

THE PENNSYLVANIA STATE UNIVERSITY  
SCHREYER HONORS COLLEGE

DEPARTMENT OF POLITICAL SCIENCE

Advice and Consent: Exploring the Role of Nominee Qualifications in the U.S. Senate  
Confirmation Process for Circuit Courts of Appeals Judges Between the 107<sup>th</sup> and 117<sup>th</sup>  
Congresses

JACOB D. ROTH  
SPRING 2023

A thesis  
submitted in partial fulfillment  
of the requirements  
for a baccalaureate degree  
in Political Science  
with honors in Political Science

Reviewed and approved\* by the following:

Michael J. Nelson  
Professor of Political Science  
Thesis Supervisor

Gretchen G. Casper  
Associate Professor of Political Science  
Honors Adviser

\* Electronic approvals are on file.

## ABSTRACT

Why are certain successful U.S. Circuit Courts of Appeals nominations confirmed more favorably by the U.S. Senate than other successful nominations? Existing studies argue that political factors and nominees' personal characteristics – including race and gender – largely influence senators' behavior. In contrast, I argue that nominees' qualifications – in the form of academic credentials and professional experiences – are the chief determinants of confirmation outcomes. Using data from 198 successfully-confirmed U.S. Circuit Courts of Appeals judges between 2001 and 2022, I test this theory. The results suggest that while nominees' advocacy organization affiliations are significant predictors of confirmation outcomes, other academic and professional attributes are not; political and personal factors – age, race, party control of government, a filibuster requirement, and ideology – are indeed significant predictors of senators' behavior. These results have implications for our understanding of how and why senators utilize their constitutional advice and consent power to shape the federal judiciary.

**TABLE OF CONTENTS**

LIST OF FIGURES .....	iii
LIST OF TABLES .....	iv
ACKNOWLEDGEMENTS .....	v
Chapter 1 Introduction .....	1
Chapter 2 Literature Review .....	5
Chapter 3 Theory .....	11
Chapter 4 Data .....	19
Chapter 5 Results .....	32
Chapter 6 Conclusion.....	44
BIBLIOGRAPHY.....	46

**LIST OF FIGURES**

Figure 1. Distribution of Affirmative Votes .....	20
Figure 2. Distribution of Days Between Nomination and Confirmation.....	21
Figure 3. Distribution of Nominees' Age by President .....	26
Figure 4. Distribution of Nominees' Race by President.....	27
Figure 5. Distribution of Nominees' Gender by President.....	28
Figure 6. Distribution of Difference Between Ideology of Nominating President and Senate Judiciary Committee Chair .....	29

**LIST OF TABLES**

Table 1. Nominees' Professional Experiences by Nominating President.....	25
Table 2. Summary Statistics .....	31
Table 3. Regression Results with Votes as the Dependent Variable .....	33
Table 4. Regression Results with Days as the Dependent Variable .....	34
Table 5. Regression Results by President with Votes as the Dependent Variable .....	36
Table 6. Regression Results by President with Days as the Dependent Variable .....	37

## ACKNOWLEDGEMENTS

First and foremost, I would like to thank my thesis supervisor, Dr. Michael Nelson, whose untiring support and mentorship made this endeavor a success. I would also like to extend my gratitude to Dr. Marie Hojnacki and my classmates in PLSC 306 for their invaluable feedback throughout the writing process. Additionally, I would like to thank Dr. Gretchen Casper for her guidance during the initial stages of my thesis in PLSC 300 and in her role as my honors adviser. Finally, thank you to my parents, Jennifer and Michael, my brother Mitchell, my girlfriend Natalie, and the rest of my wonderful family, whose love and encouragement inspires me each and every day.

## **Chapter 1**

### **Introduction**

In May 2018, the U.S. Senate confirmed both Michael B. Brennan and Michael Y. Scudder as judges of the United States courts of appeals. These two nominees shared more in common than just first names; both were nominated by President Donald Trump, confirmed during the 115<sup>th</sup> Congress, and received Commissions as members of the United States Court of Appeals for the Seventh Circuit. Despite these conspicuous similarities, there was a key difference between the two: Scudder was confirmed by an overwhelmingly bipartisan vote of 90-0, while Brennan was confirmed by a closely divided vote of 49-46 (Judicial Nominations). This comparison begs the question: why are certain successful U.S. Circuit Courts of Appeals nominations confirmed more favorably by the U.S. Senate than other successful nominations? Given the lifetime nature of federal judicial appointments and the crucial role senators play in shaping the bench, a comprehensive answer to this question – grounded in data – deserves consideration.

The prevailing consensus among political scientists is that the outcome of the U.S. Senate judicial confirmation process for circuit court nominees is largely driven by political factors and nominees' personal characteristics. One such factor is ideology. It is widely believed that a greater ideological distance between a given senator and the nominating president will lead to longer confirmation delays (Owens et al. 379; Black et al. 303). Filibuster reform has also been found to have an impact on confirmation outcomes (Boyd et al. 623). Since the elimination of the filibuster for lower court nominees in 2013, vacancy durations for the federal bench have been

cut in half (Nixon and Goss 264). Finally, there is also agreement among political scientists that party control of government impacts confirmation outcomes, and that divided government greatly increases the time between the nomination and confirmation of a nominee (Bell 599; Solowiej et al. 568).

With respect to nominees' personal characteristics, prior studies often focus on a select few attributes, including race, gender, and nominees' American Bar Association ratings. Some studies find that race and gender have a significant impact on confirmation outcomes (Holmes et al. 43; Nixon and Goss 259). Other studies, however, find that there is little difference in confirmation outcomes for white, black, male, and female nominees (Bell 602; Martinek et al. 355). Despite disagreement surrounding race and gender, most political scientists agree that a higher ABA rating for a judicial nominee corresponds to a shorter confirmation duration (Solowiej et al. 569; Black et al. 303).

This study adds an in-depth look at academic credentials and professional experiences and their direct impact on judicial confirmation outcomes. I suspect that senators' behavior – in terms of yea or nay votes – is largely driven by their own assessment of these factors. A major hypothesis of my research is that nominees who previously clerked for a federal judge are more likely to be confirmed with more votes and in a shorter period of time than nominees who have not clerked for a federal judge. I also theorize that nominees who attended a top-tier law school are more likely to be confirmed with more votes and in a shorter period of time than nominees who did not attend a top-tier law school. I apply similar logic to nominees' previous occupations. Nominees are more likely to be confirmed with more votes and in a shorter period of time if they held one or more of the following positions: private practice attorney, law professor, prosecutor, public defender, or judge. Finally, I hypothesize that nominees who are affiliated with outside



legal advocacy organizations – The Federalist Society for Republican nominees and the American Constitution Society for Democratic nominees – are more likely to be confirmed with more votes and in a shorter period of time than nominees who were never affiliated with either organization.

I test these hypotheses by employing data from 198 successive judicial nominees who were successfully confirmed to the U.S. Circuit Courts of Appeals between 2001 and 2022; this provides me with a range of data across 22 calendar years and four presidential administrations. The unit of analysis is the nominees themselves. The two dependent variables are the number of affirmative votes a nominee receives in the final confirmation vote by the U.S. Senate and the number of days between the nomination and confirmation of a nominee. The nine independent variables are the presence (or absence) of the following experiences within a nominee's professional history: a federal clerkship, U.S. Supreme Court clerkship, attendance at a top-tier law school, private practice experience, employment as a law professor, prior service as a judge, work as a criminal prosecutor, public defender experience, or affiliation with an outside legal advocacy organization. I also include several control variables, including the age, race, and gender of a nominee, as well as the presence of a filibuster requirement, party control of the U.S. Senate and presidency, and ideology.

The results of the multiple regression models show that of the nine independent variables, only advocacy organization affiliation is a statistically significant predictor of confirmation outcomes across all 198 nominees; there is slight variation in the statistical significance of the other independent variables when broken down by nominating president. With respect to control variables across all 198 nominees, age, race, the presence of a filibuster requirement, party control of the U.S. Senate and presidency, and ideology are all statistically significant predictors

of confirmation outcomes. The findings of this study have important implications not only for our understanding of the senate's constitutional advice and consent power as it relates to shaping the federal judiciary, but also for any future research concerning senate treatment of all other Article II or Article III appointees that require confirmation.

## Chapter 2

### Literature Review

Article II, Section 2 of the United States Constitution grants the President of the United States the power to nominate federal judges with the advice and consent of the U.S. Senate. The length of that process and the number of favorable votes nominees receive, however, is not defined by constitutional provisions but rather by a number of institutional factors of the U.S. Senate and personal attributes of both the judicial nominees and senators themselves. Given the importance of the confirmation process, it is not surprising that an extensive amount of research has examined how political, institutional, and ideological factors affect that process. However, research regarding the impact of nominee qualifications – education, work experience, and association with outside advocacy organizations – on the confirmation process is sparse and often poorly-designed. There is ample reason to suggest that qualifications deserve a more in-depth look.

#### **Ideology**

Previous research on the lower court judicial confirmation process tends to focus on a few key factors that affect a nominee's confirmation outcome; chief among them is ideology. Owens et al. note: "that ideology and policy goals motivate senators in the judicial appointment process is beyond dispute" (372). They analyze the decision to return a negative blue slip – that is, a form senators utilize to indicate support or disapproval of a nominee from their home state – as a function of the ideological distance between a given senator and the nominating president (Owens et al. 377). There is general consensus that the greater the ideological distance from the president, the more likely it is that a senator will utilize a blue slip to disrupt confirmation proceedings (Owens et al. 379; Black et al. 303). However, Black et al. further found that the

relationship between ideological distance and the rate of negative blue slip return is much stronger for circuit court nominees than for district court nominees, thus providing insight into the “much more contentious” nature of circuit court nominations (Black et al. 303).

There is also general agreement within the literature regarding the importance of the Judiciary Committee chair’s ideology. Holmes et al. note that the chair “is particularly important in determining the extent of the delay imposed [on a judicial nominee] by the committee” (28). They measure the distance between the ideology of the chair and the ideology of the nominating president, and find – particularly in the post-Bork era – that the greater the distance between ideologies, the more likely it is that a nominee’s confirmation will be delayed (Holmes et al. 38). Basinger and Mak take the question of the chair’s ideological influence one step further and compare it to the ideology of the nominee, a measure created by combining the ideology of the president with the ideological leanings of the nominee’s two home-state senators (163). Although their measure slightly differs from the one utilized by Holmes et al., the findings are the same, as Basinger and Mak note that when the Judiciary Committee chair’s ideological position is further from the nominee’s ideological position, a “longer spell until confirmation should occur” (165).

