Lower Federal Court Judicial Confirmation Fights: A Critical Review of the Empirical Literature and Future Research Directions

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ABSTRACT Unlike the massive literature about US Supreme Court confirmation battles, little has been written about lower federal court confirmation fights. However, in the past 20 years much has been written about the lower federal court confirmation process. Here, we take stock of the political science literature in this area and highlight where scholarly interest appears to be going. Believing a contemporary assessment of the state of the field should be of interest and use to scholars of American politics, we dissect the recent empirical literature and offer suggestions for future research. Most importantly, we offer a one-stop shop for recent literature for scholars interested in this topic.

Much has been written by scholars of American politics about US Supreme Court confirmation battles, but the literature on lower federal court confirmation fights is relatively less bountiful. However, during the past two decades, presidential, legislative, and public law scholars have increasingly focused on the lower court confirmation process (e.g., Allison 1996; Basinger and Mak 2010; Goldman 1993; Hartley and Holmes 1997; Hartley and Holmes 2002; Primo, Binder, and Maltzman 2008; Scherer, Bartels, and Steigerwalt 2008; Sollenberger 2010). A review of the recent literature reveals that there are more survey reports (e.g., Goldman, Slotnick, and Schiavoni 2011), law review articles (e.g., Brand 2010; Tobias 2010), and opinion pieces (e.g., Bendery 2011) than more complex quantitative analyses of lower-court confirmation fights. Moreover, the research results generated by the literature are widely divergent, and, at times, inconsistent.

Research on Supreme Court nomination and confirmation battles will likely keep its dominance both in the academic literature and in the popular press. However, in the last two decades, the political salience of lower federal court nominations has also increased. Confirmation battles have received wider press coverage as demonstrated by the recent cases of Goodwin Liu and Caitlin Halligan. In addition, the failure to fill vacancies has drawn attention. As of spring 2013, about 10% of all federal judgeships were vacant, partly because partisan politics in the nation's capital (McMillion 2013; Seib 2013). The increased attention to lower court nominees over the years and the increased research on the treatment of these nominations require a critical review of the empirical literature and efforts to understand the divergence or inconsistency sometimes produced by this literature. Building on recent research regarding delay in confirmation of lower federal court judges (e.g., Holmes, Shomade, and Hartley 2012; Primo, Binder, and Maltzman 2008; Scherer, Bartels, and Steigerwalt 2008), we review the recent empirical literature and offer suggestions for future research. Most significantly, we offer a one-stop shop of sorts for scholars of American politics to gain a comprehensive understanding of the recent literature.

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THE PAST 20 YEARS

Studies of judicial confirmations have been around for decades (e.g., Chase 1972; Mackenzie 1981; O'Brien 1988; Songer 1979), but most of these either centered on Supreme Court nominees (e.g., Segal 1987; Songer 1979) or concentrated on both the Supreme Court nominees and the remaining Article III judges (e.g., Goldman 1997). However, during the past 20 years, more studies have focused solely on nominees for the lower federal courts (e.g., Hartley and Holmes, 1997, 2002; Martinek, Kemper, and Van Winkle 2002; Scherer, Bartels, and Steigerwalt 2008). Some scholars have found that confirmation rates noticeably began dipping during

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the Carter administration (Hartley and Holmes 1997; 2002), but part of the reason behind scholars' recent attention seems to be the increasingly public awareness about confirmation process conflicts when the Clinton administration took office (Carney 1997; Lewis 1997; Reske 1997). Scholars widely acknowledged that Clinton's nominees took longer to be confirmed than those of his predecessors (Solowiej, Martinek, and Brunell 2005). Relatedly, interest groups' attention and mobilization in support of, or opposition to, the failed Robert Bork nomination to the Supreme Court in 1987 crossed over to lower federal court selection process, which scholars began noticing shortly thereafter (Bell 2002a).

Whereas the scholarly focus on the lower court selection process has shed significant light on substantial factors driving the process, its divergence, and at times, inconsistency can confuse scholars interested in confirmation politics. In the 1990s, most of the studies (e.g., Goldman 1993, 1995, 1997) were descriptive analyses of factors influencing the process or simple time-series models of confirmation delay. By the early 2000s, more studies using advanced quantitative analyses such as logistic regression models and duration models (e.g., Martinek, Kemper, and Van Winkle 2002) to capture some of the nuances of lower-court confirmation battles. In more recent studies (e.g., Primo, Binder, and Maltzman 2008), more sophisticated models such as spatial models—analyzing several competing models at once—are now used. However, what we have learned about the major factors driving the confirmation process cannot be readily found in one place. We bridge this gap by providing an overview of the more influential papers recently published using citation counts offered by popular databases such as Google Scholar and JSTOR. We summarize what we have learned from this era of scholarship, why it is important to scholars of American politics, and offer suggestions for future research directions. We briefly explain the methodology behind our selection of the influential works and provide tables featuring their contributions to the literature and authors' research findings.

Because the public became more aware of lower court confirmation battles during the Clinton administration, we concentrate on the relevant scholarship published since 1993, the advent of the Clinton administration and a time of heightened interest in judicial confirmations by scholars of American politics.

