

Public Opinion and Senate Confirmation of Supreme Court Nominees

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Does public opinion influence Supreme Court confirmation politics? We present the first direct evidence that state-level public opinion on whether a particular Supreme Court nominee should be confirmed affects the roll-call votes of senators. Using national polls and applying recent advances in opinion estimation, we produce state-of-the-art estimates of public support for the confirmation of 10 recent Supreme Court nominees in all 50 states. We find that greater home-state public support does significantly and strikingly increase the probability that a senator will vote to approve a nominee, even controlling for other predictors of roll-call voting. These results establish a systematic and powerful link between constituency opinion and voting on Supreme Court nominees. We connect this finding to larger debates on the role of majoritarianism and representation.

The judiciary is the branch of the federal government most insulated from public influence. Federal judges are unelected and have lifetime appointments. The justices of the Supreme Court 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. 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. But “too much” independence from the public can raise foundational concerns of counter-majoritarianism.

Scholars have long debated whether Supreme Court justices are influenced by public opinion (Flemming and Wood 1997; Giles, Blackstone, and Vining 2008; Hoekstra 2000; Mishler and Sheehan 1993; Norpoth et al. 1994;). Less noticed has been the possibility that the public might influence *who* sits on the Court in addition to *how* they vote. The decision to seat a justice is in the hands of the presidents and senators, but electoral incentives, particularly for senators, can tie the Court back to the public. Given these incentives, does the public indeed play a key role in confirmation politics? Or does a senator’s partisanship and ideology trump constituent preference?

Given the visibility of roll-call votes on Supreme Court nominees, and the stakes for controversial policies at the heart of recent elections, we expect reelection-minded senators to pay close attention to the views of their constituents. Whether they do so remains an open question. Twenty years ago, Caldeira (1988–89) urged an assessment of the role of “organized and unorganized” interests—including the public at large—in nomination and confirmation politics. Using various proxies for state public opinion, the few existing assessments of the public role have reached conflicting conclusions (cf. Segal, Cameron, and Cover (1992) with Caldeira and Wright (1998)). More recent work has studied the changing dynamics of nomination politics, setting aside any possible effects of public opinion.

In this paper, we use a direct measure of state-level public opinion to study whether senators are actually responsive to the views of their constituents on a particular nominee when casting their votes on the confirmation of that nominee. We begin by producing state-of-the-art estimates of the public’s support for each nominee in all 50 states. To do so, we make use of recent advances in multilevel modeling to generate highly accurate estimates from national polls asking about support for 10 recent Supreme Court nominees. These estimates of opinion

are a significant improvement over earlier measures: they can be generated for a broader range of nominations than was previously possible; they account for geographic variation among poll respondents; and they specifically capture state-level support for confirmation. Such estimates allow us to move beyond studying simple correlations between roll-call voting and more generic measures such as state demographic percentages or diffuse constituent ideology. As a result, these estimates have a big payoff: they allow us to present the first evidence that senators do respond to nominee-specific, state-specific support. No previous study has shown such a direct relationship. More broadly, we can study representation with more nuance than previously possible.

We find that greater home-state public support significantly and strikingly increases the probability that a senator will vote for confirmation, even controlling for other predictors of roll call voting: ideological distance between the senator and the nominee, the party of the senator, and the quality of the nominee. Public opinion, on average, matters more than any predictor other than the senator's own ideological differences with the nominee. The impact of opinion varies with context, with a greater effect on opposition party senators, on ideologically opposed senators, and for weak nominees. Thus, while public opinion matters a great deal, a senator retains some leeway when voting on nominees.

These findings speak to larger debates about representation and responsiveness in the U.S. Senate, such as the tradeoff between ideological representation and choice-specific public opinion; the balancing of a legislator's personal policy preferences with those of his or her constituents; and the degree of shirking in representative democracy.

Opinion, Representation, and Confirmation Votes

Three links in the chain are necessary for a meaningful connection between the public and who sits on the Court: knowledge, salience, and senatorial attention. First, does the public know enough to play a role in confirmation politics, particularly with respect to senatorial voting? It is commonly thought that the American public has only minimal knowledge of the Supreme Court (discussed in Caldeira and Wright 1998). We now know that this conclusion is overstated, if not simply incorrect. As Gibson and Caldeira (2009) show, the public's knowledge of the

Court is much more impressive than previously thought.¹

Of course, general knowledge might be less important than whether citizens pay attention to Supreme Court nominations—in fact, they do. By the time a nominee comes up for a vote, most Americans can say where they stand. For instance, in the periods around Justice Thomas's and Justice Alito's confirmations, 95% and 88%, respectively, held an opinion about confirming them (Gibson and Caldeira 2009; Gimpel and Wolpert 1996).

The second link is salience—if the public did not care about confirmation votes, then lawmakers might not pay attention to their constituents' views. However, many Americans do care about such votes (Hutchings 2001). For example, during the Alito nomination, 75% of Americans thought it important that their senators vote “correctly” (Gibson and Caldeira 2009). History contains ominous warnings for senators who ignore such concerns. Despite being virtually unknown, Carol Moseley Braun defeated incumbent Senator Alan Dixon in the Illinois Democratic primary, principally campaigning against his vote to confirm Clarence Thomas (McGrory 1992). Using 1992 Senate election data, Wolpert and Gimpel (1997) showed that many voters nationwide factored their senator's confirmation vote into their own vote choice. Such findings suggest that Americans know far more about the Court, pay far more attention to confirmation politics, and hold their senators far more accountable for confirmation votes than has often been assumed.

Finally, do senators, in turn, monitor the public's pulse? Theories of legislator responsiveness to constituent opinion would suggest that the answer is “yes.” 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 (Mayhew 1974). Although six-year terms provide senators with greater insulation than representatives, a reelection-minded senator will constantly consider how his votes, particularly highly visible ones, may affect approval back home (Arnold 1990).² While the outcomes of

¹For example, the authors demonstrate that the National Election Study's standard question asking respondents to identify the Chief Justice—“What about ‘John Roberts’: What job or political office does he now hold?”—systematically understates actual knowledge about the Supreme Court. Their findings add to a growing literature arguing that specific recall questions are not the key to understanding citizen informational capacity.

²We use “she” to denote justices and “he” to denote senators throughout the paper.

many Senate votes, such as spending bills or the modification of a statute, are ambiguous or obscured in procedural detail, the result of a 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. In this process, note Watson and Stookey, "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" (1995, 19).

Accordingly, a vote on a Supreme Court nominee presents a situation in which a senator is likely to consider constituent views very carefully. Cameron, Cover, and Segal set forth this logic nicely:

[W]e imagine senators asking themselves, "Can I use my actions during the confirmation process to gain electoral advantage? ... [C]an 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. (1990, 527)

Electoral gains or losses may not manifest immediately. 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 17 years earlier (Babington 2004).

Senators' concerns about mass public opinion on Supreme Court nominees arose following the shift to direct election of senators in 1914, and the subsequent increase in the transparency of the confirmation process. Just two years later, following the first public hearings during a Supreme Court confirmation, public support of Louis Brandeis helped blunt Republican opposition to his nomination, easing his path to the bench (Maltese 1998, 51). 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). President Hoover's next nominee would not fare so well—it is thought that strong opposition to John Parker among the African American community led several Republican senators to vote against a nominee of their own party, ensuring his narrow defeat on the Senate floor.

