

# Confirmation Wars, Legislative Time, and Collateral Damage: Assessing the Impact of Supreme Court Nominations on Presidential Success in the U.S. Senate

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## Abstract

Presidents often devote time and effort to promote Supreme Court nominees. Recent studies speculate that focusing on Supreme Court nominees affects presidential success beyond the confirmation process, but this has not been established systematically. We develop and test a relative effort hypothesis stating that presidents' vigorous advocacy for Supreme Court nominees delays or derails their efforts to promote their legislative agenda in the Senate and fill lower-level judicial vacancies. We test our theory using data on presidential policy agenda items from 1967-2010 and lower-level judicial nominations from 1977-2010. We find that increased efforts in promoting confirmation reduce the likelihood of Senate approval of important policy proposals and nominees to federal district courts.

On April 4, 2010, Justice John Paul Stevens announced his intention to leave active service on the Supreme Court of the United States. His departure coincided with a political environment favorable to the confirmation of an ideologically similar (i.e., left-leaning) successor. President Barack Obama enjoyed a positive approval rating and Democratic control of 59 Senate seats. Despite these conditions, many observers predicted that the president would nominate a moderate successor to Stevens (e.g. Baker 2010*a*; Stolberg and Savage 2010) in order to minimize the presidential effort and legislative time necessary to achieve confirmation. This would enable Obama and the Senate to devote their finite resources to other agenda items. Midterm elections were seven months away, and many of the administration’s legislative priorities and nominations were still being considered in the Senate. This included a \$100 billion measure to expand tax and unemployment benefits, the Dodd-Frank Wall Street Reform and Consumer Protection Act, an emergency jobs appropriation, an immigration reform act and others (Brady and Dennis 2010). On April 13, Senate Majority Leader Harry Reid (D-NV) declared that he would not “let excuses like a Supreme Court nomination get in the way” of passing key measures (Bendery 2010). Hundreds of presidential nominations—including several dozen to lower federal courts—were also on the Senate calendar.

Obama announced on May 10, 2010, that Solicitor General Elena Kagan was his choice to succeed Justice Stevens. Kagan was viewed as one of the more centrist candidates under consideration.<sup>1</sup> Indeed, the decision led some liberals to voice concerns that Kagan was not sufficiently liberal to replace Stevens (Baker 2010*b*). However, as expected, the president did not need to exert much effort to promote Kagan and she was confirmed on August 5.

The Kagan nomination demonstrates several key points about the modern Supreme Court confirmation process. First, the process has the potential to be highly contentious. Scholars

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<sup>1</sup>Two other nominees the president reportedly considered—Judge Sidney Thomas of the Ninth Circuit Court of Appeals and Judge Diane Wood of the Seventh—had more liberal reputations and credentials (Kornblut and Barnes 2010).

characterize it as a “war” (Gerhardt 2002) and “major battleground” for presidents (Davis 1994). Second, presidents recognize that combative confirmation processes are likely to require more substantial resources than those for consensus nominees. Presidents are forced to speak and lobby more aggressively on behalf of more ideological candidates (Cameron and Park 2011; Davis 1994; Johnson and Roberts 2004). This activates more commentary and resources from senators, interest groups, the press and the public, cutting into valuable Senate floor time that could be spent on other matters. Observers of the United States Senate have long argued that time is of the utmost importance in the chamber. Because the chamber lacks a simple majority mechanism for ending debate on most matters, the majority leader must sacrifice immediate policy benefits to minimize transactions costs. Despite these claims, scholars routinely model Senate decision-making in a vacuum. In this article, we examine whether time and effort spent in Supreme Court confirmation wars have the potential to inflict “collateral damage” on other key presidential agenda items.

Our interest is in the legislative time and relative presidential effort required during the confirmation process. We posit that a greater quantity of legislative time and presidential effort expended during the confirmation process influences presidents’ success with regard to their other political priorities. Specifically, we argue that Supreme Court nominations can interrupt the progress of the president’s existing agenda by redirecting his efforts and occupying legislative time that would otherwise be spent on alternative initiatives. The addition of a contentious Supreme Court nominee to the president’s concerns and the Senate’s workload temporarily reshapes the policy-making environment in ways that hinder the achievement of policy goals advanced by the executive branch. It is understandable that both the president and senators would reallocate their time and resources in the event of a Supreme Court nomination. Scholars since Dahl (1957) have shown that presidents can have a lasting influence on public policy and law via their Supreme Court appointments. This is well known to chief executives, legislators, and other observers of the confirmation process. Jay Sekulow of the American Center for Law and Justice explained that “the legacy of the President is often the

judges, because the President serves for four or eight years and the judges serve for the end of their lives. This is the lasting legacy of the President, for every conceivable issue” (Goldman et al. 2007). Presidents attempt to select ideologically concordant justices who will advance the chief executive’s policy goals, and they are generally successful (Epstein and Segal 2005, 119-141; Segal, Timpone and Howard 2000). This is true in the short term in the event of a distal vacancy, particularly if the president is ideologically concordant with pivotal senators (Krehbiel 2007). Even when presidents do not achieve rapid changes in the Court’s output their appointments can have long-term effects if their nominees are exceptional or regular turnover facilitates the selection of more like-minded justices.

We adopt a two-pronged approach to evaluate whether the reallocation of time and effort associated with Supreme Court nominees hinders the president’s success in other areas. First, we examine presidents’ success in enacting executive branch priorities from 1967 to 2010 relative to the effort they expended to promote Supreme Court nominees. Second, we investigate the confirmation processes of district and circuit court nominees from 1977 to 2010 under similar conditions.

## **Presidential Effort and Supreme Court Nominations**

An extensive literature examines the Supreme Court nomination process (Abraham 1999; Comiskey 2004; Maltese 1995) and senators’ confirmation votes (Cameron, Cover and Segal 1990; Epstein and Segal 2005). Scholars demonstrate that presidents attempt to nominate justices as close to their ideal point as possible but they must consider the constraining influence of pivotal senators (Segal, Cameron and Cover 1992; Moraski and Shipan 1999; Johnson and Roberts 2005). Despite this strategic selection, the confirmation process occasionally requires a substantial commitment of presidential effort to sell nominees (Cameron and Park 2011; Davis 1994; Johnson and Roberts 2004; Maltese 1995). As with legislative initiatives, this selling of nominees necessitates the president “go public” in order to persuade key members of Congress. Because presidential statements are likely to be reported

in the media (Barrett 2007, 655), speaking out to encourage confirmation of Supreme Court nominees can be an effective strategy for presidents (Johnson and Roberts 2004).

To the best of our knowledge there are only three systematic studies of the president's effort in the Supreme Court confirmation process (Johnson and Roberts 2004, 2005; Cameron and Park 2011).<sup>2</sup> Johnson and Roberts (2004) examined 28 Supreme Court nominations from 1949 to 1994. They determined that a greater ideological distance between the president and Senate filibuster pivot is associated with more presidential statements. In later work, they demonstrate that by speaking out more often, presidents can secure the confirmation of more ideologically extreme nominees (Johnson and Roberts 2005). Cameron and Park (2011) studied 49 nominations to the Supreme Court from 1930 to 2009. They find that going public over nominees was rare before the presidency of Lyndon Johnson, and became much more common during the Reagan administration. Their findings suggest the decision to go public is motivated by greater interest group opposition to a nominee.

This literature suggests that a president can expend effort to secure the confirmation of nominees that better reflect his or her ideology. However, as the Kagan case suggests, there may be trade-offs associated with this decision. In what follows, we develop a theoretical framework to explain why and how presidents are likely affected by expending greater legislative time and relative effort to promote the confirmation of Supreme Court nominees. Specifically, we examine the impact of Supreme Court nominations on two key presidential powers: the ability to enact their legislative agenda and fill vacancies to lower federal courts. Despite speculation in the press and social science research, we believe this is the first systematic assessment of this important political question.

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<sup>2</sup>Going public to promote potential jurists has been studied in other contexts. Holmes (2007, 2008) studied presidential speech to promote nominees to the U.S. Courts of Appeals. Vining and Wilhelm (2011) examined gubernatorial endorsements of candidates in contested elections for seats on state courts of last resort.

## Time Management and the President's Agenda

Presidents use a wide range of tactics to set policy, including their ability to influence the legislative agenda and staff vacancies to lower level federal courts. In terms of influencing the legislative agenda, modern presidents introduce legislation and define policy alternatives (Covington, Wrighton and Kinney 1995; Eshbaugh-Soha 2005, 2010). While not unconditional, presidents can use their time and effort to secure the passage of key policy proposals (Edwards and Wood 1999; Light 1999; Neustadt 1960). Importantly, though, presidents' ability to persuade the public is limited. To be successful in enacting desired policies presidents have to time their proposals to align with favorable conditions in public opinion and legislative makeup (Edwards 2009).

Presidents also influence law and policy through their Article II appointment power. Perhaps the most important nominations made by presidents are those for federal judgeships. Like members of the Supreme Court, lower federal judges have life tenure and tend to serve long after their appointing president leaves office. Presidents usually select lower court nominees who share their own political predispositions (Goldman 1997). Ideological distance between the nominee and pivotal senators plays a prominent role in explaining conflict during appointment process for lower federal judges (Binder and Maltzman 2004; Martinek, Kemper and Van Winkle 2002). In sum, influencing the legislative agenda and staffing vacancies to lower federal courts represent important opportunities for the president to influence law and policy.

Supreme Court nominations can compromise or interrupt the president's ability to exert this influence on other matters, though this effect is likely to vary. The amount of effort spent on a Supreme Court nominee is largely dependent on the ideology of the president and legislators (Johnson and Roberts 2004, 2005). Presidents want to select nominees in line with their own ideological preferences, but must take into account the preferences of key senators (Moraski and Shipan 1999). As Senator Reid's statement suggests, Supreme Court nominations can distract legislators despite rational selection behavior by presidents.

