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Author(s): Sarah A. Binder and Forrest Maltzman
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SARAH A. BINDER
George Washington University and
The Brookings Institution
FORREST MALTZMAN
George Washington University

The Limits of Senatorial Courtesy

Because of senatorial courtesy, scholars typically assume that presidents defer to home state senators from their party when selecting judges for the federal courts. We challenge this view, arguing that presidents face structural incentives that encourage them to consult broadly with senators across the partisan and ideological spectrums in choosing nominees. Using new data on the fate of judicial vacancies on the federal district courts between 1947 and 1998, we show how institutional and political forces increase interested senators' leverage in choosing federal judges. Senatorial courtesy, we conclude, has its limits, given presidents' incentives to consult with institutionally empowered senators in selecting nominees.

Instead of giving advice and consent on a President's nominee, senators block all but their own. Once the President yields to their choices, they are then easily wheeled to confirmation.

Editorial, *New York Times*[1]

The politics of judicial selection has recently attracted renewed interest among students of Congress, the president, and the courts. Focusing on the Senate's role in confirming judges for the lower federal courts, recent work has shown how institutional and partisan forces limit the president's ability to swiftly place his nominees on the federal bench (e.g., Binder and Maltzman 2002; Martinek, Kemper, and Van Winkle 2002; Nixon and Goss 2001). Garnering far less attention has been the politics of the selection process itself, with Sheldon Goldman's (1997) comprehensive treatment of lower-court judicial selection the notable exception (see also Goldman and Slotnick 1999).

The politics of selecting federal district court judges has likely attracted little attention because of the conventional wisdom regarding the role of "senatorial courtesy" in presidential appointments. As suggested by the *New York Times* observation, the received wisdom holds that presidents have historically deferred to the home state senator

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from their party when nominating judges to serve on the federal bench within that senator's state. According to the received wisdom, judicial selection is simply a patronage decision left to the home state senator, leaving little to be explained. In this paper, we challenge the inherited view of judicial selection, suggesting instead that structural incentives motivate presidents to broaden the selection process beyond the parochial interests of the home state senator of their party. Using newly collected data on the duration of judicial vacancies for the U.S. district courts between 1947 and 1998, we show that institutional and electoral factors beyond the interests of parochial senators help to shape the dynamics of judicial selection.

Politics of Senatorial Courtesy

The concept of senatorial courtesy is often invoked to describe the process for selecting judges to the federal district courts. As Chase (1972) explains,

For a good part of our history, "senatorial courtesy" could be defined accurately as a custom by which senators would support one of their number who objected to an appointment to a federal office in his state, provided the senator and the president were of the same party…In our day, senatorial courtesy has come to mean that senators will give serious consideration to and be favorably disposed to support an individual senator of the president's party who opposes a nominee to an office in his state (7).

The norm of courtesy, in other words, reflects senators' deference to their colleagues over matters internal to their home states. As a result of senatorial courtesy, the conventional wisdom holds that presidents are severely restricted in their capacity to choose judges for the district courts (Carp and Stidham 1993). Because home state senators can back up their threat to block a nominee through the institutionalized process known as the blue slip, home state senators from the president's party have typically been said to hold a veto over a president's choices.[2] As noted by Carp and Stidham (1993), many senators see their influence over the selection process as a right ordained by the Constitution: "I'm given the power to make the appointment," Senator Phil Gramm once boasted, ". . . the people elected me to do that" (Carp and Stidham 1993, 232).

Judgeships, in short, were traditionally seen as patronage, a status that encouraged senators to defer to the home state senator who hailed from the president's party. Goldman notes that there is evidence of a

"lessening to some extent of the dispensing of judgeships as political patronage" (1997, 14), particularly as presidents have become more aggressive in using appointments to pursue their policy agendas. But the leverage of home state senators from the president's party is still said to be pronounced. In the absence of a home state senator from the president's party, the conventional wisdom suggests that other actors from the president's party, such as House members and party leaders, wield influence over the selection of nominees. The received wisdom thus suggests that senators and their fellow partisans outside the chamber influence and often dictate the choice of judges.

