

THE DEATH OF BIPARTISANSHIP: DECLINING CROSSOVER VOTING IN LOWER
COURT JUDICIAL CONFIRMATIONS

by

CHRISTIAN SULLIVAN

(Under the Direction of Michael Lynch)

ABSTRACT

In spite of the historic opposition Senate Democrats have posed against President Trump's efforts, senatorial partisan opposition to lower court nominees may not be a recent phenomenon or new development. While lower court nominees have traditionally enjoyed large bipartisan majorities, prevailing research suggests that the Senate has become increasingly polarized since the 1970s. Although this polarization easily manifests in major legislative initiatives and Supreme Court confirmations, polarized voting and position-taking could easily permeate into issues of lesser legislative importance such as lower court nominations. The following paper aims to determine whether the increased party polarization in the Senate is prevalent in lower court nominations through analyzing the level of bipartisan support for nominees to the U.S. Courts of Appeals from 1977 to 2008, ultimately concluding that increased partisanship in the Senate has not led to a significant decline in bipartisan support for circuit court nominees.

INDEX WORDS: Judicial confirmations, United States Circuit Courts of Appeals, United States Senate, United States Supreme Court, Party polarization, Beta regression

THE DEATH OF BIPARTISANSHIP: DECLINING CROSSOVER VOTING IN LOWER
COURT JUDICIAL CONFIRMATIONS

by

CHRISTIAN M. SULLIVAN

A Thesis Submitted to the Graduate Faculty of The University of Georgia in Partial Fulfillment
of the Requirements for the Degree

MASTERS OF ARTS

ATHENS, GEORGIA

2020

© 2020

Christian Sullivan

All Rights Reserved

THE DEATH OF BIPARTISANSHIP: DECLINING CROSSOVER VOTING IN LOWER
COURT JUDICIAL CONFIRMATIONS

by

CHRISTIAN SULLIVAN

Major Professor: Michael Lynch
Committee: Christina Boyd
Richard Vining

Electronic Version Approved:

Ron Walcott
Interim Dean of the Graduate School
The University of Georgia
May 2020

DEDICATION

I dedicate this thesis to my family (Mom, Dad, Constance, Britton, Spencer, Gillian, and Elliot) for constantly supporting me in my endeavors.

ACKNOWLEDGEMENTS

I would like to first thank Dr. Michael Lynch for seeing me throughout this process and guiding my thesis and my master's degree program from start to finish. I would also like to thank Drs. Richard Vining and Christina Boyd for serving on my thesis committee and taking the time to read and critique this thesis to make it worthy of publication in an academic journal. I would also like to thank all of the professors, staff, and students at the Department of Political Science at the University of Georgia for providing me an excellent academic environment for me to complete my master's thesis and to grow and challenge myself academically. Similarly, I would like to thank the professors, staff, and students at the Departments of History, Religion, and Romance Languages for helping me navigate my undergraduate education at the same time I completed the degree requirements for a master's degree. Similarly, I'd like to thank all of my friends across my undergraduate and graduate careers—you all have been there to help me since the beginning and have supported me during college more than I could have asked. My closest and dearest friends know who they are and to them I thank them for supporting me—I wish I could have had a proper farewell before this coronavirus pandemic hit. Last, but certainly not least, I thank my family—Mom, Dad, Constance, Britton, Spencer, Gillian, and Elliot—who have been with me since time immemorial. Thank you Mom, Dad, Constance Britton, Spencer, Gillian, and Elliot for supporting me and putting up with my shenanigans and continuing to put up with my shenanigans for the foreseeable future.

TABLE OF CONTENTS

	Page
ACKNOWLEDGEMENTS	v
LIST OF TABLES	vii
LIST OF FIGURES	viii
SECTIONS OF THESIS	
1 INTRODUCTION	1
2 LITERATURE REVIEW	4
3 THEORY	9
4 DATA AND VARIABLES	14
5 RESULTS	24
6 CONCLUSION.....	31
REFERENCES	35
APPENDICES	
A LINEAR REGRESSION	39
B BETA REGRESSION INFORMATION	44
C IDEOLOGICAL DIFFERENCE SCORES FROM THE 96 TH TO 110 TH	
CONGRESSES	52

LIST OF TABLES

	Page
Table 1: Ideological Distance's Effect on Cross-Party Votes in Judicial Nominations, Linear Regression.....	40
Table 2: Ideological Distance's Effect on Cross-Party Votes in Judicial Nominations, Beta Regression.....	48
Table 3: Ideological Distance's Effect on Cross-Party Votes in Judicial Nominations, Linear Regression without the Voice Votes.....	42
Table 4: Ideological Distance's Effect on Cross-Party Votes in Judicial Nominations, Beta Regression Without Voice Votes.....	50

LIST OF FIGURES

	Page
Figure 1: Coefficient plot for linear regression.....	41
Figure 2: Coefficient plot for beta regression	49
Figure 3: Coefficient plot for linear regression without voice votes	43
Figure 4: Coefficient plot for beta regression without voice votes.....	51

INTRODUCTION

Party polarization has fractured nominations of federal judges. On July 19, 2018, the Trump administration withdrew the nomination of Ryan Bounds to the staunchly liberal Ninth Circuit after controversy over Bounds' undergraduate writings criticizing multiculturalism. Only hours earlier, Senate Majority Leader Mitch McConnell (R-KY) had delayed a scheduled vote on Bounds' nomination for nearly an hour while Republicans finally realized they lacked enough votes to confirm Bounds. The entire Democratic Senate delegation firmly and uniformly opposed Bounds' nomination along with some wavering Republicans.¹

Similarly, on November 29, 2018, Thomas Farr's nomination to the U.S. District Court for the Eastern District of North Carolina failed when Senator Tim Scott (R-SC) announced his opposition to Farr's nomination due to allegations of racism related to Farr's work as advisor to the 1990 campaign of former Senator Jesse Helms (R-NC) and as chief counsel to the North Carolina Republican Party. As the sole African American Republican in the Senate, Senator Scott's announcement was a crushing blow to the Republican-controlled Senate holding a razor-thin majority of 51 votes.² The Democratic delegation firmly opposed Farr on the grounds of racial justice, just as it had opposed Bounds for critiques of multiculturalism. Both Bounds' and

¹ Demirjian, Karoun. "White House withdraws judicial nominees Ryan Bounds, after GOP realizes he didn't have votes for confirmation." *The Washington Post* (Washington, D.C.), July 19, 2018. Accessed April 20, 2019. https://www.washingtonpost.com/powerpost/senate-gop-withdraws-judicial-nominee-ryan-bounds-delivering-a-blow-to-trumps-court-plans/2018/07/19/0d81ff50-8b83-11e8-8aea-86e88ae760d8_story.html?noredirect=on&utm_term=.d375c786128f

² Barrett, Ted. "Republican senator effectively sinks nomination of controversial judicial pick Thomas Farr." *Cable News Network* (Atlanta), November 30, 2018. Accessed April 20, 2019. <https://www.cnn.com/2018/11/29/politics/tim-scott-thomas-farr-nomination/index.html>

Farr's failed nominations are rare, however, as 80 percent of lower court nominees are eventually confirmed (Epstein and Segal 2005, 99). Despite these high rates of confirmation, there has been a decline in bipartisan support for lower court judicial nominees, the killing blow for both Bounds and Farr.

Regardless of each nomination's outcome, the Trump administration's nominees have faced staunch opposition from a unified Democratic party. Nominees such as Judge Holly Brady of the U.S. District Court for the Northern District of Indiana, confirmed by a vote of 56 to 42, and Judge Patrick Wyrick of the District Court for the Western District of Oklahoma, confirmed by a vote of 53 to 47, have essentially been confirmed via party-line votes with little to no bipartisan support.³ Despite their minority status, the Democratic senatorial bloc has regularly opposed the Trump administration's lower court nominees. Although they may rarely successfully oppose the Trump administration's nominees, Senate Democrats' opposition appeals to their party base, demonstrating that the Democrats in the Senate will consistently oppose Trump on all fronts regardless of saliency or legislative significance.