RESEARCH METHODOLOGY

This research concentrates on political science literature because it is most likely to be driven by empirical methods and analysis. In addition to the political science literature, law review articles also offer theoretical and empirical analysis of confirmation politics (e.g., Tobias 2001; Tobias 2010). In addition, opinion pieces, newspaper articles, and other publications focus on the lower federal court confirmation process (e.g., Bendery 2011). Because this article is intended for a political science audience, we analyze the contributions made by political scientists to our knowledge of the lower court confirmation process. This, we admit, might miss excellent work published by scholars in other disciplines. Because the public became more aware of lower court confirmation battles during the Clinton administration, we concentrate on the relevant scholarship published since 1993, the advent of the Clinton administration and a time of heightened interest in judicial confirmations by scholars of American politics.

To identify the most relevant empirical political science literature on this subject during the past 20 years, we extensively reviewed the literature. We first conducted searches in four major academic databases—Academic Search Complete, JSTOR, Social Science Research Network, and Google Scholar—using search terms such as *federal court nominee, judicial confirmation, circuit court nominee, senate confirmation, presidential nomination, district court, court of appeals, and senate judiciary committee.* Not surprisingly, many of the search terms generated thousands of results by two of the databases—Google Scholar and JSTOR. For example, using *"federal court nominee"* as one search term in JSTOR generated 3,860 results, but combining *"judicial confirmation," "federal court," "Senate,"* and *"nomination"* search terms in the same database reduced this particular search results to 34.

By limiting the search to this 20-year period and focusing on those results that mentioned federal courts either in their abstracts or introductory paragraphs, we reduced the search results to less than 200 within those databases that initially generated thousands. Google Scholar generated the most comprehensive list, so we started with these results, eliminated law review articles and other non-empirical pieces, and crosschecked the list with the results produced by the other databases. After reducing the master list to fewer than 150 works, we culled through their abstracts or introductory paragraphs and selected those works that captured our topic in a significant way (even if some of them also discuss Supreme Court appointments). At the end of this exercise, 73 works[1] met our criteria. They are listed under "Lower Federal Court Confirmation Works during the 1993–2012 Twenty Year Period" in the *Appendix*.

Recognizing that some of the works have wider circulation than others, we created a list featuring the most influential pieces within the list of 73. Again, having determined that Google Scholar (which was also referenced prominently by JSTOR as a search engine) offered the most comprehensive list, we relied on this database to cull citations to each of these 73 works. Initially we focused on the absolute number of citations to each work, but recognized quickly that more recent works might be biased by that methodology. For example, a work published in 2002 might have been cited 40 times, resulting in four citations per year. But a more recent work published in 2008 might have been cited 20 times, resulting in five citations per year. On a per year basis, the more recent work seems to be more influential even if it is less cited on an absolute basis.

In table 1, we list the top 25 most cited works per year during 1993–2012. In the table (featuring the Epstein and Segal's 2005 book as the most influential work and the Binder and Maltzman's 2004 piece as the 25th most influential work), we also list

Table 1

Top 25 Most Influential Political Science Publications on Lower Court Confirmation Politics, 1993–2012[6]

INFLUENTIAL RANK	YEAR PUBLISHED	AUTHOR(S)	NUMBER OF CITATIONS BY GOOGLE SCHOLAR	CITATIONS/YEAR
1	2005	Epstein, Lee, and Jeffrey A. Segal	214	30.57
2	2001	Giles, Michael W., Virginia A. Hettinger, and Todd Peppers	220	20.00
3	2005	Scherer, Nancy	107	15.29
4	2002	Binder, Sarah A., and Forrest Maltzman	131	13.10
5	1997	Goldman, Sheldon	170	11.33
6	1999	McCarty, Nolan, and Rose Razaghian	130	10.00
7	2002	Martinek, Wendy L., Mark Kemper, and Steven R. Van Winkle	80	8.00
8	2001	Goldman, Sheldon, Elliot Slotnick, Gerard Gryski, and Gary Zuk	77	7.00
9	1998	Krutz, Glen S., Richard Fleisher, and Jon R. Bond	92	6.57
10	1993	Goldman, Sheldon	112	5.89
11	2008	Primo, David M., Sarah A. Binder, and Forrest Maltzman	22	5.50
11	2008	Scherer, Nancy, Brandon L. Bartels, and Amy Steigerwalt	22	5.50
13	2005	Goldman, Sheldon, Elliot Slotnick, Gerard Gryski, and Sara Schiavoni	36	5.14
14	1997	Goldman, Sheldon, and Elliot Slotnick	73	4.87
15	2002(b)	Bell, Lauren Cohen	44	4.40
16	2011	Goldman, Sheldon, Elliot Slotnick, and Sara Schiavoni	4	4.00
17	1999	Goldman, Sheldon, and Elliot Slotnick	57	4.38
18	2000	Caldeira, Gregory, Marie Hojnacki, and John R. Wright	47	3.92
19	2002	Hartley, Roger E., and Lisa M. Holmes	39	3.90
20	2004	Massie, Tajuana D., Thomas G. Hansford, and Donald R. Songer	31	3.88
21	1997	Hartley, Roger E., and Lisa M. Holmes	55	3.67
22	1995	Goldman, Sheldon	62	3.65
22	2002(a)	Bell, Lauren Cohen	36	3.60
24	2007	Goldman, Sheldon, Elliot Slotnick, Gerard Gryski, and Sara Schiavoni	18	3.60
25	2004	Binder, Sarah A., and Forrest Maltzman	25	3.13

their corresponding absolute citation counts. We note here that two works from the original 73 had absolute citation counts that would have made the top 25 list on an absolute basis, but these two works[2] did not make the list on citations per year basis. Hence, 23 works on our list would have made the list even if we use absolute citation counts. Although a fair amount of overlap exists between the list of highest absolute citations and the list of highest citations per year, we decided that our rankings on the most influential pieces published since 1993 will be on the basis of citations per year.

