

The Logic of Collective Inaction: Senatorial Delay in Executive Nominations

Ian Ostrander Texas Tech University

While most executive nominees are successfully confirmed, this success masks wide variation in how long it takes the Senate to decide. Delay of critical nominees influences the character and effectiveness of agencies while hampering the policy ambitions of presidents. The exact logic of which nominees are targeted for delay and why, however, remains difficult to uncover. Building on prior literature, this project suggests that delay can be used to protect allied agencies from presidential politicization. Using a data set of several thousand executive nominations from 1987 to 2012, the ideological predisposition of an agency relative to the president is demonstrated to influence senatorial delay. Ultimately, these findings help explain why some nominees are delayed while other, seemingly similar, nominees are not.

The vast majority of executive nominations are confirmed by the Senate. Prior literature has demonstrated that the success rate of presidents with respect to executive nominations is approximately 90–95% (Bond, Fleisher, and Krutz 2009; Krutz, Fleisher, and Bond 1998). Compared with presidential track records on legislative proposals (Bond and Fleisher 1990), nominations enjoy surprising success. Such success implies a deferential process or at least one in which presidents are able to anticipate and adapt to the wishes of the Senate. However, even successful nominees routinely face extreme delay (Bond, Fleisher, and Krutz 2009; McCarty and Razaghian 1999; Millhiser 2010; Nixon 2001; O’Connell 2009). In contrast to the high success rate, the presence of lengthy delay implies a high degree of partisan conflict and that executive nominations are more of a battle than an easy bargain.

The puzzle at the heart of these contradictory facts is why effort is so often spent by a president’s opposition in delaying executive nominations that *will* eventually succeed. Forcing a rejection of a nominee may potentially lead to a more favorable replacement, but delay more often merely obstructs the inevitable. Given high confirmation rates and the costs of obstruction, the use of delay may require benefits beyond an unlikely opportunity to fail a nominee. Understanding the *intrinsic* value of delay

in executive nominations will provide understanding of the pattern and intent of strategic delay.

Delay is not innocuous. To the extent that nominations are critical levers of presidential influence, delaying such appointments is similarly influential. Senators can alter the course of bureaucratic policymaking by denying presidents influence over agencies within the duration of a delayed nomination. Such critical nominees influence the character and capacity of an agency, and the performance of an organization is likely to suffer as positions remain vacant during stalemate (Dull and Roberts 2009). Delay can thus exacerbate already high vacancy rates within the top ranks of the federal bureaucracies (O’Connell 2009). As such, senatorial delay in executive nominations is relevant to discussions of good governance in addition to being a key source of insight into interbranch rivalry for the control of bureaucratic policymaking.

This article seeks a greater understanding of the executive nominations process through an examination of strategic delay. Specifically, I focus on the targets of delay. Divided government and partisanship are likely to increase aggregate delay (McCarty and Razaghian 1999; Nixon 2001), but such Congress-level variables do not help predict which nominees are delayed *within* a congress. The following section examines Senate obstruction in executive nominations. Next, I outline the

Ian Ostrander is Assistant Professor of Political Science, Texas Tech University, 113 Holden Hall, Boston and Akron Streets, Lubbock, TX 79409-1015 (ian.ostrander@gmail.com)

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theoretical conception of strategic delay used within this study as well as the scope of the investigation. Building on these foundations, I introduce explicit hypotheses concerning patterns of delay given agency-specific traits as well as a variety of political contexts. To test predictions, I use a data set of over 6,000 nominations made from 1987 to 2012. The final sections discuss the empirical modeling strategy, present results, and explore conclusions, respectively. I find that, in addition to other important factors, agencies with predispositions opposed to the sitting president are more likely to be targeted for delay.

Obstruction and Executive Nominations

Time is an increasingly rare commodity within the modern Senate, as its rules strongly favor obstruction (Binder and Smith 1997; Koger 2010). Compounding the problem, Oppenheimer (1985) notes that, given limited time, the power of dilatory tactics is multiplied by their frequent use. Without a simple majority mechanism to end debate, the Senate operates largely via the use of unanimous consent agreements (UCAs) that require the permission of all senators to proceed with an agenda (Oleszek 2001, 194–195). Without strong control, Senate leaders have evolved strategies to create efficiency in scheduling (Smith, Ostrander, and Pope 2013), and over time, the use of UCAs has increased in response to endemic obstruction (Smith and Flathman 1989).

Importantly, UCAs create efficiency through avoiding controversial issues, not by overcoming them. As such, a single senator can delay proceedings through the simple denial of consent, or a “hold” that is the threat of such denial (Howard and Roberts; 2015 Oleszek 2001). Because such holds can often be used secretly (Koger 2010), obstructing senators are difficult to hold accountable.

Given the rules of the Senate, a determined minority within the president’s opposition party may resort to procedural tactics to stop or slow a nomination from getting a vote. Most notoriously, senators may resort to the threat or practice of filibustering a nomination (Mackenzie 2001, 31). To bypass obstruction on a nomination, a supermajority of the Senate would have to invoke cloture, which is a costly and lengthy process. A cloture petition takes two calendar days before it can be voted on. If successful, which until recently required 60 affirmative votes, a determined minority may still force 30 hours of postcloture debate. As such, a determined minority could force the majority to expend significant time and energy on even a low-ranking nomination.

Delay may be overcome on any one nomination, but there are hundreds of nominations that must be acted upon each year. A recent investigation by Millhiser (2010) suggested that if all nominations were to be delayed by the requirements of cloture, passing each nomination would take more time than available in a congressional session. While the use of the “Nuclear Option” by Senate Democrats in November 2013 has lowered the cloture threshold to a simple majority, the majority party must still pay a cost in time for each nomination that is advanced over obstruction. With such limitations plaguing majority leaders, many nominations can be delayed by a few senators. Given the cost of invoking cloture, a majority will only pay to overcome obstruction when there are significant benefits at stake.

