Sowing the Seeds of Conflict:

A History of the Senate Confirmation Debates of

President Ronald Reagan’s Appointments

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In 1993, Senator John Danforth (R-MO) offered the following advice to those men and women considering joining President Bill Clinton’s administration: “If the President calls to say that he will nominate you for a job subject to confirmation by the Senate,” wrote Danforth in The Washington Post, “just say no (Danforth 1993).” Citing excessive investigations into nominees’s lives and intolerance for differing viewpoints, Danforth condemned the degeneration of the Senate confirmation process. Many others shared his opinion. Four years later, Senator Richard Lugar (R-IN) commented on the difficulties President Clinton’s National Security Advisor, Anthony Lake, was having in getting a committee vote on his nomination to be Director of the Central Intelligence Agency: “The whole confirmation process becomes more and more outrageous,” he told The New York Times. “People feel it is their duty to engage in character assassination or to cause the nominee’s defeat, or to discourage and demoralize them” (Weiner 1997). Lake himself, in his letter to President Clinton asking for the withdrawal of his nomination characterized the process as “nasty and brutish without being short” (Daschle 1997). Finally, political scientist G. Calvin Mackenzie wrote in a 1998 follow-up to his 1996 Twentieth Century Fund Task Force report on the confirmation process that “in the 1990s, [the] evolution [of the Presidential appointment process] has accelerated out of control….In 1997, the appointment process had the worst year in its history” (Mackenzie 1998).

In this paper, I argue that the degeneration of the Senate confirmation process during the past twenty years is due in large part to Senators misusing their confirmation powers by exploiting nominations to advance their personal and partisan goals. Rather than debating the merits of a given nominee’s appointment, opposing party Senators used committee hearings and floor debates to highlight controversial or unpopular opinions a nominee had expressed (positions which would reflect poorly upon the President in power) and to attack the President himself through his selections. I call this political tactic the nomination strategy.

Although the nomination strategy did not come into full effect until President Clinton took office, the roots of its development can be found in the Reagan presidency. In fact, I argue that it was President Reagan’s adoption of the administrative presidency staffing plan that created the essential redefinition of
the role of political appointees, and that this transformation allowed Senators to view these men and women as potential tools to be used for political ends. As this paper will show, Reagan’s adoption of the administrative presidency strategy was a necessary but not a sufficient causative factor. In fact, a number of other political developments – many of which can also be traced to Reagan’s tenure – needed to come together for politicians to find the nomination strategy both attractive and effective.

In this paper, I will first present evidence proving the existence of the nomination strategy, and show that it is a recent development. Next, I will describe how Reagan’s governing choices and other political forces came together to create the conditions which now make the confirmation process particularly treacherous for the men and women who accept the President’s call to service.

**Data**

For this project, I examined every Senate confirmation floor debate that occurred between January 1, 1977 and December 31, 1998. In order to analyze the content of these floor statements, I asked three questions: what are the Senators saying? (the content of their statements); to whom are they saying it? (the target of their message); and what are the trying to accomplish by saying it? (the goal of their comments). In my opinion, the answers to all of these questions have changed over time. During the last fourteen years of the period studied, a new form of nomination opposition has arisen, in which Senators direct their messages not to their colleagues, but to the voting public, and their principal goal appears not to be the recording of the Senator’s position or even defeat of the nomination, but communication of a partisan or electoral message to the public at large. I call this form of opposition the nomination strategy; it is characterized by Senators making confirmation floor statements which attack the President as much as the nominee. The speeches may also explicitly mention the electoral ramifications of the nominee’s confirmation, and they often focus on issues with an electoral advantage for the attacking party. While examples of this type of speechmaking appear as early as 1983, the strategy of using nominations to score political points only became common after President Clinton took office. This development suggests that attacking Clinton’s nominations may have been part of a planned strategy on the part of Republicans to weaken Clinton and the Democrats electorally.
Early Use of the Nomination Strategy

As noted above, a few cases of partisanly motivated opposition can be found early on during the time period I studied. The first incidence of this type of partisan speechmaking that I uncovered took place during President Reagan’s first term when the Senate debated Kenneth Adelman’s appointment to be Director of the U.S. Arms Control and Disarmament Agency. Adelman’s nomination was highly controversial. The Foreign Relations Committee held three days of hearings and then voted to delay consideration of the nomination for a week to give President Reagan an opportunity to reconsider his choice. When Reagan refused to withdraw the nomination, the Committee voted 9-8 against recommending confirmation, but agreed to allow the nomination to proceed to the floor. During the debate on April 14, 1983, fifty-four Senators spoke on the nomination.

Opponents of Adelman’s confirmation argued that he was not qualified for the position, that he had lied to Congress about an interview he had previously given on arms control issues, and that he had broken a pledge not to involve himself in personnel issues at the ACDA before his confirmation. Most importantly, however, they objected to what they believed was Adelman’s lack of commitment to arms control agreements. He had been quoted in the disputed interview calling arms control negotiations with the Soviets a “sham.” Liberals strenuously objected to placing an arms control opponent as the nation’s chief official in charge of the arms reduction program.

Although the majority of the debate about the Adelman nomination resembled standard Senate behavior (Senators spoke to record their reasoning for their vote and they provided elaborate arguments to justify their position), several Democrats explicitly mentioned the electoral ramifications of the nomination, an unusual occurrence at that time. With the nation’s fear of nuclear war and support for arms control as a background, the Democrats emphasized Adelman’s alleged rejection of arms control negotiations as a means to criticize President Reagan and the Republicans on an issue on which the Democrats perceived that they had an advantage. Excerpts from The Congressional Record demonstrate this strategy. In his speech, Senator Paul Tsongas (D-MA) spoke about what he perceived to be the Democratic advantage on the nomination:

I, as a member of the opposition, am in the strange position of trying to, in essence, save the President from a nomination that, if confirmed, would serve my interests speaking partisanly. I happen to think that arms control is the most important issue this country faces, indeed mankind, and I would hope at some
point that those partisan considerations would not be there (U.S. Senate 1983b, S 7972).

