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The Changing Importance of Ideology, Party, and Region in Confirmation of Supreme Court Nominees, 1953-1988

BY JOHN D. FELICE* AND HERBERT F. WEISBERG**

The combative and controversial rejection of Robert Bork's nomination to the Supreme Court has revived attention to the confirmation process of nominees to the United States Supreme Court and to the interplay between the executive and legislative branches of the government. Although confirmation of Supreme Court nominees is often routine, there are two classic positions these branches take when controversy does erupt. The president's traditional argument is that appointments to the Court are the chief executive's prerogative and that partisanship and ideology should not intrude into the confirmation process. The Reagan administration most recently repeated this claim in its severe criticism of the Senate's politicizing of the Bork nomination. On the other side, senators opposed to a particular nomination maintain that the Senate's power to advise and consent¹ gives it an equal role with the president in the appointment process. Proponents of this latter position point out that the Senate has refused to confirm 28 of the 145 Supreme Court nominees forwarded to it over the past two centuries² and that this is much higher than the Senate's rejection rate for any other presidential

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¹ See U.S. CONST. art. II, § 2, cl. 2.

² See H. ABRAHAM, *JUSTICES AND PRESIDENTS* 39 (2d ed. 1985).

³ D. Tannenbaum, *Senate Confirmation and Controversial Presidential Nominations: From Truman to Nixon*, paper presented at annual meeting of American

nomination.³ As Lawrence Tribe has argued, "the upper house of Congress has been scrutinizing Supreme Court nominees and rejecting them on the basis of their political, judicial, and economic philosophies ever since George Washington was president."⁴ Although only five nominees, including the Fortas promotion to Chief Justice, have been voted down during the twentieth century, the Senate reminded Presidents Nixon and Reagan that the possibility of refusal is ever present. The conflict between the president and the Senate is in part a dispute over constitutional interpretation, but it is also partially a question of how the role of partisanship, ideology, and other factors in past confirmation battles are interpreted from the historical record.

Of the many observations made following the Bork hearings, one is particularly important: the Bork proceedings opened the doors for intensive screening and questioning of future candidates' judicial philosophies and ideological beliefs. While this may prove to be an accurate observation, individual senators have, to some degree, always assessed the ideological make-up of controversial nominations. This article will examine the influence of ideology, as well as party and region, on Senate voting in the confirmation of Supreme Court appointments from the Eisenhower administration through the Reagan years. The article focuses on each vote separately, examining how the determinants change in importance from 1953 to 1988.

I. FACTORS AFFECTING CONFIRMATION VOTING

Previous research has already begun to focus on key determinants of the confirmation process. Studies have examined why some nominees are selected, why some appointments become controversial, and why some nominations are rejected by the Senate.

A. *Literature Review*

The literature suggests that the nominee's ideology ("political and ideological compatibility") is one of the factors involved in

Political Science Association, San Francisco, September 2-5, 1975, p. 5 reprinted in G. EDWARDS III, *PRESIDENTIAL INFLUENCE IN CONGRESS* (1980).

⁴ See L. TRIBE, *GOD SAVE THIS HONORABLE COURT* 92 (1985).

the president's consideration of prospective candidates, along with their objective merits, the president's personal friendship with them, and presidential desire to balance representativeness of the Court.⁵

Baum identifies four bases of Senate opposition to nominees: the strength of the opposition party in the Senate, the timing of the nomination in a president's term (with last-year nominations having the most trouble), the "objective qualifications" of the nominees "as assessed by senators," and the policy preferences of the nominees.⁶ He describes the latter as "the primary source of Senate opposition to nominations" in the twentieth century.⁷ Furthermore, the nominee's positions on particular issues and ideology are taken into account in confirmation fights. As Abraham states, rejection can occur because of "the nominee's involvement with a visible or contentious issue of public policy or, simply, opposition to the nominee's perceived political or *sociopolitical philosophy*."⁸

Some scholars have looked at the correlates of Senate confirmation and rejection of Supreme Court nominees. Scigliano demonstrated the impact of partisanship on this process. As of the date of his study, the confirmation rate was 91% when the Senate was controlled by the president's party versus 42% when his party was in the Senate minority.⁹ Wasby examined the effect of year in the president's term. He found that the confirmation rate was 90% in the first three years of office but less than 67% in the fourth year.¹⁰

Segal provided the first multivariate analysis of the historical record, using a probit analysis¹¹ to study the determinants of the

⁵ See H. ABRAHAM, *supra* note 2, at 5-6.

⁶ See L. BAUM, *THE SUPREME COURT* 47-49 (3d ed. 1989).

⁷ *Id.* at 49.

⁸ H. ABRAHAM, *supra* note 2, at 39 (emphasis added).

⁹ See R. SCIGLIANO, *THE SUPREME COURT AND THE PRESIDENCY* 97-98 (1971) (Politically aligned nominations succeeded on 98 of 108 occasions, while nominations not politically aligned succeeded only 11 out of 26 times.).