Targeting Delay

Partisan disagreement over policy is a key motive for strategic delay in the nominations process. The use of dilatory tactics such as holds or filibusters is likely to occur more often when there is significant disagreement between a president and at least a substantial minority in the Senate. Prior research conducted by McCarty and Razaghian (1999) confirms expectations about partisan sources of delay, as it finds delay to be significantly related to both the level of polarization and political composition of the Senate. Additional research on executive nominations (Nixon 2001; O’Connell 2009) and judicial nominations (Binder and Maltzman 2002; Shipan and Shannon 2003) also confirms the pattern and influence of contextual political factors such as divided government and polarization on nominations delay.

Of course, the attributes of the individual nominee are likely to influence the duration of the nomination. Prior research has demonstrated the general importance of ideology and competence (Dull and Roberts 2009; Hollibaugh 2015a; Jo and Rothenberg 2012; King and Riddlesperger 1996), scandal (Carter 1994), prior loyal service (Parsneau 2012), and gender (Asmussen 2011) within the nomination process. As such, individual characteristics may be as influential as institutional ones.

The position to which an individual is nominated should also influence the duration. Not all agencies and offices are created equal. Some positions have much more value to a president seeking greater control over a bureaucratic agency. Examples of such offices include major independent regulatory board positions and higher-ranking agency officials. When considering delaying a nominee, however, the temptation to delay high-ranking nominees is likely to be tempered with the increased risk associated with a more visible display of obstruction

(Chiou and Rothenberg 2013). As such, midlevel nominations may be targeted due to the combination of a lower profile and substantial policy influence.

Delay is also more likely under conditions where at least a substantial minority of the Senate prefers the status quo (vacancy) to the appointment of the president's nominee. While the reversion point for negotiating over a judge is an empty seat, vacancies in executive agencies are often filled by career civil servants. In this way, while the Senate is delaying a bureaucratic nominee, the predisposition of the agency serves as a kind of "reversion point" (Romer and Rosenthal 1978) in the executive appointments bargaining game. As noted by McCarty and Razaghian (1999, 1127), even if a majority of the Senate supports the president's nominee, "some senators will prefer the policies implemented by the career servants." As such, senators may target agencies on the basis of their relationship to the president. Lewis (2008) has noted similar behavior in presidents who are found to politicize more in agencies with opposing ideological predispositions.

Bureaucracies are not designed for maximum efficiency in service of the public good, but rather are designed and structured to meet political goals (Lewis 2003; Moe 1989). From their very conception, bureaucracies are thus not politically inert neutral enforcers of policy. Agencies often have independent preferences formed when the agency was designed and staffed in a strategically partisan manner to encapsulate the preferences of the coalition that created it. In fact, bureaucratic agencies are often staffed explicitly through patronage appointments to reward political allies and aid the coalition in power (Hollibaugh, Horton, and Lewis 2014; Moe 1984, 768). Though agency predisposition is a natural focal point for studies of strategic delay in nominations, this relationship has yet to be tested empirically.

The intrinsic value of delay in the executive nominations process ultimately hinges upon what occurs during a vacancy. This reversion point determines the utility of delay for nominations that will eventually be confirmed. By using obstruction to delay presidents from taking control over their opposing agencies, a Senate opposition would preserve a more favorable status quo. Alternatively, delaying nominees to agencies that are known presidential allies would not have the same influence, as the agencies would likely be responsive without presidential appointments. If one considers that control of a bureaucracy provides a steady stream of benefits in the form of agency output, then diverting control over that stream, even for a few months, may be rewarding. As such, collective inaction on the part of an opposition party may provide policy benefits even for nominations that will eventually be successful.

Investigating Strategic Delay

Delay is an inherently subjective term. That some nominations will take longer than others is a given feature of the existent political institutions and not necessarily an indication of strategic action. Throughout this investigation, the term *delay* is used interchangeably with the phrase *time to decision* and is not intended to be pejorative or imply impropriety. Furthermore, delay is distinct from failure, which may also occur quickly or slowly, depending on circumstances. Because delay is subjective, all cases will be compared along a continuum of the amount of time it takes each nomination to reach a final outcome.

Vacancy periods have been used by several scholars (Nixon 2001; O'Connell 2009) as a means of analyzing delay in executive nominations. This measure has the advantage of capturing delay that stems from the prenomination process from either the Senate or a president (Hollibaugh 2015b). Specifically, while only one individual may eventually be formally nominated, it is often the case that many individuals are considered for a position before any formal nomination is sent to the Senate for consideration. This prenomination process takes place in conjunction with advice from key senators and can often be a site of conflict, with many nominations "dying" in this phase (Nixon 2001). Vacancy periods are a good way to estimate the total time it takes for a *position* to be filled. For analyses of senatorial delay in the nomination process, however, prior scholars have tended to use the nomination and confirmation (final action) dates from within the U.S. Senate (McCarty and Razaghian 1999). This measure has the disadvantage of being more exclusive (i.e., it only counts post nomination delay), but that exclusivity comes with several advantages. First, it allows one to focus on delay caused by Senate (in)action. Second, nominations that are not acted upon at the end of a congress are "returned to the president," which ensures that nominations will be confined within consistent institutional settings. Third, using formal nominations also allows one to study cases that failed to be confirmed either through a vote, withdrawal, or failure of the Senate to act. Because many failures occur by "malign neglect" (Bond, Fleisher, and Krutz 2009), studying these cases is particularly necessary for understanding interbranch conflict and strategic delay. Using formal nominations allows for the creation of an easily identifiable population of cases that have all passed a similar threshold of consideration.

