

The Marginality Hypothesis and Supreme Court Confirmation Votes in the Senate

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Abstract

Studies of Supreme Court confirmations have found that a senator's vote is primarily determined by her ideological proximity to a nominee and that nominee's objective qualifications. This literature does not account for the extent to which a senator's electoral safety may enhance or mitigate the effects of ideology or qualifications. We argue that senators from less competitive states are more likely to eschew a nominee's qualifications in favor of their own ideological preferences. By analyzing roll call data on confirmation votes from Byron White to Elena Kagan, we support this argument and add an intriguing new piece to the puzzle underlying the changing dynamics of Senate confirmation voting.

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To even the most casual observer of politics, the fact that Supreme Court confirmation battles are ideological is obvious. Although presidents cherish their constitutional prerogative to nominate candidates for high-level public positions, including cabinet secretaries, lower federal judges, and ambassadors, they particularly enjoy the ability to place justices on the high court. Just as interested in this process are the president's institutional opponents in the Senate. The "advice and consent" required by the Constitution is more than a rubber stamp, as Senate opposition has led to the failure of some 27 presidential nominations. One such high profile event, the 1987 failed confirmation of Reagan nominee Robert Bork mobilized journalists and political insiders to assert the dawning of a new era in confirmation politics, one which "deemphasizes ethics, competence, and integrity and stresses instead politics, philosophy, and ideology" (Epstein et al., 2006, p. 297). In this paper, we ultimately seek to contribute to an understanding of the "changing dynamics" of Senate confirmation voting. This understanding is rooted in a novel application of the "marginality hypothesis" (Bartlett, 1979; Cohen and Brunk, 1983; Griffin, 2006) of legislative behavior to the specifics of Senate voting on Supreme Court confirmations.

Upon reviewing the literature on the determinants of individual senators' votes on particular nominees, we conclude that this literature has somehow lost its grounding in theories of general legislative behavior. We argue that following the approach of Cameron, Cover and Segal (1990), as many subsequent studies do, implies taking seriously the ways in which the "electoral connection" affects Senate voting behavior. Specifically, electoral marginality may affect Senate voting on Supreme Court confirmations. This paper contributes to the literature on confirmation voting by demonstrating that the effects of the classic determinants of confirmation vote choice—ideological proximity of the nominee to a senator and the nominee's objective qualifications—are conditioned by a senator's electoral marginality. Specifically, safer senators are more able to eschew a nominee's qualifications in favor of their own ideological preferences and more marginal senators instead place more emphasis on qualifications relative to ideology.

This paper also contributes to the debate over the marginality hypothesis by focusing an evaluation of it on the Senate, instead of the House of Representatives (Deckard, 1976; Sullivan and

Uslaner, 1978) or state lower chambers (MacRae, 1952), and on a voting context that is arguably specifically amenable to it (Bartlett, 1979). Our measure of marginality is unique in that it considers myriad sources of electoral pressure, including primary election safety and party performance in presidential elections, as well as a senator's own recent general election performance. In the end, we conclude that the electoral marginality of a senator strongly conditions the emphasis that she gives to nominee characteristics when determining vote choice. In addition, we show that party pressure to vote for a candidate nominated by a president of the same party is stronger for safer legislators than it is for their more marginal colleagues. Our findings therefore contribute to recent supportive evidence regarding the marginality hypothesis, as marginality has a consistently strong effect on other important determinants of confirmation voting. We also find that the exact form of this conditioning effect varies only slightly over time. After accounting for their interactions with electoral marginality, we show that the marginal effects of both ideological distance and nominee qualifications become stronger or weaker over time, but do not do so monotonically, indicating that the increasingly ideological nature of confirmation battles (see, e.g., Epstein et al., 2006) may be an artifact of increasingly wide margins of victory in the Senate.

I. Previous Research on Confirmation Voting

Extant research has developed a strong understanding of the specific factors that jointly determine Senate voting on Supreme Court confirmations. Some of these studies pose presidential nominees as the unit of analysis and seek to predict confirmation or failure (Palmer, 1983; Segal, 1987; Segal and Mak, 2009) or the length of the confirmation process (Shipan and Shannon, 2003), but most recent analyses focus on individual senators' votes on particular nominees. Much of these individual-level explanations are theoretically and empirically informed by the model originally put forth by Cameron, Cover and Segal (1990). These authors argue that much of the variation in voting behavior across individual senators can be explained by two variables: the spatial proximity of a senator's and nominee's ideologies and the objective qualifications of the nominee.

Although there are many studies that have added to the collective knowledge of the determinants of senators' confirmation votes (see, e.g., Segal, Cameron and Cover (1992); Caldeira and Wright (1998); Bratton and Spill (2004); Johnson and Roberts (2005); Zigerell (2010)), we shall focus on three very recent accounts that will serve to highlight our own contribution to this literature. Epstein et al. (2006) seek to extend and update the Cameron, Cover and Segal (1990) research and, in so doing, demonstrate that the relative importance of ideology has increased over time as compared to other factors, including a nominee's qualifications.¹

In a subsequent paper, Shipan (2008) focuses more specifically on the role of partisanship. Here, the author shows both that the independent effect of partisanship on voting behavior has increased over time and that party identification serves to modify the increasing effect of ideological distance—with senators from the president's party less willing to punish ideologically distant, but well-qualified, nominees than senators from the opposing party. Basinger and Mak (2012) supplement this work by showing that increasing levels of average party loyalty—as well as individual variation in party loyalty—affects patterns of confirmation votes across senators. These analyses inform our own in that they paint a more complicated and comprehensive picture of the changing nature of confirmation voting than previous work and they imply that there are interactive conditions under which senators de-emphasize ideology in favor of other factors—confirming an argument originally made by Cameron, Cover and Segal (1990).

Kastellec, Lax and Phillips (2010) contribute to this literature by providing direct evidence that state-level public opinion affects senators' votes on nominees. The authors utilize national public opinion polls and state-poststratification techniques to create estimates of constituency opinion on recent nominees and find that these opinions influence the voting behavior of senators. As a result of these contributions and the others noted above, we know relatively much about what drives Senate votes on Supreme Court confirmations from the standpoints of statistical explanation and prediction (Segal and Mak, 2009). In fact, the most comprehensive empirical models consistently correctly

¹These authors also make a methodological contribution, using a now well-established bridging technique (Bailey and Chang, 2001) to create commensurable measures of ideology for senators and nominees.

predict upwards of 96% of individual yeas votes on nominees (Cameron, Kastellac and Park, 2013).

As successful as this research has been, it has not fully considered the theoretical underpinnings of the original Cameron, Cover, and Segal (1990) model. The literature these authors cite as driving their model is of the general “electoral connection” variety, focusing on the individual reelection motives of senators. The main variables they consider (“Ideological Distance” and “Lack of Qualifications”) are theoretically motivated by the nature of “electorally minded senators” (Cameron, Cover and Segal, 1990, p.528). Kastellec, Lax and Phillips (2010) frame their important contribution as establishing that senators actually do respond to public opinion regarding confirmations. As is our goal as well, they ground their theoretical approach in Cameron, Cover and Segal’s (1990) logic:

[W]e imagine senators asking themselves, “Can I use my actions during the confirmation process to gain electoral advantage? . . . What is the most electorally expedient action for me to have taken?” Hence, we follow Mayhew (1974a); Fenno (1978) and Fiorina (1974) in analyzing how the prospect of explaining behavior in Washington influences the behaviors of representatives. We recognize (as did Mayhew, Fenno, and Fiorina) that senators often have additional goals in mind as they make highly visible decisions. Among these goals may be furthering a vision of good public policy and enhancing power and prestige within the Senate (Dodd, 1985; Fenno, 1973; Kingdon, 1981). But a narrower focus on the electoral connection often captures much of the motivation of senators, provides a useful base line for more complex models, and offers an attractive, direct path to the statistical analysis of confirmation roll call voting (Cameron, Cover and Segal, 1990, p. 527)

We contend that a basic consideration of what “electorally minded senators” would do in any voting situation must account for differences in electoral contexts among senators. While Kastellec, Lax and Phillips (2010) give convincing evidence that senators respond to state level public opinion, they do not consider that this behavior may be conditioned by variation in electoral marginality. In the next section, we review some important contributions to the sprawling literature on the “marginality

hypothesis” of legislative behavior and contend that consideration of this facet of reelection theory can add much to our understanding of confirmation voting.

II. Electoral Marginality and Senate Voting

An enduring, yet far from settled question in studies of political representation and legislative behavior is that regarding the veracity of the marginality hypothesis. Most simply and broadly put, electorally unsafe legislators should pay closer attention to constituent demands than their safer counterparts, thus leading to predictable differences in legislative behavior across the spectrum of electoral competition. The existence of regularly scheduled elections is supposed to give legislators an incentive to represent their constituency’s interests, regardless of their own personal views. Nevertheless, there are myriad potential influences on legislative behavior—including personal characteristics (race, gender, socioeconomic background, issue interest and expertise), political factors (partisanship, personal ideology), and constituency characteristics (induced ideology, particularistic demands)—and the idea behind the marginality hypothesis is that electoral safety should condition the relative importance of these influences.

The marginality hypothesis holds intuitive appeal and is a bedrock of a vast literature on legislative voting behavior (MacRae, 1952). Nevertheless, as noted in a recent defense of this perspective (Griffin, 2006), the marginality hypothesis has “fallen on hard times” (p. 909). Empirical studies have shown mixed support for the proposition that “legislators elected by narrow margins pay closer attention to constituency interests than colleagues elected with plenty of votes to spare” (Fiorina, 1973, p. 479), with the perspective losing favor among some scholars (Fiorina, 1973; Bartels, 1991; Groseclose, 2001; Gulati, 2004; Kousser, Lewis and Masket, 2007). The aforementioned defense by Griffin (2006) makes sense of the uneven empirical support for the marginality hypothesis by identifying empirical weaknesses in previous studies. However convincing this general defense may be, the purpose of the present paper is not to make such a broad case for (or against) the behavioral effects of marginality. Instead, we hope to make a novel contribution to the understanding of a

particular type of voting that may be particularly amenable to being conditioned by electoral context. We now review this literature with special attention to the implications for Senate behavior in the realm of confirmation politics.