Later, he continued the argument, pointing out the electoral relevance of the arms control issue and the Adelman nomination:

And I say to my friends who have to return to their constituencies, if a mother, who was concerned about the survival of her children – and indeed the whole arms control initiative is, in fact, fueled by that parent-child bond – says, “Senator, there is no progress in arms control. I am worried about the survival of my children. The President provided a nominee who said that arms control was a sham and you voted for him,” what are you going to say? Because, by definition, if you vote for someone who believes that, you believe it. It is not my albatross, it’s going to be yours (U.S. Senate 1983b, S 7972).

Senator John Glenn (D-OH) echoed this claim in a later speech he made:

I know Senators who support Mr. Adelman today may well be rewarded with a very heartfelt “thank you” from the White House. But I submit to those Senators to think twice because the White House will not be out in the country with Senators as they try to justify a vote for Mr. Adelman’s confirmation to a constituency deeply concerned over the threat of nuclear war (U.S. Senate 1983b, S 8582).

In his comments, Senator Don Riegle (D-MI) explicitly discussed the upcoming Presidential election and criticized President Reagan for his positions on arms control:

I am very much of the opinion that in 1984 our Nation, for a variety of reasons, will take that step and we will in fact elect a new President. In so doing, we will not only put the Presidency into new and more capable hands but afford ourselves the chance to then select on behalf of our Nation someone to head the arms control effort who brings the qualification and the professional standing and the awareness of the issues that this vital, absolutely critical issue requires. In a sense, I suppose the confirmation today draws the issue even more clearly, and that is the problem of a lack of movement on arms control and in the end is a problem of inadequate Presidential leadership. I think it is time for us now to deal with the problem of President Reagan; when this term is up, to replace him with a President that can perform this job at a higher standard and in a much better way (U.S. Senate 1983b, S 8616).

The emphasis the Democrats placed on the electoral implications of Adelman’s nomination did not go unnoticed by the Republicans. As Senator Jake Garn (R-UT) put it: “[T]his debate is not solely on the qualifications of Mr. Adelman. I do not think it was intended to be that way by some. I think from the very beginning it was stated that this was to be a debate on arms control policy. I think that is what is has become (U.S. Senate 1983b, S 8291). This view was echoed by Senator Malcolm Wallop (R-WY): “…Dr. Adelman’s views are the President’s views. Hence the attack. Dr. Adelman has been the occasion of an attack directed not at him, but at the President (U.S. Senate 1983b, S 8612).”
Seven months later, on November 18, 1983, the Democrats levied another attack at President Reagan through a nomination. This time the Democrats used William Clark’s appointment as Secretary of the Interior to criticize President Reagan’s environmental policies as implemented by former Interior Secretary James Watt. Secretary Watt had been a highly controversial and unpopular figure, but his extreme policies had provided a benefit to Democratic Party officials who used his missteps as rallying cries for their party. As Senator Dale Bumpers (D-AR) described it during his speech on the Clark nomination: “James Watt used to go to fundraisers. He raised a lot of money. I am a Democrat, and he raised a lot of money for us, too. We lost our best fundraiser when James Watt resigned (U.S. Senate 1983c, S 34259).”

President Reagan’s continued support of former Secretary Watt, despite his controversial exit, and nominee Clark’s unwillingness to distance himself from the former Secretary and his policies, provided a clear opportunity for the Democratic attack. Senator Bumpers again:

Mr. President, I will tell Senators something interesting: There are 10 or 12 people, perhaps, on the other side of the aisle who do not feel this way, but I believe that somewhere between 80 percent and 90 percent of the membership of the U.S. Senate believes that James Watt is one of the most unmitigated disasters ever to strike this country. That is the reason he is not here anymore; is it not? Yet, not one time during the entire confirmation hearing did I hear so much as a whimper against his private or public conduct, about his policies, or about his lack of policies. President Reagan, to my knowledge, to this day, has never criticized James Watt for one single thing he ever said or did. I want you to think about that: Neither Judge Clark nor the President could think of a single thing about James Watt to criticize – not one policy they would reverse (U.S. Senate 1983c, S 34259).

Many other Senators joined the opposition, citing the administration’s decisions at the Interior department over such controversial issues as mining, timber cutting and private use of public lands as a reason not to confirm William Clark and as justification for questioning President Reagan’s leadership. Senator Don Riegle (D-MI) took up where these criticisms left off and condemned the President for the rising budget deficits, the out-of-control arms race, high interest rates, unemployment, the lack of health insurance, and high trade deficits, among other issues. Riegle concluded his litany with the following statement: “So we wind up this year standing here on the floor – and the list [of administration failures] is much longer – and we have not provided very many answers to anything. I would say the quality of the leadership has been substandard in terms of the requirements of the hour for the country and for the world (U.S. Senate 1983c, S 34261).”
Again, the President’s supporters responded. After listening to Senator Riegle’s speech, Senator Barry Goldwater (R-AZ) had this to say:

Mr. President, when I came into the Chamber, I was under the assumption that we were discussing the nomination of William Clark to be Secretary of the Interior. After sitting here for a long time, I have heard one of the best political speeches I have heard in some time. It is the kind of speech I would expect to hear before the Democratic National Committee (U.S. Senate 1983c, S 34262).

Despite the controversy (thirty-eight Senators spoke on his nomination), Clark’s nomination was confirmed on November 18, 1983 by a roll-call vote of 71-18.

Aside from these two battles, however, Senators did not make nomination debates during the Reagan years explicitly political. Although it is impossible to say whether Senators intended to make electoral points through their floor speeches, the rhetoric used during confirmation debates did not contain the same explicit partisan manipulation in any other case as it did during the Adelman and Clark nominations.

During President George Bush’s term, several nominations came before the Senate that Senators could have used for election purposes. It may be that in other ways Senators did demonstrate partisanship, but the floor rhetoric on nominations was generally mild during the Bush years and Senators did not take advantage of certain opportunities to attack Bush or his policies. For example, during the November 1991 debate on Robert Gates’ nomination to be Director of Central Intelligence, Senators discussed Gates’ possible knowledge of the Iran-Contra Affair, but the discussions were limited to whether Gates had lied about his involvement. In their floor statements, Senators did not emphasize the scandal, or use the nomination to highlight questions about Bush’s involvement in the affair (U.S. Senate 1991). And during the very partisan, very heated debates over John Tower’s nomination as Secretary of Defense and Clarence Thomas’s appointment to the Supreme Court, the Democrats did not make sweeping statements about Bush’s poor selection abilities. This is not to say that nomination opponents were not interested in the electoral implications of their decisions, but for the most part, they did not use floor debates over nominations as opportunities to exploit electoral strengths and weaknesses.