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 communication such as phone calls and letter writing.³ 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 voting on a Supreme Court nominee.

Given this, it is no surprise that presidents often "go public" in the hope of shifting public opinion on their nominees (Johnson and Roberts 2004). For example, 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). Indeed, Gibson and Caldeira argue that "one of the crucial elements in confirmation strategies concerns how public opinion will be managed and manipulated" (2009, 1).

Measuring Constituency Opinion: Previous Research

Analysis of roll-call votes on Supreme Court nominees (e.g., Segal, Cover and Cameron 1988–89; Songer 1979) has proceeded along two overlapping tracks. The first follows from the pioneering work of Cameron, Cover, and Segal (1990), finding that roll-call voting was affected mainly by nominee quality and the 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; otherwise, the probability of approval drops rapidly. Partisanship and the political environment are also important: all else equal, senators tend to approve nominees of a president of the same party and of 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 and the number of nominations evaluated, Epstein et al. (2006) and Shipan (2008) agreed that this model accurately captures roll-call voting, but added that the influence of both ideological distance and partisanship seems to have grown over time.

³See, e.g., Marcus (1987) and Clymer (1991) for accounts of the intensity of letter writing during the Bork and Thomas nominations, respectively.

The second track incorporates constituency preferences and lobbying interests. Doing so, however, involves several methodological challenges, especially with respect to measuring constituency preferences. These challenges arise from a harsh constraint—the lack of sufficient and comparable *state-level* polling samples for nominees. Scholars have therefore pursued several alternatives to “direct” estimates of state-level opinion. The most ambitious attempt to measure constituency opinion is that of Segal, Cameron, and Cover (1992, 109), 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. Then, 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.” Interest group activity—measured at the nominee-level rather than the senator-level—also affected votes. The linkage between constituency ideology and senators’ votes was robust to the inclusion of such effects.

To be sure, this method of estimating constituency ideology is innovative. There are, however, drawbacks. First, the measure constitutes a broad evaluation of state ideology—not opinion on the nominee specifically or even nominations in general. Moreover, because the predictions are generated using only a few presidential elections, the state estimates are static in many periods, meaning that the estimates for all nominees in a given period will be the same (and indeed the same for “opinion” on any other issue). For example, the estimates of constituent position on Harry Blackmun and Clement Haynsworth are the same, despite their vastly different profiles. Lastly, because constituency ideology is estimated from voting scores, untangling the influence of senator ideology and constituent pressure requires extreme confidence in our ability to accurately place them on the same scale.

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 potentially quite limited (Erikson, Wright, and McIver 1993, 92). Even if votes and state ideology are highly correlated, we cannot tell if vote choice is over- or underresponsive to opinion itself, or if vote choice is biased for or against the nominee. That is,

we can only tell whether more liberal (conservative) constituents lead to more liberal (conservative) votes; we cannot tell whether confirmation votes are the precise votes desired by constituents.

A more contextual proxy for constituent opinion is employed by Overby et al. (1992; 1994), to study Thurgood Marshall and Clarence Thomas. As the percentage of blacks in a senator’s home state increased, he was less likely to support Marshall, but more likely to support Thomas. They attributed this 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 opposition by most other Democratic senators. While these studies do suggest that senators are mindful of their constituents, this approach is difficult to generalize and relies on the assumptions stated. (It also suffers from the correlation problem discussed above.)

These problems show how important it is to have nominee-specific opinion measures. The most recent attempt to estimate constituency opinion—and the one that most resembles the method we use—is Caldeira and Wright (1998), which did create nominee-specific measures (for the Bork, Thomas, and Souter nominations). The authors gathered national polls 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 between their method and MRP.) They then used the mean level of these variables (race, etc.) by state, combined with the parameter estimates from the response models, to generate state-level estimates of opinion. Conducting separate models of confirmation voting on the three nominees, they found that state opinion did *not* have a statistically significant effect on senators’ roll call vote. (Nor did senator ideology, in contrast to earlier work; on the other hand, lobbying for and against a nominee, measured at the senator level, did matter).

We explain more thoroughly below, but we briefly note two limitations of the approach above, which might explain negative findings. First, it takes into account only demographic variation between respondents, and not geographic variation, which can be much larger (Erikson, Wright, and McIver 1993). 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. True frequencies require the full set of cross-tabulations, and not just aggregate percentages (e.g., knowing how many black women there are, not just how many blacks and how many women). Fortunately, given recent advances in estimating state-level opinion from national poll data, it is now possible (as it was not when the studies above were performed) to overcome both of these limitations, while improving accuracy in other ways. And, crucially, we show that these improved measures yield a different finding than this previous work.

Data and Methods

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. Unfortunately, given the relative paucity of polls on Supreme Court nominations, there are simply not enough respondents in many states to generate reliable estimates of public opinion using disaggregation.⁴

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, and rigorous assessments of MRP demonstrate that it performs very well (Gelman and Little 1997; Lax and Phillips 2009a; 2009b; Park, Gelman, and Bafumi 2006). It outperforms disaggregation, even for very large samples, and it yields results similar to actual state polls. A single national poll and simple demographic-geographic models (simpler than we use herein) can suffice for MRP to produce highly accurate and reliable state-level opinion estimates (Lax and Phillips 2009b).

⁴Consider the eight polls on John Roberts, the nominee with the largest number of polls. In 15 states there were fewer than 50 total respondents per state (e.g., there were only nine from Wyoming). The problem is even more severe for other nominees.

There are two stages to MRP. In the first stage, individual survey response is modeled as a function of demographic and geographic predictors, with individual responses nested within states nested within regions, and also nested within demographic groups. 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.

The second stage is poststratification: the estimates for each demographic-geographic respondent type are weighted (poststratified) by the percentages of each type in actual state populations, so that we can estimate the percentage of respondents within each state who have a particular issue position. In short, MRP improves upon simpler breakdowns of opinion by state by not throwing away information about demographic and geographic correlations in the response data, and by using highly accurate weighting data.

To produce estimates for as many nominees as possible, we searched the Roper Center’s *iPoll* archive. Not until recently were polls systematically conducted on Supreme Court nominees. We found sufficient polling data for 10 nominees: O’Connor, Rehnquist (for Chief Justice), Bork, Souter, Thomas, Ginsburg, Breyer, Roberts, Alito, and Miers. Of these, all but Miers received a vote on the floor of the Senate. For nominees who featured in only a handful of polls, we gathered every poll containing sufficient demographic and geographic information on individual respondents. For nominees with a large number of such polls, we only used the polls closest to their confirmation vote. For Clarence Thomas, 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 stood at the time a senator cast his vote.⁵

For each nominee (separately), we then model survey response, specifically a multilevel logistic regression model, estimated using the GLMER

⁵A complete list of polls and question wordings can be found on this article’s replication website.

function (“generalized linear mixed effects”) in R (Bates 2005). For data with hierarchical structure (e.g., individuals within states), multilevel modeling is generally an improvement over classical regression. Rather than using “fixed” (“unmodeled”) effects, the model uses “random” (“modeled”) effects, for some predictors. These modeled effects (e.g., state 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 (this is equivalent to assuming errors are correlated within a grouping structure; Gelman and Hill 2007, 244–65). The degree of pooling within the grouping emerges from the data endogenously. They can be modeled not only in terms of this “shrinkage” (the assumption that they are drawn from some common distribution) but also by including group-level (e.g., state-level) predictors.

