

Judicial Selection: Politics, Biases, and Constituency Demands

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Abstract

The determinants of recent U.S. district court judges and appellate court judges selection have been subject of much debate, but little systematic evidence has been presented to substantiate claims regarding discrimination against particular groups of judicial nominees, nor regarding the length of the appointment process. We study both the length of the nominations process, and the likelihood of confirmation and emphasize the role of Senatorial seniority and agenda control in the confirmations process. We find that Senators with agenda control have a positive effect on the speed and likelihood of confirmation and that nominees from states with comparatively senior Senators receive expedited treatment relative to other nominees. Although politics matter in the confirmation process, Senators are responsive to perceived “shortage” of judges, since they fill seats faster when a relatively large number of court seats are vacant. Nominees with higher personal qualifications are also more likely to experience success in confirmations. We found no evidence of gender or race discrimination on the part of the Senate.

I. Introduction

Over the last twenty years scrutiny in the public press of the judicial nomination process to the federal courts has increased. At the same time, the issue of the judicial philosophy of those being nominated and confirmed has played an increasingly important part of parties' political platforms. Recent controversies regarding the role of the American Bar Association (ABA), and whether the individual ideological leanings of nominees should be considered when rejecting or confirming a nominee exemplify the importance of judicial nominations in the current political debate. The rise of public interest in the judicial selection is evidenced by a large increase in newspaper articles on the topic. A search of news sources in the Lexis/Nexis database revealed that while this issue was discussed rarely between 1975 and 1984, and 300 times during the ensuing ten-year period from 1985 and 1994, there have been over 600 articles on this topic in the last five years.¹

Some studies have claimed the presence of racial and gender discrimination in the judicial selection process. For example, a 1999 study states that "the data on judicial appointments show that the average number of days between nomination and final action for women is greater than the number of days for men. We recommend that the responsible officials address this matter to assure that candidates for judgeships are not treated differently based on their gender."² The characterization that the Senate considers nominations of women and minorities at a slower pace than other nominees is characteristic of what has been expressed in

¹The search entailed a search of all of the news sources in Lexis/Nexis's database for any articles headlined with the words judicial, judge or judges, and nomination, nominate, nominated, nominating, confirm, confirmed, confirming or confirmation, and including the words Senate and District or Circuit in the text of the article.

²*Justice Held Hostage: Politics and Selecting Federal Judges* by the Constitution Project's Citizens for Independent Courts' Task Force on Federal Judicial Selection, 1999.

the popular press. For example, it has been claimed that “[m]any of the judicial nominees who have waited longest for confirmation since Republicans took control of Congress in 1994 are women or minorities,” (New York Times, 2000).³ Although it is noted that there is now a higher percentage of female and minority jurists on the federal bench than in the past “the[se] numbers mask an appointment system that continues to favor white men significantly and is so dominated by politics and paybacks that minority nominees are twice as likely to be rejected as whites,” (USA Today, 2000).⁴

These claims are not based on empirical analyses that go beyond a simple comparison of averages over a short period of time. Scholarly work that goes beyond such comparisons and covers more than two confirmation cycles is virtually non-existent. Most of the scholarly work on judicial selection is either anecdotal (Chase 1972, Harris 1953) or normative and descriptive. For example, Goldman (1997) provides summary data on the President’s judicial nominees, including the nominees’ characteristics such as their ABA rating, gender and ethnicity, but does not use these data in a regression framework. In related work, Allison (1996) examines variables that explain a nominee’s speed of confirmation. He finds that ABA ratings are correlated with confirmation speed and that district court nominees are nominated faster if one of their home state senators is a member of the Judiciary Committee. However, as does related work, that study lacks a multivariate statistical analysis that helps isolate the effects of specific variables on

³Ogletree, Charles. *Why Has the G.O.P. Kept Blacks Off Federal Courts?* *The New York Times*. August 18, 2000. Some scholarly work suggests that the confirmation process was historically based on a consensual process, but that this is no longer the case (Katzmann 1997).

⁴Biskupic, Joan. *Politics Snares Court Hopes of Minorities and Women*. *USA Today*. August 22, 2000.

confirmation speed and confirmation probabilities.⁵ Recent work uses a multiple regression framework, but those study do not focus on determinants of confirmation and confirmation length of specific candidates, but examines the length of time particular judgeships are vacant, or focus only on appellate court judges, which comprise less than twenty percent of all judicial nominations (Nixon and Gross 2001, Binder and Maltzman 2002).