The one exception to the mild approach Senators took on President Bush’s nominees was a speech given by John Rockefeller during the February 27, 1992 debate on the nomination of Barbara Franklin to take over as Secretary of Commerce. Generally, the nomination was uncontroversial; the
Senate confirmed Franklin on a voice vote and Senator Rockefeller was the only member to speak against her appointment. As he himself said, however, his opposition to confirmation was based not on Franklin herself, but on his dissatisfaction with the Bush administration’s handling of the economy. Seeking to emphasize the poorly performing economy during the Presidential election year, Senator Rockefeller listed a number of problems the administration had with managing the economy and then stated:

I understand the argument…that it is unrealistic to expect a President to appoint a secretary whose views and priorities differ from his. I understand that and I acknowledge that much of my concern about this nomination relates to the President’s lack of vision and even lack of concern about the problems I have discussed. The country is facing the worst competitiveness crisis in its history, and the President does not even seem to be aware of it. Worse, he sees little or no role for the Government in dealing with it (U.S. Senate 1992, S 2491).

He later alluded directly to President Bush’s defeat in the New Hampshire presidential primary: “I am under no illusions about this administration. They seem to think we are on the right path, and that a little tinkering will do. But the American people know that we are in danger of permanent economic decline, and they said so very clearly in New Hampshire (U.S. Senate 1992, S 2491).” As noted above, the Senate confirmed Franklin’s nomination on a voice vote, no other Senator spoke against her confirmation and even those Senators who spoke in her favor did not feel it necessary to respond to Rockefeller’s charges.

The point Rockefeller was trying to make -- that President Bush was unaffected by the nation’s economic problems, however, became a rallying cry for the Clinton-Gore campaign and was widely credited with playing a major part in the Democratic victory. Rockefeller’s decision to use the Franklin nomination to attack Bush on the economy was possibly part of a larger strategy by Democrats to focus media and public attention on Bush’s weak points while highlighting Democratic strengths. The use of a focused message was not a new innovation; the use of a nomination to highlight that message was still relatively uncommon at this point.

The Clinton Experience

The situation changed, however, when President Clinton took office. Criticizing the President through his nominations became a frequent occurrence during the 103rd Congress, as the Republicans were gearing up to take over control of Congress. During a number of floor debates on nominations, Republicans took the opportunity to attack Clinton for being too liberal in a wide variety of policy areas, including economic policy, crime and social issues.
A good example of the Republican attack was the criticism of Alicia Munnell’s nomination to be Assistant Secretary of the Treasury for Economic Policy. President Clinton nominated Munnell on April 19, 1993. The Finance Committee quickly held a hearing on the nomination on May 6, and reported the appointment favorably the same day. Thirteen days later, her nomination was called to the floor, and a small group of Republicans protested confirmation because of an article Munnell had written in which she allegedly supported the taxing of pension benefits. The Republicans argued that Munnell’s appointment was more evidence of the Clinton administration’s predilection for taxation.

Senator Trent Lott (R-MS) opened the debate by noting that President Clinton was now appointing the second tier of sub-cabinet level appointees, and that his selections for these posts would be very important in repairing the economy. He then stated: “It appears to me that a pattern is developing. More and more nominees are coming to the Senate that I feel represent very extremist positions. You are going to hear more of that this week and next week…. (U.S. Senate 1993, S 6077).” In the case of Munnell, Lott said that he would reluctantly vote for the nomination, but noted that her alleged support of taxing pension benefits caused him some pause: “I think it is another threat to the American taxpayer. The solution in Washington always seems to be, ‘Oh, let’s raise taxes. Great. You want to spend more? Raise taxes. Don’t worry about it, the American people can afford more taxes (U.S. Senate 1993, S 6077).’”

Senator Connie Mack (R-FA) took up where Lott left off and made the attack on Clinton explicit:

By now, everyone knows Bill Clinton’s campaign pledge of tax breaks for the middle class has been the reality of tax hikes. Candidate Clinton believed that American families are overtaxed, but President Clinton thinks the Government is underfed. Americans want him to cut spending first, but he is not listening…. [T]he President’s deficit reduction package is heavy on new taxes and fails to make serious spending cuts, and he continues to nominate people for high administration positions who think about higher taxes first and spending cuts not at all…. The President is rightly judged on the promises he makes, but also on the people he chooses to determine his policies. On both of these counts, Clinton is showing himself to be a major league taxer and spender (U.S. Senate 1993, S 6084).

Senators Lott and Mack then solidified the attack by engaging in this colloquy:

Lott: Why would the Senator rise to raise any objections here today? This is about the President’s choice. So she wrote about this in the *New England Economic Review*. Why would the Senator from Florida be so concerned that he would rise and express the concern about her today?

Mack: I appreciate the question. The reason I rise today is because I sense a developing pattern here. The President is out around the country telling the American people that he wants to cut spending and he “understands their concerns.” “We are not going to increase taxes until in fact there has been
spending reduction.” But yet we see his nominees are people who are constantly talking about raising taxes first. None of them talks about a cut in spending. Every one of them looks for a new area to raise “a pile of revenues.” In the case of Dr. Munnell, that “pile” would be $450 billion as a result of a 15-percent tax on pensions (U.S. Senate 1993, S 6084).

Finance Committee Chairman Daniel Patrick Moynihan (D-NY) made a brief statement defending Munnell from the charges, arguing that she was highly qualified and had entertained the pension taxation question as an intellectual exercise where she had considered the arguments both for and against such a change. Moynihan made no comment on the attacks on the President. Senators William Roth (R-DE) and Paul Coverdell (R-GA) criticized Munnell and President Clinton along the same lines as Senators Mack and Lott, and then the nomination was quietly confirmed on a voice vote.

