

## **Vacancies and Congressional Influence Over the Administrative State\***

**Abstract:** Scholars disagree about whether vacancies are beneficial to Congress' relative power over administrative policymaking because of differences in who appointees are believed to be responsive to and how agency civil servants will respond during vacant periods. This paper explains how vacancies affect congressional influence. It evaluates its claims with new data on agency leadership during the Bush, Obama, and Trump Administrations and combine them with data from a three-wave survey of federal executives. The evidence indicates that vacancies augment the direct influence of career civil servants and the relative influence of Congress. However, the effect is conditioned on the partisanship of the congressional actor examined. Co-partisans of the president are less influential over agency policymaking when there are persistent vacancies. In contrast, congressional opponents of the president are more influential relative to the president when appointed positions are vacant. These results suggest that, as an institution, Congress does better in the separation of powers struggle when high level appointed positions are vacant.

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**April 1, 2022**

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\* I would like to particularly thank Dave Lewis for ongoing feedback and advice on this project. I also thank the participants of the Vanderbilt American Politics Workshop for helpful comments and Bill Resh for sharing vacancy data with me. The errors that remain are my own.

During the most recent presidential administrations, presidents and their allies have frequently bemoaned obstruction of their nominees to appointed positions across the administrative state (Psaki 2010; Everett and Kim 2015; Everett and Levine 2020; Williamson 2022). Even when presidents Trump and Biden faced a co-partisan controlled Senate upon entering office, delays were frequent and the use of procedural tools by congressional opponents to draw out the confirmation process were a regular occurrence (Everett and Levine 2020; Williamson 2022). For example, President Biden has struggled to get his foreign policy and national security policy teams in place because of unilateral holds placed on nominees by Senators Ted Cruz and Josh Hawley (Desiderio 2021; Kim 2021). Congress, both as an institution and its individual members, is able to thwart the president from getting their people confirmed and into appointed positions on a permanent basis. The frequency with which Congress exercises this power and the resulting prevalence of vacancies in appointed positions raises the general question of how vacancies affect congressional influence over the administrative state and the relative share of power between the president and Congress.

Although agency heads are an important asset to the president, the government has faced longer and more frequent periods of vacancies over time, exacerbated by increasing periods of delay and confirmation failure rates (O'Connell 2009, 2017; Dull and Roberts 2009; Resh, Hollibaugh, Roberts, and Dull 2021). Exemplifying this trend, delays of confirmation and confirmation failure rates doubled between the Reagan and Obama administration (O'Connell 2017). These trends persisted through the Trump administration and the beginning of the Biden administration, with each president facing longer delays in the confirmation process and seeing substantially smaller percentages of their appointees confirmed (Partnership for Public Service 2022). In the face of this slowed down and less deferential appointments process, presidents

often abandon the traditional route of appointments. During the first two years of the last three administrations, presidents on average have only made nominations to approximately 70% of presidentially appointed and Senate confirmed (PAS) positions, with the average time to nomination taking well over one year for each administration (Lewis and Richardson 2021).

Scholars generally agree that vacancies are harmful to the president (e.g., O’Connell 2009; Bolton, Potter, and Thrower 2015; Piper 2022a) and beneficial to Congress (e.g., McCarty and Razaghian 1999; Lowande 2019). Matching with this view, some scholars describe vacancies as having a “counterbalancing effect,” leveling the playing field in which Congress and the president operate in our separation of powers governance structure (Resh et al. 2021, 673). However, other scholars have suggested that appointees are agents of both congressional and the presidential control (Resh et al. 2021; Resh, Napolio, and Lee 2022). Therefore, vacancies may make agencies less responsive to both political principals (O’Connell 2009).

However, existing accounts have brought little systematic empirical evidence to bear to arbitrate between these views. Given the prevalence of vacancies over the most recent administrations and the frequency with which members of Congress obstruct the confirmation process, it is particularly important to evaluate their substantive consequences for control over the administrative state. Further, the limited evidence we do have focuses on agency responsiveness rather than control over policymaking. While agencies may be quick to respond to a request by a political principal, that does not necessarily translate into influence over the agency’s policymaking. Under the multiple principals framework that agencies are subject to and our separation of powers system of government, influence seems to be the more central concept of concern. Finally, scholars have glossed over a central actor, career civil servants within agencies, often treating civil servants as passive participants in the struggle for control between

the president and Congress. Instead, career civil servants are a critical, stabilizing actor during vacant periods that need to be more fully considered.

To advance our knowledge of bureaucratic politics and separation of powers and to address these important limitations, I seek to answer the central research question: how do vacancies affect congressional influence over administrative policymaking? I explore how vacancies shape the share of power between career civil servants, Congress, and the president. Vacancies diminish the influence of the president and the rest of the appointee team and, in turn, empower the career civil servants within the agency. Because civil servants have more established relationships with members of Congress and their staff, Congress should also gain in influence. However, members of the president's party have less to gain, as political appointees when in place bias agency activity in favor of the president's co-partisans.

To evaluate my expectations, I use new data on appointee vacancies and agency leadership during the Bush, Obama, and Trump Administrations and combine them with data from a three-wave survey of federal executives. The survey includes questions designed to measure the policy influence of political actors over agency policymaking. A careful analysis of this data reveals that vacancies substantially increase the influence of career civil servants within the agency. Further, Congress' relative influence, particularly the influence of congressional committees and congressional opponents of the president, over agency policymaking in comparison to the president also increases. These results suggest that Congress has strong incentives to obstruct the confirmation process. Not only can members of Congress cause harm to the president's influence, but they can also empower career civil servants that may more strongly share their policy preferences.