In spite of the historic opposition Senate Democrats have posed against President Trump's efforts, senatorial partisan opposition to lower court nominees may not be a recent phenomenon or new development. While lower court nominees have traditionally enjoyed large bipartisan majorities, prevailing research suggests that the Senate has become increasingly polarized since the 1970s (Cameron, Kastellec, and Park 2013; Theriault and Rohde 2011). Although this polarization easily manifests in major legislative initiatives and Supreme Court

³ Bauman, Anna. "Senate confirms Patrick Wyrick to federal district court." *NonDoc Media*. April 10, 2019. Accessed April 20, 2019. <https://nondoc.com/2019/04/10/senate-confirms-patrick-wyrick-to-oklahoma-federal-district-court/>; Odendahl, Marilyn. "Brady becomes second woman judge to join Northern Indiana District Court." *The Indiana Lawyer* April 11, 2019. Accessed April 20, 2019. <https://www.theindianalawyer.com/articles/49958-brady-becomes-second-woman-judge-to-join-northern-indiana-district-court>

confirmations, polarized voting and position-taking could easily permeate into issues of lesser legislative importance such as lower court nominations. In the following paper, I aim to determine whether the increased party polarization in the Senate is prevalent in lower court nominations through analyzing the level of cross-party support for nominees to the U.S. Courts of Appeals from 1977 to 2008. I begin by reviewing the relevant literature on the relationship between increased Senate polarization, declining bipartisanship, and judicial confirmations.

LITERATURE REVIEW

Studies on declining Senate bipartisanship due to increased polarization in judicial nominations have typically discussed polarization's effect on Supreme Court nominations (Kastellec et al. 2015; Shipan 2008; Epstein et al. 2006). Prior to 2006, scant literature existed on polarized voting on Supreme Court nominees, most likely due to the overwhelming bipartisan majorities Supreme Court nominees generally enjoyed due to their impeccable legal credentials. However, in light of Robert Bork's failed nomination in 1987 and Clarence Thomas' contentious confirmation in 1991, political scientists have had reason to consider the causes behind diminished bipartisan support for Supreme Court nominations.

Lee Epstein, René Lindstadt, Jeffrey Segal, and Chad Westerland questioned whether Robert Bork's contentious nomination marked a shift in voting patterns by U.S. senators on Supreme Court nominees. After Bork's failed nomination, a wide consensus existed among legal scholars and political scientists that a new regime for Senate voting on Supreme Court nominees existed, one that deemphasized ethics, competence, and integrity and, instead, stressed political ideology and partisan affiliation. Seeking to test this widely accepted theory, Epstein and her co-authors found that since Justice John Marshall Harlan's confirmation in the late 1950s, there has been a new emphasis on the ideological distance between the nominee and the median senator. Prior to Bork's nomination, senators were willing to vote for moderately qualified candidates if they were sufficiently close to their own ideology. However, after 1987, senators have narrowed the acceptable ideological distance between themselves and Supreme Court nominees, indicating

a loss of universal acclaim for Supreme Court nominees in the Senate. Ultimately, Supreme Court nominees have been confirmed, but with less bipartisan support (Epstein et al. 2006).

Following Epstein et al., Shipan (2008) analyzed the relationship between partisanship, ideology, and Senate voting on Supreme Court nominees. Utilizing a probit model which nested senators' votes within particular nominations to account for the artificially low standard errors in previous models, Shipan's results largely confirmed previous empirical research, further establishing that senators' party identification has played an increasingly important role in predicting senators' votes on nominees over time. For example, during the 103rd Congress, Shipan's results determined that a senator from the president's party has a 62 percent chance of confirming a weak nominee with poor legal and judicial qualifications. However, a senator from the opposition party has a 10 percent chance of voting for the weak nominee (Shipan 2008, 66). From these results, Shipan's research confirmed that Supreme Court nominations have become partisan confrontations where party affiliation reigns supreme. Interestingly, Shipan (2008) framed partisan affiliation within the context of allegiance to the president, highlighting the significance of presidency-centered factors in judicial nominations.

Similarly, further empirical research emphasizes the significant role the president possesses in the judicial nomination process as the first "player" in the judicial nomination game. Through a series of simulations constructed from confirmation data ranging from 1937 to 2010, Charles Cameron, Jonathan Kastlelec, and Jee-Kwang Park (2013) demonstrated that the overall contentiousness over Supreme Court nomination voting resulted from presidents' tendency to nominate more ideologically extreme individuals, a behavior only heightened due to the growing ideological polarization present in the Senate. Additionally, these simulations again confirmed that the increased ideological distance between the nominee and each individual senator lessened

a nominee's likelihood of confirmation. The results from their multilevel logit model led them to conclude that there has been "a tandem polarization in both the Senate and the nominees" in Supreme Court voting, which they speculate could lead to the rise of nay voting in confirmations (Cameron et al. 2013, 297-298). Most importantly, the rise of ideologically extreme nominees purposely nominated by presidents seeking to advance their agendas before the Court coupled with an increasingly polarized Senate has precipitated contentious nomination battles, implying that cross-party support for lower court nominees has declined over the last century.

Johnathan Kastellec, Jeffrey Lax, Michael Malecki, and Justin Phillips extended Cameron et al.'s research on presidency-centered explanations of judicial nominations to ascertain whether senators respond to the preferences of their state's median voter or their co-partisans, specifically analyzing Supreme Court nominations as an important area adjudicating between media and non-media theories of representation. Because voters' "public opinion on nominees is often polarized among partisans in the electorate," the authors conjectured that "senators often face conflicting constituencies when they go cast a vote on a nominee" (Kastellec et al. 2015, 790). To test which of these constituencies factored more prominently in senators' voting behavior, they employed a multilevel regression and post-stratification model, modeling partisanship as a function of demographic and geographic variables to estimate a partisanship distribution.

The multilevel regression model deduced that confirmation politics is incredibly responsive to the public will. However, senators consider their co-partisans' views more strongly over the state's median constituent's view. Identifying the causal linkage between Senate polarization and co-partisans' beliefs within the context of Supreme Court nominations demonstrated the diminishing presence of bipartisanship within confirmation politics. From these

results, the authors further surmised that a similar process occurs in lower federal court nominations. Although lower court nominations are less salient than Supreme Court nominations, senators still will inherently know the type of judges that their constituents prefer and will vote in accordance with their co-partisans' views (Kastellec et al. 2015).

Despite the lack of an empirical test for Kastellec et al.'s hypothesis on senators' partisan voting behavior in lower federal court nominations, research on lower federal court nominations has already proven that lower federal court nominees are "victims" of a partisan environment. Senators consistently obstruct lower federal court nominations to deny a president's appointment and to provoke partisan conflict (Basinger and Mak 2010; Binder and Maltzman 2002; Nixon and Goss 2001). Furthermore, the ideological distance between lower court nominees and senators has proven to be an important factor in confirmation politics. Through a parametric duration model, Basinger and Mak confirmed that "judicial nominees are clothed in the ideological positions of the nominating president and home state senators" (2010, 171). Basinger and Mak's results indicated that increased ideological distance between a circuit court nominee and the Senate increased by 80 days with unified control and 90 days under divided control of the presidency and the Senate. However, they did not observe any effects on district court nominees (Basinger and Mak 2010, 165). Thus, the rising unity of the Senate minority party is clearly effective in delaying, obstructing, and even halting the confirmation process for ideologically distant nominees. Because of the considerable power the Senate minority party wields, empirical results suggest that partisan polarization in the Senate leads to a decline in cross-party support for lower federal court nominations, precipitating increasingly contentious nomination processes.

Although a majority of the existing literature predictably focuses on Supreme Court nominations, evidence from these observational studies and confirmation from studies of lower federal court nominations suggests that an increasingly polarized Senate has diminished cross-party support for lower federal court nominees. However, despite these preliminary studies, much research remains to be done. Thus far, no single study has attempted to measure Senate polarization in confirmation processes through actual confirmation outcomes, as most of the extant studies prefer to focus on confirmation delays (Cameron, Kestelleg, and Park 2013; Shipan and Shannon 2003; Binder and Maltzman 2002; Nixon and Goss 2001). Additionally, few studies adequately address the president's role in polarizing the confirmation process (Hendershot 2010; Giles, Hettinger, and Peppers 2001; Moraski and Shipan 1999). A vote for a president's nominee could be interpreted by voters and interest groups as a vote in support of the president, which, depending on party affiliation, can have drastic effects on senators' re-election prospects. In the following paper, I propose a more presidency-centered approach to lower federal court confirmation results, specifically analyzing the effect of ideological distance between the president and the Senate on the prevalence of crossover voting, a measure of cross-party support, for U.S. Courts of Appeals nominations.

THEORY

Political scientists generally agree that members of Congress are single-minded seekers of re-election. Re-election enables members of Congress to retain and increase their power in Congress, provides job security, and incentivizes members of Congress to preserve institutional structures. As members of Congress, senators must advertise their achievements, claim credit for initiatives, and take positions on certain issues and policies in order to augment their re-election prospects (Mayhew 1974). As part of these activities designed to maximize their re-election chances, senators must convey information about their positions to their constituents, interest groups, and party leaders, all of whom have the power to hinder their re-election fortunes (Richardson and Vines 1970, 69).

