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UNIVERSITY OF OKLAHOMA

GRADUATE COLLEGE

WARRING FACTIONS: SENATORS, NOMINEES, AND INTEREST GROUPS IN THE SENATE CONFIRMATION PROCESS

A Dissertation

SUBMITTED TO THE GRADUATE FACULTY

In partial fulfillment of the requirements for the

Degree of

Doctor of Philosophy

By

LAUREN MICHELLE COHEN

Norman, Oklahoma

1999

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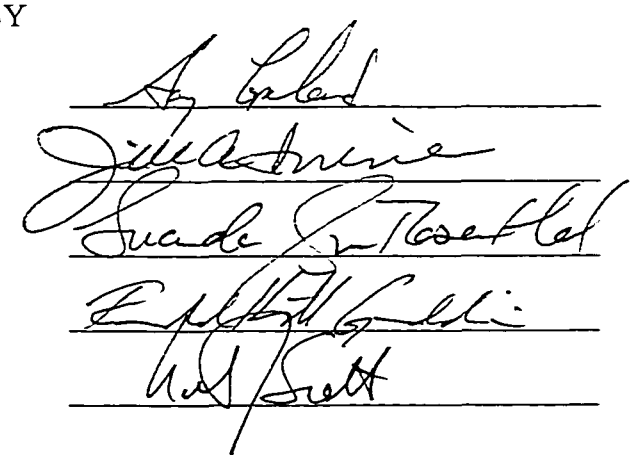
WARRING FACTIONS: SENATORS, NOMINEES, AND INTEREST GROUPS IN THE SENATE CONFIRMATION PROCESS

A Dissertation APPROVED FOR THE

DEPARTMENT OF POLITICAL SCIENCE

BY



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ABSTRACT

WARRING FACTIONS: SENATORS, NOMINEES, AND INTEREST GROUPS IN THE SENATE CONFIRMATION PROCESS

Interest groups are powerful actors in the confirmation process for federal judges, ambassadors, and cabinet secretaries. Yet, they are often ignored in treatments of confirmation dynamics. This dissertation sheds light on the causes and consequences of interest group participation in Senate confirmation decisions by addressing five questions: 1) What is the nature of interest group participation in the confirmation process? 2) Has interest group participation increased since Robert Bork's failed Supreme Court confirmation in 1987? 3) What causes interest groups to participate in the confirmation process? 4) What are the consequences of interest group participation in the confirmation process? and 5) Can the participation of interest groups explain the overwhelming changes to the confirmation process that have become evident in recent years?

Two primary methods of study are employed in this project. First, data were gathered from 1,112 confirmation hearings for federal judges and 88 confirmation hearings for cabinet secretaries-designate between 1977 and 1998. The data collected include the position for which an individual is nominated, the number of interest groups submitting materials or appearing before the committee of jurisdiction, the direction of interest group participation (in favor of or opposed to the nominee), whether there is divided or unified government, and the identity of the committee chairman. These data are then submitted to logistic regression analysis to determine the extent to which they affect the likelihood of interest group participation in the confirmation process.

In addition, qualitative data also are used. These data are gathered from field

research during which unstructured interviews were conducted with 23 individuals actively involved in the confirmation process. These individuals include two former senators, a former judicial nominee, a former U.S. ambassador, eight interest group leaders, and seven current and former Senate staff members. Each interview subject was asked to share his or her impressions of the confirmation process and the role that interest groups play. Evidence was also gathered through participant observation of the confirmation process from the vantage point of the Senate Judiciary Committee between October, 1997 and August, 1998.

The analysis of this data yields several important findings. First, despite the conventional wisdom, formal interest group participation in the confirmation process has not increased since 1987. In fact, formal participation has almost steadily declined since the late 1970s. At the same time, informal participation by interest groups in the confirmation process has increased dramatically since the late 1980s. Today, interest groups work behind the scenes to influence confirmation outcomes. Further, interest groups are strategic actors. They participate more frequently in the confirmation process for high-level appointees than they do when a nominee has been nominated to fill a vacancy in a lower-level office. The data also demonstrate that there are a wide range of consequences that can be associated with interest group participation, including lengthy waits for confirmation, a reduced likelihood of confirmation, and a breakdown of comity among senators engaged in the confirmation process.

INTRODUCTION:

THE CONFIRMATION PROCESS FALLS APART

"Here's a bipartisan program that is saving taxpayers millions every year:
nearly 250 of the government's 726 most senior jobs are
going unfilled..."

Time Magazine, May 26, 1997

Every year, the president nominates and the Senate confirms thousands of individuals to posts in the executive branch, the federal judiciary, and the military. For nearly 200 years, the vast majority of these appointments to the highest positions of the federal government were routine, and conventional wisdom on the appointment process suggested that the Senate acted only as a "rubber stamp" on presidential selections.[1] Professor G. Calvin Mackenzie, a long-time observer of confirmation politics, noted in 1996: "In the vast majority of cases, confirmation occurs routinely after the Senate has reviewed the credentials of nominees submitted by the president" (Mackenzie 1996, 61). A 1999 textbook on the relationship between the president and the Congress concurs, adding: "All evidence suggests that the Senate generally defers to presidential nominations ..." (LeLoup and Shull 1999, 54). Regarding judicial nominations,

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[1] See "The Senate Rubberstamp Machine," published by Common Cause in 1977.

constitutional scholar David O'Brien has noted: "[T]he vast majority of nominees are routinely approved by the Senate Judiciary Committee after only perfunctory investigation and according to no fixed standards" (O'Brien 1988, 65).

This is the state of the conventional wisdom on confirmation politics at the end of the twentieth century. It accurately reflects the fact that the vast majority of presidential nominees are eventually confirmed. Since 1931, over ninety-seven percent of presidential nominees for all offices have been confirmed by the Senate.[2] Recently, however, the United States Senate has intensified its scrutiny of presidential nominees. For a small but growing group of individuals nominated to positions at the highest levels of the federal government, the conventional wisdom that the Senate is merely a rubber stamp is wrong. The confirmation process for these presidential nominees has undergone significant changes in the last few decades of the millennium. No longer is the process characterized by senatorial deference to the president. The process is no longer swift or certain. Nominees to top positions in the executive and judicial branches face a lengthy confirmation process characterized by partisan bickering, animosity, struggles for power, and rancor never before witnessed by confirmation observers. As Fenno (1959, 55) notes: "Although the president does operate in the appointment process with a free hand, he does so at the sufferance of the United States Senate." Fenno could not have been more prescient.

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[2] The Twentieth Century Fund 1996.

THE CHANGED NATURE OF THE SENATE CONFIRMATION PROCESS

When Mike Schattman was nominated in December, 1995 to fill a vacancy on the United States District Court for the District of North Texas, he hoped it was the beginning of a process that would lead to the fulfillment of a lifelong dream. Schattman, who at the time of his nomination had served for nearly fourteen years as judge in the 348th Judicial District of Tarrant County, Texas, had always wanted to serve his country from the federal bench. Initially, Schattman's confirmation prospects looked good. On April 5, 1996, Texas Senator Phil Gramm stated: "I have communicated my satisfaction with Judge Schattman's credentials and qualifications to the [Senate] Judiciary Committee..."[3] Less than two weeks later, Texas' junior senator, Kay Bailey Hutchison also noted that she was supportive of Schattman's nomination: "I have spoken directly to the chairman of the [Senate Judiciary] committee, Senator Orrin Hatch, to reiterate my support for Mr. Schattman's nomination."[4] With the support of both his home state senators, Schattman expected that Senate confirmation was only a formality.

Despite the support of his home state senators, the Senate Judiciary Committee took no action on Schattman's nomination in 1996. He was renominated in March, 1997, at the beginning of the 105th Congress and again his prospects for confirmation seemed good. Both Senators Gramm and Hutchison continued to express their support for him and North Texas newspapers began calling for his confirmation. Then in July,

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[3] Letter to the Honorable Thomas Windham, Chief of Police, Fort Worth Police Department, April 5, 1996.
[4] Letter to the Honorable Thomas Windham, Chief of Police, Fort Worth Police Department, April 17, 1996.

1997 both senators suddenly withdrew their support. Gramm claimed that concerns over Schattman's appearance at a prayer vigil had led him to abandon Schattman, while Hutchison cited concerns "raised by attornies whose views I respect."[5] Because of the Senate's longstanding tradition of deferring to home state senators with regard to confirming federal judges, Schattman's nomination was effectively dead. Long before Schattman officially withdrew from his confirmation bid, Texas newspapers had declared the process over.[6]

In June, 1998, Schattman withdrew his name from consideration.[7] It was a frustrating end to the partisan and personal attacks on Schattman's credentials. Six months following his withdrawal from consideration, Schattman offered current and future nominees the following advice: "Go to bed with your senator. And watch your back."[8] It was the end of a dream for Schattman and his wife Mary Ellen. It also meant that the North Texas judgeship, which had been vacant since January 1, 1996 would remain vacant. By 1999, the North Texas judgeship had been vacant for more than three years.

The Schattman case illustrates the extent to which the Senate confirmation process has evolved from a stable, predictable process, to one that is haphazard, irregular, and unpredictable. In 1994, Yale Law School professor Stephen Carter declared that the country was facing a "confirmation mess." It has only gotten worse since then. One

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[5] October 17, 1997 letter from Kay Bailey Hutchison to Trista Allen.
[6] Williams 1998; Star-Telegram 1998; Hutcheson 1998.
[7] See Baker and Campbell 1998.

need only to consider a smattering of recent commentary on the state of the contemporary appointment process to recognize that widespread changes have occurred. Ornstein (1997, 5) writes: "Over the past 30 years, as distrust for the executive has become the norm in Congress and partisan divisions have become more prominent, tough battles over presidential appointments have become more frequent." Mackenzie (1998, 6) declares:

> ...[I]n the first year of President Clinton's second term, the changed character and the consummate disarray of the appointment process have been fully revealed. The recent evolution of the presidential appointment process has become not only inadequate to its purposes but a festering national embarrassment.

There is no question that the process has changed. The once conflict-free Senate confirmation process nearly ground to a halt during the 105th Congress (1997-1998), and the 105th Congress was the backdrop for what many observers of confirmation politics claimed was an all-time low in comity and efficiency in the process. Although the president was sending nominations to the Senate, many nominations stalled in one of the Senate's committees or were being held up on the Senate floor. On June 4, 1998 – just four months before the 105th Congress was due to adjourn, Bob Nash, President Bill Clinton's Director of Presidential Personnel sent Senate Majority Leader Trent Lott the following letter:[9]

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[8] Author's interview, November 13, 1998.
[9] Letter from Bob J. Nash to Trent Lott, June 4, 1998.

Dear Senator Lott,

I appreciate the help you have provided in confirming nominees the President has submitted to the Senate during the 105th Congress, and I would like to ask for your assistance in expediting the remainder of our nominees. We have had 252 nominations pending before the Senate in 1998, only 33% of whom have been confirmed. Nearly 40% of our current nominees have been awaiting confirmation for more than six months. There are 24 nominees (14%) who have been pending before the Senate for between 6 and 9 months; 12 nominees, or 7%, pending for 9 to 12 months; 5 nominees, or 3% pending for 12 to 18 months; and 26 nominees, or 15%, pending for more than 18 months. ... Many have been nominated for positions that are important to the efficiency and effectiveness of both our federal agencies and our judicial system. I would therefore appreciate any assistance that you may be able to provide in confirming these nominees.

...

Sincerely,
Bob J. Nash
Assistant to the President and
Director of Presidential Personnel

Despite Nash's letter, by the time the 105th Congress adjourned in October, 1998 only 100 of the 160 nominees (62.5%) awaiting confirmation in July had been confirmed.[10] Several nominations were returned to President Clinton, including a number of judicial nominees whose nominations had been pending for more than three years. Not only were a number of high-profile nominees among those whose names were returned to the president when the Congress adjourned, but nominees to lower-level positions in government were left jobless as well. Related to this phenomenon is the fact that it is now difficult for presidents to find individuals who are willing to endure the grueling

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[10] The Senate did confirm many nominees whose nominations were received after the date of Nash's letter,

(Footnotes continued on next page)

confirmation process. As Davidson and Oleszek (1997, 307) explain, "recent presidents have had difficulty in recruiting people for government service."

The consequence of this difficulty is the high number of vacancies in top-level positions in the federal government. As a 1998 Twentieth Century Fund report states:

> Despite the relative stability in positions at the highest level, the administration as a whole experienced a vacancy rate in appointed positions in the executive branch that frequently exceeded 25 percent. Many departments and agencies went through much of 1997 with a large percentage of their top positions in the hands of acting or temporary placeholders (Mackenzie 1998, 2).

At the end of the twentieth century, nearly all assessments of the appointment process are dismal. In today's confirmation climate, nominees to relatively obscure positions become household names, not because of their credentials or the importance of the jobs they have been nominated to fill, but because the Senate refuses to confirm their nominations. Since 1995, nearly all indicators of efficiency in the confirmation process suggest that the process has become less efficient than ever before. In short, the "rubber stamp machine" has been replaced by the "confirmation mess."[11]

INTERESTS GROUPS AND THE CONFIRMATION PROCESS

American University law professor Thomas Sargentich has noted that "interest group involvement in nominations is inevitable because it is an inherently political process involving both Congress and the president" (Mintz 1998, 1663). Although a handful of previous studies have shed some light on the causes of change in the

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but confirmed only 62.5 percent of those individuals whose nominations were pending on June 4, 1998.

confirmation process, none to date has focused on the role that interest groups play in shaping confirmation dynamics. This is despite the fact that interest groups have long been blamed for the defeat of Robert Bork, one of Ronald Reagan's nominees to the Supreme Court.[12]

The interest group explosion of the 1960s and 1970s had important ramifications for the confirmation process. Schlozman and Tierney (1986, 75-6) found that 40 percent of the interest groups in operation in 1981 had been started after 1960, and 25 percent had been founded after 1970. Berry (1997, 22) notes that in 1974, there were just 608 PACs; by 1980, that number had grown to 2,551. Schlozman and Tierney note that 53 percent of the 200 organizations they sampled engaged in "attempting to influence appointment to public office" (Schlozman and Tierney 1986, 150). A greater percentage of interest groups attempted to influence the appointment process than engaged in direct-mail fundraising for their organization, made public endorsements of candidates in political campaigns, or engaged in public protests and demonstrations (Schlozman and Tierney 1986, 150).

Recent coverage in the popular press has suggested that the lack of Senate action on presidential nominees is the result of pressure from outside interest groups on key members of the Senate leadership. These studies suggest that beginning with the Republican takeover of the U.S. Senate in 1995, conservative interest groups sought to lessen the impact of a Democratic president on the direction of the federal government by

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[11] From Carter's 1994 book, *The Confirmation Mess.*

encouraging Republicans in the Senate to stall confirmation on many of the president's nominees.[13] Although their participation often is singled out for criticism, interest groups also influence confirmation politics because of what they contribute to the process. Interest groups provide large amounts of information about nominees to senators and assist Senate staffers with their research into nominees' personal and professional activities. Information collected and provided by interest groups can serve to assist senators with making reasoned judgements about a nominee's background or likely activities once appointed. Sometimes, however, interest groups engage in questionable tactics designed to bring about the defeat of one or more presidential nominees. Groups attempting to defeat a nominee may distort an individual's background, or may attempt to plant seeds of doubts about a nominee's integrity, ability, or qualifications.

Previous studies of the Supreme Court confirmation process have found that interest groups play an important role in shaping the dynamics of the process.[14] Scholars have documented the importance of interest groups in a number of studies relating to Ronald Reagan's nomination of Robert Bork to the Supreme Court in 1987.[15] According to Hrebenar (1997, 4): "By the time the Bork nomination was decided, groups from every part of the political spectrum had spent millions of dollars and immeasurable effort to block Reagan's effort to ensure a conservative Supreme Court far after his term in

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[12] See Bork 1990, Bronner 1990, Silverstein 1994, and Simon 1992, among others.
[13] See Carney 1998.
[14] See, for example, Caldeira and Wright 1998; Baum 1995; Maltese 1995; Overby et al. 1994; Guliuzza, Reagan and Barrett 1994; Silverstein 1994; Gittenstein 1992; Overby et al. 1992; Simon 1992; Abraham 1991; Bork 1990; Bronner 1989; Watson and Stookey 1988.

office." Groups ran television advertisements, testified at Bork's confirmation hearings, lobbied members of Congress, and used direct-mail campaigns to bring the public into the Bork debate (Hrebenar 1997: 4-5). Wolpe (1990, 113) adds: "According to the Senate postmaster, the Bork controversy drew more mail than any issue in recent memory." In the end, the full Senate rejected Robert Bork's nomination by a vote of 58 to 42.

Of course, interest groups cared about the process long before the Bork nomination was announced, and they continue to try to affect who gets appointed to high-ranking federal offices. To that end, interest groups' target their attempts at influencing appointment outcomes at the United States Senate rather than at the executive branch, in large part because the selection process tends to be much more closed to groups' participation. As Berry (1997, 179) notes: "[T]he norm is that the Justice Department or administration officials do not meet with interest groups to discuss possible selections." During recent congresses, interest groups have been frequent participants in Senate confirmation politics for presidential nominees. More than 400 organizations took a position on one or more nominees during the 105th Congress alone. Appendix Three at the end of this dissertation provides a listing of such groups, compiled by a search of the *Congressional Record* and the records of confirmation hearings held by the Senate. Clearly, many interest groups care about the appointment process and work to influence its outcomes. They bring the entire range of their resources to bear on trying to influence

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[15] Caldeira and Wright 1998; Hrebenar 1997; Carter 1994; Silverstein 1994; Bork 1990; Wolpe 1990;

(Footnotes continued on next page)

the confirmation process in much the same way that they try to influence other legislative processes. The result is that interest groups not only participate in confirmation hearings for presidential nominees, but also that they work behind the scenes to see that nominees they approve of are confirmed, while nominees they disapprove of languish.

No study has comprehensively explored the impact of interest group participation on confirmation outcomes for presidential nominees. Although a number of studies have examined the confirmation process for Supreme Court justices, and the role that interest groups play in that process, there have been substantially fewer examinations of the role that interest groups play in the confirmation process more generally. Thus, this project examines the changed nature of the confirmation process and ascertains the impact of interest groups on it. It explores whether the variety of ways that interest groups participate in the confirmation process for cabinet secretaries, ambassadors, and lower federal court judges can explain the changed nature of the Senate confirmation process.

Using both quantitative and qualitative data, this project addresses five questions: 1) What is the nature of interest group participation in the confirmation process? 2) Has interest group participation increased since Robert Bork's failed Supreme Court confirmation in 1987? 3) What causes interest groups to participate in the confirmation process? and 4) What are the consequences of interest group participation in the confirmation process? And 5) Can the participation of interest groups explain the overwhelming changes to the process that have become evident in recent years? The

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Bronner 1989.

evidence demonstrates that when they get involved, interest groups can be successful at influencing confirmation outcomes and that their participation is in large part responsible for recent changes to the contemporary process.

Data for this project are gathered from three sources. First, all available confirmation hearings for nominees to the federal judiciary and the president's cabinet were consulted and data on interest group participation were compiled. Two data sets were then created. The first, which is referred to throughout this study as the Judicial Nominees Data Set, contains data compiled from 1,112 judicial confirmation hearings between 1979 and 1998. The second data set, referred to as the Cabinet Nominees Data Set, was compiled with data taken from the 88 hearings held on nominees to the president's cabinet between 1977 and 1998. These data sets are used in Chapters Four and Five to quantify interest group participation in Senate confirmation hearings. Appendices Two and Three provide a more detailed explanation of the coding of the variables in the data sets and the sources used to compile them, respectively.

In addition to the quantitative analysis, in-depth interviews were conducted in 1997 and 1998 with 23 individuals who are or have been integrally involved in the Senate confirmation process. Finally, many of the observations included in this project come from 10 months of participant observation of the confirmation process from the vantage point of the Senate Judiciary Committee.[16] All three of these data sources are combined

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[16] Between November, 1997 and August, 1998 I worked as an American Political Science Association congressional fellow for the minority staff of the Senate Judiciary Committee. I worked most directly for Senator Edward M. Kennedy of Massachusetts and Senator Patrick J. Leahy of Vermont. My primary

(Footnotes continued on next page)

to provide a full picture of the strategies and techniques that interest groups use to influence the confirmation process.

BACKGROUND

In this project, reference is made to several groups of nominees and positions that must be filled by the advice and consent process. Three groups of nominees are explored in detail: nominees to the lower federal courts, cabinet-secretaries designate, and nominees to represent the United States abroad as ambassadors. While these groups are similar in that they encompass important positions in the federal government, each of these groups maintains a number of unique characteristics. This section identifies the unique aspects of the structure of each position and the dynamics of confirmation that surround each.

First, the federal judiciary represents the third branch of American government. Judges and justices are charged with hearing federal criminal and civil cases, brought either under the United States Code, or brought on appeal from a lower court. The federal courts are organized hierarchically. At the lowest level of the federal judiciary are the federal district courts (92 in all) and courts of specialized jurisdiction. In the middle are the Circuit Courts of Appeals (11 in all, plus one each for the District of Columbia and the federal circuit), and at the top is the Supreme Court (Wayne et al. 1995). The president nominates, and the Senate must confirm, judges to serve at all levels of the federal judiciary.

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responsibility was to monitor judicial and Department of Justice confirmations, and this job provided me

(Footnotes continued on next page)

Nominees to the lower federal courts – the Court of International Trade, district courts, and circuit courts of appeals – are appointed for terms of good behavior, or lifetime terms. They represent the overwhelming majority of judges in the federal judicial branch. Circuit Court of Appeals (CCA) judges "review appeals from decisions of the Federal trial courts, and are empowered to review the orders of many administrative agencies" (Rutkus 1991, 7). CCA judges are considered the highest ranking judges of all the lower courts. There are 13 CCAs, with multiple judges serving on each court. There are 179 CCA judgeships authorized by federal law (Rutkus 1991). Below the CCAs are the federal district courts. According to Rutkus (1991, 11): "The United States District Courts are the trial courts of general federal jurisdiction. Each state has at least one district court, while some have as many as four." There are a total of 649 district court judgeships authorized (Rutkus 1991, 11). Finally, the United States Court of Federal Trade "has original and exclusive jurisdiction over civil actions against the United States, its agencies and officers, and certain civil actions brought by the United States arising out of import transactions and federal statutes affecting international trade (Rutkus 1991, 19). A total of nine judges make up the U.S. Court of Federal Trade. Interestingly, however, there is one caveat governing the selection of trade court judges. According to Rutkus (1991, 19), "no more than five [sitting U.S. Court of Federal Trade judges] may belong to any one political party." Judicial nominees also generally make up the largest group of nominees confirmed in a given Congress.

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ample opportunities to evaluate firsthand interest group participation.

Davidson and Oleszek (1997, 308) point out that nominees to the federal courts are the most highly scrutinized of all presidential nominees, "subject to even closer scrutiny than high-level executive appointments." The Senate is particularly cautious about confirming individuals who not only will make decisions affecting nearly every aspect of society, but who only can be removed through impeachment by the House of Representatives.

In contrast to judicial nominations, nominees to vacant seats in the president's cabinet and to vacant ambassadorships serve at the pleasure of the president. According to Mackenzie (1996), the average length of service for non-lifetime appointed personnel is now just slightly longer than two years. Throughout his presidency, but especially upon assuming his duties at the beginning of his first term, the president must choose individuals to head the 14 major government agencies. These agencies are: the Department of State, Department of Treasury, Department of Interior, Department of Agriculture, Department of Defense, Department of Education, Department of Veterans' Affairs, Department of Justice, Department of Labor, Department of Commerce, Department of Housing and Urban Development (HUD), Department of Transportation, Department of Energy, and Department of Health and Human Services (HHS). The heads of these agencies are responsible for helping the president carry out his responsibility to enforce the laws through the rule-making and program-monitoring functions their agencies perform.

Although nominees to top positions in the executive branch often come under

heavy scrutiny from senators and interest groups, they are almost always confirmed quickly and without much controversy. Considered to be part of the president's "team," and thus given a strong presumption of confirmability, nominees to the president's cabinet are not generally scrutinized as carefully as are nominees to the federal bench. Senators typically use the confirmation process for cabinet secretaries-designate only to ensure that nominees possess appropriate educational and professional qualifications and that the nominee is willing to appear before the Congress on matters of public policy.

Finally, this project explores confirmation dynamics for ambassadorial nominees. Lenhart (1991, 3n) defines an ambassador as "a diplomatic agent of the highest rank accredited to a foreign government or international organization as the resident representative of his country." In the United States, ambassadors often are considered to be the president's official representative, and some countries measure their standing in the American esteem by evaluating the stature of the ambassador sent by the U.S. Government. Like nominations to the president's cabinet, ambassadorial nominees are nearly always confirmed without controversy. Sanford (1997, 1) notes that between 1987 and 1996, the Senate confirmed 91% of the president's nominees to ambassadorships. Once appointed, ambassadors manage the U.S. embassy and its staff and act as foreign policy coordinators for the United States (Lenhart 1991).

An important difference traditionally has distinguished ambassadorial and cabinet confirmations from judicial confirmations. That difference is that the Senate usually grants the president the latitude to appoint whomever he wishes. Nominees to

ambassadorships and cabinet posts are routinely confirmed without controversy. Typically, the Senate views ambassadorships as patronage appointments to figurehead positions, and does little to block a president's choice.[17] Similarly, most senators believe that the president is entitled to his choice in choosing members of his cabinet (Boren 1997).

These brief descriptions of the three sets of nominees considered in this project demonstrate just how important these positions are to the functioning of the American government. Thus, decisions by the president and the Senate about whom to appoint to fill vacancies that occur have real consequences. For that reason, it is necessary to explore the confirmation process for these three groups of major appointments.

DEFINITIONS

In this study, a number of terms and definitions appear repeatedly. Before proceeding, it is necessary to provide clear definitions of these terms.

Throughout this study, the term *appointment process* is used to refer to both presidential and senatorial involvement in filling vacancies in the federal government. The term includes all of the steps involved in filling a vacancy that falls under the process established in Article II of the United States Constitution. That language reads:

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[17] One CRS researcher summed it up this way: "Look, if there's no ambassador , it's not like the embassy shuts down. Work goes on. The ambassador is just a figurehead." (Author's interview with anonymous CRS researcher, 1997).

> The president ... shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public ministers and consuls, Judges of the Supreme Court, and all other Officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law.

Although the president appoints individuals to positions ranging from independent government agencies to the Supreme Court, this study is primarily concerned with *major appointments.* Mackenzie (1981, xii) defines major appointments as "those positions at the highest levels of the federal government." These positions include: "Cabinet and subcabinet officers, the heads of independent agencies, the members of regulatory commissions, the directors of government corporations, ambassadors, and federal judges" (Mackenzie 1981, xii). Although most of these, and even some minor appointed positions are discussed in this study, primary emphasis is on federal judgeships, cabinet positions, and ambassadors, and the role that interest groups play in the confirmation process for these officials. An *appointee* is someone who successfully navigated the confirmation process and was confirmed by the Senate.

The term *nomination* or *nomination process* is used to encompass the procedures used by executive branch personnel to select an individual to fill a vacancy that has occurred. *Selection process* is also used to refer to the president's process of choosing an individual to fill a vacancy requiring appointment. *Nominees* or *presidential nominees* are those individuals that have been selected by the president and whose names have officially been forwarded to the Senate for consideration.

Confirmation or *confirmation process* refers to the procedures used by the United States Senate and its committees and subcommittees to approve or disapprove of a president's nominees. Throughout this study, the term *advice and consent* will also be used to refer to the Senate's role in the federal appointment process. *Vetting* refers to the process of conducting background checks on a nominee or potential nominee. It may occur prior to a nomination and during the Senate's consideration of a nominee. *Senatorial courtesy* refers to the long-standing tradition of Senators deferring to one another during the confirmation process. By tradition, if a senator objects to confirmation of an individual who would serve in his or her home state, the Senate most likely will not confirm the nominee.

Finally, for the purposes of this study, an *interest group* is defined as any non-governmental, non-party organization having multiple members and seeking to influence political outcomes. A *lobbyist* is an individual who works for an interest group, whose primary function is to make contact with policy makers. The term *grassroots* refers to those individuals in the mass public who share an attachment to an interest group, either by geography or by ideology. *Interest group activity/interest group participation* refers to the activities interest groups engage in as they attempt to influence outcomes in the legislative and confirmation processes. *Formal participation* includes two interest group activities, testifying at confirmation hearings and submitting materials for the hearing record. *Informal participation* refers to the actions an interest group engages in other than testifying at confirmation hearings and submitting materials to the hearing record.

Such activities include telephone calls and letters to senators, one-on-one meetings with senators, and communications with group members concerning the confirmation process.

ORGANIZATION OF THE DISSERTATION

Despite knowing that interest groups desire to influence appointment to public office, much remains unknown about the dynamics of their participation in the Senate confirmation process. Thus, the remainder of this dissertation explores why and how interest groups participate in confirmation politics for three groups of presidential nominees: nominees to the lower federal courts, nominees to fill vacant positions on the president's cabinet, and ambassadorial nominees.

Chapter One describes the contemporary confirmation process in great detail. It considers the confirmation process as a bellwether of the health and direction of the national government. In addition, it describes the process used by the Senate to consider presidential nominees. Chapter Two provides the rationale for this study, as well as an in-depth exploration of how the confirmation process has changed from the one established by the Founding Fathers to the complicated process of today. Chapter Two also offers several explanations for why the confirmation process changed.

Chapter Three explores the roles that interest groups play in the confirmation process. It examines the strategies that interest groups employ in order to assert their views and achieve their policy goals. Chapter Three chronicles how groups borrow heavily from the strategies they use to influence legislative outcomes, including agenda setting, educating senators and the public, and punishing or rewarding legislators for

doing what the groups think they should during the confirmation process. In light of interest group participation in the confirmation process generally, Chapter Four takes an in-depth look at one of the most contentious groups of presidential nominees – nominees to the federal judiciary.

Chapter Four explores the effect that interest group participation in the confirmation process has had on confirmation politics for federal judges. It also investigates whether interest groups have become more involved in the confirmation process since Robert Bork's confirmation failed in 1987. The findings presented in Chapter Four indicate that formal interest group participation in confirmation hearings has declined over time, while the informal, behind-the-scenes methods that these groups use have become more important. Chapter Four also identifies the consequences of interest group participation on the confirmation process for judicial nominees. More vacancies, lengthy waits for confirmation, and a reduction in the number of individuals applying for federal judgeships all seem to be related at least in part to increasing interest group activity in the confirmation process.

Chapter Five explores the lessons that can be learned from the confirmation of federal judicial nominees. It offers some observations about the ways in which interest groups are involved in the confirmation process for other groups of presidential nominees, including cabinet secretaries and ambassadors. In addition, Chapter Five explores the question of whether some of the interest group tactics that have caused dramatic changes in the confirmation process for federal judges are likely to have an

impact on confirmations for cabinet secretaries and ambassadors. Finally, Chapter Six integrates the major findings of this project, and offers some concluding observations about the future of the Senate confirmation process for appointed federal officials.

CHAPTER ONE:

THE CONTEMPORARY CONFIRMATION PROCESS

> [While you wait for confirmation], everything is unsettled. Your plans, professional and economic, are on hold. Certainly there's going to be scrutiny of nominees. But certainly you wouldn't expect there to be delays without scrutiny or delays over such an extended period.
>
> Federal District Court Judgeship Nominee, Michael Schattman, November, 1998.

With the exception of litigants in federal lawsuits, few people care very much about vacant seats on the federal bench. Even fewer care about the jobless rate among high-paid federal bureaucrats or wealthy campaign contributors seeking to become the ambassador to a foreign country. By and large, the breakdown of the confirmation process for top federal jobs is not a salient issue to the vast majority of American people. But it should be. The choices that a president makes in nominating people to fill vacancies, and the process that the Senate uses to determine nominees' integrity, fitness, and qualifications have direct consequences for the quality of governance in the United States. Understanding the confirmation process can help individuals to understand better the health, stability, and direction of the American system of government. No other process brings together as many political actors as the confirmation process for federal officials. Taken in its entirety, the appointment process brings together actors from the

executive, legislative, and judicial branches, from the federal bureaucracy, and from outside organizations such as the media and interest groups.

The confirmation process also permits public inquiry into the fitness of nominees to serve in the highest echelons of government. As Stephen Carter has written:

> [T]he federal government with each passing year recedes further and further from the control of the people of the United States, in whose name it exercises authority. The confirmation process, for a Justice, a cabinet officer, an assistant secretary is, for most of us, the only opportunity we will ever have to get some sense of what kinds of people we are allowing to run the place" (Carter 1994, 15).

Examining the dynamics of the confirmation process also can yield important clues about the political system. As Roger Garcia, a Congressional Research Service (CRS) specialist in confirmation politics notes: "The [confirmation] process is just a microcosm of the political process."[18] Thus, studying the confirmation process for major appointments is especially important because each set of nominees exists within its own web of political interests. As Richard Fenno notes in his seminal study of presidential cabinets: "Since the network of relationships which affects the cabinet includes the president, the executive branch of government, the Congress, political parties, and pressure groups, a study of the cabinet becomes in its broadest sense a study of American politics in general" (Fenno 1959, vii). Regarding ambassadors, Mak and Kennedy (1992, 22) note: "The selection and appointment of American ambassadors is a unique process involving presidential preferences, domestic policies, professional abilities from within

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[18] Author's Interview, 1997.

the foreign service and special qualifications from without." With regard to the Supreme Court, Lawrence Tribe has written that "there is hardly an aspect of American life that has not been touched by the hands of our highest tribunal" (Tribe 1986, 2). The lower federal courts also exist at the nexus of competing legal, social, and political interests, each vying for the upper hand in pending litigation.

The changes to the confirmation process that have occurred in the last few decades indicate that the American federal government is in need of repair. The slowing of the confirmation process and the increasing number of vacancies in top federal jobs suggests that our political system is no longer functioning as it once did. The changes that have occurred in the confirmation process keep federal judgeships vacant and agencies and embassies understaffed. This, in turn, has important consequences for the functioning of government. As United States Supreme Court Chief Justice William Rehnquist (1997, 7) wrote in his 1997 *Year-End Report on the Federal Judiciary*, "Vacancies can not remain at such high levels indefinitely without eroding the quality of justice that traditionally has been associated with the federal judiciary."

Studying the confirmation process is the only way to ascertain the true dynamics of the appointment process more generally. The confirmation process gives a full picture of the competing interests involved, since it is much more open to public scrutiny and involvement than is the president's nomination process. While the president's selection of a nominee largely takes place behind closed doors, the Senate confirmation process – through public hearings – provides an open forum for senators, members of Congress,

staff, interest groups, and even members of the public to make their concerns about a nominee known. The contemporary Senate's norms and procedures also provide ample room for interest groups that oppose a nominee to slow or prevent confirmation.

HOW THE CONFIRMATION PROCESS WORKS

In order to understand interest groups' effect on the confirmation process, it is first necessary to explain how the process works. Although the Constitution sets out the general structure of the appointment process, it does little to define the roles that the president and the Senate play in choosing individuals to fill the highest positions in the American government. The Constitution's mandate that the president's nominees be appointed "by and with the consent of the Senate" has resulted in persistent ambiguity over the scope of their roles. Nonetheless, the president and the Senate have developed a process for appointing public officials, which is discussed below.

Before the Senate's confirmation process can begin, a nominee must first be selected by the president. Especially at the beginning of a presidential administration, there are typically a large number of vacancies to fill. According to Mackenzie (1996, 51):

> No sooner has the last vote been cast than the resumes start flowing. During the early Clinton transition, they flowed at the rate of 15,000 per week. They don't just arrive in the mail. They come pouring out of fax machines. They are hand delivered by powerful sponsors looking for jobs for favorite staff members, constituents, old allies, or brothers-in-law.

With such high levels of interest in federal appointment, presidents and their

staffs must determine who is fit to serve. Thus, there are a number of criteria that are used to choose nominees to federal office. Presidents or presidential personnel directors usually select an individual whose education, professional experience, and personal integrity make him or her qualified to fill the vacancy that exists. When a vacancy occurs within a federal agency, agency heads often get involved by making recommendations to the president. Senators send the president names of individuals that they find acceptable to fill vacancies on the federal district courts, vacancies in the U.S. Marshals Service, or vacancies in U.S. attorneys positions within the state they represent. They do this to ensure that the nominee that ultimately emerges from the White House has a connection to the geographic area in which he or she will serve. O'Brien (1988, 70) explains that with regard to the federal courts, many senators "...send three to five names to the Justice Department for each vacancy, often suggesting their preference."[19] The exception to this norm of home-state senators' input arises if neither senator is a member of the president's party. For example, in the case of Michael Schattman, President Clinton consulted with Democrat members of the House congressional delegation from North Texas in searching for a suitable nominee for the North Texas district court vacancy.

Based on the input from senators (or House members in certain circumstances), White House staff, and agency heads, the director of presidential personnel will prepare a short list of potential nominees, and will request that the Federal Bureau of Investigation

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[19] There is evidence that the Clinton White House prefers to receive the name of only one candidate from the home state senators. According to Mark Fox, legislative assistant to Senator Daniel Inouye (D-HI), the White House has asked them for the name of only one candidate to fill vacancies on Hawaii's district court

(Footnotes continued on next page)

(FBI) conduct a thorough background check into the prospective nominee.[20] At this point, individuals on the short list are informed that they are under consideration for a presidential appointment and are told that they should be prepared for the FBI to investigate their backgrounds. Mackenzie (1996, 55) notes: "The investigations focus on the candidate's character, associations, reputation, and loyalty. The background investigation covers the candidate's entire adult life, with emphasis on the recent past." Only individuals who have been cleared by the FBI have a realistic chance of being nominated. When the background checks are complete, the president will select a nominee.

Once the president has selected a nominee, he or a member of his staff transmits the nomination to the secretary of the Senate. At the same time, the nomination also is formally announced by the White House, usually in a brief statement issued from the Office of the Press Secretary. For high-profile positions, such as cabinet-level offices and Supreme Court justiceships, the President may choose to hold a press conference at which point he reads a statement introducing the nominee to the media. These introductions mark the beginning of the Senate's confirmation process. The nomination comes to the Senate on a single sheet of paper, which the Secretary of the Senate refers to the majority committee clerk on the committee of jurisdiction for the nomination (Mackenzie 1996). Soon after receiving the formal nomination, the Department of

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(Author's Interview 1998).

[20] The FBI background check has been an important step in securing presidential nomination since the mid-1950s, when President Eisenhower instituted the background check as a prerequisite to nomination.

Justice and the FBI send over any files or information they have collected on the nominee. According to Mary DeOreo, minority staff investigator for the Senate Judiciary Committee: "Once we have that nomination, the Department of Justice is quick to send over files – meaning FBI files and all the other records."[21] At this point, Senate committee staff begin their own vetting process, largely checking to be certain that proceeding with confirmation hearings will not prove embarrassing to the committee chair. Each committee has at least one staff member with FBI clearances, which permit him or her to review the FBI files and to investigate any suspicious information in the nominee's file. Senators may also have access to the files on a "need-to-know" basis.[22] In addition to reviewing the FBI files, committee staff will solicit input from nominees' references, and will investigate allegations of wrongdoing on the part of the nominee. Some committees even require their own questionnaires be completed before confirmation hearings will be scheduled.

The investigation into a nominee's background may take only a few days or it may take several months. Once the committee staff has completed its investigation, staffers report to the chairman of the committee on their findings. It is then up to the chairman to schedule confirmation hearings. Nominees with no "skeletons in their closet" generally receive a hearing quickly. However, if the committee investigators determine a possible problem with the nominee, that person waits for a confirmation hearing until all questions are resolved. If the questions can not be resolved, a

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[21] Author's Interview, 1998.

nomination will not move to the hearing stage. Some nominees never receive a hearing and are never told why their nominations are stalled in committee.

Provided that there are no major problems with a nominee's file and, in the case of judicial and regulatory nominees, that the home state senators do not object, the nomination proceeds to a confirmation hearing. Senate confirmation hearings consist of one or more panels of nominees. Often, the number of nominees scheduled for hearings on a particular day reflects the position to which they have been nominated. For example, a nominee to fill a vacant position in the president's cabinet or subcabinet is likely to be the only nominee considered by a Committee during a hearing; however, federal judgeship and ambassadorship nominees may often sit on a panel with several other nominees for similar positions, in order to expedite the confirmation process. Sometimes, controversial nominees are also given individual hearings.

During confirmation hearings, nominees may be introduced by their home state senators, or less frequently, by their member of Congress. Nominees are then given the opportunity to make a brief opening statement and to introduce any family or friends who may be seated in the gallery. Once the nominee has concluded his or her opening statement, the Committee begins to ask questions. Nominees generally are called upon to answer questions about their professional qualifications. Sometimes, they are asked about matters of policy on which their appointment would have a direct effect. If the nominee is the only witness at the hearing, the hearing will conclude when senators have

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[22] Author's Interview with Mary DeOreo (1998).

asked their final questions of the nominee. If there are additional witnesses, such as agency personnel or interest groups wishing to testify, the nominee will be excused and the panel of additional witnesses will be called to present its views.

