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EXPLAINING SENATORS' VOTES ON SUPREME COURT APPOINTMENT

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## **Abstract**

What explains the votes of U.S. senators to approve presidential nominees to the U.S. Supreme Court? Previous research has emphasized the roles that ideology and qualifications play while paying less attention to the role of partisanship. Through use of 22 nominations and 2000 Senate votes, regression analyses were estimated to determine whether there is a difference in considerations of Republican and Democratic senators, or senators of the same party and opposing party to the president, when casting confirmation votes. While both Republicans and Democrats consider qualifications most heavily when casting their votes, Republicans weigh ideology more heavily than Democrats. Additionally, senators of the opposing party to the president weigh qualifications more than ideology. In an era of heightened partisan polarization, these results have important implications for our understanding of the Supreme Court nomination process and the role of partisan considerations in the separation of powers.

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## Chapter 1

### Introduction

Since the establishment of the United States Supreme Court in 1789, 163 men and women have been nominated to serve on that Court. One hundred twenty-five of those people have been confirmed to serve as a U.S. Supreme Court Justice. Why are some nominees confirmed and others are rejected? This question has been of intense interest to political scientists who have analyzed the effects of senator characteristics, nominee characteristics, and the nominating president's characteristics on the likelihood that a nominee is confirmed to serve on the U.S. Supreme Court (Epstein, et al, 305).

While all such findings are relevant to our understanding of the confirmation process and in turn, the workings of the Court as a whole, little has been done to investigate the impact of partisanship on the confirmation votes of senators, especially in this age of rising partisan polarization. While in recent decades, political scientists have established an empirical increase in the polarization between the Democratic and Republican parties within the United States (Nice, 115), these findings have not been applied to the appointment process of the Supreme Court. This is particularly surprising given the findings of many studies that polarization has had deleterious effects on the congressional process, such as “procedural disputes, gridlock, [and] delays in appropriations resulting in budget shut downs,” (Pearson, 36). This research will aim to bridge the gap between Supreme Court appointment research and recent findings on the polarization of the political atmosphere in America.

It is generally accepted among political scientists that there are a multitude of factors affecting the decisions of senators to confirm or reject of nominees to the Court. One of the most commonly addressed factors is *ideology*, which has a substantial impact on confirmation

(Zigerell, 409). Both the ideology of the nominee and the senator, as well as the distance between the two, have been identified as important. Epstein found that a decrease in this distance indicates an increased likelihood of confirmation (Epstein et al., 1170).

Additionally, the other major factor which effects the appointment of justices to the Court is nominee qualifications. Matters such as the prestige of a candidate's law education, their records on the lower bench, their career as an attorney, and their reputation in the field all interact to create a qualification rating by the ABA, which is used by senators to evaluate the nominee prior to casting a vote. More specifically, the three categories which factor into the ratings provided by the American Bar Association's Standing Committee on the Federal Judiciary are integrity, professional competence, and judicial temperament (ABA, 2). The committee uses, "character and general reputation in the legal community," in order to assess integrity, "intellectual capacity, judgment, writing and analytical abilities, knowledge of the law, and breadth of professional experience," to determine a professional competence rating, and "compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias, and commitment to equal justice under the law," to rate judicial temperament (ABA, 3).

Less influential, albeit still significant, factors which effect the appointment of justices to the U.S. Supreme Court are the Court's ideological center, the strength of the nominating president, public opinion, and interest group activity. Each of these play a role in a candidate's fate during the confirmation process, and will be used in my research on polarization during Supreme Court appointment.

The predominant research says that qualifications and ideology are the most important factors in the decisions of senators to reject or accept a nominee to the Court. In fact, the interaction between these two variables is the most informative predictor of the outcome of a



confirmation hearing. Senators are more likely to vote in favor of a candidate who shares their political affiliation, regardless of qualification level (Kastellec, 801). However, qualifications do have an impact on a candidate when the nominee does not share their own political ideology (Cameron, 118). While it has been established that a senator is unlikely to vote in favor of a candidate from the opposing political party, when they do vote to confirm an ideologically distant nominee they do so because that nominee is highly qualified (Zigerell, 411). In other words, when a nominee is not highly qualified there is virtually no chance that a senator from the opposing party will vote in favor of his or her confirmation to the U.S. Supreme Court.

This study adds partisanship and party polarization into the mix. Given that current research shows Republicans and Democrats do behave differently in Congress (Pearson, 32), it is curious that no research has been done to investigate partisan asymmetries in the confirmation process. While researchers have included variables of ideology and political affiliation to determine their influence on confirmation votes, none have conducted tests to determine whether the factors influencing confirmation votes are systematically different between Democrats and Republicans. This hole in our modern knowledge of Supreme Court appointment will be the primary motivation for my research.

I suspect that the behavior of Republican and Democratic senators will be determined not by their party affiliation but rather, their alignment with the nominating president. Therefore, the major hypothesis of my research is that there will *not* be a systematic difference in the weight that senators give to ideology and qualifications in the confirmation process based on their party affiliation. Research has already shown that whether the majority party of the Senate is of the same affiliation as the president is a necessary characteristic to consider during the process of Supreme Court appointment. Since presidents of the same ideology as the majority party have

more strength, senators can weigh ideology more heavily than qualifications because they already know that the Senate is highly likely to approve the president's nominations.

Alternatively, when a president is of the minority party of the Senate, senators will be forced to focus on qualifications more heavily because the majority is highly likely to disagree with the ideology of the nominee regardless of how extreme or mild he or she may be. Since the Senate majority and president switch party affiliation's regularly in the United States, I hypothesize that these two situations will balance and there will be no systematic difference in the weight senators give to ideology and qualifications based on whether they are Democrat or Republican.

I test these hypotheses with data from 25 Supreme Court confirmation hearings over 51 years using logistic regression. The information collected begins in the year 1967 with the confirmation votes of Justice Warren Berger, and ends in the year 2018 with the confirmation of Justice Brett Kavanaugh. The six independent variables will be ideology, qualifications, the Court median, public opinion, presidential strength, and interest group activity. The dependent variable will be whether a senator votes yes to confirm a Supreme Court nominee.

My findings have important implications for our understanding of the Supreme Court nomination process. Both Republican and Democratic senators give significant consideration to nominee qualifications, and the amount of consideration they give to such qualifications is equivalent. Alternatively, Republicans give more weight to the ideology of Supreme Court candidates than Democrats do. Lastly, senators outside of the nominating president's party do give more weight to nominee qualifications than they do to nominee ideology. U.S. citizens can be assured that regardless of party affiliation, the qualifications of each nominee to the Court are the largest consideration for senators when casting a vote to confirm or reject an appointment.

## Chapter 2

### Literature Review

The United States Constitution grants the president the power to nominate justices to the U.S. Supreme Court, and with the advice and consent of the Senate, appoint such justices. According to the U.S. Senate website, there have been 163 nominations brought to the Senate since the establishment of the Supreme Court in 1789, and 125 of those nominations were confirmed. As one might expect, there are a multitude of factors which influence Senate votes to confirm or reject judicial candidates.

The U.S. Supreme Court is the highest judicial body within the country, making appointment to the bench both an honor and an onerous process. The Court is responsible for interpreting the United States Constitution, and in doing so has established the laws of the land over time. Each decision made by the nine justices of the U.S. Supreme Court becomes precedent within the country, and informs decisions of every lower court regarding constitutional issues. Furthermore, justices to the Supreme Court are appointed for the rest their lives (or until they choose to retire). Life terms increase the already significant amount of power possessed by the justices of this high court. With the ability to set precedent and freedom from losing their positions, Supreme Court justices can be seen as the untouchable branch of the U.S. Government. Perhaps this is why there are a multitude of factors contributing to the decisions of senators casting a vote to confirm or reject nominees to the Court. The six most significant factors which have been researched over the course of the past two centuries are nominee qualifications, ideology, impact on the Court's median justice, the strength of the president, public opinion, and interest group activity. Each of these factors and related research findings

will be presented in order to establish a baseline for the research which will be conducted regarding U.S. Supreme Court appointment.

### **Ideology**

The single most significant variable in predicting whether or not the Senate will confirm a nominee to the U.S. Supreme Court is ideology. Specifically, the ideological distance between a nominee and the senator is relevant to each senator's vote. As much as the popular media chooses to imply that Supreme Court appointments are becoming more political, ideological considerations are not new to the process. In fact, "since President Cleveland's time, over ninety percent of the Court's appointees have been from the same political party as the president," (Kahn, 33). The political identifications and affiliations of nominees are well circulated throughout confirmation hearings, so public sentiment is just as easily influenced by the ideological stance of nominees. Senators prefer nominees who share their ideology, and the more those ideological values differ, the less likely a senator is to vote in favor of the nominee (Zigerell, 409).