The simplicity of the senatorial courtesy account stands in sharp contrast to what we know about the politics of Senate confirmation for judicial nominees: Presidents are likely to face a number of constraints in seeking swift confirmation of their nominees for the lower federal courts. For example, previously we have shown that institutionally empowered senators and party coalitions exploit their procedural advantages to delay and thus often derail confirmation of appellate court nominees (Binder and Maltzman 2002). Although high confirmation rates for federal district court nominees fuel the perception that senators customarily defer to the interests of the president, it is more likely that presidents rationally anticipate the interests of relevant Senate players at the nomination stage. Given the constraints they face during the confirmation process, presidents most likely confront a similar array of structural incentives that encourage them to navigate and negotiate through a broad array of Senate interests when filling judicial vacancies.

Considering what we know about the politics of confirmation, it is worth revisiting the received wisdom about the process of making judicial appointments. The question is whether or not home state senators from the president's party have unfettered influence over the choice of nominees for vacancies with their states. An alternative to the conventional wisdom suggests that presidents face an array of interested actors in making judicial appointments. There is strong empirical evidence of such interaction in the selection process; Goldman's (1997) accounting of the appointment process notes numerous times when the choice of nominees was not a simple dictate of home state senators—even when both senators hailed from the president's party. For example, Goldman (1997, 173) notes that Attorney General Robert Kennedy (charged with command of judicial appointments for his brother, the president) once estimated that roughly 20% of the recommendations he received from Democratic senators were unacceptable, and "the result was a struggle with senators to secure a nominee measuring up to the administration's standards."

Conflict also emerges when the home state senators for an appointment do not hail from the president's party. Goldman (1997, 211) recounts episodes in which a Republican administration faced off against Democratic home state senators over the choice of a nominee. When the Nixon administration ignored the recommendation of Florida's two Democratic home state senators over a Florida district court appointment, the administration learned its lesson: The nominee was never confirmed. Two months later, the administration accepted an alternative choice of the Democratic senators and that nominee was subsequently confirmed. More recently, Senator Orrin Hatch (chair of the judiciary panel at the time) held up all nomination hearings until President Clinton agreed to appoint one of Hatch's former aides to a district court vacancy in Hatch's home state of Utah.[3] Because the nominee was opposed by environmental groups, a long standoff ensued before Clinton agreed to the appointment—a case that again suggests the received wisdom about the selection process may mask other important political dynamics.

Influencing Judicial Selection

Our task is to delineate the types of challenges that presidents likely face in filling trial court vacancies and to determine whether or not these forces systematically affect the selection process. As recent work on confirmation politics suggests, we need to identify institutional and political factors that empower senators during the nomination and confirmation stages. Here, we assess three sources of potential influence: Senate Judiciary Committee procedures that empower interested senators and the panel chair, chamber precedents that grant majority party leaders control over the calendar of nominations in executive session, and the president's bargaining advantage.

The Judiciary Committee: Blue-Slip Politics

According to conventional wisdom, if a senator opposes a nominee slated for a vacancy in his or her state, the senator need only threaten to withhold the blue slip and thus effectively veto the judicial candidate. Although senators technically only extend courtesy to home state senators from the president's party, both senators can potentially blue slip the president's choice.[4] Indeed, Chase notes, "It must be understood that senatorial courtesy extends beyond a senator of the president's party who objects to an appointment to office in his own state. Senators will sympathetically hear objections of a senator of the state who is not

of the president's party" (1972, 9). Because either senator can potentially veto a president's choice, presidents are likely to take into account the preferences of *both* home state senators, *regardless of party*. In other words, the blue-slip procedure may empower senators who, according to the traditional partisan view of senatorial courtesy, have no role in the nomination process. The blue-slip institution thus creates a structural incentive for the president to recognize the interests of even ideologically distant home state senators during the process of selecting nominees. As the Nixon administration learned, failure to do so can lead to the defeat of the nominee.