## **Congress, Appointees, and the Vacancy “Problem”**

Scholarship on the relationship between presidential appointees and Congress typically focus exclusively Congress’ constitutional role to provide “advice and consent” on appointments during the nomination and confirmation process (e.g., McCarty and Razaghian 1999; Ostrander 2016; Howard and Roberts 2020; Resh et al. 2021; Krause and Byers 2022). In this literature, scholars have highlighted the Senate’s ability to leverage their gatekeeping role to either delay the confirmation process or outright deny appointees confirmation. Senate majority leaders can delay votes on the floor, committee chairs can prevent nominees from receiving hearings or from getting a committee vote, and individual senators can unilaterally place a “hold” on a nominee, preventing the nominee from moving forward with unanimous consent.

With the threat of delay and obstruction, the Senate can extract concessions from the president in exchange for a speedier, less conflictual confirmation process. Concessions may be directed towards the Senate majority or towards individual Senators that chair the committee responsible for reviewing the nomination or who have placed a hold on a presidential nomination (Howard and Roberts 2020). Presidents may make a variety of different types of concessions from those related to specific policy requests to characteristics of the nominee, with the primary form of concession emphasized in the literature involving the ideological moderation of nominees (Lewis 2008; Bertelli and Grose 2011; Hollibaugh and Rothenberg 2018).

Once in place, appointees are typically viewed as sole agents of the president. In fact, presidential appointments to federal agencies are viewed as one of the central tools by which all presidents exert control over bureaucratic policymaking (Moe 1985; Lewis 2008). Lewis asserts this clearly: “of course, the president’s most important source of bureaucratic control is via

personnel” (2008, 7). From their leadership posts, appointees are able to shade agency policymaking towards the preferences of the president.

For Congress, appointees are traditionally viewed as a hinderance to their efforts to control agencies. As Lowande argues, appointees “always have an interest in reducing responsiveness [to Congress], regardless of party” (Lowande 2019, 37). In this way, appointees are described as weapons in the separation of powers battle between the president and Congress. Appointees will therefore only be useful to Congress insofar as Congress shares preferences with the president (Lewis 2008). For example, appointees of a Democratic president pursuing stricter regulation of pollutants at the Environment Protection Agency will produce policy benefits for Democratic members of Congress.

Therefore, according to this argument, when presidentially appointed positions are vacant, congressional influence should improve. Appointees will no longer be in place to intervene on the president’s behalf to bias outcomes away from Congress. Instead, scholars argue that senior civil servants will take on a larger role in the agency and that these careerists will be more responsive to Congress (McCarty and Razaghian 1999). At the very least, vacancies will “delay presidents from taking control...” and “deny[] presidents influence...” (Ostrander 2016, 1063-1065; Piper 2022b), making congress have greater relative control over administrative policymaking compared to the president.

However, other scholars have suggested that appointees are tools of both presidential and Congressional control (Resh et al. 2021; Resh, Napolio, and Lee 2022) and that vacancies will harm agency accountability to both sets of political principals (O’Connell 2009). Resh et al. state that appointees “serve two masters—the president and the Senate” (2022, 67). Not only can the Senate extract concessions from appointees during the confirmation process (Walker 2018), but

they also have opportunities to monitor, reward, and sanction appointees after confirmation (Kriner and Schickler 2016; Krause and Byers 2022). These repeated interactions may create incentives for appointees, particularly those relying on Congress for future support, to be responsive to Congress.

Unfortunately, there is limited empirical evidence to arbitrate between these existing views. We know that the presence of appointees matters for presidential control (Wood and Waterman 1991, Bolton et al. 2015; Piper 2022a, 2022b), but evidence linking the presence or absence of appointees to congressional influence over the core of agency policymaking is limited. Lowande (2019) works to address this gap, examining how the presence of appointees affects the responsiveness of agencies to congressional requests. He shows that appointees decrease overall responsiveness to members of Congress and bias agency activity towards co-partisans of the president.

While Lowande (2019) begins to fill an important gap in our knowledge, there remains important limitations. First, existing work is limited by its examination of individual agency tasks from a small collection of agencies (e.g., Wood and Waterman 1991; Bolton et al. 2015; Lowande 2019). Finding comparable tasks across administrative agencies poses a significant challenge. Further, those tasks that are comparable across agencies (e.g., budget forecasting, congressional request responses, etc.) may not be central to the agency's mission or policymaking activities. This has prohibited existing work from taking a broad view of the effects of vacancies on a whole range of outcomes connected to the core of agency policymaking.

Second, scholars have yet to examine how vacancies affect congressional control over administrative agencies directly. Responsiveness is distinct from influence or control. While

agencies may respond more or less quickly to members of Congress or engage with the request more or less thoroughly, this does not necessarily translate to a change in agency outcomes. In the separation of powers fight between the branches of government, influence is the more relevant concept of interest.

Finally, scholars have glossed over two of the central underlying assumptions of why vacancies may be beneficial to Congress. In particular, the assumptions that career civil servants take on a larger role during vacant periods and that greater career civil servant influence translates into greater congressional influence. These claims have yet to be empirically tested, with scholarly focus typically focused on the individual power of one of the political principals. Careerists within agencies have their own policy views and have considerable control over policymaking activities and outcomes (Potter 2019). Therefore, they must be more fully incorporated into studies related to the consequences of vacancies.

