

# Confirmation Dynamics: Differential Vetting in the Appointment of U.S. Federal Agency Leaders

George A. Krause  
University of Georgia

and

Jason S. Byers  
University of Michigan

*Version 9.00 (Conditionally Accepted Version Submitted to  
The Journal of Politics; Post-DART Verification Approved)*  
July 7, 2021

---

Keywords: Senate Confirmation Delay; Appointment Politics; Bureaucratic Leadership in U.S. Federal Agencies, Shared and Separated Powers; Differential Vetting of Executive Nominees.

## Abstract

Confirmation delay is decomposed to better understand both *when* and *why* the Senate augments its efforts to vet presidential nominees. Distinctions among expedited, normal, and protracted confirmation processes are analyzed, as well as those between the work of Senate standing committees and chamber floor. A theory of *ex ante* moral hazard reduction is proposed which predicts that as the confirmation process becomes increasingly protracted in response to rising potential agency costs, the Senate will be increasingly swifter to confirm Tier 1 top executive leaders to U.S. federal agency leadership positions than Tier 2 subordinate leadership nominees. The statistical evidence is consistent with this theory of differential vetting between nominee tiers for both Senate party polarization and the nominee's loyalty to the appointing president, as well as for agency decision-making independence restricted to protracted confirmation processes. Yet, such differential vetting is not empirically observed in response to inter branch policy conflict.

## Short/Running Title: "Confirmation Dynamics"

\* Supplementary material for this article is available in an *Online Appendix* in the online edition.

Replication files are available in the JOP Data Archive on Dataverse

(<http://thedata.harvard.edu/dvn/dv/jop>). The empirical analysis has been successfully replicated by the JOP replication analyst.

Presidential appointments to U.S. federal agencies reflect a critical manifestation of shared power between separate political branches enumerated in the U.S. Constitution. According to Article II Section 2, the Senate has a constitutional duty to both vet and confirm presidential nominees. Presidents, however, enjoy considerable unitary power over executive branch personnel matters external to the confirmation process. This power is manifested through both the creation of appointed positions (Lewis 2008) and the appointment of loyalist individuals that do not require Senate confirmation in Schedule C and Non-Career SES positions (e.g., Hollibaugh, Horton, and Lewis 2014; Hollibaugh 2015; Moore 2018). Because the Senate lacks formal authority to remove these individuals from office once confirmed, they play a powerful *ex ante* gatekeeping role by delaying confirmation of executive appointments, even at the detriment to effective administrative governance (e.g., O'Connell 2009, 2014).

This study analyzes the Senate's willingness to disrupt executive branch governance through the vigorous vetting of presidential appointments to bureaucratic leadership positions. A theory is advanced that is premised on the Senate seeking to reduce moral hazard *ex ante* given the irreversible nature of positive confirmation decisions. Specifically, the Senate incurs higher agency costs in the form of effective *ex post* accountability and monitoring for nominees in lower agency positions vis-à-vis those in higher positions within an administrative hierarchy. This theory predicts that as the risks associated with Type I confirmation errors increase, the Senate will *conditionally* take less time to confirm nominees for higher positions (*Tier 1 nominees*) compared to those directly underneath them (*Tier 2 nominees*) within the agency hierarchy as the confirmation process becomes more protracted.

These propositions are evaluated using data on a sample of 1,013 confirmed nominees for PAS upper echelon bureaucratic leadership positions spanning 50 administrative units comprised of 35 major U.S. federal agencies for the 1981-2008 period. These set of PAS administrative positions contain disproportional influence over both the policymaking and administrative direction of these public agencies. These positions contain individual-level characteristics known to Senators at the time of a nominee's selection such as their loyalty to the appointing president based on both shared political orientation and fealty characteristics, as well as their policy expertise and managerial skills related qualifications, which are generated from a structural Bayesian generalized latent trait model (see Krause and O'Connell 2016, 2019).

The evidence highlights the heterogeneous nature of confirmation delay consistent with the theory. Specifically, the empirical findings suggest that differential vetting of nominees within the agency hierarchy of positions is rooted heavily in informational vetting in the Senate committee portion of the confirmation process that reflects internal coordination problems experienced within the Senate, as well as the *ex post* administrative responsiveness problems posed by both insulated and presidential loyalist nominees. The next section advances a novel logic to understand differential vetting of presidential appointments.

### **EXERCISING 'DUE DILIGENCE': HETEROGENEOUS SENATE CONFIRMATION DELAY AS AN EX ANTE MEANS OF REDUCING MORAL HAZARD**

Confirmation delay in the U.S. executive appointment process emphasizes the Senate's calculus for undertaking strategic delay of appointments as an institutional check against presidents' personnel choices (e.g., see Ba, Schneider, and Sullivan 2019; Chiou and Rothenberg 2014; Hollibaugh 2015; Hollibaugh and Rothenberg 2018; McCarty and Razaghian 1999;

Ostrander 2016). These studies offer critical insights into the Senate's role in confirmation delay within a separation of powers system. Yet, existing research does not consider the contextual nature of differential vetting, based on how position type within an administrative hierarchy can conditionally impact how the dual challenges of both political fragmentation and administrative responsiveness can exacerbate confirmation delay.

These issues represent a pair of important considerations for understanding confirmation politics since the Senate has an incentive to be increasingly deliberative with the passage of time. The 'Due Diligence' theory proposed here relies on two core assumptions. The first assumption is that the Senate's willingness to play a vigilant gatekeeping 'consent' role granted via Article II Section 2 is positively related to the potential agency costs that they incur once the nominee is confirmed and can influence policy and administration. Given the irreversible nature of executive confirmation decisions, the Senate will be averse to Type I confirmation errors when they hastily confirm an individual whom latter imposes higher agency costs for the Senate via policy subversion or greater *ex post* legislative monitoring efforts. The second assumption posits that the Senate exhibits lesser delay in confirming bureaucratic leadership agents chosen to serve in Tier 1 top executive PAS positions (e.g., cabinet secretaries, administrator/director of full stand-alone agencies, commission or board chairpersons) than compared to Tier 2 subordinate leadership PAS positions (e.g., assistant/deputy/under cabinet secretaries, under cabinet secretaries and directors, deputy directors/administrators, commission or board members). Nominees for positions higher within the agency hierarchy more adversely impact coordination and control for effective administration of agency programs, and hence, are a higher staffing priority for the Senate (McCarty and Razaghian 1999:

1129). In addition, appointees holding higher positions within an administrative hierarchy tend to be easier for the principal to exert influence over than compared to subordinates in positions underneath them (e.g., see Hammond and Thomas 1989; Light 1995). That is, Tier 1 nominees not only are both easier to monitor and hold accountable, but also generally enjoy a higher public profile, compared to multiplicity of Tier 2 nominees underneath them for a given agency.

This study analyzes two key sources of Senate agency costs that arise given the irreversible nature of the confirmation decision: political fragmentation and prospects for administrative responsiveness. Political fragmentation between the president and Senate, as well as between the parties within the chamber, makes it more costly for the Senate to commit Type I confirmation errors for Tier 2 nominees vis-à-vis Tier 1 nominees. Political fragmentation will therefore generate swifter confirmations for Tier 1 nominees compared to Tier 2 nominees. Further, the Senate's agency costs relating to the prospects for administrative responsiveness will be more acute for the Senate regarding lower profile Tier 2 nominees than their Tier 1 counterparts. Tier 1 nominees therefore will experience swifter confirmations than Tier 2 nominees attributable to conditional effects relating to administrative responsiveness. The Senate must not only overcome both conflict with an external principal and internally within their own institution, but also address moral hazard concerns generated from bureaucratic agents' *ex ante* via the confirmation process. Tier 1 nominees thus bear less of a burden relating to these costly delays than do Tier 2 nominees.