More notable than the relationship between nominee and senator ideology is that between senator ideology, nominee ideology, and constituent ideology. Cameron noted that, "when both the senator and the nominee are to the right or left of the senator's constituents, the senator is more likely to vote for the nominee," than when the senator is opposite the nominee with regard to his or her constituents. This adds insight to the notion in Kastellec's polarization research that, "senators weigh the opinions of their fellow partisans more heavily," when resolving the trade-off between their median constituent and median co-partisan (Kastellec, 801). In essence, those who are of the same ideological stance as a senator are considered more heavily than median constituents and politicians of the same party. So while it is clear that nominee ideology and

senator ideology are significant in predicting confirmation votes, it is also evident that closing this ideological distance is of greater importance to senators than constituent wishes, at least in practice.

### **Qualifications**

In recent decades, political scientists and U.S. citizens have expressed concern that the qualifications of nominees to the Court no longer impact their appointment, but this is certainly not the case. Nominee qualifications have been measured through different means over the course of appointment research, but generally include factors such as the caliber of the nominee's legal education, their professional career, and their breadth of knowledge. Despite public concern, various studies confirm that the qualifications of each nominee are closely related to whether or not that nominee is confirmed by members of the Senate. Zigerell found that when a nominee is not highly qualified for the position there is only a small chance that senators will vote in favor of their confirmation, but when the same nominee is rated as highly qualified the chance of support increases dramatically. In essence, despite modern day concerns citizens can be certain that senators are not casting votes to approve nominees to the U.S. Supreme Court who are viewed as less than highly qualified.

While nominee qualifications still play a role in the appointment process, it is true that they are not the most significant predictor of whether or not a nominee will be elected. Zigerell addressed this point in stating that while ideology has the most significant effect on appointment, the interaction between ideology and qualifications actually has the greatest explanatory power (Zigerell, 397). In a spatial model of roll call voting, it was found that senators consistently vote for nominees who share their ideology and are highly qualified and will typically also vote for nominees who share their ideology when they are not as highly qualified. This illustrates that

while qualifications may not be the primary factor influencing the appointment of justices to the Court, they still have a major role in a nominee's ability to be confirmed.

### **The Court Median**

In any discussion of ideology relating to the U.S. Supreme Court, the significance of the Court's median voter cannot be ignored. The Median Voter Theorem states that majority rule voting systems will select the outcome most preferred by the median voter (Median Voter Theorem, n.d.). As the United States Supreme Court is a nine member, majority rule voting system, this theory is often applied to the Court. In regards to appointment, it is relevant to the decisions of senators while casting confirmation votes. It is simple to accept the finding that senators consider where the vacancy in the Supreme Court has occurred along the ideological spectrum, and where the nominee will exist in relation to that spectrum. Whether or not the median justice remains the same is a significant consideration in confirmation voting. If the addition of a nominee is going to change the swing vote, or median voter, of the Court senators will consider the outcome more carefully (Zigerell, 399). It stands to reason that since Supreme Court justices are appointed with indefinite term lengths, policy ramifications must be considered by senators.

Specific findings on the median or swing voter of the Supreme Court may contradict expectations. Existing research models demonstrated that, "nominations of an extreme conservative will be better received when the departing justice is an extreme liberal than when the departing justice is a moderate liberal," due to the fact that the less significant change would be, "perceived as a loss by more senators," (Zigerell, 407). While one might assume that senators would prefer a nominee of their own party affiliation, even if more or less extreme than the departing justice, these findings contradict that belief. Thus, the Court median and policy

positions of both the departing justice and the nominee have a significant effect on the confirmation votes of senators during the appointment process.

### **Presidential Strength**

While the Senate holds the role of confirming or rejecting presidential nominations to the Court, the strength of the president also has an impact on whether or not his selections are confirmed. Throughout the research, presidential strength is defined in different ways. Kahn's research of the political nature of the appointment process showed that constraints on presidential freedom of appointment include, "whether or not the president is a "lame duck" at the end of his term, the majority in the U.S. Senate is from the opposite party or the actual majority is hostile to the president, the president is running for reelection, or there is a national crisis and the president must use his patronage to gain political advantages in other areas," (Kahn, 38). All of these factors impact the likelihood that members of the Senate will confirm nominations brought before it by the president.

A strong legislative position is defined as the president's, "party controlling the Senate and [the president] not [being] in an election year," (Cameron, 111). Both being a popular president and being of the same political party as the president raises the chance of a yes vote in confirmation hearings. In fact, senators, "are more likely to support a nominee appointed by a president of the same political party," (Lax, 778). Thus, while the ideology of the nominee and senator are significant predictors of confirmation, the ideological distance of the president from a senator determine his strength and in turn, have an effect on the confirmation of his nominations. This effect results in the president taking the Senate's preferences into account in order to, "ensure Senate approval of their nominees and to move the policy orientation of the Court closer

to their own preferences,” and the president must weigh such factors more heavily when in a relatively weak presidential phase than a strong one.

### **Public Opinion**

While previously it was mentioned that senators pay mind to their own ideological distance from the nominee over that of their constituents, public opinion still has a significant effect on the confirmation of nominees to the Court. U.S. Supreme Court appointment is one of the many areas for which it has been assumed that citizens are not well informed, but this time the assumption is inaccurate. Contrary to popular opinion, “voters are far more informed about confirmation politics than has often been assumed or asserted,” and despite the fact that senators, “are not making use of such diffuse ideology as a cue for how they should vote, the effects of opinion are strong,” (Lax, 782). This is an important distinction which is relevant for the research moving forward. While senators do not use the opinions of constituents to come to a yes or no decision on a particular nominee, the opinions held by constituents are still strong predictors of the manner in which senators vote. This is because the public uses the same information, such as newspapers, ABA scores, and the political ideology of the nominee, to form an opinion that senators use. Since, “opinion holding is primarily a function of awareness and politically relevant demographic traits,” it is to be expected that a measure of opinions held by the public could accurately predict appointment to the Court. Thus, while constituent concerns are not directly considered by the senators voting in confirmation hearings, public opinion is still a strong predictor of whether or not a nominee is appointed to the U.S. Supreme Court.

### **Interest Group Activity**

The last factor prevalent throughout the research on Supreme Court appointment is interest group activity. While it is the least significant of the factors mentioned thus far, interest



group activity is still noteworthy in its effect on the appointment of justices to the Court. Interest groups can have both a positive or negative impact on a candidate's likelihood of being confirmed by the Senate, and are given ample opportunity to argue their case during confirmation hearings. Specifically, "strong interest group mobilization against a nominee can hurt a candidate while interest group mobilization for a nominee can have substantively slight but statistically significant positive effects," (Cameron, 112). Interest groups take action for and against nominees through different mechanisms, including requests for action and solicitations to their group patrons. Interestingly, the tactics employed are largely based upon the nature of the vacancy (Martinek, 800). Modern research shows that "interest group mobilization during nominations has increased greatly since about 1970," (Cameron, 297). While there is not a large body of research relating to interest groups' effect on the appointment of Supreme Court justices, political researchers have demonstrated that interest groups act during vacancies, that such action has a slight yet significant impact on the appointment process, and that such action has increased in recent decades.

Overall, there has been thorough investigation of the Supreme Court appointment process by political science researchers. The general body of knowledge asserts that nominee ideology and qualifications are the most significant factors impacting whether or not a nominee is appointed to the Court. Additionally, researchers concur that potential changes to the Court median, presidential strength, public opinion, and interest group activity are also significant to consider while trying to determine whether a nominee to the Court will be confirmed by the Senate. Citizens of the U.S. should be reassured that senators take careful consideration of a multitude of factors prior to voting in favor of or against a nominee to the United States Supreme Court.

Despite the thorough nature of existing appointment research, far less has been done to determine the effect of increasing partisanship on Supreme Court appointment. While historically nominees to the Court were only rarely rejected, recent decades have shown an increase in the Senate's willingness to vote against candidates when the nomination is made by a president of the opposing party. Cameron, Kastlelec, and Park posited that the dramatic rise in contentiousness during the appointment process could be due to changes in the Senate, specifically increased ideological polarization (Cameron, 283). In conducting their research, these authors confirmed increased polarization in the appointment process since 1970, both among senators and in terms of the nominees themselves (Cameron, 297).

