

Public Opinion and Senate Confirmation of Supreme Court Nominees

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Abstract

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 nine 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.

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 (Friedman 1998)

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, Fleming and Wood 1997, Hoekstra 2000, Giles, Blackstone and Vining 2008). There is also 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?

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, however, 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 re-

¹As 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.

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 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. No previous study has shown such a direct relationship. Specifically, we analyze the relationship between state-level public opinion and roll call votes on Supreme 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 possibilities: 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 (as opposed to state ideology or raw demographic percentages). These advances move us beyond simple correlation between roll call voting and state demographics or between roll call voting and diffuse constituent ideology. Most importantly, these estimates have a big payoff: they allow us to present the first evidence that senators do respond to nominee-specific, state-specific support.

Our results establish a strong and systematic link between constituent opinion and voting on Supreme Court nominees. 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: ideological distance between the senator and the nominee, the party of the senator, and the quality of the nominee. The impact of opinion varies with context: it has a greater effect on opposition party senators, on ideologically opposed senators, and for weak nominees. This suggests 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

Three links in the chain are necessary for a meaningful connection between the public and who sits on the Court: knowledge, salience, and 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.²

Of course, such general knowledge might not count for much if citizens do not pay attention to Supreme Court nominations. In fact, they do. By the time a nominee comes up for a vote in the Senate, most Americans can say whether they prefer that the Senate confirm her.³ 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).⁴

The second link is salience—if the public did not factor votes on nominees into their assessments of senators, then lawmakers might not need to pay attention to their constituents' views. However, many Americans care about and are knowledgeable of how their

²For 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 fit within a growing literature arguing that specific recall questions are not the key to understanding citizen informational capacity. See Gibson and Caldeira (2009) for a full discussion.

³We use "she" to denote justices and "he" to denote senators throughout the paper.

⁴In a July 2009 Gallup poll, 91% of respondents expressed a view on the confirmation of Sonia Sotomayor to replace Justice Souter.

senator votes on a nominee (Hutchings 2001). During the Alito nomination, for example, 75% of Americans thought it important that their senators vote in accordance with their preferred outcome (Gibson and Caldeira 2009). Indeed, history contains ominous warnings for senators who ignore the public when casting confirmation votes. 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) systematically showed that voters nationwide did cast their votes in part based on their reactions to their senators' vote on the Thomas nomination. Taken together, these findings suggest that Americans know far more about the Court, pay far more attention to confirmation politics, and hold their senators accountable for their votes far more 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, 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. 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 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 (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.”

During confirmation battles, the public turns its attention to a nominee’s fate. 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).

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). Sixteen years later, 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.⁵ 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.

Given this, 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). Indeed, Gibson and Caldeira (2009, 1) argue that “one of the crucial elements in confirmation strategies concerns how public opinion will be managed and manipulated.”

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 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

⁵See, e.g., Marcus (1987) and Clymer (1991) for accounts of the intensity of letter writing during the Bork and Thomas nominations, respectively.

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 the influence of partisanship has likewise increased.

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).⁶ That study also found that interest group activity for and against a nominee—measured at the nominee-level rather than the senator-level—

⁶Overby 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.

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 ideology is innovative and can be applied to all nominees since 1937.⁷ 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. It does not capture opinion on the nominee directly. 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 is assumed to be the same (and indeed the same as "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 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 state ideology reveals a 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 itself. 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 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

⁷The 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).

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) do suggest that senators are mindful of their constituents 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 cast were precisely those desired by constituents.

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—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 did *not* have a statistically significant effect on senators' roll call votes, and nor did senator ideology (on

the latter point, these results contradict the studies cited above).⁸

We explain more thoroughly below, but we briefly note two limitations of the method in Caldeira and Wright (1998), which might explain their negative findings. First, the method 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. And, crucially, we show that these improved measures yield a different finding than this previous work.

3 Data and Methods

Estimating state-level public opinion

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

⁸On 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.

develop estimates of each state's overall liberalism. Unfortunately, even if we obtained all existing polls, there are simply not enough respondents in many states to generate reliable estimates of public opinion using disaggregation.⁹

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, Park, Gelman and Bafumi 2006, Lax and Phillips 2009*a;b*, Pacheco 2009). It consistently outperforms disaggregation, even for 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) suffice for MRP to produce highly accurate and reliable state-level opinion estimates.

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.

⁹For 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 fewer than 50 respondents per state across all eight polls (e.g. there were only nine in Wyoming). The problem is even more severe for other nominees.

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. Our search left us with nine nominees who received confirmation votes and for whom sufficient polling and census data are available:¹⁰ 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 gathered every poll that asked about respondents’ views on the nominee and contained suitable demographic and geographic information on individual respondents. For nominees with a large number of such polls, we retained 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.]