Substantial variation in confirmation delay can be attributed to the Senate's efforts at *ex ante* moral hazard reduction through the vigorous exercise of their advise and consent powers. Confirmation delay rarely occurs via tools of formal obstruction. For instance, only 50 nominees

out of a sample of 4,661 nominees experience a Senate hold (Howard and Roberts 2020: 417-418). Rather, confirmation delay may take many different forms that do not require formal obstruction. Greater labor effort is routinely expended by both Senate committees and Senate floor members involving information acquisition and deliberation regarding the merits and qualifications of the nominee. For example, the nomination of Alexis Herman as Secretary of Labor in 1997 was delayed in the Senate Labor Committee due to an ongoing set of disclosures that prolonged the committee's scrutiny of this case according committee chair Jim Jeffords (R-VT) (Wines 1997). Confirmation delay may also be prolonged at the Senate floor stage in response to voiced concerns and requests for additional inquiry. For example, Gordon England's nomination as Deputy Secretary of Defense in 2005 was held up for 251 days on the Senate floor after being reported out of the Armed Services Committee based on potential financial conflicts and the nominee's tenure as Secretary of the Navy (Graham 2005; Stein 2005).

When the Senate becomes increasingly constrained in its capacity to effectively monitor or sanction the subsequent behavior of these confirmed nominees, they will more carefully vet Tier 2 nominees whom they know less about, and if confirmed, experience greater difficulty both monitoring and holding accountable, compared to Tier 1 nominees. Additional information and deliberation becomes even more critical for Tier 2 nominees since they are often in line for a formal promotion to a Tier 1 position, while also enabling these individuals to avoid Senate confirmation through various temporary appointment procedures that allow them to serve as acting or interim chief executive for a sustained period of time (e.g., Black, et al. 2011; Kinane 2021; O'Connell 2014). Among upper-echelon U.S. federal political executives, Krause and O'Connell (2019) find that loyalty-competence tradeoffs are noticeably less pronounced for

subordinate level bureaucratic appointed leaders compared to appointees in chief executive supervisory positions. Thus, greater vetting of Tier 2 nominees by the Senate is undertaken to obtain a much clearer sense of their agent type. This vetting differential is hypothesized to increase as the confirmation process becomes more protracted.

As the Senate experiences greater policy conflict with the appointing president, the risk associated with confirming the president's nominee for a Tier 2 subordinate agency leadership position becomes much greater than it does for a Tier 1 supervisory agency leadership position. The Senate will therefore engage in *ex ante* moral hazard reduction as Senate-president policy conflict expands by providing additional vetting of low information Tier 2 nominees relative to high information Tier 1 nominees. This Senate vetting differential will grow as confirmation delay rises since it signals rising uncertainty about the nominee. This leads to the first hypothesis centered on the 'Due Diligence' logic:

**H1: Inter Branch Policy Conflict Differential Vetting Hypothesis:** *Ideological Conflict*

*between the President and Senate produces shorter Confirmation Delay for Tier 1 nominees than Tier 2 nominees that expands as confirmation processes become longer.*

The Senate confirmation process will also be affected by their own collective action problems via party polarization (e.g., McCarty and Razaghian 1999; Hollibaugh and Rothenberg 2018; Ostrander 2016). That is, the Senate's potential agency costs of confirming nominees are much greater when party polarization within the Senate rises. Tier 1 nominees, however, impose *conditionally* lower potential agency costs on the Senate relative to Tier 2 nominees serving in agency leadership positions. Because Tier 1 nominees impose lower potential agency costs on the Senate, this institution's efforts at *ex ante* moral hazard reduction

in the presence of greater chamber collective action problems will be more robust for Tier 2 nominees compared to Tier 1 nominees, while this vetting differential expands the lengthier that the confirmation process becomes for a given nominee. This yields the second hypothesis.

**H2: Intra Branch Policy Conflict Differential Vetting Hypothesis:** *Partisan Polarization*

*within the Senate produces shorter Confirmation Delay for Tier 1 nominees than Tier 2 nominees that expands as confirmation processes become longer.*

The above hypotheses focus on how political fragmentation differentially shapes confirmation delay for different positions within administrative hierarchies rooted in a political system that limits the Senate's capacity to alter the *ex post* behavior of appointed U.S. federal agency leaders.

Because the Senate confirmation process constitutes an irreversible personnel decision, Senators will therefore have less incentive to engage in greater *ex ante* moral hazard reduction of Tier 1 nominees than Tier 2 nominees when they presume that administrative responsiveness will be lower for these class of appointed agency leaders. The source of this administrative responsiveness can either be hardwired into an agency by design (e.g., Lewis and Selin 2015; Selin 2015), as well as reflect the expected relationship between the nominee and the appointing president based on publicly available information known at the time of nomination (e.g., Krause and O'Connell 2016, 2019). Specifically, the Senate can expect to find it more difficult to elicit responsiveness from appointed agency leaders enjoying greater decision-making independence resulting from structural insulation from political influence. Senators will view nominees for U.S. federal agency leadership positions that have staggered terms, partisan balancing requirements, or less organizational proximity to the presidency, with greater discernment than compared to counterparts whose positions are less insulated from politics.



The Senate has an incentive to engage in successively shorter confirmation delay for Tier 1 nominees relative to Tier 2 nominees as nominees become more insulated from politics.

Similarly, nominees whose profile known at time of nomination suggests that they will serve as strong presidential loyalists will be viewed with greater circumspection by the Senate. Consistent with the theory proposed here, the nominee's loyalty to the appointing president will incur relatively additional Senate scrutiny for Tier 2 nominees compared to Tier 1 nominees. That is, in each case, the differential vetting between lower profile Tier 2 nominees vis-à-vis higher profile Tier 1 counterparts arising from these potential agency costs are expected to be increasing in the duration of the confirmation process. This produces the next pair of 'Due Diligence' related hypotheses:

**H3: Decision Maker Independence Differential Vetting Hypothesis:** *Nominees in Agencies with Decision Maker Independence produces shorter Confirmation Delay for Tier 1 nominees than Tier 2 nominees that expands as confirmation processes become longer.*

**H4: Presidential Nominee Loyalty Differential Vetting Hypothesis:** *Nominees that are Expected to be More Loyal to Presidents produce shorter Confirmation Delay for Tier 1 nominees than Tier 2 nominees that expands as confirmation processes become longer.*

To clarify, **H1-H4** constitute a distinct logic from the agency hierarchical staffing prioritization hypothesis advanced by McCarty and Razaghian (1999: 1129) insofar that agency position *conditionally* exacerbates the consequences of political fragmentation and lack of administrative responsiveness on confirmation delay. Next, the empirical strategy adopted for evaluating these theoretical hypotheses are presented.

## EMPIRICAL STRATEGY

### *Confirmation Delay: Characterizing Empirical Variation*

The Senate confirmation process constitutes a balancing act. While nominees need to be confirmed in a timely manner to ensure both the smooth and effective functioning of federal agencies (e.g., O’Connell 2009, 2014, Light 1995; cf. Mendelsohn 2015), the Senate must also exercise its only effective means to check executive authority over personnel decisions. This tension explains why some presidential nominees are confirmed within a few days or a couple of weeks, while others can wait a year, or perhaps even longer.

Data are evaluated from Krause and O’Connell (2016, 2019) covering 1,013 current PAS confirmed appointees for upper-echelon political executive positions in U.S. federal agencies that underwent the Senate confirmation process (excluding those confirmed in a subsequent Congress for the same position under the same appointing president<sup>1</sup>, PAS holdovers in current appointed bureaucratic leadership positions, and non-PAS positions). Upper-echelon political executives are comprised of 332 *Tier 1* confirmed chief executive positions serving as the highest official within each administrative unit (i.e., cabinet secretaries, sub-department executive agency heads, administrator/director of full stand-alone agencies, and commission or board chairpersons) and 681 *Tier 2* confirmed subordinate leadership positions (i.e., assistant/deputy/under cabinet secretaries, under cabinet secretaries and directors, deputy administrators, and commission or board members). These data span 50 U.S. federal

---

<sup>1</sup> Those 22 cases where this takes place are treated as right-censored observations since they must be reintroduced and reconsidered in a different Congress.