We model response as a function of six race and gender types (males and females broken down into black, Hispanic, or white/other); one of four age groups (18–29, 30–44, 45–64, and 65+); one of four education groups (less than a high school education, high school graduate, some college, and college graduate); 16 groups capturing the interaction between age and education; state-level ideology (updated from Erikson, Wright, and McIver 1993); poll; state; and region (Washington, D.C., as a separate “state” and separate region, along with Northeast, Midwest, South, and West).⁶ These are standard opinion predictors and are employed widely (see, e.g., Gimpel and Wolpert 1996).

We start by coding explicit support for the nominee ($y_i^{\text{yes}} = 1$) against other responses ($y_i^{\text{yes}} = 0$ for an explicit negative response, “don’t know,” or “refused”). This captures explicit positive support among all respondents, not simply those expressing an opinion. For individual i , with indexes r, k, l, m, s , and p for race-gender combination, age category, education category, region, state, and poll, respectively, we estimate the following model:

$$\Pr(y_i^{\text{yes}} = 1) = \text{logit}^{-1}(\beta^0 + \alpha_{r[l]}^{\text{race.gender}} + \alpha_{k[l]}^{\text{age}} + \alpha_{l[l]}^{\text{edu}} + \alpha_{k[l],l[l]}^{\text{age.edu}} + \alpha_{s[l]}^{\text{state}} + \alpha_{p[l]}^{\text{poll}}) \quad (1)$$

The terms after the intercept are modeled effects for the various groups of respondents (modeled as drawn from a normal distribution with mean zero and endogenous variance):

$$\begin{aligned} \alpha_r^{\text{race.gender}} &\sim N(0, \sigma_{\text{race.gender}}^2), \text{ for } r = 1, \dots, 6 \\ \alpha_p^{\text{poll}} &\sim N(0, \sigma_{\text{poll}}^2), \text{ for } p = 1, \dots \\ \alpha_k^{\text{age}} &\sim N(0, \sigma_{\text{age}}^2), \text{ for } k = 1, \dots, 4 \\ \alpha_l^{\text{edu}} &\sim N(0, \sigma_{\text{edu}}^2), \text{ for } l = 1, \dots, 4 \\ \alpha_l^{\text{age.edu}} &\sim N(0, \sigma_{\text{age.edu}}^2), \text{ for } k = 1, \dots, 4 \text{ and} \\ & \quad l = 1, \dots, 16 \end{aligned}$$

The state effects are modeled as a function of the region into which the state falls, percent religious conservative, and state-level ideology; and the region effects are modeled as drawn from a normal distribution with mean zero and endogenous variance:

$$\begin{aligned} \alpha_s^{\text{state}} &\sim N(\alpha_{m[s]}^{\text{region}} + \beta^{\text{relig}} \cdot \text{relig}_s \\ & \quad + \beta^{\text{state.ideo}} \cdot \text{state.ideo}_s, \sigma_{\text{state}}^2), \text{ for} \\ & \quad s = 1, \dots, 51 \\ \alpha_m^{\text{region}} &\sim N(0, \sigma_{\text{region}}^2), \text{ for } m = 1, \dots, 5 \end{aligned}$$

In the second stage, we use the coefficients that result from this estimation to calculate predicted probabilities of nominee support for each demographic-geographic type. There are 4,896 combinations of demographic and state values (96 within each state). Let j denote a cell from the set of demographic-geographic types. For any j , the results above allow us to make a prediction of pro-nominee support, $\hat{\theta}_j$, which is simply the predicted probability given by the results from equation (1). We next poststratify according to population frequencies derived from the “5-Percent Public Use Microdata Sample” in the Census.⁷ 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 nominee, aggregating over each cell j in state s . Let $\hat{\gamma}$ denote an estimate of nominee support in a given state s . Then, $\hat{\gamma}_s = \frac{\sum_{j \in s} N_j \hat{\theta}_j}{\sum_{j \in s} N_j}$.

We next code explicit disapproval of the nominee ($y_i^{\text{no}} = 1$) against other responses ($y_i^{\text{no}} = 0$ for a positive response, “don’t know,” or “refused”), repeating the process above. We then have estimates, for each state, of the probability of an explicit yes *and* of an explicit no—with the remainder being the “don’t know,” or “refused” category. We can then calculate the percentage of those in each state that say

⁶Estimates are highly robust to variations in this specification.

⁷For nominees whose nominations do not fall on Census years and occurred before 2000, we weight the Census data to reflect the results from the two closest decennials. For nominations after 2000, we use the 2000 census.

yes of those with an opinion (the first category divided by the sum of the first two).⁸ Throughout the rest of the paper, we focus on the level of support among opinion holders, but the results we present below are robust to using overall opinion.

Visualizing State-Level Opinion

We explore the resulting estimates of state-level opinion in Figure 1. The left plot depicts the support for each nominee in each state (the full list of opinion estimates is given in Table 1). The lighter colors indicate lower support; darker colors indicate greater support. States are ordered by overall liberalism, with more liberal states towards the top of the y-axis. Within each plot, separating Democratic and Republican nominees, nominees are ordered left to right from lower mean support to higher mean support. We can see a relationship between state ideology and support for confirmation, since the bars tend to darken moving downwards (for Republican nominees). Ideology, however, does not fully explain support for confirmation, or the grayscale would darken smoothly from top to bottom. Still, and not surprisingly, citizens in more liberal states are more likely to support Democratic appointees and oppose Republican appointees, and vice versa.

The right plot in Figure 1 depicts the distributions of estimated state support for each nominee. The vertical dashed lines show mean support for each nominee. Bork and Miers were the two most unpopular nominees, on average, while Souter, O'Connor, Ginsburg, and Breyer enjoyed widespread support. O'Connor, for example, had roughly 90% support across the board. Bork was the only nominee for whom the balance of public opinion in a significant number of states was opposed to his nomination. 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 estimated state support for several nominees.

⁸Dropping those without an opinion would eliminate randomness within type. To accurately capture support among those with an opinion, we must run two separate models. While the predictors we use vary slightly across nominees depending on the information available in the survey data, each model takes roughly the form above. The results of Lax and Phillips (2009b) suggest that such minor variations are irrelevant. The goal is the best predictive model possible. To compare effects of predictors across nominees, we would use the same predictors in each model. Model details are available upon request.

Roll-Call Voting and State-Level Opinion

We now examine the relationship between our estimates of public opinion and voting on nominees. This analysis excludes Harriet Miers, since her nomination was withdrawn before she received a Senate vote (we return to her nomination below, however). The remaining nine nominees in our sample were each voted on by the full Senate, for a total of 891 confirmation votes (nine senators abstained, in total), 75% of which were to approve the nominee.⁹ We begin our analysis by studying the bivariate relationship between estimated public opinion and voting. For each nominee, the lines in Figure 2 present the estimated logit curves from a logistic regression of roll-call votes on state public opinion. The last plot shows the logit curve from pooling all nominees. The hash marks at the top and bottom of each panel depict state opinion for “yes” and “no” votes, respectively. The correlation is strong: as a senator’s constituents become more supportive of a nominee, he is more likely to vote affirmatively. For the more controversial nominees, the relationship between voting and opinion is stronger, with variation across nominees. The slope of the curve is most steep for the Roberts vote.