### **Vacancies and Congressional Influence**

In the vacuum created by the absence of appointed leadership, career civil servants will likely take on a greater role in the agency (O’Connell 2009; Mendelson 2014; Bolton et al. 2015). Both by stepping in as acting officials or being delegated the authority of a vacant position and by being called upon to keep the agency operating as normal, senior career civil servants will have greater influence on the day-to-day operations and policy decisions of the agency (O’Connell 2009; Mendelson 2014). These civil servants make policy decisions without the influence of “[leadership] speaking for the president with the authority that comes from confirmation” (Lewis, Bernhard, and You 2018, 491). Even if a non-careerist acting were to be temporarily placed into the agency, the expertise, experience, and networks of civil servants will be relied upon by agency leadership seeking to accomplish any significant policy initiative in the



agency (Hecl 1977). Therefore, we should expect that vacancies will be associated with greater civil servant influence over administrative policymaking.

*Hypothesis 1: Senior career civil servants on average will exert more policy influence over agencies, the longer the PAS position overseeing the agency is vacant.*

This increased role of civil servants will be beneficial to Congress in two respects. First, the career civil servants that take on a larger role during vacant periods are more likely to have established relationships with members of Congress, congressional committees, and congressional staff (McCarty and Razaghi 1999). As McCarty and Razaghi note, “career servants have long-term interactions with Congress, primarily through budget procedures and congressional oversight, making them more responsive to the wishes of Congress than to the more transitory presidential administrations” (1999, 1127). These established relationships create lines for clearer communication of congressional goals and priorities to the agency. They also strengthen the credibility of congressional threats to sanction or promises for rewards. Therefore, without the influence and interference of appointed leadership, careerists should be freer to follow the guidance of their other main political principal, Congress.

Second, while congress may grow in influence, presidents lose their grip on agency activities. Appointments are one of the key mechanisms by which all presidents assert control over the administrative state (Moe 1985; Lewis 2008). When presidents are unable to get their people into place, their ability to influence administrative policy will diminish (e.g., Bolton et al. 2015; Piper 2022a, 2022b). This is beneficial to Congress given the multiple principals framework by which agencies are governed. With the president’s position weakened, Congress will have greater relative influence over agency policymaking.

*Hypothesis 2: Congress on average will exert more policy influence over agencies relative to the president, the longer the PAS position overseeing the agency is vacant.*

However, the effects of vacancies will not be uniform across all members of Congress. Appointees, while primarily invested in carrying out the president's agenda, will bias agency activity and responsiveness towards co-partisans of the president (Lowande 2019). Therefore, the presence of appointees is less harmful and the occurrence of vacancies are less beneficial to the president's allies in Congress. Members of the opposing party, in contrast, will find a more amenable agency when appointees are not in a prominent position to steer policymaking.

*Hypothesis 3: Vacancies will have a smaller effect on the influence of presidential co-partisans in Congress.*

### **Data, Variables, and Methods**

To test these hypotheses, we need a measure of the policy influence of various political actors over administrative agencies. To measure policy influence, I look to three surveys of federal executives. I use the results from the 2007, 2014, and 2020 Survey on the Future of Government Service (SFGS), an online and paper survey of US-based federal executive.<sup>1</sup> This includes all political appointees, career members of the Senior Executive Service, and senior Foreign Service officers serving domestically. The survey sample also included other high-level managers that administered key programs or offices. The response rates were 33% (2,225 of 6,690), 24% (3,551 of 14,698), and 9.1% (1,485 of 16,232) for the 2007, 2014, and 2020 surveys respectively. All analysis includes survey weights to ensure that survey responses are representative of the target population.<sup>2</sup> Other scholars have similarly used these surveys for the

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<sup>1</sup> See [sfgs.princeton.edu](http://sfgs.princeton.edu).

<sup>2</sup> Survey researchers created post-stratification weights using iterative proportional fitting. They used the sample drawn from the *Leadership Directories'* Federal Government database to create population marginals. The characteristics they used for weighting are: 1) Whether a respondent worked in the DC area (the District of Columbia,

assessment of the influence of political actors on administrative policymaking (Bertelli and Lewis 2012; Clinton, Lewis, and Selin 2014; Selin 2015; Piper 2022b).

In order to measure the influence of political actors, I look to a question from the SFGS related to influence over policy. Respondents were asked: “In general, how much influence do you think the following groups [Congressional committees; Democrats in Congress; Republicans in Congress; Senior civil servants; White House] have over policy decisions in [your agency]?” Respondents were given a sliding scale from 1-None to 5-A great deal. They could also indicate a “Don’t know” response. The question asks federal executives to evaluate how much influence each actor has over policy decisions in their agencies by name. Respondents selected a workplace from a dropdown menu at the start of the survey and this workplace replaced the [your agency] portion of the question above. So, for example, a respondent that selected the Veterans Benefits Administration as their workplace answered the following question: “In general, how much influence do you think the following groups [Congressional committees; Democrats in Congress; Republicans in Congress; Senior civil servants; White House] have over policy decisions in the Veterans Benefits Administration?” I aggregate careerist responses<sup>3</sup> by agency for all agencies with at least 5 careerist respondents. There is significant variation in each influence measure across agency averages (Table 1).

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Maryland, and Virginia); 2) Position type (political appointees, career members of the Senior Executive Service, member of the Senior Foreign Service, and career civil servant); 3) Workplace location in the executive branch (the Executive Office of the President, each cabinet department, and independent agencies (as a unit)).

<sup>3</sup> The responses of political appointees are not included, as these respondents’ evaluations of influence may be biased.

**Table 1. Descriptive Statistics of Influence Measures**

Actor	Mean	Standard Deviation	Range
Congressional Committees	2.76	0.48	0.97-3.76
Congressional Allies of the President	2.48	0.49	0.76-3.50
Congressional Opponents of the President	2.27	0.49	0.74-3.38
Career Civil Servants	2.76	0.40	1.63-3.73
White House	2.94	0.60	0.96-4.00

**Note:** Congressional allies of the president are coded as co-partisans of the president for each individual survey (e.g., Democrats in Congress for the 2007 and 2020 survey). Similarly, Congressional opponents of the president are coded as party opponents of the president for each individual survey (e.g., Democrats in Congress for the 2014 survey).