If the power of the blue slip systematically enhances the leverage of home state senators, regardless of party, then the impact of the blue slip should leave an imprint on the judicial selection process. One possible manifestation of such influence is the amount of time that elapses between the occurrence of a vacancy and the selection of a nominee. If the only constraint faced by the president in making judicial appointments is that imposed by a home state senator from the president's party, then we would expect to find only one systematic pattern in the length of the vacancies: Nominations would be announced more quickly when a home state senator hailed from the president's party. If, instead, numerous institutionally empowered senators give the president incentives to consider their preferences over potential nominees, then the selection process should be longer in systematic ways, all else being equal.

Increases in the length of the selection process would thus reflect the additional time that presidents spend negotiating, bargaining, or simply consulting with senators over the final choice of nominees. Such consultation is precisely what Democratic senators sought early in 2001 as the Bush administration readied slates of nominees for the Senate. Warning that they would filibuster nominees unless the administration consulted with both Republican and Democratic home state senators, Democrats boxed the White House Counsel into promising to engage in "pre-nomination consultation."[5] As Patrick Leahy, chair of the Senate Judiciary Committee explained at the time, it would not be acceptable to Democrats if they were informed of the president's choice "two hours before [White House spokesman] Ari Fleischer announces it" (Palmer 2001b).

We would expect delays to be even longer when the home state senator for an appointment is ideologically distant from the president. Threatened by an ideological foe's potential to block the nomination, a president would have an incentive either to negotiate with that senator or to defer action on filling the vacancy—both strategies that would result in lengthy delays before a nominee was announced. The threat

of a negative blue slip from home state senators of either the president's or the opposition party thus leads us to two conjectures:

Senatorial courtesy: If a home state senator for a vacancy hails from the president's party, then the vacancy will take less time to fill.

Blue-slip power: If a home state senator for a vacancy is ideologically distant from the president, then the vacancy will take longer to fill.

The Judiciary Committee: Power of the Chair

The threat to issue a negative blue slip is only tenable if the chair of the Judiciary Committee defers to objections from home state senators. If the panel chair instead exercises procedural control over the timing and makeup of the committee's agenda, then the blue-slip threat loses its teeth. In other words, the chair's discretion over the panel agenda increases his or her leverage over the fate of potential nominees. Chairs have, in fact, been willing to exercise such discretion: in 1979, Senator Ted Kennedy advised that negative blue slips would no longer necessarily block committee action on pending nominees (Goldman 1997).

The potential leverage of the panel chair on the fate of nominees should increase the president's incentive to consult broadly in selecting a nominee. If the president and panel chair are ideological allies, then there should be few grounds on which the panel chair would exercise the discretion to slow down a subsequent confirmation process. But as the policy views of the president and panel chair diverge, more consultation over the nominee is likely to occur, thus slowing down the selection process. This likelihood leads us to a simple conjecture:

President-Chair distance hypothesis: The greater the ideological differences between the president and the panel chair, the longer it should take for a nominee to be chosen to fill a vacancy.

In other words, institutional prerogatives of the panel chair are likely to systematically affect the pace of filling vacancies on the bench.

Agenda Control

The likelihood that a nominee will be swiftly confirmed also depends directly on the Senate's willingness to bring a nominee to the floor for chamber consideration. Because the majority party leader by precedent holds the right of first recognition on the Senate floor, this senator is institutionally empowered to control the timing of a

confirmation decision.[6] The power of the majority party over the consideration of nominations thus should create a structural incentive for the president to heed the interests of senators from the opposition party during the selection process if control of the Senate and White House is divided between the two parties. All else being equal, divided party control should enhance the influence of the opposition party in selecting the nominee. When control of the Senate and White House is unified in a single party, the president's preferences are unlikely to stir much opposition within the Senate.

Party-control hypothesis: In periods of divided party control, it should take longer to select a nominee to fill a vacancy.

Conditions of divided party control are also likely to affect the ability of home state senators to block nominees they oppose. As we showed in 2002, when home state senators differ significantly in policy views from the president, the confirmation process moves especially slow (Binder and Maltzman 2002). Such delay is most likely due to the panel chair's tendency to heed the objections of home state senators from his or party, senators most likely to be ideological outliers from the president. The enhanced leverage of home state senators during periods of divided control creates another structural incentive for the president to negotiate extensively in selecting a nominee. The following interactive effect is thus likely to be visible in filling trial court vacancies:

Blue-slip leverage under divided control: It will take longer to select nominees during periods of divided control when a home state senator is ideologically distant from the president.