As a result, Supreme Court nominees may occupy legislative time that would be allocated to different priorities. Time is a valuable commodity in the Senate, and its value has increased as the number of bills introduced has grown, obstruction has become commonplace, and party polarization has increased. In other words, senatorial time has been filled by two major sources: the sheer volume of bills (many of which are trivial but must be considered) and more extensive time spent debating the bills that are controversial. Eventually, these increased demands on the time of Congress have policy consequences because sessions expire before important legislation can be considered and passed (Oppenheimer 1985).

The Senate is governed by several institutional rules that facilitate delay and discord in the Supreme Court confirmation process. Majority party leadership in the Senate lacks the ability to issue restrictive floor rules and small groups or individuals from either party can obstruct the legislative process. Despite the presence of a cloture rule allowing three-fifths of the chamber to end debate, incidents of obstruction have increased fairly dramatically in the latter half of the twentieth century (Binder 1997; Koger 2010; Wawro and Schickler 2006). Even when the Senate majority can muster a supermajority for cloture, the process is still fairly time consuming. The vote on a cloture petition can occur only after it lies over for two calendar days. Then, an additional 30 hours of debate and amending activity can occur before a final vote is taken on the measure.

Given the chamber's open rules, policy leaders must balance their ideological preferences with the transaction costs associated with passing legislation. Presidents faced with a Supreme Court vacancy must do the same. Opposition party senators believe that they can benefit from the president spending more time and effort on behalf of his Supreme Court nominees—even if the nominee is likely to be confirmed (Steigerwalt 2010). For example, in discussing how Stevens's retirement could help minority party Republicans deprive Democrats from successfully enacting key agenda items, Minority Conference Chair Lamar Alexander (R-TN) noted that "a Supreme Court nomination always stops things around here" (Hulse and Zeleny 2010). Examples of this extend beyond the Kagan nomination.

Silverstein and Haltom (1996) briefly discuss this possibility in their assessment of the Ruth Bader Ginsburg and Stephen Breyer nominations. They argue that Clinton picked them rather than other candidates because of his concern with alienating potential coalition partners in future political battles. Consistent with this, media coverage of the Breyer nomination explained that the Secretary of the Interior, Bruce Babbitt, was both the favored choice of liberals and likely to be confirmed. However, the Clinton administration did not want to provoke a confirmation fight due to “a heavy legislative agenda, including health care, that it hopes to push through Congress this year” (Greenhouse 2010).

When faced with aggressive opposition, presidents can put forth considerable effort to secure victory (Cameron and Park 2011; Johnson and Roberts 2004). A confirmation process in which the president frequently engages the public reduces his personal resources and distracts elites from other policy priorities. It often coincides with increased media attention and involvement by interest groups which distracts senators. Even in the case of Kagan’s nomination, senators and Senate candidates took advantage of the salience of a Supreme Court nomination for electoral purposes.<sup>3</sup> Battles over more controversial nominees like Robert Bork and Clarence Thomas commanded substantial interest group involvement and likely had a more pronounced effect on Senate business (Caldeira and Wright 1998).<sup>4</sup>

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<sup>3</sup>For example, Republican candidates for key congressional seats used issues raised during Kagan’s confirmation hearings as campaign talking points. Specifically, New Hampshire Secretary of State Kelly Ayotte, a candidate for the U.S. Senate seat being vacated by Judd Gregg argued that “as a member of a military family whose husband was in R.O.T.C. and served in the Iraq war, I am profoundly concerned about Kagan’s radical views regarding our military” (Hulse and Zeleny 2010). The National Rifle Association, a key interest group that had raised money and support for Majority Leader Harry Reid (D-NV) in the past, announced its intentions to stay neutral in his competitive reelection campaign due to his support of Kagan’s nomination (Lorber 2010).

<sup>4</sup>While Kagan’s nomination lasted 71 days from initial presidential submission to final



Moreover, the time and attention that the Senate Committee on the Judiciary must dedicate to a Supreme Court nomination can delay the committee’s ability to consider lower court nominees. Relative to circuit court nominations, which can be more politicized, district court nominations tend to be more frequent and less controversial. For this reason, the Judiciary Committee’s process for reviewing nominees is more efficient at the district court level. Therefore, the potential for delay, and even derailment, is greater at the district court level where the more numerous nominees are apt to see an interruption in the methodical confirmation process. Thus, hard-fought wars over Supreme Court nominees can cause substantial collateral damage to both the president’s legislative agenda and his ability to fill vacancies on lower federal courts. Based on this reasoning, we form two hypotheses: *First, we hypothesize that presidents who expend more effort to advocate confirmation of a Supreme Court nominee are less likely to experience success in enacting legislative agenda items. Second, we hypothesize that presidents who extensively advocate for Supreme Court nominees are less likely to get their nominees to lower federal courts confirmed than presidents who devote less effort to promote confirmation.* These propositions are untested despite widespread speculation that the confirmation process weakens the president’s bargaining position in other policy areas (Groseclose and McCarty 2001; Mackenzie 1981; Shipan and Shannon 2003).

## Data and Method

The unit of analysis in our model of legislative success is a policy proposal on the president’s agenda in each meeting of Congress from 1967 to 2010. This approach is consistent with previous studies of the presidency (Edwards 1985; Light 1999; Peterson 1990; Rudalevige 2002). Our list of presidential agenda items begins with proposals identified by Eshbaugh-Soha (2010). Eshbaugh-Soha coded a presidential proposal as any measure that was “emphasized

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Senate action, she received just five days of open committee hearings and three days of floor debate. In contrast, Thomas and Bork were subject to six and three days of floor debate and eight and twelve days of committee hearings respectively (Beth and Palmer 2011).

in at least two presidential messages and are first mentioned in the State of the Union Address or similar ‘Administrative Goals’ speeches delivered after inauguration” (2005, 261). We expand these data in several ways. First, following Eshbaugh-Soha’s coding methodology, we updated his list of proposals through 2010. Second, as Eshbaugh-Soha (2005, 2010) was primarily concerned with the content of the presidential agenda, and not when it was enacted by the Senate, we coded the last day the measure was approved by the Senate. The final passage date was listed as the date the conference report was adopted, if there was one, and the final passage date otherwise. Determining this necessitated using both the *Congressional Record* and the Library of Congress’s Thomas website. Finally, in our models, we differentiate between “important” and “routine” legislation. The list of important proposals includes those coded by Eshbaugh-Soha (2005) as either “meteoric” or “important.” The list of routine proposals includes those coded by Eshbaugh-Soha (2005) as either “incremental” or “minor.” We update these data following the coding strategy described by Eshbaugh-Soha (2005).

To capture the time it takes for a bill to pass the Senate, as well as the temporal variation in the factors influencing the prospects of passage, our data are coded as a stacked panel in which each observation consists of a month each specific proposal is considered. For each month, the outcome variable is coded 0 if a related bill or conference report does not pass and 1 if it achieves passage. Observations drop from the data set when they are enacted, or at the end of the congressional term. The data consist of 275 presidential policy proposals that were judged to be important (with a total of 3442 proposal-months) and 383 proposals that were routine (with a total of 4839 proposal-months). We consider separate models of important and routine proposals. We focus on the period since 1967 because that marks the meeting of the 90th Congress (1967-1969), the first full Congress following Lyndon Johnson’s initiation of the modern practice of presidents promoting their Supreme Court nominees. Cameron and Park (2011) demonstrate this behavior began after about 1965 as a result of greater interest group participation in the Supreme Court confirmation process. The 90th Congress

includes the successful filibuster of Justice Abe Fortas preventing his promotion to Chief Justice of the United States (Cameron and Park 2011; Massaro 1990), a watershed moment for Supreme Court confirmation politics.

Regarding the policy agenda, our primary theoretical argument is that presidents who invest greater relative effort and time advocating the confirmation of a Supreme Court nominee will have lower rates of legislative success in the short term. To test this relative effort hypothesis, the primary predictor in our model is the monthly count of the number of sentences in public statements made by the president to promote a Supreme Court nominee. We update the measure of Cameron and Park (2011), who counted the total number of sentences both in speeches focused on a Supreme Court nomination as well as answers to questions in press conferences related to a nominee. By counting these sentences on a monthly basis, this variable captures the president’s relative effort devoted to the confirmation process at a given time.<sup>5</sup> It should be noted that Supreme Court nominations are relatively rare events, with only 25 nominations (including some failed nominations) occurring during 16 different calendar years within our 1967-2010 time frame. Our variable should capture variation in presidential attention whenever there is a nomination, though.

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<sup>5</sup>As an alternative to the sentences measure, we also estimate models with the length of time a Supreme Court nomination lasted as the predictor. Under this logic, long nominations will be time and effort intensive, so this is another way to capture presidential effort. As appendix Tables 6 and 7 report, this version has a negative and significant effect on all four outcome variables. Also, besides the linear form of the presidential sentences variable, which we report, we also considered quadratic and cubic forms of this variable. Table 5 in the online appendix reports Schwarz’s BIC for each specification on each outcome. As that table shows, the linear form has the best penalized fit for circuit court nominations, district court nominations, and important legislation. For routine legislation, the linear and quadratic form have a similar fit, with a slight edge for quadratic. The results are substantively similar in both models, so we report the simpler linear form here.