Given the structure of our separation of powers system, we also care about the relative influence of key institutional actors. The survey provides the ability to assess whether vacancies advantage Congress over the president (Clinton, Lewis, and Selin 2014). In particular, I examine the relative influence of two sets of actors, congressional committees and congressional opponents of the president. To measure relative measure, I calculate the percentage difference between the respective congressional measure of influence and White House influence. For example, a relative congressional committee influence measure of 0.10 is equivalent to respondents in the agency reporting that congressional committees exerted 10% more influence over agency policymaking compared to the White House. Relative congressional committee influence averages vary from -0.52 to 1.08 with a mean value of -0.03 (SD 0.22). Relative congressional opponent influence averages vary from -0.73 to 0.61 with a mean value of -0.21 (SD 0.20).

Using these surveys to measure policy influence has two key advantages. First, these survey-based measures allow for the examination of policy influence across agencies and time on the core policy decisions made by agencies. This allows us to say something more general

about the effects of vacancies across administrative agencies. In contrast, existing work has been restricted by the limited number of agency outputs that are observable (e.g., Wood and Waterman 1991; Bolton et al. 2015; Lowande 2019). Further, there are few agency outputs that are comparable across agencies and those that are (e.g., response time to FOIA requests, payment to contractors, etc.) may not be central to policy mission of the agency (Wilson 1989). Second, these measures rely on senior executive career civil servants' perceptions of influence over agency policymaking. Parsing out the influence of individual political actors on any given policy decision or outcome is extremely difficult to do observationally. The measures I use instead rely upon those driving policy formation and implementation within the agency and that have extensive experience across administrations. These respondents are appropriately positioned to judge policy influence within their agency.

There are a few potential limitations to using these survey-based measures. First, we may be concerned that perceptions of influence do not reflect real policy influence. However, as previously mentioned, responses are restricted to senior civil servants with direct experience in the policymaking process across administrations. Further, agency-year averages match up with what we would expect, if the measure of influence reflected reality. For example, careerists in the U.S. Mint in 2014 reported one of the highest average levels of senior civil servant influence. This matches with expectations that the U.S. Mint is a professionalized agency without substantial political interference. Further, three of four highest averages for White House policy influence come from agencies within the Executive Office of the President (EOP), including the Office of Science and Technology Policy in 2014 and the Office of the United States Trade Representative and OMB in 2020. Second, we might be concerned that perceptions of influence may be biased based on the partisan or ideological leaning of the agency or respondent. For

example, respondents in a liberal agency such as the Environmental Protection Agency may have been less likely to report influence by Republicans in Congress. To account for this, I estimate models that control for the ideological reputation of the agency.

### *Independent Variables*

To test the expectations above, we need measures of vacancies.<sup>4</sup> To measure vacancies, I used the length of time the PAS position most closely overseeing the respondent's office<sup>5</sup> was vacant between the president's inauguration date and the date the SFGS survey was fielded.<sup>6</sup> For ease of interpretation, I report vacancies in terms of months. For the 2007 and 2014 survey, I used vacancy data collected by Resh et al. (2021). I then supplemented their data with information on confirmation dates from Senate.gov and exit dates from agency websites and other external sources (e.g., news sources, Leadership Connect). For the 2020 survey, I used the PPS and *Washington Post's* "Political Appointee Tracker" (Washington Post 2020) to gather confirmation and exit dates. Data for the positions not listed on their tracker was similarly gathered from Senate.gov for confirmation dates and from agency websites and other external sources (e.g., news sources, Leadership Connect) for exit dates. The average agency experienced 20.94 months of vacancies in their most proximate PAS position, or about 31% of the time between each president's inauguration and the time the survey was fielded.

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<sup>4</sup> In future iterations of the paper, I plan to incorporate a measure of vacant days connected to Senate delay. This would allow for the examination of the effects of the Senate's direct actions, rather than combining both presidential and congressional delay.

<sup>5</sup> I used the Plum Book (<https://www.govinfo.gov/collection/plum-book>) to find the PAS position most proximate to the subunit. When the Plum Book was not clear, I used agency organizational charts to determine those positions.

<sup>6</sup> Vacancies were scaled to account for differences in time since inauguration between the Bush (2007), Obama (2014), and Trump (2020) surveys. More specifically, vacancies in the Bush and Trump administration were scaled to be equivalent to those in the Obama administration.

To assess whether vacancies in positions higher in the agency hierarchy are more consequential,<sup>7</sup> I measure the length of time the PAS position directly above the head of the office,<sup>8</sup> or the head of independent executive agencies, was vacant between the president's inauguration date and the date the SFGS survey was fielded.<sup>9</sup> The same process for calculating vacancy length for the most proximate PAS position was used to measure the vacancy length of appointees higher in the agency hierarchy. The average agency experienced 18.06 months of vacancies in their next-up PAS position, or about 27% of the time between each president's inauguration and the time the survey was fielded.

### *Control Variables*

Of course, other factors are correlated with presidential influence and the key independent variables. To account for potential confounders, I include agency, congress, and survey-level controls.

