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# Control without Confirmation: The Politics of Vacancies in Presidential Appointments

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**S**eparation of powers models typically assume executives are constrained by the need for legislative approval when placing agents in unelected office. In practice, vital policymaking positions are often vacant and filled with temporary officials—or left empty entirely—without Senate confirmation. While much has been written on confirmed appointees, their strategic absence has been largely overlooked by research on separation of powers and presidential appointments. I argue that vacancies left empty and those filled by interim appointees are calculated choices presidents make, within their larger nomination strategies, to advance their policy priorities. By incorporating the president’s power to not appoint and not nominate, this theory identifies conditions under which presidents capitalize on their first-mover advantage to subvert the Senate’s power to refuse confirmation. Using new data on vacancies from 1977-2015, I test the theory’s implications and find that, as predicted, the likelihood of interim appointees increases when presidents prioritize expansion.

Keywords: separation of powers; executive politics; appointments; political control of the bureaucracy

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“ Top posts at the Defense and Justice departments went vacant for months. Inspector general jobs in several agencies are still empty. The National Labor Relations Board came close to dysfunction because of empty chairs. [ . . . ] Empty chairs make rotten policy. ”

*The Washington Post Editorial Board*

Presidents have the power to unilaterally set the direction of policy outcomes. Yet, to see this direction come to fruition, presidents must rely on the appointees who design and then implement said policies. For instance, President Obama set out an ambitious second-term foreign policy agenda to develop a new U.S. counterterrorism policy that emphasized governance and human rights, but the actual task of advancing that agenda fell to Sarah Sewall, Under Secretary for Civilian Security, Democracy, and Human Rights at the Department of State.<sup>1</sup> Thus, while Obama called for an expansive approach to “address the root causes of extremism through community engagement,”<sup>2</sup> it was Sewall who oversaw its development and implementation. So when President Trump officially outlined his own priorities for counterterrorism policy in October 2018 – in which he all but eliminated humanitarian efforts for preventing violent extremism<sup>3</sup> – we would have expected the Under Secretary to be tasked with designing an alternative human rights policy option. This position, however, was empty.

In fact, after nearly 18 months in office, over 20 percent of presidential appointments whose authority requires Senate confirmation (known as *PAS positions*) were empty.<sup>4</sup> Half of the leadership positions at State were vacant, with no nominee, for the entirety of the Trump administration’s first year. More than half of key PAS positions at Treasury were vacant, including the Assistant Secretaries

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<sup>1</sup>The Under Secretary for Civilian Security, Democracy, and Human Rights has the largest budget in the Department of State (\$5 billion) and coordinates U.S. foreign policy on combating terrorism, trafficking in persons, illicit drug activity, humanitarian efforts, human rights and labor issues, and the documentation of war crimes and atrocities.

<sup>2</sup><https://obamawhitehouse.archives.gov/the-press-office/2015/02/18/fact-sheet-white-house-summit-counteracting-violent-extremism>. Accessed 15 January 2019.

<sup>3</sup><https://www.whitehouse.gov/wp-content/uploads/2018/10/NSCT.pdf>

<sup>4</sup>Original analysis of departmental websites and organizational charts to identify the status of all PAS positions in the Trump administration as of June 2, 2018.

for Economic Policy and for Financial Markets. A third of PAS positions at the Department of Labor were also empty. Given these “empty chairs,” *The Washington Post* excerpt above would likely surprise no one today – except that it was published on March 14, 1994.

All presidential administrations have vacancies in agency leadership. If presidents control the path of policy most effectively through their power to appoint personnel, as our typical understanding suggests, then we would expect few, if any, of these positions to remain vacant. This, however, is not the case. Presidents perpetuate vacancies, regularly forgo nominations, and often use lengthy interim appointments without Senate confirmation.<sup>5</sup> Most recently, Trump kept positions empty for months and refused to pursue nominations in many agencies where he has proposed slowdowns and dramatic cuts on regulation, workforce, and budget (e.g., Education and State). Yet, he was quicker to nominate in priority areas like commerce and defense, and left entire agencies to be run by interim appointees where he has sought considerable expansions in implementation and enforcement activities (e.g., Immigration and Customs Enforcement).<sup>6</sup> Still, existing theories of appointment strategy do not allow vacancies to be anything other than aberrations and expect presidents to unflinchingly pursue formal nominations, when presidents obviously have alternative approaches to staffing these critical positions.

These unexpected outcomes raise the important question of why presidents choose to leave certain positions vacant while seeking the Senate’s advice and consent for others. This puzzle is important for two reasons. First, one of the president’s most influential powers is to appoint the

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<sup>5</sup>Over the past five administrations, executive agency positions were vacant, on average, 25 percent of the time (O’Connell 2009). Furthermore, between 1996 and 2016, nearly 40 percent of vacant positions reported to the Government Accountability Office went without subsequent nominations; and 60 percent of those vacant positions were temporarily filled by interim appointees.

<sup>6</sup>Acting Assistant Secretaries for Immigration and Customs Enforcement at the Department of Homeland Security (often referred to as the Director of ICE) were: Daniel Ragsdale (January 20-30, 2017), Thomas Homan (January 30, 2017-June 30, 2018), Ronald D. Vitiello (June 30, 2018-April 12, 2019), and Matthew Albence (April 13, 2019 until present, as of October 1, 2019).

1,200 cabinet secretaries, agency directors, general counsels and other personnel whose day-to-day actions determine the actions of the government. These PAS positions routinely make major policy decisions that impact the lives of many, if not all, Americans. Consequently, whether these positions are filled or not, and why, matters for our understanding of presidential power and how that power shapes policy. Second, vacancies in agency leadership impact agency performance and interfere with the accountability, efficiency, and responsiveness of government to its citizens. Particularly in agencies like the Department of Veterans Affairs, vacancies can stall critical decisions and delay the provision of essential services; both of which could have severe consequences.<sup>7</sup> Despite these important implications, we know little about why presidents choose to maintain vacancies and not to nominate when the benefits of nominating seem obvious. I argue that vacancies left empty and those filled by interim appointees are calculated choices presidents make, within their larger nomination strategies, to advance their policy priorities.

First, however, we need to correct how we define vacancies in PAS positions. With the focus on nominees and confirmed appointees, our current conception of “vacancies” indicates the absence of Senate confirmed appointees. Yet, PAS positions *without* confirmed appointees could be *empty* or *filled with interim appointees*, temporary officials exercising the authority of the position without Senate confirmation. Between 1996 and 2016, nearly 40 percent of vacant PAS positions reported to the Government Accountability Office went without subsequent nominations; and 60 percent of those vacant positions were temporarily filled by interim appointees. Clearly, a president’s choice to not nominate or the Senate’s choice to not confirm does not exclusively create “empty chairs;” instead, the reversion point includes empty positions *and* interim appointees. By overlooking this distinction, existing theories do not account for the walk-away value of interims and empty positions,

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<sup>7</sup>For example, in 2014, with nearly 40 percent of PAS positions vacant, the Department of Veterans Affairs “was in crisis” with a “management vacuum” that could not address the excessive wait times for medical services that affected nearly 121,000 veterans, caused at least 40 deaths, and ultimately, led Secretary Eric Shinseki to resign (Kesling and Nelson 2014; Buell 2016).

and doing so ultimately reshapes how we represent the strategic considerations of the president and the Senate when they are faced with an appointment opportunity.

This paper analyzes vacancies in presidential appointments – taking into account both types of vacancies – as strategic choices driven by the capacity of those positions to achieve policy priorities. I discuss a new theory of appointments that builds on the observed phenomenon that has gone largely unexamined: the president’s choice to nominate exists in a strategy space that includes deliberately leaving the position empty and unilaterally filling it with an interim appointee. Critically, this theory incorporates the Senate’s leverage to veto a nomination *and* the president’s power to choose not to submit one in the first place. I argue that the capacity of positions themselves to advance policy priorities to expand or contract the reach of an agency – their *Position Value* – leads rational presidents to strategically forgo appointments and nominations.

I then draw on originally collected data on the status (e.g. empty, interim appointee, permanent appointee) of PAS positions, the positions’ capacity to control policy outcomes, and the Senate’s and presidents’ policy priorities, across all fifteen Executive departments from 1977 to 2015, to test the theoretical expectations about when positions are more likely to be left empty or filled with interim and confirmed (permanent) appointees. This data is the most comprehensive in political science to date and covers a total of 10,331 position-year observations. The empirical results provide support for my theory, suggesting that presidents leverage vacancies to set the direction of policy outcomes. I find, in-keeping with expectations, that when presidents prioritize policy expansion, vacant positions with high levels of capacity to control policy are more likely to be filled with interim appointees.

The next section briefly reviews work on presidential appointments and the mechanics of vacancies therein. The next section presents the basic theoretical model.<sup>8</sup> The following section presents empirical findings and the final section concludes with a discussion of these key findings and the direction of future work.

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<sup>8</sup>See the Appendix for the development of the full model of appointments.

## VACANCIES, APPOINTMENTS, AND ADVICE AND CONSENT

Scholars, understanding the importance of appointees for policy and agency performance, have modeled the nomination and confirmation process (e.g., Kaufman 1981; Nixon 2001; Lewis 2008; Chiou and Rothenberg 2014; Hollibaugh, Horton, and Lewis 2014). As they examine the balance of executive and congressional control of the bureaucracy, these current theories of appointments maintain that presidents' choices over agency leadership are constrained by the extent to which Senate preferences deviate from those of the president. These theories assume that presidents will always make appointments, through the nominations process, to head agencies. Presidents, in fact, do not.

Presidents maintaining vacancies without submitting nominations denies the Senate its advice and consent Constitutional prerogative. Yet, scholars typically frame threats to separation of powers in terms of presidents usurping power not provided by the Constitution or congressional delegation (e.g., Moe and Howell 1999; Chiou and Rothenberg 2017), rather than presidents *sidestepping* that power. Indeed, existing research examines expansions of presidential policy-making power through executive orders (e.g., Howell 2003), proclamations (Rottinghaus and Maier 2007), signing statements (Sievert and Ostrander 2017), and presidential memoranda (Lowande 2014) as strategic tools that can unilaterally achieve policy goals without legislation (Ouyang and Waterman 2015). Others address how presidents influence policy by unilaterally constructing more controllable agencies (Howell and Lewis 2002) or adjusting the number of political appointees within agencies (Lewis 2005). Few consider how not exercising formal powers consolidates influence over outcomes, particularly when presidents choose *not* to submit nominees for Senate confirmation or choose *not* to appoint at all. This omission is surprising as empty posts and interim appointees have been in the president's toolbox as ways to achieve political and policy goals for decades. As shown in Figure 1, a snapshot of the original data at the heart of this project, the percentage of PAS positions filled with

interim appointees or left empty, varies across and within administrations. This variation provides a first look at the necessity of differentiating between interim appointees and empty positions, as well as the opportunity for presidents to use vacancies strategically.

**FIGURE 1. Percentage of Executive Department PAS Positions: Empty, Interim, Vacant (1977-2015)**



While scholars have made important progress in illuminating key aspects of the appointment process, the inter-branch politics of vacancies remains understudied and untested. Instead, extant research cites vacancies as unfortunate consequences of turnover in a large administrative bureaucracy (e.g., Chang, Lewis, and McCarty 2001), confirmation delays (e.g., Binder and Maltzman 2002; Ostrander 2016; Madonna and Ostrander 2017) that are prolonged by nominee ideologies (e.g., Chiou and Rothenberg 2014; Bonica, Chen, and Johnson 2015), in periods with divided government (e.g., McCarty and Razaghian 1999), or presidential delays in nomination due to the vetting process (O’Connell 2009). Just a handful of studies explicitly consider how presidents contribute to the accumulation of vacancies (O’Connell 2009; Hollibaugh 2015; Hollibaugh and Rothenberg 2017); which includes a notable exception, Hollibaugh (2015), who does explore sustained vacancies as a

deliberate strategy within a president's larger nomination strategy space. However, more work still needs to be done as Hollibaugh's theoretical model considers only the timing of nominations and does not set them within a larger bargaining game over Senate confirmation. Furthermore, studies of how presidents unilaterally appoint interim officials to vacant posts, often in lieu of a nominee, are missing from executive politics research. Consequently, since previous theories focus on the subgame of choosing a nominee, we have yet to consider the full choice set available to presidents within a complete, extended model of appointments. This paper does exactly that.

## **How Vacancies and Interim Appointments Work**

In an effort to limit prolonged empty positions, encourage continuity in agency leadership, and maintain agency productivity in the absence of a confirmed appointee, Congress conferred interim appointment power to the president through the Vacancies Act of 1868 and its reforms. Under the Vacancies Act, the tenure of an interim appointee was limited to 30 days until 1988, when it was increased to 120 days.<sup>9</sup> The Federal Vacancies Reform Act (FVRA) of 1998 further extended this tenure, and added a set of guidelines for who can serve as an interim appointee. Currently, an interim appointee can typically fill the position for nearly 300 days after the vacancy began; upwards of 720 days if the respective nominations are withdrawn, rejected, or returned; and these limits are suspended if the Senate does not return the nomination. Under these conditions an interim can serve for almost two years or even indefinitely, which makes interim appointments a potentially powerful strategy.<sup>10</sup> While it was intended to reaffirm the power of the Senate's confirmation prerogative by establishing clearer constraints on interim appointees (Hogue 2017), the FVRA appears to have

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<sup>9</sup>The Presidential Transition Effectiveness Act of 1988.

<sup>10</sup>Once these time restrictions are exhausted, the interim appointee technically loses her temporary authorization and only the head of the agency may perform any non-delegable function or duty of the office. There are no automatic ramifications for an interim's overstay, except a violation letter from the GAO, but legal action could be brought that challenges an interim appointees' standing to engage in official business when in violation of the time limit, as seen with *NLRB v. SW General, Inc.* 580 U.S. Supreme Court (2017).

been less than successful in limiting presidential use of temporary officials. The FVRA extensions to interim tenures ultimately created a set of vacant positions for which timing considerations encourage presidents to forgo nominations entirely.

Notably, vacancies have important implications for policy and agency performance. Vacancies *with* interim appointees likely increase responsiveness to the president's preferences since they are not subject to Senate confirmation. If drawn from long-term employees with more agency work history, acting officials may have more competence and expertise than their Senate-confirmed alternatives (O'Connell 2009). Alternatively, vacancies *without* interim appointees (i.e., empty positions) likely reduce the responsiveness of the administrative state to time sensitive or stakeholder-specific needs, limit the generation of public policy, and erode morale among careerists if agency operations stall. The absence of key officials will generally make agencies less productive and less able to handle time-sensitive crises that require swift decision-making and leadership (O'Connell 2009). For instance, Bolton, Potter, and Thrower (2015) find that when the Administrator of the Office of Information and Regulatory Affairs (OIRA) is empty, OIRA has longer regulatory review periods and is less responsive to the president's policy agenda.

Moreover, empty posts often lead to agency inaction, particularly for independent commissions (e.g., the Consumer Financial Protection Bureau) that require a quorum or regulatory agencies that need leadership to establish rule-making priorities (e.g., the Food and Drug Administration or the National Highway Traffic Safety Administration). The absence of leadership can make careerists feel "rudderless," and "thwarted for months or even years from doing the government jobs they were hired to do" (Leonnig 2008, 1), decreasing morale and the trust that reinforces careerist compliance with the administration's larger agenda.

Yet, agency inaction that aligns with the president's larger policy agenda could lead to political benefits for the president and his supporters. For instance, President Reagan famously left vacancies at more liberal agencies like the Environmental Protection Agency which generated considerable

support from his conservative base (Houck 1987). Moreover, widespread and incapacitating vacancies offer a potentially faster method of centralization from predecessors' politicized agencies. These conflicting motivations for the absence of a confirmed appointee – where empty posts promote inaction and interim appointees offer more effective reactions – further support that theories of appointments and vacancies need to incorporate a more nuanced definition of vacancies.

## A THEORY OF VACANCIES AND FILLED APPOINTMENTS

Vacancies offer presidents an opportunity to pursue diverging policy goals. Starting from this assumption, I present a theory of appointments based on a model that formalizes the president's choice to fill a position or leave it empty in an inter-branch bargaining context. Here, due to space constraints, I offer a stylized version and the model's intuition; the Appendix presents the formal treatment of the model and its solutions.

The model begins with a vacancy and has two stages and two players, the president and the Senate.<sup>11</sup> Given the advantage of a first-mover, the president sets the reversion point (i.e., an empty position or interim appointee) for the Senate's choice to confirm a nominee, if one is submitted. I assume that both players maximize utility from policy outcomes in terms of *Position Value*, which is exogenously determined and represents each PAS position's capacity to advance a player's priorities for the agency's policy-making activities. Specifically, *Position Value* ( $V_{iy}$ ) is a function of two variables: *Position Capacity* and *Policy Priorities*, each described in more detail below. As Figure 2 highlights, to make the theory's implications as stark as possible, the value of a position is high only when a player prioritizes the agency's policy jurisdiction *and* the position has the capacity to achieve those priorities.

Formally, the generalized utility functions for each player  $i$  reflect the payoff for filling the

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<sup>11</sup>I assume vacancies occur either at the start of or randomly throughout his term. While there are potential non-random aspects of the data generating process behind vacancies, particularly for term-limited positions in independent agencies, I black-box the vacancy generation and assume, for simplicity, that they are exogenous.

**FIGURE 2. Position Value: Combining Position Capacity and Policy Priorities**

		Policy Priority		
		Contraction	Neutral	Expansion
Position Capacity	High	High Value	Low Value	High Value
	Low	Low Value	Low Value	Low Value

position immediately ( $\beta\tau V_{iy}$ ), the payoff for filling the position for the long-term ( $\beta\tau\gamma V_{iy}$ ), and the bargaining cost ( $c_i$ ) of the confirmation process such that:  $u_y = \beta\tau_{(f,-f)}V_{iy} + \beta\tau_{(f,-f)}\gamma V_{iy} - c_i$ .

Here, *Position Value* ( $V_{iy}$ ) is weighted by three multipliers.<sup>12</sup> First,  $\beta$  indicates the *effectiveness* of any appointee (interim or permanent), should one fill the position, in achieving the full value of the position. I assume that the president chooses appointees based on their level of *effectiveness* in delivering the full position value, where an ineffective appointee cannot deliver the high value of the position which imitates the low value of a low capacity position. Second,  $\tau$  indicates whether a position is filled. I assume that filled positions and empty ones differ, at a minimum, in terms of accountability and responsiveness. Empty PAS positions, inherently, do not have a person to fulfill basic responsibilities like executing presidential directives. Lastly,  $\gamma$  indicates the *anticipated degree of congressional oversight* that might restrict or amplify the appointee’s ability to deliver the full realization of position value. I assume the Senate impacts the full realization of the position value through the anticipated degree of oversight of a permanent appointee.<sup>13</sup> Specifically,  $\gamma$  amplifies the realized position value when Senate and presidents policy priorities align and decreases it when they do not.

<sup>12</sup> $\beta \in (0, 1]$  and  $\tau_{(f,-f)} \in \{\mathbb{Z}^-, \mathbb{Z}^+\}$

<sup>13</sup>Confirmation establishes the nominee as a permanent appointee, which generates confidence in the perpetuity of the filled position. Moreover, the evaluation of agency actions through oversight either constrain policy changes (when the Senate and president do not align in their priorities) or strengthen their legitimacy to vested interest groups (when the Senate and president align).

Additionally, I assume that the political capital and time required for confirmation negotiations are costly, albeit not necessarily equally, to both the president and the Senate. These time-invariant costs ( $c_i$ ) are indexed to each player and incurred only when a nominee is submitted for Senate confirmation. Specifically, I assume that these non-zero costs are common knowledge, exogenously determined, and assigned by Nature for each vacant position. While several features of the confirmation process can be engineered to decrease or increase bargaining costs, I assume that these adjustments occur outside the scope of the game. The sequence of game play is as follows:

1. The president is presented with an empty position, with value to the Senate  $V_{iS}$  and to the president  $V_{iP}$ , given the position's capacity and the Senate's and the president's policy priorities for the agency, respectively. The president observes  $V_{iS}$  and  $V_{iP}$ , chooses a strategy to fill with an interim appointee or leave empty, and then to nominate or not.
2. If the president does not nominate, the game ends with an interim appointee or empty position. Payoffs are then allocated to both players.
3. If the president does nominate, the Senate chooses a strategy to confirm or not. If the Senate chooses to confirm, the game ends with a permanent appointee. If the Senate chooses to not confirm, the game ends with the reversion point from the president's move in the first stage, either an interim appointee or empty position. Payoffs are then allocated to both players.

