

**“The Presumption of Success on Presidential Appointments Reconsidered:
How Delay Has become the Primary Method of Defeating Nominees”**

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Abstract

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This analysis shows that the lengthening of the confirmation process for nominations to major executive and judicial offices from 1965-2004 is due to a purposeful strategy to defeat presidential nominees by preventing them from getting a vote. We analyze both outcomes (whether nominations pass or fail, and whether a nomination received complete consideration or died from action preventing an up-or-down vote) and the duration of the process. Because nominations can exit the confirmation process in multiple ways, we model duration as a competing risk process. We find that the most important influence on success or failure is negative information that can be used to build opposition or provide an excuse to stall the nomination until adjournment. Expansion of the controversy also contributes to failures. And failures are more likely during divided government with high polarization. The same variables also explain the duration of the confirmation process, but the effects differ in predictable ways depending on whether the path to exit is confirmation, rejection or withdrawal, or defeat as a result of stalling. These findings indicate that the confirmation process is a multi-state process with multiple paths of exit, and the processes leading to different types of exit are not the same.

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The Presumption of Success on Presidential Appointments Reconsidered: How Delay Has become the Primary Method of Defeating Nominees

How the Senate handles presidential nominations has changed in recent years. Journalistic accounts document increasing delays in the confirmation of presidential nominations, particularly nominations to the federal judiciary (see e.g., Dewar 2003; Holland 2001; Lane 2002; Rosen 2002). Recent scholarly research provides systematic evidence that the time required for confirmation has indeed increased (Binder and Maltzman 2002; Martinek, Kemper, and Van Winkle 2002; McCarty and Razaghian 1999; Shipan and Shannon 2003). The principal explanation offered for the longer confirmation process is party polarization in American politics.

This account is accurate but incomplete. The analysis in this paper shows that the lengthening of the confirmation process is a symptom of fundamental changes. Not only has the failure rate increased, but the way in which nominations are defeated and the criteria used to defeat them have also changed.

Traditionally, the Senate's consideration of presidential nominations to major offices in the executive branch and federal judiciary was characterized by a *presumption of success*, with over 90% winning confirmation after a review process that averaged a little more than a month. The presumption of success resulted in an expectation that presidential nominees were entitled to an up-or-down vote, and the burden was on opponents to convince enough fellow Senators to join them to defeat the nomination. To meet this burden, opponents engaged in an overt political process in which they identified negative information about a nominee and expanded conflict in the news media and hearings to build a case against confirmation (Krutz, Fleisher, and Bond 1998). Even unsuccessful nominations received active consideration, and were either withdrawn or defeated by a committee or floor vote in a relatively short time (an average of slightly less than four months). Presidential nominations rarely suffered the fate of most legislative proposals: to be ignored, lingering in some "pigeonhole" until they die when the current Congress adjourns.

Although the presumption of success continues to characterize a large majority of nominations, this presumption does not hold to the extent it once did. The lengthening of the confirmation process appears to be the result of a purposeful strategy that could be characterized as defeat by *maligned neglect*.

Increasingly, opponents do not engage in publicly visible political activities to reject a nominee, but rather they prevent confirmation by using Senate rules to block action until the nomination dies at the end of the Congress. Indeed, *maligned neglect* has become the most common way that presidential nominations fail.

Not only are controversial presidential nominees increasingly likely to die as a result of inaction, but the rationales that opponents use to justify their opposition have also changed. Party polarization in Congress has made it harder for Senators from opposing parties to agree on either the characteristics of a quality nominee or on how nominees should be processed. In the current climate, presidential nominees are more likely to be opposed because of ideological extremism than a lack of qualifications or questionable conduct. To some, most notably conservative Republicans, the watershed event was the concerted and coordinated attacks that Democrats and their allies made on Judge Robert Bork when President Reagan nominated him for a position on the US Supreme Court (York 2005). Unable to make a case that Bork was not qualified to serve on the Supreme Court, and with no evidence that he had acted in an illegal or unethical manner, Democrats attacked Bork as being too ideologically extreme for a position on the Court. Bork's nomination was defeated in a vote on the Senate floor.

The Bork nomination was not the first time ideological extremism was used as a rationale for opposition, but the magnitude and intensity of the attack were unprecedented.¹ The consequences of the attack on Bork based solely on the grounds of ideological extremism went beyond the immediate case. In particular, the use of the extremism rationale for opposing the president's nominees escalated, as both Republicans and Democrats played the ideological extremism card when they could find no other reasons

for opposing the nomination. But unlike the traditional process where opponents identified some negative information and then used it to expand the controversy to convince their colleagues that the nominee should be voted down either in committee or on the floor, the strategy of maligned neglect allowed them to block a confirmation with as few as one or two key Senators (i.e., the committee chair or the majority leader).

The increased use of ideology to oppose presidential nominations should be seen as part of the polarized context in which governmental actors go about the tasks of governing. In her analysis of congressional lawmaking, Binder (2003) demonstrates the impact of polarization on the ability of legislative actors to produce legislation that addresses problems on the nation's policy agenda. Previous studies of the confirmation process have also highlighted the effect of party polarization especially under divided party control of the government.

In this paper, we seek to build on this research by exploring how polarization and the increasing use of ideology have transformed the confirmation process so that maligned neglect has become the most common way in which presidential nominations are defeated. We analyze variation in outcomes and in the duration of the confirmation process of presidential nominations to key positions in the executive branch and federal judiciary from Lyndon Johnson through the first term of George W. Bush (1965-2004). This set of cases, including both executive and judicial nominees, permits more general inferences about the confirmation process than studies of appointments to a single branch. Building on recent studies of the confirmation process, we use a competing risk model to analyze the duration of the process. A competing risk model is appropriate because a nominee can exit the confirmation process in multiple ways—confirmation, defeat by some action, or defeat by inaction. Conceptualizing the process as competing risks

¹ In 1968, Republicans (and some conservative Democrats) opposed the nomination of Abe Fortas to be Chief Justice in part on the grounds that his opinions were too liberal, though questionable ethics was the more central rationale. Republicans also engaged in a filibuster to block a vote on the nomination.

allows us to analyze the confirmation process generally to explain variation in the duration of the various routes of exit, and to see if different variables explain the processes leading to confirmations and defeats.

We begin with an overview of research analyzing the confirmation process. Next we discuss our measures and methods, and present evidence that the process has changed.

Literature on the Confirmation Process

The confirmation process begins when the president sends a nomination to the Hill; it ends when the case is either confirmed or fails. The process consists of three major decision points: (1) committee hearings and consideration, (2) scheduling the nominee for consideration on the floor, and (3) floor vote. Over 90% of cases exit this process by being confirmed, and the point of confirmation is always the same—approval by a vote on the floor of the Senate. Failures, in contrast, can occur at any point in the process for several different reasons. Only a small fraction of unsuccessful nominations are defeated by a vote in committee or on the Senate floor. More common than rejection by a Senate vote are nominations that are withdrawn by the president, usually in response to controversy and opposition in the Senate. Some nominations fail because the Senate does not fully process the nomination before the current Congress adjourns. An increasing number of cases fail to complete the confirmation process because a small number of Senators use Senate rules to block action on the nomination until Congress adjourned. A nomination can stall in committee because the committee chair honors a “hold” and declines to hold hearings or schedule a committee vote (Binder and Maltzman 2004, notes 2, 4). A nomination can also stall after committee action because the majority leader respects a “hold” and does not schedule a floor vote or because there are not 60 votes to invoke cloture if the majority leader ignores the filibuster threat and brings the nomination to the floor.

In a previous study, Krutz, Fleisher, and Bond (1998) argued that presidential nominations arrive on Capitol Hill with a presumption of success. Even nominations to the highest offices in the executive branch and the judiciary typically pass quickly with little opposition. This perspective assumes that

political and policy goals motivate Senators' actions on both nominations and legislation. Although individual Senators have prerogatives to block nominations as well as legislation, the Senate does not have the same leeway to ignore nominations as it does with most legislation. The Senate traditionally defers to the president on nominations (Fisher 1991). The Constitution affords the president greater authority over appointments than over legislation, and even Senators whose policy preferences differ from the president's tend to accept that a well-functioning government requires that these positions be filled. Although political and policy differences lead to the defeat of some nominations, such defeats are rare because overcoming this presumption of success is difficult.

To change the presumption of success, opponents typically use a public strategy in which they portray a negative image of the nominee to provide a rationale for opposition, and expand the conflict to persuade other Senators to see controversy. When controversy is present, Senators seek more information and scrutinize nominees as is common with legislation. Because defeating a nomination is costly, political entrepreneurs pick their battles carefully, which explains why only a small proportion of nominations are challenged and defeated (Krutz, Fleisher, and Bond 1998).