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. We build on existing studies, which model voting on Supreme Court nominees 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 is lower for low quality nominees, especially for nominees who are ideologically distant. Senators are also more likely to support nominees appointed by presidents of the same party, and by presidents with greater popular support. With this in mind, we use the predictors below.

- *Lack of quality*: The degree to which a nominee is unqualified to join the Court (according to an ideologically balanced set of newspaper editorials (Cameron, Cover, and Segal 1990)). It ranges from 0 (most qualified) to 1 (least).
- *Ideological distance*: The ideological distance between the senator and nominee, measured using an institutional bridging technique between Common

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

FIGURE 1 (a) *Support for nominees, by state.* Every state-nominee block depicts the level of support among opinion holders in the respective group, with lighter colors indicating lower support and darker colors indicating greater support. The states are ordered by overall liberalism, with more liberal states towards the top of the y-axis and more conservative states towards the bottom. Within each plot, nominees are ordered left to right from lower mean support to higher mean support, except for clarity we offset the two Democratic nominees (Ginsburg and Breyer) from the seven Republican nominees. (b) *The distribution of nominee support.* Nominees are ordered by party and then increasing mean support. The dashed vertical line depicts mean support.

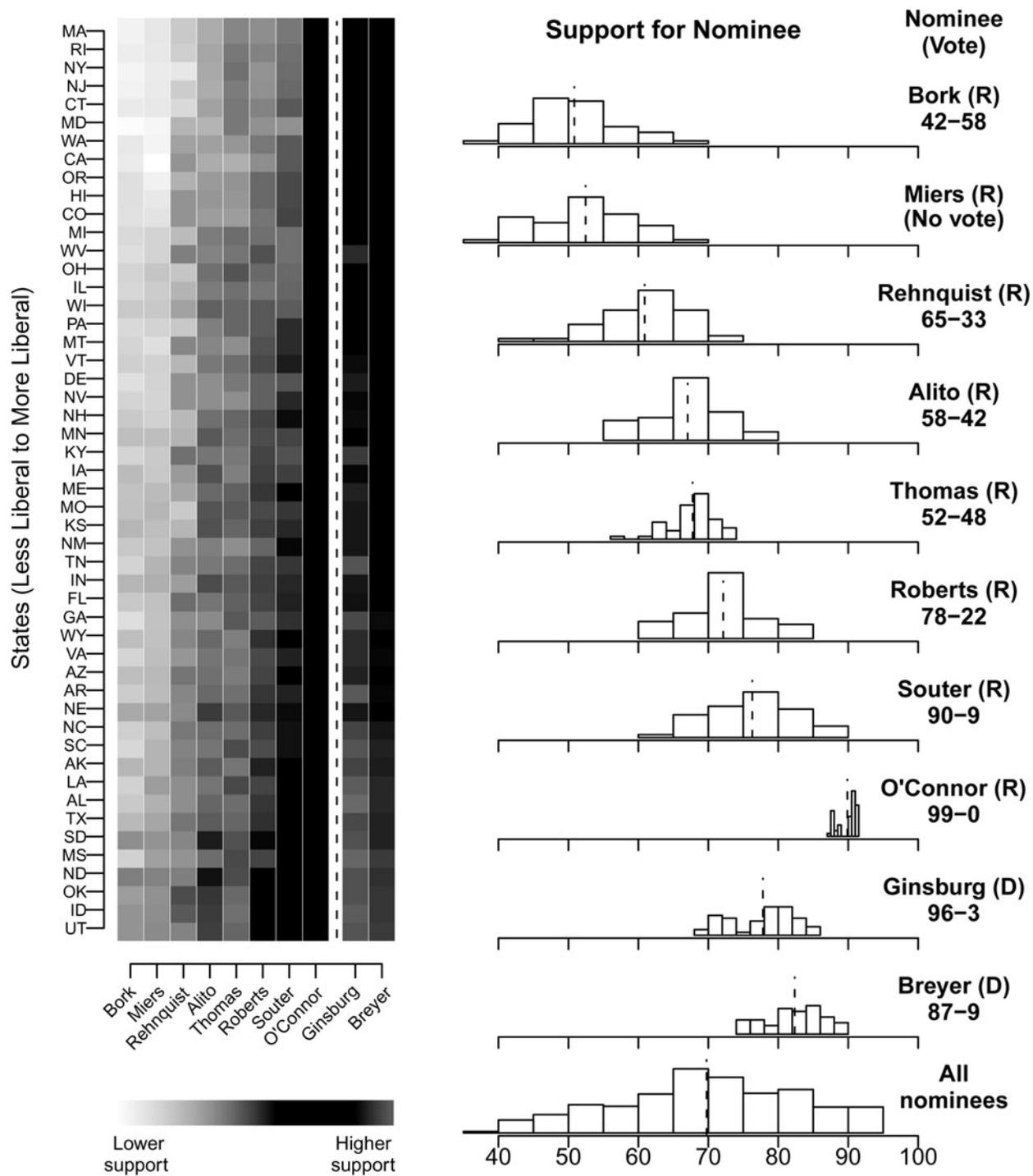
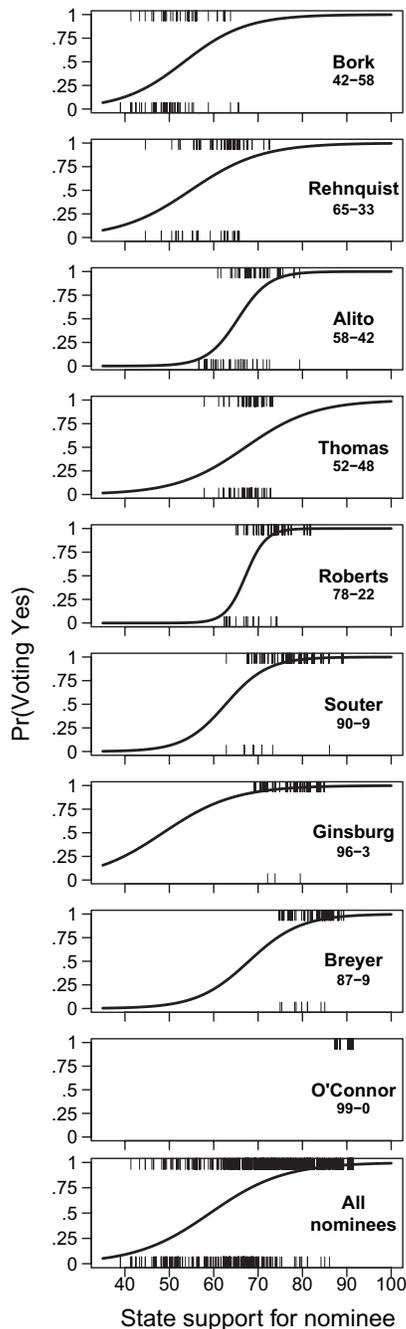