As referendums on political appointees, confirmation processes are exercises in position-taking with few incentives for credit claiming or sophisticated voting (Segal, Cameron, and Cover 1992). Despite their routine, frequent nature, research on senators' confirmation votes has demonstrated that senators vote 75 percent of the time with the median voter in their state and 87 percent of the time with their co-partisans in the Senate on Supreme Court nominations, indicating that senators believe that Supreme Court nominations are important opportunities for position-taking (Kastellec et al. 2015). Senators' positions on lower federal court nominations should similarly conform to the median voter's and their co-partisans' positions on a given nominee. Thus, lower federal court confirmation votes are opportunities for senators to articulate their positions on judicial decision-making to maintain and expand their partisan base and appeal to their constituency. Preliminary research appears to confirm this behavior in lower

federal court nominations as senators specifically pay attention to constituents' opinions on visible nominees to federal courts (Hoekstra and LaRowe 2013).

However, some political scientists counter that the low saliency of lower federal court nominations provides senators an incentive to vote their true preferences unconstrained by partisan affiliation. Due to the low visibility of judicial nominees in the public sphere and the low saliency of confirmation proceedings, some research suggests that senators can freely vote against their partisan base for nominees (Hartley and Holmes 2002; Epstein and Segal 2005). Citing generally high confirmation rates and the lack of any observable changes in senatorial scrutiny, Hartley and Holmes argued that lower federal court confirmations are considered to be less politically salient by the president, members of the Senate, the media, and the public (2002). Thus, senators can freely support nominees without regard for partisan affiliation or ideology. This position would seem to explain the prevalence of voice votes and overwhelming majorities confirming lower federal court nominees in the official Senate vote records, suggesting that lower federal court nominations are not partisan, but rather routine affairs.⁴

However, although upwards of 70 percent of district court nominees were confirmed, Holmes and Hartley admit that these confirmation rates generally declined over the course of a presidential term, abruptly dropping during presidential election years (Holmes and Hartley 2002, 268). These patterns in confirmation rates suggest that senators view lower federal court confirmations as politicized processes designed to thwart presidential attempts to reshape the

⁴“Legislative Search Results.” Library of Congress, Accessed April 20, 2019, [https://www.congress.gov/search?q=%7B%22source%22%3A%22nominations%22%7D](https://www.congress.gov/search?q=%7B%22source%22%3A%22nominations%22%7D;).; “Roll Call Votes.” United States Senate, accessed April 20, 2019, <https://www.congress.gov/search?q=%7B%22source%22%3A%22nominations%22%7D>.

federal judiciary. Even though confirmation rates may be high on an aggregate level, examining individual years betrays judicial confirmations' inherent political nature.

Other political scientists contend that lower federal court confirmations' low saliency actually promotes senators' partisan biases. Senators can expertly and discreetly delay confirmation processes to negotiate with the president for political gain "because media and public attention to the confirmation process is rare and [...] most senators seldom take an interest in nominees outside their home state or region" (Binder and Maltzman 2002, 101). In an era where senatorial inaction is frequently frowned upon, low saliency allows senators to block judicial nominees and negotiate with the president to nominate individuals with judicial ideologies closer to the median senator's ideological position in the absence of a hostile constituency.

Because senators possess partisan incentives to delay or block confirmation processes in favor of a more ideologically adjacent nominee, presidents will take into account the Senate's aggregate ideological preferences to ensure a smooth confirmation process. Presidents seek to select judges with policy preferences close to their own ideological viewpoints as ideologically similar judges tend to render favorable decisions (Giles, Hettinger, and Peppers 2001). Additionally, lower federal court nominations provide presidents with the opportunity to "accrue future political support—in other words, coalition building" (Lyles 1997, 43). With a massive political resource advantage over individual senators, presidents can easily push their nominees through the Senate, especially with a large co-partisan majority (Segal, Cameron, and Cover 1992).

However, as previously mentioned, senators can just as easily block lower federal court nominees due to their low saliency and position-taking opportunities. Additionally, in district

court nominations, home-state senators have been traditionally allowed to block nominees during the blue slip process, leading many researchers to state that the politics of judicial selection are conditioned by operation of senatorial courtesy (Giles, Hettinger, and Peppers 2002; Hendershot 2010). Because the president knows that the Senate has the ultimate power to confirm or deny his nominee, and thus affect his potential to influence judicial decision-making, the president must take into account the Senate's preferences. The president must nominate an individual who can be approved by the Senate but also shift the policy median best towards the president's ideal policy positions. Thus, the president's choice of a nominee is a function of the Senate's indifference point, the crucial ideological point where senators do not have a preference on a judicial nominee's ideology, crafting the lower federal courts to lay ideologically between the ideal policy points of the president and the Senate (Moraski and Shipan 1999, 1085; Hendershot 2010). Even negotiations between the Senate and the president over federal court nominees are a highly politicized and partisan process.

However, negotiations between the Senate and the president over lower federal court nominations become incredibly complex as the president and the Senate become more ideologically dissimilar. The duration of confirmation delays in lower federal court confirmations skyrockets in the presence of divided control of the presidency and the Senate. However, divided partisan control of the presidency and the Senate has been found to be conditioned upon the levels of party unity in the Senate, especially with respect to the minority party (Basinger and Mak 2010). Current research suggests that party unity has increased since the 1970s and has precipitated a rise of polarization in Congress, especially in the Senate (Roberts and Smith 2003; McCarty, Poole, and Rosenthal 2016). The rise of polarized political parties in the Senate would therefore initiate the rise of contentious confirmation procedures for

lower federal court nominees. As an opportunity for position-taking to advertise to their constituencies, senators will vote to represent their constituents', both co-partisans' and the state median voters', preferences. Even if the president attempts to appoint judicial nominees favorable to the Senate, party leaders in the Senate can vehemently oppose the president's lower court nominees as symbols of their opposition to the president's agenda. Additionally, blocking or delaying the nominees' confirmation functions as a bargaining chip for a unified minority party to extract concessions from the president and the majority party. Divided government only worsens this situation, allowing the Senate minority party to comfortably oppose the president's nominees without facing detrimental consequences due to the inherent position-taking nature of confirmation votes.

As a result, increased party polarization in the Senate and the incentive for position-taking should diminish the level of bipartisan support for nominees. As polarized senators articulate their positions to their ideological bases, these very same ideological base voters demand that their senators refuse to compromise with the opposing party, no matter if the opposing party controls the presidency and thus, the nomination power. Even though there is extensive evidence demonstrating the eventual successful confirmation of most nominees, the actual vote results suggest a lack of cross-party support in lower federal court confirmations (Hartley and Holmes 2002; Epstein and Segal 2006; Hendershot 2010). Therefore, I hypothesize that the greater ideological distance existing between the president and the Senate, the less likely that cross-party support for a president's lower federal court nominees will exist.

DATA AND VARIABLES

To determine the levels of cross-party support for lower federal court nominees, data was drawn from an extended version of Dr. Wendy Martinek's Lower Federal Court Confirmation Database constructed by Drs. Susan Navarro Smelcer, Amy Steigerwalt, and Richard Vining (Smelcer, Steigerwalt, and Vining 2014; Smelcer, Steigerwalt, and Vining 2012; Martinek, Kemper, and Winkle 2002).⁵ This dataset includes all successful and unsuccessful district court nominations from 1977 to 2010 and all successful and unsuccessful U.S. Court of Appeals nominations from 1977 to 2008. To test my theory, I analyzed only U.S. Court of Appeals nominations from 1977 to 2008. U.S. Courts of Appeals are often the courts of last resort for many significant cases which hold broad implications for American policymaking. Since the U.S. Supreme Court only hears a relatively few number of cases per year, circuit courts of the U.S. Courts of Appeals often set policy for their given circuits (Martinek, Kemper, Van Winkle 2002). Because of their significance in American judicial decision-making on highly salient and significant cases, U.S. Courts of Appeals nominees may receive heightened scrutiny from the Senate, as senators engage in more partisan behavior to ensure their policy preferences are enacted in various circuit courts. As a result, there should be more instances of partisan voting behavior in circuit court nominations than in district court nominations.

Additionally, upon a cursory examination of federal district court nominations, it appears that most district court judges are confirmed en masse with little to no deliberation. Although district court nominations are more numerous than circuit court nominations, including district

⁵ I especially would like to thank Dr. Richard Vining for providing access to an updated version of the Lower Federal Courts Confirmation Database constructed since its original publication.

court nominations reveal little about senators' voting behavior on lower federal court confirmations since the majority of nominees in the dataset are confirmed via voice vote or unanimous consent. However, I plan to update this study with federal district court nominees from the Lower Federal Courts Confirmation Database from 1977 to 2010 and perhaps even to the present day in the interest of generalizability. Limiting the dataset to simply circuit court nominees still allows for the testing of all of the variables in the Lower Federal Court Confirmation Database. Most of the variables in this shortened dataset were derived from the Lower Federal Court Confirmation Database. Some variables such as the levels of cross-party support for a given nominee, the explanatory variable, and the ideological differences between the Senate and the president were uniquely constructed for this paper, the key independent variable of interest.