Ideology also appears to affect public perception of nominees. Hoekstra and LaRowe provided focus group participants with hypothetical news stories regarding upcoming U.S. Senate confirmation votes of judicial nominees (Hoekstra and LaRowe 42). One of the key survey questions they asked participants dealt with the nominee’s ideological divisiveness, and how it would impact their support or disapproval of a nominee (Hoekstra and LaRowe 42). They found that when the hypothetical nominee was portrayed as “more [ideologically] divisive” regardless of other qualifications, participants were less likely to support the nominee.

## **Filibuster Reform**

Besides ideology and its intertwinement with U.S. Senate leadership, procedures, and public opinion, filibuster reform also has an impact on the judicial confirmation process. Prior to 2013, sixty votes were needed in the U.S. Senate in order to break a filibuster – or end debate on – a nominee to a circuit or district court (Boyd et al. 623). For the party of the president, having a filibuster-proof majority of sixty votes was seen as a key factor in filling judicial vacancies expeditiously, as it often led to “dramatically shorter vacancy durations – less than half as long [as vacancy durations in which the president’s party did not have a filibuster-proof majority]” (Nixon and Goss 264). However, in November 2013, U.S. Senate Democrats deployed a rule change known as the “nuclear option”, thus allowing debate on a nominee to be ended by a simple-majority vote (Boyd et al. 623). This rule change has had a significant impact on the pace of the confirmation process, as both O’Connell and Boyd et al. agree that confirmation duration for lower court nominees significantly decreased, with Boyd et al. even noting that the successful confirmation rate of President Obama’s nominees jumped from 62% in the pre-reform era to around 80% in the post-reform era (1686; 635).

## **Party Control of Government**

Party control of the U.S. Senate and presidency have also been shown to significantly impact the judicial confirmation process. Bell notes that divided government – that is, when the U.S. Senate and presidency are controlled by different political parties – has long been associated with legislative gridlock “and other congressional maladies” (Bell 599). In her research, she tests the length of confirmation proceedings for lower court nominees as a function of the presence of divided government, and finds that the “presence of divided government strongly affects the length of time between nomination and confirmation, with the length of time elapsed increasing

when government is divided” (Bell 599). Solowiej et al. agree, and take their research one step further by analyzing the length of confirmation duration by unified or divided government under both Republican and Democratic administrations, a unique approach in this area of research (568). Consistent with the findings of other research, Solowiej et al. determine that confirmation duration under both unified Republican and unified Democratic governments is substantially less than the duration of confirmation proceedings under either divided Republican or divided Democratic control of government (568).

### **Qualifications**

Turning to nominees’ characteristics, previous research has largely been concentrated on a select number of personal and professional attributes. One such factor is gender. Holmes et al. find that female nominees faced longer confirmation delays – that is, the amount of time between the judiciary committee report and final confirmation vote – than male nominees (43). Bell, on the other hand, finds that female nominees “do not appear to wait substantially longer for confirmation than do male nominees” with the exception of nominees put forth during a period of divided government (602).

There is also some slight disagreement in the literature regarding the impact of a nominee’s race on confirmation outcome. Nixon and Goss determine that the duration of the confirmation process for minority nominees is “about twice as long in duration” when compared to white nominees (259). Martinek et al., on the other hand, find that the “expected confirmation duration for nonminority nominees” is only ten days shorter than for minority nominees (355). Despite this disagreement, other research shows that the impact of race depends on the political context of the nomination. For example, Solowiej et al. find that minorities “fare worse” than their white peers in two scenarios: under total Republican control of government – even with a

Republican president – and under divided government when nominated by a Democratic president (569).

Despite disagreement regarding the impact of race and gender, there is widespread agreement surrounding the impact the American Bar Association's ratings of nominees has on the confirmation process, with several studies noting the strong correlation between higher ABA ratings and shorter confirmation durations (Solowiej et al. 569; Black et al. 303). Black et al. also reveal that that nominees with low ABA ratings "[are] roughly three times as likely to receive a negative blue slip than [nominees] with a high ABA rating" (303).

While a vast majority of research surrounding the American Bar Association's ratings of nominees focuses on the impact the ratings have on the confirmation outcome, Smelcer et al. take a different approach, examining the relationship between numerous professional attributes of nominees and the nominees' ABA ratings in order to determine whether or not ABA ratings are truly objective (Smelcer et al. 827). These attributes include years of experience as a judge, prosecutor, attorney in private practice, political experience, as well as whether or not the nominee was put forth by a Democratic president (Smelcer et al. 832). While – as expected – the study reveals that more years as a judge correlates to a higher ABA rating, years of political experience contribute to the likelihood of a nominee receiving a lower rating (Smelcer et al. 832). The authors argue that the "presumption that [judges] were nominated because of patronage rather than their legal pedigrees...[causing the ABA to] evaluate those with a political past more unfavorably than those following a more traditional path to a judgeship" is to blame for this discovery (Smelcer et al. 832). This finding calls into question not only the ABA's evaluation mechanism, but also the use of ABA ratings in other research as the leading measure of nominee's qualifications.

Prior research on the lower court judicial confirmation process is certainly comprehensive with respect to political and ideological factors. However, the research remains acutely limited in terms of adequately assessing the impact of qualifications, as much of it focuses solely on the race, gender, and the American Bar Association ratings of nominees. A much more comprehensive study – utilizing additional measures such as education, professional experience, and association with outside advocacy organizations – is required in order to fully assess the impact that nominee qualifications have on judicial confirmation proceedings. As a result, I develop a model very similar to the one utilized by Smelcer et al. in their research. However, instead of analyzing the impact of a wide assortment of variables on ABA ratings, I apply each of my selected variables directly to the outcomes of the judicial confirmation process.



## Chapter 3

### Theory

The central concept that merits explanation is the idea that some nominations to the U.S. Circuit Courts of Appeals are confirmed more favorably than others. By this, I am referring to nominees who are confirmed with more affirmative votes and in a shorter period of time relative to their peers. While previous research centers on the relationship between the outcome of the confirmation process and a nominee's race, gender, and American Bar Association rating, I argue that limiting an assessment of a nominee's qualifications to these measures alone is insufficient. Studies that limit the scope of their research to these factors fail to take into consideration the wide array of experiences and attributes attorneys may acquire prior to their nomination to the federal bench. This absence of adequate measures warrants further research that constructs a more comprehensive definition of nominee qualifications that can be directly compared to the varying end results of the U.S. Senate judicial confirmation process. Therefore, I develop a set of theoretical expectations regarding the impact of judicial clerkships, education, previous occupations, and advocacy organization affiliation on nomination outcomes.

#### **Federal Judicial Clerkships**

One of the most important professional characteristics to take into consideration when assessing a nominee's qualifications is any federal clerkships they may have completed early in their legal career. Clerking for a federal judge – at either the district or circuit level – signals to senators that nominees have first-hand experience with the day-to-day work required of federal judges. As clerks, young lawyers conduct extensive legal research, summarize briefs, and draft court opinions; these are the key tasks that judges complete throughout the process of hearing a case. Having a federal clerkship on a resume allows nominees to demonstrate to senators that

they are prepared to assume the duties of a judge should they be confirmed to the bench, and therefore allows a nominee to be viewed as more qualified than nominees who have not clerked for a federal judge.

Beyond district and circuit court clerkships, a select few nominees may have clerked for any of the nine justices of the U.S. Supreme Court. A Supreme Court clerkship is incredibly prestigious; each justice only selects four clerks per year based on academic credentials and highly-advanced writing skills, among other criteria. As a result, senators may consider former Supreme Court clerks to be even more qualified for the federal bench than nominees who have clerked at the district or circuit level. Therefore, when taking into account the past clerkships of circuit court nominees, I hypothesize the following:

*H<sub>1A</sub>: A nominee who has clerked for a federal judge is more likely to be confirmed with more votes than is a nominee who has not clerked for a federal judge.*

*H<sub>1B</sub>: A nominee who has clerked for a federal judge is more likely to be confirmed in a shorter period of time than is a nominee who has not clerked for a federal judge.*

*H<sub>2A</sub>: A nominee who has clerked at the United States Supreme Court is more likely to be confirmed with more votes than is a nominee who has not clerked at the United States Supreme Court.*

*H<sub>2B</sub>: A nominee who has clerked at the United States Supreme Court is more likely to be confirmed in a shorter period of time than is a nominee who has not clerked at the United States Supreme Court.*

## **Law School**

It is also important to consider a nominee's legal education. Attending a top-tier law school affords students the unique opportunity to learn from distinguished instructors, including

current and former federal judges. It also provides students with high-quality career placement services and elite alumni networks, which help them to attain employment with prestigious law firms or clerkships with U.S. Supreme Court justices. Law students who attend non-top-tier law schools immediately incur the disadvantage of having a more difficult time making elite connections within the legal community, as their law schools lack the high-quality infrastructure that top-tier law schools use to produce successful alumni. When faced with the choice to adjudicate whether or not a nominee is qualified for the bench, members of the U.S. Senate are likely to hold top-tier law school alumni in high regard, and this recognition of their high-quality legal education allows nominees to acquire more affirmative votes. Therefore, I hypothesize the following:

*H<sub>3A</sub>: A nominee who attended a top-tier law school is more likely to be confirmed with more votes than is a nominee who did not attend a top-tier law school.*

*H<sub>3B</sub>: A nominee who attended a top-tier law school is more likely to be confirmed in a shorter period of time than is a nominee who did not attend a top-tier law school.*

### **Previous Occupations**

Besides legal education and early career clerkships, I also expect that a nominee's depth of work experience will shape their confirmation. These expectations are confined to a number of occupations an individual may have held prior to their nomination, which signals to senators that a nominee is qualified for a judicial position. Before being nominated, many attorneys work in private practice. Those who work at large corporate firms often immerse themselves in an extremely fast-paced, stressful work environment, and gain contractual or litigation experience in a wide array of legal areas, including business, taxation, medical malpractice, and civil litigation. The rigor and diverse practice areas of private practice signals to senators that a nominee is fully

able to handle not only the excessive caseload judges are often saddled with, but also understand and adjudicate complex legal matters in various areas of the law.