The literature on the marginality of a legislator's district tells us that legislators from closely contested districts may have to fight harder to please their constituencies and thereby be reelected (Sullivan and Uslander, 1978; Avery and Forsythe, 1979; Kalt and Zupan, 1990; Lanoue and Emmert, 1999; Conley, 2000; Stratmann, 2000). Here, a legislator's set of plausible actions is constrained if they are from a hotly contested district. Despite evidence that constituents are mostly ignorant of the voting records of their legislators (Campbell et al., 1960; Converse, 1964; Smith, 1989; DelliCarpini and Keeter, 1991), members of Congress are inclined to act as though their votes are being closely watched (Canes-Wrone, Brady and Coogan, 2002). An electorally minded legislator from a closely contested district would presumably be so consumed with trying to get reelected that he/she might avoid pursuing any individual political and/or ideological goals if they were at odds with their constituency's preferences.² As a corollary, according to this theory, legislators from less competitive districts should be liberated from electoral constraints and free to pursue secondary goals at will.

The unconditional claim that there is a direct relationship between electoral marginality and responsiveness to a constituency is difficult to demonstrate, as it is also difficult to believe. Why wouldn't electorally safe members also care about constituency preferences? How did they get so safe in the first place if they were the type of legislator to pursue their personal goals at the expense of district wants and needs across the range of public policies? These are but a sampling of the types of doubts one might have of unconditional claims of marginality effects on legislative behavior. Therefore, many of the influential portrayals of the marginality hypothesis (MacRae, 1952; Froman, 1963; Deckard, 1976; Sullivan and Uslander, 1978) have emphasized that "safe" legislators have the freedom not to pursue purely personal or ideological goals, but to toe the party line more often than

²There is, of course, the perspective that electorally-minded legislators are never perfectly "safe," and that legislators should always behave as if they are electorally vulnerable (Mann, 1978). While compelling for members of the House of Representatives, longer term lengths and broader constituencies make this argument less applicable to the Senate. Yet, to the extent that it is true, it should work against us finding empirical support for our hypotheses. Nevertheless, this is worth noting as a clear mechanism for the null hypothesis.

their more marginal colleagues. In addition, there is reason to believe that party leadership would know this and strategically target those safe legislators most likely to have the wiggle room with their constituencies to be loyal to their party (Griffin, 2006; Lebo, McGlynn and Koger, 2007).

This idea that electoral context can determine the relative importance of constituency versus party influences is a theoretically appealing one. As parsimonious as it is to consider members of Congress “single-minded seekers of reelection” (Mayhew, 1974*a*), each vote prompts legislators to consider the opportunities for and constraints against each type of strategic behavior. However, with the exceptions of Shipan (2008) and Basinger and Mak (2012), most of the previous literature on Supreme Court confirmation voting has emphasized the importance of ideology at the expense of party loyalty. This is not to say that party is unimportant, but there is a case to be made for the supremacy of ideology over party for this type of vote (Cameron, Cover and Segal, 1990; Epstein et al., 2006). Besides, where party leadership may exert influence over safe members of the House of Representatives (Lebo, McGlynn and Koger, 2007), numerous scholars have held that leadership is a weaker influence on senators (Binder, 1997; Dion, 1997; Sinclair, 2000). In addition to ideological proximity between a senator and a nominee, the literature reviewed above suggests that a nominee’s objective qualifications affect the likelihood of either a “yea” or “nay” vote. We argue that the relative importance of these two major determinants of confirmation voting are conditioned by each senator’s electoral marginality.

Recall that the classic formulations of the marginality hypothesis focus on potential opportunities for legislators to stray from constituency interests if they can advance secondary or personal interests, such as party loyalty or ideological behavior not congruent with the constituency. “Constituency interests” are always difficult to define and operationalize. For aggregate tests of the marginality hypothesis, scholars have looked to the congruence between citizen ideology and roll-call behavior of legislators to assess their responsiveness (Achen, 1978; Ansolabehere, Snyder Jr. and Stewart III, 2001; Griffin, 2006). For confirmation voting as a subset of Senate behavior, Kestelec, Lax and Phillips (2010) approximate this approach and show that state-level public opinion on nominees significantly affects senators’ confirmation votes. Theirs is an important effort, but they do not con-

sider that the relationship between public opinion and legislative behavior might vary with electoral context (specifically regarding electoral security), as suggested by the marginality hypothesis.

Davis (2005), among others, argues that confirmation proceedings have become a very public and newsworthy event—at least partly due to the long-term and far reaching salience of a successful confirmation. Likewise, since confirmation votes lack compromise amendments and hidden riders, they should be fairly simple votes for constituents to follow. A “yea” vote means that a senator approves of a nominee, a “nay” that they do not. Kestelec, Lax and Phillips (2010) argue that the public has knowledge of these votes, that they are salient, and that senators know that the public is watching these high profile confirmations relatively closely. However, citizens may not have well-formed ideological opinions about which nominees to support and which to oppose. Surely, this is to some extent conditioned by party efforts, but jurisprudential ideology is not reducible to political ideology and may be difficult for citizens to understand sufficiently. Despite these potential pitfalls, Kestelec, Lax and Phillips (2010) make a strong case for aggregating survey responses of citizens up to the state level and examining how this state-level constituent opinion affects the roll call votes of senators. However, this strategy requires analyzing a limited number of more recent nominees. Kestelec, Lax and Phillips (2010) use data on Justices O’Connor, Rehnquist, Bork, Souter, Thomas, Ginsburg, Breyer, Roberts, and Alito, many of whom achieved confirmation unanimously, or near unanimously. In addition, and consequentially for the analyses that we conduct below, there is very little variation in the objective qualifications of these recent nominees, as compared to the pre-1981 nominees.

For these reasons and in order to study confirmation politics as broadly as possible given the limited availability of survey data on nominees, we conceptualize constituent preferences differently than do Kestelec, Lax and Phillips (2010). In particular, we see a nominee’s objective qualifications as a valence dimension (Cameron, Cover and Segal, 1990; Johnson and Roberts, 2005; Cameron, Kastellac and Park, 2013). We assume that citizens care unequivocally about a nominee’s qualifications to serve on the bench and always prefer more qualifications to fewer. We expect senators to be at least moderately risk-averse and acutely aware of the kinds of votes that can harm or help

them “at home,” and see a decision based on nominee qualifications to be one that is unlikely to harm reelection chances. In particular, we argue that although voting ideologically will please some proportion of a senator’s constituency, voting on the basis of qualifications should please all constituents, regardless of their ideological preference for or against a nominee. The linchpin to our empirical strategy is that qualifications are a valence issue, while ideological concerns are conflictual within heterogenous state districts, and are thus a riskier platform from which to base a confirmation vote for senators.

Based on the logic of the marginality hypothesis and the specter of constituency constraints, we argue that electorally unsafe senators should place more emphasis on the valence issue of nominee qualifications than they do on the electorally riskier influences of political ideology or partisan loyalty. On the other hand, safer senators may see themselves as less constrained by the need to please their constituencies and therefore have more opportunity to engage in ideological or partisan voting behavior. These arguments have clear implications for our expectations concerning the relative strength of ideological distance versus nominee qualifications and how electoral marginality serves to condition these relative influences across individual senators. Specifically,

Hypothesis 1 *As the safety of a senator’s seat increases, that senator will be less constrained by the concerns of his/her constituents and will be freer to pursue the secondary goal of voting ideologically.* As existing literature has made the case for the primacy of ideology, we must also recognize the potential for strong party influence on voting behavior (Shipan, 2008; Basinger and Mak, 2012). In accordance with much literature on the marginality hypothesis (MacRae, 1952; Froman, 1963; Deckard, 1976; Sullivan and Uslander, 1978; Griffin, 2006), we might expect that,

Hypothesis 2 *As the safety of a senator’s seat increases, that senator will be less constrained by the concerns of his/her constituents and will be freer to pursue the secondary goal of voting with their party for or against the president’s nominee.*

These hypotheses imply relationships between ideological distance/party and voting behavior that are conditional on seat safety. The general hypotheses are operationalized in a subsequent section

with multiplicative interaction terms and split samples to capture empirically this conditionality.

As a corollary to these hypotheses, senators who have won their seats with tight electoral margins should not risk alienating their constituencies by voting purely on the basis of ideology or party. As a result,

Hypothesis 3 *As the safety of a senator's seat decreases, that senator will be more constrained by the concerns of his/her constituents and will be increasingly likely to pursue the safer strategy of voting on the basis of a nominee's qualifications rather than voting ideologically or in party-driven fashions.*

As above, this relationship should become stronger the less electorally secure a senator is. Taken together, these hypotheses summarize our argument that a senator's electoral context should condition the relative importance of the aforementioned determinants of confirmation voting. The theoretical mechanism is one of risk-aversion and pleasing constituents by pursuing a valence issue (nominee qualifications) rather than the riskier strategy of voting ideologically or strictly to satisfy party leaders. It is, of course, true that basing a vote on ideology would please many of a senator's constituents, especially when such a vote is likely to be in accordance with constituency preferences (Kastellec, Lax and Phillips, 2010). Our key micro-behavioral argument is that basing a vote on ideology (hypothesis 1), or on party (hypothesis 2), is a riskier strategy than basing it on a nominee's qualifications (hypothesis 3) and that senators become more risk averse as they become less electorally secure. Importantly, these predictions concern the *marginal effects* of these variables, given exogenous levels of vote share. This has implications for the empirical tests that we conduct below and the presentation of our results, especially in figures 2-5.

Finally, a word on the exogeneity of vote share. It is quite obviously the case that vote share is not actually exogenous to legislative behavior. In reality, good representation (of constituent interests) leads to higher vote shares for senators and bad representation (voting selfishly and against the interests of a state) to lower vote shares and, eventually, to electoral loss. Nevertheless, no matter how salient Supreme Court confirmation votes are (and we argue that they are salient enough to see

an effect of electoral marginality on voting behavior), they are unlikely to have much of a causal effect on vote share on their own. These votes come up at most a few times a year and some senators never get to vote more than once or twice in their careers on confirmations. We do not argue that these votes are wholly unimportant. In fact, they must be important enough for us to propose the theory that we do. In part to ameliorate endogeneity concerns, but also in order to more accurately measure a senator's sense of overall safety, we incorporate information regarding primary and presidential elections to senators' general election vote margins. Presidential election vote share for a senator's party captures electoral security/vulnerability in a way that is not as tainted by the endogeneity concerns discussed above.