The number of senators needed to defeat a nomination varies along the different points in the process. Defeating a nomination on the floor requires a majority to go on record against the nominee and the president. Defeating a nomination before it gets to the floor requires as few as one Senator to place a "hold" on the nomination and cooperation of a key gatekeeper (the committee chair or the majority leader). Even if the key gatekeeper ignores a filibuster threat and the opposing Senator is forced to carry through, a minority of the Senate can block cloture and prevent the nomination from coming up for a final vote. Thus, from the vantage point of a Senator opposed to a president's nomination, a strategy of maligned neglect is easier to execute than is the traditional process of trying to defeat a nomination.

Consequently, most failed nominations never reach the floor for a vote. A previous analysis of the confirmation process from 1965 to 1994 found that less than 5% of nominations failed, and 94% of failures

were rejected or withdrawn before the floor (Krutz, Fleisher, and Bond 1998). In the current study of nominations made between 1965 and 2004, we find that approximately 10% of the nominations failed to be confirmed.

In their 1998 study, Krutz, Fleisher and Bond reported that the strongest determinant of failure was negative information in a nominee's background—wrongdoing, concerns about qualifications, or ideological extremism. The effect on the probability of confirmation was similar for all types of negative information. In the traditional process, articulating a rationale for opposing the president's nominee is part of a strategy of expanding conflict. Although a strategy of maligned neglect is less dependent on expanding conflict, we would still expect a Senator pursuing this strategy to articulate a rationale for opposing the nomination. With a strategy based on delay, however, the various rationales are not equally likely. A strategy of maligned neglect is most likely to rely on a charge of ideological extremism as the rationale to oppose a nominee. In a period of party polarization, party caucuses become more ideologically homogeneous as the number moderate and cross-pressured members decline (Fleisher and Bond 2004). A larger proportion of ideological extremists in each party increase the odds that a nominee from the opposite party will be viewed as extreme, and such a charge can be made without alienating very many fellow partisans. If opponents can find credible evidence of wrongdoing or lack of qualifications, then they are likely use the traditional strategy of expanding the conflict. But uncovering such evidence may have become more difficult as the screening of potential nominees has become more rigorous following a number of well publicized cases in which a nominee was subject to charges of wrongdoing or a lack of qualifications.² Thus, we expect that charges of ideological extremism have become more common than allegations of wrongdoing or lack of qualifications.

² Even with a process of greater scrutiny by the White House prior to making a nomination, the possibility that a presidential nomination will be subject to charges of wrongdoing or lack of qualifications still exists. When President Bush nominated Harriet Meirs to be an Associate Justice of the Supreme Court, many conservative Republicans expressed the concern that her prior background did not make her qualified for a position on the Court.

Krutz, Fleisher, and Bond (1998) also found that indicators of expanded conflict—a disproportionate number of negative witnesses at the hearings and more coverage in the national press—reduced the odds of confirmation. A strategy of maligned neglect does not require opponents to expand conflict to increase opposition to a nominee. Instead, this strategy relies on using internal Senate rules that empower individual Senators to block action in the Senate. Hence, we do not expect such indicators will have a significant effect. Indeed, a key aspect of the strategy is to block hearings on a nominee.

Institutional conditions are likely to influence the confirmation process regardless of the strategy used to resist confirmation. In particular, divided government should make it more difficult to get nominees confirmed. An earlier study found that divided government was not significantly related to the probability of confirmation. Given Senate rules that protect individual prerogatives, opponents can effectively challenge nominations under unified and divided party control (Krutz, Fleisher, and Bond 1998). This study, however, did not consider whether the degree of party polarization in the Senate might alter the effects of divided government.

The discussion so far has focused on analyzing the outcome of the confirmation process—i.e., whether the nomination passes or fails. Several prior studies of presidential nominations criticize the focus on outcomes because it ignores the process leading to confirmation or failure (Binder and Maltzman 2002, 191; Martinek, Kemper, and Van Winkle 2002, 339). Failed nominations are rare, leaving the study of outcomes little variance to explain. How long it takes the Senate to confirm nominees, in contrast, varies considerably, and researchers have begun to analyze the duration of the confirmation process. Furthermore, since confirmation is the outcome that dominates the process, some researchers argue that studying failures is not particularly informative (Allison 1996). One team of researchers boldly asserts that estimating the duration of “events other than confirmation is substantively uninteresting since in almost every case that event consists of the nomination expiring at the end of the congressional session. Therefore, the length of

time from nomination . . . to failure is merely a function of when the nomination was made relative to the end of the congressional term . . .” (Martinek, Kemper, and Van Winkle 2002, 352 fn. 20).

Studies of the duration of the confirmation process treat cases that expire at the end of a Congress due to inaction as right-censored (Binder and Maltzman 2002; Martinek, Kemper, and Van Winkle 2002; McCarty and Razaghian 1999; Shipan and Shannon 2003). If cases are right-censored, estimates produced by traditional estimation techniques (e.g., OLS or logit) are inefficient. Duration analysis offers a solution to this censoring problem (Box-Steffensmeier and Jones 1997, 2004).

Because “Speed of confirmation . . . is an indicator of the ease or difficulty of confirmation” (Allison 1996, 9), explaining why some take longer than others contributes to our understanding. Recent research indicates that such institutional factors as divided government and ideological distance between the president and key gatekeepers in the Senate contribute to a longer confirmation process for judicial appointments (Binder and Maltzman 2002; Martinek, Kemper, and Van Winkle 2002; Shipan and Shannon 2003), and for executive branch agencies (McCarty and Razaghian 1999).

We see three limitations of this line of research. First, if the rationale for analyzing time rather than outcome is to get inside the process, explaining time to confirmation tells only part of the story. Ignoring unsuccessful nominations is a particularly conspicuous omission. We disagree that analyzing failed nominations is uninteresting, and we suspect that presidents, defeated nominees, and Senators who devised the strategy to defeat them find these to be the most interesting cases.

But failures are important theoretically as well. Although most nominations are eventually confirmed, failures have become more common in recent decades. Moreover, nominations that die at the end of the session—those pesky right-censored cases that duration studies treat as little more than a nuisance to estimation—seem to have become a key component of a new political strategy. Analyzing these cases is important theoretically. Although it is true that the duration of such cases is perfectly determined by the time remaining in the Congress, to dismiss them as “merely a function of when the

nomination was made” (Martinek, Kemper, and Van Winkle 2002, 352) fails to recognize the difference between correlation and causation. Nominations expiring at the end of a Congress were once rare, and typically were cases nominated late in an election year. Failure by inaction has become much more common in recent decades, and this increase cannot be explained by election year distractions. We argue that the rise in the number of these cases reflects a fundamental change in the confirmation process in which opponents engage in purposeful and strategic delay until the nomination expires when the current Congress adjourns.

Furthermore, the duration of nominations that fail in more traditional ways—rejected by a vote in the Senate or withdrawn—varies. The models used in previous studies assume the same relationships apply to confirmations and defeats (Binder and Maltzman 2002; Martinek, Kemper, and Van Winkle 2002; McCarty and Razaghan 1999; Shipan and Shannon 2003). We suspect that the political processes leading to confirmation or defeat differ in systematic ways. In the language of duration analysis, because nominations may exit in different ways, they are subject to competing risks. If different processes characterize these different paths to exit, then variables that lengthen the time of cases that are confirmed may have no effect or even shorten the time for cases that exit through defeat.

Second, studies of outcomes need not ignore process. Krutz, Fleisher, and Bond (1998), for example, tested a process theory by modeling the effects of process variables—negative information and expansion of conflict—as well as candidate characteristics, and institutional variables on outcomes. Analyzing the effects of process variables on outcomes provides a more general understanding of the process than models of the time it takes for confirmation. Moreover, since inaction has become the most common method of defeating nominations, these cases may be the most interesting theoretically. Identifying variables that explain whether a nomination is fully processed or stalls and dies of maligned neglect will contribute to a more complete understanding of the process.

A third limitation is the focus on a single branch of government. Findings based on nominations to one branch may not apply to nominations in general. Studies of Supreme Court nominations, for example, indicated that divided government was a significant cause of failures (MacKenzie 1981; Ruckman 1993; Scigliano 1971; Segal 1987), but the confirmation process on a broader sample of major presidential nominations to the judiciary and executive branch was not fundamentally different under unified and divided government (Krutz, Fleisher, and Bond 1998). Although studies of nominations to a single branch offer insights about the process for that set of nominations, to understand the confirmation process in general requires a broader empirical base. We turn now to a description of the research design we use to study the confirmation process.

Research Design

Units of Analysis

The units of analysis are “key” presidential nominations to the judiciary and executive branch from 1965 to 2004. We define *Key Nominations* as (1) Supreme Court, (2) U.S. Circuit Courts of Appeals, and (3) all Level 1, 2, and 3 positions in the Federal Executive Schedule (U.S. Congress, Senate Committee on Governmental Affairs 1996, 2000), except for the “inner cabinet” (Defense, Justice, State, Treasury, and Homeland Security) which also includes Level 4 positions.³ This procedure yields a set of 2201 key nominations, 476 to the federal judiciary, 1408 to the cabinet and Executive Office of the President, and 317 to independent agencies and government corporations. Supreme Court and Circuit Court nominations are the most important judicial appointments. The Executive Schedule identifies the top positions in the executive branch and bureaucracy. These are nominations in which the president and senators are likely to be most interested, but the set of cases is broad enough to be representative of nominations in general.

