Public Opinion and Senate Confirmation of Supreme Court Nominees

Jonathan P. Kastellec*
JPK2004@columbia.edu
Department of Political Science
Columbia University

Jeffrey R. Lax
JRL2124@columbia.edu

Justin Phillips
JHP2121@columbia.edu

March 26, 2009

Abstract

We study the relationship between state-level public opinion and the roll call votes of senators on Supreme Court nominees. Applying recent advances in multilevel modeling, we use national polls on nine recent Supreme Court nominees to produce state-of-the-art estimates of public support for the confirmation of each nominee in all 50 states. We show that greater public support strongly increases the probability that a senator will vote to approve a nominee, even after controlling for standard predictors of roll call voting. We also find that the impact of opinion varies with context: it has a greater effect on opposition party senators, on ideologically opposed senators, and for generally weak nominees. These results establish a systematic and powerful link between constituency opinion and voting on Supreme Court nominees.

*Corresponding author. This version prepared for the 2009 Annual Meeting of the Midwest Political Science Association. We thank Andrew Gelman, Elliot Slotnick, Yu-Sung Su, and members of the Cornell Courts Colloquim for helpful comments and suggestions, along with i-Poll and the Columbia Applied Statistics Center. We would like to thank Lee Epstein, Rene Lindstadt, Jeffrey Segal, and Chad Westerland for generously making their data publicly available.

1 Introduction

The judiciary is the branch of the federal government most insulated from public influence. Federal judges are unelected and have lifetime appointments. Supreme Court justices, atop the federal judicial hierarchy, need not even worry about promotions to a higher court. This leaves them largely unconstrained in their decision-making, which ultimately reaches the most controversial policy areas. While judicial independence has obvious advantages, leaving the justices free from improper influence, free to make impartial decisions, and free to protect the rights of unpopular minorities, "too much" independence also raises foundational concerns over how counter-majoritarian the Court might be (see Friedman 1998, *inter alia*)

Scholars have long debated whether the justices of the Court are influenced by public opinion in their decision making (Mishler and Sheehan 1993, Norpoth et al. 1994, Flemming and Wood 1997, Hoekstra 2000, Giles, Blackstone and Vining 2008). Less noticed has been the possibility that the public might influence *who* sits on the Court in addition to *what* the justices decide. The decision to appoint and confirm a justice is in the hands of the presidents and senators, but the electoral incentives, particularly for senators, potentially tie the Court back to the public.[1] Given these incentives, does the public play a key role in confirmation politics? Or do partisan loyalties and the senator's own ideology trump constituent preference?

Senate lore contains ominous warnings for senators who ignore the public when casting confirmation votes. Despite being virtually unknown, Carol Mosley Braun defeated incumbent Senator Alan Dixon in the Illinois Democratic primary, principally campaigning against his vote in favor of Clarence Thomas (McGrory 1992). Indeed, Wolpert and Gimpel (1997)

[1] As Dahl (1957) notes, one would not expect the Supreme Court to stray too far from the mainstream, because justices are nominated by presidents and confirmed by senators, all of whom will be at least somewhat representative of the public.

showed systematically using 1992 Senate election data that voters nationwide did cast their votes in part based on their reactions to their senators' vote on the Thomas nomination.

Few decisions made by U.S. senators are as visible to the public as votes to confirm or reject a Supreme Court nominee. While the outcomes of many Senate votes, such as spending bills or the modification of a statute, are ambiguous, or obscured in procedural detail, the result of vote on a Supreme Court nomination is stark: either the nominee is confirmed, allowing her to serve on the nation's highest court, or she is rejected, forcing the president to name another candidate.[2] In this process, note Watson and Stookey (1995, 19), "there are no amendments, no riders and [in recent decades] no voice votes; there is no place for the senator to hide. There are no outcomes where everybody gets a little of what they want. There are only winners and losers."

Given the visibility of roll call votes on Supreme Court nominees, and the stakes for controversial policies at the heart of recent elections, such as abortion rights, we expect reelection-minded senators to pay close attention to the views of their constituents. Whether they do so, anecdotes aside, remains an open question. Twenty years ago, Caldeira (1988-1989) urged students of the nomination and confirmation process to account for the role of "organized and unorganized" interests, including those of the public at large. Using various proxies for state public opinion, the few studies that have examined the relationship between the two have reached conflicting conclusions (e.g., cf. Segal, Cameron and Cover (1992) with Caldeira and Wright (1998)). More recent work has studied the changing dynamics of nomination politics (focusing primarily on partisan, ideological, and legal factors), but has set aside the possible effects of public opinion.

In this paper, we study whether senators are actually responsive to the views of their constituents when casting their votes on the confirmation of a nominee. Specifically, we analyze the relationship between state-level public opinion and roll call votes on Supreme

[2]We use "she" to denote justices and "he" to denote senators throughout the paper.

Court nominees. We begin by producing state-of-the-art estimates of the public's support in all 50 states, for each nominee. These make use of recent advances in multilevel modeling to generate highly accurate estimates from national polls asking about support for nine recent Supreme Court nominees. These estimates of opinion are a significant advance over earlier efforts: they can be generated for a broader range of nominees than was previously possible; they account for geographic variation among poll respondents; and they specifically capture state-level support for confirmation. These advances move us beyond simple correlation between roll call voting and state demographics or between roll call voting and diffuse constituent ideology.

We find that greater home-state public support does significantly and powerfully increase the probability that a senator will vote to approve a nominee, even controlling for standard predictors of roll call voting: ideological distance between the senator and the nominee, the party of the senator, and the quality of the nominee. Next, we find that the impact of opinion varies with context: it has a greater effect on opposition party senators, on ideologically opposed senators, and for weak nominees. These results establish a strong and systematic link between constituent opinion and voting on Supreme Court nominees. We also find that only senator ideology has a greater impact on confirmation vote on average. This suggest that, while constituent preference matters a great deal, the senator still has some leeway when voting on nominees. Our results extend beyond the direct substantive implications for confirmation politics and speak to larger debates about representation and responsiveness in the U.S. Senate.

2 Opinion, representation, and confirmation votes

Linking public opinion to roll call votes. While the goals of members of Congress are multifaceted, the desire for reelection has long been established as a powerful driver, if

not the primary driver, of congressional behavior, including roll call voting (Mayhew 1974). Although the six-year terms of senators provide them with greater insulation compared to House members, a reelection-minded senator will constantly consider how his votes may affect approval back home. This will be particularly true of highly visible votes, such as whether to authorize a war, votes on taxes, and high profile nominations, such as cabinet positions or Supreme Court justices. During confirmation battles, the public turns its attention to a nominee's fate. For instance, in the periods around Justice Thomas's and Justice Alito's confirmations, 95% and 88% of Americans, respectively, held an opinion about confirming them (Gimpel and Wolpert 1996, Gibson and Caldeira 2009). During the Alito nomination, 75% of Americans thought it important that their senators vote in accordance with their preferred outcome (Gibson and Caldeira 2009). Accordingly, a vote on a Supreme Court nominee presents a situation in which a senator is likely to consider constituent views carefully, given the importance placed on nominees.

Cameron, Cover and Segal (1990, 527) set forth this logic nicely:

> With respect to motivation, we imagine senators asking themselves, "Can I use my actions during the confirmation process to gain electoral advantage? If I'm forced to account for my votes, can they be used against me? What is the most electorally expedient action for me to have taken?" ... The senator can generally expect to gain electorally (or at least not to lose electorally) from voting as constituents wish and can expect to incur losses from flouting constituents' desires, regardless of the actual outcome of a vote.

Their electoral gain or loss may manifest itself not only in the election directly after a nomination vote, but in future elections. For instance, in a bid to unseat Pennsylvania Senator Arlen Specter in the 2004 Republican primary, challenger Pat Toomey invoked Specter's vote against Robert Bork seventeen years earlier—one of only six votes by Republican senators to reject the controversial nominee (Babington 2004).

Given this thinking, it is no surprise that presidents often "go public" in support of their nominees in the hope of shifting public opinion (Johnson and Roberts 2004). For example,

to get nominees through the Senate, Richard Nixon's White House actively worked to shift public opinion on Clement Haynsworth and Ronald Reagan's White House launched a "major (though largely unsuccessful) public relations offensive to build support for [Robert Bork]" (Maltese 1998, 87-88). Appeals to the public in nomination politics date back in fact to the shift to the direct election of senators in 1914 (Maltese 1998, 86). In 1930, the Republican Senate majority was so concerned about rising public opposition to the appointment of Charles Evans Hughes for Chief Justice that his supporters blocked further hearings and moved to a quick vote, before public opinion could shift any further (Maltese 1998, 55).[3]

How do senators' take the pulse of their constituents on Supreme Court nominees? Public opinion polls help inform senators, as do more direct forms of communications such as phone calls and letter writing.[4] Segal, Cameron and Cover (1992) and Caldeira and Wright (1998) argue that interest groups play an important role both in *shaping* constituency preferences and *informing* senators of these preferences: "Interest groups attempt to mold senators' perceptions of the direction, intensity and electoral implications of constituency opinion" (Caldeira and Wright 1998, 503). It is thus likely that most senators will have a good idea of where their constituents stand when they cast a vote on a Supreme Court nominee.

Measuring constituency opinion: previous research. The modern-day analysis of roll call votes on Supreme Court nominees—beginning perhaps with Songer (1979) but certainly no later than Segal, Cover and Cameron (1988-1989)—has proceeded along two overlapping

[3]One of the most striking examples of concern over public opinion occurred *after* a successful confirmation, that of Hugo Black. Facing public outrage when his prior membership in the Ku Klux Klan was revealed only after the Senate had voted, Black took to the radio to explain himself. The percentage of respondents stating that Black should resign decreased from 59% to 44% following his address (Maltese 1998, 105).

[4]See, e.g., Marcus (1987) and Clymer (1991) for accounts of the intensity of letter writing during the Bork and Thomas nominations, respectively.

tracks. The first follows from the pioneering work of Cameron, Cover and Segal (1990), who found that roll call voting could largely be explained by the interaction of nominee quality and ideological distance between a senator and the nominee. Senators will likely approve a nominee if she is ideologically close or if she is of high legal quality; if both these conditions are not met, however, the probability of approval drops rapidly. Partisanship and the political environment are also important: all else equal, senators are more likely to approve a nominee appointed by a president of the same party and a president who is "strong" in that his party controls the Senate and he is not in his fourth year of office. Updating both the methodology of Cameron, Cover and Segal (1990) and the number of nominations evaluated, Epstein et al. (2006) found that this model still accurately captures roll call voting, although the effect of ideological distance seems to have grown over time. Shipan (2008) finds similarly as to the influence of partisanship.