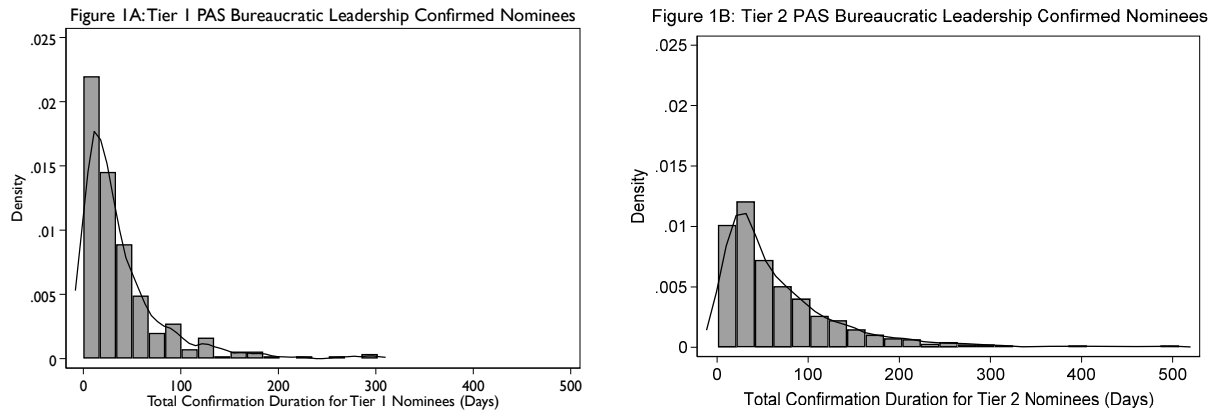
administrative units comprised of 35 major agencies from the beginning of the Reagan presidency through the end of the George W. Bush presidency.<sup>2</sup>

Senate confirmation delay is analyzed as time-to-event data measured as the number of days elapsed from the presidential nomination date to the confirmation approval date, for those nominees confirmed within the current Senate that they were nominated (N = 991 uncensored observations). Both the empirical distribution and kernel density estimates of overall confirmation delay for PAS U.S. federal agency leadership positions for top level and subordinate agency leadership positions appear respectively in **Figures 1A & 1B**. These graphs reveal that each nominee group exhibits a highly positively skewed distribution with many expedited Senate confirmation processes being more commonplace than protracted confirmation processes. The median confirmation delay among these uncensored observations is 23.5 days for Tier 1 nominees and 49 days for Tier 2 nominees. The lower quartile of successfully confirmed nominees are completed within 11 days of nomination for Tier 1 Nominees and 23 days for Tier 2 nominees. The upper quartile of these distributions completed from the onset of the formal nomination process ranging between 50 days and 302 days for Tier 1 nominees (skewness = 2.59), while taking anywhere from 92 days to 507 days (skewness = 2.47) for Tier 2 nominees. The set of skewness statistics reveal that confirmation delay is consistently skewed in a positive direction (i.e., more confirmations are completed in an expeditious manner than those in a protracted manner), while the kurtosis statistics far exceed

---

<sup>2</sup> The full listing of agencies appears in *Table A.1, Appendix A: Listing of U.S. Federal Agencies & Selected Asymmetric Laplace Regression Tabular Estimates* of the Online Appendix.

**Figure 1: Empirical Distribution Plot of Senate Confirmation Delay  
(Bureaucratic Leadership PAS Appointees: Tier 1 Versus Tier 2 Confirmed Nominees)**



the threshold of 3 observed in a normal distribution. Moreover, Tier 1 nominees experience much swifter confirmation processes than compared to Tier 2 nominees when confirmation duration lies between one month (30 days) and six months (180 days), with the maximum survival gap between nominee groups occurring around the 100-day mark.

### *Modeling Heterogeneous Confirmation Processes*

A pair of statistical modeling concerns must be adequately addressed to obtain appropriate statistical estimates and reliable inferences from these data. First and foremost, because ‘Due Diligence’ theory is predicated on analyzing distinctions between expedited, normal, and protracted confirmation processes, standard survival modeling techniques capable of only estimating ‘typical’ expected average or median confirmation times are inadequate. For instance, the distribution of confirmation times from **Figures 1A** and **1B** reveal that expedited confirmations are observed to occur with much greater frequency compared to protracted confirmations based on the positive skewness in this outcome measure. Analysis of mean confirmation delay may understate the pace of the confirmation process since a majority of agency leadership nominees are successfully confirmed within six weeks of nomination. Our

second modeling challenge pertains to distinguishing those nominees for the given PAS agency leadership positions covered by the sample of agencies and time period that were confirmed within the current Senate process (N = 1,013) as well as those nominees that are right-censored since they are confirmed in a later Congress without a formal explicit stoppage instituted on their nomination, albeit requiring formal resubmission of a nomination (N = 22).<sup>3</sup>

Analyzing the heterogeneous nature of the confirmation process requires a statistical model that is capable of estimating parameters for various survival percentiles using a quantile regression approach. A quantile regression approach is most suitable for addressing the heterogeneous impact of covariates across the empirical distribution of how long it takes for nominees to be successfully confirmed, including, but not limited to, evaluating the impact of covariates on median confirmation delay. An Asymmetric Laplace survival percentile regression modeling approach is extremely well-suited for analyzing conditional quantiles for time-to-event failure data (Bellavia, et al. 2015; Bellavia, Bottai, and Orsini 2016; Bottai and Zhang 2010). Because this method relies on estimating time-unit survival percentiles of Senate confirmation delay, the estimates appear in their natural time unit form, in this study days (Bellavia, Bottai, and Orsini 2016). This statistical model takes the general form:

$$T_i(\tau) = x_i' \beta(\tau) + \sigma_i(\tau) \varepsilon_i, \quad (1)$$

---

<sup>3</sup> We also consider nominees thwarted through explicit formal action via Rule 31, presidential withdrawn, or a formal vote as a non-random selection problem. The results of this ancillary analyses are consistent with our evidence regarding *H1-H4* reported in the manuscript that only addresses censoring issues (see *Online Appendix, Appendix C: Censoring and Sample Selection Model Estimates*).

where  $x_i'$  represents the covariate vector and  $\beta(\tau)$  represents the corresponding coefficients for the  $\tau^{\text{th}}$  survival percentile, and the error term,  $\varepsilon_i$ , follows an Asymmetric Laplace (i.e., double-exponential) distribution across  $i$  cases for each  $\tau^{\text{th}}$  survival percentile. Simply, Asymmetric Laplace regression estimates the linear relationship between each covariate and the  $\tau^{\text{th}}$  survival percentile based on least absolute deviation of the residuals. Equation (1) is estimated using maximum likelihood methods involving an iterative maximization of the gradient of the likelihood function.<sup>4</sup> Standard errors are estimated using 1000 bootstrap replications (with a seed value of 123).<sup>5</sup> The set of covariates employed to predict confirmation delay (in days) as time-to-event failure data across conditional survival quantiles.<sup>6</sup>

### ***Differential Vetting: Challenges of Political Fragmentation***

To test both the *Inter Branch Policy Conflict Hypothesis (H1)* and *Intra Branch Policy Conflict Hypothesis (H2)*, a pair of interaction terms are created with respect to *Bureaucratic Leadership Position Type*, where the latter refers to whether the nominee is appointed to a Tier 1 (= 1) top executive positions or Tier 2 (= 0) subordinate leadership positions defined earlier in this study.

---

<sup>4</sup> Given the existence of censored observations, the appropriate the analytical formula applied to generate these conditional quantile parameter estimates are:  $S_n[\beta(p)] = \frac{1}{\sigma(p)} \sum_{i=1}^n x_i \left\{ \left( p - \omega_i - \omega_i (1 - \delta_i) \frac{p-1}{1-F(y_i | x_i)} \right) \right\}$ , (see Bottai and Zhang 2010: 489, Equation (4)).

<sup>5</sup> This is implemented using the *Laplacereg.ado* program code in Stata (Distributed on October 7, 2018 via <http://fmwww.bc.edu/RePEc/bocode/l>). A predecessor version of this program code was the *Laplace.ado* program Stata code (see Bottai and Orsini 2013).

<sup>6</sup> Estimates of the core hypotheses (**H1-H4**) from standard Weibull duration models are reported in the *Online Appendix* (see **Appendix B: Weibull Proportional Hazards Model Estimates**).

Existing research shows that inter branch policy conflict, as it relates to the divergence of the president and the Senate, will be associated with greater confirmation delay, on average, across all nominees (e.g., Chiou and Rothenberg 2014; Hollibaugh and Rothenberg 2018; Ostrander 2016). In accordance with *H1*, inter branch policy conflict will exacerbate confirmation delay for Tier 2 subordinate leadership nominees relative to Tier 1 chief executive nominees. Therefore, *H1* is evaluated by interacting the absolute distance between the president's ideal point and the filibuster pivot in each Congress using NOMINATE scores (Poole and Rosenthal 1997) with the binary indicator for nominee type.<sup>7</sup> As the absolute distance between the president and the Senate filibuster pivot increases, the lesser confirmation delay will be for Tier 1 nominees relative to Tier 2 counterparts, and that this differential is expected to rise for nominees whose confirmation processes becomes more protracted ( $|President-Senate Filibuster Pivot| \times Bureaucratic Leadership Position Type < 0$ ).