³The Executive Schedule has five salary levels. Cabinet Secretaries and their equivalents are Level 1; Level 2 positions are under-secretaries and heads of major subcabinet agencies such as the Department of the Army and FBI Director; lower level appointments receive Level 3, 4, or 5 salaries depending on the size and prestige of the agency (Meier 1993, 39).

Dependent Variables

Analysis of both outcomes and duration contributes to a more complete understanding the confirmation process. We analyze two outcome variables. One outcome is *Pass/Fail* (1 = confirmed; 0 = fail). A failed nomination is one submitted to the Senate for consideration that is not confirmed during the Congress in which it is made (U.S. Government Printing Office 1966-2005a, b, c). Nominations fail at several points in the process for different reasons: the Senate may reject the nominee by a vote in committee or on the floor, or the president may withdraw it.⁴ Some fail because the Senate has not acted when that Congress adjourns. Indeed, because delaying action until Congress adjourns has become the most common source of failed nominations, we also analyze whether action on a nomination is *Completed* (1 = confirmed/rejected or withdrawn) or *Stalled* (0 = failed due to inaction).

Our measure of *Duration* is the number of days the case is in the process before exiting. The process begins on the date Congress receives a nomination, and ends on the date the nominee is confirmed, rejected or withdrawn, or when the Congress adjourns.⁵

Determinants of Success and Duration

Research on the confirmation process has identified a number of variables that influence the success or failure of nominations, as well as the duration of the process. These include characteristics of the nominee, expansion of conflict, presidential activities and resources, and institutional conditions.

Nominee Characteristics. We measure rationales that political entrepreneurs use to challenge nominations with four dichotomous variables to indicate the presence or absence of a negative attribute. These are

⁴We found several withdrawn cases that we did not code as failures. One was President Carter's nomination of Frank Johnson to be FBI director, who asked to withdraw for health reasons. Another was President Reagan's nomination of Frank Gaffney to be Assistant Secretary of Defense, who resigned because of policy disagreements with the administration. In addition, there were seven Appellate Court nominations that were withdrawn by President Bush at the beginning of the 108th Congress. We do not count these as failures for Bush because they were Clinton nominees that had failed with adjournment of the 107th Congress and Clinton nominated again during the 108th Congress immediately before he left office.

⁵This measure of calendar days includes recesses. In the 105th Congress, the correlation with days in session is .953.

Alleged Wrongdoing, *Qualifications a Concern*, and *Extreme Conservative*, or *Extreme Liberal* (1 = yes; 0 = no). Opponents identified at least one negative attribute in about 5% (112) of the cases. Allegations of wrongdoing were most common (50 cases, > 2%), followed by being viewed as an extreme conservative (39 cases, < 2%), extreme liberal (21 cases, < 1%), and concerns about qualifications (17 cases, < 1%) (Congressional Quarterly, Inc. 1966-2004).⁶ Keep in mind that these variables are not objective indicators of the negative attribute. Instead, these variables are intended to measure negative information raised by opponents as rationales to oppose a nominee.

We also include measures of attributes that might insulate nominees from challenge. These include whether the nominee was *Previously Confirmed* for another office, and current or former members of the *House* or the *Senate* (1 = yes; 0 = no). About one-third of the cases (732) had been previously confirmed (Marquis Who's Who, Inc. 1969-2005); less than 3% (56) were former House members; less than 1% (15) had served as Senators.

Expansion of Conflict. The probability of confirmation declines when opponents expand the controversy over a nominee (Krutz, Fleisher, and Bond 1998). Our indicator that *Media Coverage* has expanded conflict over a nominee is the number of stories in the *New York Times* (New York Times 1966-2004) about the nomination prior to the date of confirmation or failure. This variable ranges from zero to 93 stories with a mean of 1.6 and a standard deviation of 5. About 50% (1116) of the nominees in our sample received no mention in the *New York Times*; about 48% received between one and ten mentions. The outliers in media coverage were Bork (93), Estrada (89) and Thomas (77), followed by Meese (56), and Ashcroft and Tower (45 each). On average, nominees to the federal bench received more attention in the *New York Times* (2.2 stories) than did nominees to executive branch positions (1.5 stories).

⁶The total number of allegations is 126 because a few nominees had multiple allegations raised.

Presidential Activities and Resources. The president may seek to improve the chances of securing a quick and easy confirmation. The president often tries to avoid controversy by consulting with senators to identify candidates and by screening nominees in light of past controversies (Binder and Maltzman 2004). For political and policy reasons, however, presidents still nominate controversial individuals. When the president sends such cases to the Senate, there is evidence that he can increase the chances of confirmation if he goes to extra lengths to highlight positive aspects of the nominee's experience and qualifications (Krutz, Fleisher, and Bond 1998). Thus, we test the effects of efforts to preempt the opposition. Our measure of *Initial Presidential Priority* is the number of column lines in the president's speech introducing the nominee (U.S. Government Printing Office 1966-2005a). This variable ranges from zero to 286 column lines with a mean of 14.8 and a standard deviation of 23.1.

The president's popularity with the public is a resource that may influence members of Congress (Neustadt 1960). Although evidence that public approval affects legislation is mixed (see Bond, Fleisher, and Wood 2003), there is some evidence that the president's popularity affects the confirmation process (Krutz, Fleisher, and Bond 1998; Martinek, Kemper, and Van Winkle 2002). We test the effects of two aspects of *Presidential Approval*. One is the percentage approving of how the president is handling his job in the closest Gallup poll before the point at which the president announces the nomination (Edwards with Gallup 1990; Gallup Web Site 1993-2005, various reports). This variable ranges from 24% to 89% with a mean of 55.1% and a standard deviation of 10.8%. In addition, we measure the change in the president's approval rating from the time the nomination was made to the date that the outcome of the nomination was decided. This variable ranges from -36% to +47% with a mean of -0.4% and a standard deviation of 7.5%.

Institutional Conditions. We measure several institutional conditions that might affect the outcome and duration of the confirmation process. Previous research identifies divided government as a major influence on the president's legislative success (Bond and Fleisher 1990; Edwards 1989). Similar theoretical considerations lead to the expectation of more failed nominations and longer, more difficult, confirmations

when the opposition party controls the Senate. Opposition party members are predisposed to disagree with the president's preferences on policy and personnel, and these members are more numerous under divided control. But more important than numbers is that under divided government opposition party members control the levers of power, chairing committees and controlling scheduling of business on the floor.

Evidence that divided government affects the confirmation process is mixed. Research on Supreme Court nominations found a relationship between party control and success (King and Riddlesperger 1991; MacKenzie 1981; Ruckman 1993; Scigliano 1971; Segal 1987). Studies of the length of the confirmation process emphasize divided government as a major cause of longer confirmations (Binder and Maltzman 2002; McCarty and Razaghian 1999). But Krutz, Fleisher and Bond's (1998) study of nominations to top judicial and executive positions found that divided government had no significant effect on success or failure. We test the effects of *Divided Government* with a dummy variable (1 = divided party control; 0 = same party control). About 54% (1188) of the nominations in our data set were considered under divided government.

Polarization between the parties in Congress may contribute to a more difficult confirmation process, especially under periods of divided government (Binder and Maltzman 2002; McCarty and Razaghian 1999). We measure *Party Polarization* as the absolute distance between the DW-NOMINATE scores of the Senate Majority and Minority Leaders. DW-NOMINATE scores range from -1.0 (most liberal) to +1.0 (most conservative) (Poole 2001). During the period of this study, the distance between the party leaders ranged from .43 to .92, with a mean of .67 and standard deviation of .17. We also control for *Polarized Period* (post-1980=1). We also look at the effects of the interaction of divided government and polarization (*Divided Govt. *Polarization*). To facilitate interpretation, we centered the polarization measure on its mean. The coefficients for divided government and polarization indicate the effects of those variables when the other is zero—the effect of divided government at average polarization and the effect of

polarization during unified government. The coefficient for the interaction term indicates the effect of above average polarization during divided government.⁷

Timing is important in any political process, and Washington time runs on an electoral calendar. Entrepreneurs may have greater difficulty challenging nominations early in the president's term. Light (1983, 44, 218) advises new presidents to "move it or lose it" because they are more successful in pursuing a legislative program early in their term. Similarly, we would expect the Senate to give newly elected presidents latitude to staff the government. As the presidential election approaches, however, opposition party senators have a greater incentive to slow the process to await the outcome of the election. Previous studies of judicial appointments suggest that timing influences confirmations. Ruckman (1993) and Scigliano (1971) found that Supreme Court nominations are more likely to fail late in the president's term, and legislation increasing the number of federal judges is less likely to pass late in the president's term (Bond 1980; Richardson and Vines 1971). We test the effects of timing with two dummy variables, *First Year of Term* and *Presidential Election Year* (coded 1 if that year, 0 otherwise).