Once the confirmation hearings have concluded, the committee must formally vote to approve or disapprove of the nomination. This is generally done during the next subsequent executive business meeting of the full committee. If a nominee is uniformly acceptable to members of the committee, the nomination generally will be approved by voice vote. If the nominee is not acceptable to the entire committee, the chairman will call for a roll-call vote. If senators on the committee wish more time for consideration of a nomination, the nominee may be "held over" to the next executive business meeting. If a majority of senators on the committee approve, the nomination will be sent to the entire Senate for a floor vote for confirmation.

Regardless of the extent of damaging information in a nominee's file, the confirmation process now takes longer than ever before. Mackenzie (1996, 64) points out that while the average number of weeks between the Senate's receipt of a nomination and its final vote for confirmation was 6.8 during the Johnson administration, that number rose steadily to reach 14.6 weeks during Ronald Reagan's first administration. As the data in Chapter Four indicate, during the 104th Congress, judicial nominees waited an average of 30 weeks for confirmation. These delays may be related to the increasing use of two tools to delay or deny confirmation to presidential nominees – blue slips and holds.

Blue Slips

Judicial nominees and nominees to regulatory and special commissions face another obstacle to the scheduling of confirmation hearings – the return of favorable or negative "blue slips." "Blue slips" are literally blue slips of paper given to home state senators for the purpose of evaluating whether the home state senator supports the individual nominated to fill a judicial or other vacancy within that senator's state. O'Brien (1988, 71) notes that the Judiciary Committee's blue slips read as follows:

> Dear Senator
> Will you kindly give me, for the use of the Committee, your opinion and information concerning the nomination of [name, district, and name of former judge]? Under rule of the Committee, unless a reply is received from you within a week from this date, it will be assumed that you have no objection to the nominee.
>
> Respectfully,
> [Signature]
> Chairman, Senate Judiciary Committee

O'Brien notes that while "the wording would seem to indicate that nonreturn signifies support for the nominee" in reality, the lack of an affirmative response from the home state senators typically results in no further action on a nominee (O'Brien 1988, 71).

If the home state senators are pleased with the president's nominee, they simply return the slip indicating that the nominee is acceptable, and Senate confirmation proceedings continue. If the home state senators do not approve of the nominee, however, they may return the slip stating that they find the nominee to be "personally obnoxious." A June 8, 1989 letter from then-Judiciary Committee chairman Joseph

Biden (D-DE) to President George Bush details the evolution of the Blue Slip policy with respect to the Judiciary Committee:

> For many years – under both Democratic and Republican chairmanships – the return of a negative blue slip meant that the nomination simply would not be considered. That policy was modified under Senator Kennedy's chairmanship, so that the return of a negative blue slip would not preclude consideration of the nomination. A hearing and vote would be held, although the return of a negative blue slip would be given substantial weight.

Biden continued:

> At the Judiciary Committee's business meeting on May 18, I articulated the blue slip policy that the committee will follow under my chairmanship. The return of a negative blue slip will be a significant factor to be weighed by the committee in its evaluation of a judicial nominee, but it will not preclude consideration unless the administration has not consulted with both home state senators prior to submitting the nomination to the Senate.[23]

When Orrin Hatch assumed the chairmanship of the Judiciary Committee in 1995, he informed the White House that he would continue the policy set out by Senator Biden.[24] In an interesting twist on the longstanding blue slip practice, in Michael Schattman's case, Senators Gramm and Hutchison withdrew in 1997 the favorable blue slips they had returned in 1996. Because Gramm and Hutchison, as republicans, had not been consulted prior to his nomination, the net effect was to stop Schattman's nomination from even being considered by the Senate Judiciary Committee. Thus, blue slips are an important factor in determining whether nominees to certain offices are given hearings and, thus,

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[23] Letter to President George Bush from Senator Joseph Biden, June 6, 1989.

whether they ultimately are confirmed by the Senate.

Interestingly, the use of blue slips provides additional evidence that the confirmation process has changed. In 1988, O'Brien reported: "The blue slip is now rarely used to block nominees" (O'Brien 1988, 71). Yet, in a June, 1998 floor statement, Senate Judiciary Committee Chairman Orrin Hatch cited lack of support among home state senators as one of the reasons that nominees to the federal bench were not being confirmed (Hatch 1998, S.6753). Despite O'Brien's assurances that blue slips are not used very often, recently there has been a resurgence of their influence. Indeed, Mike Schattman's case illustrates just how important blue slips really are in the confirmation.

Holds

The vast majority of nominations approved by the committee of jurisdiction are confirmed easily on the Senate floor. However, if any Senator objects to the confirmation of a nominee for any reason, he or she can request that the Senate Majority Leader put a "hold" on the nomination. The hold prevents the nomination from being brought to the floor for debate or for a vote (Twentieth Century Fund 1996). In addition, up until March, 1999, senators had the option of keeping their holds on nominees secret from their colleagues, often to avoid being held accountable for opposition to the nominee in question. Dewar (1997, A17) writes: "The holds procedure began a century ago as a courtesy to senators who were unable to come to the Senate floor for a debate or vote. But it has evolved over the years into a major tool of delay or obstruction.

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[24] Letter from Senator Orrin Hatch to Abner J. Mikva, Counsel to President Bill Clinton, February 3, 1995.

According to a *Washington Post* editorial written by Senators Ron Wyden (D-OR) and Chuck Grassley (R-IA): "The hold started out as a courtesy for senators who wanted to participate in open debate. It has become a shield for senators who wish to avoid it" (Wyden and Grassley 1997, P.A23).

Michael Carrasco, minority nominations clerk for the Senate Judiciary Committee, notes that there are three types of holds: substantive, target, and leadership. If a senator has concerns about a nominee's qualifications, he or she may place a *substantive* hold on that individual. In effect, the senator placing the hold is expressing his or her concerns over a nominee's orientation to a substantive policy issue. On the other hand, a senator may use a hold as a retaliatory technique, either against a nominee or against another senator. This is what is considered a *target* hold, because the nominee becomes the target of hostilities that stem from a broader political conflict. Finally, the Senate majority leader may place a *leadership* hold on a nomination. Carrasco notes that this type of hold is used when the majority leader believes that "other things are more important than the nominations pending on the Senate floor" and wants to ensure that other legislative business is concluded before the Senate considers a nomination.[25] For example, midway through the second session of the 105th Congress, Senate Majority Leader Trent Lott declared a leadership hold on many nominations, vowing that he would not bring them to a vote until portions of the budget agreement had been approved by the

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[25] Author's interview with Michael Carrasco, minority nominations clerk, Senate Committee on the Judiciary, November 4, 1998.

Senate.[26]

There is some evidence that the use of holds to prevent the confirmation of presidential nominations has increased in recent years. Sheldon Goldman, a legal scholar who studies the Senate confirmation process for judicial nominations, was quoted in the Sacramento *Bee* during the first session of the 105th Congress as stating: "We've never had a Senate Majority Leader [Trent Lott] allowing so-called holds on people who have been cleared and moved to the full Senate for a vote. ... The whole Senate committee system is being challenged" (Jacobs 1997, B7). In general, the hold is a powerful tool for preventing presidential nominations from being confirmed.

Getting Confirmed

If a nominee can survive the vetting process, committee blue slips, the committee vote to send the nomination to the full Senate, and the increasing use of the hold, the Senate majority leader schedules time on the Senate's Executive Calendar for the nomination to be debated (if necessary) and voted on by the full Senate. The Executive Calendar is the Senate scheduling device used solely for consideration of the president's nominations. In order to debate or vote on a nomination, the Senate Majority Leader or his designee must ask unanimous consent that the Senate proceed to its Executive Calendar. If a nominee receives a majority vote in favor of confirmation, he or she is confirmed by the Senate. If a nominee fails to receive a majority vote, his or her nomination is failed by the Senate.

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[26] Ibid.

A number of factors have been found in previous studies to influence senators' confirmation decisions. Previous studies have found that senators' confirmation decisions are based on the same factors that influence their legislative decisions. According to Congressional Research Specialist Rogelio Garcia:

> How the Senate acts on a nomination depends largely on the importance of the position involved, existing political circumstances and policy implications. Generally, the Senate shows particular interest in the nominee's views and how they are likely to affect public policy. How closely the nominee's personal and professional qualities are examined may depend on the importance of the position, possible or likely effect on constituent interests, and his or her possible likely influence on public policy (Garcia 1996b, 2).

Constituents, interest groups, the mass media, and even their colleagues in the Senate also appear to have an impact on senators' confirmation decisions.[27] According to former Oklahoma Senator David Boren: "The confirmation decision is almost the same as passing a bill. The very same pressures come to bear on you."[28]

One final note on the Senate's confirmation process. Senate consideration of a nominee – that is the entire process from committee vetting to final approval of a nomination – must take place during the same Congress in which an individual was nominated by the president. If, by the time the Congress adjourns, action is not completed on a nomination, the nomination is returned to the president, and the president must re-nominate the individual during the next Congress.[29]

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[27] See, for example, Overby et al. 1992; Overby and Henschen 1994; Silverstein 1994; Carter 1994
[28] Author's Interview, 1997.
[29] The president can, if he chooses, exercise his power to make recess appointments between Congresses or

(Footnotes continued on next page)

CONCLUSION

Table 1.1 summarizes the major steps of the contemporary confirmation process. As was noted above, today's confirmations bring together many of the nation's most important political actors – the president, the Senate, members of Congress, the executive branch, the judicial branch, interest groups, and the public. Because the Constitution provides no specific guidelines with regard to the role that any of these groups are to play in the confirmation process, they have been left to their own devices to forge working relationships and staff government's highest public offices. The way that these groups work together – or do not work together – to influence the staffing of government sheds important light on the health, stability, and direction of the American political system.

The contemporary confirmation process has evolved since the earliest years of the American republic. Throughout most of American history, the confirmation process operated above the fray of politics. Senators tended to defer to their colleagues, and nominees were not often used as political bargaining tools. Recently delaying tactics like blue slips and holds have been used more frequently by the Senate to prevent the confirmation of presidential nominees. Presidential nominees have been caught in the fray of politics, as the president and the Senate have begun to use the confirmation process as an arena to secure other political goals. As former Oklahoma Senator David L. Boren has said: "Nominees are treated like pawns in a bigger chess game."[30]

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during lengthy breaks within Congresses. However, presidents use this power sparingly, and it is not a focus of the analyses in the remainder of this dissertation.

[30] Author's Interview, 1997.

The contemporary confirmation process is characterized by lengthy delays, partisan attacks on nominees, and conflict among all the actors involved. As Mackenzie (1981, xix) writes:

> Conflict occurs regularly in the appointment process for a very simple reason. Appointments matter. Were that not the case, presidents would not have several dozen White House aides devoting full time to appointment decisions; Senate committees would not hold hundreds of hours of confirmation hearings; interest groups, agencies, political parties, and members of the House would not spend their time or resources trying to shape appointment decisions. Yet they all do these things, and they do them because they think it makes a difference who gets appointed to serve in particular federal offices.

LeLoup and Shull (1999, 64) add: "The president controls several thousand appointments to the most important jobs in the executive branch. This can help shape rule making, enforcement and policy implementation." And, according to Wood and Waterman (1991, 801): "[P]olitical appointments – a shared power of the president and Congress – is [sic] the most important instrument of political control; changing budgets, legislation, congressional signal, and administrative reorganizations are less important."

In order to put the contemporary confirmation process into context it is necessary to identify the specific changes that have occurred. The next chapter more fully considers the changes that have taken place in the contemporary confirmation process. It explores how the process is different from that envisioned by the framers of the Constitution. Chapter Two also considers several explanations for these changes, including the relatively new phenomenon of interest group participation.

TABLE 1.1

MAJOR STEPS IN THE CONTEMPORARY CONFIRMATION PROCESS

Preliminary Steps

1. **A nomination is announced by the President.**
2. **The White House sends the nomination to the Senate.**
3. **The nomination is referred to the appropriate Senate Committee.**
4. **The nominee is given and returns required committee questionnaires, including additional financial disclosure and conflict-of-interest forms.**
5. **Committee staff investigate the nominee's background.**
6. **Home-state senators are queried about the nominee.**

Hearing Stage

7. **Nominee is scheduled for a confirmation hearing.**
8. **Nominee travels to Washington, D.C.**
9. **A public confirmation hearing is held – outside witnesses, including interest groups, may be invited to attend.**
10. **The nomination is brought to a vote by the Committee at the next Executive Business meeting.**

Final Approval

11. **The nomination is placed on the Executive Calendar**
12. **The Senate Majority Leader calls for a full-Senate vote on the nominee.**
13. **Upon receiving a majority vote, the nominee is confirmed.**
14. **The Secretary of the Senate notifies the White House that the Senate has approved the nomination.**

CHAPTER TWO

HOW AND WHY THE CONFIRMATION PROCESS CHANGED

> For almost thirty years the presidential appointment process has been evolving away from its constitutional roots. In the 1990s, this evolution has accelerated out of control.
>
> G. Calvin Mackenzie: *Starting Over.* 1998.

Like most other political processes, the confirmation process has evolved over time. The contemporary confirmation process described in the previous chapter is the product of more than 200 years of political struggle over the staffing of the federal government. As the United States has become more pluralistic, so too have the number of actors participating in the confirmation process grown. Today, presidential staffs, individual senators and their staffs, members of Congress, the media, and interest groups all are active participants in the confirmation process.

The confirmation process has changed because the appointment process more generally has undergone dramatic changes. According to Mackenzie (1996, 37):

> The modern presidential appointment process barely resembles its constitutional design or intent. In fact, it differs dramatically from the way presidents made appointments as recently as the late 1940s. There are more jobs to fill than ever before... The appointment process is much more formal and structured. It takes longer, often many moths longer, to fill an appointive position than it did just a few decades ago. And the process is more visible and more consistently contentious than ever.

Today's appointment process stands in stark contrast to the one envisioned by the framers. Confronted with the question of how best to appoint federal political executives, the framers of the United States Constitution ultimately agreed that only two actors were to be involved: the president and the Senate. They settled on these actors after long and protracted debate; over the course of the Constitutional Convention, the framers considered a number of proposals for the appointment of federal judges and officials, from sole legislative appointment to the suggestion that the executives of each of the states should make appointments to the federal government (Farrand 1966b; 419). In the end, however, the framers decided that the president and the Senate each should play a role in the appointment of judges and other officers.

The "advice and consent" clause of the Constitution is the foundation of the Senate's important confirmation authority.[31] The president nominates anyone of his choosing to fill vacancies in the federal government and the Senate must then approve his choices. The framers established no further guidelines within the Constitution for how the process of "advice and consent" was supposed to work. As Mackenzie (1981, 92) writes: "The most noteworthy characteristic of the appointment process shaped by the Founding Fathers is the legacy of ambiguity it left to subsequent generations of political practitioners." The framers' ambiguity about the role that both the president and the Senate would play in the confirmation process is what has allowed it to evolve and change over time. Nonetheless, the framers' debates at the Constitutional Convention of

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[31] The text of this clause appears in the Introduction of this project.

1787 and the early years of the new American government provide insight into how the confirmation process was supposed to work.

Senate Approval

The earliest clues about the role that the framers intended the Senate to play come from the debates about ratification of the Constitution. On October 24, 1787, James McHenry told the Maryland House of Delegates: "[The president's] power when elected is check'd by the Consent of the Senate, to the appointment of Officers, and without endangering Liberty by the junction of the Executive and Legislative in this instance" (Farrand 1966c; 150). On November 29th, 1787, Luther Martin told the Maryland House of Delegates:

> Some would gladly have given the appointment of Ambassadors and Judges to the Senate, some were for vesting this power in the Legislature by joint ballot, as being most likely to know the Merrit of Individuals over this extended empire. But as the President is to nominate, the person chosen must be ultimately his choice and he will thus have an army of civil officers as well as Military (Farrand 1966c; 159).

On December 4th, 1787, James Wilson told the Pennsylvania Convention: "With regard to the appointment of officers, the President must nominate before [the Senate] can vote. So that if the powers of either branch are perverted, it must be with the approbation of some one of the other branches of government: thus checked on one side, they can do no one act of themselves" (III Farrand 1966; 162).

The *Federalist Papers* also give clues to the framers' intent, with regard to the

balance of power between the president and the Senate in the appointment process. Alexander Hamilton notes in *Federalist 65*: "As in the business of appointments the Executive will be the principal agent..." In *Federalist 66*, Hamilton asserted that in appointing federal officers, "[t]here will, of course, be no exertion of choice on the part of the Senate. They may defeat one choice of the executive, and oblige him to make another; but they themselves can not choose – they can only ratify or reject a choice he has made." In *Federalist 76,* Hamilton makes his strongest statement on the appointment of federal officers and the shared power of the president and the Senate:

> The Senate could not be tempted by the preference they might feel to another to reject the one proposed; because they could not assure themselves that the person they might wish would be brought forward by any subsequent nomination. They could not even be certain that a future nomination would present a candidate in any degree more acceptable to them...To what purpose then require the co-operation of the Senate? I answer that the necessity of their concurrence would have a powerful, though in general a silent operation. It would be an excellent check upon a spirit of favoritism in the president, and would tend to preventing the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity.

In Hamilton's view, the Senate was intended to be a "silent" check on the president for the purpose of preventing cronyism, favoritism, and nepotism from preventing the appointment of the best qualified individuals.

The early years of the confirmation process set precedents that would be followed well into the twentieth century. The nation's first president, George Washington, was the

first to appoint judges and other officials using the new Constitution's framework. By and large, the Senate gave Washington *carte blanche* to appoint whomever he felt best to vacancies in the new government. His first nomination – William Short to be temporary ambassador to France – was made on June 15th, 1789. Short was confirmed two days later (Harris 1953; 37-8). Most of Washington's nominees were swiftly confirmed by the Senate within just one day of being nominated. With few exceptions, the appointment process in Washington's time was amicable.

Throughout the first period of American history, presidents generally could expect senatorial deference to their nominees and nearly all presidential nominations were eventually confirmed. Presidents frequently consulted members of the Senate for their advice, but nominees generally were well known to the president and often were selected based on their allegiance to the new Constitution. And, upon presentation to the Senate, presidential nominees were routinely confirmed. To be sure, some presidents had an easier time than others. James Madison, for example, sometimes had difficulty convincing the Senate to confirm his nominees. But in general, the Senate deferred to presidential choice and fulfilled its role as a silent check on the president's selections.

Even through the turbulence of the Civil War and Reconstruction, the Senate tended to defer to the President. Harris (1953, 53) writes: "No other President ever had as many contests with the Senate over appointments as Andrew Jackson..." But, unlike President Madison, who had caved to pressure from a small cabal of Senators, President Jackson stood his ground on behalf of his nominees. For example, when the Senate

rejected ten of Jackson's nominations early on in his administration, Jackson renominated them and all but four were eventually confirmed (Harris 1953, 53).

Throughout American history, presidents typically have been able to count on the Senate to confirm their nominees. Until recently, there were few major contests over presidential nominees. The Senate's confirmation process was swift and predictable. That is no longer the case. Today, presidential nominees can not assume that they will be confirmed. While some nominees are confirmed quickly and without controversy, others languish for months or even years before learning of their fates. Today, a nominee's success in the confirmation process often is constrained by the peculiar conditions of the political environment. The political environment may determine who gets nominated, who gets confirmed, and the tone and tenor of these processes. In recent years, the political environment has helped to reshape the once predictable process of securing Senate confirmation into a process characterized by delays, uncertainty, and partisan foot-dragging.

Once thought to be above the fray of politics, the confirmation process now is influenced by a plethora of external political factors and is especially susceptible to conflict between the president and the Senate. For example, Davidson and Oleszek (1997, 308-9) describe how the campaign finance scandal of 1997 affected the appointment process for President Clinton's diplomatic nominees. They write:

> After allegations in the press that foreign national and governments contributed money to his 1996 presidential campaign as a way to win favors, President Clinton was wary of naming foreign envoys. At the beginning of his second term, the selection of diplomatic personnel 'bogged down, a victim of White House indecision caused in part by the furor over campaign financing.'

Anthony Lake's nomination to head the Central Intelligence Agency (CIA) was one nominee whose confirmation chances were adversely affected by the campaign finance investigation. His nomination stalled hopelessly while the Senate tried to sort out fact from fiction in the campaign finance scandal. Reporter Eric Engberg noted on "CBS This Morning" in March, 1997 that "it's clear the expanding investigations into the Democrats' raising of funds from questionable and maybe illegal foreign sources have [made the administration vulnerable]; said Republican Senator John McCain, 'If it weren't for that, [Anthony] Lake would have slid through.' The fight was not about Lake. He was just a convenient target" (CBS This Morning, March 19, 1997).

HOW THE CONFIRMATION PROCESS CHANGED

The Constitution has never been amended on the subject of the appointment process or on the role of the U.S. Senate within it. Nonetheless, many aspects of today's confirmation process are very different from the one established by the framers. As the previous chapter made clear, the Senate no longer acquiesces to the president's choices. Nominees no longer can expect swift and certain confirmation to federal office. The contemporary confirmation process is very different from the amicable procedure envisioned by the framers and used by President Washington and nearly all other U.S.

presidents. Increases in the number of positions requiring Senate confirmation, a diminished role for the president, increasing partisanship, and the more frequent use of delaying tactics by the Senate are the most visible ways in which the confirmation process has changed in recent decades.

INCREASES IN THE NUMBER OF POSITIONS REQUIRING SENATE CONFIRMATION

The practical matter of an ever-expanding number of jobs requiring Senate confirmation is an important change to the confirmation process. In 1789, there were less than 2,000 people employed in the federal bureaucracy. That number had grown to three million by 1988 (see Wayne et al. 1995; 516). The federal judiciary has grown exponentially since it was created in 1789. In 1798 there were six members of the United States Supreme Court and the total number of lower federal court judges was 13 (Arnold 1996; 474). Today, there are 829 lower federal court judgeships whose work is reviewed by nine sitting Supreme Court justices (Rutkus 1997). With regard to ambassadorships, in 1789, there were just two countries – Britain and France – to which the United States sent an ambassador. By 1991 the United States sent ambassadors to 138 countries and to several multi-national organizations, including the North Atlantic Treaty Organization (NATO) and the United Nations (Lenhart 1991).

In 1998 report, the Twentieth Century Fund summed up all these statistics: "There are forty-three times more appointees in the federal government today than there were in 1935, five times as many as in 1960" (Mackenzie 1998, 21). Political scientist Paul Light (1995) has referred to this tremendous growth in the number of federal jobs and layers of

management as "thickening government." The process of thickening government has dramatically affected the confirmation process. New positions mean that the Senate has more nominees to confirm. But new positions may also increase the tension between the Senate and the president as the latter attempts to use the appointment process to ensure the success of his agenda. According to Heclo (1977, 82):

> More layers of technocratic political appointees may well reduce rather than increase bureaucratic responsiveness to broader political leadership by the president and department heads: this in turn increases incentives for the White House to politicize the civil service by trying to build an executive team of loyalists throughout the political and higher career levels.

The additional number of positions the Senate is required to pass on has dramatically altered confirmation dynamics. Maranto (1993, 144) points out that increases in the number of appointees taxes the Senate's confirmation abilities and "erode[s] the already limited ability of appointees to develop their own teams."

A REDUCED ROLE FOR THE PRESIDENT

Nominees once were personally known by the president that appointed them. If the president did not know them, they usually had the prior input of senators to guide the selection process. In contrast, many of today's nominees are selected by nominating commissions or other non-partisan groups, are forced to endure a lengthy vetting process prior to being nominated, and may even be unknown to the president or to senators even at the moment of nomination (Mackenzie 1998, 1996; Berkson 1980; Neff 1980). As the number of positions requiring presidential appointment grew beginning in the 1930s with

President Franklin Roosevelt's New Deal expansion of the federal government, presidents actually began to drift further and further from the actual process of selecting nominees. The increases in the number of positions requiring confirmation made it difficult for presidents to handle the job of selecting nominees. President Harry S Truman was the first president to have a staff aide whose primary responsibility was to review candidates for federal jobs (Mackenzie 1981, 11).

In the 1950s, changes in the White House's nomination system reduced the need for presidents to pay attention to most personnel decisions. Under President Dwight D. Eisenhower, "steps were taken to ensure that personnel decisions for all but the most important positions could be finalized without active presidential involvement" (Mackenzie 1981,15; 18). Eisenhower, the former general, wanted a highly routinized process that could be run by subordinates on all but the most important of personnel decisions. White House staffers took on the primary task of selecting nearly all of Eisenhower's nominees to appointed positions. During John F. Kennedy's presidency, White House aides further routinized selection procedures and centralized decisions about political appointments. In addition to screening potential appointees, aides were active in recruiting individuals to serve their government (Mackenzie 1981, 27-9).

Presidents Johnson, Nixon, and Carter all were more active participants in the selection process for federal appointed positions, but the bureaucracy associated with selecting nominees continued to increase during the late 1960s and the 1970s. During the Johnson administration, the White House personnel office grew in size and began using

computers to keep track of potential appointees (Mackenzie 1996, 46). President Carter further reduced the role of the president in selecting judicial nominees in 1977 by issuing Executive Order 11972, which created nominating commissions designed to select United States Circuit Court judges. The commissions were charged with narrowing the list of possible candidates for Circuit Court judgeships to five, from which the president would make his choice (Goldman 1997, 238-9). Since the late 1970s, presidents have relied on staffers and nominating commissions to assist them with the task of selecting nominees. Far fewer nominees are known to the president who appointed them today than would have been known to him only a few decades ago.

Related to this phenomenon of presidential detachment in the selection process, presidents have become less able to influence the confirmation process. Presidents once could be reasonably certain that with a little pressure from the White House, the Senate would confirm the administration's nominees. Today, pressure from the White House may have little to no effect on confirmation outcomes, even on nominees to the president's own team, which typically enjoyed a presumption of confirmation without controversy. As Mackenzie (1998, 17-18) writes: "Traditional deference to presidential authority in the selection of subcabinet appointees virtually disappeared in 1997. ... [The president] has less freedom to pick his own subordinates than almost any other political executive in America."

Finally, in the last several years, presidents have reduced the amount of time and effort they are willing to spend to make the confirmation process run smoothly for their

nominees. Describing her confirmation to the Environmental Protection Agency (EPA), Anne Burford recalls that the president was noticeably absent from the process. She writes: "As I waited nervously [at the confirmation hearing] to begin my testimony with a statement, to be followed by the Senators' questions, it flashed through my mind that the White House had given me absolutely no help in my confirmation process. Zero. Zip" (Burford 1986, 49). Former Ambassador to Liberia and South America under President Clinton and former Ambassador to the United Nations under President Bush, Ambassador Edward Perkins notes: "The White House is not involved [in the confirmation process]. Once my nomination went to the Senate, I never heard a word from the White House."[32]

Like his predecessors, President Bill Clinton has been largely unwilling and unable to help secure confirmation for the people he has selected to fill vacancies in the federal government. Mackenzie (1998, 19) writes:

> One of the great mysteries of the appointment process in 1997 was the whereabouts of the president of the United States. From time to time, the president would pop up to express his frustration at the slow pace of the confirmation process, but for most of the year he was a peripheral figure in nearly every appointment struggle. In the two most prominent appointment controversies of the year, over Anthony Lake and William Weld, presidential efforts to win confirmation were little in evidence. It was an uncommonly – and uncannily – passive performance.

Eliot Mincberg, legal director for the liberal group People for the American Way notes that Clinton's lack of public support for his nominees results from his unwillingness to

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[32] Author's Interview, 1997.

expend political capital on Senate confirmations. According to Mincberg: "[Clinton's unwillingness to stand by his nominees] goes all the way back to Lani Guinier. Clinton sent a clear signal to Republicans that it doesn't take much push to get Clinton to abandon a nominee."[33] Shogan (1996, 146) quotes reporter Ken Bode: "In the Lani Guinier nomination, there was no fight. Bill Clinton collapsed before the fight."

While not all modern presidents have taken as much of a hands-off approach as has President Clinton, the bottom line is that contemporary presidents are further removed from the confirmation process than ever before. While they still care very much about who fills vacancies in their administrations, their staffs are handling most of the staffing decisions. The Senate has become less willing to accord the president latitude in choosing his own subordinates, which further reduces presidential influence over confirmation politics. In addition, throughout the course of his presidency, President Bill Clinton has signaled that he will not personally intervene to expedite the Senate's confirmation process. At the end of the twentieth century, the president has become almost superfluous to the confirmation process.

AN INCREASINGLY PARTISAN AND IDEOLOGICAL PROCESS

Prior to 1980, the confirmation process proceeded reasonably smoothly. To be sure, there were occasional battles over presidential nominees, but by and large presidents got their way in the appointment process. Not only did the president and the Senate try to cooperate in making personnel decisions, the Senate rarely questioned a nominee's

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[33] Author's Interview, 1998.

fitness on the basis of his or her ideology. In the 1980s, the confirmation process changed more rapidly and more profoundly than it ever had before. Ideology became a litmus test for many nominees, and some were rejected outright because they held issue positions that senators considered to be extreme.

Many observers agree that Ronald Reagan's election began the trend toward ideology as a litmus test for both the nomination and the confirmation of presidential nominees. According to Rhett DeHart, former counsel to Senator Jeff Sessions and current counsel to Senator Orrin Hatch: "Reagan did make [the appointment process] more ideological." Shogan (1996, 121) declares: "With the election of Ronald Reagan, ...polarized politics ... would return with a vengeance." From the beginning, Reagan expressed his intent only to appoint conservatives to high-ranking positions in the federal government. But Reagan was especially anxious to appoint conservatives to the federal bench. As Segal and Spaeth (1993, 125) write: "The chief legacy of the Reagan Administration, when the twenty-first century rolls around, will likely be the Reaganizing of the judiciary." In 1987, Reagan nominated Robert Bork, a conservative judge on the District of Columbia Court of Appeals, to a seat on the U.S. Supreme Court. Bork was considered to be extremely conservative, but he held the respect of many Republican members of the Senate. Doomed from the start, this single nomination ultimately did more to increase partisanship in the confirmation process than any other before or since.

As soon as Reagan announced that he would nominate Bork to fill the vacancy on the Supreme Court, liberals in the United States Senate sprung into attack mode.

Massachusetts Senator Edward M. Kennedy led the charge. Upon hearing of Bork's nomination, Kennedy declared: "Robert Bork's America is a land in which women would be forced into back-alley abortions, blacks would sit at segregated lunch counters, rogue police would break down citizens' doors..." (Bronner 1989, 98). Liberal senators worked together with liberal interest groups to wage Capitol Hill, grassroots, and media campaigns against Bork that were unprecedented in their scope. In the end, Bork was defeated by a vote of 52-48 against his nomination. The confirmation process would never again be the same. Although nearly all of President Reagan's, and later President Bush's nominees were confirmed by the Democratically-controlled Senate, Republican senators never forgot the way in which Democratic senators had used the confirmation process to discredit and embarrass one of their party's most revered icons.

The axiom "turnabout is fair play" perhaps best describes Republican senators' approach to the confirmation process when they recaptured the Senate in 1994. But, the Republicans, engaging in a sort of senatorial one-upmanship, were not content to focus on discrediting just one or two of President Clinton's nominees. Instead, they waged an all-out attack on a number of nominees, even some who had been nominated to sub-cabinet and regulatory agency positions. As Walter Shapiro, a columnist for *USA Today* noted in December, 1997:

> The prime offender, it must be stressed, is the Republican Senate. The results were the same whether the titans of the Senate were pandering to right wing constituencies [the nomination of Bill Lann Lee to head the Department of Justice's Civil Rights Division]; settling old scores (Foreign Relations Committee Chairman Jesse Helms vetoing moderate Republican [William] Weld); or simply making mischief (Senate Intelligence Committee Chairman Richard Shelby by tormenting [CIA nominee Anthony] Lake). These debilitating games of 'gotcha' have their roots in the scorched-earth tactics perfected by Senate Democrats in blocking the 1987 nomination of Robert Bork to the Supreme Court. But ancient enmities don't justify the conduct of the GOP Senate. (Shapiro 1997, 8A).

The Republican party increased its scrutiny of the president's nominees because of its fears that President Clinton, a Democrat, would be able to undo the 12-years of a Republican-dominated federal judiciary and bureaucracy. Gest and Lord (1997, 24) note that with regard to the federal judiciary: " Republicans are resisting Clinton nominees aggressively in part because they had to fight so long to get the judiciary to their liking." People for the American Way's Mincberg notes: "Every Clinton judge you don't put on the bench is that much longer Reagan and Bush can continue to dominate the courts. Even if it's just a temporary advantage, that just means less Clinton judges and more Reagan and Bush Judges." [34]Senate Judiciary Committee chairman Orrin Hatch himself acknowledged this point in a November, 1996 speech to the Federalist Society:

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[34] Author's Interview, 1998.

> [W]e are at a critical crossroad in the history of our federal judiciary. While the legacy of 12 years of Republican appointees to the federal bench has just begun to bear some fruit, and we have begun to see a handful of significant, albeit initial, steps toward returning the courts to their proper sphere, we are now faced with the prospect of four more years of Clinton appointees (Hatch 1996b).

It is not only that the switch from Democratic to Republican control of the Senate increased partisanship in the confirmation process, it is also the particular combination of Republicans in the Senate specifically, and in the Congress more generally. An anonymous CRS researcher notes that the more partisan Republican majority in the House of Representatives did not want the Senate to undo the work it had done. So the House Republicans began to put pressure on their Senate counterparts to prevent the appointment of liberal nominees to fill vacancies in government. According to the researcher: "The House Republicans ... don't want their counterparts in the Senate to screw up the "revolution" that they're trying to start."[35] As Mincberg notes: "The combination of having the Republicans in the majority, and which Republicans are in the majority..." helps to explain the increasingly partisan political environment.

The confirmation process of the late 1990s is plagued by partisanship at levels never before thought possible. And it may only get worse. As Dewar (1997b, A10) writes: "As Democrats and Republicans alternate in control of the White House and Congress, each party ... pushes against the outer limits of established conduct in an ever-escalating cycle that keeps ratcheting up the partisan contentiousness of the process."

McCarty and Razaghian (1988) note: "Political conflict induced by divided government and party polarization clearly leads to a more drawn out confirmation process" (1998; 24). Unlike most of the history of the confirmation process, partisanship is every bit as much a part of confirmation politics as it is on a broad range of legislative initiatives.

THE MORE FREQUENT USE OF DELAYING TACTICS

Mackenzie (1996) notes that the confirmation process, measured as time elapsed from senatorial receipt of a nomination to the Senate's final confirmation vote, has grown increasingly longer throughout the second half of the twentieth century. What once took George Washington only two days to accomplish may now take nearly two years. Whereas it took George Washington only two days to gain Senate confirmation for his initial judicial appointments in 1789, in 1997 it took the Senate an average of 212 days to confirm Bill Clinton's judicial nominees.[36] In addition, while the Senate failed to confirm only 154 civilian nominations during the 103rd Congress, during the 104th Congress that number grew to 734.[37]

In recent decades, the Senate has developed and refined the use of such tactics as the blue slip and the hold, each of which is designed to prevent presidential nominees from being confirmed.[38] According to Mackenzie (1998, 13):

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[35] Author's Interview, 1997.
[36] From statistics routinely compiled for the Senate Judiciary Committee, minority staff.
[37] From the *Resume of Congressional Activity*, Congresses indicated.
[38] Each of these tactics is discussed at length in Chapter One.

> The tools of such opponents have expanded and become institutionalized. The most effective of those are filibusters, holds, and the vigorous exercise of the discretionary power of committee chairs. In 1997, the use of these instruments grew more aggressive than ever before, and their impact on the appointment process was widely felt.

Silverstein (1994, 23) writes that "delay is a particularly effective strategy in contesting a presidential nomination. Drawing the proceedings out over time permits the opposition to organize, new information to be discovered, the public to be aroused."

The pervasive use of delaying tactics is a relatively new phenomenon in the process. While senators have always had the option of using holds and filibusters to delay the process, most observers agree with Mackenzie's observation that in recent congresses their use has increased. Eliot Mincberg, Legal Director for People For the American Way claims that the tactic of delaying Senate confirmation has never happened so dramatically before. In addition, the delays are being used not to provide senators more time to consider nominees, but to force nominees to withdraw before being confirmed. Victoria Bassetti, chief counsel to Illinois Senator Richard Durbin explains: "[Republicans] are trying to make the process so long and drawn out and awful that the nominees drop out."[39]

EXAMPLES OF CHANGES TO THE CONFIRMATION PROCESS

The changes discussed above – a reduced role for the president, increased partisanship and ideology in the process, and the more frequent use of delaying tactics –

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[39] Author's Interview, 1998.

made Senate confirmation at the end of the twentieth century less certain than ever before. Some examples are illustrative. Below are synopses of four individuals' experiences with the appointment process in the last few years: Dale Kimball and Margaret Morrow, both President Clinton's choices to replace retiring federal district court judges, Bill Lann Lee, Clinton's selection to head the Department of Justice's Civil Rights Division, and James Hormel, Clinton's pick to serve as ambassador to Luxembourg. Although the contemporary process still works well for nominees like Dale Kimball, the other stories below demonstrate that many other nominees face difficult confirmation battles and highlight some of the important changes to the confirmation process.

Dale Kimball

Though a contemporary appointee, Dale Kimball's nomination represents the traditional path that nominations take through the appointment process. He was both nominated and confirmed quickly and with little fanfare or controversy. President Clinton nominated Kimball on September 5, 1997 to fill a vacancy that had occurred less than ninety days earlier on the federal District Court for the district of Utah. The Senate Judiciary Committee held a hearing on his nomination on September 30, 1997 and reported his nomination to the Senate by unanimous consent on October 9. On October 21, the Senate confirmed Kimball by unanimous consent. From start to finish, it took just 46 days to confirm Kimball's nomination.

Unfortunately, in the 104th and 105th Congresses, Kimball's appointment stands

out as dramatically different from the appointments of other individuals. Most vacancies have taken longer than five months to fill. As the next three examples demonstrate, Kimball's swift, conflict-free, confirmation does not represent the norm for the last two congresses.

Margaret Morrow

Margaret Morrow's appointment to the district court for the central district of California demonstrates what became the norm during the 104th and 105th Congresses – inordinate delays resulting from foot-dragging in the confirmation process. Morrow's nomination stands in stark contrast to Dale Kimball's, and highlights the ease of his confirmation.

Morrow was nominated to the Central District court in California in May, 1996, to replace Judge Richard Gadbois, who had retired three-and-a-half months earlier. The Judiciary Committee held a hearing on her nomination on June 25, 1996 and two days later reported her nomination to the full Senate by unanimous consent. But the Senate took no action on her nomination and it was returned to the Senate when the 104th Congress adjourned. Election-year politics were most likely to blame, as Republicans confirmed only 17 judges in 1996, hopeful that Republican presidential candidate Robert Dole would win the 1996 presidential election. If that occurred, Republicans could choose more conservative judges to fill the vacancies that existed in 1996.

Of course, Dole did not win the presidential election, and President Clinton renominated Margaret Morrow in January, 1997 immediately upon the opening of the

105th Congress. She was given another hearing in March, 1997, but the Committee did not send her nomination to the Senate floor until June 12, 1997. Morrow waited an additional seven months, until February 11, 1998 to be confirmed by the full Senate. She was confirmed by a vote of 67 to 28.

From start to finish, Morrow waited nearly two full years from the time she was nominated to the time she was confirmed. Two factors made Morrow's confirmation more difficult than Kimball's. First, the heightened partisanship of a presidential election year gave Republicans an incentive to prevent Morrow from being confirmed. Second, Republican senators made ideology a litmus test for Morrow. During the second session of the 104th Congress, judicial activism – the notion that judges broadly define the boundaries of the Constitution in order to legislate from the bench – had become the bogeyman of conservative Republicans, many of whom were looking for a way to stymie Bill Clinton's judicial nominations. Several Republican senators, working on behalf of the conservative group, The Judicial Selection Monitoring Project, agreed to vote against any nominee who was or had the potential to be a judicial activist. Schwartz (1997, 10) noted in 1997: "With an eye toward weeding out future judicial activists, GOP senators have virtually hijacked the appointment process."

Debating her confirmation, Missouri senator and presidential hopeful John Ashcroft stated:

> I think judges who believe that the Constitution is written in pencil and who think that the Bill of Rights is written in disappearing ink are judges that are out of control. We have to be careful we don't put more individuals on the bench who have a disregard for the separation of powers and who do not understand that what the people do under the authority of the Constitution is valid and must be respected (Congressional *Record* 1998, S. 649).

Ashcroft also entered into the *Congressional Record* a letter from the Judicial Selection Monitoring Project that charged that Morrow was a judicial activist, and that had been signed by 180 organizations. Unlike Dale Kimball, who was speedily confirmed during the 105th Congress, Margaret Morrow's nomination languished because of increased partisanship and the use of ideological litmus tests by the Senate in 1996 and 1997.