To measure delay, I use the nomination and final action dates of nominations presented to the U.S. Senate. Even when a nomination never receives a vote, one can measure the time that the Senate held the nomination under review. Nomination and confirmation data are

available from the Library of Congress's website, THOMAS.¹ The population of all nominees (given the restrictions on scope noted below) for this study was gathered from this source. Basic information includes the nominee's name, the agency to which the individual was nominated, the position, and the dates of nomination and confirmation. Additionally, THOMAS contains information as to whether nominations were withdrawn from consideration, failed, or were returned to the president at the end of a session. This measure will allow for a direct comparison of how much time each nomination required. Such a definition is a useful construct, and it follows the example of similar studies of the nominations process (Bond, Fleisher, and Krutz 2009; McCarty and Razaghian 1999).

Scope and Boundaries

Every administration faces thousands of appointments, but only some of these appointments will be considered within this work for reasons of theoretical incompatibility. First, all military officers are promoted by acts of Congress, and these nominations may also be delayed or held hostage by senators. These positions, however, are often bundled together and voted on as a whole due to the fact that there are thousands of promotions each year. Because they are bundled, and because their policy influence is unclear, these nominations are not theoretically compatible with this study. Second, some specific positions, such as federal marshals and ambassadors, have unclear policy influence and as such are often left out of studies concerning nomination delay. Following this reasoned tradition, these posts will not be included in the subsequent analysis.

While the process of nomination and confirmation is similar for federal judges, it is important to note that the nature of judicial appointments is often quite different. Unlike bureaucrats, judges serve for lifetime appointments and are generally well insulated from control after taking office. Senators are therefore much more cautious about the appointment of judges than they are with any level of bureaucrat (King and Riddlesperger 1996, 282). Furthermore, while motivations for delay similar to those encountered by bureaucrats have been uncovered for nominations to the judiciary (Binder and Maltzman 2002, 2004), there exists an entirely different (pre)nomination process for judges. Specifically, the use of the "blue slip" and senatorial courtesy (Binder and Maltzman 2002, 2004) implies that judges must go through additional hurdles before confirmation is achieved. Therefore, while

the literature on bureaucratic and judicial nominees is linked, questions concerning the delay of bureaucratic and judicial nominations can be profitably separated. As such, I will not include judicial nominations within the empirical analyses ahead.

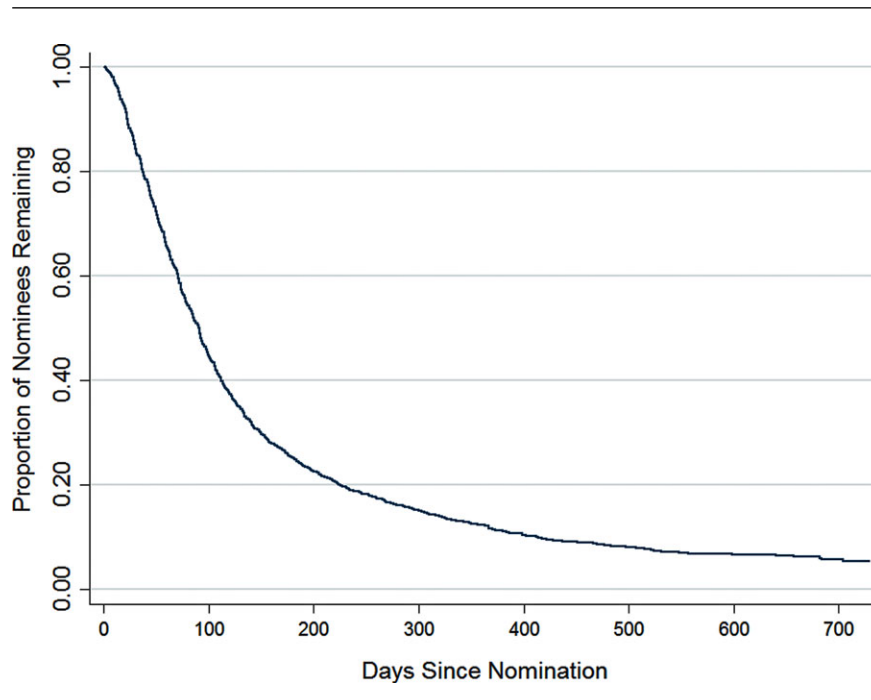
The time period in which I will investigate strategic behavior within the executive nominations process is 1987–2012 (100th–112th Congresses). While strategic delay certainly occurred before and after this specific time period, there are substantive reasons to support this choice. As Mackenzie (1981) has noted, all nominations must be understood within their own historical epoch, and according to Carter (1994), a new era began in 1987 with the nomination of Robert Bork and the ensuing shift toward partisan nomination battles. Similarly, the historic Senate rules change regarding cloture on most executive nominations in the 113th Congress has arguably created a new era of executive nominations. As such, the time frame of this study, which begins in the same year as the Bork nomination and ends just before the Senate rules change, was chosen for its consistency of rules and norms.

Trends in Delay

Pooling all cases between 1987 and 2012, Figure 1 shows the proportion of nominees between 1987 and 2012 who remained under Senate consideration after a given number of days. A Kaplan-Meier curve is used to show these data because the mean or median time to decision would be dramatically skewed given the presence of censored cases that never reached a decision. Because nominations not confirmed by the end of a congressional session are returned, the maximum number of possible days that an individual could be delayed is just about 730 days. By the shape of the curve, one can see that many nominees are confirmed quickly, with just over 40% of nominees remaining after about 100 days. After 100 days, the process slows considerably, as the changing slope of the curve indicates. By 200 days, approximately 20% of cases remain undecided. The fact that the curve never touches 0 indicates that there are many individuals whose cases were still pending by the end of a congressional session. These data indicate that significant delay does occur, with some nominees waiting as long as 500 or 600 days for confirmation.

Table 1 shows the average time (in days) that nominations remained undecided aggregated to the level of each congress and noting the associated presidential term. It is difficult to detect any clear pattern at this level of aggregation, but some comparisons can be made. The data do suggest, for example, that presidents tend to experience more delay in their second term than

¹<http://thomas.loc.gov/>.