I control for whether the agency has an ideological reputation that is in opposition to or alignment with the president. To measure ideological position in relation to the president, I use a measure of agency ideological reputation from the 2014 SFGS (Richardson et al. 2018). The authors asked agency officials: "In your opinion, do the policy views of the following agencies tend to slant liberal, slant conservative, or neither consistently in both Democratic and Republican administrations?" (Richardson et al. 2018, p. 304). They aggregated responses and generated ratings, after accounting for each respondent's conception of the general liberal-

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<sup>7</sup> Krause and Byers (2022) suggest that congress has more opportunities to interact with and oversee appointees that are in more senior leadership positions, as opposed to appointees in lower-level positions.

<sup>8</sup> I used the Plum Book (<https://www.govinfo.gov/collection/plum-book>) to find the PAS position that directly oversees the subunit. When the Plum Book was not clear, I used agency organizational charts to determine those positions.

<sup>9</sup> As previously described, vacancies were scaled to account for differences in time since inauguration between the Obama (2014) and Trump (2020) surveys.

conservative ideological dimension and the respondent's experience with the agency.<sup>10</sup> The ratings vary from -2 to 2. I coded an agency as moderate if the estimate of the agency's ideology is statistically indistinguishable from 0. I coded an agency as liberal or conservative if the estimate of the agency's ideology is statistically distinguishable from 0 in either a liberal (negative) or conservative (positive) direction. I then code the "Presidential Ideological Opponent" variable with a 1 if the agency has an ideological reputation that is in opposition to the president (i.e., liberal agency-Republican president or conservative agency-Democratic president). I code the "Presidential Ideological Ally" variable with a 1 if the agency has an ideological reputation that is in alignment with the president (i.e., liberal agency-Democratic president or conservative agency-Republican president). Respondents from ideologically opposed and aligned agencies may be more or less likely to report policy influence by partisan congressional actors.

Additionally, I control for the agency's location in either a Cabinet Department or the Executive Office of the President (EOP). I code the "Department" variable with a 1 if the position is within a Cabinet Department bureau and 0 otherwise. I code the "EOP" variable with a 1 if the position is within the EOP and 0 otherwise. Therefore, the comparison group is independent executive agencies (e.g., Environmental Protection Agency, Social Security Administration, etc.). Agencies in the Cabinet and EOP are more likely to report presidential influence and are more highly politicized.

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<sup>10</sup> Although their measure was based on a single survey at one point in time, Clinton et al. (2018) have shown that agency ideology is stable, through comparison with earlier measures (Clinton et al. 2012; Bonica et al. 2015). They also included phrasing of "across Democratic and Republican administrations" to prompt respondents to think more generally about an agency's ideology over time. Additionally, based on our understanding civil servant self-selection into agencies that align with their policy preferences (Clinton et al. 2012) and the longevity of the civil servants that work in agencies, we have additional reason to believe that agency ideology is stable over time.



Further, I control for the level of control the president has through the placement of other appointees. To measure politicization, I calculated the percent of supervisors in an agency that were comprised of political appointees (Lewis 2008). I gathered agency supervisor employment data for June of the surveyed year from the Office of Personnel Management's *FedScope*.<sup>11</sup> I counted the number of PAS, non-Career SES, Schedule C employees in the agency from the 2004, 2012, and 2020 editions of the Plum Book. The average agency had 3.62% of their supervisors comprised of political appointees.

I also control for characteristics of the Senate committee overseeing the agency. In particular, I control for the ideology of the committee chair relative to the president. I standardize committee chair DW-NOMINATE scores so that positive values represent ideological extremity in the direction of the president and negative values represent ideological extremity in the direction of the opposition party. For ease of interpretation, a value of 1 represents a one standard deviation increase in ideological extremity in the direction of the president's party. It is possible that Senate committee chair ideology affects both the president's ability to get their appointees confirmed and the level of influence Congress exerts over the agency.

Finally, I include presidential fixed effects. I code the "Obama" variable with a 1 if the average was derived from the 2014 SFGS and 0 otherwise. I code the "Trump" variable with a 1 if the average was derived from the 2020 SFGS and 0 otherwise. It is possible that observations from one presidential administration are systematically different than in another administration.

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<sup>11</sup> <https://www.fedscope.opm.gov/>

## *Models*

I estimate models to observe the effect of vacancies in PAS positions on career civil servant and congressional influence over agency policymaking. I estimate models for each measure of influence, both direct and relative influence.

## **Results**

Three central patterns emerge within the results of my models. First, on average, vacancies in positions higher in the agency's hierarchy lead to increased senior civil servant influence. In the gap left by appointed agency leadership, senior civil servants take on an heightened role. Second, vacancies in higher up appointed positions lead to increased relative congressional committee and congressional opponent influence in comparison to the White House, with the primary driver being diminished White House influence. Finally, congressional allies of the presidents exert less influence over agency policymaking when higher up appointed positions are vacant for longer periods.

These results suggest that career civil servants are an important, although often overlooked, bridge during periods of vacant leadership. With their experience and knowledge from working within the agency, they are able to take on a heightened role and keep the agency functioning. This provides evidence of the potentially salutatory effects of vacancies, with agency activity being driven less by the political interests of appointees and more by the "stable hands" of senior career civil servants (Mendelson 2014). Further, these results highlight why Congress may delay or deny confirmation to agencies for which they share ideological preferences (Resh et al. 2021).

Further, these results suggest that, in the separation of powers struggle between the president and Congress, vacancies are a net positive for Congress. In particular vacancies are

beneficial for the influence of Congress as an institution, through its committees, and for congressional opponents of the president. This helps to explain the rising prevalence of Senate obstructionism and decreased deference to presidential nominees. Additionally, this highlights Congress' ability to influence agency policymaking outcomes even when they are not able to overcome collective action problems to act proactively.