Many prominent attorneys also serve as full time or adjunct law professors. These individuals are often well-versed in constitutional law, case law, and other significant matters that come before federal appellate courts. Law professors are also tasked with developing impeccable research skills, explaining legal concepts in a clear and concise manner, and imparting knowledge on students. Nominees who have developed these skills are well suited to the federal bench, as they will be tasked with researching legal precedents, writing clear and concise opinions, and indirectly imparting legal knowledge on attorneys and law students through their written work as a federal circuit court judge. Senators are likely to recognize the strong correlation between the work of a law professor and that of a federal judge, and as a result are more inclined to support nominees with experience as a law professor.

Experience in criminal law may also allow senators to form positive opinions about the qualifications of nominees, both for former prosecutors and public defenders. Criminal prosecutors – at both the state and federal level – have extensive experience trying cases before judges, often litigating on behalf of the government at the local, state, and federal level. Public defenders also spend their careers litigating in front of judges, and are often highly-educated on matters of criminal procedure, civil liberties, and constitutional law. This extensive legal knowledge, paired with well-developed courtroom litigation skills, causes senators to view these nominees as fit for the bench. As a result, senators will be more inclined to cast votes in support of nominees with criminal law experience.

Finally, nominees who have previously served as judges – either at the state or federal district level – are more likely to be viewed favorably by senators due to their already-acquired

procedural experience and judicial temperament. When a current judge is appointed to a federal circuit court, it is essentially an elevation in rank as opposed to a change in occupation, so senators can take comfort in knowing that the nominee is well-prepared for their new role, and therefore are more likely to cast an affirmative vote on their nomination. As a result, I hypothesize the following:

*H<sub>4A</sub>: A nominee who has been in private practice is more likely to be confirmed with more votes than is a nominee who has not been in private practice.*

*H<sub>4B</sub>: A nominee who has been in private practice is more likely to be confirmed in a shorter period of time than is a nominee who has not been in private practice.*

*H<sub>5A</sub>: A nominee who has served as a law professor is more likely to be confirmed with more votes than is a nominee who has not served as a law professor.*

*H<sub>5B</sub>: A nominee who has served as a law professor is more likely to be confirmed in a shorter period of time than is a nominee who has not served as a law professor.*

*H<sub>6A</sub>: A nominee who has served as a judge is more likely to be confirmed with more votes than is a nominee who has not served as a judge.*

*H<sub>6B</sub>: A nominee who has served as a judge is more likely to be confirmed in a shorter period of time than is a nominee who has not served as a judge.*

*H<sub>7A</sub>: A nominee who has worked as a criminal prosecutor is more likely to be confirmed with more votes than is a nominee who has not worked as a criminal prosecutor.*

*H<sub>7B</sub>: A nominee who has worked as a criminal prosecutor is more likely to be confirmed in a shorter period of time than is a nominee who has not worked as a criminal prosecutor.*

*H<sub>8A</sub>: A nominee who has worked as a public defender is more likely to be confirmed with more votes than is a nominee who has not worked as a public defender.*

*H<sub>8B</sub>: A nominee who has worked as a public defender is more likely to be confirmed in a shorter period of time than is a nominee who has not worked as a public defender.*

### **Advocacy Organization Affiliation**

During law school (and after), those in the legal field often have the opportunity to affiliate themselves – by way of membership or meeting attendance – with ideologically-centered advocacy organizations. Many conservative attorneys associate themselves with The Federalist Society for Law and Public Policy Studies, while liberal attorneys and law students often associate themselves with the American Constitution Society, which was founded in response to The Federalist Society’s growing influence within the legal community. These organizations sponsor academic social events, provide individuals with networking opportunities, and seek to strategically elevate attorneys’ standing within various sectors of the legal field through professional development resources. Senators familiar with both organizations are more likely to support affiliated nominees because they recognize both The Federalist Society and the American Constitution Society as organizations dedicated to producing individuals who are both highly-educated and well-versed in the esoteric legal conversations of the day. Therefore, I hypothesize the following:

*H<sub>9A</sub>: A nominee who is affiliated with either The Federalist Society or the American Constitution Society is more likely to be confirmed with more votes than is a nominee who is not affiliated with either organization.*

*H<sub>9B</sub>: A nominee who is affiliated with either The Federalist Society or the American Constitution Society is more likely to be confirmed in a shorter period of time than is a nominee who is not affiliated with either organization.*

### **Additional Factors**

Although my theoretical expectations surrounding the judicial confirmation process largely center around nominees' professional experiences, it is also important to account for the impact of other personal characteristics may have on nomination outcomes, specifically age, race, and gender. In terms of age, I theorize that nominees who are older – and therefore are more likely to have a lengthier resume – may be perceived by senators to be more qualified than younger nominees. In terms of race – as some of the previous research has conclusively demonstrated – non-white nominees face a longer confirmation delay than their white peers. Finally, I believe that female nominees are likely to face a longer confirmation delay than their male colleagues.

No assessment of the confirmation process is complete without also taking into consideration the impact of numerous political factors, many of which are also well-established in previous research. One key example is the presence (or absence) of the sixty-vote threshold required to end debate on a nominee. If that threshold is in place, then it is incumbent on the nominee to appeal to a bipartisan coalition of senators, as most parties in control of the U.S. Senate do not have a sixty-member caucus. The type of government – united or divided by party control – also plays an important role in the confirmation process. Unified control of the U.S. Senate and presidency by one party could help to quickly advance nominations on a party-line basis regardless of nominees' qualifications. Divided control of government, on the other hand, gives the party controlling the U.S. Senate the impetus to reject a nominee on a party-line basis

regardless of that nominee's qualifications. It is also important to consider the nominating president for each nominee, as each president differs in his popularity, amount of political capital, and approach to making judicial nominations. Finally, the impact of ideology must be accounted for in any theoretical considerations. Senators who are more ideologically aligned with the nominating president may utilize those ideological similarities to justify votes in support of nominees. By the same token, senators who are ideologically further from the nominating president may utilize that ideological distance to justify votes against certain nominees.

A vast majority of previous research posits that these additional factors – personal characteristics and political elements – are the chief driving force behind a successful confirmation's degree of favorability, rendering professional qualifications largely irrelevant. While I acknowledge that these factors may impact the confirmation process, I offer an alternative theory: that professional qualifications and scholarly credentials play a central role in confirmation outcomes, and that an in-depth exploration of nominees' professional qualifications is required in order to determine the validity of this explanation.



## Chapter 4

### Data

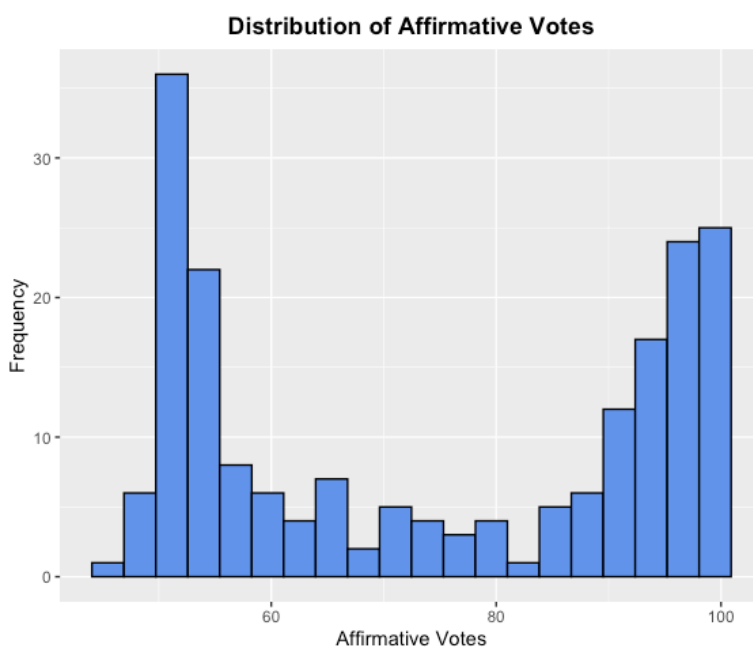
In order to test my hypotheses, I focus on 198 successive judicial nominees who were successfully confirmed to the U.S. Circuit Courts of Appeals. The data begin with the confirmation of Roger L. Gregory on July 20, 2001, and end with the confirmation of Arianna J. Freeman on September 29, 2022, thus providing me with a range of data across 22 calendar years. This sample adequately represents the population of confirmed circuit court judges for several reasons. In addition to including a large and diverse set of nominees, the data also span four presidential administrations: two Republican and two Democrat. As of January 31, 2022, the U.S. Senate confirmed 61, 55, 54, and 28 individuals nominated to the U.S. Circuit Courts of Appeals by Presidents George W. Bush, Barack Obama, Donald Trump, and Joe Biden, respectively. Furthermore, this range comprises data from the 107<sup>th</sup> Congress through the end of the 117<sup>th</sup> Congress; party control of the U.S. Senate varied greatly during this time. The unit of analysis is the nominees themselves; their qualifications and professional experiences are of key interest in explaining why some nominations are confirmed more favorably than others.

### Dependent Variables

The first dependent variable utilized to assess the favorability of a nominee's confirmation is the number of affirmative votes a nominee receives in the final confirmation vote by the U.S. Senate. The data for this variable are drawn from the U.S. Senate Judiciary Committee, which hosts a thorough record of information pertaining to all recent judicial nominations ("Judicial Nominations"). An interval variable, the number of votes a nominee receives is coded on a scale from 0 to 100, indicative of the 100 members of the U.S. Senate. This variable was chosen because senators' votes on a nominee are perhaps the most consistent

way to gauge support for or opposition to a nominee across all 198 nominees in the dataset. If a given nominee receives a large bipartisan vote, it may indicate that his or her professional qualifications are unimpeachable, leading to less opposition from senators. On the other hand, if a given nominee is confirmed by a slim majority, it may indicate that her or she lacks the requisite professional qualifications, leading to increased opposition from senators. Figure 1 indicates that there is considerable variation in the votes received by the sample of nominees. The figure demonstrates that nominees between 2001 and 2022 frequently received affirmative vote totals of approximately 50 or 100 votes. The large cluster of votes around the 100-vote mark indicates that a significant number of nominees were confirmed near-unanimously.