Absent from previous studies is a statistical analysis of the role of the institutional framework in the confirmations process. The literature on congressional voting and reputation building shows that committee assignments and seniority are important for determining legislative outcomes. However, the judicial appointment literature places little emphasis on whether chairman, senate majorities, and institutions such as seniority play an important role in the appointment process.⁶

In this study we analyze confirmation speed and the likelihood of confirmation within a multiple regression framework. Contrary to some previous studies, we will include institutional factors that influence the confirmation process in our analysis. Within a political economy framework, we analyze whether powerful legislators, as measured by seniority, chairmanships, and majority status, are able to exert special influence, and the extent to which political institutions are responsive to the demand to fill court vacancies. Using these variables in addition to nominee characteristics, we examine the length of the appointment process with a

⁵In related work some scholars find that the fraction of lower court nominees confirmed does not change when party control differs between the White House and the Senate (Hartley and Holmes 1997). Similar to other work in this area, Hartley and Holmes (1997) arrive at this conclusion without controlling for other factors which may affect judicial selection.

⁶The exception is Binder and Maltzman (2002) who show that divided government and presidential election years increase time to confirmation. However, they do not control for nominee ability and qualifications, race and gender, and agenda control variables as in this study, nor do they examine determinants whether a nominee is confirmed. Other studies on this topic include Massie et al. 2001, Kemper et al. 2002, and Bond et al. 2002.

hazard model, and the likelihood of appointment with a probit model. This framework allows us to test for the importance of Senate institutions, the existence of discrimination with respect to race and gender, and the significance of nominees' personal qualifications in the confirmation process.

The next section of the paper reviews the institutions relevant to the appointment process. The third section presents hypothesis and the fourth section presents the empirical methods and results. We conclude in the last section.

II. Institutions in the Nominations Process

To fill a judgeship for a circuit or district court, the President first consults with the senator or senators of his party in the state where the vacancy arose. Less consultation occurs on circuit court vacancies than on district court vacancies due to the fact that the jurisdiction of a circuit court covers several states. However, some discussion between the White House and senators regarding circuit court vacancies still takes place since these nominees are typically selected from the home state of the judge who last held the seat. If there are no senators from the President's party representing a state where a vacancy exists, the President often consults with senior members of the his party's congressional delegation, the state's governor or other senior state office holders from his party. During the same period, the President will usually enter into discussions with the opposition party's senator(s) in the state. This is especially true when different parties control the White House and the Senate.

Before submitting the nomination to the Senate, White House personnel, typically working in the White House Counsel's office, in cooperation with the Department of Justice, review the candidate's legal and academic records, and conducts a background investigation.

Upon selection, the President nominates the individual by submitting the name to the Senate. When the nomination is received in the Senate it is immediately referred to the Senate Judiciary Committee. The Committee then asks the nominee to fill out a questionnaire detailing his or her legal and academic background. The nominee also provides the Committee with copies of all of his or her professional writings. At the same time, the Department of Justice forwards a copy of the Federal Bureau of Investigation file on the nominee to the Committee. The Chairman and Ranking Member's investigators review this file and jointly conduct further investigation or interviews as they deem necessary. Following the conclusion of the review and investigation, Committee members are briefed.

Once the review and investigation are completed, a nomination hearing date is set at the discretion of the Committee Chairman. At the hearing Committee members pose questions to the nominees regarding their legal knowledge, experience, views, etc. At the conclusion of this process, the Chairman of the Committee has discretion whether or not to place a nominee on an executive business meeting agenda where the Committee debates and votes on the nomination. When voting in the executive business meeting, Committee members first vote on whether or not to report the nomination to the Senate with a favorable recommendation. For the most part, if a nominee is scheduled for a vote in Committee, the motion passes and the nominee is sent to the Senate floor for consideration by the Senate as a whole. If the vote to favorably report a lower court nominee fails, then the nomination fails and is returned to the President.⁷

Once the nomination is reported to the Senate, it awaits scheduling for a floor vote by the Senate Majority Leader. For the most part, lower court judges are passed by the Senate by

⁷Only in rare cases the committee reports the nomination to the Senate without a recommendation, or with a negative recommendation.

unanimous consent and do not require a roll call vote. However, when a nomination is contentious, a roll call vote may be required. During the Clinton administration there were 377 judges confirmed to the federal bench with fewer than 50 roll call votes, and only one nominee was defeated in a Senate roll call vote.⁸

III. Data and Hypotheses

The median voter model predicts that legislator behavior is a function of the median voter's preferences. Given the characteristics of the nominee, the model predicts which legislators lengthen the nominations process, and which legislators support confirmation. In the simplest case, a pro-choice nominee receives support from senators representing pro-choice states and opposition from senators representing pro-life states. We can test the median voter model if we know the preferences of median voter, the nominee's positions on legal issues, and if we can observe the behavior of legislators. These requirements make the model difficult to test, since the preferences of the median voter on many law relevant issues are not known, and because one does not typically observe the behavior of individual legislators in the nomination process.