Bill Lann Lee

During the 104th and 105th Congresses, the Senate did not limit increased scrutiny of nominees to President Clinton's judicial nominees. In fact, almost every appointment was fair game for heightened investigation. Bill Lann Lee found this out after Clinton nominated him to fill the position of Assistant Attorney General for Civil Rights on July 21, 1997. The politics of Lee's confirmation process illustrate the extent to which the president's ability to select his own subordinates has been circumscribed by the Senate in the last two decades.

Lee was a well-respected civil rights attorney in Los Angeles at the time of his nomination in 1997. His caseload included a number of cases involving employment discrimination and other controversial issues. The son of poor immigrants, Lee's rise to a

respected position as a prominent attorney was truly an American success story. On top of his solid professional credentials, Lee was supportive of the Clinton Administration's "mend it, don't end it" position on affirmative action. To the Clinton White House, Lee seemed like the perfect person to head the Justice Department's Civil Rights division.

But Republicans lashed out at Lee for his position on affirmative action. Ironically, Senate Judiciary Committee chairman Orrin Hatch, who typically restrained himself from opposing Clinton's executive branch nominees, led the charge against Lee's confirmation. According to political commentator Jacob Weisberg: "In Lee's case, Hatch says he's opposing a qualified nominee simply to draw the line on an administration policy he disagrees with – support for affirmative action" (Weisberg 1997).

Republicans seized on the affirmative action issue and attempted to defeat Lee's nomination. Even Speaker of the House Newt Gingrich got involved, urging Senate Majority Leader Trent Lott to oppose Lee's nomination (Suro 1997d, A6). On November 13, 1997 Democratic members of the Senate Judiciary Committee blocked a vote on Lee's nomination, "after determining they would lose if [a vote] were taken" (Suro 1997b, A1). This tactic would have prevented Lee from being rejected by the Republican majority on the Judiciary Committee. On December 15, 1997, Clinton named Bill Lann Lee the Acting Assistant Attorney General for Civil Rights, a move that prompted one political commentator to declare: "'Acting' is now all the confirmation process can muster" (Shapiro 1997, A23).

Lee's nomination demonstrates the problems that increased partisanship and

ideological litmus testing have created for the confirmation process. Today, nominees are rejected by the Senate because of their policy positions on particular issues. Lee's failed confirmation also illustrates how far afield the appointment of low-level cabinet positions has come. For most of American history, presidents were deemed entitled to the people they wanted, with regard to staffing the executive branch. In this case, however, Lee failed to be confirmed for no greater reason than that he supported the president's position on affirmative action.[40]

James Hormel

James Hormel's nomination to be ambassador to Luxembourg was returned to President Clinton at the end of the 105th Congress. Typically, ambassadorships are non-controversial nominations, either because they are awarded to career foreign service officers with proven records of public service, or because it is generally accepted that ambassadorships are given as rewards to big campaign donors. In Hormel's case, however, the Senate thought differently.

Ideology again reared its ugly head in Hormel's confirmation process. Hormel, heir to the Hormel meat-packing fortune, is a well-known supporter of the Democratic party. However, this was not the Republicans' reason for opposing his nomination. Hormel also is a well-known homosexual, who has contributed sizeable amounts of

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[40] It should be noted, however, that Lee was not the first nominee to head the Department of Justice's Civil Rights division to become embattled in the Senate. Both of President Bill Clinton's previous nominees, Lani Guinier and Deval Patrick were similarly criticized by the Senate, and Guinier's nomination ultimately was withdrawn by the President. Similarly, Presidents Reagan and Bush also had a difficult time getting their Civil Rights Division nominees confirmed by the Senate.

money to organizations that promote homosexual rights. His enemies in the Republican-controlled Senate were many, apparently based solely upon his sexual orientation. According to a report in the conservative newspaper, The Washington *Times,* "The senators objected to Mr. Hormel's open advocacy of the gay lifestyle and were concerned he would promote homosexuality as a U.S. ambassador" (Morrison 1998). When asked to defend his opposition of Hormel, New Hampshire Senator Bob Smith stated: "This isn't a tolerance issue, this is a matter of advocacy of the gay lifestyle" (R. Cohen 1998, 5J). According to the *Daily Oklahoman,* Oklahoma Senator James Inhofe did not believe that the United States "should be represented by an openly homosexual ambassador" ("Inhofe Deserves Support" 1998, 4).

Although Hormel's nomination was approved by the Senate Foreign Relations Committee in 1997, at least four senators put a hold on his nomination and asked Trent Lott not to schedule time for floor debate on his nomination. Lott agreed, and the Senate returned Hormel's nomination to the president when the 105th Congress adjourned in October, 1998. Despite support from the White House, Secretary of State Madeleine Albright, and many senators from both sides of the aisle, Hormel's sexual orientation became the deciding factor in the Senate's inaction on his nomination (Holland 1998; Holland 1998b; Bayer 1998; Torricelli and Feinstein 1998, Baker 1997).

Ideology, coupled with the use of a delaying tactic – the hold – prevented Hormel from being confirmed by the Senate. Although Hormel's supporters in the Senate were numerous enough to ensure confirmation, the holds placed on his nomination prevented

the Senate from taking a vote on whether or not to confirm Hormel. His nomination fell victim to the changed confirmation process in the 1990s.

The confirmation process in the last two Congresses has defied classification, in large part because the expectation of a routinized, highly-professionalized confirmation process has not been met. Today, no nominee can reasonably expect that his or her confirmation will be swift or easy. As the examples above have demonstrated, today the confirmation process for major appointments is more unpredictable than ever. Since the Republicans took control of both houses of the Congress in 1995, many nominees have been subjected to lengthy waits for confirmation. While a handful of every president's nominees has always been subjected to delay and heightened scrutiny, nominees to federal office – even offices once viewed as requiring only a senatorial rubber stamp – now routinely face confirmation delays and partisan bickering.

WHY THE CONFIRMATION PROCESS CHANGED

That the confirmation process has changed dramatically in 210 years of American history, and that conditions worsened during the 104th and 105th Congresses, is not in question. But although the passage of time provides some explanation – more nominees, more bureaucracy, centralized decision-making within the White House, and less deference by members of the Senate – it still is not completely clear why the process that once permitted nominees to be confirmed within 48 hours now routinely requires months and sometimes years to be completed. History does not tell us why an increasing number of nominees are now being subjected to lengthy delays or are being denied confirmation

altogether.

Despite recognition among political scientists of the changed nature of the confirmation process, only a few studies have explored the underlying causes of the change. Previous research has suggested that general changes in the political environment as a whole are to blame for the increasingly contentious confirmation process. There are also several specific causes of confirmation process change that merit specific attention here. These include: changes in the role of the Senate, changes in internal Senate norms, increased incentives for senators to oppose presidential nominees, divided government, and the rise of interest group participation in confirmation politics.

CHANGES IN THE ROLE OF THE SENATE IN THE PROCESS

If the president enjoyed the upper hand in the appointment process in the early years of the American republic, it is the Senate that is the dominant player today. Even the president's power to nominate a person of his or her choosing has been circumscribed as members of the Senate have sought to use the confirmation process for political gain. No longer is the Senate a "rubberstamp machine." Today the Senate is an arena for the articulation of competing interests, with each senator seeking to alter the course of public policy or curry favor with his or her constituents through action or inaction on presidential nominees.

Until the 1960s, the Senate nearly always played the role of willing partner in the appointment process. Upon presentation to the Senate, presidential nominees were routinely confirmed. To be sure, there were examples of senatorial assertiveness (some

of which were noted above), but these were most notable for their rarity. Senators generally respected presidential claims of a mandate and nearly always permitted presidents to have their own way in appointing people to serve in the federal government.

As presidential power in the appointment process began to wane beginning in the 1950s, the Senate began to fill the vacuum left behind. Senators began to establish their own, highly-routinized processes for screening presidential nominees. By 1972, public distrust for President Nixon led the Senate to view presidential nominees more skeptically. The Senate began to pay much more attention to the qualifications of nominees and began rejecting more and more presidential nominations as a result (Mackenzie 1981; O'Brien 1988).

In the late 1980s, the Senate again asserted itself as the dominant player in confirmation politics. Robert Bork's nomination, which was opposed by a majority of senators, provided the Senate with an important opportunity to send a message to the president. The message was that the Senate would no longer idly acquiesce to the presidential nominating power. While the president still was free to nominate the person of his choosing, the Senate in the Bork confirmation hearings put the president on notice: not just anyone would be able to survive the Senate's confirmation process.

Increasing communications technology helped to cement the Senate's new, aggressive position. Bork's confirmation hearings were televised, which gave senators a new forum for expressing their views and attempting to influence public opinion. With increasing media exposure for the Senate's confirmation hearings the Senate gained

greater and greater prominence in the appointment process. Today, no president dares to nominate someone to fill a high-level vacancy without consulting with home-state senators and key members of the Senate leadership. During the 105th Congress, for example, Senate Judiciary Committee chairman Orrin Hatch worked closely with the White House to prevent it from naming individuals to the federal courts and other judicial positions that would have had no chance of being confirmed. Lewis (1998, B9) reports: "[Hatch] has no doubt been a factor in Clinton's favoring centrists for his judicial choices." In today's confirmation process, the president can not afford to act without first consulting members of the Senate. And even then, the Senate may refuse to approve the president's choices. As O'Brien (1996, 63) notes:

> The influence of the Senate has declined in the selection of Supreme Court justices but not in that of lower federal court judges. Presidents in fact trade lower-court judgeships for legislation and good relations. Federal judgeships are opportunities for the Senate, no less than for the president, to influence national policy and confer political patronage.

CHANGES IN INTERNAL SENATE NORMS

Partially responsible for the Senate's new prominence in the appointment process were changes to the chamber's internal rules and norms in the 1960s and 1970s. Earlier senates tended to be extremely open to presidential choice in the appointment process. By the late 1960s, however, changes to the norms of the Senate made securing confirmation for presidential nominees much more difficult.[41]

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[41] For a discussion of changes to Senate norms beginning in the 1960s see Hibbing and Peters (1990) and Sinclair (1989).

During the nineteenth and much of the twentieth centuries, the U.S. Senate was an inner-directed, hierarchical chamber that was resistant to outside influences and pressures. Examinations of the Senate even as late as the 1960s captured a Senate deeply wedded to internal norms and folkways. Power flowed from the top down, with senior members of the majority party in the Senate coalescing at the top and junior members being left at the bottom. Regens and Gaddie (1995, 10) note:

> The allocation of virtually every resource ranging from committee positions to office space to debate privileges was determined by a member's seniority. ... Junior senators were expected to acquiesce to these norms and maintain a high degree of deference to senior members, especially committee chairs.

Sinclair (1989) points to the election of 15 northern, liberal Democrats to the Senate in 1958, and the subsequent elections of additional liberal Democrats in 1960, 1962, and 1964, as the catalysts for changes to the Senate. Beginning with the "class of 1958," new senators found the Senate's institutional norms and practices to be restrictive in their quest to fulfill campaign promises and to reach personal and political goals. As a result, they began to work around the existing norms as they endeavored to secure their political and electoral futures. Sinclair writes:

> For these members ... [t]he goal of reelection dictated legislative activity, whether effective or not, right from the beginning. These senators needed to show their constituents that they were working toward fulfilling their campaign promises, and doing so required visible activity. The unusual amount of media coverage that the class of 1958 received increased its members' incentives to ignore the apprenticeship norm and play an active role immediately. It ensured that a senator's activities would be highly visible to his constituents, while a lack of activity would also be obvious (Sinclair 1989, 33).

Sinclair (1989) notes that while the freshmen classes entering the institution between 1959 and 1965 were unable to dismantle completely the institutional devices (including the seniority system and the apprenticeship norm) that privileged senior senators over their more junior counterparts, the northern liberals who entered during this time period were successful in changing the norms just enough to redistribute power within the chamber. Coupled with external changes in the 1960s and 1970s such as an increasingly contentious social agenda, the exponential growth of interest groups, and greater media coverage of senators and their work, these changes in internal Senate norms had a profound effect on the Senate's legislative process. The process became less stable and less predictable, and issues that once would have been decided behind closed doors by a small cabal of senior senators now are decided by the whole Senate during contentious floor debates and with the guidance of a large number of political interest groups. By the 1970s, Regens and Gaddie (1995, 11) note that "[j]unior members arrived in the Senate with established political agendas and regularly used floor privileges to pursue those agendas."

Confirmation dynamics have been similarly affected by the changes to internal Senate norms. In the "old" Senate, presidents needed to persuade only a handful of senior senators to approve of their nominee in most cases, because the expectation was that the junior senators would fall in line behind their elders. Silverstein (1994) notes that President Lyndon Johnson referred to this system as one of "whales" and "minnows." According to Silverstein (1994, 19):

> In [Johnson's] view, the Senate consisted of a few 'whales' and many 'minnows.' The conventional wisdom held that in any battle in the Senate (particularly in securing its advice and consent on appointments) the president only had to negotiate with the appropriate whales. Once the consent of the powerful had been secured, the remainder of the Senate would fall in line.

But following on the changes brought about by the classes of 1958, 1960, 1962, and 1964, in 1968 the distinction between whales and minnows in the confirmation process all but disappeared with Johnson's nomination of Justice Abe Fortas to be Chief Justice of the United States Supreme Court. Although Johnson had the support of the "whales," a new crop of young reform-minded Senators had refused to acquiesce to the more senior members of the body. When the Senate Judiciary Committee voted 11-6 to send Fortas' name to the full Senate for consideration, the young reformers in the Senate began the filibuster that was ultimately to undo the Fortas nomination (Silverstein 1994). The Fortas defeat signaled the end of nearly two centuries of Senate norms of courtesy and reciprocity. No longer would presidential nominees be carried to confirmation on the backs of just a handful of senior senators.

Senate norms also changed as a result of increasing communications technologies. According to Silverstein (1994, 146): "The media explosion dramatically altered the Senate ideal, replacing the behind-the-scenes specialist with the highly-visible, and quotable, generalist." Senators began to realize that they could use the media as a tool to help them in their reelection campaigns. As senators embraced instantaneous communications technologies, Senate norms fell by the wayside. Silverstein (1994, 148) remarks: "Today the Senate newcomer enters the chamber with a complete legislative agenda and fully expects to be involved directly with the legislative process." To the extent that a president nominates someone whose agenda is contrary to that of any individual senator, that senator now has ample opportunities to oppose the nominee – often publicly. In seeking the Senate's approval for their nominees, presidents now have to work much harder than ever before.

INCREASED INCENTIVES FOR THE SENATE TO OPPOSE PRESIDENTIAL NOMINEES

Closely related to the phenomenon of changes in internal Senate norms is the fact that beginning in the 1960s, senators had increased incentives to use the confirmation process to gain electoral and legislative advantages. The increasing pervasiveness of media coverage of the Senate provided the first incentive. Not only did the media help to break down Senate norms, senators began to realize that they could exploit media coverage for their own personal gain. Beginning with Supreme Court nominees, "contesting the nomination ... [became] a highly visible -- and often necessary – event in a senator's life" (Silverstein 1994, 147). Silverstein explains that in the contemporary

Senate, "[i]ncreased media coverage and the constant search for campaign funds invite independent action and encourage senators to become visible players in matters of national interest" (Silverstein 1994, 153).

Throughout most of the Senate's history, any single vote on a nominee was unlikely to garner much attention from senators' constituents. As the costs of opposing a president's nominees were great and the costs of supporting the president's choice relatively low, senators typically acquiesced to the president (Silverstein 1994). As increased communications technologies made it possible for constituents to keep a closer eye on their senators, so too did the incentives to oppose presidential nominees increase. Beginning in the 1980s, constituency pressures increased senators' incentives to oppose presidential nominees. With the televised confirmation hearings for Robert Bork, segments of the population that had never before paid attention to confirmation politics began to call upon their senators to oppose some presidential nominees. Senators realized that through the media they could appear to be the champions of causes that were important to constituents and powerful interests within their home states, or they could appear to be detached from the people who elected them. When it came time to confirm nominees, senators could no longer be sure who was watching and what effect their confirmation vote might have on their approval ratings back home. As a result, constituency pressures became much more central to senators' confirmation decisions. This, in turn, increased senators' incentives to oppose presidential nominees.

DIVIDED GOVERNMENT[42]

Since the mid-1950s, Republicans and Democrats have had to share control of the legislative and executive branches (Fiorina 1992; Mayhew 1991; Sundquist 1988). Several studies have suggested that divided government makes consensus on legislative initiatives more difficult. V.O. Key (1964) has written: "Common partisan control of executive and legislature does not assure energetic government, but division of party control precludes it" (Key 1964, 688). Ripley (1969) concurs, noting that in periods of divided control "not much legislation is produced ... particularly on domestic matters" (Ripley 1969, 168). The presence of divided government also helps to explain the increasingly partisan and ideological nature of the sparring over presidential nominations. According to *Washington Post* staff writer David Broder: "We have had a number of spirited battles that simply resulted from divided government." [43] Just as divided government may make it more difficult to reach consensus on legislative proposals, the president and the Senate can not be counted on to work together to staff the government. According to CRS researcher Roger Garcia, "Divided government creates problems for nominees. [Senate] parties won't be as docile about accepting the president's choices."[44] In 1993, Segal and Spaeth found evidence that the presence of divided government has a significant impact on the likelihood of confirmation for nominees to the Supreme Court.

When presidents have greater difficulty achieving success on domestic policy

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[42] In this project, divided government is used to refer to periods in which the Senate and the White House were controlled by different political parties.
[43] Broder, as quoted in Shogan 1996, 155.

initiatives, their ability to appoint individuals to carry out such initiatives will usually be thwarted as well. The Senate is not generally anxious to confirm individuals who would support the president's initiatives at the expense of those favored by the Senate. Split party control of the federal government has even altered the dynamics of senatorial courtesy. If there is no home state senator of the president's party with whom to consult, the president may select a nominee that is unacceptable to the home state senators. The result is that the nominee is "orphaned," with no one to push for confirmation (Schattman 1998). In eras of divided government, presidents may seek out non-controversial nominees for appointment rather than expend political capital attempting to shepherd a controversial nominee through a hostile Senate controlled by members of the opposing party (Carter 1994; Mackenzie 1996; Boren 1997; Mackenzie 1998).

Recent studies have found that divided government is an insufficient explanatory variable for change to the confirmation process (Krutz, Fleisher, and Bond 1998; Hartley and Holmes 1997; Katzmann 1997) Katzmann (1997) writes: "Divided government no doubt contributed to the rise in the length and intensity of the hearings; but today, even when the president and the Senate are of the same party, confirmation hearings consume far more time than they did a generation ago." However, while divided government does not wholly explain recent changes to the confirmation process, it nonetheless is an important contributor to changes in confirmation dynamics. Evidence demonstrates that the confirmation strategies of the president, the Senate, and the interest groups all change

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[44] Author's Interview, 1997.

during periods of divided government.[45]

INCREASED PARTICIPATION OF INTEREST GROUPS

Only a few studies of interest group participation in the political process include interest groups among the players in the appointment process.[46] Harris (1953), one of the first comprehensive treatments of the Senate's advice and consent power, does not even mention interest groups. But there can be no doubt that interest groups, as the most recent addition to confirmation politics, also have contributed to its changed nature.[47]

Although since 1930 interest groups had periodically mobilized against nominees to the Supreme Court, their regular participation in confirmation politics did not begin until the late 1970s. Interest groups began to more closely monitor nominations to the federal courts at that time. According to Silverstein (1994, 91):

> With the coming of the Carter Administration, both the degree of scrutiny and the number and political influence of groups engaged in the endeavor [of monitoring judicial nominations] increased materially. Groups with a professional, upper-middle class focus such as the Women's Legal Defense Fund, the Center for Law and Social Policy, Common Cause, and the NOW Legal Defense Fund began regularly to set aside funds and staff for the express purpose of keeping watch on nominees to the federal bench.

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[45] L. Cohen (1998); Author's Interview with Eliot Mincberg, 1998.

[46] Fleming, MacLeod, and Talbert 1998, Caldeira and Wright 1998; Berry 1997; Ornstein 1997; Shogan 1996; Maltese 1995; Fisher 1991; Mackenzie 1981, Cross 1977; Mann 1964.

[47] Interest group participation in confirmation politics did not begin in earnest until the late 1970s. Carter (1994, 78) explains: "...[O]nly in the past twenty years has there been a consistently high degree of involvement by interest groups..." Divided government, waning presidential influence in the process, and changes to Senate norms all began in the 1960s or before. Delaying tactics like the blue slip, the filibuster, and the hold likewise have been part of confirmation politics for decades. However, while interest groups are relative newcomers to the process, their presence likely exacerbates the effects of these other conditions.

In the mid-1980s, interest groups stepped up their participation in the confirmation process for judicial nominees. President Reagan's 1984 announcement that he would use the appointment process to remake the federal judiciary in a conservative image sparked liberal interest groups to mobilize against Reagan's nominees. Interest groups, like the Alliance for Justice, sprouted or retrenched in order to combat Reagan's plan. Unable to affect the president's selections, their strategy was to convince the Senate to reject those individuals nominated by Reagan that they deemed to be too conservative. This was especially true following the midterm election of 1986, when Democrats regained control of the Senate after six years of a Republican majority (Aron 1998).

When Ronald Reagan nominated Robert Bork to the Supreme Court in 1987, interest groups mobilized an intense media campaign designed to discredit Bork and force the Senate's rejection (Bork 1990; Bronner 1989). According to a report in the *Congressional Quarterly Weekly Report*:

> Since 1987, when President Ronald Reagan nominated Robert H. Bork to the U.S. Supreme Court, outside groups such as the Free Congress Research and Education Foundation and People for the American Way have gained prominence on Capitol Hill, making their voices heard both on particular nominations to the federal bench and on the broader issue of the judicial confirmation process (Mintz 1998, 1663).

John Maltese, in his book *The Selling of Supreme Court Nominees* concurs that the Bork confirmation represented the first time interest groups had been able to mobilize such a far-

reaching campaign against a Supreme Court nominee. He writes:

> The Bork nomination was a watershed in terms of interest group involvement: more than 300 groups opposed Bork, and these groups 'used a wide variety of tactics, including advertising, grassroots events, focus groups, and polling.' The White House responded by using its Office of Public Liaison go mobilize group support for Bork. It targeted direct mailings at groups and helped outside groups place favorable editorials in states where there were crucial swing senators (Maltese 1995, 137-8).

Bork himself blamed the interest groups for his defeat. As Silverstein (1994, 10) explains: "In the months following the failed appointment, Bork toured the country. Speaking before various conservative and business groups, he asserted that his defeat was the result of the first all-out political campaign directed at a nominee to the Supreme Court."

Since Bork, interest groups have become even more active in the confirmation process. For one thing, they no longer focus exclusively on judicial confirmations. Once respectful of the president's choices to fill executive-branch vacancies, today nominations to nearly every position are cause for interest groups to participate in confirmation hearings and to lobby senators on behalf of or in opposition to the nominee. According to Shogan (1996, 152): "[T]he judicial-executive line of demarcation has been losing much of its meaning as contentiousness increases across the board of the appointment process." During the 1990s, interest groups have actively participated in confirmation politics for nominees to every cabinet-level agency, as well as in the confirmation process for sub-cabinet and ambassadorial nominees. Even regulatory

agencies and government commissions have seen their nominees become the target of interest groups. According to Baum (1995, 126): "In general, the role of interest groups in the confirmation process is higher than ever."

Interest groups may substantially exacerbate existing tensions in the confirmation process. These groups, and the Political Action Committees (PACs) with which they are associated, contribute to the growing number of incentives that senators have to pay attention to the confirmation process (see Herrnson 1998; Nelson 1998). With their ability to educate and mobilize the grassroots, interest groups may make senators' constituents aware of impending confirmation decisions. Money is also a critical component of interest groups' participation in the confirmation process. Many interest groups have extensive mailing lists, contributor networks, and foundation sponsors who are willing to give money to senators who act the way the donors prefer. The PACs use their campaign financing role to provide financial incentives to senators who act on confirmation in the way desired. In this way, interest groups also increase senators' incentives to support or oppose presidential nominees.

Certainly, without interest groups to placate, senators would likely be less willing to confront the White House over confirmation of its nominees. Mincberg notes: "It is very important to the Republicans' far-right constituency that they be responsive in some way. [Opposing Clinton's nominees is] a way that they can make their far-right allies happy without doing anything."[48] With regard to judicial confirmation decisions,

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[48] Author's Interview, 1998.

Silverstein (1994, 154) writes:

> The fact that politically powerful groups are willing to invest substantial time and resources to control the judiciary coupled with the erosion of the old Senate norms and the appearance of a new Senate style, has altered the political calculus for every senator confronting a vote on a nominee to the federal bench.

Silverstein's assessment is no less true for nominees to other positions. As Shogan (1996, 91) declares: "The interest groups that have proliferated across the spectrum, both as cause and effect of the erosion of parties, increasingly have become a force in the appointment process, second only in importance to the president."

CONCLUSION

The confirmation process at the end of the twentieth century is vastly different from the process put into place by the framers of the Constitution at the end of the eighteenth century. The president is today only a peripheral actor in choosing nominees and securing their confirmation. Where the framers once intended the Senate to act as a "silent" check on the president's ability to nominate individuals to fill government jobs, today's Senate is far from silent. Senators use confirmation decisions as just another opportunity to garner name recognition, address supporters, and allay the concerns of critics. Most importantly, however, today's process is pluralistic, bringing together actors from the White House, the Senate, the media, and interest groups. The presence of interest groups in the confirmation process may be the most important of all of the changes discussed in this chapter. In the contemporary confirmation process, interest

groups create incentives for senators to support or oppose nominees by using their most powerful tool – money. By targeting sympathetic senators with the promise of hefty campaign contributions and other financial support, interest groups have discovered that many senators will spearhead campaigns against presidential nominees simply to curry favor with important, and especially wealthy, group members. Interest group pressure thus combines with already-existing tensions to increase incentives for senators to delay or oppose presidential nominations.

The next chapter considers the strategies interest groups use to influence confirmation politics. It demonstrates that interest groups are strategic actors, focusing on certain nominations rather than others and certain senators rather than others, all the while hoping to influence the Senate's confirmation decisions. Chapter Three also demonstrates the powerful hold that interest groups have on some senators, with regard to their confirmation decisions.

CHAPTER THREE:

INTEREST GROUPS, AMERICAN POLITICS, AND THE EXECUTIVE CALENDAR

> We strongly oppose the nomination of Frederica Massiah-Jackson to the U.S. District Court because of her record of bias and outrageous behavior. ...The Senate has hardly been careless in opposing President Clinton's judicial nominees. Indeed, neither the Judiciary Committee nor the full Senate has defeated a single one. We join the Pennsylvania and national Fraternal Order of Police and National Association of Police Organizations in strongly urging that this should be the first."
>
> Letter signed by the Judicial Selection Monitoring Project and 225 additional organizations, March 11, 1998.

In the United States, public policy is often made as a result of the aggregation of competing interests within society (Dahl 1956; Dahl 1961; Birch 1993). As Robert Dahl explained in 1956: "A central guiding thread of American constitutional development has been the evolution of a political system in which all the active and legitimate groups in the population can make themselves heard at some crucial stage in the process of decision" (Dahl 1956, 137). In 1961, Dahl added: "[M]ost of the actions of government can be explained ... simply as the result of struggles among groups of individuals with

differing interests and varying sources of influence" (Dahl 1961, 5). The contemporary confirmation process, no less than any process of government, is a struggle among groups in society. Every interest group wants to see its favored candidate ascend to high-ranking federal offices in order to promote policies that are congruent with the group's interests.

In the last two decades, interest groups have become extremely prolific players in confirmation politics.[49] In *The Confirmation Mess,* Steven J. Carter (1994, 78) writes: "...[I]n the past twenty years there has been a consistently high degree of involvement [in the confirmation process] by interest groups..." Since the late 1970s interest groups have become more frequent participants in the confirmation process across a broad range of nominations. Existing interest groups have retrenched to monitor the confirmation process and new groups have organized for the sole purpose of influencing presidential appointments. This chapter explores the new prominence of interest groups in the confirmation process. It explores their gradual incorporation into the confirmation process and considers the techniques and strategies they use as they attempt to influence its outcomes.

BACKGROUND

Interest groups are recent entrants to confirmation politics. Although groups have long been interested in who serves in government's highest positions, several factors precluded their regular participation in confirmation politics until well into the twentieth

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[49] The reader will recall that for the purposes of this research, an interest group is defined as any non-governmental, non-party organization having multiple members and seeking to influence policy outcomes. Such a definition encompasses a wide range of organizations, including Political Action Committees

(Footnotes continued on next page)

century. First, senators were not popularly elected until passage of the Seventeenth Amendment in 1913. Prior to 1913, senators were chosen by state legislatures. The lack of an electoral connection meant that interest groups could exercise little control over senators, and senators had little incentive to pay attention to the preferences of interest groups, not only with regard to confirmations, but in the legislative process more generally. In addition, until 1929 the Senate considered nominations in executive session, and did not permit floor debate. Maltese (1995, 37) writes:

> At least two structural factors stalled the institutionalization of routine [interest group] involvement in Senate consideration of Supreme Court nominees in the 1800s. First, senators were not popularly elected, but chosen by state legislatures. This undermined the potent threat of electoral retaliation against senators that interest groups now enjoy. Second, Senate consideration of Supreme Court nominees took place in almost absolute secrecy. ... Both committee action and floor debate often took place with little discussion and no roll-call votes. Thus, interest groups seldom had either the time or the opportunity to influence the Senate confirmation process.

Through the mid-twentieth century and beyond, the confirmation process most often was closed to interest group participation. Senators, following the age-old norms of the Senate typically acquiesced to the president or to the Senate leadership. The confirmation process was not yet a political process, and there was no room for interest group participation (Flemming, Macleod, and Talbert 1998). Further, the Senate's confirmation process for most nominees was *ad hoc*, with few committees requiring confirmation hearings and none requiring detailed personal or financial disclosures. The

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(PACs), labor unions, trade associations, multi-group coalitions, and public interest and consumer groups.

lack of standardized procedures combined with internal Senate norms to make interest group participation a rare event. As Flemming, Macleod and Talbert (1998, 620) note: "Before Nixon's election, groups testified infrequently."

As Watergate heightened the distrust between the president and the Senate, the confirmation process began to change. In the late 1970s the Senate began to formalize and tighten its confirmation requirements. In 1977, the Senate Commerce Committee developed new procedures for investigating presidential nominees that were independent of the investigations conducted by the White House and FBI (Mackenzie 1996, 62). Soon thereafter, other Senate committees began to enhance their screening processes for presidential nominees and adopted formal waiting periods between nomination and confirmation. Committees also began to use nominees' written responses to judge their professional, ideological and political suitability for positions. In 1979, when Massachusetts Senator Edward M. Kennedy took control of the Senate Judiciary Committee, the Committee began requiring detailed personal questionnaires and financial disclosure statements for all nominees to the federal courts (O'Brien 1988, 73).

The routinization of Senate confirmation changed the nature of the process by creating new levels of Senate bureaucracy that nominees had to navigate in order to be confirmed. Newly enhanced screening procedures created a greater number of "veto" points on nominations within the Senate. The greater number of veto points in turn enhanced opportunities for interest groups to participate in confirmation politics. Committee chairmen began to seek out information from interest groups and even

encouraged groups to participate in the confirmation politics. Senator Kennedy was especially open to the participation of interest groups to the Judiciary Committee during his tenure as chairman in the late 1970s (Flemming, MacLeod and Talbert 1998; O'Brien 1988). Since the late 1970s, interest groups have been active participants in the confirmation process.

Today, interest groups approach the contemporary confirmation process in much the same way that they approach other legislative initiatives. Shogan (1996, 152) notes: "[P]residential appointments increasingly are viewed as just another political trophy and the confirmation process just another political battleground." According to former United States Senator David L. Boren: "[Interest groups] have turned the confirmation process into something that's not very different than passing a bill."[50]

WHY INTEREST GROUPS PARTICIPATE IN THE CONFIRMATION PROCESS

When President Clinton announced his nomination of Lani Guinier to head the Department of Justice's Civil Rights Division in 1993, conservative interest groups immediately mobilized against her confirmation. According to Shogan (1996, 144): "Guinier was the target of a calculated assault by the right." The conservative groups faulted Guinier for being too liberal and for taking controversial positions on racial issues. They labeled her the "quota queen" and claimed that she wanted to dismantle the principle of "one man, one vote" (Shogan 1996, 144). The Institute for Justice and several other vocal opponents of Guinier's nomination ultimately were able to force

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[50] Author's Interview, 1997.

President Clinton to withdraw her name. But when he did, liberal organizations and civil rights groups decried his action.

The Guinier controversy demonstrates that in the contemporary confirmation process, interest groups on all sides of the ideological spectrum are ready and willing to pounce on a president's nominees. Groups are active in confirmation politics for two main reasons: they want to influence public policy outcomes and to engage in organizational maintenance. Interest groups have learned that they can accomplish both goals through calculated participation in confirmation politics. As Silverstein (1994, 154) writes:

> "It makes equally good sense for groups engaged in the [confirmation] process to court influence with senators...The Senate has become the most accessible institution for those seeking to influence the national political agenda, with a membership acutely sensitive to the concerns of outside groups that champion causes with a national appeal. Increasingly this means that the proponents and opponents of any nomination will have willing advocates in the Senate."

Influencing Public Policy

The primary reason that interest groups get involved in the confirmation process is for the same reason they get involved in the legislative process – they want to influence public policy outcomes. Over the years, interest groups have recognized that who serves in appointive office can have a tremendous impact on the kinds of policies that government creates and on policy implementation. By participating in the confirmation process, interest groups hope to ensure that the policies and issues that they care about

will be championed by those who serve in appointed positions within the federal government.

Interest groups recognize that because of the networks of policy subgovernments that exist in Washington D.C., a good relationship with the political appointees that oversee the federal agencies is essential in order to ensure that their group will not be marginalized from legislative and bureaucratic decisions.[51] As James Q. Wilson (1992, 214) writes: "[Interest] groups recognize that political decisions are increasingly made in the executive branch rather than in the legislative branch and want not only a share of bureaucratic authority, but also permanent recognition of their claim to bureaucratic authority." Because interest groups know that executive appointees have tremendous influence on public policy, interest groups want to be sure that the individuals serving in the highest positions are not hostile the group's objectives. Typically, interest groups work against those executive branch nominees that they feel will be unwilling to consider their points of view.

Similarly, interest groups consider the impact that a judicial nominee will have on legislation and governmental actions that are supported by the group. Beginning in the 1960s, interest groups turned to the federal judiciary as a last-ditch attempt to secure favorable public policy for their group members (Silverstein 1994). Recognizing that the Warren and Burger Courts were more open to injury claims by minorities and other disadvantaged groups in society than was the Congress, interest groups increasingly

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[51] For more information on policy sub-governments, see Wayne et al. 1999; Davidson and Oleszek 1998;

(Footnotes continued on next page)

focused their attention on the federal judiciary and the judges and justices nominated to serve it. Silverstein (1994, 62) explains:

> With the coming of the Burger Court in the early 1970s, an assortment of ... interests – for example, environmentalists, feminists, consumer groups, political reformers – found in the judiciary an attractive alternative to the other branches. ... [I]n the modern era ... increased access to the courts has combined with the new tools of judicial power to make the judiciary an attractive ally for a host of powerful constituent groups.

Berry (1997, 179) adds: "Interest groups ... try to influence the direction of the courts by attempting to affect selection of federal judges."

Interest groups actively monitor and attempt to influence the public policy-making process. To that end, many groups participate in the confirmation process because they want to promote certain types of nominees and bury others. But interest groups also participate in the confirmation process because they want to be certain that their issue positions are on the record. They want to be certain that nominees learn of and understand the issues that are important to their members. This type of participation is known as organizational maintenance, and is discussed below.

Organizational Maintenance

As Mancur Olson notes in his seminal work on interest group behavior, *The Logic of Collective Action: Public Goods and the Theory of Groups:* "One purpose that is ... characteristic of most organizations, and surely of practically all organizations with an important economic aspect, is the furtherance of the interests of their members" (Olson

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Campbell and Davidson 1998; Uslaner 1998; Browne 1998; and Hrebenar 1997.

1965, 5). But furthering members' interests may be costly, and interest groups are also faced with the problems of communicating their activities to their members and demonstrating to their members that the group is indeed acting to secure its members' interests. For that reason, interest groups also use the confirmation process to practice organizational maintenance. Organizational maintenance refers to the set of activities that interest groups engage in for the purposes of retaining members, retaining a prestige position on Capitol Hill, fundraising, and expanding the group's programs. These activities are not designed to further any particular policy goal, but are instead designed to foster feelings of good will toward the interest group by group members and outsiders. Such activities include communication with members through letters, faxes, and e-mails, as well as gaining media attention for the group's cause. Generally, these activities require less time and effort on the part of the organization than other forms of participation in the political process. The groups reap the rewards of increased membership and visibility without expending a commensurate amount of resources.

The confirmation process provides a useful forum for interest groups to engage in organizational maintenance. There are relatively few costs, in terms of the expenditure of time and resources, in participating in the confirmation process. This is because the confirmation process is significantly less complex than the legislative process more generally. There are only two possible outcomes in the process and the principals do not change. In addition, few individuals know or care about individual nominees to high-ranking positions in the executive and judicial branches. This allows groups significant

freedom to take positions on nominees and to use their activities to market the organization without fear of retribution from members. For these reasons, many interest groups participate in the confirmation process in order to send a signal to their members that they working hard, or to send a signal to members of the Senate that they are interested in confirmation outcomes.

Organizational maintenance may take many forms. According to one member of the Congressional Research Service (CRS), who asked that her name be kept confidential, interest groups use the confirmation process to assist them in enhancing the size and prestige of the organization. "Interest groups use nominations to gain visibility, and thus, members," she said. [52] In addition, interest groups may publicize little-known presidential nominees in an effort to raise money. As former U.S. Senator David Boren notes: "Some groups even [get involved in confirmation politics] to make money."[53] Katzmann (1997, 34) concurs: "At times, groups point to their lobbying activities with regard to nominees to bolster their fund-raising campaigns." Baum (1995, 37) notes: "Ideological groups have found that opposition to controversial nominees is a good way to generate interest in their cause and monetary contributions from their supporters."

An example of organizational maintenance activity during the 105th Congress is the American Jewish Congress' January, 1998 press release that decried the slow pace of Senate confirmation for President Clinton's judicial nominees. The press release took no position on any pending nominee, and in fact made no mention of the impact of the

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[52] Author's Interview, 1997.

confirmation slowdown on the members of the American Jewish Congress. It served no other purpose than to establish the American Jewish Congress as an interested party to the judicial confirmation slowdown and to send a signal to members of the American Jewish Congress that their leaders were working on their behalf.

INTEREST GROUPS AS STRATEGIC ACTORS

Despite the benefits that groups accrue when they participate in the confirmation process, interest groups do not participate in all confirmations, and not all interest groups join their colleagues in supporting or opposing controversial nominees. Interest groups are strategic in their participation in the confirmation process no less than they are strategic in the legislative process more generally. With the hundreds of major appointments that the president is called upon to make every year, interest groups cannot possibly have influence on them all. In addition, groups do not want to waste time and other scarce resources on confirmations that they have no hope of influencing or that are unimportant to their members. For these reasons, interest groups concentrate on affecting those appointments that are most directly related to the implementation of their policy goals. They strategically attempt to weed out nominees who are hostile to their group's goals while promoting those nominees that they believe will work with them to alter the course of public policy in ways favorable to the group's members. Interest groups also are strategic in that they will direct most of their efforts at affecting confirmation outcomes for high-level appointments to the cabinet or to the circuit and Supreme courts.

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[53] Author's Interview, 1997.

By targeting their scarce resources at influencing nominees to top positions, interest groups hope to influence lower-level appointees such as sub-cabinet subordinates and district court judges.

Hostile Nominees

Interest groups often get involved in the confirmation process when they perceive a nominee to be opposed to the views of their members. Because interest groups are most interested in influencing public policy outcomes to conform to the expectations of their members, they closely monitor nominees' policy positions. Those nominees with policy goals or positions that a group deems to be in direct conflict with the goals of its members often are fair game for interest group opposition. For example, in opposing the nomination of James Hormel to be the ambassador to Luxembourg, the Family Research Council (FRC) cited its concern that Hormel lacked respect for the basic family values – values that the FRC's mission directs them to uphold.[54] On the other hand, interest groups may refrain from participating in the confirmation process when they feel that the goals of their members are being adequately met. Similarly, the National Organization for Women (NOW) was an active participant in confirmation politics for federal judges during the Reagan and Bush administrations but has rarely participated during the Clinton administration. According to Linda Berg, who works on confirmation politics in NOW's Washington headquarters, this lack of participation is because President Clinton has been nominating pro-choice judges to the federal bench. But, says Berg: "If an anti-choice

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[54] Author's Interview with Steve Schwalm, 1998.

president of either party got elected, then we would definitely increase our participation at the lower court level. We would oppose people who are hostile to women."[55]

High-Level Positions

Several previous studies have demonstrated that interest groups pay more attention to the confirmation process for high-level appointees than they do for lower level appointments (Katzmann 1997; J. Cohen 1988). For example, interest groups generally pay more attention to Circuit Court of Appeals nominees than they do to nominees to the federal district courts. Nominees to the federal district courts usually are recommended to the president by home-state senators and generally are confirmed easily (Harris 1953). Senators rarely scrutinize district court nominees (although this has changed somewhat since 1995) when the home-state senators approve. This reduces incentives for interest groups to participate in the confirmation process for district court nominees. They may be more likely to participate at confirmation hearings for federal Circuit Court of Appeals nominees, since the circuit courts generally are considered more important and because confirmation is generally less certain for these nominees. Katzmann (1997, 13) sums up this argument this way:

> Presidents typically nominate people named by the senators of their party to fill vacancies in the districts of the various states. Norms of reciprocity mean that senators are generally reluctant to prevent confirmation (certainly consideration) of their colleagues' choices. Thus the confirmation process of district court judgeships is largely free of conflict... Because district courts are viewed as having a less important policy impact than higher courts (a

[55] Author's Interview, 1997.