In sum, our argument adds nuance to extant accounts of confirmation voting and recognizes the strategic complexity of legislative behavior in this area of interbranch relations. In addition, given that voting on the basis of a Supreme Court nominee's qualifications is likely to please the majority of a senator's constituency, this issue area has the potential to elucidate a clear mechanism for the marginality hypothesis.

III. Data and Methods

In order to test these hypotheses, we start with data collected and provided by Lee Epstein and colleagues.³ Since these data are complete, consistent, and well documented, they are ideal for the analyses in this paper. To assess the effect of the electoral marginality of senators, we collected information on electoral vote shares from the CQ Press Voting and Elections Center.⁴ As described below, we use a combination of general election, primary election, and presidential election returns to calculate our marginality/safety variable. Since we were only able to collect complete primary electoral data back to the 85th Congress (1957-1959), we focus on nominees from 1962-2010.⁵

³These data are available online: <http://epstein.wustl.edu/research/Bork.html>

⁴ <http://library.cqpress.com/elections/> This source excludes special elections, so we supplemented it with information from Federal Election Commission reports as needed.

⁵We use the previous election to calculate marginality/safety, so we had to go back at least to the 1956 elections to calculate this variable for senators voting on 1962 nominations.

All told, our modified dataset includes 2,401 observations from the nomination and confirmation of Justices White through Kagan.⁶

As it is not our goal to generate a completely novel model of individual-level Senate voting on Supreme Court nominees, we do not stray far from the basic model specification found in Cameron, Cover and Segal (1990) or in the Epstein et al. (2006) or Shipan (2008) articles. Since the dependent variable is dichotomous, we estimate probit models of senators' vote choices. To account for the hierarchical nature of these data (individual votes grouped within nominations), we cluster the standard errors by nomination.⁷ The standard predictors from previous studies (Cameron, Cover and Segal, 1990; Epstein et al., 2006; Shipan, 2008; Kastellec, Lax and Phillips, 2010) are included and briefly described below.

- *Ideological Distance*: Bridging of NOMINATE scores and Segal-Cover scores (see Segal and Cover (1989) and Epstein et al. (2006) for more details) to create a Euclidian distance between each senator's ideology and the nominee's.
- *Qualifications*: The degree to which nominees are seen to be qualified for office. Cameron, Cover and Segal (1990) assessed this via a content analysis of newspaper editorials written from the time of the nomination until the vote by the Senate. The scores range from 0 (least qualified) to 1 (most qualified);⁸ see Cameron, Cover, and Segal (1990), Table 2 for more details.
- *Strong President*: Whether the president was "strong" in the sense that his party controlled the Senate and he was not in the fourth year of office.⁹

⁶Three early nominations in these data were confirmed through voice votes: White, Goldberg, and Fortas. These votes are counted as unanimous in the main results, but are alternatively excluded, with no change in substantive results, in appendix table A1.

⁷We have also estimated random-effects probit models for the analyses reported below, but these very rarely deviate from those reported here.

⁸This variable is often conceptualized as a *lack* of qualifications, but we reverse the coding for ease of interpretation.

⁹This variable is never a significant predictor of vote choice in our models. Our results are substantively identical to what we present when we exclude this variable, but we always report models which include it, as it present in almost all of the previous literature.

- *Same Party*: Whether the senator is of the same political party as the president.

All four of these variables significantly and consistently affect Senate confirmation voting in previous studies, with ideological distance generally having the strongest substantive effects (Cameron, Cover and Segal, 1990; Epstein et al., 2006; Shipan, 2008; Kastellec, Lax and Phillips, 2010). We have the same expectations regarding these variables as previous authors have had: that the coefficients on *Ideological Distance* be significantly negative and those on *Qualifications*, *Strong President*, and *Same Party* be significantly positive.

Recall that the novel hypotheses proposed in this article imply that the effects of *Ideological Distance* (hypothesis 1), *Same Party* (hypothesis 2), and *Qualifications* (hypothesis 3) are conditional on the electoral safety of a senator. We have operationalized this safety by recording the *Smallest Vote Share* won by each senator in their most recent election. Sitting senators must generally clear two formal hurdles to achieve their position: a party primary election and a general election. Senators can clear both bars easily and be considered relatively safe from electoral pressure; or they can struggle in both and be electorally marginal; or, since they often face drastically different electorates in either race, they can win one easily and the other much more closely. Particularly in this latter case, there are notable examples of legislators who are broadly safe from general election pressure, but must fend off tough opponents in primaries. In these cases, electorally minded senators should be primarily focused on the tougher of the two races. In addition, presidential elections signal something about electoral safety to senators. A Democratic senator in a strongly Republican presidential state, even if they won election by a wide margin, is less “safe” than that senator would be if they served in a strongly Democratic state.¹⁰ Since all three of these election types should play on senators’ minds, we measure the *Smallest Vote Share* of the three as an indicator of the marginality/safety of individual senators in our data.¹¹ It is important to note that this is a lagged variable in that we cannot capture

¹⁰We thank anonymous reviewers for directing us to these points.

¹¹Practically, this is often, although not always, the presidential vote share variable. Our general results hold if we use the smallest of a senators’ own election shares and exclude presidential elections, but we prefer to include presidential elections as they help ameliorate the endogeneity concerns discussed above.

each senator's actual expectations concerning *future* elections.¹² Instead, we use the competitiveness of their toughest most recent election as a proxy for how closely contested their state is in general at the time of their confirmation vote. We believe that this captures an important aspect of each senator's electoral context that should serve to mediate the effects of *Ideological Distance*, *Same Party*, and *Qualifications* as argued above. Figure 1 shows how the mean vote share variables vary over time for the congresses including nomination votes.¹³ While there is no monotonic trend across all years included in this study, there are clear trends in increasing competitiveness from the 87th Congress (1961-1963) through the 93rd (1973-1975), followed by a trend in steadily increasing vote shares from then on. In order to facilitate the interpretation of interaction terms, we have rescaled each of the continuous variables (*Smallest Vote Share* [mean .49, SD .08], *Ideological Distance* [mean .25, SD .26], and *Qualifications* [mean .77, SD .24]) to have a mean of zero.

Figure 1 goes here.

IV. Results

As represented in table 1, column 1, we begin by replicating the canonical model (Cameron, Cover and Segal, 1990; Epstein et al., 2006; Shipan, 2008) of Supreme Court confirmation voting. Not surprisingly, the size, direction, and level of statistical significance of the coefficients for *Ideological Distance* and *Qualifications* are nearly identical to those from closely related studies.¹⁴ Predictably, these results show that an individual senator becomes less likely to vote for a nominee the farther that

¹²After much deliberation, and trying it either way with little substantive variation in results, we do not drop those senators who ended up retiring at or before their subsequent reelection year. The justification for excluding them is that if they knew they were to retire when voting, they may have been more willing to deviate from a constituency preference for a highly qualified nominee, regardless of how competitive their seat had been. For the vast majority of cases, however, we cannot say that retiring senators knew that they would certainly retire at the time of the vote. Indeed, even if they did know this, they would probably have legacy- and integrity-related reasons not to eschew qualifications, just as any senator seeking reelection would. For consistency's sake, we keep these retiring senators in the analyses, but note that no important results change when we omit them.

¹³Additionally, we have included a "years to next election" variable to capture the temporal nature of electoral security. This variable does not perform as well as *Smallest Vote Share* as a measure of electoral marginality, as it does not include any information on how close the past or next elections were. Nevertheless, all results reported below are robust to its inclusion as a covariate.

¹⁴Again, we measure *Qualifications*, rather than the *Lack of Qualifications* of previous studies. So, statements concerning equivalence of findings reflect the mirror image of what we present in tables 1 and 2.

nominee is from them ideologically. Equally unsurprisingly, individual senators are more likely to vote for those nominees more highly qualified for the bench. Of slightly more note, the coefficients for *Strong President* and *Same Party* are in the expected direction, but fall short of conventional levels of statistical significance. In fact, *Strong President* does not statistically significantly determine vote choice in any of the models that we estimate for the time period from White to Kagan. These results from table 1, column 1, add to the choir of previous research in emphasizing the primary importance of *Ideological Distance* and *Qualifications* in determining the voting behavior of individual senators on confirmation votes.

The second column of table 1 introduces the novel mediating variable described in this study. In addition to the basic model from column 1, we include a variable measuring the *Smallest Vote Share* for each senator in their previous elections (primary, general, and the previous presidential election). As noted above, we rescale this variable such that it has a mean of zero. In order to evaluate hypothesis 1, we include a multiplicative interaction term between *Smallest Vote Share* and *Ideological Distance*. We have no theoretical reason to expect *Smallest Vote Share* to exert an independent influence on the probability of casting a Yea vote—neither extremely safe nor marginal senators should be unconditionally more likely to vote to confirm or not. The first thing to note is that this specification does not change the relationship between *Qualifications* and the propensity for a senator to vote for confirmation. Neither does it affect the general relationship between *Ideological Distance* and vote choice. The coefficient on *Ideological Distance* now denotes the effect of ideology on a senator’s vote when he or she won election with the mean *Smallest Vote Share* of 49% in their last election. The negative and significant coefficient on the interaction term indicates a basic support for hypothesis 1 — as a senator becomes safer (from the mean value of the safety variable at least), ideological distance has a stronger negative effect on confirmation vote choice. We will more systematically assess this relationship when discussing column 4’s more comprehensive model.

Column 3 presents coefficients from a model which includes *Smallest Vote Share* and its interaction with *Qualifications* and excludes the interaction from column 2. Again, we see that the relationship between *Ideological Distance* and the direction of the confirmation vote maintains from column

1. Also as in column 2, the interaction term (between *Smallest Vote Share* and *Qualifications*) is statistically significant and in the expected direction. As senators become safer and nominees become more qualified, each senator is actually less likely to base her vote on qualifications and thus more likely to pursue a goal normally secondary to reelection. According to our theory (specifically, hypothesis 3), these senators do not rely on the low-risk, low-reward strategy of voting for or against a nominee based on qualifications alone. The corollary to these results is that more marginal senators are significantly more likely to simply vote based on qualifications, avoiding the risk of alienating key constituents or voting (perhaps inadvertently, perhaps sincerely) against the ideological interest of the district. Column 4 of table 1 reaffirms these relationships for a model where we include both sets of interactions simultaneously.¹⁵

The model fit statistics for table 1 generally indicate that the models do a good job at correctly classifying votes (percent correctly classified of between 85.1% and 86.4%), but are not as predictive as some of the more comprehensive models in the literature (Cameron, Kastellac and Park, 2013).¹⁶ Column 4 represents our most theoretically preferred model, but it is also the best fit to the data, as a likelihood ratio test indicates that the interaction variables are jointly significant at $p < .001$.