Finally, we include controls for type of office being filled to detect any differences across categories of offices. Three dummy variables measure whether the nomination is for the *Cabinet/EOP*, *Supreme Court/Circuit Court*, or *Regulatory Agency/Government Corporation* (the reference category). About 22% (476) of our nominations were judicial (20 Supreme Court and 456 Circuit Court); about 70% (1408) were appointments to the cabinet and EOP. We also include controls for workload. *Votes in Session* is the number of roll call votes in each year of the Congress; *Days in Session* is the total number of days the Senate was in session during a Congress.

⁷We looked at the effect of polarization between the President and the Majority leader and the Committee Chair. President-Majority Leader distance is correlated .97 with *Divided Government*. The distance between the President and committee chair significantly shortened the time to confirmation, but it was not significant in any other model.

Methods

We use logit analysis to estimate the models of dichotomous outcomes (*Pass/Fail*, *Completed/Stalled*). Since our indicators of negative information about a nominee are charges raised by opponents rather than objective criteria, these rationales might be post hoc rationalizations rather than causes of difficult and failed nominations. Although we cannot definitively establish causation, we identified the point in the process when the charge was made to determine the sequence of events (*Congressional Quarterly Weekly Reports*, various issues 1965-2005). If an allegation surfaces before any public action in the Senate, then we can establish the correct temporal sequence for the argument that the rationale leads to difficulty rather than the reverse. Of the cases for which a negative allegation was raised, 93% were made before any formal Senate consideration—23 cases before the nomination was made, 81 cases after nomination but before Senate hearings. Only eight cases had allegations first raised during the hearings. There were no cases of allegations emerging after hearings. Since so few allegations were made after the commencement of formal Senate consideration, it seems reasonable to infer that the direction of causation goes from rationale to defeat or delay.

We use duration analysis to analyze the effects of our independent variables on the risk of exiting the process. Because we had no *a priori* expectation about the time dependence of the underlying hazard rate, we estimated relationships with a Cox proportional hazards model (Box-Steffensmeier and Jones 2004, Chap. 5). Previous studies of the duration of the confirmation process assume a single-state process with the only event of interest being confirmation. We argue that once a nominee enters the confirmation process, there are several substantively interesting ways to exit—confirmation, rejection or withdrawal, and failure due to inaction. Therefore, we model duration as a competing risk process (Box-Steffensmeier and Jones 2004, Chap. 10).

Findings

We look first at patterns in the outcomes and duration of the confirmation process. Of 2201 key nominations in our study, about 10% (219) were not confirmed. The low failure rate indicates that even the most important cases tend to have a presumption of success. Yet instances of failure are sufficiently common to justify identifying conditions associated with success and failure. Furthermore, the failure rate is considerably higher for judicial (22.1%) than for independent agencies (9.46%) and cabinet/EOP appointments (5.97%).

Table 1 presents information on the point at which nominations fail. Over 99% of unsuccessful nominations never reached the floor, suggesting that efforts to defeat a nominee are most effective during pre-floor phases of the process. Nominations are seldom defeated by a vote—only four cases were rejected by a floor vote and 13 were rejected by vote in committee. About 24% (53) of unsuccessful nominations were withdrawn at some point in the process. More than two-thirds of unsuccessful cases (68.5%) failed because of inaction—either the committee never held hearings (87) or the nomination stalled between committee hearings and the floor (63). About half of the failed nominations to the cabinet and independent agencies were the result of inaction whereas a huge majority of unsuccessful judicial nominations (86.7%) stalled and died when Congress adjourned.

[Table 1 about here]

Previous studies of the confirmation process treat nominations that fail at the end of a Congress as right-censored (Binder and Maltzman 2002; Martinek, Kemper, and Van Winkle 2002; McCarty and Razaghian 1999; Shipan and Shannon 2003). We argue that treating such cases as right-censored does not accurately model the confirmation process. Censoring typically occurs because a researcher ceases making observations, while some cases have not yet exited the process under investigation. The process continues after the researcher ceased observing, and all of these censored cases eventually exit. Because the researcher ceased observing, we don't know the actual duration of the process or what the mode of exit will

be. But the source of the censoring—ceasing to observe—is assumed to be random and unrelated to the reason for failure (Box-Steffensmeier and Jones 2004).

Nominations are not right-censored in this sense. A Congress runs for two years. Because opponents can use this finite time period as a tool to defeat nominations, the so-called “censoring” of cases at the end of a Congress is related to the reason for failure. When the Senate adjourns at the end of a Congress, any cases left untreated—bills not passed and nominations not confirmed—expire. The act of adjournment has the effect of defeating any untreated cases. To be eligible for consideration and action in the next Congress, a bill or a nomination must be proposed again. If a bill or nominations is proposed again, it becomes a new case with a new number and a new two-year clock. Even if the president re-nominates the same person for the same vacancy in the next Congress, the nomination that was not confirmed by the end of the previous Congress is a failure that is not substantively different from those that failed because they were withdrawn or rejected by the Senate.

Table 2 describes outcomes of the confirmation process—confirmed, rejected or withdrawn, or no action—and the length of the process by presidential administration. The duration of the confirmation process for all nominations has increased from about one-month under Johnson, Nixon, and Ford, to about one-and-one-half months under Carter and the first Reagan term, to more than two months in the second Reagan, the senior Bush, and the first Clinton administrations. Then in the second Clinton administration, the duration of the process jumped to over six months. Although the average duration for George W. Bush’s nominations during his first term declined to a little less than five months, this is substantially longer than was the case for presidents before Clinton.

[Table 2 about here]

Much of the discussion and analysis of the longer confirmation process has focused on judicial nominations. Figure 1 reveals that the confirmation process for judicial nominations is typically longer than for executive branch appointments and the lengthening of the process is most dramatic for judicial

nominations. The average length of Senate consideration of judicial nominations increased exponentially from less than two months under Johnson, Nixon and Ford to 10-11 months during the second Clinton and first Bush administrations. Although the rise is less dramatic, Senate consideration of nominations to executive branch positions has also lengthened over time, most conspicuously under Clinton. From the Johnson to the first Clinton term, executive branch appointments were processed in one or two months, with cabinet appointments taking slightly less time than those to independent agencies. During Clinton's second term, the average duration doubled to about four months for nominations to both the cabinet and independent agencies. The average duration declined somewhat during Bush's first term, but the three-month average to consider Bush's cabinet appointments is longer than for presidents before Clinton. To develop a general understanding of changes in the confirmation process, we need to analyze nominations to major offices in both the executive branch and judiciary.

[Figure 1 about here]

The confirmation process has not only become much longer, the failure rate has increased. And nominations with the longest confirmation process—federal judges—have the highest failure rate. Figure 2 shows failure rates for judicial and executive branch nominations. Before the Reagan administration, only President Ford had a failure rate higher than 10% for Supreme Court and Circuit Court appointments. Since then, the failure rate for judicial appointments has climbed steadily from about 1-in-6 during Reagan's second term, to 1-in-5 for the senior Bush, to 1-in-4 during Clinton's first term. During Clinton's second term and continuing to the first Bush term, the failure rate for appointments to federal appellate courts increased dramatically to nearly 1-in-2. Failure rates for executive branch nominations have not increased as much, though Clinton was less successful than other presidents in getting his cabinet and independent agency nominees confirmed.

[Figure 2 about here]

We have argued that these changes are the result of conscious strategy to defeat presidential nominations by stalling the confirmation process. Figure 3 shows a dramatic increase in the number and percentage of nominations that fail because they had not completed the process when Congress adjourned. From 1965 to 1980, only nine nominations failed at the end of the session because of inaction, and seven of these were nominations made after the first quarter of a presidential election year. There were about as many of these cases in each Reagan term as there were for the five preceding presidents, but less than half of these failures were nominated late in an election year. The 16 cases during the senior Bush term nearly doubles the number observed during two Reagan terms, and only four can be explained as late election-year nominations. Thus, the use of long delays to defeat some nominees appears to have started during the Reagan and senior Bush administrations, but use of this strategy escalated under Clinton, most notably during his second term. Clinton had 69 nominees defeated by delay, more than the six preceding presidents combined. About one-fifth of Clinton's second-term nominations were victims of maligned neglect. The incidence of nominations defeated through delay dropped somewhat under the current Bush administration, but it is evident that such cases are much more common than was the case before the Clinton presidency.

[Figure 3 about here]

If defeating nominations through delay is a conscious strategy, then we would expect ideological extremism to become a more common rationale than allegations of wrongdoing and lack of qualifications. Figure 4 provides evidence to support this expectation. Although the number of controversial nominees in any given Congress is small, we see that the incidence of ideological extremism as a rationale to oppose a nominee became much more common after 1981. And in every Congress since the 102nd (1991-92), the number of allegations of ideological extremism is greater than or equal to the number of allegations of wrongdoing and lack of qualifications.