## **Chapter 3**

### **Theory**

While increased polarization in the Senate has been confirmed in political science research, little has been done to empirically establish its effect on the confirmation process. Thus, it is worth investigating whether one party weighs certain factors more heavily than the other. For instance, are nominee qualifications a stronger predictor of confirmation votes for Democratic senators than they are for Republican senators? Does one party give more consideration to the political ideology of the nominee than the opposing party? Based on the assertions and insults made by both parties, it is worth investigating whether or not accusatory comments have statistical merit with regard to one or both of the political parties within the United States.

#### **Hypothesis 1: Overall Party Differences**

As illustrated by the 2018 confirmation hearings of Trump's nominee, Brett Kavanaugh, both the Republican and Democratic parties are eager to accuse each other of weighing their own ideological concerns over considerations of a nominee's qualifications. However, very little research has been done to evaluate whether any party-specific claims have merit. Much research has been done regarding senators being of the same or opposing party of the president, but has not been done to determine whether there is actually a difference in the considerations of Republican and Democratic senators in their confirmation voting. My second and third hypotheses are applicable to both parties, and focus not on the party itself but rather, whether the senator shares the affiliation of the nominating president when casting his or her vote in favor of or against a judicial nominee.

I argue that senators do not differ in their considerations during the confirmation process based on party affiliation. The paramount expectation of my research is that there will be no distinction between the factors impacting votes during Supreme Court confirmation hearings by Republican versus Democratic senators. There are several pieces of evidence which give rise to this expectation. First, with the host of appointment research currently in existence, none has concluded that there is a systematic difference between the considerations of senators during the confirmation process based upon party affiliation. In contrast, political scientists have found that ideology, qualifications, the Court median, presidential strength, public opinion, and interest group activity interact to determine the manner in which senators vote on each individual nominee to the U.S. Supreme Court. Secondly, there is no reasonable explanation as to why one party would favor ideology, qualifications, or any of the other factors more than the other. While senators do have differing ideological stances on issues, this does not support a claim that one party's ideology is more likely to disregard qualifications than another. Since both parties are aware that justices confirmed to the Court are granted life sentences, the senators voting in these hearings are facing an identical situation regardless of their political affiliation. The only distinction between the senators is whether or not they are of the same political affiliation as the president. This will be accounted for in the second and third hypotheses.

Based on the lack of basis for claims that one party favors ideological concerns more heavily than another, I predict that there will be no statistically significant difference between the influence of nominee qualifications on senators' confirmation votes from either party. I also predict there will be no statistically significant difference between the influence of ideology on senators' confirmation votes from either party. Thus, my expectation regarding party differences in confirmation voting is as follows:

*Democratic and Republican senators do not systematically differ in the weight they give to the two main factors of consideration during confirmation of Supreme Court justices such as qualifications and ideology.*

## **Hypothesis 2: Same Party President and Ideology**

While both the nominee's qualifications and ideology have an effect on the vote of senators, each senator must make trade-offs when coming to a final decision. For instance, in certain circumstances the nominee may be highly qualified but of the opposing political party, creating dissonance for the senator during the confirmation process. Alternatively, a judicial candidate may have relatively low qualifications, but be almost identical to the senator from an ideological standpoint. In order to decide in either of these situations, the senator must decide which of the two factors is most important prior to casting a vote of confirmation or rejection.

Senators make trade-offs based on whether or not they are of the same political party as the nominating president. President's expect and research supports the idea that the Senate will confirm the president's nominees when the majority party in the Senate is the same as their own (Lax, 778). Being of the party that controls the majority of the Senate is seen as presidential strength due to the fact that senators, "are more likely to support a nominee appointed by a president of the same political party," (Lax, 778). Even so, it is important to consider how such strength might change the considerations of senators in terms of their ideological and qualification expectations of candidates. Because senators know that the president is almost guaranteed to nominate a candidate from his own party, they are given the opportunity to give less weight to the qualifications of the candidates.

When making a trade-off between nominee ideology and qualifications, senators from the president's party will consider ideology over qualifications. In a position of strength, the president does not have to focus time or energy convincing senators that his judicial candidate is

highly qualified because of the fact that those senators within his party are likely to confirm his candidate regardless of qualifications. Through having majority power within the Senate, the members of the president's party are able to demand a candidate with ideological views more similar to their own because they do not need to concern themselves with convincing the opposing party senators that the candidate is qualified or unbiased, since they do not need those senators' votes to get the candidate confirmed.

Based on the finding that the president has more flexibility in his nominee options when his party also controls the Senate, I predict that the party which is identical to the president performing the nomination will weigh ideology more heavily during the confirmation process than the party that is in opposition to the president. This is because the president will not have to make concessions with regard to nominating an individual ideologically similar to himself, since he knows that members of the Senate from within his party will not be concerned with a qualification argument since they will inherently favor nominees from their own party. Thus, my theory regarding the impact of a senator being from the same party as the president is as follows:

*A senator is more likely to weigh ideological concerns about the nominee more than the nominee's qualifications when s/he is of the same political party as the president.*

### **Hypothesis 3: Opposing Party President and Qualifications**

Senators from the opposing party to the nominating president also consider the qualifications of the nominee. Factors such as the candidates' professional experiences, colleague opinions, caliber of law school, and perceived bias in former decisions all play a role in influencing the decisions of senators on whether to vote in favor or against nominees to the Court (Zigerell, 405). Senators from the opposing party to the nominating president consider ideology during the Supreme Court confirmation process as well. Given the life-time appointment status of Supreme Court justices, senators are not immune to the political impact of

a justice's role while they are determining how to vote. Senators, like all American politicians, would benefit from having more justices of their own political affiliation on the Court than of the opposing political affiliation, because an interpretation of the Constitution aligned with their own views could help them advance bills and gain political capital. Thus, while senators from the opposing party are aware that the president is unlikely to pick a judicial candidate from their own party, they would still like to minimize the ideological distance between themselves and the next justice of the United States Supreme Court.

Senators from the opposing party to the nominating president are also required to make trade-offs in order to determine whether they will vote in favor of a Supreme Court nominee. As a result of such trade-offs, senators from the opposing party to the nominating president will weigh qualification concerns more heavily than ideological concerns during the confirmation process. The reasons which support an expectation that in the time of a strong president, ideological considerations will prevail, are identical to those which support the expectation that members of the opposing party will focus more on nominee qualifications. This is due in large part to the reality that more than ninety percent of appointees have shared their political party with the nominating president since Cleveland was in office (Kahn, 33). Senators know that when the nominating president does not share their party affiliation, they are not going to share ideological views with his judicial nominees. The fact that almost every nominee in our nation's history has been of the same political affiliation as the nominating president further supports this claim. Therefore, senators from the party opposing that of the president will find it necessary to give weight to other factors in determining whether or not they will vote to confirm that candidate, since a focus on just ideology in such cases would result in a nay vote every single time a nomination came before the Senate. Since qualifications and ideology are the two most

significant factors which predict the appointment of justices to the United States Supreme Court, I expect that qualifications will be the factor opposing-party senators choose to focus on when ideology is no longer an option.

As indicated above, the same research on presidential strength suggests that members of the party opposing the president have different ideological concerns from those of both the president and the majority party of the Senate. I believe that these senators will already enter the confirmation process knowing that they will not be in favor of the political party of the nominee and in response, will focus more attention and energy on the nominee's qualifications. Thus, my theory regarding the impact of a senator being of a different political party from the nominating president is as follows:

*A senator is more likely to weigh concerns about nominee qualifications over ideology when s/he is of the opposing political party from the president.*



## Chapter 4

### Data

This research involves the confirmation votes of 22 judicial candidates to the United States Supreme Court. The data begin with the confirmation of Warren Berger on June 9, 1969 and ends with the confirmation of Brett Kavanaugh on October 6, 2018. Thus the temporal range consists of 49 years. The data also involve Senates from 12 different sessions of Congress with the earliest being the 91<sup>st</sup> Congress and the latest being the 115<sup>th</sup> Congress. The nominations in the dataset were made by eight different presidents with the earliest being Richard Nixon and the most recent being Donald Trump. Senators within the dataset are either from the Republican or Democratic party, as are the nominating presidents. The unit of analysis is the senator-vote, meaning that each row in my dataset contains information about a single senator's vote on a single Supreme Court nominee. Table 1.1 provides information on each nominee in the dataset.