Figure 2 goes here.

Although the theoretically important interactions are significant and in the expected directions, a cursory glance at the coefficients of a binary choice model with interactions can potentially obfuscate interesting relationships and does little to convey substantive meaning (e.g., Brambor, Clark and Golder, 2006). Figure 2 plots the marginal effects of *Ideological Distance* across the range of values of *Smallest Vote Share*.¹⁷ Each point on the slope gives the amount of change in the propensity of a

¹⁵Concerned about nominee-specific heterogeneity, we also estimated regressions with nomination fixed effects and have reported results as appendix table A2. These results omit the main effects of *Qualifications*, as they are constant within unit (nomination), but they fully support the findings that we report in table 1.

¹⁶In addition, more recent nomination votes are more difficult to correctly classify, as there are fewer voice votes in the sample.

¹⁷Holding the remaining model covariates constant. Figures 2-5 were generated after estimating the comprehensive model from column 4 of Table 1. Continuous variables (i.e., either *Ideological Distance* or *Qualifications*) are held at their means, and dichotomous variables (*Strong President* and *Same Party*) are held at their modes (i.e., simulating conditions of a weak president and a senator of the president's party).

yes vote for a one unit change in *Ideological Distance* given the coordinate value for *Smallest Vote Share*. As previous research would predict, the marginal effects are very strongly negative for many values of *Smallest Vote Share*. This reflects the much discussed ideological nature of confirmation votes. Yet, we also see that for very marginal senators (those with scaled *Smallest Vote Shares* less than -.15), the marginal effect of *Ideological Distance* fails to achieve statistical significance, which is strong evidence in support of hypothesis 1. Now, there are not many observations of such unsafe senators (this is roughly two standard deviations below the mean of *Smallest Vote Share*), but the kernel density estimate overlaid on figure 2 shows that there are some data points for which ideology does not affect senator vote choice, which previous literature would not have expected at all.

Figure 3 goes here.

Figure 3 demonstrates equally clear support for the marginality hypothesis as expressed as hypothesis 3. Here, we expected *Qualifications* to exert less of an influence on the propensity of a yes vote as an individual senator becomes more electorally safe. Again, the logic is that electoral safety frees legislators up to pursue goals secondary to merely keeping their jobs. Electorally marginal senators, on the other hand, should have their votes primarily determined by qualifications, over and above other determinants of legislative behavior. It is important to again emphasize that we do not argue that ideology becomes wholly unimportant to marginal senators, nor do we deny that public opinion can sometimes spur ideological voting, regardless of qualifications. Instead, we argue that, in the aggregate, marginal senators should be more likely to adopt the low-risk, if low-reward, strategy of basing a vote on qualifications. To test this insight, we turn again to analysis of marginal effects, given varying levels of *Smallest Vote Share*.

Figure 3 displays strong support for this theoretical expectation. The downward slope of the marginal effects plot clearly demonstrates this statistically significant relationship. For example, the marginal effect of *Qualifications* for a hypothetical senator with the lowest *Smallest Vote Share* in the data is just about 6. In contrast, the marginal effect approaches very near zero if that same senator were to have been elected unanimously. In fact, at a scaled *Smallest Vote Share* near 0.1

(a standard deviation above the mean), the marginal effect of *Qualifications* becomes statistically insignificant as a determinant of *Vote Choice*. As with figure 2 and *Ideological Distance*, this confirms that the importance of *Qualifications* is conditional on a senator's electoral context. This finding conflicts with the extant literature's view of the unconditional roles of ideology and qualifications on confirmation votes. Also consistent with hypothesis 3, we show that *Qualifications* is most important when a senator is constrained by electoral concerns. The fact that a senator's voting calculus is affected by her/his electoral marginality is entirely novel in the empirical literature on appointee confirmation and is specific evidence in support of a marginality hypothesis.

We also find support for the expression of the marginality hypothesis in the form of our hypothesis 2. This expectation follows previous literature (MacRae, 1952; Froman, 1963; Deckard, 1976; Sullivan and Uslaner, 1978) in emphasizing the possibility that party pressure should disproportionately affect less marginal senators. Confirmations of nominations to the Supreme Court should be of high importance to party leaders. The argument emphasizes that all senators should feel some pressure from their respective party leaders to confirm potential justices nominated by presidents of their party and to disconfirm those nominated by the opposing party. The extent to which these pressures should actually affect their vote choice, however, should theoretically vary with a senator's electoral safety.

In table 2 we present evidence that electorally marginal (i.e., electorally *unsafe*) senators are more strongly affected by party pressure than their safer counterparts. These models include the most common specification from the empirical literature (e.g., Epstein et al., 2006) on split samples to show how the effect of *Same Party* changes across *Smallest Vote Share*. The leftmost column presents results from the model for electorally safe senators only. Safety here is operationalized as having a *Smallest Vote Share* greater than the mean of *Smallest Vote Share*. As above, *Ideological Distance* and *Qualifications* are statistically significant determinants of a senator's vote choice, as is *Same Party*, with the president's copartisans significantly more likely to support a nominee. In contrast, the second column, like those results reported in table 1, shows that *Same Party* has no statistically significant effect on vote choice for the subsample of "unsafe" legislators. These two

columns combine to support the expectation from hypothesis 2. The rightmost columns of table 2 suggest that this finding is not an artifact of how we split the sample between “safe” and “unsafe” legislators. Here, we use the median as the measure of central tendency to split the two populations, and come away with the same substantive story. Electorally safe senators appear to vote ideologically, while they are simultaneously pressured by party leaders, while more vulnerable senators do not appear to be significantly affected by party at all. In addition, judging by the relative magnitude of the coefficients across samples, safe senators do not appear to be as affected by *Qualifications* and more effected by *Ideological Distance* than more marginal senators, confirming the findings in table 1 and figures 2 and 3. Simply, electorally marginal senators are most likely to let qualifications determine their confirmation vote and safe senators are most likely to vote ideologically and with their party.

Figure 4 goes here.

As a final assessment of hypothesis 2, we estimated a probit just as in table 1, column 4, this time also interacting *Same Party* with *Smallest Vote Share*. We then used this model to generate figure 4 in the same way that we generated figures 2 and 3. Here, we see graphical confirmation of the finding from table 2 that safe senators are significantly likely to vote with their party. Interesting, especially unsafe senators (scaled *Smallest Vote Share* less than -.2) are actually significantly likely to be negatively affected by party cues.

Recent empirical evaluations of appointments and confirmations to the Supreme Court portray a starkly changing dynamic to this process (Caldeira, 1989; Krutz, Fleisher and Bond, 1998; Martinek, Kemper and Winkle, 2002; Epstein et al., 2006; Shipan, 2008; Basinger and Mak, 2012; Cameron, Kastellac and Park, 2013). These works document that the importance of ideological considerations has increased as a determinant of confirmation voting over time—at the expense of others, including a nominee’s qualifications. Many of these studies point to the 1987 failed confirmation of Ronald Reagan nominee Robert Bork as the primary catalyst for such a changing dynamic. Epstein et al. (2006), for example, directly test and find empirical confirmation for the popular assertions of a

“Bork Effect” on the way that ideology and qualifications are considered by senators. Although some have proposed potential mechanisms for this changing dynamic (Caldeira, 1989; Baugh, 2002; Bell, 2002; Davis, 2005), none have been able to fully explain the change in legislative behavior regarding confirmation votes in the Senate. These mechanisms focus on increased interest group participation for or against nominees and on an increasing polarization of political elites (Hunter, 1992; Fiorina, Abrams and Pope, 2004). While these theories are plausible, no previous empirical study has verified their ability to explain how and why the dynamics of confirmation voting have changed over time. Concurrent with the accounts of these changing dynamics are the “vanishing marginals” (Mayhew, 1974*b*) and increased tendencies for House and Senate incumbents to win reelection in uncompetitive elections (Westlye, 1983; Schickler, Citrin and Sides, 2003; Donovan and Bowler, 2004; Abramowitz, Alexander and Gunning, 2006). Utilizing the above framework for understanding how electoral context might affect senatorial behavior, we surmise that if elections have become less competitive, senators will have increasingly been freed from state-level electoral constraints. Such freedom would allow them to eschew “ethics, competence, and integrity”—assumed to be important to their constituents—in favor of “politics, philosophy, and ideology” (Epstein et al., 2006, p. 297). In other words, we suspect that the changing dynamics found by previous literature might in part be explained by the mechanism of increasing *Smallest Vote Share* across the Senate.

Figure 5 goes here.

Figure 5 speaks to this question by displaying how the marginal effects of *Ideological Distance* and *Qualifications* have changed across time. Similarly to figures 2 and 3 above, these effects are calculated after estimating probit models of senators’ confirmation votes.¹⁸ Here, unlike in figures 2-4 we do not vary the level of the mediating *Smallest Vote Share* variable. Instead, *Smallest Vote Share* is held at its mean value and we vary the value of *Same Party* to capture the differing marginal effects for senators of the president’s party and for those of the opposition. The top dots on each

¹⁸Each model estimated here includes all of the covariates, including the interactions, from Table 1, column 4, with the exception of *Strong President*. We will be comparing marginal effects by decade and there are decades (the 1970s and from 2000 on) for which this variable did not vary.

panel of the figure give the average marginal effect for one-unit increases in *Ideological Distance* and *Qualifications*, respectively, across the full data set, given the model specified in table 1, column 4 (omitting the *Strong President* variable). The dots give the marginal effect and the lines on either side extend to display a 95% confidence interval for this effect. To assess the dynamics of these effects over time, the next five rows display marginal effects for models of the data in decennial increments.¹⁹

If it were true that Supreme Court nominations were becoming more ideological over time, then we might expect to see increasingly negative marginal effects of *Ideological Distance* across time. This is most certainly not the case, as there is not discernible trend in the marginal effect of *Ideological Distance*, holding electoral marginality constant. This all indicates that the nature of the interactive relationship between *Ideological Distance* and *Smallest Vote Share* on confirmation voting has not changed significantly over time, contra the conventional wisdom of “changing dynamics.” Instead, secular trends in increasing incumbent safety, such as that from the 102nd Congress on (figure 1) might lead to illusion of more ideological voting. We interpret our findings as suggestive evidence that senators might not be becoming more ideological across the board— instead, we are seeing more electorally safe senators free to vote more ideologically than they would have if they were less electorally safe. The same temporal consistency in the marginal effects of *Qualifications* implies that the widely perceived decreased emphasis on “ethics, competence, and integrity” is driven not by a fundamentally new type of politics, but instead by decreasingly marginal types of senators.