TABLE 1 Estimates of state support among opinion holders, by nominee

State	O'Connor	Rehnquist	Bork	Souter	Thomas	Ginsburg	Breyer	Roberts	Alito	Miers
Alabama	88	64	52	81	68	69	77	76	69	57
Alaska	91	66	56	85	67	74	78	77	70	56
Arizona	91	67	54	83	66	77	81	74	68	56
Arkansas	88	64	51	77	68	71	80	75	69	55
California	91	62	43	71	58	83	87	63	58	38
Colorado	91	63	46	74	61	81	86	67	61	45
Connecticut	91	48	44	71	67	84	88	65	60	44
D.C.	90	28	15	31	62	92	93	31	30	23
Delaware	89	63	46	71	67	78	84	70	64	49
Florida	89	69	52	78	70	79	82	74	67	54
Georgia	88	63	47	76	71	73	80	71	64	53
Hawaii	91	62	47	73	62	81	86	69	62	44
Idaho	91	71	63	89	68	71	75	82	75	64
Illinois	90	56	49	70	68	83	85	67	66	51
Indiana	90	61	56	77	71	78	81	74	73	57
Iowa	91	62	55	74	66	80	83	74	72	52
Kansas	91	56	56	77	70	79	82	74	72	54
Kentucky	88	68	49	72	67	75	83	74	67	52
Louisiana	88	64	50	81	73	70	77	74	68	61
Maine	91	59	54	81	70	77	83	76	69	55
Maryland	89	56	39	63	67	81	86	63	57	40
Massachusetts	91	52	41	67	65	83	89	64	58	45
Michigan	90	55	48	68	68	85	85	68	66	50
Minnesota	91	57	54	74	68	82	83	73	71	54
Mississippi	87	63	50	82	73	69	75	74	68	61
Missouri	90	52	54	76	71	79	82	73	71	56
Montana	91	65	49	76	63	81	85	72	65	46
Nebraska	91	64	59	80	71	78	81	77	75	60
Nevada	91	63	49	77	64	80	84	70	64	49
New Hampshire	91	56	52	80	69	80	84	74	68	50
New Jersey	91	51	42	69	66	84	88	63	58	44
New Mexico	91	63	52	80	64	78	82	70	66	53
New York	91	45	41	69	68	84	88	62	59	43
North Carolina	88	67	51	79	68	74	79	75	68	54
North Dakota	91	66	66	86	73	72	76	82	79	65
Ohio	90	53	49	69	71	84	84	69	68	53
Oklahoma	88	73	61	86	69	72	75	82	76	63
Oregon	91	57	46	73	62	81	86	69	62	42
Pennsylvania	90	52	48	77	70	81	85	71	66	50
Rhode Island	90	51	42	68	67	85	89	65	59	44
South Carolina	88	65	49	79	73	71	78	73	67	56
South Dakota	91	65	64	84	72	72	77	80	78	62
Tennessee	88	65	50	75	69	72	81	74	67	56
Texas	89	68	55	82	70	73	77	76	71	60
Utah	91	65	62	89	69	71	75	81	74	64
Vermont	91	56	51	78	69	80	85	73	67	50
Virginia	88	62	49	77	67	77	80	73	67	55
Washington	91	60	45	71	62	82	87	67	60	41
West Virginia	88	66	47	68	68	76	86	72	65	50
Wisconsin	91	60	52	70	69	82	85	71	70	52
Wyoming	91	65	54	82	65	77	81	76	69	54

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. 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.



Space scores (Poole 1998) and Segal-Cover nominee-ideology scores (Segal and Cover 1989).

- *Same party*: Coded 1 if the senator is a copartisan of the president.
- *Presidential capital*: We use two measures to capture presidential capital. The first, "strong president," is coded 1 if the president was not in his fourth year of office *and* his party controlled the Senate at the time (Cameron, Cover, and Segal 1990). The second is public approval of the president, using the last Gallup poll preceding the vote.¹⁰
- *State voter ideology*: We control for the possibility that senators respond to diffuse state-level ideology (rather than nominee-specific opinion) by including updated scores created by Erikson, Wright, and McIver (1993). We recode this variable to match whether nominees are liberal or conservative (i.e., nominated by Democratic or Republican presidents, respectively), such that higher values indicate greater ideological support for the nominee. Higher values should increase the probability that the senator votes to confirm a nominee.

Our key expectation is that constituent opinion will play a strong role in driving the votes of senators. Of course, we still expect that the other variables noted above will continue to have an independent contribution to explaining senator votes on nominees. For all the models we present, the continuous predictors 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 a continuous predictor covers two standard deviations of that predictor. Such linear transformations cannot affect statistical significance; rather, they make it easier to compare relative magnitudes across predictors.

Results

Before turning to our full regression analyses, we document the basic relationships between votes, opinion, partisanship, and ideological distance. Figure 3 depicts state-level support on the x-axis and ideological distance on the y-axis; the open circles denote

¹⁰Fine-grained measures of presidential capital might be preferable for some research questions (Johnson and Roberts 2004). However, because we are evaluating only nine nominees selected by only four presidents, our ability to gain leverage on the dynamics of presidential capital are greatly limited.

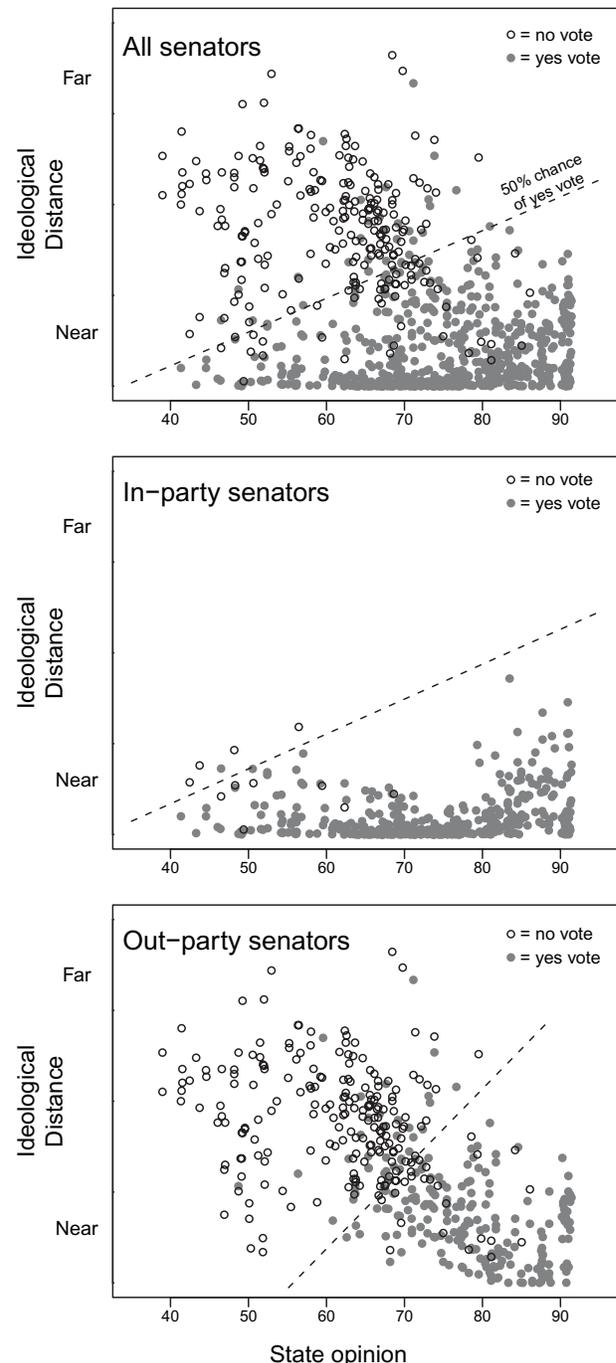
“no” votes, while the dark circles denote “yes” votes. From the top panel, which depicts this information for all senators, it is evident that few senators vote against nominees who have a high degree of public support. For nominees with less public support, senators are likely to vote “yes” if the nominee is ideologically close to him. By contrast, senators facing a nominee who is less popular in his state and is ideologically distant from him will usually vote against confirmation. “Yes” votes and “no” votes can be roughly divided by a diagonal cut-line: the dashed line in each plot is the estimated cut-line, based on a simple logistic regression invoking distance and opinion as predictors, showing where the estimated probability of a positive confirmation vote is 50%.