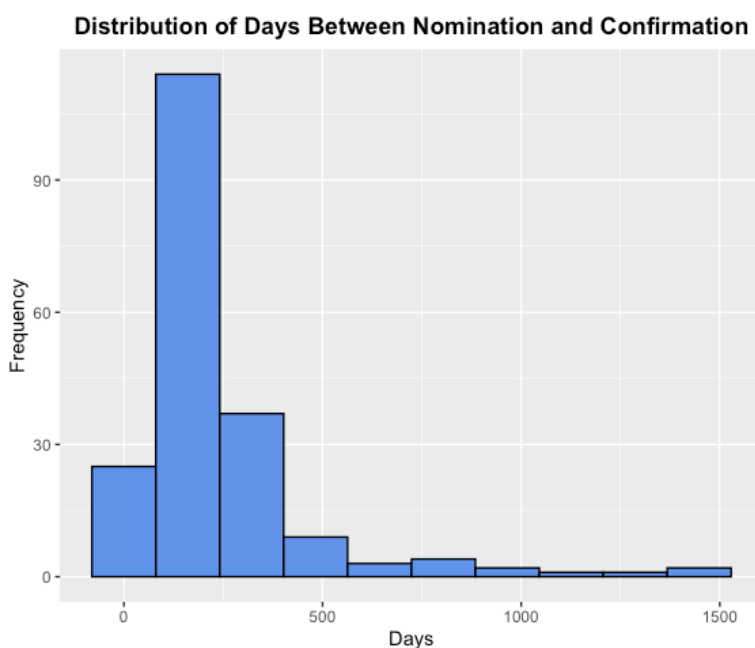
**Figure 1. Distribution of Affirmative Votes.** The blue bars represent the frequency of affirmative vote totals nominees received. The distribution is bimodal, with a cluster occurring around the 50-vote mark and another occurring around the 100-vote mark.



The second dependent variable used to assess the favorability of a nominee's confirmation is the number of days between the nomination and confirmation of a nominee. This

variable is calculated by determining the difference between the date of nomination and confirmation – both found in the Congressional Record – and is coded as the number of days (“Congressional Record”). This variable ranges from 29 to 1,477 days, with a median value of 181 days. It was chosen because it aptly assesses senators’ behavior towards nominees throughout the confirmation process. If senators determine that a nominee lacks requisite qualifications, they might delay the nomination in order to hold additional hearings, gather evidence, or launch investigative probes, resulting in a longer duration between nomination and confirmation. On the other hand, if senators believe that a nominee is qualified for the federal bench, there might be no need to gather additional information, resulting in a shorter duration between nomination and confirmation. Figure 2 reveals that nominees between 2001 and 2022 most frequently waited about 150 days to be confirmed; few nominees waited 500 days or more.

**Figure 2. Distribution of Days Between Nomination and Confirmation.** The blue bars represent the frequency of the number of days between a nominee’s nomination to the federal bench and confirmation by the U.S. Senate. The distribution is unimodal and skewed to the right, with a cluster occurring around the 150-day mark.



## **Independent Variables**

The data for my independent variables are drawn from several key sources. The U.S. Senate Judiciary Committee maintains an excellent database of nominees' written questionnaires; these questionnaires contain the information necessary to code all of my independent variables ("Judicial Nominations"). For nominees whose questionnaires were not readily available on the committee website, I turned to the Federal Judicial Center, which maintains a thorough database of federal judges from 1789 to present day containing personal information derived from committee questionnaires ("Biographical Directory"). Finally, in the event nominees did not disclose their affiliation with The Federalist Society or the American Constitution Society on committee questionnaires, those organizations' websites contain accurate records of members and other affiliated individuals ("About Us"; "About ACS").

The first independent variable used to assess a nominee's professional qualifications is whether or not the nominee previously clerked for a federal judge. A dichotomous variable, the data are coded as "1" if the nominee previously clerked for a federal judge, and "0" if he or she did not. Table 1 indicates that 65.7% of nominees in the dataset have clerked for a federal judge. When the data are stratified by president, however, that figure varies. While Presidents Obama and Biden nominated individuals who previously clerked for federal judges 63.6% and 67.9% of the time, respectively, President Bush relied less on former clerks when selecting nominees; only 44.3% of his nominees were clerks. President Trump frequently selected individuals who had a prior clerkship; this was the case for over 90% of his circuit court nominees.

The second independent variable utilized was whether or not a nominee clerked for a justice of the U.S. Supreme Court. This dichotomous variable is also coded "1" if the nominee clerked at the Supreme Court and "0" if he or she did not. According to Table 1, 23.2% of

nominees in the dataset have clerked at the Supreme Court. Once again, the data vary significantly by president; just 10.7% of Biden nominees clerked at the high court, the least of any president in the study. This is a sharp contrast to Trump nominees, 38.9% of whom clerked at the Supreme Court.

The third independent variable used to assess a nominee's professional qualifications is a nominee's attendance at a top-tier law school. In order to differentiate between top-tier and non-top-tier law schools, I utilize the T-14 law school measurement, which encompasses law schools consistently-ranked in the top 14 in the United States (Neil). T-14 law schools include Yale Law School, Harvard Law School, Stanford Law School, Columbia Law School, the University of Chicago Law School, New York University School of Law, the University of Pennsylvania Law School, the University of Virginia Law School, the University of California Berkeley Law School, Duke Law School, the University of Michigan Ann Arbor Law School, Northwestern Law School, Cornell Law School, and Georgetown Law School (Neil). The data are coded as "1" if the nominee attended a T-14 law school, and "0" if the nominee did not attend a T-14 school. Table 1 demonstrates that 58.1% of nominees in the dataset attended a top-tier law school. The data do not vary much by president; between 49% and 71% of each president's nominees attended top-tier law schools.

The fourth, fifth, sixth, seventh, and eighth independent variables employed in this study deal with nominees' previous occupations of private practice attorney, law school professor, judge, prosecutor, and public defender, respectively. These dichotomous variables are all coded separately as "1" if the nominee held the given occupation and "0" if the nominee has not held the given occupation. Table 1 shows that the most common occupation held by nominees in this sample is private practice attorney (90.4% of nominees), and the least common occupation held

by nominees in this study is public defender (just 7.6% of nominees). However, nearly 28% of Biden nominees have experience as a public defender. This is a stark contrast to Bush, Obama, and Trump nominees, who only held public defender positions at rates of 3.3%, 9.1%, and 0.0%, respectively.

The final independent variable used to assess a nominee's professional qualifications is whether or not a nominee is affiliated with a specific outside legal advocacy organization: The Federalist Society for nominees put forth by Republican presidents, and the American Constitution Society for nominees put forth by Democratic presidents. This variable contains three categories: affiliation with the American Constitution Society, affiliation with The Federalist Society, and no affiliation with either organization, which is the base category. Given that no nominee in the dataset is associated with both organizations, the presence of an affiliation with either The Federalist Society or the American Constitution Society is always compared to the base category of no affiliation. According to Table 1, 56.6% of nominees in the dataset were affiliated with the aforementioned organizations. When looking at the data by president, Bush and Trump nominees were affiliated with The Federalist Society at rates of 63.9% and 92.6%, respectively. This is a sharp contrast to Obama and Biden nominees, who were affiliated with the American Constitution Society at rates of 29.1% and 25.0%, respectively. This suggests that Republican presidents tend to prioritize affiliation with The Federalist Society more than Democratic presidents prioritize affiliation with the American Constitution Society when selecting circuit court nominees.

These variables were chosen because the data associated these variables appear on the written questionnaires that nominees submit to the U.S. Senate Judiciary Committee during the confirmation process. Prior to the final vote on a given nominee, senators review all the

important documents and records associated with said nominee in order to adjudicate his or her fitness for office. Since senators likely take the questionnaire into account when determining whether or not the nominee is qualified for the bench, the data derived from that questionnaire serve as valid measures of qualifications that can accurately explain the behavior of senators as it relates to confirming nominees.

**Table 1. Nominees' Professional Experiences by Nominating President.** The percentages reflect the rate at which nominees possess certain professional experiences. There may be little or great variation in the presence of experiences when nominees are separated by nominating president.

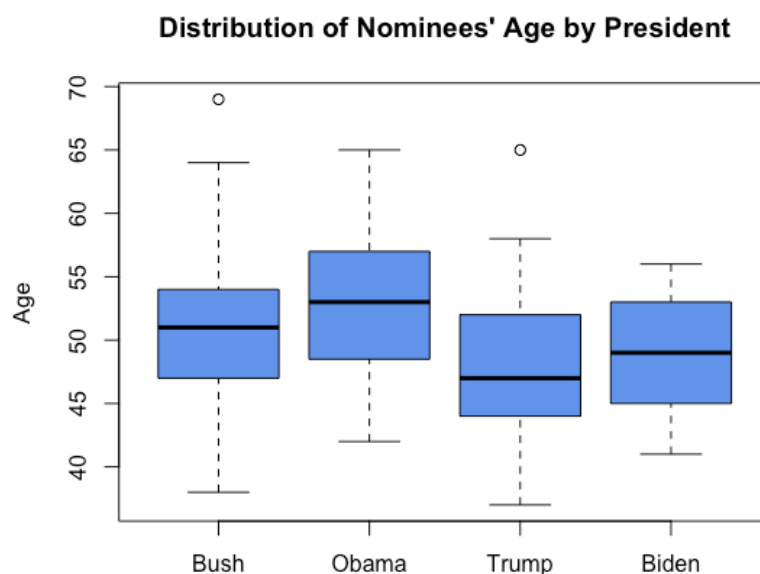
	<b>Overall</b>	<b>Bush</b>	<b>Obama</b>	<b>Trump</b>	<b>Biden</b>
<b>Federal Clerkship</b>	65.7%	44.3%	63.6%	90.7%	67.9%
<b>Supreme Court Clerkship</b>	23.2%	14.8%	23.6%	38.9%	10.7%
<b>Top-Tier Law School</b>	58.1%	54.1%	49.1%	70.4%	60.7%
<b>Private Practice</b>	90.4%	90.2%	89.1%	96.3%	82.1%
<b>Law School Professor</b>	39.9%	36.1%	30.9%	48.1%	50.0%
<b>Judge</b>	49.5%	52.5%	56.4%	33.3%	60.7%
<b>Prosecutor</b>	40.4%	29.5%	50.9%	44.4%	35.7%
<b>Public Defender</b>	7.6%	3.3%	9.1%	0.0%	28.6%
<b>Advocacy Organization</b>	56.6%	63.9%	29.1%	92.6%	25.0%

## **Control Variables**

Besides studying the effect of variables centered around nominee qualifications, I also control for other political factors and personal attributes, all widely utilized in previous research. The first control variable is the age of the nominee at the time of their confirmation. This interval variable is coded as age in years, and the data are drawn from U.S. Senate Judiciary Committee questionnaires as well as the Federal Judicial Center (“Judicial Nominations”; “Biographical Directory”). Nominees’ ages in this dataset range from 37 to 69, with a median age of 50 years. Figure 3 below reveals that the median age of nominees for each president is between 45 and 55 years. For both Bush and Obama nominees, the median age is over 50 years. However, in recent

years, the median age of a nominee has fallen below 50 years; this is the case for both Trump and Biden nominees.