*Position Value*, the key parameter that indicates the capacity of the position in terms of controlling the policy outcomes within the jurisdiction of the position's parent agency, is a composite of *Position Capacity* and *Policy Priorities*. The extent to which a specific position can advance each player's policy priorities is institutionally constrained by the *Position Capacity* to control policy outcomes. Positions with *low* policy control capacity are administrative or routine in nature, have little to no latitude, and generally provide few opportunities to reach larger political goals. Alternatively, positions with *high* policy control capacity require more expertise, have more room to influence

policy outcomes, and advance a larger political agenda.

*Policy Priorities* capture whether the player prefers to expand, contract, or neutrally maintain the agency's status quo implementation, regulation, or policy generating activities. Specifically, expansion- or contraction-branded priorities classify the player's ideal policy direction.<sup>14</sup> Expansion priorities emphasize increasing the reach of an agency in a given policy area whereas contraction priorities focus on shrinking the agency's footprint.<sup>15</sup> When we entertain what the president and the Senate are looking to achieve more broadly from their policy agenda, we can generalize to consider how the *position* itself – whether left empty or filled with a specific appointee – advances that agenda.

Interacting *Position Capacity* and *Policy Priorities*, a position with high *Position Value* has a high capacity to advance expansion and contraction policy priorities, otherwise the position has low value.<sup>16</sup> *Position Value* creates the incentives that drive the Senate's choice to confirm a nominee, and the president's strategic choice to submit one, given the Senate's confirmation strategy. The

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<sup>14</sup>Traditionally, when we theorize about appointees, we begin with ideology. Most models of presidential appointments focus on the choice of nominee in terms of *ideological* alignment with the president and the Senate. Yet, ideology is just one element in the basket of what appointments can deliver. Critically, the expansion-contraction dimension is not a surrogate for the standard liberal-conservative one. Here, priorities over the status quo are distinct from ideology in that liberal and conservative actors both prefer to diminish *and* cultivate policy reach, albeit often on competing issues. For instance, self-styled conservative policy priorities might include expansion in border protection and reductions in anti-trust enforcement, whereas liberal priorities might include decreasing immigration enforcement and expanding federal lands protections. Thus, while policy priorities are not agnostic of ideology, this expansion-contraction dimension generalizes over time and shifting party platforms.

<sup>15</sup>For example, policy priorities might include contracting supervision of liquefied natural gas pipelines by weakening the Federal Energy Regulatory Commission or expanding protections for intellectual property by strengthening the Patent and Trademark Office.

<sup>16</sup>When a position has low policy control capacity, any appointee – interim or permanent – has minimal ability to affect policy change and the value of that position to a player is nil, no matter their policy priorities. Likewise, when a player does not prioritize the policies under the agency's purview (i.e., the player has neutral policy priorities) the value of the position for advancing the player's larger agenda is also nil, no matter the position's capacity level.

**FIGURE 3. Theory of Vacancies and Filled Appointments Outcomes**

		Period 2: Senate's Strategies		
		Confirm	Not confirm	
Period 1: President's Strategies	Fill Immediately with Interim	Submit Nominee	<i>Interim and Permanent</i>	<i>Interim</i>
		Not Submit Nominee	<i>Interim</i>	
	Not Fill Immediately	Submit Nominee	<i>Permanent</i>	<i>Empty</i>
		Not Submit Nominee	<i>Empty</i>	

combinations of these strategies lead to any one of four outcomes, as depicted in Figure 2: an empty position, a position filled by an interim appointee with no action toward a permanent appointee, a position filled by a permanent appointee, or a position filled by an interim and then a permanent appointee. I employ subgame perfect Nash equilibrium and solve the game via backwards induction. The game follows a straightforward sequential structure, has a unique equilibrium, and produces clear predictions about the way in which each of these outcomes arise. In the following sections, I describe these predictions, use them to generate several hypotheses, which I then test using new and original data on the status of positions, their capacity, and the corresponding policy priorities.

**Empirical Predictions**

The model's equilibrium solution generates three sets of empirical predictions related to *Position Value*, *Position Capacity*, and *Policy Priorities*. First, empty positions occur either when the president chooses not to appoint an interim and also not nominate, or when the president chooses to nominate without appointing an interim but the Senate does not confirm the nominee. Through

backward induction, we can mathematically derive the conditions under which the president chooses these strategies, captured by the equations leading to Proposition 1 (Appendix A2), which are: a high value position with contraction presidential policy priorities will not be filled by either an interim or confirmed appointee – it will be empty – when the game ends. In other words, when a president prioritizes policy contraction, positions with high levels of capacity will stay empty as the president will not appoint an interim or nominate a permanent appointee.<sup>17</sup>

As expected, the president’s first-mover advantage manifests as dictatorial control over empty positions. It is important to note that when a president chooses to keep a position empty, the position is high-capacity. These positions have the most potential for advancing policy priorities but also have real-world consequences for agency performance and policy outcomes when left empty. This implies that widespread empty posts are not among low-level, heavily administrative PAS positions, but rather among exactly those positions that need to be filled for a functioning agency. These conditions yield the theory’s first testable hypothesis:

**H1. Empty Position Hypothesis:** *A president is more likely to leave high value positions empty when prioritizing policy contraction.*

Second, consider the outcome of an interim appointee. Interim appointees can occur when the president chooses to appoint one either without submitting a nominee or with a nominee that the Senate does not confirm. I find that, in equilibrium, the president chooses to appoint interims to all low value positions – which amounts to low capacity positions across all policy priorities and high capacity positions when the president has neutral policy priorities – and to high value positions when prioritizing policy expansion. Importantly, these conditions continue to highlight the president’s

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<sup>17</sup>When the president prioritizes contracting policy, the Senate will not confirm nominees for high value positions. In other words, anticipating the Senate’s pure strategy to return a nominee and end the game with an empty position, the president prefers to avoid the bargaining cost of appointment negotiations, forgo submitting a nominee entirely and arrive at the same result of an empty position. Low capacity positions, on the other hand, will be filled with interim appointees when the president prioritizes contraction, but no nominee will be submitted.

first-mover advantage over vacancies in agency appointments and the endogenous reversion point that is created. The president's choice to fill a position immediately with an interim appointee (or not) does not explicitly depend on the Senate's policy priorities or on the Senate's confirmation strategy. Instead, when a president seeks to expand the reach of an agency, he fills all vacant PAS positions with interim appointees. This suggests that as policy agendas are increasingly dominated by expansion priorities, the use of interim appointees will also increase. These conditions generate the theory's second testable hypothesis:

**H2. Interim Appointee Hypothesis:** *A president will always immediately fill low value positions with interim appointees, and is more likely to immediately fill high value positions with interims when prioritizing policy expansion.*

Most interestingly, when presidents prioritize policy contraction for agencies, they will not submit a nominee for confirmation. In these cases, presidents immediately fill low-capacity positions with interim appointees but high-capacity positions stay empty, even when the Senate agrees with contraction. The notable implication is that if a president prefers to shrink the policy reach of an agency, persistently empty high capacity positions, without nominees awaiting confirmation, will occur even in unified government. Thus, we would expect that, all else equal, the combination of high capacity and contraction priorities (high value, contraction positions) significantly increases the likelihood it remains empty.

Additionally, this theory recognizes that a vacant position can be filled by a confirmed appointee, an interim appointee, or both.<sup>18</sup> This model predicts that when the Senate and the president have conflicting priorities, contraction and expansion respectively, presidents will only appoint an interim and not submit a nominee. Since existing literature does not explicitly identify interim appointees, we have few current expectations. However, we could imagine that divided government – when conflicting policy priorities across branches make confirmation difficult – or increased polarization –

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<sup>18</sup>Importantly, a vacant position filled by both an interim appointee and a permanent appointee would be filled first by the interim (before confirmation of a submitted nominee) and then by the permanent appointee (after confirmation).

when conflicting policy priorities within the Senate make collective action towards confirmation difficult – likely make an interim appointee a more attractive option. In other words, the likelihood of an interim increases if the president’s priorities conflict with those of the Senate.

## **ANALYZING VACANCIES IN PRESIDENTIAL APPOINTMENTS**

To evaluate the expectations outlined above, I collected data on the status of PAS positions and their levels of capacity to control policy outcomes, as well as congressional and administration’s policy priorities from 1977-2015 for PAS positions<sup>19</sup> in all fifteen Executive departments (Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, Homeland Security, Interior, Justice, Labor, State, Transportation, Treasury, and Veterans Affairs). To identify whether a position is filled or empty, and specifically to differentiate between interim and permanent appointees, I rely on government published directories of PAS positions. Together with a research assistant, I digitized data from archived editions of the quadrennial publication *United States Government Policy and Supporting Positions* (the Plum Book) and archived annual editions of the *United States Government Manual* using optical character recognition (OCR) software. Each of the government reports lists who is occupying the position and whether they are an interim appointee, or if the position is empty, at the time of publication.<sup>20</sup> Using these data, I constructed

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<sup>19</sup>The analysis here excludes United States Marshals, United States Attorneys, or United States Ambassadors, as they are appointments distinct from other Executive department PAS positions and they can be filled through varied processes. For instance, individuals can be selected to temporarily fill empty U.S. Attorney positions by their respective district courts, as well as selected by the president. Consequently, they require a separate examination beyond the scope of this project.

<sup>20</sup>This measure offers a discrete snapshot of which positions are filled – and by whom – at a particular time of year: the Government Manual is published in June or July each year. Ultimately, this means that an empty position could be filled with a confirmed appointee the week following the published version or could have been filled up until the previous week, and in both cases the position would be (correctly) identified as empty. However, there is little reason to believe that the Senate, presidents, or appointees schedule their choices to confirm, appoint, or vacate positions to correspond with the publication date of a standard publication from the Government Printing Office.

the three-category *Position Status* to identify whether the PAS position is empty, filled with an interim appointee, or filled with a confirmed appointee.<sup>21</sup>

Of the 10,331 position-year observations, 8,308 (80.4 percent) were filled by permanent appointees, 1,069 (10.4 percent) were filled by interim appointees, and 954 (9.2 percent) were left empty. Importantly, this data quantifies the error in past work on appointments, which, on average, misses the reversion point for nearly 20 percent of positions. Additionally, this distribution was not constant across administrations or departments. Of the positions filled with a permanent appointee and those left empty, over half of each were during Republican administrations; whereas, just 44 percent of positions filled with an interim appointee had Republican presidents. Our conventional wisdom might lead us to expect a smaller share of empty positions with co-partisan presidents and Senate majorities, since confirmation (and therefore nomination) would, presumably, be less costly. However, nearly a third of empty positions occurred during united government (House of Representatives, Senate, and president) and 59 percent saw party-aligned presidents and Senate majorities. Importantly, *Position Status* varies by partisanship and institutional control, which suggests that there are other considerations beyond these traditional explanations – perhaps, as I posit, differences in the value of the position to the president and the Senate – that influence the decision to fill a position.

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<sup>21</sup>The discrete nature of the outcome variable – the single, yearly time-step of each record for each PAS position – does not offer a complete picture of all vacancies *throughout* each year of each administration. If observations of empty positions or interim or permanent appointees not included due to this data structure are systematic or widespread, then that could potentially lead to biased findings. However, there is good reason to believe this is not the case. An analysis of a continuous dataset for positions in the Department of Labor from 1977-2003, constructed with the inclusion generously shared data from Anne Joseph O’Connell, identifies the *absence* of a confirmed appointee with near perfect accuracy: just one observation in my data was reported as a vacancy when a permanent appointee was listed in the OPM data. This considerable overlap suggests that systematic missingness in the dependent variable is rather unlikely. (The O’Connell dataset contains employment records from 1977 to 2003 attained through a FOIA request to the Office of Personnel Management (OPM) and used in the analysis for (O’Connell 2009).)

## **Measuring *Position Value***

My theory conjectures that the value of PAS positions depends on their capacity to control policy outcomes in line with policy priorities; and that presidents fill or leave PAS positions empty based largely on this position value. Accordingly, each of the previously described expectations are characterized in terms of position value as a function of position policy control capacity and policy priorities. The subsequent analysis, therefore, requires an operationalization of these concepts, such that *Position Value* is a composite measure of *Policy Priorities* (contraction, neutral, expansion) and the level of *Position Capacity* (high or low).

***Policy Priorities*** To operationalize the concept of policy priorities, I need to identify if the president and Senate prefer to expand or contract the reach of an agency in the year of the observed position status. There are various opportunities for each actor to reveal their preferences. Presidents convey their agenda through campaign platforms, State of the Union Addresses, signing statements, administration position statements and official press engagements. Scholars often control for the salience of policy priorities in terms of mentions in the State of the Union (e.g., Krause and O’Connell 2016) or frame these priorities in terms of a legislative agenda (e.g., Beckmann 2010), but this theory requires a measure of the *direction* of policy priorities vis-à-vis the status quo. Fortunately, the annual budget process requires administrations and Congresses to take stock of each agency’s current position relative to their ideal agency activities, determine areas for change, and create quantitative measures of desired shifts in budgetary authority. Thus, I am able to identify expansion and contraction policy priorities using administration budget requests and final appropriation levels.

To compile this data, I scraped the annual presidential budget requests and previous years’ budget authority, for each agency from 1977 to 2015, from the historical summary tables located in the appendices of every fiscal year edition of *The Budget of the United States Government*, archived by FRASER.<sup>22</sup> I structure *policy priorities* as a categorical variable identifying expansion, contraction,

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<sup>22</sup>United States. Bureau of the Budget and United States. Office of Management and Budget. Budget of the United States

or neutral (maintaining the status quo funding level given inflation) presidential and congressional policy priorities.

I measure presidential *expansion policy priorities* as budget requests to increase an agency's budget authority from the average of the previous two fiscal years, by an amount more than what would be required to maintain current levels given the annual rate of inflation. The average of the previous two appropriations smooths fluctuations in budget authority due to irregular spending from stimulus packages or new program roll-outs, or reductions from agency reorganizations or program terminations. Conversely, I measure presidential *contraction policy priorities* as budget requests to decrease an agency's budget authority from the average of the previous two fiscal years. Similarly, I measure congressional *expansion policy priorities* as increases, larger than inflation, in the congressionally approved budget authority from the average of the previous two fiscal years; and congressional *contraction policy priorities* as decreases to an agency's budget authority from the average of the previous two fiscal years.<sup>23</sup> The remaining category of *neutral policy priorities* indicates requests or approved budget authority that maintains the same level of agency funding within the range of inflation.<sup>24</sup>

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Government. 1921-2018. <https://fraser.stlouisfed.org/title/54>.

<sup>23</sup>Importantly, the congressional policy priorities constructed here are not those of just the Senate. Budget authorizations must pass the Senate, and, therefore, Senate priorities are reflected in any budget authority. However, the realization of the Senate's priorities are likely constrained – in either direction – by the preferences of the House of Representatives. This constraint would be particularly prominent if the party leadership is divided between the House and the Senate, and would have largest implications when the Senate majority is not the president's party. To control for these potential biases in my analyses, I control for the the co-partisanship of the Senate and president.

<sup>24</sup>Critically, presidential budget requests are not directly tied to congressional appropriations. While the budget process creates the opportunity for presidents to submit their annual budget request, Congress is not required to entertain any debate or hearings or to fund at the requested level. In fact, there are many instances when Congress has blatantly ignored the administration's request and funded at the levels it deemed appropriate; the most recent example comes from Trump's request to considerably decrease funding for the Department of Education, which was flatly rejected and, instead, the most recent funding package increased Education's budget authority. However, Congress has clear incentives to use the president's budget request as an oversight opportunity and as an information-sharing exercise.

***Position Capacity*** In the theory outlined above, I conjectured that positions themselves have the opportunity to deliver political or policy benefits to the president (or Senate); that is, they have the capacity to control policy outcomes. Consequently, I am most concerned with identifying which positions have a high level of policy control capacity. Each edition of the *Government Manual* offers brief descriptions of the position responsibilities, the general mission or scope of activities for agency or sub-agency that the position leads, and organizational charts that identify where the position or sub-agency fit in the larger agency structure. To construct a measure of *Position Capacity* to control policy outcomes, I first identified whether the responsibilities of each PAS position in each agency were for agency operations, policy development, policy implementation, inter- or intra-agency coordination, legislation development, agency management and communications or public relations using position and agency descriptions published in annual editions of the *Government Manual*.

The positions that have *clear* responsibilities for policy development, implementation, or explicit coordination among policy implementers carry the lion's share of the success or failure in achieving policy goals. While all PAS positions have some impact on the agency's operations and will, even if only implicitly, influence how well other positions are able to advance on their priorities, it is those that clearly impact policy outcomes that have high capacity. These positions include: agency heads (e.g. secretaries, administrators, directors), general counsels, inspectors general, and deputy or assistant secretaries that have jurisdiction and responsibilities for policy direction and implementation. Consequently, each of these position's *Position Capacity* level is *high*.

Alternatively, positions with *low* policy control capacity are responsible for an agency's internal management or policies governing agency operations, like assistant secretaries of administration. These roles do indeed have important functions with respect to internal management and operation, but they are coded here as low policy control capacity given the position's low impact on the policy direction of the agency. Similarly, positions with responsibilities for relating information or maintaining public relations (e.g., assistant secretaries for communication), and positions responsible

only for research and data collection without grant making or policy recommendation responsibilities (e.g., director of the Bureau of Mines at the Department of the Interior) also have little opportunity to influence the promulgation, enforcement, or implementation of the substantive rules that guide policy outcomes. Consequently, these positions' *Position Capacity* level is *low*.

***Position Value*** Lastly, I construct the categorical variable, *Position Value*, as a function of *Position Capacity* and *Policy Priorities*. Specifically, as Table 1 outlined above, a position is “Low Value” such that its *Position Capacity* level is low or *Policy Priorities* are neutral. A position is “High Value (contraction)” or “High Value (expansion)” when its *Position Capacity* is high and *Policy Priorities* are contraction or expansion, respectively.

### **Explaining *Position Status* with *Position Value***

It is important to establish the empirical consequences of the keystone of my research: differentiating between vacancies left as empty positions and those filled with an interim appointee. The non-parametric cross-tabulations of the distributions reported in Tables 1 and 2 clearly demonstrate the significance of this distinction. Table 1 shows that, under the conventional definition, vacancies appear to be similarly distributed, accounting for approximately 19 percent of PAS positions in each category of president *Position Value*. Moreover, we cannot statistically differentiate among the distributions of permanent appointees and vacancies across those categories. However, when we define vacancies more precisely, as shown in Table 2, substantively and significantly different distributions emerge.

Specifically, Table 2 reports that empty positions and interim appointees vary considerably across the categories of president *Position Value*. In particular, 11.2 percent of “High Value (expansion)” positions are filled with interim appointees, compared to 9.2 percent left empty; and 9.8 percent of “High Value (contraction)” positions were left empty compared to 9.3 percent with interims. In other words, 55 percent of vacancies in “High Value (expansion)” positions and 54 percent of “Low

**TABLE 1. Distribution of Permanent Appointees and Vacancies**

		Percentage of PAS Positions	
		Permanent Appointees	Vacancies
<b>President Position Value</b>	High Value (expansion)	79.7%	20.3%
	High Value (contraction)	80.9%	19.1%
	Low Value	81.1%	18.9%

Note: N=10,331.  $\chi^2 = 2.7636, p = 0.251$

Value" positions were filled with interim appointees, while 51 percent of "High Value (contraction)" positions were left empty; and we can statistically differentiate between these percentages at a less than ten percent level. Recall, the *Empty Position Hypothesis* predicts that presidents are more likely to leave positions empty that are "High Value (contraction)" and the *Interim Appointee Hypothesis* posits that they are more likely to appoint interims to positions that are "Low Value" and "High Value (expansion)." Thus, without controlling for any other factors, the distributions presented in Table 2 align with my theoretical expectations.