> questionable proposition), they typically receive less scrutiny from resource-strapped interest groups concerned about judicial selection.

Similarly, interest groups focus their attention on those executive branch nominees that they deem to be most important and influential with regard to realizing the groups' goals. For that reason, interest groups will often focus on cabinet secretaries-designate with the knowledge that the eventual agency head will be an integral part of choosing his or her own subordinates. In this way, interest groups hope to influence a wider range of policymakers by focusing on the most important positions in the federal government.

TOOLS AND TECHNIQUES OF INTEREST GROUP PARTICIPATION

In his 1996 book, *Participation in Congress,* Richard L. Hall notes that legislative decisions are made in two ways – through the formal participation of members in committee hearings and markups and on the chamber floor, or through the informal conversations members have with one another (Hall 1996). Regarding cabinet officers, Jeffrey Cohen (1988, 11) notes:

> There are both formal and informal aspects of the Congress' role in the appointment of cabinet officers. The formal aspect of the relationship derives from the constitutional requirement of Senate confirmation...Also, formal aspects of the relationship can be seen in the need to hold confirmation hearings.

Cohen adds: "[T]he Senate uses the hearings to represent and advocate the interests of the senators' constituents" (Cohen 1988, 11).

Interest group participation in the confirmation process is composed of these same

dynamics. Interest groups may participate formally in the process by appearing at committee hearings or making their position a part of the public record by submitting materials to the committee to be included as part of the formal hearing record. Or, groups may participate informally through engaging in behind-the-scenes contact with members of the Senate. Interest groups borrow extensively from their legislative strategies in attempting to influence confirmation outcomes through the informal mechanisms that are available to them. When lobbying senators on behalf of, or in opposition to, a nominee, interest groups write letters, make phone calls, lobby senators face-to-face, hold press conferences, stage demonstrations, organize petition drives, gather information, or try to mobilize the grassroots membership of their organizations to pressure senators. Both formal and informal participation are discussed below.

Formal Participation

Until the mid-1980s, most interest group participation in the confirmation process was formal participation. Formal participation is that set of activities that takes place within the regular governmental procedures of the confirmation process. It includes such activities as testifying at confirmation hearings or submitting testimony to the hearing record. For example, Anne Burford, President Ronald Reagan's pick to head the Environmental Protection Agency notes that at her confirmation hearing:

> At the end of the Senators' question period, the chairman thanked me ... and then he turned the microphone over to a panel of environmentalists who'd filed statements in response to my nomination (most, though not all of them, in opposition), and had asked for the opportunity to question me (Burford 1986, 58).

Interest group testimony, like what took place at the end of Burford's confirmation hearing, is an excellent example of formal participation in the confirmation process. Formal participation may also include submitting materials to the committee with the intent to make them part of the permanent hearing record.

Interest groups' use of formal techniques began to wane in 1987, following Robert Bork's failed attempt at confirmation. Katzmann (1997) notes that the Bork nomination took interest group participation in a different direction – toward more informal techniques. He writes: "With the Bork confirmation proceedings came a new dimension to interest group activity. In addition to trying to influence senators directly, several groups sought to reach public opinion" (Katzmann 1997, 35). To do so, interest groups stepped up the use of techniques geared at indirectly influencing senators confirmation decisions. Worried that interest groups would again create a spectacle out of the confirmation process, Senate committees simultaneously began to restrict the opportunities for interest groups to participate formally. Beginning just a decade after Senate Committees had first opened their doors to the widespread participation of interest groups, committees began to close off avenues of formal participation to the interest groups that had once been welcome to participate in hearings.

In the contemporary confirmation process, formal interest group participation is viewed with skepticism, and efforts have been made to reduce the amount of formal influence groups have on the confirmation process. For example, in one of his first

official acts of the 105th Congress, Senate Judiciary Committee chairman Orrin Hatch severed ties with the American Bar Association (ABA) in February, 1997. According to the ABA's report on the activities on the Standing Committee on Judiciary, the Senate had requested the ABA's input on every judicial nomination since 1948.[56] However, on February 18, 1997, Hatch's office issued a press release stating: "Sen. Hatch ... has concluded that, while individual senators are free to weigh the input of any group how they see fit, the ABA should not play an official role" (Hatch 1997a).[57] Hatch's move to eliminate the role of the ABA came after the House Republican Policy Committee had issued a policy statement that read: "The ABA consistently prefers liberal nominees to equally well-qualified conservatives. ... The ABA ... has no right to a formal role in the process of judicial selection or confirmation" (House Republican Policy Committee 1996). With Hatch's February, 1997 statement, 40 years of good relations between the Judiciary Committee and the ABA was officially ended.[58] So, too, Hatch's actions with regard to the ABA sent a clear message that interest groups were not welcome to participate formally in judicial confirmations, the largest group of nominees the Senate considers in any given year.

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[56] See ABA Report: "Standing Committee on Judiciary," as well as Driscoll 1998.

[57] There is little evidence to indicate that senators are using ABA ratings any less than they did prior to Hatch's declaration that their official role had been revoked. Instead of sending its review to the Chairman of the Senate Judiciary Committee, the ABA now sends a letter to each member of the Judiciary Committee directly, which gives judicial nominees a rating and which describes ABA's rating system.

[58] It appears that Hatch's severing of ties to the ABA was more symbolic than substantive, at least in its effect. In a March 24, 1998 "Dear Colleague" letter, Missouri Senator John Ashcroft criticized the White House for continuing to consider the ABA's views: "Depite the Senate's decision to limit the ABA's influence on the nomination process, the Clinton Administration continues to rely on the ABA to help review and rate prospective judges" (Ashcroft 1998, 1).

Informal Participation

The vast majority of interest group participation in the contemporary confirmation process is informal. Evidence suggests that organizations increasingly have turned to informal methods of participation in the last decade as the chairmen of many Senate committees have sought to prevent interest groups from testifying at confirmation hearings (L. Cohen 1998, DeHart 1998). Cut off from other, more formal avenues, interest groups now work largely behind closed doors to persuade senators to act in ways supported by the interest groups. And, as they have developed effective informal strategies, many groups have found they no longer have a need to participate formally in the confirmation process. As Fleming, MacLeod, and Talbert (1998, 629) explain: "Informal consultation behind closed doors makes public testimony less critical to the groups' effectiveness."

In contrast to formal participation, informal interest group participation includes that set of activities that are designed to influence confirmation outcomes but that take place outside of the formal stages of the confirmation process. These activities are the private lobbying efforts that take place out of the public's line of sight. The most important, and most often-used, method of informal participation is the direct lobbying of a senator on a particular nomination (either in person or by letter or telephone). But, interest groups use direct lobbying in concert with other techniques. Interest groups try to set the Senate's agenda, disseminate information, promote or block a nominee's confirmation, and provide incentives to senators. They do all of these things without ever

setting foot in a committee hearing room.

Setting the Agenda

Agenda setting in the confirmation process is made up of two separate activities. First, interest groups will try to influence the president's choices. Second, interest groups will try to promote nominees that they care about while attempting to prevent the nominees that they oppose from coming to a vote in the Senate. Together, interest groups use these two activities to try to set the Senate's confirmation agenda. This is an important role that interest groups take on behind the scenes. As Shogan (1996, 91) writes: "The interest groups can not always decide who gets confirmed and who gets rejected, but they can determine who gets contested – and that is sufficient to give them plenty of weight with both the executive and legislative branches."

With regard to trying to influence the president's choices, many interest groups will use their contacts in the executive branch to tip them off as to whom the Administration is considering. When they find out that the president is considering nominating someone that they find to be objectionable, many interest groups will attempt to persuade the White House not to risk a confirmation fight in the Senate by making the nomination. For example, Eliot Mincberg, the legal director for liberal organization People For the American Way, explains that when the Republicans controlled the White House: "We'd go to the Administration and try to talk them out of nominating people."[59] Conversely, interest groups also try to promote certain candidates to the White House

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[59] Author's Interview, 1998.

personnel selection staff in the hopes that their preferred candidate will get the nomination.

Interest groups will also approach their allies in the Senate for help to convince the White House to nominate certain types of nominees and not to nominate others. For example, when Washington Senator Slade Gorton brokered a deal with the White House to nominate Barbara Durham, the Chief Justice of the Washington Supreme Court for a circuit court judgeship, the Alliance for Justice circulated a draft of a lengthy report that was highly critical of Durham's record.[60] It was an attempt to persuade senators to pressure the White House not to honor the deal with Gorton. The Alliance also was hoping to persuade some senators to vote against Durham if she were nominated. The Alliance report concluded: "In sum, Chief Durham's record and rulings suggest that she will be at odds with President Clinton's vision for the federal judiciary" (Alliance for Justice 1998; 12). When Clinton officially nominated Durham in January, 1999, the Alliance report was publicly released to widespread coverage in newspapers across the country.[61]

Interest groups are not always successful at persuading the White House to kill a potential nomination. This is because frequently the groups do not know who the Administration is considering for the nomination. Mary DeOreo, minority staff

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[60] Senator Gorton allegedly told the White House that he would agree to vote in favor of William Fletcher's nomination to the Ninth Circuit Court of Appeals only if President Clinton agreed to nominate Durham for another vacancy in the Ninth Circuit (See Callaghan 1998; Postman and Grimaldi 1998). The Alliance for Justice began circulating its report on Durham in July, 1998.

[61] See Carter 1999; Cooper 1999; Edsall 1999.

investigator for the Senate Judiciary Committee, explains that often, "[The groups] don't know [who the president is considering]. They're not that far ahead of the curve." For that reason, interest groups will almost always attempt to set the Senate's agenda on nominations by promoting to senators those nominees that they care about while attempting to prevent the nominees that they oppose from being confirmed.

Interest groups usually begin their campaigns in favor or against a nominee at the committee level by trying to push a nominee onto, or keep a nominee off of, the confirmation hearing agenda. This is because, according to Michael Carrasco, minority nominations clerk for the Senate Judiciary Committee, most aspects of the confirmation process – especially who gets a hearing and when – "generally are worked out at the [committee] staff level."[62] Once an organization has determined whether to oppose or support a nomination, it typically will begin to exercise a strategy of informing the senators and staffers of the committee or jurisdiction by issuing a letter or report stating its views. For groups that oppose a nominee, this is also an attempt to set the committee's agenda and prevent consideration of a nominee. If enough communication from interest groups raise concerns in the minds of staff investigators, a nomination may be delayed in receiving a confirmation hearing. According to Carrasco, "if there is too much opposition, the [committee] chairman might not want to move a nominee. You don't want to embarrass someone, you want to save face for the nominee."[63]

Committee staff investigators often cannot corroborate information brought to

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[62] Author's Interview, 1998.

them by an interest group or do not feel that the information is credible. So a nomination may move forward regardless of interest group opposition. If interest groups cannot convince committee staffers that a nominee should not be granted a hearing or confirmed, they may refocus their efforts on individual senators. Hall (1996, 10) notes that in the U.S. Congress, "not all members are involved in each legislative decision." Like the Senate's deliberative process more generally, the design of the Senate's confirmation process permits a single senator to influence confirmation outcomes. As was discussed in Chapter One, a single senator may prevent an individual from gaining confirmation by placing a hold on his or her nomination. Any senator can personally contact the committee chairman to oppose scheduling the nominee for a hearing or can place a hold on a nomination should the nominee be voted out of committee. According to Carrasco and Melody Barnes, Chief Counsel to Senator Edward M. Kennedy, interest group pressure may persuade a senator to work against the nomination.[64] And, a single senator may be enough to thwart confirmation for some nominees. Thus, for groups that support a nomination, it is important to shore up as much support as possible and to reduce the risk of opposition.

The reverse scenario also is true. Both Carrasco and Barnes point out that a single senator's work on behalf of a nomination can be sufficient to move a nominee forward, and Barnes notes that pressure from an interest group or set of groups with which a

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[63] Author's Interview, 1998.
[64] Author's Interview, 1998.

senator has worked closely may encourage a senator to go to bat for a nominee.[65] Carrasco notes: "The most important tool a senator has is his vote. ... I wouldn't be surprised if at any time a nominee were confirmed because one senator traded his vote."[66] Interest groups know that at any time, a single senator's efforts may convince the chairman of the committee to schedule a hearing. Despite a nominee's controversial record, a committee chairman generally will not deny a nominee a hearing when pushed by another member of the Senate, according to Carrasco. Thus, groups that support a nomination typically will try to persuade individual members of the Senate to champion their nominee.

Disseminating Information

When a nomination is announced by the White House, interest groups on both sides of the ideological spectrum spring into action. Their first priority is to gather as much information as possible on the nominee. Interest groups will look at any records available to them to try to determine whether to support or oppose a nominee. According to Ron Weich, former chief counsel to Senator Edward M. Kennedy, the advent of on-line databases makes it especially easy for interest groups to quickly determine a nominee's profile. "I can type in a name, punch a button, and see everything a nominee has every written or see every time their name has appeared in the newspaper," says Weich.[67]

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[65] Author's Interview, 1998.
[66] Author's Interview, 1998.
[67] Author's Interview, 1998

For most groups, information dissemination is a way to get a foot in the door with members of the Senate. It is also a way to provide senators with important facts about a nominee to which they might not otherwise have access. Alex Acosta, director of the conservative Project on the Judiciary, sees the gathering and dissemination of information about nominees to federal judgeships as his most important job. "My goal is to educate people inside the beltway," says Acosta. To that end, he engages in a variety of information-gathering techniques:

> I get the information that's available in paper form, like past opinions, speeches, and law review pieces. Then I call people and ask them 'What do you know of 'X' individual?' Then I give out the information. I might cull out the controversial information, but I'm not all that proactive. I usually let the information speak for itself. I do not do blast-faxes. I don't send around newsletters. I don't send weekly e-mails. I'm more of a clearinghouse.

Interest groups can fulfill an important role in the confirmation process by providing members of the Senate information that neither they nor their staffers have the time or resources to collect on their own. By disseminating information to senators, interest groups can help senators to make educated and informed decisions about whether to confirm a presidential nominee. At the same time, however, when interest groups distribute information that is false, misleading, or biased, such groups may ruin a nominee's chances at confirmation.

All interest groups that participate in confirmation process are engaged in the sharing of information with senators and their staffs. Groups recognize that just like other

legislative decisions, information is at a premium in the confirmation process. Senators and staffers will gratefully accept any information that interest groups provide, often without any independent effort to check its accuracy or veracity. Interest groups know this and work diligently to provide senators with the information they need to make informed decisions about presidential nominees. Some groups will even distort nominees' records as they attempt to persuade senators to vote the way that the group prefers.

Creating Incentives for Senators to Support or Oppose a Nominee

Interest groups are not always successful at setting the Senate's confirmation agenda, nor are their reports and analyses always enough to persuade senators to vote in favor of the nominees they support and against the nominees they oppose. So groups pursue additional means of persuading senators to vote the way the groups would like. The groups pull out the "big guns" – the senators' constituents.

To do this, interest groups will turn to outside, grassroots means of trying to influence the confirmation process. Many will engage in "astroturfing" – the instigating of grassroots campaigns. Interest groups will contact their state and local affiliates and will work to mobilize support for or opposition to pending nominees. For example, in 1998 several Hispanic organizations organized a petition drive in New York state to urge former Senator Alfonse D'Amato (R-NY) to push the nomination of Sonia Sotomayor to the Second Circuit Court of Appeals to a vote. The drive yielded the signatures of hundreds of New Yorkers who demanded that Sotomayor be brought to a vote. The

Hispanic groups hoped that the petitions, coupled with D'Amato's impending senatorial election, would convince him to push the Senate leadership for a vote on Sotomayor's nomination. The overriding goal was to link Sotomayor's confirmation vote with the electoral process.

Interest groups know that senators will not often vote against the wishes of a large number of their constituents. In fact, in the contemporary confirmation process, senators will often seek out constituent opinions before casting confirmation votes. According to Ron Weich, former Chief Counsel to Senator Kennedy: "Too few senators have sense of history and our constitutional scheme. They want to see what their constituents think."[68]

Punishing and Rewarding Senators

The most important of all incentives that interest groups can offer is the ability to affect a senator's electoral chances. Interest groups have learned that senators respond to constituency pressures and act accordingly. In the contemporary confirmation process, some interest groups devote a substantial amount of resources to educating the public about issues or about public officials' voting behaviors on presidential nominations. These same groups then turn around and threaten to make the senators' votes an issue in the upcoming election (Jacobson 1998).

Davidson and Oleszek (1998, 338) note that there are now 100 organizations that routinely publish "vote scorecards," which are designed to give the public a quick reference tool for determining how their members of Congress or their Senators voted on

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[68] Author's Interview, 1998.

legislation that is important to the group. In recent years, some interest groups, including the Christian Coalition, have begun to include senators' confirmation votes among the votes the groups select. For example, in April, 1998, the Christian Coalition released its 1998 U.S. Senate Scorecard. The scorecard, compiled every election year, charts senators' votes on legislation or issues on which the Christian Coalition had taken a position. In 1998, two of the 12 votes that the Coalition used to rate senators were confirmation decisions – the confirmation of David Satcher to be U.S. Surgeon General and the confirmation of Margaret Morrow to be a federal judge for the district of central California. Two years earlier, the scorecard had included no confirmation votes.[69]

Liberal groups also employed the threat of voter scorecards to attempt to influence the Senate's confirmation decisions. Unlike their conservative counterparts, however, liberal organizations threatened to punish senators for delaying votes on several nominees. For example, after their nominations to the circuit courts stalled in the Senate, federal district court judges Richard Paez and Sonia Sotomayor received overwhelming support from interest groups representing the Hispanic community. In June, 1998 two dozen members of the National Hispanic Leadership Agenda (NHLA) marched from the front of the U.S. Supreme Court to the offices of Senate Majority Leader Trent Lott inside the U.S. Capitol to protest what they believed were inordinate delays in confirming President Clinton's Hispanic judicial nominees. In a press release, NHLA declared: "In October, the NHLA will publish a scorecard rating the voting record of each member of

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[69] Both the 1998 and 1996 Christian Coalition U.S. Senate Scorecards are available via the Christian

(Footnotes continued on next page)

Congress and the Senate on legislation that affects Hispanics" (NHLA press release 1998).

Rhett DeHart, former counsel to Senator Jeff Sessions (R-AL) and current counsel to Senator Orrin Hatch (R-UT), asserts that voter scorecards are an effective way to provide senators an electoral context to their confirmation decisions. He says: "I've noticed for certain controversial nominees [some interest groups] send out letters saying 'We're gonna score your vote on this person's nomination.' That's kind of a new angle and I think that absolutely has an effect [on senators' voting behaviors]."[70] Mike Carrasco, minority nominations clerk for the Senate Judiciary Committee adds:

> The reason a bunch of judges received 'no' votes [from some senators] is because the Christian Coalition and other groups came out and said 'we're scoring.' To some senators, having a 100 percent record with some groups helps define their [legislative] record.[71]

Senators know that they can not afford to ignore the electoral consequences of their confirmation decisions. In the contemporary confirmation process, interest groups put pressure on senators to consider the ramifications of their confirmation votes. According to Alex Acosta: "Groups play an important role because groups remind the Senate about its responsibility to do the right thing."[72] "And," he adds, "groups can reward Senators when they do the right thing."[73] Interest groups also try to punish

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Coalition's website at http:/www.cc.org.
[70] Author's Interview, 1998.
[71] Author's Interview, 1998.
[72] Author's Interview, 1998.
[73] Author's Interview, 1998.

senators for failing to act in the way the groups prefer.

Additional Observations

Interest groups' techniques vary depending on whether they support or oppose a presidential nominee. Interest groups that support nominees appear to engage in more public techniques, while interest groups that oppose nominees seem more likely to try to influence senators in more circumspect ways. For example, in 1998 several interest groups held rallies outside the Supreme Court to demonstrate their support for Hispanic nominees whose nominations were not moving forward in the Senate. In contrast, the Judicial Selection Monitoring Project produced a fundraising videotape that was sent to individuals on a conservative mailing list asking for help to prevent President Clinton's judicial nominees from being confirmed.[74] Similarly, evidence suggests that interest groups opposing presidential nominees approached senators in private to seek a promise of a hold or filibuster on the nominees they deemed unacceptable, while groups that supported nominees seemed to seek public assurances that the nominees would be brought to a vote.

It is likely that this difference in strategy results from the fact that it takes only one senator to delay or prevent confirmation, through the use of a hold or similar delaying tactic, while it takes at least 51 senators to confirm a nominee. Interest groups recognize this distinction and tailor their strategies to the goals they wish to achieve.

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[74] Both of these examples are explained in greater detail in Chapter Four.

THE CONSEQUENCES OF INTEREST GROUP PARTICIPATION

Evidence from the Bork confirmation hearings and other studies indicates that interest group participation in the confirmation process can have a powerful effect on senators' confirmation decisions. With the new and increasing tactic of linking senators' confirmation votes to the electoral process, interest groups create new incentives for senators to lead the charge for or against some presidential nominations. Nominees that would once have sailed through the Senate now may wait months or even years for confirmation. As Baum (1995, 53) writes:

> If groups that are electorally important to a senator mount a campaign against a nominee, the senator may perceive a negative vote as politically advantageous. This is especially true, of course, if the groups' position seems to coincide with prevailing opinion in the senator's state. Further, substantial interest group opposition can overcome the assumption that a nominee will be confirmed and thus stir potential senate opponents to action.

Interest group participation in the confirmation process has created a more contentious environment for presidential nominees. Recognizing that the confirmation process is another opportunity to push their policy agendas and appease their members, interest groups now use Senate confirmations to shape public policy and to punish or reward senators for their decisions. Interest groups opposed to nominees will engage in character attacks and the dissemination of misinformation about nominees. As former senator Alan Simpson notes: "We have groups that rear up and gear up simply to smote a candidate between the eyes" (CIC Transcript 1998). These groups share information

with senators and work with members of the Senate to thwart the appointment of some nominees. Nominees now face the confirmation process with trepidation. In a phone conversation with members of the Senate Judiciary Committee staff, one nominee to the Ninth Circuit Court of Appeals even indicated that she was "terrified" of what would happen at her confirmation hearings.

Fear of Senate confirmation makes the process of recruiting individuals to serve as federal judges more difficult. Illinois Senator Dick Durbin notes in a piece for *Insight Magazine* that 120 people applied to fill a judicial vacancy in Illinois in 1994. But when another vacancy occurred in the fall of 1997, only eight people applied for the job. Durbin writes: "I can only guess why people declined to apply for the job. But a dispassionate look at the situation would give anyone pause. ... People who are being nominated to fill those positions are being put through a brutal hazing ritual known as Senate confirmation" (Durbin 1998). In an interview on National Public Radio's "All Things Considered," *Slate Magazine* correspondent Jacob Weisberg noted: "On top of the many sacrifices public servants already make, they must increasingly bank on being gratuitously ripped apart in the Senate. Former senator David Boren sums up the consequences of interest group participation in this way: "The confirmation process now drives out the more capable people because they feel they're just going to be torn apart. It's now impossible to confirm anyone with a record."[75]

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[75] Author's Interview, 1997.

CONCLUSION

In a pluralist system, public policy results from the struggle between and among groups in society. To the extent that governmental institutions are involved, they are merely the arenas within which groups struggle for supremacy. Institutions provide boundaries and bear the ultimate responsibility for enactment and enforcement of public policies. But interest groups constrain the policy options available to lawmakers. Latham (1965) articulated this situation well. He noted that the products of the legislative process tend to reflect the preferences of successful groups in society. In his view:

> The legislature referees the group struggle, ratifies the victories of the successful coalitions, and records the terms of the surrenders. ... The legislative vote on any issue tends to represent the composition of strength, i.e. the balance of power, among the contending groups at the moment of voting. What may be called public policy is the equilibrium reached in this struggle at any given moment (Latham 1965, 35-6).

Katzmann (1997, 52) adds: "Legislators, eager to be reelected, avoid choices on critical issues that could antagonize energized groups. They do not work to develop coherent policy, but instead seek to accommodate the preferences of interest groups through ad hoc bargaining." In the contemporary confirmation process, senators now respond to interest groups in much the same way as they do in other legislative decisions. The result is that interest groups are able to exercise some control over confirmation outcomes as senators strive for a middle ground in a process that provides only two alternate choices.

This chapter has explored the roles and functions of interest groups in the confirmation process. From this exploration it is clear that interest groups use the confirmation process in much the same way that they use other legislative processes. Interest groups try to influence public policy outcomes by weeding out nominees that are hostile to their groups' goals. But interest groups are strategic actors. They typically target only those nominees and those positions that are likely to have the most impact on the groups' abilities to achieve their objectives. In this way, groups can conserve scarce resources while still influencing public policy outcomes.

The dynamics of interest group participation in the confirmation process have changed from what they were even just two decades ago. In the 1970s, interest groups used the formal procedures of the confirmation process by testifying at hearings and submitting materials to the hearing record. Beginning in the late 1980s, the Senate began to close off opportunities for interest groups to participate formally in the confirmation process. Today, interest groups take full advantage of the wide range of informal techniques that are available to them, including setting the agenda, disseminating information, creating incentives for senators and punishing and rewarding senators for their confirmation decisions. In the contemporary confirmation process, interest groups use a wider range of techniques to influence senators than they once did. But their goals remain the same: to influence public policy and to practice organizational maintenance.

The next two chapters provide practical measures of interest group participation in the confirmation process. Chapter Four explores the dynamics of interest group

participation in the confirmation process for federal judges. It is clear that interest groups' formal participation has markedly declined with regard to judicial confirmations as the Senate Judiciary Committee has reduced opportunities for groups to give testimony and submit materials. But Chapter Four illustrates that groups have become extremely innovative in the techniques that they use. Chapter five examines interest group participation in the confirmation process for cabinet secretaries-designate and ambassadors. While formal interest group participation in confirmations for these nominees appears not to have been as drastically curtailed, it is clear that interest groups are now borrowing extensively from the techniques they refined in the judicial confirmations to attempt to influence confirmation outcomes for cabinet and ambassadorial nominees. Together, the next two chapters provide important evidence of the extent to which interest groups shape the contemporary confirmation process.

CHAPTER FOUR:

GROUP DYNAMICS AND THE SENATE CONFIRMATION PROCESS – THE CASE OF THE FEDERAL JUDICIARY

> "[I]nterest groups have injected themselves into the process... As we study the politics of judicial confirmations, we need to integrate this new phenomenon into our models and analysis."
>
> -- Gregory Caldeira, 1989

While interest groups care about a wide range of federal appointments, there is perhaps no group of nominees they consider more important than nominees to the federal courts. Federal judges effectively serve lifetime terms, are impervious to electoral challenge, and rule on cases that affect nearly every aspect of social, political, and economic policy. Further, federal judges may strike down state or federal laws that interest groups' members care deeply about. These judges may even strike down legislation that interest groups spent a lot of time, money, and effort to get enacted through the legislative process. For this reason, interest groups pay close attention to judicial nominations and to the Senate confirmation process for federal judges. Groups care deeply about who is appointed to the federal bench and often work hard in support of nominees that they favor and equally as hard against nominees they oppose. In their study of Supreme Court confirmations, Segal and Spaeth (1995, 146) note: "Historical evidence clearly indicates that lobbying has influenced the confirmation process."

Many previous studies of the Supreme Court confirmation process have found an important role for interest groups.[76] These studies of Supreme Court confirmations also have found that interest groups can be significant influences on confirmation outcomes. While these studies are useful, they have focused primarily on the failed confirmation of Robert Bork. For example, Shogan (1996) and Carter (1994) assert that as a result of the Bork controversy, interest groups became more prominent actors in the appointment process across all types of nominations. Maltese (1995, 7) points out that the aftermath of the interest group campaign against Robert Bork even produced a new verb: "to Bork; which means to unleash a lobbying and public relations campaign of the kind employed against Robert Bork." In an interview, former U.S. Senator David L. Boren (D-OK) noted: "The Bork nomination became the prototype of interest groups using the confirmation process."[77]

Despite evidence from scores of case studies of the Bork hearings suggesting that interest groups are important actors in the confirmation process, there has been little scholarly attention to whether lower court confirmations are affected by interest groups in the same way as Supreme Court confirmations. What is lacking, are comprehensive studies that consider the extent to which interest groups affect the confirmation process for judicial nominees more generally. As Caldeira and Wright (1998, 501) point out: "Despite the power many people have attributed to organized interests, research on

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[76] See, for example, Caldeira and Wright 1998; Baum 1995; Maltese 1995; Overby et al. 1994; Guliuzza, Reagan and Barrett 1994; Silverstein 1994; Gittenstein 1993; Overby et al. 1992; Simon 1992; Abraham 1991; Bork 1990; Bronner 1989; Watson and Stookey 1988.

judicial nominations affords little insight into the role and impact of interest groups." Although one recent study has made steps in the direction of considering interest group activity in the confirmation process for lower federal court judges, much remains unknown about the dynamics of interest group participation in the confirmation process.[78] This chapter aims to put interest group participation in the confirmation process into some context by exploring the ways in which interest groups participate in judicial confirmations. To explore both the formal mechanisms that interest groups use in participating in judicial confirmations, data were gathered from 1,236 nominations to positions in the federal judiciary made between 1979 and 1998. The data were then compiled into a data set, hereafter referred to as the Judicial Nominees Data Set. Included in that number are data from 1,112 nominees on whose nominations confirmation hearings were held.[79] The quantitative data were then used to analyze the formal mechanisms of interest group participation, and the effects of such participation on confirmation outcomes for judicial nominees. A more complete explanation of the data set appears in Appendix One at the end of this project.

In addition, this chapter focuses on the informal mechanisms that interest groups use to influence confirmation outcomes. These data are drawn from interviews with key

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[77] Author's Interview, 1997.

[78] Flemming, MacLeod, and Talbert (1998, 629) examine whether interest group participation in judicial confirmation hearings has increased over time. However, their study does not discuss the *effects* of interest group involvement on the confirmation process.

[79] Note that the nominees included in this Data Set are those individuals selected by the president to fill vacant Article III judgeships. An Article III judgeship is one meets the criteria specified in Article III of the United States Constitution. According to Rutkus (1991, 1): "the 'Article III courts' consist of the U.S. Courts of Appeals, the U.S. Court of International Trade, and the U.S. District Courts in the 50 States, the

(Footnotes continued on next page)

interest group leaders and Senate staffers and they explore the behind-the-scenes work that interest groups do to attempt to influence confirmation outcomes. In addition, evidence was gathered through participant observation between November, 1997 and August, 1998. A full description of the qualitative methodology employed also appears in Appendix One.

BACKGROUND

Lower federal court confirmations typically make up the largest group of nominees that the Senate must approve in any given Congress (Mackenzie 1996, 43). Since 1990, when the Congress approved 72 new federal judgeships, there are 829 Article III judgeships requiring presidential nomination and Senate confirmation. This compares with fewer than 200 ambassadorships, and just 14 cabinet secretary positions that must be filled. Presidents routinely fill more federal judgeships than any other office. For example, during the 104th Congress, President Clinton submitted 141 judicial nominations to the Senate for consideration. In comparison, he nominated 88 individuals to ambassadorships, 33 individuals to positions in independent government agencies and 22 individuals to positions on regulatory boards and commissions (Senate Committee on Foreign Relations 1997; Garcia 1996a, 1; Garcia 1996b, 1).

By and large, most judicial nominees are confirmed easily. As O'Brien (1988, 65) notes:

District of Columbia, and Puerto Rico."

> Although the Senate has the power to reject nominees to the federal bench put forward by the president, the overwhelming majority of nominees are routinely approved by the Senate Judiciary Committee and confirmed by the Senate after only perfunctory investigation and according to no fixed standards.

Further, because senatorial courtesy often governs the selection of lower court judges, lower federal court confirmations tend to be viewed as another example of the *quid pro quo* attitude that is typical of politics in the Senate and, as such, not worthy of detailed study.[80]

Despite conventional wisdom suggesting otherwise, recent developments in the confirmation process broadly and in judicial confirmations specifically indicate that it is no longer appropriate to exclude lower federal court confirmations from study. The conventional wisdom of an amicable process free from much Senate scrutiny no longer holds true. The confirmation process for federal judges has become more contentious over the last few years. According to United States Court of Appeals judge Alex Kozinski:

> [H]ighly alarming are the recent battles in the Senate over the appointment of the Chief Justice, Judge Bork, Justice Thomas, and some of the judges of the lower courts. Judicial appointment and tenure has suddenly become a political football in a way that has serious implications for our way of life. It will not stop there (Kozinski in O'Brien 1997, 75-6).

Numerous accounts in the popular press have documented the extent to which nominees to the federal courts faced a contentious and uncertain confirmation process during the

104th and 105th Congresses.[81] Nominees waited lengthier periods of time from nomination to confirmation, were subjected to heightened scrutiny, and faced uncertain confirmation outcomes. More than any other group of nominees, lower federal court judicial nominees highlight the changed nature of the contemporary confirmation process and demonstrate the new nearly omnipresent power of interest groups.

Indeed, both the 104th and the 105th Congresses provide the backdrop for a number of unusual occurrences that make the study of the role of interest groups in judicial confirmations extremely timely and important. Beginning with the Republican takeover of the Senate in 1995 and intensifying following the 1996 congressional elections, the confirmation process has become a flash point of conflict between many of the key actors in the confirmation process. Whereas prior to 1995 most lower court judicial confirmations were non-events, recently the confirmation process for federal judges has become much more contentious. With the Republican takeover of the Senate, conservative senators made judicial activism an issue, forced increases in roll-call votes for judicial nominees, fought amongst themselves, and ultimately increased the length of time and the uncertainty involved in navigating the confirmation process. The contemporary confirmation process for judicial nominees looked very different in 1999 than it did just five years earlier.

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[80] Abraham 1991; Baum 1990; Watson and Stookey 1988; Matthews 1960.
[81] Dewar 1998, Gest and Lord 1997, Joseph 1997, Marquand 1997; Ornstein 1997,Washington 1997

The Conservatives Take Power

The first inkling that the judicial confirmation process would change under the new Republican leadership came immediately following the Republican takeover of the Senate in the 1994 congressional midterm election. Conservative interest group leaders were ecstatic with the Republican victory and vowed that the confirmation process would change. One week after the 1994 congressional midterm election, the legal publication *The Legal Times* quoted Clint Bolick, leader of the conservative Institute for Justice as saying: "It's definitely the dawn of a new day. ... I think the Republicans have chafed under Democratic control of the Judiciary Committee, and that the tables will very much be turned" (Rodriguez 1994, 6).

Despite Bolick's prediction, during the first session of the 104th Congress the judicial confirmation process proceeded with very little controversy. In 1995 President Clinton's nominees were confirmed at a rate and pace similar to the rate and pace that they were confirmed during the 103rd Congress, when Democrats controlled the Senate. But, the second session of the 104th Congress was an election year – and Republican candidate Bob Dole focused some of his campaign energy on the federal courts, suggesting that during his first term Clinton had appointed judges who were soft on crime. According to Schwartz (1997): "Bob Dole's presidential campaign featured an attack on President Bill Clinton's judicial appointments" (Schwartz 1997, A33).

The presidential campaign, coupled with Dole's accusations about Clinton

nominees resulted in an abysmal year for judicial confirmations in 1996. During the second session of the 104th Congress, the Senate confirmed just 17 judicial nominations of the 49 nominations that were pending (Rutkus 1997). The 1996 presidential election also set the stage for the 105th Congress, in which the pace of judicial confirmations would again slow, this time without the specter of a presidential election looming over the process.

Following the 1996 presidential election, "...Congress [got] in on the act" of opposing President Clinton's nominees to the federal courts (Schwartz 1997, A33). The first order of business was attacking President Clinton's nominees as judicial activists, despite evidence from Sheldon Goldman and other judicial appointment experts that Clinton was nominating primarily centrist judges. On November 15, 1996, less than two weeks after the 1996 presidential election, Judiciary Committee chairman Orrin Hatch declared at a meeting of the Federalist Society:

> A judicial nominee must appreciate the inherent limits on judicial authority under the Constitution, must demonstrate the self-discipline and professional humility to be faithful to these limits, and must interpret the law, not legislate from the bench. A judicial activist, on the left or right, is not in my view qualified to sit on the federal bench (Reske 1997, 28).

By the end of the 104th Congress, the conservative revolution that had swept through the Congress and affected legislative initiatives had also begun to affect the confirmation process. Unlike the aftermath of the 1994 election, major changes to the confirmation process were underway at the beginning of the 105th Congress.

Roll Call Votes

The dawn of the 105th Congress brought more changes almost immediately. In March, 1997, the Republican-controlled Senate began a new policy of taking roll call votes on all judicial nominees. Beginning in January,1997, conservative North Carolina Senator Lauch Faircloth launched a campaign to persuade members of the Republican Conference that it was inappropriate to confirm individuals to lifetime appointments by voice vote. On March 19, 1997 he told the full Senate:

> [O]ur vote today is an important precedent since it marks the beginning of the Senate's new commitment to hold roll call votes on all judicial nominees. This is a policy change which I had urged on my Republican colleagues by a letter of January 8, 1997, to the Republican Conference. Voting on federal judges, who serve for life and who exert dramatic – mostly unchecked – influence over society, should be one of the most important aspects of serving as a U.S. Senator. Rollcall votes will, I believe, impress upon the individual judge, the individual senator, and the public the importance of just what we are voting on. I hope my colleagues will regard this vote, and every vote they take on a Federal judge, as being among the most important votes they will ever take (Congressional Record, March 19, 1997, S2529).

As a result of this policy change, during the 105th Congress nominees to federal judgeships were more likely than at any other point in history to be subject to a roll call vote for confirmation. In 1997, eleven District Court judgeship nominees -- nearly 38 percent -- were confirmed by roll call vote; between 1979 and 1996, only one District Court nominee *total* had ever been put to a roll call vote for confirmation. Clearly, not every nominee was subjected to a role call vote. But many judicial nominees faced

lengthy floor debates and close roll-call votes on their confirmations.

Republican In-Fighting

In April, 1997, more controversy surrounded the Senate confirmation process. In an unusual move, conservative members of the Republican caucus attempted to strip Senate Judiciary Committee Chairman Orrin Hatch of much of his committee's authority to advise and consent to judicial nominations in April, 1997. Upset that Hatch had made deals with liberal members of the body, some members of the Republican leadership attempted to give increased veto power over judges to Republicans from the home states or regions where a nominee would serve (Lewis 1997, A1; Henry 1997, 1). According to a report in the New York *Times,* a small group of Republican senators wanted to "have the power to block any Clinton Administration nominees they thought were not conservative enough or were unsuitable for any other reason" (Lewis 1997, A1).

While Hatch was able to fend off the attacks on the Judiciary Committee, he was forced to do so without help from party leaders. According to a report in *The National Journal:* "Last year, when [Sen. Slade] Gorton [R-Wash] and Phil Gramm, R-Texas launched an attack to divest the Judiciary Committee of a major chunk of its judicial-nominations turf, Lott didn't lift a finger to help" (Victor 1998, 742). *Roll Call* quoted a Republican aide, who stated: "Hatch should realize that half of his Conference is not happy with the way he is handling the Judiciary Committee. ... Hatch is on notice...there's going to be continuing tension" (Henry 1997, 1). Never before had the majority party sought such influence in the confirmation process at the expense of one of

its own members.

Unprecedented Slowing of the Confirmation Process

Perhaps in response to concerns about his party loyalty and ability to run the Judiciary Committee, Hatch began to slow Judiciary Committee consideration of President Clinton's judicial nominees. During the 105th Congress, nominees to the lower federal courts waited dramatically longer periods of time between their initial nomination and their confirmation than did nominees in any other Congress in the last two decades. Such a slowing clearly had never happened before in a non-presidential election year. Table 4.1 below clearly identifies the pace and rate of confirmation for federal judges between 1979 and 1998, and it is clear that confirmations slowed dramatically during the 105th Congress. In addition, the 105th Congress stands out as unique in that the pace of judicial confirmations slowed dramatically in a Congress that did not precede a presidential election, and in that the percentage of confirmations was lower than what might have been expected for a non-presidential election situation.[82]

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[82] Pines (1996) notes that during a presidential election year, the rate and pace of judicial nominees slows as the Senate waits to see whether there will be a shift in presidential leadership.

