect of slowing down confirmation rates; the relationship is inverse—as the proportion of nationwide vacancies increases the confirmation hazard rate decreases. For every one standard deviation increase in the mean proportion of nationwide vacancies, there is a 31.2 percent decreased risk of confirmation for 1973-1992 nominations, and a 18.9 percent decreased risk of confirmation for the nominations made during 1993 to 2012. Overall, the Senate's confirmation proceedings slow down in the event of large numbers of nominations. Finally, nominations for omnibus judgeships speed up Senate confirmation processes, by 34.3 percent in the 1973 to 1992 model and by 56 percent in 1993 to 2012.

As previously mentioned, two variables attained significance in the earlier model but not in the later model. Minority members of the Senate Judiciary

Committee fail to affect confirmation rates in more recent decades, but accelerated a nomination's risk of confirmation by 34.7 percent in the 1973 to 1992 time period. In addition, a one standard deviation increase in the proportion of district-specific nominations sped up the hazard rate by nearly 11 percent during the earlier time frame.

With regard to the 1993 to 2012 model, three additional covariates exerted substantively significant effects on the speed of confirmation. Nominations for full vacancies are at a 22 percent higher risk of confirmation than those for partial vacancies. A one standard deviation increase in the mean value of ideological distance decreases the risk of nomination by 1 percent in the earlier model. The effect is obviously small, but nonetheless exists. To conclude, nominations made in the first year of presidential tenure's fare better than nominations made in other years—first year nominees are at a 61.2 higher risk of confirmation.

Table 6-9
1973-1992 Confirmation Model Results

Independent Variables	Expected Sign	Coefficient	Exponential (Coef)	SE[1]	SD	Transformed Coefficient	Transformed Exp(Coefficient)
Political Variables							
Senatorial Courtesy	+	0.228	1.256	0.114*	-	-	-
Divided Government	-	-0.618	0.539	0.102***	-	-	-
Ideological Distance⁺	-	-0.439	0.644	0.242	0.209	-0.092	1.096
Thurmond Rule	-	-0.305	0.737	0.229	-	-	-
First Year of Presidency	-	0.128	1.134	0.104	-	-	-
Female Candidate	-	-0.128	0.880	0.124	-	-	-
Minority Candidate	-	0.060	1.062	0.162	-	-	-
Judiciary Majority Member	+	0.135	1.144	0.113	-	-	-
Judiciary Minority Member	+	0.298	1.347	0.126*	-	-	-
Operational Variables							
Full/Partial Vacancy	+	0.169	1.184	0.098	-	-	-
Existing District Vacancies⁺	+	0.677	1.969	0.242**	0.154	0.104	1.109
District Vacancies Nationwide⁺	+	-6.736	0.001	0.889***	0.069	-0.464	0.628
Omnibus Judgeship	-	0.295	1.343	0.124*	-	-	-

[1] P-values of <0.05 are denoted with one asterisk (*), p-values of <0.01 are denoted with two asterisks (**), and p-values of <0.001 are denoted with three asterisks (***).

+ Denotes this variable is continuous and has been transformed according to the methodology in the text.

Table 6-10
1993-2012 Confirmation Model Results

Independent Variables	Expected Sign	Coefficient	Exponential (Coef)	SE¹	SD	Transformed Coefficient	Transformed Exp(Coefficient)
Political Variables							
Senatorial Courtesy	+	0.187	1.206	0.089***	-	-	-
Divided Government	-	-0.146	0.864	0.094***	-	-	-
Ideological Distance⁺	-	-0.063	0.065	0.257**	0.154	-0.009	0.990
Thurmond Rule	-	0.124	1.132	0.257	-	-	-
First Year of Presidency	-	0.481	1.619	0.096***	-	-	-
Female Candidate	-	-0.021	0.979	0.133	-	-	-
Minority Candidate	-	0.148	0.862	0.148	-	-	-
Judiciary Majority Member	+	-0.082	0.921	0.093	-	-	-
Judiciary Minority Member	+	-0.051	0.950	0.592	-	-	-
Operational Variables							
Full/Partial Vacancy	+	0.200	1.222	0.099*	-	-	-
Existing District Vacancies⁺	+	0.348	1.416	0.319	0.123	0.049	1.051
District Vacancies Nationwide⁺	+	-5.925	0.003	1.171***	0.034	-0.207	0.811
Omnibus Judgeship	-	0.445	1.560	0.152***	-	-	-

¹ P-values of <0.05 are denoted with one asterisk (*), p-values of <0.01 are denoted with two asterisks (**), and p-values of <0.001 are denoted with three asterisks (***).

+ Denotes this variable is continuous and has been transformed according to the methodology in the text.

Effect of Independent Variables on Confirmation Hazard Rate
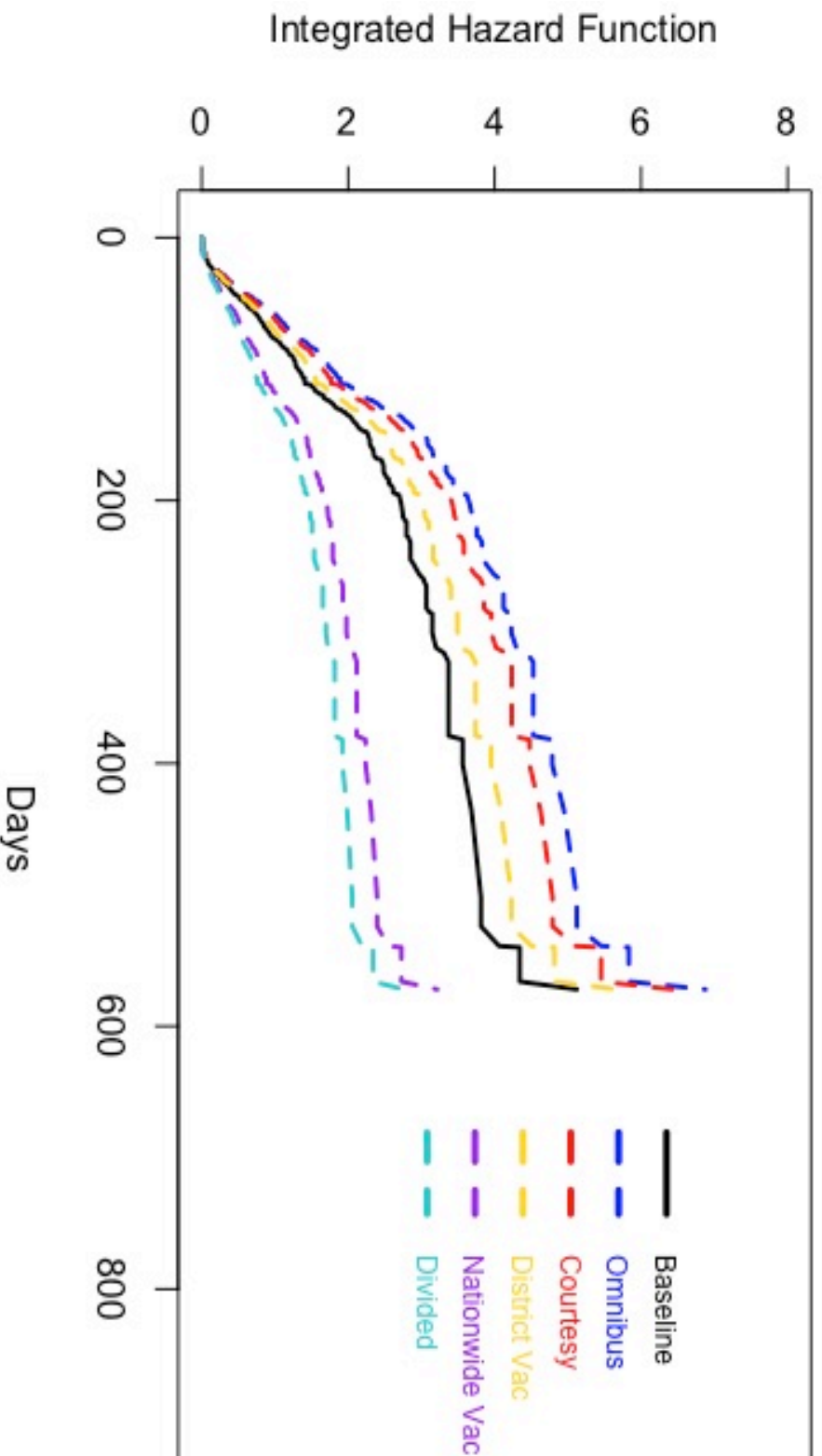1973-1992