¹⁰ See S. WASBY, *THE SUPREME COURT IN THE FEDERAL JUDICIAL SYSTEM* 128 (3d ed. 1988).

¹¹ "Probit [analysis] is a multivariate technique similar to regression in that it assigns weights to several variables simultaneously while trying to predict the values of the dependent variable." Segal and Spaeth, *If a Supreme Court Vacancy Occurs, Will the Senate Confirm a Reagan Nominee?*, 69 *JUDICATURE* 186, 189 (1986).

confirmation of appointments. His final reduced model shows significant effects for a number of factors: whether the opposition party controlled the Senate, whether the nominee was a sitting senator, whether the appointment was in the fourth year of the president's term, whether the nominee was a member of the Cabinet, how long the nominee served in the national legislature, and whether the appointment occurred in the twentieth century.¹² Lemieux and Stewart have also used a logit analysis¹³ of the same historical record, emphasizing the closeness of the party balance on the Court in affecting nomination success.¹⁴

These analyses are important, but they focus on the outcome of the Senate confirmation process as a dichotomous confirmed/rejected variable. This article, instead, examines the determinants at the level of the individual senator voting on the nomination.

The impact of ideology on senators' confirmation voting has also received some attention in the literature as well. Sulfridge found that ideology (as measured by Americans for Constitutional Action [ACA] rating scores of the senators' voting records) relates to the number of conservative votes cast by senators on the Fortas, Haynsworth, Carswell, and Rehnquist nominations.¹⁵ Senators voting for Fortas and against the rest had an average ACA score of 11.9, compared to an average of 73.3 for those voting against Fortas and for the rest.¹⁶ On this basis, he concludes that "the ideological position of a senator is a major factor in determining how he will vote."¹⁷ Poole and Rosenthal

¹² See Segal, *Senate Confirmation of Supreme Court Justices: Partisan and Institutional Politics*, 49 J. POL. 998, 1003-05 (1987); see also Segal & Spaeth, *If a Supreme Court Vacancy Occurs, Will the Senate Confirm a Reagan Nominee?*, 69 JUDICATURE 187, 189 (1986).

¹³ Logit analysis assumes that the probability of an event occurring is related in a nonlinear fashion to a linear combination of independent variables. It is a structural model similar to linear regression. P. Lemieux & C. Stewart, *Advise? Yes. Consent? Maybe. Senate Confirmation of Supreme Court Nominations* (1988) (paper presented at the Annual Meetings of the American Political Science Association, Washington, D.C.). For a more detailed discussion of logit, see J. ALDRICH & F. NELSON, *LINEAR PROBABILITY, LOGIT, AND PROBIT MODELS* (1984).

¹⁴ See P. Lemieux & C. Stewart, *Advise? Yes. Consent? Maybe. Senate Confirmation of Supreme Court Nominations* (1988) (paper presented at the Annual Meetings of the American Political Science Association, Washington, D.C.).

¹⁵ See Sulfridge, *Ideology as a Factor in Senate Consideration of Supreme Court Nominations*, 42 J. POL. 560, 560 (1980).

¹⁶ See *id.* at 565-66.

¹⁷ *Id.* at 560, 567.

relate their ideological scaling of senators voting in 1985 to the confirmation votes on Haynsworth, Carswell, Bork, and Rehnquist's elevation to Chief Justice, finding high predictive success.¹⁸ For example, their model predicts only seven votes incorrectly on Bork. These studies, however, do not control for the effects of partisanship and other variables.

Turner has shown that party is the most important predictor of congressional votes generally.¹⁹ Two studies of confirmation voting have introduced explicit controls for party effects. Rohde and Spaeth created a Guttman scale²⁰ of Senate votes on the Fortas Chief Justice nomination, Haynsworth, Carswell, and Rehnquist appointments.²¹ The votes scaled with a reproducibility of .97. They hypothesized that senators' ideology would be related to their scale positions. Measuring ideology by Conservative Coalition scores,²¹ they find a strong relationship between scale position and liberalism. Controlling for party, they still find that "it is the degree of liberalism of a senator and not his party affiliation which is related to his voting on nominations."²³ Songer examined fourteen controversial nominations in this century, testing whether votes against confirmation are due to perceived policy disagreement with the nominee.²⁴ He found that supporters of the nominee and opponents differed on roll-call scales in the issue areas that he predicted to be salient, and this relationship held when party was controlled.²⁵ He concluded that when a nomination is controversial, "predicted policy dissatis-

¹⁸ See K. Poole & H. Rosenthal, *The Bork Nomination and the Enduring Liberal-Conservative Conflict* (1987) (unpublished paper).

¹⁹ See J. TURNER, *PARTY AND CONSTITUENCY* 34 (*Studies in Historical and Political Science*—Johns Hopkins University v.69, n.2 1951).