[Figure 4 about here]

We see, therefore, that the nature of the process leading to failed nominations has changed. Until the 1980s, nominations rarely failed due to inaction. But the process changed after 1980, and delaying action until adjournment has become the dominant strategy to defeat presidential nominations. Given the substantive importance of this increasingly used strategy to defeat nominations, treating such failures as merely a right-censoring problem seems unwise theoretically.

We turn now to an analysis of the determinants of the outcomes and duration of the confirmation process. Table 3 shows the effects of nominee characteristics, expansion of conflict, presidential resources, and institutional conditions on two indicators of the outcome of the confirmation process. First consider the conditions that lead to confirmation or failure.

Negative information in a nominee's background exerts a major effect on whether the nomination passes or fails. Alleged wrongdoing and lack of qualifications have the strongest effect, cutting the chances of success almost in half. Ideological extremism has a significant effect on the probability of confirmation for liberals but not conservatives. Being viewed as liberal extremist cuts the chances of confirmation by .18. Since we have no cases of Republican nominees viewed as extreme liberals, this finding suggests that Republicans have been more effective using ideological opposition against Democrats.

[Table 3 about here]

In contrast to the effects of negative attributes, background characteristics that might insulate nominees from challenge have little influence. Although nominees who have weathered a previous confirmation are more successful, the marginal increase in the probability of success only about three percent. Former members of Congress are not more likely to be confirmed than nominees without congressional ties.

A strategy to socialize conflict significantly reduces the probability of confirmation, but the substantive effect is marginal. If media coverage increases one standard deviation above the mean (about five stories), the probability of confirmation declines about one percent.

Presidential resources also have only a marginal effect on the probability of confirmation. Although the president's job approval rating at the time of nomination has no significant effect, a standard deviation increase in approval over the course of the confirmation process (about 7 percent) increases the probability of confirmation about one percent. If the president goes to extra lengths to signal that a nomination is a priority in his nomination announcement, the odds of confirmation improve about two percent.

Institutional conditions also exert significant effects. Divided party control and party polarization in the Senate affect the probability of success only in conjunction with each other. At an average level of party polarization in Congress, nominations are about two percent less likely to be confirmed if party control of government is divided than if the president's party has a majority in the Senate. And if the ideological distance between the parties in the Senate increases one standard deviation, the probability of confirmation declines about two percent if party control of government is divided. Also note that getting nominees confirmed has become more difficult in the polarized period beginning in the early 1980s.

We also find additional institutional effects. Nominations made in the president's first year in office are about three percent more likely to be confirmed than nominations made at other times. Also note that appointments to the cabinet and EOP are about three percent more likely to succeed than appointments to the independent agencies. These findings might indicate a tendency to give a new president some leeway in forming his government. These positive effects, however, are less than the eight percent decrease in the odds of success for nominations made in a presidential election year. Thus, the motivation to delay acting on late nominations to await the outcome of the presidential election has a stronger effect than any tendency that might exist to allow the president leeway in forming his government.

Since blocking action until the Senate adjourns has become the most common way of defeating nominations, we should look at the effects of these variables on whether the confirmation process is completed or stalled. Although the substantive effects are smaller, several of the variables that affect the probability of confirmation also affect the probability that the process will be completed. Similar to the

traditional process, opponents still seem to target negative information about a nominee. The analysis indicates that nominees viewed as being involved in some wrongdoing, as unqualified, or being liberal extremists are more likely to have their nominations defeated by stalling action until Congress adjourns. Furthermore, characteristics expected to increase a nominee's odds of confirmation have an effect. A previous confirmation significantly increases the odds that the case completes the process. In addition, variables indicating former members of the House and Senate were dropped from the model, because no former member of Congress failed to complete the process. Being a former member of Congress may not improve the chances of success, but these nominees always receive a complete hearing.

Unlike the traditional route to defeating nominations, defeating nominations with the strategic use of delay does not require expansion of conflict. And we find that the coefficient for expansion of conflict through the media has no significant effect in this model. This result is consistent with our argument that stalling until the end of a Congress is an inside-the-beltway political strategy.

Although this analysis of outcomes reveals insights about what conditions lead to success or failure, recent studies argue that analyzing the length of time from nomination to confirmation is a more appropriate way to model the confirmation process. These studies use duration analysis to identify what variables lengthen or shorten the time to confirmation. These studies assume a "single-state process"—i.e., that nominations are at risk of experiencing only the single event of confirmation. We believe that since nominations exit the process in different ways, a competing risk model is a more appropriate way to model the duration of this process. It is unlikely that the relationships are the same for all paths of exit.

Table 4 presents the results of a competing risk analysis of the effects of nominee characteristics, expansion of conflict, and institutional conditions on the duration of the process. We use a Cox proportional hazards model (Box-Steffensmeier and Jones 2004, Chap. 4) to estimate the effects of covariates on the risk of exit. A negative coefficient indicates that increases in the variable reduce the risk

of exit, which lengthens the process; a positive coefficient indicates that increases in the variable shorten the process. We see that different processes do indeed characterize the different paths of exit.

[Table 4 about here]

For nominations that are ultimately confirmed, several variables contribute to a longer, more difficult, process. All of the negative attributes that political entrepreneurs use to oppose nominations lengthen the path to confirmation. The risk of exiting the process (i.e., being confirmed) in the next period is from 60% to 74% lower for nominees with any of these indicators of controversy than for those with no negative rationale raised. And ideological extremism has a similar affect on the length of time to confirmation as allegations of wrongdoing and lack of qualifications.

Several other variables contribute to a longer time to confirmation. Party polarization and the interaction of divided government and party polarization reduce the risk of exit. That is, during unified government, a one standard deviation increase in party polarization lowers the risk of being confirmed about 14.5%. Under divided government, if party polarization increases one standard deviation above the mean, the risk of being confirmed in the next period declines 21%. Nominations made during the polarized period (after 1980) and those made in presidential election years also have a longer path to confirmation.

In this model, divided government has no significant direct affect on the time to confirmation. This finding is at odds with other studies of the confirmation process that emphasize the strong, independent effects of divided government and party polarization on the duration of the confirmation process (Binder and Maltzman 2002; McCarty and Razaghian 1999). The sample of cases and time period studied are different here, but our finding of modest and conditional effects for divided government and party polarization is mainly due to the covariates used to model different aspects of the process. We estimated our model omitting different sets of covariates. In models without the indicators of timing during the president's term (*First Year* and *Presidential Election Year*), the coefficient for divided government is

negative and significant, indicating that divided government has a direct effect on lengthening the process.⁸ Given the substantive importance of timing during the president's term to understanding the confirmation process, we believe the model is better specified with these variables included. This finding suggests that divided government has little direct effect on the length of the process once the differences in the first year and the election year are modeled.

Several variables tend to shorten the time to confirmation. Former senators have a shorter confirmation process (risk of confirmation in the next period increases 233%), while having been previously confirmed has a more modest effect (19% increase in the risk of exit). Consistent with news reports, appellate court nominations have longer, more contentious confirmations (39% decrease in the hazard rate relative to independent agencies), but nominees to the cabinet and EOP have shorter confirmations. Nominations made in the first year of a president's term also have shorter confirmations.⁹

Notice that the process leading to confirmation is characterized by variables that lengthen the process and others that shorten it. The duration of the process ending in rejection or withdrawal of the nomination, in contrast, is fundamentally different. Accusations of wrongdoing and concerns about qualifications shorten the process leading to defeat, the opposite effect as in the model of confirmations. And the percentage change in the risk of defeat associated with these rationales is 1.5 to 4.5 times greater than their impact on the length of confirmations. Being viewed as an ideological extremist, in contrast, has no effect on the risk of exit for cases destined for defeat. Recall that these negative attributes are not objective indicators, but rather charges or "excuses" that opponents raise to build opposition to a nominee.

⁸The significance and substantive effect of other variables are similar, except that presidential approval is significant in models without the timing variables. The substantive impact of divided government (change in risk = -14.5%), however, is less than one-third of that reported in other studies (-46.5%) (Binder and Maltzman 2002, 196). Limiting the analysis to judicial nominations, the impact of divided government in our model (-.26.9%) is half that reported in Binder and Maltzman's study of federal judges.

⁹Controls for workload have only modest effects. Previous studies included time remaining from nomination date to the end of the Congress. We omit this variable because we cannot include it in the model of failures due to inaction. Days remaining in the Congress is not statistically significant in the models of confirmations and defeats.

Some charges of wrongdoing and poor qualifications are sufficiently credible and grave to lead to quick defeats. Others are insufficient to stop confirmation, but can lengthen that process. Accusations of ideological extremism indicate policy disagreements. This negative information can delay confirmation, but unlike wrongdoing and qualifications, policy disagreements do not affect the hazard rate of nominations destined for defeat. Former Senators who are ultimately rejected tend to be rejected more quickly than others. At average party polarization, divided government also has the effect of shortening the time to rejection. But high polarization during divided government lengthens the process, and the path to rejection is longer in presidential election years.