**TABLE 2. Distributions of Permanent Appointees, Empty Positions, and Interim Appointees**

		Percentage of PAS Positions			Percentage of Vacant PAS Positions	
		Permanent Appointees	Empty Positions	Interim Appointees	Empty Positions	Interim Appointees
<b>President Position Value</b>	High Value (expansion)	79.7%	9.2%	11.2%	45.1%	54.9%
	High Value (contraction)	80.9%	9.8%	9.3%	51.4%	48.6%
	Low Value	81.1%	8.7%	10.2%	46.2%	53.8%

Note: For the percentage of overall PAS positions (N=10,331):  $\chi^2 = 8.5791, p = 0.073$   
 For the percentage of vacant PAS positions (N=2,023):  $\chi^2 = 5.8564, p = 0.053$

Critically, the Department of Defense houses a considerable proportion of Executive department PAS positions (nearly 15 percent), and, uniquely, decisions about defense policy outputs are fundamentally decisions about defense personnel. This starkly differs with the policy outputs from all the other departments as policies are not centered on departmental personnel. When we examine the distribution of permanent appointees, empty positions, and interim appointees across the PAS positions in non-Defense Executive departments, we find a starker pattern.

As Table 3 displays, 12.3 percent of “High Value (expansion)” non-Defense positions are filled with interim appointees, compared to 8.5 percent left empty; and 9.4 percent of “High Value (contraction)” non-Defense positions were left empty compared to 9.5 percent with interims. In other words, by excluding Department of Defense positions, we see that 59 percent of vacancies in “High Value (expansion)” positions and 57 percent of “Low Value” positions were filled with interim appointees, while 50 percent of “High Value (contraction)” positions were left empty. Moreover, we can statistically differentiate between these percentages at a less than five percent level. Recall, I posit that presidents are more likely to appoint interims to positions that are “Low Value” and “High Value (expansion).” The distributions presented in Tables 2 and 3, without controlling for any other factors, align with my theoretical expectations.

Each of these sets of comparisons demonstrate that when we coarsely group empty positions and interim appointees together, as the conventional definition of vacancies does in Table 1, we unfortunately and inaccurately perceive little effect of strategic behavior on the misleadingly similar distributions. My research remedies that oversight. In the next section, I analyze the patterns that emerged from this non-parametric analysis in the context of a parametric likelihood model, which allows for formal statistical inference about the role *Position Value* plays in a president’s calculus to fill or not fill vacant positions.

**TABLE 3. Distributions of Permanent Appointees, Empty Positions, and Interim Appointees, excluding the Department of Defense**

	Percentage of PAS Positions			Percentage of Vacant PAS Positions		
	Permanent Appointees	Empty Positions	Interim Appointees	Empty Positions	Interim Appointees	
<b>President Position Value</b>	High Value (expansion)	79.25%	8.5%	12.3%	40.8%	59.2%
	High Value (contraction)	81.15%	9.4%	9.5%	49.6%	50.4%
	Low Value	80.3%	8.5%	11.2%	43.3%	56.7%

Note: For the percentage of overall PAS positions (N=8,799):  $\chi^2 = 13.1630, p = 0.011$   
For the percentage of vacant PAS positions (N=1,751):  $\chi^2 = 9.7474 p = 0.008$

**Modelling the Likelihood of *Position Status* as a Function of *Position Value***

I estimate multinomial probit (MNP) models of *Position Status*, with cluster-robust standard errors to account for clustering within administrations,<sup>25</sup> and the key predictor variables: *Position Value* for the president and for Congress and the interaction between them. I control for whether the administration is new and in transition or if it is an established administration; that is, *Established*

<sup>25</sup>Ultimately, this paper aims to examine what underpins and predicts the president’s choice to leave certain positions empty and fill others with interim or permanent appointees. To do this, we need to employ an estimation strategy that accommodates a categorical outcome variable, such as MNP or logistic regressions. Importantly, estimating the likelihood of empty positions and interim appointees (with and without the nomination distinction) also requires a statistical model that allows for comparisons between pairs of position status alternatives, while not imposing the independence of irrelevant alternatives (IIA) assumption. Notably, the strategic nature of the decision to fill with either an interim or confirmed nominee or not to fill a position at all violates the IIA assumption, which requires that evaluations between two alternatives do not change if a third alternative is added or dropped (Greene and Hensher 2010). Obviously, adding the alternative to fill with an interim appointee will change the likelihood evaluation between leaving the position empty and filling it with a confirmed appointee. Consequently, a MNP model – given that the errors are distributed by a multivariate normal distribution (Greene and Hensher 2010) – which can facilitate comparisons between the position status alternatives and does not require the IIA assumption, is most appropriate for this analysis.

*Administration* indicates that the administration is no longer in its first year.<sup>26</sup> Although the months between election and inauguration are traditionally focused on assembling the top leadership in a new administration, the sheer volume of vacant PAS positions due to structural turnover likely explains at least some of the variation in empty positions and interim posts, outside of presidential strategic behavior. Additionally, I control for the department average time that nominations spent in the Senate each year, which operationalizes the Senate’s *Permanence and Oversight* parameter from my theoretical model. I control for whether the Senate majority is the same party as the president (*Co-Partisan Control*), which likely impacts the ease of confirmation that makes permanent appointees more valuable. Lastly, I include a control for the *Department of Defense* and administration fixed effects to control for time-invariant characteristics of administrations.

Specifically, as per Greene and Hensher (2010), the structural equation for the multinomial probit model is the following:<sup>27</sup>

$$U_{y_{jt}} = \alpha_{y_{jt}} + \beta_{VP} V'_{Py_{jt}} + \beta_{VC} V'_{Cy_{jt}} + \beta_{VPxC} V'_{Py_{jt}} V'_{Cy_{jt}} + \gamma_1 EA'_t + \gamma_2 T'_j + \gamma_3 CP'_t + \gamma_4 D'_j + \gamma_5 A'_t + \varepsilon, \quad (1)$$

such that

$$Pr(y_{jt} = S_m) = Pr(u_{S_m} > u_{S_k} \forall m \neq k)$$

<sup>26</sup>The results presented below are robust to specifications that include only established administration years (i.e., observations from non-first years).

<sup>27</sup>*Position Value* ( $V_{iy_{jt}}$ ) is, fundamentally, the combination of *Policy Priorities* and *Position Capacity*. Kam and Franzese (2009) show that the individual terms of an interaction do not have to be included when there is clear theoretical evidence that points toward not including them. My theory offers a clear theoretical expectation that the predictors of the outcome variable are the various combinations of *Policy Priorities* and *Position Capacity* captured in *Position Value*, not the individual terms themselves. Consequently, I do not include them in this model specification; however, the results from this estimation are robust to their inclusion.

for

$$S_{1m} \begin{cases} 0 \Rightarrow \textit{Empty} \\ 1 \Rightarrow \textit{Interim Appointee} \\ 2 \Rightarrow \textit{Permanent Appointee}, \end{cases}$$

where

$S_1$  is the status of a position  $y_{jt}$  in department  $j$  for year  $t$ , which indicates whether it is empty, filled with an interim appointee, or filled with a permanent appointee;

$V_{Py_{jt}}$  is *Position Value* for the president;

$V_{Cy_{jt}}$  is *Position Value* for Congress;

$V_{Py_{jt}}V_{Cy_{jt}}$  is the interaction between the *Position Value* for the president and Congress, as driven by my theoretical expectations;

$EA_t$  and  $\gamma_1$  is *Established Administration* and its effects;

$T_{jt}$  and  $\gamma_2$  is average time nominations for department  $j$  spent in the Senate in year  $t$  and its effects;<sup>28</sup>

$CP_t$  and  $\gamma_3$  is *Co-Partisan Control* of the Senate and its effects;

$D_j$  indicates the *Department of Defense*;  $A_t$  is administration fixed effects; and  $\varepsilon$  are the multivariate normally distributed errors.

## Results

Below, Table 4 reports the estimated coefficients and cluster-robust standard errors with the three-category construction of *Position Value*.<sup>29</sup> The coefficients for the baseline choice, "Permanent Appointee," have been normalized to zero in order to identify the model and allow for comparisons

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<sup>28</sup>The variable indicating the average time that nominations spent in the Senate for each department in each year is the corollary to the formalized *Permanence and Oversight* parameter.

<sup>29</sup>The structure of the three-category *Position Status* dependent variable does not indicate nominations, and does not require the inclusion of the variable measuring average time a nomination spent in the Senate. Tests for the model's sensitivity to the variable's inclusion supports excluding it as the results do not change significantly or substantially. However, the estimation on the five-category *Position Status* does require the inclusion of the variable to avoid omitted variable bias.

**TABLE 4. Likelihood Models of Presidential Appointment Strategy in Executive Departments, 1977-2015**

		Multinomial Probit DV: <i>Position Status</i>	
		(1)	(2)
		Empty Position	Interim Appointee
<i>President Position Value</i>	High Value (expansion)	0.147 (0.11)	-0.285** (0.11)
	High Value (contraction)	-0.205 (0.35)	-0.191 (0.38)
<i>Congress Position Value</i>	High Value (expansion)	-0.193** (0.05)	-0.138* (0.07)
	High Value (contraction)	-0.233 (0.17)	-0.203** (0.06)
<i>President X Congress Position Value</i>	High Value (contraction) X High Value (contraction)	0.365 (0.49)	0.160 (0.33)
	High Value (contraction) X High Value (expansion)	0.488 (0.38)	0.856 (0.29)
	High Value (expansion) X High Value (contraction)	-0.201 (0.30)	0.138 (0.09)
	High Value (expansion) X High Value (expansion)	-0.068 (0.10)	0.418** (0.14)
	Established Administration	-1.078** (0.06)	-0.689** (0.06)
Co-Partisan Control	0.027 (0.27)	0.041 (0.06)	
Department of Defense	0.227* (0.11)	-0.452** (0.09)	
Administration Fixed Effects	✓	✓	
Intercept	-1.141** (0.29)	-1.354** (0.15)	

Note: N=10290 in all models. Table entries are multinomial probit estimates of *Position Status*. The omitted (baseline) category is "Permanent Appointee," its coefficients have been normalized to zero in order to identify the model and allow for comparisons across equations. Reference category for *Position Value* is "Low Value." Cluster-robust standard errors appear in parentheses.

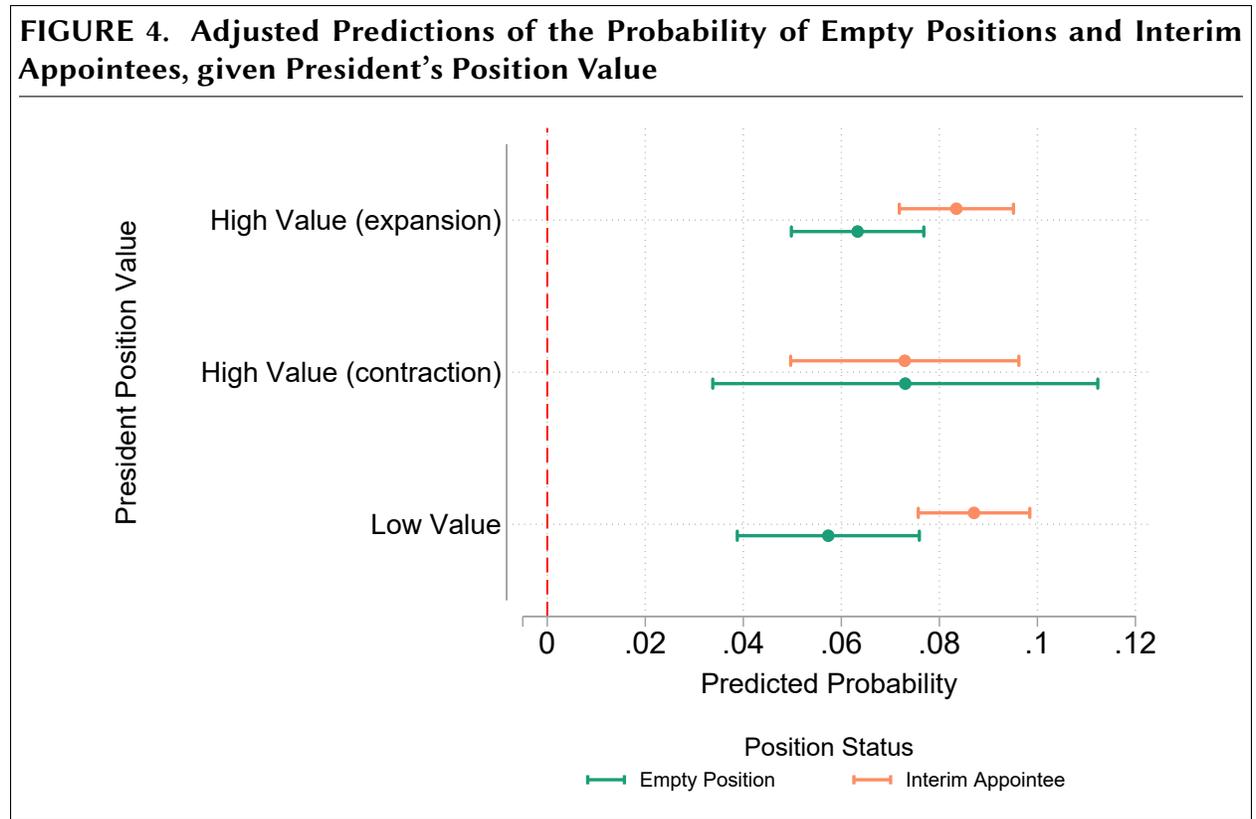
\*p<0.05, \*\*p<0.01

**TABLE 5. Predicted Probabilities of Position Status Outcomes**

		Permanent Appointee	Interim Appointee	Empty Position
<i>President Position Value</i>	High Value (expansion)	0.853 (0.01)	<b>0.083</b> (0.01)	0.063 (0.01)
	High Value (contraction)	0.854 (0.02)	0.073 (0.01)	<b>0.073</b> (0.02)
	Low Value	0.856 (0.01)	<b>0.087</b> (0.01)	0.057 (0.01)
<i>Congress Position Value</i>	High Value (expansion)	0.848 (0.01)	0.087 (0.01)	0.065 (0.01)
	High Value (contraction)	0.874 (0.015)	0.071 (0.01)	0.055 (0.01)
	Low Value	0.848 (0.01)	0.078 (0.01)	0.074 (0.01)
Established Administration	New Administration	0.646 (0.02)	0.146 (0.01)	0.208 (0.02)
	Established Administration	0.854 (0.01)	0.081 (0.003)	0.064 (0.01)
Co-Partisan Control	Divided Control	0.86 (0.02)	0.077 (0.005)	0.062 (0.02)
	Co-Partisan Control	0.854 (0.01)	0.081 (0.003)	0.064 (0.01)
Department	Defense	0.866 (0.02)	0.044 (0.004)	0.091 (0.02)
	Non-Defense	0.85 (0.01)	0.09 (0.004)	0.06 (0.01)

Note: Table entries are the predicted probabilities of each position status given specified row variables. Standard errors are in parentheses. Bold and colored entries denote alignment with theoretical expectations. Explanatory variables were held constant at their mean values.

across equations. We can see that president *Position Value* significantly contributes to the likelihood of both an empty position and interim appointee. However, since parameter estimates from MNP models display the multinomial log-odds, relative to the base category, and coefficients for categorical variables are relative to the omitted category, their interpretation can be a bit onerous. Instead, as reported in Table 5, the predicted probabilities of each position status for each category of the explanatory variables, with all other variables at their means, reveals the precise nature and magnitude of these effects. Additionally, for visual ease, Figure 4 presents the predicted probabilities of empty positions and interim appointees for each category of president’s *Position Value*, the variable at the core of each hypothesis.



**H1. Empty Position Hypothesis**

The *Empty Position Hypothesis* states that presidents are more likely to leave high value positions

empty when they have contraction policy priorities. Consequently, if the hypothesis is accurate, then we would expect to find a higher predicted probability of empty positions when president *Position Value* is “High Value (contraction)” than otherwise. The last column in Table 5 reports the results relating to the *Empty Position Hypothesis*. We can see that, as expected, “High Value (contraction)” positions have a higher predicted probability (7.3%) of being empty than “High Value (expansion)” positions with a predicted probability of 6.3%, and even higher than “Low Value” positions with a predicted probability of 5.7%. However, neither of these differences are statistically significant at even the 10 percent level ( $p = 0.541$  and  $p = 0.206$ , respectively), which is more evident from their overlapping confidence intervals displayed in Figure 4.

## ***H2. Interim Appointee Hypothesis***

The *Interim Appointee Hypothesis* states that presidents are more likely to fill positions with interim appointees when they are low value and, if they are high value, when presidents have expansion policy priorities. If the hypothesis is accurate, we would expect to find higher predicted probabilities of interim appointees when president *Position Value* is “Low Value” and “High Value (expansion),” than otherwise. And this is indeed what we find. The second column in Table 5 reports the results relating to the *Interim Appointee Hypothesis*. Specifically, exactly as predicted, interim appointees are more likely in “High Value (expansion)” positions, with a predicted probability of 8.3%, than in “High Value (contraction)” positions with a predicted probability of 7.3%. This difference in predicted probabilities is statistically significant at the 10 percent level ( $p = 0.080$ ). While “Low Value” positions also have higher predicted probability of interim appointees (8.7%) than “High Value (contraction),” the difference is not statistically significant ( $p = 0.819$ ).

Figure 4 also clearly illustrates that interim appointees are more likely than empty positions under the “High Value (expansion)” category of president *Position Value*. In fact, when presidents prioritize expansion, interim appointees in high capacity positions are over 30 percent more likely

(predicted probability of 8.3%), as empty high capacity positions (predicted probability of 6.3%); and this difference is statistically significant ( $p = 0.033$ ). Additionally, Table 5 and Figure 4 show that, as expected, “Low Value” positions are 45 percent more likely to be filled with an interim appointee, with a predicted probability of 8.7%, than left empty, with a predicted probability of 5.7%; and this difference is also statistically significant ( $p = 0.005$ ).<sup>30</sup>

### **Additional Findings**

The controls included in this analysis also offer two interesting findings. First, permanent appointees are *not* significantly more likely during periods of co-partisan control versus periods of divided control ( $p = 0.775$ ). This result is surprising since we would expect from previous work on appointees, ideology, and confirmation delay (e.g., McCarty and Razaghian 1999) that permanent appointees would be significantly less likely under divided control. Instead, when we account for vacancies and include the capacity of the position to achieve policy priorities, permanent, confirmed appointees are not any more likely when the Senate majority party is the same as the president’s party than when its not. Second, interim appointees are statistically significantly more likely in new administrations in their first year, with a predicted probability of 14.6%, than in established ones, with a predicted probability of 8.1% ( $p = 0.000$ ). But established administrations are statistically significantly more likely to have interim appointees than empty positions with a predicted probability of 6.4% ( $p = 0.002$ ). We know from the distribution of vacancies over time (highlighted at the outset in Figure 1) that presidents inherently experience fewer vacancies outside of their first, transition year. These results suggest that experienced presidents are more likely to fill those fewer vacant positions with interim appointees than to leave them empty. These higher likelihoods might also suggest that as the end of an administration’s term draws closer, and within the interim tenure limit, interim appointees become a more attractive strategy for presidents to achieve their policy priorities.

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<sup>30</sup>Interims also appear to be equally as likely as empty positions under “High Value (contraction)”, with predicted probabilities of 7.3% ( $p = 0.997$ ).

## **Extension: Explaining *Position Status*, Before and After the *Federal Vacancies Reform Act***

As discussed previously, the extended length that interim appointees can serve under the FVRA makes them a powerful strategy given that presidential terms are just 1,461 days. Recall that the Federal Vacancies Reform Act (FVRA) of 1998 extended an interim appointee's initial tenure to 210 days and upwards of 720 days after two rounds of submitted and returned nominees. Interim appointments after the passage of the FVRA could be nearly six times longer than those before, which makes 1998 a potentially critical year for presidential appointment strategy. With this substantial difference in the prospective tenures pre and post-FVRA, I argue that the strategic value of interim appointees is amplified and expect that interim appointees are even more likely in high value positions in years after 1998. Consequently, we might expect to find different patterns before and after the passage of the FVRA, driven by changes in the institutional structure that has governed vacancies and the tenures of interim appointees.