V. Conclusion

We began this article by noting the recognition that citizens and scholars alike afford to the ideological nature of Supreme Court confirmations. The sense of the growing ideological nature of these constitutionally-mandated consultations between presidents and the Senate extends to lower court and agency appointments as well. Recent episodes of “advise and consent” have seen Senate

¹⁹The sample sizes for these models are as follows. 1960s: 644, 1970s: 472, 1980s: 492, 1990s: 394, 2000s-present: 399

minorities obstruct both President George W. Bush's and President Barack Obama's nominees to these important positions. Concomitantly, Senate majorities, first under Bill Frist (R-TN), and then Harry Reid (D-NV), had responded by threatening the "nuclear option" of changing Senate rules to preclude filibusters on confirmation votes. On November 21, 2013, such institutional conflict came to a head, as Reid and the Senate Democrats finally fulfilled such threats and changed the chamber rules to prevent filibustering on all but Supreme Court nominations.

The recent prevalence and predictability of these dynamics have been attributed to the magnified extent to which senators are said to behave ideologically. To a certain extent, this rings true to us, but we have attempted to make more systematic sense of this temporal development. Specifically, our approach has been to utilize modern statistical models—a mainstay of confirmation studies—to evaluate the extent to which the "changing dynamics" (Epstein et al., 2006) can be explained as a function of some underlying institutional factor. While we cannot claim that the entirety of purported changing dynamics can be explained by an increase in uncompetitive Senate elections, we hold that this is likely a part of the causal story.

We began by revisiting the theoretical infrastructure of the seminal model of Senate voting on Supreme Court nominees provided by Cameron, Cover and Segal (1990). Motivated by the literature on the "marginality hypothesis" and congressional behavior, we feel that we have correctly specified the "neoinstitutional" model of Senate confirmation votes. Our hypotheses highlight a proposed conditioning effect of electoral safety on Senate confirmation voting behavior. In evaluating these hypotheses, we produce strong evidence that as senators are elected with wider margins of victory, they become less likely to base their vote on a nominee's qualifications—a valence characteristic—and more likely to vote based on some other dimension, including both party and ideology. This idea speaks to a number of different literatures and implies important directions for future research.

First, our study extends the testing grounds of the marginality hypothesis from the House of representatives to the Senate and from voting on bills to voting on confirmations. Next, our research builds on calls for a "constituency perspective" in work on Senate confirmation voting (Caldeira, 1989; Felice and Weisberg, 1989; Overby et al., 1992). After all, senators do not make voting

decisions in an electoral vacuum. Despite the “electoral connection” flavor of Cameron, Cover and Segal (1990), much research glosses over the theoretical importance of including constituency preferences into studies of judicial or executive appointments and confirmations. Our work follows Kastellec, Lax and Phillips (2010) in considering constituency preferences more closely than scholars had previously done.

This research also has normative implications and could be used to inform popular claims that uncompetitive elections are detrimental not only to democracy, but also to citizen engagement and public trust. We have demonstrated a tangible consequence of “vanishing marginals” that has gone heretofore unexamined in popular and scholarly accounts of recent changes in American politics. Specific to confirmation politics, Cameron, Kastellac and Park (2013) highlight elements of change and continuity in confirmation politics and conclude that the most obvious institutional change is increasing polarization in the Senate. Our research amends this story slightly, arguing that the aggregate appearance of heightened ideological contentiousness in confirmation votes might have less to do with polarization and more to do with the mediating effect of electoral safety on individual legislative behavior.

References

- Abramowitz, Alan I., Brad Alexander and Matthew Gunning. 2006. "Incumbency, Redistricting, and the Decline of Competition in U.S. House Elections." *Journal of Politics* 68(1):75–88.
- Achen, Christopher H. 1978. "Measuring Representation." *American Journal of Political Science* 22(3):475–510.
- Ansolabehere, Stephen, James M. Snyder Jr. and Charles Stewart III. 2001. "Candidate Positioning in U.S. House Elections." *American Journal of Political Science* 45(1):136–159.
- Avery, William P. and David P. Forsythe. 1979. "Human Rights, National Security, and the U.S. Senate: Who Votes for What, and Why." *International Studies Quarterly* 23(2):303–320.
- Bailey, Michael and Kelly H. Chang. 2001. "Comparing Presidents, Senators, and Justices: Interinstitutional Preference Estimation." *Journal of Law, Economics, & Organization* 17(2):477–505.
- Bartels, Larry M. 1991. "Constituency Opinion and Congressional Policy-Making." *American Political Science Review* 85(2):457–474.
- Bartlett, Robert V. 1979. "The Marginality Hypothesis: Electoral Insecurity, Self-Interest, and Voting Behavior." *American Politics Research* 7:498.
- Basinger, Scott J. and Maxwell Mak. 2012. "The Changing Politics of Supreme Court Confirmations." *American Politics Research* 40(4):737–763.
- Baugh, Joyce A. 2002. *Supreme Court Justices in the Post-Bork Era: Confirmation and Judicial Performance*. New York, NY: Peter Lang.
- Bell, Lauren Cohen. 2002. *Warring Factions: Interest Groups, Money and the New Politics of Senate Confirmation*. Columbus, OH: The Ohio State University Press.
- Binder, Sarah A. 1997. *Minority Rights, Majority Rule: Partisanship and the Development of Congress*. Cambridge University Press.
- Boehmke, Frederick J. 2008. "GRINTER: A Stata Utility to Graph Interaction Effects after Regression Models, Version 1.8." <http://myweb.uiowa.edu/fboehmke/stata/grinter>.
- Brambor, Thomas, William Roberts Clark and Matt Golder. 2006. "Understanding Interaction Models: Improving Empirical Analysis." *Political Analysis* 14:63–82.
- Bratton, Kathleen A. and Rorie L. Spill. 2004. "Moving up the Judicial Ladder: The Nomination of State Supreme Court Justices to the Federal Courts." *American Politics Research* 32(2):198–218.
- Caldeira, Gregory A. 1989. "Commentary on Senate Confirmation of Supreme Court Justices: The Roles of Organized and Unorganized Interests." *Kentucky Law Journal* 77(3):531–38.
- Caldeira, Gregory A. and John R. Wright. 1998. "Lobbying for Justice: Organized Interests, Supreme Court Nominations, and the United States Senate." *American Journal of Political Science* 42(2):499–523.

- Cameron, Charles M., Albert D. Cover and Jeffrey A. Segal. 1990. "Senate Voting on Supreme Court Nominees: A Neoinstitutional Model." *The American Political Science Review* 84(2):525–534.
- Cameron, Charles M., Jonathan P. Kastellac and Jee-Kwang Park. 2013. "Voting for Justices: Change and Continuity in Confirmation Voting 1937-2010." *Journal of Politics* 75(2).
- Campbell, Angus, Philip E. Converse, Warren E. Miller and Donald E. Stokes. 1960. *The American Voter*. New York, NY: Wiley and Sons.
- Canes-Wrone, Brandice, David W. Brady and John F. Coogan. 2002. "Out of Step, Out of Office: Electoral Accountability and House Members' Voting." *The American Political Science Review* 96(1):127–140.
- Cohen, Jeffrey E. and Gregory G. Brunk. 1983. "A Dynamic Test of the Marginality Hypothesis." *Political Behavior* 5(3):293–307.
- Conley, Richard S. 2000. "The Electoral and Policy Context of Divided Government and Presidential Support in Congress: Nixon and Bush Compared." *Polity* 32(4):595–621.
- Converse, Philip E. 1964. The Nature of Belief Systems in Mass Publics. In *Ideology and Discontent*, ed. David E. Apter. New York: Free Press.
- Davis, Richard. 2005. *Electing Justice: Fixing the Supreme Court's Nomination Process*. New York, NY: Oxford University Press.
- Deckard, Barbara Sinclair. 1976. "Electoral Marginality and Party Loyalty in House Roll Call Voting." *American Journal of Political Science* 20(3):469–481.
- DelliCarpini, Michael X. and Scott Keeter. 1991. "Stability and Change in the U.S. Public's Knowledge of Politics." *The Public Opinion Quarterly* 55(4):583–612.
- Dion, Douglas. 1997. *Turning the Legislative Thumbscrew: Minority Rights and Procedural Change in Legislative Politics*. University of Michigan Press.
- Dodd, Lawrence C. 1985. Congress and the Quest for Power. In *Studies of Congress*, ed. Glenn R. Parker. Washington, DC: Congressional Quarterly Press.
- Donovan, Todd and Shaun Bowler. 2004. *Reforming the Republic: Democratic Institutions for the New America*. Upper Saddle River, NJ: Pearson Prentice Hall.
- Epstein, Lee, René Lindstädt, Jeffrey A. Segal and Chad Westerland. 2006. "The Changing Dynamics of Senate Voting on Supreme Court Nominees." *Journal of Politics* 68(2):296–307.
- Felice, John D. and Herbert F. Weisberg. 1989. "The Changing Importance of Ideology, Party, and Region in Confirmation of Supreme Court Nominees, 1953-1988." *Kentucky Law Journal* 77:509–30.
- Fenno, Richard F. 1973. *Congressmen in Committees*. Boston, MA: Little, Brown.