Also note that the duration of the process ending in defeat is affected by expansion of the conflict in the news media. Expansion of conflict increases the probability of failure (see Table 3), and it tends to shorten the time from nomination to defeat. This result is consistent with our argument that these are cases defeated through the traditional process of identifying negative information and expanding the conflict outside of the Senate to attract more opposition to the nominee.

In addition to confirmation and rejection, some nominations exit the confirmation process because a small number of Senators exploit the rules of the Senate to block final action final until that Congress adjourns—a strategy of defeat by maligned neglect. Indeed, blocking final action has become the most common method of defeating nominees. Since defeat by stalling is an inside-the-beltway strategy that does not require expanding controversy in order to attract more opponents, we expect variables associated with other states of the confirmation process will operate differently in this model. We see that neither expanding conflict in the news media nor indicating that the nomination is a priority affect the duration of the process. And while increasing public approval of the president shortens the processes leading to failure and rejection, a rise in popularity lengthens the process of failure by neglect. Rising popularity may bolster the president's resolve to get his nominee confirmed, but the few Senators needed to block action have little to fear from a popular president.

The nature of this strategy also leads to the expectation that allegations of ideological extremism will be the primary rationale. We find that perceptions of extreme liberalism and extreme conservatism have identical affects, lowering the risk of exit by 50%. Allegations of wrongdoing and lack of qualifications have no affect on the duration of this process. If there is credible evidence of wrongdoing or poor qualifications, opponents are likely to engage in the traditional strategy to defeat the nomination. Recall that these rationales strongly affected the duration of the process leading to rejection or withdrawal.

Furthermore, institutional conditions affect the duration of nominations defeated by inaction in different ways. Divided government and party polarization in the Senate directly affect the risk of exit, but the interaction is not significant. In models of the other states, it was the interaction of divided government and polarization that had the greatest effect. While divided government shortens the duration of the stalling process, party polarization has contributed to a longer process. This finding might indicate that as polarization has increased and ideological extremism has become a more common rationale, presidents are less inclined to withdraw controversial nominees because they view opposition based on policy differences a less legitimate rationale than wrongdoing and poor qualifications.

Nominations destined to fail by inaction have shorter durations in presidential election years than those made in other years. This coefficient is artificially large because nominations made in an election cannot linger as long as nominations made in the first year of a Congress. But this result is consistent with our observation that some of these failures are due to nominations made during a time when Senators' attention has turned to reelection and to the upcoming presidential election.

Conclusions

The confirmation process has changed. An increase in the time required to confirm nominations is perhaps the most visible indicator of an altered process, but it is not the most noteworthy. If the length of the confirmation process doubles from one month to two months and then doubles again but outcomes remain the same (confirmation), then the implication for the president's appointment power is minor if not

trivial. But outcomes of this longer process are not the same. Unsuccessful nominations have become more common in recent years, and the way nominations are defeated has changed. Nominations failing due to inaction were once rare, occurring mostly in election years. The number of such failures increased somewhat during the Reagan and senior Bush presidencies, but then expanded dramatically during the Clinton years and continued through Bush's first term. The dominant source of failure has become a purposeful strategy of defeat by maligned neglect.

Given such fundamental change, analyzing the number of days to confirmation is not the most appropriate dependent variable to understand the process. A complete understanding of the confirmation process requires analysis of outcomes, including not only whether the nomination is confirmed or not, but also whether a nomination received complete consideration ending in confirmation or rejection, or died of maligned neglect. Changing the dependent variable from outcomes to time and modeling the hazard rate is not the key to understanding the confirmation process. Rather, understanding the process requires specifying the variables that capture key aspects of the process leading to different outcomes. Our analysis suggests that the most important of these variables is an indication that opponents have identified some negative information that can be used to build opposition, or at least be used as an excuse to stall the nomination and wait for adjournment. In addition, expansion of the controversy contributes to failures. And if this process occurs during divided government when polarization is high, failures are more likely.

These same variables also explain why the process leading to confirmation has increased. Even without these changes, however, analyzing only the length of time to confirmation does not accurately model the process. The confirmation process is a multi-state process with multiple paths of exit, and the processes leading to different types of exit are not the same. Allegations of wrongdoing and concerns about qualifications, variables that lengthen the path to confirmation, have the opposite effect on nominations that are rejected or withdrawn. Ideological extremism has no affect on the traditional process of rejection, but ideological extremism is the only rationale (or excuse) associated with the duration of cases defeated

by inaction. Moreover, expanded conflict and presidential activities do not affect the duration of stalling an additional indication that failure by stalling differs from the traditional method of defeating presidential nominees. The effects of divided government and party polarization also vary with the mode of exit. These results provide strong evidence that the confirmation process is more appropriately modeled as a competing risk process.

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TABLE 1
Point at Which Nominations Failed

Point of Failure	Cabinet & EOP		Agcy & Gov Corp		Judicial		All	
	%	N	%	N	%	N	%	N
Failed by Action of Senate	8.33	7	13.33	4	5.71	6	7.77	17
Floor rejection	1.19	1	0.00	0	2.86	3	1.83	4
Committee rejected by vote	7.14	6	13.33	4	2.86	3	5.94	13
Withdrawn by President	41.67	35	30.00	9	7.62	8	23.75	52
Withdrawn after committee report	11.90	10	6.67	2	0.95	1	5.94	13
Withdrawn before committee vote	11.90	10	3.33	1	2.86	3	6.39	14
Withdrawn before committee hearing	17.86	15	20.00	6	3.81	4	11.42	25
Failed Due to Stalling	50.00	42	56.67	17	86.67	91	68.50	150
Stalled between committee and floor	19.05	16	16.67	5	19.05	20	18.72	41
Stalled between hearing and committee vote	4.76	4	10.00	3	14.29	15	10.05	22
No hearings held	26.19	22	30.00	9	53.33	56	39.73	87
Total Failures	5.97	84	9.46	30	22.06	105	9.95	219
Total cases in category		1408		317		476		2201

TABLE 2
Outcome of Nominations by Administration, 1965-2004

Presidential Administration	Confirmed			Rejected or Withdrawn			No Action			All Nominations	
	%	Avg. Days	N	%	Avg. Days	N	%	Avg. Days	N	Avg. Days	N
Johnson	99.0	30.1	99	0.0	--	0	1.0	110.0	1	30.9	100
Nixon I	97.6	26.2	165	2.4	101.5	4	0.0	--	0	27.9	169
Nixon II	95.5	27.9	85	3.4	140.0	3	1.1	91.0	1	32.4	89
Ford	93.7	32.3	89	3.2	116.0	3	3.2	57.3	3	35.7	95
Carter	95.7	46.0	199	2.4	89.6	5	1.9	182.3	4	49.7	208
Reagan I	93.7	38.1	209	2.7	131.5	6	3.6	314.1	8	50.5	223
Reagan II	91.1	59.4	205	4.9	140.4	11	4.0	227.9	9	70.1	225
Bush Sr.	92.1	56.6	246	1.9	97.6	5	6.0	256.7	16	69.4	267
Clinton I	90.7	62.8	243	2.2	127.0	6	7.1	184.4	19	72.9	268
Clinton II	73.6	109.7	184	6.4	194.3	16	20.0	363.8	50	165.9	250
Bush	84.0	86.2	258	3.3	206.6	10	12.7	458.6	39	137.4	307
Total	90.0	57.2	1982	3.2	150.4	69	6.8	329.0	150	78.7	2201