In this section, I present an extension of the likelihood models, described above, of *Position Status* as function of *Position Value*. Critically, this extension estimates two MNP models separately on the set of position-year observations from the pre-FVRA regime (1977-1997) and those from the post-FVRA regime (1998-2015). As the multi-choice model simultaneously tests the two central hypotheses under each regime, for convenience, I will address them each in turn.

The *Empty Position Hypothesis* predicts that presidents are more likely to leave “High Value (contraction)” positions empty; and the *Interim Appointee Hypothesis* predicts that presidents will fill “Low Value” and “High Value (expansion)” positions with interim appointees. In other words, similar to the expectations outlined above, we would expect if two positions faced the same political context and were both high value, the one under expansion presidential policy priorities would face a higher probability of being filled with an interim appointee. Alternatively, the one under contraction policy priorities would face a higher probability of being left empty. For the analysis at hand, we

would expect to see these patterns to emerge *within* each regime, separately for the pre-FVRA and post-FVRA models.

Furthermore, the distinct features of the post-FVRA institutional regime – notably, the longer potential tenures of interim appointees – adds an extra dimension to these expectations. Each appointee, no matter their effectiveness, is naturally constrained by the limit of their resources. Government actions are constrained by appropriations and individuals are constrained by the limited time they are able to serve. Ultimately, each additional day presents appointees with a wider window of time to achieve the administration’s policy and political objectives. If we suppose that the extended terms that interim appointees can serve makes them a more attractive option for advancing policy priorities, then we would anticipate that the FVRA will amplify our expectations. That is, we would expect higher likelihoods of interim appointees in “High Value (expansion)” and “Low Value” positions in the post-FVRA regime than in the pre-FVRA regime.

### ***H1. Empty Position Hypothesis***

If the *Empty Position Hypothesis* is accurate, we would expect higher predicted probabilities of empty positions for those that are “High Value (contraction)” than otherwise. As the third column in Table 7 reports, that is exactly what we find under the pre-FVRA regime. In fact, Figure 5 offers a clearer picture of the two expected relationships: between the predicted probabilities of an empty position across the categories of president *Position Value* and between the predicted probabilities of interim appointees and empty positions within the “High Value (contraction)” category. We can see from Figure 5 that “High Value (contraction)” positions have the highest predicted probability of being empty, and it is statistically distinguishable from “High Value (expansion)” and “Low Value” positions at a 1 percent level ( $p < 0.000$ ). Moreover, within positions that are “High Value (contraction),” empty positions are considerably more likely than interim appointees, and the predicted probabilities are statistically distinguishable at a 5 percent level ( $p = 0.011$ ). While the expected patterns reverse under the post-FVRA regime, these re-

**TABLE 6. Likelihood Models of Presidential Appointment Strategy in Executive Departments, Pre-FVRA (1977-1997) and Post-FVRA (1998-2015)**

		Multinomial Probit DV: 3 Category Position Status			
		Pre-FVRA		Post-FVRA	
		(1)	(2)	(3)	(4)
		Empty Position	Interim Appointee	Empty Position	Interim Appointee
President <i>Position Value</i>	High Value (expansion)	0.180 (0.27)	-0.309 (0.35)	0.223 (0.30)	-0.299 (0.21)
	High Value (contraction)	-0.014 (0.19)	0.073 (0.459)	-0.640 (0.79)	-0.517** (0.07)
Congress <i>Position Value</i>	High Value (expansion)	-0.238* (0.10)	-0.080 (0.09)	-0.114 (0.08)	-0.276 (0.20)
	High Value (contraction)	-0.111 (0.06)	-0.090 (0.08)	-0.144 (0.27)	-0.133 (0.12)
<i>President X Congress Position Value</i>	High Value (contraction) X (contraction)	0.307 (0.27)	0.005 (0.39)	0.379 (0.84)	0.292 (0.15)
	High Value (contraction) X (expansion)	0.676* (0.29)	-0.266 (0.27)	0.573 (1.03)	0.522* (0.22)
	High Value (expansion) X (contraction)	0.065 (0.48)	0.560 (0.34)	-0.494 (0.344)	-0.241 (0.29)
	High Value (expansion) X (expansion)	-0.118 (0.19)	0.509** (0.16)	-0.218 (0.26)	0.502 (0.27)
Established Administration		-1.205** (0.02)	-0.828** (0.21)	-0.973** (0.02)	-0.660** (0.09)
Co-Partisan Control		0.637* (0.25)	0.208** (0.02)	-0.487** (0.03)	0.016 (0.04)
Department of Defense		0.113 (0.18)	-0.503** (0.15)	0.291** (0.05)	-0.429** (0.07)
Administration Fixed Effects		✓	✓	✓	✓
Intercept		-1.601** (0.35)	-1.462** (0.33)	-0.836** (0.09)	-0.657** (0.06)

Note: N=5,174 in models (1) and (2); N=5,116 in models (3) and (4). Table entries are multinomial probit estimates of *Position Status*. The omitted (baseline) category is "Permanent Appointee," its coefficients have been normalized to zero in order to identify the model and allow for comparisons across equations. Reference category for *Position Value* is "Low Value." Cluster-robust standard errors appear in parentheses. \*p<0.05, \*\*p<0.01

**TABLE 7. Predicted Probabilities of Position Status Outcomes, Pre-FVRA (1977-1997)**

		Permanent Appointee	Interim Appointee	Empty Position
<i>President Position</i>	High Value (expansion)	<b>0.830</b> (0.01)	<b>0.075</b> (0.01)	0.096 (0.02)
	High Value (contraction)	0.806 (0.01)	0.054 (0.01)	<b>0.139</b> (0.02)
<i>Value</i>	Low Value	0.851 (0.02)	<b>0.068</b> (0.01)	0.081 (0.01)

Note: Table entries are the predicted probabilities of each position status given specified row variables. Standard errors are in parentheses. Bold and colored entries denote alignment with theoretical expectations. Explanatory variables were held constant at their mean values.

**TABLE 8. Predicted Probabilities of Position Status Outcomes, Post-FVRA (1998-2015)**

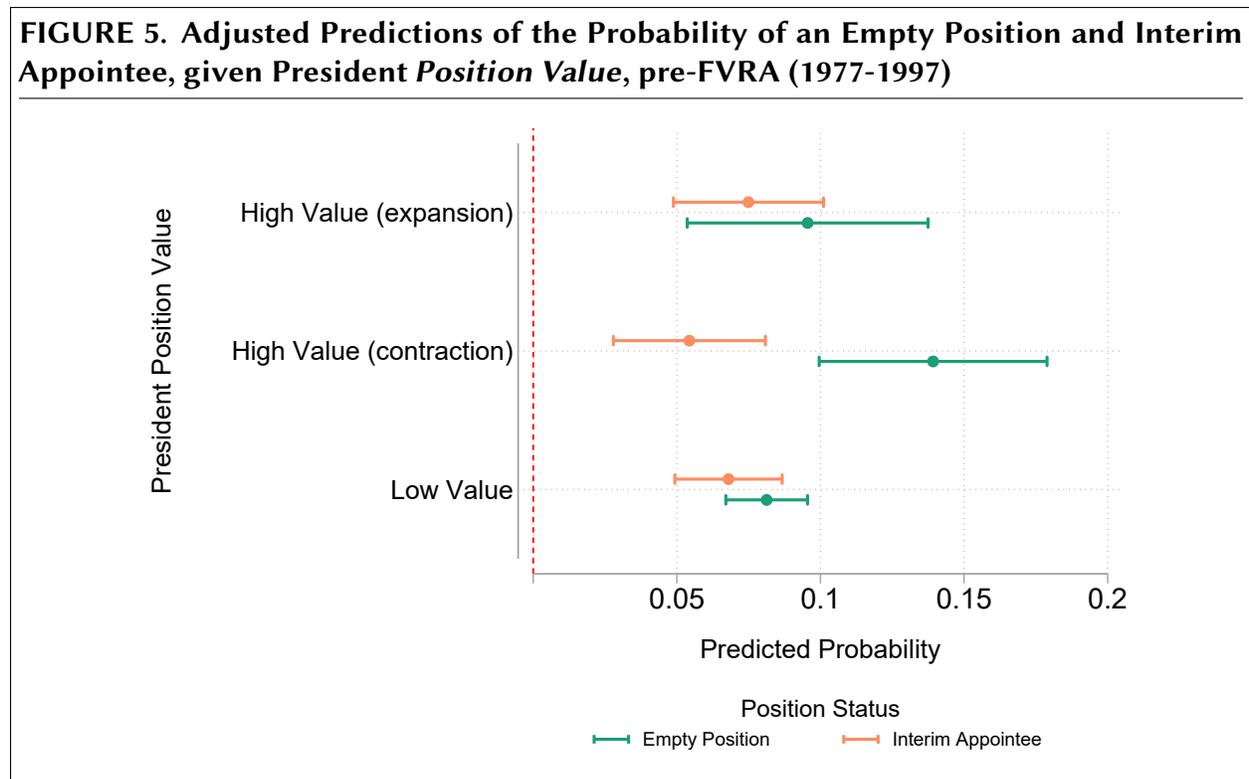
		Permanent Appointee	Interim Appointee	Empty Position
<i>President Position</i>	High Value (expansion)	0.852 (0.004)	<b>0.098</b> (0.01)	0.050 (0.01)
	High Value (contraction)	0.874 (0.01)	0.090 (0.01)	0.036 (0.002)
<i>Value</i>	Low Value	0.844 (0.01)	<b>0.106</b> (0.01)	0.050 (0.001)

Note: Table entries are the predicted probabilities of each position status given specified row variables. Standard errors are in parentheses. Bold and colored entries denote alignment with theoretical expectations. Explanatory variables were held constant at their mean values.

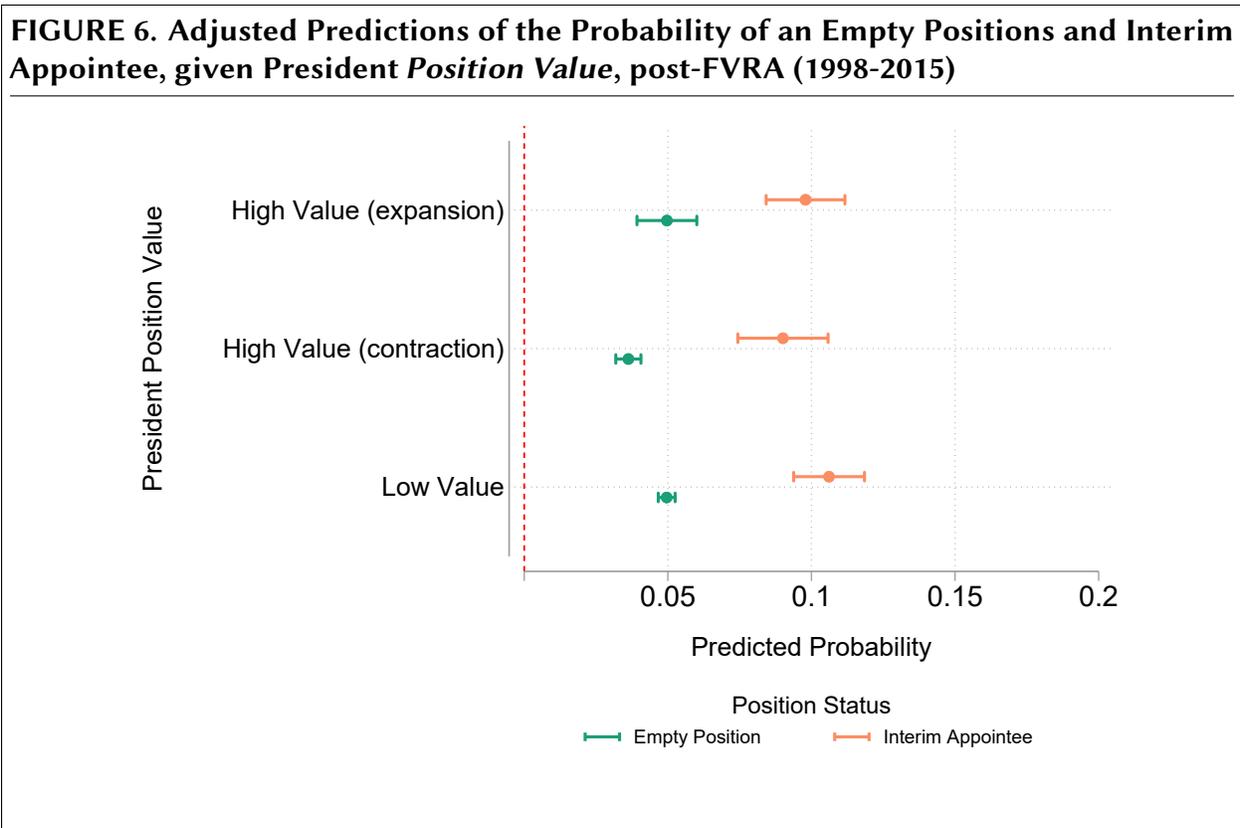
sults show that there is strong support for the *Empty Position Hypothesis* under the pre-FVRA regime.

## H2. *Interim Appointee Hypothesis*

If the *Interim Appointee Hypothesis* is accurate, we would expect higher predicted probabilities of interim appointees for “High Value (expansion)” and “Low Value” positions than otherwise. The second columns in Tables 7 and 8 present exactly these expected results. Moreover, Figures 5 and 6 highlight the strong evidence for the *Interim Appointee Hypothesis* under both the pre- and post-FVRA regimes – a result foreshadowed by the robust results from the earlier likelihood analysis. Figure 5 clearly illustrates that, under the pre-FVRA regime, the likelihood of interim appointees is higher for “High Value (expansion)” positions than “High Value (contraction)” ones, and statistically distinguishable at a 1 percent level ( $p < 0.000$ ). While the second column in Table 7 reports that “Low Value” positions also have a higher likelihood than “High Value (contraction)” under the pre-FVRA regime, this difference is not statistically distinguishable ( $p = 0.551$ ).



Additionally, the second column in Table 8 reports that these patterns persist under the post-FVRA regime. That is, the predicted probabilities of an interim appointee in “High Value (expansion)” and “Low Value” positions, under the post-FVRA regime, are higher than “High Value (contraction)” ones, however, they are not statistically distinguishable ( $p = 0.261$  and  $p = 0.585$ , respectively). Furthermore, while the predicted probabilities, under the pre-FVRA regime, of interim appointees are less than the predicted probabilities of empty positions within “High Value (expansion)” and “Low Value” categories of president *Position Value*, they are not statistically distinguishable either ( $p = 0.536$ ).



Most notably, Figure 6 displays a striking result. While we cannot statistically differentiate between the likelihoods of an interim appointee, under the post-FVRA regime, across the categories of president *Position Value* ( $p = 0.261$  and  $p = 0.585$ ), we can very clearly differentiate between

them *within* these categories. Specifically, the predicted probabilities of an interim appointee are twice those of an empty position for “High Value (expansion)” and “Low Value” positions – which offers very strong evidence for the *Interim Appointee Hypothesis*. However, Figure 6 also shows that interim appointees are three times as likely as empty positions for “High Value (contraction)” positions, which does not align with expectations from the *Empty Position Hypothesis* or the *Interim Appointee Hypothesis*. Even so, the higher likelihoods of interim appointees under the post-FVRA regime – higher still than the likelihoods under the pre-FVRA regime – emphasize the influence, as expected, of the Federal Vacancies Reform Act on how *Position Value* captures the strategic value of interim appointees.

## **Conclusion**

In this paper, I show that frequent and sustained vacancies are not by chance or the mechanical byproduct of an elaborate appointment process, but rather they result from strategic choices that presidents make to advance their policy agenda. Specifically, interim appointees are significantly more likely to fill high capacity positions when presidents seek to expand an agency’s policy reach, which confirms the one of the two hypotheses also discussed here. Conversely, the likelihood of a position left empty is not as strongly correlated with its value or the president’s contraction priorities as expected. The null result for empty positions notwithstanding, the analysis, and the larger research project behind it, has important implications for our understanding of the politics of presidential appointments and separation of powers. Specifically, there is clear evidence that presidents are strategically using interim appointees to advance their policy priorities.

The first likelihood model offers little support for the *Empty Position Hypothesis* and there are two potential reasons. First, the mixed result could be driven by a limitation of the data. Empty positions could be de facto filled temporarily by individuals who are performing all the powers and

duties of the positions without having the official title of “Acting” appointee.<sup>31</sup> A more nuanced distinction between these two kinds of empty positions – ones that are actually empty and those empty only in name – could yield more supportive results. Second, this result could be driven by the concentration of empty positions within departments. This likelihood model, with the position status outcome at the position level, measures the probability that any one position is empty. It does not address the incidence of empty positions within a department. The generality of the theoretical hypotheses outlined above allow for considerations of both likelihood *and* incidence of empty positions and interim appointees within departments. Since congressional and presidential policy priorities correspond to each department, we would expect a larger number of empty positions when presidents prioritize contraction and a larger number would be filled with an interim when the president prioritizes expansion. In fact, an analysis outside the scope of this paper – of the aggregated counts of position status – shows that contraction policy priorities *do* increase the number of empty high capacity positions.

The findings presented, and the theory motivating the analysis, suggest that strategic behavior contributes to the likelihood of interim presidential appointments. In the course of doing so, this paper aims to shift our focus toward the opportunities to consolidate political power by avoiding – or even perhaps “voluntarily relinquish[ing]”<sup>32</sup> – formal, institutionalized ones. Here, this shift produces a more nuanced definition of vacancies; one that recognizes a position without a confirmed appointee can be unfilled or filled with an interim appointee. This shift also requires a more complete strategy space that accounts for the options to not nominate and not appoint. Lastly, this shift

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<sup>31</sup>Importantly, someone who signs official documents as “performing the duties of X position,” who is essentially an interim appointee without the official “Acting” designation, is not the same as subdelegating duties of the position to other filled positions.

<sup>32</sup>Justice Clarence Thomas noted in his concurring opinion for *NLRB v. SW General, Inc.* that “the Senate voluntarily relinquished its advice-and-consent power in the FVRA does not make this end-run around the Appointments Clause constitutional.” (580 U.S. Supreme Court (2017))

motivates moving away from ideology. Ideological alignment is just one element in the basket of what appointments can deliver. When we entertain what the president and the Senate are looking to achieve more broadly, their policy agenda, we can generalize to consider the value of the position itself, filled or unfilled, for advancing that agenda.

The broadest implication of this research stems from its correction of the standard view that vacancies are simply arbitrary miscalculations within the appointment process. By treating vacancies as footnotes, rather than as marked features of presidential appointment strategy, existing research and policies fundamentally disregarded the role that each type of vacancy has to play. This research illustrates that scholars and politicians have misunderstood the realities of PAS positions without Senate confirmed appointees. In particular, our previous understanding completely overlooked the fact that empty positions and interim appointees are two different outcomes and each present distinct opportunities to pursue diverging policy priorities. Furthermore, we mistakenly assumed that presidents would unfailingly pursue formal nominations and that, however stalled by institutional forces, PAS positions would always be filled by Senate confirmed appointees. This study clearly documents that vacancies are not the aberration we thought they were, demonstrates that empty positions and interim appointees are separate consequences of strategic decisions, and presents the first error correction of its kind on the politics of vacancies.

Furthermore, now that we have a more precise picture of vacancies and permanent appointments, we can more accurately consider the implications that these outcomes have for bureaucratic performance and accountability. Since we had not previously differentiated between empty positions and interim appointees, our understanding has been restricted to the impact of different characteristics of permanent appointees (e.g., Lewis 2008; Gallo and Lewis 2011) or the organization of those appointments (e.g., Krause, Lewis, and Douglas 2006; Wood and Lewis 2017) on performance. We now know that interim appointees and empty positions each account for approximately 10 percent of appointments, on average, which indicates that there are considerable opportunities for each to

shape agency performance. Thus, while we have evidence that the absence of appointees clearly shapes agencies' ability to accomplish certain objectives (e.g., Bolton, Potter, and Thrower 2015), we now can explore how that ability differs under the leadership of interim appointees compared to empty positions, and how each type of vacancy compares with permanent appointees.