- Fenno, Richard F. 1978. *Home Style: House Members in Their Districts*. Boston, MA: Little, Brown.
- Fiorina, Morris. 1973. "Electoral Margins, Constituency Influence, and Policy Moderation: A Critical Assessment." *American Politics Quarterly* 1(4):479–498.
- Fiorina, Morris P. 1974. *Representatives, Roll Calls, and Constituencies*. Lexington, MA: D.C. Heath.
- Fiorina, Morris P., Samuel Abrams and Jeremy C. Pope. 2004. *Culture War?* New York, NY: Longman.
- Froman, Lewis A. 1963. "The Importance of Individuality in Voting in Congress." *Journal of Politics* 25(2):324–332.
- Griffin, John D. 2006. "Electoral Competition and Democratic Responsiveness: A Defense of the Marginality Hypothesis." *Journal of Politics* 68(4):909–919.
- Groseclose, Tim. 2001. "A Model of Candidate Location When One Candidate Has a Valence Advantage." *American Journal of Political Science* 45(4):862–886.
- Gulati, Girish J. 2004. "Revisiting the Link between Electoral Competition and Policy Extremism in the U.S. Congress." *American Politics Research* 35(5):495–520.
- Hunter, James Davison. 1992. *Culture Wars: The Struggle to Define America*. Basic Books.
- Johnson, Timothy R. and Jason M. Roberts. 2005. "Pivotal Politics, Presidential Capital, and Supreme Court Nominations." *Congress the Presidency* 32(1):31–48.
- Kalt, Joseph P. and Mark A. Zupan. 1990. "The Apparent Ideological Behavior of Legislators: Testing for Principal-Agent Slack in Political Institutions." *Journal of Law and Economics* 33(1):103–131.
- Kastellec, Jonathan P., Jeffrey R. Lax and Justin H. Phillips. 2010. "Public Opinion and Senate Confirmation of Supreme Court Nominees." *Journal of Politics* 72(3):767–784.
- Kingdon, John W. 1981. *Congressmen's Voting Decisions*. 2nd ed. New York, NY: Harper & Row.
- Kousser, Thad, Jeffrey B. Lewis and Seth E. Maskett. 2007. "Ideological Adaptation? The Survival Instinct of Threatened Legislators." *Journal of Politics* 69(3):828–843.
- Krutz, Glen S., Richard Fleisher and Jon R. Bond. 1998. "From Abe Fortas to Zoe Baird: Why Some Presidential Nominations Fail in the Senate." *The American Political Science Review* 92(4):871–881.
- Lanoue, David J. and Craig F. Emmert. 1999. "Voting in the Glare of the Spotlight: Representatives' Votes on the Impeachment of President Clinton." *Polity* 32(2):253–269.
- Lebo, Matthew J., Adam J. McGlynn and Gregory Koger. 2007. "Strategic Party Government: Party Influence in Congress, 1789-2000." *American Journal of Political Science* 51(3):464–481.

- MacRae, Duncan. 1952. "The Relation between Roll Call Votes and Constituencies in the Massachusetts House of Representatives." *American Political Science Review* 46(4):1046–55.
- Mann, Thomas E. 1978. *Unsafe at Any Margin: Interpreting Congressional Elections*. Washington, DC: American Enterprise Institute.
- Martinek, Wendy L., Mark Kemper and Steven R. Van Winkle. 2002. "To Advise and Consent: The Senate and Lower Federal Court Nominations, 1977-1998." *Journal of Politics* 64(2):337–361.
- Mayhew, David R. 1974a. *Congress: The Electoral Connection*. New Haven: Yale University Press.
- Mayhew, David R. 1974b. "Congressional Elections: The Case of the Vanishing Marginals." *Polity* 6(3):295–317.
- Overby, L. Marvin, Beth M. Henschen, Michael H. Walsh and Julie Strauss. 1992. "Courting Constituents? An Analysis of the Senate Confirmation Vote on Justice Clarence Thomas." *The American Political Science Review* 86(4):997–1003.
- Palmer, Jan. 1983. "Senate Confirmation of Appointments to the U.S. Supreme Court." *Review of Social Economy* 16(2):152.
- Schickler, Eric, Jack Citrin and Jonathan Sides. 2003. "What if Everyone Voted? Simulating the Impact of Increased Turnout in Senate Elections." *American Journal of Political Science* 47:75–90.
- Segal, Jeffrey A. 1987. "Senate Confirmation of Supreme Court Justices: Partisan and Ideological Politics." *Journal of Politics* 49:998.
- Segal, Jeffrey A. and Albert D. Cover. 1989. "Ideological Values and the Votes of U.S. Supreme Court Justices." *American Political Science Review* 83(2):557–65.
- Segal, Jeffrey A., Charles M. Cameron and Albert D. Cover. 1992. "A Spatial Model of Roll Call Voting: Senators, Constituents, Presidents, and Interest Groups in Supreme Court Confirmations." *American Journal of Political Science* 36(1):96–121.
- Segal, Jeffrey A. and Maxwell H. H. Mak. 2009. "Out of the Sample and One Step Ahead: Forecasting Supreme Court Confirmation Votes." *The Justice System Journal* 30(2):123–138.
- Shipan, Charles R. 2008. "Partisanship, Ideology, and Senate Voting on Supreme Court Nominees." *Journal of Empirical Legal Studies* 5(1):55–76.
- Shipan, Charles R. and Megan L. Shannon. 2003. "Delaying Justice(s): A Duration Analysis of Supreme Court Confirmations." *American Journal of Political Science* 47(4):654–66.
- Sinclair, B. 2000. *Unorthodox Lawmaking: New Legislative Processes in the U.S. Congress*. CQ Press.
- Smith, Eric R.A.N. 1989. *The Unchanging American Voter*. Berkeley, CA: University of California Press.

- Stratmann, Thomas. 2000. "Congressional Voting over Legislative Careers: Shifting Positions and Changing Constraints." *The American Political Science Review* 94(3):665–676.
- Sullivan, John L. and Eric M. Uslaner. 1978. "Congressional Behavior and Electoral Marginality." *American Journal of Political Science* 22(3):536–553.
- Westlye, Mark C. 1983. "Competitiveness of Senate Seats and Senate Voting Behavior in Senate Elections." *American Journal of Political Science* 27:253–83.
- Zigerell, L.J. 2010. "Senator Opposition to Supreme Court Nominations: Reference Dependence on the Departing Justice." *Legislative Studies Quarterly* 35(3):393–416.

Tables

Table 1: Probit Models of Senate Voting on Supreme Court Nominees, 1962-2010

	(1)	(2)	(3)	(4)
Ideological Distance (scaled to mean 0)	-2.532*** (.522)	-2.914*** (.449)	-2.563*** (.490)	-2.823*** (.443)
Qualifications (scaled to mean 0)	2.381*** (.552)	2.441*** (.560)	2.280*** (.545)	2.304*** (.570)
Strong President	.043 (.359)	.043 (.353)	.078 (.350)	.062 (.354)
Same Party as President	.493 (.313)	.414 (.330)	.499 (.334)	.402 (.328)
Smallest Vote Share (scaled to mean 0)		.031 (1.128)	-1.166 (1.382)	-.218 (1.238)
Smallest Vote Share*Ideo. Distance		-11.530*** (4.280)		-10.103** (4.548)
Smallest Vote Share*Qualifications			-9.220*** (2.835)	-7.177** (2.964)
Constant	.895 (.555)	.901 (.568)	.814 (.549)	.855 (.564)
Observations	2401	2401	2401	2401
Log-likelihood	-760.60	-735.78	-745.23	-728.97
Wald χ^2 (df)	72.73 (4)	108.46 (6)	84.51 (6)	156.79 (7)
Percent correctly classified	85.1%	86.2%	86.1%	86.4%
Null correctly classified	79.9%	79.9%	79.9%	79.9%
LR test Model 1 vs. Model 4: χ^2 (df)				63.26 (3)
LR test Model 1 vs. Model 4: prob. > χ^2				.001

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Note: Robust standard errors, clustered by nominee, in parentheses. *Smallest Vote Share* variable is the smallest winning vote share of 1) A senator's vote share in their previous general election, 2) A senator's vote share in their previous primary election, and 3) the vote share for a senator's party in the previous presidential election.

Table 2: Probit Models of Senate Voting on Supreme Court Nominees, 1962-2010

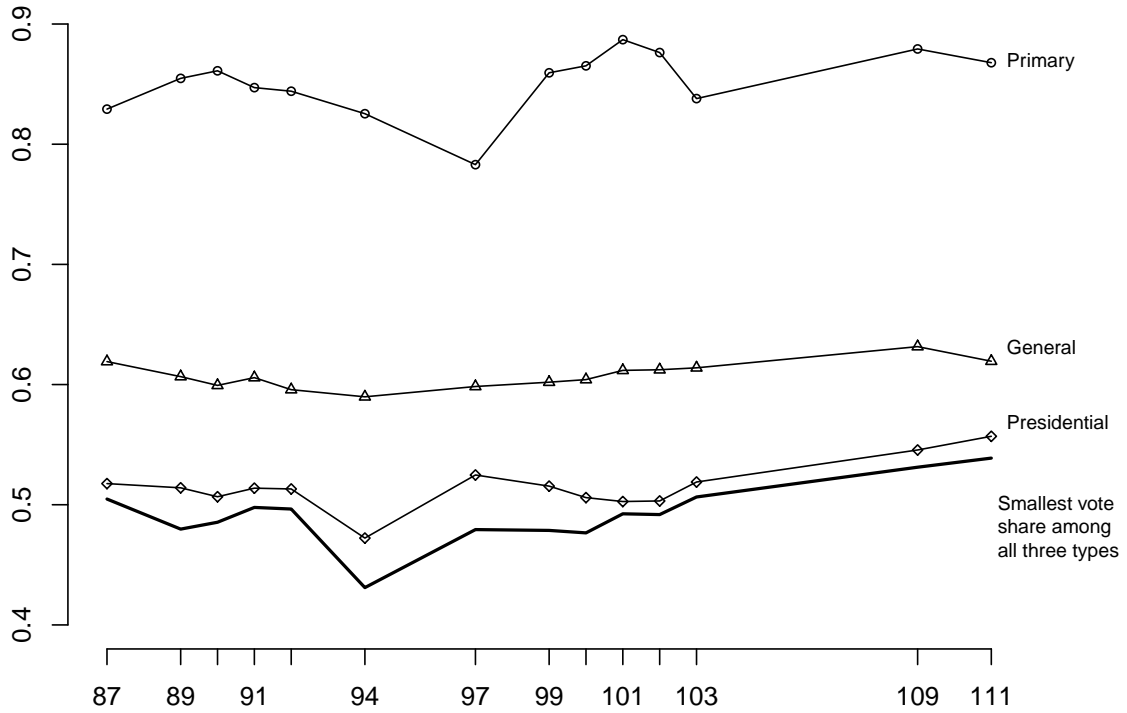
	Safe (SVS > mean)	Unsafe (SVS ≤ mean)	Safe (SVS > p(50))	Unsafe (SVS ≤ p(50))
Ideological Distance (scaled to mean 0)	-3.300*** (.496)	-2.477*** (.502)	-3.345*** (.526)	-2.479*** (.495)
Qualifications (scaled to mean 0)	1.956*** (.634)	2.917*** (.555)	1.973*** (.665)	2.817*** (.522)
Strong President	-.246 (.423)	.473 (.357)	-.302 (.430)	.415 (.355)
Same Party as President	.828** (.346)	-.129 (.348)	.837** (.347)	-.029 (.355)
Constant	1.049 (.710)	.571 (.594)	1.121 (.722)	.611 (.582)
Observations	1311	1090	1200	1201
Log-likelihood	-321.54	-375.59	-293.06	-409.96
Wald χ^2 (df)	84.48 (4)	60.21 (4)	76.26 (4)	67.97 (4)

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Note: Robust standard errors, clustered by nominee, in parentheses. *Smallest Vote Share* (“SVS”) variable is the smallest winning vote share of 1) A senator’s vote share in their previous general election, 2) A senator’s vote share in their previous primary election, and 3) the vote share for a senator’s party in the previous presidential election.