Figure 6-19

Figure 6-20

Effect of Independent Variables on Confirmation Hazard Rate
1993-2012

200
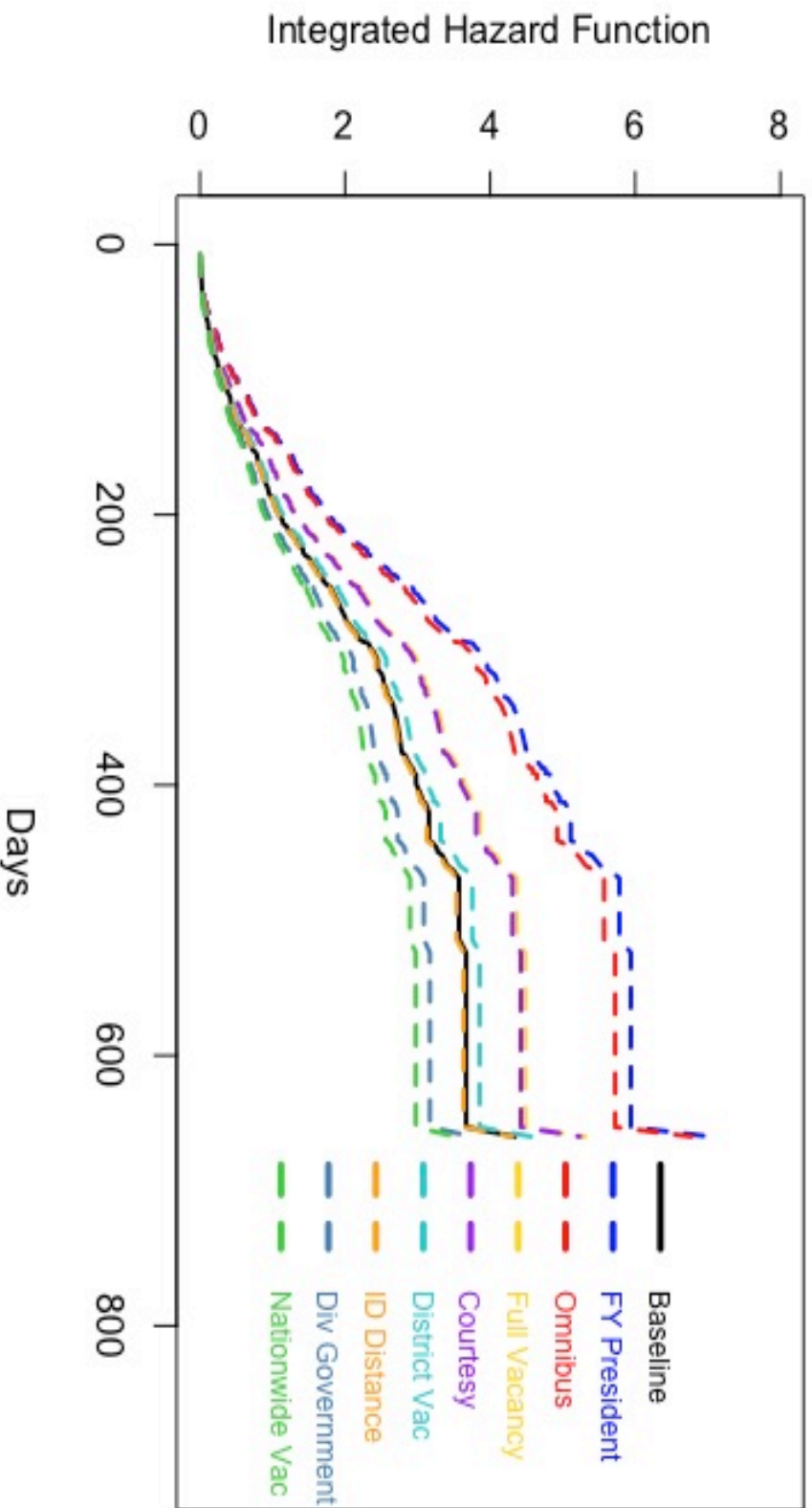
Summation

In the previous chapter, we found that while variation exists, the length of time presidents have taken to submit judicial nominations has not increased systematically over forty years. The results from this chapter, however, reveal that the duration of time senators have taken to confirm nominees has consistently increased over time. Just as in the presidential analysis, we observed that several independent variables affect the confirmation process in the same way under every condition and time frame, albeit with differing degrees of impact. The primary objective of this section remains the same as in previous chapter; here, we will review the independent variables' effects in light of interviews conducted with both members of the Judiciary and staff members of key Senate leaders. While the information garnered from the interviews is anecdotal in its function, the conversations did illuminate many of the results, particularly those results that run contrary to theoretical expectations.

Senatorial Courtesy

Similar to its impact on presidential nomination rates, senatorial courtesy continues to wield considerable influence on the confirmation stage of the appointment process. In all but one model, the presence of senatorial courtesy substantially sped up the rates for confirmation.

Effect	Overall	Divided	Unified	1973-1992	1993-2012
Nomination Rate exp (Estimate) %	↑38.5%	↑60.3%	↑39.4%	↑40.2%	↑46.7%
Confirmation Rate exp (Estimate) %	↑35.2%	*failed*	↑58.2%	↑25.6%	↑20.6%

Here, the effect of senatorial courtesy is most relevant during unified government, accelerating a nominee's risk of confirmation by 58.2 percent. It is not unreasonable to infer that during the most ideal political conditions, presidents and home-state senators work efficiently on both sides to advance preferred judicial candidates. In my interviews, one chief of staff to a Democratic member of the Judiciary Committee noted,

"The thing about senatorial courtesy is that it mostly cuts down time on the vetting process. Where it comes to play on the confirmation side is its signaling function. Every senator knows when senatorial courtesy is in play, and the Judiciary Committee members, are especially aware of it. There's a long understanding with the White House—you have a say on the judge in your state. Maybe not the exact person you'd initially wanted to take the position will get the nomination, but to submit a nomination for a person the home-state senator completely objects to—now that'd be really idiotic. And frankly, I've never seen it happen when there's party alignment."

Senatorial courtesy retains its informal institutional purpose. The consistency with which the executive acknowledges it grants immediate credibility to the nominee for the district seat. Fellow senators expect that courtesy will be given during party alignment and appear to use the norm as a signal to confirm proposed nominees. A staffer to a Republican Party leader remarked that senatorial courtesy's principle purpose in the confirmation stage comes to light when the institutional norm is absent. He stated,

"As I'm sure other staffers have told you, courtesy really comes into play on the nomination side. Like I've said before, it's an informational tool. Everybody wins—the senator gets a say on the nominee, the White House gets to move more quickly because they have better information…where it's important on the Senate side is when you know that a nomination has been made without a [home-state] senator's seal of approval. That's when you see this [partisan] rally. Of course, senators tend to fall on party lines but even across party lines, there is a level of deference they seem to give one another. Mainly, I think it's a quid pro quo…especially with the Judiciary Committee members. They do tend to honor withheld blue slips on either side…"

These anecdotes further the notion that senators give deference to one another on the district nomination front—either by confirming, delaying, or rejecting nominees. Perhaps even more curious is that the variable failed to achieve significance in the divided government iteration. In these cases, the evidence suggests that senatorial courtesy matters less on the Senate side, though the variable still impacts nomination rates. By default, a nomination satisfying senatorial courtesy during divided government means that the nominations are for seats in states where the home-state senator(s) are members of the president's party but not in control of the Senate. So, senatorial courtesy may speed up the White House's time line in making nominations, but divided government in and of itself seems to slow down confirmation rates.