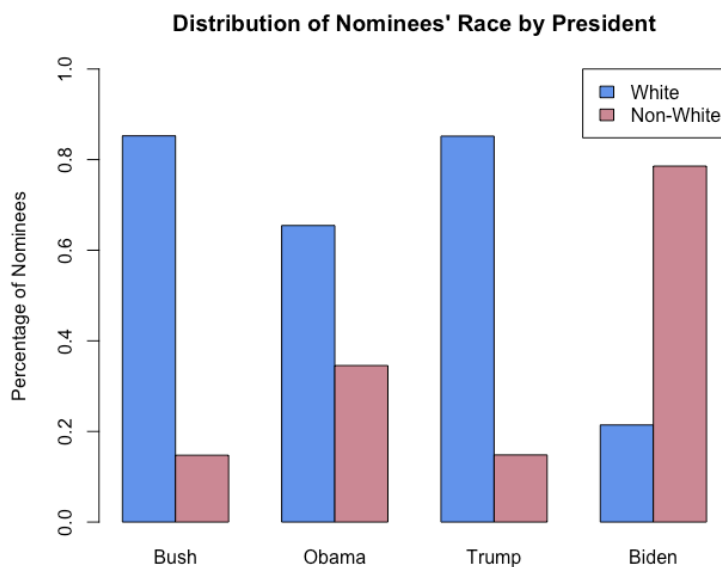
**Figure 3. Distribution of Nominees' Age by President.** The blue boxes represent the middle 50% of nominees' ages by president. The median age of Obama nominees is the highest, while the median age of Trump nominees is the lowest.



The second control variable employed in this study is the race of the nominee. This dichotomous variable is coded as “0” for white nominees and “1” for non-white nominees. The data for this variable are drawn from the Federal Judicial Center. Table 2 reveals that 70.7% of the nominees in the dataset are white, while 29.3% of the nominees in the dataset are non-white (“Biographical Directory”). Figure 4 demonstrates the difference in the racial makeup of nominees by president. Over 80% of Bush and Trump nominees were white. While a majority of President Obama’s nominees were white, approximately 35% of his nominees were non-white, more than double the percentage of non-white Bush or Trump nominees. The racial makeup of Biden’s nominees marks a clear departure from his predecessors; only 20% of his nominees were white, while an astounding 80% were non-white.

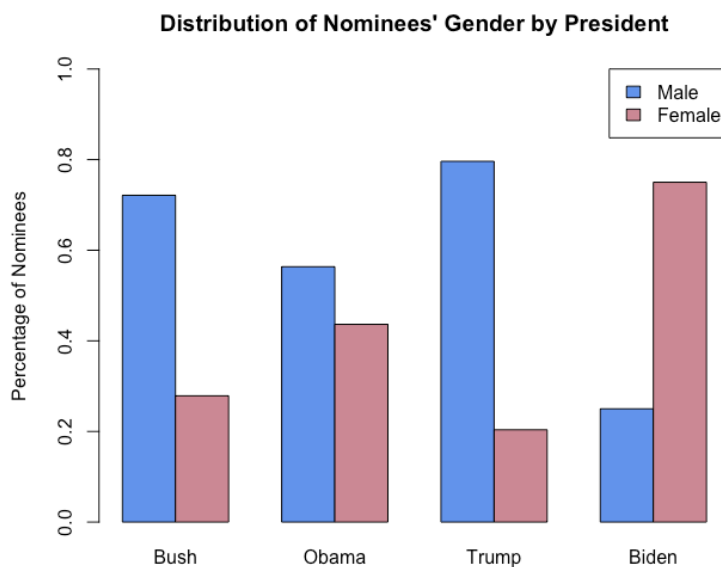


**Figure 4. Distribution of Nominees' Race by President.** The blue bars represent the percentage of nominees by president who were white, while the red bars represent the percentage of nominees who were non-white. Presidents Bush, Obama, and Trump tended to nominate white individuals, while President Biden's nominees were overwhelmingly non-white.



The third control variable utilized in this study is nominee gender. The data for this dichotomous variable come from the Federal Judicial Center, and are coded as “0” for male and “1” for female (“Biographical Directory”). Across the four presidential administrations studied, 63.1% of nominees are male, while 36.9% of nominees are female. Figure 5 reveals an interesting comparison of the rate of male and female nominees by president. During the Bush administration, approximately 30% of nominees were female, while 70% were male. The proportion of female nominees rose to over 40% during the Obama administration; still, a majority of Obama’s nominees were male. President Trump reversed this trend during his administration; only around 20% of his nominees were female, while a staggering 80% were male. President Biden is the only president in the dataset to have put forth mostly female nominees. An astounding 75% of his nominees were female – a far higher rate than Bush, Obama, or Trump – while only 25% of his nominees were male.

**Figure 5. Distribution of Nominees' Gender by President.** The blue bars represent the percentage of nominees by president who were male, while the red bars represent the percentage of nominees who were female. Presidents Bush and Trump tended to nominate men, while President Biden tended to nominate mostly women. President Obama's nominees were more evenly divided between male and female.

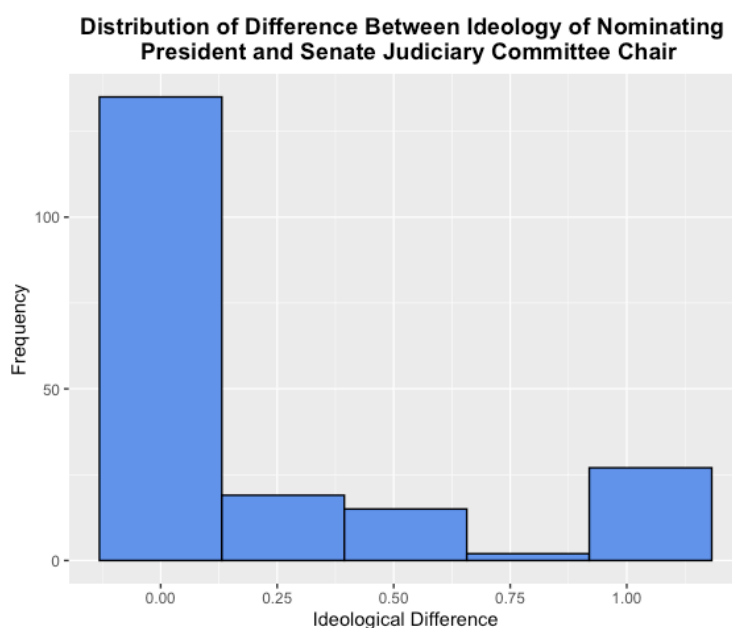


The fourth control variable is the presence of the sixty-vote threshold filibuster requirement needed to end debate on a nominee. This dichotomous variable is coded as “1” if the filibuster rule was in place at the time of confirmation and “0” if the rule was not in place at the time of confirmation. The data for this variable are drawn from the article by Boyd et al., which notes the date of the rule change (623). According to Table 2, 51% of confirmation votes in the dataset occurred while the rule was in place; 49% occurred after the rule was eliminated.

The fifth control variable is party control of the U.S. Senate and presidency. The data are categorical and drawn from the U.S. Government Publishing Office. The base category is Republican control of the senate and presidency, and the other categories are Republican control of the presidency and Democratic control of the senate, Democratic control of the presidency and Republican control of the senate, and Democratic control of the presidency and senate (“Party Government since 1857”).

The sixth and final control variable employed in this study is ideology. The data for this variable are drawn from the first dimension of Voteview's NOMINATE ideology scores, which measure presidents' and senators' ideology over time based on roll call votes (Lewis et al.). NOMINATE scores are coded by a range of most liberal (-1) to most conservative (1) (Lewis et al.). In order to assess the impact of ideology on the judicial confirmation process, I calculate the absolute value of the difference between the ideological scores of two individuals heavily involved in the confirmation process: the nominating president and the chair of the U.S. Senate Judiciary Committee, who oversees confirmation hearings. The absolute value of ideological difference in this study ranges from 0.0020 to 1.0530, with a median difference of 0.0280. Figure 6 demonstrates that a vast majority of nominations in this study are associated with an ideological difference value between 0.00 and 0.25.

**Figure 6. Distribution of Difference Between Ideology of Nominating President and Senate Judiciary Committee Chair.** The blue bars represent the frequency of the ideological distance between the president and the chair of the U.S. Senate Judiciary Committee. The distribution is unimodal and skewed to the right, with a cluster occurring around an ideological distance of 0.00.



## Summary Statistics

The table below provides a general overview of the dataset, which was used in my regression analysis. With respect to the time period utilized in this research, the number of affirmative votes a nominee receives is always between 46 and 100, with the median number of votes being 73. The number of days between nomination and confirmation ranges from 29 to 1,477, with a median value of 181 days. The age range of nominees is between 37 and 69 years, with a median value of approximately 50 years. The ideological values associated with nominees range from 0.0020 to 1.0530, with a median value of 0.0280; this denotes a minimal distance between the ideological score of the nominating president and chair of the U.S. Senate Judiciary Committee for the median nominee.

The table of summary statistics also includes data regarding the presence or absence of dichotomous variables, which was more thoroughly addressed in the independent and control variables sections of this chapter. The most notable dichotomous variables are private practice and public defender experience; 90.4% of nominees worked in private practice, while just 7.6% of nominees had public defender experience before their nomination to the federal bench. The most evenly divided dichotomous variable is the presence of a filibuster requirement; 51% of nominations were confirmed while the filibuster rule was in place, while 49% of nominations were confirmed after the filibuster rule was scrapped.