With few exceptions, the nomination of judges to lower courts is not a salient issue in Senators' constituencies, and the constituency is therefore not likely to monitor their Senators closely in the nominations process (Slotnick and Goldman 1998). Because of this, there is some slack in the principal (constituency) agent (Senator) relationship, and thus legislators have some leeway to act on nominations based on their personal preferences. Contrary to issues of high

⁸Some of the mechanism of the confirmation process has been examined by Goldman and Slotnick 1999 and McCarty and Razaghian 1999.

salience, acting on their own preferences with respect to judicial confirmations is unlikely to be costly in terms of significantly reducing the likelihood of reelection. Moreover, Senators have considerable leeway in influencing the nominations process, without it being subject to a public record that could be easily monitored by the constituency. Thus, even if the constituency has intense preferences regarding a nomination, in most cases there is no public record that indicates the actions of their Senators other than the final vote on the nomination.

Assuming that the constituency demands competent judges, a speedy confirmation of qualified nominees is one indication that Senators act in the interest of their constituencies. Thus, we predict a speedy confirmation of qualified nominees. Our measures of competency include the nominee's professional experience, the nominee's ABA rating, and the law school ranking from which the candidate obtained the law degree (Grossman 1965).

We measure prior experience with an indicator variable which equals one if the nominee has judicial experience and zero otherwise. For the ABA ratings, we use the ABA's rating scale which ranges from 0.5 to 2.0 where a higher number indicates a stronger endorsement by the ABA. An index for the reputation of the law school attended by the nominee was obtained from the 2000 U.S. News and World Report law school rankings.

Judicial vacancies result in potentially costly delays in the litigation process. Assuming that the constituency prefers judicial seats filled, we hypothesize that a larger "shortage" of sitting judges results in a stronger demand for a speedy confirmation. If Senators are responsive to constituency demand, the nomination process is shorter for those candidates where the "need" for a speedy confirmation is highest. We measure the need for a speedy confirmation by two

variables. One variable is the number of days a seat has been vacant.⁹ We predict that the longer a seat has been vacant, the shorter the nominations process. Seat vacancy has a more severe impact on litigation delay in a court with three judges as opposed to a court with ten judges, for example. Thus, we include a second variable to control for the different court sizes, namely the number of judge slots on the court for which the candidate has been nominated. We predict speedier confirmation for individuals who have been nominated to smaller courts. Lastly, we interact both variables, in order to examine “cross-effects”.

Given that the constituency has few incentives to closely monitor Senators’ behavior in the nominations process given and that it faces relatively high monitoring costs, legislators’ personal preferences regarding nominees’ race and gender may be an important explanatory factor in determining nomination speed and confirmation. The discrimination hypothesis predicts that females and minorities are have lower confirmation rates and that they are considered at lower speeds than other nominees. We will use two variables to test for discrimination. One variable equals one if the nominee is male, and zero if the nominee is female. The other variable equals one if the nominee is white, and equals zero for all other races.

An analysis of the duration of the nominations process and whether a nominee is confirmed entails an analysis of a non-random data set because the observations on nominees are not a random sample of all potential nominees. Candidates become nominees in part because

⁹In a few cases a candidate is nominated while the judgeship seat for which he or she is nominated has not been vacated. In this cases we coded the length of vacancy equal to zero.

they fit into the Presidents overall strategy and his working relationship with Congress.¹⁰

Though the President is likely to nominate candidates who have a reasonable chance of winning, some Presidents may put forward a candidate who has characteristics that make it unlikely that he or she will be confirmed. A president may do so for strategic reasons. However, as mentioned in the description of the nominations process, the President typically confers with the home state Senators regarding the identity of the nominees, thus in most cases the nominee has some measure of support from at least one of the home state Senators.

Legislators who have agenda control are in a position to delay, speed up confirmations, or press for the rejection of a nominee. If the sample of nominees were random, legislators with agenda control would perhaps oppose half of the candidates and support half of the others, and consequently any empirical analysis would not reveal any importance of an agenda control variable - in the absence of data on whether legislators oppose or favor a candidate - on the likelihood of confirmation. The institutional detail that the President tends to put forward a nominee only if at one of the home state senators supports confirmation, implies that nominees tend to have some measure of support from at least one of the home state senators. This institution in turn allows us to predict the effect of agenda control on confirmation success.

We predict that nominees who are affiliated with politicians with agenda control and who can trade away favors in exchange for a speedy nomination are most likely to experience a fast confirmation and are most likely to succeed in being confirmed. The presidential office is such an institution. We predict that if a nominee has the same party affiliation as the president, the nominee will be confirmed faster than a candidate without such an affiliation. Thus, we include

¹⁰Theoretical work in this area predicts that Presidents nominate candidates who they expect to be confirmed (Calvert, McCubbins and Weingast 1989, Hammond and Hill 1993, Moraski and Shipan 1999, and Nokken and Sala 2000).

a variable that equals one if the nominee has the same party affiliation as the President and zero otherwise.