Besides this treatment variable, our model also includes a set of covariates hypothesized to influence presidential success on legislation. As one control variable, we include an indicator for whether a nominee will replace the chief or a median justice, on the possibility that these are the contentious nominations that could be driving our effects.<sup>6</sup> We also account for the fact that the size of the president’s agenda may affect how quickly the Senate works through individual bills, so we include a measure for the number of proposals that are currently pending—the simple count of important or routine proposals that have not been decided yet in a term of the Senate. Another control we include is presidential approval, which is measured by taking every reported survey result from the Roper Center for Public Opinion Research’s iPOLL archive. This is smoothed to a monthly measure that appropriately weights each polling house using the technique described by Stimson (1991, 129-131). We also include the ideological distance between the president and the Senate filibuster pivot and the distance between the president and the median member of the majority party (Koger 2010; Primo, Binder and Maltzman 2008). Each of these is measured using DW-NOMINATE scores (updated from Poole and Rosenthal 1997).<sup>7</sup> As a control for divided government, we include the number of opposition-party senators. Because major disruptive events (such as disasters or economic calamities) can draw the president’s attention away from other matters, we also include an indicator variable for whether such an event occurred in a given month (Beckmann 2010, 141). This indicator is adapted from Lebo and Cassino’s (2007) research but tailored to focus on exogenous events over which the president

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<sup>6</sup>We also tried an alternate version of this measure that determines whether a nominee is a critical nomination (Shipan, Allen and Bargaen 2014). Unfortunately, we ran into problems of perfect collinearity with this variable, so we cannot report this version of the results.

<sup>7</sup>For the filibuster pivot distance, this is the absolute distance between the president’s first dimension DW-NOMINATE score and the DW-NOMINATE score of the senator at the 60th percentile or 40th percentile of a given Senate depending on the partisan affiliation of the president.

had no control.<sup>8</sup> A complete listing of the events can be found in our supporting information section. Finally, the Senate’s receptiveness to presidential policy proposals may shift in the president’s second term, or ahead of a midterm election when the Senate and president are of the same party; hence, indicator variables are included for each of these predictors.<sup>9</sup>

In order to examine the influence of Supreme Court vacancies on the appointment process for lower federal judges, we adapt the model of confirmation duration developed by Martinek, Kemper and Van Winkle (2002, 354). Their data begin in 1977, the first year of the Carter administration. We employ these data in our analysis as well as updates provided by Smelcer, Steigerwalt and Vining (2012, 2014). We analyze all federal district and circuit court nominees from 1977 to 2010. A total of 456 circuit court nominations (with 3892 nomination-months total) and 1506 district court nominations (with 8354 nomination-months total) were submitted during this time period.<sup>10</sup> We analyze circuit court and district court nominations separately due to different norms and practices associated with each as well as the greater politicization of nominations to appellate courts (Goldman 1997; Scherer

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<sup>8</sup>For example, Lebo and Cassino’s (2007) data treat the Clarence Thomas hearings as a major event. This event was controlled partially by the president, so we omitted it from our list. Our updated list is drawn from the website of the Miller Center at the University of Virginia. This website includes biographies for all presidents including a list of “Key Events” during their tenures. Source: <http://millercenter.org/president/>. Notably, our substantive results hold even if we omit the exogenous events variable.

<sup>9</sup>Under unified government, a midterm election could threaten whether the president can get his agenda through if party control changes hands afterwards, so lawmakers may see a need to rapidly push through actions. Omitting the midterm election under unified government indicator, however, has no bearing on our results.

<sup>10</sup>Our data exclude the nomination of Carolyn P. Short, who was nominated conditional on the elevation of the current occupant of the post to a higher court. The seat never became vacant.

2005; Steigerwalt 2010). As discussed above, circuit court nominations have become more lengthy and unpredictable than district court nominations since the early 1990s. We expect that contentious Supreme Court nominations disrupt consideration of all lower federal court nominees by the president, Senate, and Senate Committee on the Judiciary. However, we expect that the impact of this disruption will be greatest for the more efficient and less controversial set of district court nominees than their counterparts picked for the appellate bench.

For each of these models the unit of analysis is a month in which a judicial nomination was pending. For each month a nomination was considered, the outcome variable is coded 0 if a nominee is not confirmed and 1 if the Senate confirms his or her appointment. Nominees drop out when they are confirmed or when the congressional term ends. Again, we anticipate that when the president invests more time and attention to a Supreme Court nomination, this has a negative impact on his ability to push lower court nominees through the confirmation process. Therefore, our primary treatment variable is the number of sentences in statements per month that a president makes in support of a Supreme Court nominee.

The confirmation models include all of the covariates in the policy model—presidential approval, exogenous events, distance to filibuster pivot, distance to the majority party median, number of opposition senators, chief or median justice replaced, second term president, current number of nominations pending, and midterm election under unified government—under the view that any factor that can shape Congress’s receptiveness to the president’s agenda also applies to filling appointed positions. Additionally, and building on the work of Martinek, Kemper and Van Winkle (2002), this model also specifies that both nominee-specific and institutional factors affect the duration of the confirmation process. The characteristics of nominees expected to influence the duration of the confirmation process include their American Bar Association (ABA) ratings, race, gender, and whether they have been renominated after failing to achieve confirmation. Nominees demanding more presidential effort, which Cameron and Park (2011) attributes to the activation of interest groups, are

also likely to tie up the Senate Judiciary Committee that would otherwise be processing lower court nominations.

Senators have electoral incentives to delay proceedings for lower court nominees while a Supreme Court nomination is pending. Interest groups and the press monitor Supreme Court nominations closely. Organized interests treat Supreme Court nominations as opportunities to advance both their policy goals and organizational maintenance via recruitment and fundraising (Bell 2002; Vining and Wilhelm 2011; Watson and Stookey 1995). Presidents, recognizing the importance of the justices they appoint, sometimes encourage this behavior by marshaling interest groups to promote their nominees to senators and the news media (Maltese 1995, 128-140). The press recognizes that Supreme Court nominations are rich with drama and conflict, and consider then newsworthy (Solberg and Waltenburg 2015, 85-107; Vining and Marcin 2014, 66). Given this substantial attention from elites and the media, constituents are more likely to form preferences about potential justices than any lower court nominees and expect senators to express their wishes via the investigative process, public statements, and votes. Reelection-minded senators are likely to respond to constituent (and donor) preferences during the Supreme Court confirmation process and perceive it as an opportunity for position-taking behavior. Senators are likely to receive more positive feedback from their investment in a Supreme Court confirmation battle than any effort spent on relatively anonymous lower court nominees.

Institutional characteristics are captured by the covariates from the policy model as well as the composition of the Senate Judiciary Committee. This committee considers all judicial nominees and has unique norms apart from those of the full Senate (e.g., the blue slip process, judicial confirmation hearings, and quasi-formal cooperation with the ABA's Standing Committee on the Federal Judiciary). The Senate Committee on the Judiciary has responsibilities and incentives that lead it to devote attention and resources to Supreme Court nominees (Bell 2002, 49-52; Epstein and Segal 2005, 92-102). Its vetting process and hearings for the nominee are highly scrutinized and receive ample political and press at-

tention. The high profile and importance of Supreme Court nominees encourages Judiciary Committee members to give them outsized attention relative to lower court nominees. Judicial Committee members and their staffs must investigate a nominee thoroughly in a timely fashion, requiring that they redirect their full efforts from various lower court nominees to the Supreme Court nominee under consideration. Senators probe nominees for information regarding their backgrounds, judicial philosophies, and ideological predispositions during confirmation hearings. These hearings have been featured on national television since 1981 and members are rewarded or punished for their performance in them (Bell 2002; Watson and Stookey 1995).

Finally, we control for the possibility that the failed Supreme Court nomination of Judge Robert Bork in 1987 marked a structural break in the politicization of nominees. Several scholars of nomination politics conclude that the Bork nomination initiated a new era of heightened politicization of the judicial confirmation process. The contentious vetting and rejection of Bork sparked widespread interest group participation in confirmation politics and heightened scrutiny of nominees identified as potentially outside the mainstream of contemporary legal or political thought (Bell 2002; Scherer 2005; Slotnick and Segal 1998; Steigerwalt 2010). We include an indicator for whether the nomination took place in a session of Congress following this failed nomination (Martinek, Kemper and Van Winkle 2002; Epstein et al. 2006). The univariate descriptive statistics for variables in both the policy proposal and judicial nomination models are reported in Table 1.

[Table 1 about here.]

## Statistical Specification of the Duration Models

We estimate a discrete time model for each of the four outcomes we consider. These events include the passage of important or routine policy proposals and confirmation of circuit court or district court nominees. Like other duration models, discrete time models analyze the time it takes for an event to occur. We investigate the time until the Senate passes a bill or



confirms a nominee. These models are estimated by organizing the data as a stacked panel in which the outcome is coded 1 at the time the event occurs, 0 otherwise, and the individual proposal or nominee drops out once the event (Senate passage or confirmation) occurs.<sup>11</sup> A model of this form contains the same information as a duration model that uses the time until an event as the outcome variable (Box-Steffensmeier and Jones 2004, 69-71).

Under this framework, the hazard rate is equal to the predicted probability from the model (Cameron and Trivedi 2005, 602). This is the probability the event of Senate passage occurs conditional on the predictors and the fact that the nomination or proposal has not yet passed (Mills 2011, 182). Cameron and Trivedi (2005) point out that it is important to allow the intercept of the logistic regression model to vary over time. Otherwise, the model is equivalent to assuming an exponential distribution for duration times, which assumes the baseline hazard rate is constant over time. Following this advice, we nonparametrically model the baseline hazard rate following the generalized additive model procedure described by Beck and Jackman (1998).<sup>12</sup> The baseline hazard rate is smoothed over the 24 months of a congressional term, and a unique baseline is allowed for pre-midterm Congresses and post-midterm Congresses. In this way, all 48 months of a president’s term have a unique baseline propensity for Senate passage of a presidential agenda item.