For each nominee, we combine polls into a single internally-consistent dataset. We then run a separate model for each. We use a multilevel logistic regression model, estimated using the GLMER function (“generalized linear mixed effects”) in R (Bates 2005)). For data with hierarchical structure (e.g., individuals within states within regions), multi-level 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 (Gelman and Hill 2007, 244-65).

¹⁰Polls were conducted on Douglas Ginsburg and Harriet Miers, but their nominations were withdrawn before any Senate action (we analyze Miers’ state-level public opinion below). Polls were also conducted on Clement Haynsworth and G. Harrold Carswell, but unfortunately no geographic identifiers are available for poll respondents.

We model response as a function of race and gender (males and females broken down into black, Hispanic, or white and 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); sixteen 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).¹¹ These are standard opinion predictors and are employed widely (see e.g Gimpel and Wolpert 1996). We find that demographic and geographic predictors perform quite well in explaining survey responses at the individual level.

We start by coding explicit support for the nominee ($y^{\text{yes}} = 1$) against other responses ($y^{\text{yes}} = 0$ 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 j , k , l , m , s , and p for race-gender combination, age category, education category, region, state, and poll respectively, we estimate the following model:

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

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

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

That is, each is modeled as drawn from a normal distribution with mean zero and endogenous variance, as is the region effect. The state effects are modeled as a function of the region into which the state falls, religious percentage, and Democratic vote share:

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

In the second stage, we use the coefficients that result from this estimation to calculate

¹¹Estimates are highly robust to variations in this specification. Note also that poststratification corrects in part for clustering and other statistical artifacts.

predicted probabilities of policy support for each demographic-geographic type. There are 4,896 combinations of demographic and state values (96 within each state). For any specific cell j , specifying a type, the results above allow us to make a prediction of pro-policy support, θ_j (the inverse logit given the relevant predictors and their estimated coefficients, using the latest poll effect where possible). We next poststratify according to population frequencies derived from the “5-Percent Public Use Microdata Sample” in the 2000 census. 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 : $y_{\text{state } s}^{\text{pred}} = \frac{\sum_{j \in s} N_j \theta_j}{\sum_{j \in s} N_j}$. This process yields estimates of explicit support for each policy in each state.

We next code explicit disapproval of the policy ($y^{\text{no}} = 1$) against other responses ($y^{\text{no}} = 0$ for an explicit positive response, “don’t know,” or “refused”), going through the process above a second time. We then have estimates, for each demographic-geographic type, the probability of an explicit yes *and* of an explicit no—with the remainder, the third category, being the “don’t know,” or “refused” category. We can then calculate the percentage of those in each state that say yes of those with an opinion (the first category divided by the sum of the first two).¹²

The distributions of state support for each nominee are depicted in Figure 1a (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 average 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 num-

¹²Dropping those without an opinion would invalidate randomness within type. To accurately capture support among those with an opinion, we must run two separate models. While the predictors we use in each response model vary slightly across nominees depending on the demographic information available in the survey data, each model takes roughly the form above. The results of Lax and Phillips (2009b) show 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.

ber of states was opposed to his nomination. Thus, among voters with opinion, all but one nominee received broad public support on average. 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

We now turn to examining the relationship between public opinion and voting on nominees. 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 total), 75% of which were to approve the nominee.¹³ We begin our analysis by studying the bivariate relationship between public opinion and voting. For each nominee, the lines in Figure 1b presents the estimated logit curves from a logistic regression of roll call votes on state public opinion. 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 slope of the curve is most steep for the Roberts vote, while the curves for Rehnquist and Thomas are less steep. 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. 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

¹³Roll call and other data for all nominees except Alito come from Epstein et al. (2006).

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 following predictors, which are commonly employed in the literature:

- *Lack of quality*: The degree to which a nominee is judged to be 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). Less qualified nominees have been shown to be less likely to be approved.
- *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.)
- *Same party*: Coded 1 if the senator is a co-partisan 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 4th year of office *and* his party controlled the Senate at the time (Cameron, Cover and Segal 1990). 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.
- *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. If the appointing president is a Democrat, higher numbers mean a greater percentage of liberal voters in a state; if the appointing president is a Republican, higher numbers mean a greater percentage of conservative voters. Thus, higher values of our recoded measure should always increase the probability that the senator votes to confirm a nominee.

All continuous predictors in the models that appear below 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 transformations 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 about relative magnitudes across predictors.

Our key expectation is that constituent opinion will play a strong role in driving the votes of senators. However, we still expect that the other variables noted above will continue to have an independent contribution to explaining senator votes on nominees.