A year later, on May 25, 1994, the Senate debated two foreign policy nominations and again certain Republican Senators used the opportunity to attack Clinton for his liberal positions. On the surface of the debate, Derek Shearer’s appointment to be Ambassador to Finland was opposed because of statements he had made during the 1980s supporting socialist policies such as nationalization of industry and redistribution of wealth, while Sam Brown’s appointment for the rank of Ambassador while head of the Delegation to the Conference on Security and Cooperation in Europe was controversial because of Brown’s past tenure as head of the ACTION Agency and his support for anti-Vietnam war protests. In both cases, however, Republican opponents directed much of their criticism at President Clinton.

Discussing Shearer’s nomination, Senator Phil Gram argued that “elections have consequences” and that President Clinton had a right to appoint individuals who express the positions he advocated during his campaign. Developing his argument, however, Gramm stated: “Where I draw the line…is where people are nominated who have views that are far outside the parameters of the views that the President expressed during the election campaign (U.S. Senate 1994a, S 6221).” “The American people may not want to accept the fact,” Gramm continued, “but when they voted for Bill Clinton, they voted for more Government spending, more Government taxes, more Government activism, and they voted for the appointment of liberal Government activists to positions in the Federal Government (U.S. Senate 1994a, S 6224).”

Senator Bob Smith (R-NH) also weighed in on the nominations:

1 Debate on the two nominations was intertwined and many Senators addressed their statements to both nominees.
It troubles me to have to take the floor, time after time, in opposition to President Clinton’s national security nominees…So many of them are either patently unqualified, unabashed antiwar activists, or radical extremists who are simply unsuited to these very sensitive positions in our Government….It is not surprising to anyone who has followed the nomination process to find the administration’s foreign policy is in a shambles. The President continues to surround himself with the type of people he protested with in the golden years of the antiwar movement. And it is having a devastating effect on the quality and the effectiveness of our national security policy. You judge a person by the company he keeps. You judge a President by the appointments he makes (U.S. Senate 1994a, S 6311-6312).

Senator Byron Dorgan (D-ND) responded to the attacks on the President by identifying an apparent subtext to the debates: “I think one of the last points the Senator from Texas made really says much about this debate. He said that the real purpose here is to describe the President’s mindset about appointing people. In other words, this is sort of a ricocheted debate, apparently attempting to be critical of President Clinton (U.S. Senate 1994a, S 6225).” In the end, the Shearer nomination was confirmed by a roll-call vote of 67-31, but the Brown nomination expired after the Senate twice failed to obtain cloture (votes of 54-44 and 56-42).

Debates on the confirmation of judicial appointments became an opportunity for the Republicans to criticize Clinton’s position on crime. As Senator Bob Smith (R-NH) put it during the April 14, 1994 debate on Rosemary Barkett’s nomination to be a Judge for the Eleventh Circuit Court of Appeals:

Poll after poll after poll shows that the American people have grave doubts about this President and some of his policies. The Barkett nomination is a prime nomination of why [sic]. As I said earlier, actions do speak louder than words. The President is talking tough on crime and then serves up an endless parade of these liberal judicial nominees who are soft on crime (U.S. Senate 1994c, S 4296).

After lamenting Barkett’s liberal positions on the death penalty, sentencing questions and other issues, Smith urged voters watching the debate on CSPAN to call their Senators and ask them to vote no on the nomination. And then he expanded his request:

While you are at it give the White House a call. Say, “Mr. President, I do not understand. I do not understand how you can be anticrime and be in favor of the death penalty and give us a judge like this. I do not understand, Mr. President.” Let me give you that number: 202-456-1414. Let him know how you feel (U.S. Senate 1994c, s 4296).

Senators Orrin Hatch (R-UT) (U.S. Senate 1994c, S 4288), Strom Thurmond (R-SC) (U.S. Senate 1994c, S 4293), Jesse Helms (R-NC) (U.S. Senate 1994c, S 4300), Charles Grassley (R-IA) (U.S. Senate
1994c, S 4310), Trent Lott (R-MS) (U.S. Senate 1994c, S 4312), and Malcolm Wallop (R-WY) (U.S. Senate 1994c, S 4322) all made comparable statements during the Barkett debate accusing Clinton of only pretending to be tough on crime. Barkett was confirmed on a roll call vote of 61-37.

A similar tactic was adopted during the October 4, 1994 consideration of H. Lee Sarokin’s nomination to the Third Circuit Court of Appeals. As Senator Hatch said: “The Clinton administration, having postured itself as tough on crime, wants to hide the fact that it is supporting soft-on-crime judges, like Rosemary Barkett and Lee Sarokin, who will undermine our Nation’s anti-crime effort. But the American people deserve to know what kind of judges this President is putting on the Federal courts of appeals (U.S. Senate 1994b, s 13970).” Senator Phil Gramm made the argument even more clearly:

Let me say, Mr. President, in order to save the time of the Senate, the point I want to make in this debate is not directly related to this judge. It is related to the person who has nominated this judge….I am going to vote against this judge because Americans voting in 1992 could never have believed that the person who was running for President, named Bill Clinton, who was a new kind of Democrat, who believed in the death penalty, who wanted to be tough on crime – there was no reason that they would have believed that he was going to nominate this judge to be a Federal circuit judge. There was no way a rational person could have concluded that this nomination could have been expected or reasonable (U.S. Senate 1994b, S 14024-14025).

After the Democrats successfully invoked cloture on a vote of 85-12, Sarokin’s nomination was confirmed by a vote of 63-35.

The attacks on Clinton through his nominations continued even after the conclusion of the 103rd Congress and the Republican take-over of the Senate. In 1995, Democrats accused Senator Phil Gramm (R-TX) of obstructing the confirmation of Dr. Henry Foster as Surgeon General in order to win points for his presidential bid. According to his Democratic opponents, Gramm was using the nomination to prove to the right wing that he could deliver on their agenda and to depict President Clinton as a far-left liberal, which he hoped would weaken the President before the 1996 election. Echoing the words he used to oppose H. Lee Sarokin’s confirmation, Gramm said the following about the Foster nomination:

But the real reason I oppose [the nomination] is, the American people would have had no reason to believe that the Bill Clinton running for office in 1992 who became President would have appointed such a person. They would have every reason to believe it today. In 1995, after Joycelyn Elders, after gays in the military, after the Clinton Justice Department has entered every suit involving quotas and set-asides on the side of quotas and set-asides, after a series of appointment of people who hold radical views, today, no one is surprised (U.S. Senate 1995, S 8727).
Without providing any real evidence of their claims, several Democratic Senators took the floor to deplore Gramm’s ploy. Senator Christopher Dodd (D-CT) stated:

Let me put it bluntly, this is not about Dr. Foster. We are engaged in Presidential politics. That is what this is about. This is not a question of whether or not Dr. Foster deserves to be confirmed as the Surgeon General of the United States. This is a game of one-upmanship, in my view, and that is what it comes down to. Frankly, he is being used as a pawn in this process to advance the particular agenda of candidates for an office that will not be decided for 18 months in this country. Anyone who suggests otherwise, I think, has not been around here in the last number of weeks (U.S. Senate 1995, S 8725).