Additional Controls

Following our 2002 study, we include a number of controls for the impact of the president and for the context in which the Senate considers nominees. We control for the popularity of the president, the onset of a presidential election year, and the number of vacancies to be filled. More popular presidents should feel less constrained by Senate opponents in selecting nominees, and thus vacancies should be filled more swiftly as a president's approval rating rises. In contrast, election year dynamics are likely to slow the process of selecting a nominee. Clearly, presidential opponents have an incentive to "save" vacancies for after a presidential election (in hopes of gaining control of the White House in the intervening election). Presidents, recognizing their diminished leverage in presidential election years, have an increased incentive to consult broadly before making a nomination in those years. Finally, the

greater the number of vacancies to be filled, the longer it should take to fill them, given the limited time and resources that White House and Justice Department staff have to expend on vetting potential appointees (see Goldman and Slotnick 1999 on the selection process during the Clinton administration).

Data and Methods

To test our conjectures about the politics of judicial selection, we use the *Final Calendars* of the Senate Judiciary Committee to identify the vacancy and nomination dates for every vacancy on the U.S. district courts between 1947 and 1998.[7] For each observation, we record the date the vacancy occurred and the date on which a nomination was announced.[8] If no nomination is made by the end of the Congress, then we add an additional observation for each subsequent Congress until that Congress in which a nomination is announced.[9] So long as there is not a change in control of the White House, the vacancy date on these additional observations remains the original vacancy date. When a new president inherits a vacancy, we recode the vacancy date as the inauguration date for the new president. We do this because we are primarily interested in identifying the institutional and political factors that affect the president's selection process. Including time attributable to the previous administration would introduce measurement error into the dependent variable. Sometimes, nominations are announced before a seat officially becomes vacant. In these cases, we set the vacancy date one day before the actual nomination date.[10] Because there are no home state senators for vacancies to the D.C. federal district court, we exclude vacancies to that court. These coding decisions yield 2,163 observations over 51 years.

Estimation

To test our conjectures about the timing of nominations, we estimate a hazard rate model. Because we have no theoretical expectation regarding the distribution for the time until the event of interest (a nomination) occurs, we use a Cox model of proportional hazards to assess the effect of the covariates on the hazard rate (the conditional probability of failure at time t). The coefficients indicate whether each variable increases or decreases the hazard rate. An increase (decrease) in the hazard rate means that the variable has the effect of speeding up (slowing down) the announcement of a nomination. Because we have multiple observations for vacancies if a nominee is not chosen by the

end of a Congress, we use robust standard errors clustering on the vacancy to control for correlated errors across multiple observations for a single seat.

Independent Variables

We use a series of dummy variables to tap the dichotomous independent variables. To tap whether or not a home state senator hails from the president's party (*senatorial courtesy*) we determine the party of the two home state senators for each vacancy and code whether or not either senator hails from the president's party.[11] If at least one of the home state senators hails from the president's party, then senatorial courtesy is coded as 1; it is coded as 0 otherwise. To isolate home state senators who are ideologically distant from the president, we first determine the ideology of the two home state senators using Poole and Rosenthal's DW-NOMINATE first-dimension scores and then calculate the ideological distance between the president and each home state senator.[12] If the farther home state senator is greater than one standard deviation above the mean ideological distance, then that senator is coded as 1 as an *ideologically distant blue-slip senator*; the senator is coded as 0 otherwise. To mark the incidence of *divided government*, we code whether control of the Senate and the White House is unified or divided for each Congress over which a vacancy persists without a nominee. We code vacancies that do not have a pending nominee during a *presidential election* year as 1 and as 0 otherwise.