Examining our top 25 list, we found books to be very influential as they take positions 1, 3, and 5 on the list. Predictably, the articles published in some of the most prominent political science journals, such as *The American Political Science Review*, *American Journal of Political Science*, and *The Journal of Politics* are near the top of our most influential list as they occupy positions 4, 6, 7, 9, and 11. Other prominent journals featuring works near the top of the list include *Judicature* and *Political Research Quarterly*. For new students of lower court confirmation politics, these 25 articles serve as key references for the latest works on this topic. Next, we summarize their literature contributions and key findings.

KEY FINDINGS

In table 2, using publication year chronologically, we identify the authors, courts, or nominees studied, nomination years covered, and the primary methodology the authors used. We also summarize the literature contributions made by each work when published and discuss its findings. There are occasions when information from the literature contributions column could easily be placed in the column featuring the key findings, and vice-versa. On the one hand, scholars looking to study a specific aspect of this topic (e.g., President Clinton's selection process or the role of interest groups) can use the literature contributions column as a starting point. On the other hand, the key findings column enables scholars to easily track what the most influential works in the literature have found thus far.

Many of the most influential publications concentrate solely on circuit and district court nominees but some discuss the nomination processes surrounding nominees for the US Supreme Court

Table 2

Chronological Detailed List of Top 25 Most Influential Political Science Publications on Lower Court Confirmation Politics, 1993–2012

AUTHORS	YEAR PUBLISHED	COURTS OR NOMINEES STUDIED	YEARS COVERED	METHODOLOGY	LITERATURE CONTRIBUTIONS	KEY FINDINGS
Goldman, Sheldon	1993	Article III courts	1991–92	Descriptive analysis using data and information obtained from nominees' questionnaires submitted to SJC, confirmation hearings, personal interviews, and other public information	Overview of key events related to judicial selection during the last two years of President Bush I presidency; Comparisons of Bush I's appointees to district and circuit courts in his first two years with his appointees in the last two years; Comparisons of the composite profiles of all Bush I's appointees to district and circuit courts with the composite profiles of all similar court appointees of Presidents Johnson through Reagan; Sampling of the political and legal credentials of some of the appointees; Brief discussion of the process surrounding Justice Clarence Thomas's nomination to the Supreme Court	President Bush I made a commitment to gender and ethnic diversity which was delivered by a significant proportion of women to lower federal courts and appointment of Justice Thomas to Supreme Court; Focus of judicial selection decision-making shifted back to the White House from the Justice Department; Attempt by Bush administration to restrict access of congressional staffers to FBI reports might have precluded the administration from getting as many as two dozen additional confirmations.
Goldman, Sheldon	1995	Article III courts	1993–94	Descriptive analysis using data and information obtained from nominees' questionnaires submitted to SJC, confirmation hearings, personal interviews, and other public information	Overview of key events related to selection of judges during the first two years of President Clinton's presidency; Demographic profiles of Clinton's appointments to lower federal courts during the 103rd Congress compared to those of his three predecessors; Sampling of the political and legal credentials of some of the appointees; Brief discussion of Justices Ginsburg's and Breyer's nominations	Clinton administration increased the proportion of women and minorities during its first two years; the administration started establishing ideological balance on the bench by naming primarily moderate to liberal Democrats but the bench was still dominated by Presidents Reagan and Bush appointees.
Goldman, Sheldon	1997	Article III courts	1933–89	Descriptive analysis using data and information obtained from nominees' questionnaires submitted to SJC, confirmation hearings, personal interviews, and other public information	Most comprehensive study of the selection of lower federal court judges during the past twenty years; Focuses on Article III nominees to lower federal courts during Presidents Roosevelt through Reagan's administrations; Analysis of the history of and mechanics surrounding the selection process during each presidential administration with emphasis on each administration's efforts (or lack thereof) to engender racial and gender diversity on the bench;	Prior to Reagan administration, the influence of party organizations in the selection process was very strong because of the partisan nature of the appointments; However, this influence has waned over the years studied and especially during the Reagan administration; The most recent nominations during the period studied trending toward a more professionalized judiciary and reflecting the checks and balances envisioned by the framers; Despite occasional

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Table 2 (Continued)