Finally, Table 2 includes the multi-factor variable of party control. The data reveal that 46% of the judges studied were confirmed during Republican control of the presidency and senate, 12.1% of judges were confirmed during Republican control of the presidency and Democratic control of the senate, just 1% of judges were confirmed during Democratic control

of the presidency and Republican control of the senate, and 40.9% of judges were confirmed during Democratic control of the presidency and senate.

**Table 2. Summary Statistics.** The data are broken down into three categories: continuous variables accompanied by measures of central tendency, dichotomous variables reflecting the presence or absence of certain attributes, and one multi-factor variable reflecting party control of government.

### **Continuous Variables**

	Minimum	Mean	Median	Maximum	Standard Deviation
Votes	46	74.48	73	100	20.11533
Days	29	236.4	181	1477	227.4904
Age	37	50.29	50	69	6.26934
Ideology	0.0020	0.2432	0.0280	1.0530	0.370572

### **Dichotomous Variables**

	Yes	No
Federal Clerkship	65.7%	34.3%
Supreme Court Clerkship	23.2%	76.8%
Top-Tier Law School	58.1%	41.9%
Private Practice	90.4%	9.6%
Law School Professor	39.9%	60.1%
Judge	49.5%	50.5%
Prosecutor	40.4%	59.6%
Public Defender	7.6%	92.4%
Advocacy Organization	56.6%	43.4%
Non-White	29.3%	70.7%
Female	36.9%	63.1%
Filibuster Requirement	51.0%	49.0%

### **Multi-Factor Variables**

	President (R); Senate (R)	President (R); Senate (D)	President (D); Senate (R)	President (D); Senate (D)
Party Control	46.0%	12.1%	1.0%	40.9%

## Chapter 5

### Results

In order to test my hypotheses, I employ a series of multiple regression models. Table 3 is a regression model of all the independent and control variables with the number of affirmative votes as the response variable. Table 4 is very similar, except the response variable utilized is the number of days between nomination and confirmation. The models displayed in Tables 5 and 6 are very similar to the models represented in Tables 3 and 4, respectively, except that Tables 5 and 6 contain separate regression models for each of the four presidents in the study.

#### **Federal Judicial Clerkships**

In Chapter 3, I hypothesized that a nominee who has clerked for a federal judge is more likely to be confirmed with more votes and in a shorter period of time than is a nominee who has not clerked for a federal judge. Tables 3 and 4 demonstrate that the data do not support these hypotheses, as there is no statistically significant relationship between the presence of a federal clerkship and either the number of votes received or the number of days between nomination and confirmation. However, Table 5 reveals that when the data are stratified by nominating president, two statistically significant relationships exist. First, for Biden nominees, prior service as a federal judicial clerk is associated with an increase of eight votes. Second, for Bush nominees, prior service as a federal judicial clerk is associated with a decrease of 253 days between nomination and confirmation.

I also hypothesized that a nominee who has clerked at the U.S. Supreme Court is more likely to be confirmed with more votes and in a shorter period of time than is a nominee who has not clerked at the U.S. Supreme Court. Again, the data in Tables 3 and 4 do not support these

hypotheses, as no statistically significant relationship exists between experience as a Supreme Court clerk and either dependent variable.

**Table 3. Regression Results with Votes as the Dependent Variable.** This table includes the results of the regression analysis explaining the number of affirmative votes received by circuit court nominees. Advocacy organization affiliation, age, the presence of a filibuster requirement, and party control of the U.S. Senate and presidency are all statistically significant factors for predicting the number of votes nominees receive.

	<i>Dependent variable:</i>
	Votes
Federal Clerkship	-2.695
	(2.578)
Supreme Court Clerkship	3.738
	(2.750)
Top-Tier Law School	0.648
	(2.179)
Private Practice	-3.811
	(3.603)
Law School Professor	-0.694
	(2.109)
Judge	0.443
	(2.270)
Prosecutor	3.413
	(2.068)
Public Defender	-2.493
	(4.135)
American Constitution Society	-7.280**
	(3.456)
The Federalist Society	-6.616*
	(3.391)
Age	0.357*
	(0.188)
Non-White	-3.849
	(2.390)
Female	1.187

	(2.254)
Filibuster Requirement	27.282***
	(2.851)
Republican president; Democratic senate	10.956*
	(5.770)
Democratic senate; Republican president	37.374***
	(11.248)
Democratic president; Democratic senate	-3.463
	(4.199)
Ideology	-9.288
	(6.988)
Constant	51.933***
	(11.113)
Observations	198
R <sup>2</sup>	0.591
Adjusted R <sup>2</sup>	0.549
Residual Std. Error	13.501 (df = 179)
F Statistic	14.349*** (df = 18; 179)
<i>Note:</i>	* p<0.1; ** p<0.05; *** p<0.01

**Table 4. Regression Results with Days as the Dependent Variable.** This table includes the results of the regression analysis explaining the number days between the nomination and confirmation of circuit court nominees. Race, the presence of a filibuster requirement, party control of the U.S. Senate and presidency, and ideology are all statistically significant factors for predicting the number of days between nomination and confirmation.

	<i>Dependent variable:</i>
	Days
Federal Clerkship	-22.943
	(38.432)
Supreme Court Clerkship	22.862
	(41.001)
Top-Tier Law School	-31.806



	(32.479)
Private Practice	87.218
	(53.708)
Law School Professor	-16.187
	(31.440)
Judge	7.554
	(33.848)
Prosecutor	-42.159
	(30.834)
Public Defender	-4.948
	(61.644)
American Constitution Society	-20.165
	(51.523)
The Federalist Society	18.478
	(50.555)
Age	-2.528
	(2.802)
Non-White	-60.868 <sup>*</sup>
	(35.632)
Female	20.667
	(33.608)
Filibuster Requirement	116.688 <sup>***</sup>
	(42.511)
Republican president; Democratic senate	-393.038 <sup>***</sup>
	(86.025)
Democratic senate; Republican president	-6.029
	(167.688)
Democratic president; Democratic senate	77.648
	(62.607)
Ideology	371.663 <sup>***</sup>
	(104.175)
Constant	203.305
	(165.674)

Observations	198
R <sup>2</sup>	0.289
Adjusted R <sup>2</sup>	0.217
Residual Std. Error	201.284 (df = 179)
F Statistic	4.035 <sup>***</sup> (df = 18; 179)
Note:	* p<0.1; ** p<0.05; *** p<0.01

**Table 5. Regression Results by President with Votes as the Dependent Variable.** This table includes the results of the regression analysis explaining the number of affirmative votes received by circuit court nominees. This is very similar to Table 3; however, in this model, the results are separated by nominating president.

	<i>Dependent variable:</i>			
	Votes			
	Bush	Obama	Trump	Biden
Federal Clerkship	0.282	-4.377	-7.277	7.781 <sup>**</sup>
	(6.137)	(5.011)	(5.645)	(3.278)
Supreme Court Clerkship	-2.844	2.155	1.919	-3.431
	(7.951)	(5.968)	(3.756)	(5.793)
Top-Tier Law School	10.555 <sup>**</sup>	-3.527	1.819	-6.659 <sup>**</sup>
	(4.500)	(5.104)	(3.490)	(3.088)
Private Practice	-4.038	-3.134	-19.271 <sup>**</sup>	-3.424
	(7.966)	(6.698)	(8.047)	(5.740)
Law School Professor	-3.226	-0.711	1.210	-1.920
	(4.847)	(5.199)	(3.088)	(2.904)
Judge	-1.894	4.708	-0.382	2.433
	(5.452)	(5.207)	(3.518)	(4.023)
Prosecutor	-0.319	-0.112	3.312	-3.965
	(5.045)	(4.754)	(3.174)	(5.685)
Public Defender	12.000	-2.681		-4.369
	(13.493)	(8.226)		(3.350)
The Federalist Society	-2.698		-22.058 <sup>***</sup>	
	(4.715)		(6.011)	
American Constitution Society		-9.239 <sup>*</sup>		3.919

		(4.664)		(4.787)
Age	0.221	0.229	0.234	0.068
	(0.390)	(0.434)	(0.302)	(0.310)
Non-White	-1.933	0.192	-1.104	-0.951
	(6.263)	(5.168)	(3.985)	(3.242)
Female	-2.360	0.727	5.476	-0.601
	(5.592)	(4.612)	(3.784)	(4.664)
Filibuster Requirement		15.553 <sup>***</sup>		
		(5.693)		
Ideology	7.103	25.785	124.795	
	(6.942)	(17.393)	(146.844)	
Constant	73.834 <sup>***</sup>	68.351 <sup>***</sup>	84.221 <sup>***</sup>	54.255 <sup>***</sup>
	(23.951)	(24.824)	(17.111)	(16.090)
Observations	61	55	54	28
R <sup>2</sup>	0.194	0.415	0.536	0.407
Adjusted R <sup>2</sup>	-0.029	0.210	0.400	-0.068
Residual Std. Error	16.046 (df = 47)	14.206 (df = 40)	9.819 (df = 41)	5.933 (df = 15)
F Statistic	0.870 (df = 13; 47)	2.025 <sup>**</sup> (df = 14; 40)	3.943 <sup>***</sup> (df = 12; 41)	0.857 (df = 12; 15)
Note:	*p<0.1; **p<0.05; ***p<0.01			

**Table 6. Regression Results by President with Days as the Dependent Variable.** This table includes the results of the regression analysis explaining the number of days between the nomination and confirmation of circuit court nominees. This is very similar to Table 4; however, in this model, the results are separated by nominating president.