Results

Before turning to regression analyses, we continue our descriptive look at the data by examining the relationship between state-level public opinion, partisanship, the ideological distance between a senator and a nominee, and whether a senator votes to confirm. Figure 2 depicts state-level ideology on the x-axis and ideological distance on the y-axis; the open circles denote “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 seem roughly divided by a diagonal outline.

How does partisanship affect these relationships? The 2nd panel in Figure 2 depicts the outcome of confirmation votes only for 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. The voting patterns of out-party senators exhibit a starker pattern of that seen for all senators. 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 several models of the probability that a senator will vote to confirm a nominee, which are presented in Table 2. The first four models are regular logit models. Models 5-8 are parallel regressions (i.e. Model 5 contains the same predictors as Model 1, etc.); these present the results of multilevel models, which account for the fact that the votes are grouped by nominee. Each of these models includes varying intercepts for each nominee (i.e. random effects), 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.¹⁴

Models 1 and 5 replicate the logit model in Epstein et al. (2006) on our subset of nominees (we successfully replicated it for all 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 each model. These results demonstrate that public opinion has a robust influence on Supreme Court confirmation

¹⁴We checked that no single nomination was driving our results by running Model 8 nine times, each time leaving out a single nominee. The coefficient on opinion was substantively and statistically similar in each model.

politics—as state opinion of a nominee increases, senators are more likely to support her, even after controlling for well-known predictors of the vote.

The estimated coefficients on the other predictors match results 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.) Finally, while Models 5 and 8 show that diffuse state voter ideology does affect senators’ votes, the magnitude of its estimated coefficient is dwarfed by that of state-specific nominee opinion.¹⁵

In terms of model performance, Table 2 shows that 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 8 perform the “best.”¹⁶ Each multilevel model, which allows the intercepts to vary by nominee, performs better than its respective regular logit counterpart, demonstrating that it is important to account for the fact that votes are grouped by nominee (Shipan 2008).

Substantive importance of public opinion on votes

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 on the nominee 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

¹⁵We also investigated the possibility that the relationship between opinion and voting may be conditioned by a senator’s proximity to his re-election bid (Overby et al. 1992). We estimated a model that interacted state opinion with a dummy variable for when a vote on a nominee took place within two years of the senators’ next reelection. The coefficient on this interaction term is small and not statistically different from zero, indicating that there is no *additional effect* of opinion on senators facing reelection. Results available upon request.

¹⁶AIC rewards goodness of fit, while penalizing based on the number of estimated parameters, thus discouraging overfitting. Lower AIC values indicate the preferred model variant.

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. 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.

We show the effects of varying state-level public opinion on the nominee, given different levels of the other predictors, in Figure 3. 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.

Public opinion and nominee quality. In the top panel of Figure 3, we show how the effect of public opinion varies across nominee quality. One might suspect that public opinion simply mirrors nominee quality. While the two are positively correlated, the graph shows that 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, as the probability of a “yes” vote is near one. For less popular nominees, however, the difference

in probability of a “yes” vote is substantial. Low-quality and unpopular nominees are much less likely to be supported than either popular or high-quality nominees. Quality levels also affect 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 3 shows the predicted probabilities for same- and opposite-party senators (fixing ideological distance at the mean). As the distance between the curves illustrates, it is largely the opposition that winds up responding to public opinion. 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 in the state. For opposite party senators, however, public opinion strongly influences the probability of a vote to confirm in the central range of opinion; a “yes” vote only approaches certainty among more popular nominees. To put this another way, same- and opposite-party senators (holding distance constant) react similarly to high-opinion nominees, but low-opinion nominees are very vulnerable to senator opposition, especially among members of the opposition party.

Public opinion and ideological distance. The last two panels of Figure 3 display the impact of ideological distance, first among opposite party senators and then among same party members. Beginning first with the former, it is clear that public opinion is most important for ideologically distant senators, who 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. The effects of opinion over its typical range illustrates this difference. When the senator and nominee are ideologically close 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%. Thus, ideologically distant

senators of the opposition party are very sensitive to public opinion, average-distant senators are still sensitive, and ideologically compatible ones are less so. 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.

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 1a, Robert Bork received far less public support for confirmation than did Samuel Alito, who himself was below average. What if Bork had received as much public support as Alito? We applied the coefficients from Model 8 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 exactly 42). 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 53 votes.

Justice Alito's confirmation too seemed at risk, at least for a time. He eventually received 58 votes (we would have predicted 59), the same number of votes cast *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 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 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. 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 40 votes—a “landslide” vote against confirmation. Public opinion, it seems, was crucial to his successful confirmation (Overby et al. 1992).

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. 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 52% in favor, among those with an opinion, ranging from a low of 37% support 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 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 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 Ruth Ginsburg's 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 (that is, her nominee effect is set to zero, while the values of her other predictors are kept as is). Under this assumption, our best prediction is 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, 278-281), 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 34 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.