AUTHORS	YEAR PUBLISHED	COURTS OR NOMINEES STUDIED	YEARS COVERED	METHODOLOGY	LITERATURE CONTRIBUTIONS	KEY FINDINGS
					Demographic profiles of each president's appointees featuring age, education, prior experience, occupation, party affiliation, and other related information	disruptions, that trend seemed to be working reasonably well; Inconclusive answer as to whether minorities and women were overcoming the odds of being selected.
Goldman, Sheldon and Elliot Slotnick	1997	Article III courts	1993–96	Descriptive analysis using data and information obtained from nominees' questionnaires submitted to SJC, confirmation hearings, personal interviews, and other public information	Overview of key events related to selection of judges during the first term of President Clinton's presidency; Comparisons of demographic profiles of Clinton's 103rd Congress appointees with those of Clinton's 104th Congress appointees; Comparisons of demographic profiles of Clinton's non-traditional appointees with those of Clinton's traditional appointees; Comparisons of demographic profiles of Clinton's appointments to those of his three predecessors; Sampling of the political and legal credentials of some of the appointees	Because of the Republican takeover of Senate during the middle of Clinton's first term, proportionally less number of lower federal court judges were confirmed during the last two years than were during the first two years; Republican senators seemed determined to stall the confirmation process despite Clinton's efforts to avoid controversy by selecting non-ideological judicial nominees.
Hartley, Roger E. and Lisa M. Holmes	1997	Circuit and district courts	1969–96	Descriptive analysis using averages of confirmation rates and confirmation speed	To better understand how the confirmation process for lower court judges has become contentious; Measuring delay in the process is a better measure of difficulty than just looking at the percentage of failed nominations	Average speed of confirmation from referral to SJC to Senate confirmation by each presidential administration increased; Prior to 1980, no difference in confirmation time for district and circuit nominees but from 1980, circuit nominees took longer to be confirmed; Divided government had a mixed effect during the period studied.
Krutz, Glen S., Richard Fleisher, and Jon R. Bond	1998	Selected "important" presidential nominations, including those to the Supreme Court and circuit courts	1965–94	Multivariate logit analysis	Policy entrepreneurs in nomination contests pursue their goals with a presumption that many nominees will be confirmed	To alter this presumption of success and defeat a nominee, opposition entrepreneurs identify negative information re the nominee and try to envelope committee hearings internally and the media externally with this negative information; Nomination failures occur at distinct phases of the Senate confirmation process; Divided government did not have a measurable effect on nomination results.

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AUTHORS	YEAR PUBLISHED	COURTS OR NOMINEES STUDIED	YEARS COVERED	METHODOLOGY	LITERATURE CONTRIBUTIONS	KEY FINDINGS
Goldman, Sheldon and Elliot Slotnick	1999	Article III courts	1997–98	Descriptive analysis using data and information obtained from nominees' questionnaires submitted to SJC, confirmation hearings, personal interviews, and other public information	Overview of key events related to selection of judges during the first term of President Clinton's presidency; Comparisons of demographic profiles of Clinton's 105th Congress appointees with those of Clinton's 103rd and 104th Congress appointees; Comparisons of demographic profiles of Clinton's non-traditional appointees with those of Clinton's traditional appointees during the 105th Congress; Comparisons of demographic profiles of Clinton's appointees during the first six years with those of his three predecessors; Sampling of the political and legal credentials of some of the appointees	Although Clinton continued to face a Republican-controlled Senate during the 105th Congress, the administration fared "better" in getting a higher proportion of its appointees confirmed than it did during the 104th Congress; This was due to a number of reasons, among which were: the administration improved its handling of the process, Chief Justice Rehnquist drew attention to judicial vacancies and its effects, seemingly more appointees with more traditional social and legal profiles were presented to the Senate.
McCarty, Nolan, and Rose Razaghian	1999	3500 nominations to domestic executive branch agencies	1885–1996	Weibull duration models	A greater understanding of the politics of executive-legislative relations through an assessment of the confirmation process	Senate procedures enable and encourage partisan and ideological minorities strategic opportunities to impact public policy by delaying executive nominees; Confirmations take substantial longer during divided government and when the Senate is ideologically polarized.
Caldeira, Gregory, Marie Hojnacki, and John R. Wright	2000	District and circuit courts	1984–91	Quantitative analysis using OLS regression models; Descriptive analysis	Examines the influence and activities of lobbying groups in judicial and related nominations; survey of interest groups over a three-year period generating information from active 182 lobbying groups	The amount of advocacy by interest groups (as well as the participating groups) varies across nominations depending on the position's importance; interest groups' choices of lobbying tactics are not directly related to organizational structure, resources, or campaign's political context; although organizational resources might have some effects on types of tactics adopted, overall the effects are limited.
Giles, Michael W., Virginia A. Hettinger and Todd Peppers	2001	Circuit courts	Civil rights and civil liberties cases decided with dissent between 1953 and 1988 by judges appointed by	Logistic regression models	Whether the preferences of appointing presidents for a policy or a partisan agenda when selecting circuit judges are reflected in the behavior of selected judges	Selection politics of presidents depend on the existence of senatorial courtesy; With senatorial courtesy present, there was no linkage between presidential preferences and voting patterns; However,