The second track has sought to augment the first by incorporating the role of constituency preferences and lobbying interests in addition to institutional, ideological, and nominee-specific factors. Doing so, however, has raised several methodological challenges, especially with respect to measuring constituency preferences. These challenges arise from a harsh constraint—the lack of comparable state-level polls for nominees and thus of "direct" estimates of state-level opinion. As a result, scholars have pursued several alternatives, with various advantages and drawbacks. Because these methods both inform substantive findings in the second track of the literatures and motivate our analysis below, a review is useful.

The most ambitious attempt to measure constituency opinion is that of Segal, Cameron and Cover (1992), who generated state-level constituent ideology scores using predictions from regressions of congressional voting scores on state presidential election results and indicators for Democrats and Southern Democrats. Based on these, and using scaling procedures to place nominees, senators, and constituents on the same scale, they found that "confirmation voting is decisively affected by the ideological distance between senators' constituents

and nominees" (109).[5] That study also found that interest group activity for and against a nominee—measured at the nominee-level rather than the senator-level—significantly affects confirmation votes. Thus, the linkage between constituency ideology and senators' votes seems to be robust to the presence of lobbying efforts.

To be sure, this method of estimating constituency opinion is both innovative and can be applied to all nominees since 1937.[6] There are several disadvantages, however. First, the measure constitutes a broad evaluation of state ideology, and it is not specific to any particular nominee or even Supreme Court nominations more generally. Moreover, because the predictions are generated using only a few presidential elections, the state estimates are static in many periods, meaning that the opinion on all nominees in a given period will be assumed to be the same (and indeed the same as opinion on any other issue). For example, the estimates of constituent "opinions" of Harry Blackmun and Clement Haynsworth are the same, despite their vastly different profiles. Lastly, because constituency opinion is estimated from voting scores, untangling the influence of senator ideology and state opinion requires strong assumptions about the ability to accurately place them on the same scale.

Indeed, given these limits, one can only show the degree and direction of correlation between the diffuse constituent ideology score and senator vote. Without accurate measures of how constituents want these *specific* votes to be cast, without a common metric for opinion and choice, the inferences we can draw are limited (Erikson, Wright and McIver 1993, 92). A high correlation of votes and opinion reveals strong relationship between the two, but if we do not have a meaningful scale for responsiveness, we cannot tell if vote choice is over- or under-responsive to opinion. That is, we can only tell whether more liberal (conservative)

[5]Overby et al. (1994) apply this method to votes on Justices Marshall and Thomas and find that support increased and decreased in state liberalism, respectively, as expected.

[6]The scaling procedure involved employs Segal-Cover scores (Segal and Cover 1989), which are only available from 1937-on (Epstein et al. 2006, 298, fn. 4).

constituents lead to more liberal (conservative) votes; we cannot tell whether these votes are the precise votes desired by constituents without a common metric.

A more contextual proxy for constituent opinion is employed in Overby et al. (1992; 1994), who examined the roll call votes on the nominations of Thurgood Marshall and Clarence Thomas, the only two black nominees to the Supreme Court. The authors analyzed a racial component of constituent ideology, finding that as the percentage of blacks in his home state increased, a senator was *less* likely to support Marshall but *more* likely to support Thomas. They attributed this discrepancy to the changing dynamics of Southern politics: whereas in the 1960s Southern Democrats resisted civil rights measures and were reluctant to offend white supporters by endorsing Marshall, by the 1990s Southern Democrats were dependent on black votes to gain office, which led many to support the Thomas nomination despite the opposition of most other Democratic senators.

Again, these studies (Overby et al. 1992; 1994) are highly informative and support a conclusion that senators are mindful of constituent wishes when voting for or against Supreme Court nominees. But this approach is difficult to generalize beyond the unique circumstances of these two nominations, and it relies on assumptions as to what these demographic groups preferred. It also suffers from the same correlation problem discussed above. Here, the problem is that one can only assess the correlation between aggregate demographic percentages and vote, not whether votes were cast precisely as desired by constituents.

These shortcomings point to a need for nominee-specific opinion measures. The most recent attempt to estimate constituency opinion—and the one that most resembles the method we use—comes from Caldeira and Wright (1998) and does provide nominee-specific measures. The authors gathered national polls on the Bork, Thomas, and Souter nominations, and estimated individual-level models of opinion, regressing survey respondents' views of the nominees on race, partisanship, ideology, and rural dwelling. (The next step is, methodologically, one of the main points of departure herein.) Using the parameter estimates from

these models, they then generated state-level estimates of opinion by using the mean level of these variables by state. Conducting separate models of confirmation voting on the three nominees, they found that state opinion does not have a significant effect on senators' roll call votes, nor does senator ideology—results that contradict the studies cited above. On the other hand, lobbying for and against a nominee (here measured more precisely at the senator level) are strong predictors of confirming or rejecting a nominee, respectively.

We explain more thoroughly below, but we briefly note two limitations of the method in Caldeira and Wright (1998). First, it takes into account only demographic variation between respondents, and not geographic variation (Erikson, Wright and McIver (1993) showed that a great deal of geographic variation in opinion exists beyond that explained by demographic differences). Second, using the mean values of each demographic variable within a state only approximates the correct weighting of demographic influences on opinion. It does not make use of the true frequencies of each respondent type, which is crucial given that, even setting aside geographic differences, demographic variables *interact* with each other to influence opinion at the individual level. Doing so requires using the full set of cross-tabulations, and not merely aggregate percentages (i.e., knowing how many black women there are, not just how many blacks and how many women). Fortunately, it is possible to deal with both of these issues, and improve upon accuracy in other ways, given recent advances in estimating local opinion from national poll data.

3 Data and Methods

Estimating state-level public opinion. We first give an overview of the techniques which allow us to estimate nominee-specific public opinion. Full details are provided in the Appendix. The most intuitive way to measure state public opinion on Supreme Court nominees would be to gather all possible national polls on a particular nominee, then break

down responses by state, hoping to get sufficiently many within each state to yield an accurate sample. Such a plan would follow the "disaggregation" approach pioneered by Erikson, Wright and McIver (1993), who pooled polls over 25 years (thus achieving adequate sample sizes) to develop estimates of each state's overall liberalism. Obviously, in this context, pooling over many years is impossible as we are interested in a narrow time frame between nomination and confirmation. Unfortunately, even if we obtained all existing polls, even for the most-polled nominees, there are simply not enough respondents in many states to generate reliable estimates of public opinion using disaggregation.[7]

Fortunately, an alternative method exists, one that generates estimates of state opinion using national surveys. Multilevel regression and poststratification, or MRP, is the latest implementation of such a method (Gelman and Little 1997, Park, Gelman and Bafumi 2006, Lax and Phillips 2009). In the first stage, a multilevel model of individual survey response is estimated, with opinion modeled as a function of demographic and geographic predictors: individual responses are modeled as nested within states nested within regions, and are also nested within demographic groupings (e.g., four education categories as one grouping). Instead of relying solely on demographic differences like older versions of the method, the state of the respondents is used to estimate state-level effects, which themselves are modeled using additional state-level predictors such as region or state-level aggregate demographics. Those residents from a particular state or region yield information as to how much predictions within that state or region vary from others after controlling for demographics. MRP compensates for small within-state samples by using demographic and geographic correlations. All individuals in the survey, no matter their location, yield information about demographic patterns which can be applied to all state estimates.

[7]For example, in the eight polls we collected to create estimates on the nomination of John Roberts—the nominee with the largest number of polls—in 15 states there were a total of fewer than 50 respondents. The problem is even more severe for other nominees.

The second stage is poststratification, in which the estimates for each demographic-geographic respondent type are weighted, or poststratified, by the percentages of each type in the actual state populations, so that we can estimate with a high degree of accuracy the percentage of respondents within each state who have a particular issue position. Post-stratification can correct for clustering and other statistical issues that may bias estimates obtained via survey pooling.

Comparisons of MRP with other techniques have demonstrated that it performs very well. Park, Gelman and Bafumi (2006) validate MRP, comparing its results to two alternate ways of producing state estimates by modeling individual response. MRP does better than not pooling at all—that is, running a separate model for each state's respondents, the equivalent of using fixed effects and interaction terms for all predictors. And it does better than pooling all respondents across states—that is, using only demographic information and ignoring geographic differences (which suggests that the estimates in Caldeira and Wright (1998) will be measured with a high degree of error). They show the benefits of partially pooling information across states. Lax and Phillips (2009) systematically assess MRP, also comparing it to its main competitor, disaggregation. They establish the face and external validity of MRP estimates, by comparing them to actual state polls. MRP consistently outperforms disaggregation, despite biasing the baseline towards disaggregation. Even a single national poll and a simple demographic-geographic model (using only race and state) are sufficient for MRP to produce highly accurate and reliable state opinion estimates. MRP estimates using small samples are roughly as accurate as disaggregation samples 10 times as large.

Opinion estimates. To produce estimates for as many nominees as possible, we searched the Roper Center's *iPoll* archive. Not until very recently were polls systematically conducted on Supreme Court nominees. Indeed, no poll is available for the nomination of Antonin Scalia. Our search left us with us nine nominees who received confirmation votes and for

whom sufficient polling and census data are available:[8] O'Connor, Rehnquist (for Chief Justice), Bork, Souter, Thomas, Ginsburg, Breyer, Roberts and Alito.

For nominees who featured in only a handful of polls, we compiled each poll with suitable demographic information on individual respondents and with state indicators. For nominees with a large number of such polls, we sought to retain polls as close to their confirmation vote as possible. For Clarence Thomas, for instance, we only retained polls taken after the Anita Hill allegations surfaced. This procedure helped ensure as much as possible that our estimates would tap state opinion as it existed at the time a senator cast his vote. [A complete list of polls we used is available on request.]

The distributions of state support for each nominee are depicted in Figure 1 in order of mean nominee support (the full list of opinion estimates is given in Table 1). Nominees are ordered by mean support (indicated by the dashed line), from lowest to highest. Bork had the lowest mean support and also the widest spread of support, while O'Connor was the least controversial nominee, both in terms of mean support and the variance of support across states. In addition, Bork was the only nominee for whom the balance of public opinion in a significant number of states was opposed to his nomination. Thus, among voters with opinion, all but one nominee received broad public support. The bottom histogram depicts support for all nominees combined, revealing that most of the distribution of opinion falls between 60% and 80% support. Despite the overall tendency to support a nominee, the histograms show widespread variation in state support for several nominees.