²⁰ Guttman scale analysis, or cumulative scale analysis, assumes that persons who endorse a more extreme statement "should endorse all less extreme statements if the statements are to be considered a scale." D. ROHDE & H. SPAETH, *SUPREME COURT DECISION MAKING* 79 (1976) (quoting Guttman, *The Basis for Scalogram Analysis*, in *MEASUREMENT AND PREDICTION* 62 (S. Stouffer, *et al.*, eds. 1950)). This scale solves problems of consistency of responses to a series of questions.

²¹ See *id.* at 105-06.

²² The Conservative Coalition support score measures the degree of liberalism of members of Congress and is published annually by Congressional Quarterly, Inc. See *id.* at 105.

²³ *Id.* at 106.

²⁴ See Songer, *The Relevance of Policy Values for the Confirmation of Supreme Court Nominees*, 13 *L. & Soc'y Rev.* 927, 930-31 (1979).

²⁵ See *id.* at 935-36.

faction should be regarded as the major cause of most votes against confirmation."²⁶ This article builds on these studies by examining the changing effects of party, region, and ideology on controversial confirmation votes between 1953 and 1988.

B. *Hypotheses*

Voting on controversial Supreme Court nominations will reflect ideological, partisan, and regional considerations. The relative mix of these factors will, however, vary across nominations because of the differing contexts in which the nominations take place.

Ideology will be one important criterion affecting how senators vote on nominees to the Court. As the recent battle over the Bork nomination illustrates, Supreme Court appointments can affect the ideological make-up of the Court. As a result, senators try to assess the judicial philosophy of the nominee. Liberal senators will be more supportive of liberal nominees, and conservative senators will be more supportive of conservative nominees.

Partisanship will also affect voting on Supreme Court nominations. Votes against nominations will generally be concentrated in the opposition party, with members of the president's party rarely voting against confirmation of the nominations.

The effect of presidential support will also be examined. Senators who generally support the president's program will likely vote for the nominations at a higher rate than those who oppose the president's program. This relationship should hold even when controlling for partisanship.

Regional differences should also be found in voting on confirmations. In particular, because of the civil rights movement and the aftermath of the *Brown v. Board of Education*²⁷ decision, Southern senators in the 1950s through 1970s would be more likely to oppose liberal appointments and more likely to support conservative appointments. Many of these regional differences, however, are expected to be a function of ideology, and therefore should diminish when ideology is controlled.

²⁶ *Id.* at 946.

²⁷ 347 U.S. 483 (1954).

Party, presidential support, and region will likely vary in their impact on confirmation voting as a reflection of changing political contexts, but ideology should be the most consistent factor over time. Thus, senators' ideological records in Congress will be related to their confirmation voting, even when controlling for the other variables.

II. ANALYSIS OF INDIVIDUAL CONFIRMATION VOTES

This article will analyze Senate voting on Supreme Court nominations from 1953 to 1988. A listing of the nominations during that time period is given in Table 1. As is customary in legislative roll-call analysis, paired votes and announced positions are treated the same as actual votes, and this is reflected in the vote totals in Table 1. Note that the cloture vote on the filibuster against Fortas is used as a vote on his elevation to Chief Justice since there was no straight up-or-down vote on his nomination.

Table 1
Supreme Court Nominations, 1953-1988

<u>Appointee</u>	<u>Vote Date</u>	<u>Vote**</u>	<u>Opposition</u>
Eisenhower:			
Warren, Earl	Mar-01-54	unanimous	Langer + few Southern Democrats
Harlan, John	Mar-16-55	80-12	*controversial
Brennan, William	Mar-19-57	voice vote	Langer and McCarthy (WI)
Whittaker, Charles	Mar-19-57	voice vote	none
Stewart, Potter	May-05-59	81-17	*controversial
Kennedy:			
White, Byron	Apr-11-62	voice vote	none
Goldberg, Arthur	Sep-25-62	voice vote	Thurmond
Johnson:			
Fortas, Abe	Aug-11-65	voice vote	Curtis, Thurmond, and Williams
Marshall, Thurgood,	Aug-30-67	81-15	*controversial

Continued

Table 1 Continued

<u>Appointee</u>	<u>Vote Date</u>	<u>Vote**</u>	<u>Opposition</u>
Fortas, Abe (CJ)	Oct-01-68	47-48	*(cloture 2/3 vote required)
Thornberry, Homer	1968	not acted on	moot—no vacancy on Court
Nixon:			
Burger, Warren	Jun-06-69	94-03	McCarthy (MN) Nelson, Young
Haynsworth, Clement	Nov-21-69	45-55	*rejected
Carswell, G. Harrold	Apr-08-70	47-52	*rejected
Blackmun, Harry	May-12-70	100-0	none
Powell, Lewis	Dec-07-71	97-01	Harris
Rehnquist, William	Dec-10-71	71-27	*controversial
Ford:			
Stevens, John Paul	Dec-17-75	99-00	none
Reagan:			
O'Connor, Sandra	Sep-21-81	100-0	none
Rehnquist, Wm. (CJ)	Sep-17-86	66-33	*controversial
Scalia, Antonin	Sep-17-86	99-00	none
Bork, Robert	Oct-23-87	42-58	*rejected
Ginsburg, Douglas	1987	withdrawn	
Kennedy, Anthony	Feb-03-88	99-00	none

*Nominations included in the main analysis in this paper.