Senator James Exon (D-NE) joined in:

I may be wrong. But it is the opinion of this Senator that Dr. Foster is being crucified on the altar of Presidential politics, pure and simple. That is not what all of the opponents of Dr. Foster are thinking in my mind. But it is to a considerable extent of some who are providing leadership. I think crucifying someone to enhance someone else’s Presidential ambitions is a sorry sight indeed, to see happening on the floor of the supposedly deliberative body that makes up the U.S. Senate (U.S. Senate 1995, S 8728).

And Senator Tom Daschle (D-SD):

[T]here is a minority of Senators who, for the most unfortunate reasons, want to deny Dr. Foster even the opportunity for a vote. They know that Dr. Foster may be the first victim of Republican Presidential politics; that this vote may be a hostage to a narrow constituency in the Republican Party who hold a different philosophical view than Dr. Foster. That is really what this is all about. It is about whether or not the far right has enough influence to stop a qualified public servant from serving his country. It is about whether some who seek the Republican Presidential nomination can make this the first vote of the Republican primaries (U.S. Senate 1995, S 8742).

The Democrats twice failed to invoke cloture on the Foster nomination by votes of 57-43.

Also during the 104th Congress, Republicans opposed Alice Rivlin’s appointment to the Federal Reserve Board as a protest against the Clinton administration’s alleged misrepresentation of financial data. Republicans argued that although Clinton made public claims to cutting the budget, in reality his aides were assuring executive branch officials that such cuts would not be necessary. Senator Robert Bennett gave this speech during the June 20, 1996 debate on confirmation:

…I will vote against her with the firm understanding that this has little to do with Alice Rivlin and a great deal to do with the Clinton White House. It has little to do with what she did when she was following orders to extend that kind of a response to chairman Bond and it has everything to do with the administration that gave her those orders and said: Pretend, dissemble, camouflage, confuse, but do not tell the Congress that which is blatantly obvious to everyone else, which is that this administration does not plan to keep its word on the President’s budget (U.S. Senate 1996, S 6582).
Only three Senators spoke on the nomination: Bennett and Senator Christopher Bond (R-MO) opposed confirmation because of her alleged dissembling on the budget and Senator Frank Lautenberg (D-NJ) spoke in favor of confirmation. Despite this minor debate – it only took up two pages of the Congressional Record -- the vote on the nomination was 57-41, with only Republicans voting nay.

The selection of quotes included here is not exclusive, but it should demonstrate that there has been a change in the content, target and objective of Senators’ opposition to nominations. Now more than ever, Senators are directing their comments to the public at large, they are emphasizing controversial issues on which their party has an electoral or partisan advantage\(^2\), and they are using nomination battles to advance the electoral fortunes of themselves or their party by attacking the President and his nominees. It is my theory that these changes have evolved over the twenty years of this study, with incremental steps taking place along the way, fueled by specific changes in the political environment. The next section will trace these changes and describe how they contributed to the current nomination climate.

**Development of the Nomination Strategy**

Over the past twenty years, a number of political factors have come together to create an environment receptive to the use of nominations as political pawns. I am not arguing that there is a direct causal relationship between each of these factors and the development of what I call the “nomination strategy.” As with most political strategies, this approach developed over time as political actors sought to make the most of the opportunities their situations provided, and in this case, the political actors came to realize how attractive nominations were as a political tool.

In brief, the developments I have identified as important factors in the building of this strategy are: President Reagan’s adoption of the administrative presidency strategy; the increase in the number and size of public interest groups who can activate national memberships on important issues; the use of national direct mail for fundraising; the Bork nomination battle; the introduction of television coverage to the Senate; the rise of talk radio as a political force; and the increase in ideological polarization in the Senate.

The first significant event was President Reagan’s adoption of the administrative presidency strategy. Although this strategy included many elements, of particular relevance to this paper was the plan

\(^2\) For Republicans, these issues include law and order, tax policy and certain social welfare issues such as late term abortion. For Democrats, the issues would be protection of the safety net (particularly Medicare and Social Security funding), the environment and consumer safety.
to staff the executive branch with people ideologically committed to the President’s agenda. By choosing ideological adherents (rather than individuals with program or administrative expertise), the Reagan administration hoped to improve executive agency loyalty to the President and his policy aims. The White House staff could then circumvent Congress and go directly to program directors to achieve the President’s policy aims, often by altering the implementation of government programs, in other cases by failing to carry out program directives at all (Nathan 1983; Moe 1985;).

While this strategy may have improved the Administration’s flexibility and policy effectiveness, it also angered many members of Congress who felt Reagan was illegitimately usurping their constitutionally guaranteed powers. And this anger, I believe, made Senators less willing to adhere to the twentieth century Senate norm which instructed that a President was entitled to confirmation of his nominations except in cases of incompetence or ethical malfeasance. In other words, once President Reagan made his appointees players in a struggle over control of policy and program outcomes, Senators became more willing to see the nominees as political actors, and thus fair targets for battle.