FIGURE 1 Kaplan-Meier Survivor Function for Executive Nominations, 1987–2012**TABLE 1 Time to Decision in Days by Presidential Term and Congress, 1987–2012**

President	Congress	Average Delay	Total Nominations
Reagan	100	109	557
G. H. W. Bush	101	88	708
	102	93	525
Clinton I	103	61	874
	104	148	431
Clinton II	105	118	506
	106	167	490
G. W. Bush I	107	74	911
	108	175	617
G. W. Bush II	109	129	687
	110	180	543
Obama I	111	109	766
	112	190	402

in their first. Furthermore, when comparing the first presidential terms across this time period, there does appear to be some increase in the amount of delay over time. Unfortunately, there are too few presidencies with complete data to make a strong case for change over time.

Table 2 shows average time to congressional decision in days aggregated by the the position level of the appoint-

TABLE 2 Delay Time in Days by Level of Position, 1987–2012

Nomination Position by Tier	Average Delay
Cabinet Secretary and Attorney General	27
High-Level Nomination	96
Major IR Board/Commission Member	137
Low-Level Nomination	133
Lowest-Level/Other Nominations	108

ment.² The resulting description indicates that delay is more pronounced in middle-tier positions and less likely to be observed in either the highest or lowest tiers. Intuitively, this may suggest that high-level nominations such as cabinet secretaries are more difficult to delay, whereas the lowest-level nominees may not be valuable enough to delay for reasons of policy. The data trend also comports well with the intuition of Chiou and Rothenberg (2013) about the relative costs of delay by position. While seemingly more innocuous, delay of such midlevel appointments is still likely to hamper agency performance and disrupt executive control over policy implementation by creating “neckless” bureaucracies (Light 2004).

²The coding for each tier can be found in the following sections and the appendix.

Furthermore, the trends described in Table 2 indicate that the highest average delay comes from appointments to major independent regulatory boards or commissions. Such positions, even when they are not immediately median-shifting, are still quite valuable, as these decision-making bodies are usually composed of just a handful of voting members. It is also the case that independent regulatory commissions (IRCs), due to their small boards with statutory requirements for a quorum of Senate-confirmed appointments to operate, are the agencies least able to withstand vacancies. Nominations to IRCs thus have the greatest potential to shift policy away from the status quo. As such, the pattern of delay within position levels comports well with intuitions of strategic delay.

Expectations and Hypotheses

Based on prior literature, there are a variety of political and institutional contexts that we expect to influence delay in executive nominations. A study by McCarty and Razaghan (1999) has already shown that nominations made within the first 90 days of an administration tend to proceed more quickly, whereas those made under conditions of polarized or divided government tend to proceed more slowly. Similarly, one would expect that lame duck presidents would be less able to find and support nominees, and as such, delay would be more likely.

Based on the theory described above, one would also expect that agency predispositions can influence strategic delay. This relationship, however, is not straightforward. The influence of agency ideology operates in relation to the president. As noted above, prior research has demonstrated that presidents attempt to exert greater control over agencies with an opposing ideology. Given their respective incentives, one would expect that a president's opposition within the Senate would attempt to thwart these presidential ambitions and thereby also protect a more favorable status quo point. Delay is therefore predicted to occur in nominations to agencies with a disposition in opposition to the president. Alternatively, delaying a nomination to an agency allied with the president may yield no differences in policy or enforcement, and thus these nominations are not predicted to differ from appointments to neutral agencies.

H1: Delay will be greater for nominations to agencies with ideological dispositions opposite to the president.

Prior studies (Black et al. 2007, 2011; Nixon 2001) note the importance of being able to choose a member of a major IRC. These positions are influential because the decision-making body is usually very small, they can-

not be removed from office easily, and they serve long terms that are not affected by changes in administration. Furthermore, a vacancy on a major IRC cannot be filled by a career civil servant; rather, the reversion point is an empty seat. This implies that IRCs, more than any other agency type, are not able to absorb vacancies. Delays to IRCs may be aimed at blocking the establishment of a quorum, retaining the party balance of the status quo, or attempting to delay choice until after a presidential transition. Due to these factors as well as the large influence of being able to place one member onto an independent regulatory commission, it is expected that these positions face significantly more delay when compared with other nominations.

H2: Delay is significantly greater for nominations to major independent regulatory commissions.

Given the relative inability of presidents to "go public" for minor officials combined with the policy relevance that midlevel positions still hold, it would be natural for these midlevel positions to be the primary targets of strategic delay. This pattern is suggested by a variety of anecdotal accounts (Light 2004; Troy 2011) and comports well with intuition about how senators may balance the value and vulnerability of positions for delay. Furthermore, Chiou and Rothenberg (2013) show that high-level nominees are less often targets of delay likely due to the trade-offs associated with publicly delaying a high-stakes appointment. As such, when compared with high-level positions such as cabinet secretaries or to the lowest-level positions with little policy relevance, one would expect delay to be significantly greater in midlevel appointments.

H3: Delay is significantly greater for midlevel appointments.

The nature of the electoral cycle should also have an influence on delay. Partisan expectations as to the outcome of an election, whether founded or not, can influence the desirability of delay. As an election nears, delay increases the likelihood that a new, and perhaps more favorable, president will oversee a given appointment. This is especially true for positions on commissions or other offices in which the term of office transcends administrations. The informal Thurmond Rule, which is a Senate practice wherein no nominations are decided within the last few months of a presidential election year, is an embodiment of this idea. While the existence and practical details of the Thurmond Rule have been questioned since the 1980s, the Thurmond Rule is still widely discussed in election years (Binder and Maltzman 2009, 88). As such,

one would expect nominations to slow during presidential election years.

H4: Delay is significantly greater for nominations within the year of a presidential election.