Roll call voting and state-level opinion. The nine nominees in our sample were each voted on by the full Senate, for a total of 891 confirmation votes (nine senators abstained, in

[8]Polls were conducted on Douglas Ginsburg and Harriet Miers, but their nominations were withdrawn before any Senate action. Clement Haynesworth and G. Harrold Carswell were polled, but we do not yet have the contemporaneous census data for poststratification.

total), 75% (667) of which were to approve the nominee.[9] We begin our analysis by studying the bivariate relationship between public opinion and voting. For each nominee, the dark lines in Figure 2 presents the estimated logit curves from a logistic regression of roll call votes on state public opinion, while the lighter lines depict uncertainty in the estimated regressions. The hash marks at the top and bottom of each panel depict state opinion for "yes" and "no" votes, respectively. For the more controversial nominees, there is a significant relationship between voting and opinion, although there is variation across nominees. The curve is most steep and precisely estimated for the Roberts vote, while the curves for Rehnquist and Thomas are less steep and less precisely estimated. For the lopsided roll call votes, there is too little variation for any predictor to explain voting well. The bottom panel shows the estimated logit curve from pooling all nominees. The correlation is strong: as a senator's constituents become more supportive of a nominee, he is more likely to vote affirmatively.

Can we conclude that public opinion *influences* roll call voting, rather than simply aligning with it? To answer this question, we turn to a multivariate analysis of roll call voting on Supreme Court nominees, so that we can control for other influences.

Data and methods. We build on existing studies, which model voting on Supreme Court nominees primarily as a function of nominee quality, the ideological distance between a senator and a nominee, partisanship, and presidential strength. These studies show that senators are likely to support high quality nominees regardless of ideological distance, but that the probability of approval for is lower for low quality nominees, especially for nominees who are ideologically distant. With this in mind, we use the following predictors:

Lack of Quality: the degree to which a nominee is judged (according to newspaper editorials (Cameron, Cover and Segal 1990) to be unqualified to join the Court. It ranges from 0 (most qualified) to 1 (least). Less qualified nominees are less likely to be approved.

[9]Roll call and other data for all nominees except Alito come from (Epstein et al. 2006).

Ideological Distance: The ideological distance between the senator and the nominee, as measured using an institutional bridging technique that combines Common Space scores (Poole 1998) and Segal-Cover scores (Segal and Cover 1989). (Nominees chosen by presidents of the same party as the Senate majority serve as a bridge to link senators' and nominees ideal point estimates.) Ideologically distant senators are less likely to support nominees.

Same Party: Coded 1 if the senator is a co-partisan of the president, who are more likely to support a nominee than opposite party senators.

Presidential Capital: We use two measures to capture presidential capital. The first, "strong president," is coded 1 if the president was not in his 4th year of office *and* his party controlled the Senate at the time.[10] We also use the more direct measure of public approval of the president, based on the most recent Gallup poll taken before a nominee's confirmation vote. Nominees appointed by presidents with more capital are more likely to gain senators' approval.

Figure 3 presents descriptive statistics for each predictor. All continuous predictors in the models have been standardized by centering (at zero) and dividing by two standard deviations—as a result, the coefficients for all continuous and binary predictors are comparable on roughly the same scale (Gelman 2008). A one unit change in the continuous predictors covers two standard deviations of that predictor. Because these transformation are linear, they do not affect any inferences about statistical significance; rather, they simply make it easier to interpret the relative substantive magnitude of each predictor and to make comparisons and about relative magnitudes across predictors.

Our expectation is that constituent opinion will play a strong role in driving the votes of senators. However, we still expect that the others variables noted above will continue to have

[10]While used in previous studies (Epstein et al. 2006), this measure seems to lack face validity for some nominees: President Bush is coded as "strong" when he nominated Roberts for Chief Justice in 2005, though this came in the immediate aftermath of Hurricane Katrina.)

an independent contribution to explanatory power, as shown by Epstein et al. (2006), inter alia.[11] One reason that there might be room for other forces to operate even in the face of the electoral connection is that, though there are usually clear majorities among respondents with an opinion, only 40% of the time is there an absolute majority in a state explicitly for or against the nominee. That is, 60% of the time, in a given state, there are sufficiently many respondents who do not have an opinion, meaning that a senator can cast his vote either way without having to face a dissatisfied majority. Finding strong responsiveness to public opinion even given this fact would then indicate exactly how worried senators are even about plurality opinion when casting confirmation votes.

4 Results

Table 2 presents five models of voting on Supreme Court nominees. Model 1 replicates the logit model in Epstein et al. (2006) on our subset of justices (we successfully replicated it for all nominees). On this set of nominees, our findings match theirs: senators are less likely to support less qualified nominees and those ideologically distant from them, and more likely to support candidates nominated by a president of their party and a strong president.

We begin by adding public opinion to this basic model, yielding Model 2. The coefficient on *Opinion* is statistically significant, and its magnitude is comparable to that of *Ideological Distance*. In addition, the significance of the other predictors remains similar to Model 1. These results indicate that as state opinion of a nominee increases, senators are more likely to support her, even after controlling for well-known predictors of the vote.

Model 3 presents the results of a multilevel model, which recognizes that the votes are grouped by nominee. It includes varying intercepts for each nominee (i.e., random effects),

[11] It is also possible that quality and ideology have indirect effects that operate through public opinion. However, these are weakly correlated with opinion (.33 and .37 respectively).

assumed to be drawn from a normal distribution with mean zero and a variance estimated from the data. These intercept shifts capture any variation across nominees not captured by the other predictors. The results are substantively the same as in Model 2, although *Lack of Quality* and *Strong President* are not statistically significant. Model 4 is identical to Model 3, except *Presidential Approval* is substituted for strong president. Again the results are substantively similar, although *Lack of Quality* does have a statistically significant (negative) effect. We also show the varying intercepts for Model 4 in Table 2 (and discuss them below).

Finally, Model 5 assesses the degree to which the relationship between opinion and voting may be conditioned by a senator's proximity to his re-election bid. Examining the Thomas nomination, Overby et al. (1992) found that *only* senators up for reelection in 1992 (the next election after the vote) were influenced by the percentage of blacks in their home states. However, examining the Thurgood Marshall nomination, Overby et al. (1994) found no such interactive effect between proximity to election and black population. We take a more general approach, interacting state opinion with an indicator variable, *Reelection*, coded 1 if a vote on a nominee took place within two years of the senators' next reelection. The coefficient on *Opinion* in Model 4 gives the estimated effect of public opinion on senators who were *not* facing reelection: it is unchanged from Models 1 and 3. The coefficient on the interaction term is small and not statistically different from zero, indicating that there is no *additional effect* of opinion on senators facing reelection. Thus, as a general matter, we can conclude that the effect of opinion is more related to senators' long-term interests in maintaining constituent support, rather a more short-term focus on whether a vote contrary to such support will have immediate negative consequences.

In terms of model performance, Table 2 shows that while all the models do quite well at explaining votes, model fit improves significantly when public opinion included. Akaike's information criterion (AIC) shows that the "best" model is Model 4, which includes opinion

and allows the intercepts to vary by nominee.[12] Adding *Opinion* reduces the error by an additional 5%, and allowing intercepts to vary by another 5%. The percentage correctly classified remains high even if *Opinion* is omitted, but a simple model of just *Opinion* and *Same Party* will itself correctly classify 89% of the observations, and adding varying intercepts brings this to 91% (models available upon request). In summary, adding opinion increases the fit of the model significantly and has a strong independent effect on vote.

The rescaled coefficients show that the effects of *Opinion* are larger than switching the party affiliation of the senator, larger than shifting the strength of the president making the appointment from weak to strong, larger than changing the quality of the nominee, and even larger than a shift in nominee effect from the nominee with the highest random effect (Rehnquist) to the nominee with the lowest (Alito). Only the senator's ideological distance to the nominee has a potentially greater impact (across a standardized range of that predictor) on the vote. A (two standard deviation) shift in distance has a greater effect than that of public opinion, but no other predictor comes close.

We explain the substantive implications of the statistical results in detail below, when we give a wide range of predicted probabilities under different conditions and show how the impact of public opinion varies with context. For now, we note that, given the results in model 4, the upper bound of the effect of *Opinion* on vote probability is that a one point increase in the former leads to a four point increase in the latter. A two-standard-deviation swing in *Opinion* could have an effect as large as 95%. Of course, effects this large would only apply to a senator who is already wavering in his vote.[13]

[12] AIC rewards goodness of fit, while penalizing based on the number of estimated parameters, thus discouraging overfitting. Lower AIC values indicate the preferred model variant.

[13] Dividing a logit coefficient by four yields the rough upper bound of its effect, which will be at the steepest part of the logit curve, near 50% (Gelman and Hill 2006, 119). Re-estimating Model 4 with *Opinion* on its original scale leads to an estimated coefficient of .15 (.03).

Note that the random effects (or justice effects) in the last column of Table 2 and 4, which capture any idiosyncracies by nominee not otherwise controlled for, do vary quite a bit.[14] A nominee effect of zero indicates the nominee did as well on average as one would expect from the substantive predictors. All else equal, controlling for all the predictors of vote included in the models, Rehnquist was more likely to get a yes vote than one would otherwise predict; O'Connor and Bork come close to average in this respect, and Alito was the mirror image of Rehnquist, equally less likely to get a yes vote. The standard deviation of these varying intercepts is 1.1, which would correlate to an upper bound of about 25 percentage points change in the probability of a senator voting yes.

5 Discussion

To flesh out our findings, we calculate and graph predicted probabilities of a senator voting yes on the nominee for an assortment of configurations. Given that marginal probabilities in a logit model vary across predictor values, such displays will help us understand how the impact of public opinion varies given the values of the other predictors in the model, as well as how the impact of these other predictors varies given different levels of public opinion. We use model 4 for all predicted values in the text. All predictions use the following baseline setup unless otherwise noted: continuous predictors are set to their mean, party is set to the opposition party, and the random effect is that for an average nominee (zero, by construction). For continuous predictors, we set "low" values to be those one standard deviation below the predictor mean, and "high" values to be those one standard deviation above the mean. For discussion of specific values, we calculate probabilities using simulated

[14]We tried including average opinion across states by nominee (a nominee level variable), but this was not significant, led to a worse AIC, and did not meaningfully change the random effects, suggesting that these effects were not simply picking up differences in average opinion.

draws of coefficients given their values and standard errors, thus capturing the underlying uncertainty of the coefficient estimates. We then calculate the mean probability or mean change in probability over 1,000 random draws of coefficients as applied to the scenario under discussion. Where helpful, we include parenthetical 95% confidence intervals.