TABLE 4.1: CONFIRMATION TRENDS FOR JUDGES CONFIRMED 1979-1998

CONGRESS	AVERAGE NUMBER OF DAYS, NOMINATION TO CONFIRMATION[83]	NUMBER (AND PERCENT) OF NOMINEES CONFIRMED
105th	220.5	101 (83%)
104th	131	71 (66%)
103rd	72	125 (89%)
102nd	112.5	120 (66%)
101st	74	70 (93%)
100th	121	92 (80%)
99th	43	128 (95%)
98th	32.5	89 (91%)
97th	33	95 (100%)
96th	77	201 (92%)

Sources: Unpublished data from the Administrative Office of the United States Courts; Statistics routinely compiled by the Senate Committee on the Judiciary (minority staff); *Congressional Record* for the years indicated; Democratic Policy Committee 1998, 1998b.

Lengthy delays during the 105th Congress even caused some nominees to withdraw their names from consideration. One such nominee, Lynne Lasry, withdrew her name from consideration for a judgeship in the Southern District of California District Court in February, 1998. She had waited nearly a year for the Senate to act on her nomination. In withdrawing Lasry stated: "I am honored to have been considered for this important position, but I can not leave my life and my practice on hold indefinitely" (Alvord 1998, B-3). In the year she had waited, the Senate had not even held a hearing on her nomination.

The slowing of the confirmation process came as Republicans attacked the federal judiciary on other fronts. Most notably, members of Congress began to hint that they

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[83] This average is uncorrected for Senate recesses, per the method used by the Administrative Office of the

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would use the Congress' authority to allocate judgeships and to impeach sitting judges to exercise control of the federal judiciary. During the 105th Congress, several "court-curbing" proposals were put forth by interest groups and members of Congress. These included a proposed reduction of the current number of judgeships in the federal courts and the suggestion that an amendment to the Constitution be passed to limit judges' terms (Biskupic 1997; Joseph 1997; Novak 1997). Some conservative Republicans "talked of impeaching sitting judges whose rulings advocate liberal causes or try to 'effect political or social change'" (Marquand 1997, 3).

Throughout 1997, the Republican Congress drew clear battle lines with the federal judiciary, the president, and the president's nominees to the federal courts. Delay was their primary strategy. Senate Republicans held up many Clinton nominees for more than two years.[84] A report in *Congressional Quarterly* noted:

> Republican senators who were elected in 1994 have not had a crack at a Clinton nominee to the Supreme Court yet. But in lower court positions, their main strategy in the past three years has been to hold up scores of nominees, preventing them from even coming up for a vote (Carney 1998, 1065).

By the middle of the second session of the 105th Congress, the confirmation process for lower court judges had reached a near stalemate. The situation was so bad, that President Clinton was forced to, as one newspaper article put it, "negotiate for hostages," by making the deal with Republican Senator Slade Gorton that was discussed in Chapter

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United States Courts.

[84] Unpublished statistics compiled by the Senate Judiciary Committee, minority staff.

Three. Clinton agreed to nominate Washington State Chief Judge Barbara Durham in exchange for Gorton's support in confirming William Fletcher to the Ninth Circuit Court of Appeals (Cocco 1998, A51). A report in the legal publication *The Recorder* declared: "The deal reportedly struck by President Clinton with conservatives who have been blocking his choices to the federal judiciary constitutes nothing short of ransom paid to senatorial terrorists (Olin 1998, 5).

INTEREST GROUPS AND JUDICIAL CONFIRMATIONS

Changes to the Senate's confirmation process during the 104th and 105th Congress demonstrate the power of interest groups in the confirmation process. Case study and anecdotal evidence suggest that conservative interest groups – bolstered by the Republican takeover of the Senate in 1994 – are at least partially to blame for increased contentiousness in the judicial confirmation process. A 1998 *Congressional Quarterly* piece notes: "The Senate has turned the process of confirming federal judges into a political sideshow for the two parties to curry favor with their hard-core supporters" (Carney 1998, 1660). Many observers of the confirmation process believe that an increase in activity by conservative interest groups attempting to keep Democratic President Bill Clinton's nominees off of the federal bench are responsible for the strange circumstances surrounding judicial confirmations in the 105th Congress.[85]

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[85] Conservative interest groups were mentioned as a cause of the slowdown not only by the leaders of more liberal interest groups (author's interviews with People For the American Way's Eliot Mincberg and Tracy Hahn-Burkett, and Alliance for Justice's Nan Aron, all in 1998) and a nominee to the federal courts who was forced to withdraw, Michael Schattman (author's interview 1998), but also by Tom Jipping, director of the Judicial Selection Monitoring Project (Author's interview 1997) who stated that he measured success by how many Clinton nominees his organization could delay or prevent from being confirmed.

Of course interest groups have long been interested in judicial confirmations. As was noted in Chapter Three, interest groups began to take an interest in judicial confirmations in 1930, when President Herbert Hoover nominated John J. Parker to a vacancy on the United States Supreme Court. Concern over Parker's views on organized labor and racial equality led the American Federation of Labor (AFL) and the National Association for the Advancement of Colored People (NAACP) to testify against him at his confirmation hearing. It was the first time ever that interest groups were present to urge the defeat of a president's nominee.

Since 1930, interest groups have involved themselves in only a handful of judicial confirmations, usually for nominees to the Supreme Court or to the Circuit Courts of Appeal (cite). And, group participation has almost always been nominee specific. Only rarely did interest groups express concerns about more general issues relating to the Senate's confirmation process.[86] In 1994, however, that trend came to an abrupt halt, as Republicans gained control of the Senate's Judiciary Committee. Shogan (1996, 153) predicted: "With the Senate in Republican hands, right-wing interest groups will be even more emboldened to challenge any attempt on [President Bill Clinton's] part which seems to them as an attempt to undo the gains conservatives made during the Reagan-Bush era..." By 1996, conservative interest groups – incensed over Bill Clinton's win in the 1996 presidential election – had developed and implemented strategies to prevent Clinton from securing a judicial legacy. Stunned that they had been unable to recapture

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[86] These conclusions are drawn from an examination of all confirmation hearings for federal judicial

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the White House, these conservative groups, many of which had poured vast amounts of resources into the election, set their sights on the federal judiciary. Conservative interest groups turned to conservative members of Congress and stepped up their opposition to Clinton's judicial nominees.[87] According to a 1997 New York *Newsday* editorial: "A coalition of right-wing groups has launched what it sees as a war to save the courts from Clinton. Enlisting grassroots activists and radio talk-show hosts, it is pressuring senators to drag out the nomination process..." (Newsday 1997, A24).

The campaign against the Clinton nominees was led by the Judicial Selection Monitoring Project's Tom Jipping. Jipping was quoted in a Utah newspaper just days after the 1994 midterm election saying that his organization would closely monitor the Republicans and new Judiciary Committee chairman Orrin Hatch, because "they're the majority now" (Lewis 1994). During the 105th Congress, interest groups such as the Free Congress Foundation's Judicial Selection Monitoring Project (JSMP), the Project on the Judiciary, and the Family Research Council actively lobbied the Republican Senate to reject Bill Clinton's judicial nominees. According to Jacobs (1997):

> [S]ome conservatives, led by Tom Jipping, of the far-right Free Congress Foundation's Judicial Selection Monitoring Project, and their allies in the U.S. Senate have embarked on a new strategy: Block most Clinton appointees, regardless of ideology, so as to deny Clinton his appointments and save the slots for a Republican president to fill.

In a 1997 interview with Tom Jipping, Director of the JSMP, he stated: "Our goal is to

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nominees between 1979 and 1998.

blunt the worst excesses of nominations by a democratic president."[88]

The presence and pressure of interest groups can be linked to all the changes to the judicial confirmation process in the 104th and 105th Congresses that were discussed above. For example, with regard to the increasing focus of Republican senators on judicial activism, it was interest groups that seized on Hatch's statements to the Federalist Society in 1996 and turned judicial activism into a litmus test for President Clinton's judicial nominees. Conservative interest groups lauded Hatch's statements and stepped up their pressure to prevent Clinton nominees from assuming seats on the federal bench. The JSMP even asked senators to sign the "Hatch Pledge," and vow to keep judicial activists off the bench. Interestingly, Hatch himself refused to sign the pledge, although 11 senators did agree to block Clinton's "activist" nominees.[89]

Interest groups were also involved in the "coup" attempt against Hatch's chairmanship. The unusual move to strip Hatch of much of his power came as conservative interest groups were expressing their concerns about Hatch's loyalty to conservative objectives. Tom Jipping was quoted in a March, 1997 article in *The Weekly*

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[87] Jacobs 1997, Ornstein 1997, Schwartz 1997,Biskupic 1997

[88] Author's Interview, 1997.

[89] The Hatch Pledge reads as follows:

> "Those nominees who are or will be judicial activists should not be nominated by the president or confirmed by the Senate, and I personally will do my best to see to it that they are not."

As of September, 1997, 11 senators had signed the pledge. They are: Senator Wayne Allard (R-CO), Senator John Ashcroft (R-MO), Senator Christopher Bond (R-MO), Senator Paul Coverdell (R-GA), Senator Larry Craig (R-ID), Senator Lauch Faircloth (R-NC), Senator Jesse Helms (R-NC), Senator Tim Hutchinson (R-AR), Senator James Inhofe (R-OK), Senator Bob Smith (R-NH), and Senator Charles Grassley (R-IA). See the Judicial Selection Monitoring Project's website for

(Footnotes continued on next page)

Standard as stating: "'Senator Hatch has overseen a process geared toward confirming judges, not weeding out judicial activists'" (Rees 1997, 14). Further upset that Hatch had cosponsored a children's health insurance bill "with liberal Sen. Ted Kennedy," conservatives both inside and outside the Senate questioned whether they could trust Hatch. Paul Weyrich, leader of the conservative Free Congress Foundation summed up conservatives' view of Hatch this way: "What he does behind the scenes, in cooperation with the liberals renders his committee chairmanship useless" (Weyrich, as quoted in Victor 1998, 741).

During the 104th and 105th Congresses conservative interest groups also aggressively lobbied senators to put holds on nominees. According to Mary Ellen Schattman, all the JSMP had to do was call one of the senators on its list of signatories to the Hatch pledge and tell them that a nominee was a judicial activist.[90] This appears to be what happened to Margaret Morrow. After nearly two years of aggressive lobbying against Morrow's confirmation on the grounds that she was a judicial activist, interest groups were forced to retreat when Orrin Hatch reported to the full Senate that her record had been distorted by her conservative detractors.

Finally, while there is no evidence to suggest that interest groups were behind the move to increase roll call votes for judicial nominees, many benefited from the change in Senate procedure. Groups like the Christian Coalition and others could use senators votes on individual nominees against them, as they prepared their voter scorecards for

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information regarding the Hatch pledge, at http://www.freecongress.org/jsmp/adopt/Hatch.htm.

their members. As Chapter Three indicated, assessments of Senate staff members suggest that the scorecards became an effective way for interest groups to influence the confirmation process.

While partisan in-fighting, court-curbing proposals, and lengthy waits for confirmation characterized the confirmation process during the 105th Congress, it is clear that interest groups had a substantial role as well. Although some of the evidence linking interest groups to the Republicans' activities surrounding the judicial confirmation process in the 105th Congress is circumstantial, what is clear is that a small cadre of conservative interest groups sought to undermine the efficiency of the Senate's confirmation process.

AN ANALYSIS OF INTEREST GROUP PARTICIPATION

What remains unclear is why the interest groups participated in some confirmations and not others. In addition, it is necessary to illuminate the strategies that interest groups use in attempting to influence confirmation outcomes. This section considers both the formal and informal participation of interest groups in the confirmation process. It explores the causes of each type of participation and demonstrates that interest groups use both formal and informal techniques to influence confirmation outcomes.

Formal Participation

A variety of factors encourage interest groups to participate formally in the

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[90] Author's Interview, 1998.

confirmation process for lower federal court judges. These include divided government, the position for which an individual is nominated, and the disposition of the Judiciary Committee chairman to the participation of interest groups in confirmation hearings. Each of these is considered briefly below, using the data gathered from 1,112 confirmation hearings.

Divided Government

Based upon the discussion of causes of the changes to the confirmation process in Chapter Two, one plausible explanation for interest group participation in some confirmations and not others is the presence of divided government. Indeed, previous studies have found that divided government affects the dynamics of the confirmation process. For example, Segal and Spaeth (1995) found that the presence of divided government significantly affects the likelihood of confirmation for nominees to the Supreme Court. Interest groups may believe that their chances of influencing the confirmation process are greater when the Senate and the presidency are controlled by different political parties. According to CRS specialist Roger Garcia: "Divided government creates problems for nominees. Parties won't be as docile about accepting the president's choices."[91] Table 4.2 below presents the results of a chi-square analysis of association between divided government and interest group participation.

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[91] Author's Interview, 1997.

TABLE 4.2: ASSOCIATION OF INTEREST GROUPS AND DIVIDED GOVERNMENT

		Divided Government		TOTAL
		No	Yes	
Groups	No	434 (84.8%)	534 (89.0%)	968 (87.1%)
	Yes	78 (15.2%)	66 (11.0%)	144 (12.9%)
	TOTAL	512 (100.0%)	600 (100.0%)	1,112 (100%)
Pearson Chi-Square: 4.394, 1 df, p<.038**† Kendall's Tau-b: -.063				

Sources: Judicial Nominees Data Set

Table 4.2 demonstrates that there is a significant association between the presence of interest groups and divided government. The Kendall's Tau-b coefficient, however, indicates that the relationship is weak. Interestingly, the association between these two variables is not in the direction predicted. Interest groups appear to participate *less often* in confirmation hearings during periods of divided government than they do during periods of unified government. This may be because presidents choose their nominees more carefully in periods of divided government, with the goal of avoiding costly political conflicts over their federal court nominees. For example, several analyses of President Bill Clinton's nominations to the lower courts indicate that Clinton is choosing more moderate nominees than he might if the Senate were controlled by Democrats.[92]

Position for Which an Individual is Nominated

Another possible explanation of interest group participation in confirmation

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† In this project, the following labels are used to denote statistical significance:
* = p<.10
**=p<.05
***=p<.01
****=p<.001

[92] For example, see Lewis 1998.

hearings is that the position for which an individual is nominated may influence whether interest groups participate. Table 4.3 summarizes the association between interest group participation and the position for which an individual was nominated.

TABLE 4.3: ASSOCIATION OF INTEREST GROUPS AND POSITION

		Position		TOTAL
		Other Courts	Circuit Courts	
Groups	No	788 (89.5%)	180 (77.6%)	968 (87.1%)
	Yes	92 (10.5%)	52 (22.4%)	144 (12.9%)
	TOTAL	880 (100.0%)	232 (100.0%)	1,112 (100%)
Pearson Chi-Square: 23.294, 1 df, p<.001**** Kendall's Tau-b: .145				

Source: Judicial Nominees Data Set

Table 4.4 indicates that as the theories suggest, interest groups participated in 52 of 232 (22.4%) of confirmation hearings for Circuit Court of Appeals nominees, compared with 92 of 880 (10.5 %) of confirmations for nominees to the other lower federal courts. This is consistent with previous studies, such as Katzmann (1997), that have found that circuit court confirmations are more likely to draw interest group attention than are district court or other lower court confirmations. In addition, the Kendall's Tau-b statistic indicates that the relationship between the two variables is positive, and is stronger than the relationship between interest group participation and divided government, although it is still quite weak.

Disposition of the Committee Chairman

A third factor that may contribute to interest group participation is the disposition of the chair of the Senate Judiciary toward the appearance of interest groups at

confirmation hearings for federal judges. Interest group participation at the hearing stage is almost exclusively under the control of the chair of the Senate Judiciary Committee. According to Michael Carrasco, Nominations Clerk for the Senate Judiciary Committee minority staff, "it's up to the chairman" whether interest groups are permitted to testify during confirmation hearings.[93] Table 4.4 demonstrates that there is a highly significant association between interest group participation and who the chairman of the Senate Judiciary Committee is.

TABLE 4.4: ASSOCIATION OF INTEREST GROUPS AND COMMITTEE CHAIRMANSHIP

		Chair				TOTAL
		Kennedy	Thurmond	Biden	Hatch[94]	
Groups	No	147 (71.7%)	286 (93.2%)	366 (87.8%)	169 (92.3%)	968 (87.1%)
	Yes	58 (28.3%)	21 (6.8%)	51 (12.2%)	14 (7.7%)	142 (12.8%)
	TOTAL	206 (100%)	321 (100%)	428 (100%)	156 (100%)	1,112 (100%)
Pearson Chi-Square: 57.73, 4 df, p<.001**** Phi: .228						

Source: Judicial Nominees Data Set.

These results indicate that interest groups participated in a greater percentage of hearings during Ted Kennedy's chairmanship than during any other period of time. This is consistent with previous studies. For example, O'Brien (1988, 73) explains that under Senator Kennedy's chairmanship of the Judiciary Committee "interest groups were invited to give their views on nominees." But, O'Brien notes, when Strom Thurmond (R-SC) took over as chair of the Committee in the 97th Congress, "Thurmund and his

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[93] Conversation with author 1998.

[94] Includes those nominees whose hearings were held prior to July, 1998. Additional hearing data will be

(Footnotes continued on next page)

principle investigator ... were less open to the concerns of outside groups" (O'Brien 1988; 73).

In general, Democratic Committee chairs are more open to the formal participation of interest groups, although Senator Biden was less open to it than Senator Kennedy had been. Other evidence indicates that both Senator Hatch is less open to the formal participation of interest groups during confirmation hearings than was Senator Biden. According to Michael Carrasco, minority nominations clerk for the Judiciary Committee, Chairman Hatch does not believe that interest groups should be permitted to appear before the Judiciary Committee during confirmation hearings.[95] This is consistent with the findings presented above that indicate that interest groups participated at the fewest percentage of hearings during Orrin Hatch's chairmanship.

Predictive Value of Key Variables on Interest Group Participation

In light of the significant associations among these variables, it is now important to determine the extent to which unified vs. divided government, the position for which an individual has been nominated, and the committee chairman are useful for predicting interest group participation in confirmation hearings for lower federal court nominees. To do so, the data are submitted to a logistic regression analysis, where group participation is the dependent variable, and the position to which an individual is nominated (circuit/non-circuit), divided government (divided/unified), and committee chairmanship (Hatch/not Hatch; Thurmond/not Thurmond; and Kennedy/not Kennedy)

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added as it becomes available.

are the independent variables.[96] The data indicate that in 87.1 percent of cases, interest groups are not present in the confirmation process. Thus, the hope is that including these independent variables in a model of interest group participation would provide a greater ability to predict interest group participation. The results of the logistic regression analysis appear in Table 4.5 below.

TABLE 4.5: DETERMINANTS OF INTEREST GROUP PARTICIPATION

Variable	B	Standard Error	Significance	Impact
Kennedy	9.035	12.719	.478	.49
Thurmond	7.282	12.716	.567	.49
Hatch	-.528	.318	.097*	-.13
Divided Government	8.014	12.717	.397	.49
Circuit Court Nominee	.929	.200	.000****	.22
Constant	-10.218	12.719	.422	--
N=1,112				
Model Chi-Square (Improvement): 77.15 (5 df); p <.001****				

Source: Judicial Nominees Data Set

In general, the logistic regression model is highly significant (p<.001). However, the results of the logistic regression analysis indicate that the only variable that aids in predicting interest group participation at confirmation hearings is whether or not an individual has been nominated to a circuit court judgeship. Interest groups are more likely to participate in confirmation hearings for circuit court of appeals nominees than for nominees to the federal district courts, Court of International Trade, or United States Court of Claims. Overall, the model predicts 87.14 percent of all cases – an improvement

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[95] Author's Interview, 1998.

[96] Because he presided over the greatest number of judicial confirmations during the period of study, Senator Joe Biden's chairmanship is the control variable in the analysis of committee chairmanship on

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of .04 percent over what our null hypothesis suggests. In all, this represents only a negligible proportional reduction in error for this model.

Table 4.6 also includes an impact column, which indicates the relative impact of a one-point change in the independent variable on the dependent variable, above and beyond the probability of the dependent variable's probability of occurring in the absence of the independent variable. As Segal and Spaeth (1993, 144) explain, the impact variable measures "the difference in the probability of [the dependent variable occurring] when [an independent variable] is present as opposed to its absence." Thus, from Table 4.6, we learn that Kennedy's and Thurmond's Judiciary Committee chairmanships resulted in a .49 increase in the probability that interest groups would participate in the confirmation process. By comparison, Hatch's chairmanship results in a .09 decrease in the probability that interest groups participated in the confirmation process. In addition, both divided government and the position for which an individual was nominated have a positive effect on the probability that interest groups will participate in the confirmation process. When the relative impact of each of these variables is included in the analysis, it becomes clear that the variables that were expected to affect the participation of interest groups did so. While their effects may not have been substantial, they are in the expected direction.

Unfortunately, this model is poorly specified. When the data are submitted to an ordinary least squares (OLS) regression analysis in order to test for multicollinearity, the

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interest group participation.

regression diagnostics indicate that there is overwhelming multicollinearity between the variables measuring Judiciary Committee chairmanship and divided government. The OLS regression analysis calculated the following collinearity tolerance statistics: Divided Government -- .007; Thurmond's chairmanship -- .009; Kennedy's chairmanship -- .012. Menard (1995, 66) notes that a collinearity tolerance statistic of less than .10 "almost certainly indicates a serious collinearity problem." Clearly, multicollinearity is affecting the ability of the model of interest group participation to adequately predict the conditions under which interest groups will get involved in the formal stages of the confirmation process. Thus, it is necessary to respecify the model of interest group participation.

To do this, the divided government variable is omitted from the analysis. While the measures of association for divided government indicate that divided government is significantly associated with interest group participation, the direction of the association indicates that divided government itself does not make interest groups more likely to participate in confirmation hearings for lower federal court nominees. Therefore, in order to better specify the model and correct for the problem of multicollinearity, divided government is not included in the new model.

When the divided government variable is omitted, the model remains highly significant ($p<.001$). In addition, the problem of multicollinearity is eliminated, as the regression diagnostics indicate that all collinearity tolerance statistics are well within acceptable limits. The results of the analysis indicate that committee chairmanship joins

the position for which an individual has been nominated as a significant predictor of group participation (with the exception of Orrin Hatch's chairmanship). This is consistent with previous studies (for example, O'Brien 1988) that found an important role for the Judiciary Committee Chairman in structuring interest group participation in the confirmation process. In the corrected analysis, the position for which an individual was nominated remains a highly significant predictor of interest group participation. The results of this analysis are presented in Table 4.6.

TABLE 4.6: CORRECTED ANALYSIS OF DETERMINANTS OF INTEREST GROUP PARTICIPATION

Variable	B	Standard Error	Significance	Impact
Kennedy	1.023	.219	.000****	.24
Thurmond	-.678	.273	.013**	-.16
Hatch	-.525	.318	.099*	-.13
Circuit Court Nominee	.916	.199	.000****	.21
Constant	-2.201	.163	.000****	--
N=1,112				
Model X^2 (Improvement): 71.04 (4 df); p<.001****				

Source: Judicial Nominees Data Set

The re-specified model provides no improvement in predictive value over what the null model would predict, with regard to interest group participation. However, with the re-specification, multicollinearity ceases to affect the analysis. It is clear that as expected, Committee chairmanship and the position to which an individual has been nominated are important to determining whether interest groups participate in confirmation hearings for lower federal court judges. The impact analysis clearly substantiates these conclusions. For example, Kennedy's chairmanship results in a .24

increase in the probability that interest groups participated in confirmation hearings; the probability of interest group participation in confirmation hearings for lower federal court judges decreases during both Thurmond and Hatch's chairmanships. It is clear that O'Brien's (1988) anecdotal discussion of the importance of the Committee chairman's disposition toward interest group participation is borne out through the analysis above. In addition, the likelihood of formal interest group participation in confirmation hearings for federal judges is increased by a probability of .21 when the nominee before the Committee is a Circuit Court of Appeals nominee. Thus, the analysis indicates that interest groups are significantly more likely to participate formally in circuit court confirmation hearings when the chairman of the Judiciary Committee is receptive to their participation.

The Consequences of Formal Interest Group Participation

It is clear that formal interest group participation in the confirmation is primarily a result of groups targeting nominees to the circuit courts coupled with the openness of the Senate Judiciary Committee Chairman's willingness to permit interest groups to testify at confirmation hearings. These findings do not, however, provide any indication of the impact that formal participation has on the confirmation process for judicial nominees. Additional evidence is needed to shed light on that issue.

One important determinant of the effect of an interest group on the confirmation process should be the direction of its participation – in favor of or in opposition to a nominee. Segal and Spaeth's (1995) study of Supreme Court confirmations notes:

"[S]trong interest group mobilization against a nominee can hurt a candidate, whereas interest-group mobilization for a nominee only has substantively slight, but still statistically significant, positive effects" (Segal and Spaeth 1995, 157). Interest groups participated in confirmation hearings for lower federal court judges a total of 144 times between 1979 and 1998. In 41 (28.5%) of these instances the groups participated but took no position on the specific nominee under consideration. That is, the groups expressed that they neither supported or opposed the nominee before the Judiciary Committee but instead wished to express their concerns about some aspect of the judicial process unrelated to the specific nomination under consideration. In 54 (37.5%) of the cases of interest group participation, interest groups participated unanimously in support of the pending judicial nominee. Unanimous group support of a pending nominee resulted in his or her confirmation nearly 95% percent of the time.

In contrast, groups participated in unanimous opposition to nominees 34 times (23.6%). Nominees that were unanimously opposed by interest groups were confirmed only 82% of the time. When interest group support was non-unanimous, or evenly mixed, (the remaining 15 or 10.5% of the cases), nominees were confirmed just 68.7% of the time. Table 4.7 explores the association of direction of interest group participation and ultimate confirmation outcome.

TABLE 4.7: ASSOCIATION OF CONFIRMATION OUTCOME AND DIRECTION OF INTEREST GROUP PARTICIPATION

		Confirmation Outcome		TOTAL
		Not Confirmed	Confirmed	
Direction	**Support**	4 (2.1%)	50 (36.6%)	54 (37.5%)
	Mostly Support	1 (.07%)	3 (2.1%)	4 (2.8%)
	Mixed	2 (1.4%)	4 (2.8%)	6 (4.2%)
	Mostly Oppose	1 (.07%)	4 (2.8%)	5 (3.5%)
	Oppose	7 (4.9%)	27 (18.7%)	34 (23.6%)
	No Position	2 (1.4 %)	39 (27.1%)	41(28.5%)
	TOTAL	17 (13.9%)	124 (86.1%)	144(100%)

Source: Judicial Nominations Data Set

Although a chi-square analysis is not feasible (since eight cells have an expected count of less than five), it is clear from the table above that the direction of interest group support for judicial nominees has an effect on a nominee's confirmation success or failure. So, what of interest group participation and the direction of such participation? In order to test whether interest group participation in confirmation hearings has an effect on confirmation outcomes, a statistical model that posits that likelihood of confirmation is affected by the direction (pro or con) of the participation of the interest group(s) is needed.

This model tested in Table 4.8 seeks to determine whether this is, in fact, the case. In addition, several other variables are included in the model, including the position for which an individual has been nominated and the chairman of the Senate Judiciary Committee. These political variables, which were found to be significant determinants of interest group participation, are included in this test in order to gauge the relative importance of interest group participation in confirmation hearings on confirmation

outcomes.[97] The results of this analysis are presented in Table 4.8 below.

TABLE 4.8: EFFECTS OF INTEREST GROUP PARTICIPATION AND OTHER FACTORS ON CONFIRMATION OUTCOMES

Variable	B	Standard Error	Significance	Impact
Kennedy	1.172	.530	.027**	.26
Thurmond	.388	.401	.334	.10
Hatch	-1.184	.329	.000****	-.27
Group Participation	-.579	.458	.206	-.14
Direction of Group Participation	-.348	.124	.005***	-.09
Circuit Court Nominee	-.458	.309	.138	-.11
Constant	3.352	.260	.000****	--
N=1,112				
Model X^2 (Improvement): 47.95 (6 df); p<.000****				

Source: Judicial Nominees Data Set

The results of this analysis indicate that confirmation outcomes are affected by several of the variables in the model. In general, this model is also highly significant at the p<.000 level. The model predicts 94.69 percent of all confirmation outcomes correctly, which represents no proportional reduction of error above and beyond what would be predicted using the null hypothesis. However, the model contains useful data nonetheless.

With regard to the individual variables in the analysis, interest group participation in confirmation hearings has a modest negative impact on the probability that a nominee will be confirmed. When interest groups participate in confirmation hearings, a nominee's probability of being confirmed is reduced by .14. The direction of interest

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[97] Although McCarty and Razaghian (1998) suggest that divided government reduces the likelihood of

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group participation also has a modest negative impact on the probability of a yes vote for confirmation. As interest group testimony becomes more negative, likelihood of confirmation decreases by .09.

Ted Kennedy and Strom Thurmond's tenures as chair of the Senate Judiciary Committee favorably affects the probability that a nominee will be confirmed. Nominees chances of being confirmed increased by .26 during Kennedy's chairmanship while they increased by .10 under Thurmond. However, under Chairman Orrin Hatch, the probability that an individual nominee will be confirmed decreases by .27. This last finding is consistent with the anecdotal evidence presented earlier in this chapter that indicates that since Republicans took over the United States Senate in 1995 there has been a fundamental change in the confirmation process for federal judges.

In addition, the analysis demonstrates that the position for which an individual is nominated does not have a statistically significant effect on confirmation outcomes. Further, while interest groups may be more likely to testify during confirmation hearings for Circuit Court of Appeals nominees, those nominees are actually less likely to be confirmed than their lower-court counterparts on the district courts and Court of International Trade.

This examination of formal interest group participation indicates that their presence in the confirmation process is most likely during Democratic Judiciary Committee chairmanships and when a nominee has been selected to fill a vacancy on the

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confirmation of presidential nominations, Hartley and Holmes (1997) and Cohen (1998) found no evidence

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Circuit Courts of Appeal. Further, interest groups' formal participation reduces the probability that a nominee will be confirmed by .14. When interest groups are opposed to nominees, their likelihood of being confirmed is again reduced. This exploration of formal participation has captured only part of the dynamics of interest groups in the confirmation process for lower federal court nominees. To understand the whole of interest group participation it is necessary to turn to an examination of groups' informal participation.

Informal Group Participation

The models of interest group participation presented above are useful, as they shed light on the determinants of interest group participation. However, interest groups are across the board less formally involved today in judicial confirmations than they were during Senator Kennedy's chairmanship of the Judiciary Committee in 1979 and 1980. Moreover, the data indicate that interest groups also are less formally involved than they were immediately preceding and following the Bork rejection in 1987. Table 4.9 demonstrates that while interest group participation spiked somewhat during the 100th Congress (the Congress in which Robert Bork was defeated), participation had been increasing up until that point and quickly diminished immediately after.

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of this. Due to concerns about multicollinearity, divided government is omitted from this analysis as well.

TABLE 4.9: INTEREST GROUP PARTICIPATION IN JUDICIAL CONFIRMATIONS, 1979-1998

Congress	Dates	Total Number of Nominees	Number (and percent) of Nominees Receiving Hearings	Number (and percent) of Nominees Confirmed	Number (and percent) of Hearings at which Interest Groups Were Present
96th	1979-80	218	205 (94%)	201 (92%)	58 (28%)
97th	1981-82	95	95 (100%)	95 (100%)	3 (3%)
98th	1983-84	98	93 (98%)	89 (91%)	4 (4%)
99th	1985-86	135	133 (99%)	128 (95%)	14 (11%)
100th	1987-88	115	102 (89%)	92 (80%)	24 (24%)
101st	1989-90	75	70 (93%)	70 (93%)	14 (20%)
102nd	1991-92	181	126 (70%)	120 (66%)	10 (8%)
103rd	1993-94	141	130 (92%)	125 (89%)	4 (3%)
104th	1995-96	108	87 (81%)	71 (66%)	5 (6%)
105th	1997-98	122	108 (89%)	101 (83%)	6 (6%)
TOTALS		1288	1149	1092	

Source: United States Senate Committee on the Judiciary. *Confirmation Hearings on Federal Appointments.* Congresses indicated.

The data presented in Table 4.9 demonstrate that formal interest group participation has actually declined since 1987, despite the conclusions that have been drawn by a number studies of the failed Bork confirmation. It is clear that not only are there relatively few instances of group participation at confirmation hearings for lower federal court judges, but also that interest groups are *not* more often participants in confirmation hearings now than they were prior to Robert Bork's nomination. Although Table 4.10 indicates that interest groups continued to be present in a small percentage of confirmation hearings during the 104th and 105th Congresses, it should be noted that no interest group actually presented oral testimony before the Senate Judiciary Committee in either of these Congresses.

While the quantitative data indicate that interest groups have become less formally involved in the confirmation process since the Bork confirmation, these findings are the opposite of what would be expected based upon interviews with Senate staff members. These interviews suggest that interest groups play an important and possibly increasing role in the confirmation process. According to Ronald Weich, former Chief Counsel to Senator Edward M. Kennedy (D-MA) states: "The interest groups have played a big role in judicial nominations since the Bork nomination died in the Senate. They are there now and they weren't before."[98] Mary DeOreo, Investigator for the Senate Judiciary Committee's minority staff notes: "There is no question that these groups are important."[99] Victoria Bassetti, chief counsel to Senator Richard Durbin's (D-IL) says: "In my experience, the right wing interest groups are really actively involved right now."[100] Both Melody Barnes, Chief Counsel to Senator Edward M. Kennedy (D-MA) and Mike Carrasco, minority nominations clerk for the Judiciary Committee point out that interest groups are important because they can encourage individual senators to push nominees forward or to hold up confirmations.[101] Rhett DeHart, former counsel to Senator Jeff Sessions (R-AL) and current counsel to Senator Orrin Hatch (R-UT), adds that interest groups are important because they can provide an electoral connection to senators' confirmation decisions.[102]

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[98] Author's Interview, 1998.
[99] Author's Interview, 1998.
[100] Author's Interview, 1998.
[101] Author's Interview, 1998.
[102] Author's Interview, 1998.

Interviews with Senate staff members indicate that interest groups have become more involved in the process, not less. Informal interest group participation in the confirmation process – that is, interest group activity on behalf of or in opposition to a nominee that takes place out of the formal confirmation process – may account for staffers' assessments that interest groups are now more involved in the confirmation process for lower federal court judges. And former nominee Michael Schattman says: "It's obvious that interest groups play a significant behind-the-scenes role in the confirmation process."[103]

An example illustrates this point. The nomination of Frederica Massiah-Jackson, a Pennsylvania state trial court judge to serve on Pennsylvania's Eastern District Court brought out interest groups in droves, both in favor and opposed to her confirmation. Yet not a single interest group testified before the Senate Judiciary Committee in opposition to her confirmation. As Judge Massiah-Jackson's nomination was pending on the Senate floor, the Pennsylvania District Attorney's Association and the Law Enforcement Alliance of America (LEAA) began to lobby Senators behind closed doors to reject Massiah-Jackson. The groups claimed she possessed an unfit judicial temperament and that she was prone to leniency in her judicial decisions. In a March, 1998 letter to all members of the Senate, the LEAA wrote:

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[103] Author's Interview, 1998

> LEAA stands vehemently opposed to this judge's appointment to the U.S. District Court. We believe that she is unqualified for a position so highly regarded and should not be presiding over death penalty and habeas corpus appeals. Her confirmation to the federal judiciary would be detrimental to the sanctity of the law and the dignity of the judicial system (LEAA letter 1998).

The only public indication of opposition to her confirmation from organized interests came at Massiah-Jackson's second confirmation hearing in February, 1998, at which Senate Judiciary Committee Chairman Orrin Hatch stated: "We've never had a situation where law enforcement has come out this strongly against a nominee" (Confirmation Hearing of Frederica Massiah-Jackson, February 22, 1998). On March 16, 1998, even as the Senate was scheduled to debate her nomination, Judge Massiah-Jackson withdrew her name from consideration, writing to President Bill Clinton: "I have recently been subject to an unrelenting campaign of vilification and distortion as I waited for a vote on my nomination by the full Senate" (Massiah-Jackson 1998).

Many interest group leaders have turned toward informal means of influencing confirmation outcomes, such as letter writing, direct lobbying of senators, and grassroots lobbying. Part of the explanation for high rates of informal participation may be the greater number of access points available at a time when the formal points of entry into the confirmation process were being closed off from interest groups. Although Orrin Hatch does not permit interest groups to testify in confirmation hearings, since 1997, interest groups have had the additional access point of floor debate on even district court

nominees. Thus, some groups will attempt to influence senators to speak out against a nominee.

Another possible explanation for significant informal participation in the confirmation process is that conservative groups have been using this kind of participation for decades and liberal groups have come to realize that behind-the-scenes participation is their only option. Indeed, since the Republicans took control of the Senate in 1995, the ideological background of an interest group seems to be an important determinant of its participation in the confirmation process. Since 1995, the ideological incompatibility of liberal interest groups with the Senate majority party may have forced some of the more liberal groups to rethink their means of participating in the confirmation process. While these groups now testify less often at hearings and submit fewer materials for the hearing record they may use other, more informal techniques to make their opposition to or support of a particular nominee known. Many liberal groups, which were very active participants in the confirmation process during the Reagan and Bush presidencies, now use behind-the-scenes techniques nearly exclusively. One staff member of a liberal organization cautions interpreting the lower number of instances of interest group testimony as a reduction in the role of interest groups in the process. In fact, said this staff person, (who preferred not to be identified) even though President Clinton has been forced to nominate more moderate judges, "[liberal groups] are working really hard for these people that we really don't give a shit about."

For the liberal groups, Republican control of the Congress means that they are

somewhat limited with regard to the strategies available to them. The liberal groups are forced to "play defense," by responding to allegations raised by conservative interest groups that oppose a nominee. The liberal groups can not, however, be too proactive in expressing their support for President Clinton's judicial nominees. For groups like People for the American Way (PFAW), a liberal-leaning organization, testimony at confirmation hearings does not make much sense. According to Mincberg: "During the 105th Congress, we haven't made an effort to testify. We haven't felt it would be particularly useful. What good does it do for a liberal group to testify?" Instead, says Mincberg, television advertisements, newspaper advertisements, lobbying on Capitol Hill, and grassroots lobbying have been used to attempt to influence confirmation outcomes. "In differing combinations, those tactics have been used to a differing degree on nominations we oppose," says Mincberg.[104] At the same time, says Tracy Hahn-Burkett, legislative representative at PFAW, PFAW will put out reports or visit members of the Senate to set the record straight or encourage confirmation of nominees it supports.[105] Other groups such as the JSMP, the Alliance for Justice, and the Project on the Judiciary also use similar behind-the-scenes tactics, according to the leaders of these organizations.[106]

The Judicial Selection Monitoring Project Videotape

The most significant example of informal interest group participation in the

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[104] Author's Interview, 1998.
[105] Author's Interview, 1998.
[106] Author's Interviews with Tom Jipping (1997), Nan Aron (1998) and Alex Acosta (1998)

confirmation process comes from a fundraising videotape that the Free Congress Foundation – a conservative interest group headquartered in Washington D.C. – sponsored in 1997. The video was a fundraising appeal urging recipients to contribute money to the JSMP, a subsidiary of the Free Congress Foundation whose mission is to thwart the appointment of "judicial activists" to the federal bench.

On September 9, 1997, contributors to the Free Congress Foundation received a letter from Robert Bork that asked: "Can we afford to give President Clinton a free ride with his judicial appointments over the next three and a half years?" Suggesting that the correct answer was no, Bork continued: "That is why I am taking the unusual step of sending you the enclosed video from the Free Congress Foundation's 'Judicial Selection Monitoring Project.'" The videotape featured testimony from prominent conservatives – including Republican Senators James Inhofe (R-OK), Jeff Sessions (R-AL), Phil Gramm (R-TX), and Bob Smith (R-NH) – touting the JSMP and the need to block President Bill Clinton's judicial nominations. Three other Republican senators – Kay Bailey Hutchison (R-TX), John Ashcroft (R-MO), and Kit Bond (R-MO) – lent written testimonials to the videotape's producers. Among the Republican senators, comments included:

> Gramm: "The Judicial Selection Monitoring Project has the resources to get the facts, to provide information to people like me who are willing to use it."
>
> Sessions: "The Judicial Selection Monitoring Project is important because [it] shares information that senators may not have known and wouldn't have had time to consider."[107]

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[107] Judicial Selection Monitoring Project. "Judging the Judges." 1997.