We plot these three scenarios in Figure 4, 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 conservatism 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, assuming that Miers was otherwise an average nominee, it comes down to a party-line vote, with 51 Republicans supporting her. 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 not only with a firm foundation among Republicans, but pulling at least a handful of Democrats in her favor as well.

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

4 Discussion

Our paper connects two literatures on Supreme Court confirmation politics—one examining how public opinion is formed on nominees (e.g. Gimpel and Wolpert 1996, Gibson and Caldeira 2009) and one that examines why senators decide to approve or reject a nominee. 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 also reinforces our finding about the role of public opinion on senatorial voting. 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.

We certainly do not think this paper should be the last word on the role of public opinion in confirmation politics; others might indeed seek to show that the effects of opinion disappear once other factors are controlled for. We have, of course, subjected opinion to a rather stringent test, including controls for state voter ideology, senator ideology and presidential capital. Furthermore, while our systematic findings are new to the literature, there are strong theoretical, empirical, and anecdotal reasons to expect that senators will respond to their constituents on confirmation votes.

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.

Our findings are part of a surprisingly limited body of work tying government choice to choice-specific opinion. Sometimes the literature on confirmation politics takes for granted the fit between constituent views and representative behavior. Yet, that fit is questionable 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 on nominees or merely respond to their constituents ideological tendencies.

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). As we noted at length earlier, voters are far more informed about

confirmation politics than has often been assumed or asserted.

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 (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 or other 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 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.

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"?

Our findings are particularly timely given the close split on the Court today between liberal and conservative justices and the fact that President Obama has had the opportunity

to nominate one justice to the Court and may have several more. While the strong Democratic majority provides a cushion should President Obama nominate someone with lower public support, even same-party senators are not immune to the pull of public opinion—and the threat of a filibuster still looms. The more conservative Democratic senators will look to their constituents in these votes, as will the more liberal Republicans.

5 Conclusion

Mr. Dooley famously stated that “ th’ supreme coort follows th’ illiction 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 in doubt, but we find clear 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 blunt instrument of election of senators and the president.

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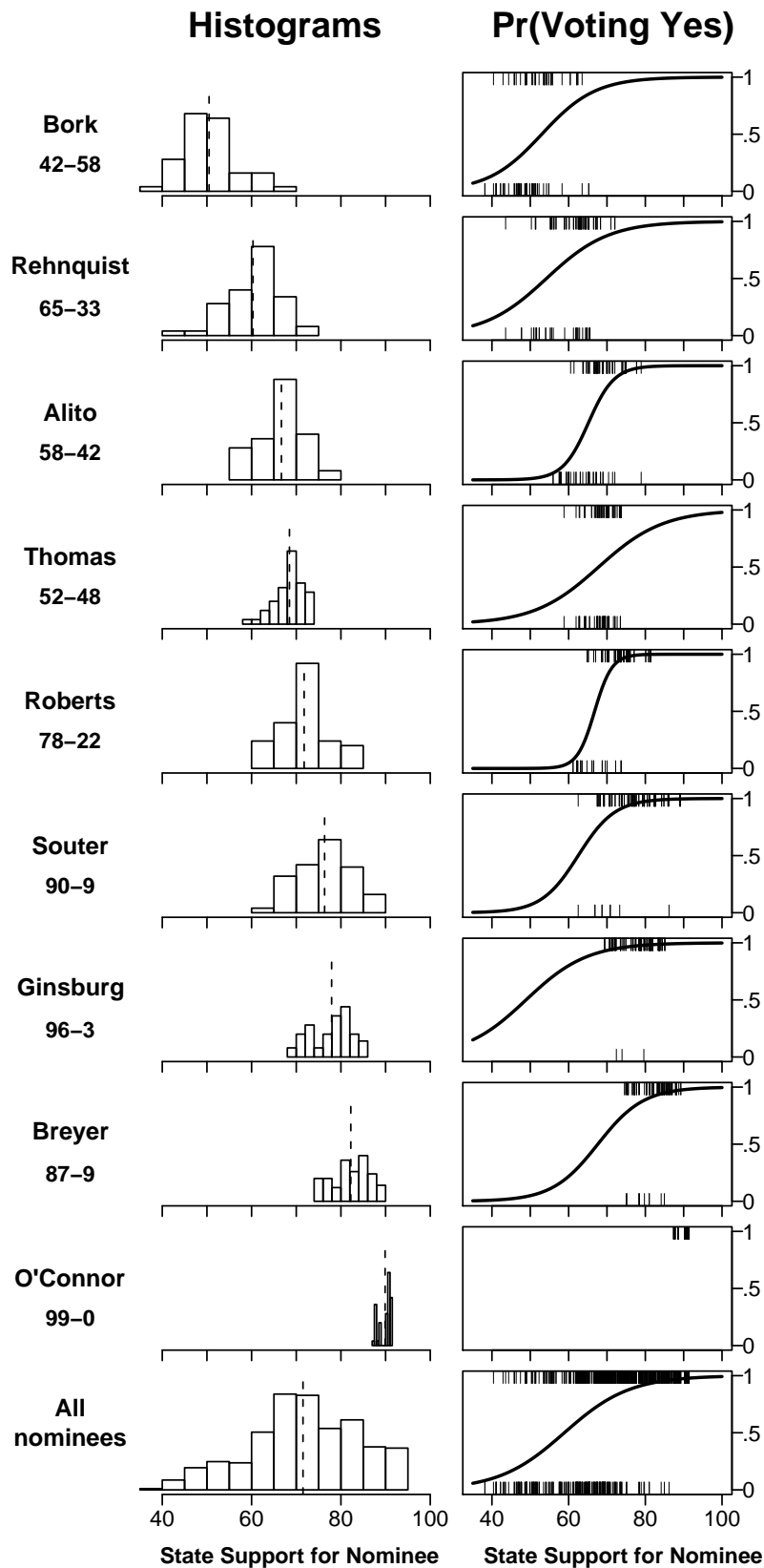