The popularity of a president has long been noted to be a source of bargaining power (Neustadt 1990) as well as an opportunity to take matters “public” (Kernell 1997). Within the topic of nominations, studies of presidential recess appointments such as Black et al. (2007, 2011) and Corley (2006) find public approval of presidents to be a significant factor in making these nomination decisions. Public approval of a president may therefore provide the executive with more political capital, and thus aid in bargaining efforts with the Senate. Conversely, unpopular presidents may have proportionally less bargaining power. As such, one would expect that more popular presidents will suffer significantly less delay on their nominations.

H5: Delay is significantly lower for nominations made by popular presidents.

Furthermore, there exists wide variation in the policy matter that agencies are tasked with. Some policy areas may be more or less susceptible to delay. For example, if politics in fact ends at the water’s edge, then the Senate may give presidents more latitude, and hence less delay, with agencies related to national defense. The idea that a president may be advantaged in areas of foreign policy has been advanced by Wildavsky (1966), and it may be possible that this deference would extend to executive nominations. As such, one would expect significantly less delay in defense-related nominations as compared to other policy areas.

H6: Delay is significantly lower for nominations made to defense-related agencies.

Data Operationalizations

Agency ideological dispositions have previously been measured by Clinton and Lewis (2008) for the purpose of examining executive agencies.³ Using expert opinions, Clinton and Lewis (2008) develop an estimate of relative agency ideology for 82 executive agencies in existence between 1988 and 2005.⁴ While Lewis (2008) used these

³These data are available at <https://my.vanderbilt.edu/davidlewis/data/>.

⁴Approximately 20% of the cases within the data set cannot be given a score because the agency or board was not included in the Clinton and Lewis (2008) data. All models were run with and without this measure and were found to be robust.

data to evaluate bureaucratic performance based on the predisposition of agencies and other institutional characteristics, these data can be readily adapted to examine whether particular agencies are targeted for delay on the basis of their predispositions and characteristics. Furthermore, a recoding of this variable from the raw scores into a measure of either opposition to or agreement with the president will allow one to test the conditional effects of agency predisposition.⁵

Beyond ideology, an agency’s policy arena may influence delay. Agencies concerned with matters of national defense and security are coded from the Clinton and Lewis (2008) data set.⁶ By way of comparison, the Departments of Transportation, Energy, and the Interior can be categorized broadly as *infrastructure* related, whereas the Departments of Education, Health and Human Services, Veterans Affairs, and Housing and Urban Development, as well as the Social Security Administration, can be categorized as related to *social* policy. The categories for infrastructure and social agencies follow the scheme used by McCarty and Razaghian (1999, 1134).

Not all nominations are created equally, and they can differ widely with respect to importance. While there are a great variety of different job titles that have proliferated throughout the executive bureaucracy (Light 1995), types of positions can be directly comparable, and several prior studies have profitably grouped offices into categories for the purpose of investigation (McCarty and Razaghian 1999). As such, nominations will be divided into tiers: cabinet level, high level, major commission, low level, and lowest level.⁷ The category of “lowest level” will serve as the baseline factor for comparison in future analyses.

The highest tier of offices includes cabinet secretaries and the attorney general. Below this tier are other high-level nominations such as deputy cabinet secretaries, department/agency directors, and undersecretaries. The third level, listed as “Major IR Board/Commission Member,” includes all members of major IRCs.⁸ While it is

⁵Agency ideology scores are recoded from Clinton and Lewis (2008). Specifically, these scores were categorized in reference to each president as neutral, allied, or opposed. Scores within the inner quartiles of the original Clinton and Lewis (2008) data were coded as neutral in all cases. Allied and opposed agencies were calculated in reference to presidential party and are composed of the outer quartiles. In the following analysis, the “allied” and “opposed” categories are identified in relation to “neutral.”

⁶Where no measures were present, the author’s discretion was used to approximate the Clinton and Lewis (2008) coding scheme for agencies related to national defense.

⁷The exact operationalization for each of these categories can be found in Table A1 in the appendix.

⁸Following the coding scheme of Black et al. (2007, 2011) and Nixon (2005), this list includes members of the Consumer Product Safety

true that there are other commissions and boards, these other entities are often purely advisory and have far less policy influence than these major boards. In the fourth tier, “low-level” nominations include members of non-major commissions, counsel technical positions, and U.S. attorneys. Last, the fifth tier, “lowest-level” nominations, contains a mixture of administrative titles such as “deputy undersecretary” or “special assistant” as well as irregular offices that defy categorization.

Several contextual variables are key to testing the above hypotheses. First, for presidential contexts, I use an indicator for whether a nomination takes place within a presidential election year. As it is also possible that presidents with a known expiration date may be disadvantaged, I account for lame duck presidencies by including a measure of whether a nomination occurred within a president’s second term. To account for public opinion, I use the average public approval of the president during the month of the nomination.⁹ Next, an “early” nomination in a president’s administration is coded as the first 90 days after a president’s first inauguration. This measure is not recalculated for a president’s second term. Additionally, I code nominations for whether they take place during a presidential election year.

Second, there are several important Senate-level contexts. Divided government is measured based on whether a president’s party affiliation differs from that of the majority party in the Senate. To measure Senate polarization, or the relative distance between the two parties, I measure the difference between the party mean scores within the first dimension of DW-NOMINATE.¹⁰ The workload of the Senate is also an important consideration, as the ability of the Senate to conclude nominations varies widely across a session. To account for varied workloads, I use the number of Senate roll-call votes within the month of a nomination. While workload is a difficult concept to measure exactly, using roll-call data provides a consistent and tested metric.¹¹

Commission, Equal Employment Opportunity Commission, Federal Communications Commission, Federal Election Commission, Federal Energy Regulatory Commission, Federal Reserve Board of Governors, Federal Trade Commission, Interstate Commerce Commission, National Labor Relations Board, National Transportation Safety Board, Nuclear Regulatory Commission, and Securities and Exchange Commission.

⁹See the American Presidency Project at <http://www.presidency.ucsb.edu/data/popularity.php>.