Similarly, *Senate Party Polarization* captures the internal partisan policy conflict within the Senate chamber. Senate polarization between the political parties within the chamber is measured as the absolute difference in the NOMINATE scores between the respective party medians. Increasing partisan polarization within the Senate will exacerbate confirmation delay (e.g., McCarty and Razaghian 1999). This affords us with the opportunity to examine how the divergence of the political parties within the Senate chamber will have differential effects on confirmation delay for Tier 1 nominees versus Tier 2 counterparts. *H2* predicts that intra branch

---

<sup>7</sup> More detailed information on these variables appear in a separate document (*Data Codebook: Variable Names, Labels, Definitions, and Data Sources*) that is available on the *Harvard JOP Dataverse* for this article.

policy conflict will exact relatively less delay for Tier 1 nominees than Tier 2 nominees (*Senate Party Polarization*  $\times$  *Bureaucratic Leadership Position Type*  $< 0$ ).

### ***Differential Vetting: Prospects for Administrative Responsiveness***

Both the *Decision Maker Independence Hypothesis* (H3) and *Presidential Nominee Loyalty Hypothesis* (H4) address the heightened stakes of confirming Tier 2 nominees vis-à-vis Tier 1 nominees that relate to both rising insulation of administrative agencies and loyalty to the nominating president, respectively. In the former case, some agencies' administrative leaders possess autonomy in their decision-making based on their long and overlapping terms of office (e.g., National Labor Relations Board), while others do not as they serve on an at-will basis for the current presidential administration (e.g., Department of Housing and Urban Development). In the latter case, the ties of individuals appointed to serve in federal agency leadership positions with the current presidential administration will vary considerably with some working on political campaigns for the nominating president (e.g., Joe M. Allbaugh, FEMA Administrator under George W. Bush), while others have little connection to the administration (e.g., John A. Gordon, Deputy Director of Central Intelligence in the Clinton administration).

H3 predicts that as agency's ability to make independent decisions with little oversight expands (i.e., more insulated), Tier 1 nominees will experience less time-intensive scrutiny than Tier 2 nominees, and hence, lesser confirmation delay as the confirmation process becomes lengthier (*Decision Maker Independence*  $\times$  *Bureaucratic Leadership Position Type*  $< 0$ ). *Decision Maker Independence* is measured utilizing the first dimension of Selin's (2015) latent measure of agency insulation from politics. Higher values indicate greater insulation from political removal by either political branch due to fixed and/or staggered terms of appointment, partisan balancing



requirements, or less organizational proximity to the presidency. Likewise, *H4* predicts that as an agency leadership nominees' loyalty to the president increases, Tier 1 nominees will experience less such scrutiny compared to Tier 2 nominees, and hence, lesser confirmation delay as the confirmation process takes a longer time (*Presidential Nominee Loyalty* × *Bureaucratic Leadership Position Type* < 0). *Presidential Loyalty* is operationalized as the perceived loyalty that a nominee has towards the appointing president known at the time of nomination estimated from a Bayesian generalized latent trait structural measurement model (Krause and O'Connell 2016, 2019: 532-533). *Presidential Loyalty* consists of indicators reflecting both a shared political orientation between president and nominee (i.e., nominee is a co-partisan of the president, and made a campaign donation to the president's election campaign prior to nomination), plus a set of binary indicators that account for fealty the latter is inclined to exhibit towards the former based on their prior work and service history known at time of nomination (i.e., whether the nominee previously served in an appointed position by an administration of the same party, the nominee had prominent experience with national or state party organizations of the president's party, previous electoral experience, and whether the nominee served in the executive branch of a state during the time when the president previously served as a governor).<sup>8</sup>

---

<sup>8</sup> Krause and O'Connell (2019: 10, *Supporting Information Appendix, Section 4. Comparison of Loyalty Latent Trait Estimates to CFScore Ideal Point Estimates*) demonstrates database that the loyalty measure exhibits strong convergent validity with the Bonica (2013) DIME measure of absolute ideological distance in relation to only the shared political orientation indicators, yet exhibits superior content validity since it captures a common fealty sub-dimension that is uncorrelated with absolute ideological distance.

### *Additional Covariates*

A host of additional covariates that may impact confirmation delay are also accounted for in the statistical models. One such factor is the impact of federal agencies' ideological predisposition on Senate confirmation delay that is operationalized by interacting the ordinal credibility interval interpretation of the Clinton and Lewis (2008) agency ideology measure in relation to the Senate majority party. A pair of binary indicators accounts for whether confirmation delay varies with amongst those agencies that are ideologically aligned with the Senate majority (*Senate Majority-Agency Aligned*), as well as for ideologically opposed agencies (*Senate Majority-Agency Opposed*), with neither consisting of moderate agencies being captured in the baseline intercept term. It is expected when an agency's ideological orientation is aligned with the Senate majority party, that successful confirmation processes will be attenuated.<sup>9</sup>

When an agency and Senate majority party are ideologically opposed, the confirmation process will become further delayed. The workload of the Senate may also impact its ability to successfully confirm bureaucratic leadership nominees, as the process may slow down due to the Senate's volume of both its legislative and executive nomination related activities (e.g., Dull, Roberts, Keeney, and Choi 2012; Ostrander 2016). *Senate Legislative Workload* is a covariate that is

---

<sup>9</sup> Ancillary analyses replacing these covariates with a pair that consider the joint ideological alignment and opposition of the president and Senate majority to federal agencies reveal that the core hypotheses are unaffected by this particular alternative model specification (see *Online Appendix*, see ***Appendix G: Presidential-Senate Majority Ideological Alignment & Ideological Opposition to Federal Agencies as Control Covariates***).

measured as the number of roll call votes within a given Congress. The Senate's workload specific to oversight activity (*Senate Oversight Workload*) is the total number of Senate hearings for a given Congress. The Senate's workload specific to executive nominations (*Senate Executive Nominations Workload*) is measured as the total number of PAS civilian nominations for a given Congress. Senate confirmation delay is posited as being inversely associated with the volume of roll-call votes, hearings, and civilian PAS executive nominations processed by this institution. Lastly, late legislative term nominations are likely to expedite confirmations since they occur within the final 30 days of a session. This distinction is captured by a binary indicator (*End Legislative Session*) that equals 1 for nominations set forth in the final 30 days prior to the end of a session, and equals 0 for all nominations made outside this specified window.

Another factor that may impact the rate of confirmation delay is the agency policy salience corresponding to the nominee (*Agency Policy Salience*). This variable is operationalized as the number of times that the policy issue area, of the relevant agency, was mentioned in a presidential State of the Union address in the year that the appointment was made (Krause and O'Connell 2016). This measure accounts for the extent that a policy issue area associated with the agency was viewed as important by the appointing administration. Rising agency policy salience is expected to be associated with a swifter confirmation process as it becomes more protracted. In addition, the Gallup job approval rating of the president in the month that nomination occurs (*Presidential Approval*) is posited as being inversely related to confirmation delay (Ostrander 2016), especially as the process becomes more protracted.