**Vote shown includes paired votes and announced positions.

Altogether, there were 24 nominations made during this period, 3 of which were withdrawn. The Senate took recorded votes on 16 of these nominations—counting the Fortas cloture vote. Nine of these votes were controversial, with more than 10% opposition. Three decisions were negative, plus the Fortas elevation, which failed to receive the extra-size majority needed to invoke cloture. This article will concentrate on these 9 controversial votes.

Analysis of these votes requires a consideration of the ideological positions of the appointments. Haynsworth, Carswell, Rehnquist, and Bork were conservative nominations by presidents committed to adding conservative members to the Court. Marshall and Fortas were clearly liberal appointments. The Harlan and Stewart appointments, however, are more ambiguous to interpret ideologically. Their judicial philosophy or ideology would generally be considered moderate or even moderate-conservative. Within the political context of the 1950s, however, they were seen by Southern conservatives as likely supporters of the *Brown*²⁸ decision. Their nominations were regarded as liberal appointments, and Harlan was characterized as "ultra-liberal."²⁹ Therefore, they will be included in the analysis that follows as liberal nominations.

The analysis will begin by examining the separate effects of ideology,³⁰ party,³¹ region,³² and presidential support³³ on confirmation voting.³⁴

²⁸ See *id.*

²⁹ See H. ABRAHAM, *supra* note 2, at 260.

³⁰ Senators' *ideology* is based on their conservative coalition scores as reported by Congressional Quarterly. These scores have been adjusted for absences by dividing the conservative coalition support scores by the sum of the senator's conservative coalition support and opposition scores. These scores are not available for 1955, the year of the Harlan appointment.

³¹ *Party* is routine, except for a few independents and party switchers. James Buckley is counted as a Republican, and Harry Byrd, Jr. is counted as a Democrat. Strom Thurmond is coded as Democrat for the votes during the 1950s and Republican thereafter.

³² *Region* follows the 11 states of the Confederate South. See *infra* note 34.

³³ *Presidential support* is measured by Congressional Quarterly's presidential support scores, with a similar correction for absences.

³⁴ Congressional Quarterly did not report conservative coalition and presidential support scores in some years for Senators who left Congress before the end of the session or who were incapacitated, which removed three Senators from parts of the analysis reported *infra*. The Congressional Quarterly scores through 1971 were obtained from the Inter-university Consortium for Political and Social Research; neither the Consortium nor Congressional Quarterly is responsible for any interpretations given here.

The reader may note that the results in this paper differ from those in an earlier version. See H. Weisberg & J. Felice, *An Ideological Model of Senate Voting in Supreme Court Nominations (1988)* (paper presented at the Annual Meeting of the Midwest Political Science Association, Chicago). The differences are totally due to shifting the definition of the South from the 14-state South used by the National Election Studies

A. *Separate Effects*

Table 2 shows the votes of senators on each controversial confirmation by party and region, and trichotomized versions of ideology and presidential support.³⁵ Summary percentages are provided at the bottom of the table.

Table 2
Levels of Senate Support for Controversial Nominations

	TOTAL	IDEOLOGY			PARTY		REGION		PRES SUPPORT		
		Lib	Mod	Cons	Dem	Rep	South	North	Low	Mod	High
Harlan	85%	—	—	—	79%	96%	50%	97%	33%	82%	100%
Stewart	83%	100%	79%	69%	73%	100%	23%	100%	84%	64%	100%
Marshall	84%	100%	96%	60%	77%	97%	30%	99%	50%	84%	89%
Fortas	49%	96%	66%	3%	63%	28%	10%	61%	0%	63%	100%
Haynsworth	45%	3%	24%	90%	33%	60%	91%	32%	40%	41%	82%
Carswell	47%	0%	42%	95%	30%	70%	82%	38%	0%	54%	100%
Rehnquist	72%	23%	84%	100%	56%	93%	96%	66%	34%	91%	100%
Rehnquist (CJ)	67%	4%	65%	100%	34%	96%	91%	60%	18%	96%	100%
Bork	42%	0%	21%	78%	4%	87%	27%	46%	5%	90%	100%
Nominations by Republican presi- dents	63%				44%	86%	66%	62%			
Nominations by Democratic presi- dents	67%				70%	61%	20%	80%			
Liberal nominees	75%	99%	79%	44%			28%	89%			
Conservative nominees	55%	6%	43%	93%			77%	48%			

Key:

—Measures are not available.

to the 11-state confederate South. This shift is appropriate, since senators from states like Maryland and Oklahoma do not necessarily share reactions with senators from the solid south. This changed definition leads to more emphasis on region in explaining voting on the confirmations of Harlan, Stewart, and Marshall.