Normally the baseline hazard is developed for the duration of times until the event occurs for the observation. In the case of presidential actions, however, prior theory suggests that

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<sup>11</sup>Cameron and Trivedi (2005, 577-578) point out that duration data are often measured within intervals (such as weeks or months), and in these cases transition times are grouped within their respective intervals in discrete-time hazard models. In our case, the data are measured monthly. If a nomination or policy proposal is approved at any point in a month it is coded 1. If it is not approved, but pending at any point in a month, then it is coded 0. For nominations that are withdrawn or fail a vote, these are always coded 0 and drop out of the dataset once the nomination is no longer pending.

<sup>12</sup>See also: Beck, Katz and Tucker (1998).

the baseline likelihood of an event occurring is less a function of how long the nomination or policy proposal has existed and more a function of when in the president’s term the initiative is being considered. Among the well-established results are that many laws are enacted during the “honeymoon period” of a president’s first 150 days (Grossback, Peterson and Stimson 2006), and that judicial nominees are less likely to be confirmed as a president’s term progresses. Given that the time a policy proposal or a nomination is pending is highly collinear with how far along the session of Congress is, we choose to put a premium on properly filtering the effect of time in the congressional term, as missing this is much more likely to violate proper model specification. Our technique of allowing a nonparametrically smoothed hazard rate to vary across all 48 months of the president’s term should serve to capture all of the temporal dynamics of electoral mandates and lame-duck terms that are commonly discussed. Further, given that this nonparametric and flexible time-referenced intercept is in the model, any remaining effects of the time a presidential proposal has been considered ought to be negligible. Because we use a nonparametric smoother, our results effectively address the potential for honeymoon effects, lame duck effects, and seasonality. The smoother is more effective than a polynomial time trend because it more readily allows for nonmonotonicity. Hence, our baseline hazard term serves to account for all broad patterns in senatorial action.

Each presidential proposal and judicial nomination is only considered within a congressional term. If the proposal does not pass or the nominee is not confirmed within that time frame, they are right-censored and drop out of the data set. By coding right-censored proposals as never succeeding in the data set, our model naturally accounts for this right-censoring (Box-Steffensmeier and Jones 2004, 72). However, given that a nomination or proposal can only be considered within one term of Congress (or else the president has to place it on his agenda again in the next term), our data have a special quality of being nested in nature. In other words, these are multi-level data wherein proposals and nominations are nested within congressional terms. For this reason, we account for the possibility that the Senate

will be more willing to enact the president’s agenda more quickly during some terms than in others, perhaps due to unobserved factors unique to a term of Congress. We address this by including a frailty term that accounts for random variation in passage times among Congresses (Cameron and Trivedi 2005, 614).

All of these features are incorporated in the generalized additive mixed model presented in Equation 1.

$$\text{logit}(\lambda_{ijt}) = \alpha(m_{ijt}, d_i) + \mathbf{x}'_{ijt}\boldsymbol{\beta} + \epsilon_i \quad (1)$$

In this model, observations are identified by the congressional term ( $i$ ), proposal or nominee ( $j$ ), and month of consideration ( $t$ ). Since the outcome is a binary indicator, this equation specifies a logit model of the probability a proposal or nomination will be adopted in a month given that it has not yet been adopted. The term  $\alpha$  is a nonparametric intercept term that is smoothed over  $m_{ijt}$ , which is the month of a congressional term a proposal is being considered. The month term is interacted with  $d_i$ , which is an indicator coded 0 if it is a Congress serving before a midterm election and 1 if it is a Congress following a midterm election, thereby allowing a unique baseline hazard for any month in a presidential term.  $\mathbf{x}_{ijt}$  is a vector of covariates that a proposal takes on during a given month (including a constant),  $\boldsymbol{\beta}$  is a vector of fixed regression coefficients, and  $\epsilon_i$  is a random frailty term that varies by Congress. The model of Equation 1 is estimated using thin plate regression splines for the smoothed intercept and a ridge penalty for the random effects (or frailties) by congressional term.

## Results for Policy Proposals

When modeling the effect of Supreme Court nominations on the president’s policy agenda, we find that effort on a nomination does detract from *important* proposals. Even if the president delivered a short speech in support of a Supreme Court nominee, the odds of Senate passage compared with non-passage for an item on his or her agenda would decrease by 65%. Turning

to the details of our analysis, Table 2 reports the results from fitting the duration model of Equation 1 to the data on both important and routine policy proposals. As can be seen, on important policy proposals, the number of sentences the president speaks about a Supreme Court nominee has a negative and statistically discernible effect on the probability a proposal will pass the Senate in a given month. This result fits with our theory that major items on the president’s agenda can suffer when he dedicates substantial time, effort and attention to the confirmation of a justice. However, this treatment variable does not have a discernible effect on routine policy agenda items.<sup>13</sup> These less-visible, less-politicized proposals appear to be a function of other factors. Specifically, major exogenous events appear to distract the Senate from adopting such proposals, the Senate is less likely to adopt minor proposals when it is more ideologically distant from the president (as captured by the filibuster pivot), and when the Senate is backlogged on routine proposals it is more likely to pass individual bills.<sup>14</sup> Additionally, both important and routine proposals vary in probability of passage based on the president’s length of tenure, as the significant smoothed intercepts indicate.<sup>15</sup>

[Table 2 about here.]

The results of these models are clarified in Figure 1. In this figure, the horizontal axis represents values that the odds ratio for a given coefficient can take, and all of the coefficients

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<sup>13</sup>If we fit a model where important and routine agenda items are pooled, the treatment variable is statistically significant at the 95% confidence level.

<sup>14</sup>Since routine proposals are less politicized and more likely to address technical needs, the Senate likely can process these mechanically if the needs pile up.

<sup>15</sup>Oddly, in both the policy and judicial nomination models, a midterm election under unified government shows a counterintuitive negative effect. Since this is a partial effect in a model that controls for time, ideology, and partisanship, it may be that the other predictors imply overestimates of productivity for a unified government in a midterm election year, so this merely corrects that.

are listed along the vertical axis. Within the figure, points represent the estimate of the odds ratio, and line segments represent the 90% confidence interval. The results for the model of important proposals are presented as dotted black lines with circular points, and the results for the model of routine proposals are presented as solid red lines with triangular points.

An odds ratio tells us the factor by which the odds will change for a one unit shift in the input variable. Hence, whenever the confidence interval includes 1, it includes the prospect that the odds of a proposal’s passage compared with non-passage in a given month are not responsive to the input. Of particular interest is the odds ratio of sentences supporting a Supreme Court nominee in the model of important policies. As can be seen, the confidence interval only includes values less than one, and the point estimate is equal to 0.916. This is what tells us that for each additional sentence in a presidential speech about a Supreme Court nominee reduces the odds of Senate passage of an important proposal by 8.4%. Further, as Table 1 indicates, the standard deviation of this predictor is nearly 12. If the president were to deliver a 12-sentence speech supporting a Supreme Court nominee, the odds of Senate passage would drop by 65%. This very plausible situation represents a substantial drop in the president’s ability to advance major legislation. This result also implies that it takes longer for a policy agenda item to be enacted in the Senate. Given that policy proposals leave the agenda at the end of a congressional term, the longer time frame also means that more proposals will never be enacted. This suggests that how much effort a president expends supporting his nominee does in fact damage his ability to enact important policy.<sup>16</sup>

[Figure 1 about here.]

Finally, it is worth considering how presidential policy proposals fare over time in the Senate when all of the structural factors are held constant. Figure 2 shows the smoothed

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<sup>16</sup>Figure 1 omits the odds ratios for distance to filibuster pivot, distance from majority median, midterm election under unified government, and key justice nomination, as the scale of these coefficients’ effects would not fit neatly on the graph.

intercept for important and routine policy proposals over all of the months of a president’s term. Higher values of the smoothed intercept correspond to higher values of the baseline hazard rate. In each panel, the horizontal axis represents the number of months into the president’s term, and the vertical axis represents the value of the smoothed intercept. A vertical dividing line on each panel separates the pre-midterm Congress from the post-midterm Congress. The solid line is the estimate of the smoothed intercept, and the dashed lines are drawn two standard deviations above and below the estimate. As Table 2 reports, all of these smoothed terms are statistically discernible at any common level of confidence.

[Figure 2 about here.]

The smoothed intercepts presented in Figure 2 behave in many regards as we would expect: At the beginning of a president’s term, the Senate has not yet had time to debate or enact any proposals. Hence, the early baseline hazard is quite low for both kinds of policy. Right around the sixth month, the hazard reaches a peak when the president’s proposals from his “honeymoon period” start to be enacted. Additionally, for both important and routine proposals, the hazard rate drops off at the end of the president’s term, a likely indication of his “lame duck” status. Other peaks and troughs emerge as Congress has fewer or more days of recess, thereby limiting its ability to enact policies. All of this suggests that tenure in office continues to be a critical control variable when modeling policy action (Grossman, Kumar and Rourke 1998; Light 1999; Eshbaugh-Soha 2005, 2010; Barrett and Eshbaugh-Soha 2007; Beckmann and Godfrey 2007).

## Results for District and Circuit Court Nominees

Turning to the effect of Supreme Court nominations on lower court nominations, we find that the president has a hard time obtaining confirmation for *district court* nominees when promoting a Supreme Court nominee. That is, the Supreme Court nomination will rise to the top of the Judiciary Committee’s priority list in this case, pushing district court nominees

down the agenda. With a short presidential speech about a Supreme Court nomination, the odds of a district court nominee’s confirmation drop by 12% for a given month. Turning to model details, Table 3 reports the results from fitting the duration model of Equation 1 to the data on circuit and district court nominees. On district court nominees, the number of sentences the president speaks in statements about a Supreme Court nominee has a negative and statistically discernible effect on the probability a nominee will be confirmed by the Senate in a given month. Hence, the president is less able to fill district court vacancies when he dedicates substantial time to supporting a nominee for the Supreme Court. This treatment variable, however, does not have a discernible effect on circuit court nominees. As we previously note, this may be a function of the way the Senate Judiciary Committee considers nominees for each of these two courts, with increased attention to a Supreme Court nominee diminishing their ability to process the large number of district court nominees.

