

**Testimony of Thomas E. Mann
W. Averell Harriman Chair and Senior Fellow, The Brookings Institution**

**Before the
Committee on Rules and Administration
U.S. Senate
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Executive Summary

The focus of my testimony at this hearing is the impact of the increasing use of filibusters and holds on the Senate confirmation of presidential appointees. Because it holds the constitutional authority to withhold its approval of presidential appointments, the Senate can wield formidable negative power. How responsibly the Senate exercises that power importantly shapes the performance of the executive and judicial branches.

All presidential appointments subject to Senate confirmation are not equal. Approximately 65,000 military appointments and promotions and many of the roughly 4,000 civilian nominations are routinely confirmed each Congress. More problematic are appellate judicial nominations and senior appointees in cabinet departments and executive agencies. In the case of the former, the confirmation process over the last three decades has become increasingly prolonged and contentious. The confirmation rate of presidential circuit court appointments has plummeted from above 90% in the late 1970s and early 1980s to below 50% in recent years. These delays in confirming appellate judges have led to increased vacancy rates, which has produced longer case processing times and rising caseloads per judge on federal dockets.

Even more disconcerting has been the impact of the changing confirmation process on the ability of presidents to staff their administrations. The average time taken to confirm nominees in the first year of new administrations has steadily increased (from 51.5 days under George H.W. Bush to 60.8 days under Barack Obama) while the percentage of presidential nominations confirmed by the end of the first year declined (from 80.1% under Bush 41 to 64.4% under Obama).

Senators have long viewed the confirmation process as an opportunity to express their policy views and to get the administration's attention on a matter of importance to them or their constituents. But the culture of today's Senate provides no restraints on the exercise of this potential power and no protection of the country's interest in having a newly-elected president move quickly and effectively to form a government.

The costs of the serious flaws on our appointment and confirmation process outweigh the benefits. Government agencies are ill-equipped to operate effectively and to be held accountable by Congress; able individuals willing to serve their country are subject to uncertainty and major disruptions in their personal and professional lives; huge amounts of precious time in the White House and Senate are diverted from much more pressing needs.