### *Senior Civil Servant Influence*

I proceed by examining the effect of vacancies on career civil servant influence. Matching my expectation in hypothesis 1, on average, lengthier vacancies in positions higher in the agency's hierarchy are associated with increased civil servant policy influence. Looking to the coefficient on "Higher Up Vacant Months" in Table 1, we see that each additional month the PAS position overseeing the agency was vacant increased the degree to which career civil servants in the agency reported policy influence by senior civil servants in their agency. This result is statistically significant at the 0.01 p-value threshold. Here, moving from the first to third quartile in higher up vacant months (+16.61) is associated with a 0.17-point increase in senior civil servant influence, or a little less than half of a standard deviation increase in senior civil servant influence. In contrast, vacancies in the PAS position most closely overseeing an agency have a negative effect on senior civil servant influence.

These results suggest that career civil servants take on significantly greater roles when there are high-level vacancies within the agency. This comports with existing theories related to the effects of vacancies on civil servant participation in the agency (O'Connell 2009; Mendelson 2014).

**Table 2. Senior Civil Servant Policy Influence Model**

	<i>Dependent variable:</i>
	Senior Civil Servant Policy Influence
Higher Up Vacant Months	0.010*** (0.003)
Direct Vacant Months	-0.005** (0.002)
Politicization %	-0.016* (0.008)
Department	0.128* (0.075)
EOP	0.914** (0.443)
Presidential Ideological Opp.	-0.127* (0.067)
Presidential Ideological Ally	0.077 (0.078)
Senate Committee Chair Ideology	0.078 (0.109)
Constant	2.874*** (0.191)
Presidential Fixed Effects	YES
Observations	174
R <sup>2</sup>	0.155

*Note:*

\* p<0.1; \*\* p<0.05; \*\*\* p<0.01

### *Congressional Committee Influence*

Next, we can examine how the effect of vacancies on the direct and relative influence of congressional committees. Consistent with my expectations in hypothesis 2, lengthier vacancies in positions one level removed from the agency's direct leader are associated with increased relative congressional committee influence. As shown in Model 2 of Table 3, each additional month that the PAS position overseeing the agency was vacant decreased the degree to which career civil servants in the agency reported policy influence by congressional committees relative to the influence of the White House. This relationship is statistically significant at the 0.01 p-value threshold. This can be seen most clearly in Figure 1, showing the predicted level of relative congressional committee influence based on the length of vacancy in the higher up PAS position.

Here, we see that as vacancies occur for longer periods, congressional committees can reach parity with the White House and even exert greater influence.

These results suggest that, as an institution, Congress does better in the separation of powers struggle when high level appointed positions are vacant. While they may not benefit directly, or even have slightly less direct influence during vacant periods, Congress is advantaged relative to the White House. Therefore, those invested in the institutional strength of Congress, and particularly those opposed to the president, have strong incentives to prevent the president from getting their appointees in place.

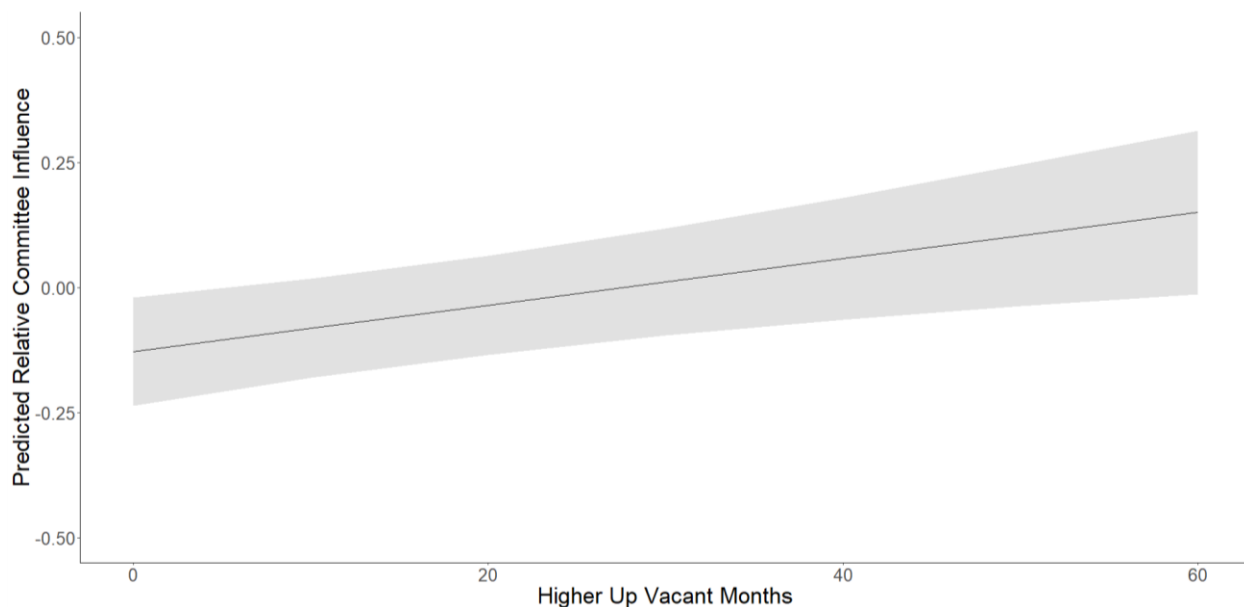
**Table 3. Congressional Committee Policy Influence Models**