**Table 1.1 Nominees, the President, and the Senate**

Nominee Name	Nominating President	Senate Vote	President's Party	Senate's Party
Warren Berger	Richard Nixon	93-3	Republican	Democrat
Clement Haynsworth Jr.	Richard Nixon	46-55	Republican	Democrat
G. Harrold Carswell	Richard Nixon	45-51	Republican	Democrat
Harry Blackmun	Richard Nixon	94-0	Republican	Democrat
Lewis F. Powell Jr.	Richard Nixon	89-1	Republican	Democrat
William H. Rehnquist	Richard Nixon	68-26	Republican	Democrat
John Paul Stevens	Gerald Ford	98-0	Republican	Democrat
Sandra Day O'Connor	Ronald Reagan	99-0	Republican	Republican
William H. Rehnquist	Ronald Reagan	65-33	Republican	Republican
Antonin Scalia	Ronald Reagan	98-0	Republican	Republican
Robert H. Bork	Ronald Reagan	42-58	Republican	Democrat

Anthony M. Kennedy	Ronald Reagan	97-0	Republican	Democrat
David H. Souter	George H. W. Bush	90-9	Republican	Democrat
Clarence Thomas	George H. W. Bush	52-48	Republican	Democrat
Ruth Bader Ginsburg	Bill Clinton	96-3	Democrat	Democrat
Stephen G. Breyer	Bill Clinton	87-9	Democrat	Democrat
John G. Roberts, Jr.	George W. Bush	78-22	Republican	Republican
Samuel A. Alito, Jr.	George W. Bush	58-42	Republican	Republican
Sonia Sotomayor	Barack Obama	68-31	Democrat	Democrat
Elena Kagan	Barack Obama	63-37	Democrat	Democrat
Neil M. Gorsuch	Donald Trump	54-45	Republican	Republican
Brett Kavanaugh	Donald Trump	50-48	Republican	Republican

The data for the dependent variables are drawn from records kept by the U.S. Senate and distributed on its website, Congress.gov. There were two sources involved in the collection of the data for the independent and control variables. The first source was the United States Senate website which provides the name of the nominating president, the name of each candidate to the Court, the date of the vote, the tally of yeas and nays and whether the candidate was confirmed or rejected. The final and most useful source was the VoteView website which is created by the UCLA Department of Political Science. This site provides every roll call vote made by both houses of Congress. It provided the roll call votes for the confirmation or rejection of judicial candidates, the ideological distance between the Senate and the president, whether each senator was an out-partisan, meaning in a different political party from the president, the party of the senator, the Segal-Cover ideology score for the candidate, the Segal-Cover qualifications score for the candidate, and the polarization of the Senate at the time of the vote.

This sample of data is sufficient to generalize to the population of interest because that population is nominees to the United States Supreme Court, and the sample includes all nominees over the last 50 years. Including nominees from over 50 years ago would not be useful

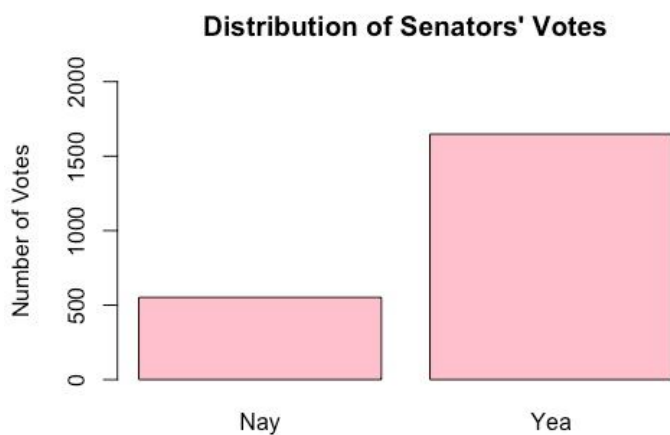
because the hypotheses involve comparison between political parties and polarization, which were both severely different than they are now. Also, many early Supreme Court nominees were confirmed by voice vote in the U.S. Senate, meaning there was no opposition to their confirmation noted on the record. Thus, in order to draw conclusions applicable to the modern environment of United States politics including candidates and relevant votes from the past 49 years is sufficient for generalization.

The dependent variable of this research is each senator's vote regarding each candidate to the U.S. Supreme Court as either yea or nay. Each candidate can be confirmed or rejected by the Senate as a whole, and each individual senator can either vote yea or nay in regard to a candidate's confirmation. Thus, the dependent variable is dichotomous and was coded 1 if the senator voted yea and 0 if the senator voted nay. Eighty-two percent of the cases in my data are classified as yea votes under this measure.

Trends in this variable over time illustrate an increasing divisiveness over these nominations in the U.S. Senate. As Table 1.1 illustrates, beginning with the appointment of Ruth Bader Ginsburg in 1993 through the confirmation of Brett Kavanaugh in 2018, the senate majority and nominating president are always of the same political party. The table also shows that every Senate vote which resulted in the rejection of a nominee occurred when the nominating president and Senate majority were affiliated with opposing political parties. Even when the nominee was still confirmed, the table demonstrates that casting nay votes became more common as time progressed. While six of the first ten nominees received less than 4 nay votes, the last ten nominees listed received nearly 30 nay votes on average. Thus, it is clear that senators have become more willing to cast nay votes over time, even though the change has not

resulted in more rejections of the nominees to the Court. Most nominees to the U.S. Supreme Court are confirmed during the corresponding Senate vote.

Figure 1.1 provides a bar plot of the distribution for the dependent variable.<sup>1</sup> The figure demonstrates that far more often than not, Senators cast yea votes in confirmation of nominees to the Court. The figure also depicts the nay votes cast by senators in confirmation hearings between 1969 and 2018. Therefore, roughly a quarter of votes cast by senators with regard to nominees to the U.S. Supreme Court are nay votes while the overwhelming majority are yea votes.



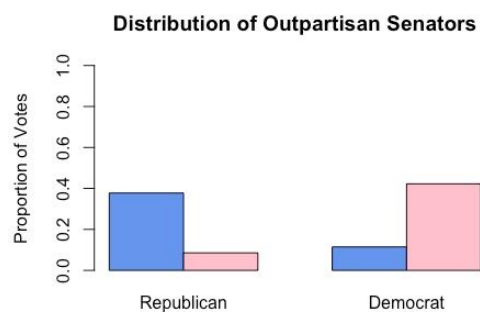
**Figure 1.1 Distribution of Senate Votes.** The pink bars represent the number of votes by senators within the dataset, the left bar being no votes and the right bar being yes votes. There are three times as many yes votes as no votes cast by senators in regard to Supreme Court nominees.

The first key independent variable is political affiliation of the senator. This is relevant to all three hypotheses, and was measured as two separate dichotomous variables. The variable for Republican is measured 1 if the senator affiliated as a Republican and 0 if the senator did not

<sup>1</sup> Note that some nominees—like George W. Bush’s nominee Harriet Meiers—withdraw. These nominations are not included in my dataset because there was no official Senate vote on their nomination.

affiliate with the Republican party. Forty-six percent of the cases in my data are classified as Republican under this measure. The variable for Democrat is measured 1 if the senator affiliated with the Democratic party and 0 if the senator did not affiliate with the Democratic party. Fifty-three percent of the cases in my data are classified as Democrat under this measure. Thus, there are slightly more Democratic senators in this dataset than Republican senators. Of the nominations in my data, 7 were nominees of Republican presidents with a Republican Senate, 4 were nominees of Democratic presidents with a Democratic Senate, 0 were nominees of Democratic presidents with a Republican Senate and 11 were nominees of Republican presidents with a Democratic Senate. Thus, there are slightly more Democratic senators included in this data set than Republican senators. This information came from the VoteView website maintained by the UCLA Department of Political Science (Lewis et al. 2019).

The second key variable is the out-partisan measure, which indicates whether the senator is of the same political party as the nominating president or not. This is also a dichotomous measure. The variable is coded 1 if the senator is of a different political party from the nominating president and 0 if the senator is of the same political party as the president. Fifty-one percent of the votes in my data are classified as out-partisan under this measure. Thus the occurrence of senators affiliating with the same political party as the nominating president is slightly more frequent than senators affiliating with the opposing party to the nominating president during this 49-year timespan. This information also came from the VoteView website maintained by the UCLA Department of Political Science (Lewis et al. 2019). The figure below illustrates the distribution of in-partisan and out-partisan senators, broken up by party affiliation. There are more Democrats opposing the party of the nominating president than opposing Republicans in this dataset.



**Figure 1.2 Distribution of Out-partisan Senators.** The blue bars represent senators of the same political party as the president and the pink bars represent senators in the opposing party to the president. There are more Democrats in the opposing party to the president than opposing Republicans in this dataset.

I measured presidential approval rating as a continuous variable. This is the percentage of American citizens who approve of the work being done by the nominating president in the month closest to the Senate vote on each nominee. This variable ranges from 39% approval to 65% approval within the cases from 1969 to 2018. There is no discernable pattern in presidential approval rating over this time period other than the range remaining between 39% and 65% approval. This data came from the American Presidency Project.