Figure 1: a) The distribution of state public support, by nominees, who are ordered by increasing mean support. Numbers under their names give their vote tally in the Senate. b) Correlation between state opinion and roll call voting. For each nominee, the line depicts the estimated logit curve from regressing senators' votes on state public opinion. Hash marks on top and bottom indicate votes of approval and rejection, respectively. The bottom plots pool all nominees together.

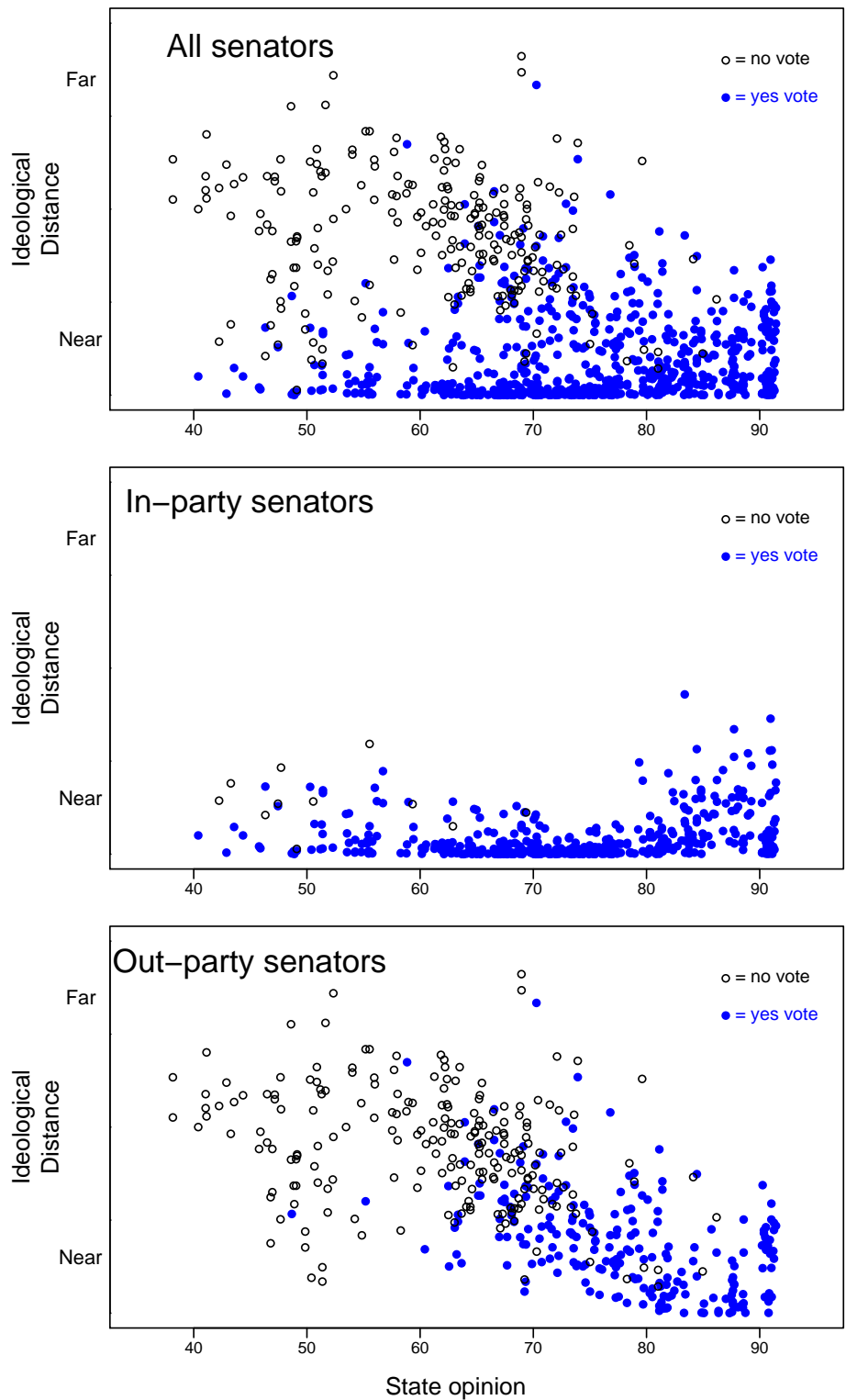
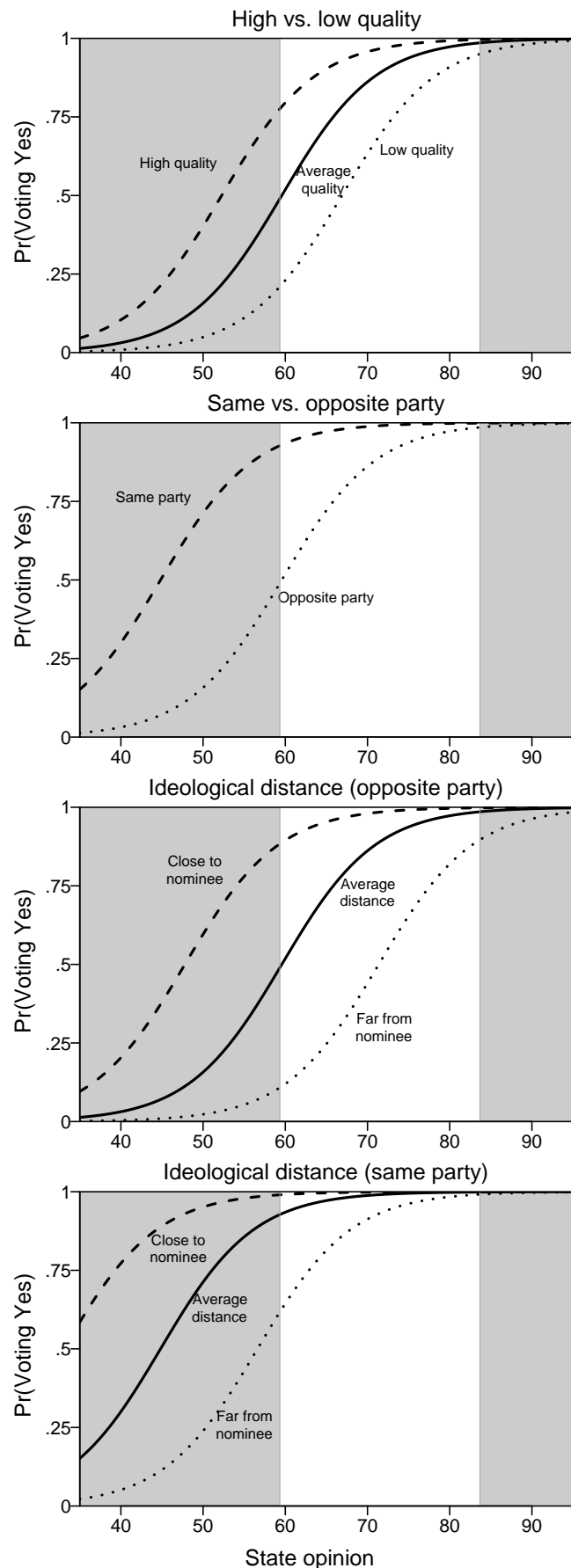
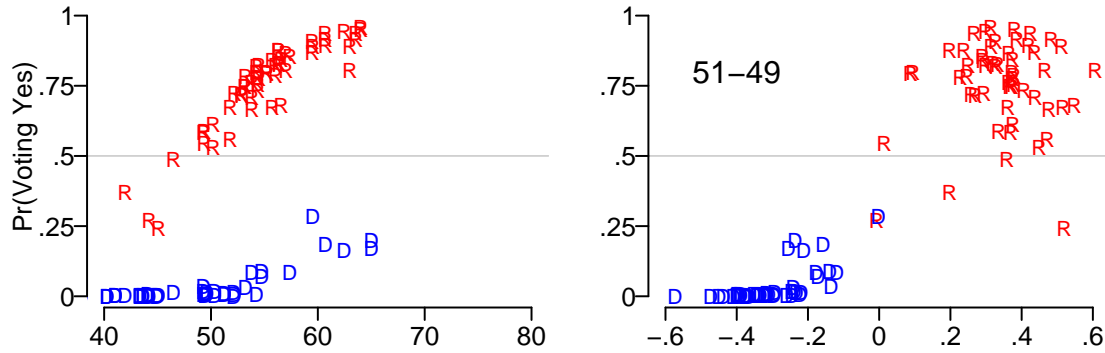