Divided Government

The conditions of divided and unified government significantly affect the rates at which senators confirm judicial nominations. Just as in the presidential analysis, unified party control of the Senate and White House sets the stage for quicker confirmation proceedings, whereas divided control of the Executive Branch and legislative chamber have the effect of slowing down the nomination

stage. Yet the delaying effects of divided government appear to have lessened

over time. The exponential coefficients from the 1973 to 1992 model and the

1993 to 2012 model indicate that divided party control's impact reduced by over

32 percent. This result stands in direct contrast to the increasing influence of

divided government on presidential nomination rates. Perhaps divided control's

effects are more pronounced on the front end of the appointment process.

Effect	Overall	Divided	Unified	1973-1992	1993-2012
Nomination Rate exp (Estimate) %	↓**16.3%**	**NA**	**NA**	***failed***	↓**29.8%**
Confirmation Rate exp (Estimate) %	↓**18.4%**	**NA**	**NA**	↓**46.1%**	↓**13.6%**

The general counsel to a Democratic member of the Judiciary Committee

discussed the difficulties divided government poses to senators and judicial

candidates themselves:

"Majority control—that's the heart of the matter here. If our party isn't in
control, then we can't move on any nominee. Not at the committee stage, not at
the floor stage. Obviously, there's an expectation that committees are still going
to do their jobs, so more than likely, the process will end up taking place, but
probably more slowly. Control is control, and I can't deny that we don't use it to
our advantage when we have it either. If we don't like a really conservative
nominee, we'll figure out a way to slow the process down. However, we do try to
take of those really unattractive judges [proposed from home-states] during the
vetting process. But our efforts to do that doesn't always work."

A chief of staff to a Republican leader noted the effects divided

government plays on the entire legislative agenda:

"When you're not in power, you have to prioritize your issues. There's only
so much time and so many resources you can devote to any single area. In some
ways, the senators hunker down for two years and do what they really need to
satisfy their constituents. As far as judicial nominees goes, one, you're obviously
less likely to get a district nominee you want when the president is not a party

ally. But even if you need a judge, you may have to offer a carrot to committee members or to Democrats in order to get that judge in a timely fashion. It's just a built-in feature and a consequence of how the chamber works. Sometimes I think majority control hinders the entire political process, but good luck getting the senators to change the rules."

As we observed in the nomination stage, agenda control, legislative priorities, and incentives play a role throughout the entire appointment process. The dynamics of the confirmation process influence tactics for both parties—one with the majority power and one without the power. As one interviewee mentioned, majority control of the chamber is not likely to change for two years, so naturally, agenda control and time frames affect senators' strategies and workload distribution.

Ideological Distance

In the presidential nomination analysis, the results indicated that an increase in the ideological distance between presidents and home-state senators has a delaying effect on nomination proceedings. However, ideological distance failed to attain statistical significance in all but one Senate confirmation model. These differences beg the question as to why the variable exerts little to no influence on the second stage of the appointment process. The interviews help to explain reasons why ideological distance might lose its influence during confirmation proceedings.

Effect	Overall	Divided	Unified	1973-1992	1993-2012
Nomination Rate exp (Estimate) %	↓6.5%	↓11.9%	*failed*	↓12.3%	*failed*

Confirmation Rate

	failed	*failed*	*failed*	*failed*	↓1.0%

exp (Estimate) %

A former chief of staff to a Democratic Party leader noted,

"The results do make sense to me. I can see why greater ideological distance loses its effects on the confirmation stage. I can imagine that other variables like senatorial courtesy and divided government might capture some of the effects of ideological distance. Also, you have to imagine that presidents try to take care of ideological distance on the front-end—so they're just less likely to submit nominations for candidates too far away from their preferences. And, senatorial courtesy is much less likely to be in play when the home-state senator is diametrically opposed to a president."

Another Democratic staffer mentioned that ideological distance plays a role in evaluating candidates. She stated,

"To be sure, ideology plays a huge role in the appointment process. But where the ideology is a problem is when the nominee and the home-state senator are far apart from one another. That's where you see delay happening. Presuming senatorial courtesy is satisfied, that issue won't come to play. Or if a senator wholly objects to a nominee, he or she still reserves the right to withhold blue slips. Withholding blue slips does not always work, but the committee typically honors them, at least for a period of time."

In the end, the data and anecdotal evidence suggest that while ideological distance continues to affect the nomination stage, the covariate's impact on future confirmation processes remains to be determined.

Thurmond Rule

Given the impact of the Thurmond Rule on the presidential nomination rates, my expectation was that this variable would also affect Senate decision-making processes. However, the findings suggest that the last six months of a presidential election year are not as relevant to confirmation proceedings. The null results in all but the 1993-2012 suggest that the Thurmond Rule only comes

into consideration during more recent times. The interviews provided additional

insight into why the condition may exert less influence on the confirmation stage

of the process as opposed to the nomination side.

Effect	Overall	Divided	Unified	1973-1992	1993-2012
Nomination Rate exp (Estimate) %	↓43.7%	↓33.4%	↓54.6%	↓39.2%	*failed*
Confirmation Rate exp (Estimate) %	*failed*	*failed*	*failed*	*failed*	↑13.2%

The chief staff member to a key Republican leader stated,

"Like I've said before, election years are just different. One, every one is
distracted and usually gunning for re-election. And two, there's understanding
that the senators don't put too much additional work on each other's plate. That
understanding really is in place summer through November. At this point, I feel
like the White House, especially if the party doesn't have control of the Senate,
doesn't even bother sending over too many nominations."

A sixth circuit judge who received his commission in 1997 reaffirmed,

"As I told you before, the administration avoided submitting my nomination
in those last six months of 1996. Obviously, the seat was open, but they told me
it was a futile effort to do so. Republicans controlled Congress, so the likelihood
that they would confirm until the election played out was really unlikely. The
administration said there was no pointing in having to submit and then resubmit.
Also, doing so would create unnecessary anxiety for my family as we waited for
them to act. It was a scheduling decision calculation, and I understood it."

These anecdotes reveal that the White House has at times preempted

itself the effects of the Thurmond Rule by avoiding submitting nominations

altogether. Why waste time, effort, and political capital trying to secure

confirmations that will not happen by default of temporary political conditions?

Perhaps the nominations presidents do submit are for seats terribly in need of

replacing. Yet the results do suggest that the more recent senators move very slowly to act on any nomination sent for consideration.

First Year President

Although the first year of president's tenure failed to achieve statistical significance in the divided and 1973-1992 model iterations, the variable's impact on the main confirmation model and unified and 1993-2012 extensions was staggering. In each of those models, a nomination made in the first year of a presidency was at least 60 percent more at risk of receiving confirmation than those nominations made in other years. These results from the three models more than imply that the Senate does give presidents a nomination "honeymoon." Not surprisingly, the effects are strongest in the unified model—the ideal political conditions present the friendliest scenarios for nominees. Senate staffers provided additional commentary as to why the findings for the variable are so strong, and so logical.

Effect	Overall	Divided	Unified	1973-1992	1993-2012
Nomination Rate exp (Estimate) %	↓40.7%	↓39.3%	↓44.2%	↓27.8%	↓49.8%
Confirmation Rate exp (Estimate) %	↑64.4%	*failed*	↑77.6%	*failed*	↑64.9%

The chief of staff to a Republican Senate leader discussed,

"What I've said before is that administrations just take longer to submit nominations in the first year. So, that presents interesting situations for senators. We just don't get nominees until late Spring, early summer. Inevitably, there's about six to seven months that those nominations have the opportunity to sit

around in the first year, so we tend to get to them quickly. It's logic—you've eliminated almost half a year of time for senators to drag their feet."