Included with the videotape was a fundraising pledge sheet, which promised that in recognition of gifts of $10,000 or more, donors would receive "invitations to attend periodic briefings and intimate dinners in Washington with Paul Weyrich [director of the Free Congress Foundation], JSMP Director Tom Jipping, and leading conservative elected and public figures closely involved with the judicial confirmation process."[108] The videotape, the letters from Robert Bork, and the promise of access to "elected and public figures closely involved with the judicial confirmation process," represents a convergence of confirmation politics, interest groups, and senators that is unprecedented in its scope. It also represents a danger of informal participation – many of the examples used by the JSMP in the videotape came from judges that actually had been appointed by President George Bush. Yet, because the video was part of a private fundraising effort, the veracity of its message was beyond public scrutiny of the type that would have occurred had the group participated in a formal way in the confirmation process.

It is also clear that informal interest group participation may affect confirmation outcomes for specific nominees. For example, in a press release following Judge Frederica Massiah-Jackson's withdrawal from consideration for a federal district court judgeship, Missouri Senator John Ashcroft issued a statement saying: "The strong opposition from police and prosecutors in Pennsylvania made it possible for me and others to bring attention to the shortcomings of this nomination" (Ashcroft 1998b). Not one interest group had testified before the Senate Judiciary Committee to oppose

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[108] JSMP Fundraising Pledge Sheet 1997.

Massiah-Jackson's nomination.

While informal interest group participation in the confirmation process may provide cover for a senator to vote against a nominee, or may force nominees to withdraw from the process, informal group participation may have other effects on the confirmation process as well.

For example, People For the American Way's Hahn-Burkett agrees that with more negative participation from interest groups comes a more negative view of the judiciary overall, which in turn prevents individuals from wanting to serve. She says: "You don't call for a judge's impeachment because you disagree with their decisions. That's entirely inappropriate and destructive to the process. Good candidates don't want to get involved. And you get judges listening to the political winds, not the merits of the case."[109]

Informal interest group participation also leads to delays. For example, in 1997 and 1998, the JSMP aggressively lobbied signatories of the Hatch Pledge to put holds on so-called judicial activist nominees. A number of nominees were held up for extended periods as a result. Further, presidents are finding it difficult to recruit the most able attorneys for positions on the lower federal courts.

Delays in confirmation and difficulty recruiting individuals to serve on the federal bench leads to yet another problem: delays in filling vacant seats on the federal bench, which may have serious consequences for the health of the judicial system. In his 1997

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[109] Author's Interview, 1998.

Year-End Report on the Federal Judiciary, United States Supreme Court Chief Justice William Rehnquist wrote:

> Judicial vacancies can contribute to a backlog of cases, undue delays in civil cases, and stopgap measures to shift judicial personnel where they are most needed. Vacancies can not remain at such high levels indefinitely without eroding the quality of justice that traditionally has been associated with the federal judiciary. ... Some current nominees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote (Rehnquist 1998, 7-8).

People for the American Way's Hahn-Burkett adds: "The positions that are not filled are not just empty vacancies. They mean something to the people whose cases are held up."[110]

Finally, another effect of the increased participation of conservative interest groups in the confirmation process is that President Bill Clinton's ability to create a judicial legacy has been thwarted. Indeed, the conservative groups have been reasonably successful. *A U.S. News and World Report* piece notes: "Well into Clinton's second term, the judiciary's composition has barely changed, thanks to an aggressive Republican strategy of thwarting Clinton's nominees – and a remarkable timidity on the president's part" (Gest and Lord 1997, 23).

CONCLUSION

Just as in the confirmation process more generally, interest groups get involved in the judicial confirmation process because of concerns about a nominee's policy positions

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[110] Author's Interview, 1998.

or to promote an individual's candidacy. Interest groups may also promote or oppose a nominee simply because they wish to draw attention to their message. This chapter has focused on the role of interest groups in the confirmation process for nominees to the lower federal courts by examining their formal and informal participation.

Several conclusions are warranted. First, interest groups have been integrally involved in the changes to the confirmation process that occurred during the 104th and 105th Congresses. They are robust, active players in the confirmation process. In the aggregate, they bring a full range of techniques to pushing for nominees that they support and to opposing nominees that they do not support. However, it appears that interest group involvement in the confirmation process for federal judicial nominees has changed in the last two decades.

The conventional wisdom that indicates that interest groups are now more involved in the confirmation process should be revised to reflect that their formal participation has actually declined.[111] Whereas previous studies of Supreme Court confirmations have concluded that interest groups are more involved in the confirmation process since the Senate's rejection of Robert Bork in 1987, the data analysis in the preceding pages indicates that this is not entirely true. Instead, the analyses above demonstrate that while groups have maintained or even increased their behind-the-scenes participation, they have become less formally involved than they once were, testifying less often at confirmation hearings and submitting fewer materials for the hearing record.

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[111] Indeed, Flemming, MacLeod, and Talbert's 1998 *Political Research Quarterly* piece makes strides

(Footnotes continued on next page)

These findings suggest that the conventional wisdom regarding the formal role of interest groups in judicial confirmations must be revisited. First, in terms of formal participation, interest groups are actually less often present at the confirmation hearings of federal judges today than they were in the late 1970s and early 1980s. There is additional corroborating evidence of this. Nan Aron, director of the Alliance for Justice, a Washington, D.C. organization that has monitored judicial appointments for more nearly 15 years, says: "I don't know that more groups are involved or that groups are more involved."[112] According to People for the American Way's Eliot Mincberg, interest groups got involved in the confirmation process in response to Ronald Reagan's attempt to create a conservative judiciary, but once Reagan left office, interest groups paid less attention to the confirmation process. According to him, "[Interest group involvement] culminated in Bork."[113] Indeed, the data in Table 4.9 bear out this assessment.

Interestingly, while interest groups are now less formally involved in the confirmation process, their participation still can have a powerful impact on confirmation outcomes. In November 1996, the *New Jersey Law Journal* pointed out: "These groups, which have played critical roles, especially in high-profile nominations, can trigger a firestorm of controversy and may force political showdowns (Brown and Rodriguez 1996, 8). The analysis above demonstrates that when interest groups do participate formally in confirmation hearings – especially when they oppose a nominee – the

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toward debunking this long-held myth about interest group participation.
[112] Author's Interview, 1998.
[113] Author's Interview, 1998

likelihood of confirmation is significantly reduced. However, group participation also has more generalized effects on the confirmation process, including delays in confirmation, difficulty recruiting people to serve as federal judges, increasingly lengthy judicial vacancies, and the inability of the president to craft a legacy through the federal courts.

In addition, the analyses above demonstrate that the political environment constrains the extent to which interest groups participate in the process. Interest groups participate in confirmation hearings more often for nominees to the circuit courts of appeals than they do for other lower federal courts. But, interest group participation at confirmation hearings appears to be largely determined by the Judiciary Committee chairman's willingness to open up confirmation hearings to outside witnesses. Whereas Senator Kennedy welcomed interest group participation, Senator Hatch is, according to Judiciary Committee staff, much less open to group participation during the hearings themselves.

In the end, the most striking conclusion to be drawn from the preceding analysis may be how dangerous informal participation of interest groups in the confirmation process can be. As the example of the JSMP video demonstrates, informal participation in the confirmation process can not be monitored for accuracy or fairness. Thus, while senators may use information provided by interest groups in closed-door meetings, that information may be false or misleading. As interest groups have been forced out of public participation in the formal mechanisms of the confirmation process they have continued

their campaigns in favor or opposed to nominees behind the scenes. This gives these groups immeasurable influence over the confirmation process.

CHAPTER FIVE:

FROM THE BENCH TO THE CABINET, AND BEYOND

> "Bill Clinton's nomination of James Hormel sends the message that radical homosexual activists are perfectly fine in the eyes of the government as our representative."
>
> -- Steve Schwalm, Family Research Council

Unlike federal judges, members of a president's cabinet do not serve lifetime terms. Nor do ambassadors serve in their positions longer than the length of a presidential administration. In fact, as Mackenzie (1996, 44) notes, many non-judicial nominees serve only through the first congressional midterm election. He writes:

> [A] ... powerful force in elevating the importance of the presidential appointment process has been the pattern of declining tenure among presidential appointees. Once appointed, they don't stay in office very long. ... [T]he average appointee now stays on the job for only slightly longer than two years; almost a third have a tenure shorter than eighteen months.

Because of the high rates of turnover, it is important to understand the dynamics of interest group participation in confirmation hearings for these sets of nominees. Cabinet secretaries oversee the most important of federal agencies, supervising their regulatory and rule-making functions. Ambassadors represent the president of the United States abroad, working with leaders of other nations to craft important, bi- and multilateral trade, environmental, and defense agreements. Interest groups view the confirmation

process for nominees to these positions as another point of entry for the interjection of their policy preferences.

As the previous chapter demonstrated, interest group participation in the confirmation process for federal judges slows down the pace of confirmations and reduces the likelihood that judicial nominees will be confirmed. As the Senate Judiciary Committee tightened control of confirmation hearings and closed off the formal avenues of participation to interest groups their participation in confirmation hearings significantly declined. In the contemporary confirmation process interest groups rely instead on informal techniques, including agenda setting, information dissemination, and punishing and rewarding senators to affect confirmation outcomes. Reports from Senate staff indicate that the use of these informal techniques has increased substantially in the last decade.

But what about nominees to other positions? While judicial nominees typically are the largest group of nominees sent to the Senate by the president in any given Congress, the Senate must act on the nominations of literally hundreds of nominees to everything from independent regulatory boards to the Director of the U.S. Census. This chapter explores the dynamics of interest group participation for nominees to fill vacancies in the president's cabinet and nominees to serve as United States ambassadors. It considers whether the same factors that determine interest group participation in the confirmation process for federal judges also apply to their participation in the confirmation process for cabinet secretaries-designate and U.S. ambassadors. Each group

is considered separately below.

CABINET SECRETARIES-DESIGNATE

According to Mackenzie (1981, 3): "The first and most formidable of the tasks facing a new president is the problem of finding men and women to fill the most important positions in his administration." Especially upon his election, but no matter when a vacancy arises during his presidency, the president must choose individuals to head the 14 major government agencies.[114] The heads of these agencies are responsible for helping the president carry out his responsibility to enforce the laws through the rule-making and program-monitoring functions their agencies perform. Mackenzie (1981, 6) writes:

> These initial [cabinet] selections are important because they provide the President with a chance to lay the groundwork for political relationships that will directly affect the future success of his administration. Not only do they allow him to reward those who have supported him in the past, they also permit him to broaden his base of support within his own party, with organized interest groups, and with the Congress.

Although the Constitution makes no mention of a presidential cabinet, every president since George Washington has had one. There is evidence that the framers even intended for the president to consult with the heads of the executive departments before making important decisions (Fenno 1959, Farrand 1966). Richard Fenno, in the first

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[114] These agencies are: the Department of State, Department of the Treasury, Department of the Interior, Department of Agriculture, Department of Defense, Department of Education, Department of Veterans' Affairs, Department of Justice, Department of Labor, Department of Commerce, Department of Housing and Urban Development (HUD), Department of Transportation, Department of Energy, and the Department of Health and Human Services (HHS).

comprehensive treatment of the cabinet in the American political system, notes: "By 1787, the roots of the American Cabinet were already sunk deep in American practice. Most of the colonial governments provided for a council of assistants to consult with the governor, though they were selected in a variety of ways" (Fenno 1959, 11). Fenno notes that the first "cabinet" meeting was held in 1791, at President Washington's request.

Like nominees to the federal judiciary, cabinet secretaries-designate must appear before the U.S. Senate and receive its approval before taking office. Unlike judicial nominees, nominees to the president's cabinet appear before different committees, depending on which Senate committee has jurisdiction over the federal agency that a nominee has been selected to head. Also unlike judicial nominees, cabinet secretaries-designate enjoy a strong presumption of suitability for confirmation. Fenno (1959, 14) writes: "As a matter of courtesy, the Senate has from the very outset (in all cases but two) consented to confirm [the president's] choice." He adds: "Though the president's appointment power is subject to 'the advice and consent of the Senate,' in practice that is hardly a limitation at all on the legitimacy of the presidential decision. The Senate ordinarily extends him the courtesy of approving his selections" (Fenno 1959, 54).

The Senate has rejected only 10 nominees to the president's cabinet in its 200-plus year history, and has only twice rejected a nomination made at the beginning of a presidential term: George Bush's nomination of John Tower to be Secretary of Defense, and Bill Clinton's nomination of Zoe Baird to be Attorney General (Mackenzie 1996, 129). Stephen Carter has written: "Cabinet nominations...have traditionally been

handled with kid gloves by the Senate... Until recently, the handling has been so gentle as to make nomination to a cabinet post tantamount to appointment" (Carter 1994, 31-2). Even conservative interest group leader Paul Weyrich notes:

> One should more readily oppose a lifetime nominee to the Court than a presidential appointee to one of the departments. ... [The president] is entitled to an appointment like that by virtue of having won the election (Weyrich, as quoted in Mackenzie 1996, 152).

The Clerk of the Senate also has acknowledged that the president is given nearly free reign to select the cabinet secretaries of his choice. In a study published by Government Printing Office in 1954, the Clerk wrote: "The president is accorded wide latitude in the selection of members of his cabinet..." (Clerk of the Senate 1954; 2). The 1993 confirmation of Robert Reich to be President Bill Clinton's Secretary of Labor provides an illustration of the presumption of confirmability that surrounds cabinet nominees. In his 1997 memoir, *Locked in the Cabinet,* former Secretary of Labor Robert Reich recalls "cramming" for his Senate confirmation hearing. He recalls: "I'm cramming for my Senate confirmation hearing on Thursday, helped by several coaches including the lawyers who investigated me and several Democratic staffers from the Hill. I feel like a prizefighter getting ready for the big one" (Reich 1997, 37). But the bottom line, Reich is told, is that unless a scandal is revealed, the Senate will confirm him. Reich notes that one of the individuals helping to prepare him for his confirmation hearing tells him: "Look: The President has nominated you to be a cabinet secretary. They have to consent to your nomination. Barring an unforeseen scandal, they will" (Reich 1997, 38).

Interest Groups and Cabinet Secretaries-Designate

Interest groups care who serves as the head of an executive-branch agency for the same reason that they care who serves as a federal judge – agency heads oversee the federal rule-making process that can determine how a law affects a group's constituents in the same way that federal judges' interpretations of laws can determine how particular statutes affect groups' members. Unlike federal judges, who can rule only on those cases brought to them, federal agencies are proactive in promulgating rules and regulations. Interest groups know that it matters who sits at the top of the federal agency hierarchy and they pay close attention to whom the president has nominated.

Interest groups also care about the confirmation process for cabinet nominees because cabinet appointments are additional opportunities for policy discussions. As Chapter Three pointed out, the primary reason that interest groups participate in the confirmation process is because they desire to affect public policy outcomes. Executive branch nominations are a good opportunity for interest groups to engage in policy debates with nominees and to go on record with their policy preferences. For these reasons, interest groups participate in the vast majority of confirmation hearings for cabinet secretaries-designate. Table 5.1 demonstrates that interest groups were present at 64 of 88 hearings (72.7%) for cabinet-secretaries designate between 1977 and 1998. This compares with just 137 of 1,112 confirmation hearings (12.3%) on federal judicial nominees between 1979 and 1998.

TABLE 5.1: INTEREST GROUP PARTICIPATION IN CONFIRMATIONS FOR CABINET SECRETARIES-DESIGNATE 1977-1998

Congress	Dates	Total Number of Nominees	Number (and percent) of Nominees Receiving Hearings	Number (and percent) of Nominees Confirmed	Number (and percent) of Hearings at which Interest Groups Were Present
95th	1977-78	11	11 (100%)	11 (100%)	10 (91%)
96th	1979-80	8	8 (100%)	8 (100%)	6 (75%)
97th	1981-82	12	12 (100%)	12 (100%)	11 (92%)
98th	1983-84	3	3 (100%)	3 (100%)	3 (100%)
99th	1985-86	9	9 (100%)	9 (100%)	8 (89%)
100th	1987-88	5	5 (100%)	5 (100%)	2 (40%)
101st	1989-90	13	13 (100%)	12 (92%)	9 (69.2)
102nd	1991-92	4	4 (100%)	4 (100%)	3 (75%)
103rd	1993-94	17	17 (100%)	16 (94%)	10 (59%)
104th	1995-96	1	1 (100%)	1 (100%)	0 (0%)
105th	1997-98	5	5 (100%)	5 (100%)	2 (40%)
TOTALS		88	88 (100 %)	86 (97.7 %)	Average: 72.7%

Sources: Cabinet Nominees Data Set

In addition to the active participation of interest groups in confirmation hearings for cabinet secretaries-designate, it is possible to identify several trends from the data reported above. First, every nominee tapped by the president to fill a vacancy in his cabinet since 1977 has been given a hearing by the United States Senate. In addition, cabinet secretaries-designate have been approved by the Senate in every case except for just two. Nearly 98 percent of presidential nominations to fill vacant cabinet positions have been confirmed since 1977.

Table 5.1 also permits comparisons to be made between judicial confirmations and confirmations for cabinet nominees. The data in Table 5.1 demonstrate that confirmations for cabinet secretaries-designate vary somewhat from confirmations for the

lower federal courts. From Table 5.1 it is clear that interest groups participate in confirmation hearings for cabinet secretaries-designate far more often than they do in Senate confirmations for lower federal court judges. Interest groups participated in just 12.3 percent of judicial confirmations but they participated in 72.7 percent of confirmation hearings for nominees to the president's cabinet between 1977 and 1998.

The Intensity of Interest Group Participation

Although interest groups are regular participants in confirmation hearings for cabinet nominees, most nominations garner only a handful of letters or requests to testify. Only a few nominees have sparked large amounts of interest group participation. Since 1977, the nominees that have received the most attention are nominees to be the Secretary of the Interior, largely because of the mobilization of environmental organizations. For example, 31 interest groups testified in January, 1981, at the Senate Committee on Energy and Natural Resources' confirmation hearings for President Reagan's nominee to be Secretary of the Interior, James Watt. An additional 15 groups submitted materials to the Committee. The direction of the testimony was mostly positive, but the amount of interest group attention was unprecedented for a cabinet nominee. Eighteen interest groups testified and four groups submitted materials to the Energy and Natural Resources Committee during William Clark's confirmation hearings in 1983. Thirteen interest groups testified and 17 groups submitted materials when Reagan nominated Donald Hodel in 1985 to replace Clark. Again, the direction of the testimony and submitted materials was mostly positive. Only Edwin Meese, Reagan's

nominee to be Attorney General was met with similarly high levels of interest group participation during his confirmation hearings in 1985.[115]

In the aggregate, interest group participation is less polarized with regard to cabinet nominees than it is for judicial nominees. The previous chapter found that interest group participation in confirmation hearings for federal judgeships breaks down as follows: unanimous support for the nominee in 39.4 percent of cases, mixed participation in 11.8 percent of cases, unanimous opposition to the nominee in 27% of cases, and no position taken on the nominee in 21.8 percent of cases. The trend in direction of participation in confirmations for cabinet secretaries-designate is somewhat different. First, a lower percentage of groups unanimously supported the cabinet nominees. Participating interest groups unanimously supported a cabinet secretary designate in only 35.9 percent of the cases. However, the percentage of cases in which interest group participation was unanimously in opposition to the pending nominee also was substantially lower than the corresponding figure for judicial confirmations. In just 7.8 percent of hearings for cabinet secretaries-designate was interest group participation unanimously in opposition to the pending nominee. No position was taken on 14.1 percent of nominees.

The biggest difference between participation for lower federal court nominees and cabinet secretaries-designate comes in the middle ground, where group participation is mixed. In 42.2 percent of the cases of interest group participation, interest group

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[115] Data are taken from the Cabinet Nominees Data Set.

participation was not unanimous in either direction. This compares with just 11.8 percent of cases of non-unanimous participation in confirmation hearings for lower federal court judges. Table 5.2 gives the breakdown in the direction of interest group participation in confirmation hearings for cabinet secretaries-designate between 1977 and 1998.

TABLE 5.2: FREQUENCY DISTRIBUTION OF THE DIRECTION OF INTEREST GROUP PARTICIPATION IN CONFIRMATION HEARINGS FOR CABINET SECRETARIES-DESIGNATE, 1977-1998.

Direction	Frequency	Percent
Support	24	35.9
Mostly Support	21	32.8
Mixed	3	4.7
Mostly Oppose	3	4.7
Oppose	5	7.8
No Position	10	14.1
		N=64

Source: Cabinet Nominees Data Set.

FACTORS AFFECTING INTEREST GROUP PARTICIPATION

There are a number of factors that may have an effect on interest group participation in cabinet confirmation hearings. First, interest groups consider the position to which an individual is nominated when making the calculation whether to participate in the confirmation hearing. In addition, several aspects of the political environment have been identified in previous studies as having an effect on interest group participation in the confirmation process, including divided government, which party is in control of the Senate, and the president making the nomination.[116] Each of these is discussed separately below.

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[116] Mackenzie 1998; Goldman 1997; Shapiro 1997; Hatch 1996b; Mackenzie 1996; Shogan 1996; Segal and Spaeth 1993; Mackenzie 1981.

Position

The position to which an individual is nominated seems to have an impact on the extent to which interest groups participate in cabinet confirmations. Not only do interest groups participate at varying levels of intensity in cabinet confirmations, they participate at varying frequencies. That is, some cabinet positions appear to encourage more interest groups to participate than others. Table 5.3 shows that over the last two decades, every nominee to head the Departments of Energy, Interior, and Transportation was confronted with interest groups at his or her confirmation hearing. In contrast, only one of six nominees to head the Department of Defense faced interest groups during his confirmation hearings – and that was John Tower, one of only Cabinet nominees to be failed by the Senate during the period of study. Nominees to the departments of Commerce, Labor, and Treasury also were among those nominees least likely to face interest groups during their confirmation hearings. As was the case with judicial nominees, the position for which an individual is nominated is positively associated with the presence or absence of interest groups during confirmation hearings. Table 5.3 provides the breakdown of interest group participation in confirmation hearings, by cabinet position.

TABLE 5.3: INTEREST GROUP PARTICIPATION BY CABINET POSITION, 1977-1998

Cabinet Position	Number of Hearings in Which Groups Participated	Total Number of Confirmations for This Position	Percentage of Hearings at Which Groups Were Present
Agriculture	3	5	60%
Attorney General	6	8	75%
Commerce	4	7	57%
Defense	1	6	16.7%
Education	4	5	80%
Energy	7	7	100%
Health and Human Services	6	7	85.7%
Housing and Urban Development	5	6	83.3%
Interior	7	7	100%
Labor	4	8	50%
State	6	7	85.7%
Transportation	6	6	100%
Treasury	4	7	57%
Veterans' Affairs	2	2	100%

Source: Cabinet Nominees Data Set

One reason for differences in interest group participation in confirmation hearings for cabinet secretaries designate is suggested by Jeffrey Cohen's 1988 study of the genesis of cabinet agencies. He notes that the way in which an agency is created may determine the extent to which interest groups seek to influence the agency's policy making function. Cohen (1988, 19) writes: "Some departments, such as agriculture, interior, labor, and education were created because of political interests." Cohen finds that interest groups frequently attempt to affect these agencies' decision making. Although the data above do not indicate that interest groups are any more interested in

the Departments of Agriculture, Interior, Labor, and Education, Cohen's theory may be useful for exploring which factors contribute to interest group participation. This question is addressed shortly.

Divided Government

Divided government is another potentially fruitful factor that may contribute to interest group participation in the confirmation process for cabinet secretaries designate. As was found for judicial nominees, divided government is positively associated with interest group participation. Unlike judicial nominees, the relationship between interest group participation and divided government is not statistically significant, with a chi-square value of .466 and a gamma value of .186. Although the results are not statistically significant, the results do demonstrate that interest groups participated in 77.4 percent of cabinet confirmations that occurred in periods of divided government. This compares with a 70.2 percent participation rate in years that the same party controlled both the Senate and the White House. Interest groups participate slightly more often in periods of divided government than they do in periods of unified government.

TABLE 5.4: ASSOCIATION OF INTEREST GROUP PARTICIPATION AND DIVIDED GOVERNMENT IN CONFIRMATION HEARINGS FOR CABINET SECRETARIES-DESIGNATE, 1977-1998

		Divided Government		TOTAL
		No	Yes	
Groups	No	17 (28.2%)	7 (22.6%)	24 (27.3%)
	Yes	40 (70.2%)	24 (77.4%)	64 (72.7%)
	TOTAL	57 (64.8%)	31 (35.2%)	88 (100%)
Pearson Chi Square: .531, 1 df, p<.466 Gamma: .186				

Source: Cabinet Confirmation Data Set

Partisan Control of the Senate

In addition to the position for which an individual is nominated and the presence or absence of divided government, two additional factors may affect whether interest groups participate in the confirmation process for cabinet nominees. Based upon the findings presented in the previous chapter, it is clear that interest groups participate more frequently during periods of Democratic control of the Senate than they do when the body is controlled by the Republican party. Thus, it is possible that partisan control of the Senate also affects organized interests' participation in cabinet confirmations. Table 5.5 presents the results of the chi-square analysis of the association of interest group participation and partisan control of the Senate in confirmation hearings for cabinet secretaries-designate. It is clear from the results presented in the table below that interest group participation and party control are not statistically significantly associated with one another. With a chi-square value of .271 and a gamma value of .286 it is clear there is not a strong relationship between the two variables.

Nonetheless, the findings presented in Table 5.5 are interesting. Interest groups participate more often when the Senate is controlled by Republicans than they do when it is controlled by Democrats. This is precisely the opposite of what was found in the previous chapter's examination of judicial nominees.

TABLE 5.5: ASSOCIATION OF INTEREST GROUP PARTICIPATION AND PARTY CONTROL OF THE SENATE CONFIRMATION HEARINGS FOR CABINET SECRETARIES-DESIGNATE, 1977-1998

		Party Control of the Senate		TOTAL
		Republican	Democrat	
Groups	No	6 (20%)	18 (31.1%)	24 (27.3%)
	Yes	24 (80.0%)	40 (68.9%)	64 (72.7%)
	TOTAL	30 (34.1%)	58 (65.9%)	88 (100%)
Pearson Chi-Square: 1.214, 1 df, p <.271 Gamma: .286				

Source: Cabinet Nominees Data Set

Nominating President

Finally, it is also possible that the nominating president may be associated with the participation of interest groups in the confirmation process for agency heads. For example, interest groups are widely perceived to have challenged Ronald Reagan's nominees to cabinet positions during the 1980s. Table 5.6 suggests that who the president is may have some marginal significance in determining whether interest groups participate in confirmation hearings for nominees. Because of data limitations it is impossible to run an accurate chi-square analysis. However, the data presented below demonstrate that while interest groups are active participants across all four of the presidents – Carter, Reagan, Bush, and Clinton – considered in this project, they have not participated in cabinet confirmations equally. In fact, interest group participation in confirmation hearings has steadily declined since the Carter Administration. Between 1977 and 1980, interest groups participated in 84.2 percent of the confirmation hearings held on nominees to the president's cabinet. In contrast, interest groups were present at

only slightly more than half (52.2%) of the confirmation hearings for cabinet nominees during the first six years of Bill Clinton's presidency.

TABLE 5.6: ASSOCIATION OF INTEREST GROUPS AND NOMINATING PRESIDENT

		President				TOTAL
		Carter	Reagan	Bush	Clinton	
Groups	**No**	3 (15.8%)	5 (17.3%)	5 (29.4%)	11 (47.8%)	24 (27.3%)
	Yes	16 (84.2%)	24 (82.7%)	12 (70.6%)	12 (52.2%)	64 (72.7%)
	TOTAL	19 (21.6%)	29 (33.0%)	17 (19.3%)	23 (26.1%)	88 (100%)

Source: Cabinet Nominees Data Set

PREDICTIVE VALUE OF KEY VARIABLES ON INTEREST GROUP PARTICIPATION

In order to determine the extent to which the variables described above contribute to the likelihood of interest group participation in the confirmation process, it is necessary to submit the cabinet-level confirmation data to a logistic regression analysis. The logistic regression analysis helps to determine the significance and impact of several factors on the likelihood of interest group participation. The presence or absence of divided government, the agency to which an individual was nominated,[117] and the nominating president all are included in the model, the results of which appear in Table 5.7 below.

[117] The agency to which an individual was nominated is coded as a dichotomous variable, reflecting whether the agency is one that is generally open to interest groups or closed to interest groups, per J. Cohen's 1988 study of cabinet agencies. See discussion above of Cohen's theory.

TABLE 5.7: INFLUENCES ON INTEREST GROUP PARTICIPATION IN CONFIRMATION HEARINGS FOR CABINET SECRETARIES DESIGNATE, 1977-1998.

Variable	B	Standard Error	Significance	Impact
Divided Government	**-8.290**	**22.252**	**.710**	**.00**
Party in Control of Senate	**8.861**	**22.264**	**.691**	**.01**
Carter	**2.132**	**.882**	**.016****	**.39**
Reagan	**1.177**	**.763**	**.123**	**.26**
Bush	**.941**	**.705**	**.182**	**.22**
Group-Dominated Agency	**-.066**	**.569**	**.908**	**-.02**
Constant	**-.042**	**.489**	**.932**	**-.01**
N=88				
Model Chi-Square (Improvement): 12.064* (df=6) **p<.10**				

Source: Cabinet Nominees Data Set.

The analysis in Table 5.7 provides no proportional reduction in error, predicting just 70.5 percent of the cases of interest group participation in confirmation hearings for cabinet secretaries-designate, compared with a null prediction of 72.7, (the actual percentage of cases in which interest groups participated in hearings for cabinet positions between 1977 and 1998.) Thus, the model is poorly specified. However, three of the individual variables in the model are of interest. First, it is clear that the agency (group-dominated vs. not group dominated) does not have a significant impact on the likelihood of interest group participation. Second, it is clear that interest groups were significantly more likely to participate in confirmation hearings for individuals nominated to cabinet positions during Jimmy Carter and Ronald Reagan's presidencies than they were during George Bush or Bill Clinton's (the null case). However, according to the impact analysis

presented in the table above, Carter's presidency most significantly increases the probability of interest group participation in the confirmation process for cabinet secretaries-designate.

Like the model of interest group participation in the confirmation process for lower federal court judges, in the model above multicollinearity poses a potential problem, as the independent variables measuring partisan control of the Senate and divided government are highly correlated, according to multicollinearity diagnostics obtained through an ordinary least-squares regression analysis of the model specified above. Thus, Table 5.8 presents the results of a corrected logistic regression analysis in which the divided government variable has been removed. [118]

TABLE 5.8: INFLUENCES ON INTEREST GROUP PARTICIPATION IN CONFIRMATION HEARINGS FOR CABINET SECRETARIES DESIGNATE, 1977-1998 (CORRECTED).

Variable	B	Standard Error	Significance	Impact
Party in Control of Senate	.575	.752	.445	.14
Carter	1.732	.783	.023**	.35
Reagan	1.170	.763	.125	.26
Bush	.937	.705	.183	.22
Group-Dominated Agency	-.020	.563	.972	.00
Constant	-.055	.488	.910	-.01
N=88				
Model Chi-Square (Improvement): 8.040 (df=5) p<.15				

Source: Cabinet Nominees Data Set.

When divided government is removed from the analysis, partisan control of the

[118] The analysis presented above in Table 5.4 demonstrates that there appears to be no significant relationship between the presence or absence of interest groups at confirmation hearings for cabinet secretaries-designate and divided government. Thus, in order to correct for the problem of multicollinearity, the divided government variable is omitted.

Senate demonstrates a greater impact on the likelihood that interest groups participate in the confirmation process than it appeared to based upon the uncorrected analysis. As in the uncorrected analysis, the results presented above indicate that interest group participation is not substantially affected by the position for which an individual has been nominated. Like the previous table, the corrected table demonstrates that the probability of interest group participation in the confirmation process for cabinet secretaries-designate was greatest during the Carter administration. In general, the corrected model predicts 69.3 percent of the cases correctly; again, this represents an increase in the proportional reduction of error and suggests that the model is poorly specified.

THE EFFECTS OF INTEREST GROUP PARTICIPATION ON CABINET CONFIRMATIONS

Although interest groups have (since the 1970s) been important actors in the confirmation process for cabinet secretaries-designate, their participation does not seem to have a quantifiable impact on confirmation outcomes for cabinet secretaries-designate. During the period of study, only two of 88 cabinet nominees failed to be confirmed by the Senate, and each had substantial problems that had nothing to do with interest groups. Unlike judicial nominees, interest groups appear to be unable to affect confirmation outcomes through their formal participation in confirmation hearings.

Evidence suggests, however, that interest groups are beginning to use the informal means available to them to influence confirmation outcomes. Though he offered no testimony at Alexis Herman's confirmation hearing to be Secretary of Labor in March, 1997, NAACP Chairman Kwesi Mfume was present in the audience – in fact, Senator

Paul Wellstone noted for the hearing record the presence of the NAACP chair.[119] In addition, interest groups have become active players in confirmation proceedings for sub-cabinet nominees like Bill Lann Lee, whose nomination was discussed in Chapter Two and Dr. David Satcher, whose nomination to be Surgeon General garnered 96 separate endorsements from interest groups. While not even beginning to approach the informal role that groups play in judicial confirmations, interest groups are increasingly prominent actors in the confirmation process for cabinet nominees.

AMBASSADORS

Ambassadors are the president's official representatives abroad. They are part of the executive branch, and often are called upon to represent the president and his policy initiatives overseas. Like cabinet secretaries, ambassadors are appointed to carry out the president's policies.

Ambassadorial nominees represent another large group of individuals that the Senate must confirm. All told, there are approximately 200 ambassadorships requiring Senate confirmation, and while this is a substantially smaller number than the number of federal judgeships, presidents often end up appointing almost as many ambassadors as judges during their presidencies as a result of high levels of turnover among ambassadors. Nonetheless, there is relatively little information available about ambassadors. As Mak and Kennedy (1992, 5) note: "The American public has little information about these men and women, who they are, where they come from, or how they become

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[119] See: Committee on Labor and Human Resources, United States Senate. 1997. *Confirmation for*

(Footnotes continued on next page)

ambassadors. Except for the famous or near famous, the American ambassador remains an unknown quantity." Just as there is little known about the men and women who serve as ambassadors, there has been little study on the influences on the confirmation process for ambassadorial nominees.

The history of ambassadorial appointments sheds some light on the confirmation process for ambassadors. Ambassadorial confirmations were hardly deemed worthy of attention, not only by interest groups but by the Senate itself during the first 150 years of American history. Ambassadorships were seen as prizes that presidents could use almost unchecked to reward loyal partisans and campaign supporters. Today, many ambassadors work their way up through the foreign service to achieve the rank of ambassador. But this is a recent phenomenon. Throughout much of the nineteenth century, presidents simply named political friends to important ambassadorial posts. According to Mak and Kennedy (1992, 3):

> From the presidency of Andrew Jackson on, the guiding principle to the selection of American chiefs of mission was 'to the victors belong the ambassadorial or ministerial appointments. Both U.S. embassies and consulates were staffed by politically appointed Americans until the turn of the 20th century.

The notion that ambassadors are appointed to repay electoral debts persists. According to Lenhart (1991), there is a "perceived tendency of [presidential administrations] ... to reward large campaign donors and other party loyalists" (Lenhart 1991, 1).

In addition, ambassadorial nominees were deemed to be part of the lower tier of

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Secretary of Labor. March 19, 1997. Washington, D.C.: Government Printing Office.

appointments that presidents were called upon to make. Mak and Kennedy (1992, 3) explain: "The U.S. had no actual ambassadors abroad until 1893. While the major European countries exchanged ambassadors among themselves, the United States was considered to be a second class power and rated only ministers." The result was that no one particularly paid attention to ambassadorial nominees.

Presidential nominees to fill vacant ambassadorships come from a wide variety of backgrounds and interests. While there are a number of ambassadors confirmed in each congress, ambassadorial nominees are among the most difficult of all of the president's major appointments to study. This is because with the exception of a handful of high-profile positions, confirmation hearings for ambassadorships are almost always strictly perfunctory. For example, according to a report by Washington Report, an organization that monitors activities relating to the United States Department of State, a September 18, 1997 confirmation hearing for four ambassadors and one nominee to be assistant secretary of state "lasted only two hours, with more than half of the session devoted to the [assistant secretary's nomination]" (Washington Report 1997). Lenhart (1991, 13) notes: "...The Senate Foreign Relations Committee ... rarely examines the qualifications of individual appointees in any great detail." Jonathan Sanford, a CRS research specialist finds that between 1987 and 1996, 17 ambassadorial nominees were confirmed without any hearings at all (Sanford 1997, 2).

Table 5.9 records confirmation outcomes for confirmation hearings for ambassadorships between 1977 and 1998. Between 1977 and 1998, 94.5 percent of all

ambassadorial nominations were confirmed by the Senate. Nominees that were granted hearings by the Senate Foreign Relations Committee were confirmed 98.0 percent of the time. It is clear that like nominees to fill vacant cabinet positions, ambassadorial nominees are almost always confirmed. As Lenhart (1991, 27) notes: "The vast majority of nominations referred to the Senate Foreign Relations Committee in the foreign affairs field are confirmed."

TABLE 5.9: CONFIRMATION OUTCOMES FOR AMBASSADORIAL NOMINATIONS, 1977-1998.

Congress	Dates	Total Number of Nominees	Number (and percent) of Nominees Receiving Hearings	Number (and percent) of Nominees Confirmed
95th	1977-78	113	110 (97%)	110 (97%)
96th	1979-80	91	88 (97%)	84 (92%)
97th	1981-82	103	103 (100%)	103 (100%)
98th	1983-84	81	81 (100%)	81 (100%)
99th	1985-86	97	95 (98%)	92 (95%)
100th	1987-88	44	43 (98%)	37 (84%)
101st	1989-90	121	112 (93%)	109 (90%)
102nd	1991-92	105	89 (85%)	87 (83%)
103rd	1993-94	120	120 (100%)	119 (99%)
104th	1995-96	49	49 (100%)	49 (100%)
105th	1997-98	69	67 (97%)	67 (97%)
TOTALS		993	957	938 (94.5%)

Sources: Senate Foreign Relations Committee. *Legislative and Executive Calendar*. Congresses Indicated

The lack of variation in confirmation outcomes for ambassadorial nominees makes such outcomes difficult to analyze. Data analysis of ambassadorial confirmations suffers, as did the analysis of confirmation outcomes for cabinet secretaries-designate, because with so little variation in outcomes it is impossible to quantitatively research the factors contributing to confirmation or non-confirmation. Yet, there is another, more

fundamental difficulty in analyzing ambassadorial confirmations: not only are nearly all ambassadorial nominees confirmed, but records of ambassadorial confirmation hearings are not organized or kept in any readily-available format. As a 1997 Congressional Research Service (CRS) Report on the disposition of ambassadorial nominations notes: "Unless specifically indicated, nomination hearings are not printed, and all votes are by voice," and within the CRS report, not a single ambassadorial confirmation hearing appears to have a printed hearing record. According to staff members of the Senate Foreign Relations Committee, the committee of jurisdiction for the consideration of ambassadorship nominations, any records of ambassadorial confirmation hearings are sent to the National Archives within a few weeks. Neither the Foreign Relations Committee library nor any of the government's federal depository libraries keep copies of the majority of confirmation hearings for these nominees. Further, most ambassadors are confirmed by voice vote, including nominees to important posts such as Israel and India (Reuters 1997).

Thus, any study of the confirmation process for ambassadorships suffers from a lack of quantifiable data. Unlike the explorations of judicial confirmation hearings, and confirmation hearings for cabinet secretaries-designate that appear in previous sections of this project, there is no set of comprehensive data that will allow for a solid study of the role of interest groups in the confirmation process. However, that is not to say that interest groups are unimportant to the confirmation process for ambassadorial nominees. Rather, like their counterparts in the judiciary and in the Cabinet, ambassadorial

nominees may be confronted by interest groups during their confirmation process in the United States Senate.

Unlike cabinet and judicial confirmations, where interest groups have been major players for decades, and where certain interest groups are repeat participants, interest groups have not typically been active in the confirmation process for ambassadors. Instead, their participation is a relatively recent phenomenon. According to Nan Aron of the Alliance for Justice, and Steve Schwalm of the Family Research Council (whose organization was active in opposing the nomination of James Hormel to be Ambassador to Luxembourg), there is no organization that devotes a substantial amount of time to the monitoring of ambassadorial nominations. Even Schwalm notes: "[The Family Research Council does not] ordinarily get involved in foreign policy and ambassadorial nominations. Nobody cares about ambassadors." [120]

Schwalm overstates the apathy toward ambassadorial nominees. For example, former Ambassador Edward Perkins recalls that interest groups were very interested in participating in all four of his confirmations – to be Ambassador to Liberia, South America, the United Nations, and Australia. Perkins notes that different groups were present at each of his confirmations, but that across the board, interest groups were involved.[121]

Like the confirmation process for other groups of nominees, interest groups can be important in the confirmation process. Despite their participation in Perkins'

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[120] Author's Interview, 1998.

confirmation proceedings, interest group participation in confirmations for ambassadorial nominees is not a universal phenomenon. The lack of interest group participation is a function of the perception that ambassadorships are the president's exclusive prerogative. Interest groups typically have avoided involvement in the confirmation process for nominees to fill vacant ambassadorships. During the 105th Congress, that practice changed, as conservative interest groups mobilized to attempt to defeat the nomination of James Hormel to be Ambassador to Luxembourg. The Family Research Council, the most outspoken group in opposition to Hormel's confirmation, claims success; Hormel's nomination was returned to the president at the expiration of the 105th Congress.