How does partisanship affect these relationships? The second panel in Figure 3 depicts only senators of the president’s party. As the graph makes clear, “no” votes by in-party senators are very rare, but are undertaken only when the nominee is relatively unpopular in his state. Senators from the opposition party almost always reject unpopular nominees. For moderately to highly popular nominees, ideological distance is crucial: more moderate members of the opposition party do support nominees with moderate support, while more ideologically distant members often vote “no.”

We now turn to more complete models of the probability that a senator will vote to confirm a nominee. The first five models in Table 2 are regular logit models. Models 6–10 are parallel regressions (i.e., Model 6 contains the same predictors as Model 1, etc.) using multilevel modeling, accounting for the grouping of votes by nominee (i.e. random effects), assumed to be drawn from a normal distribution with mean zero and endogenous variance estimated. These intercept shifts capture average variation across nominees not captured by the other predictors.¹¹ Models 1 and 6 replicate the logit model in Epstein et al. (2006) for our subset of nominees (we successfully replicated it for all the nominees they evaluated). The remaining models bring in state-level opinion and use various specifications.

The coefficient on *Opinion* is statistically significant and of a sizeable magnitude in every model. These results demonstrate that public opinion has a robust influence on Supreme Court confirmation politics—as state support for a nominee increases, senators are more likely to vote for the nominee, even

FIGURE 3 *Public opinion, ideological distance, partisanship, and roll call voting on Supreme Court nominees.* The open circles denote “no” votes, while the closed circles denote “yes” votes. The dashed line shows an estimated cut-line between “yes” and “no” votes (based on a logistic regression using just distance and opinion as predictors).



¹¹We checked that no single nomination drives our results by running Models 8 and 9 nine times, leaving out each nominee in turn. The coefficient on *Opinion* remained substantively and statistically similar.

TABLE 2 *Explaining roll call voting.* The first set of models are regular logistic regressions. The second set are corresponding multilevel models, with intercepts varying by nominee. For all models, * indicates $p < .05$ (one-tailed tests). 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. A one-unit increase in a standardized predictor captures a two-standard deviation increase in the underlying variable. AIC denotes the Akaike Information Criterion, with lower values denoting improved model fit, taking into account the number of predictors. $N = 891$ for all models.

	Logit					MLM				
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Opinion	–	3.3*	3.8*	3.0*	3.0*	–	4.1*	4.3*	3.1*	3.1*
		(.5)	(.5)	(.5)	(.6)		(.8)	(.8)	(.7)	(.8)
State voter ideology	–	–	–	.6*	.6*	–	–	–	.7*	.7*
				(.3)	(.3)				(.4)	(.4)
Lack of quality	–1.1*	–.9*	–2.1*	–3.0*	–3.0*	–1.8	–1.4	–2.5*	–3.2*	–3.2*
	(.3)	(.3)	(.4)	(.5)	(.5)	(1.2)	(1.0)	(1.2)	(.8)	(.8)
Ideological distance	–4.7*	–3.5*	–3.1*	–4.0*	–4.0*	–4.9*	–4.2*	–4.1*	–4.1*	–4.1*
	(.4)	(.5)	(.5)	(.5)	(.5)	(.5)	(.6)	(.6)	(.6)	(.6)
Same Party	1.1*	2.5*	3.0*	2.9*	2.9*	1.8*	2.5*	2.6*	2.7*	2.8*
	(.4)	(.6)	(.6)	(.6)	(.6)	(.5)	(.6)	(.6)	(.6)	(.6)
Strong president	1.5*	.7*	–	2.4*	2.5*	2.1*	.6	–	2.5*	2.5*
	(.3)	(.3)		(.5)	(.5)	(1.2)	(1.1)		(.8)	(.8)
Presidential approval	–	–	1.5*	3.1*	3.1*	–	–	1.7	3.3*	3.2*
			(.4)	(.5)	(.5)			(1.1)	(.9)	(.9)
Reelection	–	–	–	–	0.0	–	–	–	–	.1
					(.4)					(.4)
Opinion × Reelection	–	–	–	–	.1	–	–	–	–	.2
					(.8)					(.8)
Intercept	.8	1.2	1.6	.4	.4	.6	1.7	2.1	.5	.5
	(.2)	(.3)	(.2)	(.3)	(.4)	(1.0)	(.9)	(.5)	(.6)	(.6)
AIC	419	351	342	313	317	347	317	315	311	315
Standard deviation of justice effects	–	–	–	–	–	1.6	1.3	1.1	.6	.6
% Correctly Classified	90.8	92.4	92.1	92.5	92.6	93.3	93.4	93.6	93.4	93.4
% Reduction in Error	63.4	69.6	69.6	70.1	70.5	73.2	73.7	74.6	73.7	73.7

after controlling for other predictors of the vote. We return shortly to the substantive effect of public opinion on roll call voting.

The results for other predictors match those from previous studies. Senators are more likely to support a nominee appointed by a president of the same party, ideologically near to him, and of higher quality. Higher presidential strength also increases the chances of a “yes” vote. (There is less precision on the estimates of group-level predictors, those such as presidential approval that do not vary within a given nominee.) While Models 4 and 9 show that diffuse state-voter ideology does affect voting, the magnitude of its estimated coefficient is dwarfed by that of state-specific nominee opinion.

Next, Models 5 and 10 assess the degree to which the relationship between opinion and voting may be

conditioned by a senator’s proximity to his reelection bid (c f. Overby et al. 1992, 1994). We interact state opinion with an indicator variable, *Reelection*, coded 1 if a vote on a nominee took place within two years of the senator’s next reelection. The coefficient on *Opinion* in Models 5 and 10 gives the estimated effect of public opinion on senators who were *not* facing reelection: it is unchanged from Models 4 and 9. The coefficient on the interaction term is small and not statistically different from zero, indicating that there is no *additional effect* of opinion among senators facing reelection. Thus, as a general matter, we conclude that the effect of opinion is more related to senators’ long-term interests in maintaining constituent support, rather than a more short-term focus on whether a vote contrary to such support will have immediate negative consequences.

In terms of model performance, model fit improves significantly when public opinion is included as a predictor. Akaike's information criterion (AIC) shows that within each set of models, Models 4 and 9 perform the "best."¹² Each multilevel model, which allows the intercepts to vary by nominee, performs better than its regular logit counterpart, demonstrating that it is important to account for the grouping of votes by nominee.

Substantive Importance of Public Opinion

To flesh out our findings about the role of public opinion in confirmation politics, we calculate and graph predicted probabilities of a senator voting yes under a variety of conditions. 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, as well as how the impact of these other predictors varies given different levels of public opinion. All predictions use the following baseline unless otherwise noted: continuous predictors are set to their mean (zero, by construction), party is set to the opposition party, and the random effect is that for an average nominee (zero). 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. We use Model 8 for all predicted values in the text.