I measured ideological distance between the senator and president as a continuous variable. These scores were calculated as the absolute value of the distance between the senator's and president's first-dimension NOMINATE score (Bouche et al. 2018; Poole and Rosenthal 1992; Lewis et al. 2018).<sup>2</sup> Higher values of this variable indicate more severe ideological disagreement between the senator and the president. The variable ranges from 0 to 1.3, where a 0 reflects no ideological distance between the president and senator and 1.3 reflects a president

<sup>2</sup> Boche, Adam, Jeffrey B. Lewis, Aaron Rudkin, and Luke Sonnet. 2018. "The new Votview.com: preserving and continuing Keith Poole's infrastructure for scholars, students and observers of Congress". *Public Choice* 176(1-2). Available online: <https://link.springer.com/article/10.1007/s11127-018-0546-0>

and senator who are on completely opposite sides of the ideological spectrum. The median ideological distance is .61 and the mean is .58, meaning typically there is significant ideological distance between the nominating president and senators.

I measured nominee ideology as a continuous variable using the Segal-Cover scores for each candidate (Segal and Cover 1989). The scores are generated based on news articles from the Wall Street Journal, the New York Times, the Washington Post, the Los Angeles Times, the Chicago Tribune, and the St. Louis Post-Dispatch. Using the Segal-Cover measure, 0 means most conservative and 1 means most liberal. In this data set, the minimum ideology score was 0 and the maximum was .78. Three-fourths of the scores within these cases were below .365. Therefore, most of the nominees to the U.S. Supreme Court between 1969 and 2018 held liberal ideological views.

I also measured nominee qualifications as a continuous variable using the Segal-Cover scores for each candidate (Segal and Cover 1989). In the Segal-Cover qualifications measure, 0 means unqualified and 1 means completely qualified. Among my cases, the minimum score was .11 and the maximum score was 1. The median score was .81 indicating that most nominees were either qualified or highly qualified to serve as justices to the Court.

The final variable is polarization of the Senate. I measured polarization as a continuous variable. Zero indicates a Senate that is not polarized and 1 indicates a Senate that is highly polarized. These data come from Lewis et al. (2018) and is the distance in average DW-NOMINATE scores for Democrats and Republicans in the U.S. Senate. Higher values indicate more polarization. The minimum level of polarization within this data set is .50 and the maximum level of polarization is .85. The median polarization level is .59 indicating that from the year 1969 through 2018 there was a relatively high level of polarization within the Senate

during roll call votes regarding nominees to the U.S. Supreme Court. Below is a table of summary statistics for each of the variables involved in this research.

The summary statistics table below provides more general information about this dataset. Presidential approval is always between 39% and 65% in the cases used for this research. Ideological distance ranges from 0 to 1.29, but is typically around .61. Nominee ideology ranges from 0 to .78 and the median is .16, meaning candidates to the Court are typically not extreme in their ideological views. Qualifications range from .11 to 1, and it is clear that most candidates are highly qualified since the median is .81. Polarization ranges from .51 to .85, and generally remains toward the lower end of this range as the median is .59. Most of the Senate votes cast are yes votes, specifically 75% of votes cast. Whether or not a senator is in-partisan or out-partisan is split in half almost exactly 50-50. This table helps to understand the data which was used to run regression analyses in this research.

**Table 1.2 Summary Statistics**

<b>Continuous Variables</b>					
	Minimum	Mean	Median	Maximum	Standard Deviation
Presidential Approval	39	51	49	65	8
Ideological Distance	0	0.58	0.61	1.29	0.35
Nominee Ideology	0	0.25	0.16	0.78	0.23
Nominee Qualifications	0.11	0.75	0.81	1	0.26
Polarization	0.51	0.62	0.59	0.85	0.11
<b>Dichotomous Variables</b>					
	No	Yes			
Vote	25%	75%			
Out-Partisan	49%	51%			
Republican	54%	46%			
Democrat	47%	53%			



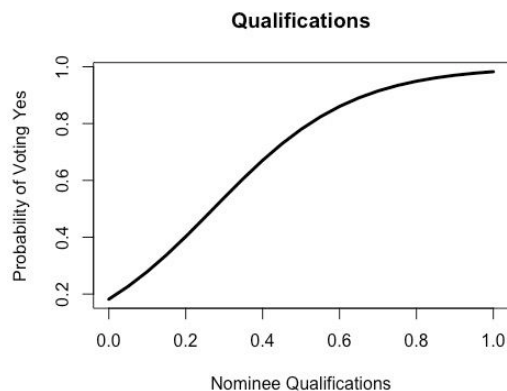
## Chapter 5

### Results

#### Baseline Results

A baseline regression model was estimated to explain the confirmation votes of senators for justices to the U.S. Supreme Court using the variables ideological distance, an out-partisan measure, presidential approval, whether the senator was a Republican or Democrat, the nominee's ideology, the nominee's qualifications, and the Senate's polarization level at the time of the vote. The key independent variables are the nominee qualifications and the nominee ideology. Therefore, this model helps us understand if—across legislators of both parties—these two factors make a senator more (or less) likely to vote for a nominee.

Table 2.0 shows the results of the baseline regression model. The model shows that nominee qualifications are statistically significant ( $p < .01$ ) in predicting whether a senator will vote yes or no in regard to a judicial candidate. As a nominee's qualifications increase, a senator becomes more likely to vote for the nominee. Figure 2.3, below, demonstrates that when a nominee's qualifications are lower than .2, senators are less than 40% likely to vote yes to confirm that nominee. Alternatively, the figure demonstrates that when a nominee's qualifications are rated .8 or higher, a senator is almost guaranteed (nearly 100% likely) to vote yes to confirm the candidate. Overall, senators become far more likely to vote yes to confirm a supreme court candidate as the nominee's qualifications rating increases, especially once the rating is .6 or higher.



**Figure 2.3 Confirmation Votes Based on Nominee Qualifications.** The figure above shows the probability that a senator will vote yes to confirm a judicial nominee to the U.S. Supreme Court as the qualifications rating of that nominee increases. The black line illustrates that a senator is highly likely (over 80% chance) to vote to yes to confirm a nominee to the Court when that nominee's qualifications rating is .6 or higher.

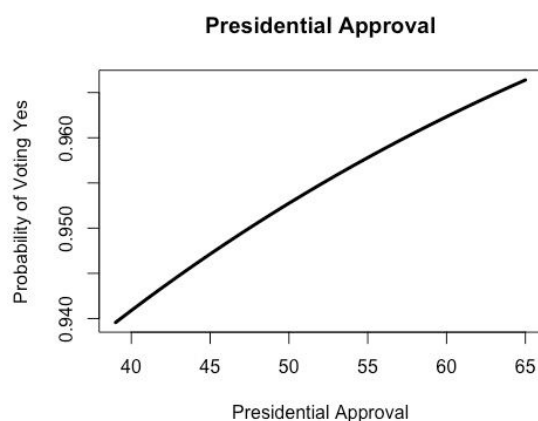
However, nominee ideology is not statistically significant for explaining whether a senator will vote in favor or against a judicial nominee. There is no evidence that more liberal (or conservative) nominees are, on average, disadvantaged in the U.S. Senate.

This baseline model allows us to make useful predictions regarding whether or not a nominee to the Court will be confirmed by the Senate. For example, when ideological distance, presidential approval, the out-partisan measure, the Democrat measure, the Republican measure, ideology score, qualifications score, and polarization level are all at their medians, each senator is 95% likely to vote yes in favor of confirmation.

### **Presidential Approval**

The approval rating of the nominating president is statistically significant at the  $p < .05$  level. The figure below shows that the probability of voting yes increases as the percentage of the population approving the nominating president increases. When the nominating president has a 50% approval rating, a senator is 95% likely to vote yes to confirm his candidate to the Court. When a nominating president has an approval rating of 65%, a senator is practically guaranteed to vote yes to confirm a candidate to the court. Presidential approval is a useful tool in predicting

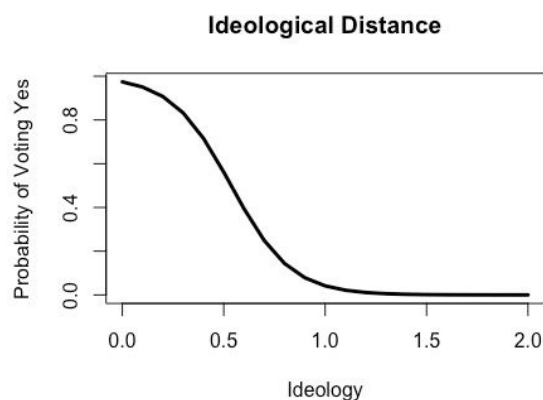
whether a senator will vote yes to confirm a nominee to the United States Supreme Court. Presidential approval is a statistically significant variable in the baseline model at the  $p < .05$  level.