We show the effects of varying state-level public pinion on the nominee, given different levels of the other predictors, in Figure 4. The graphs use point predictions from the logistic regressions, which closely resemble those calculated using simulations, but yield smoother plots. Each panel highlights a shift in a different predictor or set of predictors. Public opinion is on the x-axis in each panel, ranging from 35% to 95% support (the approximate range of the opinion data used). The non-shaded regions depict the range of public opinion between low opinion (one standard deviation below the mean) and high opinion (one standard deviation above)—that is, the range where most observations fall. The predicted probability of voting yes is shown on the y-axis in each panel. Across curves, at a given level of opinion, we can compare the effect of changing the predictor noted in the panel description.

The solid line in the first panel (actually, in all panels in the top and bottom rows), show the predicted effects under baseline conditions. In the baseline setup, near average opinion, a one-point increase in constituent support implies a 2.2 [.7, 4.1] point increase in the probability of a yes vote. An opinion level of almost 60% is needed to get the probability of a yes vote to 50%. A two-standard deviation swing centered at mean opinion implies an increase in vote probability from roughly 40% to 97%.

In this first panel, we also show the differential effects of low and high quality. At the baseline, shifting from low to high quality (technically, shifting from high lack of quality to low lack of quality) will increase the probability of a yes from 70% to 90%. For high-opinion nominees, quality has almost no effect, but for low opinion nominees, the difference in probability of a yes vote is roughly 28 points. Quality levels also affect the impact of opinion. A unit shift in opinion (as always, near average opinion) has an impact of 3.0 [1.1,

4.6] points when quality is low, but only half that when quality is high, 1.4 [.2, 3.7] (this particular difference is not significant). For a two-standard deviation shift in opinion, the impact is about 65 points when quality is low, and only about 40 points when quality is high. Thus we see that a high quality nominee is still vulnerable to public opinion, but somewhat less so than a low quality opinion. To put this another way, roughly 50% public support in a state gets a high quality nominee to a 50-50 chance of a yes vote from that state's senator. A low quality nominee needs roughly 65% support to have the same chance.

The second panel (top right) shows the predicted probabilities for same- and opposite-party senators (fixing ideological distance at the mean). Here we see that it is largely the opposition that winds up responding to public opinion—same-party senators are already largely in the bag, over the central range of opinion at least. A marginal unit of opinion (around average opinion) in the state of a same-party senator yields only a .3 [.1, 1.2] point gain in vote probability, compared to a 2.2 [.7, 4.1] points for an opposition senator, a statistically significant difference. There is a sharp drop-off in same-party senator support only once the nominee is significantly unpopular in the state.

To put this another way, high-opinion nominees see little difference between same- and opposite-party senators (holding distance constant), but low-opinion nominees are very vulnerable (given the distance between the curves). We can also see that party has a meaningful effect by comparing the opinion level necessary for the president's fellow partisans to give him a 50-50 chance at a yes vote, roughly 45%, to that level of support necessary in an opposing senator's home state, over 60%.

The third panel displays the impact of ideological distance among opposite party members, and shows that distance between the nominee and the senator is of greater consequence than quality. For the former, a distant nominee needs 70% support to have the same 50-50 chance as an ideologically closer nominee with 45% support—while it takes roughly an additional 15 points of support to make up for low vs. high quality, it takes 25 points to make up

for large vs. small ideological distance. Also, while low-opinion nominees are very vulnerable to ideological distance, the difference between the curves even at the right standard deviation line shows that even high-opinion nominees have to worry somewhat about ideology—over the typical range in distance it means the difference between roughly a 79% chance of a yes vote and a near guarantee of support. Interestingly, the probability of a yes vote is roughly the same for an opposite party senator of average distance from a nominee and a same party senator who is far removed from a nominee.

The effects of opinion over its typical range differ between near nominees and far nominees. When the senator and nominee are ideologically close (and of the opposite party, as in the baseline configuration), a swing from low opinion to high simply increases the probability of a yes vote from 85% to nearly 100%. For ideologically distant senators/nominees, the spread is from under 10% to nearly 80%. A unit change in opinion (at average opinion) increases the probability of a yes vote by .4 [.1, 1.5] points for low distance and by 3.2 [1.2, 4.9] points for high distance. (The difference between these effects of unit opinion change is significant.[15]) Thus, ideologically distant senators are very sensitive to public opinion, and average-distant senators are still sensitive, while ideologically compatible ones are effectively less so. To see a steep drop off in the probability of a yes vote from an ideologically compatible senator, a nominee has to drop below 60% support in the senator's home state, outside the typical range of opinion. The fourth panel shows the impact of ideological distance among same party senators. The patterns are similar, but the probability of a yes vote is higher for those nominated by a president of the same party, controlling for opinion.

The fifth panel shows that there is some difference in the treatment of nominations by presidents with high versus low public approval once we control for opinion on nominees, but not to the extent of partisanship or the other predictors. That said, for low opinion nominees,

[15]Because of covariation one cannot simply compare the overlap in confidence intervals to assess statistical significance. Rather, we specifically test the difference in differences.

being nominated by a president with high approval ratings would mean the difference between a predicted 40% chance of a yes vote and a predicted 60% chance.

The final panel explores those differences in nominee outside those captured by the substantive predictors,[16] as captured by the variance in intercept by nominee (if we were already capturing full variance across nominees, these random effects would be zero). A "good" nominee is one with a positive intercept shift, one standard deviation above zero; a "bad" nominee is one with a negative intercept shift, one standard deviation below zero. Both types would need to worry about opinion, but the slope is much steeper (in the central region) for a bad nominee. A high-opinion nominee might see little variation in vote given this (a bad nominee would still have nearly a 90% chance of a yes vote), but the difference for low-opinion nominees is much larger (18% vs. 67%). A good nominee might need around 55% public support in the state to get an even chance at a yes vote; a bad one would need around 70%.

Counterfactuals. One additional way to assess the importance of public opinion in confirmation politics is to make counterfactual "predictions" had the public felt differently about the nominees. We ask three questions based on such counterfactuals.

Should Bork blame the public? As can be seen in Figure 1, Bork received far less public support for confirmation than did Alito, who himself was below average. What if Bork *had* received as much public support as Alito? We applied the coefficients from Model 4 to predict votes for each of the senators who voted on Bork's confirmation, but using the state-by-state opinion estimates from Alito instead of from Bork (leaving all else the same). Bork received only 42 votes in his favor (given actual opinion on his nomination, we would have predicted 43). If he were as popular as Alito, however, with the state-by-state popularity of Alito, we predict that he would have been confirmed with 58 votes.

[16]There could include nominee gender, race, or religion effects, as well as more idiosyncratic features such as Bork's allegedly scary visage.

Justice Alito's confirmation too seemed at risk, at least for a time. He eventually received 58 votes (we would have predicted 56), the same number of votes against Bork. We ask whether Bork would have been confirmed if as popular as Alito—what about the reverse? With state-by-state opinion at Bork's levels, we would predict that Alito would still have received 53 votes. This is a smaller margin, but still suggests that attempts by the Democrats to investigate Alito further and shift the public's stance on confirmation might have done little. Bork and Alito had similar "quality" levels and, on average, were roughly as compatible ideologically with the senators, but otherwise the situations were quite different. Alito faced a Senate with 12 fewer Democrats than did Bork. Partisanship trumped the effects of opinion here—his nomination might have suffered a different fate if it had taken place after the Democrats took control of the Senate following the 2006 elections.

Did the public confirm Justice Thomas? Justice Thomas also faced a tough confirmation fight, eventually being confirmed with 52 votes (the same as we would have predicted) after Anita Hill's allegations nearly derailed him. Thomas was more popular a nominee on average than was Bork, and a bit more popular than Alito. Did this make a difference in his confirmation vote? What if he had been as unpopular as Bork? Our prediction, applying Bork's state-by-state opinion level instead of his own, is that Thomas would have received only 36 votes—a landslide vote against confirmation. Of course, with expected support from the public and therefore from the Senate so low, it seems likely that his nomination would have been withdrawn rather than fail by so wide a margin.

Could Harriet Miers have won confirmation? The nomination of Harriet Miers was unique in many ways, particularly in the manner in which senators of the president's party signaled their potential opposition. Nevertheless, her nomination is still useful for exploring the potential magnitude of opinion effects. In October 2005, President Bush nominated Miers to replace Justice O'Connor. Three weeks later, he withdrew the nomination, after

vocal opposition from members of his own party. By the time of the withdrawal, the public had already been polled on whether she should be confirmed. Using this data, we created estimates of state public opinion as we did for the nominees who went to a vote. We found that average state-level opinion was 50% in favor, among those with an opinion, ranging from a low of 42% support in Hawaii to 58% support in Nebraska. On average, she is tied with Bork, with less variation across states. Her Lack of quality score is .64, higher than any of our other nominees. Neither her quality nor opinion levels would be good omens for a successful confirmation, as compared to, say, Alito. On the other hand, because she was more ideologically moderate than Alito, her average ideological distance from senators (.14) was slightly less than the average across our nominees (.18) and clearly less than the average for Alito (.21) (it places her on part with Souter or Ruth Ginsburg for average ideological compatibility with the senators). This factor would push in her favor in comparison to Alito (who, again, wound up with 58 votes).

We start by temporarily setting aside any idiosyncratic features of her nomination and assume she was otherwise an average nominee (nominee effect set to zero). Under this assumption, our best prediction is that she would have won 56 votes. This suggests in part that the problem with the Miers nomination was not the usual one—the inability to grab sufficient votes from the opposition party—but the unusually loud criticism among Republicans and conservative activists. If we take into account Miers's other weaknesses and poor performances in her dealings with the senators (e.g., Greenburg 2007, 278-281), by attributing to her the same negative nominee effect as Alito, then our best prediction would be that she would only have received 42 votes.

What part of this is due to public opinion? To assess the effect of public opinion on confirmation voting, we next predicted senator votes assuming the public had supported Miers to the same extent they did Alito (maintaining the negative nominee effect). We would then predict she would sail through confirmation with 60 votes.