Also of note, two particularly robust predictors of confirmation at both levels of the judiciary are the ABA’s qualification rating of the nominee and the number of pending judicial nominations. At either level, more qualified candidates are confirmed more easily, *ceteris paribus*, and a larger backlog of nominations increases the Senate’s propensity to confirm a nominee, on average and all else equal. These important controls further validate past research on judicial confirmation. Just as in the policy models, the smoothed intercepts are significant, further verifying that presidential tenure is a key part of confirmation dynamics. Additionally, a large backlog of pending nominations leads to a higher rate of confirmation for an individual nominee. Since nominees are often considered in slates, and since many pending nominations implies many vacancies, having a backlog ought to raise these nominations on the Senate’s priority list.

[Table 3 about here.]

Figure 3 shows a forest plot of the odds ratios to demonstrate further the impact of our variables. The bottom horizontal axis presents the potential values of odds ratios for the six predictors listed in the lower portion of the graph, and the top horizontal axis presents the

scale for the four predictors in the upper portion of the graph.<sup>17</sup> The results for the model of circuit court confirmations are presented as dotted black lines with circular points, and the results for the model of district court confirmations are presented as solid red lines with triangular points.

As Figure 3 shows, in the model of district court confirmations, the estimate of the odds ratio for presidential sentences supporting a Supreme Court nominee is .992. Further, the confidence interval only includes values less than one, indicating a discernible effect at the 95% confidence level. Substantively, this result implies that for each additional sentence the president makes in a statement supporting a Supreme Court nominee, the odds of Senate confirmation compared with non-confirmation for a pending district nominee drop by 0.8%. Again, as Table 1 indicates, the standard deviation of this predictor is nearly 17. If the president were to deliver a 17-sentence speech supporting a Supreme Court nominee, the odds of Senate confirmation of a district court nominee would drop by a substantial 12%. Hence, attention to a Supreme Court vacancy limits the president’s ability to fill vacancies in district courts. Again, this result implies that it takes longer for a district court nominee to be confirmed by the Senate. Given that the Senate drops consideration of a nominee at the end of a term, the longer time frame implies that fewer of the president’s nominees ever will be confirmed. This is consistent with the idea that the time a president spends supporting a Supreme Court nominee damages his ability to shape the composition of lower courts.

[Figure 3 about here.]

Finally, Figure 4 shows the smoothed intercept terms for circuit and district court nominees over all of the months of a president’s term, indicating how the baseline hazard rate

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<sup>17</sup>Figure 3 omits the odds ratios for distance to filibuster pivot, distance from majority median, second term president, proportion of the judiciary not of the president’s party, and post-Bork nomination, as the scale of these coefficients’ effects would not fit neatly on the graph.



varies. As Table 3 reports, these smoothed terms and the variance of random frailties by Congress are all statistically discernible at any common level of confidence. Much like with the policy models, the smoothed intercepts of Figure 4 behave in a reasonable manner. Early in a president’s term, the baseline hazard is lower, as the confirmation process cannot be completed in such a short time. Over the course of the pre-midterm congressional term, though, the propensity to confirm the president’s nominees rises (albeit in an up-and-down fashion for district court nominees). Again, the president sees a major drop-off in the confirmation rate during the last year of his term. Therefore, the president’s tenure in office has a profound effect on confirmation and is a critical control variable.

[Figure 4 about here.]

## Conclusions

Supreme Court vacancies are important opportunities for presidents to influence law and policy for decades after their nominees are confirmed. As a result, presidents have strong incentives to devote attention in an effort to fill vacancies with like-minded justices. However, previous scholarship has demonstrated that presidents must spend more time in order to ensure confirmation of more ideological nominees. By distracting policymakers who are engaged with other political priorities favored by the executive branch, controversial Supreme Court nominations can render legislation and lower court appointments secondary concerns. In sum, during the modern era of confirmation politics, the relative effort expended by presidents is likely to affect the success or failure of their broader agenda.

Our results are largely supportive of our theoretical argument. We find that the more a president is forced to go public on a nominee’s behalf, the less successful he is at enacting important policy initiatives from his agenda in the U.S. Senate. In fact, a typical exertion of support of a nominee drops the odds of policy success in the Senate by 65% in a given month. Additionally, data on all lower federal court nominations from 1977 to 2010 indicate that the more effort a president dedicates to promoting a Supreme Court nominee, the less

successful he is at achieving senatorial consent for his district court nominees. A typical effort supporting a Supreme Court nominee drops the odds of a pending district court nominee's confirmation by 12% in a given month.

Furthermore, because we include presidential proposals and nominations only after the president has made them, it is likely that we underestimate the collateral damage caused by presidents' relative efforts on Supreme Court nominations. It seems likely that presidents faced with a Supreme Court vacancy are slower in proposing agenda-items and vetting potential nominees to lower federal courts. Indeed, Republican senators criticized President Barack Obama for nominating potential judges more slowly than his predecessors. Responding to this, President Obama pointed to "other priorities," including the two Supreme Court nominations.<sup>18</sup> Future work should consider the effect of Supreme Court vacancies on the executive branch's output. Additional future research could also consider possible reform ideas for how the president and Senate Judiciary Committee could respond to pending or likely Supreme Court nominations.

Our analysis highlights the important role played by transaction costs and has important implications for scholars who examine policy-making in either the U.S. Senate or separation of powers context. There is overwhelming evidence demonstrating that once a bill or nomination is on the floor, its success or failure is in large part determined by the underlying content of the measure (or the ideal point of a nominee) in relation to the ideological location of key legislative pivots. But no legislative or nomination battle is fought in a vacuum. The amount of time and resources devoted to the enactment of a given bill or nomination directly influences the success of pending agenda items. This implies that the enactment of a particularly salient piece of legislation or a lengthy battle over a controversial lower-court or executive branch nomination likely has substantial consequences on the broader presidential or legislative agenda.

In conclusion, Supreme Court vacancies provide presidents with valuable opportunities

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<sup>18</sup>See "Judge Not," *The Economist*, December 9, 2010.

to influence policies long after leaving the White House, but they can come with important trade-offs. Vacancies also provide out-party senators with an opportunity to delay the passage of policy proposals supported by an opposing party president. As such, the president may need to sacrifice important policy proposals from his legislative agenda in the Senate. In addition, the president can shape the long-term composition of the federal judiciary with the appointment of district court nominees. However, the confirmation process for these individuals is likely to be delayed, if not derailed altogether, when a Supreme Court nominee is considered. This indicates that presidents are constrained in the policy arenas in which they can create an enduring legacy and must choose carefully where to focus their time and attention.

## Online Appendix

In this appendix, we present additional detail about some of the measures we use, as well as alternate specifications of our primary models. Figure 5 shows the total annual number of sentences supporting Supreme Court nominees in a presidential speeches by year. Table 4 displays the exogenous events we draw from Lebo and Cassino (2007) for our model, including the term of Congress and the incumbent president.

We also report additional information about alternative specifications we considered as a robustness check. Specifically, for the four outcome variables, we considered different polynomial forms of the number of sentences a president speaks in favor of a Supreme Court nominee. Table 5 reports Schwarz’s Bayesian Information Criterion (BIC) for each polynomial specification on each outcome. Lower values of the BIC indicate a better parameter-penalized fit. For all four outcome variables the linear specification had the best penalized fit, so that is the version we report in the text.

Finally, we also re-estimated each of our models with an alternative measure of nomination effort. Instead of including the number of sentences in presidential statements as a means of capturing presidential attention to a Supreme Court nomination, in these new models, we use a variable that counts how many months a Supreme Court nomination took before a decision. The logic behind this measure is that if a Supreme Court nomination takes several months, then it will certainly draw a lot of presidential attention, which will divert attention away from his or her ability to push his policy agenda or lower-court nominees through the Senate. Table 6 reports this alternate specification with number of months a nomination is considered for important and routine policy proposals. Table 7 reports the model with duration of a Supreme Court nomination as a predictor of circuit and district court nominations. As can be seen, the results are actually a bit stronger under this specification. A long Supreme Court nomination deters the president’s ability to advance his agenda in any of these four areas, as this variable has a negative and significant impact in all four models. We still prefer the results with our number of sentences predictor, as that ties

more closely to our concept of interest, but this alternative specification further supports our argument.

[Figure 5 about here.]

[Table 4 about here.]

[Table 5 about here.]

[Table 6 about here.]

[Table 7 about here.]