The Hormel Case

As was discussed in Chapter Two, James Hormel, a philanthropist and former Dean of Students at the University of Chicago, was nominated by President Bill Clinton to serve as the Ambassador to Luxembourg in October, 1997. Prior to his nomination, Hormel had also served as a member of the United States delegation to the United Nations Human Rights Commission and was an alternate representative to the United Nations; the latter required Senate confirmation, which was granted without problem (Mills 1998, 7).

Yet, despite Hormel's diplomatic credentials, Hormel is also a longtime Democratic Party activist who has contributed large sums of money to the Party. Hormel is also openly gay. For that reason, his nomination was opposed by a handful of

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[121] Author's Interview, 1997.

Republican senators who expressed concerns that Hormel's open homosexuality would lead him to promote a homosexual agenda while stationed as ambassador to Luxembourg. An editorial in the *Washington Post* noted: "The Senators who object – Tim Hutchison of Arkansas, James Inhofe of Oklahoma, Robert Smith of New Hampshire, and a fourth who remains anonymous – say they fear he would use his ambassadorship to advance a gay rights agenda" ("Qualified to Serve... 1998). According to the Family Research Council's Steve Schwalm, conservative North Carolina Senator and Chairman of the Senate Foreign Relations Committee, Jesse Helms, was the fourth senator to place a hold on Hormel's nomination.[122]

Although the four conservative senators held up Hormel's confirmation, there was also broad support for his confirmation, not only among Democrats but among a few prominent Republicans as well, including former Senator Alfonse D'Amato (R-NY) and Senator Orrin Hatch (R-UT).[123] Hatch stated: "My personal belief is that although I do not approve of the gay lifestyle, I'm still not going to discriminate against someone who is otherwise qualified" (Holland 1998c; A-1). On April 3, 1998, 42 Democratic senators sent a letter to Senate Majority Leader Trent Lott, requesting a vote on Hormel's nomination, which had been approved by the Foreign Relations Committee 16-2 in November, 1997 (Bayer 1998, A-12). But Lott refused to move Hormel's nomination. A *Rocky Mountain News* editorial declared on April 21, 1998: "If Hormel's being gay is the only issue, the Senate should vote on and approve his nomination" ("Approve Hormel

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[122] Author's Interview 1998.

For Post..." 1998). Early in the second week of June, 1998, Democratic senators Robert Torricelli (NJ), and Dianne Feinstein (CA) sent an opinion piece to newspapers around the country, challenging their Republican colleagues to confirm Hormel. They wrote: "We urge our colleagues to part with the Republican Party's extreme faction and bring the nomination of this talented man to a vote of the full Senate" (Toricelli and Feinstein 1998, B-9). As was discussed in Chapter Two, James Hormel's nomination to serve as ambassador to Luxembourg was returned to the president when the 105th Congress adjourned in October, 1997.

While Hormel's failure to be confirmed is interesting in and of itself, in light of the ease with which most ambassadorial nominees are confirmed, his confirmation is also important because it marks the first instance of interest-group warfare over an ambassadorial nominee in recent memory.[124] According to Bayer (1998, A-12):

> "Hormel's nomination has become a test case for the social conservatives, among them the Family Research Council, which has accused the Clinton administration of 'cultural imperialism' for promoting a nominee offensive to family values. At the same time, the nomination has been a rallying point for gay advocacy groups, who are using the stalemate to disparage Republicans."

On the conservative side, the Family Research Council immediately mobilized to oppose Hormel's nomination. According to Steve Schwalm, a senior writer and analyst for the Family Research Council: "When Bill Clinton nominated Hormel in October

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[123] See Bayer 1998; "D'Amato Criticizes GOP Hold on Hormel Nomination" 1998.
[124] In interviews with the Alliance for Justice's Nan Aron, People for the American Way's Tracy Hahn-Burkett, and Steve Schwalm of the Family Research Council, none of the interview subjects could recall

(Footnotes continued on next page)

[1997] right away red flags came up because we were aware of his funding of [gay] activist organizations."[125] The group immediately began gathering information on Hormel's past activities with regard to homosexual advocacy and support of the Democratic Party. According to Schwalm, in the assessment of the Family Research Council, Hormel "was all over the map doing everything that's contrary to Christian values. His activities are a direct attack on the family."

Once the Family Research Council had gathered and analyzed information concerning Hormel's previous political activities, the group made it available at both the grassroots and Capitol Hill levels. According to Schwalm, the Family Research Council targeted Catholics, the Promise Keepers (Schwalm claims that the Human Rights Campaign has attacked the Promise Keepers), educators, the Boy Scouts (who were forced to defend their refusal to permit homosexuals to be members of their organization), and members of the military (Schwalm 1998).

On the liberal side, the Human Rights Campaign ("the nation's largest gay and lesbian organization," according to published reports), countered the conservative campaign against Hormel with articles in its *Human Rights Campaign Quarterly* as well as attempts to mobilize supporters of Hormel and non-discrimination in federal appointments. In the Spring, 1998 issue of *Human Rights Campaign Quarterly,* executive editor Kim Mills highlighted Hormel's plight. The article even included endorsements from three sitting Democratic senators, Secretary of State Madeleine

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another instance of interest group participation in the confirmation process for ambassadorial nominees.

Albright, and President Clinton. The organization was even invited to participate in a strategy session at the White House in June, 1998 to explore ways to end the Senate impasse and confirm James Hormel (Holland 1998, A-7).

As has been noted above, Hormel's nomination was returned to the president at the end of the 105th Congress. Although it is unclear to what extent interest group participation in Hormel's confirmation contributed to his inability to be confirmed, it is possible to conclude that the extensive nature of the Family Research Council's campaign against Hormel was without parallel with regard to ambassadorial nominees in general. It is possible, as well, that the Hormel nomination is a harbinger of things to come. Schwalm notes that the Family Research Council's measure of success was whether or not Hormel was confirmed by the Senate. He said: "If Hormel becomes the ambassador to Luxembourg, we've failed." When asked whether success in the campaign against Hormel would encourage the Family Research Council to get involved in future ambassadorial nominations, Schwalm replied that the Council would oppose any nominee whose views were hostile to Christian values.[126]

CONCLUSION

This chapter has explored the dynamics of interest group participation in the confirmation process for two groups of nominees – nominees to fill vacancies on the president's cabinet and nominees to fill vacant ambassadorships abroad. Although the available data are not as complete as the data available for evaluating the role of interest

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[125] Author's Interview, 1998.

groups in the confirmation process for federal judges, it is possible to draw some important conclusions.

First, with regard to cabinet secretaries, interest groups are active participants in the confirmation process. Between 1977 and 1998, interest groups participated in 72.7 percent of all confirmation hearings for cabinet nominees. This compares with a participation rate of just 12.8 percent for judicial nominees. Interest groups' formal participation in the confirmation process for cabinet secretaries-designate has decreased steadily since 1980. While groups participated in more than half of the confirmation hearings for President Bill Clinton's cabinet nominees, that represents a substantial decrease from a high of 84.2 percent participation in hearings during the Carter Administration.

Evidence from the 105th Congress suggests that interest groups are now using informal techniques in cabinet confirmations, although they seem less reliant on informal techniques than do the interest groups that participate in the confirmation process for judicial nominees. This is most likely because the formal avenues for participation have not been closed off from interest groups wishing to participate in cabinet confirmations in the way they have been with regard to judicial confirmations.

It is also clear that the same factors that influence interest group participation in the confirmation process for judicial nominees do not affect their participation in the confirmation process for cabinet-secretaries designate. This suggests that policy

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[126] Author's Interview, 1998

concerns rather than political circumstances dominate interest groups' calculations in deciding to participate in the confirmation process for cabinet nominees. The exception to this is the finding above that interest groups were most likely to participate during President Carter's administration. Like the confirmation process for judicial nominees, interest groups' formal participation in the confirmation process peaked in the late 1970s. They are less formally involved in confirmation politics for cabinet secretaries-designate today than they were two decades ago.

In contrast to cabinet confirmations, interest groups are not yet consistent participants in ambassadorial confirmations. The available evidence suggests that participation by interest groups during the confirmation process for James Hormel was an anomaly; interest groups do not generally follow ambassadorial appointments. Yet, their departure from their standard practice by participating in the Hormel confirmation may be the most important finding of this chapter. It is possible that with their success in forcing Hormel's rejection, interest groups will heighten their scrutiny of ambassadorial nominees as they engage in the omnipresent struggle to have an impact on the policy process.

CHAPTER SIX:

LOOKING TO THE FUTURE: INTEREST GROUP PARTICIPATION AND THE CONFIRMATION PROCESS

> Every time a nomination stalls, every time an individual nominee is hung out to dry, every time the bar of admission to public service is 'raised,' every time a new disqualifier is added to a list that is already too long, reverberations echo through every phase of the appointment process. What follows is more background checks, more clearances, more vetting, more deliberation, slower consideration, more negotiation, and more -- much more -- reluctance on the part of those asked to serve. The controversy that surrounds one nominee envelops them all. The process grows thicker and slower. Vacancies grow longer. Talent grows thinner. Governing grows more difficult.
>
> -- G. Calvin Mackenzie, 1998

Margaret Morrow was the poster child for the far right. Nominated to fill a vacancy on California's Central District Court, conservative interest groups seized upon a statement she had made in 1988 that was critical of California's ballot initiatives procedure. First nominated in May, 1996, Morrow's nomination languished for nearly two years as conservative senators responded to interest groups' calls to oppose her confirmation. Like Morrow, Frederica Massiah-Jackson's confirmation was undone by interest groups. In Massiah-Jackson's case, Pennsylvania law enforcement and criminal justice organizations actively lobbied for her defeat. David Satcher's nomination was opposed by the Christian Coalition and other pro-life interest groups. The Human Rights

Campaign battled for James Hormel's confirmation from the left while the Family Research Council pushed against it from the right. Hispanic groups protested outside of the Supreme Court, while the Judicial Selection Monitoring Project produced a fundraising videotape urging conservative activists to contribute to the Project to help keep President Clinton's nominees off the federal bench.

Interest groups were highly visible actors in the confirmation process during the 104th and105th Congresses. While most nominees still were confirmed without controversy, many were subject to intense Senate and interest group scrutiny, lengthy delays, and in some cases, rejection. By nearly all assessments, the Senate's confirmation process in the 104th and 105th Congresses continued on its trajectory away from its constitutional foundations toward something that only vaguely resembles the process the framers designed. The process that Common Cause decried as a "rubberstamp machine" in the 1970s is now decried as too slow, too unpredictable, and too disrespectful of the president and his nominees. In 1994, Stephen Carter declared that the United States was suffering from a "confirmation mess." In 1996, the Twentieth Century Fund called the appointment process an "obstacle course." When asked about the confirmation process that approved her to be a federal district judge in Massachusetts, Judge Nancy Gertner declared: "It's all so profoundly irrational."[127] And former U.S. Senator Howard Metzenbaum thinks "it's a tragedy what [some senators and interest

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[127] Conversation with author, 1998.

groups are] doing to these nominees."[128]

This study has expanded upon the earlier work of Stephen Carter (1994) and the Twentieth Century Fund (1996, 1998). These previous studies have explored the dynamics of the confirmation process in great detail. However, while these studies provide a good baseline for understanding the contemporary confirmation process, they do not provide many explicit insights into how or why interest groups now play such a prominent role in confirmation politics. As this project has demonstrated, interest groups view the confirmation process as another opportunity to further their policy and political goals. Sweeping changes to the Senate institution and the political system since the 1960s have given groups a greater number of access points into the confirmation process, while simultaneously increasing the incentives that senators have to be responsive to group demands. The result is that interest groups now wield an enormous amount of influence over the Senate's confirmation decisions. What the framers designed as a process involving only two actors is now pluralistic, involving sometimes dozens of interest groups in addition to the president and the Senate.

WHY INTEREST GROUPS?

That interest groups are now a fixture in confirmation politics is a result of the convergence of a number of factors including divided government, changes in internal Senate norms, the abdication of the president, and some senators' increasing focus on raising money for their reelection campaigns. These factors, coupled with low levels of

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[128] Conversation with author, 1998.

information about the confirmation process at the mass public level, have created a climate that gives interest groups a powerful role in determining who sits at the highest levels of the federal government.

To understand properly the relationship among these factors, and how they gave rise to what is today an overwhelming level of interest group participation and influence in confirmation politics, it is first necessary to look back at some important changes to the Senate and to the political environment since the late 1950s. Between 1958 and 1964, a large number of northern, liberal Democrats were elected to the Senate, many by narrow margins. For them, the norms of the 'old' Senate provided too little visibility and too few opportunities for the advancement of their policy preferences. By the late 1960s, these senators had been relatively successful at adapting existing Senate norms to meet their needs. Sinclair (1989, 49) notes:

> By the end of the 1960s, the Senate was a more participatory and less committee-centered institution that it had been in the 1950s. ... The demise of the apprenticeship norm, the increase in staff, and committee chairmen's more restrained use of their powers made it easier for less senior senators to participate meaningfully in the legislative process.

The political environment surrounding the Senate also began to change in the 1960s. One new development was the increasingly common condition of divided government. With the president and the Congress more frequently operating under divided control, political accountability was even further diffused. In addition, the social and political movements for civil rights and gender equity in the 1960s gave rise to a

tremendous number of new interest groups in Washington, D.C., each with its own set of goals. Not insignificantly, the increase in interest groups coincided with changes in Senate norms that increased the incentives for senators to recognize, and even champion, interest groups' causes at just the same moment that these groups were calling upon senators to take an active role in promoting groups' goals. For senators, cooperation with the interest groups meant the promise of campaign contributions, grassroots support, additional publicity, and sometimes legislative success. Non-cooperation might mean retaliation at the ballot box. Herrnson (1998b, 127) notes:

> As the testimonies of candidates who were targeted by the AFL-CIO, the Coalition, the Christian Coalition, and other groups attest, PAC contributions, campaign services, independent expenditures interest-group advocacy advertisements, and grass roots efforts can change the dynamic of an election, sometimes spelling the difference between victory and defeat.

By the early 1970s, a symbiotic relationship was developing between the interest groups and their Senate champions. Groups needed senators to promote their goals in the policy process, while senators needed groups to assist them with meeting their own electoral and political objectives. Still, the confirmation process proceeded relatively smoothly, even as this new relationship between groups and senators was developed. In large part this was a result of continued interest group and Senate deference to the president. Presidents were assumed to be entitled to the appointee of their choice, and even the cozy relationship between interest groups and senators was an insufficient counterweight to presidential authority. This began to change, however, in the late 1970s

as the White House's process for selecting nominees was more regularly delegated to staff aides and presidents became less involved in the selection process. Throughout the 1980s, interest groups perfected their participation in the confirmation process and their bargaining techniques with senators as the White House became a less visible and less interested player in confirmation politics.

Since his election in 1992, President Bill Clinton has been largely unwilling to fight for confirmation for his nominees. Beginning with Lani Guinier in 1993, and continuing through 1998 with dozens of judicial and executive branch nominees, President Clinton has shown little interest in expending political capital to push for Senate confirmation. This lack of presidential leadership left a vacuum, which interest groups have filled. Today, interest groups often wield as much or even more influence over the confirmation process as the president of the United States.

INTEREST GROUPS' TACTICS AND STRATEGIES

Interest groups are strategic actors. Even with new avenues for participation and good relations with senators, groups do not participate in all or even the majority of Senate confirmations. The president nominates hundreds of individuals every year to fill vacancies to positions that qualify as major appointments, and most interest groups have neither the time nor the resources to review very many of these nominees. With the exception of cabinet nominees, most of the president's major appointments are ignored by interest groups. Instead, groups focus the vast majority of their scarce resources on targeting prominent nominees to important positions.

Interest groups participate more often in confirmations for high-level appointments than they do for lower-level positions. For example, they participate more frequently in Circuit Court of Appeals confirmations than they do in district court confirmations and more often participate in cabinet confirmations than ambassadorial confirmations. By participating in confirmation hearings for nominees to the most important positions, interest groups hope also to influence lower-level positions that the high-level nominee has some responsibility in filling.

Interest groups are also more likely to participate in the confirmation process when the position being filled is closely tied to their policy goals. For example, groups with strong views on specific matters of public policy are likely to participate in confirmation hearings for cabinet secretaries-designate whose agencies are charged with monitoring the programs that the groups care about. The interest groups hope to affect public policy in ways that are beneficial to their groups' members.

Finally, interest groups are incited to participate in the confirmation process when they believe that the nominee is or would be hostile to the groups' goals. Interest groups more often mobilize against nominees than for them. Baum (1995, 36) writes: "Group opposition to a nominee is more common than support..." Segal and Spaeth (1995, 153-4) note that "...supportive interest-group mobilization arises largely in reaction to interest-group mobilization against nominees."

Formal and Informal Interest Group Participation

When interest groups do decide to participate in the confirmation process, their

participation may take one of two forms: formal participation and informal participation. Interest groups participate in the formal mechanisms of the Senate's confirmation process by attending hearings and providing testimony, either oral or written. Interest groups' formal participation began in earnest in the 1970s, as the aftermath of Watergate heightened Senate scrutiny of presidential nominees and new norms of conduct in the Senate fostered the development of relationships between senators and organized interests. Further, as the Senate coordinated and centralized its advice and consent power in its committees during that period and began to adopt a more active role in the appointment process, interest groups found new access points for their ideas and new pressure points to use against key senators. In the 1970s, interest groups began to use Senate confirmation hearings to practice organizational maintenance, to disseminate their messages to senators, and to influence public policy by affecting the confirmation process. Senate committees frequently heard testimony from interest groups as they deliberated on the president's nominees.

Between 1979 and 1998, interest groups engaged in formal participation in 144 confirmation hearings (12.9% of the time) for judicial nominees. Between 1977 and 1998, interest groups engaged in formal participation in 64 of 88 (72.7%) of the cases of a nomination of a cabinet secretary. Although the records of ambassadorial confirmations over the last two decades are incomplete, the available evidence suggests that interest group participation in confirmations for ambassadorial nominations is a rare event.

Since the late 1970s, interest group participation in the formal aspects of Senate confirmation has decreased. This is in part because Senate committees are now less willing to permit interest groups to have a formal role in the confirmation process. Scarred from the Bork experience, Senate committee chairs are now less interested in hearing from interest groups on the subject of presidential nominations. In addition, many Republicans blamed interest groups for Bork's defeat, as well as the difficult confirmation experience faced by Clarence Thomas, President Bush's nominee to the Supreme Court in 1991. When the Republicans regained control of both the House and the Senate in 1995, they quickly moved to end any formal role for interest groups in the confirmation process, especially for judicial nominees. Since 1995, interest groups have been shut out of judicial confirmation hearings altogether by Judiciary Committee Chairman Orrin Hatch. The same finding holds true for cabinet nominees. In general, Senate committee chairmen appear to have reacted to the spectacle of the Bork confirmation by being more selective in granting permission to interest groups to participate in the process.

The second way in which interest groups participate in the confirmation process is through informal techniques. With formal avenues of participation increasingly closed to them, interest groups now participate in the confirmation process primarily through the informal avenues of influence available to them. Groups have increasingly moved toward media and grassroots strategies that take place far away from the Senate's hearing rooms. They bring to bear a wide range of tactics, most adapted from their legislative

strategies, to try to influence senators' confirmation decisions. As Segal and Spaeth (1993) point out in their study of interest group participation in Supreme Court confirmations, there is no way to quantify this type of participation. Yet, the anecdotal evidence supplied by those individuals integrally involved with the confirmation process, including former senators, Senate staffers and interest group leaders, suggests that interest groups are extremely active behind-the-scenes. Interest groups write letters, organize grassroots campaigns, and lobby senators behind closed doors in order to influence the confirmation process.

In the contemporary confirmation process, interest groups use informal techniques much more frequently than they use formal techniques. This is especially true for judicial confirmations, where the Senate Judiciary Committee no longer is open to the formal participation of interest groups. As interest groups' opportunities to participate formally in the confirmation process have been reduced, they have retreated to more and more creative informal means of affecting the confirmation process. Today, interest groups rely on innovative informal strategies to influence the process, including fundraising videos, grassroots campaigns, and voter education programs.

WHY SENATORS LISTEN

The confirmation of any single nominee has relatively little effect on the federal government. Vacancies on the federal bench go unfilled for years but the federal courts continue to operate. Cabinet-level agencies can have either no leader or an acting leader and still fulfill their functions. Embassies do not shut down if there is no ambassador.

The vast majority of the American public neither knows nor cares who has been nominated to fill most positions in the federal judicial and executive branches. For these reasons, the confirmation process provides a low-cost way for interest groups to practice organizational maintenance and for senators to appease their interest group benefactors with little or no public backlash. With changes in the Senate and a White House that was increasingly removed from the confirmation process between 1959 and today, conditions were ripe for interest groups to have an impact on confirmation politics.

That interest groups are prominent players in confirmation politics can not be disputed. But why do senators pay attention to the interest groups? If confirmation votes truly are low-cost for senators in terms of public awareness and reaction, why heed the interest groups' calls for action? The answer is that in today's group-centered political environment, senators can not afford to ignore powerful interest groups. Groups at both ends of the ideological spectrum have access to wealthy contributors and other resources that senators have come to rely upon as they seek to achieve their electoral and political goals. Interest groups can, and will, deliver votes and money to their allies, but they will work equally diligently to embarrass or defeat their foes. Chapter Three's discussion of the increasing use of voter scorecards, and groups' recent inclusion of confirmation votes on their scorecards, demonstrates the extent to which interest groups today are proactive in using the confirmation process in much the same way that they have been using scorecards to track legislative decisions more generally for decades.

Today, interest group participation is quite possibly the most important

determinant of confirmation outcomes and contentiousness in the confirmation process. This is because unlike other explanatory factors for changes to the confirmation process, interest groups provide direct, tangible incentives to senators to act in particular ways. While changes in Senate norms and a more prominent role for the Senate in the appointment process have affected confirmation dynamics, neither condition is as directly tied to senators' electoral fortunes as interest group participation. Just as in the legislative process more generally, interest groups now wield enormous influence over the confirmation process.

CONFIRMATION POLITICS IN AN INTEREST GROUP AGE

Interest groups are now nearly co-equal actors with agency heads and the Presidential Personnel Office in the contemporary confirmation process. As the White House has decentralized its selection process and the president has exercised less responsibility in choosing nominees, interest groups have taken on an important new role. They now are an integral part of both choosing nominees and determining whether or not presidential nominees are confirmed. Interest groups are also responsible for a number of problems confronting the contemporary confirmation process, including increases in partisanship and contentiousness, inordinate delays in confirming nominees, and the difficulty in finding individuals willing to endure Senate confirmation. In the contemporary confirmation process it takes 51 senators to confirm a nominee and only one, through a Senate hold, to keep someone from being confirmed. Interest groups recognize this, and those that support a nominee often wage extensive public campaigns

while those that oppose a nominee often move underground, targeting senators who are in sync with the organization's views. All the opponents need to do is to persuade one senator to put a hold on the nominee, and the nomination is effectively dead.

In and of itself, there is not necessarily anything inappropriate with regard to interest group participation in the confirmation process. Especially when interest groups participate formally, their participation functions as just one of a number of influences on a senator's confirmation decision calculus. As Wright (1996, 42) explains: "A[n] ... important function of congressional hearings is to force organized interests to reveal their preferences and to state them publicly." When they do so, senators have an opportunity to ask questions, to listen to their colleagues' questions, and to weigh the testimony of interest groups against the testimony of the nominee. In this respect, the presence of interest groups in the confirmation process can assist senators with structuring their confirmation decisions and may make the confirmation process more democratic.

The result of groups' increasing use of informal techniques is that their participation can no longer be monitored, nor is it subjected to public scrutiny. Participating informally allows groups to exercise complete control over their message without the interference of other interest groups or members of the Senate seeking to determine the veracity of the information being disseminated. The danger, of course, is that such participation also permits interest groups to be ruthless in their attacks on nominees, which may, in turn, cause some potential nominees to think twice about seeking an appointed office in the federal government.

Since the interest groups exploded onto the Washington landscape in the 1960s and 1970s, the legislative process has become more pluralistic and open and less predictable and stable (Sinclair 1989). The confirmation process has been similarly affected. With the Senate often playing the part of co-conspirator, interest groups have discovered that they can be extraordinarily successful at influencing the confirmation process. The groups' role in defeating Robert Bork in 1987 heightened awareness of the ways in which the confirmation process could be used by interest groups, and today interest groups use the confirmation process to promote their goals, indicate their policy preferences, and ultimately to affect public policy outcomes. As Shogan (1996, 95) writes: "Interest groups have learned that confirmation battles can help advance and protect their objectives." For their parts, senators pay attention to the interest groups because of the benefits groups are able to provide.

Of course, interest group participation and the Senate's deference to it does not occur without consequence. Regardless of the intensity of interest group participation (positive or negative), the mere presence of interest groups in the process may have a destabilizing effect. For example, in the case of federal judges, formal interest group participation reduces the probability that a nominee is confirmed by .14 overall, regardless of the direction of that participation. As interest groups offer negative testimony, the nominee's likelihood of confirmation is reduced even further.

Interest group participation is also at least partially responsible for slowing the confirmation process, especially during the period between 1996 and 1998. Such a

slowing leads to additional consequences: the recruitment of individuals willing to accept a nomination to the federal courts may become more difficult, and long-term vacancies in the federal judiciary may cause delays in the administration of justice for those with cases pending in the federal courts (Rehnquist 1998).

Because nearly all cabinet nominees are confirmed, it is impossible to estimate statistically the impact of interest groups on these confirmations. However, like judicial confirmations, antagonistic interest groups may have an impact on recruitment of individuals to serve on the president's team. And, while interest group participation in confirmations for cabinet secretaries-designate does not appear to have an effect on confirmation outcomes for these nominees, groups have been able to force showdowns over nominees to other positions. For example, the evidence presented in Chapter Five suggests that interest groups were partially responsible for the return of James Hormel's ambassadorial nomination to President Clinton at the adjournment of the 105th Congress. Clearly, there are consequences of interest group participation in the confirmation process – especially when that participation is in opposition to a nominee.

LOOKING TO THE FUTURE

What does the future hold for the Senate confirmation process and the participation of interest groups? In light of the successes that interest groups enjoyed during the 104th and 105th Congresses, it is likely that they will be emboldened to challenge more and more presidential nominations as the 20th century draws to a close and the 21st century begins. This may especially be the case should the Republicans and

Democrats swap control of the White House and the Senate. Former Senator Paul Simon, author of *Advice and Consent* notes that the confirmation process has changed in recent years as Republicans have imposed stricter standards for evaluating a nominee's fitness for confirmation. And, Simon is concerned about what will happen in the future. He cautions:

> The danger is, of course, that when Democrats take back the Committee, which they inevitably will one day, that they will do the same thing when a Republican is in the presidency. No one gets served well. The lesson is when the pendulum swings too far in one way it will swing back too far the other way.[129]

In addition, if judicial confirmations and the case of James Hormel prove to foreshadow the future, interest groups will only be emboldened by past successes to increase their use of informal means of participating in the confirmation process.

Should more the passage of time lead to an increase in behind-the-scenes participation by interest groups there may be some important consequences. First, as has been noted repeatedly throughout this project, informal participation can not be monitored in any systematic way (Segal and Spaeth 1993). Second, informal participation can not be regulated in any systematic way. While a committee chairman may prevent interest groups from testifying at committee hearings, he or she can not prevent interest groups from engaging in direct lobbying of individual senators or mobilizing their grassroots.

Prospects for improvement in the confirmation process appear a long way away.

Although in March, 1999 the Senate eliminated the secrecy component of Senate holds, it still takes only one senator's objection to force the rejection of presidential nominees. And without other fundamental changes to the confirmation process, there is no reason to believe that the process will change in the near future. In addition, with the booming national economy at the end of the twentieth century, there is no shortage of big-money donors looking to contribute money to the interest groups that in turn reward senators with campaign support. Unless and until the interest groups at both ends of the political spectrum run out of ways to reward senators for championing the defeat or approval of particular presidential nominees, there is not likely to be any substantial change in the dynamics of the relationship between these groups, senators, and presidential nominees.

In the contemporary confirmation process, interest groups are important actors. They were successful in forcing the slowdown of the confirmation process during the 105th Congress, and in some cases, like that of the nomination of Judge Frederica Massiah-Jackson, interest groups were integrally involved in forcing the rejection of individual nominees. Based upon that level of success, it is doubtful that groups will retreat from their aggressive lobbying efforts during the confirmation process at the dawn of the twenty-first century. It is also not in doubt interest groups will continue to push senators to reject nominees that the groups deem to be unfit. What is in doubt is whether the confirmation process can withstand these pressures.

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[129] Author's Interview, 1998.

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APPENDIX ONE:

METHODOLOGY

Two distinct methodologies are employed in this project. First, quantitative data analysis is the backbone of many of the conclusions in this study. Much of Chapter Four is based on a quantitative analysis of 1,264 judicial nominations and 1,112 confirmation hearings of nominees to the lower federal courts occurring between 1979 and 1998. This large-scale study of the lower federal courts is unusual, in that previous studies of judicial confirmations tend to be focused on single-case studies as a means of telling the judicial confirmation story. As Silverstein (1994 5-6) points out:

> The principal genre for the study of judicial confirmations has been the case study. ... This micro analysis reveals a wealth of valuable detail about a single nomination... At the same time, the case study may focus the reader's attention too narrowly, resulting in an uncomfortable failure to appreciate the wonders of the forest for concentrating attention on a single, albeit dazzling tree.

In this analysis, however, the emphasis is on the "forest," rather than the "dazzling trees." Such a large number of cases permits more sophisticated analysis of the role of interest groups in the confirmation process, and permits generalizeable conclusions to be drawn.

In addition to the quantitative analysis of interest groups in the confirmation process for lower federal court nominees, the first part of Chapter Five bases its conclusions on the role of interest groups in the confirmation process for cabinet

secretaries-designate on a quantitative analysis of 88 confirmation hearings for cabinet positions between 1977 and 1998. Although not nearly as large a sample as that which was used to analyze judicial confirmation, the data provide a broad look at the dynamics of interest group participation in the confirmation process for cabinet secretaries-designate.

Throughout this project, qualitative interview data and participant observation were used to provide corroborating information and examples of the ways in which interest groups participate in the confirmation process. The qualitative data come from interview data gathered from 23 separate interviews with Senate staffers, interest group leaders, former senators, and nominees. In addition to formal interviews, many observations are taken from participant observation of the confirmation process from the vantage point of the Senate Judiciary Committee. Between November, 1997 and August, 1998, I served as an American Political Science Association Congressional Fellow in Washington D.C. where I worked for Senators Kennedy and Leahy on the Judiciary Committee. My primary responsibility was to assist both senators in preparing for their confirmation responsibilities, which gave me firsthand insights into the dynamics of interest group participation in the confirmation process. Both the quantitative and qualitative methodologies described briefly above are discussed in greater detail in the remainder of this appendix.

QUANTITATIVE METHODOLOGY

Much of the analysis presented in Chapters Four and Five is based upon data

collected from 1,264 judicial nominations and from 88 cabinet secretary nominations between 1977 and 1998. For those nominees granted hearings (1,112 judicial nominees and all 88 cabinet secretaries-designate), additional data were compiled from their hearing transcripts. (Hearing transcripts were compiled with the assistance of the Senate Committee on the Judiciary and the University of Maryland's McKeldin Library.) Each hearing was read and the following data were recorded: the nominee's name, the date of the hearing, the committee chairman, the party leadership of the Senate, the position for which the nominee was nominated, whether interest groups were present at the confirmation hearing, the number of groups testifying, the number of groups submitting materials for the hearing record, the committee chairman, whether government was divided or unified, and the direction (pro or con) of interest group participation. Then, data on whether the nominee ultimately was confirmed was compiled from Congressional Research Service and the *Congressional Record.*

The Data Sets

Once the data collection was completed, data were compiled into two separate SPSS data sets. The first data set categorized multiple data points for 1,264 nominees to the lower federal courts (1,112 of whom were granted hearings). The second data set recorded data on 88 confirmation hearings for cabinet secretaries-designate between 1977 and 1998. Appendix Two records the sources of information that were used to compile both of these data sets.

Data Set One: Judicial Nominees Data Set (1979-1998)

The following list gives a description of each variable contained in the data set of lower federal court nominees, followed by the variable label (in parentheses). Then, for numeric variables, the value labels assigned follow:

Name of the Nominee: (NAME)

Congress in Which Nominated: (CONGRESS)
- 96th Congress = '96'
- 97th Congress = '97'
- 98th Congress = '98'
- 99th Congress = '99'
- 100th Congress = '100'
- 101st Congress = '101'
- 102nd Congress = '102'
- 103rd Congress = '103'
- 104th Congress = '104'
- 105th Congress = '105'

Date of Confirmation Hearing: (DATE)
(input from 01/01/79 to 10/30/98)

Year in Which Confirmation Hearing Was Held: (YEAR)
- 1979 = '1979'
- 1980 = '1980'
- 1981 = '1981'
- 1982 = '1982'
- 1983 = '1983'
- 1984 = '1984'
- 1985 = '1985'
- 1986 = '1986'
- 1987 = '1987'
- 1988 = '1988'
- 1989 = '1989'
- 1990 = '1990'
- 1991 = '1991'
- 1992 = '1992'
- 1993 = '1993'
- 1994 = '1994'
- 1995 = '1995'
- 1996 = '1996'

1997 = '1997'
1998 = '1998'

Position for Which an Individual Was Nominated: (POSITION)
Court of International Trade = '5'
Federal District Courts = '6'
Circuit Court of Appeals = '7'

Whether Interest Groups Were Present at Confirmation Hearings: (GROUPS)
Yes = '1'
No = '0'

Whether Interest Groups Testified at Confirmation Hearings: (TESTIFY)
Yes = '1'
No = '0'

Whether Interest Groups Submitted Materials at Confirmation Hearings: (SUBMIT)
Yes = '1'
No = '0'

Whether the Nominee Was Confirmed by the Senate: (CONFIRM)
Yes = '1'
No = '0'

Chairman of the Judiciary Committee: (CHAIR)
Edward M. Kennedy = '1'
Strom Thurmond = '2'
Joseph Biden = '3'
Orrin Hatch = '4'

Partisan Control of the Senate: (PARTY)
Republican = '1'
Democrat = '0'

Divided or Unified Government: (DIVIDED)
Divided = '1'
Unified = '0'

Direction of Interest Group Participation: (DIRECTIO)

Unanimously in favor of nominee = '1'
Majority of Groups in favor of nominee = '2'
Mixed = '3'
Majority of Groups oppose nominee = '4'
Unanimously opposed to nominee = '5'
Groups Participated But Took No Position = '0'
No Groups Participated = '9'

Data Set Two: Cabinet Nominees Data Set (1977-1998)

The following list gives a description of each variable contained in the data set compiled for cabinet secretaries-designate, followed by the variable label (in parentheses). Then, for numeric variables, the value labels assigned follow.

Name of Nominee: (NAME)

Congress in Which Nominated: (CONGRESS)
96th Congress = '96'
97th Congress = '97'
98th Congress = '98'
99th Congress = '99'
100th Congress = '100'
101st Congress = '101'
102nd Congress = '102'
103rd Congress = '103'
104th Congress = '104'
105th Congress = '105'

Date of Confirmation Hearing: (DATE)
(input from 01/01/79 to 10/30/98)

Year in Which Confirmation Hearing Was Held: (YEAR)
1979 = '1979'
1980 = '1980'
1981 = '1981'
1982 = '1982'
1983 = '1983'
1984 = '1984'

1985 = '1985'
1986 = '1986'
1987 = '1987'
1988 = '1988'
1989 = '1989'
1990 = '1990'
1991 = '1991'
1992 = '1992'
1993 = '1993'
1994 = '1994'
1995 = '1995'
1996 = '1996'
1997 = '1997'
1998 = '1998'

Position for Which an Individual Was Nominated: (POSITION)
Secretary of State = 'state'
Secretary of Defense = 'defense'
Secretary of the Treasury = 'treasury'
Attorney General = 'ag'
Secretary of Agriculture = 'agricult'
Secretary of the Interior = 'interior'
Secretary of the Dept. of Health and Human Services = 'hhs'
Secretary of Commerce = 'commerce'
Secretary of the Dept. of Housing and Urban Development = 'hud'
Secretary of Labor = 'labor'
Secretary of Energy = 'energy'
Secretary of Education = 'ed'
Secretary of Veteran's Affairs = 'va'
Secretary of Transportation = 'trans'

Whether Interest Groups Were Present at Confirmation Hearings: (GROUPS)
Yes = '1'
No = '0'

Whether Interest Groups Testified at Confirmation Hearings: (TESTIFY)
Yes = '1'
No = '0'

Whether Interest Groups Submitted Materials at Confirmation Hearings: (SUBMIT)
Yes = '1'
No = '0'

Whether the Nominee Was Confirmed by the Senate: (CONFIRM)
Yes = '1'
No = '0'

President of the United States: (PRESIDE)
Jimmy Carter = '1'
Ronald Reagan = '2'
George Bush = '3'
Bill Clinton = '4'

Partisan Control of the Senate: (PARTY)
Republican = '1'
Democrat = '0'

Divided or Unified Government: (DIVGOV)
Divided = '1'
Unified = '0'

Direction of Interest Group Participation: (DIRECTIO)
Unanimously in favor of nominee = '1'
Majority of Groups in favor of nominee = '2'
Mixed = '3'
Majority of Groups oppose nominee = '4'
Unanimously opposed to nominee = '5'

A Note on Measurement

While most of the variables are self explanatory, a note on the coding of a view of the variables may be useful to the reader. In both data sets, *interest group presence or absence* is measured as whether groups are present, through oral or written testimony, at confirmation hearings for lower court nominees. A group is defined as a non-governmental, non-party, multi-membered organization seeking to influence public

policy outcomes. (While there are instances in which private citizens testified against a nominee, their participation was not considered to be group participation because they represented only themselves.) In order to determine the number of groups participating at the confirmation hearings for lower federal court judges and for cabinet secretaries-designate, I recorded the number of groups actually either appearing at the confirmation hearings each nominee, or submitting materials to the hearing record.[130] When at least one interest group either presented testimony or submitted materials for the hearing record, interest groups were recorded as being present during formal Senate consideration of a nominee.

Similarly, in both data sets, *the direction of interest group participation* is measured on a Likert scale, from '1' (unanimously in favor of a nominee) to '5' (unanimously opposed to a nominee). In cases where more than one organization participated in a confirmation hearing, the direction variable was coded based on the direction of the majority position of all the groups. If there was no majority in favor or opposed to a nominee, the variable was coded '3' for mixed participation. *Divided Government* is measured as split party control of the presidency and the Senate. The variable was coded '0' when the president and Senate were controlled by the same party (1979-1980, and 1993-1994) and was coded '1' when the president and Senate were controlled by different parties (1981-1992).

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[130] The exception to this is the American Bar Association (ABA). Because it assesses and reports on every judicial nominee, it is not included in my count of interest groups that participate on individual judicial nominations (See Report of the American Bar Association [undated]).

The method noted above is consistent with the methodology used by Segal and Spaeth (1995) in their study of factors influencing the staffing of the Supreme Court. As they point out, this method of coding interest group participation clearly can not comprehensively identify interest group lobbying of individual senators; but Segal and Spaeth also note that there is no way to obtain such information. They state:

> In the best of all possible situations, we would have senator-level data on the amount of lobbying by organized interests...Obviously, such data are unavailable. Thus, while recognizing that some senators will be lobbied more than others, we chose a variable that measures lobbying activity with respect to each nominee, the number of organized interests presenting testimony for ... and against the nominee...at the Senate Judiciary Committee hearings. ... [W]e presume that the more opposition a nominee has, the less support he or she will have, and alternatively, the more organized support for a nominee, the more support he or she will have" (Segal and Spaeth 1993, 150).

In the analyses described below, the data collected from Committee hearings, with regard to interest group participation and the direction of that participation, by necessity acts as a proxy for senator-level data on group lobbying efforts.

Hypothesis Testing

In Chapter Four, three main hypotheses were tested. First, the hypothesis that interest groups had become more involved in the confirmation process for federal judges since Robert Bork's failed confirmation in 1987 was explored. Using frequency distributions to determine the number of individuals nominated, the number of confirmation hearings held, and the number of instances of interest group participation

during confirmation hearings between 1979 and 1998, it became clear that formal interest group participation had actually declined substantially since 1987. (These results appear in Table 4.1). Then, descriptive statistics and logistic regression were used to test two additional hypotheses. Logistic regression is an appropriate methodology because in both hypothesis tests, the dependent variable is dichotomous (Agresti 1996; Menard 1995; Agresti 1984).