	<i>Dependent variable:</i>			
	Days			
	Bush	Obama	Trump	Biden
Federal Clerkship	-252.990 <sup>*</sup>	51.517	49.207	-41.217
	(131.446)	(46.922)	(45.020)	(25.597)
Supreme Court Clerkship	258.989	-12.459	8.467	6.552
	(170.291)	(55.883)	(29.955)	(45.228)
Top-Tier Law School	-55.479	43.847	-42.402	-34.045
	(96.390)	(47.795)	(27.831)	(24.107)

Private Practice	198.680	62.981	140.112**	-57.145
	(170.612)	(62.720)	(64.178)	(44.814)
Law School Professor	114.348	-72.865	-6.915	-3.221
	(103.827)	(48.686)	(24.624)	(22.672)
Judge	32.595	-5.405	-43.292	6.665
	(116.769)	(48.756)	(28.058)	(31.414)
Prosecutor	-131.892	-18.116	36.899	-48.610
	(108.048)	(44.515)	(25.312)	(44.385)
Public Defender	-98.614	15.623		9.100
	(288.994)	(77.033)		(26.158)
The Federalist Society	44.553		-6.243	
	(100.985)		(47.936)	
American Constitution Society		11.207		-53.672
		(43.672)		(37.373)
Age	-6.591	0.305	-0.083	-0.971
	(8.346)	(4.061)	(2.405)	(2.422)
Non-White	-77.274	-12.505	3.447	12.943
	(134.148)	(48.400)	(31.782)	(25.309)
Female	117.697	42.732	-3.874	-49.132
	(119.766)	(43.184)	(30.182)	(36.419)
Filibuster Requirement		86.181		
		(53.316)		
Ideology	-134.994	138.590	-1,348.635	
	(148.690)	(162.873)	(1,171.111)	
Constant	641.197	86.242	47.797	326.101**
	(513.001)	(232.463)	(136.466)	(125.628)
Observations	61	55	54	28
R <sup>2</sup>	0.225	0.241	0.251	0.599
Adjusted R <sup>2</sup>	0.011	-0.024	0.032	0.277
Residual Std. Error	343.680 (df = 47)	133.035 (df = 40)	78.311 (df = 41)	46.320 (df = 15)
F Statistic	1.050 (df = 13; 47)	0.908 (df = 14; 40)	1.144 (df = 12; 41)	1.864 (df = 12; 15)
Note:	* p<0.1; ** p<0.05; *** p<0.01			

## **Law School**

With respect to nominees' legal education, I hypothesized that a nominee who attended a top-tier law school is more likely to be confirmed with more votes and in a shorter period of time than is a nominee who did not attend a top-tier law school. Tables 3 and 4 demonstrate that these hypotheses are not supported by the data, as no statistically significant relationship exists between top-tier law school attendance and either the number of votes received or the number of days between nomination and confirmation. However, a statistically significant relationship does exist between top-tier law school attendance and the number of votes received for both Bush and Biden nominees. For Bush nominees, top-tier law school attendance is associated with an increase of 11 votes, while for Biden nominees, top-tier law school attendance is associated with a decrease of 7 votes.

## **Previous Occupations**

I also developed a set of theoretical expectations regarding the impact of nominees' prior occupations on the favorability of confirmation outcomes. With respect to nominees who worked as attorneys in private practice, I hypothesized that they will likely be confirmed with more votes and in a shorter period of time than nominees who have not worked as attorneys in private practice. The data in Tables 3 and 4 do not support this hypothesis, as no statistically significant relationship exists between private practice experience and either dependent variable. However, a statistically significant relationship does exist between private practice experience and both dependent variables for Trump nominees; experience in private practice is associated with a decrease of 19 votes and an increase of 140 days between nomination and confirmation.

I also hypothesized that a nominee with prior experience as a law professor is more likely to be confirmed with more votes and in a shorter period of time than a nominee who has not

served as a law professor. Tables 3 and 4 reveal that this hypothesis is not supported by the data, as no statistically significant relationship exists between prior experience as a law professor and either the number of votes received or the number of days between nomination and confirmation.

The next occupation examined is prior service as a judge. In Chapter 3, I hypothesized that a nominee who has served as a judge is more likely to be confirmed with more votes and in a shorter period of time than a nominee who has not served as a judge. The data in Tables 3 and 4 do not support this hypothesis, as no statistically significant relationship exists between prior service as a judge and either dependent variable.

The final two occupations I study fall into the field of criminal law: prosecutor and public defender. In Chapter 3, I hypothesized that a nominee who has worked as a criminal prosecutor is more likely to be confirmed with more votes and in a shorter period of time than a nominee who has not worked as a criminal prosecutor. Tables 3 and 4 demonstrate that this hypothesis is not supported by the data, as no statistically significant relationship exists between prior service as a criminal prosecutor and either the number of votes or the number of days between nomination and confirmation. With respect to nominees who previously served as public defenders, I hypothesized that a nominee who has worked as a public defender is more likely to be confirmed with more votes and in a shorter period of time than a nominee who has not worked as a public defender. Once again, the data in Tables 3 and 4 do not support this hypothesis, as no statistically significant relationship exists between experience as a public defender and either dependent variable.

### **Advocacy Organization Affiliation**

I previously hypothesized that a nominee who is affiliated with either The Federalist Society or the American Constitution Society is more likely to be confirmed with more votes and

in a shorter period of time than is a nominee who is not affiliated with either organization. The data in Table 4 do not support my hypothesis, as no statistically significant relationship exists between advocacy organization affiliation and the number of days between nomination and confirmation. The data in Table 3 also do not support my hypothesis; a statistically significant relationship does exist between advocacy organization affiliation and the number of votes, but the relationship is the opposite of what I hypothesized. Affiliation with the American Constitution Society is associated with a decrease of seven votes, while affiliation with The Federalist Society is also associated with a decrease of approximately seven votes.

### **Control Variables**

The regression models also reveal interesting results regarding my control variables. Table 3 demonstrates that across the four presidential administrations studied, age, the presence of a filibuster requirement, and party control of the U.S. Senate and presidency have a statistically significant effect on the number of votes a nominee receives. An increase in age is associated with an increase of 0.357 votes. The presence of a filibuster requirement is associated with an increase of 27 votes. With respect to party control, Republican control of the presidency and Democratic control of the U.S. Senate is associated with an increase of 11 votes from Republican control of both the presidency and U.S. Senate; Democratic control of the presidency and Republican control of the U.S. Senate is associated with an increase of 37 votes from Republican control of both the presidency and U.S. Senate. No statistically significant relationship exists between the votes a nominee received and the nominee's race, gender, ideology, or when Democrats controlled both the U.S. Senate and presidency.

Table 4 demonstrates that a statistically significant relationship exists between the number of days between nomination and confirmation and a nominee's race, the presence of a

filibuster requirement, party control of the U.S. Senate and presidency, and ideology. Being non-white is associated with a decrease of 61 days between nomination and confirmation. The presence of a filibuster requirement is associated with an increase of 117 days between nomination and confirmation. Republican control of the presidency and Democratic control of the U.S. Senate is associated with a decrease of 393 days as compared to Republican control of both the presidency and U.S. Senate. An increase in the ideological difference between the nominating president and the chair of the U.S. Senate Judiciary Committee is associated with an increase of 372 days between nomination and confirmation. No statistically significant relationship exists between the number of days and a nominee's age, gender, Democratic control of the presidency and Republican control of the U.S. Senate and Democratic control of both the U.S. Senate and presidency.

### **A Broader View**

The aforementioned models demonstrate the statistical significance – or lack thereof – of various predictors as it relates to vote totals and days between nomination and confirmation. But in a broader sense, these models can be used to predict if a given nominee will succeed or fail under scrutiny by the U.S. Senate. For example, if two individuals – alike in every possible way – are nominated for seats on the U.S. Circuit Courts of Appeals, but one nominee is affiliated with The Federalist Society, while the other is not, we can predict that the affiliated nominee will likely receive 45 affirmative votes and the unaffiliated nominee will receive 52 votes. Given that 51 votes are needed for confirmation, the affiliated nominee in this scenario would not be confirmed to the bench. The outcome of the U.S. Senate judicial confirmation process can also vary greatly due to slight changes in political factors and institutional rules. For example, if two nominees are alike in every way, except that one nominee was confirmed while the filibuster rule



was in place and the other nominee was confirmed after the rule was eliminated, we can predict that the nominee confirmed while the rule was in place will be confirmed with 79 votes and in 320 days. The nominee confirmed after the rule was eliminated, however, will only be confirmed with 52 votes, but will be confirmed in a shorter time period of 203 days. This prediction model reveals how a slight change in senate rules not only affects two nominees, but also the speed at which the senate processes Article III appointees and the ability of the president to expeditiously shape the federal judiciary.

## Chapter 6

### Conclusion

This study attempts to explain why some nominations to the U.S. Circuit Courts of Appeals are confirmed more favorably than others; specifically, why certain nominees are confirmed with more affirmative votes and in a shorter period of time relative to their peers. In Chapter 3, I hypothesized that the presence of certain professional qualifications and experiences – including clerkships, prior occupations, and affiliation with legal advocacy organizations – would lead to an increase in affirmative votes and a decrease in confirmation duration for a given nominee. Overall, my hypotheses regarding nominee’s professional experiences were not supported by the data. The results of the regression models in Chapter 5 reveal that of the nine independent variables, only advocacy organization affiliation is a statistically significant predictor of confirmation outcomes across all 198 nominations studies, and when nominees are affiliated with either The Federalist Society or the American Constitution Society, their share of affirmative votes is likely to decrease, not increase. However, the data do support the idea that political factors and personal characteristics – including age, race, the presence of a filibuster requirement, party control of the U.S. Senate and presidency, and ideology – are statistically significant predictors of confirmation outcomes.

Two major limitations of my research concern the measurement of two key variables: professional experiences and ideology. With respect to professional experiences, the data from the U.S. Senate Judiciary Committee questionnaires and judicial biographies focuses on the existence of a professional experience or occupation within a nominee’s portfolio; I coded my data as such. However, this measurement does not aptly describe the depth of a nominee’s experience. For example, two nominees could have both worked as a prosecutor, although one

nominee had three years of experience in the field while the other had 30 years of experience. This distinction was not made when coding data. With respect to ideology, the nominating president's ideology was used as a proxy for the nominee's ideology. I would have preferred to employ a measure of ideology based solely on the nominee, if such a measure existed. Another limitation of my research is that I did not include a measure to gauge the effect that confirmation hearings had on nomination outcomes. During hearings, members of the U.S. Senate Judiciary Committee ask questions of nominees, and therefore may be influenced to vote for or against a nominee based on said nominee's performance.

Despite these limitations, the findings of this study have important implications for our understanding of core constitutional principles in practice. Circuit court nominees are not the only individuals who endure scrutiny by the U.S. Senate; hundreds of other Article III judicial nominees, cabinet appointees, and federal regulatory commission members are all nominated by the president and confirmed by the senate in a manner very similar to the one described in this research. Given the results of this study – that political and personal factors influence confirmation outcomes more than nominees' professional experiences – researchers might consider investigating why such factors have an outsized influence on the confirmation process, as well as studying whether or not the model developed in this research produces the same results when applied to the nomination and confirmation of federal district court judges, executive branch nominees, or regulatory commission members. Regardless of the approach researchers take in the future, a further investigation of the U.S. Senate confirmation process would be highly beneficial not only for political scientists, but also for any American interested in learning how the provisions of the Constitution – written over 225 years ago – endure regardless of changing societal and political norms.