Lastly, this paper draws new attention to how empty positions and interim appointees did not dissipate in the time period after the passage of the Federal Vacancies Reform Act (FVRA). Critically, the FVRA was intended to create incentives for presidents to submit nominees for Senate confirmation. The stipulations of who can legally serve as an interim appointee were designed to restrict the use of interims, while the tenure extensions were intended to ensure continuity in leadership and agency productivity (Hogue 2008). However, they ultimately created circumstances that further encourage presidents to forgo nominations entirely. The results presented here – while they do not allow for causal inference – suggest that the FVRA has not achieved its objective of curbing the use of interim appointees or explicitly encouraging presidents to submit nominees. Given that interim appointees can serve for extended lengths under the FVRA, we could easily imagine that if presidents intend to use interim appointees exclusively, they might seek actions to take full advantage of the deadlines.<sup>33</sup> By discovering the strategic potential of vacancies, and explicitly incorporating empty positions and interim appointees into presidential appointment strategy, this study creates the foundation to consider how proposed stipulations in future reforms might ultimately encourage these outcomes. Consequently, this research has widespread implications for our understanding about whether reforms to the nomination process – which are necessary to safeguard the Senate's constitutional prerogative of advice and consent – will achieve their desired results.

With its novel theory and extensive data, this study engages research on executive appointments

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<sup>33</sup>For instance, presidents might submit nominees who are not attractive for immediate Senate confirmation in order to pause the interim appointees' tenure limits for as long as possible; or they might maximize the interim tenure by submitting a nominee on the last day (most likely the 210<sup>th</sup> day) of the interim appointee's legal term.

and political control of the bureaucracy, contributes to the growing literatures on presidential unilateral action and legislative obstruction, and speaks to work on separation of powers more generally. Executive politics scholars claim that the Senate's refusal to confirm appointments damages the president's ability to exercise his authority and execute the law. However, this paper identifies and tests the conditions under which presidents, when they use interim appointments, capitalize on their first-mover advantage to subvert the Senate's power to refuse confirmation.

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## APPENDIX

### A Theory of Vacancies and Filled Appointments

The theory presented here is built on a stylized setting involving the president  $P$  and the Senate  $S$ . In the first period, the president is presented with a vacant PAS position.<sup>34</sup> While there are potential non-random aspects of the data generating process behind vacancies, particularly for term-limited positions in independent agencies, I will black-box the vacancy generation and assume, for simplicity, that they are exogenous. The first period mimics a decision-theoretic model as the president makes a sequence of decisions: first whether to immediately fill the empty post with an interim and then whether to submit a nominee for Senate confirmation. Essentially, when faced with an opening, the president has three choices: fill the position immediately with an interim or not, submit a nominee for confirmation or not, or leave the position empty.

Given the advantage of a first-mover, the president sets the reversion point (i.e. an empty or temporarily filled position) for the Senate's choice in the second period to confirm a nominee, if one is submitted. However, the president need not submit a nominee for the Senate's consideration. When the president decides against nominating a permanent appointee after appointing an interim, he circumvents the Senate's right to review, advise, and consent to the individuals serving in key policy-making positions in the Executive Branch. Alternatively, if the president does not appoint an interim or submit a nominee, he maintains the empty post and, again, sidesteps Senate participation in how the position will be filled. The combinations of strategies can lead to any one of four outcomes: an empty position, a position filled by an interim appointee with no action toward a permanent appointee, a position filled by a permanent appointee, or a position filled by an interim and then a permanent appointee.

The political capital and time required for confirmation negotiations are assumed to be costly, albeit not necessarily equally, to both the president and the Senate.<sup>35</sup> These time-invariant costs are indexed to each player and incurred only when a nominee is submitted for Senate confirmation.<sup>36</sup> Specifically, I assume that these non-zero costs are common knowledge, exogenously determined, and assigned by Nature for each vacant position. While several features<sup>37</sup> of the confirmation process can be engineered to decrease or increase bargaining costs, I assume that these adjustments occur

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<sup>34</sup>Either at the start of or randomly throughout his term.

<sup>35</sup>The cost of confirmation might also be in terms of future legislative success of administration policy proposals (Madonna, Monogan III, and Vining Jr 2016).

<sup>36</sup>Extensions of this model will consider the impact of time-based costs and costs incurred in the absence of a nominee.

<sup>37</sup>Bargaining for the success of a nominee throughout the confirmation process requires resources in terms of staff

outside the scope of the game.

***Policy Priorities over the Status Quo: Expansion versus Contraction*** A position's *value*, one of the central elements of the theory presented below, is comprised of its capacity to control policy and each player's priority for the policy area under the position's jurisdiction. *Policy priority* captures, in part, whether the player prefers to expand, contract, or neutrally maintain the status quo.<sup>38</sup> Thus, expansion- or contraction-branded priorities classify the player's ideal policy outcome relative to the status quo, achieved by the appointee through changes to an agency's implementation activities. In other words, expansion priorities emphasize increasing the reach of an agency in a given policy area whereas contraction priorities focus on shrinking the agency's footprint. Critically, the expansion-contraction dimension is not a surrogate for the standard liberal-conservative one. Here, priorities over the status quo are distinct from ideology in that liberal and conservative actors both prefer to diminish *and* cultivate policy reach, albeit often on competing issues. For instance, self-styled conservative policy priorities might include expansion in border protection and reductions in anti-trust enforcement, whereas liberal priorities might include decreasing immigration enforcement and expanding federal lands protections. Thus, while policy priorities are not agnostic of ideology, this expansion-contraction dimension generalizes over time and shifting party platforms.

Traditionally, when we theorize about appointees, we begin with ideology. As mentioned previously, most models of presidential appointments focus on the choice of nominee in terms of *ideological* alignment with the president and the Senate. Yet, ideology is just one element in the basket of what appointments can deliver. When we entertain what the president and the Senate are looking to achieve more broadly, their policy agenda, we can generalize to consider how a filled or unfilled appointment advances that agenda. Thus, to focus on the choice to fill the position rather

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attention, opportunity costs of diverting valuable time away from other legislative (or executive) business, and political concessions from both the administration and members of the Senate. In cases of unified government – when the president and Senate are most likely to have similar, or even identical, priorities – successfully confirmed nominees require fewer staff resources and political concessions. Alternatively, easing the procedural rules that govern the confirmation process by limiting committee hearings and floor debate or relaxing the cloture requirement (i.e. the 'nuclear' option) decreases the time spent on confirmation and its consequent opportunity costs. The degree to which these bargaining costs diminish any benefit of a permanent, confirmed appointee might be minimized by unified government or procedural easing, however, they remain non-zero.

<sup>38</sup>While the status quo has long been recognized as 'sticky' and not easily moved by new legislation, particularly in an era of polarization and routine obstruction (e.g., McCarty, Poole, and Rosenthal 2016), achieving policy goals through implementation and administrative law offers a viable alternative (Farber and O'Connell 2014).

than whom to fill it with, I assume that interim appointees and permanent nominees are identical in terms of *effectiveness*.<sup>39</sup> However, that is not to say that ideology and effectiveness are mutually exclusive. Ideology provides a measure of policy preferences and an indication of one’s policy agenda, but does not provide any indication of one’s *ability* to achieve those policy goals. Ideological alignment between agents and principals matters less if agents are unable to accomplish goals in line with those preferences. In other words, ideology does not reveal an agent’s effectiveness in delivering realized value to a principal.<sup>40</sup> Moreover, an ideologically-aligned appointee in a low capacity position that is institutionally constrained has minimal ability to effectively shape policy change, mimicking an ineffective appointee regardless of their ideological alignment. Accordingly, this model deviates from previous theories by incorporating the effectiveness of an appointee instead of ideological alignment.

**Strategies.** At any point in a president’s term, there exists a set of vacant PAS positions  $Y$ ; naturally,  $Y$  is a larger set at the start of a term. Nature chooses an empty position  $y \in Y$  with position value  $V_{yi}$  to each player  $i$ . The president  $P$  then makes a strategy choice  $p$  from four possible options,  $p \in \{I\&\neg N, I\&N, \neg I\&N, \neg I\&\neg N\}$ : to fill immediately with an interim appointee without submitting a nominee for Senate confirmation ( $p = I \& \neg N$ ), fill immediately and nominate ( $p = I \& N$ ), not fill immediately but submit a nominee ( $p = \neg I \& N$ ), or not fill at all ( $p = \neg I \& \neg N$ ). If the president chooses a strategy that includes a nomination, the Senate  $S$  then makes a strategy choice  $s \in \{Confirm, \neg Confirm\}$ <sup>2</sup> to confirm the nominee or not. While this strategy set condenses the larger set of available Senate responses (i.e. holds and blue-slips, filibusters, returns, and confirmations), it covers the principal outcomes of the confirmation process.

**Utility Functions.** The president  $P$  and the Senate  $S$  derive utility from securing the value of a PAS position and achieving their priorities to expand or contract policy implementation. The generalized utility function player  $i$  reflects the payoff for filling the position immediately ( $\beta\tau V_{yi}$ ),

<sup>39</sup>To clarify, I am assuming equal effectiveness per unit of time. We might expect that the longer someone serves (more units of time in a position) the more effective they become, comparatively.

<sup>40</sup>One could reason that if the objective is, in effect, ideological, then the agent’s alignment with a principal could indicate effectiveness in delivering value. However, I contend that policy preferences and priorities vis-a-vis the status quo ultimately transcend ideology. Our conventional understanding of ideology derives from a collection of policy preferences along a policy dimension (liberal versus conservative; “left” versus “right”), and our measures of ideology capture these preferences as ideal points (e.g., NOMINATE scores from Congressional roll call votes (Lewis, Poole, and Rosenthal 2017) or citizen ideology estimates using item response theory models (Tausanovitch and Warshaw 2013)). Thus, while an objective in selecting an agent might be congruent ideologies, those *ideologies* represent policy preferences, whereas *effectiveness*, separately, represents the agent’s ability to achieve those policy goals.

the payoff for filling to position for the long-term ( $\beta\tau\gamma V_{yi}$ ), and the bargaining cost ( $c_i$ ) of the confirmation process such that:

$$u_i = \beta\tau_{(f,\neg f)}V_{yi} + \beta\tau_{(f,\neg f)}\gamma V_{yi} - c_i \quad (2)$$

Given the president's strategy set  $p \in \{I\&\neg N, I\&N, \neg I\&N, \neg I\&\neg N\}$ , the Senate's payoff is

$$U_S(s; p) = \begin{cases} \beta\tau_{f_1}V_{yS} + \gamma\beta\tau_{f_2}V_{yS} - c_S, & \text{if } s = \text{Confirm} \& p = I\&N; \\ \tau_{\neg f_1}V_{yS} + \gamma\beta\tau_{f_2}V_{yS} - c_S, & \text{if } s = \text{Confirm} \& p = \neg I\&N; \\ \beta\tau_f V_{yS} - c_S, & \text{if } s = \neg \text{Confirm} \& p = I\&N; \\ \tau_{\neg f}V_{yS} - c_S, & \text{if } s = \neg \text{Confirm} \& p = \neg I\&N; \\ \beta\tau_f V_{yS}, & \text{if } p = I\&\neg N; \\ \tau_{\neg f}V_{yS}, & \text{if } p = \neg I\&\neg N, \end{cases}$$

while, given the Senate's strategy set  $s \in \{\text{Confirm}, \neg \text{Confirm}\}$  the president's payoff is

$$U_P(p; s) = \begin{cases} \beta\tau_{f_1}V_{yP} + \gamma\beta\tau_{f_2}V_{yP} - c_P, & \text{if } s = \text{Confirm} \& p = I\&N; \\ \tau_{\neg f_1}V_{yP} + \gamma\beta\tau_{f_2}V_{yP} - c_P, & \text{if } s = \text{Confirm} \& p = \neg I\&N; \\ \beta\tau_{\neg f}V_{yP} - c_P, & \text{if } s = \neg \text{Confirm} \& p = I\&N; \\ \tau_{\neg f}V_{yP} - c_P, & \text{if } s = \neg \text{Confirm} \& p = \neg I\&N; \\ \beta\tau_f V_{yP}, & \text{if } p = I\&\neg N; \\ \tau_{\neg f}V_{yP}, & \text{if } p = \neg I\&\neg N, \end{cases}$$

where  $\tau_{(f,\neg f)}$  differentiates between a filled and unfilled position (in the first and second period if necessary),  $\beta \in (0, 1)$  represents the effectiveness of the (interim or confirmed) appointee,  $|\gamma| \geq 1$  is the confirmed appointee's permanence, and  $c_i > 0$  accounts for the transaction costs to both players from bargaining over confirmation.

**Position value**,  $V_{yi} \in (-1, 1)$ , is exogenously determined and represents each position's potential role in advancing player  $i$ 's larger policy agenda. Specifically,  $V_{yi}$  is a function of the position's capacity to control policy and the player's priorities of expansion, contraction, or neutrally maintaining the status quo policy reach of the agency. Importantly, players' larger policy agendas are common knowledge, determined ex ante, and exogenous to the specific positions' policy jurisdictions.<sup>41</sup>

<sup>41</sup>In other words, I assume that players do not target specific positions for expansion or contraction *per se* but establish a

Nature maps these policy agendas to the set of executive department and independent agencies with PAS positions, generating policy priorities for each parent agency. These policy priorities range from contracting implementation and outcomes under agency  $a$ 's jurisdiction, expanding those outcomes, or neutrally maintaining the status quo. In other words, these priorities represent the degree to which each player would like to undercut, strengthen, or ignore the agency's status quo implementation, regulation, or policy generating efforts.<sup>42</sup> However, the extent to which a specific position can contribute to each player's policy priorities is institutionally constrained by the position's capacity to advance those priorities. *Low capacity* positions are administrative or routine in nature, have little to no latitude, and generally provide few opportunities to reach larger political goals. Alternatively, *high capacity* positions require more expertise, have more room to influence policy outcomes, and advance a larger political agenda. When a position has a low policy capacity any appointee – temporary or permanent – has minimal ability to affect policy change and the value of that position to a player is nil ( $V_{yi} = 0$ ) no matter the policy priorities. Likewise, when a player does not prioritize the agency and has strict preferences for contracting or expanding policies under agency  $a$ 's purview the value of the position for advancing the player's larger agenda is nil ( $V_{yi} = 0$ ) no matter the position's capacity level. Alternatively, the positions with the highest absolute value ( $|V_{yi}| = 1$ ) are high capacity and high priority. Thus, to make the theory's implications as stark as possible, the value of an empty position is non-zero only when a player prioritizes the agency's policy jurisdiction and the position has the capacity to achieve those priorities.

As my objective is to provide intuition for the circumstances under which a president and the Senate might each prefer an empty PAS position to one filled by an interim or confirmed appointee, I focus the model on the operational differences between a filled and empty position instead of ideological differences between players or between each player and an appointee. I build this model on the core assumption that leadership positions in the federal bureaucracy are valuable for their ability to *deliver* outcomes in line with player's policy priorities. Ideological (mis)alignment between principals and agents, while a clear indicator of (dis)agreement on the content of policy, does not

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policy agenda and see positions and agencies with pertinent policy jurisdictions as vehicles for achieving policy goals. For instance, a president's larger policy agenda might prioritize environmental deregulation and devolution of education policy to the states, without tying these priorities to the specific positions like the Assistant Secretary for the Office of Fossil Fuels in the Department of Energy or Under Secretary for the Department of Education.

<sup>42</sup>For instance, a president's priorities might include rapid deregulation of liquefied natural gas pipelines by weakening the Federal Energy Regulatory Commission; increasing protections for intellectual property by strengthening the Patent and Trademark Office; or simply maintain the status quo in government oversight by generally ignoring the role of Inspectors General.

sufficiently determine the effectiveness of an appointee (or the lack thereof) in achieving outcomes. Furthermore,  $V_{yi}$  specifies differences in policy priorities between players which indicates, at least in part, differences in ideological preferences. While I acknowledge that ideology plays an important role in the decision of *who* will fill a position, I contend that effectiveness in delivering value for a position captures a core element of the decision to fill a position in the first place.

***Effectiveness.*** The value of a position to each player indicates the opportunity to accomplish their prioritized policy goals; however the success of this depends largely on how effective the appointee is in that position. An ineffective appointee mirrors a low capacity position; neither offers valuable advancement of the player's policy agenda. Thus, each player must consider not only the position's value but also the appointee's ability to realize that value. Specifically, *effectiveness* aligns with the established notion of agents' "capacity" to fulfill the duties of their position based on their qualifications (Carpenter 2010), while also accounting for PAS appointees' relations with their subordinate career civil servants.<sup>43</sup>

The degree to which appointees can be effective in advancing the president's agenda largely depends on their interactions with set of careerists who are largely responsible for *implementing* agency policy (Durant and Resh 2010). Presidential appointees – specifically those in PAS positions – represent a modest bloc atop a much larger pyramid of nearly 3 million civil servants spread across over 200 departments and agencies.<sup>44</sup> In some cases, the agencies these appointees seek to manage naturally produce policies consistent with the president's wishes with very little attention from the White House; others need active management.<sup>45</sup>

Here, PAS appointees as "internal" principals must establish trust in their appointee-careerist relations through "sanctioned acceptance" of their agent's legitimacy to facilitate careerist compliance with their ideal policy implementation (Resh 2015; Carpenter and Krause 2014). Thus, an appointee's *effectiveness* in advancing a player's policy agenda requires the capacity to fulfill the position's ascribed duties *and* foster productive relations with careerists.<sup>46</sup> Importantly, the president chooses

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<sup>43</sup>This, of course, requires that the appointee have careerists to manage, which is not the case for appointees to independent commissions.

<sup>44</sup>For a closer look at the structure of the federal civilian personnel system, *see* Lewis and Selin 2012.

<sup>45</sup>Consequently, presidents may be better served by concentrating on appointing allies to more actively lead agencies whose missions and policy preferences are not aligned with their own (Gailmard and Patty 2007). For such agencies, "incoming presidents have incentives to select appointees who can effectively change agency policy" Lewis 2011, 54 and ensure the agency performs to the president's expectations.

<sup>46</sup>Previous research on the administrative presidency traditionally focused on how presidents achieve policy goals and minimize agency loss through centralization of policymaking or politicization of the bureaucracy (Moe 1993; Lewis

an appointee with a specific level of effectiveness. Given perfect information, both players perfectly anticipate the effectiveness of any appointee or nominee; however, by selecting the interim appointee or nominee, the president sets the appointee's level of effectiveness,  $\beta \in (0, 1]$ .

For simplicity, interim appointees and nominees for position  $y$  are assumed to be equally effective and therefore have the same  $\beta$ .<sup>47</sup> If there exists an ideally effective nominee for the position and the president chooses to fill immediately with an interim appointee, it is reasonable to assume that the president would set the reversion point as close to the ideal nominee as possible, in the event that the Senate does not confirm. Identical interim appointees and nominees create a reversion point for Senate confirmation that is the president's ideal appointee. Moreover, this assumption simplifies the expected utility functions by reducing the variables that the president and the Senate must consider in their choices of strategies.<sup>48</sup>

**Filled Position.** Filled positions and empty ones differ, at a minimum, in terms of accountability and responsiveness. Empty PAS positions, fundamentally, do not have a person to fulfill basic responsibilities like reporting to congressional oversight hearings, negotiating new or re-authorizing

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2008), assuming a foundational distrust of career personnel that must be controlled or circumvented (Edwards III 2001). However, more recent work on leadership traits among appointees (Krause and O'Connell 2016), the role of transactional authority in bureaucratic politics (Carpenter and Krause 2014), and bureaucratic competence (Resh 2015) indicate that a partnership between appointees (as principals) and career personnel rooted in trust and managerial competence offers a third mechanism for optimizing careerist compliance in policy implementation.