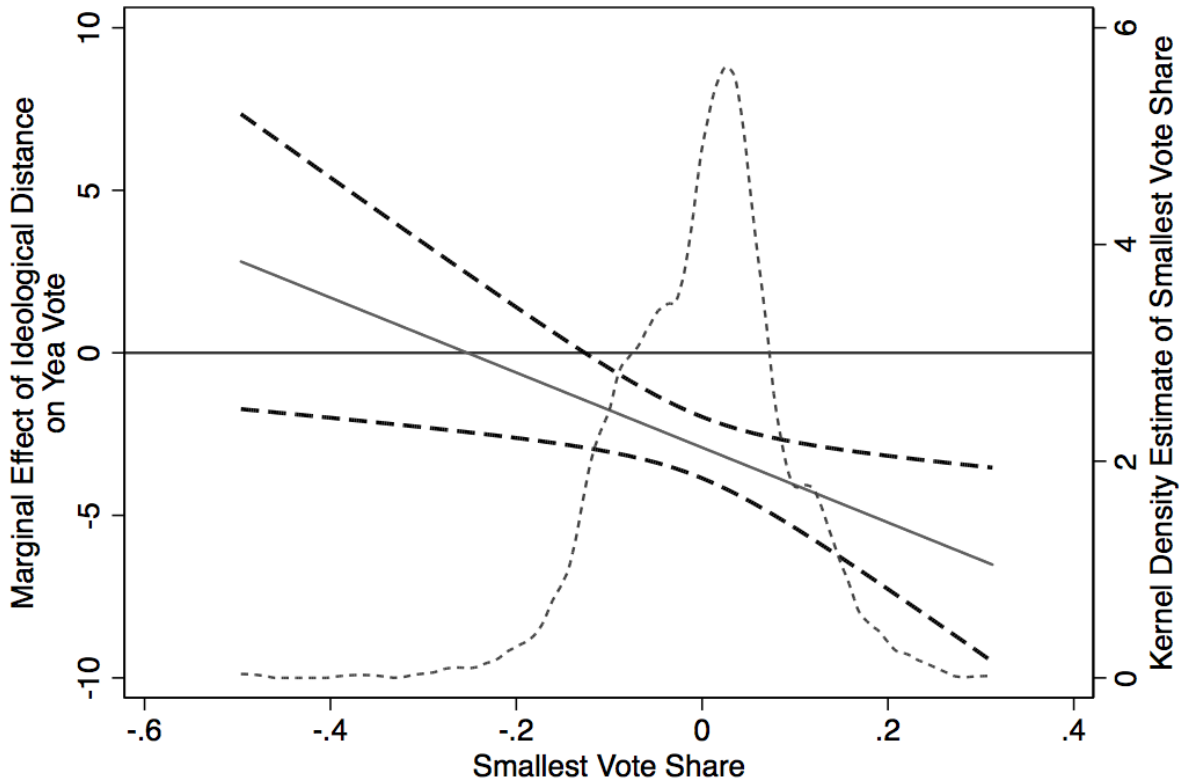
Figures

Figure 1: Mean Electoral Vote Shares for Senates with Nomination Votes



NOTE: *Primary Vote Share*, *General Vote Share*, and *Presidential Vote Share* all measured for individual senators based on the pervious election of each type. *Smallest Vote Share* is the minimum of these values for each senator. These figures are aggregated as the mean value for each Congress. Data for omitted congresses interpolated in the figure (not actual data for non-nomination congresses).

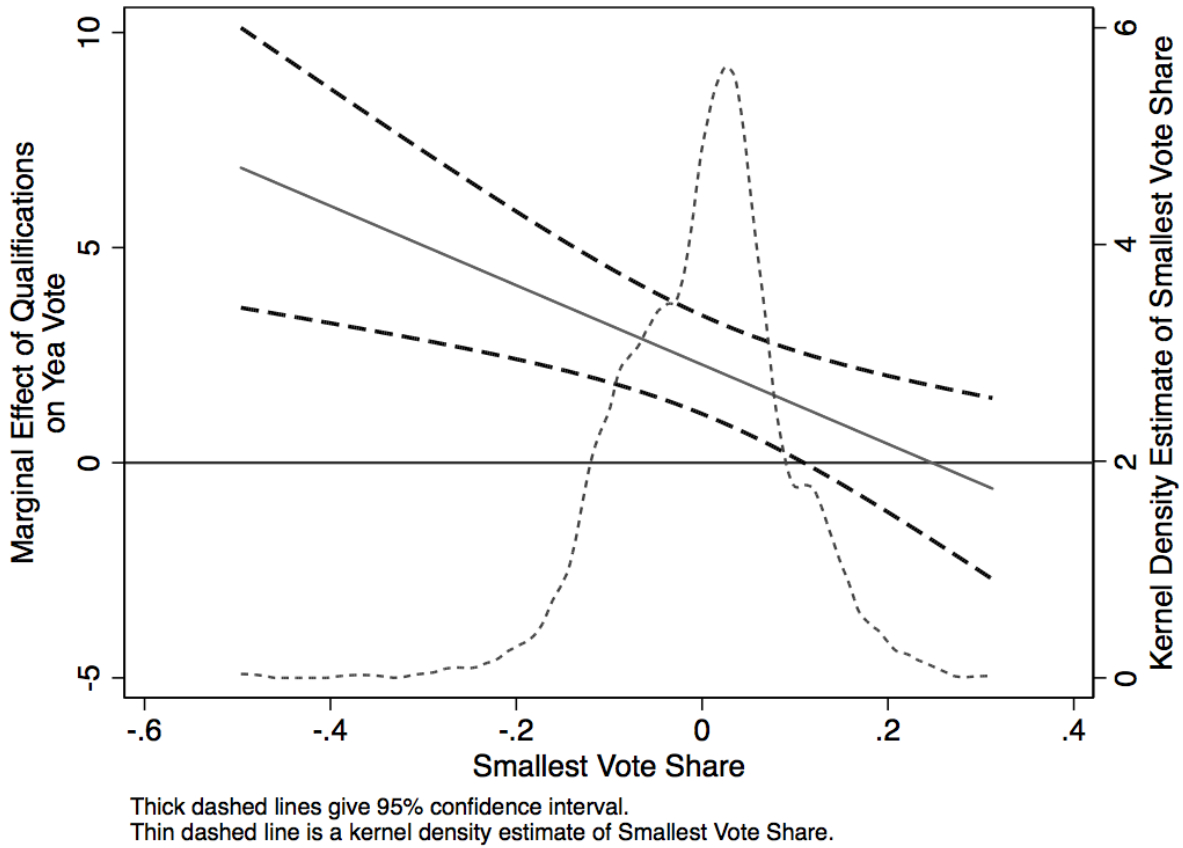
Figure 2: Marginal Effect of Ideological Distance on Yea Vote (all nominees)



Thick dashed lines give 95% confidence interval.
Thin dashed line is a kernel density estimate of Smallest Vote Share.

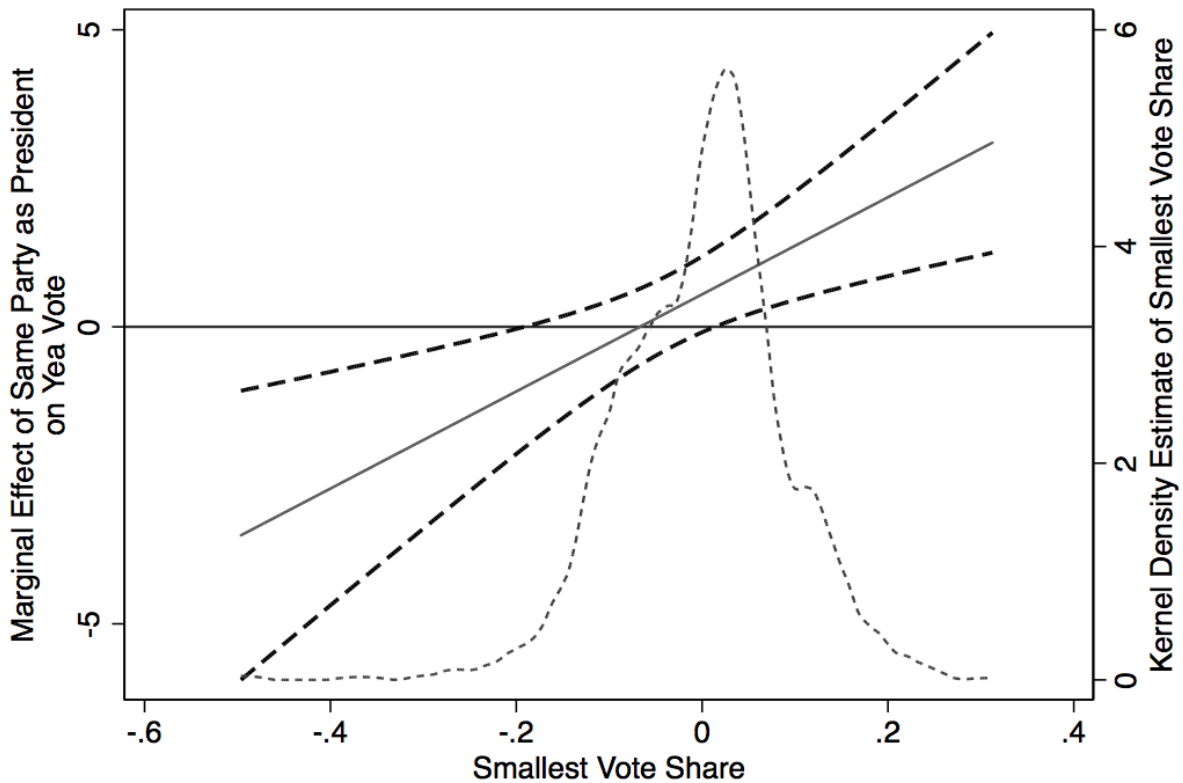
NOTE: Figure generated with Boehmke’s (2008) “grinter” utility after estimating the comprehensive model from column 4 of Table 1. *Qualifications* is held at its mean, and dichotomous variables (*Strong President* and *Same Party*) are held at their modes (i.e., simulating conditions of a weak president and a senator of the president’s party). *Smallest Vote Share* variable is the smallest winning vote share of 1) A senator’s vote share in their previous general election, 2) A senator’s vote share in their previous primary election, and 3) the vote share for a senator’s party in the previous presidential election. All continuous variables centered to have mean 0.