TABLE 3
Determinants of Outcomes of Presidential Nominations, 1965-2004

Independent Variables	Pass/Fail				Completed/Stalled			
	Coef.	S.E	z	Δ prob.	Coef.	S.E.	z	Δ prob.
NOMINEE CHARACTERISTICS								
Extreme Conservative	-1.114	0.736	-1.51		-0.287	0.807	-0.36	
Extreme Liberal	-1.777***	0.635	-2.80	-0.18	-1.574***	0.647	-2.43	-.06
Qualifications a Concern	-2.992***	0.524	-5.71	-0.45	-2.313**	0.824	-2.81	-.13
Alleged Wrongdoing	-2.980***	0.483	-6.17	-0.44	-2.531***	0.553	-4.58	-.16
Previously Confirmed	0.810***	0.214	3.78	0.03	0.909***	0.266	3.41	.01
Former House Member	0.518	0.873	0.59		--	--		
Former Senator	0.820	0.815	1.01		--	--		
EXPANSION OF CONFLICT								
New York Times Coverage	-0.043*	0.024	-1.83	-0.01	-0.004	0.019	-0.22	
PRESIDENTIAL RESOURCES								
Presidential Approval	0.004	0.009	0.42		0.011	0.012	0.87	
ΔPresidential Approval	0.032**	0.013	2.48	0.01	0.037**	0.016	2.37	0.005
Initial Presidential Priority	0.015*	0.008	1.80	0.02	0.023*	0.011	2.03	0.009
INSTITUTIONAL CONDITIONS								
Divided Government	-0.394*	0.212	-1.86	-0.02	-0.004	0.280	-0.01	
Party Polarization	-0.753	1.013	-0.74		-2.441*	1.247	-1.96	-0.007
Divided Govt * Polarization	-2.952**	1.261	-2.34	-0.02	-3.491*	1.722	-2.03	-0.007
First Year of Term	0.658***	0.228	2.88	0.03	0.750**	0.309	2.43	0.01
Presidential Election Year	-1.169***	0.211	-5.55	-0.08	-1.778***	0.259	-6.87	-0.06
Polarized Period (post-1981)	-0.759***	0.292	-2.60	-0.03	-1.202**	0.406	-2.96	-0.02
TYPE OF OFFICE								
Supreme Court/Circuit Court	-0.643**	0.273	-2.36	-0.04	-1.208***	0.342	-3.53	-.03
Cabinet/EOP	0.516*	0.247	2.09	0.03	0.661*	0.322	2.05	.01
Constant (Reg. Agcy/Govt. Corp.)	3.030	0.583	5.19		3.706	0.856	4.33	
N of Cases	2201				2201			
Wald chi2(19)	222.23				277.37			
Prob > chi2	0.000				0.000			
Log pseudolikelihood	-517.753				-359.478			
Pseudo R ²	0.274				0.344			
% Correctly Predicted	91.23				93.78			
% in Modal Category	90.04				93.18			

Dependent variable in the Pass/Fail model is confirmed (1) or not confirmed (0). Dependent variable in the Completed/Stalled model is whether the nomination completed the process (confirmed/defeated = 1) or stalled and died due to inaction when the Congress adjourned (0). Party polarization in the Senate is centered on its mean (i.e., 0 = average polarization). Entries are logit coefficients with robust standard errors estimated by Stata 8.0. % Δ probability was calculated using *mfx compute* in Stata 8.0 using a change of 0 to 1 for dichotomous variables and a one-standard deviation change for continuous variables. *p < .05, **p < .01, ***p < .001.

TABLE 4
Competing Risk Analysis:
Explaining the Duration of Presidential Nominations by Type of Exit, 1965-2004

	Confirmed				Rejected/Withdrawn				Stalled				
	Coef.	S.E.	z	% Δ in Risk	Coef.	S.E.	z	% Δ in Risk	Coef.	S.E.	z	% Δ in Risk	
NOMINEE CHARACTERISTICS													
Extreme Conservative	-0.875***	0.254	-3.44	-58.33	0.357	0.461	0.77		-0.696*	0.346	-2.01	-50.14	
Extreme Liberal	-1.284***	0.281	-4.58	-72.30	0.078	0.898	0.09		-0.706*	0.347	-2.04	-50.62	
Qualifications a Concern	-1.351***	0.387	-3.49	-74.09	1.458**	0.540	2.70	329.70	0.351	0.480	0.73		
Alleged Wrongdoing	-1.352***	0.256	-5.29	-74.13	0.800*	0.477	1.68	122.63	0.565	0.373	1.51		
Previously Confirmed	0.174***	0.052	3.36	19.01	0.278	0.274	1.01		-0.262	0.183	-1.43		
Former House Member	0.141	0.184	0.77		0.010	0.591	0.02		--	--	--		
Former Senator	1.203***	0.272	4.42	232.89	1.299*	0.772	1.68	266.53	--	--	--		
EXPANSION OF CONFLICT													
NYT Coverage	-0.008	0.007	-1.12		0.032***	0.010	3.19	17.16	-0.002	0.014	-0.16		
PRESIDENTIAL RESOURCES													
Presidential Approval	-0.002	0.003	-0.84		0.029	0.019	1.49		-0.022	0.017	-1.32		
Δ Presidential Approval	0.008**	0.003	2.67	6.27	0.026*	0.016	1.64	21.13	-0.028**	0.012	-2.33	-19.02	
Initial Pres Priority	0.002*	0.002	1.61	5.89	0.000	0.008	0.03		-0.012	0.009	-1.28		
INSTITUTIONAL CONDITIONS													
Divided Government	-0.006	0.053	-0.11		0.841***	0.281	3.00	131.94	0.565**	0.250	2.26	75.95	
Party Polarization	-0.904***	0.279	-3.24	-14.53	-1.198	1.861	-0.64		-2.317*	1.435	-1.61	-33.12	
Div Govt * Polarization	-1.954***	0.314	-6.22	-21.10	-3.464*	2.036	-1.70	-34.29	1.567	1.307	1.20		
First Year of Term	0.550***	0.058	9.50	73.38	0.225	0.350	0.64		-0.288	0.294	-0.98		
Pres Election Year	-0.345***	0.071	-4.87	-29.20	-1.126*	0.609	-1.85	-67.58	2.469**	*	0.344	7.17	1080.82
Polarized Period	-0.570***	0.096	-5.94	-43.42	-0.700	0.516	-1.36		0.392	0.451	0.87		
TYPE OF OFFICE													
Sup Court/Circuit Court	-0.487***	0.088	-5.52	-38.53	-1.622***	0.453	-3.58	-80.24	-0.397	0.279	-1.42		
Cabinet/EOP	0.278***	0.076	3.68	32.01	0.173	0.355	0.49		-0.367	0.287	-1.28		
WORKLOAD CONTROLS													
Votes in Session	-0.002***	0.000	-5.72	-17.28	0.000	0.002	0.04		-0.001	0.001	-1.05		
Days in Session	0.000	0.001	-0.20		-0.006	0.008	-0.77		0.020**	0.007	3.00	71.53	
Wald chi2		812.42				258.342				206.42			
LR chi2		0.000				0.000				0.000			
Log pseudolikelihood		-13165.29				-360.205				-635.70			
N of Cases		2201(1982)				2201 (69)				2201 (150)			

Competing risk analysis conducted as suggested by Box-Steffensmeier and Jones (2004, 166-69).
Cox Models estimated with Stata 8.0 with robust errors.*p < .05, **p < .01, ***p < .001