<sup>47</sup>Not only does this assumption allow for model tractability, it represents the reality that presidents have often nominated the *same* person that they appointed on an interim basis, thereby ensuring identical effectiveness. While *NLRB v. SW General* (2017) removes this specific strategy as an option for future administrations, it does not restrict presidents from nominating and temporarily appointing equally effective individuals. Howe 2017, 2 describes a very recent example of this type of maneuvering: "Shortly after his inauguration, President Donald Trump named Washington lawyer Noel Francisco as the principal deputy solicitor general... Because Trump had not yet nominated (nor had the Senate confirmed) a solicitor general, Francisco soon began to serve as the acting solicitor general. [Two months later], Trump announced that he was nominating Francisco to serve as the solicitor general on a permanent basis. Francisco then moved to another job in the Department of Justice; Jeffrey Wall – the new principal deputy solicitor general – now serves as the acting solicitor general." Thus, I retain this assumption for its historic accuracy and future relevance.

<sup>48</sup>While this model establishes the possibility, under basic and reasonable assumptions, for strategies that include maintaining empty positions, the core assumption of equally effective appointees contradicts a fundamental tenet of principal-agent research: that distinct agents are not duplicates of their principals or each other. Future iterations will relax this assumption to consider distributions in effectiveness and ideological alignment.

legislation with Congress, or executing presidential directives.<sup>49</sup> Under more dire circumstances, empty PAS positions do not have a person to prepare for and initiate response protocols in a crisis. Moreover, independent boards and commissions that require a quorum cannot engage in official business when the required number of seats are not filled.<sup>50</sup> Players must differentiate between the time a position is filled and the time it is empty, as each scenario produces disparate prospects for achieving policy priorities.<sup>51</sup> The *filled position* multiplier  $\tau_{(f, \neg f)} \in \{\mathbb{Z}^-, \mathbb{Z}^+\}$  captures this distinction, such that

$$\tau_{(f, \neg f)} = \begin{cases} \tau_k \leq -1, & \text{if } k = \neg f; \\ \tau_k \geq 1, & \text{if } k = f \end{cases}$$

***Permanence and Oversight.*** The president sets the reversion point by either choosing to leave a

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<sup>49</sup>While an empty post necessarily means that no *individual with that specific title* can report to Congress, it does not necessarily mean that *no one* will appear. In some instances, the most senior appointee will testify on behalf of the position. For example, in March 2009, as the Obama administration experienced scores of empty deputy and undersecretary positions at the Treasury Department, Naylor 2009, 2 reports that “Treasury Secretary Timothy Geithner shuttle[d] between appearances before congressional panels to testify about the budget, [oversaw] the rollout of homeowner and bank bailout programs, and join[ed] talks to rescue the auto industry, he [was] pretty much the only Obama appointee with a desk at the Treasury. However, in most circumstances, interactions with Congress or other agencies stall when key posts are left empty. For instance, the Clean Air Act required re-authorization in 1989 and President George H.W. Bush did not “name an assistant administrator at the Environmental Protection Agency to handle the negotiations. A congressional aide said it ‘definitely slow[ed] things down’” (Havemann 1989, 4). Nevertheless, a post left unmanned will have at least some portion of its duties undone.

<sup>50</sup>For example, in 2007, the Consumer Product Safety Commission was without a chairman and therefore, as a three-person commission, lacked quorum. President George W. Bush had not submitted a nominee even though “public safety may be at stake, too, because the lack of a quorum means the agency can’t pursue its regulatory agenda to lower the level of lead in children’s jewelry, redesign portable generators and address safety risks of all-terrain vehicles” (Skrzycki 2007, 3).

<sup>51</sup>While this model does not explicitly incorporate the time horizon of a president’s term, player’s common knowledge of the remaining time for a position to be either filled or empty implicitly incorporates this limit. In other words, players know at the start of the game how much time remains in the president’s term  $\mathcal{T}$  such that

$$\mathcal{T} = \sum_{-f}^f |\tau_k|$$

This generalized form of the model does not specify a unit of time, however, future iterations (including expanding to repeated play) will incorporate a specific unit of time.

position empty or filling it immediately and choosing the effectiveness of the interim and nominee. In response, the Senate determines the magnitude of the *permanence and oversight* multiplier,  $|\gamma| \geq 1$ , with confirmation.<sup>52</sup> Permanent, confirmed appointees magnify the position's value in two circumstances. First, interim appointees are subject to tenure limitations required for compliance with the Federal Vacancies Reform Act, which creates expectations for future attention to the position. Confirmed appointees are not subject to these limits and do not have any anticipated cutoff to their tenure before the end of the president's term. While Senate confirmation does not guarantee that the appointee will serve the entire term, and the well-documented turnover of PAS appointees indicates a sustainable uncertainty about the actual permanence of the appointee (see Chang, Lewis, and McCarty 2001), this theory concentrates on the decisions to appoint and confirm rather than the decision to keep one's position. In this context, appointees are expected to serve the length of their allotted tenure which makes permanent, confirmed appointees unlikely to require future attention. Thus, confirmation generates confidence in the perpetuity of an appointee and magnifies the realized value of the position. Second, federal courts have generally treated interim appointees the same as confirmed appointees, but some argue that interim appointees have less influence over careerists than confirmed appointees and often fill multiple roles at once which depletes their attention to any one position (O'Connell 2009). While this difference in clout does not stem directly from specific statutes, the implication is that confirmed appointees have potentially larger capacity to achieve the players' policy and political goals.

The magnitude of  $\gamma$  indicates the length of tenure for a permanent appointee as determined by the length of the Senate's confirmation process. Accordingly, the Senate establishes this magnitude by limiting the time to confirmation. Greater values of  $|\gamma|$  indicate longer tenures that permanent appointees serve, given the time remaining in the president's term.<sup>53</sup> Delays in confirmation reduce the maximum tenure of permanent appointees, thereby lowering  $|\gamma|$ . The Senate sets  $|\gamma|$  at its minimum 1 by not confirming and returning the nomination to the president.

Senate confirmation establishes the *permanence* of an appointee, and a clear *oversight* responsibility. However, the effect of oversight activities depends on the players' preferences. If the president's policy priorities align with the Senate's, then oversight activities further increase the prospect of achieving those priorities: a positive multiplier. Alternatively, when the president's policy

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<sup>52</sup>Confirmation hearings offer ex ante oversight opportunities to establish expectations for the nominee should she be confirmed as the permanent appointee. They also provide a forum for senators to examine the direction of the agency or department as well as the administration's policies towards the major groups within the department's or agency's jurisdiction. When a president does not submit a nominee, the Senate loses these oversight opportunities.

<sup>53</sup>For simplicity, this theory assumes that both players experience the same horizon of the current president's term.

priorities conflict with the Senate's, oversight will naturally restrict the appointee's advancement of the president's agenda and circuitously impede the Senate's priorities: a negative multiplier. In other words, when priorities align  $\gamma$  positively amplifies the value of the position ( $\gamma > 1$ ), but when they diverge  $\gamma$  decreases the value ( $\gamma < -1$ ). Thus, the alignment of players' policy priorities determines the sign of the permanence and oversight multiplier while the Senate sets the value of  $|\gamma| \geq 1$  such that:

$$|\gamma| = \begin{cases} \gamma, & \text{if } V_{yS} = V_{yP}; \\ -\gamma, & \text{if } V_{yS} \neq V_{yP} \end{cases}$$

**The Game.** These features of my formal model are carried out through the following sequence of game play:

1. Nature selects empty position  $y_a \in Y$  in agency  $a$  with value to player  $i$ ,  $V_{yi} \in (-1, 1)$ , given the policy capacity level of position  $y$ ,  $s_y \sim U[0, 1]$ , and agency  $a$ 's position on player  $i$ 's policy agenda
2. The president  $P$  observes  $V_{yi}$  and chooses strategy  $p \in \{I\&\neg N, I\&N, \neg I\&\neg N, \neg I\&N\}$ .
3. If  $p = I\&\neg N$  or  $p = \neg I\&\neg N$ , the game ends with an interim appointee or empty position.
4. If  $p = I\&N$  or  $p = \neg I\&N$ , the Senate  $S$  chooses strategy  $s \in \{Confirm, \neg Confirm\}$ .

The figure below illustrates this sequence and the payoffs associated with each strategy pairing.

### Equilibrium Results

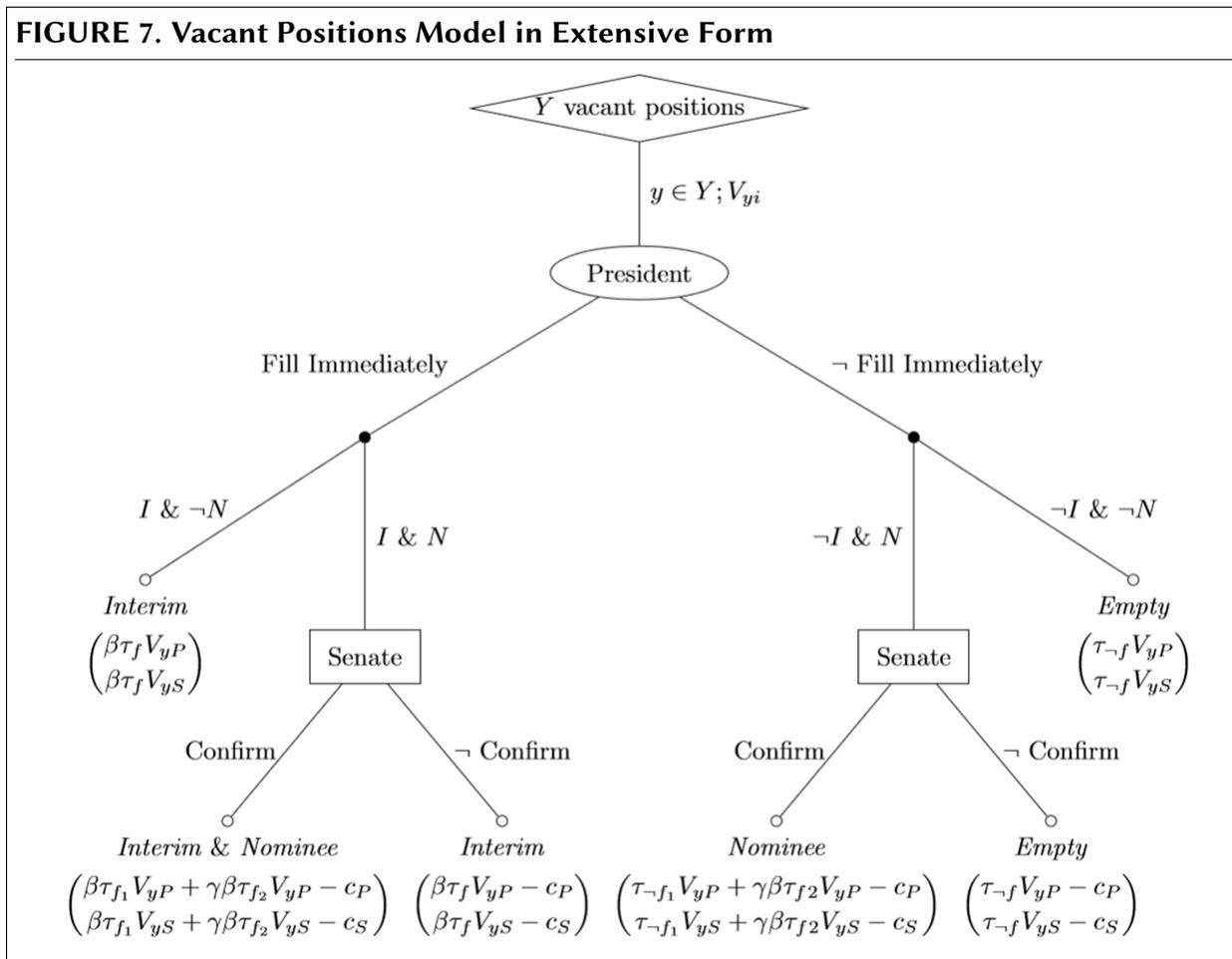
In this section, *Lemmas 1-3* describe the pure strategy Subgame Perfect Nash Equilibrium (SPNE) results that generate the testable hypotheses presented in *Proposition 1* and *Corollaries 1* and *2*. I assume that the president  $P$  resolves indifference in strategy choices with a weak preference for filling the position immediately and subsequently submitting a nominee for confirmation, while the Senate  $S$  resolves indifference in favor of confirming the president's nominee.

**Lemma 1** *The Senate  $S$  confirms the president  $P$ 's nominee if*

1.  $\{V_{yS} = V_{yP} = 1\}$ ;
2.  $\{V_{yS} = -1, V_{yP} = 1\}$  and  $p = I\&N$ ;
3.  $\{V_{yS} = -1, V_{yP} = 1\}$ ,  $p = \neg I\&N$ , and  $\gamma < -\frac{1}{\beta}$ ;
4.  $\{V_{yS} = 1, V_{yP} = -1\}$ ,  $p = \neg I\&N$ , and  $\gamma > -\frac{1}{\beta}$ ; or
5.  $V_{yS} = 0$ .

Lemma 1 describes the Senate  $S$ 's confirmation set when the president nominates a candidate. This result indicates that the *position value* namely the interaction of the position's policy control

**FIGURE 7. Vacant Positions Model in Extensive Form**



capacity (the ability of a minimally effective appointee to authorize and achieve desired policy implementation strategies) and players' policy priorities (expand or contract policy under the agency's jurisdiction), governs the Senate's acceptance of the president's nominee. When given the choice,  $S$  confirms the nominee under five sets of circumstances, the first four of which require that position  $y$  is a position with high policy control capacity. First,  $S$  confirms when the president and Senate both prioritize policy expansion ( $V_{yi} = 1$ ), irrespective of the reversion point.  $S$  also confirms a nominee when the president and Senate *do not* agree on policy priorities, albeit under specific conditions. In particular, when the president prioritizes policy expansion ( $V_{yP} = 1$ ) and the Senate prioritizes policy contraction ( $V_{yS} = -1$ ), the Senate confirms if an interim has been appointed ( $p = I \& N$ ). If an interim has not been appointed ( $p = \neg I \& N$ ), then the Senate confirms only when  $\gamma < -\frac{1}{\beta}$  which indicates the trade-off between an effective nominee ( $\beta$ ) and the Senate's capacity for permanence and oversight ( $\gamma$ ). Fourth,  $S$  confirms when the president prioritizes policy contraction ( $V_{yP} = -1$ ) and the Senate prioritizes policy expansion ( $V_{yS} = -1$ ) only if the reversion

point is an empty position ( $p = -I&N$ ) and  $\gamma > -\frac{1}{\beta}$ . Lastly, the Senate also confirms the president's nominee when the position delivers no value ( $V_{yS} = 0$ )<sup>54</sup> because indifference is resolved in favor of confirmation.

More specifically, when the president and Senate both support a policy area (for example, understanding the likelihood of large scale natural disasters due to climate change) and the vacant position is high capacity (i.e. the Director of the U.S. Geological Survey), the Senate will confirm the president's nominee. This result supports an expected scenario: when both players prioritize strengthening policy under the jurisdiction of a high capacity position that affords an appointee the discretion to meet those goals, the Senate will always confirm the president's nominee.

Alternatively, if the Senate opposes a policy that the president supports (for instance, government interventions in corporate mergers and acquisitions) and the position has high policy control capacity (i.e. the Assistant Attorney General for the Antitrust Division at the Department of Justice), the Senate will confirm the president's nominee if an interim has been appointed. In this case, the Senate and the president are at odds in their priorities for a position that has the capacity to effect policy change. With an interim appointee from a president who prioritizes policy expansion, the Senate faces an unfavorable reversion point without the benefit of oversight from confirmation. The Senate, under these circumstances, would be better served to acquiesce with the advantage of oversight than to contend with the identical appointee in an interim capacity without the institutional constraints of confirmation. If no interim has been appointed, the Senate will confirm only if the *permanence and oversight* multiplier ( $\gamma$ ) is sufficiently small given a relatively effective nominee or, conversely, if the nominee is relatively ineffective ( $\beta \rightarrow 0$ ) and  $|\gamma|$  is sufficiently large. Without an interim appointee, the Senate faces an empty post as the reversion point. Given the high capacity position, the Senate intuitively prefers leaving the post empty than confirming an effective nominee ( $\beta \rightarrow 1$ ) from a president who seeks to expand policy. However, the Senate has an oversight incentive to confirm if the nominee is ineffective and appointee's tenure ( $|\gamma|$ ) is sufficiently long to allow for oversight activities. On the other hand, the Senate will confirm a relatively effective nominee only if the tenure of that permanent appointee is sufficiently small ( $\gamma \rightarrow -1$ ).

These two scenarios might appear at odds, particularly for the same confirmation strategy. However, once we consider the role of permanence and oversight the inconsistency dissipates. When the Senate shares the president's priorities to expand policy ( $V_{yS} = V_{yP} = 1$ ), the permanence of a confirmed appointee magnifies that position value (by  $\gamma > 1$ ) and produces a dominant strategy of Senate confirmation. When the Senate prioritizes policy contraction and the president seeks expansion ( $V_{yS} = -1$  and  $V_{yP} = 1$ ), oversight of a formally confirmed appointee, compared to the

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<sup>54</sup> $V_{yS} = 0$  either because it is low capacity or the Senate is policy neutral

reversion point of an interim appointee, offers an avenue to limit the president's influence and achieve more of the Senate's agenda thereby amplifying the value of that position. If the Senate prioritizes policy contraction and the president seeks expansion, but the reversion point is an empty position ( $p = \neg I\&N$ ), the Senate will prefer confirmation only if the president submits a sufficiently ineffective nominee, since  $\beta \rightarrow 0$  mirrors the ineffectiveness of a low policy control capacity position. Higher levels of incapacity further limit the influence of the president, which complements the oversight of a formal confirmation. Otherwise, if the president offers a more effective nominee ( $\beta > \frac{1}{|\gamma|}$ ) the Senate would prefer to return the nominee and revert to an empty position.

Lastly, if the Senate supports policy expansion while the president prioritizes policy contraction and the position is high capacity, the Senate will confirm the president's nominee if an interim is not appointed and the magnitude of the *permanence and oversight* multiplier ( $|\gamma|$ ) is sufficiently small ( $\gamma \rightarrow -1$ ) given a relatively effective nominee ( $\beta \rightarrow 1$ ).

Lemma 2 presents the complement to the results in Lemma 1 and characterizes the Senate  $S$ 's rejection set when the president submits a nominee:

**Lemma 2** *The Senate  $S$  does not confirm the president  $P$ 's nominee if*

1.  $\{V_{yS} = V_{yP} = -1\}$ ;
2.  $\{V_{yS} = 1, V_{yP} = -1\}$  and  $p = I\&N$ ;
3.  $\{V_{yS} = 1, V_{yP} = -1\}$ ,  $p = \neg I\&N$ , and  $\gamma < -\frac{1}{\beta}$ ; or
4.  $\{V_{yS} = -1, V_{yP} = 1\}$ ,  $p = \neg I\&N$ , and  $\gamma > -\frac{1}{\beta}$ .

Specifically, Lemma 2 states that the Senate prefers to not confirm the nominee when the position is high capacity and its priorities to contract policy align with the president's  $\{V_{yS} = V_{yP} = -1\}$ . The Senate also has a dominant strategy to not confirm for a high capacity position if policy priorities conflict such that the president prioritizes policy contraction while the Senate seeks expansion and there is an interim appointee. As described above, the Senate will also return the nominee when the president seeks expansion counter to the Senate's priority for contraction ( $\{V_{yS} = -1, V_{yP} = 1\}$ ), the reversion point is an empty post, and the president offers a relatively effective nominee ( $\beta > \frac{1}{|\gamma|}$ ).

The first of these results, that is when  $V_{yS} = V_{yP} = -1$ , appears the most surprising, particularly as one might imagine that aligned priorities for contracting policy encourage a confirmed nominee that actively seeks to derail agency activity and performance. However, implicit in the construction of this model is an assumption that an appointee, however (in)effective, will minimally perform the responsibilities ascribed to that position. Ultimately, the ability of an appointee to impact the agency's performance is constrained by the cost (oversight, budgetary, or electoral/political) of appointees actively and/or visibly damaging agency performance. Government watchdog groups,

vested interests, client advocacy groups, and potential electoral opponents have multiple methods of drawing attention to explicit bureaucratic drift. An appointee's actions are at least marginally undesirable compared to an empty position for players who prioritize contracting policy. Thus, the Senate's optimal strategy to narrow an agency's policy reach is to return a nominee if one is submitted.