**Figure 2.4 Influence of Presidential Approval on Senate Votes.** The black line shows the probability that a senator will vote yes to confirm a Supreme Court nominee based on the approval rating of the nominating president. As approval rating increases, the probability of voting yes increases and at a 65% approval rating or higher senators are almost guaranteed (99.9% likely) to vote to confirm a nominee.

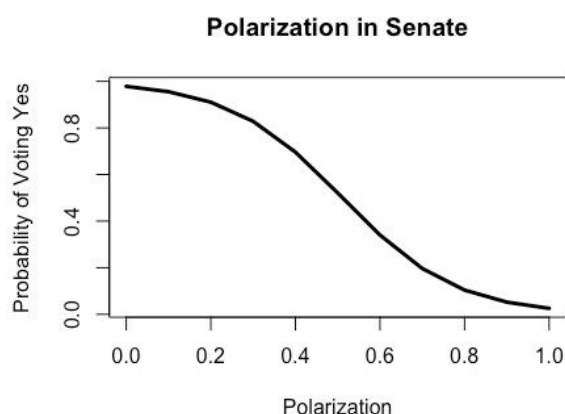
### **Partisanship and Ideology**

Ideological distance between the nominee and senator and the level of polarization in the Senate were also statistically significant at the  $p < .01$  level. This result indicates that the ideological distance between the nominee and senator had explanatory power, since as the distance becomes greater a senator becomes more likely to vote no against a nominee's confirmation. This result can be used to make predictions regarding a senator's vote based on the ideological distance between that senator and the judicial nominee. The figure below shows that when the ideological distance between the senator and nominee is .25, the senator is 95% likely to vote yes. However, when the distance reaches .5 the senator is only about 40% likely to vote yes and when the distance is at 1, the senator is less than 5% likely to vote yes.



**Figure 2.5 Ideological Distance Predictions on Senate Votes.** The black line shows the probability that a senator will vote yes to confirm a Supreme Court nominee based on the ideological distance between the senator and the nominee. As ideological distance increases, the probability of voting yes decreases and at a distance of 1 or greater, senators are almost guaranteed (95% likely) to vote against confirming a nominee.

Additionally, the polarization within the Senate has explanatory power, as more polarization also increases the chances that each senator will cast a no vote against the confirmation of a Supreme Court nominee. The results allow us to predict that if the polarization within the Senate is above .6 the probability of a senator casting a yes vote to confirm a nominee is less than 10%. The figure below illustrates the impact polarization has on a senator's probability of voting yes to confirm a candidate to the U.S. Supreme Court. If polarization is below .2, each senator is 90% likely to cast a yes vote. Alternatively, if polarization is at .8, each senator is only 10% likely to cast a yes vote.



**Figure 2.6 Senate Polarization Predictions on Senate Votes.** The black line shows the probability that a senator will vote yes to confirm a Supreme Court nominee based on the level of polarization within the senate. As polarization increases, the probability of voting yes decreases and at a polarization level of .8, each senator is less than 10% likely to vote to confirm a nominee.

### Hypotheses

Having considered the results of a baseline model that explains the votes of all U.S. senators, we now turn to differences among senators, as predicted by my theory. The first hypothesis of the research was:

*Democratic and Republican senators do not systematically differ in the weight they give to the two main factors of consideration during confirmation of Supreme Court justices such as qualifications and ideology.*

To test this hypothesis, I estimated two separate logistic regression models: one with only Republican senators included and a second with only Democratic senators included. Again, the dependent variable in both models would indicate whether or not the senator voted yes on the nominee. Additionally, I expected that the significance of the qualifications score would be almost identical if it were of equal importance to Republican and Democratic senators when casting their votes. In terms of ideology, if this hypothesis were supported by the data ideology would be either significant or insignificant for both Republicans and Democrats. The results of

this regression are displayed in Table 2.1 with the first column representing Democratic senators and the second column representing Republican senators. If the hypothesis is supported, there will be no statistically significant difference in the ideology and qualifications coefficients across the two models.

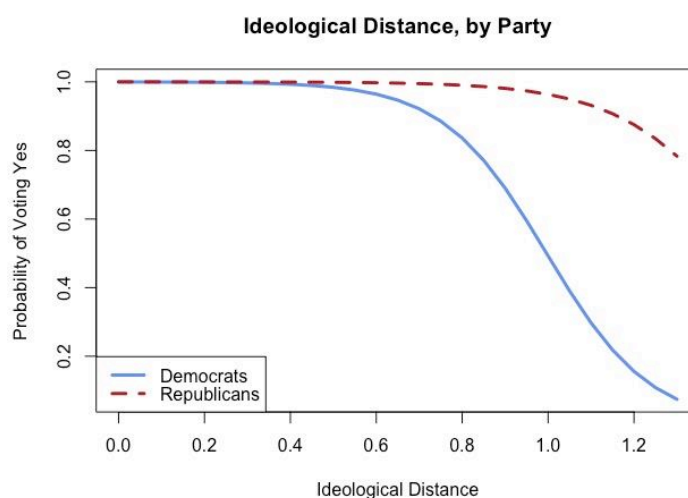
### **Qualifications**

In both models nominee qualifications were statistically significant at the  $p < .01$  level. To test for differences across models, I conducted a t-test for equivalence of the coefficients for qualifications in the Democrat model (6.728) and the Republican model (5.948). This test produced a p-value of .47. As .47 is greater than .05, the difference between the coefficients is not statistically significant. Thus, there is no evidence that nominee qualifications are more important to Republican senators than Democratic senators during the appointment process, nor is there any evidence that qualifications are more important to Democratic senators than Republicans. Simply put, there is no meaningful difference between the consideration senators give to nominee qualifications based on party affiliation. This result is in line with Hypothesis 1.

### **Ideology**

In the two separate models for Republican and Democratic senators (Table 2.1), ideology was statistically significant at the  $p < .01$  levels. Additionally, a t-test for the coefficients for ideology in the Democrat model (4.703) and the Republican model (-7.288) produced a p-value of .0001. Thus, the difference between the coefficients is statistically significant and suggests that Democrats and Republicans place different values on the ideology of a nominee when they cast their votes; Republicans weigh ideology more heavily than do Democrats. Therefore, the ideology results of these two models do not support the hypothesis that both parties consider nominee ideology to the same degree while casting votes to confirm a Supreme Court justice.

Using this information, we can make predictions related to nominee ideologies and the confirmation votes of senators on nominees to the Supreme Court in the future. The figure below shows the probability that a senator will vote yes to confirm a judicial candidate as that candidate's ideological distance becomes further from their own, based on party identification. The probability of voting yes begins to decline for Democrats once ideological distance reaches .8. Probability of voting yes does not begin to rapidly decline for Republicans until distance reaches 1.0, suggesting that Republican senators may be slightly more likely to vote yes for a nominee who is ideologically distant from themselves. Thus, the figure shows an interesting difference in the probability of voting for an ideologically distant nominee between Republican and Democratic senators.



**Figure 2.7 Influence of Ideological Distance on Senate Votes by Party.** The blue line represents Democratic senators and the red dashed line represents Republican senators. Both parties are likely to vote yes when ideological distance between themselves and the nominee is less than .6, but then Democrats become far less willing to vote yes as ideological distance increases, with only a 40% chance at voting yes at a distance of 1.0 while Republicans still have over a 90% chance of voting yes at the same distance.

### Hypothesis 2: Same Party President and Ideology

The second hypothesis of the research was:

*A senator is more likely to weigh ideological concerns about the nominee more than the nominee's qualifications when s/he is of the same political party as the president.*

I anticipated that there would be a difference between consideration given to the factors of nominee qualifications and ideology based on party affiliation. Specifically, I predicted that senators in the same political party as the nominating president would consider nominee ideology more than nominee qualifications. If this hypothesis was supported, the nominee qualifications independent variable would be less predictive than the ideology variable. Thus in the table of regression results (Table 2.2), the left column for in-partisans would have an ideology score more significant than the qualifications score.