If legislators' constituencies demand like-minded judges, we predict that legislators with agenda control will attempt to assure confirmation of nominees who are members of the same party. Legislators differ in their power to assure confirmation. Since the agenda of the Senate is controlled by the majority party, senators from the majority party have more agenda control than senators from the minority party. Thus we predict that nominees who have the same party affiliation as the Senate majority party have more confirmation success. To test this hypothesis we will include a variable that equals one if the nominee is a member of the Senate's majority party and zero otherwise.

The chairman of the Judiciary Committee is endowed with the power to schedule and thus delay or table nominations hearings. We will test whether the chairman uses his influence to speed up the nominations process for nominees favored by him by including an indicator variable that equals one if the candidate is nominated for a judicial seat in the chairman's state and zero otherwise. As noted previously, theoretically, the chairman could delay the nomination because he opposes the candidate, but this is unlikely to occur because the President selected the candidate in consultation with the home senator, who in this case, is the committee chairman. In practice, candidates from the chairman's home state, who are likely to be opposed by the chairman, are rarely nominated.

Some legislators are more successful than others in having their preferred nominees confirmed. Senior members tend to have more influence because they are ranked higher on, and tend to chair, other Senate committees. Because chairmen of other committees have agenda control over broad areas of legislation, they are more powerful. This means that they have the

ability to trade legislation in exchange for speedy confirmation of nominees they support. A measure of seniority is the seniority ranking. We include the ranking of the senior Senator from a nominee's home state as one of our political economy variables.¹¹

The Senate Judiciary Committee conducts all hearings on judicial nominations. Since these legislators have special influence on the nomination process, we predict that nominees who come from districts that are represented by the chairman, the ranking member, and other committee members, will have advantages in the nominations process. We will also distinguish between committee members who are in the Senate majority and those who are in the Senate minority party.

We analyze data over a twelve year period, spanning six two-year election cycles, from 1989-1990 to 1999-2000, i.e. from the 101st to the 106th Congress. These data cover all but one combination of the party control combinations between the Senate and the President. President Bush was in office when the Democrats controlled a majority of the Senate (101st and 102nd Congresses), in President Clinton's for two years the Democrats controlled a majority (103rd Congress), and the last six years of the Clinton Presidency saw a Republican majority in Congress (104th, 105th, and 106th Congresses).¹²

We will restrict our analysis to district and circuit court nominees to courts of general jurisdiction. These nominees comprise ninety-six percent of all judicial nominations.

IV. Methods and Results

¹¹The importance of congressional institutions for political outcomes has been emphasized by Weingast and Marshall (1988).

¹²Some of our data were generously provided by Dr. Goldman.

First we will examine the time-span from nomination to confirmation. We do so by developing a hazard model that explains the factors that determine the length of time the Senate considers a nominee. Such factors include nominees' personal characteristics and qualifications, constituency demand to have seats filled, as well as institutional and political economy factors. Second, we investigate confirmations with a probit model to examine whether the factors that explain the length of time to confirmation also explain whether or not a nominee is confirmed.

A. Hazard model.

A hazard model is the most appropriate model to examine how time to confirmation is related to institutional and political economy factors, and personal characteristics of nominees (Kalbfleisch and Prentice 1980, Kiefer 1988, Greene 2000). We explain the time to confirmation as the period from the nomination date to the confirmation date. In this model the hazard rate is the likelihood that a nominee is confirmed at time t given that the nominee has not yet been confirmed at that time. Thus the hazard rate is the probability that the nominee is confirmed at a given point in time.

A proportional hazard models takes the form

$$h[t, \mathbf{x}(t), \mathbf{b}] = h_0(t) \exp[\mathbf{x}(t)' \mathbf{b}] \quad (1)$$

where $\mathbf{x}(t)$ is a vector of time-varying covariates, \mathbf{b} is the parameter vector to be estimated, and $h_0(t)$ is the baseline hazard rate.

A model of confirmation duration requires us to decide whether we want to impose a structure on the hazard function. Suppose that over time, information or shocks arrive that increase support for the nominee. In this case, the hazard function shows positive duration dependence, and the hazard rate rises over time. We can estimate the shape of the hazard

function over time with a non-parametric Kaplan-Meier product-limit estimator (Greene 2000). Figures 1 and 2 show these graphs and indicate that the hazard function initially grows steeply then flattens out over time. For example, Figure 2 indicates that 75 percent of the nominees are confirmed in approximately the first 200 days after nomination and that for the remaining 25 percent, time to nomination is between 200 and 1500 days. Thus, the graph shows that the baseline hazard increases over time (meaning that the likelihood of confirmation increases over time).