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AUTHORS	YEAR PUBLISHED	COURTS OR NOMINEES STUDIED	YEARS COVERED	METHODOLOGY	LITERATURE CONTRIBUTIONS	KEY FINDINGS
			Presidents Eisenhower through Reagan			patterns of circuit judges' voting selected without senatorial courtesy were consistent with presidential policy preferences; Thus, whenever possible, the presidents studied selected deferral judges who reflected their policy preferences.
Goldman, Sheldon, Elliot Slotnick, Gerard Gryski, and Gary Zuk	2001	Article III courts	1999–2000; 1993–2000	Descriptive analysis using data and information obtained from nominees' questionnaires submitted to SJC, confirmation hearings, personal interviews, and other public information	Overall assessment of Clinton's judicial legacy and the selection process of Article III judges with special focus on the last two years of Clinton's 2nd term; Comparisons of demographic profiles of Clinton's 105th Congress and 106th Congress appointees with those of Clinton's 103rd and 104th Congress appointees; Comparisons of demographic profiles of Clinton's non-traditional appointees with those of Clinton's traditional appointees during the 106th Congress; Comparisons of demographic profiles of Clinton's appointees with those of his three predecessors; Sampling of the political and legal credentials of some of the appointees	Fewer nominees confirmed during the 106th Congress than were confirmed during the 105th Congress; On average, minorities and women confirmed waited longer to be confirmed than traditional white male nominees did; Sex scandal that led to Clinton's impeachment consumed the Clinton Administration during the early part of 106th Congress and might have affected the administration's will to fight for its nominees; Overall, Clinton appointed highly qualified judges and increased the proportion of minorities and women on the federal bench despite facing a more partisan and more ideological Republican Senate during his last six years in office.
Bell, Lauren Cohen	2002(a)	Federal district and circuit courts, presidents' cabinets, and ambassador positions	1977–98	Quantitative analysis of 1242 judicial nominees using chi-square and logistic regression; Qualitative analysis of interest groups' roles	Impact of interest groups participation on presidential nominees' confirmation outcomes and the penetration of money into the confirmation process	Although interest groups have kept up their behind-the-scenes participation in federal judicial confirmation battles since Senate's rejection of Robert Bork, they have become less formally involved in a public way. However, interest groups are more visibly involved formally in the confirmation process for cabinet nomination fights, but are less involved in ambassadorships'. Overall, interest groups seem to view participation in the confirmation process as an opportunity to raise revenue.

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AUTHORS	YEAR PUBLISHED	COURTS OR NOMINEES STUDIED	YEARS COVERED	METHODOLOGY	LITERATURE CONTRIBUTIONS	KEY FINDINGS
Bell, Lauren Cohen	2002(b)	Federal district and circuit courts	1979–98	Duration Models – Cox Proportional Hazards Model	Focuses on the duration of time period between a president's nomination and Senate's confirmation	Several factors determine if a nominee is quickly confirmed or delayed; they include presence/absence of divided government, interest group participation during periods of divided government, other political factors, institutional circumstances, and nominee's characteristics.
Binder, Sarah A. and Forrest Maltzman	2002	Circuit courts	1947–98	Duration Models – Cox Proportional Hazards Model	Examines the time duration between a president's nomination and Senate's confirmation	Presence or absence of divided government is a prominent but not the only relevant factor in confirmation delay; Similar result as Bell's 2002(b) finding on divided government's effect but no inclusion of interest group participation as a variable in analysis.
Hartley, Roger E. and Lisa M. Holmes	2002	Circuit and district courts	1969–98	Descriptive and time series analyses using averages of confirmation rates and confirmation speed	Increased focus on lower federal court nominees prior to President Carter's administration; Institutional changes within the Carter administration and in the Senate have increased scrutiny levels placed on judicial nominees.	Institutional changes re judicial selection implemented during the Carter years have made judicial appointments more contentious and more time consuming; Although majority of nominees continued to be confirmed, confirmation rates have dipped since the Carter years; While inconsistent, time to confirmation has also increased dramatically since the Carter years.
Martinek, Wendy L., Mark Kemper, and Steven R. Van Winkle	2002	Circuit and district courts	1977–98	Multivariate analysis using both logistic regression and duration analysis models	Usage of multivariate analysis to test the effects of nominee characteristics, institutional features, and political factors on the confirmation of lower federal court nominees; Seemed to be one of the first prominent studies to use duration models for studying the selection process of lower court nominees	Various factors accounted for whether a nominee was confirmed; On either court level, they included ABA rating, composition of the SJC, and number of pending nominations.
Binder, Sarah A. and Forrest Maltzman	2004	Circuit courts	1947–98	Duration Models – Cox Proportional Hazards Model	The limits of senatorial courtesy (blue slip) and the politics of consent versus advice surrounding the confirmation process; Expanded model used in 2002 article by examining interaction effects of certain variables and the natural logarithm of time	Although senatorial courtesy works efficiently in the initial period flowing vacancy, strong institutional incentives force presidents to consult widely with senators across partisan and ideological lines when picking judicial nominees.

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AUTHORS	YEAR PUBLISHED	COURTS OR NOMINEES STUDIED	YEARS COVERED	METHODOLOGY	LITERATURE CONTRIBUTIONS	KEY FINDINGS
Massie, Tajuana D., Thomas G. Hansford, and Donald R. Songer	2004	Circuit and district courts	1977–99	Duration models	Why presidents sometimes delay their nominations after a judicial vacancy	Timing of presidential nomination is constrained by both political and institutional forces as the president sometimes considers the norm of senatorial courtesy and the time remaining in the presidential term; Ultimately, presidents, and not Senate, can be blamed for appointment delays.
Goldman, Sheldon, Elliot Slotnick, Gerard Gryski, and Sarah Schiavoni	2005	Article III courts	2001–04	Descriptive analysis using data and information obtained from nominees' questionnaires submitted to SJC, confirmation hearings, personal interviews, and other public information	Overview of key events related to selection of judges during the first term of President Bush II's presidency; Comparisons of demographic profiles of Bush II's nontraditional appointees with those of his traditional appointees; Comparisons of demographic profiles of Bush II's appointees to those of his four predecessors; Sampling of the political and legal credentials of some of the appointees	Less non-traditional picks compared to Clinton's choices but record was better than those of previous Republican presidents; Federalist Society became a very influential organization and played a significant informal role in the selection process; Because administration decided to remove the ABA from the pre-nomination stage, the organization could not ask people about nominees until they are made public; Hence, people were probably less willing to be honest and the ABA ratings became less persuasive even to Democrats in the SJC's minority; Consequently, ABA became less of a player in the confirmation process; Although judicial selection has become more acrimonious, the administration perceived it as a way to motivate the party's core base for elections; Overall, the bench continued to be staffed by a more professional judiciary and those with diverse backgrounds even if they were more conservative.
Epstein, Lee and Jeffrey A. Segal	2005	Article III courts	Not specific	Descriptive Analysis	Explanation of various aspects of the appointment process including the Constitutional framework, how vacancies arise, presidential and senatorial roles, the politics surrounding the selection process, and the politics of judging	The judicial appointments process has always been and is political because the judges/justices themselves are political.