The timing of the nomination has been shown to affect the length of the confirmation process for certain appointments. Simply, the secular component of the irreversibility of

confirmation decisions, reflecting how long that a nominee may be able to serve in their appointed position, may be confounded with the Senate's agency costs with respect to explaining confirmation delay. To account for this possibility, a series of binary *Administration Term Year* indicators – for 1<sup>st</sup> Year (Years 1 & 5), 2<sup>nd</sup> Year (Years 2 & 6), and 3<sup>rd</sup> Year (Years 3 & 7) [4<sup>th</sup> Year (Years 4 & 8) are captured in the baseline intercept] – capture the timing of the nominee with an electoral term of a presidential administration. The possibility of expedited confirmation processes for agency leadership appointments during the first 100 days of a new presidential term is captured with a binary indicator (*1<sup>st</sup> 100 Days*) that equals 1 for nominations made during this 'honeymoon' period, and all other nominations are enumerated as 0 (e.g., Ba, Schneider, and Sullivan 2019; Chiou and Rothenberg 2014; Ostrander 2016). The consequences of the Federal Vacancies Reform Act of 1998 on confirmation delay for PAS agency leadership nominees is operationalized as a binary indicator that equals 1 for those executive branch department and EOP administrative units covered by this Act, 0 otherwise (*FVRA Treated*). Positions covered by the Act are expected to have swifter confirmation times than those that are not since it reduces the potential agency costs incurred by the Senate since this Act not only restricted presidents' ability to maneuver existing PAS confirmed appointees into other PAS slots, but also placed a time limit on temporary appointees in PAS positions (Brannon 2018).<sup>10</sup>

---

<sup>10</sup> Ancillary analyses tease out the conditional effects from the *Tier 1 / Tier 2* nominee position distinction on confirmation delay from those conditional effects attributable to whether the nominee position is covered by this Act (see *Online Appendix* (see *Appendix E: Evaluating Conditional Effects of Position Advancement & Temporary Service Restrictions on Nominees Attributable to the Federal Vacancies*

The statistical models also include covariates accounting for additional relevant individual nominee characteristics of nominees that may impact the confirmation vetting process. *Managerial Competence* refers to the relevant public sector managerial skills of the nominee that can be inferred from their background known at the time of their nomination. This latent measure is constructed from information regarding whether or not the nominee had recently lived in the DC area (i.e., ‘social embeddedness’ with those both living and working in the U.S. federal bureaucracy); substantial federal government management-related/relevant prior professional experience (defined as being at the assistant secretary or equivalent level outside the federal government); possessed any prior federal management experience; and whether the nominee had prior agency-specific managerial experience via an appointed PAS or Non-PAS position (Krause and O’Connell 2016, 2019: 533-534). Managerial competence is predicted to be inversely related to confirmation delay, and that this will be more consequential for longer confirmations. Similarly, *Policy Competence* is a latent measure that gauges the nominee’s policy-relevant specific expertise for the agency that is represented by indicators consisting of the nominee’s educational background; whether the appointee had prior professional experience in the policy issue area; whether the appointee had prior policy-relevant employment in the federal government; had any prior civil service experience; and whether the appointee had any prior civil service position within the agency that they were

---

*Reform Act of 1998*). These substantive results are generally consistent with the evidence for **H1-H4** reported in the manuscript across each set of confirmation delay models.

appointed (Krause and O’Connell 2016, 2019: 534-535). On average, greater relevant policy expertise is associated with reducing confirmation delay as the process becomes protracted.

Whether the nominee is a women or racial/ethnic minority is captured by the *Gender* and *Race* with binary indicators that equal 1 for the presence of each characteristic, and 0 otherwise. Both the gender and race of nominees has been shown to affect the length of the confirmation process (Asmussen 2011). Senate confirmation delay is expected to be higher for female and minority nominees, and these effects may be magnified as the confirmation process becomes more protracted. Finally, a series of binary indicators presidential administration captures unobserved differences in confirmation delay across presidents, possibly reflecting a secular rise in confirmation delay through time as these processes has become more contentious.

## EMPIRICAL FINDINGS

The analysis begins by evaluating whether Tier 2 nominees incur a vetting premium that is increasing in potential agency costs experienced by the Senate arising from political fragmentation. Because the binary indicator for nominee type equals 1 for Tier 1 individuals and 0 for Tier 2 individuals, evidence consistent with these hypotheses should result in a negative valued downward sloping set of coefficients. The Tier 1 –Tier 2 slope differentials appear in **Figure 2** below.<sup>11</sup> Interestingly, the  $|President-Senate Filibuster Pivot| \times Leadership$

---

<sup>11</sup> Because the regression estimates for each model consist of 21 separate sets of estimates (one per quantile), these are not fully reported here. However, only eight of these quantile estimates are reported in tabular form in the *Online Appendix (Appendix A: Listing of U.S. Federal Agencies & Selected*

*Bureaucratic Position Type* results indicate an absence of a vetting premium for Tier 2 nominees at each estimated quantile. The maximum numerical benefit that Tier 1 nominees enjoy vis-a-vis Tier 2 counterparts is a paltry 6 fewer days ( $\tau = 40$ , 29 days,  $p = 0.542$ ). Interbranch policy conflict is thus not associated with the Senate seeking to lower the risk by lengthening the overall length of the confirmation process. Challenges confronted by collective action problems within the Senate – i.e., intra branch policy conflict (*Senate Party Polarization*  $\times$  *Leadership Bureaucratic Position Type*) produce a consistent, statistically discernible Tier 2 vetting premium for moderate and protracted confirmation processes at the  $\tau \geq 45$  quantiles of overall confirmation delay. The Tier 1 – Tier 2 vetting differential for these set of estimates rises from 32 days for the conditional median overall confirmation duration [ $\tau = 50$ , 38 days] to 52 days for  $\tau = 75$  [80 days], and up further for 88 days at  $\tau = 95$  [190 days], before reaching its maximal impact of 162 days at  $\tau = 99$  [331 days]. Taken together, these findings suggest that a large source of overall confirmation delay can be attributed to the Senate’s internal collective action problems that significantly dampen their ability to confirm lower profile Tier 2 nominees in a timely manner, especially for those confirmation processes of a moderate or protracted nature.<sup>12</sup>

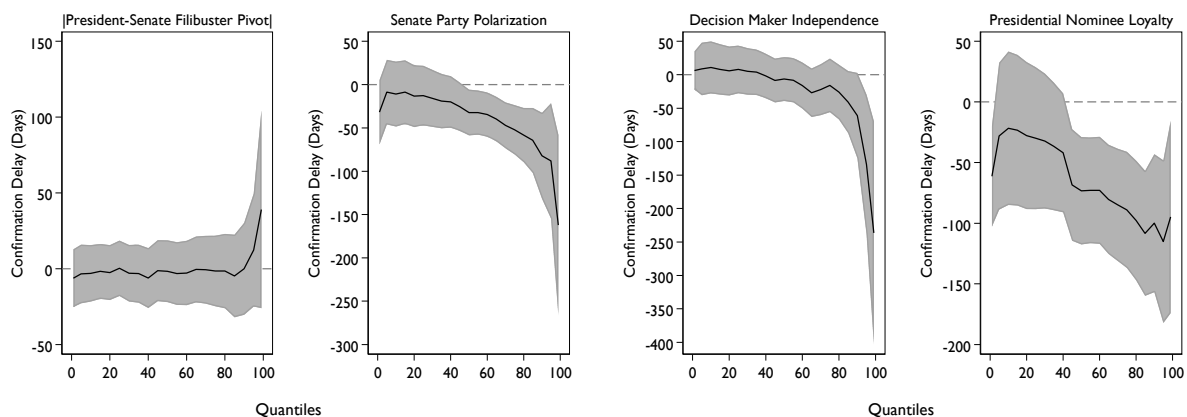
---

*Asymmetric Laplace Regression Tabular Estimates*) due to space limitations. These full set of results from the statistical output file can be obtained from the authors upon request.

<sup>12</sup> An alternative measure of intra branch policy conflict (the absolute ideological distance between the Senate filibuster pivot and the most ideologically extreme Senator on the president’s side), is also considered (See *Online Appendix: Appendix F: Alternative Senate Polarization Covariate for Evaluating H2*). These ancillary results are inferior at predicting confirmation delay consistent with **H2** compared to the standard Senate party polarization measure for reasons discussed in *Appendix F*.

The Senate only appears to engage in differential vetting of Tier 1 and Tier 2 nominees for protracted confirmation processes based on an agency's structural independence for decision making. Specifically, *Decision Maker Independence*  $\times$  *Leadership Bureaucratic Position Type* results in an overall vetting differential between Tier 1 and Tier 2 nominees that is both modest in magnitude and also is not statistically discernible between these groups for all but highly protracted nomination processes that are at least 136 days in overall confirmation duration [ $\tau \geq 90$ ]. A range increase in an agency's structural decision-making independence is associated with 61 [ $\tau = 90$ ] to 236 [ $\tau = 99$ ] fewer days of overall confirmation delay for Tier 1 nominees compared to Tier 2 counterparts at  $p \leq 0.061$ . Finally, the overall confirmation delay differential based on the nominee's loyalty to the president (*Presidential Nominee Loyalty*  $\times$  *Leadership Bureaucratic Position Type*) is statistically significant at  $p \leq 0.019$  for all moderate and protracted confirmation processes that require at least 68 days to attain a successful confirmation outcome [ $\tau \geq 45$ ]. For instance, the median confirmation delay differential attributable to a Tier 1 (vis-à-vis Tier 2) nominee's loyalty to the appointing president is 73 fewer days, while this differences peaks at nearly 115 fewer days for  $\tau = 95$ .