Figure 1
Increasing Length of the Confirmation Process

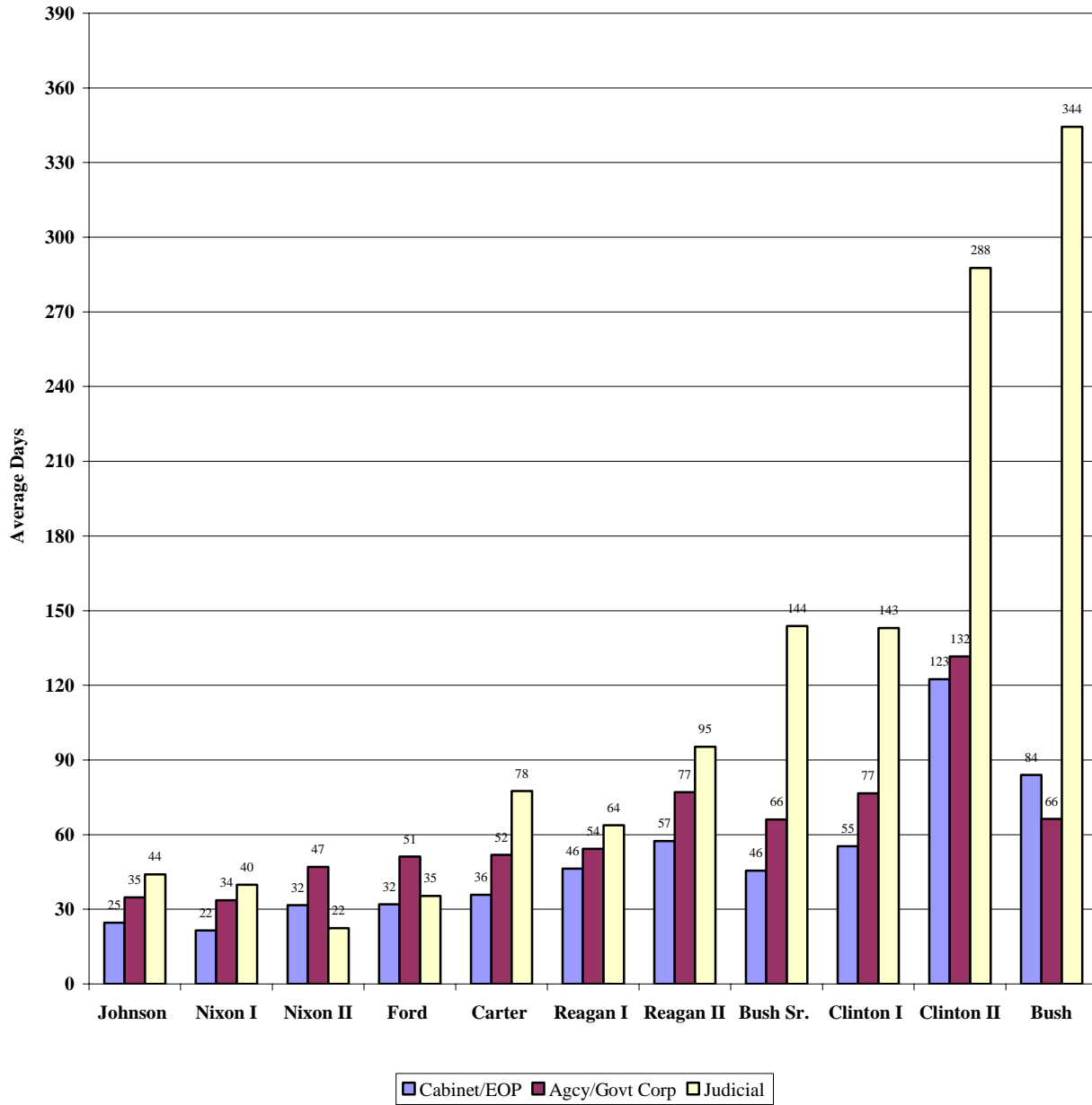


Figure 2
Increasing Failure Rates

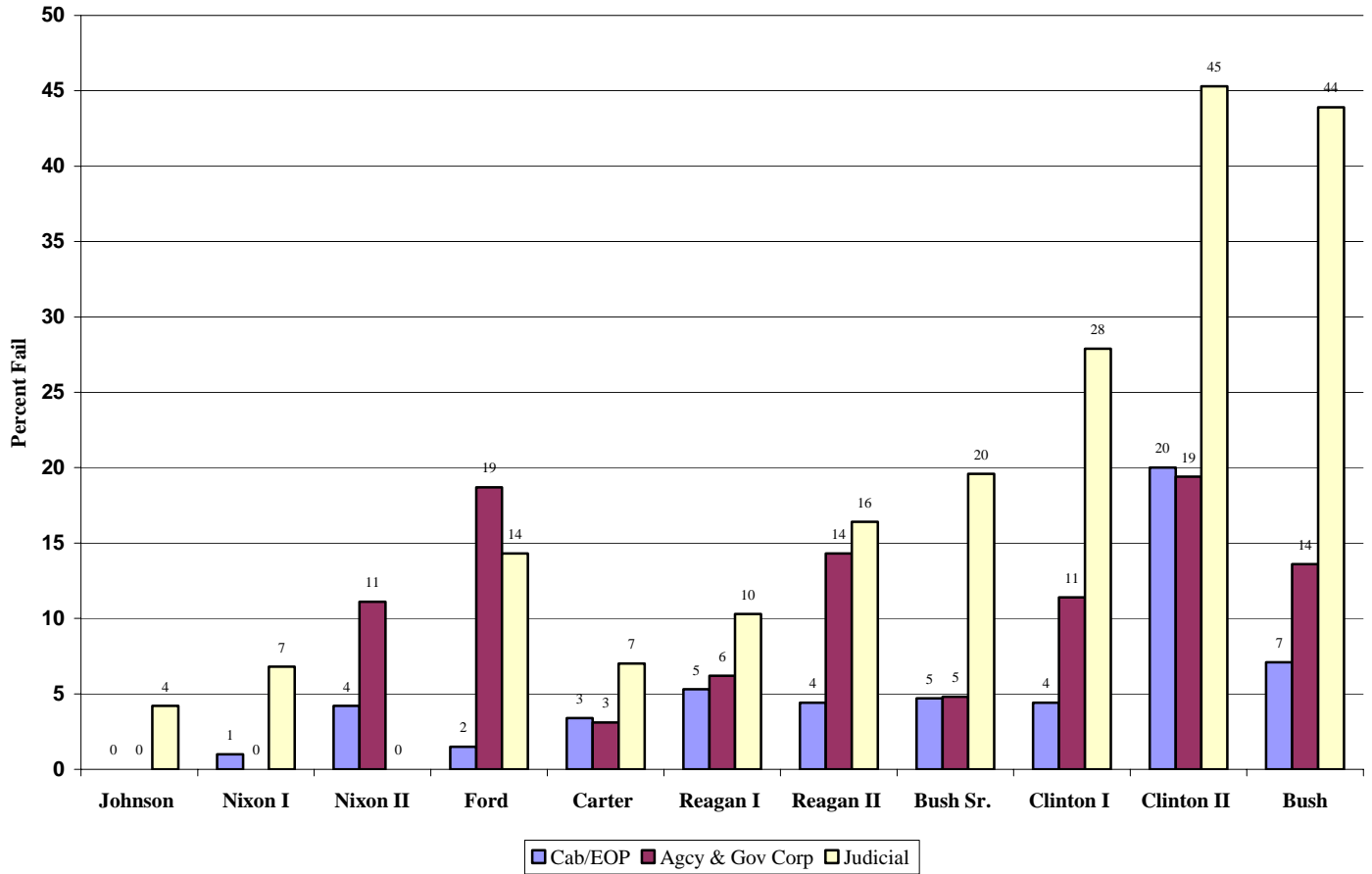


Figure 3
Increasing Use of Stalling to Defeat Presidential Nominations

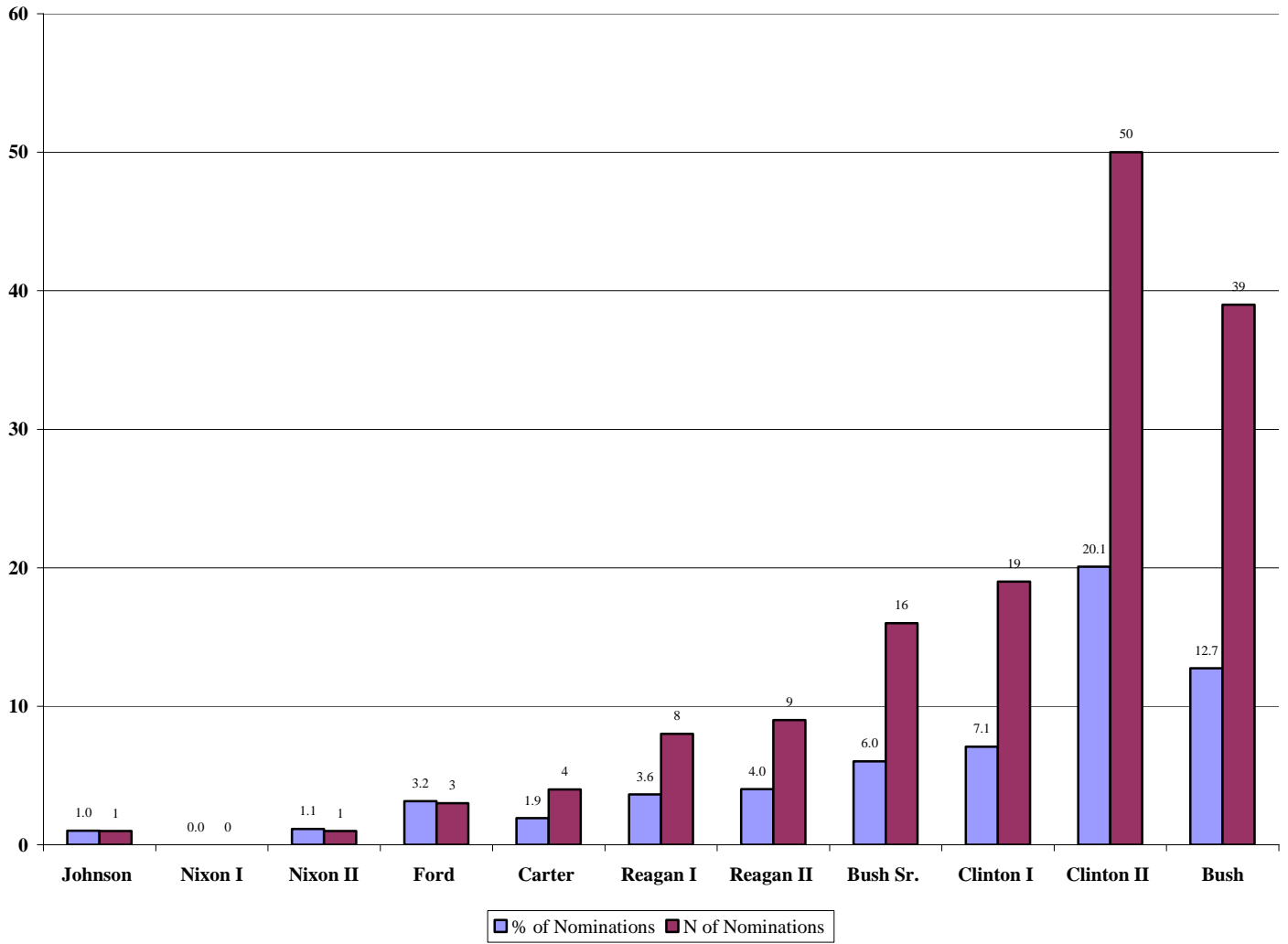


Figure 4
Changing Rationales for Opposing Presidential Nominees