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AUTHORS	YEAR PUBLISHED	COURTS OR NOMINEES STUDIED	YEARS COVERED	METHODOLOGY	LITERATURE CONTRIBUTIONS	KEY FINDINGS
Scherer, Nancy	2005	Circuit and district courts		Logistic regression models, descriptive analyses, interviews with activities	Politicization of the appointments to the lower federal bench; Theory of "elite mobilization"	Because of changes to the importance of lower courts and to political parties themselves, political leaders (both the president and those in the Senate) have found it useful to use lower court appointments to mobilize elite constituents (interested groups and partisan activists); In so doing, political leaders essentially have to take public stands on nominees in order to placate the elites who are paying attention.
Goldman, Sheldon, Elliot Slotnick, Gerard Gryski, and Sarah Schiavoni	2007	Article III courts	2005–06	Descriptive analysis using data and information obtained from nominees' questionnaires submitted to SJC, confirmation hearings, personal interviews, and other public information	Brief discussion of events surrounding the selection of Chief Justice Roberts and Justice Alito, coupled with the failed nomination of Harriet Myers; Comparisons of demographic profiles of Bush II's nontraditional appointees during his first six years with those of his traditional appointees during same period; Comparisons of demographic profiles of Bush II's appointees with those of his four predecessors; Sampling of the political and legal credentials of some of the appointees	Continued politicization of the judicial selection process; Republicans saw judicial selection as a means of motivating and galvanizing its base for elections; Compared to the same period during Clinton's presidency, Bush was less successful getting his nominees confirmed; However, the administration perceived the period as a success since it placed two extremely conservative jurists on the Supreme Court and several highly conservative judges on the lower courts.
Primo, David M., Sarah A. Binder, and Forrest Maltzman	2008	Circuit and district courts	1975–2000	Logit models using Bayesian Information Criterion	Usage of alternative spatial models that incorporate the effects of multiple and potentially competing senate pivots to determine whether a nominee will be confirmed; Assessment of the impact of multiple veto players on confirmation outcomes; Assume there are multiple pivotal points that a nominee could be blocked from being confirmed	There are limitations to highlighting a single institutional veto player in the Senate confirmation process as the role of players change over time; For both types of courts, spatial models featuring the preferences of the majority party median and potential filibuster senators seemed to better explain which nominees get confirmed; For the district courts, support by both home state senators seemed to be crucial for confirming nominees.

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AUTHORS	YEAR PUBLISHED	COURTS OR NOMINEES STUDIED	YEARS COVERED	METHODOLOGY	LITERATURE CONTRIBUTIONS	KEY FINDINGS
Scherer, Nancy, Brandon L. Bartels, and Amy Steigerwalt	2008	Circuit court	1985–2004	Split population duration models featuring probit and log-logistic distribution models	Assessing the role of interest groups on whether and when a circuit court nominee gets confirmed	When opposed by interest groups, a nominee will likely face a contentious battle, lengthy process, and will less likely be confirmed; Absent interest group opposition, senators are more likely to confirm nominees and do so swiftly.
Goldman, Sheldon, Elliot Slotnick, and Sarah Schiavoni	2011	Article III courts	2009–10	Descriptive analysis using data and information obtained from nominees' questionnaires submitted to SJC, confirmation hearings, personal interviews, and other public information	Detailed discussion of President Obama's selection process and Republicans' determined efforts to slow and stymie Obama's process; Sampling of the political and legal credentials of some of the appointees; Presentation of tables featuring the number and percentage of district and circuit court nominees confirmed by the Senate by each Congress starting from the 95th Congress; Presentation of tables featuring index of obstruction and delay in Senate process of district and circuit court nominees	The number of President Obama's nominees sent to the Senate were relatively smaller than the number sent by any recent presidential administration in its first two years; Obama administration was slow in creating an effective and efficient process, due in part with preoccupation with health care policy, confirmation of two Supreme Court justices, slowness of Majority Leader Reid in bringing up nominees for Senate confirmation because of his own re-election battle; Meanwhile, the Republican minority was determined to stymie the process using secret holds, threat of filibusters, and procedural maneuvers.

(especially the works of Sheldon Goldman and his colleagues) as well. Although Goldman et al.'s works discuss the selection process involving all Article III judges per presidential administration, each publication concentrates significantly on circuit and district court nominees. Although the earlier published works on the list (the 1990s publications) seem to examine non-judicial presidential nominees in addition to judicial nominees, the later works (2000s pieces) concentrate solely on the lower federal courts.

With the exception of Goldman and colleagues' works (not counting his 1997 book), which detail each presidential administration's selection process biennially, the most influential publications cover nomination periods that vary widely. The works that concentrate solely on circuit and district court nominees generally cover the late 1970s through the late 1990s. As for the methodological approaches used by the authors, descriptive analysis or a simple time series are common approaches across the board, but since the early 2000s, multivariate analyses like regression and duration models have become popular. This shift might be as a result of the understanding that, generally, extreme nomination delays equal failed nominations and that duration models offer stronger statistical modeling.