³⁵ For the ideology column in Table 2, adjusted Conservative Coalition scores are divided into liberal (0-29%), moderate (30-70%), and conservative (71-100%). For presidential support, the categories are low (0-49%), moderate (50-79%), and high (80-100%).

Starting with ideology, the senators who voted most with the conservative coalition supported conservative nominations—Haynsworth, Carswell, Rehnquist, Rehnquist for Chief Justice, and Bork—93% of the time compared to 44% of the time for the controversial liberal nominations of the period—Stewart, Marshall, and Fortas. By contrast, the senators who voted least with the conservative coalition supported conservative nominations 6% of the time compared to 99% of the time for the three liberal appointments. Thus, ideology had a large impact on confirmation voting during this 36-year period.

Party differences are also visible in confirmation voting. As summarized at the bottom of Table 2, Republican senators supported nominations by Republican presidents 86% of the time compared to 44% support of those nominations by Democratic senators. Democratic senators supported the two controversial nominations—Marshall and Fortas for chief justice—by a Democratic president (Johnson) 70% of the time compared to 61% of the time for Republican senators.

Additionally, region has had an impact on confirmation voting. Overall, the South supported liberal nominations only at a 28% rate, while the non-South supported these same nominations at 89%. The non-South supported conservative nominations just 48% of the time, while the South supported them at a 77% level. The South supported nominations of Republican presidents at a 66% rate, compared to 20% support of appointees of Democratic presidents. The difference is less dramatic for Northern senators: they supported Republican appointments at a 62% rate compared to 80% for Democratic nominations. Republican appointees were supported at about the same rate in the North and the South, while Democratic appointees received four times as much support among Northerners as Southerners.

Table 3 shows the correlations of these variables with the confirmation votes. Three major correlation patterns are evident. Region was the strongest correlate of vote on the first three nominations—Harlan, Stewart, and Marshall—with the North being more supportive than the South. Ideology is the second strongest correlate on those votes when we have a measure of ideology, with liberals more supportive.

Table 3
Correlations with Confirmation Voting

<u>Nomination</u>	<u>Ideology</u>	<u>Party</u>	<u>Region</u>	<u>Presidential Support</u>
Harlan	—	.25***	— .58***	.39***
Stewart	— .36***	.33***	— .85***	.14
Marshall	— .48***	.26***	— .77***	.20*
Fortas	— .83***	— .34***	— .43***	.76***
Haynsworth	— .79***	.27***	.49***	.32***
Carswell	— .85***	.39***	.37***	.75***
Rehnquist	— .78***	.42***	.28***	.68***
Rehnquist(CJ)	— .87***	.66***	.27***	.82***
Bork	— .71***	.84***	— .16***	.87***

Key:

* < .05

** < .01

*** < .001

— Data not available.

All values are Pearson r correlations.

On the next set of nominations—Fortas, Haynsworth, Carswell, and the two Rehnquist votes—ideology correlated most with vote, with liberals more supportive of Fortas and conservatives more supportive of the rest. On Haynsworth, region was the second largest correlate, with Southerners more supportive. On the other votes, presidential support has the second largest correlation, with supporters of the president always more supportive of confirmation.

The Bork nomination has the most distinctive pattern: presidential support has the highest correlation, party second, and ideology a strong third. Thus, the correlations show a shift from regional voting on Supreme Court confirmations in the 1950s through the mid-1960s, to ideological voting from the late 1960s through the mid-1980s, and then to partisan voting in the late 1980s.

Table 3 is also useful in testing the earlier hypotheses. Ideology was predicted to have the largest impact on Supreme Court confirmation votes. Indeed, ideology correlated significantly with each of these controversial confirmation votes. It was the second highest correlate of vote on the Stewart and Marshall nominations, but became the most important beginning with the Fortas nomination. Ideology fell to the third largest correlation with the Bork vote.

Party was predicted to affect voting, with members of the president's party more supportive of confirmations than members of the opposition party. According to Table 3, party was significantly related to voting on all of the confirmations, with the relationship achieving its highest values for the two Reagan nominations. The signs of the party correlations show that Republicans were more supportive than were Democrats of each nomination, except for the elevation of Fortas. Looking at differences between the president's party and the opposition party, the president's party was generally more supportive of the nominations. The sole exception was the Marshall nomination, when Democrats supported him at a lower rate than Republicans (77% versus 97%) because of Southern Democratic opposition to the first appointment of a black to the Supreme Court.

Presidential support was also expected to affect voting. The correlations of presidential support with confirmation voting were significant, except for the Stewart vote. Presidential support was particularly important on the Fortas promotion, the Carswell nomination, and the Rehnquist and Bork votes.