As the dependent variable in this analysis, levels of cross-party support for a given nominee during their confirmation vote will be operationalized as the percentage of votes a nominee receives from senators of the president's opposition party out of the total votes received, otherwise known as crossover voting. This variable was hand-coded using the recorded roll call votes on lower federal court nominees located on the U.S. Senate's website and the Library of Congress' website for nominations since 1980.⁶ For nominations from 1977 to 1980, the 95th and 96th Congresses, this variable was hand-coded using recorded in the U.S. Congressional Record and U.S. Congressional Daily Record.⁷ Generally, in the prevailing

⁶ "Legislative Search Results." Library of Congress, Accessed April 20, 2019, <https://www.congress.gov/search?q=%7B%22source%22%3A%22nominations%22%7D>; "Roll Call Votes." United States Senate, accessed April 20, 2019, <https://www.congress.gov/search?q=%7B%22source%22%3A%22nominations%22%7D>.

⁷ *Congressional Record* 123-125 (1977-1979). (Text from: *Congressional Record Permanent Digital Collection*); Accessed: February 8, 2020.

political science literature, crossover voting refers to an individual-level behavior where voters in a primary or an election cast ballots in favor of a party with which they are not traditionally affiliated (Bullock 1984; Weekin 1986). Since senators' votes are an individual-level behavior, I will refer to the votes a nominee receives from senators of the president's opposing party as crossover votes. Crossover votes should be an appropriate and valid measure of cross-party support since votes on nominees have been generally considered acts of position-taking, a key activity senators must pursue to ensure a high probability for re-election (Mayhew 1974; Segal, Cameron, and Cover 1992).

As the key independent variable of interest in this study, ideological distance between the president and the Senate is operationalized as the difference between the sitting president's ideology score and the median senator's ideology score for a given Congress. Following the prevailing measurement method in the literature, ideology scores will be taken from Poole and Rosenthal's first dimension DW-NOMINATE scores.⁸ Employing the data provided by the Congressional Roll Call Votes Database, I calculated the median first dimension ideology score of the U.S. Senate for the 96th through 110th Congresses. This score was then subtracted from the ideology score of the president in office during each individual Congress. Ideology scores can be positive or negative, indicating the conservative or liberal ideology respectively of each senator and president. These scores can be found in Appendix C.

Generally, studies of judicial confirmations include a confounding variable addressing nominee's political affiliations, especially since many lower federal court nominees identify with a particular political party (Nixon and Goss 2001; Martinek, Kemper, Winkle 2002; Smelcer,

⁸ Lewis, Jeffrey B., Keith Poole, Howard Rosenthal, Adam Boche, Aaron Rudkin, and Luke Sonnet (2018). Voteview: Congressional Roll-Call Votes Database. <https://voteview.com/>

Steigerwalt, Vining 2012; Smelcer, Steigerwalt, Vining 2014). Additionally, preliminary evidence suggests that a nominee's ideological preferences are a factor in both senators' and the general public's views on a given nominee and can even significantly delay a nominee's confirmation process (Binder and Maltzman 2002; Hoekstra and LaRowe 2013; Cameron, Kastellec, and Park 2013). The prevailing research thus indicates that a confounding variable for judicial ideology should be included. However, nominees tend to vote in accordance with the political affiliation of the appointing president and often, measures of judicial ideology are functions of presidential ideology, if not simply the president's ideology (Poole, Rosenthal, Boche, Rudkin, Sonnet 2018; Giles, Hettinger, and Peppers 2001). Since the main independent variable of interest, ideological distance between the president and the Senate, is a function of presidential ideology as determined by DW-NOMINATE scores, a variable for judicial ideology would be highly correlated to the main independent variable of interest, and precipitate issues of multicollinearity. Two highly correlated ideology-related variables would weaken a robust data set and may bias the data against my null hypothesis. For these reasons, I have chosen not to include a variable for judicial ideology and instead, utilize the main independent variable of interest as a proxy for judicial ideology.

Another equally important ideology-related confounder in this study is divided government. Political scientists dispute whether divided government affects the likelihood of confirming a judicial nominee as one study found that divided government has no significant effect on Supreme Court nominations (Shipan and Shannon 2003). However, most of the prevailing literature on judicial confirmations disagrees, demonstrating that divided government significantly diminishes a nominee's likelihood of confirmation (Binder and Maltzman 2002; Basinger and Mak 2010). If opposing parties control the Senate and the presidency, ideological

conflict exists. According to my hypothesis, this increased ideological conflict between the Senate and the president would lead to a decline in crossover voting. Thus, omitting a measure of divided government would overestimate the effect ideological distance between the president and the Senate would have on the prevalence of crossover voting on lower federal court confirmations. Derived from the Lower Federal Court Confirmation Database, divided government is a dichotomous variable coded as 1 for divided government and 0 for unified government.

A unique and complicated issue in the judicial nominations literature is the operationalization of voice votes, an oral group vote for which the U.S. Senate only records the outcome. From a cursory glance at lower federal court confirmations, most confirmation votes are voice votes. Within the judicial nominations literature, these votes are coded as unanimous votes in favor or against a nominee (Cameron, Kastellec, and Park 2013; Epstein et al. 2006). To conform with the prevailing practice in the literature, I coded each voice vote as a unanimous decision. The percentage of votes from members of the president's opposing party to confirm a nominee is simply the percentage of seats the opposing party holds in the Senate. However, omitting a control variable for voice votes would overestimate the prevalence of crossover voting for lower federal court judicial nominees and would suggest that ideological distance between the president and the median senator is irrelevant. To avoid overestimating the prevalence of crossover voting in lower federal court nominations, I construct a dichotomous variable for whether the confirmation vote was a voice vote or not (1 for a voice vote, 0 for a roll-call vote).

Interestingly, out of all of the confounding factors in federal judicial nominations, the effect a nominee's gender and ethnic/racial identity has on the eventual confirmation outcome remains inconclusive. It would not be too difficult or strange to imagine that a nominee's gender

or racial identity could significantly impact a nominee's confirmation. However, multiple observational studies have demonstrated that both the gender and racial/ethnic background of a nominee has no significant effect on confirmation outcomes or confirmation duration (Martinek, Kemper, and Winkle 2002; Hartley 2001). Other observational studies dispute these results, emphatically stating that race and gender do matter in the lower federal courts confirmation process as a female and/or a minority nominee will experience delays in their confirmation processes (Nixon and Goss 2001; Bell 2002). One study found that minority nominees to the district court face longer confirmation processes (Martinek, Kemper, and Winkle 2002). To address the inconsistency of the research surrounding nominees' gender and racial/ethnic background, Lisa Solowiej, Wendy Martinek, and Thomas Brunell (2005) interacted racial/ethnic background and gender with the political parties in control of the Senate and the presidency. From these results, they concluded that female nominees generally have faster processing times under Republican unified control than Democratic unified control and divided government. Thus, these results indicate that the effects of a nominee's gender and racial/ethnic background are conditioned by divided government and the political party controlling the Senate and the presidency (Solowiej, Martinek, and Brunell 2005). In light of the prevailing disagreement over the effects of nominees' gender and racial/ethnic background, I include four dichotomous variables, two interacting gender with political affiliation (Female Republican and Female Democrat) and another two dichotomous variables interacting minority status with political affiliation (Minority Republican and Minority Democrat). Both of these variables were coded from Smelcer, Steigerwalt, and Vining's database on ABA ratings. Through these four dichotomous variables, I hope to be able to determine the veracity of Solowiej, Martinek, and Brunell's assertions.

As a canonical confounder in the judicial nominations literature, nominees' American Bar Association (ABA) scores are included as a variable in this analysis. Considered to be quantified measures of a judicial nominee's qualifications, ABA scores are assigned to each federal judicial nominee by the American Bar Association's Standing Committee on the Federal Judiciary, ranging from not qualified to extremely well qualified (Lyles 1997, 49-50). Within the judicial nominations literature, ample evidence exists that ABA scores have a significant effect on a confirmation's duration and outcome. Higher ABA scores generally translate into shorter confirmation durations and a higher likelihood of confirmation (Nixon and Goss 2001; Martinek, Kemper, and Winkle 2002; Solowiej, Martinek and Brunell 2005; Shipan 2008; Basinger and Mak 2010; Hoekstra and LaRowe 2013). Some political scientists have hypothesized that an interaction between qualifications operationalized between ABA scores and ideology might be more appropriate to include in an analysis, but including this interaction term has proven to have no effect on the studies' results (Shipan 2008). Thus, I include an ABA scores variable from Smelcer, Steigerwalt, and Vining's altered version of the Lower Federal Court Confirmation Database to control for a nominee's qualifications. ABA scores are recorded as either not qualified (coded as 1), qualified (coded as 2), or well qualified (coded as 3) in the Lower Federal Court Confirmation Database. Any split ABA ratings votes were simply coded based on the majority of votes in favor of a specific rating.