For the continuous variables, we create three measures. First, to measure *president-judiciary chair distance* we calculate the ideological distance between the president and the judiciary panel chair as the absolute difference between the DW-NOMINATE scores for the president and the panel chair.[13] Second, we use the *president's approval rating* in the year in which the vacancy appeared to tap the president's public standing (Ragsdale 1998; Roper Center 2003). Third, to control for the *number of vacancies* to be filled, we determine the total number of vacancies that open up to be filled over the course of the Congress.

Results

Table 1 presents descriptive statistics for the variables included in the analysis. The median duration is 212.5 days, roughly seven months. The vacancy that took the longest to find a suitable nominee lasted 2,070 days. Although this vacancy on the Pennsylvania Western District

TABLE 1
Descriptive Statistics

Variable	Mean	Standard Deviation	Min	Max
Time from Vacancy to Nomination	284.66	276.24	1	2,070
Senatorial Courtesy	.77	.42	0	1
Divided Government	.47	.50	0	1
Ideologically Distant Blue-Slip Senator	.05	.22	0	1
Ideologically Distant Blue-Slip Senator during Divided Government	.03	.16	0	1
Distance between President and Chair	.42	.34	.02	.89
Presidential Election Year	.27	.45	0	1
Presidential Approval	55.35	10.61	28	76
Number of Vacancies	128.07	60.20	16	246

Federal Court first opened in January 1971, affording Richard Nixon the opportunity to fill it, a nominee was not chosen until March of 1978, after Jimmy Carter had taken office. Those 121 vacancies with the shortest duration (one day) are those for which a nominee had already been chosen in anticipation of the official vacancy.

In Table 2, we show the results of two models seeking to explain the timing of judicial nominations.[14] The overall fits of the model are good, as we can safely reject the hypothesis in both models that all the coefficients are jointly 0.[15] In data column 1, we find strong support for the simplest version of the received wisdom: A nominee is named more swiftly by the president when a home state senator for the vacancy hails from the president's party. We also find, as expected, that the overall vacancy load affects the administration's ability to move swiftly to fill existing vacancies. The more seats there are to be filled, the longer it takes to select nominees to fill them.

But the results in the second data column suggest limits on the impact that senatorial courtesy has on the selection process in the face of competing influences. To be sure, having a home state senator from the president's party still speeds up the selection process, but the president also appears to be constrained by the involvement of additional senators. First, senators who are ideological foes of the president seem able to slow the selection process when vacancies occur in their home states.[16] The threat of the blue slip by either home state senator thus seems sufficient to encourage the president to consult more widely

TABLE 2
Cox Regression of the Timing of Judicial Nominations, 1947–98

Variable	Expected Sign	Model 1 Coefficient (robust s.e.)	Model 2 Coefficient (robust s.e)
Senatorial Courtesy	+	.167 (.069)**	.129 (.074)*
Divided Government	−	—	.003 (.075)
Ideologically Distant Blue-Slip Senator	−	—	−.203 (.096)*
Ideologically Distant Blue-Slip Senator during Divided Government	−	—	.170 (.130)
Ideological Distance between President and SJC Chair	−	—	−.283 (.114)**
Presidential Election Year	−	—	−.619 (.070)***
Presidential Approval	+	—	−.001 (.004)
Number of Vacancies	−	−.004 (.001)***	−.003 (.0005)***
N		2,163	2,163
Log likelihood		−10,795	−10,735
Chi-square		72.58***	199.97***

Note: Cell entries are coefficient estimates (robust standard errors in parentheses).
*$p < .05$; **$p < .01$; ***$p < .001$ (all one-tailed t-tests).

before selecting a nominee. There is also some limited evidence that the influence of ideologically distant home state senators is especially pronounced during periods of divided control (one-tailed p value = .095). Control of the Senate by the opposition party does not appreciably slow the selection process, as shown by the statistically insignificant coefficient for divided government. But ideological differences between the president and the chair of the judiciary panel markedly diminish the pace of choosing judicial nominees. These results, considered together, suggest that strategic consideration of likely committee dynamics is primarily salient to administrations in selecting potential nominees. When there is no home state senator from the president's party, structural incentives shaped by the Judiciary Committee's influence over the fate of nominees seem to entice presidents to proceed cautiously in choosing nominees.