While the Cox model assumes that the hazard is constant and poses no restrictions on the shape of the hazard, the Weibull model assumes an increasing hazard and imposes this structure on the baseline hazard rate. Given Figures 1 and 2, the Weibull specification seems most appropriate, but we will estimate a Cox model as well in order to assess the sensitivity of the results when we impose no structure on the baseline hazard. In the Weibull model baseline hazard rate is pt^{p-1} and the parameter p is estimated from the data. If $p > 1$ the model indicates that the hazard rate is monotonically increasing. If the Weibull model is the correct specification of the underlying functional form, we expect gains in efficiency relative to the Cox model.

Our hazard model analyzes the time-span during which confirmation occurs or does not occur. A nominee's time-span is either the time passed between nomination and confirmation, or time from nomination to the end of Congress in which the candidate was nominated, since candidates are under consideration for confirmation until the end of that Congress (unless the candidates withdraws which is not quantitatively important in our sample). Observations where no confirmation occurs by the end of Congress constitute right-censored observations, and we will take account of the censoring in our estimation strategy. Some candidates fail to be nominated in one Congress, but are re-nominated in a subsequent Congress and are then

confirmed. Rather than having two observations for such a candidate (one for each Congress), we define the time-span for this candidate from the initial nomination date to the confirmation date in a later Congress. We will examine the sensitivity of our results with respect to this specification.

The likelihood function that corresponds to equation (1) is written as

$$L(\mathbf{b}) = \prod_{i=1}^N d_i 1n h[t_i, \mathbf{x}(t_i), \mathbf{b}] - \sum_{i=1}^N \int_0^{t_i} h[u, \mathbf{x}(u), \mathbf{b}] du \quad (2)$$

where N is the number of nominees, d_i is an indicator equaling one if a nominee is confirmed and zero otherwise, and t_i is the length of time of the nominations process for nominee i (Keefer 1988). Inverting the Weibull hazard function and mapping it into time domain implies the estimation of a regression $\ln(T) = \mathbf{x}'\mathbf{b}^* + e$, where $\ln(T)$ is the log of time to confirmation, and $\mathbf{b}^* = -\mathbf{b}/p$. We report the \mathbf{b}^* coefficients in our tables.

From the estimated time coefficients in the Weibull model we can calculate the percentage change in time to confirmation for a one unit change in the explanatory variables. A positive coefficient, for example, indicates in that an increase in that variable leads to a longer time to confirmation.

Table 1 and Tables 2 describe the data we use in our analysis. Table 1 shows how many nominees have been confirmed and how many failed confirmation. It also shows that the length of time the Senate considers a nominee has been increasing from the 101st Congress to the 106th Congress. While the average time from nomination to confirmation was about 90 days in the 101st and 102nd Congress, it more than doubled in the last two Congresses. The number of nominees who failed to be confirmed has a more sporadic pattern, reaching its peak with 45 non-confirmed nominees in the 102nd Congress, when Bush was President and the Democrats had a majority in the Senate. The largest number of rejections coincides with the last two years of a Presidential election cycle.

Table 2 shows the means and standard deviations of the data we use in our analysis. The average time between nomination and confirmation is 137 days, and approximately 84 percent of all nominees are confirmed. Since the President has the power to nominate, it is perhaps not too surprising that ninety-one percent of the nominees have the same party affiliation as the president. Three quarters of the nominees are male or white, and half of the nominees have some judicial experience. More than fifty percent of all judicial seats had been vacant for more than one year at the time the nominee was nominated. Almost 80 percent of all nominees in our sample are nominated for the district court as opposed to the appellate court.

We noted previously that Figures 1 and 2 exhibit an increasing hazard. The graphs show the Kaplan-Meier product estimator for those who have been confirmed, separated by race and gender. The survival paths for both race and gender sub-groups are fairly similar, and a log-rank for the equality of the survivor functions does not allow for rejection of the hypothesis that both curves are equal.

Table 3 shows the results from the Weibull model. The regression in the first column includes only the race and gender variables. Both race and gender variables have a negative and statistically significant negative sign, indicating that time to confirmation is shorter for males and for whites. Thus, this regression tends to support the popular claim that we noted in the introduction to this paper, namely that the Senate discriminates against minority nominees and against female nominees. However, the race and gender variables may be correlated with other characteristics that determine time to confirmation and thus we have to control for these other characteristics, in order to determine whether we find evidence for discrimination. Table 3, columns 2, 3, and 4 add political economy and demand variables, as well as variables measuring the quality of the nominees. The regression in Table 3, column 2 shows our basic model. Table

3, column 3 adds an indicator for nominees who are re-nominated. This variable captures those nominees who have high duration times because they were re-nominated because they failed to be confirmed in the first Congress during which they were nominated. Table 3, column 4 includes the same variables as the regression in column 2, but adds indicators for each Congress. These indicators capture Congress-specific effects, for example the unique working relationship between the President and the Senate majority party in a 2-year election cycle.

Once we add our control variables, the coefficients on gender and race shrink in all specification and in most specifications shrink to more than half of their original size. All gender and race coefficients are statistically insignificant once we control for other factors that affect the length of time from nomination to confirmation. Thus we do not find evidence for discrimination with respect to gender and race.