Due to the overwhelming literature on confirmation duration, I also include a control variable for the number of days from nomination to final Senate action on a nominee. Confirmation delays can arise as a result of ideological differences between the president and the Senate (Binder and Maltzman 2002; Shipan 2008; Hendershot 2010). These confirmation delays allow senators to form coalitions in favor or against a president's nominee and allow the

opposition party, especially with minority party status, to gather political resources to successfully oppose a president's nominee. Therefore, omitting a variable measuring confirmation duration would underestimate the effect ideological distance between the president and the Senate would have on the prevalence of crossover voting in lower court judicial nominations. As such, I utilized a variable operationalized as the number of days from nomination to final Senate action as recorded in the Lower Federal Confirmation Database.

An additional time-related variable included in this analysis is the year of a given president's term. Research has shown that in the later years of a presidential term, presidents are less likely to have their lower federal court nominees confirmed. Presidents in the later years of a given term, especially second term presidents, are especially vulnerable to heightened ideological conflict since senators must take more positions to ensure their re-election chances and presidents must either be re-elected or help their party's nominee get elected to the presidency (Martinek, Kemper, and Winkle 2002). As a result, this heightened ideological conflict caused by election related constraints at the end of each term might precipitate a decline in crossover voting for lower federal court nominees. To control for the effect of a presidential term, I included an ordinal variable from the Lower Federal Court Confirmation Database with values ranging from one to four inclusive, indicating whether a given nominee was nominated in the first, second, third, or fourth year of a president's term.

Generally, studies involving the presidency have included a number of control variables representing each president within the study (Hager and Sullivan 1994; Ragsdale and Theis 1997). As each study involving the presidency has argued, individual presidents may have a unique impact on the causal relationship or mechanism studied. However, the main independent variable of interest in this study assesses president's interactions with the Senate through

ideology. Differences among individual presidents' ability to negotiate with the Senate and individual idiosyncrasies presidents may have in their governing styles are negligent in lower court nominations since circuit court nominations are usually low saliency affairs and rarely involve the president personally and directly advocating for a circuit court nominee (Hartley and Holmes 2002; Epstein and Segal 2005). However, to assuage concerns that the exclusion of a variable controlling for president-level effects might severely impact the results, I have included a final control variable for president-level effects.

Generally, studies involving the presidency have included a number of control variables representing each president within the study (Hager and Sullivan 1994; Ragsdale and Theis 1997). As each study involving the presidency has argued, individual presidents may have a unique impact on the causal mechanism studied. Correspondingly, individual presidents and their administrations may have a unique impact on the progress of lower federal court confirmations. To remain consistent with the presidency literature, I uniquely include an ordinal-level variable capturing individual president's effects on confirmation politics (Carter administration=1, Reagan administration=2, George H.W. Bush administration=3 and so forth). Typically, president-level effects are measured through a series of dichotomous variables for each president. However, research has consistently demonstrated that both the presidency and the Senate have become steadily more partisan over the last several decades (Roberts and Smith 2003; Galvin 2013; McCarty, Poole, and Rosenthal 2016). With this increasingly partisan behavior from both the president and senators with each presidential administration, less crossover voting should occur with each subsequent presidency as senators vote pursuant to their partisan allegiance. Because each subsequent president and Congress has become more partisan,

it is appropriate to assign ordinal, chronological values to each presidential administration to control for each nominee's appointing president.

All of these confounders and the key independent variable, ideological difference between the Senate and the president, will be regressed against the dependent variable, crossover voting. Since the dependent variable, crossover voting, is measured as a percentage, with values within the interval of 0 to 1, typically a beta regression would be appropriate to analyze this relationship. However, an ordinary-least squares regression, a much simpler and more accessible regression technique, can describe this relationship just as well as a beta regression. Therefore, to augment this relationship's accessibility and simplify interpretation, I primarily analyze the relationship between the ideological differences between the president and the Senate and the level of crossover voting through a simple ordinary-least squares regression. In the interests of transparency and scholarship, I have also conducted a beta regression analysis of ideological difference between the president and the Senate and the level of crossover voting in judicial confirmations accompanied by a brief explanation of beta regression techniques, both of which can be found in Appendix B (pages 41-48).

RESULTS

Results from the linear regression are reported in Table 1 and the coefficient plot in Figure 1 (see pages 37 and 38 respectively). Additionally, I have also reproduced results from a linear regression and a coefficient plot, which exclude voice votes (see pages 39 and 40 respectively). No matter the inclusion or exclusion of voice votes, the overall results do not confirm my hypothesis. Increased ideological difference between the president and the Senate does not diminish crossover voting. The reported results in Table 1 and Figure 1 indicate that only five control variables are significant: voice votes, judicial ideology, confirmation duration, ABA Score, and divided government. Surprisingly, partisan affiliation, ABA scores, the presence of a strong president, and presidential approval are insignificant, all of which are consistent with previous research in the judicial confirmation literature.

A negative insignificant relationship exists between ideological distance between the president and median senator and crossover votes for lower federal court nominees. While the relationship between ideological difference and crossover voting is in the expected negative direction, the insignificance of this relationship fails to find support for my theory, implying that senators do not necessarily vote for circuit court nominees in a partisan manner, regardless of ideological tension between the president and the Senate. As hypothesized by some political scientists, senators may feel emboldened to engage in crossover voting due to the low saliency of lower federal court nominations. Circuit court nominations' relatively low visibility in the public sphere allows senators to vote their true preferences on nominees, unconstrained by their home state's voting populace's preferences (Hartley and Holmes 2002; Epstein and Segal 2005).

Alternately, senators may vote for circuit court nominees not based on an ideological regime, but instead centered solely on circuit court nominees' qualifications such as legal education, prior experience on the bench, and legal writing skills. Both of these theories are adequate explanations for the lack of significant partisan behavior in circuit court nominations.

However, the recent elimination of the filibuster for lower federal court nominees, the "nuclear option," may provide an alternate explanation for the presence and/or absence of partisan behavior in lower federal court nominations. Filibusters allow minority coalitions of senators and even individual senators to block legislation and the confirmation of federal court nominees. To break a filibuster, 60 members of the Senate must vote in favor of cloture, which ends debate and moves the floor to a final vote. Before the elimination of the filibuster on federal court nominees, presidents may have had to account for the filibuster "pivot," the 60th vote in favor of cloture, especially if the president nominated a particularly contentious nominee (Krehbiel 1998). Without a 60 vote majority to block filibusters, presidents may have had to nominate more ideologically moderate nominees than they would have preferred.

However, in 2013, Senate Majority Leader Harry Reid (D-NV) invoked the nuclear option through a successful vote to amend the Senate rules to confirm lower federal court judges via a simple majority vote, effectively eliminating any concern for the filibuster "pivot."⁹ Preliminary research has found that the invocation of the nuclear option allows the Senate to confirm federal judicial nominees more often and more quickly, allowing presidents to fill the federal judiciary with their ideological allies (Boyd, Lynch, and Madonna 2015). Because of the more efficient procedure underlying federal judicial confirmations and the elimination of the filibuster pivot, confirmation votes may become more partisan (Krehbiel 1998). So long as a

⁹ Everett, Burgess and Seung Min Kim. "Senate goes for 'nuclear option.'" *Politico*, 21 November 2013. <https://www.politico.com/story/2013/11/harry-reid-nuclear-option-100199>

simple majority exists and the president's party controls the Senate, the majority party and the president could confirm more partisan nominees. As this study only analyzed circuit court nominees confirmed from 1977 to 2008, ending five years before the invocation of the "nuclear option," further research should be conducted extending the dataset to the present day and adding a control variable for the elimination of the filibuster pivot. A future version of this study should analyze voting behavior on lower federal court confirmations before and after the "nuclear option" so as to determine if the filibuster's elimination leads to significantly lower levels of crossover voting with heightened ideological conflict, which would partially confirm my theory. Thus, confirmation hearings could be considered partisan affairs, but only in the absence of a filibuster, an institutional construction which forces coordination between the president and the Senate to coordinate prior to confirmation hearings to augment crossover voting.