The results also suggest only limited leverage for the president in the selection process. A president's public standing does not appear to markedly affect the speed with which vacancies are filled, and approaching presidential elections hamper the president's ability to swiftly select nominees for Senate consideration. The sheer volume of vacancies seems to slow down an administration, with heavier loads making it difficult for the administration to choose nominees swiftly.

Still, it is appropriate to interpret these results with some caution. As Box-Steffensmeier and Zorn (2001) note, a key assumption of the Cox model is the assumption of proportional hazards. If the assumption holds, then the effects of the covariates are constant over time: For any two values of a covariate, the hazard of failure at time t for one value is proportional to the hazard for the other variable. In other words, the ratio of the two hazards will be a nonnegative constant. When the assumption holds, the Cox model is an appropriate estimator. When the assumption is violated, one needs to correct for such nonproportionality. Following Box-Steffensmeier and Zorn (2001), we use Schoenfeld residuals to test for nonproportionality, and we find that four covariates violate the proportional hazards assumption: senatorial courtesy, presidential election year, presidential approval, and the number of vacancies.[17]

We follow the advice of Box-Steffensmeier and Zorn (2001) and reestimate the Cox model to correct for the presence of covariates with nonproportional effects. In estimating the new model, we include an interaction effect between each offending covariate and the natural logarithm of time.[18] The inclusion of time-by-covariate effects "results in a better-specified model and greater accuracy in assessing covariate effects" (Box-Steffensmeier and Zorn 2001, 978). In substantive terms, the interaction effects allow the offending covariates' effects to vary monotonically with the duration of the nomination stage. We can then assess the impact of the interaction effects on the hazard of a nomination being announced.

The new parameter estimates appear in Table 3. Correcting for nonproportionality brings considerable nuance to the original results. First, the impact of senatorial courtesy is clear; the presence of a home state senator from the president's party significantly speeds up the process of selecting a nominee. This finding suggests that presidents are likely to defer to home state senators from their party, resulting in a swift selection of an agreed-upon nominee. What is striking is the waning influence of home state partisans over time, as seen in the covariate's interaction with time. As the vacancy remains open over time, the presence of a home state senator from the president's party actually decreases the hazard of a nominee being chosen. Once a vacancy has

TABLE 3
Cox Regression with Log-Time Interactions
of Judicial Nominations, 1947–98

Variable	Coefficient (robust s.e.)
Senatorial Courtesy	8.759 (1.368)***
Senatorial Courtesy x ln(time)	−1.489 (.225)***
Divided Government	.081 (.061)
Ideologically Distant Blue-Slip Senator	.078 (.092)
Ideologically Distant Blue-Slip Senator during Divided Government	−.274 (.151)*
Ideological Distance between President and SJC Chair	−.325 (.105)***
Presidential Election Year	.780 (.308)
Presidential Election Year x ln(time)	−.232 (.055)***
Presidential Approval	.034 (.003)***
Presidential Approval x ln(time)	−.065 (.002)***
Number of Vacancies	.016 (.002)
Number of Vacancies x ln(time)	−.003 (.001)***
N	2,163
Log likelihood	−8,960.477
Chi-square	1,706.53***

Note: Cell entries are coefficient estimates (robust standard errors in parentheses).
*p < .05; **p < .01; ***p < .001 (one-tailed t-tests, except for variables with ln(time) interactions, for which two-tailed tests are used).

been open for 180 days, the percentage change in the hazard of a nomination goes down by some 90%.[19] The revised model also clarifies the impact of the blue-slip threat on the selection of nominees. Overall, ideologically distant home state senators do not measurably slow the selection of nominees for vacancies within their states. But the potential for a negative blue slip from such senators during periods of divided government markedly affects the selection process, yielding a 31% decrease in the hazard of a nomination being announced.[20] Diverging policy views between the president and the judiciary chair continue to affect the selection process in the new specification, lowering the hazard of a nomination by nearly 20%.[21] Together, these results suggest that Senate committee practices significantly constrain the selection of

judicial nominees: Presidents have an incentive to consult broadly when it appears that ideologically distant senators could exploit institutional rules and practices to block nominees in a subsequent confirmation battle.