Floor statements made by Senators during this period show the growth in Senators’ anger over Reagan’s techniques and their willingness to oppose nominations because of it. In an early example (Senate debate took place on September 21, 1981), Senator Howard Metzembaum (D-OH) spoke against James C. Miller’s nomination to be a Federal Trade Commissioner, arguing that Miller was an inappropriate choice because he opposed the FTC antitrust policies he would be expected to enforce. Metzembaum said:

Mr. President, what we have here is again an instance of this administration’s appointing people to head up an agency who do not believe in the agency…As you look across this whole galaxy of appointments by this administration you find that where they could not change the laws or had concerns about coming to congress to ask to change the laws that they put somebody in whose views are 180 degrees opposite from that which the laws were originally intended to do, somebody who wants to turn the clock back totally. One after the other this administration has been sending appointments of that kind to the Senate to confirm, and because we all recognize the right in the President to have his appointees in position we go along with those appointments. We say, “OK, you have the right to make the appointments.” And we abandon our responsibility in the confirmation process because we are somehow afraid to speak up and carry out our own responsibility as Members of the U.S. Senate (U.S. Senate 1981a, S 21346).

Miller was confirmed on a roll-call vote of 97-2 with only Senators Metzembaum and William Proxmire (D-WI) voting nay.
Two years later, the Senators were still fighting the same battle, but the amount of opposition had grown. In this case, President Reagan appointed Alfred Regnery to be Administrator of the Office of Juvenile Justice at the Justice Department. The Reagan Administration had requested no money for the office in its yearly budget requests and wanted to shut the office down, but Congress continued to appropriate funds. Supporters of the programs saw Reagan’s appointment of Regnery – whom they argued had no justice experience and was selected only for his conservative ideology and Reagan loyalty – as the Administration’s final effort to shut the programs down. During the May 17, 1983 debate on the nomination, Senator Patrick Leahy (D-VT) explained his opposition to Regnery this way:

Too often the nominees sent to the Senate by the President during the last two years have been people whose views have put them directly at odds with the purposes of the agencies they were chosen to head. While any President has the right to choose people who share his views, the Senate has the right – and the obligation – to expect that any candidate will solidly support agency goals. That expectation has not been reasonably satisfied in the case of this appointment. The President has every right to press for further changes, but they should come in the form of proposed legislation (U.S. Senate 1983a, S 12571).

Regnery was also confirmed on a roll-call vote, but this time twenty-eight Senators voted against his nomination.

Miller and Regnery were far from the only nominations objected to on the grounds that Reagan was trying to undermine Congress’s authority. Similar debates took place over the nominations of James Richards to be Inspector General of the Department of Energy (September 21, 1981) (U.S. Senate 1981b), James C. Miller to be Director of the Office of Management and Budget (October 4, 1985) (U.S. Senate 1985b), Robert Dawson to be Assistant Secretary of the Army (December 4, 1985) (U.S. Senate 1985c), Terrence Scanlon to be Chairman of the Consumer Products Safety Commission (July 15, 1986) (U.S. Senate 1985d), and all of President Reagan’s nominations to the Legal Services Corporation.

It is my contention that President Reagan’s utilization of the administrative presidency strategy turned presidential appointments from occasionally controversial honor positions to direct threats to Congress’s power over policy and program implementation. At the very least, this strategy focused the Senate’s attention on nominations, and encouraged Reagan’s political opponents to investigate his nominations for information about their ideology and issue positions. In a broader sense, the tradition of investigating nominees and opposing them for their issue positions (despite the fact that the nominee
inevitably shared an ideology with the appointment President) became institutionalized and created opportunities for nominee opponents -- and problems for nominees -- for decades to come.

The second important relevant development was the growth in the number and size of public interest groups with national memberships open to mobilization on political issues. Interest groups had always been involved in nomination politics – business and labor groups had routinely clashed over the President’s selection of top Labor department officials, for example – but traditional interest group involvement had been manifested through insider negotiations and lobbying. The development of public interest groups, whose power derived from national memberships ready to respond to mobilization pleas, helped make nominations politically relevant to Senators. The groups provided the key element of information – they communicated voter preferences to Senators and Senate votes to constituents – to make nominations relevant to Senators’ electoral fortunes.

The impact of interest groups is directly related to the first development discussed here – Reagan’s adoption of the administrative presidency strategy. It is my contention that Reagan’s insistence on a policy of ideological governance spurred the involvement of interest groups in nomination politics in the first place. Indeed, it was the White House’s public promise to reform the federal court system by replacing “judicial activists” with conservative appointees that prompted People for the American Way to organize the Alliance for Justice in 1985, a group whose purpose was solely to investigate judicial nominees and fight against those deemed too conservative.3 Such groups, which had formed to protect the interests of minorities and women, as well as environmental and consumer groups among others, felt justifiably threatened by the Reagan agenda. And, since a major pathway of implementing this agenda was through ideologically conservative nominees, it only made sense that these groups would organize to fight these appointments. (For a discussion of the role interest groups play in judicial nominations see Caldeira and Wright, 1995 and Fleming, MacLeod and Talbert, 1998.)

Another factor perhaps influencing the willingness of interest groups to involve themselves in nomination politics was the usefulness of nomination battles when raising money through direct mail.

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3 Several years before, conservatives had formed a similar organization – the Judicial Reform Project under the Free Congress Foundation – to monitor President Reagan’s judicial appointments. The Judicial Reform Project in 1992 became the Judicial Selection Monitoring Project, and continued its practice of evaluating and scoring judicial candidates on their judicial activism during the Clinton administration. The Projects’
Senator Jesse Helms (R-NC) was a pioneer in the use of direct mail fundraising, and he had found that nominations could be powerful symbols of his fight to protect conservatism, the driving force behind his national fundraising drives (Furgurson 1986, 137-146). During the eight years of the Reagan administration, Helms repeatedly criticized the President’s foreign policy appointments for being too liberal, and, after making his protest on the floor, Helms then used his opposition to liberal nominations in his fundraising letters. Nomination battles were a simple means of conveying his message that he was the strongest defender of conservatism; rather than having to explain a complicated issue, Helms could instead cite his opposition to nominations who were, in his mind, too liberal for the conservative revolution President Reagan had promised.