In Figure 4, we show the effects of varying state-level public opinion on the nominee, given different levels of the other predictors. The graphs use point predictions from the logits, which resemble those calculated using simulations, but yield smoother plots. Each panel highlights a shift in a different predictor. 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.

Public opinion and nominee quality. In the top panel of Figure 4, we show how the effect of public opinion varies given quality. One might suspect that

public opinion simply mirrors nominee quality, yet while the two are positively correlated, the probability of a "yes" vote varies substantially across public opinion levels even for nominees of similar quality. (In addition, recall from Figure 1 that there is substantial variation in state-level opinion *within* each nominee; this variation, of course, cannot be explained by nominee quality.) For popular nominees, quality has almost no effect; a "yes" vote is near certain. For less popular nominees, however, the effect is substantial. Low-quality and unpopular nominees are much less likely to get a "yes" vote than either popular or high-quality nominees. Quality levels also condition the impact of opinion. For a high-quality nominee, roughly 50% public support in a state yields 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.

Public opinion and partisanship. The second panel in Figure 4 shows predicted probabilities for same- and opposite-party senators. Same-party senators are already highly likely to support a nominee, at least over the central range of opinion. There is a drop-off in same-party senator support only once the nominee is significantly unpopular. For opposite-party senators, however, public opinion strongly influences voting; a "yes" vote only approaches certainty among more popular nominees. To put this another way, same- and opposite-party senators (holding ideology constant) react similarly to high-opinion nominees, but low-opinion nominees are very vulnerable to senator opposition, especially among members of the opposition party. (To be clear, this is not due to an explicit interaction term, but rather a function of the intercept shift for same-party senators.)

Public opinion and ideological distance. The last two panels of Figure 4 display the impact of ideological distance, first among opposite-party senators and then among same-party members. Public opinion is most important for ideologically distant senators; they are only likely to support distant nominees who are popular in their state. More moderate senators of the opposition party, on the other hand, are likely to support nominees with weak to moderate public approval. For same party senators, we see that ideological distance only influences their votes among very unpopular nominees. As a nominee's state approval exceeds 60%, a "yes" vote by an in-party senator approaches certainty. When the senator and nominee are ideologically close, a swing from low opinion to high increases the probability of a yes vote from 85% to nearly 100%. For ideologically distant senators/nominees, the spread is from under 10% to

¹²AIC rewards goodness of fit, but discourages overfitting. Lower AIC values indicate the preferred model variant.

nearly 80%. Thus, ideologically distant senators of the opposition party are very sensitive to public opinion, and ideologically compatible ones are far less so.

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? Robert Bork received far less public support for confirmation than did Samuel Alito (see Figure 1). What if Bork had received as much public support as Alito? We applied the coefficients from Model 9 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 54 votes.

Justice Alito’s confirmation too seemed at risk for a time. He eventually received 58 votes (we would have predicted 59), the same number of votes cast *against* Bork. We asked 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 predict that Alito would have lost some support, but still would have been confirmed with 54 votes. This suggests that attempts by the Democrats to investigate Alito further and shift the public’s

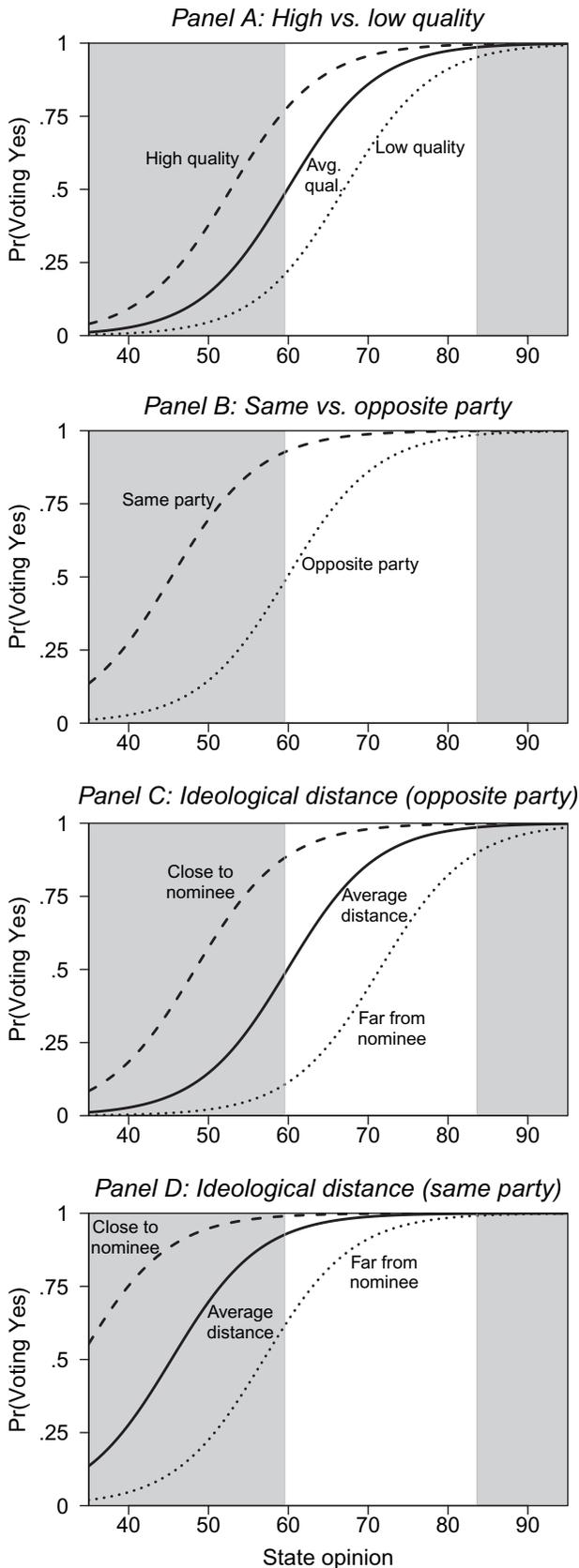


FIGURE 4 The predicted effects of opinion on roll call voting. Each panel shows the predicted probability of a senator voting yes on confirmation, across the range of state-level public opinion, for different levels of the other predictors. All curves are derived from Model 8 in Table 2, but results are similar for all. 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 nonshaded 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.

stance on confirmation might have proved futile. 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 more Republicans than did Bork, giving him a larger base of support against any decline in public opinion. In terms of confirmation (rather than individual senator votes), the partisan distribution of the Senate trumped the effects of opinion—Alito's 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 40 votes—a "landslide" vote against confirmation. Public opinion, it seems, was crucial to his successful confirmation.

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 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 Republicans. Miers was one of the least popular nominees in our sample; her average state-level support was 52% among those with an opinion, ranging from a low of 38% in California to 65% support in North Dakota. On average, her support was similar to Bork's, with less variation across states. Her lack of quality score was .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 Alito, for example. 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) (her distance was on par with Souter or Ginsburg's average ideological compatibility with the senators). This factor would push in her favor in comparison to Alito (who, to repeat, was confirmed with 58 votes).