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**Table 1: Descriptive Statistics of Monthly Data on Policy Proposals and Judicial Confirmations**

	<i>Important Policy</i> <i>N=3442</i>		<i>Routine Policy</i> <i>N=4839</i>		<i>Global</i> <i>Parameters</i>	
Predictor	Mean	S.D.	Mean	S.D.	Min.	Max.
Passes in month	0.0459	0.2093	0.0424	0.2014	0.0000	1.0000
Supreme Court sentences	2.4663	11.8267	2.5317	12.6548	0.0000	214.0000
Exogenous events	0.0950	0.2933	0.0924	0.2896	0.0000	1.0000
Distance to filibuster pivot	0.6496	0.1571	0.6040	0.1797	0.2774	0.8626
Presidential approval	54.8836	11.6183	54.3025	11.2984	34.2850	90.2220
Second term president	0.3414	0.4742	0.2786	0.4483	0.0000	1.0000
Midterm elect. under unified gov.	0.1888	0.3914	0.1666	0.3726	0.0000	1.0000
	<i>Circuit Court</i> <i>N=3892</i>		<i>District Court</i> <i>N=8354</i>		<i>Global</i> <i>Parameters</i>	
Predictor	Mean	S.D.	Mean	S.D.	Min.	Max.
Confirmed in month	0.0822	0.2747	0.1493	0.3564	0.0000	1.0000
Supreme Court sentences	2.6346	14.8377	3.4600	16.5850	0.0000	214.0000
Exogenous events	0.1364	0.3433	0.1495	0.3566	0.0000	1.0000
Distance to filibuster pivot	0.7340	0.1332	0.6956	0.1445	0.3510	0.8626
Presidential approval	58.5181	10.6515	57.0914	10.8152	34.2850	83.8780
Second term president	0.3821	0.4860	0.3757	0.4843	0.0000	1.0000
Midterm elect. under unified gov.	0.1223	0.3277	0.1706	0.3762	0.0000	1.0000
ABA rating	4.4807	1.5470	4.3726	1.5407	1.0000	6.0000
Minority nominee	0.1688	0.3746	0.1998	0.3999	0.0000	1.0000
Female nominee	0.2235	0.4167	0.2230	0.4163	0.0000	1.0000
Renomination	0.2613	0.4394	0.1197	0.3246	0.0000	1.0000
Pending jud. nominations	48.1719	25.1425	44.8479	22.3442	1.0000	102.0000
Post-Bork nomination	0.8266	0.3787	0.7637	0.4248	0.0000	1.0000
Proportion of Jud. Cmte. not of president's party	0.5042	0.0599	0.5003	0.0668	0.3333	0.5714

**Table 2: Discrete Hazard Model of Senate Passage of Important and Routine Presidential Policy Proposals, 1967-2010**

Covariate	Important Proposals			Routine Proposals		
	Estimate	Std. Err.	<i>p</i> -value	Estimate	Std. Err.	<i>p</i> -value
Intercept	-1.7971	1.7306	0.2991	-3.6576	2.5219	0.1470
Supreme Court sentences	-0.0881	0.0344	0.0104	-0.0068	0.0083	0.4083
Exogenous events	0.0021	0.3148	0.9948	-0.8558	0.3986	0.0318
Distance to filibuster pivot	-0.5462	1.2776	0.6690	1.1809	1.7581	0.5018
Distance to majority party median	0.1522	0.9121	0.8674	-1.3175	1.2812	0.3038
Number of opposition senators	-0.0328	0.0408	0.4216	-0.0478	0.0587	0.4156
Midterm elect. under unified gov.	-0.9428	0.3929	0.0164	-0.7472	0.4274	0.0805
Presidential approval	0.0086	0.0106	0.4164	0.0297	0.0128	0.0207
Second term president	-0.2275	0.3369	0.4995	0.7607	0.4376	0.0821
Agenda size	0.0264	0.0235	0.2603	0.0633	0.0213	0.0029
Chief or median justice replaced	1.9773	0.4164	0.0000	-0.0714	0.3589	0.8423

For the important proposal model: 275 proposals considered in a total of 3442 months. BIC=1376.

Approximate significance test for pre-midterm intercept smoothed over months:

$\chi^2_{4.03} = 25.8$  ( $p = 0.0001$ ). For post-midterm:  $\chi^2_{1.00} = 10.5$  ( $p = 0.0012$ ).

For random effects by Congress:  $\chi^2_{7.64} = 16.6$  ( $p = 0.0050$ ).

For the routine proposal model: 383 proposals considered in a total of 4839 months. BIC=1844.

Approximate significance test for pre-midterm intercept smoothed over months:

$\chi^2_{6.83} = 39.3$  ( $p < 0.0001$ ). For post-midterm:  $\chi^2_{8.62} = 53.7$  ( $p < 0.0001$ ).

For random effects by Congress:  $\chi^2_{11.74} = 26.6$  ( $p = 0.0024$ ).

Two-tailed *p*-values reported. Estimates computed with R 3.2.1.

**Table 3: Discrete Hazard Model of Confirmation of U.S. Circuit and District Court Nominees, 1977-2010**

Covariate	Circuit Court			District Court		
	Estimate	Std. Err.	<i>p</i> -value	Estimate	Std. Err.	<i>p</i> -value
Intercept	1.9252	10.9687	0.8607	3.4604	10.9492	0.7520
Supreme Court sentences	-0.0036	0.0047	0.4424	-0.0077	0.0028	0.0060
Exogenous events	-0.2276	0.1952	0.2436	-0.1067	0.1124	0.3423
Distance to filibuster pivot	-1.0622	8.2522	0.8976	0.5015	8.6881	0.9540
Distance to majority party median	-1.7853	5.5371	0.7471	-1.6133	5.7997	0.7809
Number of opposition senators	-0.3342	0.3714	0.3682	-0.5479	0.2572	0.0331
Midterm elect. under unified gov.	-0.8546	0.3419	0.0124	-1.1630	0.2312	0.0000
Presidential approval	-0.0016	0.0132	0.9060	0.0222	0.0065	0.0007
Second term president	0.0827	1.5722	0.9581	0.2886	1.8675	0.8772
ABA rating	0.1571	0.0448	0.0005	0.1250	0.0222	0.0000
Minority nominee	0.1061	0.1875	0.5715	-0.0033	0.0880	0.9704
Female nominee	0.2485	0.1608	0.1222	0.0815	0.0833	0.3274
Renomination	-0.0597	0.1981	0.7632	0.0763	0.1211	0.5286
Pending judicial nominations	0.0253	0.0062	0.0000	0.0216	0.0035	0.0000
Post-Bork nomination	-2.2647	2.0512	0.2696	-2.1162	2.1110	0.3161
Chief or median justice replaced	0.1587	0.4018	0.6928	0.5792	0.2103	0.0059
Proportion of Judiciary Cmte. not of president's party	28.6174	37.2510	0.4423	42.7659	32.8164	0.1925

For the circuit court model: 456 nominations considered in a total of 3892 months. BIC=2155.

Approximate significance test for pre-midterm intercept smoothed over months:

$\chi^2_1 = 6.37$  ( $p = 0.0116$ ). For post-midterm:  $\chi^2_{2.05} = 15.91$  ( $p = 0.0009$ ).

For random effects by Congress:  $\chi^2_{10.70} = 94.51$  ( $p < 0.0001$ ).

For the district court model: 1506 nominations considered in a total of 8354 months. BIC=6750.

Approximate significance test for pre-midterm intercept smoothed over months:

$\chi^2_{8.89} = 96.2$  ( $p < 0.0001$ ). For post-midterm:  $\chi^2_{8.67} = 88.0$  ( $p < 0.0001$ ).

For random effects by Congress:  $\chi^2_{10.79} = 131.0$  ( $p < 0.0001$ ).

Two-tailed *p*-values reported. Estimates computed with R 3.2.1.



**Table 4: Exogenous Events**

Congress	President	Event
90	Johnson	Tet Offensive
90	Johnson	MLK Assassination
91	Nixon	Violent Anti-War Marches
95	Carter	Bert Lance Hearings
96	Carter	Deng Visits U.S.
96	Carter	Three Mile Island
96	Carter	Gas Lines
96	Carter	Iran Hostage Crisis
96	Carter	BillyGate
97	Reagan	Assassination Attempt
97	Reagan	Allen Accusation/Resignation
98	Reagan	Marines Killed in Lebanon
99	Reagan	Raymond Donovan Resigns
99	Reagan	Achille Lauro
99	Reagan	Iran-Contra
99	Reagan	Challenger Explosion
100	Reagan	Reports of Astrology Use
102	HW Bush	LA Riots
103	Clinton	Rabin & Arafat Accord
103	Clinton	Blackhawk helicopter shot down
104	Clinton	Oklahoma City Bombing
104	Clinton	Travel Gate
104	Clinton	Olympic Park Bombing
105	Clinton	Lewinsky Scandal
106	Clinton	Embassy Bombing
106	Clinton	Stock Market Crash
106	Clinton	Cole Bombing
107	W Bush	Terror Attacks
108	W Bush	Abu Ghraib Scandal
109	W Bush	Terri Schiavo Case
109	W Bush	Hurricane Katrina
109	W Bush	Hussein Death
110	W Bush	Scooter Libby Scandal
111	Obama	Swine Flu
111	Obama	Fort Hood Shooting
111	Obama	Nobel Prize
111	Obama	BP Oil Spill
111	Obama	Times Square Bombing

**Note:** This list of exogenous events is adapted from Lebo and Cassino (2007) and tailored to include only events over which the president had no control. For example, Lebo and Cassino (2007) include the Clarence Thomas hearings as an event. This event was directly controlled by the president, so we omitted it from our list. Our updated list is drawn from the website of the Miller Center at the University of Virginia. This website includes biographies for all presidents including a list of “Key Events” during their tenures. Source: <http://millercenter.org/president/>. Additionally, several of the events listed spanned multiple months.

**Table 5: Bayesian Information Criterion for Various Polynomial Specifications of the Presidential Sentences Variable when Modeling Each Outcome**

Outcome variable	Polynomial Specification		
	Linear	Quadratic	Cubic
Circuit nominees	2115	2122	2120
District nominees	6750	6756	6763
Important legislation	1376	1385	1394
Routine legislation	1844	1846	1855

**Note:** Cell entries are BIC values for the model of each outcome using a linear, quadratic, or cubic specification on the number of sentences a president speaks in favor of a Supreme Court nomination. Lower values indicate better fit.