	<i>Dependent variable:</i>	
	Committee Policy Influence (1)	Relative Committee Policy Influence (2)
Higher Up Vacant Months	-0.004 (0.004)	0.005*** (0.002)
Direct Vacant Months	0.002 (0.003)	-0.0002 (0.001)
Politicization %	-0.012 (0.010)	-0.014*** (0.004)
Department	-0.054 (0.093)	0.032 (0.040)
EOP	0.308 (0.553)	0.428* (0.237)
Presidential Ideological Opp.	0.029 (0.084)	-0.045 (0.036)
Presidential Ideological Ally	0.101 (0.097)	-0.055 (0.042)
Senate Committee Chair Ideology	0.079 (0.137)	-0.063 (0.059)
Constant	2.885*** (0.240)	-0.177* (0.103)
Presidential Fixed Effects	YES	YES
Observations	171	167
R <sup>2</sup>	0.104	0.236

*Note:*

\*p<0.1; \*\*p<0.05; \*\*\*p<0.01

**Figure 1. Predicted Level of Relative Committee Influence Given Higher Up Vacancy Length (Model 2 of Table 3)**



### *Partisan Congressional Influence*

Finally, we can examine how vacancies affect the influence of partisan congressional actors. Consistent with my expectation in hypothesis 3, vacancies are less beneficial for members of the president's party. In fact, as shown in Model 1 of Table 4, the direct influence of co-partisan members of Congress decreases as the position overseeing the agency is vacant for longer. However, this result is only significant at the 0.10 p-value threshold. Figure 2 highlights this result, showing the predicted level of congressional ally influence based on the length of vacancy in the higher up PAS position. Here, we see that congressional co-partisans of the president exercise less influence over agency policymaking the longer the vacancy occurs.

For congressional opponents of the president, vacancies in higher up positions result in increased relative influence compared to the White House. This finding, shown in Model 3 of Table 4, is consistent with my expectation in hypothesis 2. This result is significant at the 0.01 p-value threshold. As shown in Figure 3, congressional opponents of the president can come close to parity with the president in terms of influence at the highest levels of vacancy length.

These results suggest that appointees are not just institutionally aligned actors, providing more influence to the president and constraining the influence of Congress, but they are also partisan actors, assisting co-partisans of the president when they are in place and harming co-partisans when they are absent. This finding aligns with Lowande's (2019) finding that appointees shade agency responsiveness and activity in favor of the president's co-partisans. Therefore, congressional allies of the president not only benefit from having appointees in place that will achieve policy outcomes in alignment with their preferences, but will also benefit from having more direct influence over the agency's policymaking.

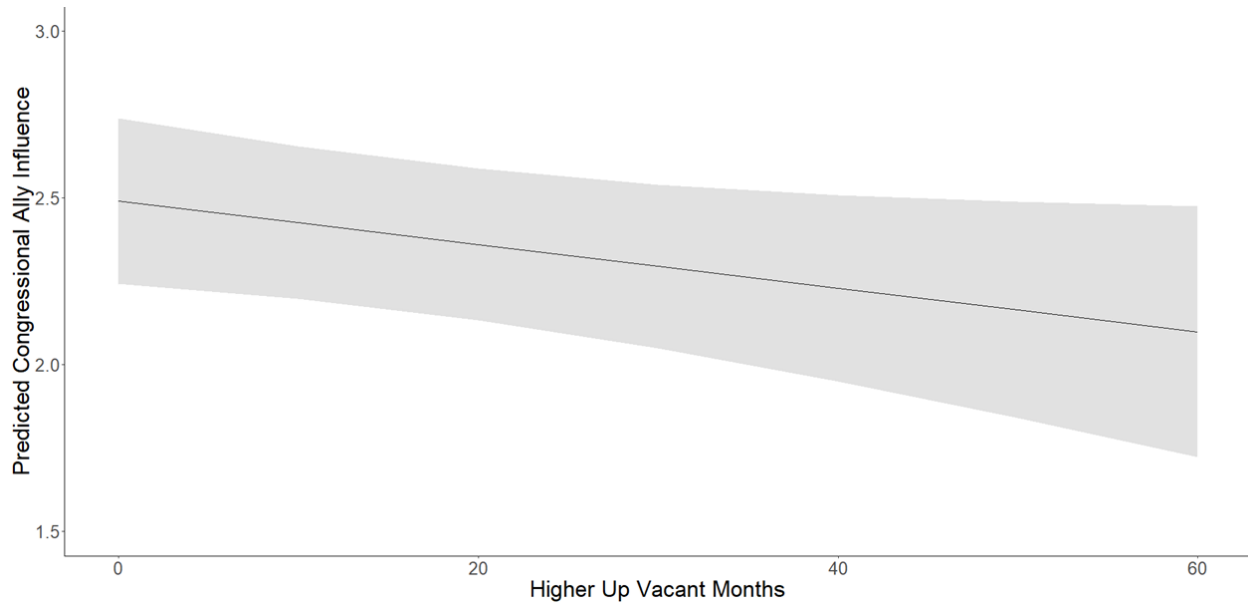
**Table 4. Partisan Congressional Actor Policy Influence Models**

	<i>Dependent variable:</i>		
	Congress. Ally Influence (1)	Congress. Opp. Influence (2)	Relative Congress. Opp. Influence (3)
Higher Up Vacant Months	-0.007* (0.003)	-0.004 (0.003)	0.004*** (0.001)
Direct Vacant Months	0.003 (0.003)	0.002 (0.003)	-0.0001 (0.001)
Politicization %	-0.012 (0.010)	-0.020** (0.010)	-0.013*** (0.004)
Department	-0.082 (0.092)	-0.097 (0.092)	-0.004 (0.036)
EOP	0.633 (0.543)	0.380 (0.542)	0.364* (0.211)
Presidential Ideological Opp.	0.053 (0.084)	-0.030 (0.084)	-0.084** (0.033)
Presidential Ideological Ally	0.127 (0.096)	0.040 (0.095)	-0.061 (0.037)
Senate Committee Chair Ideology	0.035 (0.135)	0.108 (0.136)	-0.062 (0.053)
Constant	2.603*** (0.237)	2.503*** (0.239)	-0.307*** (0.093)
Presidential Fixed Effects	YES	YES	YES
Observations	167	166	165
R <sup>2</sup>	0.129	0.105	0.270