Regional differences were also anticipated, with Southerners more likely to oppose liberal nominations and support conservative ones. The correlations of region with confirmation voting were significant except for the Bork vote. Region impact was greatest on the Stewart and Marshall votes. The signs of the correlations show that Southern senators were less supportive of the Harlan, Stewart, Marshall, Fortas, and Bork nominations than were non-Southerners. Southerners were more likely to oppose liberal nominations—counting the Eisenhower appointees as liberal—and were most supportive of conservative ones, until the Bork nomination, when Southerners were less supportive—27% support in the South versus 46% in the non-South.

The foregoing analysis has shown some common patterns and tested some of the basic hypotheses. A complete test of these hypotheses requires, however, the use of multivariate analysis to determine which variables have independent explanatory power when all of the others are controlled.

B. *Multivariate Analysis*

Ideology was expected to be the most important vote determinant when the other variables were controlled. This hypothesis will be checked with a multivariate analysis. Presidential support is expected to operate differently, however, for members of the president's party and the opposition party. Therefore, analyses of all senators without the presidential support variable were first performed and then the two parties were analyzed separately including presidential support. The Harlan vote is excluded from the multivariate analysis because of the unavailability of the ideology indicator.

Table 4 reports the results of a multiple regression analysis of each controversial vote on ideology, party, and region.³⁶ With these variables, the proportion of variance accounted for on the eight votes ranges from 60 to 80 percentage points. Thus, voting on confirmation of Supreme Court nominees during this period was principally affected by ideology, party, and region.

Ideology had a significant effect on each of these confirmation votes. Party and region also had significant effects on the Stewart, Marshall, and Bork votes, and region on the Haynsworth rejection. The other four confirmation contests—Fortas, Carswell, and two Rehnquist votes—seem purely ideological, without independent contributions by party or region.

Region was the predominant influence on the first two votes—Stewart and Marshall. Ideology was second most important and party third on these votes, with all three exerting some independent effects. In addition Southern conservative Democrats were possibly opposing these nominations because of civil rights issues.

³⁶ A probit analysis would be more appropriate since the dependent variable is dichotomous, but generally the results of such analysis are close to those of regression analysis.

Table 4

Multiple Regression Analysis of Confirmation Votes

<u>Nomination</u>	<u>Ideology</u>	<u>Party</u>	<u>Region</u>	<u>R²</u>
Stewart	-.32*** (4.11)	.25*** (3.05)	-.67*** (9.61)	0.77
Marshall	-.38*** (4.38)	.32*** (3.97)	-.53*** (6.62)	0.67
Fortas	-.77*** (9.20)	-.32 (0.41)	-.10 (1.32)	0.69
Haynsworth	.72*** (7.92)	-.02 (0.18)	.18** (2.15)	0.65
Carswell	.84*** (10.31)	-.02 (0.25)	.03 (0.38)	0.72
Rehnquist	.81*** (8.13)	-.01 (0.16)	-.06 (0.70)	0.60
Rehnquist(CJ)	.76*** (9.17)	.12 (1.52)	.05 (0.84)	0.76
Bork	.41*** (6.10)	.56*** (8.54)	-.15** (2.74)	0.79

Entries are beta coefficients, with t-values in parentheses.

Key:

* < .05

** < .01

*** < .001

Ideology was the most important of these vote predictors on the next five controversial nominations—Fortas, Haynsworth, Carswell, and two Rehnquist votes. Indeed, ideology was the only significant influence on these votes, except for some regional effect for Nixon's nomination of Haynsworth.

Only on the Bork vote was party affiliation the most powerful predictor, which is somewhat inconsistent with the media's conclusion that the Bork rejection resulted from intense ideological polarization. Ideology was a fairly close second on the Bork nomination. Region also had a small independent effect on the

vote, but this time the Southern senators were less supportive than Northerners, even though the nominee was conservative.

Table 5 gives the multiple regression analysis of the controversial votes on ideology, region, and presidential support, controlling for party. When controlling for party, the cases involving less than 10% dissent within a party have been set aside.

Table 5
Multiple Regression, Controlled for Party

Nomination	Democrats			N	R2
	Ideology	Region	Support		
Stewart	-.36** (3.37)	.60*** (6.73)	-.04*** (0.48)	64	0.75
Marshall	-.53*** (5.07)	.42** (4.22)	-.05*** (0.64)	62	0.75
Fortas	-.43** (3.42)	-.09 (0.82)	-.39 (2.99)	59	0.73
Haynsworth	.49*** (4.07)	-.42*** (3.55)	.03 (0.42)	57	0.73
Carswell	.40 (1.98)	-.25 (1.99)	.32* (2.22)	56	0.77
Rehnquist	.79** (2.93)	-.13 (0.83)	-.09 (0.42)	54	0.58
Rehnquist(CJ)	.80** (3.41)	.08 (0.74)	.01 (0.05)	47	0.71
	Republicans				
Fortas	-.80** (3.42)	.04 (0.31)	-.03 (0.11)	36	0.60
Haynsworth	.73*** (5.72)	.04 (0.38)	-.02 (0.38)	43	0.54
Carswell	.71** (2.03)	.02 (0.17)	.02 (0.17)	41	0.58
Bork	.51** (2.41)	-.21 (1.90)	.24 (1.12)	46	0.49

Entries are beta coefficients, with t-values in parentheses.