**Table 6: Discrete Hazard Model of Senate Passage of Important and Routine Presidential Policy Proposals, 1967-2010, with Predictor of Duration of a Supreme Court Nomination**

Covariate	Important Proposals			Routine Proposals		
	Estimate	Std. Err.	<i>p</i> -value	Estimate	Std. Err.	<i>p</i> -value
Intercept	-2.1621	2.5585	0.3981	31.3139	22.1777	0.1580
Supreme Court duration	-0.3727	0.0868	0.0000	-0.7388	0.0796	0.0000
Exogenous events	-0.2172	0.3211	0.4988	-0.8098	0.4171	0.0522
Distance to filibuster pivot	-1.1258	1.8800	0.5493	0.3389	26.7573	0.9899
Distance to majority party median	-0.5594	1.3731	0.6837	12.0647	14.4261	0.4030
Number of opposition senators	-0.0095	0.0610	0.8765	-0.9125	0.4636	0.0490
Midterm elect. under unified gov.	-0.9080	0.4238	0.0322	-1.5154	0.5041	0.0026
Presidential approval	0.0158	0.0120	0.1885	0.0389	0.0179	0.0294
Second term president	-0.0430	0.4411	0.9223	2.5694	1.0000	0.0102
Agenda size	0.0255	0.0260	0.3275	0.0684	0.0251	0.0064
Chief or median justice replaced	1.7754	0.4203	0.0000	0.7049	0.3797	0.0634

For the important proposal model: 275 proposals considered in a total of 3442 months. BIC=1400.

Approximate significance test for pre-midterm intercept smoothed over months:

$\chi^2_{4.06} = 27.98$  ( $p < 0.0001$ ). For post-midterm:  $\chi^2_{1.00} = 8.91$  ( $p = 0.0029$ ).

For random effects by Congress:  $\chi^2_{12.03} = 35.75$  ( $p < 0.0001$ ).

For the routine proposal model: 383 proposals considered in a total of 4839 months. BIC=1804.

Approximate significance test for pre-midterm intercept smoothed over months:

$\chi^2_{6.51} = 46.1$  ( $p < 0.0001$ ). For post-midterm:  $\chi^2_{8.41} = 56.1$  ( $p < 0.0001$ ).

For random effects by Congress:  $\chi^2_{18.69} = 108.2$  ( $p < 0.0001$ ).

Two-tailed *p*-values reported. Estimates computed with R 3.2.1.

**Table 7: Discrete Hazard Model of Confirmation of U.S. Circuit and District Court Nominees, 1977-2010, with Predictor of Duration of a Supreme Court Nomination**

Covariate	Circuit Court			District Court		
	Estimate	Std. Err.	<i>p</i> -value	Estimate	Std. Err.	<i>p</i> -value
Intercept	2.4491	11.9161	0.8372	3.3088	10.8969	0.7614
Supreme Court duration	-0.2834	0.0625	0.0000	-0.1441	0.0343	0.0000
Exogenous events	-0.2704	0.1996	0.1755	-0.1335	0.1126	0.2358
Distance to filibuster pivot	-1.5121	9.0146	0.8668	0.3428	8.6452	0.9684
Distance to majority party median	-2.2003	6.0599	0.7165	-1.7917	5.7709	0.7562
Number of opposition senators	-0.3967	0.3892	0.3081	-0.5418	0.2567	0.0348
Midterm elect. under unified gov.	-0.9025	0.3622	0.0127	-1.1178	0.2318	0.0000
Presidential approval	0.0045	0.0137	0.7442	0.0247	0.0066	0.0002
Second term president	0.1794	1.6846	0.9152	0.3295	1.8582	0.8593
ABA rating	0.1606	0.0451	0.0004	0.1220	0.0222	0.0000
Minority nominee	0.0611	0.1873	0.7442	-0.0109	0.0879	0.9014
Female nominee	0.1896	0.1629	0.2444	0.0706	0.0834	0.3970
Renomination	0.0464	0.2026	0.8188	0.1372	0.1223	0.2617
Pending judicial nominations	0.0241	0.0064	0.0002	0.0205	0.0036	0.0000
Post-Bork nomination	-2.1936	2.2398	0.3274	-2.0305	2.1009	0.3338
Chief or median justice replaced	0.6659	0.4304	0.1218	0.7288	0.2164	0.0008
Proportion of Judiciary Cmte. not of president's party	34.4971	39.8684	0.3869	42.7155	32.6831	0.1912

For the circuit court model: 456 nominations considered in a total of 3892 months. BIC=2103.

Approximate significance test for pre-midterm intercept smoothed over months:

$\chi^2_{2.1} = 10.6$  ( $p = 0.0107$ ). For post-midterm:  $\chi^2_{2.2} = 18.7$  ( $p = 0.0003$ ).

For random effects by Congress:  $\chi^2_{10.8} = 97.1$  ( $p < 0.0001$ ).

For the district court model: 1506 nominations considered in a total of 8354 months. BIC=6741.

Approximate significance test for pre-midterm intercept smoothed over months:

$\chi^2_{8.89} = 96.1$  ( $p < 0.0001$ ). For post-midterm:  $\chi^2_{8.65} = 85.6$  ( $p < 0.0001$ ).

For random effects by Congress:  $\chi^2_{10.79} = 123.0$  ( $p < 0.0001$ ).

Two-tailed *p*-values reported. Estimates computed with R 3.2.1.

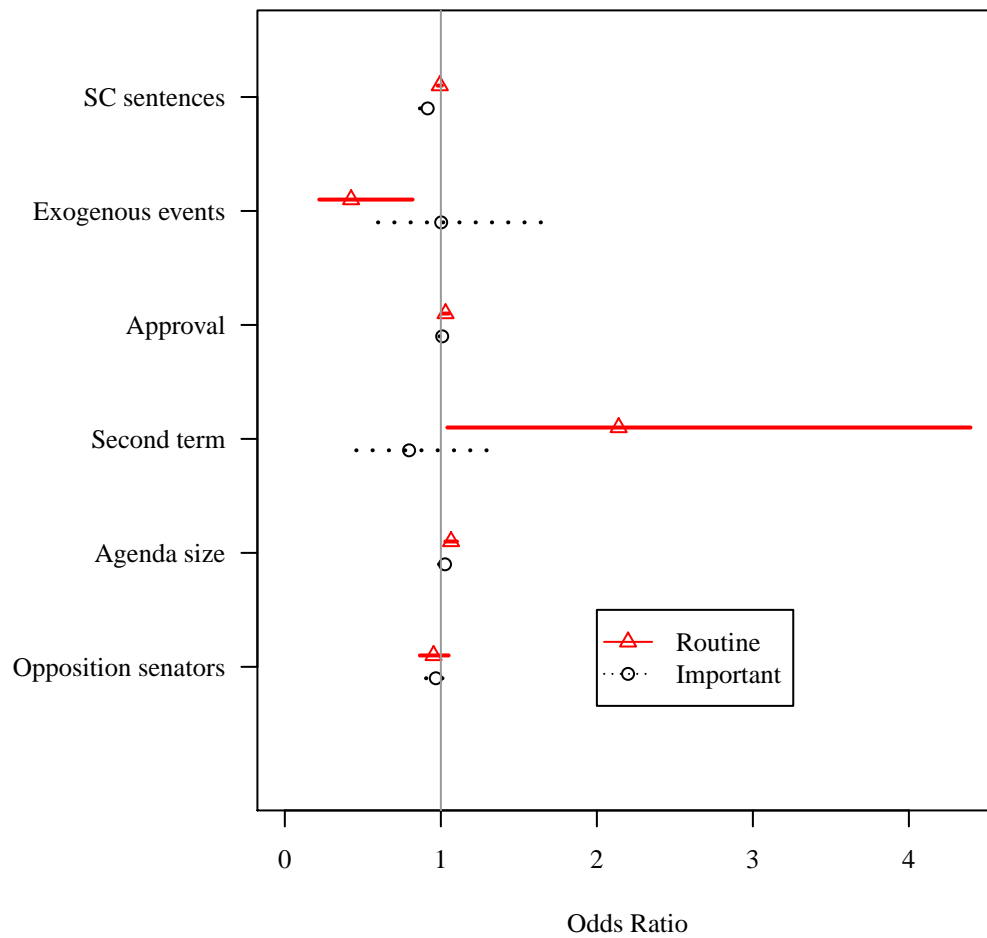
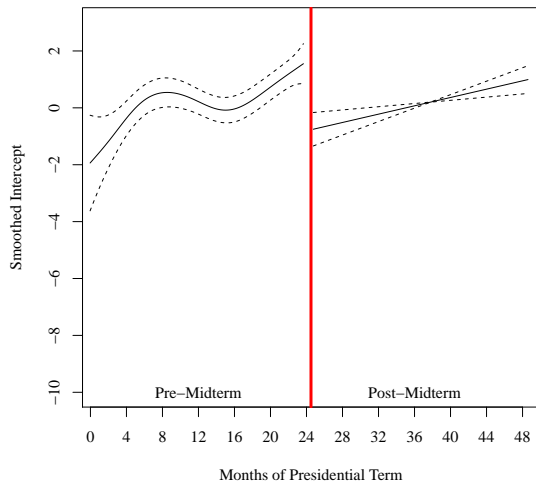
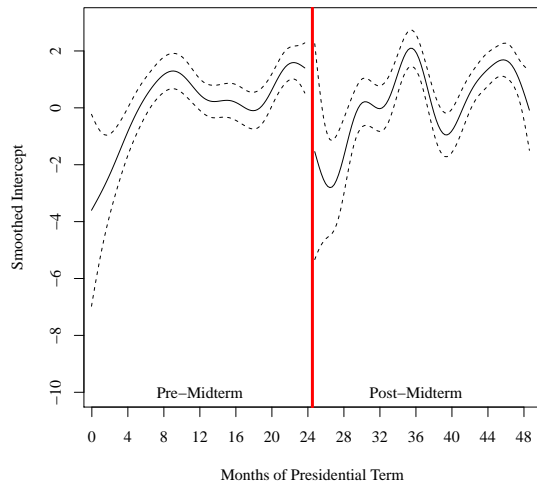


Figure 1: Point estimates and 90% confidence intervals of odds ratios from duration models of important and routine presidential policy proposals.