We temporarily set aside any idiosyncratic features of her nomination and assume she was otherwise an average nominee (zero nominee effect, maintaining other predictors as is). Our best prediction is then that she would have squeaked by 51 votes, all from Republican senators. Of course, the opposition from members of her own party, as well as her poor performances in meetings with senators (Greenburg 2007, 278–81), indicate that Miers was a well below average nominee. We take this weakness into account by attributing to her the same negative nominee effect as Alito, while keeping her actual public opinion as is. Given this, our best prediction would be that she would only have received 32 votes—a landslide against confirmation. Could greater public opinion have saved her nomination? To answer this, we next predicted senator votes assuming the public had supported Miers to the same extent they did Alito, while still capturing her weaknesses by maintaining the negative nominee effect. We predict she would have gained confirmation with 53 votes. The gain in public opinion would approximately offset the negative nominee effect.

Such counterfactuals help show the pivotal role of public opinion in confirmation politics. Public opinion can mean the difference between a Justice Bork and a Justice Kennedy.

Justice Sotomayor: A Robustness Check

As a final robustness check, we attempt to "predict" the confirmation votes for Justice Sotomayor (we completed the analysis for this paper before she was confirmed in August 2009). We can use the votes on her nomination as an out-of-sample prediction to test the robustness of our model. Sotomayor was one of the least popular nominees among those we studied, with an average state-level opinion of 58%, placing her above only Bork and Miers. This stands in stark contrast to the widespread support for Breyer and Ginsburg, the other two Democratic nominees in our sample. While Breyer and Ginsburg were largely uncontroversial nominees, Sotomayor was attacked persistently by Republicans, likely driving down her overall popularity as a nominee.

We predicted each senator's vote on Sotomayor's nomination (using the estimates from Model 9), and compared those predictions to senators' actual votes. (The Senate voted to confirm her 68 to 31.) We predicted 93 of 99 votes correctly, a rate that even improves upon our in-sample predictions from Table 2. Thus, our model works well to explain a nomination that was not the subject of our original analysis. We also

reran our regression models with Sotomayor included. Results were statistically and substantively the same.

Discussion

While public opinion may be shaped by many factors, some idiosyncratic or trivial, the evidence shows that on average and in the aggregate, opinion is sufficiently meaningful and informed for scholars and senators alike to take it seriously (see, e.g., Erikson, Wright, and McIver 1993). And, as we noted at length earlier, voters are far more informed about confirmation politics than has often been assumed or asserted. Our findings are part of a surprisingly limited body of work tying government choice to choice-specific public opinion. Studies of confirmation politics can take for granted the fit between constituent views and representative behavior—yet that fit can be questioned and any slack is noteworthy to models of legislative behavior. Whether senators should mirror constituent preferences or instead exercise independent judgment is an interesting normative question. Whether they actually do so is an important empirical question. Furthermore, it is also important to know whether senators listen to their constituents' specific preferences or merely follow their constituents' ideological tendencies.

Our paper connects two literatures on Supreme Court confirmation politics—one examining how public opinion is formed on nominees (e.g., Gibson and Caldeira 2009, Gimpel and Wolpert 1996) and one that examines why senators decide to approve or reject a nominee. It also speaks to debates about legislative responsiveness in general and senatorial responsiveness more narrowly. The answer to our main question—does public opinion on a given nominee in senator's home state drive his or her confirmation vote?—is a resounding and robust yes. Given that we controlled for state-level voter ideology and senator ideology, our findings about the effect of public opinion on roll-call voting are all the more striking. While senators do seem to be making use of such diffuse ideology as a cue for how they should vote, the effects of opinion are strong and indeed far stronger than that of diffuse ideology. Moreover, we note that the constituent influence we find exists even though elected senators will already tend to reflect their constituents' views.

In addition, the role of presidential calculations in nominee selection reinforces our findings. Presidents surely choose nominees they hope to get through the Senate, and frequently make public appeals in an effort to raise support for their

nominees (Johnson and Roberts 2004; Moraski and Shipan 1999). To the extent that presidents take into account the expected public view of a nominee, our results would understate the effect of opinion in the larger nomination and confirmation game.

Senators do respond to other forces besides nominee-specific 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. 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 copartisans 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 or other goals. Our results speak to the empirical literature on responsiveness. Overall, the trend of the literature, to paint broadly, is that representative 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 more common focus on aggregate responsiveness in the existing literature.

Our findings are particularly timely given the close split on the Court today between liberals and conservatives and the fact that President Obama has had the opportunity to nominate one justice to the Court and may nominate several more. While the Democratic majority in the current Senate provides a cushion for nominees with lower public support, even same-party senators are not immune to the call of public opinion—and the threat of a filibuster still looms. Conservative Democratic senators will look to their constituents in these votes, as will the more moderate Republicans.

Conclusion

Mr. Dooley famously stated that "th' supreme coort follows th' illicion returns" (Dunne 1901, 26). Senators clearly worry that election returns may follow Supreme Court confirmations. A process thought to be driven largely by political elites turns out to be responsive to the mass public as well. Even the six-year terms of senators do not make them invulnerable to public pressure on an issue of this magnitude and salience.

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 named 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 nominee, and for weaker nominees more generally.

These results tie the Court back to majority will. The public's influence over justices *after* confirmation may be unclear, but we find strong evidence of influence over confirmation itself. This means that the Court is even less likely to fall outside the mainstream of American public opinion than would be the case if the public's influence over the Court's membership were realized solely through the relatively blunt instrument of election of senators and the president (see Dahl 1957).

At the same time, we are not arguing that confirmations are simply popularity contests. Rather, the quality of democratic government should be judged, at least in part, by the responsiveness of elected officials to the preferences of their constituents. Functioning democracy requires some matching of governmental choices to public opinion, regardless of whether public opinion on a nominee is trivialized as mere popularity or reflects a legitimate judgment on the nominee in question. To some extent, one might not care what public opinion is based upon, but rather only whether senators respond to it.

Future work could take up where we now leave off. We suggest a few avenues here. We did not find residual differences in the effect of opinion across nominees (results available upon request). But even in the most comprehensive model, with our most complete set of controls, there are residual differences across nominees in terms of the varying intercepts (shifting the base probability of a "yes" vote up or down from the average). If we truly captured all across-nominee variation, we would expect the random effects by nominee to shrink to zero. These could be idiosyncratic, but future work might inquire further. What else separates "good" nominees from "bad"?

Next, one might dig deeper into what drives public opinion on Supreme Court nominees. Support itself could be the central dependent variable in such a project, with our multilevel models of individual support unpacked in greater detail or modified to

answer questions focused at that level, rather than the state level. For example, how does support change over time? How do people get informed and what role do elites play in this process? Third, one could 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). Fourth, one could study the interaction of the public and organized interests in pressuring the votes of senators (see Caldeira and Wright 1998). Finally, one could study whether senators respond more to their fellow partisans or the median voter in casting their votes on Supreme Court nominees.

This article will surely not be the the last word on the role of public opinion in Supreme Court confirmation politics. We hope that this line of inquiry will lead to a deeper understanding of the linkages between the public and the legislators who confirm the members of the nation's highest court.

Acknowledgments

We thank Andrew Gelman, Elliot Slotnick, Jeffrey Staton, Yu-Sung Su, and members of the Cornell Courts Colloquium for helpful comments and suggestions, along with the Roper Center 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. Replications datasets and code are available at www.princeton.edu/~jkastell/sc_noms_replication.html

Manuscript submitted 30 July 2009

Manuscript accepted for publication 18 January 2010

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