In the model, nominee qualifications and nominee ideology are both statistically significant, since ideology is significant at the  $p < .05$  level and qualifications are significant at the  $p < .10$  level. Further, the coefficient for qualifications is 4.091 while the ideology coefficient is 2.782. A t-test was conducted on these two coefficients and determined that the difference between them is extremely statistically significant ( $p < .0001$ ). Nominee qualifications have more explanatory power than ideology. Therefore, the hypothesis is not supported. Senators inside of the nominating president's party do not give more weight to nominee ideology than they do to nominee qualifications.

### **Hypothesis 3: Opposing Party President and Qualifications**

The third hypothesis of the research was:

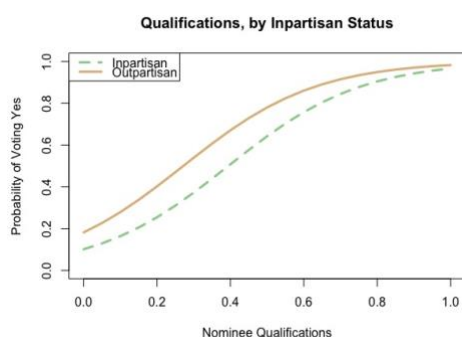
*A senator is more likely to weigh concerns about nominee qualifications over ideology when s/he is of the opposing political party from the president.*

I anticipated that there would be a difference between consideration given to the factors of nominee qualifications and ideology based on party affiliation. Specifically, I predicted that senators in the opposing political party to the nominating president would consider nominee qualifications more than nominee ideology. If this hypothesis was supported, the nominee qualifications independent variable would be insignificant or less significant than the ideology



variable and the coefficient for ideology would be less predictive than the coefficient for qualifications. Thus in the table of regression results, the right column for out-partisans will have an ideology score less significant than the qualifications value and the coefficient for ideology will be less than that for qualifications.

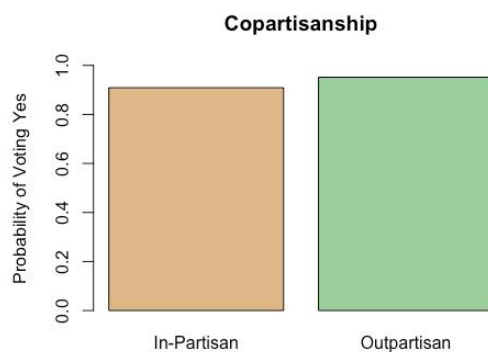
A regression model was conducted for senate votes confirming nominees to the U.S. Supreme Court including the distance, presidential approval, ideology, qualifications, and polarization data for out-partisan senators. In the model, nominee qualifications and nominee ideology are both statistically significant, since ideology is significant at the  $p < .10$  level and qualifications are significant at the  $p < .01$  level. Further, the coefficient for qualifications is 5.878 while the ideology coefficient is .873. A t-test was conducted on these two coefficients and determined that the difference between them is extremely statistically significant ( $p < .0001$ ). Therefore, the hypothesis is supported. Senators outside of the nominating president's party do give more weight to nominee qualifications than they do to nominee ideology. The results from the regression comparing in-partisan and out-partisan senators' confirmation votes can be used to make predictions about the future based on co-partisanship.



**Figure 2.8 Influence of Nominee Qualifications Based on Partisanship.** The figure above shows the probability that a senator will vote yes to confirm a nominee to the U.S. Supreme Court based on whether they share the nominating president's political affiliation or not. The tan line represents senators of the same political affiliation as the nominating president and the green, dashed line represents senators who do not share the political affiliation of the nominating president. The tan line shows that those who do not share the president's party are more likely to

vote yes with a qualification score from 0 to .6, but both lines show that as the qualification scores increase, senators become more likely to vote yes.

A prediction of confirmation based on co-partisanship shows that knowing whether or not a senator shares the same political party as the president does not provide useful information as to whether the senator will vote yes or no to confirm the nominee to the Court. As the figure below demonstrates, those in the party of the president and those outside of the president's party are highly likely to vote yes in favor of confirming a nominee to the U.S. Supreme Court. Both groups show over a 90% chance of voting yes with regard to a nominee. Therefore, the out-partisan measure cannot be used to determine whether or not a senator will vote yes to confirm nominees to the Court. Additionally, the out-partisan variable is not statistically significant in the baseline model at the  $p < .05$  level.



**Figure 2.9 Senate Votes Based on Partisanship.** The tan bar represents senators who share the political affiliation of the president while the green bar represents senators who do not share the political affiliation of the president. Out-partisans are actually more slightly more likely to cast a yes vote than in-partisans, but both groups of senators are at least 90% likely to cast a yes vote.

## **Chapter 6**

### **Conclusion**

On July 9, 2018, Brett Kavanaugh was nominated by President Donald J. Trump to become the next United States Supreme Court justice. On September 4, the confirmation hearings began before the Senate Judiciary Committee. Plagued by protestors, public questioning of Kavanaugh ended on September 6. On September 16<sup>th</sup>, a story published in the Washington Post exposed a rape accusation against the Supreme Court nominee. As expected, a media circus ensued as the entire country became enthralled in whether or not Kavanaugh would be confirmed and appointed to the Court, in light of the accusations. On October 5, the Senate voted 50-48 to confirm his nomination to the U.S. Supreme Court. This peaked public interest in the Supreme Court appointment process and provoked questions regarding the considerations of senators during confirmation hearings. Thus, this research aimed at answering some of these questions, specifically with regard to party differences.

The first theory of this research was that Republican and Democratic senators would not differ in the consideration given to the qualifications and ideology of nominees to the U.S. Supreme Court when casting their votes to confirm or reject such candidates. To test this theory, two separate regression models were estimated, one for the Democratic senators' votes between 1967 and 2018 and one for the Republican senators' votes between 1967 and 2018. The results showed that the hypothesis was partially supported. There is no difference in the consideration Republican and Democratic senators give to nominee qualifications based upon party identification. However, there is a significant difference in the consideration given to nominee ideology, as Republicans weigh ideology more heavily than Democrats. This should still be reassuring to citizens of the United States, as the data show that no matter which party holds the

Senate majority, nominee qualifications are always of paramount importance while confirmation votes are being cast.

I also hypothesized that senators would pay more attention to nominee ideology than nominee qualifications when they share the political affiliation of the nominating president. This is because a senator sharing the president's political affiliation is already highly likely to confirm his/her candidate, so that senator can focus more on having a nominee ideologically close to himself than being convinced that he should confirm the nominee of an opposing party. This hypothesis was not supported. In the regression analysis for in-partisan senators, qualifications of the nominee were a far better predictor of whether the senator would vote in favor of confirming the nominee than nominee ideology.

The third and final theory of the research was that senators would give more attention to nominee qualifications than nominee ideology when they do not share the political affiliation of the nominating president. This is because they have accepted the fact that the nominee is coming from an opposing party president and is therefore, highly likely to maintain a great ideological distance from themselves. In the regression analysis for votes of out-partisan senators, this hypothesis was supported. Senators outside of the nominating president's party have given more weight to the nominee's qualifications than to their ideology over the past 50 years.

The one factor which was able to distinguish between the votes of Republican and Democratic senators was ideological distance between the senator and the nominee. While nominee qualifications do have more explanatory power than nominee ideology for the votes of both senators, Republicans are actually more willing to vote yes than Democrats are as the ideological distance increases. At the same ideological distance where Democrats are unlikely to vote yes (10% chance), Republicans are much more likely to vote yes than no (90% chance).

Thus, while both parties consider nominee qualifications more heavily it is evident that Republicans are more willing to vote in favor of confirmation despite the ideological distance between themselves and the nominee than Democrats are.

The overall findings of this research should be encouraging to citizens of the United States of America. While people are often worried that polarization between the Republican and Democratic parties is impacting the status of our government, and the results do show that no votes for Supreme Court nominees increase as polarization increases, the data also show that all senators value the qualifications of nominees to the U.S. Supreme Court over those nominees' ideology. Additional concern arises from the fact that justices to the Court are appointed to life sentences, and therefore do not experience a check on their power. The fact that justices are not appointed unless they are highly qualified candidates for the position should ease some of this concern. Neither Republicans nor Democrats ignore qualifications to reduce ideological distance, and this is of the upmost importance in determining the legitimacy of the U.S. Supreme Court.

### **Limitations**

There are several limitations to this research, and corrections to these limitations could provide more conclusive results to help in understanding future appointments to the Court. First, while senators can easily be compared based on party affiliation, there is a large amount of ideological variance between each party. Thus, while it does not seem that on average, Republican and Democratic senators differ in the weight they give to nominee qualifications and ideology during the appointment process, it is possible that the most extreme members of each party differ from the other members of each party. For instance, it is possible that extremely conservative senators and extremely liberal senators will not cast a yes vote at a particular ideological distance, no matter how qualified the nominee is. Therefore, future research could

further separate senators so that rather than being labeled as Republicans or Democrats, the spectrum of views could be accounted for and any patterns may be detected.