A Democratic staffer to minority member of the Senate Judiciary Committee stressed the importance of time lags during outgoing and incoming administrations. She revealed,

"In the end, we're eager to act on those first-year nominations. Why? Because we've been waiting for nominations not just since the inauguration but since the last few months of the outgoing president's administration. Typically, presidents don't submit many nominations at the ends of their terms. So if you add all that time up, it's anywhere from seven to ten months that some of these vacancies have persisted, and senators do pay attention to the needs of their districts. You have to think about those calendar dynamics—logistics are hugely important. You could say that's why the Senate seems to be so receptive to first-year nominees."

Under certain conditions, nomination honeymoons may be the consequence of persistent judicial need. As the interviews indicated, vacancies continue to pile on both in the remaining months of outgoing presidencies and in the first months of incoming administrations. This build-up then creates situations where senators may be more swift to act as district court workloads may become more of a problem as that time passes. Additionally, it is not unreasonable to infer than incoming presidents and senators take advantage of party alignment during unified control. Unified party control enables both branches to address the staffing needs of the judiciary with the most ideal ideological candidates.

Females and Minorities

In the last chapter, we observed that vacancies created by women and people of color leaving judgeships had no affect on presidential nomination rates. Yet the nomination of females and racial minorities do impact Senate

confirmation rates under particular conditions; both women and minority nominees were slower to receive confirmations in both the overall Senate confirmation model and the unified government extension model. While the covariates did fail to attain significance in three remaining iterations, the findings from the overall and unified models follow in line with my theoretical expectations and the current literature. Senators are seemingly slower to respond to gender and racially diverse judicial candidates.

Effect	Overall	Divided	Unified	1973-1992	1993-2012
Women Nom. Rate exp (Estimate) %	*failed*	*failed*	*failed*	*failed*	*failed*
Minority Nom. Rate exp (Estimate) %	*failed*	*failed*	*failed*	*failed*	*failed*
Women Con. Rate exp (Estimate) %	↓21.7%	*failed*	↓21.4%	*failed*	*failed*
Minority Con. Rate exp (Estimate) %	↓21.8%	*failed*	↓23.6%	*failed*	*failed*

Just as in the presidential analysis, I informed every interviewee about the results for these particular variables. Most of the responses were comparable to the reactions from the presidential nomination findings. The interviewees principally cited the inherent flaws of judicial evaluation measures as well as the lack of females and minority representation.

A key member to a Republican Party leader mused,

"Until we see more women and people of color in the actual halls of Congress, I'm afraid this reluctance to confirm those types of candidates will persist. There's no doubt that diversification across all branches of the federal

government is a problem. So, the question becomes: how do we remedy the situation? More women and people of color have to run for office. Simply stated. And, until we see those numbers climb to certain levels, we will fail to appoint enough women and minorities to positions. I'm a man, and I have two daughters, so I find the results upsetting but not unsurprising. Also, people in general…the electorate in general has to become more comfortable with women and people of color holding powerful positions. I will tell you that I didn't vote for Hillary Clinton, but that was because I thought so many of her policies would be disastrous for the country. But I can tell you that I think many people simply didn't vote for her because she is a woman. That's distressing—but Congress is often reflective of what the general population feels."

The general counsel to a Democratic member of the Senate Judiciary

Committee noted,

"I'm a lawyer. But I can tell you that my profession in and of itself is riddled with gender and racial discrimination. Sad, but true. I prepare all of the documents on judicial nominees for the senator's review. I'm charged with the task of assessing each candidate proposed by the president and then making the recommendation as to confirm or reject the nominee. I'm the one who makes the recommendations for all the nominations—from Merrick Garland and Gorsuch, down to the district level. What I can tell you is that women and minorities are consistently underrated by the ABA, and we've used those qualification measures since the 1950s. Finally, someone, maybe it was a political scientist, one of you guys, conducted a study and determined that the measures are inherently biased against us ladies, black people, and so on. I've already said it before—but your decisions can only be as good as your information. That's true in every realm of life. But especially in Congress. We just don't have the time to delve deeply into every issue and policy arena. So we take shortcuts, and sometimes those shortcuts turn out to be bad ones…Given that I know there's bias, I make every effort to research those candidates on my own. Obviously, I don't have the time to do it in detail, but I make the effort because, well maybe, maybe it's because I am a woman. I care about whether there are enough women on the bench, enough minorities on the bench. And my boss certainly cares about that situation. But I can't say that every office makes the same effort that we do."

While the influences of women and minority nominees were confined to

two model iterations, the reasons why senators are slower to confirm those

candidates is area ripe for discussion and research. As one interviewee noted,

gender and racial diversification is a systemic problem across all federal

branches of government, it is not confined to the judiciary. Additionally, the problem is compacted by racial and gender bias within the legal profession itself. Without reliable and valid data, senators are poorly equipped to make judgments on judicial nominees. Whether or not the data improve, and whether or not electoral composition changes, remains to be seen. Nonetheless, diversification is area judicial scholars should continue to pursue as it is likely to affect appointment proceedings in the future.

Judiciary Committee—Majority and Minority Members

Judiciary Committee members provide the opportunity for nominees to have powerful allies, even champions, in the confirmation process. Given that a Senate floor vote for confirmation cannot take place until the Judiciary Committee holds a vote on a nominee, exploring the impact those senators may have on confirmation durations is a necessary endeavor. More specifically, this project seeks to examine the role of home-state senators who serve on the Judiciary Committee. In the event that a district vacancy occurs in his or her home-state, do these committee members speed up or slow down confirmation proceedings? Contrary to expectations, the influence of home-state committee members is spotty at best. Majority members with nominations for district vacancies in their home-states slow down proceedings in the overall model, but speed up the process for nominees in the unified model. Additionally, minority members sped up final decisions for nominations made to vacancies in their home-states in the 1973-1992 model.

Effect	Overall	Divided	Unified	1973-1992	1993-2012
Nom. Rate Majority	*failed*	*failed*	*failed*	*failed*	↓22.8%
Nom. Rate Minority	*failed*	*failed*	*failed*	*failed*	*failed*
Con. Rate Majority	↓14.3%	*failed*	↑18.9%	*failed*	*failed*
Con. Rate Minority	*failed*	*failed*	*failed*	↑34.7%	*failed*

These results beg the same question from the presidential analysis: what reasons would compel a senator to slow down the confirmation process for judicial nominations? Additionally, why do we observe these committee members also speeding up the confirmation processes under different conditions? Here, we look to the interviews for additional insight.

The general counsel to a Democratic senator on the Judiciary Committee commented,

"To be honest, I've never really seen a Judiciary Committee member make a serious effort to move a nominee more quickly through committee proceedings or confirmation hearings. What I have seen is a senator using their gatekeeping powers to prevent a nominee from appearing before the committee or making it to the floor. Senatorial courtesy and deference to home-state senators are real things."

The chief of staff to a Republican Senate leader clarified the minority members results. He noted,

"Your results for the minority members don't surprise me. Honestly, I would expect minority members to speed up the process in all cases. You have to understand, majority members are majority members. They're not all too concerned about their nominees not making it through to confirmation. But minority members, they can really help nominees for their states. And they have enough power as committee members that presidents can't avoid asking for their input. But your results show that that sort of deal brokering may have gone by the wayside in the last couple of decades. But I think presidents certainly deferred to committee members across the board back in the day."

These anecdotes further the notion that senators approach the confirmation stage differently depending on their positions of power. Being in a position to speed up final votes does not guarantee or necessitate an expedited process. Senate decision-making processes do not occur in a vacuum. In some cases, a senator may push to move along a nominee more quickly, in other cases, that same home-state senator may stall proceedings at the committee or floor stage to gain some other advantage.