**FIGURE 2: Quantile Survival Regression Range-Adjusted Coefficient Plots**  
(*Moral Hazard Reduction Model of Overall Confirmation Delay*)





In short, the Senate's total vetting activities of U.S. federal agency leaders reveal that their efforts at reducing moral hazard *ex ante* by delaying confirmation of Tier 2 nominees relative to Tier 1 counterparts is rooted in overcoming its own collective action problems, and also the extent it views that the nominee will be responsive *ex post* once assuming the bureaucratic leadership position. Wald coefficient restriction tests reported in the *Online Appendix (Appendix I: Empirically Distinguishing Between Competing Accounts of Confirmation Delay)* discriminate the joint significance of these conditional agency hierarchy position slope effects from the maintained null hypothesis of unconditional agency position intercept effects (e.g., Hollibaugh and Rothenberg 2018; McCarty and Razaghian 1999; Ostrander 2016). The test results appearing in *Figure I.1* of the *Online Appendix* support the veracity of the 'Due Diligence' logic for both moderate and protracted confirmation processes ( $\tau \geq 50$ : 38 days or longer). Next, the extent that differential vetting of nominee types reflects information acquisition and deliberation by Senate standing committees versus procedural delay that arises from Senate chamber floor activities is analyzed.

### ***Evaluating Informational and Procedural Vetting Sources of Confirmation Delay***

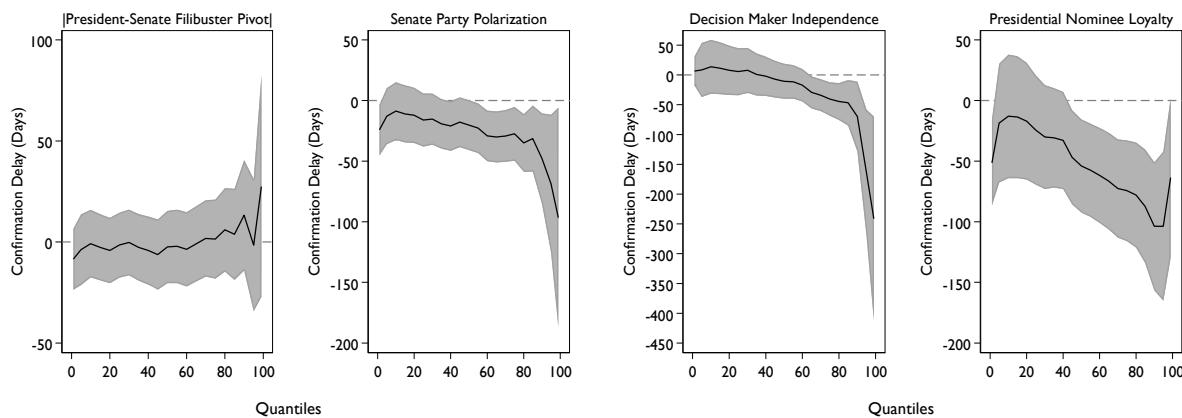
The prior set of statistical models predict overall confirmation duration commonplace in the study of presidential nominations (e.g., Hollibaugh and Rothenberg 2018; McCarty and Razaghian 1999; Ostrander 2016). Although this focus is useful for analyzing how long it takes a nominee to assume their formally appointed position, it is worth pinpointing the particular segment of the confirmation process that is largely responsible for confirmation delay by parsing out delay at the respective committee and chamber floor stages (Ba, Schneider, and Sullivan 2019). The present analysis is extended by decomposing the confirmation process to

separately analyze the informational vetting from Senate committees that transpires from time of nomination to the time the nominee is successfully reported out of committee, as well as the procedural vetting that arises from the full Senate chamber between the time the nominees is reported out of committee to successful confirmation via the Senate floor vote. The statistical analysis of informational vetting differential between Tier 1 and Tier 2 nominees appears in **Figure 3**. Once again, executive-legislative inter branch policy conflict ( $| \textit{President-Senate Filibuster Pivot} | \times \textit{Leadership Bureaucratic Position Type}$ ) does not reveal any substantial differential information-based confirmation delay arising from the Senate committee process between these two types of nominees. Consistent with the previous findings, party polarization between Republicans and Democrats within the U.S. Senate ( $\textit{Senate Party Polarization} \times \textit{Leadership Bureaucratic Position Type}$ ) does generate a noticeably swifter Senate committee confirmation process for Tier 1 nominees relative to Tier 2 nominees. This differential effect attributable to Senate informational vetting lies between 20 fewer days for moderately protracted legislative committee vetting processes [ $\tau = 50, 30$  days] and 97 fewer days for highly protracted legislative committee vetting processes [ $\tau = 99, 259$  days].

The structural independence of agency decision-making has bearing on Senate efforts at reducing moral hazard *ex ante* through differential informational vetting for both moderately and strongly protracted Senate committee confirmation processes. Tier 1 nominees are delayed by an average of 34 fewer days ( $\tau = 70$ ), 70 fewer days ( $\tau = 90$ ), and 241 fewer days ( $\tau = 99$ ) compared to Tier 1 nominees. These findings suggest that the Senate standing committees engage in considerably greater information search and deliberation for politically insulated agency leaders prior to reporting the Tier 2 nominations to the Senate floor relative to Tier 1

nominees. Finally, the loyalty of Tier 1 nominees to appointing presidents face a shorter time path to making out of Senate committees than compared to Tier 2 counterparts. These effects range from 47 ( $\tau = 45$ ) to 104 ( $\tau = 90$ ) fewer days. Administrative responsiveness concerns thus factor heavily on Senate committees when it comes to providing additional circumspection and scrutiny regarding the confirmation of Tier 2 nominees compared to Tier 1 nominees.

**FIGURE 3: Quantile Survival Regression Range-Adjusted Coefficient Plots**  
*(Moral Hazard Reduction Model of Informational Vetting Confirmation Delay)*



The Senate floor process contributes noticeably less to overall confirmation delay compared the Senate committee process. Specifically, half of all confirmed agency leadership nominees in our sample that occur within the same Congress obtain final passage within two days of being reported out of committee (while it takes 30 days for Senate committees to process the same proportion of nominees). The ratio of legislative committee information vetting to procedural floor vetting is 3.18 (105 days / 33 days) for the 90<sup>th</sup> percentile of each respective distribution. It is reasonable to infer that the Senate standing committees are more responsible for confirmation delay than the Senate floor for both moderate and protracted confirmation processes. For swiftly confirmed nominees, differential vetting among Tier 1 and Tier 2 nominees does not occur for the overall confirmation process nor the Senate committee stage.

The Wald model restriction tests appearing in *Appendix I* of the *Online Appendix* (*Figure I.2*) find evidence of the ‘Due Diligence’ logic distinct from the agency hierarchical staffing view (McCarty and Razaghian 1999; see also Hollibaugh and Rothenberg 2018; Ostrander 2016) for both moderate and protracted committee confirmation processes ( $\tau \geq 50$ : 30 days or longer).