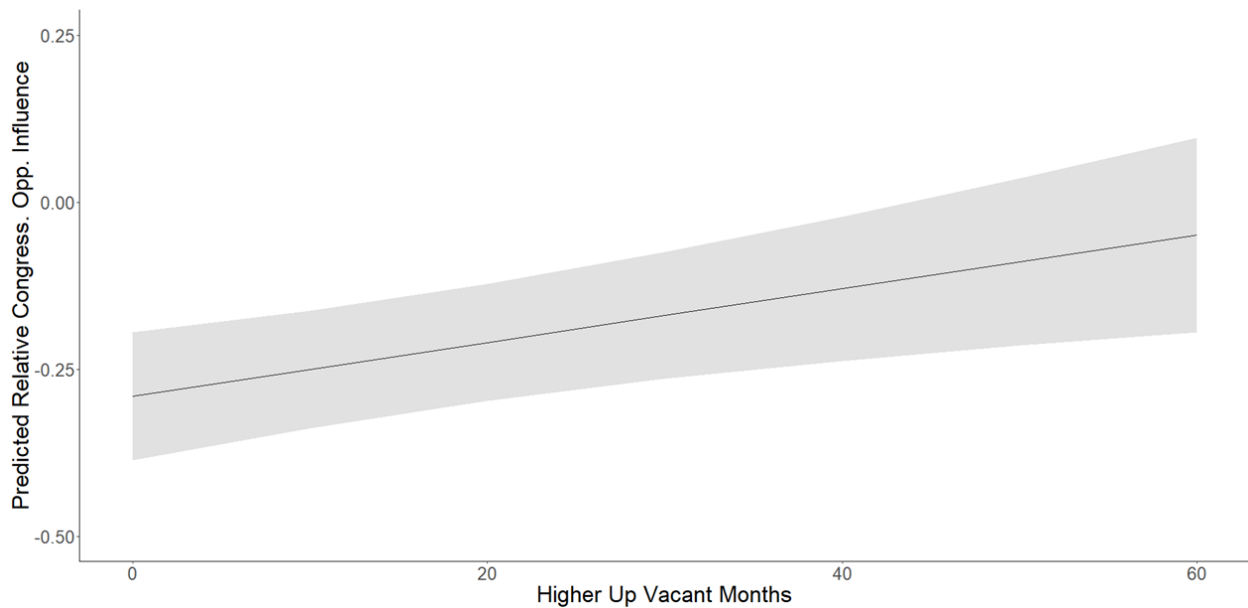
Note:

\*p<0.1; \*\*p<0.05; \*\*\*p<0.01

**Figure 2. Predicted Level of Direct Congressional Ally Influence Given Higher Up Vacancy Length (Model 1 of Table 4)**



**Figure 3. Predicted Level of Relative Congressional Opponent Influence Given Higher Up Vacancy Length (Model 3 of Table 4)**



One other result stands out across the model specifications. Increased politicization is a strong predictor of decreased direct and relative congressional opponent influence, direct senior civil servant influence, and relative congressional committee influence. Therefore, by using appointees that do not require Senate confirmation, presidents can unilaterally shift the balance



of power between themselves and these other key actors. This puts presidents at a privileged position in our separation of powers system.

## **Conclusion**

There is growing concern among scholars and the media about the increased prevalence of vacancies in PAS positions. These trends have led some experts to claim that the traditional route of appointments through presidential nomination and Senate confirmation is broken and that reform is needed to reduce the number and length of vacancies (Stier 2021). However, scholars have not been able to empirically evaluate the consequences of vacancies for the relative balance of power between Congress and the president, an important factor under our separation of powers system of government.

This paper describes how vacancies will affect both congressional and career civil servant influence over agency policymaking. It brought new data to bear to test the theoretical expectations. The results indicate that vacancies on average augment the direct influence of career civil servants and the relative influence of Congress. However, the effect is conditioned on the partisanship of the congressional actor examined. Co-partisans of the president are less influential over agency policymaking when there are persistent vacancies. In contrast, congressional opponents of the president are more influential relative to the president when appointed positions are vacant.

It is worth highlighting that the story of vacancies does not end with a position sitting “empty.” Instead, presidents have opportunities to unilaterally fill positions on an interim basis (O’Connell 2020; Kinane 2021; Piper 2021) and can place other types of appointees within agencies without Senate confirmation (Lewis and Waterman 2013; Moore 2018; Waterman and Ouyang 2020). These tools allow presidents to offset some of the negative effects of vacancies

on presidential influence (Piper 2022b). However, in response, some members of Congress have begun to introduce legislation that would restrict the president's ability to act unilaterally during vacant periods (House Committee on Oversight and Reform 2021).

Several implications emerge from this analysis. First, Congress has strong incentives to obstruct the presidential appointments process, particularly when they are opposed to the president and are aligned with the agency the appointment is directed towards. Therefore, we will likely see continued and worsening Senate obstructionism of the confirmation process. Second, normative evaluations of the "broken" appointments process must also consider the potential beneficial effects of vacancies. Having experienced career civil servants empowered and at the helm of agencies is likely a beneficial outcome for the performance of the agency. Finally, Congress is able to exert influence over administrative policymaking despite, and in this case because of, gridlock. Not being able or willing to act speedily on presidential nominees strengthens the relative position of Congress, rather than hamstringing its influence.

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