**BIBLIOGRAPHY**

- “About ACS.” *American Constitution Society*, American Constitution Society, 3 January 2023, [www.acslaw.org/about-us/](http://www.acslaw.org/about-us/).
- “About Us.” *The Federalist Society*, The Federalist Society, [fedsoc.org/about-us](http://fedsoc.org/about-us). Accessed 19 Jan. 2023.
- Basinger, Scott, and Maxwell Mak. “The Changing Politics of Federal Judicial Nominations.” *Congress and the Presidency*, vol. 37, no. 2, 2010, pp. 157-75, <https://doi.org/10.1080/07343460903394226>. Accessed 12 Sept. 2022.
- Bell, Lauren. “Senatorial Discourtesy: The Senate's Use of Delay to Shape the Federal Judiciary.” *Political Research Quarterly*, vol. 55, no. 3, Sept. 2002, pp. 589-607, <https://doi.org/10.1177/106591290205500305>. Accessed 12 Sept. 2022.
- “Biographical Directory of Article III Federal Judges, 1789-present.” *Federal Judicial Center*, [www.fjc.gov/history/judges](http://www.fjc.gov/history/judges). Accessed 7 Oct. 2022.
- Black, Ryan C., Anthony J. Madonna, and Ryan J. Owens. “Qualifications or Philosophy? The Use of Blue Slips in a Polarized Era.” *Presidential Studies Quarterly*, vol. 44, no. 2, Apr. 2014, <https://doi.org/10.1111/psq.12114>. Accessed 10 Oct. 2021.
- Boyd, Christina L., Michael S. Lynch, and Anthony J. Madonna. “Nuclear Fallout: Investigating the Effect of Senate Procedural Reform on Judicial Nominations.” *The Forum*, vol. 13, no. 4, 2015, pp. 623-41, <https://doi.org/10.1515/for-2015-0042>. Accessed 12 Sept. 2022.
- “Congressional Record.” *Congress.gov*, Library of Congress, <https://www.congress.gov/congressional-record>. Accessed 7 Oct. 2022.
- Hoekstra, Valerie, and Nicholas LaRowe. “Judging Nominees: An Experimental Test of the Impact of Qualifications and Divisiveness on Public Support for Nominees to the Federal

Courts.” *Justice System Journal*, vol. 34, no. 1, 2013, pp. 38-61, [www-proquest-com.ezaccess.libraries.psu.edu/docview/1469867308?pq-origsite=summon&accountid=13158](http://www-proquest-com.ezaccess.libraries.psu.edu/docview/1469867308?pq-origsite=summon&accountid=13158). Accessed 13 Sept. 2022.

Holmes, Lisa M., Salmon A. Shomade, and Roger E. Hartley. “The Confirmation Obstacle Course: Signaling Opposition through Delay.” *American Review of Politics*, vol. 33, spring 2012, pp. 23-49, <https://doi.org/10.15763/issn.2374-7781.2012.33.0.23-49>. Accessed 12 Sept. 2022.

“Judicial Nominations.” *United States Senate Committee on the Judiciary*, United States Government Publishing Office, [www.judiciary.senate.gov/nominations/judicial](http://www.judiciary.senate.gov/nominations/judicial). Accessed 7 Oct. 2022.

Lewis, Jeffrey B., Keith Poole, Howard Rosenthal, Adam Boche, Aaron Rudkin, and Luke Sonnet. “Voteview: Congressional Roll-Call Votes Database.” *Voteview*, U of California Los Angeles Department of Political Science, [voteview.com/data](http://voteview.com/data). Accessed 7 Oct. 2022.

Martinek, Wendy L., Mark Kemper, and Steven R. Van Winkle. “To Advise and Consent: The Senate and Lower Federal Court Nominations, 1977–1998.” *The Journal of Politics*, vol. 64, no. 2, May 2002, pp. 337-61, <https://doi.org/10.1111/1468-2508.00129>. Accessed 12 Sept. 2022.

Neil, Martha. “Yale’s Still #1 in Latest US News Rankings; Harvard, Stanford, Columbia & Chicago Follow.” *ABA Journal*, American Bar Association, 15 Apr. 2010, [https://www.abajournal.com/news/article/law\\_school\\_rankings](https://www.abajournal.com/news/article/law_school_rankings).

Nixon, David C., and David L. Goss. “Confirmation Delay for Vacancies on the Circuit Courts of Appeals.” *American Politics Research*, vol. 29, no. 3, 1 May 2001, <https://doi.org/10.1177/1532673X01293002>. Accessed 10 Oct. 2021.

- O'Connell, Anne. "Shortening Agency and Judicial Vacancies through Filibuster Reform - An Examination of Confirmation Rates and Delays from 1981 to 2014." *Duke Law Journal*, vol. 64, no. 8, May 2015, pp. 1645-715, [heinonline.org/HOL/Page?collection=journals&handle=hein.journals/duklr64&id=1644&men\\_tab=srchresults](https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/duklr64&id=1644&men_tab=srchresults). Accessed 12 Sept. 2022.
- Owens, Ryan J., Daniel E. Walters, Ryan C. Black, and Anthony Madonna. "Ideology, Qualifications, and Covert Senate Obstruction of Federal Court Nominations." *University of Illinois Law Review*, vol. 2014, no. 2, 28 Feb. 2014. *Hein Online*, [heinonline.org/HOL/Page?collection=journals&handle=hein.journals/unilllr2014&id=35](https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/unilllr2014&id=35)
- "Party Government since 1857." *U.S. House of Representatives*, United States Government Publishing Office, [history.house.gov/Institution/Presidents-Coinciding/Party-Government/](https://history.house.gov/Institution/Presidents-Coinciding/Party-Government/). Accessed 7 Oct. 2022.
- Smelcer, Susan Navarro, Amy Steigerwalt, and Richard L. Vining, Jr. "Bias and the Bar: Evaluating the ABA Ratings of Federal Judicial Nominees." *Political Research Quarterly*, vol. 65, no. 4, 2012, pp. 827-40, <https://doi.org/10.1177/1065912911421011>. Accessed 12 Sept. 2022.
- Solowiej, Lisa A., Wendy L. Martinek, and Thomas L. Brunell. "Partisan Politics: The Impact of Party in the Confirmation of Minority and Female Federal Court Nominees." *Party Politics*, vol. 11, no. 5, 2005, pp. 557-77, <https://doi.org/10.1177/1354068805054980>. Accessed 12 Sept. 2022

## ACADEMIC VITA

Jacob D. Roth

### EDUCATION

---

<b>Villanova University Charles Widger School of Law</b> <i>Juris Doctor</i>   Villanova, PA	Beginning 8/2023
<b>The Pennsylvania State University, Schreyer Honors College</b> <i>Bachelor of Arts in Political Science</i>   University Park, PA	Expected 5/2023
<ul style="list-style-type: none"><li>• Earned President's Freshman Award, Evan Pugh Scholar Junior Award, and Evan Pugh Scholar Senior Award.</li></ul>	

### LEADERSHIP and WORK EXPERIENCE

---

<b>South Whitehall Township Board of Commissioners</b> <i>Township Commissioner</i>   Allentown, PA	12/2022 – present
<ul style="list-style-type: none"><li>• Member of five-person governing body for first class township of 21,000 residents.</li><li>• Tasked with reviewing and approving \$17.7 million budget to ensure high-quality municipal services and adequate employee remuneration; appointed to Budget, Finance, and Audit Subcommittee.</li><li>• Spearheading legislative priorities in areas including land use, township finances, public safety, government reform, infrastructure, and historic preservation.</li></ul>	
<b>Albright's Hardware and Garden Center</b> <i>Retail Associate</i>   Allentown, PA	5/2022 – 12/2022
<ul style="list-style-type: none"><li>• Performed daily store operations, including restocking shelves, processing payments, and counting cash drawers.</li><li>• Utilized home maintenance knowledge to help customers select appropriate tools and materials.</li></ul>	
<b>United States House of Representatives</b> <i>Congressional Intern</i>   Washington, D.C.	1/2022 – 5/2022
<ul style="list-style-type: none"><li>• Generated policy and bill briefs for legislative staff in office of Congressman Fred Keller (PA-12).</li><li>• Aided staff assistant by writing constituent letters, answering phone calls, and processing constituents' concerns.</li><li>• Assisted multiple central Pennsylvania municipalities with federal infrastructure and broadband grant applications.</li><li>• Provided guided tours of United States Capitol Building.</li></ul>	

### ACTIVITIES and COMMUNITY SERVICE

---

<b>South Whitehall Township Park and Recreation Board</b> <i>Board Member</i>   Allentown, PA	10/2022 – 12/2022
<ul style="list-style-type: none"><li>• Provided input to township staff and Board of Commissioners on topics related to parks and recreation programs.</li></ul>	
<b>McCourtney Institute for Democracy Student Advisory Board</b> <i>Board Member</i>   University Park, PA	11/2021 – present
<ul style="list-style-type: none"><li>• Outline social media strategies to promote democratic values on Penn State's campus; advise on speakers and events.</li></ul>	
<b>Penn State Lion Caucus</b> <i>Advocacy Committee</i>   University Park, PA	9/2021 – present
<ul style="list-style-type: none"><li>• Develop legislative lobbying skills and policy knowledge for use in meetings with Pennsylvania General Assembly.</li></ul>	
<b>South Whitehall Concerned Citizens</b> <i>Communications and Community Outreach</i>   Allentown, PA	2/2018 – 12/2022
<ul style="list-style-type: none"><li>• Cultivated thorough understanding of Pennsylvania First Class Township Code and South Whitehall SALDO.</li><li>• Coordinated presentations to township officials concerning land development plans and zoning regulations.</li><li>• Executed marketing and communication strategies to inform and unite diverse coalition of 650 concerned residents.</li></ul>	
<b>Boy Scout Troop 12</b> <i>Eagle Scout</i>   Allentown, PA	9/2008 – 3/2020
<ul style="list-style-type: none"><li>• Oversaw 15 volunteers in project involving planting trees, landscaping, and repairing benches at Union Cemetery.</li><li>• Completed over 225 service hours through Scout-related projects.</li><li>• Received first annual Troop 12 Vivek Ananthan Citizenship Award.</li></ul>	