We plot these three scenarios in Figure 5, with the probability of a positive vote on the vertical axes, and either opinion in the senator's state on the x-axis (left panels), or the senator's ideology score (right panels). Within the left panels, Democrats clump at the bottom and Republicans clump at the top. Within the right panels, Democrats clump at the left and Republicans clump at the right. In the first scenario, top row, assuming that Miers was otherwise an average nominee, it largely comes down to a party vote. But, the second row of panels shows that Miers idiosyncratic flaws would have killed almost any chance of getting the votes of Democratic senators and would have put the votes of at least a dozen Republicans into doubt. The third row of panels show how public support could have saved Miers yet, providing her with not only with a firm foundation among Republicans, but pulling at least a handful of Democrats in her favor as well.

These hypotheticals illustrate the pivotal role of public opinion in confirmation politics. Shifts in public support can mean the difference between Justice Bork and Justice Kennedy.

6 Conclusion

The public's influence over justices *after* confirmation may be in doubt, but influence over confirmation is not. Even the six-year terms of senators do not make them invulnerable to public pressure. This ties the Court back to majority will. Our findings are particularly timely given the close split on the Court today between liberal and conservative justices and the strong possibility that the next president will have the opportunity to name at least one justice to the the Court. Constituent opinion is a strong and robust predictor of a senator's roll call vote even after controlling for the strongest known influences on confirmation votes. This finding establishes a strong and systematic link between constituent opinion and voting on Supreme Court nominees. Even high quality nominees and those proffered by strong presidents are vulnerable to constituent influence. On the other hand, constituent opinion

plays a larger role in the vote calculus of those positioned to oppose the nominee, whether for partisan or ideological reasons, than for those who will otherwise be likely to support the nomine, and for weaker nominees more generally.

Senators do respond to other forces besides opinion, most notably their own preferences and partisanship. Our results thus speak to larger debates about the tradeoffs between these forces. First, we find clear evidence of party effects, consistent with partisan theories of legislative organization and behavior (Aldrich 1995, Cox and McCubbins 2005). This suggests that senators balance party pressure with direct constituent pressure, or that the long-term electoral calculus pushes towards maintenance of the party label through confirmation or rejection of the president's nominee (for co-partisans or the opposition respectively).

Second, that personal preferences still matter suggests that senators are willing to partially "shirk" the desires of their constituents, in pursuit of their own ideological goals. Our results speak to the empirical literature on responsiveness, dating back to Miller and Stokes (1963) and to more recent work (e.g., Jacobs and Shapiro 2000, Bafumi and Herron 2007). Overall, the trend of the literature, to paint broadly, is that democracy works and policy choices are responsive though imperfectly so. Whether shirking happens in any particular voting context is an empirical question. One advantage of our approach is that we were able to assess representation in a concrete set of votes, in contrast to the aggregate responsiveness which is the more common focus in the existing literature.

Future work could: (1) dig deeper into what drives public opinion on Supreme Court nominees, combining our state- or individual-level estimates with threads of the existing literature; (2) study how presidents can increase public support for their nominees and whether it works in the context of other factors (building on Johnson and Roberts (2004)); (3) study whether senators respond more to their fellow partisans or the median voter in casting their vote (see, e.g., Clinton 2006); and (4) study the interaction of the public and organized interests in pressuring the votes of senators (see Caldeira and Wright 1998).

We would also note that our analysis shows that there remains residual idiosyncratic variation across nominees. (If we truly captured all across-nominee variation, we would expect the random effects for each nominee to shrink to zero.) This suggests that there remains further digging to do as to why some nominees do better or worse than captured by any current model (those of this paper or those of others). State-level public opinion explains a significant portion of this, but what else separates "good" nominees from "bad"?

7 Appendix: Estimating Nominee-Specific Opinion

For each nominee, we combined their polls into a single internally-consistent dataset. For each respondent, we have sex, race (black, Hispanic, or white and other), one of four age categories (18-29, 30-44, 45-64, and 65+), one of four education categories (less than a high school education, high school graduate, some college, and college graduate). Race and gender are combined to form six possible categories (from male-white to female-Hispanic). State and region are included (Washington, D.C., as a separate "state" and separate region, along with Northeast, Midwest, South, and West). For each state, we have the percent of evangelical Protestants and Mormons (American Religion Data Archive 1990) and the Democratic presidential election share in 2004.

We run a separate model for each nominee. We use a multilevel logistic regression model, estimated using the LMER function ("linear mixed effects in R," Bates (2005)). For data with hierarchical structure (e.g., individuals within states within regions), multilevel modeling is generally an improvement over classical regression. Rather than using "fixed" (or "unmodeled") effects, the model uses "random" (or "modeled") effects, at least for some predictors. The effects within a grouping of variables (say, state level effects) are related to each other by their grouping structure and thus are partially pooled towards the group mean, with greater pooling when group-level variance is small and for less-populated groups.

The degree of pooling within the grouping emerges from the data endogenously. This is equivalent to assuming errors are correlated within a grouping structure. (See Gelman and Hill (2007, 244-8,254-8,262-5).)

Our goal is to estimate the percentage of those supporting the nominee of those with an opinion. We start by modeling explicit support for confirmation (coded as $y_i = 1$), as compared to explicit disapproval of confirmation or answering "do not know" (coded as $y_i = 0$). We subsequently model explicit disapproval of confirmation against those approving or staying silent. Then, once we have the estimated percentage within each state that explicitly approves and the estimated percentage that explicitly disapproves, we can divide the former by the sum of both estimates to yield the share of those who explicitly approve out of those with an opinion.[17]

While the predictors we use in each response model vary slightly across nominees, based on the demographic information was available in the survey data, each model takes the following basic form, with individual i, and indexes j, k, l, m, s, and p for race-gender combination, age category, education category, region, state, and poll respectively:[18]

[17]We cannot simply drop the "do not know" respondents as the likelihood of so responding will vary across respondent types, weights for which represent *all* respondents, not simply those with an opinion. Modeling "yes of those with an opinion" by applying MRP twice, first for explicit "yes" and then for explicit "no," we avoid using the non-random sample of respondents we would have left after dropping anyone who answered "do not know."

[18]We drop predictors when there is insufficient variation to distinguish effects from zero to the limits of the LMER algorithm, that is, when there is no residual variation for these terms to pick up: for O'Connor, state, religion, and presidential vote; for Ginsburg, religion; and for Breyer, religion. Given variation across polls on Bork, we also let age level effects vary by poll. The results of Lax and Phillips (2009) show that such minor variations are irrelevant. The goal is the best predictive model possible. To compare effects of predictors across nominees, not the goal here, we would use the same predictors in each model.

$$\Pr(y_i = 1) = \text{logit}^{-1}(\beta^0 + \alpha^{race,gender}_{j[i]} + \alpha^{age}_{k[i]} + \alpha^{edu}_{l[i]} + \alpha^{state}_{s[i]} + \alpha^{poll}_{p[i]}) \qquad (1)$$

The terms after the intercept are modeled effects for the various groups of respondents:

$$\alpha^{race,gender}_j \sim N(0, \sigma^2_{race,gender}), \text{ for } j = 1, ..., 6 \qquad \alpha^{poll}_p \sim N(0, \sigma^2_{poll}), \text{ for } p = 1, ...$$

$$\alpha^{age}_k \sim N(0, \sigma^2_{age}), \text{ for } k = 1, ..., 4 \qquad \alpha^{edu}_l \sim N(0, \sigma^2_{edu}), \text{ for } l = 1, ..., 4$$

That is, each is modeled as drawn from a normal distribution with mean zero and endogenous variance. The state effects are in turn modeled as a function of the region into which the state falls, the state's conservative religious percentage, and the contemporaneous Democratic presidential candidate's state-level vote share (group-level predictors reduce unexplained group-level variation, leading to more precise estimation). The region variable is, in turn, another modeled effect:

$$\alpha^{state}_s \sim N(\alpha^{region}_{m[s]} + \beta^{relig} \cdot relig_s + \beta^{presvote} \cdot presvote_s, \sigma^2_{state}), \text{ for } s = 1, ..., 51$$

We use these to calculate predicted probabilities of nominee support for each demographic-geographic type. Since we controlled for poll effects, we must choose a specific poll coefficient when generating predicted values using the inverse logit. We use the average across the polls included in each policy question's sample, thus averaging out any time effects as well.

There are 4,896 possible combinations of demographic and state values (96 within each state), ranging from "White," "Male," "Age 18-29," "Not high school graduate," in "Alabama," to "Hispanic," "Female," "Age 65+," "College degree or more," in "Wyoming." For any cell j, specifying a set of individual demographic and geographic values, the results above allow us to make a prediction of pro-gay support, θ_j. Specifically, θ_j is the inverse logit given the relevant predictors and their estimated coefficients based on equation (1).

We next poststratify according to population percentages. That is, the prediction in each cell needs to be weighted by the actual population frequency of that cell, N_j. For each state, we then can calculate the percentage who support the policy, aggregating over each cell j in state s: $y^{\text{pred}}_{\text{state } s} = \frac{\sum_{j \in s} N_j \theta_j}{\sum_{j \in s} N_j}$. (2)

We calculate the necessary population frequencies using the "1-Percent Public Use Mi-

crodata Sample" from the 1990 or 2000 census, which have demographic information for one percent of each state's voting-age population. For example, for the cells mentioned above the frequencies are 581 (1.7% of Alabama's total population) and 0 respectively. Again, we do this entire procedure first for explicit "yes" answers against all other answers and then for explicit "no" answers against all other answers.

References

Aldrich, John H. 1995. *Why Parties? The Origin and Transformation of Political Parties in America*. Chicago: University of Chicago Press.

Babington, Charles. 2004. "Republican Specter Challenged From the Right." *The Washington Post* April 7.

Bafumi, Joseph and Michael C. Herron. 2007. "Preference Aggregation, Representation, and Elected American Political Institutions." Presented at the 2007 Annual Meeting of the Midwest Political Science Association.

Bates, Douglas. 2005. "Fitting Linear Models in R Using the lme4 Package." *R News* 5(1):27–30.

Caldeira, Gregory A. 1988-1989. "Commentary on Senate Confirmation of Supreme Court Justices." *Kentucky Law Journal* 77:531–38.

Caldeira, Gregory A. and John R. Wright. 1998. "Lobbying for Justice: Organized Interests Supreme Court Nominations, and United States Senate." *American Journal of Political Science* 42(2):499–523.

Cameron, Charles M., Albert D. Cover and Jeffrey A. Segal. 1990. "Senate Voting on

Supreme Court Nominees: A Neoinstitutional Model." *American Political Science Review* 84(2):525–534.

Clinton, Joshua D. 2006. "Representation in Congress: Constituents and Roll Calls in the 106th House." *Journal of Politics* 68(2):397–409.