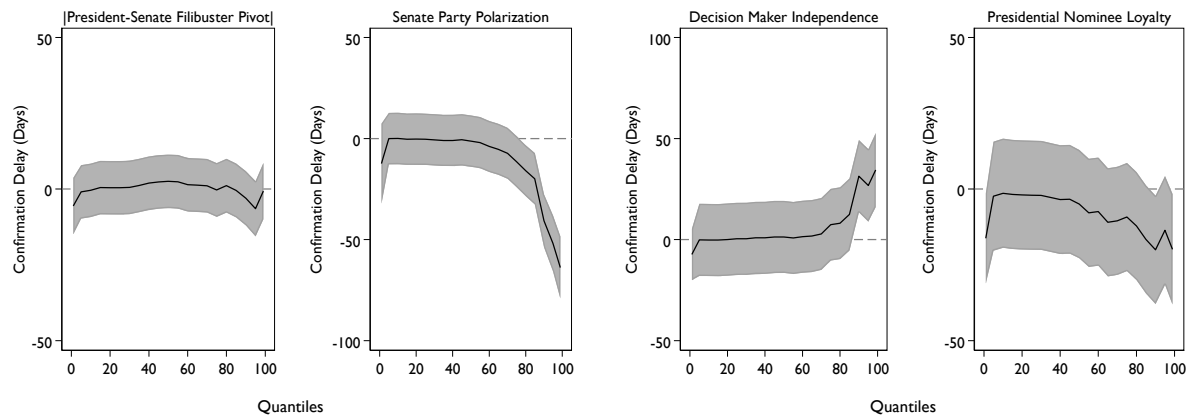
**Figure 4** displays the statistical estimates of the conditional Senate procedural vetting differential between Tier 1 and Tier 2 nominees that takes place after the nominee is successfully reported out of committee until they pass the final floor vote. Once again, inter branch policy conflict between the president and Senate is not associated with shorter procedural delay for Tier 1 nominees relative to Tier 2 nominees across various quantiles of confirmation processes.<sup>13</sup> Intra branch policy conflict, measured as Senate party polarization, yields a consistent statistically significant nominee type differential for relatively lengthier confirmation processes on the Senate floor [ $\tau \geq 80$ ], ranging from 16 [ $\tau = 75$ ] to 64 [ $\tau = 99$ ] fewer days for Tier 1 nominees

---

<sup>13</sup> Distinctions between unified versus divided partisan control regimes are evaluated for both the inter branch policy conflict (**H1**) and agency decision maker independence (**H3**) hypotheses. The results for **H1** are consistent with those presented here under both partisan control regimes. This consistency between political regimes, however, is only observed for **H3** with respect to Senate committee confirmation delay. The differential effects for overall confirmation delay predicted by **H3** is attributable to comparatively weaker estimated effects under unified partisan control vis-à-vis divided partisan control, as well as the greater uncertainty surrounding these estimates for Senate floor delay under the unified partisan control regime. For more details, see *Online Appendix, Appendix D: Evaluating the Interaction Between Ideological Inter Branch Policy Conflict and Decision Maker Independence in Relation to Partisan Inter Branch Policy Conflict*).

relative to Tier 2 nominees. These Senate floor delay differential effects are substantially less than the corresponding quantile estimates for the Senate committee stage presented in **Figure 3**.

**FIGURE 4: Quantile Survival Regression Range-Adjusted Coefficient Plots**  
*(Moral Hazard Reduction Model of Procedural Vetting Confirmation Delay)*



Interestingly, Tier 1 nominees experience greater Senate procedural delay ranging between 31 to 35 days longer when being chosen to serve in politically insulated agencies than compared to Tier 2 nominees for highly protracted floor deliberations ( $\tau \geq 90$ ). This finding suggests that highly contentious nominees for chief executive positions in politically insulated agencies experience longer procedural delay on the Senate floor to ensure sufficient chamber support. Although presidential loyalist Tier 2 nominees experience greater procedural delay in their respective confirmation processes than Tier 1 nominee counterparts, these effects are comparatively smaller for procedural vetting at the Senate floor stage compared to the Senate committee process estimates displayed in **Figure 4**. Such differential delay effects not only are of modest magnitude, but only statistically significant at conventional levels for protracted confirmation processes ( $\tau \geq 90$ ). These effects entail is associated with a 20 day differential during the Senate floor process at both  $\tau = 90$  and  $\tau = 99$ . In closing, confirmation delay is primarily attributable to both the informational and deliberative nature of the Senate standing

committees, while becoming acute as the confirmation process becomes highly protracted. The Wald model restriction tests appearing in *Appendix I* of the *Online Appendix (Figure I.3)* show, at a minimum, evidence of marginal discriminatory evidence of the ‘Due Diligence’ logic for highly protracted Senate floor confirmation processes ( $\tau \geq 80$ : 12 days or longer).

## IMPLICATIONS

By constitutional design, power is intended to check power within a system of separated and shared powers. In response to Montesquieu’s advocacy of unitary branch powers, James Madison forcefully argued in *Federalist 47* that powers shared among the executive and legislative branches must be interconnected. Yet, these powers are neither uniformly interconnected nor balanced between executive and legislative institutions charged with the responsibility of selecting appointed personnel in U.S. federal agencies. Presidents enjoy unitary control over nomination choices, can add appointed slots at the non-PAS levels (Lewis 2008), as well as appoint individuals to positions that circumvent the Senate confirmation process (e.g., Black, et al. 2011; Madonna and Ostrander 2017; Kinane 2021; O’Connell 2014).

This struggle between the executive and legislative branches is acutely manifested in the appointment process since much of the delay in the Senate confirmation process has been attributed to not only intensified policy conflict both between and within these political branches (e.g., McCarty and Razaghian 1999; Ostrander 2016), but also because of the type of nominees chosen by presidents (e.g., Hollibaugh and Rothenberg 2018; Parsneau 2014). The Senate experiences considerable constraints for shaping the personnel choices for agency leadership positions responsible for providing policy and administrative direction to U.S. federal agencies. The Senate confirmation process provides the only instance of shared

personnel power with executive branch regarding presidential staffing of U.S. federal agencies. Yet, the Senate's efforts to vigorously deploy their advise and consent powers adversely impacts executive branch performance as vacant administrative leadership positions are filled for increasingly by temporary personnel (Black, et al. 2011; Kinane 2021; O'Connell 2014).

Due to its severely constrained role in shaping executive branch personnel decisions, the Senate has a strong incentive to reduce the risk associated with Type I confirmation errors by carefully vetting presidential nominees for upper-echelon political executive positions that have disproportionate influence over administrative governance. Because the confirmation decision is irreversible, the Senate seeks to differentially vet nominees based on the agency costs that they confront as a political principal. As the Senate's potential agency costs rise, they will differentially vet lower information Tier 2 nominees more vigorously than Tier 1 nominees given their inability to effectively monitor and sanction these appointees once they assume office. The empirical evidence bears this out with respect to internal collective action problems experienced within the Senate, and also the extent to which the nominee is presumed to be loyal to the appointing president. Support for this logic is also obtained for agency decision-making independence with respect to Senate informational vetting for both moderate and protracted confirmation processes. The Senate's enhanced vetting of Tier 2 nominees does not occur for expeditious confirmations that do not require much time to either vet or deliberate upon whether particular nominees should be confirmed. Unfortunately, addressing coattail-type contagion effects between tiers of nominee within agencies is made extremely difficult due to proper temporal matching of nominees' confirmation processes, as well as the challenge of ensuring that sufficient within-agency variation exists within a relevant limited time frame.

The broader implications of this study suggest that while confirmation delay yields tangible costs for effective executive branch governance and administration (e.g., O’Connell 2009, 2014), it also serves to increase the deliberative nature of decision making underlying the confirmation process. The Senate’s aversion to Type I confirmation decision errors are marked by intense intra branch collective action problems, coupled by a concern for administrative responsiveness. These Senate concerns should become even more acute for delaying the confirmation process resulting from recent efforts curtailing minority opposition to executive branch nominations by ending floor debate by cloture vote with a simple majority (Carey 2012).

From a normative perspective, confirmation delay can be viewed as an inherent cost to democracy within a separation of powers system since it necessitates a tradeoff between the caliber of executive branch performance versus institutional checks on executive power. Given that the confirmation process remains the only avenue for the legislative branch to formally exercise shared authority over personnel choices in the U.S. federal bureaucracy, the findings presented here suggest that the difficulty surrounding the slow pace in confirming federal agency nominees chosen to serve in appointed leadership positions constitutes a systematically variable effort by the Senate to exert not only its limited authority, but also scarce resources, over executive branch personnel decisions made largely in a unilateral manner by presidents. The Senate’s ‘consent’ powers granted via Article II Section 2 of the U.S. Constitution are exercised in a robust manner that serves to offset the multiple ways in which presidents enjoy unfettered control over executive personnel decisions – but alas, at the expense of reducing the executive branch’s capacity for effective governance.