¹⁰These data can be found at <http://voteview.com/polarized-america.asp>.

¹¹This measure is similar to the one found in McCarty and Razaghan (1999). Roll-call votes are also found on the Voteview webpage.

Last, the individual characteristics of the nominee may influence delay. As noted by Asmussen (2011), presidents may leverage minority nominees as a means of gaining sufficient votes to confirm a more ideologically friendly appointee. As such, I operationalize gender by coding whether the nominee was female.¹² Prior literature has also noted the importance of nominee ideology or competence on the nominations process (Chiou and Rothenberg 2013; Hollibaugh 2015a, 2015b; Jo and Rothenberg 2012; King and Riddlesperger 1996); however, consistent measures of these traits are very difficult to uncover for all levels of nominees throughout the full time period of this study. One potential measure of quality is whether a nominee has been successfully confirmed to a position before. Theoretically, repeated nominations lower the information cost for senators and suggest that a nominee has government experience. I measure repeat nominations by noting when a nominee has been successfully appointed within the past two congresses.¹³

Empirical Tests

The dependent variable of interest when testing the above hypotheses is the length of time the Senate considers a nomination. The standard method employed in studying delay times is a duration, an event history, or a survival model.¹⁴ Because of their desirable qualities given data related to the time between events, duration models have been used by McCarty and Razaghan (1999) as well as others in the study of confirmation delay.

In particular, duration models are capable of taking into account the extra information available in censored observations, which are critical within the study of delay in nominations. Nominations are “censored” when the Senate returns the nomination to the president at the end of a congressional session without a decision. Theoretically, these observations would have ended in success or failure on an infinite time line, but the end of a congress artificially ends the period of observation. These observations are important in helping to estimate the duration of nominations, as they provide additional information

¹²Gender coding relied first upon Internet searches for news articles and government profiles related to the appointment and second on common usages of the first name.

¹³The variables described within this section as well as in the sections above are listed along with their operationalization and source within Table A1 in the appendix for easy reference.

¹⁴See Box-Steffensmeier and Jones (2004) for details on various approaches to duration models.

to the model. Furthermore, censored observations tend to be patterned (i.e., more likely in the second session) as well as important instances of extreme delay, and thus their exclusion may significantly bias any analysis.

While the most common approach to survival data is perhaps the Cox proportional hazards model, the data for nominations do not meet several of the basic assumptions inherent to a Cox proportional hazards framework. Most importantly, the data contain a high proportion of tied cases, which poses a difficulty for Cox models (Box-Steffensmeier and Jones 2004). Evidence from Kaplan-Meier survival plots, as well as a variety of other tests, suggests the Weibull model as a good alternative. As such, the following analysis of nomination delay will employ a parametric duration model, the Weibull. This model has been used by McCarty and Razaghian (1999) in their study of nominations delay and has several advantages.

Findings

The model in Table 3 demonstrates the results of the Weibull duration model on the nominations data described above. The estimates of the duration model are given in terms of hazard ratios rather than estimated coefficients in order to aid interpretation. The hazard ratio can be read as increasing or decreasing the probability of exiting the nominations process, with the baseline for comparison being 1.00. So a hazard ratio of 3 indicates that a one-unit increase in the independent variable will make the nomination three times more likely to exit each day, whereas a ratio of .50 suggests that a nomination will be half as likely. Nominations with a greater or lower probability of exiting the process are also expected to proceed more quickly or slowly, respectively.

We can view the hazard ratios predicted within the Weibull model graphically in Figure 2. Within this figure, the dots represent the estimated hazard ratio, with the horizontal lines representing the 95% confidence intervals for each estimate. Estimates with confidence intervals crossing the reference line at 1 are not statistically significant at the 95% level. Within the model estimates, the “ln(p)” term is a shape parameter for the Weibull, with $H_0 = 0$. The significant value of .082 suggests that the hazard is monotonically decreasing.

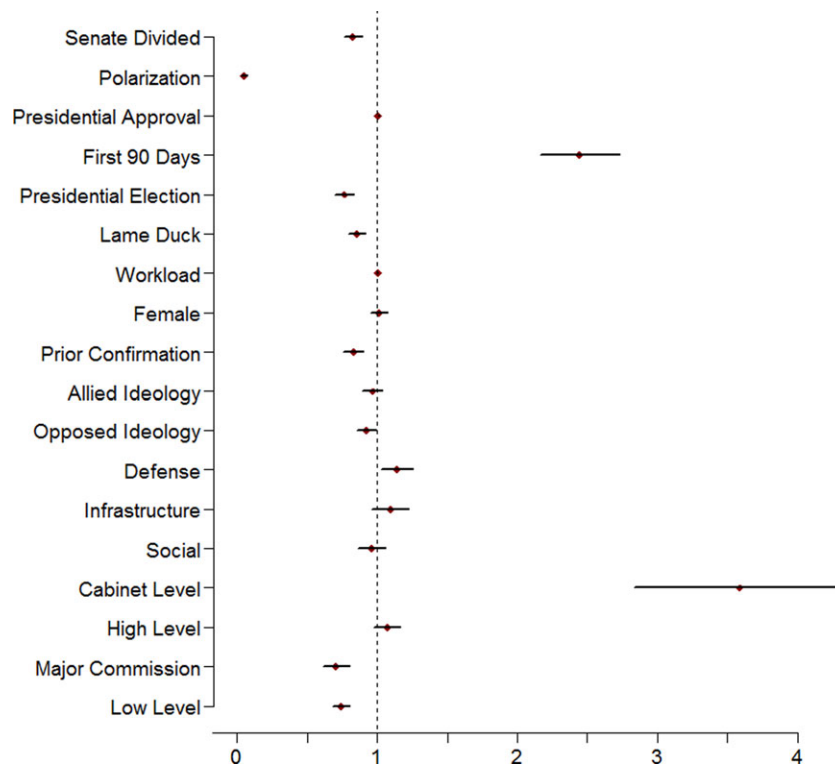
The model results suggest support for the key hypotheses listed above. With respect to the role of agency ideology, being nominated to an agency or a board with a disposition opposed to the ideology of the president does make nominations significantly less likely to exit the process. As suggested by the theory above, this effect is not present in those agencies or boards with allied ideologies. This finding is interesting because both “allied”