Although writing about the lower federal court confirmation process became increasingly common starting in the 1990s, Sheldon Goldman's biennial *Judicature* articles and his 1997 book dominate the field. As presented in table 1, five of the eight most influential works during the 1990s were written either by Goldman or by Goldman and his colleagues. Other authors jumped into the field in the early 2000s, most especially in 2002 when five (20% of the total) influential works were published.

As for the key findings on each presidential administration, we learn President Carter made it a priority to nominate women and minorities, and compared to his predecessors' choices, his nominees were the "first" to be delayed at a significant level (Hartley and Holmes 2002). Prior to the Reagan administration, party consideration was significant in determining who was selected to the courts. President Reagan focused on making the federal bench a more professionalized judiciary while ensuring that his choices shared his conservative views (Goldman 1997). The first President Bush followed in his immediate predecessor's footsteps regarding a professionalized judiciary, but also made a commitment to gender and ethnic diversity (Goldman 1993). During the Clinton administration the nomination process became very contentious, as interest groups that mobilized for or against Robert Bork's failed nomination maintained their energy and became prominently involved in the

confirmation process (Bell 2002a). President Clinton was in the office when the public also became more aware of the confirmation process and its related battles (Carney 1997; Lewis 1997; Reske 1997). Nonetheless, President Clinton continued efforts to make the judiciary a more diverse bench (Goldman and Saronson 1994; Goldman et al. 2001).

The second President Bush reduced the role of the American Bar Association in the selection process and was still able to place many of his conservative picks on the bench despite the continued acrimonious confirmation process in the Senate (Goldman et al. 2005; Goldman et al. 2007). In part because of the foci on two Supreme Court picks, President Obama was slow in getting an effective and efficient selection process in place and, consequently, placed a proportionally lower number of his nominees on the federal bench by the end of his first two years in office. It did not help that Senate Republicans in the minority were determined to stymie the process through secret holds, filibuster threats, and procedural maneuvers (Goldman, Slotnick, and Schiavoni 2011).

Regarding recurring variables that seem to determine who gets placed on the lower federal bench and depending on the period studied, any of the factors that constitute nominee characteristics (e.g., age, gender), political factors (e.g., divided government, president's first or second term), or institutional features (e.g., support by home state senators) could be significant. Nonetheless, two factors—divided government and interest group opposition—stand out. Although one study indicates that divided government is not significant (Krutz, Fleisher, and Bond 1998), other studies show that it matters (Bell 2002b; Binder and Maltzman 2002). Although the influence of interest groups was not consistently measured earlier in the period studied, in more recent studies this has become a regular feature, and scholars seem to universally agree that the role of interest groups is a significant factor in the selection process (Scherer 2005; Scherer, Bartels, and Steigerwalt 2008).

Despite what scholars have taught us about lower court confirmation process, a few gaps still need to be filled. The use of blue slip[3] by home state senators seems to be changing, but the literature does not reflect this dynamism surrounding blue slip usage. Although some efforts have been made to incorporate the blue slip process into judicial appointment politics study (Binder 2007; Sollenberger 2010), more could be done with better access to useful quantitative data. Box-Steffensmeier's Blue Slip Senate Archive (available (as of May 22, 2013) at http://politicalscience.osu.edu/faculty/jbox/blueslip/index.php) can be used for analysis of senatorial use of blue slips from 1910 to 1960, although data since then are not available. To the extent that there are different institutional changes made by different committee chairs of the Senate Judiciary Committee (SJC) vis-à-vis different presidential eras, the literature does not reflect the effect of these institutional changes on the selection process per presidential era. Relatedly, each administration packages or presents its various sets of nominees differently, but the literature has not fully captured the significant variables driving these presentations.

Scherer (2005) and colleagues (2008) considered interest group participation as a major factor predicting delay and failure of nominees. They focused on this particular variable, studied it, and presented an important finding on which scholars can build. More research can focus on how groups identify problematic nominees and how they attempt to influence the confirmation process in a dynamic confirmation environment. For example, Scherer (2005) argues that groups want senators to take public stands on nominees. However, the use of anonymous holds recently has been a useful tool in obstructing confirmation (Goldman, Slotnick, and Schiavoni 2011).

Whereas Scherer and colleagues' isolation of interest group participation is noteworthy, what other variables can similarly be isolated and singularly studied? Can we use the supposed ideologies of the nominees to predict the likelihood of delay or confirmation? What other theories and models outside of political science might be used to explain confirmation delays? Might we use queuing theory?[4] With queuing theory, we could determine whether the confirmation process "queue" is being deliberately slowed by one party as a strategy to give the next president (perhaps from its own party) the opportunity to appoint judges. Alternatively, increasing the queue in the confirmation process might have been created as a specific strategy by one party or a group of senators to gain negotiation advantage from a particular president on related or unrelated matters. Similarly, meta-analysis[5] might be used to increase our understanding of the confirmation process from the existing research. Although we briefly discussed some of the significant variables that have been identified by scholars of the most influential works, we did not use a systematic methodological approach to flush out these variables. Network analysis is another promising methodological tool. Given that network analysis can reveal the nature and strength of relationships among groups of individuals or organizations (see, e.g., Shomade and Hartley 2010), this technique reveals the dynamics of the relationships among organizations on various fronts in the confirmation process. For instance, network analysis show how strongly liberal or conservative groups co-ordinate their support or opposition to certain nominees with the White House. The technique might also assess the relationships among SJC members when considering high profile nominees.