**Acknowledgments:** Earlier versions were presented at the annual meetings of the 2020 Southern Political Science Association meetings, San Juan, Puerto Rico; 2019 American Political Science Association, Washington, D.C., August 29-September 1; and the 2019 Midwest Political Science Association, Chicago, IL, April 4-7, 2019. The first author thanks Anne Joseph O'Connell for her contributions to their joint work constructing a database of U.S. federal agency leadership appointments used in the creation of the bureaucratic leader latent trait measures. We greatly benefitted from the insightful comments and advice supplied by Anthony Bertelli, Julia Fleischer, Brad Gomez, Christina Kinane, David Lewis, Scott Limbocker, Michael Lynch, Tony Madonna, Ian Ostrander, Yu Ouyang, Larry Rothenberg, and the anonymous JOP referees. Any errors or omissions that remain are the sole responsibility of the authors.

## REFERENCES

- Asmussen, Nicole. 2011. "Female and Minority Judicial Nominees: President's Delight and Senators' Dismay?" *Legislative Studies Quarterly* 36(November): 591–619.
- Ba, Heather, Brandon Schneider, Terry L. Sullivan. 2019. "Presidential Leadership and Initiative in Appointment Politics." Paper presented at the 2019 annual meetings of the Midwest Political Science Association. Chicago, IL. April 4-7.
- Bellavia, Andrea, Andrea Discacciati, Matteo Bottai, Alicja Wolk, and Nicola Orsini. 2015. "Using Laplace Regression to Model and Predict Percentiles of Age at Death When Age is the Primary Time Scale." *American Journal of Epidemiology* 182(3): 271-277.
- Bellavia, Andrea, Matteo Bottai, and Nicola Orsini. 2016. "Evaluating Additive Interaction Using Survival Percentiles." *Epidemiology* 27(3): 360-364.
- Black, Ryan C., Anthony J. Madonna, Ryan J. Owens, and Michael S. Lynch. 2011. "Assessing Congressional Responses to Growing Presidential Powers: The Case of Recess Appointments." *Presidential Studies Quarterly* 41(September): 569–88.
- Bonica, Adam. 2013. "Database on Ideology." *Money in Politics, and Elections: Public Version*. <https://data.stanford.edu/dime>.
- Bottai, Matteo, and Jiajia Zhang. 2010. "Laplace Regression with Censored Data." *Biometrical Journal* 52(4): 487-503.
- Brannon, Valerie C. 2018. "The Vacancies Act: A Legal Overview." *Congressional Research Service Report 4997*. Washington, D.C.: Congressional Research Service. <https://fas.org/sgp/crs/misc/R44997.pdf>. Retrieval Date: Friday January 24, 2020.
- Carey, Maeve P. 2012. "Presidential Appointments, the Senate's Confirmation Process, and

- Changes Made in the 112th Congress." *Congressional Research Service Report*. Washington, D.C.: Congressional Research Service. <https://fas.org/sgp/crs/misc/R41872.pdf>. Retrieval date: September 04, 2020.
- Chiou, Fang-Yi., and Lawrence S. Rothenberg. 2014. "Executive Appointments: Duration, Ideology, and Hierarchy." *Journal of Theoretical Politics* 26(July): 496-517.
- Dull, Matthew, Patrick S. Roberts, Michael S. Keeney, and Sang Ok Choi. 2012. "Appointee Confirmation and Tenure: The Succession of U.S. Federal Agency Appointees, 1989–2009." *Public Administration Review* 72(6): 902-913.
- Graham, Bradley. 2005. "Senator May Block Successor to Defense Policy Chief Feith." *Washington Post*. June 23. Section A: 25.
- Hammond, Thomas H., and Paul A. Thomas. 1989. "The Impossibility of a Neutral Hierarchy." *Journal of Law, Economics, and Organization* 5(Spring): 155-184.
- Hogue, Henry B., and Maeve P. Casey. 2015. *Appointment and Confirmation of Executive Branch Leadership: An Overview*. Washington, D.C. Congressional Research Service. R44083. <https://fas.org/sgp/crs/misc/R44083.pdf>. Retrieval Date. December 18, 2019.
- Hollibaugh Jr., Gary E. Gabriel Horton, and David E. Lewis. 2014. "Presidents and Patronage." *American Journal of Political Science* 58(October): 1024-1042.
- Hollibaugh Jr., Gary E. 2015. "The Incompetence Trap: The (Conditional) Irrelevance of Agency Expertise." *Journal of Public Administration Research and Theory* 27(April): 217-235.
- Hollibaugh Jr., Gary E., and Lawrence S. Rothenberg. 2018. "The Who, When, and Where of Executive Nominations: Integrating Agency Independence and Appointee Ideology." *American Journal of Political Science* 62(April): 296-311.

- Howard, Nicholas O., and Jason M. Roberts. 2020. "Obstruction and the Politics of Civilian Nominations." *American Politics Research* 48(May): 414-421.
- Kinane, Christina M. 2021. "Control Without Confirmation: The Politics of Vacancies in Presidential Appointments." *American Political Science Review* 115(May): 559-614.
- Krause, George A., and Anne Joseph O'Connell. 2016. "Experiential Learning and Presidential Management of the U.S. Federal Bureaucracy: Logic and Evidence from Agency Leadership Appointments." *American Journal of Political Science* 60(October): 914-931.
- Krause, George A., and Anne Joseph O'Connell. 2019. "Loyalty-Competence Tradeoffs for Top U.S. Federal Bureaucratic Leaders in the Administrative Presidency Era." *Presidential Studies Quarterly* 49(September): 527-550.
- Light, Paul. 1995. *Thickening Government: Federal Hierarchy and the Diffusion of Accountability*. Washington D.C.: Brookings Institution Press.
- Lewis, David E. 2008. *The Politics of Presidential Appointments: Political Control and Bureaucratic Performance*. Princeton, New Jersey: Princeton University Press.
- Lewis, David E., and Jennifer L. Selin. 2015. "Political Control and Forms of Agency Independence." *George Washington Law Review* 83(4/5): 1487-1516.
- Madonna, Anthony J., and Ian Ostrander. 2017. "No Vacancy: Holdover Capacity and the Continued Staffing of Major Commissions." *Journal of Public Policy* 37 (December): 341-361.
- McCarty, Nolan, and Rose Razaghian. 1999. "Advice and Consent: Senate Responses to Executive Branch Nominations 1885-1996." *American Journal of Political Science* 43(October): 1122-1143.

- Mendelson, Nina A. 2015. "The Uncertain Effects of Senate Confirmation Delays in the Agencies." *Duke Law Review Journal* 64(8): 1571-1606.
- Moore, Emily H. 2018. "Polarization, Excepted Appointments, and the Administrative Presidency." *Presidential Studies Quarterly* 48(March): 72-92.
- O'Connell, Anne Joseph. 2009. "Vacant Offices: Delays in Staffing Top Agency Positions." *University of Southern California Law Review* 82(5): 913-1000.
- O'Connell, Anne Joseph. 2014. "Shortening Agency and Judicial Vacancies through Filibuster Reform – An Examination of Confirmation Rates and Delays from 1981 to 2014." *Duke Law Journal* 64(8): 1645-1716.
- Ostrander, Ian. 2016. "The Logic of Collective Inaction: Senatorial Delay in Executive Nominations." *American Journal of Political Science* 60(October): 1063-1076.
- Parsneau, Kevin. 2014. "Politicizing Priority Departments: Presidential Priorities and Subcabinet Experience and Loyalty." *American Politics Research* 41(August): 443-470.
- Poole, Keith T., and Howard Rosenthal. 1997. *Ideology and Congress: A Political History of Roll Call Voting*. Transaction Publishers.
- Selin, Jennifer L. 2015. "What Makes an Agency Independent?" *American Journal of Political Science* 59(October): 971-987.
- Stein, Mark A. 2005. "Brace for Collision." *New York Times*. November 20. A: 2.
- Wines, Michael. 1997. "President Speaks Out on Nominee for Labor." *New York Times*. February 21. A: 24.

**Biographical Statement:** George A. Krause is Alumni Foundation Distinguished Professor of Public Administration, Department of Public Administration and Policy, School of Public and International Affairs, University of Georgia, 280G Baldwin Hall, Athens, GA 30602.

[gkrause@uga.edu](mailto:gkrause@uga.edu). Jason S. Byers is Postdoctoral Fellow, Center for Political Studies, University of Michigan, 426 Thompson Street, Ann Arbor, Michigan 48104. [byersjs@umich.edu](mailto:byersjs@umich.edu).