Our political economy variables perform well in explaining the length of the confirmation process. If a nominee is nominated for a seat on a court that is located in the state of the chairman or ranking member of the Senate Judiciary Committee (or, in case of the Appellate Court, a seat that is assigned to that state), that nominee experiences a significantly shorter nomination duration than other nominees. The estimated coefficient in Table 3, column 2 indicates that nominees affiliated with the chairman have their confirmation time reduced by 50 percent (Table 3, column 2). The ranking member also matters for nomination time. The point estimate implies that the marginal effect of the ranking member is a 68 percent reduction in confirmation time (Table 3, column 2).

The results show that senior Senators bring their nominees through the confirmation process faster (when Senators have a higher rank in the Senate they are assigned a lower rank number), indicating that institutional power is important in the nomination process. A one

standard deviation change in the rank changes time to nomination by approximately eleven percent. Partisanship matters as well, since nominees who have the same party affiliation as the Senate majority, and nominees who have the same party affiliation as the president also go faster through the nomination process. For example, having the same party affiliation as the Senate majority implies that a nominee reduces the time spent in the confirmation process by 63 percent (Table 3, column 2).

In all specifications the measures of nominee quality have the anticipated signs. Both higher ABA ratings and judicial experience shorten the time to confirmation. Having a record of being active in a party politics increases time to confirmation, perhaps because this makes a nominee more contentious and raises concerns about political and judicial impartiality.

Our demand-for-confirmation variables, for the most part, have the anticipated effect on time to confirmation. Time to confirmation is shorter for candidates who are nominated for a seat that has been vacant for more than one year. For those nominees, time to confirmation is 28 percent lower than for nominees who are nominated for a recently vacated seat (Table 3, column 2). The number of seats on the court, by itself, does not appear to influence nomination, but the interaction term between the number of seats and an indicator for a seat being vacant for more than one year is statistically significant and has the anticipated sign. That estimated coefficient indicates that nominees are confirmed faster when they are nominated for a seat in a small court than in a large court, conditional on the seat having been vacant for more than one year.

To assess the robustness of our findings, we tested the sensitivity of our results with respect to the Weibull functional form used in Table 3. We re-estimated the regressions in Table 3 with a Cox model and our conclusions regarding the importance of the determinants of our variables did not change.

Next we test whether the variables that explain time to confirmation also explain whether a nominee is confirmed. To answer this question we estimate a probit model. Here, the dependent variable equals one if the nominee is confirmed and zero otherwise. We report the marginal effects estimates in Table 4.

The regression in the first column of Table 4 includes only the race and gender variables. Both point estimates are statistically insignificant, and thus offering no support for the discrimination hypothesis. Columns 3 and 4 add the previously used variables in Table 3, with the exception of the interaction term. The interaction term was statistically insignificant when added to the regression equation.

We could not estimate a coefficient on the chairman and ranking member variables, since all of those variables were perfectly collinear with the dependent variable: all nominees associated with the chairman and ranking member are confirmed. Thus nominees from the state of these Senators have a double-advantage. They are confirmed faster than other nominees and their confirmation is a virtual certainty. The seniority of the senior Senator does not appear to influence whether a nominee is confirmed. However, the probability that a nominee is confirmed increases by thirteen percent when the nominee has the same party affiliation as the senate majority and increases by thirty-two percent if the nominee has the same party affiliation as the President. Personal qualifications influence the probability a nominee's confirmation. Candidates with judicial experience have a six percent higher likelihood of confirmation and increasing the ABA rating by one standard deviation increase the likelihood of confirmation by five percent. Finally, if a seat has been vacant for more than one year at the time of nomination, the probability of confirmation increases by eight percent.

V. Conclusion

We hypothesized that nominees from states with a senator possessing agenda control or influence, as measured by their position of leadership on the Senate Judiciary Committee or seniority within the Senate, would have a positive effect on the speed and likelihood of confirmation. The agenda control and influence variables were statistically significant for explaining a nominee's success. That the chairman and ranking member of the Judiciary Committee have a significant influence is perhaps obvious, as the Judiciary Committee chairman set the Committee's agenda and decides which nominees will receive hearings. The data supports the notion that Committee chairman, of both parties, give preferential treatment to nominees from their home state. This may be a result of the chairman's personal knowledge of the qualifications, traits and character of the nominee from his or her state or may simply be an exercise of the chairman's prerogative. Preferential treatment is also extended to the nominees from the home state of the Judiciary Committee's ranking member. There are significant institutional powers given to the committee's minority and, therefore, its ranking member, that enable them to thwart the legislative agenda of the chairman. Thus the chairman has an incentive to give preference to the nominees of the leader of the minority on his committee in order to invoke goodwill and increase the likelihood that these procedures will not be utilized.