Full Vacancy

To reiterate the remarks from the presidential analysis, this dissertation seeks to explore how the different types of vacancies impact the judicial appointment process. For this chapter, the objective is to determine how nominations for various types of vacancy influence the rates of Senate confirmations. Recall that a full vacancy is any vacancy created by a judge's death, elevation to another court or position, impeachment, or full retirement from the bench. Partial vacancies are those incidents where a judge elects senior status as well as vacancies that are created by newly made judgeships (authorized by Congress). The logic is the same as in that proposed in the theoretical section: full vacancies create greater workload problems for remaining judges as the departing judge's workload is immediately dispersed among his or her remaining colleagues. Consequently, if presidents and senators are concerned about the efficient operation of the courts, full vacancies and their ensuing nominations should receive swifter action than would be the case for

partial vacancies. According to the results, full vacancies speed up the rates at

which we observe senators making final decisions in four out of five models. The

effects of the variable are most pronounced in the overall model and divided

government extension, where the variable speeds up the rate of nomination by

42.3 percent and 49.1 percent, respectively. Contrary to my expectations, the

variable failed to achieve statistical significance in the 1973 to 1992 iteration,

indicating that full vacancies were less important to confirmation considerations

in the past. Just as in the presidential analysis, the interviews provided even

more knowledge as to why full vacancies speed up confirmation durations.

Effect	Overall	Divided	Unified	1973-1992	1993-2012
Nomination Rate (exp) Estimate %	↑20.2%	↑26.7%	↑30.9%	↑26.7%	*failed*
Confirmation Rate (exp) Estimate %	↑42.3%	↑49.1%	↑32.5%	*failed*	↑22.2%

According to a U.S. District Judge serving in the Sixth Circuit,

"When one of our colleagues leaves the bench, and by that I mean, the judge doesn't take senior status, workloads inherently tick up quite a bit. Most of us take senior status simply because we want a little more downtime with our families, but we still want to work. But when you have a colleague die suddenly or something of the nature, the void is real, both personally and professionally. Workloads go up significantly in those smaller districts—districts with fewer numbers of judges. And, we push our political leaders to address those vacancies. I've called my senators offices several times when my district has had persistent vacancies—I've also called on behalf of colleagues."

A key staff member to a Democratic Senate leader noted,

"Judges are important to us. Granted, sometimes it doesn't look like they are. They've been requesting salary increases forever—to no real avail. But we do listen to our judicial colleagues, and we hear from them. If there's a vacancy

that's in need of filling, and more often than not, it's when we have someone die on the bench, or leave because the pay is just not what the private sector is, we work to get the job done. It's common knowledge that senior status is effectively semi-retirement, so you could say we're a little less concerned about those seats. You have to understand that the judiciary, via Congress, has created institutions that are really useful to keeping the legal system functioning. Honestly, senior status may be the biggest one."

In the world of judicial vacancies, these interviews suggest senior status vacancies have lost their signal strength, or perhaps never had strength at all. Both the judge and staff member discussed the impact deaths and full departures have for district workloads. Additionally, the staff member revealed that senators consider senior status an effective "semi-retirement," which impacts how quickly or slowly they proceed to act on nominations for those seats.

Given that the results for the full vacancy variable were strongest in the divided government iteration, I asked the interviewees to expound on the potential reasons for the findings. The chief of staff to a Republican Senate leader remarked,

"Again, I've said it before…you have to think hard about what you want when your party isn't in power. By default of majority rule, it's just more difficult to get things done. So, you prioritize what you think can do, and what you think the opposing party will be amenable to. Trust me—we realize that if we don't confirm nominations, we won't have judges. It's up to us. But when we're out of power, it's a given, we're not going to get as many judges or the kinds of judges we want. You have to be more willing to compromise. The deck is stacked against you. But what senators can do is talk about workload, emergency statuses, and they're more likely get somewhere. Your coding of these vacancies as full vacancies does a pretty good job of capturing potential workload issues…I haven't thought about it specifically before this interview, but we do try and lobby for those "full vacancies" or "emergencies" because we know we're more likely to get them. It's not smart to waste your resources."

Full vacancies do influence senate decision-making. While the variable did fail in the 1973 to 1992 model, the overall findings are compelling. With the

establishment of senior status and its parameters, the judiciary has created an

institution that allows for greater stabilization of workloads. That stabilization has

its consequences; in this case, sudden departures from the bench seem to have

affected the rapidity with which senators proceed with judicial candidates.

Existing District Vacancies

The proportion of existing vacancies in a district is important to senators,

albeit with some caveats. The variable failed to achieve statistical significance in

the unified and 1993 to 2012 model extensions, but attained substantive

significance in overall model, divided extension, and 1973 to 2012 extension. The

interviews were particularly illustrative as to why we observe these results.

Effect	Overall	Divided	Unified	1973-1992	1993-2012
Nomination Rate (exp) Estimate %	⬆8.8%	⬆15.2%	⬆11.0%	⬆16.7%	*failed*
Confirmation Rate (exp) Estimate %	⬆9.8%	⬆17.1%	*failed*	⬆10.9%	*failed*

General counsel to a Democratic member of the Senate Judiciary

Committee communicated,

"When there are multiple vacancies in a district, you do realize that we're
working to confront the problem on the front-end. We are pushing the
administration to submit nominations—it's much easier of course when it's our
party controlling the White House, but nonetheless we still try to make it happen.
And once they're over on our side, we work to fill the seats. But there is a
schedule to consider. Sometimes, it just takes longer to get candidates in front of
the committee because we have a bit of a backlog."

Additional vacancies in a district pose significant workload consequences. Prior to this dissertation, scholars have neglected to examine vacancies on a smaller-scale. A standard deviation increase in the mean proportion of vacancies more often than not results in faster confirmation proceedings for district nominees. The interview account above indicates that senators are mobilized to remedy the problem at the nomination stage, though party dynamics can be preventative to success.

The chief of staff to a former Democratic Senate Whip discussed the extent to which home-state senators will work to address multiple district vacancies in their states. He recalled,

"They will find a way to fill vacancies at the district-level. It's a hell of a lot easier to get a few senators motivated to do so. This is where home-state senators are clutch, and trust me, they work together to get the job done. Honestly, even when you have a Democrat and a Republican, they'll make sure their state is taken care of—otherwise, they'll have judges and anyone powerful enough in the legal world breathing down their necks."

Just as in the presidential analysis, district judges weighed in on their efforts to bring attention to staffing issues in their area. A district judge remarked,

"I told you before—I call my senators. If we're a few judges down, I will beat down their doors to get more people…It's funny—after the Merrick Garland situation, I had friends and people in general asking me if we experience stalling like that. My response was usually 'no.' But that whole ordeal did bring the lingering vacancy problem to light, and in some ways gave us judges a little more leverage in the debate. Not that I would do it, but if I wrote an editorial in a state-wide paper about a staffing problem or a persistent vacancy, I could definitely drum up support. Especially from the legal profession."

As with the presidential models, a primary objective of the Senate analysis was determine whether additional vacancies increased the speed of confirmations. The findings suggest that a nomination for any additional vacancy

is at higher risk of Senate action when there is another district seat open for replacement, though the results are conditional. The descriptive statistics reiterate that judicial vacancies at the district level have not risen to the level that is distinctly higher than in the past. The proportional measure accounting for the increases to the size of the federal judiciary makes the measures more meaningful and intuitive.

District Vacancies Nationwide

The proportion of district vacancies on a national level has a substantial effect on the rates at which we observe presidents submit judicial nominations. Although I expected the Senate to move more quickly in the event of an increase in the proportion of nominations, the results suggest an entirely different reaction. While the variable failed to achieve statistical significance in the overall and unified model iteration, the variable did slow down the rate of Senate action in the remaining three models. With every one standard deviation increase in the mean proportion of nationwide (district) nominations, there is a 29.6 percent, 37.2 percent, and 18.9 percent delay in the Senate during divided government, from 1973 to 1992, and during 1993 to 2012 respectively. These findings indicate that the Senate behaves similarly to presidents, as vacancies, and consequently nominations, increase in large numbers, political actors move much more slowly to make final decisions.