Clymer, Adam. 1991. "After Judging Thomas, Senators Face the Public." *The New York Times* October 21.

Cox, Gary W. and Mathew D. McCubbins. 2005. *Setting the Agenda: Responsible Party Government in the U.S. House*. Berkeley, CA: University of California Press.

Dahl, Robert A. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker." *Journal of Public Law* 6:279–295.

Epstein, Lee, Rene Lindstadt, Jeffrey A. Segal and Chad Westerlad. 2006. "The Changing Dynamics of Senate Voting on Supreme Court Nominees." *Journal of Politics* 68(2):296–307.

Erikson, Robert S., Gerald C. Wright and John P. McIver. 1993. *Statehouse Democracy Public Opinion and Policy in the American States*. Cambridge: Cambridge University Press.

Flemming, Roy B. and B. Dan Wood. 1997. "The Public and the Supreme Court: Individual Justice Responsiveness to American Policy Moods." *American Journal of Political Science* 41(2):468–98.

Friedman, Barry. 1998. "The History of the Countermajoritarian Difficulty, Part One: The Road to Judicial Supremacy." *New York University Law Review* 73:333.

Gelman, Andrew. 2008. "Scaling regression inputs by dividing by two standard deviations." *Statistics in Medicine* 27:286573.

Gelman, Andrew and Jennifer Hill. 2007. *Data Analysis Using Regression and Multilevel-Hierarchical Models*. Cambridge: Cambridge University Press.

Gelman, Andrew and Thomas C. Little. 1997. "Poststratification into Many Categories Using Hierarchical Logistic Regression." *Survey Methodology* 23(2):127–35.

Gibson, James L. and Gregory Caldeira. 2009. "Confirmation Politics and the Legitimacy of the U.S. Supreme Court: Institutional Loyalty, Positivity Bias, and the Alito Nomination." *American Journal of Political Science* 53(1):139–55.

Giles, Michael W., Bethany Blackstone and Jr. Vining, Richard L. 2008. "The Supreme Court in American Democracy: Unraveling the Linkages between PublicOpinion and Judicial Decision." *Journal of Politics* 70(2):293–306.

Gimpel, James G and Robin M. Wolpert. 1996. "Opinion Holding and Public Attitudes Toward Controversial Supreme Court Nominees." *Political Research Quarterly* 49(1):163–76.

Greenburg, Jan Crawford. 2007. *Supreme Conflict: The Inside Story of the Struggle for Control of the United States Supreme Court*. Penguin Books.

Hoekstra, Valeria J. 2000. "The Supreme Court and Local Public Opinion." *American Political Science Review* 94(1):89–100.

Jacobs, Lawrence R. and Robert Y. Shapiro. 2000. *Politicians Don't Pander: Political Manipulation and the Loss of Democratic Responsiveness*. Chicago, IL: University of Chicago Press.

Johnson, Timothy R. and Jason M. Roberts. 2004. "Presidential Capital and the Supreme Court Confirmation Process." *Journal of Politics* 66(3):663–83.

Lax, Jeffrey R. and Justin H. Phillips. 2009. "How Should We Estimate Public Opinion in the States?" *American Journal of Political Science* 53(1):107–21.

Maltese, John A. 1998. *The Selling of Supreme Court Nominees*. Johns Hopkins University.

Marcus, Ruth. 1987. "Growing Array of Groups Fights Bork Confirmation; Many Traditionally Neutral on Judgeships." *The Washington Post* September 25.

Mayhew, David. 1974. *Congress: The Electoral Connection*. New Haven: Yale University Press.

McGrory, Mary. 1992. "Thomas Fallout Begins Out of Chicago." *The Washington Post* March 29.

Miller, Warren E. and Donald E. Stokes. 1963. "Constituency influence in Congress." *American Political Science Review* 57(1):45–56.

Mishler, Mishler and Reginald S. Sheehan. 1993. "The Supreme Court as a Countermajoritarian Institution? The Impact of Public Opinion on Supreme Court Decisions." *American Political Science Review* 87(1):87–101.

Norpoth, Helmut, Jeffrey Segal, William Mishler and Reginald Sheehan. 1994. "Popular Influence on Supreme Court Decisions." *American Political Science Review* 88(3):711–24.

Overby, L. Marvin, Beth M. Henschen, Julie Strauss and Michael H. Walsh. 1994. "African-American Constituents and Supreme Court Nominees: An Examination of the Senate Confirmation of Thurgood Marshall." *Political Research Quarterly* 47(4):839–55.

Overby, L. Marvin, Beth M. Henschen, Michael H. Walsh and Julie Strauss. 1992. "Courting Constituents? An Analysis of the Senate Confirmation Vote on Justice Clarence Thomas." *American Political Science Review* 86(4):997–1003.

Park, David K., Andrew Gelman and Joseph Bafumi. 2006. *State Level Opinions from National Surveys: Poststratification using Multilevel Regression*. Vol. 12 Stanford University Press pp. 375–85.

Poole, Keith T. 1998. "Recovering a Basic Space from a Set of Issue Scales." *American Journal of Political Science* 42:954–93.

Segal, Jeffrey A. and Albert D. Cover. 1989. "Ideological Values and the Votes of U.S. Supreme Court Justices." *American Political Science Review* 83(2):557–65.

Segal, Jeffrey A., Albert D. Cover and Charles M. Cameron. 1988-1989. "The Role of Ideology in Senate Confirmation of Supreme Court Justices." *Kentucky Law Journal* 77:485–507.

Segal, Jeffrey A., Charles M. Cameron and Albert D. Cover. 1992. "A Spatial Model of Roll Call Voting: Senators, Constituents, Presidents and Interest Groups in Supreme Court Confirmations." *American Journal of Political Science* 36(1):96–121.

Shipan, Charles R. 2008. "Partisanship, Ideology and Senate Voting on Supreme Court Nominees." *Journal of Empirical Legal Studies* 5(1):55–76.

Songer, Donald R. 1979. "The Relevance of Policy Values for the Confirmation of Supreme Court Nominees." *Law & Society Review* 13:927–48.

Watson, George and John Stookey. 1995. *Shaping America: The Politics of Supreme Court Appointments*. New York: HarperCollins.

Wolpert, Robin M. and James G Gimpel. 1997. "Information, Recall, and Accountability: The Electorate's Reponse to the Clarence Thomas Nomination." *Legislative Sutides Quarterly* 22(4):535–50.

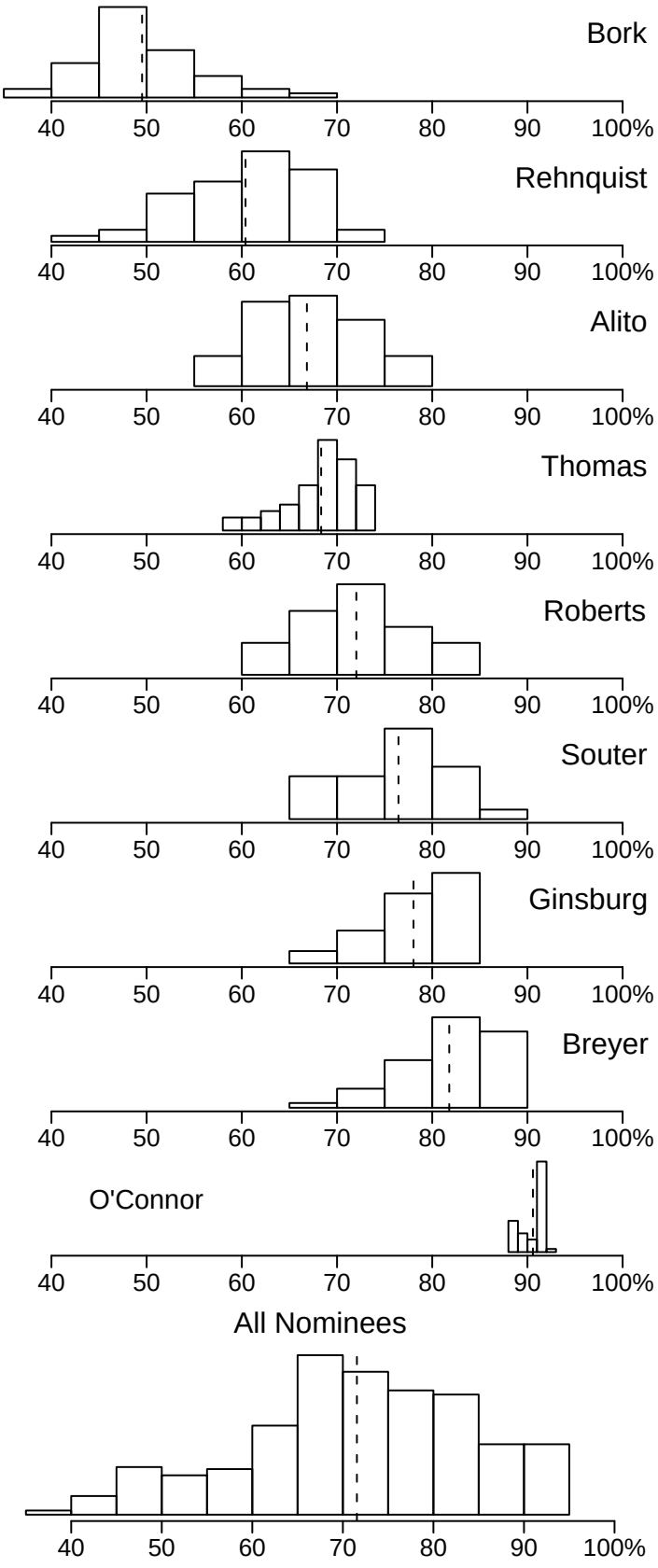

Figure 1: *The distribution of state public support, by nominee. The first nine histograms depict the distribution of state support for the given nominee, while the last histogram depicts the distribution for all nominees combined. The dashed vertical lines indicate mean levels of state support. Nominees are ordered by increasing mean support.*