However surprisingly insignificant the results from the key independent variable are, the relationships between ABA scores and crossover voting and between voice votes and crossover voting are unsurprisingly positive and highly significant at the 0.01 level. As many previous studies have systematically proven, senators place special importance on ABA scores as measures of a nominee's qualifications and thus, a higher ABA score translates into higher levels of bipartisan support for a given nominee (Nixon and Goss 2001; Martinek, Kemper, and Winkle 2002; Basinger and Mak 2010; Smelcer, Steigerwalt, Vining 2012). Similarly, since voice votes are coded as unanimous votes in this study, a voice vote on a given nominee should lead to an increase in crossover voting. Thus, due to the operationalization of voice votes as unanimous votes, voice votes predictably and unsurprisingly increase crossover voting. However, even when voice votes are excluded, the overall results from the linear regression analysis do not change, challenging the basic necessity of including voice votes within this study. However, should this

data be extended to the present day, voice votes should still be preliminarily included as a confounder and then, perhaps even limit the scope of the study to solely unanimous consent and roll call votes.

Also unsurprisingly, confirmation duration has a highly significant and negative relationship with the ideological difference between the president and the median senator. This result is consistent with previous studies on delays in judicial confirmations, which have generally concluded that longer confirmation delays diminish the likelihood of a given nominee's confirmation (Binder and Maltzman 2002; Hartley and Holmes 2002; Martinek, Kemper, and Winkle 2002; Basinger and Mak 2010). A drawn-out confirmation allows senators and opposition parties to build stronger coalitions against the president and gather additional votes against a nominee. Stronger coalitions lead to a decline in crossover voting and allow minority parties to successfully oppose lower federal court nominees. Thus, confirmation delays lead to a decline in crossover voting and bipartisan support for lower federal court nominees.

Similarly unsurprising is the positive significant relationship between divided government and crossover voting, meaning that nominees considered during periods of divided government will receive more votes from senators of the party opposing the president. Knowing that the Senate under divided government will directly oppose the president's policy preferences, the president recognizes that he/she must nominate individuals with ideological preferences that are amenable to both the president and the Senate. With more ideologically proximate nominees under divided government, opposing party senators will vote more often for the president's nominees. However, emboldened by a legislative majority in the Senate, the president will nominate more ideologically proximate individuals to the circuit courts during periods of unified government as the president recognizes that he/she does not need as many opposing party

senators to confirm his/her nominees. By virtue of the partisan composition of the Senate, crossover voting in circuit court confirmations is more prevalent in periods of divided government than under unified party control.

Like the divided government confounder, the insignificance of the gender and minority confounders appear to confirm the long-held notion that the gender and racial/ethnic identity of a given judicial nominee does not impact their likelihood of being confirmed or the amount of bipartisan support a nominee engenders. Even when interacted with political ideology as suggested by Solowiej, Martinek and Brunell (2005), gender and racial/ethnic identity is not a significant factor influencing senators' voting behavior on circuit court nominees. Because senators represent a wide constituency, discriminating against a nominee for their gender and/or racial/ethnic background would incur charges of racism and sexism, an accusatory death knell that would certainly end a senator's re-election campaign, regardless of the nominee's partisan identification. Even if a nominee has very similar ideological preferences or extremely ideologically distant preferences, senators do not factor race and gender into their voting behavior to avoid the appearance of favoring a nominee due to their race and/or gender. To maintain a high probability of re-election, senators must avoid even the mere perception of being sexist and racist even in less salient issues such as lower federal court nominations. Thus, race and gender should not affect prevalence of crossover voting because crossover voting simply occurs due to other more significant factors such as a higher ABA score.

Also surprisingly insignificant was the year of a presidential term. Although originally hypothesized that nominees considered during the later years of a presidential term would receive less bipartisan support due to presidential election-related constraints, this study demonstrates that the year in a presidential term in which a nominee is considered does not

impact levels of cross-party support. This insignificance might simply arise due to the lack of a control variable for whether the nominee was considered during a president's first or second term. Different electoral and policy-related pressures exist at the culmination of both the first and second terms. While presidents at the end of their first terms usually face stalled policy initiatives due to re-election efforts, presidents at the end of their second terms may face stalled policy initiatives as the president becomes a "lame duck" and Congress prepares the election of a new president. A future replication of this study should address this issue by either including an additional variable controlling for the presidential term or perhaps operationalize the year of a presidential term differently.

The appointing president of a circuit court nominee was also insignificant. While many studies have called for the use of fixed effects for individual presidents to control for presidents' diverse managerial styles and other idiosyncrasies, it is not difficult to understand why the appointing president does not impact a nominee's chances of confirmation. Generally, individual presidents' actual behavior, other than their ideological preferences, have little impact on a lower federal court nominee's chances of confirmation as presidents must nominate individuals to the federal courts to adjudicate the ever-increasing number of legal disputes in the American courts system. Even if a president nominates an individual the Senate considers unacceptable, the Senate must eventually confirm a nominee who is somewhat ideologically proximate to the president to the federal courts. However, president-level effects may have an impact on more recent confirmations during the Trump administration as it appears that some senators specifically tie their opposition to a federal courts nominee to their opposition to the Trump

administration.¹⁰ However, despite some senators' more presidency-centered approach to the Trump administration's nominees, it is unlikely that past and future presidents' "leadership styles" will be able to have an outsized influence on lower federal court confirmations due to the imperative necessity to confirm federal judges.

Despite only examining circuit court nominees and the insignificance of the key independent variable of interest, this study provides ample material for future studies on lower federal court confirmations. With the improved operationalization of certain key variables and the inclusion of data since the invocation of the "nuclear option" in 2013, perhaps my theory on the decline of cross-party support for lower court nominees will be confirmed. However, with only the results of this study, it is clear that circuit court nominees from 1977 to 2008 did not experience a decline in crossover voting even in the presence or absence of heightened ideological conflict, implying that ideological considerations in circuit court nominations, and perhaps all lower federal court nominations, are insignificant.

¹⁰ Egelko, Bob. "Kamala Harris says she'll vote against all of President Trump's judge picks." *San Francisco Chronicle*, 4 February 2019. <https://www.sfchronicle.com/news/article/Kamala-Harris-says-she-ll-vote-against-all-of-13588919.php>

CONCLUSION

While this study initially determined to prove that heightened ideological conflict between the president and the Senate led to less cross-party support for lower court nominees, this study demonstrates that there is no significant relationship between ideological differences between the Senate and the president and crossover voting in circuit court nominations, implying that lower federal court confirmations are not partisan theater, but perhaps are based more on ethics, qualifications, and temperament. Alternately, due to lower federal court nominations' low saliency, senators may feel more free to vote their true preferences instead of conforming to their party's preferences.

However, as explained earlier in this study, the lack of a significant relationship between ideological differences between the president and the Senate might be due to the presence of the filibuster, an institutional structure that constrains the president's ability to nominate ideologically proximate nominees to the U.S. Courts of Appeals. The threat of a filibuster on a circuit court nomination motivates the president to select nominees that can overcome the 60-vote threshold necessary to invoke a vote of cloture to end the filibuster. Thus, the presence of a filibuster encourages the president to nominate individuals who can gather higher levels of bipartisan support, increasing crossover voting behavior. Conversely, centering behavior around the filibuster, the removal of the filibuster for lower federal court nominees implies that presidents will be more prone to nominate co-partisans who will be less amenable to opposing party senators, diminishing bipartisan support for a given nominee. However, the president can afford to lose bipartisan support for lower court nominees because only a simple majority is

necessary to confirm. Essentially, greater ideological dissonance between the president and the Senate could lead to a decline in crossover voting, but only with the elimination of the filibuster, a partial confirmation of my initial hypothesis.

Fortunately, the Senate's removal of the filibuster for lower federal court nominees in 2013 provides a natural experiment to test this explanation for the lack of significant data in this study. A future improved version of this study should not only include federal district court nominees and extend the dataset to the present day, especially data on all lower federal court nominees since 2013, but also should include appropriate variables to address the absence of the filibuster in lower federal court nominations after 2013. Specifically, a future study should include two variables accounting for the presence or absence of a filibuster: a dichotomous variable for the presence or absence of the filibuster and an interaction variable between this new dichotomous variable and the key independent variable in this study, ideological differences between the president and the Senate. Through these two variables, perhaps my original hypothesis can be partially or even fully confirmed and demonstrate that since 2013, a new ideological regime for voting on lower federal court confirmations has arisen, independent of external political factors such as the election of President Donald Trump.

Additionally, new confounders should be included as a robust check of this study's results. In addition to an extended dataset from 2008 to the present day and the inclusion of district court judges, a variable measuring the ideological distance between nominees and the median senator should be included in further studies and perhaps, be interacted with the president's ideological score to demonstrate the president's impact on judicial selection. Although nominee ideology was not included in this study, as I sought to demonstrate the impact of presidential ideology on lower federal court nominations, ideological distance between a

nominee and the median senator has been demonstrated to have a significant effect on nomination outcomes (Cameron, Kastellec, and Park 2013). Omitting this important variable may overestimate the importance of presidential ideology in cueing senatorial opposition. Therefore, any continuation of this study should endeavor to include a variable or series of variables measuring the ideological distance between a nominee and the median senator.