Notwithstanding Goldman and colleagues' useful biennial reports on each administration's selection process, some might argue that the gaps left to be filled are not that big. Investigating this possibility, we notice that the literature is moving away from models of confirmation success and delay and reaching into different aspects of the nomination and confirmation process. Examples include recent work on how the American Bar Association rates nominees (Haire 2001; Smelcer, Steigerwalt, and Vining 2012), how presidents use troubled and failed nominees when rallying their partisan supporters (Holmes 2007; Holmes 2008), and the relationship between diversity on the bench and institutional legitimacy (Scherer and Curry 2010). Additional work, outside the domain of delay of nominations, is the impact of confirmation battles on recruitment and even the lives of those who enter the process. For example, when a nomination is made and delayed, it can take a toll on those who are waiting for the appointment. It can influence their careers as lawyers if firms might have to reassign cases—or not take cases—in anticipation of moving onto the bench. Delay in the process and the intensified scrutiny of nominees detailed by past research might even affect the recruitment. Some excellent candidates may choose not to enter the nomination process because of the heightened political scrutiny and delays they might face. Other candidates, especially legal scholars with judgeship ambitions, might refrain from writing about significant societal or critical issues if their writings or opinions might later be deemed controversial.

Might we be getting judges with a different background or a different type of judge because of these changes in the confirmation process? Recent work on these questions indicates that

although lower court nominees recently have been less likely to come from the private sector (Goldman, Slotnick, and Schiavoni 2011; Holmes 2012; Wheeler 2010), preliminary analysis indicates that concern about tenuous confirmation prospects is not a driving factor (Holmes 2012). Certainly many issues related to the lower federal court confirmation process can be studied and can shed more light on what we do not already know.

CONCLUSION

Thus far, we have learned that interest group opposition can be problematic to a nominee's prospects (Scherer 2005; Scherer, Bartels, and Steigerwalt 2008). At times, divided government can doom a nominee (Bell 2002b: Binder and Maltzman 2002) while at other times divided government is not a hindrance (Krutz, Fleisher, and Bond 1998). Overall, in the past circuit court nominees take longer to be confirmed while district court nominees are confirmed more quickly (Hartley and Holmes 1997), but that could change given more recent research results (McMillion 2013). To be certain, we have learned that depending on the period studied, nominee characteristics, political factors, or institutional constraints results showcase a particular set of variables as being more significant than others.

Notwithstanding these results, largely missing from the most influential or even the larger list, with a notable exception of a few recent studies (Epstein and Segal 2005; Holmes, Shomade, and Hartley 2012; Martinek, Kemper, and Van Winkle 2002; Steigerwalt 2010), are specific studies of the different phases of the Senate confirmation process, or better understanding of the relevance of key events such as Robert Bork's unsuccessful Supreme Court nomination or the Gang of 14's efforts to avoid the "nuclear option" in 2005. In addition, we lack a particular methodology that comprehensively captures many of the significant findings together in one study. Also missing are stronger analyses of the effects of changing usage of blue slips, institutional changes in each presidential era, and changes by the SJC chairs themselves. Lastly, more could be known about the impact of contentious confirmation politics on the judiciary, in terms of its ability to recruit nominees, the workload of judges, and collegiality on the bench.

Interestingly, despite the more advanced quantitative models used in recent studies, the descriptive analyses offered biennially by Goldman and colleagues seem to provide adequate and sufficient information regarding each administration's efforts and ongoing institutional changes in the Senate. Clearly, using the latest quantitative models to increase our understanding of the selection process is necessary and welcome, but scholars must balance application of these models with appreciable qualitative analyses (at times better captured by law review articles) of its dynamics. Adding a few years of data to existing models might not generate new insights about the selection process, but dissecting other aspects of the process, such as changing blue slip usage, the relationship between bench diversity and institutional legitimacy, and impact of confirmation politics on the bench, to name a few, might be beneficial to scholars and students. ■

NOTES

1. Search was concluded on July 27, 2012.
2. The two works were Hartley, Roger E. 2001. "Senate Delay of Minority Judicial Nominees: A Look at Race, Gender, and Experience." *Judicature* 84: 190–97 (**28 citations**); and Nixon, David C., and David L. Goss. 2001. "Confirmation Delay for Vacancies on the Circuit Courts of Appeals." *American Politics Research* 29: 246–74 (**31 citations**). They would have replaced Goldman et al.'s 2011 (**4 absolute citations**) and Goldman et al.'s 2007 (**18 absolute citations**) works.
3. The "blue slip" is a letter on a blue paper from the SJC to a judicial nominee's two home-state Senators asking the Senators to approve or disapprove a nominee. To block a nominee's confirmation process from going forward, either Senator may also choose not to return the blue slip. However, changing policies implemented by SJC chairs in response to varying political circumstances influence the ability of the home-state Senators to unilaterally prevent committee action on a nominee (see Sollenberger 2010).
4. Queuing theory is the mathematical or analytical study of queues (waiting lines) to predict queue lengths or waiting times (see e.g., Casstevens 1989).
5. A meta-analysis is the use of methods to analyze studies to systematically determine the most important factors.
6. As indicated above, search was concluded on July 27, 2012.

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APPENDIX: (continued)

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