Effect	Overall	Divided	Unified	1973-1992	1993-2012
Nomination Rate (exp) Estimate %	↓40.7%	↓39.3%	↓44.2%	↓27.8%	↓49.8%
Confirmation Rate (exp) Estimate %	*failed*	↓29.6%	*failed*	↓37.2%	↓18.9%

Once again, the interviews provided additional insight as to why delay

persists at each stage of the appointment process. The chief counsel to a

Democratic Judiciary Committee Member revealed,

"When the number of vacancies gets really high, we run into scheduling and vetting problems. Usually, what happens is that there's a piling on during predictable times of the year: summer recess, the holidays, and the last half of election years. There's just more pressing things happening as far as most people are concerned. And then you turn around, and you have dozens and dozens of vacancies and nominations to sort out."

A former chief of staff to former Senate Democratic leader remarked,

"It's just an issue of scheduling. There is such a thing as too many nominations to sort out—and we've definitely changed practices since the 80s. When I first began my job with the Senator—in the early 80s, we didn't spend as much time on each candidate. I can't deny that the process has become really inefficient—we expect these nominees to fill out a ton of paperwork on the presidential side, and then we expect them to do the same thing when they get to us. There could be some streamlining as far as I'm concerned—but that's the nature of the government these days. The White House does their own homework, and we do ours. Again, it's really inefficient but in some ways, but we're all covering ourselves."

Both of these interview account allude to scheduling problems,

administrative backlog, and governmental inefficiencies. At the end of the day,

the committee can only meet so many times as senators continue to work on

multiple committees and subcommittees. Also, one anecdote discussed the

importance of changes to nomination reviews—staffers and senators spend more

time evaluating nominees in current times than in the past. While the motivation

to do so may be rooted in the desire for better information or for better judges,

the task of doing so requires more time.

A judge on the sixth circuit discussed the inefficiencies in submitting

paperwork for appointment process. He noted,

"I can't even begin to stress what a pain it is to become a federal judge. Of course, it's an honor, I would never say anything but that. However, I spent more time wading through paperwork than I've ever spent in my life. You do it on the vetting side, and then you turn right around on the confirmation side and do it for the Senate. My hearing before the committee was pretty painless. They asked me about a dozen questions, and that was it. But there were probably another ten, fifteen nominees going before the committee on the same day. It seems as if they like to churn out a big chunk altogether, rather than case by case. And that makes sense. Maybe you should look into that next—how many nominees are interviewed on average per committee meeting. You might find some patterns there."

The size and scope of the federal government has continued to grow

since the 1930s, and those changes present interesting effects for governmental

processes. As the senators are charged with the task confirming more and more

presidential nominees (not exclusively judicial), and seek to scrutinize those

candidates more closely, the process takes longer. To top it off, congressional

sessions present inherent scheduling restrictions for confirmation hearings and

votes. The results from both analytical chapters support the argument that

logistics are important and have real consequences for governmental

proceedings.

Omnibus Judgeships

Just as in the presidential analysis, I expected that judgeships created by

omnibus bills would cause an administrative backlog for the Senate. Yet I was

wrong; on average, senators move much more quickly to make final decisions on nominations for omnibus judgeships. Although the covariate failed to achieve significance in the 1973 to 1992 model, the variable did substantially speed up confirmation rates in every other iteration. The effects are strongest in the divided model and in the 1993 to 2012 extension. Once more, the information acquired through interviews prove useful in understanding the effects and circumstances surrounding nominations for omnibus judgeships.

Effect	Overall	Divided	Unified	1973-1992	1993-2012
Nomination Rate (exp) Estimate %	↑25.9%	*failed*	↑53.1%	*failed*	↑70.9%
Confirmation Rate (exp) Estimate %	↑37.5%	↑58.6%	↑32.4%	*failed*	↑56.0%

The chief of staff to a Republican Senate leader discussed the creation and political context of omnibus bills and resulting judgeships. He recalled,

"Let's just say that everyone is up and ready when we create seats through omnibus bills. Senators don't just add judicial seats for the hell of it. There has to be a demonstrated need, and that need plays into decisions. We've got lobbying coming from the judges themselves, home-state senators, and even the administration. Now, sometimes there are so many seats that it inherently causes delay, but sometimes we just push through because we're better organized. It's a lot easier to fix a problem when you know that it's coming—you know, before it actually happens."

A key staff member to a Democratic leader talked about the dynamics of omnibus bills,

"We do a lot of things through omnibus bills—judicial seats are one of them. Your results don't surprise me mainly because we negotiate so heavily during these bills. There's a commitment to get the work done."

A ninth circuit judge, whose seat was created from an omnibus bill, discussed his confirmation proceedings. He recalled,

"Hell, I got my seat through an omnibus bill. As I've said before, my nomination and confirmation proceedings were pretty painless, minus the paperwork. I didn't have to field any questions. I always thought I moved through quickly because of my connections, but maybe it was a function of anticipation. When you know you've have a lot tasks coming up, you tend to be a bit smarter with your time."

In end, the Senate appears to act much more quickly on omnibus judgeships. I suspect that the variable may have failed in both the 1973-1992 nomination and confirmation models because of my original theory. The addition of over 100 seats during President Carter's administration may have created a serious bottleneck. Yet omnibus judgeships have been fewer in number since then, so the probability for administration backlog is lower. These results in many ways paint a picture of a responsible government—presidents and senators work together more efficiently when the judiciary exhibits demonstrable need.

Final Remarks

The Senate's role to provide advice and consent for presidential nominations presents major consequences for judicial staffing. Both chapters have examined formerly studied factors as well as previously unidentified influences on the appointment processes. What we have learned is that politics matter—the political conditions and institutions surrounding vacancies and resulting nominations are important to Senate decision-making processes. Nevertheless, the analysis in this chapter reveals that senators do care about the

courts. The findings suggest that senators work quickly to address demonstrated judicial need, either by acting speedily on omnibus judgeships, full vacancies, and multiple vacancies in specific districts. In the end, it is the dual responsibility of the executive and legislative branches to equip the judicial branch with a functioning staff. Although the Senate is taking a longer time to make final decisions in recent decades, at face value, they do appear to address the nominations for the most pressing vacancies in a more rapid fashion.

Chapter 7

Conclusion

"We ought not to forget that the government, through all its departments, judicial as well as others, is administered by delegated and responsible agents; and that the power which really controls, ultimately, all the movements, is not in the agents, but those who elect or appoint them."
--John C. Calhoun

As we come to the end of this dissertation, we should first take pause to consider the motivations of this study. In his well-known Fort Hill address, infamous U.S. politician John C. Calhoun declared to his audience that political power fundamentally rests with those individuals who elect or appoint government agents. That is to say, the American people retain ultimate power over their elected representatives. By the same token, then, it is presidents and senators who wield power over the judiciary, given that they are collectively responsible for appointing each judge to the Third Branch. To be sure, the people as voters retain indirect power over federal judges, but without the agreement of the executive and legislative branches, the judiciary would find itself completely incapable of discharging its constitutional duty to establish justice in the country.[1] This responsibility of presidents and senators to equip the judiciary with adequate resources and necessary personnel is essential for good governance.

Scholars have long explored the factors affecting judicial selection. Recently the literature has begun to examine the length of time presidents have taken to submit nominations for judicial vacancies and the amount of time senators have taken to confirm those nominations. This research has identified

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[1] The people retain indirect power simply because they elect (directly or indirectly) both the presidents and senators who appoint those judges.

multiple political and candidate-specific factors affecting appointment durations and decision-making processes. These factors are relevant to the study of both the nomination and confirmation stages as the actors involved are inherently concerned with political consequences. In addition to reexamining these political influences, this dissertation has explored whether presidents and senators, in discharging their staffing duties for the judicial branch, factor in the functioning of the courts in their appointment decisions. More to the point, this study has explored how the operational conditions of the federal courts affects presidential nomination timing and senate confirmation timing vis-à-vis the political features scholars have previously identified as important.