With the results from an improved version of this paper that may confirm my hypothesis, further research should endeavor to comprehend the effects of changing partisanship in lower federal court confirmations on judicial decision-making. Lower federal court judges may become emboldened to enact their policy preferences due to the presence of partisan allies across the courts and be more prone to engage in partisan conflicts. However, the increased partisanship of lower federal court confirmation processes may also deter district and circuit court judges from engaging in salient partisan disputes so as to enhance their chances for promotion to a higher court. Further research should strive to determine if judges have adjusted their decision-making to reflect a potentially more partisan confirmation process, a massive undertaking that would entail multiple comprehensive datasets and further analysis of lower court decisions.

Additionally, this confirmation research should be applied to other executive appointments requiring Senate confirmation including cabinet secretaries and independent executive agencies' leadership. The prevalence or lack of crossover voting in other confirmation battles can be utilized to determine if parties, the president, and the Senate value these appointments enough to protect their partisan interests. Should these confirmations be proven to be as equally partisan as lower federal court confirmations, the Senate's partisanship has increased across all confirmations and further demonstrates that all Senate business, no matter how routine, is partisan politics. Should all politics become partisan politics, then bipartisan

government will become an ideal of a forgone era, a tantalizing dream of epic proportions, and instead, be replaced by a resurrected party system based upon strict ideological purity.

REFERENCES

Barrett, Ted. "Republican senator effectively sinks nomination of controversial judicial pick Thomas Farr." *Cable News Network* (Atlanta), November 30, 2018. Accessed April 20, 2019. <https://www.cnn.com/2018/11/29/politics/tim-scott-thomas-farr-nomination/index.html>.

Basinger, Scott and Maxwell Mak. 2010. "The Changing Politics of Federal Judicial Nominations, Congress and the Presidency." *Congress and the Presidency* 37(2): 157-175.

Bauman, Anna. "Senate confirms Patrick Wyrick to federal district court." *NonDoc Media*. April 10, 2019. Accessed April 20, 2019. <https://nondoc.com/2019/04/10/senate-confirms-patrick-wyrick-to-oklahoma-federal-district-court/>

Bell, Lauren C. 2002. "Senatorial Discourtesy: The Senate's Use of Delay to Shape the Federal Judiciary." *Political Research Quarterly* 55(3): 589-607.

Binder, Sarah A. and Forrest Maltzman. "Senatorial Delay in Confirming Federal Judges, 1947-1998." *American Journal of Political Science* 46(1): 190-199.

Boyd, Christina A., Michael S. Lynch, and Anthony J. Madonna. 2015. "Nuclear Fallout: Investigating the Effect of Senate Procedural Reform on Judicial Nominations." *The Forum* 13(4): 623-641.

Bullock III, Charles S. 1984. "Racial Crossover Voting and the Election of Black Officials." *The Journal of Politics* 46(1): 238-251.

Cameron, Charles M., Jonathan P. Kastellec, and Jee-Kwang Park. 2013. "Voting for Justices: Change and Continuity in Confirmation Voting, 1937-2010." *Journal of Politics* 75(2): 283-299.

Congressional Record 123-125 (1977-1979). (Text from: *Congressional Record Permanent Digital Collection*); Accessed: February 8, 2020.

Cribari-Neto, Francisco and Achim Zeileis. 2010. "Beta Regression in R." *Journal of Statistical Software*, 34, 1-24.

Demirjian, Karoun. "White House withdraws judicial nominees Ryan Bounds, after GOP realizes he didn't have votes for confirmation." *The Washington Post* (Washington, D.C.), July 19, 2018. Accessed April 20, 2019. https://www.washingtonpost.com/powerpost/senate-gop-withdraws-judicial-nominee-ryan-bounds-delivering-a-blow-to-trumps-court-plans/2018/07/19/0d81ff50-8b83-11e8-8aea-86e88ae760d8_story.html?noredirect=on&utm_term=.d375c786128f.

- Egelko, Bob. "Kamala Harris says she'll vote against all of President Trump's judge picks." *San Francisco Chronicle*, 4 February 2019. <https://www.sfchronicle.com/news/article/Kamala-Harris-says-she-ll-vote-against-all-of-13588919.php>
- Epstein, Lee, and Jeffrey A. Segal. *Advice and Consent: The Politics of Judicial Appointments*. Oxford: Oxford University Press, 2005.
- Epstein, Lee, Rene Lindstadt, Jeffrey A. Segal and Chad Westerland. 2006. "The Changing Dynamics of Senate Voting on Supreme Court Nominees." *Journal of Politics* 68(2): 296–307.
- Everett, Burgess and Seung Min Kim. "Senate goes for 'nuclear option.'" *Politico*, 21 November 2013. <https://www.politico.com/story/2013/11/harry-reid-nuclear-option-100199>
- Ferrari, Silvia L.P. and Francisco Cribari-Neto 2004. "Beta Regression for Modelling Rates and Proportions." *Journal of Applied Statistics*, 31(7), 799–815.
- Galvin, Daniel J. 2013. "Presidential Partisanship Reconsidered: Eisenhower, Nixon, Ford, and the Rise of Polarized Politics." *Political Research Quarterly* 66(1): 46-60.
- Giles, Michael W., Virginia A. Hettinger, and Todd Peppers. 2001. "Picking Federal Judges: A Note on Policy and Partisan Selection Agendas." *Political Research Quarterly* 54(3): 623-641.
- Gonyea, Don. "The Longest Government Shutdown in History, No Longer—How 1995 Changed Everything." *NPR*, 12 January 2019. <https://www.npr.org/2019/01/12/683304824/the-longest-government-shutdown-in-history-no-longer-how-1995-changed-everything>
- Hager, Gregory and Terry Sullivan. 1994. "President-Centered and Presidency-Centered Explanations of Presidential Public Activity." *American Journal of Political Science* 38(4): 1079-1103.
- Hartley, Roger E. 2001. "A Look at Race, Gender, and Experience." *Judicature* 84(4): 191-197.
- Hartley, Roger E. and Lisa M. Holmes. 1997. "Increasing Senate Scrutiny of Lower Federal Court Nominees." *Judicature* 80(6): 274-278.
- Hendershot, Marcus E. 2010. "From Consent to Advice and Consent: Cyclical Constraints within the District Court Appointment Process." *Political Research Quarterly* 63(2): 328-342.
- Hoekstra, Valerie and Nicholas LaRowe. 2013. "Judging Nominees: An Experimental Test of the Impact of Qualifications and Divisiveness on Public Support for Nominees to the Federal Courts." *Justice System Journal* 34(1): 38-61.
- Kastellec, Jonathan P., Jeffrey R. Lax, Michael Malecki, and Justin H. Phillips. 2015. "Polarizing the Electoral Connection: Partisan Representation in Supreme Court Confirmation Politics."

Journal of Politics 77(2): 787-804.

Krehbiel, Keith. *Pivotal Politics: A Theory of U.S. Lawmaking*. Chicago: University of Chicago Press, 1998.

Legislative Search Results.” Library of Congress, Accessed April 20, 2019, <https://www.congress.gov/search?q=%7B%22source%22%3A%22nominations%22%7D>.

Lewis, Jeffrey B., Keith Poole, Howard Rosenthal, Adam Boche, Aaron Rudkin, and Luke Sonnet (2018). Voteview: Congressional Roll-Call Votes Database. <https://voteview.com/>

Lyles, Kevin L. *The Gatekeepers: Federal District Courts in the Political Process*. Westport, CT: Praeger, 1998.

Martinek, Wendy L. *The Lower Federal Court Confirmation Database*.

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. *Congress: The Electoral Connection*. New Haven, CT: Yale University Press, 1974

McCarty, Nolan M., Keith T. Poole, and Howard Rosenthal. *Polarized America: The Dance of Ideology and Unequal Riches*. Cambridge, MA: MIT Press, 2016.

Moraski, Bryon J. and Charles R. Shipan. 1999. “The Politics of Supreme Court Nominations: A Theory of Institutional Constraints and Choices.” *American Journal of Political Science* 43(4): 1069-1095.

Nixon, David C. and David L. Goss. 2001. “Confirmation Delay for Vacancies on the Circuit Court of Appeals.” *American Politics Research* 29(3): 246-274.

Odendahl, Marilyn. “Brady becomes second woman judge to join Northern Indiana District Court.” *The Indiana Lawyer*, April 11, 2019. Accessed April 20, 2019. <https://www.theindianalawyer.com/articles/49958-brady-becomes-second-woman-judge-to-join-northern-indiana-district-court>

Ornstein, Norman J., Thomas E. Mann, and Michael J. Malbin. *Vital Statistics on Congress 2008*. Brookings Institution Press, 2009.