Alternatively, the strategy choice to return a nominee if the president prioritizes policy contraction while the Senate seeks expansion results, in large part, from the oversight cost associated with disparate policy priorities ( $\gamma < -1$ ). Conceptually, oversight that obstructs or delays agency actions – as occurs when the Senate prefers policy contraction over expansion – requires less political capital and intervention than oversight that demands action. The capacity to achieve the Senate's expansion priorities diminish with larger values of  $|\gamma|$  where  $\gamma < -1$ , which decreases the expected utility received with confirmation and makes returning the nomination the preferred choice.

**Lemma 3** *The president  $P$  plays the following strategy choice after observing  $V_{yi}$  for  $i \in \{S, P\}$ :*

$$p = \begin{cases} I\&N, & \text{if } V_{yS} = V_{yP} = 1 \text{ and } c_P \leq (\gamma - 1)\beta\tau_{f_2}V_{yP}; \\ I\&\neg N, & \text{if } V_{yS} = V_{yP} = 1 \text{ and } c_P > (\gamma - 1)\beta\tau_{f_2}V_{yP}, \\ & \text{or } V_{yS} = -1 \text{ and } V_{yP} = 1, \\ & \text{or } V_{yP} = 0; \\ \neg I\&\neg N, & \text{if } V_{yS} = V_{yP} = -1, \\ & \text{or } V_{yS} = 1 \text{ and } V_{yP} = -1, \end{cases}$$

Lemma 3 presents an important result:  $p = \neg I\&N$ , while contained in the president  $P$ 's strategy space, is not contained within the set of optimal strategies. If the president chooses to not fill a position immediately, he will not then submit a nominee for Senate confirmation. This result is driven primarily by the strategic anticipation that the Senate will not confirm a nominee if one was submitted (under the scenario that the president has set an empty position as the reversion point). In other words, anticipating the Senate's pure strategy to return a nominee and end the game with an empty position, the president prefers to avoid the bargaining cost of appointment negotiations, forgo submitting a nominee entirely and arrive at the same result of an empty position. Consequently, the mixed strategy SPNE or relaxing the common knowledge assumption and introducing uncertainty about policy priorities would likely result in  $p = \neg I\&N$  included in the president's set of optimal strategies.

Given the SPNE results from Lemmas 1-3, the following propositions describe the testable

predictions that obtain in equilibrium.

**Proposition 1** *Vacant position  $y$  will stay empty in equilibrium if and only if the position is high-capacity and the president  $P$  prioritizes policy contraction ( $V_{yP} = -1$ ).*

Proposition 1 asserts that a vacant position  $y$  with position value to the president of  $V_{yP} = -1$  will not be filled by either an interim or confirmed appointee when the game ends. A few aspects of Proposition 1 are worth noting. First, as expected, the president's first-mover advantage manifests as dictatorial control over empty posts. Anticipating that the Senate will confirm a nominee for high capacity positions when the president prioritizes contracting policy only if it is policy neutral ( $V_{yS} = 0$ ) and will return nominees if  $V_{yS} \neq 0$ , the president prefers to avoid the bargaining cost by forgoing a nomination.

Second, and relatedly, the proposition implies that, when an empty position is sustained, a nominee was not submitted for confirmation no matter the policy priority alignment with the Senate. While policy priorities are not explicit indicators of ideology, one can easily posit that a unified government would have considerable overlap in policy priorities. Consequently, Proposition 1 implies that sustained empty positions would occur even in unified government if the president prefers policy contraction.

Finally, the third implication of the proposition is that, when a president chooses to keep a position empty, the vacant position is high-capacity. These positions have the most potential for advancing policy priorities but also have real-world consequences for agency performance and policy outcomes when left empty. This proposition implies that widespread empty posts are not among low-level, heavily administrative PAS positions, but rather among exactly those positions that need to be filled for a functioning agency. The following corollaries describe the conditions of confirmed and interim appointments in equilibrium.

**Corollary 1** *A confirmed appointment to position  $y$  will occur in equilibrium if and only if the following occurs:*

1. *The position is high-capacity,*
2. *The Senate  $S$  and the president  $P$  both prioritize policy expansion ( $V_{yS} = V_{yP} = 1$ ) or the president prioritizes policy expansion ( $V_{yP} = 1$ ) while the Senate is policy neutral ( $V_{yS} = 0$ ), and*
3. *The president's bargaining cost,  $c_P$ , is less than or equal to the president's cutpoint  $c_P^*$  ( $c_P \leq c_P^*$ ) such that  $c_P^* = (\gamma - 1)\beta\tau_{f_2}V_{yP}$ .*

**Corollary 2** *An interim appointment to position  $y$  will occur in equilibrium if and only if the following occurs:*

1. *The position is high capacity, the Senate  $S$  and the president  $P$  both prioritize policy expansion  $V_{yS} = V_{yP} = 1$  or the president prioritizes policy expansion ( $V_{yP} = 1$ ) while the Senate is policy neutral ( $V_y = yS = 0$ ), and the president's bargaining cost is  $c_P \leq c_P^*$  (such that  $c_P^* = (\gamma - 1)\beta\tau_{f_2}V_{yP}$ ), or*
2. *The position is high capacity, the Senate prioritizes policy contraction ( $V_{yS} = -1$ ), and the president prioritizes policy expansion ( $V_{yP} = 1$ ), or*
3. *The position is low capacity or the president is policy neutral such that  $V_{yP} = 0$ .*

The implications of Corollary 1 and 2 complement those of Proposition 1 in the following two ways. First, Corollary 1 implies that the president seeks to submit a nominee for only high-capacity positions when prioritizing policy expansion, and the Senate, when given the choice to confirm, will do so only when prioritizing expansion or policy neutrality. Importantly, the president's choice to submit a nominee hinges on the cost to bargain with the Senate over confirmation and the cut-point in equilibrium ( $c_P^*$ ) is largely driven by the Senate's value for permanence and oversight  $\gamma$ . Thus, by setting a high value of  $\gamma$  (e.g., speedy confirmation hearings), the Senate increases the likelihood that the president's bargaining costs will fall below the cut-point, thereby ensuring a nominee to confirm. Second, Corollary 2 implies that interim appointees fill high and low-capacity positions, but that the president does not use interim appointees in high capacity positions when prioritizing policy contraction. This implication suggests that as policy agendas are increasingly dominated by expansion priorities, the frequency of vacant positions filled with interim appointees will also increase.

## PROOFS

**Proof for Lemma 1.** First, suppose Nature chooses a position  $y \in Y$  that is high capacity such that  $s_y = 1$  and from an agency with jurisdiction that aligns with both players policy expansion priorities such that position value  $V_{yP} = V_{yS} = 1$ . If the president chooses to fill the position immediately with an interim appointee and submit a nominee for Senate confirmation,<sup>55</sup> the Senate prefers to confirm the nominee only if the expected utility from confirmation outweighs the expected utility from not

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<sup>55</sup>Players know at the start of the game how much time remains in the president's term  $\mathcal{T}$  such that

$$\mathcal{T} = \sum_{-f}^f |\tau_k|$$

confirming:

$$\begin{aligned}
EU_S(C|I\&N) &> EU_S(\neg C|I\&N) \\
\beta\tau_{f_1}V_{yS} + \gamma\beta\tau_{f_2}V_{yS} - c_S &> \beta\tau_f V_{yS} - c_S \\
\beta(\tau_{f_1} + \gamma\tau_{f_2})V_{yS} &> \beta(\tau_{f_1} + \tau_{f_2})V_{yS} \\
\tau_{f_1} + \gamma\tau_{f_2} &> \tau_{f_1} + \tau_{f_2} \\
\gamma\tau_{f_2} &> \tau_{f_2} \\
\gamma &> 1
\end{aligned}$$

By definition, if  $V_{yP} = V_{yS}$  then  $\gamma > 1$ ; therefore  $EU_S(C|I\&N) > EU_S(\neg C|I\&N)$ . If, instead, the president chooses to not fill the position immediately but still submits a nominee for Senate confirmation, the Senate prefers to confirm the nominee only if the expected utility from confirmation outweighs the expected utility from not confirming:

$$\begin{aligned}
EU_S(C|\neg I\&N) &> EU_S(\neg C|\neg I\&N) \\
\tau_{\neg f_1}V_{yS} + \gamma\beta\tau_{f_2}V_{yS} - c_S &> \tau_{\neg f}V_{yS} - c_S \\
(\tau_{\neg f_1} + \gamma\beta\tau_{f_2})V_{yS} &> (\tau_{\neg f_1} - \tau_{f_2})V_{yS} \\
\tau_{\neg f_1} + \gamma\beta\tau_{f_2} &> \tau_{\neg f_1} - \tau_{f_2} \\
\gamma\beta\tau_{f_2} &> -\tau_{f_2} \\
\gamma\beta &> -1
\end{aligned}$$

By definition,  $\beta \in (0, 1]$  and if  $V_{yP} = V_{yS}$  then  $\gamma > 1$ ; therefore  $\gamma\beta > -1$  and  $EU_S(C|\neg I\&N) > EU_S(\neg C|\neg I\&N)$ . This proves that if  $V_{yP} = V_{yS} = 1$ , the Senate has a dominant strategy to confirm whenever the president submits a nominee.

Now consider the Senate's possible strategies when Nature chooses a position  $y \in Y$  that is high capacity such that  $s_y = 1$  and from an agency with jurisdiction that aligns with the president's policy expansion priorities but the Senate prioritizes policy contraction such that position value  $V_{yS} = -1$

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The *filled position* multiplier  $\tau_{(f, \neg f)} \in \{\mathbb{Z}^-, \mathbb{Z}^+\}$  such that

$$\tau_{(f, \neg f)} = \begin{cases} \tau_k \leq -1, & \text{if } k = \neg f; \\ \tau_k \geq 1, & \text{if } k = f \end{cases}$$

and  $V_{yP} = 1$ . If the president chooses to fill the position immediately and submit a nominee for Senate confirmation, the Senate prefers to confirm the nominee only if the expected utility from confirmation outweighs the expected utility from not confirming:

$$\begin{aligned}
EU_S(C|I\&N) &> EU_S(\neg C|I\&N) \\
\beta\tau_{f_1}V_{yS} + \gamma\beta\tau_{f_2}V_{yS} - c_S &> \beta\tau_f V_{yS} - c_S \\
\beta(\tau_{f_1} + \gamma\tau_{f_2})V_{yS} &> \beta(\tau_{f_1} + \tau_{f_2})V_{yS} \\
\tau_{f_1} + \gamma\tau_{f_2} &< \tau_{f_1} + \tau_{f_2} \\
\gamma\tau_{f_2} &< \tau_{f_2} \\
\gamma &< 1
\end{aligned}$$

By definition,  $\gamma < -1$  if  $V_{yP} \neq V_{yS}$ ; therefore  $\gamma < 1$  and  $EU_S(C|I\&N) > EU_S(\neg C|I\&N)$ . If the president chooses to not fill the position immediately but still submit a nominee for Senate confirmation, the Senate prefers to confirm the nominee only if the expected utility from confirmation outweighs the expected utility from not confirming. Given that  $V_{yS} = -1$ , the expected utility of confirmation is greater than that of rejection only when  $\gamma < -\frac{1}{\beta}$ :

$$\begin{aligned}
EU_S(C|\neg I\&N) &> EU_S(\neg C|\neg I\&N) \\
\tau_{\neg f_1}V_{yS} + \gamma\beta\tau_{f_2}V_{yS} - c_S &> \tau_{\neg f}V_{yS} - c_S \\
(\tau_{\neg f_1} + \gamma\beta\tau_{f_2})V_{yS} &> (\tau_{\neg f_1} - \tau_{f_2})V_{yS} \\
\tau_{\neg f_1} + \gamma\beta\tau_{f_2} &< \tau_{\neg f_1} - \tau_{f_2} \\
\gamma\beta\tau_{f_2} &< -\tau_{f_2} \\
\gamma &< -\frac{1}{\beta}
\end{aligned}$$

Thus, if  $V_{yS} = -1$  and  $V_{yP} = 1$ , the Senate will confirm the president's nominee whenever an interim is also appointed ( $p = I\&N$ ) and, if an interim is not appointed ( $p = \neg I\&N$ ), only when  $\gamma < -\frac{1}{\beta}$ .

Third, suppose that Nature chooses a position  $y \in Y$  that is high capacity such that  $s_y = 1$  and from an agency with jurisdiction that aligns with the Senate's policy expansion priorities but the president prioritizes policy contraction such that position value  $V_{yS} = 1$  and  $V_{yP} = -1$ . If the president chooses to not fill the position immediately but still submit a nominee for Senate confirmation, the Senate prefers to confirm the nominee only if the expected utility from confirmation outweighs the expected utility from not confirming. Given that  $V_{yS} = 1$ , the expected utility of

confirmation is greater than that of rejection only when  $\gamma > -\frac{1}{\beta}$ :

$$\begin{aligned}
EU_S(C|I\&N) &> EU_S(-C|I\&N) \\
\tau_{\neg f_1} V_{yS} + \gamma\beta\tau_{f_2} V_{yS} - c_S &> \tau_{\neg f} V_{yS} - c_S \\
(\tau_{\neg f_1} + \gamma\beta\tau_{f_2}) V_{yS} &> (\tau_{\neg f_1} - \tau_{f_2}) V_{yS} \\
\tau_{\neg f_1} + \gamma\beta\tau_{f_2} &> \tau_{\neg f_1} - \tau_{f_2} \\
\gamma\beta\tau_{f_2} &> -\tau_{f_2} \\
\gamma &> -\frac{1}{\beta}
\end{aligned}$$

Thus, if  $V_{yS} = 1$  and  $V_{yP} = -1$ , the Senate will confirm if an interim is not appointed ( $p = -I\&N$ ) only when  $\gamma > -\frac{1}{\beta}$ .

Lastly, consider the Senate's confirmation strategy if Nature chooses a position  $y \in Y$  that is low capacity where  $s_y = 0$  or for whose parent agency the Senate has no preference for either expanding or contracting policy (is policy neutral)  $w_a i = 0$  such that  $V_{yS} = 0$ . Assuming that indifference is resolved in favor of confirmation, when  $V_{yS} = 0$ , the Senate will always confirm the president's nominee. ■

**Proof for Lemma 2.** First, suppose Nature chooses a position  $y \in Y$  that is high capacity such that  $s_y = 1$  and from an agency with jurisdiction that aligns with both players policy contraction priorities such that position value  $V_{yP} = V_{yS} = -1$ . If the president chooses to fill the position immediately with an interim appointee and submit a nominee for Senate confirmation, the Senate will not confirm the nominee only if the expected utility from rejecting the nominee outweighs the expected utility from confirmation:

$$\begin{aligned}
EU_S(C|I\&N) &< EU_S(-C|I\&N) \\
\beta\tau_{f_1} V_{yS} + \gamma\beta\tau_{f_2} V_{yS} - c_S &< \beta\tau_f V_{yS} - c_S \\
\beta(\tau_{f_1} + \gamma\tau_{f_2}) V_{yS} &< \beta(\tau_{f_1} + \tau_{f_2}) V_{yS} \\
\tau_{f_1} + \gamma\tau_{f_2} &> \tau_{f_1} + \tau_{f_2} \\
\gamma\tau_{f_2} &> \tau_{f_2} \\
\gamma &> 1
\end{aligned}$$

By definition, if  $V_{yP} = V_{yS}$  then  $\gamma > 1$ , therefore  $EU_S(C|I\&N) < EU_S(-C|I\&N)$ . If, instead, the president chooses to not fill the position immediately but still submits a nominee for Senate

confirmation, the Senate prefers to not confirm the nominee only if the expected utility from rejecting the nominee outweighs the expected utility from confirmation:

$$\begin{aligned}
EU_S(C|\neg I\&N) &< EU_S(\neg C|\neg I\&N) \\
\tau_{\neg f_1} V_{yS} + \gamma\beta\tau_{f_2} V_{yS} - c_S &< \tau_{\neg f} V_{yS} - c_S \\
(\tau_{\neg f_1} + \gamma\beta\tau_{f_2}) V_{yS} &< (\tau_{\neg f_1} - \tau_{f_2}) V_{yS} \\
\tau_{\neg f_1} + \gamma\beta\tau_{f_2} &> \tau_{\neg f_1} - \tau_{f_2} \\
\gamma\beta\tau_{f_2} &> -\tau_{f_2} \\
\gamma\beta &> -1
\end{aligned}$$

By definition,  $\beta \in (0, 1]$  and if  $V_{yP} = V_{yS}$  then  $\gamma > 1$ ; therefore  $\gamma\beta > -1$  and  $EU_S(C|\neg I\&N) < EU_S(\neg C|\neg I\&N)$ . This proves that given  $V_{yP} = V_{yS} = -1$ , the Senate has a dominant strategy to not confirm whenever the president submits a nominee.

Suppose now that Nature chooses a position  $y \in Y$  that is high capacity such that  $s_y = 1$  and from an agency with jurisdiction that aligns with the Senate's policy expansion priorities but the president prioritizes policy contraction such that position value  $V_{yS} = 1$  and  $V_{yP} = -1$ . If the president chooses to fill the position immediately and submit a nominee for Senate confirmation, the Senate prefers to reject the nominee only if the expected utility from not confirming outweighs the expected utility from confirmation:

$$\begin{aligned}
EU_S(C|I\&N) &< EU_S(\neg C|I\&N) \\
\beta\tau_{f_1} V_{yS} + \gamma\beta\tau_{f_2} V_{yS} - c_S &< \beta\tau_f V_{yS} - c_S \\
\beta(\tau_{f_1} + \gamma\tau_{f_2}) V_{yS} &< \beta(\tau_{f_1} + \tau_{f_2}) V_{yS} \\
\tau_{f_1} + \gamma\tau_{f_2} &< \tau_{f_1} + \tau_{f_2} \\
\gamma\tau_{f_2} &< \tau_{f_2} \\
\gamma &< 1
\end{aligned}$$

By definition,  $\gamma < -1$  if  $V_{yP} \neq V_{yS}$ ; therefore  $\gamma < 1$  and  $EU_S(C|I\&N) < EU_S(\neg C|I\&N)$ . If the president chooses to not fill the position immediately but still submits a nominee for Senate confirmation, the Senate prefers to reject the nominee only if the expected utility from rejection outweighs the expected utility from confirmation. Given that  $V_{yS} = 1$ , the expected utility of returning the nominee is greater than that of confirmation only when  $\gamma < -\frac{1}{\beta}$ :

$$\begin{aligned}
EU_S(C|\neg I\&N) &< EU_S(\neg C|\neg I\&N) \\
\tau_{\neg f_1} V_{yS} + \gamma\beta\tau_{f_2} V_{yS} - c_S &> \tau_{\neg f} V_{yS} - c_S \\
(\tau_{\neg f_1} + \gamma\beta\tau_{f_2}) V_{yS} &> (\tau_{\neg f_1} - \tau_{f_2}) V_{yS} \\
\tau_{\neg f_1} + \gamma\beta\tau_{f_2} &< \tau_{\neg f_1} - \tau_{f_2} \\
\gamma\beta\tau_{f_2} &< -\tau_{f_2} \\
\gamma &< -\frac{1}{\beta}
\end{aligned}$$

Thus, if  $V_{yS} = 1$  and  $V_{yP} = -1$ , the Senate will reject the president's nominee whenever an interim is also appointed ( $p = I\&N$ ) and, if an interim is not appointed ( $p = \neg I\&N$ ), only when  $\gamma < -\frac{1}{\beta}$ .