Although Helms may have exploited the symbolic value of presidential appointments, in other critical ways his treatment of nominations differed significantly from the approach of the nomination strategy. In his floor statements, Helms did not attack the nominees or the President; instead, he disagreed with the appointees’ positions and he made it clear that he did not place responsibility for the poor selection in the oval office. In 1985, for example, Helms led the opposition to Edwin G. Corr’s nomination to be Ambassador to El Salvador based on unspecified allegations of personal misconduct while Corr had been Ambassador to Bolivia. Furthermore, Helms implied that Corr’s opposition to socialism was not adequately fierce, but he did so with restraint and diplomacy, as compared to the Senators who later attacked President Clinton’s nominees. About Corr, Helms said: “I do not attack the man’s character. I do not suggest that he is not entitled to his own view of things. But he is a man who has made clear in various ways that he does not support the foreign policy goals of the present President of the United States and, therefore, the administration of which he is a part (U.S. Senate 1985a, S9480).” And he continued: “Now, the question may arise: If Mr. Corr is not in sympathy with the President’s foreign policy goals or the President’s foreign policy philosophy, then why did the President nominate him? The answer to that is very simple: No President – this one or any previous one – has had time to investigate the political philosophy of everybody appointed in his administration. Look at the multitude of nominations that are literally shuffled in the Oval Office, and where no President can give more than cursory attention to them. (U.S. Senate 1985a, S9480).” Of course, the fact that Senator Helms was opposing a President of his own earlier efforts were directed more towards inside lobbying as President Reagan supported their agenda;
...party, and a President to whom he had closely tied himself politically, meant that the attacks were unlikely to be as sharp as those coming from an opponent. But Helms’s use of nominees in his direct mail politicking laid the stage for further elaboration of the nomination strategy.

Indeed, it wasn’t long before nominations fueled fundraising for others besides Jesse Helms. Both liberal and conservative groups used direct mail fundraising campaigns during the Bork debate (Gitenstein 1992, 179-181), and the Clarence Thomas debate became a major fundraising issue for feminist groups and female candidates in the 1992 election. In 1997, the Judicial Selection Monitoring Project, a conservative judicial watchdog group, developed a $1.4 million fundraising campaign that included quotes from four conservative Senators and former Reagan Attorney General Ed Meese criticizing President Clinton’s liberal judicial appointments. Senator Patrick Leahy, the ranking member on the Senate Judiciary Committee, criticized the fundraising effort as another attempt by Republicans to politicize the nomination process: “This extremist diatribe has been red meat for some elements of the Republican base, and now they apparently see this as a pot of gold (Weinstein 1997).”

As described above, during the first six years of the Reagan administration, many developments were taking place that created a problematic environment for nominees. Reagan’s adoption of the administrative presidency strategy had turned nominations into a threat, interest groups had developed with formidable political power and they too had turned their attention to nominations, and the development of direct mail fundraising encouraged the simplification of political issues and the use of symbols. In 1986, another powerful force was added to this mixture: the decision to allow continuous television coverage of Senate debates. Opponents of television coverage argued that allowing the broadcast of debates would encourage Senators to address their comments not to their fellow Senators but to their constituents and the public at large, and that such a change would cause Senate speeches to be public pleas and posturing rather than an occasion for reasoned debate (Fenno 1990). As this paper shows, Senators did make more speeches directed at the public than before. With the cameras came speeches intended for the voters back home and the use of nominations to make political points to the electorate. There would be no reason to strongly criticize the President or to request viewers phone their Senators or the White House if no one

with President Clinton, the Project undertook public campaigns against nominees and the president.
were watching; such pleas would have little effect if they existed only on the rarely read pages of *The Congressional Record*.

Which brings the discussion to the next important development – the intense battle over Robert Bork’s nomination to be an Associate Justice of the Supreme Court. The fight over the Bork nomination was the culmination of several of the developments discussed previously, and it contributed to the increasingly hostile environment towards nominees in two ways. First, it engendered a fierce anger on the part of conservatives who felt that Bork was treated unfairly and should have been confirmed on the basis of his intelligence and scholarship. Conservatives often cite this anger as a justification for subjecting the nominations of Democratic presidents to extensive grilling and ideological opposition. Second, the Bork nomination was a public fight, to a degree not previously realized, with the participation of large numbers of interest groups, intensive media attention and the use of political tactics such as mass mailings, advertising and grass roots organizing. Once these tactics had been developed and used for the Bork debate, they became freely available and part of the universe of options for individuals seeking to defeat a nomination.

The next development came about during President George H.W. Bush’s presidency when talk radio burst onto the scene. Suddenly, conservatives had an active outlet for their political message and, with the increasing popularity of the fax machine, they developed “burst fax” tactics where they could instantly communicate their strategic positions to a number of radio hosts and through them a small but active group of listeners and voters. By 1992, Rush Limbaugh and his radio compatriots had become close allies of the Republican party. “We send out a weekly newsletter to our list of several hundred radio talk shows,” Chuck Greener, spokesman for the Republican National Committee told *Washington Post* reporter Howard Kurtz, describing how his organization used radio to communicate its political message. (Kurtz 1996, 291). And the effort apparently worked. A poll taken by the Kaiser Foundation found that during the health care debate early in President Clinton’s administration, 46 percent of Congressional members and their staffs felt that talk radio had been the most influential media source in the debate, outranking the traditional media outlets such as *The New York Times*, *The Washington Post*, and television news sources, none of whom were cited by more than 15 percent of those polled (Kurtz 1996, 293-4).
Talk radio had a clear impact on confirmation debates as well. When President Clinton’s nomination of Zoe Baird for Attorney General ran into trouble because of information about her illegal use of household help, mainstream media sources initially downplayed the issue. But Rush Limbaugh and other talk radio hosts attacked the nominee and Clinton for his apparent willingness to overlook Baird’s law breaking, and the storm of calls to Congress resulted in Clinton’s swift withdrawal of the nomination (Kurtz 1996, 297). In 1998, during the debate on Margaret Morrow’s nomination to be a U.S. District Judge for the Central District of California, Senator John Ashcroft (R-MO) inserted into The Congressional Record a list of groups opposed to confirmation compiled by the Judicial Selection Monitoring Project. Of the 182 opponents listed (which included such interest groups as the National Rifle Association, the Home School Legal Defense Association and the Eagle Forum) nine were radio programs (U.S. Senate 1998, S648).

The final, and perhaps most significant, factor affecting the change in Senate nomination behavior is the increasing ideological polarization between the parties that developed over the previous twenty years. Many works have described the movement of southern conservatives from the Democratic to the Republican party following the civil rights movement and war on poverty, and the consequential increase in ideological homogeneity in the parties (Rohde 1991; Black and Black 1987). Other work demonstrates that even outside the south, the parties have become more homogeneous and they have also become more ideologically extreme. Furthermore, the old party cleavage built around economic issues has been replaced to a large degree by a new division along social issues, such as abortion and affirmative action (Jacobson 2000).