Figure 3: Marginal Effect of Qualifications on Yea Vote (all nominees)



NOTE: Figure generated with Boehmke’s (2008) “grinter” utility after estimating the comprehensive model from column 4 of Table 1. *Ideological Distance* is held at its mean, and dichotomous variables (*Strong President* and *Same Party*) are held at their modes (i.e., simulating conditions of a weak president and a senator of the president’s party). *Smallest Vote Share* variable is the smallest winning vote share of 1) A senator’s vote share in their previous general election, 2) A senator’s vote share in their previous primary election, and 3) the vote share for a senator’s party in the previous presidential election. All continuous variables are scaled to have mean 0.

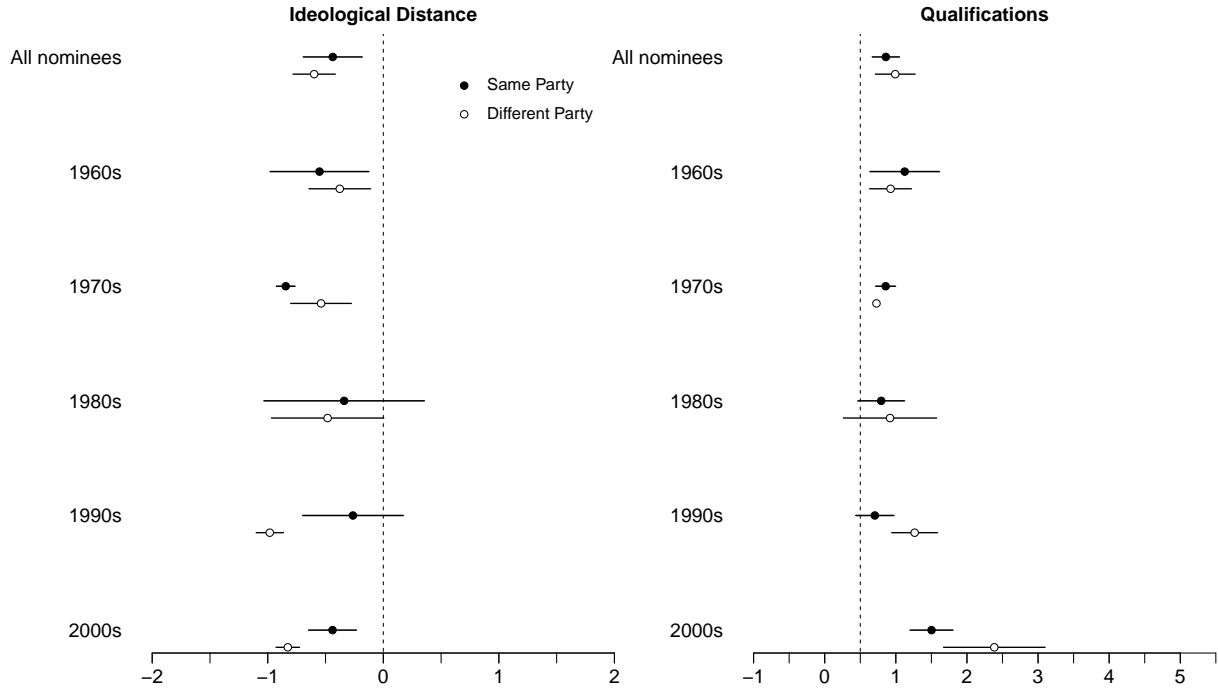
Figure 4: Marginal Effect of Same Party on Yea Vote (all nominees)



Thick dashed lines give 95% confidence interval.
Thin dashed line is a kernel density estimate of Smallest Vote Share.

NOTE: Figure generated with Boehmke’s (2008) “grinter” utility after estimating the comprehensive model from column 4 of Table 1 and adding and interaction of *Same Party* and *Smallest Vote Share*. *Qualifications* and *Ideological Distance* are held at their means, and *Strong President* is held at its mode (i.e., simulating conditions of a weak president). *Smallest Vote Share* variable is the smallest winning vote share of 1) A senator’s vote share in their previous general election, 2) A senator’s vote share in their previous primary election, and 3) the vote share for a senator’s party in the previous presidential election. All continuous variables are scaled to have mean 0.

Figure 5: Marginal effects of ideological distance and qualifications (by decade)



NOTE: Figure shows marginal effects of *Ideological Distance* and *Qualifications* for separate models estimated for decennial subsets of the data. Each model is a probit model of Senate voting behavior including the following covariates: *Ideological Distance*, *Qualifications*, *Smallest Vote Share*, *Smallest Vote Share x Ideological Distance*, *Smallest Vote Share x Qualifications*, and *Same Party*. *Strong President* is not included, as it does not vary in some decades. Each continuous variable is scaled to mean 0. The marginal effects are calculated with *Smallest Vote Share* held to its mean value (per decade). Effects were calculated separately for senators of the president’s party and for those of the opposition party. Bars give 95% confidence intervals.

- 1960s nominees ($N = 644$) are White, Goldberg, Fortas, Marshall, Fortas (Chief Justice), Haynsworth, and Burger
- 1970s nominees ($N = 472$) are Blackmun, Carswell, Rehnquist, Powell, and Stevens
- 1980s nominees ($N = 492$) are O’Connor, Rehnquist (Chief Justice), Scalia, Bork, and Kennedy
- 1990s nominees ($N = 394$) are Souter, Thomas, Ginsburg, and Breyer
- 2000s on nominees ($N = 399$) are Alito, Roberts, Sotomayor, and Kagan

Appendix

Table A1: Probit Models of Senate Voting on Supreme Court Nominees, excluding Voice Votes

	(1)	(2)	(3)	(4)
Ideological Distance (scaled to mean 0)	-2.559*** (.597)	-2.980*** (.499)	-2.590*** (.560)	-2.898*** (.493)
Qualifications (scaled to mean 0)	2.426*** (.606)	2.486*** (.609)	2.337*** (.601)	2.364*** (.622)
Strong President	-.152 (.371)	-.158 (.361)	-.115 (.362)	-.137 (.362)
Same Party as President	.461 (.339)	.348 (.357)	.466 (.364)	.338 (.352)
Smallest Vote Share (scaled to mean 0)		.144 (1.155)	-1.096 (1.380)	-.119 (1.215)
Smallest Vote Share*Ideo. Distance		-12.027*** (4.612)		-10.711** (4.798)
Smallest Vote Share*Qualifications			-8.656*** (3.175)	-6.631** (3.277)
Constant	1.107* (.578)	1.134* (.585)	1.028* (.573)	1.088* (.582)
Observations	2101	2101	2101	2101
Log-likelihood	-716.58	-692.01	-703.70	-686.45
Wald χ^2 (df)	65.23 (4)	105.44 (6)	73.38 (6)	133.30 (7)

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Note: Robust standard errors, clustered by nominee, in parentheses. *Smallest Vote Share* variable is the smallest winning vote share of 1) A senator's vote share in their previous general election, 2) A senator's vote share in their previous primary election, and 3) the vote share for a senator's party in the previous presidential election. Nominees confirmed by voice vote (White, Goldberg, and Fortas) excluded.

Table A2: Probit Models of Senate Voting on Supreme Court Nominees, Nominee Fixed Effects

	(1)	(2)	(3)	(4)
Ideological Distance (scaled to mean 0)	-5.033*** (1.209)	-5.391*** (1.051)	-5.090*** (1.196)	-5.366*** (1.049)
Strong President	.266*** (.075)	.267*** (.067)	.208*** (.076)	.243*** (.071)
Same Party as President	.070 (.456)	-.060 (.478)	.000 (.475)	-.062 (.478)
Smallest Vote Share (scaled to mean 0)		1.676 (1.004)	1.103 (.891)	1.509 (1.974)
Smallest Vote Share*Ideo. Distance		-12.550** (4.887)		-12.233** (5.093)
Smallest Vote Share*Qualifications			-7.056* (2.690)	-6.457* (2.932)
Constant	-.016 (.128)	.017 (.166)	.131 (.162)	.061 (.195)
Nominee FE	Yes	Yes	Yes	Yes
Observations	1615	1615	1615	1615
Log-likelihood	-447.18	-431.38	-443.30	-431.07

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Note: Robust standard errors, clustered by nominee, in parentheses. *Smallest Vote Share* variable is the smallest winning vote share of 1) A senator's vote share in their previous general election, 2) A senator's vote share in their previous primary election, and 3) the vote share for a senator's party in the previous presidential election. Nominee fixed effects included for each model. *Qualifications* is constant within nominee and is thus dropped from all analyses. Justices Blackmun, Fortas, Goldberg, Kennedy, O'Connor, Scalia, Stevens, and White were unanimous votes and are also omitted.