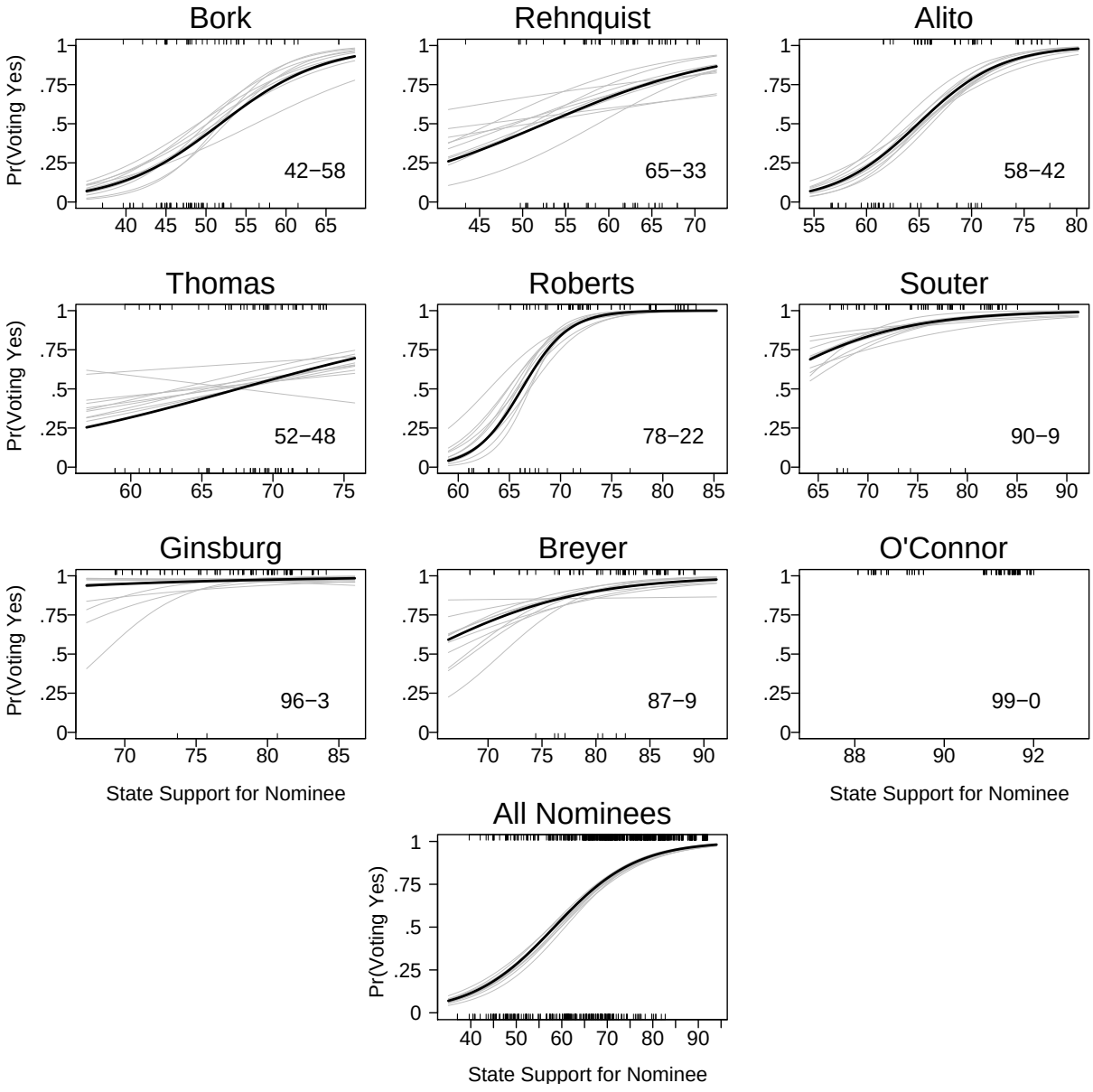

Figure 2: *Correlation between state opinion and roll call voting. For each nominee, the black line depicts the estimated logit curve from regressing senators' votes on state public opinion. Light grey lines depict uncertainty in the estimates, and are derived by simulating the curve based on the parameter estimates and standard errors from each logit. Hash marks indicate votes of approval ("1") and rejection ("0") of nominees, while the numbers in the right-hand corner of each plot denote the overall vote tally by the Senate. The bottom plot pools all nominees together.*

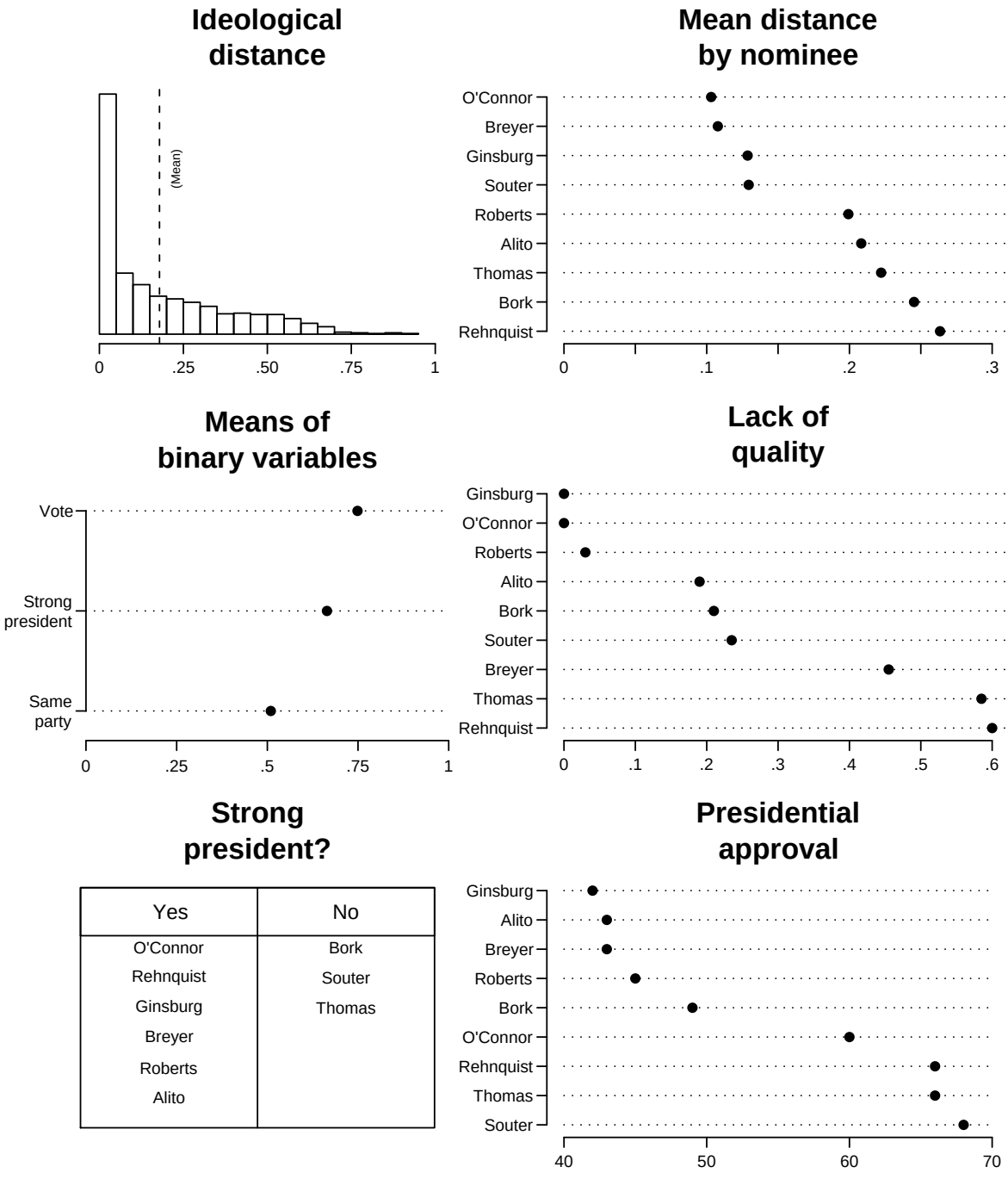

Figure 3: *Descriptive statistics*

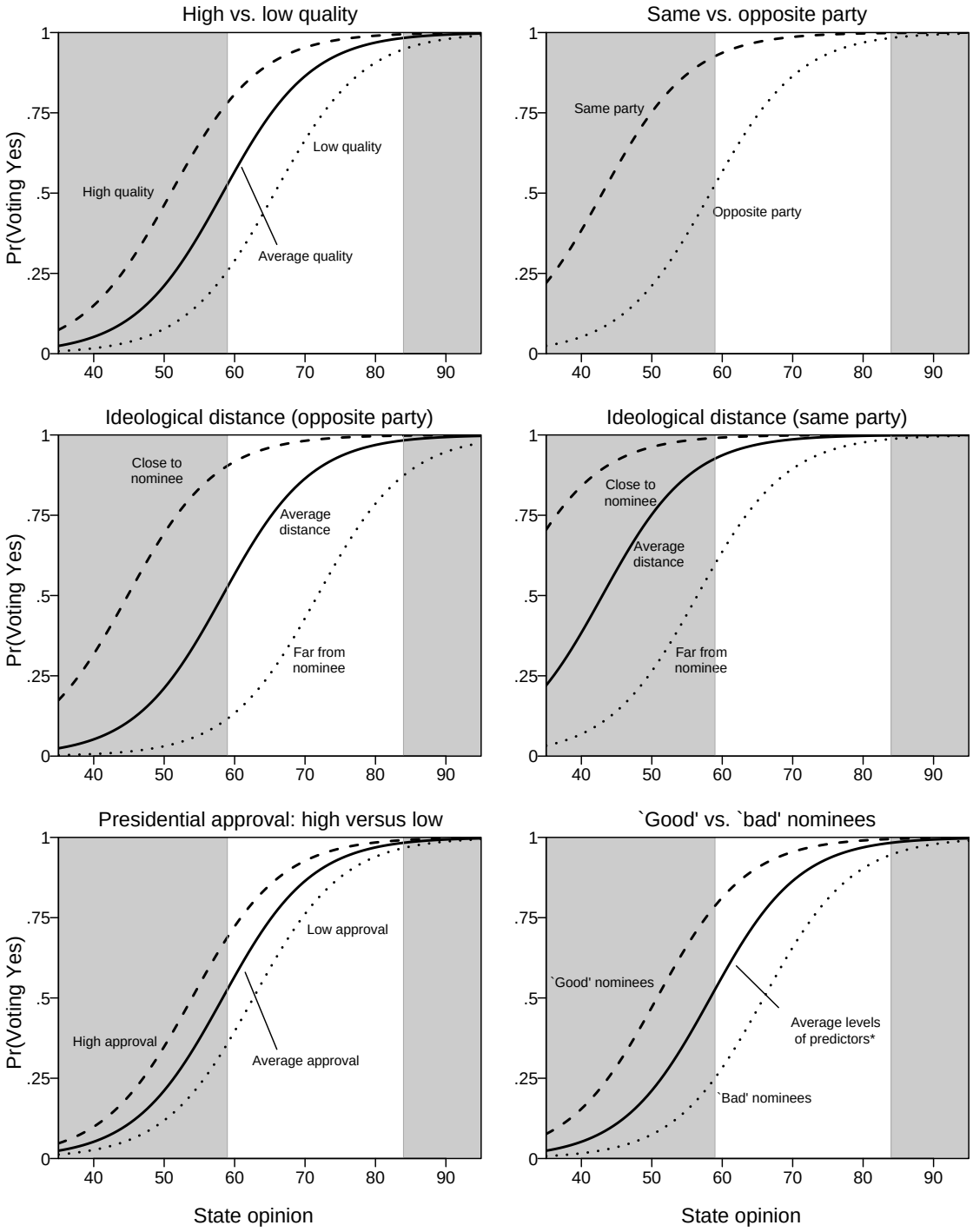

Figure 4: *The predicted effects of opinion on roll call voting.* Each panel shows the predicted probability of a senator voting yes on confirmation, across the range of state-level public opinion, for different levels of the other predictors. All predictions derived from Model 3 in Table 2. The default value of each continuous variable is its mean. "Low" values are one standard deviation below this; "high" values are one standard deviation above. We assume unless otherwise noted that the senator is of the opposite party, that the president is weak, and that the nominee is otherwise average (random effect set to zero). The non-shaded regions depict the range of public opinion between low opinion (one standard deviation below the mean) and high opinion (one standard deviation above)—that is, the range where most observations fall.