Keith Poole and Roward Rosenthal have devised a measure of ideological polarization called DW-NOMINATE. The DW-NOMINATE scores are a spatial model of member ideology that allows for cross-Congress comparisons (Poole, Rosenthal, and 1997; McCarty, et al. 1997). I used the average difference in Poole and Rosenthal’s DW-NOMINATE scores for the two Senate parties from 1977-1998 to prepare chart one below. The results show that the ideological distance between the two parties has grown significantly during the twenty-two years covered by this study, almost doubling from the 95th to 105th Congresses. My research has shown that this growth in polarization tracks an increase in party-line votes.
on nominations, and that, as polarization increases, nominations are less likely to be confirmed and are more likely to take longer to process (Leof 2001).

Chart 1: Average Ideological Differences Between the Parties

In addition to making legislating more difficult, ideological polarization also makes the strategy of using nominations to score partisan points more attractive. As John Gilmour discusses in his book *Strategic Disagreement: Stalemate in American Politics* (1995), politicians can use disagreement to their advantage by highlighting issues on which their party has an electoral advantage and by refusing to compromise on politically salient issues (Gilmour 1995). Compromise is not an option when it comes to nominations, as confirmations only require an up or down vote, but they still provide an opportunity for political grandstanding. Indeed, rather than bring an abortion or environmental bill to the floor and actually deal with the political intricacies of the issue, Senators can target a nominee who holds politically unpopular positions and send a clear, electoral message. Furthermore, because of the large number of nominations, party members have frequent opportunities to emphasize their party’s advantage over the opposition. As we’ve seen, Republicans pick on the nominations which emphasize their strengths – crime, foreign policy, partial birth abortion, affirmative action – and Democrats do the same – the environment, civil rights, a woman’s right to choose, consumer protection -- and nominations provide a perfect opportunity to cleanly criticize the opposition.
To summarize, political developments have made adopting a nomination strategy for partisan gain very attractive to politicians. This appeal is the culmination of several forces – the politicization of nominations by the Reagan administration, the growing involvement of citizen interest groups in the process, the development of direct mail and other grass roots political strategies, the introduction of television to the Senate, and the ideological polarization of the parties – that have led to the current situation. The next section examines whether utilization of the nomination strategy is likely to continue or whether we can expect the trend to diminish.

The Future

Whether or not a political practice will survive depends on whether the advantages of the strategy continue to outweigh the disadvantages. The advantages to a strategy of using nominations to criticize the President and opposing party are clear – it allows the opposition to attack the President without incurring great costs (failure to confirm an official is unlikely to have severe political repercussions), allows an opponent to make a policy argument without addressing the intricacies of real policy (take a stand against affirmative action without really voting on the issue), and provides an easy political symbol with which to target ones opponent (calling President Clinton’s nominee Lani Guinier the “quota queen” elegantly summarized Republicans opposition to affirmative action quotas at the same time as claiming President Clinton supported them).

Currently, for the opposition, there are few disadvantages to a nomination strategy. As noted above, outside of Washington, there is likely to be little protest if a given office remains unfilled. Constituents are unlikely to care if no one is acting as the Director of the Women’s Bureau at the Department of Labor, but they may applaud their Senator for opposing a nomination who supported the Equal Rights Amendment. Furthermore, opposition Senators may prefer that staff vacancies in the administration remain, as policy changes are difficult to bring about without personnel to make the adjustments.

The White House has responded to attacks on the President’s nominees by trying to turn the tables and depict opposing Senators as obstructionist ideologues, but this strategy has had little success. Public campaigns on behalf of Clinton’s Ambassadorial appointment James Hormel and Assistant Attorney General for Civil Rights appointee Bill Lann Lee have had no success in freeing the nominations from
committee because the Senators blocking them had more to gain from opposing the nominations on symbolically political grounds than they did from appearing to be cooperative. (Anti-homosexual and anti-affirmative-action stands having a guaranteed constituency among conservatives.) Furthermore, large-scale campaigns to increase the number of judges approved by the Senate have not decreased the backlog of nominations in committee.

Another tactic adopted by the Administration – selecting more moderate nominations and carefully screening them for controversial writings or positions – has also had only limited success. According to news reports, the Clinton administration made a concerted effort to not select far left liberals for positions in the administration, but the result had not been a significant increase in confirmations and Republicans continued to find issues they felt justified opposing confirmation (Dahl 1996; Mackenzie 1998).

Indeed, little appears to have changed with the inauguration of President George W. Bush. Democrats led with an attack against former Senator John Ashcroft, President Bush’s selection to be Attorney General. After a contentious debate about Ashcroft’s conservative positions on such issues as civil rights, abortion and gun control, the Senate confirmed his appointment by a vote of 58 to 42. Senator Charles E. Schumer (D-NY) described the conflict as a “shot across the bow,” a warning to President Bush that the Democrats would be willing to oppose future conservative nominees (Dewar 2001). And they did. To name just a few: in August, 2001, the Senate Commerce Committee rejected Mary Sheila Gall’s nomination to the Consumer Product Safety Commission on a 12-11 party line vote because of her alleged favoritism to industry over consumers (Mayer 2001); the Senate Agriculture Committee held up Thomas Dorr’s nomination to be Undersecretary of Agriculture for Rural Development because of Congressional Black Caucus objections to comments he made claiming that the success of certain “rural economic environments” in Iowa was due in part to their racial homogeneity (Becker 2001); and the Senate Foreign Relations Committee has refused to hold a hearing on Otto Juan Reich’s nomination to be Assistant Secretary of State for Latin America because of his strong positions against normalizing relations with Castro’s Cuba and because of certain ethical considerations (DeYoung 2001).

It seems that, at least in the short run, it is unlikely that Presidential opponents will cease to use nominations to score political and partisan points. The strategy works to mobilize supporters and to damage the President and is unlikely to change unless the political calculus does. Until voters become
outraged by the delays and controversy surrounding nomination battles, opposition leaders will have no incentive to cease their activities.

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