Figure 2: Public opinion, ideological distance, partisanship, and roll call voting on Supreme Court nominees. The open circles denote “no” votes, while the closed circles denote “yes” votes.

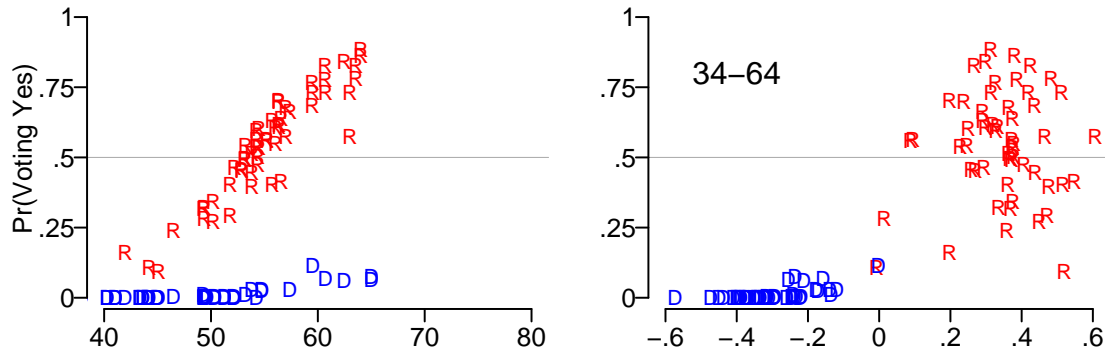
Figure 3: *The predicted effects of opinion on roll call voting. Each panel shows the predicted probability of a senator voting yes on confirmation, across the range of state-level public opinion, for different levels of the other predictors. All curves derived from Model 7 in Table 2, but results are 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 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.*



Were Miers otherwise an average nominee ...



But given her weaknesses ...



But if she had been as popular as Alito ...

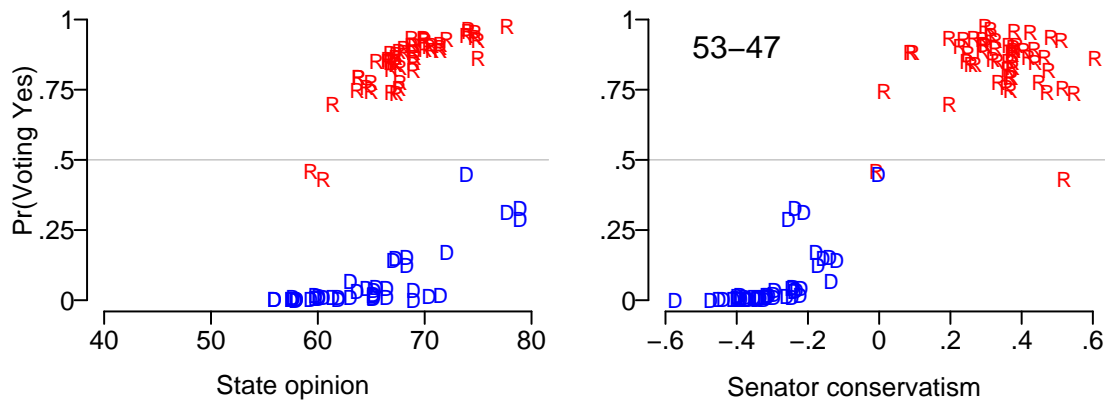


Figure 4: *Miers predictions.* We predict votes for each senator on the Miers nomination under three scenarios (one in each row of panels). The panels on the left show the probability of a “yes” vote with senators plotted by public support for Miers in their home states. The panels on the right plot them by their Common Space ideology score. Republicans and Democrats are indicated with an R or a D, respectively.