As senators obtain seniority in the Senate, they also increase their standing on the Senate's other legislative committees. We found that the nominees from states with comparatively senior senators received expedited treatment relative to other nominees. This may be explained under a theory that nominees can be used as a political currency. The Judiciary Committee chairman can use the nominees under his control to influence the adoption of his legislative agenda on committees where he does not sit. This result may also be explained

simply by the personal relationships that evolve between senators over time. Since younger senators have not known the Judiciary Committee chairman as long as other, more senior, senators, their influence may be less than their more senior colleagues.

We found that a “shortage” of judges, as measured by the size of a given court and whether seats on the court have been vacant for longer than one year has a positive effect upon the speed with which a nomination to such a seat would be considered by the Senate. This may be one of the few constituent influences on the nomination process. As a seat in a relatively small court sits vacant, the wheels of justice in the district slow. Senators may begin to expend more political currency to secure the confirmation of nominees as their constituents recognize the judicial drought in the state. Along similar lines, constituents are expected to demand qualified judges on the bench. We found that nominees with higher qualifications, as measured by prior judicial experience and ABA ratings were most successful in the confirmation process. Finally, we predicted that there might, according to the declarations of the popular press, be some relationship between race or gender and confirmation speed and success. All gender and race coefficients, however, are statistically insignificant once we control for qualification, institutional and political factors that affect both the length of time to confirmation and the likelihood of confirmation. As a result, we found no evidence of gender or race discrimination on the part of the Senate.

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Table 1
Time to Confirmation by Congress

Congress	N	mean duration	median duration	min	max	not confirmed
101	70	83	77	10	483	0
102	119	115	114	21	437	45
103	125	91	84	15	724	6
104	73	130	108	8	541	6
105	98	222	153	16	1262	11
106	69	199	141	43	1505	38

Nominees who are not confirmed in congress t but re-nominated and confirmed in Congress $t+1$ or $t+2$ are not counted as unconfirmed in congress t , but as confirmed in period $t+1$ and $t+2$ respectively. For those candidates the duration is calculated from the first nomination to confirmation.

Table 2
Sample Statistics
Means and Standard Deviations

Variable	Mean (Standard Deviation)
Days from nomination to confirmation	137.0 (147.1)
Nominee is confirmed = 1, 0 otherwise	0.839 (0.367)
Senator is chairman of the Judiciary Committee = 1, 0 otherwise	0.0076 (0.0868)
Senator is Judiciary Committee ranking minority member = 1, 0 otherwise	0.0136 (0.1160)
Rank of senior home state Senator Rank ranges from 1 to 100	37.744 (24.196)
Same political party as Senate majority = 1, 0 otherwise	0.2667 (0.4426)
Same political party as president = 1, 0 otherwise	0.9136 (0.2811)
male = 1, 0 otherwise	0.7561 (0.4298)
white = 1, 0 otherwise	0.7864 (0.4102)
Judicial experience = 1, 0 otherwise	0.5000 (0.5003)
ABA rating, rating ranges from 0.5 to 2.0	1.4848 (0.5188)
Republican = 1, 0 otherwise	0.3379 (0.4734)
Party activity = 1, 0 otherwise	0.5682 (0.4957)
Seat vacant for more than one year = 1, 0 otherwise	0.5470 (0.4982)
Number of seats on the court	11.996 7.413
District Court=1, Appellate Court = 0	0.7924 (0.4059)
If nominated for same position in subsequent Congresses=1, 0 otherwise	0.0667 (0.2496)

Table 3
Weibull Model:
Explaining time to Confirmation
Asymptotic t-statistics in parentheses

	(1)	(2)	(3)	(4)
Senator is chairman of the Judiciary Committee = 1, 0 otherwise		-0.696 (2.07)	-0.755 (2.43)	-0.957 (2.96)
Senator is Judiciary Committee ranking minority member = 1, 0 otherwise		-1.147 (4.52)	-1.076 (4.54)	-0.906 (3.68)
Rank of senior home state Senator		0.003 (2.10)	0.002 (1.71)	0.002 (1.96)
Same political party as Senate majority = 1, 0 otherwise		-1.055 (12.12)	-0.840 (10.14)	-1.008 (5.87)
Same political party as president = 1, 0 otherwise		-0.879 (6.48)	-0.730 (5.64)	-0.666 (3.95)
male = 1, 0 otherwise	-0.177 (2.04)	-0.050 (0.68)	0.023 (0.33)	-0.039 (0.56)
white = 1, 0 otherwise	-0.161 (1.73)	-0.126 (1.55)	-0.056 (0.73)	-0.086 (1.09)
Judicial experience = 1, 0 otherwise		-0.129 (1.97)	-0.105 (1.73)	-0.132 (2.10)
ABA rating		-0.231 (3.64)	-0.241 (4.12)	-0.172 (2.80)
Republican = 1, 0 otherwise		-0.527 (6.92)	-0.343 (4.78)	-0.521 (4.10)
Party activity = 1, 0 otherwise		0.163 (2.40)	0.063 (0.98)	0.146 (2.22)
Seat vacant for more than one year = 1, 0 otherwise		-0.322 (2.57)	-0.322 (2.76)	-0.353 (2.89)
Number of seats on the court		0.0002 (0.04)	-0.002 (0.29)	-0.001 (0.16)
Number of seats on the court when seat has been vacant for more than one year		0.015 (1.82)	0.012 (1.48)	0.013 (1.58)
District Court=1, Appellate Court = 0		-0.385 (4.63)	-0.344 (4.52)	-0.322 (3.97)
If nominated for same position in subsequent Congresses=1, 0 otherwise			0.985 (7.54)	
Indicator for each Congress	NO	NO	NO	YES
p	1.13	1.38	1.49	1.45
N	660	660	660	660
Log-Likelihood	-898.22	-785.69	-750.44	-750.95