Key:

* < .05

** < .01

*** < .001

Ideology was the most important predictor for both Republicans and Democrats, except for the Stewart nomination where region was most important for Democrats. Ideology was the only significant factor for Republican senators on any of the nominations. Presidential support was significant for Democrats voting on Fortas and Carswell, where Democrats more generally supportive of the president were more likely to support the nomination than other Democrats. Region was significant for Democratic senators only on the Stewart, Marshall, and Haynsworth nominations.

In summary, only the ideology predictor had a consistently large effect on all of the confirmation votes. Region and party each affected only a few nominations, and presidential support was even less of a factor across this time period.

Other factors certainly have been raised in some of the nomination battles during this period—particularly questions as to the nominee's ethics or competence. Ideology, party, and region were least successful in accounting for voting on the Rehnquist, Haynsworth, and Marshall nominations, which allowed these other factors to exert their largest independent effects on those votes. That the analysis here accounts for 60%-80% of the variance in the votes without inclusion of such variables suggests, however, that their independent influence must be minimal. More likely, such questions interact with the factors analyzed here. For example, questions as to ethics or competence may affect the voting of members of the opposition party more so than members of the president's party. After all, members of the president's party are more likely to give the nominee the benefit of the doubt and to view the charges as politically motivated, while members of the opposition party may use such questions as a pretext to justify their negative votes.

What does this emphasis on ideology, region, and party mean? These terms should be interpreted generally from a constituency perspective. Thus, regional differences on the Harlan and Stewart votes reflect constituents' demands on Southern senators. Ideological effects signify differences in the constituencies of liberal and conservative senators. This is not a measurement of the independent effects of the senator's personal ideology, rather, an illustration that senators who generally want

their constituents to believe they support the liberal side voted on confirmations differently from senators who find favor with their constituents by taking conservative stands. Similarly, party differences, as on the Bork vote, result in part from differences in the constituencies which Republican and Democratic senators represent, and particularly the need of many Democratic senators to oppose Bork to remain in good stead with Democratic constituents and liberal interest groups.

Ideology is most determinative of voting on these nominations, but senators are voting not on the ideology of the nominee in a narrow sense but on the ideology of the nomination contest.³⁷ That is, what matters to Senate confirmation voting is not how liberal a Harlan or Bork would be on the Court versus the policy wishes of the senators, but how ideological the nomination is perceived within the broad political context. Such factors as which seat on the Court is being filled are relevant to determining this context. Senators view replacing a justice as more ideological when the balance on the Court could be affected and less ideological when the replacement is needed to guarantee representation of some social group on the Court. Thus, ideological voting does not mean that senators always judge the ideology of the nominee, but that the political context of the nomination is being evaluated ideologically.

C. *Party and Committee Leadership Effects*

Party differences are evident in nomination voting during this period, but party had an independent effect only on the Stewart, Marshall, and Bork votes. Because party differences can result from the influence of the party and committee leaders, the extent to which Democratic and Republican leaders took different positions on these nine controversial votes will now be examined. Leaders of the president's party are predicted to be more supportive of nominations than those of the opposition party.

Senate leaders often face particular difficulty in dealing with Supreme Court nominations. Their states and re-election con-

³⁷ See H. Weisberg & J. Felice, *supra* note 34.

stituencies may prompt them to vote in one direction, but the demands of their party (and their president if their party controls the White House) can run in the opposite direction.

Table 6 summarizes the leadership votes. The Republican leaders generally supported these Supreme Court nominations, with a few notable exceptions. The only opposition to a Democratic nominee resulted from the votes of Dirksen and Smith against the elevation of Fortas to Chief Justice, signalling the intense controversy on that vote. Republican leaders defied their party's president in five votes. The three top Republican leaders opposed Nixon's choice of Haynsworth, Margaret Chase Smith voted against Carswell, and Chafee voted against the Bork nomination.