TABLE 3 Duration of Nomination Decisions in the 100th–112th Congresses

Variable	Hazard Ratio	Z Score	95% CI
<i>Political Contexts</i>			
Senate Divided	0.827	−4.86	[0.766–0.893]
Polarization	0.048	−13.73	[0.031–0.075]
Presidential Approval	1.006	4.18	[1.003–1.009]
First 90 Days	2.450	15.28	[2.184–2.749]
Presidential Election	0.762	−5.89	[0.697–0.834]
Lame Duck	0.855	−4.31	[0.797–0.918]
Workload	1.003	3.50	[1.001–1.004]
<i>Nominee Traits</i>			
Female	1.012	0.38	[0.951–1.077]
Prior Confirmation	0.828	−4.18	[0.759–0.905]
<i>Agency Traits</i>			
Allied Ideology	0.963	−0.99	[0.894–1.037]
Opposed Ideology	0.921	−2.30	[0.859–0.988]
Defense	1.139	2.60	[1.032–1.256]
Infrastructure	1.091	1.39	[0.965–1.234]
Social	0.959	−0.78	[0.864–1.065]
<i>Appointment Level</i>			
Cabinet Level	3.587	11.92	[2.908–4.425]
High Level	1.068	1.50	[0.980–1.164]
Major Commission	0.705	−5.14	[0.617–0.805]
Low Level	0.739	−7.41	[0.682–0.800]
Constant	0.041	−15.51	
ln(p)	0.082	7.81	
N	6,282		
Log likelihood	−8,558		

and “opposed” categories contain exactly the same mix of agencies, and what is changing is their relationship to each president’s ideology. Ultimately, these findings support Hypothesis 1 and the theoretical notion that agency reversion points are a key consideration for targeting delay.

Broad political contexts appear to influence senatorial delay in expected ways. First, when the Senate majority and a president are divided, nominations take significantly longer to decide. Such a finding is intuitive, as the majority party in the Senate would have little reason to speed up confirmations for an opposition party president. Second, the level of polarization between the parties in the Senate is also found to significantly slow nominations. Third, making a nomination within the first 90 days of a presidency decreases the time it takes to make a nomination decision. The first 90 days of a presidency fall within the traditional period of nomination deference, in which the Senate may be more likely

FIGURE 2 Predicted Hazard Ratios

to give presidents a free hand to set up a government. As such, the findings with respect to traditional measures of political capital correspond well with established intuitions.

With respect to Hypothesis 2, these findings also show that nominations to major commissions (IRCs) are significantly more likely to be delayed. While major IRCs do not fill vacancies in the same way that agencies do, it is important to note that a theory centered on reversion points will also pick out major IRCs as likely targets. This is due to the leverage gained from placing even a single individual within a small voting body. Furthermore, when a nomination to an IRC can potentially shift the median, this appointment is likely much more influential than regular agency appointments. Combined with the findings on agency ideology, these results support the notion that agency reversion points are critical to understanding how delay is targeted across nominations.

Building off of the purely descriptive treatments of delay above, the model provides more evidence for Hypothesis 3 and the notion that there are differences in the degree of delay between the tiers of appointments. Position level clearly matters. The results of the model indicate that cabinet-level nominations proceed much faster than the lowest-level nominations, whereas ma-

ior commission and low-level nominations are significantly slower. High-level nominations seem to have delay about on par with the lowest-level nominations. These findings comport well with both the prior descriptive analysis as well as intuitions about where delay is likely to occur.

In testing Hypothesis 4, the results suggest that the presidential election cycle does influence the speed at which nominations are decided. First, presidential election years appear to significantly slow the nominations process. Similarly, if a president is a lame duck, it appears that nominations will take longer. This could be the result of either strategic delay in the hopes of a better president or problems of recruitment and retention at the end of a long administration. In either case, the presidential electoral cycle is a significant influence upon delay in executive nominations.

Presidential approval also influences delay in the expected direction. In support of Hypothesis 5, nominations made by popular presidents are more likely to be quickly concluded than less popular presidents. High public approval rates may make a president more likely to press a nominee given that approval makes it easier to bargain with Congress. This result is interesting, however, as it is not necessarily the case that a popular president at the

time of the nomination will be as popular when the nomination is concluded. These findings suggest that early gains in the process (e.g., quicker committee turnaround) are carried throughout the life of a nomination.

The results also suggest that higher Senate workloads produce faster nominations. While initially counterintuitive, these results comport well with prior findings from McCarty and Razaghian (1999, 1141). These findings suggest that the Senate, with a highly variable schedule, tends to work though nominations more efficiently while it is also engaged in legislating. In this way, nominations may benefit from an active Senate calendar and similarly suffer when the Senate is dormant. This measure of workload is likely capturing the influence of the congressional election cycle, recesses, and productivity shifts over the span of a session.

The influence of individual traits is mixed. Contrary to findings from Asmussen (2011), no relationship is found between nomination duration and the gender of a nominee. The explanation for these differences may be that the use of minority nominees for ideological gains could be reserved for high-level and especially judicial nominations, although this model includes data with a high proportion of lower positions and no federal judges. As for nominees who have previously been confirmed by the Senate, the results suggest that such nominees may actually be less likely to receive quicker confirmations. These results are somewhat puzzling given that, as nominations are an information-gathering activity from the perspective of the Senate, prior confirmation should proceed more quickly given familiarity. However, it may be the case that such nominations may be ideal targets for delay, given better information available to senators as to their ideological and policy predispositions. These findings suggest that confirmation delay may have little to do with information gathering.