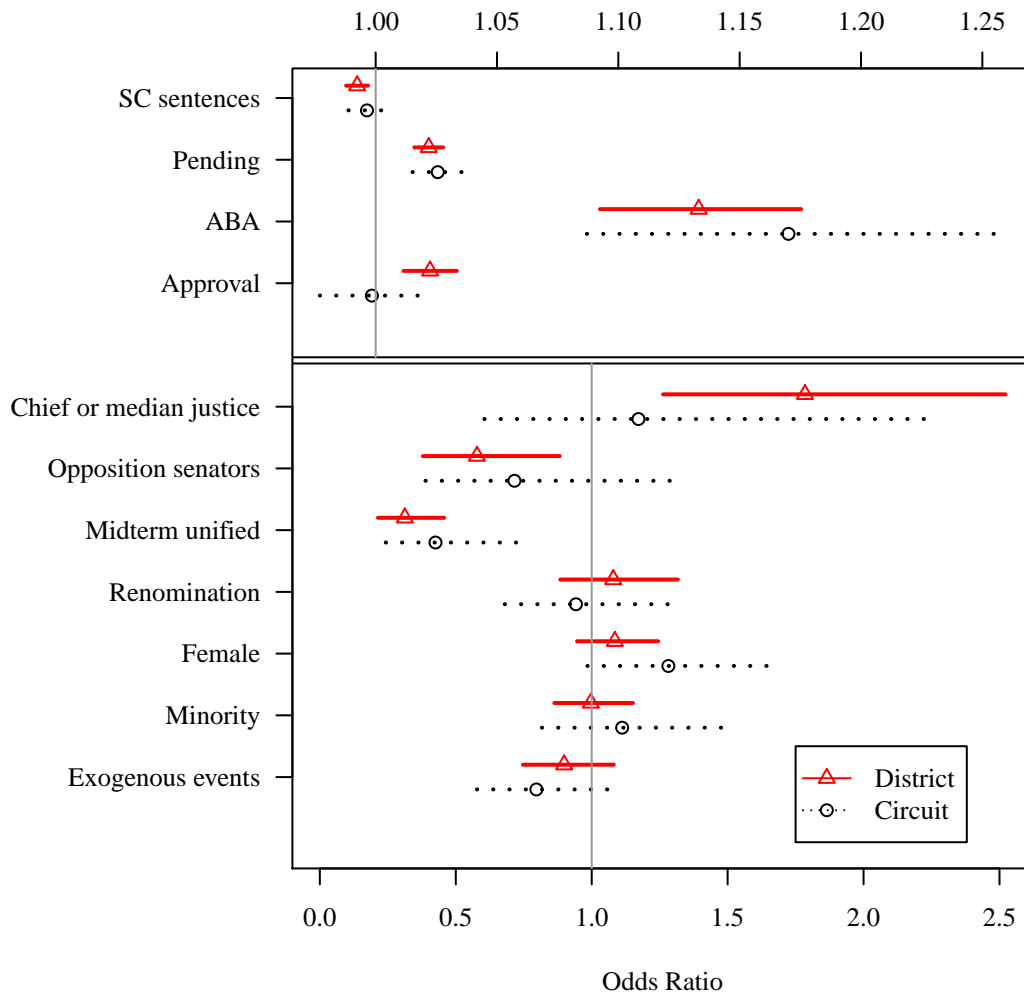


(a) Important

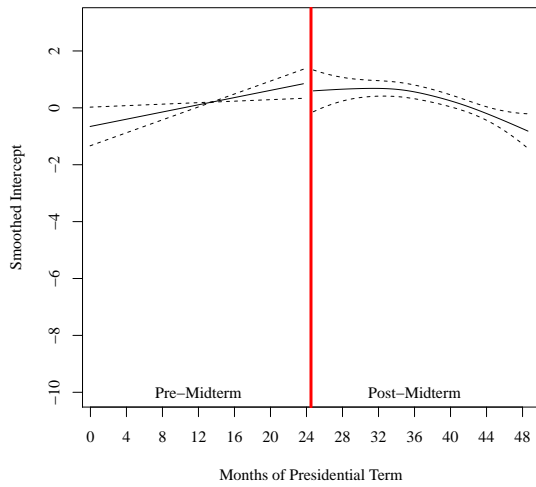


(b) Routine

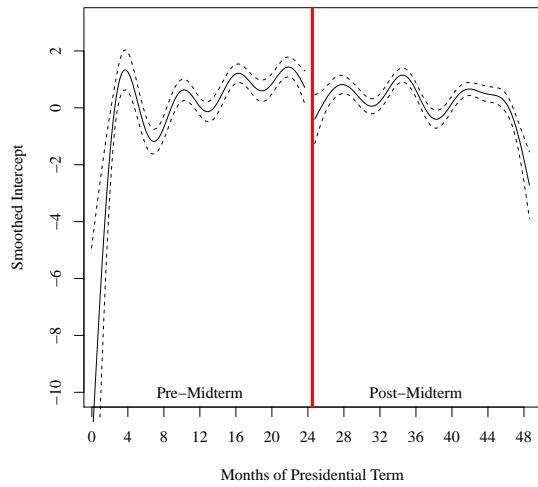
**Figure 2: Smoothed intercept term for Senate passage of important and routine presidential policy proposals across the four years of a president's term. Higher values of the intercept correspond to higher values of the average baseline hazard rate.**



**Figure 3:** Point estimates and 90% confidence intervals of odds ratios from duration models of circuit and district court confirmations.



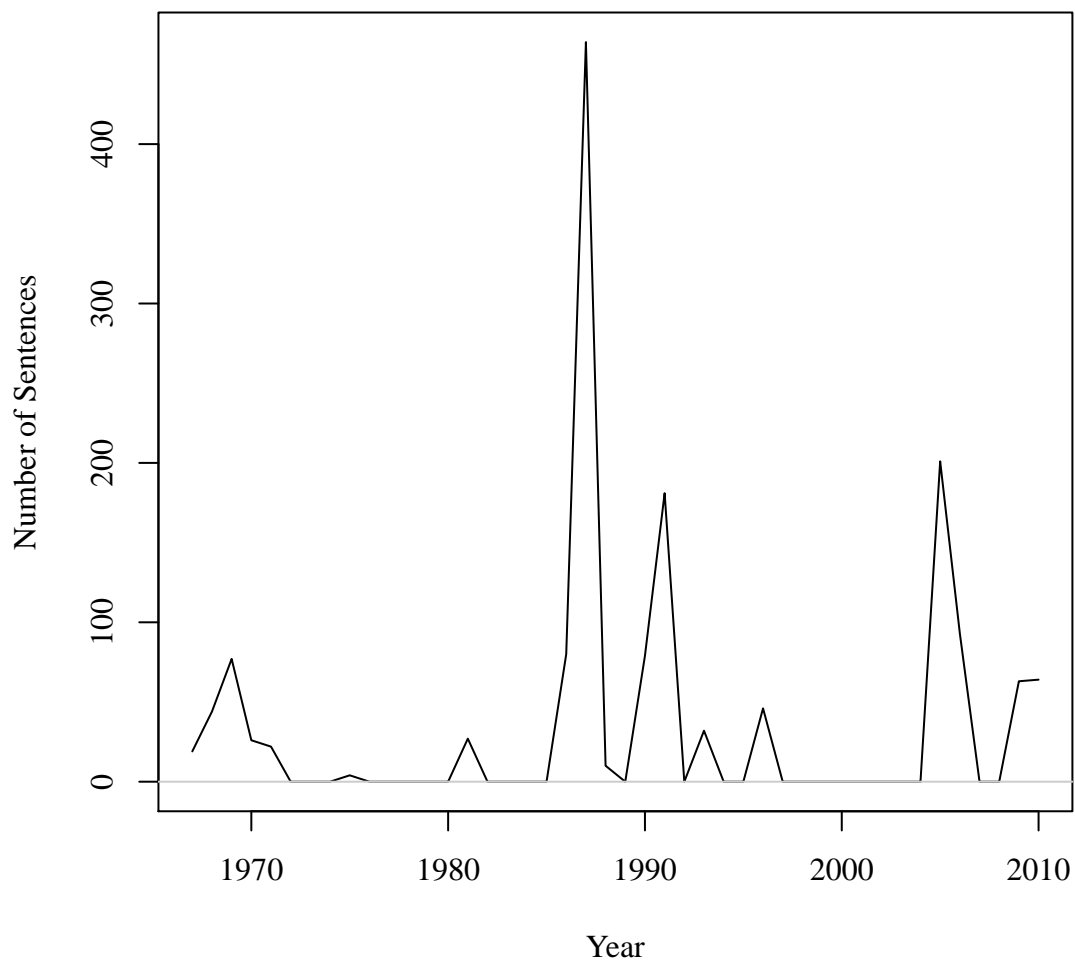
(a) Circuit Court



(b) District Court

**Figure 4: Smoothed intercept term for circuit court and district court nominee confirmation across the four years of a president's term. Higher values of the intercept correspond to higher values of the average baseline hazard rate.**





**Figure 5:** Total number of sentences in support of a Supreme Court nominee in presidential speeches over the course of each year.