All values of p are statistically significant at the one percent level.

Table 4
Explaining Whether a Nominee is Confirmed:
Probit estimates and asymptotic t-statistics in parentheses

		(1)	(2)
Senator is chairman of the Judiciary Committee = 1, 0 otherwise		predicts confirmation perfectly	predicts confirmation perfectly
Senator is Judiciary Committee ranking minority member = 1, 0 otherwise		predicts confirmation perfectly	predicts confirmation perfectly
Rank of senior home state Senator		0.0003 (0.44)	0.0003 (0.52)
Same political party as Senate majority = 1, 0 otherwise		0.140 (3.90)	0.134 (3.62)
Same political party as president = 1, 0 otherwise		0.328 (4.08)	0.317 (3.96)
male = 1, 0 otherwise	-0.032 (0.95)	-0.031 (0.95)	-0.034 (1.04)
white = 1, 0 otherwise	0.039 (1.11)	0.029 (0.80)	0.027 (0.37)
Judicial experience = 1, 0 otherwise		0.062 (2.18)	0.061 (2.15)
ABA rating		0.101 (3.80)	0.102 (3.82)
Republican = 1, 0 otherwise		0.060 (1.95)	0.054 (1.75)
Party activity = 1, 0 otherwise		-0.004 (0.12)	0.001 (0.04)
Seat vacant for more than one year = 1, 0 otherwise		0.084 (2.83)	0.082 (2.78)
Number of seats on the court		0.002 (1.21)	0.003 (1.29)
District Court=1, Appellate Court = 0		0.128 (3.33)	0.126 (3.29)
If nominated for same position in subsequent Congresses=1, 0 otherwise			-0.057 (1.01)
Indicator for each Congress	NO	NO	NO
N	660	646	660
Log-Likelihood	-289.77	-259.68	-750.95

Figure 1

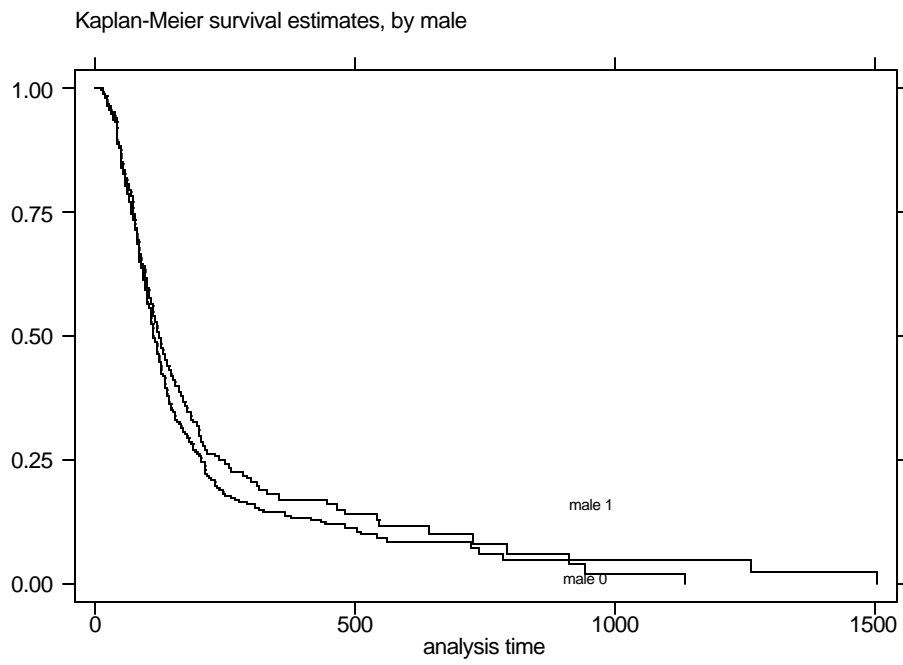


Figure 2