The second additional hypothesis tested in Chapter Four is that political factors influence whether interest groups participate in the confirmation process for federal judges. First, chi-square analysis was conducted to determine whether there were significant associations between variables in both models. When it became apparent that there were significant associations between interest group participation in confirmation hearings and a series of environmental variables, a model of group participation was developed. In order to operationalize the model, two variables were recoded into dichotomous independent variables. First, the POSITION variable was recoded to reflect a circuit court nomination vs. a non-circuit court nomination.[131] Thus a new variable was created:

Circuit Court of Appeals Nomination: (CIRCUIT)
Yes = '1'
No = '0'

Then, the CHAIR variable was recoded. Because its initial coding suggested some kind

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[131] This is theoretically sound because, as was indicated in Chapter Four, previous studies have found that senators and interest groups tend to view Circuit Court of Appeals nominations as more important than other lower federal court nominations.

(Footnotes continued on next page)

of ordinal ranking among committee chairman, it was recoded as a series of dummy variables to show that a confirmation hearing took place during the chairmanship of a particular individual. The new variables are as follows:

Was Edward Kennedy the Chairman? (KENNEDY)
Yes = '1'
No = '0'
Was Strom Thurmond the Chairman? (THURMOND)
Yes = '1'
No = '0'
Was Orrin Hatch the Chairman? (HATCH)
Yes = '1'
No = '0'

It should be noted that there was no new variable computed to reflect Joseph Biden's chairmanship of the Senate Judiciary Committee, since those confirmation hearings that took place during Biden's chairmanship is determined by a negative response to the three other chairmanship variables.

Once the key variables needed to test whether the political environment affects the likelihood of formal interest group participation, a logistic regression analysis was performed. The analysis was modeled as follows:

GROUPS = Constant + DIVGOV + CIRCUIT + KENNEDY + THURMOND + HATCH

The results of this hypothesis test appear in Chapter Four. An examination of the results indicates that multicollinearity between the chairmanship variables and the divided government variable is highly problematic. Thus, a new model was tested, which did not include the divided government variable. This model is as follows:

GROUPS = Constant + CIRCUIT + KENNEDY + THURMOND + HATCH

Finally, to test the third hypothesis – that interest group participation, and the direction of that participation, are important determinants of confirmation outcomes – logistic regression analysis again is used. Again, it became necessary to recode one of the variables in the analysis. In order to appropriately specify the direction of interest group participation, the DIRECTIO variable was recoded into a new variable:

What Was the Direction of Interest Group Participation? (DIRECT2)
- Groups Took No Position on the Nominee = '0'
- Groups Unanimously Supported the Nominee = '1'
- Majority of Groups Supported the Nominee = '2'
- Groups' Opinions Were Mixed = '3'
- Majority of Groups Opposed the Nominee = '4'
- Groups Unanimously Opposed the Nominee = '5'

Once the new variable was created, it was possible to proceed with the hypothesis test. This time, the model is specified as follows:

CONFIRM = Constant + GROUPS + DIRECT2 + KENNEDY + THURMOND + HATCH

In each table of results, an impact-assessment calculation also is included. The impact of each independent variable on the dependent variables in question (group participation and confirmation outcome, respectively) is calculated based upon the method specified by Segal and Spaeth (1993) in their study of influences on confirmation outcomes for Supreme Court nominees. They explain that in order to "determine the influence of a one (or more) unit change in any independent variable from any prior probability level," a researcher must:

1. Choose a prior probability level.[132]
2. Determine the odds ratio OR=(Pi/1-Pi) for that prior probability level.
3. Take the log of the OR of the prior probability level.
4. For a one-unit change in the independent variable, determine the new log of the odds ratio by adding or subtracting the estimated B for the coefficient of interest. This is the new log of the odds ration after the influence of the variable in question. ...
5. Take the anti-log of the new OR. This is the new odds ratio.
6. Divide the OR by 1+OR. This is the new probability of an event happening.
7. Compare the new probability with the prior probability of the event happening. (Segal and Spaeth 1995, 371-2).

Once the calculations were completed, the difference in probability of the phenomenon measured by the dependent variable occurring when the independent variable is included in the analysis appears in the "Impact" column of the analysis tables.

In Chapter Five, the data collected on cabinet secretaries-designate was used to compile Table 5.1, which examined the extent to which interest groups participated in confirmation hearings for these nominees between 1979 and 1998. In order to compile this table, frequency distributions drawn from the data were used. Because the majority of the data compiled regarding cabinet appointees was nominal data, no further quantitative tests were performed on the data. Instead, qualitative data were used to supplement the remainder of the analysis and discussion in Chapter Five.

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[132] In the case of all analyses involving lower court nominees, the prior probability level was set at .85, the probability that any given nominee will be confirmed by the Senate.

QUALITATIVE METHODOLOGY

In addition to the quantitative analysis of confirmation hearings for judicial nominees and cabinet nominees, this project uses qualitative evidence support the findings of the logistic regression analysis. Most significantly, this project relies on data gathered through participant observation. Fenno (1978) pioneered the use of qualitative "participant observation" in *Home Style*. Although Fenno's research focused on interviews with members of Congress, his notes on methodology are useful for understanding the qualitative methodology employed in this study. He notes:

> Research based on participant observation is likely to have an exploratory emphasis. Someone doing this kind of research is quite likely to have no crystallized idea of what he or she is looking for or what questions to ask when he or she starts. Researchers typically become interested in some observable set of activities and decide to go have a firsthand look at them (Fenno 1978, 250).

By spending 10 months immersed in confirmation politics, I was able to observe several phenomena related to interest group participation.

In addition to participant observation, I conducted 23 interviews with individuals who are or have been integrally involved in the confirmation process. All of these were all open-ended interviews, although similar questions were asked of all interviewees. Interview subjects were selected based upon research into the important players in the confirmation process. All were contacted personally via telephone, e-mail, or personal visit, and formal interviews were set up. Subjects were told that they were being interviewed for a dissertation on the role of interest groups in the Senate confirmation

process. Interviewees were also told that their comments would be on the record, but that at any time they could specify that they preferred their comments to be kept anonymous. One individual specifically requested that the entire interview be kept anonymous. The interview subjects and affiliations are as follows:

Alex Acosta – Director, Project on the Judiciary

Anonymous Congressional Research Service Specialist

Nan Aron – Director, Alliance for Justice

Melody Barnes, Chief Counsel to Senator Edward M. Kennedy (D-MA)

Victoria Bassetti – Chief Counsel to Senator Richard Durbin (D-IL)

Linda Berg – National Organization for Women

David Boren (D-OK) – Former Senator and Judiciary Committee Member

Tracy Hahn-Burkett – Legislative Aide, People for the American Way and former staffer to Senator Herb Kohl, D-WI

Michael Carrasco – Minority Nominations Clerk, Senate Committee on the Judiciary

Bruce Cohen – Minority Chief Counsel, Senate Committee on the Judiciary

Rhett DeHart – Former Counsel to Senator Jeff Sessions (R-AL) and current Counsel to Senator Orrin Hatch (R-UT)

Mary DeOreo – Investigator, Senate Committee on the Judiciary

Mark Fox, Legislative Assistant to Senator Daniel Inouye (D-HI)

Roger Garcia, Congressional Research Service Specialist

Tom Jipping – Executive Director, People for the American Way

Stephan Kline – Director, Judicial Selection Project

Eliot Mincberg – Legal Director, People For the American Way

Edward Perkins – Former Ambassador to Liberia, South Africa, the United Nations, and Australia

Mary Ellen Schattman – Wife of Michael Schattman and independent researcher

Michael Schattman – Nominee to the Federal District Court of North Texas

Steve Schwalm – Family Research Council

Paul Simon (D-IL) – Former Senator and member of the Senate Committee on the Judiciary

Ron Weich – Former Chief Counsel to Senator Edward M. Kennedy

Although the interviews were open ended, subjects were asked similar questions. The two former senators and the Senate staffers that I interviewed (N=9) were asked about the extent to which they utilize information from interest groups, the extent to which they seek out information from interest groups, their view about the involvement of interest groups in the confirmation process, and their views about the proper role of interest groups in the confirmation process. Former nominees (2) were asked about their

impressions of the confirmation process in general, the extent to which interest groups participated in their confirmation process, and their views about the proper role of interest groups in the confirmation process. Interest group leaders were asked to comment on whether they attempt to influence the confirmation process, the strategies they use, and their measures of success. They also were asked to provide copies of any written materials they had produced relative to the confirmation process.

APPENDIX TWO:

DATA SET INFORMATION SOURCES

The following confirmation hearings and Senate Committee Calendars were used to compile the data sets used in this project:

Committee on Agriculture, Nutrition, and Forestry. United States Senate. *Nomination of John R. Block To Be Secretary of Agriculture.* Jan. 6, 1981. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination of Richard E. Lyng.* Mar. 4, 1986. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination of Clayton Yeutter.* Feb. 2, 1989. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination of Edward R. Madigan.* Mar. 5, 1991. Washington, D.C: Government Printing Office.

----------. United States Senate. Nomination of Hon. Mike Espy. Jan. 14, 1993. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Dan Glickman Nomination.* Mar. 28, 1995. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination Hearing of Daniel R. Glickman.* Mar. 21, 1995.

Committee on Armed Services. United States Senate. *Nominations: Harold Brown and Charles W. Duncan, Jr.* Jan. 11, 1977. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination of Caspar W. Weinberger To Be Secretary of Defense.* Jan. 6, 1981. Washington, D.C: Government Printing Office.

----------. United States Senate. *Nominations Before the Senate Armed Services Committee, First Session, 100th Congress [Frank Carlucci].* Jan. 28, Feb. 25, Apr. 6, May 20, June 10, 24, Aug. 4, Sept. 29, Oct. 9, 14, 16, Nov. 12, 19, 24, Dec. 1, 10, 11, 15, 18, 1987. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nominations Before the Senate Armed Services Committee, First Session, 101st Congress. [Richard Cheney].* Mar. 14, 16, Apr. 5, 18, 19, May 3, 4, 16, 18, June 22, July 31, Aug. 3, Sept. 7, 8, 20, Oct. 6, 17, Nov. 7, 9, 20,1989. Washington, D.C: Government Printing Office.

----------. United States Senate. *Nominations Before the Senate Armed Services Committee, First Session, 103d Congress.* Jan. 7, 20, Feb. 16, 25, Mar. 4, 11, 30, Apr. 28, May 13, 18, 19, 25, June 11, 30, July 13, 20, 30, Sept. 22, 23, Oct. 7, Nov. 10, 18, 1993. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nominations Before the Senate Armed Services Committee, First Session, 105th Congress.* Jan. 22, Feb. 5, Mar. 6, July 9, 17, 24, Sept. 9, 16, Oct. 1, 23, 30, Nov. 8, 1997. Washington, D.C.: Government Printing Office.

Committee on Banking, Housing, and Urban Affairs. United States Senate. *Nomination: Patricia Roberts Harris.* Jan. 10, 1977. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination of Moon Landrieu.* Sept. 6, 1979. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination of Samuel R. Pierce, Jr.* Jan. 13, 1981. Washington, D.C: Government Printing Office.

----------. United States Senate. *Nomination of Jack Kemp.* Jan. 27, 1989. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination of Henry Cisneros.* Jan. 12, 1993. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination of Andrew M. Cuomo.* Jan. 22, 1997. Washington, D.C.: Government Printing Office.

Committee on Commerce, Science, and Transportation. United States Senate. *Nominations: Secretaries Departments of Transportation and Commerce*. Jan. 7, 10, 1977. Washington, D.C.: Government Printing Office.

----------. *Nomination: Secretary of Commerce [Malcolm Baldridge]*. United States Senate. Jan. 6, 1981. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination: Secretary of Transportation [Andrew Lewis]*. Jan. 7, 1981. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination: DOT*. Jan. 26, 1983. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination: Department of Commerce [C. William Verity]*. Sept. 10, 1987. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nominations: DOT [James Burnley]*. Nov. 17, 1987. Washington, D.C.: Government Printing Office.

----------.United States Senate. *Nominations: Department of Commerce [Robert Mosbacher]*. Jan. 24, 1989. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nominations: DOT (Samuel K. Skinner)*. Jan. 25, 1989. Washington, D.C.: Government Printing Office.

----------.United States Senate. *Nomination of Ronald Harmon Brown To Be Secretary of Commerce*. Jan. 6, 1993. Washington, D.C.: Government Printing Office.

----------.United States Senate. *Nomination of William Daley To Be Secretary of Commerce*. Jan. 22, 1997. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination of Hon. Rodney E. Slater To Be Secretary of Transportation*. Jan. 29, 1997.

Washington, D.C.: Government Printing Office.

Committee on Energy and Natural Resources. *United States Senate. Nomination of Dr. James R. Schlesinger to be the Nation's First Secretary of Energy*. Aug. 3, 1977. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Charles William Duncan, Jr. Nomination*. July 30, 1979. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination -- Secretary of Transportation [Neil Goldschmidt]*. Sept. 5, 1979. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nominations -- Department of Commerce and Federal Maritime Commission.* Dec. 19, 1979. Washington, D.C.: Government Printing Office.

----------.United States Senate. *James G. Watt Nomination, Part I.* Jan. 7, 8, 1981. Washington, D.C.: Government Printing Office.

----------. United States Senate. *James B. Edwards Nomination.* Jan. 12, 1981. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Hodel and Hesse Nominations*. Dec. 1, 1982. Washington, D.C.: Government Printing Office.

----------. United States Senate. *William P. Clark Nomination.* November 1, 2, 1983. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Donald Paul Hodel Nomination.* February 1, 1985. Washington, D.C.: Government Printing Office.

----------. United States Senate. *John S. Herrington Nomination.* Jan. 31, 1985: Washington, D.C.: Government Printing Office.

----------. United States Senate. *James D. Watkins Nomination.* Feb. 22, 1989. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Hazel R. O'Leary*

Nomination. Jan. 19, 1993. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Bruce Babbitt Nomination.* Jan. 19, 21, 1993. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Federico F. Pena Nomination.* Jan. 30, 1997. Washington, D.C.: Government Printing Office.

Committee on Finance. United States Senate. *Blumenthal Nomination.* Jan. 12, 1977. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nominations: Joseph A. Califano, Jr. and Laurence N. Woodworth.* Jan. 13, 1977. Washington, D.C.: Government Printing Office.

----------United States Senate. *Nomination of G. William Miller.* July 27, 1979. Washington, D.C.: Government Printing Office.

----------United States Senate. *Nomination of Patricia Harris.* July 25, 26, 1979. Washington, D.C.: Government Printing Office.

---------- United States Senate. *Nomination of Donald T. Regan.* Jan. 6, 1981. Washington, D.C: Government Printing Office.

---------- United States Senate. *Nomination: Richard S. Schweiker.* Jan. 6, 1981. Washington, D.C.: Government Printing Office.

---------- United States Senate. *Nominations of Margaret M. Heckler and John A. Svahn.* Feb. 25, 1983. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination of James A. Baker III.* Jan. 23, 1985. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination of Dr. Otis R. Bowen.* Dec. 10, 1985. Washington, D.C.: Government Printing Office.

----------.United States Senate. *Nomination of Nicholas F. Brady* . Sept. 13, 1988. Washington, D.C.: Government Printing Office.

----------.United States Senate. *Anticipated Nomination of Hon. Lloyd Bentsen.* Jan. 12, 1993. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Anticipated Nomination of Donna E. Shalala.* Jan. 14, 1993. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination of Robert E. Rubin.* Jan. 10, 1995. Washington, D.C.: Government Printing Office.

Committee on Foreign Relations. United States Senate. *Vance Nomination.* Jan. 11, 1977. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination of Edmund S. Muskie.* May 7, 1980. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination of Alexander M. Haig, Jr., Part 1.* Jan. 9, 10, 12, 13, 1981. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination of Alexander Haig, Part 2.* Jan 14, 15, 1981. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination of Warren M. Christopher To Be Secretary of State.* Jan. 13, 14, 1993. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination of Secretary of State [Madeleine Albright].* Jan. 8, 1997. Washington, D.C.: Government Printing Office.

Committee on Interior and Insular Affairs. United States Senate. *Interior Nomination.* Jan. 17, 18, 1977. Washington, D.C.: Government Printing Office.

Committee on the Judiciary, United States Senate. 1977. *Griffin Bell.* Jan. 11-14, 17-19, 1977. Washington, D.C: Government Printing Office.

----------. 1979. *Confirmation Hearings on Benjamin R. Civiletti, Nominee, Attorney General.* July 25-27, 1979. Washington D.C.: Government Printing Office

---------- 1980. *Confirmation Hearings on Federal Appointments.* 96th Congress, First Session. Washington, D.C.: Government Printing Office.

---------- 1980b. *Legislative and Executive*

Calendar. 96th Congress (final edition).

---------- 1981. *Confirmation Hearings on Federal Appointments.* 96th Congress, Second Session. Washington, D.C.: Government Printing Office.

---------- *Confirmation Hearing on William French Smith, Nominee To Be Attorney General.* Jan. 15, 1981. Washington, D.C.: Government Printing Office.

---------- 1982. *Confirmation Hearings on Federal Appointments.* 97th Congress, First Session. Washington, D.C.: Government Printing Office.

---------- 1982b. *Legislative and Executive Calendar.* 97th Congress (final edition).

---------- 1983. *Confirmation Hearings on Federal Appointments.* 97th Congress, Second Session. Washington, D.C.: Government Printing Office.

---------- 1984. *Confirmation Hearings on Federal Appointments.* 98th Congress, First Session. Washington, D.C.: Government Printing Office.

---------- 1985. *Confirmation Hearings on Federal Appointments.* 98th Congress, Second Session. Washington, D.C.: Government Printing Office.

---------- Confirmation of Edwin Meese III. Jan. 29-31, 1985. Washington, D.C.: Government Printing Office.

---------- 1986. *Confirmation Hearings on Federal Appointments.* 99th Congress, First Session. Washington, D.C.: Government Printing Office.

---------- 1987. *Confirmation Hearings on Federal Appointments.* 99th Congress, Second Session. Washington, D.C.: Government Printing Office.

---------- 1988. *Confirmation Hearings on Federal Appointments.* 100th Congress, First Session. Washington, D.C.:

Government Printing Office.

---------- 1989. *Confirmation Hearings on Federal Appointments.* 100th Congress, Second Session. Washington, D.C.: Government Printing Office.

---------- *Confirmation Hearings on Federal Appointments, Part 8 [Richard Thornburgh].* July 27, 28, Aug. 5, Sept. 8, 1988. Washington, D.C.: Government Printing Office.

---------- 1990. *Confirmation Hearings on Federal Appointments.* 101st Congress, First Session. Washington, D.C.: Government Printing Office.

---------- 1991. *Confirmation Hearings on Federal Appointments.* 101st Congress, Second Session. Washington, D.C.: Government Printing Office.

---------- . *Confirmation Hearings on Federal Appointments. Part 2: William P. Barr.* Nov. 12, 13,1991.Washington, D.C.: Government Printing Office.

---------- 1992. *Confirmation Hearings on Federal Appointments.* 102nd Congress, First Session. Washington, D.C.: Government Printing Office.

---------- 1993. *Confirmation Hearings on Federal Appointments.* 102nd Congress, Second Session. Washington, D.C.: Government Printing Office.

---------- 1994. *Confirmation Hearings on Federal Appointments.* 103rd Congress, First Session. Washington, D.C.: Government Printing Office.

---------- 1995. *Confirmation Hearings on Federal Appointments.* 103rd Congress, Second Session. Washington, D.C.: Government Printing Office.

---------- 1996. *Confirmation Hearings on Federal Appointments.* 104th Congress, First Session. Washington, D.C.: Government Printing Office.

---------- 1997. *Confirmation Hearings on Federal Appointments.* 104th Congress, Second Session. Washington, D.C.: Government Printing Office.

---------- 1998. *Confirmation Hearings on Federal Appointments.* 105th Congress, First Session. Washington, D.C.: Government Printing Office.

---------- United States Senate. *Nomination of Janet Reno To Be Attorney General of the U.S.* Mar. 9, 10, 1993. Washington, D.C.: Government Printing Office.

Committee on Labor and Human Resources. United States Senate. *Nomination of F. Ray Marshall.* Jan. 13, 1977. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Joseph A. Califano, Jr., to be Secretary of Health, Education and Welfare: Additional Consideration.* Jan. 13, 1977. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Patricia Roberts Harris To Be Secretary of Health, Education, and Welfare -- Additional Consideration.* July 26, 1979. Washington, D.C.: Government Printing Office.

----------.United States Senate. *Nomination [Shirley Hufstedler*]. Nov. 27, 1979. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination: Terrel H. Bell.* Jan. 15, 1981. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination: Raymond J. Donovan.* Jan. 12, 27, 1981. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Margaret M. Heckler, To Be Secretary, Department of Health and Human Services, Additional Consideration.* Mar. 3, 1983. Washington, D.C.: Government Printing Office.

----------. *Nomination (William Emerson Brock III).* United States Senate. Apr. 23, 1985. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination (Otis R. Bowen).* Dec. 11, 1985. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination (William J. Bennett).* Jan. 28, 1985. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination (Elizabeth Hanford Dole).* Jan. 19, 1989. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination (Lynn Martin).* Jan. 30, 1991. Washington, D.C.: Government Printing Office.

----------.United States Senate. *Nomination (Andrew L. Alexander).* Feb. 6, 1991. Washington, D.C: Government Printing Office.

----------.United States Senate. *Nomination (Robert Reich).* Jan. 7, 1993. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination (Richard W. Riley).* Jan. 12, 1993. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination (Donna E. Shalala).* Jan. 15, 1993. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination (Alexis M. Herman).* Mar. 18, 1997. Washington, D.C.: Government Printing Office.

Committee on Veterans' Affairs. United States Senate. *Nomination of Hon. Edward J. Derwinski.* Mar. 1, 2, 1989. Washington, D.C.: Government Printing Office.

----------. United States Senate. *Nomination of Jesse Brown To Be Secretary of Veterans Affairs.* Jan. 7, 1993. Washington, D.C.: Government Printing Office.

Rutkus, Denis Steven. 1998. "Judicial Nominations by President Clinton During the 103rd - 105th Congresses." *CRS Report for Congress.* January 24, 1998.

---------- 1997. "Judicial Nominations by President Clinton During the 103rd and 104th Congresses." *CRS Report for Congress.* January 24, 1997.

---------- 1993. "Judicial Nominations by President Bush During the 101st and 102nd Congresses." *CRS Report for Congress.* March 29, 1993.

---------- *1991.* "Judicial Nominations by President Bush During the 101st

Congress." *CRS Report for Congress.*

---------- 1988. "Judicial Nominations by President Reagan During the 100th Congress." *CRS Report for Congress.*

---------- 1986. "Judicial Nominations by President Reagan During the 99th Congress." *CRS Report for Congress.*

---------- 1984. "Nomination and Confirmation Actions: 98th Congress" *CRS Report for Congress.*

APPENDIX THREE:

INTEREST GROUPS IN THE CONFIRMATION PROCESS, 105th CONGRESS

The following is a list of those organizations that expressed an opinion about one or more nominees, or about the confirmation process in general, during the 105th Congress. Some organizations listed below were active participants in the process, compiling information and communicating it to senators. Other organizations merely signed on to materials produced by another organization.

This list was compiled by a search of the *Congressional Record* and by an examination of available committee transcripts of confirmation hearings. Every effort has been made to provide a complete listing of interest groups that participated in the process during the 105th Congress.

60 Plus Association
Accuracy in Media
Adirondack Solidarity Alliance
AIDS Action Council
Alabama Citizens for Truth
Alabama Family Alliance
Alliance for America
Alliance Defense Fund
Alliance for Justice
American Academy of Family Physicians
American Academy of Child and Adolescent Psychiatry
American Academy of Pediatrics
American Association of Christian Schools
American Association of Clinical Endocrinologists
American Association of Health Plans
American Association of Neurological Surgeons
American Association of Nurse Anesthetists
American Association of Public Health Physicians

American Association of Small Property Ownership
American Association of University Women
American Bar Association
American Cancer Society
American Center for Legislative Reform
American Center for Law and Justice
American Citizens and Lawmen Association
American Coalition of Life Activists
American College of Chest Physicians
American College of Emergency Physicians
American College of Gastroenterology
American College of Nuclear Physicians
American College of Obstetricians and Gynecologists
American College of Physicians
American College of Preventative Medicine
American Conservative Union
American Correctional Association
American Council on Economic Security
American Council for Immigration Reform
American Dental Association
American Diabetes Association
American Dietetic Association
American Family Association
American Family Association of Alabama
American Family Association of Kentucky
American Family Association of Michigan
American Family Association of New Jersey
American Family Association of New York
American Family Association of Oregon
American Family Association of Virginia, Inc.
American Family Defense Coalition
American Focus
American Foundation (OH)
American Freedom Crusade
American Gastroenterological Association
American GI Forum
American Hospital Association
American Immigration Control
American Jewish Congress
American Loggers Solidarity
American Lung Association
American Medical Association
American Medical Group Association
American Medical Women's Association
American Nurses Association
American Policy Center
American Pro-Constitutional Association
American Psychiatric Association
American Public Health Association
American Public Philosophy Institute
American Rights Coalition
American Society of Cataract and Refractive Surgery
American Society of Clinical Pathologists
American Society of Pediatric Nephrology
American Society of Reproductive Medicine
American Society for Transplant Physicians
American Sovereignty Action Project
Americanism Foundation
Americans for Democratic Action
Americans for Tax Reform
Americans for Voluntary School Prayer
Arkansas Policy Foundation
Arizona Policy Union
Arizona Eagle Forum
Armstrong Foundation
Asian American Bar Association of the Delaware Valley
Asian American Legal Defense and Education Fund
Association of American Medical Colleges

Association of Attorney-Mediators
Association of the Bar of the City of New York
Association of New Jersey Rifle and Pistol Clubs
Association of Schools of Public Health
Association of Maternal and Child Health Programs
Association of State and Territorial Health Officials
Barrister Association of Philadelphia
Bazelon Center for Mental Health Law
Black Women Lawyers Association of Los Angeles
Boston Bar Association
Business and Professional People for the Public Interest
California Correctional Peace Officers Association
California Medical Association
California Narcotics Officers Association
California Women Lawyers
Californians for America
Campaign for Working Families
Capital Research Center
Catholic League for Religious and Civil Rights
Center for Arizona Policy
Center for Equal Opportunity
Center for Faith and Freedom, Inc.
Center for Individual Rights
Center for Law in the Public Interest
Center for Law and Social Policy
Center for New Black Leadership
Center for the New West
Center for Public Representation
Center for Reclaiming America
Center for Reproductive Law and Policy
Center for Science in the Public Interest
Chicago Committee for Civil Rights Under Law
Children's Defense Fund
Children's Health Fund
Christian Action Network
Christian Civic League of Maine
Christian Coalition
Christian Coalition of California
Christian Coalition of Georgia
Christian Coalition of Hawaii
Christian Coalition of Kansas
Christian Coalition of Kentucky
Christian Coalition of Louisiana
Christian Coalition of Montana
Christian Coalition of New York
Christian Coalition of North Carolina
Christian Coalition of Pennsylvania
Christian Coalition of Rhode Island
Christian Committees of Correspondence
Christian Exchange, Inc.
Christian Home Educators of Kentucky
Christian Home Educators of New Hampshire
Christian Values in Action Coalition, Inc.
Citizens Against Repressive Zoning
Citizens Against Violent Crime
Citizens for Action Now
Citizens for Better Government
Citizens for Budget Reform
Citizens for Community Values
Citizens for Excellence in Education
Citizens for Independent Courts
Citizens for Judicial Reform
Citizens' Justice Programs
Citizens for Law and Order
Citizens for Responsible Government
Citizens United
Coalition Against Pornography
Coalition for America
Coalition for Constitutional Liberties
Coalition for Health Funding
Coalition on Urban Renewal and Education
College of American Pathologists
Colorado for Family Values

Colorado Term Limits Coalition
Commercial Law Affiliates
Community Law Center
Concerned Women for America
Concerned Women for America of Virginia
Congress of Neurological Surgeons
Consumer's Union
Coral Ridge Ministeries
Council of State and Territorial Epidemiologists
Crooked Lake North Shore Association
Defenders of Property Rights
Delaware Home Education Association
Dialogue on Diversity
Direct Legislation League
Disability Rights Education and Defense Fund
Eagle Forum
Eagle Forum of Alabama
Eagle Forum of Arkansas
Eagle Forum of California
Eagle Forum of Delaware
Eagle Forum of Florida
Eagle Forum of Hawaii
Eagle Forum of Idaho
Eagle Forum – Illinois
Eagle Forum of Louisiana
Eagle Forum of Minnesota
Eagle Forum of Mississippi
Eagle Forum of Ohio
Eagle Forum of Washington
Eagle Forum of Washington, DC
Eagle Forum of Wisconsin
Education Law Center
Emergency Nurses Association
Employment Law Center
English First
Equal Rights Advocates
Eugene (OR) Police Employees' Association
Fairness to Land Owners Committee
Families USA
Family of the Americas Foundation
Family First
Family Foundation (VA)
Family Friendly Libraries
Family Policy Network
Family Protection Lobby of Maryland
Family Research Council
Family Research Institute of Wisconsin
Family Taxpayers Network
Family Violence Prevention Fund
First Principles, Inc.
Focus on the Family
Food Research and Action Center
Fraternal Order of Police
Fraternal Order of Police – Philadelphia Lodge
Freedom Foundation
Freedom in Medicine Association
Frontiers of Freedom
Greenfield Movement to Impeach Federal Judge John T. Nixon
Georgia Family Council
Georgia Public Policy Foundation
Georgia Sport Shooting Association
Gun Owners Action League Help America First
Gun Owners of South Carolina
Hispanic Association of Colleges and Universities
Hispanic Association on Corporate Responsibility
Hispanic National Bar Association
Hispanic United of Maryland
Home School Legal Defense Association
Hospital and Health System Association of Pennsylvania
Human Life Alliance of MN
Human Rights Council
Illinois Citizens for Life
Illinois Family Institute
Illinois Right to Life Committee

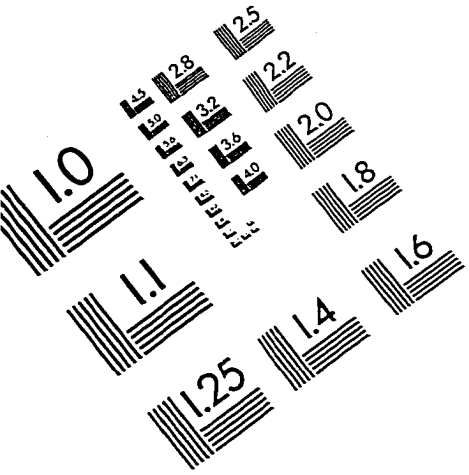
Independence Institute
Independent American Party of Nevada
Independent Women's Forum
Indiana Conservative Union
Indiana Family Institute
Institute for Justice
Institute for Media Education
Institute for Public Representation
Interamerican College of Physicians and Surgeons
Intercultural Cancer Council
International Union of Police Associations, AFL-CIO
Iowa Family Policy Center
Joint Action Committee for Political Affairs
Judicial Selection Monitoring Project
Judicial Watch, Inc.
Justice for Homicide Victims
Justice for Murder Victims
Juvenile Law Center
Kansas Conservative Union
Kansas Family Research Institute
Kansas Taxpayers Network
Labor Council for Latin American Advancement
Land Rights Foundation
Landmark Legal Foundation
Lane County (OR) Peace Officers Association
Latino Civil Rights Center
Law Enforcement Alliance of America
Lawyers Club of San Diego
Leadership Conference on Civil Rights
League of American Families
League of United Latin American Citizens
Libertarian Party of Utah
Liberty Foundation
Liberty Matters
Life Advocacy Alliance
Life Coalition International
Life Decisions International
Local Government Council
Los Angeles County Bar Association
Los Angeles County Professional Peace Officers Association
Madison Project
Maine Grassroots Coalition
Maine State Bar Association
March of Dimes Birth Defects Foundation
Maryland Conservative Caucus
Massachusetts Family Institute
Medina County Christian Coalition
Memory of Victims Everywhere (M.O.V.E.)
Memphis (TN) Bar Association
Mexican American Legal Defense and Education Fund
Michigan Decency Action Council
Michigan Family Forum
Milwaukee Police Association
Mississippi American Family Association
Mississippi Family Council
Mississippi State Medical Association
Missouri Association of Teaching Christian Homes
Missouri Christian Coalition
Morality Action Committee
NW Council of Governments and Associates
National Abortion Rights Action League
National Abstinence Clearinghouse
National Asian-Pacific American Bar Association
National Asian Women's Health Organization
National Association for the Advancement of Colored People (NAACP)
National Association for Bilingual Education
National Association of Blacks in Criminal Justice
National Association of Children's Hospitals

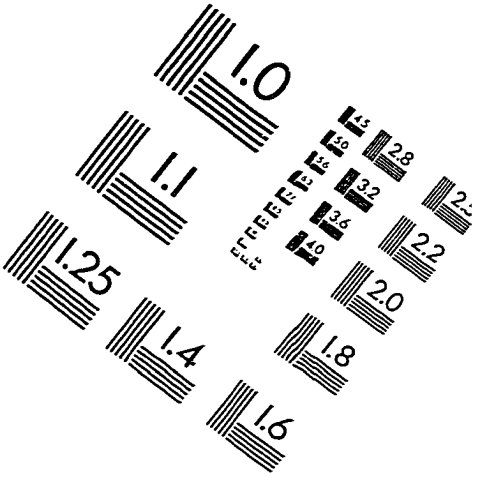
National Association of County and City Health Officials
National Association of Evangelicals
National Association of Hispanic Publications
National Association of Latino Elected and Appointed Officials
National Association for Neighborhood Schools
National Association of People With AIDS
National Association of Police Organizations
National Association for Public Health Policy
National Association of Public Hospitals and Health Systems
National Association of Social Workers
National Association of Women Judges
National Black Child Development Institute
National Black Nurses Association
National Black Women's Health Project
National Breast Cancer Coalition
National Center for Constitutional Studies
National Center for Public Policy Research
National Center for Youth Law
National Citizens Legal Network
National Clearinghouse for Legal Services
National Coalition for the Protection of Children and Families
National Conference of Puerto Rican Women
National Conference of Women's Bar Associations
National Council of La Raza
National Education Association
National Employment Lawyers Association
National Family Legal Foundation
National Family Planning and Reproductive Health Association
National Hispanic Caucus of State Legislators
National Hispanic Council on Aging
National Hispanic Leadership Agenda
National Hispanic Medical Association
National Immigration Law Center
National Institute of Family and Life Advocates
National Latina/o Lesbian and Gay Organization
National Law Center on Homelessness and Poverty
National Legal Aid and Defender Association
National Legal Foundation
National Legal and Policy Center
National Medical Association
National Mental Health Association
National Multiple Sclerosis Society
National Organization of Black Law Enforcement Executives
National Organization for Women
National Organization for Women Legal Defense and Education Fund
National Osteoporosis Foundation
National Parents' Commission
National Pharmaceutical Association
National Puerto Rican Coalition
National Task Force on AIDS Prevention
National Tax Limitation Committee
National Urban Coalition
National Veterans Legal Services Program
National Wildlife Federation
National Women's Law Center
Native American Rights Fund
Natural Resources Defense Council
New Hampshire Christian Coalition
New Jersey Family Policy Council
New Mexico Shooting Sports Association
New York Eagle Forum
New York Lawyers for the Public Interest

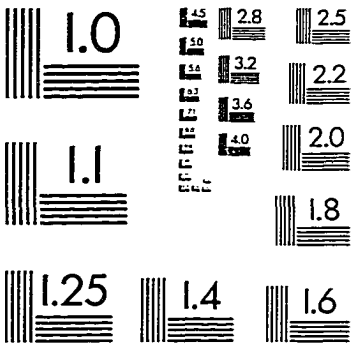
New Yorkers for Constitutional Freedoms
North Carolina Family Policy Council
North Dakota Christian Coalition
Oklahoma Christian Coalition
Oklahoma Council of Public Affairs
Oklahoma Family Policy Council
Oklahoma Conservative Committee
Oklahomans for Children and Families
Oregon Bar Association
Oregon State Police Officers Association
Organized Victims of Violent Crime
Palmetto Family Council
Parents Rights Coalition
Partnership for Prevention
Pennsylvania Landowners Association
Pennsylvania National Organization for Women
Pennsylvania Rifle and Pistol Association
Pennsylvania District Attorneys Association
People for the American Way
Philadelphia Bar Association
Philadelphians Against Crime
Planned Parenthood Federation of America
Plymouth Rock Foundation
Professional Fire Fighters of Wisconsin, Inc.
Project 21
Project on the Judiciary
Providence Foundation
Public Advocates, Inc.
Public Interest Institute
Public Justice Center
Puerto Rican Bar Association
Puerto Rico Federal Affairs Administration
Religious Freedom Coalition
Religious Roundtable
Right to Life of Greater Cincinnati
Santa Clara County (CA) Bar Association
Save America's Youth
Seniors Coalition
Society of Nuclear Medicine
Society for Public Health Education
Society of Thoracic Surgeons
South Dakota Family Policy Council
Southeastern Legal Foundation
Southwest Voter Registration and Education Project
Stop Promoting Homosexuality America
Strategic Policies Institute
Students for America
Sutherland Institute
Take Back Arkansas, Inc.
TEACH Michigan Foundation
Tennessee Eagle Forum
Tennessee Family Institute
Tennessee Public Policy Foundation
Tennessee Medical Association
Tides Center
Texas Right to Life Committee Inc.
Toward Tradition
Traditional Values Coalition
United Seniors Association
US Business and Industrial Council
US Taxpayers Alliance
United States Department of Health and Human Services Hispanic Employee Organization
Utah Coalition of Taxpayers
Virginia Eagle Forum
Wall Builders
Washington Women Lawyers
Watchdogs Against U.S. Government
We The People of West Virginia
Welfare Law Center
West Virginia Family Foundation
Western Growers Association (Newport Beach, CA)
Wilderness Society
Wisconsin Christians United
Wisconsin Coalition Against Domestic Violence

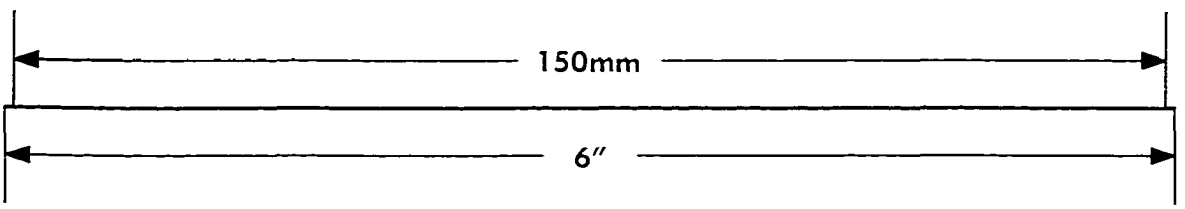
Wisconsin Information Network
Wisconsin Professional Police Association
Wisconsin State Sovereignty Coalition
Wisconsin Troopers Association
Women Lawyers Association of Los Angeles
Women for Responsible Legislation
Women's Law Project
Women's Legal Defense Fund
Yankee Institute for Public Policy
Young America's Foundation

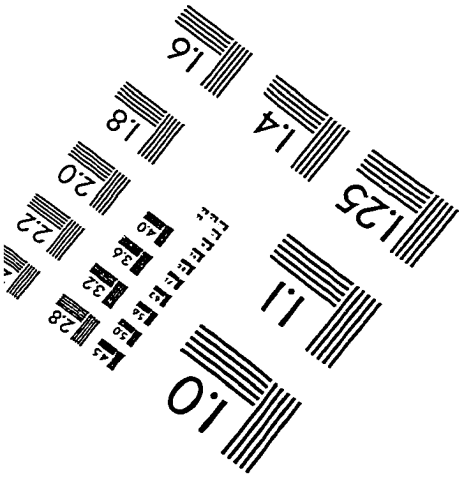
IMAGE EVALUATION
TEST TARGET (QA-3)

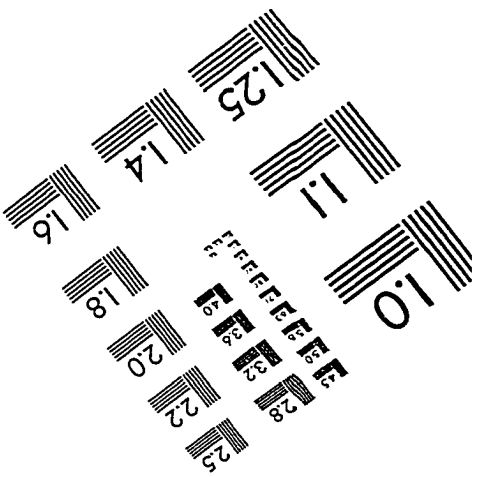












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