Lastly, suppose that Nature chooses a position  $y \in Y$  that is high capacity such that  $s_y = 1$  and from an agency with jurisdiction that aligns with the president's policy expansion priorities but the Senate prioritizes policy contraction such that position value  $V_{yS} = -1$  and  $V_{yP} = 1$ . If the president chooses to not fill the position immediately but still submit a nominee for Senate confirmation, the Senate prefers to not confirm the nominee only if the expected utility from rejection outweighs the expected utility from confirmation. Given that  $V_{yS} = -1$ , the expected utility of confirmation is greater than that of rejection only when  $\gamma > -\frac{1}{\beta}$ :

$$\begin{aligned}
EU_S(C|\neg I\&N) &< EU_S(\neg C|\neg I\&N) \\
\tau_{\neg f_1} V_{yS} + \gamma\beta\tau_{f_2} V_{yS} - c_S &< \tau_{\neg f} V_{yS} - c_S \\
(\tau_{\neg f_1} + \gamma\beta\tau_{f_2}) V_{yS} &< (\tau_{\neg f_1} - \tau_{f_2}) V_{yS} \\
\tau_{\neg f_1} + \gamma\beta\tau_{f_2} &> \tau_{\neg f_1} - \tau_{f_2} \\
\gamma\beta\tau_{f_2} &> -\tau_{f_2} \\
\gamma &> -\frac{1}{\beta}
\end{aligned}$$

Thus, if  $V_{yS} = -1$  and  $V_{yP} = 1$ , the Senate will reject a nominee (prefer an empty post) if an interim is not appointed ( $p = \neg I\&N$ ) only when  $\gamma > -\frac{1}{\beta}$ . ■

**Proof for Lemma 3.** Since I have structured this model as a sequential game, I employ a Subgame Perfect Nash Equilibrium concept. Let us examine the president's pure strategy choice given  $V_{yi}$  and

the Senate's strategies for confirming and rejecting a nominee.

First, suppose Nature chooses a position  $y \in Y$  that is high capacity such that  $s_y = 1$  and from an agency with jurisdiction that aligns with both players policy expansion priorities such that position value  $V_{yP} = V_{yS} = 1$ . Anticipating that the Senate plays a dominant strategy of confirming whenever a nomination is tendered, the president chooses to submit a nominee after filling the position immediately with an interim appointee only if the expected utility from the nominee's confirmation outweighs the expected utility from not having submitted a nominee (with the outcome being an interim appointee). Given that  $V_{yP} = V_{yS} = 1$  and  $\gamma > 1$ , the expected utility of nominating what will be a confirmed appointee is greater than not nominating only when  $c_P < (\gamma - 1)\beta\tau_{f_2}V_{yP}$ :

$$\begin{aligned}
EU_P(I \& N | C) &> EU_P(I \& \neg N | C) \\
\beta\tau_{f_1}V_{yP} + \gamma\beta\tau_{f_2}V_{yP} - c_P &> \beta\tau_fV_{yP} \\
\beta\tau_{f_1}V_{yP} + \gamma\beta\tau_{f_2}V_{yP} - c_P &> \beta\tau_{f_1}V_{yP} + \beta\tau_{f_2}V_{yP} \\
\gamma\beta\tau_{f_2}V_{yP} - c_P &> \beta\tau_{f_2}V_{yP} \\
\gamma\beta\tau_{f_2}V_{yP} - \beta\tau_{f_2}V_{yP} &> c_P \\
(\gamma - 1)\beta\tau_{f_2}V_{yP} &> c_P
\end{aligned}$$

Thus, if  $V_{yP} = V_{yS} = 1$  and given the Senate's dominant strategy to confirm, if the president appoints an interim official immediately he will also submit a nominee for Senate confirmation only when  $c_P < (\gamma - 1)\beta\tau_{f_2}V_{yP}$ .

Alternatively, the president chooses to submit a nominee after not filling the position immediately only if the expected utility from the nominee's confirmation outweighs the expected utility of not submitting a nominee and maintaining the empty post. Given that  $V_{yP} = V_{yS} = 1$  and  $\gamma > 1$ , the expected utility of nominating what will be a confirmed appointee is greater than not nominating only when  $c_P < (\gamma\beta + 1)\tau_{f_2}V_{yP}$ :

$$\begin{aligned}
EU_P(\neg I \& N | C) &> EU_P(\neg I \& \neg N | C) \\
\tau_{\neg f_1}V_{yP} + \gamma\beta\tau_{f_2}V_{yP} - c_P &> \tau_{\neg f}V_{yP} \\
\tau_{\neg f_1}V_{yP} + \gamma\beta\tau_{f_2}V_{yP} - c_P &> (\tau_{\neg f_1} - \tau_{f_2})V_{yP} \\
\tau_{\neg f_1}V_{yP} + \gamma\beta\tau_{f_2}V_{yP} - c_P &> \tau_{\neg f_1}V_{yP} - \tau_{f_2}V_{yP} \\
\gamma\beta\tau_{f_2}V_{yP} + \tau_{f_2}V_{yP} &> c_P \\
(\gamma\beta + 1)\tau_{f_2}V_{yP} &> c_P
\end{aligned}$$

Thus, if  $V_{yP} = V_{yS} = 1$  and given the Senate's dominant strategy to confirm, if the president does not appoint an interim official immediately he will submit a nominee for Senate confirmation only when  $c_P < (\gamma\beta + 1)\tau_{f_2}V_{yP}$ .

Since  $(\gamma - 1)\beta\tau_{f_2}V_{yP} < (\gamma\beta + 1)\tau_{f_2}V_{yP}$ , to consider the choice between filling a position immediately or not, with the anticipation of submitting a nominee, assume  $c_P < (\gamma - 1)\beta\tau_{f_2}V_{yP}$  as the maximal condition. Given  $c_P < (\gamma - 1)\beta\tau_{f_2}V_{yP}$  and that a nominee will be submitted and confirmed, the president chooses to fill the position immediately with an interim only if the expected utility from the confirmed nominee with an interim appointee outweighs the expected utility from the confirmed nominee without an interim appointee:

$$\begin{aligned}
EU_P(I\&N|C) &> EU_P(\neg I\&N|C) \\
\beta\tau_{f_1}V_{yP} + \gamma\beta\tau_{f_2}V_{yP} - c_P &> \tau_{\neg f_1}V_{yP} + \gamma\beta\tau_{f_2}V_{yP} - c_P \\
(\beta\tau_{f_1} + \gamma\beta\tau_{f_2})V_{yP} &> (\tau_{\neg f_1} + \gamma\beta\tau_{f_2})V_{yP} \\
\beta\tau_{f_1} + \gamma\beta\tau_{f_2} &> \tau_{\neg f_1} + \gamma\beta\tau_{f_2} \\
\beta\tau_{f_1} &> -\tau_{f_1} \\
\beta &> -1
\end{aligned}$$

By definition,  $\beta \in (0, 1]$  therefore  $\beta > -1$  and  $EU_P(I\&N|C) > EU_P(\neg I\&N|C)$ . This proves that, given  $V_{yP} = V_{yS} = 1$ ,  $c_P < (\gamma - 1)\beta\tau_{f_2}V_{yP}$  and anticipating the Senate's dominant strategy to confirm, the president will prefer to fill the position immediately with an interim appointee and also submit a nominee for Senate confirmation ( $p = I\&N$ ).

Alternatively, if  $c_P > (\gamma - 1)\beta\tau_{f_2}V_{yP}$  the president will prefer to not submit a nominee for Senate confirmation. Given  $V_{yP} = V_{yS} = 1$  and that a nominee will not be submitted, the president chooses to fill the position immediately with an interim only if the expected utility from the interim appoint outweighs the expected utility from maintaining an empty position (not filling the position immediately):

$$\begin{aligned}
EU_P(I\&\neg N|C) &> EU_P(\neg I\&\neg N|C) \\
\beta\tau_fV_{yP} &> \tau_{\neg f}V_{yP} \\
\beta\tau_f &> -\tau_f \\
\beta &> -1
\end{aligned}$$

By definition,  $\beta \in (0, 1]$  therefore  $\beta > -1$  and  $EU_P(I\&\neg N|C) > EU_P(\neg I\&\neg N|C)$ . This proves

that, given  $V_{yP} = V_{yS} = 1$ ,  $c_P > (\gamma - 1)\beta\tau_{f_2}V_{yP}$ , and the anticipation of Senate confirmation, the president will prefer to fill the position immediately with an interim appointee but not submit a nominee for Senate confirmation ( $p = I\&\neg N$ ).

Now suppose Nature chooses a position  $y \in Y$  that is high capacity such that  $s_y = 1$  and from an agency with jurisdiction that aligns with the president's policy expansion priorities but the Senate prioritizes policy contraction such that position value  $V_{yS} = -1$  and  $V_{yP} = 1$ . Anticipating that the Senate confirms a nominee if an interim is appointed, the president chooses to not submit a nominee after filling the position immediately only if its expected utility outweighs that from a nominee's confirmation. Given that  $V_{yP} \neq V_{yS}$  and  $\gamma < -1$ , the expected utility of not nominating what will be a confirmed appointee after appointing an interim appointee is greater than nominating:

$$\begin{aligned}
EU_P(I\&N|C) &< EU_P(I\&\neg N|C) \\
\beta\tau_{f_1}V_{yP} + \gamma\beta\tau_{f_2}V_{yP} - c_P &< \beta\tau_fV_{yP} \\
\beta\tau_{f_1}V_{yP} + \gamma\beta\tau_{f_2}V_{yP} - c_P &< \beta\tau_{f_1}V_{yP} + \beta\tau_{f_2}V_{yP} \\
\gamma\beta\tau_{f_2}V_{yP} - c_P &< \beta\tau_{f_2}V_{yP} \\
\gamma\beta\tau_{f_2}V_{yP} - \beta\tau_{f_2}V_{yP} &< c_P \\
(\gamma - 1)\beta\tau_{f_2}V_{yP} &< c_P
\end{aligned}$$

By definition,  $\gamma < -1$  and  $\beta \in (0, 1]$  which establishes that  $(\gamma - 1)\beta\tau_{f_2}V_{yP} < 0$  and  $c_P > 0$ ; therefore  $EU_P(I\&N|C) < EU_P(I\&\neg N|C)$ . Alternatively, anticipating that the Senate confirms a nominee if an interim is not appointed only when  $\gamma < -\frac{1}{\beta}$ , the president chooses to not submit a nominee after not filling the position immediately (maintaining the empty post) only if its expected utility outweighs that from a nominee's confirmation. Given that  $V_{yP} \neq V_{yS}$  and  $\gamma < -1$ , the expected utility of not nominating what will be a confirmed appointee after not appointing an interim appointee is

greater than nominating:

$$\begin{aligned}
EU_P(\neg I \& N | C) &< EU_P(\neg I \& \neg N | C) \\
\tau_{\neg f_1} V_{yP} + \gamma \beta \tau_{f_2} V_{yP} - c_P &< \tau_{\neg f} V_{yP} \\
\tau_{\neg f_1} V_{yP} + \gamma \beta \tau_{f_2} V_{yP} - c_P &< \tau_{\neg f_1} V_{yP} - \tau_{f_2} V_{yP} \\
\gamma \beta \tau_{f_2} V_{yP} - c_P &< -\tau_{f_2} V_{yP} \\
\gamma \beta &< -1 \\
\gamma &< -\frac{1}{\beta}
\end{aligned}$$

By definition,  $\gamma < -\frac{1}{\beta}$ ; therefore  $EU_P(\neg I \& N | C) < EU_P(\neg I \& \neg N | C)$ . Thus, given  $V_{yS} = -1$  and  $V_{yP} = 1$  and the Senate's confirmation strategies, the president prefers to not submit a nominee whether he fills the position immediately or not. Given that the president will not submit a nominee, he prefers to fill the position immediately only if the expected utility of having the interim appointee outweighs the expected utility of maintaining the empty position:

$$\begin{aligned}
EU_P(I \& \neg N | C) &> EU_P(\neg I \& \neg N | C) \\
\beta \tau_f V_{yP} &> \tau_{\neg f} V_{yP} \\
\beta \tau_f &> -\tau_f \\
\beta &> -1
\end{aligned}$$

By definition,  $\beta \in (0, 1]$  therefore  $\beta > -1$  and  $EU_P(I \& \neg N | C) > EU_P(\neg I \& \neg N | C)$ . This proves that, given  $V_{yS} = -1$  and  $V_{yP} = 1$  and the anticipation of Senate confirmation, the president will prefer to fill the position immediately with an interim appointee but not submit a nominee for Senate confirmation ( $p = I \& \neg N$ ).

Furthermore, suppose Nature chooses a position  $y \in Y$  that is high capacity such that  $s_y = 1$  and from an agency with jurisdiction that aligns with both players policy contraction priorities such that position value  $V_{yP} = V_{yS} = -1$ . Anticipating that the Senate plays a dominant strategy of not confirming whenever a nomination is tendered, the president chooses to not submit a nominee after filling the position immediately with an interim appointee only if its expected utility outweighs that of the nominee's rejection. Given that  $V_{yP} = V_{yS} = -1$  and  $\gamma > 1$ , the expected utility of not submitting a nominee is greater than for submitting what will be a returned nominee:

$$\begin{aligned}
EU_P(I \& \neg N | \neg C) &> EU_P(I \& N | \neg C) \\
\beta \tau_f V_{yP} &> \beta \tau_f V_{yP} - c_P \\
c_P &> 0
\end{aligned}$$

By definition,  $c_P > 0$  therefore  $EU_P(I \& \neg N | \neg C) > EU_P(I \& N | \neg C)$ . Again, anticipating the Senate's dominant strategy of not confirming whenever a nomination is tendered, the president chooses to not submit a nominee after not filling the position immediately only if its expected utility outweighs that from the nominee's rejection outweighs. Given that  $V_{yP} = V_{yS} = -1$  and  $\gamma > 1$ , the expected utility of not submitting a nominee is greater than that for nominating what will be a returned nominee:

$$\begin{aligned}
EU_P(\neg I \& \neg N | \neg C) &> EU_P(\neg I \& N | \neg C) \\
\tau_{\neg f} V_{yP} &> \tau_{\neg f} V_{yP} - c_P \\
c_P &> 0
\end{aligned}$$

By definition,  $c_P > 0$  therefore  $EU_P(\neg I \& \neg N | \neg C) > EU_P(\neg I \& N | \neg C)$ . Lastly, consider the choice the president must make to fill the position immediately or not, given that he prefers to not submit a nominee in both scenarios. In this case, the president prefers to not fill the position immediately if the expected utility from the empty position outweighs that from the position filled by an interim, given that  $V_{yP} = -1$ :

$$\begin{aligned}
EU_P(\neg I \& \neg N | \neg C) &> EU_P(I \& \neg N | \neg C) \\
\tau_{\neg f} V_{yP} &> \beta \tau_f V_{yP} \\
-\tau_f V_{yP} &> \beta \tau_f V_{yP} \\
\beta &> -1
\end{aligned}$$

By definition,  $\beta \in (0, 1]$  therefore  $\beta > -1$  and  $EU_P(\neg I \& \neg N | \neg C) > EU_P(I \& \neg N | \neg C)$ . This proves that, given  $V_{yS} = V_{yP} = -1$  and the anticipation of Senate rejection, the president will prefer to maintain an empty post by filling not the position immediately with an interim appointee and not submit a nominee for Senate confirmation ( $p = \neg I \& \neg N$ ).

Lastly, suppose Nature chooses a position  $y \in Y$  that is high capacity such that  $s_y = 1$  and from

an agency with jurisdiction that aligns with the Senate's policy expansion priorities but the president prioritizes policy contraction such that position value  $V_{yS} = 1$  and  $V_{yP} = -1$ . Anticipating that the Senate only confirms a nominee if an interim is not appointed and  $\gamma > -\frac{1}{\beta}$ , the president chooses to not submit a nominee after not filling the position immediately only if its expected utility outweighs that from a nominee's confirmation. Given that  $V_{yP} \neq V_{yS}$  and  $\gamma < -1$ , the expected utility of not nominating what will be a confirmed appointee after not appointing an interim appointee is greater than nominating:

$$\begin{aligned}
EU_P(\neg I \& \neg N | C) &> EU_P(I \& \neg N | C) \\
\tau_{-f} V_{yP} &> \tau_{-f} V_{yP} + \gamma \beta \tau_{f_2} V_{yP} - c_P \\
\tau_{-f_1} V_{yP} - \tau_{f_2} V_{yP} &> \tau_{-f} V_{yP} + \gamma \beta \tau_{f_2} V_{yP} - c_P \\
-\tau_{f_2} V_{yP} &> \gamma \beta \tau_{f_2} V_{yP} - c_P \\
c_P &> \gamma \beta \tau_{f_2} V_{yP} + \tau_{f_2} V_{yP} \\
c_P &> \tau_{f_2} V_{yP} (\gamma \beta + 1)
\end{aligned}$$

Given that  $\gamma > -\frac{1}{\beta}$  then  $\gamma \beta > -1$  and  $V_{yP} = -1$ ,  $\tau_{f_2} V_{yP} (\gamma \beta + 1) < 0$ . By definition,  $c_P > 0$  so  $c_P > \tau_{f_2} V_{yP} (\gamma \beta + 1)$  and therefore  $EU_P(\neg I \& \neg N | C) > EU_P(I \& \neg N | C)$ .

Alternatively, anticipating that the Senate will not confirm a nominee if an interim has been appointed, the president chooses to not submit a nominee after appointing an interim only if the expected utility of not submitting a nominee outweighs the expected utility of a Senate rejection:

$$\begin{aligned}
EU_P(I \& \neg N | \neg C) &> EU_P(I \& N | \neg C) \\
\beta \tau_f V_{yP} &> \beta \tau_f V_{yP} - c_P \\
c_P &> 0
\end{aligned}$$

By definition  $c_P > 0$ , therefore  $EU_P(I \& \neg N | \neg C) > EU_P(I \& N | \neg C)$ . Given  $V_{yP} = -1$ , the president prefers to not fill the position immediately and not submit a nominee (maintain the empty post) if its expected utility outweighs the expected utility of filling the position immediately and not submitting a nominee:

$$EU_P(\neg I \& \neg N | \neg C) > EU_P(I \& \neg N | \neg C)$$

$$\tau_{\neg f} V_{yP} > \beta \tau_f V_{yP}$$

$$-\tau_f < \beta \tau_f$$

$$\beta > -1$$

By definition,  $\beta \in (0, 1]$  therefore  $\beta > -1$  and  $EU_P(\neg I \& \neg N | \neg C) > EU_P(I \& \neg N | \neg C)$ . This proves that, given  $V_{yS} = 1$  and  $V_{yP} = -1$  and the Senate's confirmation strategy, the president will prefer to maintain an empty post by filling not the position immediately and not submitting a nominee for Senate confirmation ( $p = \neg I \& \neg N$ ). ■

**Proof for Proposition 1.** Suppose Nature chooses a position  $y \in Y$  that is high capacity such that  $s_y = 1$  and from an agency with jurisdiction that aligns with the president's policy contraction priorities such that position value  $V_{yP} = -1$ . From Lemma 1 and Lemma 2: If  $V_{yS} = 1$  and  $\gamma > -\frac{1}{\beta}$ , the Senate will confirm when the president submits a nominee without immediately filling the position with an interim appointee; If  $V_{yS} = 1$  and  $\gamma < -\frac{1}{\beta}$ , the Senate will not confirm when the president submits a nominee without immediately filling the position with an interim appointee; If  $V_{yS} = -1$ , the Senate has a dominant strategy to not confirm when the president submits a nominee regardless of whether the position has an interim appointee.

Given the Senate's confirmation strategy, from Lemma 3 the president chooses not to fill the position immediately and not to submit a nominee ( $p = \neg I \& \neg N$ ) regardless of  $V_{yS}$ , leading to the outcome of an empty post. Moreover, from Lemma 2, an empty post arises when, given  $V_{yS} = -1$ ,  $V_{yP} = 1$ , and  $\gamma > -\frac{1}{\beta}$ , the Senate does not confirm the president's nominee when the president does not appoint an interim appointee ( $p = \neg I \& N$ ). However, Lemma 3 proves that  $p = \neg I \& N$  is not contained within the set of optimal strategies. Thus, the vacant position  $y$  will stay empty in equilibrium if and only if the position is high capacity ( $s_y = 1$ ) and the president  $P$  prioritizes policy contraction ( $V_{yP} = -1$ ). ■