Finally, the new results bring some nuance to our interpretation of the impact of the president. First, in the new estimation, the process of selecting nominees is not appreciably slower in presidential election years. Over the course of a vacancy, however, the nomination process moves noticeably slower as the vacancy wears on. Second, and perhaps more important, the president's public standing seems to confer some advantage on the president during the process of filling vacancies on the bench. As vacancies stay open over time, however, the president's standing has a diminishing impact on the hazard of naming a nominee. Third and last, although a heavy vacancy load does not initially slow the selection process, over time high numbers of vacancies do reduce the hazard of a nomination, perhaps suggesting that a long-lasting vacancy receives lower priority from the administration as time passes and no nominee is chosen.

In sum, senatorial courtesy works its will quite efficiently in the weeks just following a vacancy. But after those easy nomination choices are made, the dynamics of the selection process take on a new character, as presidents face structural incentives to consult more widely beyond their own partisans in choosing their nominees. The constraints imposed by the committee process during a potential confirmation struggle seem particularly salient to the president; ideologically distant home state senators and judiciary panel chairs measurably reduce the risk of a nominee being selected. Indeed, such committee constraints seem more pressing on the administration than the broader constraint of divided government. This finding suggests that securing the support of critical senators at the committee stage is seen by presidents as the key challenge when negotiating over potential nominees. So long as key senators eventually agree to a nomination, administrations seem to calculate that support by the full chamber will follow—precisely what the norm of senatorial courtesy would predict.

Discussion and Conclusions

Although the Constitution affords the Senate both the power to advise and to consent, most political observers and scholars of the process tend to focus on the politics of consent rather than the politics of advice. Most likely, this pattern occurs because the confirmation process is quite visible and it is relatively easy to compile data on con-

firmation decisions. In contrast, the nomination process takes place out of the public eye, making it tougher to systematically explain the politics of selection (but see Moraski and Shipan 1999 and Nemachek and Wahlbeck 1998). When it comes to judicial nominations at the lower-court level, the process is often deemed mechanical, if not automatic: Presidents simply heed the preferences of the home state senators from their party, giving senators a de facto power to nominate as well as to confirm. It is thus not surprising that, with the notable exception of Goldman (1997), few scholars have ventured to explore what political forces—if any—structure the selection of lower-court judges.

Our results suggest that lower-court judicial selection is not as devoid of politics as the received wisdom leads us to believe. To be sure, the presence of a home state senator from the president's party significantly speeds up the selection process, making it appear that home state senators have a "right" to name federal judges and that presidents heed their choices. But outside these "easy" cases for which nominees are swiftly agreed upon, negotiation and consultation seem to be the norm. Bolstered by the blue slip and the majority party's control of the Judiciary Committee agenda, the opposition party has structural and political leverage to force the administration to consult over potential nominees. Judicial selection is clearly a political process that involves a number of actors using their institutional powers to influence the makeup of the federal trial courts. Senatorial courtesy certainly pervades the process of selecting potential judges, but its limits are clear. Presidents and home state senators do not have a free hand to dictate the choice of lower-court nominees: structural incentives force presidents to consult far more widely than is suggested by the inherited view of judicial selection.

Sarah A. Binder is Associate Professor of Political Science, George Washington University, and Senior Fellow at The Brookings Institution. Forrest Maltzman is Professor of Political Science, George Washington University, 2201 G Street NW, Washington, DC 20052.

NOTES

1. Unsigned editorial, *New York Times*, 15 March 1980.
2. "Blue slips" are the notices sent by the counsel of the Senate Judiciary Committee to the two home state senators for the nomination. If senators mark "object" or withhold the slip, then traditionally no hearing would be scheduled on the nominee (Goldman 1997, 12; see also Denning 2001).