This conclusion begins with a summary of how these political conditions and newly identified operational conditions impact appointment durations, and more specifically, discusses whether or not these factors support the existing literature and or provide a broader understanding of the mechanisms at work in the judicial appointment process. From there, we explore the limitations of this study, and finally, look to potential areas for future research.

Summary of Findings

The objective of this section is to review the study's empirical findings, and assess how the results respond and add to the existing literature.

Political Factors

Scholars have identified and reexamined political conditions that affect the judicial nomination and confirmation processes. As previously mentioned, a principal goal of this study was to incorporate previously identified political variables and survey their effects against newly identified operational conditions.

Senatorial Courtesy. Scholars have consistently cited senatorial courtesy as an accelerant to both stages of the appointment process, and this study's findings support the results of the current literature. The informal institution consistently sped up the rates at which we observe presidents submitting nominations and senators confirming those nominations. Interviews with key Senate staffers and members of the judiciary cited the important informational role it plays; senators provide presidents with crucial home-state knowledge, and that knowledge reduces the amount of time White House staff would otherwise take to acquire that knowledge. On the Senate side, the norm provides an implicit signal of a home-state senator's acceptance of a nominee to other chamber members.

Divided Government. Not surprisingly, divided and unified government continue to impact durations and decision-making processes for presidents and senators. These conditions are so important to the political appointment process that I devoted an entire extension to their examination. As expected, the duration of the nomination and confirmation stage is consistently longer during periods of divided party government, and shorter during unified party government. Majority control of the Senate chamber can alter presidential approaches to the

nomination stage, and senators' reactions to those nominations. Just as judicial

scholars have been asserting, the findings and anecdotal evidence here suggest

that unified control provides the ideal circumstances to substantially affect judicial

outcomes.

Ideological Distance. Academics and journalists alike have long discussed

how ideological distance, and the increases in that distance, have affected

political outcomes. For the judicial appointment process, scholars have found

that increasing ideological distance between presidents and senators have

slowed down nomination and confirmation proceedings. In this study, the findings

suggest that polarization, or increasing ideological distance, does slow down

presidential response rates. Vacancies arising in states where the home-state

senator(s) are ideologically opposed to president(s) result in delayed nominations.

Yet ideological distance failed to impact the confirmation side of the process in all

but one model iteration. Its failure may be the result of anticipation—presidents

know that ideologically distant home-state senators will be resistant to nominees

and try to propose more preferable candidates to avoid rejection at the

confirmation stage.

Thurmond Rule. In keeping with the existing literature, my expectation was

that vacancies and nominations made in the last six months of a presidential

term would be slower to receive both executive and Senate attention. The

nomination analysis findings were consistently supportive of my theoretical

expectations, though the variable did fail to impact the 1993 to 2012 model

iteration. On the Senate side, nominations made during the last six months of

presidential term failed to affect confirmation rates except in the 1993 to 2012 extension. During this time period, nominations satisfying the Thurmond Rule actually sped up confirmation rates. While the result may seem counterintuitive, it is important to remember that the term "confirmation rate" refers to the amount of time the Senate takes to make a final determination on a nomination. That determination can be a confirmation or rejection. Looking more closely at the 1993 to 2012 data, I found that the Senate quickly rejected many of these nominations, which effectively sped up the decision-making rate. Observing this nuance makes the results more intuitive. As time goes on, it will be interesting to see if the Senate continues to behave in a similar manner. Rather than delaying confirmation because of presidential election year dynamics, will the Senate simply reject proposed nominations?

First Year of Presidency. Judicial scholars have frequently cited the appointment delays associated with the first year of a president's tenure. In contrast, these same scholars note that the Senate tends to be more receptive and quicker to act on nominations made by a president in his first year of office. The findings of this study are consistent with the current literature—the results of the presidential and Senate analyses provide additional support for those arguments. The variable did fail to achieve significance in the Senate divided government model and in the 1973 to 1992 Senate extension, but otherwise impacted the process by substantially slowing down nomination submittals and speeding Senate decision-making. With respect to this variable, the existing

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literature appears to have accurately captured the logistical dynamics conditioning presidential administration turnovers.

      <u>Females and Minorities.</u> Current studies examining nomination and confirmation rates suggest that senators are slower to make decisions on female and minority judicial nominees. Given those findings, I hypothesized that presidents would respond more slowly to vacancies created by exiting female and minority judges, and senators would react more slowly to women and people of color nominated to fill judicial vacancies. In the end, both variables failed to achieve statistical significance in the presidential analysis. Yet nominations for women and people of color did slow down confirmation proceedings in the overall model and unified government model. These findings did support the current literature, but the variables' impacts were inconsistent. Perhaps as more women and racial minorities vacate the federal bench as well as receive nominations to open seats, we will be able to make more conclusive statements.

      <u>Judiciary Committee Members.</u> The findings with respect to the impact of Senate Judiciary Committee members were inconsistent at best. Per the current literature, I had anticipated that home-state senators would act as agents for vacancies in their respective states. That is to say, these senators would speed up both the nomination stage and confirmation stage for vacancies (and resulting nominations) occurring in their home-states. Nevertheless, minority committee members failed to affect presidential nomination rates. They did, however, speed up Senate confirmation rates in the 1973-1992 model. Majority members sped up Senate action in the unified model, a result that seems intuitive. During unified

government, majority committee members have both presidential and chamber support, making the conditions ideal for both the nomination and confirmation stages. However, majority members did slow down nomination rates in the 1993 to 2012 model. The anecdotal evidence suggests that senators in these positions use their power to influence candidate selection, and perhaps slow down the presidential side in order to gain a more preferable judicial nominee.

Operational Factors

The existing literature neglects to consider whether the functioning of the judiciary influences presidents and senators appointment decisions. The conditions below were designed to assess how the courts' operational efficiency affects nomination and confirmation durations.

Full Vacancy. The different ways in which vacancies are created has never been fully examined in any judicial nomination or confirmation analysis. Given that the federal courts provide a mechanism for judges to semi-retire, and that the majority of the judges who do elect senior status continue to maintain significant caseloads, their "retirements" from the bench may not affect judicial workload conditions to the same extent as a judge who leaves altogether. The findings consistently support my theoretical expectations—full vacancies, those created by a judge's death, elevation, impeachment, full-retirement, or resignation, do speed up presidential action in all but the 1993-2012 model, and speed up Senate action in every model but the 1973 to 1992 extension. These findings suggest that political actors do regard vacancies differently, and perhaps

realize that the ways vacancies are created do affect district workloads differently as well. The interviews supported this notion, as staffers and members of the judiciary discussed how senior status provides a weaker signal for political action.

Existing District Vacancies. Prior to this analysis, scholars have neglected to look at conditions existing in specific districts and how these conditions may affect nomination and confirmation rates. Just as with full vacancies, the number of existing vacancies in a district also has implications for caseload management. As the number of vacancies grows in a district, the remaining judges' workload increases to compensate for these vacant judgeships. Creating a localized measure is also necessary because the existing literature suggests that home-state senators are especially responsive to elites pushing for timely legal resolutions. Given that the number of seats in any given district may change over time and that the size of districts varies across the country, this variable accounts for the proportion of vacancies existing in a specific district.

On the whole, as the proportion of vacancies rises in a specific district, presidents move more quickly to submit nominations and senators move more quickly to confirm those nominations. While the variable failed to achieve statistical significance in both the 1993-2012 nomination and confirmation models, as well as the unified confirmation model, the increase of district-specific vacancies increased presidential and senate responsiveness in every other model iteration. These results fall in line with my theoretical expectations. Interviewees consistently noted that home-state senators are sufficiently mobilized to address multiple vacancies in their respective states. It is not

unusual for district judges or elites to contact senators about workload problems or case delays, and senators appear to take those conditions seriously. Going forward, my hope is that other judicial scholars will begin to study conditions within individual districts rather than exclusively aggregating across all districts.