State	O'Connor	Rehnquist	Bork	Souter	Thomas	Ginsburg	Breyer	Roberts	Alito	Miers
Alabama	88	63	51	81	69	69	77	75	69	57
Alaska	91	65	56	85	68	74	78	77	70	56
Arizona	91	67	54	83	67	77	81	74	68	56
Arkansas	88	64	51	77	69	71	80	75	68	55
California	91	62	43	71	59	83	87	63	58	38
Colorado	91	62	46	74	62	81	86	67	61	45
Connecticut	91	48	43	71	68	84	88	65	60	44
D.C.	90	28	15	30	63	92	93	31	30	24
Delaware	89	62	46	71	68	78	83	70	63	49
Florida	89	68	52	78	71	79	82	73	67	54
Georgia	88	63	47	76	71	74	80	71	64	53
Hawaii	91	62	46	73	63	82	86	69	62	44
Idaho	91	71	62	89	69	71	75	81	75	64
Illinois	90	55	48	69	69	84	84	66	65	51
Indiana	90	60	55	77	72	79	81	74	72	57
Iowa	91	61	55	74	67	81	83	74	71	52
Kansas	91	56	55	77	70	79	82	74	71	54
Kentucky	88	67	49	72	68	75	83	73	67	52
Louisiana	88	63	50	81	74	71	77	73	67	61
Maine	91	59	53	81	71	78	83	75	69	55
Maryland	89	56	38	62	67	81	86	62	56	40
Massachusetts	91	52	41	67	65	83	89	63	58	45
Michigan	90	54	47	67	69	85	85	67	65	49
Minnesota	91	56	54	74	69	82	83	72	70	54
Mississippi	87	63	50	82	74	69	75	74	69	61
Missouri	90	51	54	75	72	79	82	72	71	56
Montana	91	64	49	76	64	81	85	72	65	46
Nebraska	91	64	58	80	72	79	80	76	74	60
Nevada	91	63	49	77	64	80	84	70	64	49
New Hampshire	91	55	51	80	70	80	84	74	68	50
New Jersey	91	51	41	69	67	84	88	62	58	44
New Mexico	91	63	52	80	64	79	82	70	65	53
New York	91	44	40	68	68	84	88	61	58	43
North Carolina	88	67	51	79	69	74	78	74	68	54
North Dakota	91	65	65	86	73	72	76	81	79	65
Ohio	90	52	49	69	72	84	84	69	67	53
Oklahoma	89	72	60	86	70	72	75	81	75	63
Oregon	91	57	46	73	63	82	86	69	61	42
Pennsylvania	90	51	47	76	70	81	85	70	65	49
Rhode Island	90	50	42	68	67	85	89	65	59	44
South Carolina	88	65	49	79	73	71	78	73	67	57
South Dakota	91	64	64	84	73	72	77	80	78	62
Tennessee	88	65	49	75	70	72	81	73	67	56
Texas	89	67	55	82	70	73	77	75	70	59
Utah	91	65	62	89	70	72	75	81	74	64
Virginia	88	61	49	77	68	77	80	73	67	54
Vermont	91	56	51	78	69	80	85	73	66	50
Washington	91	59	44	71	63	82	87	67	60	41
West Virginia	88	66	47	68	68	76	85	72	65	50
Wisconsin	91	59	51	71	70	82	84	70	69	52
Wyoming	91	65	54	82	66	77	81	76	69	54

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

	Regular logits				Multilevel logits			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Opinion	–	3.2* (.5)	3.7* (.5)	3.0* (.5)	–	4.1* (.8)	4.3* (.8)	3.1* (.7)
State voter ideology	–	–	–	.6* (.3)	–	–	–	.7* (.4)
Lack of quality	-1.1* (.3)	-.9* (.3)	-2.1* (.4)	-3.0* (.5)	-1.8 (1.2)	-1.4 (1.0)	-2.6* (1.2)	-3.2* (.8)
Ideological distance	-4.7* (.4)	-3.5* (.5)	-3.1* (.5)	-4.0* (.5)	-4.9* (.5)	-4.2* (.6)	-4.2* (.6)	-4.1* (.6)
Same party	1.1* (.4)	2.5* (.5)	3.0* (.5)	2.9* (.6)	1.8* (.5)	2.4* (.6)	2.6* (.6)	2.7* (.6)
Strong president	1.5* (.3)	.8* (.3)	–	2.5* (.5)	2.1* (1.2)	.6 (1.0)	–	2.6* (.8)
Presidential approval	–	–	1.4* (.4)	3.2* (.5)	–	–	1.7 (1.1)	3.3* (.9)
Intercept	.8 (.2)	1.1 (.3)	1.6 (.2)	.4 (.3)	.6 (1.0)	1.6 (.9)	2.1 (.5)	.5 (.5)
Nominee effects (st. dev.)	–	–	–	–	1.6	1.3	1.1	.6
AIC	419	352	345	313	348	318	316	311

Table 2: *Explaining roll call voting*. The first set of models are regular logistic regressions. The second set are corresponding multilevel models, with varying intercepts for each nominee (standard deviation of these is shown in the Table). 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.