3. Al Kamen, "Clinton Nominates Hatch Friend to Bench," *Washington Post,* 28 July 1999.

4. The fury over Judiciary Panel Chair Orrin Hatch's (R-UT) proposal at the beginning of the Bush administration in 2001 to recognize only negative blue slips from Republicans is testament to the tradition of respecting negative blue slips from all senators. As Senator Chuck Schumer (D-NY) responded to the proposed change, "Each senator from each state will lose a grand prerogative" (Palmer 2001a, 1020). The Democratic minority leader at the time promised to filibuster any nominee who was opposed by a Senate Democrat.

5. Helen Dewar, "Daschle Warns GOP on Judicial Confirmations," *Washington Post,* 3 May 2001.

6. Nominations are considered when the Senate is convened in executive session, a time when nongermane amendments are impermissible. Thus, the majority party leader's control of the floor agenda cannot be circumvented by opposition party members seeking confirmation for preferred nominees.

7. We supplement these calendars when necessary with data from the Federal Judicial Center's Federal Judges Biographical Database (http://www.fjc.gov). We thank Peter Wonders and Bruce Ragsdale for their assistance with these data.

8. If no nomination was made during the Congress in which the vacancy first occurred, then we record the last day of the session as the date on which the vacancy was no longer "at risk" of having a nomination forwarded to that Congress.

9. If a nominee is announced by the president but is not confirmed during that Congress (and thus is resubmitted by the president at the start of the next Congress), then we do not create an additional observation. Although, technically, Senate rules require a new nomination each session, renomination of pending nominations is routine.

10. We estimate the models with Stata's *stcox* routine, which does not allow an observation to both "enter" and "exit" the data at the same time. Thus, we adjust the vacancy date by one day prior to the nomination date.

11. We determine the relevant home state senators and their parties from Poole's DW-NOMINATE file for the 1st–106th Congresses (http://voteview.uh.edu/dwnomin.htm). In many Congresses, more than two senators served from a single state, owing to death or resignation before the end of a Congress. In these cases, we determine which two senators were serving when the vacancy opened.

12. DW-NOMINATE scores are estimates of legislators' ideal points derived from a spatial model of voting. For the original presentation of NOMINATE scores, see Poole and Rosenthal 1997.

13. Committee chairs are determined from Nelson 1993. Halfway through the 84th Senate, Judiciary Chair Harley Kilgore (D-WV) died in office, with James Eastland (D-MS) succeeding him as chair in early 1956. The distance between the president and the chair thus varies across the two committee chairs for the 84th Senate.

14. To deal with the presence of observations with tied survival times, we estimate the Cox model using the efron method of handling tied values. Alternative methods for handling ties do not appreciably affect the estimates.

15. Analysis of Cox-Snell residuals for Model 1 reinforces the overall good fit of the model. Analysis of Martingale residuals is also instructive. The plots of deviance residuals based on the Martingale residuals suggest that Model 1 slightly underestimates the probability of a nominee being announced for vacancies that are filled quickly and

slightly overestimates the probability of a nominee being selected when vacancies take longer to be filled. Still, there is little evidence that influential observations are uniquely driving the results. Estimating the model with and without outlier observations (those with deviance residuals greater than 2 or less than –2) yields substantively similar results. Diagnostic tests for Cox proportional hazard models are outlined in StataCorp 2001, 291–99.

16. The parameter estimate is also statistically significant for other specifications of ideologically distant home state senators.

17. We also reject the null hypothesis of proportional hazards for the global test across all covariates.

18. According to Box-Steffensmeier and Zorn (2001), this is the preferred method and functional form for estimating the Cox model in the presence of nonproportional covariates.

19. We calculate the expected percentage change in the hazard rate via the *adjust* routine in Stata 7.0. This simulation compares the hazard rate of a nominee being announced at day 30 and day 180 of a vacancy. We assume a period of divided government and a presidential election year. All continuous variables are set at their mean values.

20. We calculate the expected percentage change in the hazard rate by assuming a presidential election year, divided government, and the presence of a home state senator from the president's party. Continuous variables are set at their means.

21. We calculate the expected percentage change in the hazard rate for one standard deviation below and above the mean distance between the president and judiciary chair, assuming divided government, a home state senator from the president's party, and a presidential election year. All continuous variables are held constant at their means.

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