Another limitation to this research is the fact that it does not include data for nominees who decide to drop out of the race prior to the Senate vote. Perhaps the small number of no votes recorded in the last 50 years is due in large part to the fact that nominees who know they will be rejected tend to drop out rather than let the hearings and voting proceed. If these nominees have special characteristics, such as high ideological distance from the Senate majority or low qualification levels, they could strengthen or even contradict the results of this research. The fact that the dependent variable of the research is the yes or no vote of the senators, and most of the votes historically have been yes votes, suggests more information could be gleaned from the hypothetical no votes that are not being recorded. Future research may be able to include these nominees, alongside projected votes for the senators, to gather more conclusive results.

### **Implications**

As stated above, the implications for this research are largely positive. Nominee qualifications are the most compelling factor for senators when casting their votes to confirm or reject a nominee to the Court. While this was largely agreed upon among scholars, there had been no investigation as to whether Republicans and Democrats weight factors differently, or whether those weights change when a senator shares the political affiliation of the nominating president. This research demonstrated that nominee qualifications always matter to senators, and that qualifications are always more significant to a senator's vote than the nominee's ideology. Both parties, regardless of partisanship, consider the nominee's qualifications more than the nominee's ideology. However, Republicans are more willing to vote yes for a candidate as ideological distance increases than Democrats are.

The conclusions drawn from this research can be used to make predictions about the future of the Court. For instance, if Ruth Bader Ginsburg retires and President Trump is re-elected, there are several predictions which can be made about the next appointment process. First of all, the nominee will need a base level of qualifications since this is the most significant factor for senators. Regardless of qualifications though, if President Trump's approval rating is at 40% or more, the nominee is nearly guaranteed to be appointed. However, the fact that Democrats are less willing than Republicans to vote yes as ideological distance increases means that a candidate too far to the right runs the risk of being rejected. If Trump's next nominee were appointed, we would likely have the most conservative Court this country has ever seen.

Alternatively, similar factors would hold true for a Democratic president. The next nominee would need a base level of qualifications, but otherwise would be highly likely to get confirmed assuming that president makes the nomination while his or her approval rating is at least 40%. Since Republicans are more willing to vote yes than Democrats as ideological distance increases, a Democratic president may be able to nominate a candidate further left than a Republican president could do to the right, since the Democrat could still obtain yes votes.

Over the course of the past 50 years, no votes have been infrequent in the confirmation votes of senators on appointments to the U.S. Supreme Court. However, polarization continues to increase as demonstrated by current gridlock in Congress and a wavering ability to compromise on a budget in order to prevent government shutdown. Therefore, it can also be predicted that no votes will increase as polarization does, which means in the future it may be harder to appoint Supreme Court justices than it has been in the past. For now, Supreme Court appointment remains one area where the parties do not seem to differ significantly. Nominee

qualifications are the most significant factor in the appointment of justices to the United States Supreme Court, regardless of party and partisanship.



## Appendix

**Table 2.0 Baseline Results.** This table includes the results of the regression analysis explaining the confirmation votes of senators for justices to the U.S. Supreme Court. Ideological distance, presidential approval, qualifications, and polarization are all statistically significant factors for the explaining the confirmation votes of senators.

Dependent variable: yea	
Ideological Distance	-7.072*** (0.591)
Out-partisan	0.680* (0.399)
Presidential Approval	0.024** (0.012)
Democrat	-1.486 (1.494)
Republican	-1.805 (1.476)
Ideology	0.296 (0.510)
Qualifications	5.535*** (0.396)
Polarization	-7.459*** (0.891)
Constant	6.828*** (1.816)
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Observations	1,800
Log Likelihood	-573.854
Akaike Inf. Crit.	1,165.708

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

**Table 2.1 Overall Party Differences.** The table includes the results of two regression analyses. The left column explains the confirmation votes of Democratic senators during Supreme Court appointment. The right column explains the confirmation votes of Republican senators during Supreme Court appointment. Ideological distance, partisanship, qualifications, and polarization were all statistically significant for both parties.

Dependent variable: yea		
	Democrats	Republicans
Ideological Distance	-8.305*** (0.903)	-6.629*** (0.888)
Out-partisan	3.168*** (0.880)	3.681*** (1.018)

Presidential Approval	0.083*** (0.017)	-0.012 (0.028)
Ideology	4.703*** (1.009)	-7.228*** (1.737)
Qualifications	6.728*** (0.572)	5.948*** (0.916)
Polarization	-5.699*** (1.192)	-4.879*** (1.744)
Constant	-1.782 (1.526)	6.063*** (1.966)

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Observations	971	819
Log Likelihood	-319.258	-212.972
Akaike Inf. Crit.	652.515	439.944

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

**Table 2.2 Partisanship.** The table includes the results of two regression analyses. The left column explains the confirmation votes of in-partisan senators during Supreme Court appointment. The right column explains the confirmation votes of out-partisan senators during Supreme Court appointment. Ideological distance, ideology, qualifications, and polarization were all statistically significant for both groups of senators.

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Dependent variable: yea		
	In-partisan	Out-partisan
Ideological Distance	-6.502*** (1.016)	-7.199*** (0.747)
Presidential Approval	0.026 (0.026)	0.028** (0.014)
Ideology	-2.782** (1.355)	0.873* (0.528)
Qualifications	4.091*** (0.666)	5.878*** (0.471)
Polarization	7.875*** (2.690)	-11.015*** (1.102)
Constant	-3.230 (2.239)	7.715*** (1.273)

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Observations	887	913
Log Likelihood	-151.600	-394.436
Akaike Inf. Crit.	315.201	800.872

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

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ACADEMIC VITA  
**Hannah M. Petruzzi**

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**EDUCATION**

The Pennsylvania State University, University Park, PA May, 2019  
Bachelor of Arts Political Science & History | Minor in Psychology  
**Schreyer Honors College** **Spring 2017-Present**

**Paterno Fellows Program** **Fall 2015-Present**

- Honors Program including advanced coursework, senior thesis, study abroad, ethics study & service commitment  
University of Vienna, Vienna, Austria **Summer 2016**
- Studied Intercultural Communication & Media Theory (6 credits), visited Innsbruck, Linz, & Salzburg and worked closely with University of Vienna graduate student to complete research thesis & presentation

**RELEVANT EXPERIENCE**

**Alpha Phi Omega National Service Fraternity, University Park, PA** **Spring 2016-Present**  
*President (Fall 2018)*

- Oversee 20 executive positions, plan & lead weekly chapter meetings of 65 brothers, executive meetings of 21 brothers, and voting executive meetings of 7 brothers
- Correspond with sectional, regional, and national leaders, complete paperwork pertaining to national requirements & bylaws and serve as voting delegate at 2018 national convention in Austin, Texas

*Service Vice President (Spring 2017)*

- Determine & schedule service program for spring semester by contacting local community members
- Organize & direct service committee, including Philanthropy, THON, and Scouting Chairs, to ensure that all pursuits run smoothly and assist in establishing & maintaining contacts, planning events, and schedule keeping

**Council of Lionhearts, University Park, PA** **Spring 2017-Present**  
*Vice President (Spring 2018)*

- Collaborate with service leaders of all organizations to market service opportunities to general student body
- Select discussion topics for weekly meetings, organize service fair and plan campus-wide service events

**Liberal Arts Envoys, University Park, PA** **Fall 2015-Present**  
*Secretary (Fall 2016-Spring 2017)*

- Take meeting minutes to update members regarding upcoming events & conduct interviews for new members
- Provide campus tours and information sessions for alumni & prospective liberal arts students
- Attend & lead discussion at events for the College of Liberal Arts such as new student panels & inductions

**Volé Penn State Ballet Company, University Park, PA** **Fall 2016-Fall 2018**

- Attend weekly technique class, workshops in various styles (ballet, tap, jazz) & semester showcase rehearsals

**WORK EXPERIENCE**

**District Office of Congressman Charles W. Dent, Allentown, PA** **Summer 2017**  
*Intern*

- Answered constituent phone calls, emails, and mail and assisted staff members with case work
- Attended site visits and meetings with supervisor to various locations throughout the 15<sup>th</sup> district of Pennsylvania

**McCarthy's Red Stag Pub, Bethlehem, PA** **Summer 2016-Summer 2018 (Seasonal)**  
*Food Server*

- Completed training as server, memorized customer policies, menu & event procedure, gained teamwork experience during height meal hours, and gained experience with customer interaction & conflict resolution