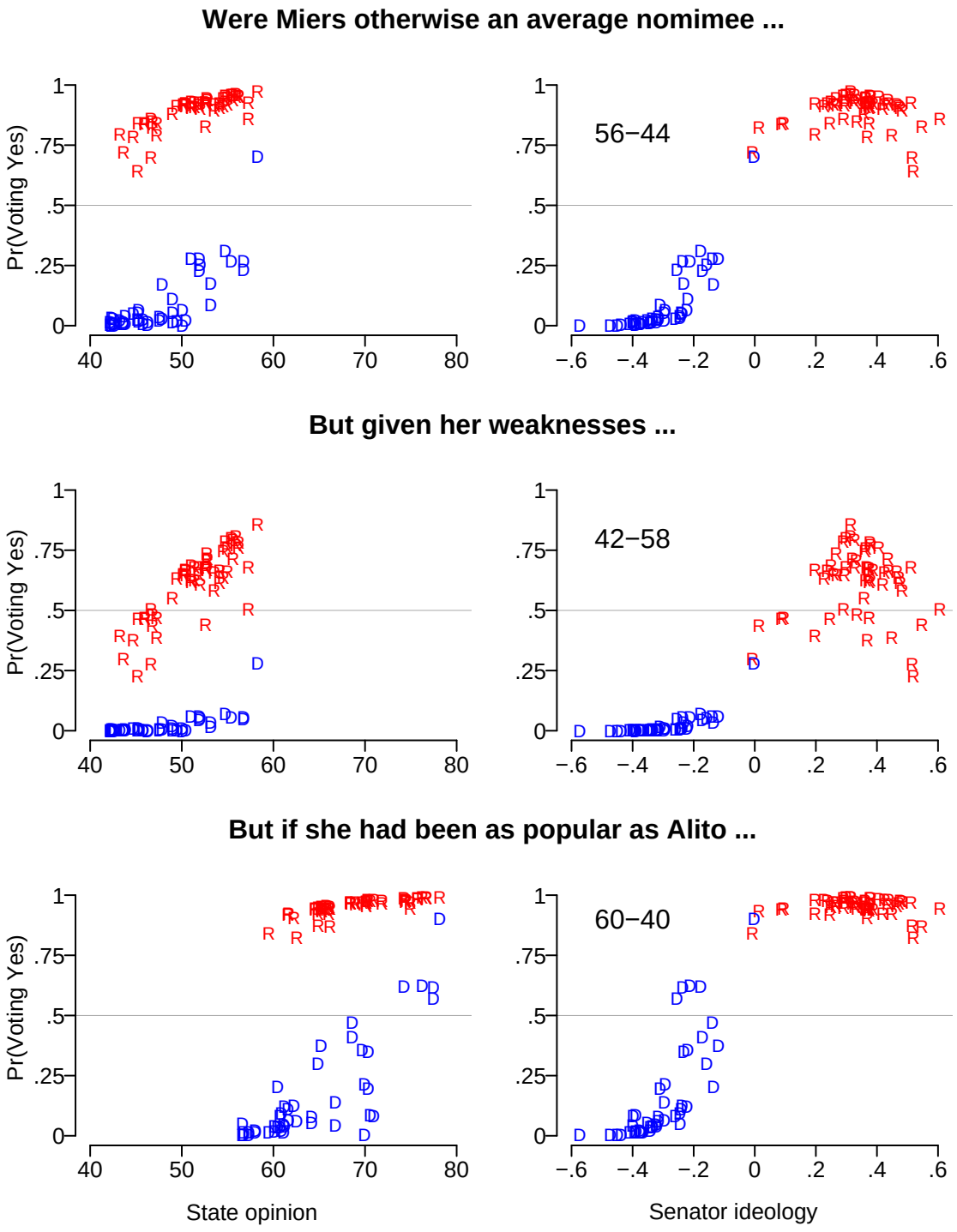

Figure 5: *Miers predictions. We predict votes for each senator on the Miers nomination under three scenarios (one in each row of panels). The panels on the left show the probability of a yes vote with senators plotted by public support for Miers in their home states. The panels on the right plot them by their Common Space ideology score. Republicans and Democrats are indicated with an R or a D, respectively.*

State	O'Connor	Rehnquist	Bork	Thomas	Souter	Ginsburg	Breyer	Roberts	Alito
Alaska	92	65	54	68	84	77	74	79	70
Alabama	88	61	49	70	81	69	78	76	70
Arkansas	88	63	52	69	79	72	88	74	69
Arizona	92	68	53	67	82	79	80	71	65
California	92	63	44	60	73	82	87	61	57
Colorado	92	65	50	62	77	79	83	70	63
Connecticut	92	50	47	69	72	82	85	67	61
Delaware	89	66	45	69	76	75	84	68	60
Florida	89	71	52	71	80	78	80	72	65
Georgia	89	62	45	72	75	71	81	72	66
Hawaii	92	62	44	59	68	80	86	67	60
Iowa	91	58	49	65	67	81	83	72	71
Idaho	92	69	61	68	85	77	73	82	74
Illinois	91	55	46	69	69	83	86	63	64
Indiana	91	59	54	74	78	79	77	77	74
Kansas	91	58	58	72	78	79	78	79	76
Kentucky	88	68	52	69	78	73	82	79	72
Louisiana	88	62	44	71	77	72	82	72	65
Massachusetts	92	51	40	65	67	81	89	62	57
Maryland	90	58	37	67	68	76	86	63	57
Maine	91	57	50	71	77	80	86	71	65
Michigan	91	55	49	71	69	84	84	68	67
Minnesota	91	50	53	71	74	80	85	71	71
Missouri	92	52	45	67	72	83	86	70	69
Mississippi	88	59	46	73	84	69	77	71	66
Montana	92	65	50	63	76	80	83	79	70
North Carolina	89	66	48	70	80	74	80	73	66
North Dakota	91	63	58	71	78	78	74	81	77
Nebraska	91	66	62	73	82	79	71	82	78
New Hampshire	92	59	55	73	82	81	82	73	66
New Jersey	91	53	45	70	80	81	83	66	61
New Mexico	91	62	48	62	76	80	85	65	62
Nevada	91	67	52	66	78	80	82	69	62
New York	91	43	40	68	69	83	88	61	58
Ohio	91	54	49	72	77	82	81	70	68
Oklahoma	89	70	60	69	83	76	76	82	75
Oregon	92	57	45	61	71	80	86	69	62
Pennsylvania	91	50	42	70	74	82	86	71	65
Rhode Island	91	50	41	65	66	84	89	64	59
South Carolina	88	65	48	74	82	70	77	73	66
South Dakota	91	61	57	70	75	78	79	79	76
Tennessee	89	63	48	70	83	71	83	75	68
Texas	89	67	51	69	77	74	78	76	70
Utah	92	62	67	72	89	76	68	82	77
Virginia	89	63	48	70	82	75	78	72	65
Vermont	92	55	48	68	72	82	88	66	61
Washington	92	60	45	61	74	80	86	67	61
Wisconsin	91	57	48	69	70	81	83	71	70
West Virginia	88	68	46	66	71	73	86	79	70
Wyoming	92	67	58	67	83	78	78	83	74

Table 1: *Estimates of state opinion, by nominee.*

	Logit		MLM			Justice Effects	
	(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(4)**	
Opinion	–	3.2*	3.8*	4.0*	3.9*	Rehnquist	2.0*
		(.4)	(.7)	(.7)	(.8)		(.4)
Lack of quality	-1.1*	-.9*	-1.4	-2.3*	-2.3*	Ginsburg	1.1
	(.3)	(.3)	(1.0)	-1.1	(1.1)		(.7)
Ideological distance	-4.7*	-3.6*	-4.3*	-4.2*	-4.3*	Roberts	.5
	(.4)	(.5)	(.6)	-0.6	(.6)		(.4)
Same Party	1.1*	2.5*	2.4*	2.4*	2.4*	O'Connor	.1
	(.4)	(.5)	(.6)	-0.6	(.6)		(1.1)
Strong president	1.5*	.9*	.8	–	–	Bork	-.3
	(.3)	(.3)	(1.0)				(.4)
Presidential approval	–	–	–	1.4	1.4	Breyer	-.4
				1.1	1.1		(.4)
Reelection	–	–	–		.2	Thomas	-.9
					(.4)		(.4)
Opinion × Reelection					.3	Souter	-1.0
					(.8)		(.4)
Intercept	.8*	1.1*	1.5	2.1*	1.5	Alito	-1.1*
	(.2)	(.3)	(.8)	-0.5	(.8)		(.5)
% Correctly Classified	91	92	93	94	93		
% Reduction in Error	63	68	73	74	74		
AIC	419	348	319	318	321		

Table 2: *Explaining roll call voting. The first two models are regular logistic regressions. The third, fourth and fifth are multilevel models with varying intercepts for each nominee. We present only the estimates of these intercepts for Model 4. For all models, * indicates* $p < .05$*. All continuous predictors in the models have been standardized by centering and dividing by two standard deviations—as a result, the coefficients for the continuous and binary predictors are comparable on roughly the same scale.*