District Vacancies Nationwide. Although scholars and journalists consistently highlight the problems associated with high numbers of judicial vacancies, few studies have actually factored in how high vacancy levels influence decisions related to nomination and confirmation timing. Additionally, scholars routinely cite the absolute number of vacancies on the federal bench and use those statistics to conclude that vacancies are more excessive now than in previous eras. This study not only incorporates a variable for the amount of district vacancies in the nation, but also calculates this variable using a methodology that accounts for the expansion of the judiciary over time. Just as with existing district-specific vacancies, the absolute number of vacancies may not be theoretically equivalent over time. Therefore, calculating the proportion of vacancies eligible for executive and congressional action provides greater nuance as how to multiple vacancies affect decisions over time.

Overall, the results suggest that as the national proportion of district vacancies increases, presidential nominations and Senate confirmations stall. These results run counter to my predictions—my expectation was that as the proportion rose, presidents and senators would be quicker to act in efforts to combat increases in judicial workloads. However, the anecdotal evidence suggests that high proportions place administrative burdens on both White

House officials and Senate actors that result in delayed nominations and confirmations. According to the interviews, the logistical issues associated with background checks and scheduling large numbers of candidates present complications that can be too difficult resolve in a timely fashion. These results run counter to those of district-specific vacancies. Here, the interviewees commented that home-state senators have a much easier time quickly addressing vacancies on a statewide level than the president or entire chamber can do on a national level.

Omnibus Judgeships. Prior to this study, no judicial scholar had systematically assessed the effects of omnibus judgeships on federal nomination and confirmation rates. Given that the vast majority of new judicial seats are created via omnibus bills, a close review of the mechanism's impact is necessary. Contrary to my expectations, vacancies and resulting nominations created by omnibus bills sped up presidential and Senate action on the whole. My anticipation was that the huge numbers of seats would cause an administrative backlog, and inherently cause delay on both sides of the process. To be fair, the variable failed to achieve statistical significance in the both the 1973-1992 nomination and confirmation models. These null results are important because that time frame observed the largest addition of judicial seats in the last sixty years. That huge expansion, occurring during President Carter's administration, was not replicated thereafter—seats were added, but by the dozens rather than by the hundreds. The results indicate that presidents and senators appear to

cope well with smaller omnibus expansions, but perhaps not with the enormous increase during President Carter's administration.

On the whole, the findings indicate that political actors are motivated to fill omnibus seats quickly, sparking questions as to why. We do know that omnibus bills are not passed without support from both the executive and Congress, and the anecdotal evidence suggests that presidents and senators are administratively prepared to address these new judicial seats created by the bills. That is to say, the relevant actors are sufficiently mobilized in both stages of the process, which likely contributes to why the results run counter to my expectations.

Proportional Measures

Although descriptive statistics do not speak to how each independent variable speeds up or slows down nomination and confirmation rates, they do lend insight into how certain conditions have changed over time. In the past decade, scholars and journalists have reported that judicial vacancies, particularly those at the district level, have been consistently higher in number than in previous times. To be fair, this statement is true in terms of absolute numbers.

Nonetheless, one of the principal objectives of this study was to account for the expansion of the federal courts over time. The proportional measures at both the district-specific and national level capture the amount of district seats that are vacant at any point in time during this analysis.

It is the proportional measures that permit the direct comparison of vacancies over time. Although the absolute number of vacancies may be consistently higher in the most recent decade, the descriptive statistics indicate that the mean proportion of district vacancies on the national level was actually higher in the 1973 to 1992 period than in the 1993 to 2012 time frame (10.6 percent vs. 8.4 percent). Of course, these statistics do not speak to how vacancies affect judicial workload, but these proportions do suggest that the amount of vacancies relative to the current size of the judiciary is not distinctly higher than in previous eras.

Study Limitations and Suggestions for Future Research

As with all behavioral studies, this research has important limitations that should be acknowledged. Perhaps the most important limitation is that Cox proportional hazard models can only assess whether or not an independent variable speeds up or slows down hazard rates. The model estimations cannot speak to whether presidents are less or more likely to submit nominations under specific conditions, and whether senators are more or less willing to confirm those nominations under specific conditions. Every finding must be interpreted within that narrowed context.

Additionally, the study failed to include district vacancies and nominations from President Obama's second term. Ideally, the dissertation would capture every complete presidency, but given that this research endeavor began in 2014, I instead chose to focus primarily on the consistency in the measurement of

variables over time. Any further study would be incomplete without incorporating President Obama's full collection of district nominations and ensuing Senate confirmations.

This study also omits an analysis of potential political party differences. It is not unreasonable to suggest that Democrats and Republicans approach the judicial appointment process differently. Republican senators and presidents may be more likely to address operational stresses of the courts than Democratic senators and presidents, or vice versa. In addition, congressional Republicans may react differently than Democrats under conditions of divided government. Needless to say, any further analysis should examine how each party operates under different political conditions and how each party incorporates the functioning of the courts in their decision-making.

This dissertation's empirical analyses and conversations with key legislative and judicial officials brought to the forefront areas for future research. In interview sessions, Senate staffers repeatedly noted the scheduling problems associated with the congressional calendar. Committee hearings, committee votes, and floor votes can only occur when senators are on the Capitol premises. To add, Senate aides discussed in detail how the breadth of congressional work and responsibility has steadily increased over the past decades. In their words, senators have too many representative responsibilities, which ultimately prevent them from reliably addressing judicial nominations in a timely manner. Because of these increasing job expectations, legislative interviewees suggested that

scholars study and create variables that capture both administrative capacity and availability.

Additionally, the research findings and anecdotal evidence did support my theoretical expectations regarding full and partial vacancies. Given that the vast majority of district vacancies are created by judges' election of senior status, I believe that any further analysis on the matter would be incomplete without a full assessment of senior judges' impact at the district court level. It is not unreasonable to suggest that if the incentives of "semi-retirement" were modified, the federal judiciary might experience significant changes in workload distribution. Of course, these effects would be felt across every legal rung—from remaining judges to legal participants. This study has supported the notion that senior judges play a crucial role in the federal judiciary, and without them, the dynamics of the appointment process might shift dramatically.

Final Observations

To say the least, this dissertation has been a labor of love and continued interest. Very early in my doctoral education, I became curious about judicial selection. The consistency with which I read accounts of nomination and confirmation delays sparked an enduring interest on the subject and pushed me to think critically on the mechanisms and dynamics conditioning the process. Time and again, I fixated on what I believed to be a glaring shortcoming of the existing literature: scholars neglected to include any characteristic specifically associated with the operational efficiency and capacity of the judiciary. After all,

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the judicial appointment process is one designed to staff the judicial branch. Why the functioning of the courts was never discussed as a factor completely bewildered me.

Although I have known since middle school that judicial appointments require both executive and senate approval, it took extensive reading on the subject to realize that the functional capacity of one entire branch of government required the cooperation of the other two branches. My immediate reaction to this realization was that the founding fathers made a serious error. Given that political tides change often, and power struggles inevitably happen, the separating of appointment powers could lead to a courts system without judges. Nonetheless, presidents and senators have worked together since 1789 to ensure that the judiciary is equipped to handle their constitutional duties.

In the end, I am delighted that I may have added nuance to the understanding of the appointment process by incorporating judiciary-specific institutions and conditions. While the models only speak to how these judicial characteristics delay or advance nomination and confirmation proceedings, the effects of the operational variables do suggest that presidents and senators consider the courts' functioning in their decision calculuses. From a normative perspective, these indications are reassuring in many ways; legislators and executives may be responsible agents of good governance after all—well, at least with respect to the judiciary.

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