Hypothesis 6 is also supported, as the results suggest that the agencies engaged in defense-related tasks enjoy generally faster nominations. This could be due to deference toward presidents in matters of defense, and/or to the fact that some positions deemed nationally important may be more visible and thus less susceptible to strategic delay. Presidents may also prioritize such nominations and thus introduce them more quickly within their administration. By comparison, agencies related to infrastructure or social welfare programs were found to be neither significantly more or less likely to be delayed. These results, however, suggest that agency-specific characteristics, including the subject under their purview, can influence the time to confirmation.

While Figure 2 shows the relative hazard ratios predicted for each independent variable, some of these re-

sults are difficult to interpret substantively because each estimate is sensitive to the scale of the given variable. As such, the influence of presidential approval (measured as a percent) and workload (measured as the number of roll-call votes), though both significant, appear quite small relative to the baseline because what is being measured is the influence of one additional percentage point of approval or one additional roll-call vote. Conversely, having a cabinet-level nomination and being nominated within the first 90 days of an administration are dichotomous variables, and thus the large hazard ratios are estimated by comparing just one category against the other.

The substantive significance of these results is also important to consider. Using the model to make predictions, cases take an average of 105 days to reach a decision in the Senate. Looking at some of the larger hazard ratios, nominations made within the first 90 days of an administration are predicted to take about 32 days (versus 110 otherwise), and cabinet-level nominations are predicted to take about 25 days (versus 89 days for the lowest-level nominations or 136 days for major commissions). While these differences may be small, even a few weeks or months may be the deciding factor between confirmation and automatic failure at the end of a congress.

In terms of the key independent variable, agency ideology, the difference in the predicted number of days is substantively small while statistically significant. The results suggest that nominations to agencies with an ideological predisposition opposed to the presidency take between four and five days longer. These results suggest that the largest determinants of time to decision in executive nominations are intuitively the level of the appointment, timing, and political contexts such as polarization and divided government. However, the contribution of these findings rests in discovering motivation for targeting some nominations over others rather than the magnitude of delay experienced. It is important to note that this relationship continues to hold even when accounting for the most intuitively significant factors such as timing, contexts, and position level.

Discussion

Delay in executive nominations continues to be a salient issue for presidential, congressional, and bureaucratic politics even after the 2013 rules change regarding cloture. While delay may be costly given the fact that most nominees will eventually be confirmed, my findings suggest that the motivation for such delay may be found in the expected differences between how policy will be

implemented under a stalemate versus a president's nominee. Prior studies have tended to focus on the nominee side of this equation. Yet, as vacancies are often filled with agency staff, agency predispositions also matter. Senators can be expected to insist upon delay in conditions where they are rewarded with more favorable policy output during a stalemate.

Many studies have shown delay to be patterned on the basis of political contexts, but this is perhaps the first empirical study to investigate the conditional role of agency ideology in predicting strategic delay. The results above not only suggest that some nominees are likely delayed in order to protect favorable status quo points, but also that this relationship may be related to presidential politicization within recalcitrant agencies. Just as Lewis (2008) found presidents to politicize agencies strategically given agency ideologies, I find that the Senate may resist politicization using strategic delay. In this way, strategic delay within executive nominations and presidential politicization are linked.

These findings also build on prior work by extending the analysis to cases that are often excluded from investigations. These cases include major IRCs, a variety of lower-level positions, and unsuccessful nominations. By focusing only on high-level nominations, many studies are unable to compare across the distinct layers of the

federal bureaucracy. While lower-level positions may not have the same policy influence as agency heads, such positions do provide a point of comparison and a useful baseline in studying delay. Furthermore, using an analysis that is broad across cases bridges the gap between studies of just IRCs, such as Nixon (2001), and studies that do not include IRCs, such as McCarty and Razaghian (1999). Importantly, the results suggest that even if major IRC nominations are important only in median-shifting circumstances, these occur often enough to make IRC nominations take significantly longer in general as compared with other nominations.

When examining a broad range of cases, results from both a purely descriptive standpoint as well as the empirical model suggest that nominations differ greatly by appointment level with respect to how much delay they are likely to experience. One of the most important considerations of this finding is that studies using just a subset of nominations, such as only cabinet-level offices or just major IRCs, will not be generalizable to the broader range of nominations. Consistent with prior findings, the results suggest that strategic delay may be more effective or at least more common on midlevel nominations. Future studies must therefore take into account the differences in exposure to delay between relative ranks of offices.

Appendix

TABLE A1 Operationalization and Sources of Key Variables

Variable	Operationalization and Source(s)
<i>Political Contexts</i>	
Divided Government	Senate majority not copartisan with president
Polarization	Distance between party mean DW-NOMINATE scores
Presidential Approval	Average presidential approval in month of nomination
Start of Term	Was nomination within first 90 days of first term
Presidential Election	Was nomination within a presidential election year
Lame Duck	Was nomination within a president's second term
Workload	Number of Senate roll-call votes in month of nomination
<i>Nominee Traits</i>	
Female	Whether the nominee was a female
Prior Confirmation	Nominee had been confirmed within past two congresses
<i>Agency Traits</i>	
Allied Agency	Quartile closest to president (Clinton and Lewis 2008)
Opposed Agency	Quartile furthest from president (Clinton and Lewis 2008)
Defense Related	Was agency defense related (Clinton and Lewis 2008)
Infrastructure	Departments of Transportation, Energy, Interior
Social	Departments of Education, HUD, HSS, SSA, and VA
<i>Appointment Level</i>	
Cabinet Level	Cabinet Secretaries and Attorneys General
High Level	Deputy/Under/Assistant Secretaries, Agency Heads
Major Commission	Nominations to IRCs from Nixon (2005)
Low Level	Minor Commissions, Inspectors, Technical Positions
Lowest Level	Deputy Undersecretaries/Advisers, All Others

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