Table 6
Votes of Party and Committee Leaders
Republicans

<u>Party leader</u>	Yes	No
Knowland (Cal.)	Harlan	—
Dirksen (Ill.)	Stewart & Marshall	Fortas
Scott (Pa.)	Carswell & Rehnquist	Haynsworth
Baker (Tenn.)	—	—
Dole (Kan.)	Rehnquist (CJ) & Bork	—
 <u>Minority whip</u>		
Saltonstall (Mass.)	Harlan	—
Dirkson (Ill.)	—	—
Kuchel (Cal.)	Stewart, Marshall, & Fortas	—
Scott (Pa.)	—	—
Griffin (Mich.)	Carswell & Rehnquist	Haynsworth
Stevens (Alas.)	—	—
Simpson (Wyo.)	Rehnquist (CJ) & Bork	—
conference chair		
Milliken (Colo.)	Harlan	
Saltonstall (Mass.)	Stewart	
Smith (Maine)	Marshall & Rehnquist	Fortas, Haynsworth & Carswell
—		

Continued

Table 6 Continued

<u>Minority Whip</u>	<u>Yes</u>	<u>No</u>
Cotton (N.H.)	—	—
Curtis (Neb.)	—	—
Packwood (Oreg.)	—	—
McClure (Id.)	—	—
Chafee (R.I.)	Rehnquist (CJ)	Bork
<u>Judiciary comm. chair</u>		
Langer (N.D.)	—	—
Thurmond (S.C.)	Rehnquist (CJ)	—
Democrats		
<u>Party leader</u>		
Johnson (Texas)	Harlan & Stewart	
Mansfield (Mont.)	Marshall & Fortas	Haynsworth, Carswell, & Rehnquist
Byrd (W.Va.)		Rehnquist (CJ) & Bork
<u>Whip</u>		
Clements (Ky.)	Harlan	—
Mansfield (Mont.)	Stewart	—
Humphrey (Minn.)	—	—
Long (La.)	—	Marshall & Fortas
Kennedy (Mass.)	—	Haynsworth & Carswell
Byrd (W.Va.)	Rehnquist	—
Cranston (Cal.)	—	Rehnquist (CJ) & Bork
<u>Judiciary comm. chair</u>		
Kilgore (W.Va.)	Harlan	—
Eastland (Miss.)	Haynsworth, Carswell, & Rehnquist	Stewart, Marshall, & Fortas
Kennedy (Mass.)	—	—
Biden (Del.)	—	Bork

On the Democratic side, opposition to Supreme Court nominations has been more prevalent: Mike Mansfield opposed all three controversial Nixon appointments; Byrd voted against

Rehnquist for Chief Justice (even though he had supported Rehnquist for Associate Justice) and against Bork; Long opposed Johnson's nomination of Marshall and the cloture vote on the Fortas promotion; Kennedy opposed Nixon's appointments of Carswell and Haynsworth; and Cranston opposed both controversial Reagan nominations. As Senate Judiciary Committee chairmen, Eastland opposed three Eisenhower and Johnson nominees, and Biden opposed the Bork nomination. Overall, the Democratic party and committee leadership voted with Democratic presidents only 2 of the 6 times on controversial nominations, while voting against Republican presidents 11 of 20 times.

The leadership within the individual parties rarely united on these votes. The Republican leaders split on the Fortas, Carswell, and Bork nominations, while the Democratic leaders were split on Stewart, Marshall, Haynsworth, Carswell, and the first Rehnquist vote. In three cases, the leadership of a party actually united against a nominee: the Republican leadership opposed Carswell, and the Democratic leadership opposed both Rehnquist as Chief Justice and Bork. The Harlan nomination is the only controversial vote where no party leader opposed the nominee.

Altogether, nearly one-third (9 of 28) of the leadership votes on a nomination by presidents of their own party were negative, compared to one-half (13 of 26) of the leadership votes on nominations when the president was a member of the opposition party. Thus, leaders are more likely to support presidents of their party, but there is a considerable willingness of party and committee leaders to oppose Supreme Court nominations even when they share political affiliation with the president.

The leaders of the two parties were in most severe opposition to one another over Rehnquist's promotion to Chief Justice, with all Republican leaders in support of the nomination and all Democratic leaders opposed to it. The leaders of the two parties also disagreed on the Marshall and first Rehnquist votes (in both cases Republicans united in favor but 2 of the 3 Democratic leaders against), on the Carswell vote (Republican leaders split but favored the nomination and Democratic split but opposed the nomination), and on Bork's nomination (Democratic leaders united against Bork but 2 of the 3 Republican leaders favored the nomination). That the leaders of the two parties opposed

one another on 4 of the most recent 5 controversial votes shows that partisan factors may be becoming more important in Supreme Court confirmations.

CONCLUSION

The voting of senators in the past three decades on controversial Supreme Court nominations is largely compatible with an ideological interpretation. As would be expected, liberal senators have been more supportive of liberal nominations, and conservative senators have been more supportive of conservative nominations, showing that ideology is an important cue for individual senators on nomination voting. Those ideological differences generally remain strong when controlling for the influence of party, region, and presidential support. Party, region, and presidential support are themselves significantly related to confirmation voting during this period. These effects, however, often disappear under controls, except for the importance of region during the turmoil over civil rights in the 1950s and 1960s, and except for the influence of party on the Bork rejection. In many ways this latter result is the most intriguing, especially if it leads to increased partisan polarization on Supreme Court confirmation votes.