Ragsdale, Lyn and John Theis. 1997. “The Institutionalization of the American Presidency, 1924-92.” *American Journal of Political Science* 41(4): 1280-1318.

Richardson, Richard J., and Kenneth Nelson Vines. *The Politics of Federal Courts: Lower Courts in the United States*. Boston: Little, Brown, 1970.

Rivers, Douglas and Nancy Rose. 1985. "Passing the President's Program: Public Opinion and Presidential Influence in Congress." *American Journal of Political Science* 29(2): 183-196.

Roberts, Jason M. and Steven S. Smith. 2003. "Procedural Contexts, Party Strategy, and Conditional Party Voting in the U.S. House of Representatives, 1971-2000." *American Journal of Political Science* 47(2): 305-317.

"Roll Call Votes." United States Senate, accessed April 20, 2019, <https://www.congress.gov/search?q=%7B%22source%22%3A%22nominations%22%7D>.

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.

Shipan, Charles R. 2008. "Partisanship, Ideology, and Senate Voting on Supreme Court Nominees." *Journal of Empirical Legal Studies* 5(1): 55-76.

Smelcer, Susan Navarro, Amy Steigerwalt, and Richard Vining, Jr. 2012. "Bias and the Bar: Evaluating the ABA Ratings of Federal Judicial Nominees." *Political Research Quarterly* 65(4): 827-840.

Smelcer, Susan Navarro, Amy Steigerwalt, and Richard Vining, Jr. 2014. "Where One Sits Affects Where Others Stand: Bias, the Bar, and Nominees to Federal District Courts." *Judicature* 98(1): 35-45.

Smithson, Michael and Jay Verkuilen. 2006. "A Better Lemon Squeezer? Maximum-Likelihood Regression With Beta-Distributed Dependent Variables." *Psychological Methods* 11(1): 54-71.

Solowiej, Lisa A., Wendy L. Martinek, and Thomas L. Brunell. 2005. "Partisan Politics: The Impact of Party in the Confirmation of Minority and Female Federal Court Nominees." *Party Politics* 11(5): 557-577.

Theriault, Sean M. and David W. Rohde. 2011. "The Gingrich Senators and Party Polarization in the U.S. Senate." *Journal of Politics* 73(4): 1011-1024.

"The Unforgettable 107th Congress." United States Senate, Accessed November 23, 2019, https://www.senate.gov/artandhistory/history/minute/unforgettable_107th_congress.htm.

Ward, Michael D. and John S. Alquist. *Maximum Likelihood for Social Science: Strategies for Analysis*. New York: Cambridge University Press, 2018.

Wekkin, Gary D. 1988. "The Conceptualization and Measurement of Crossover Voting." *Western Political Quarterly* 41(1): 105-114.

APPENDIX A-LINEAR REGRESSION

Table 1: Ideological Distance's Effect on Cross-Party Votes in Judicial Nominations, Linear Regression

	<i>Dependent variable:</i>
	Crossover Voting
Ideological Difference	0.086 (0.075)
Divided Government	0.127*** (0.017)
Voice Vote	0.082*** (0.018)
ABA Scores	0.023** (0.011)
Year of Presidential Term	0.007 (0.008)
Minority Republican	-0.023 (0.032)
Minority Democrat	0.011 (0.029)
Female Republican	0.017 (0.022)
Female Democrat	-0.021 (0.026)
Confirmation Duration	-0.0001*** (0.00003)
Appointing President	-0.005 (0.006)
Constant	0.276*** (0.064)
Observations	204
R ²	0.417
Adjusted R ²	0.384
Residual Std. Error	0.098 (df = 192)
F Statistic	12.485*** (df = 11; 192)
<i>Note:</i>	*p<0.1; **p<0.05; ***p<0.01

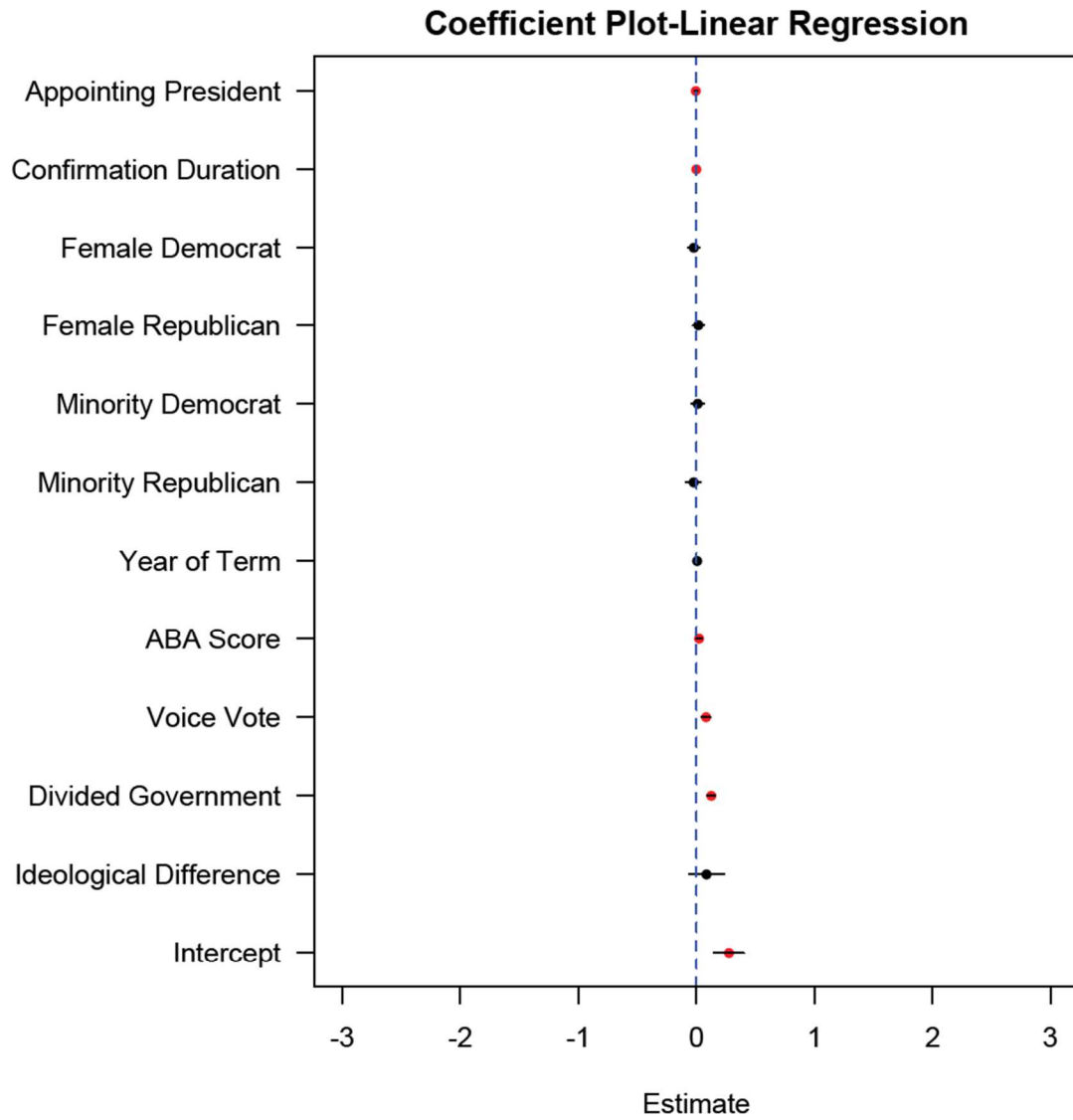


Figure 1: Coefficient plot for the linear regression showing the impact of ideological distance between the Senate and the president and levels of bipartisan support for a nominee with confidence intervals for all variables. Significant variables have their coefficients colored red.

Table 3: Ideological Distance's Effect on Cross-Party Votes in Judicial Nominations, Linear Regression without the Voice Votes

	<i>Dependent variable:</i>
	Crossover Voting
Ideological Difference	0.075 (0.178)
Divided Government	0.151*** (0.032)
ABA Score	0.045** (0.019)
Year of Presidential Term	0.016 (0.014)
Minority Republican	-0.008 (0.048)
Minority Democrat	0.055 (0.070)
Female Republican	0.016 (0.034)
Female Democrat	-0.047 (0.067)
Confirmation Duration	-0.0001*** (0.00005)
Appointing President	-0.007 (0.010)
Constant	0.192 (0.132)
Observations	110
R ²	0.409
Adjusted R ²	0.349
Residual Std. Error	0.130 (df = 99)
F Statistic	6.838*** (df = 10; 99)
<i>Note:</i>	*p<0.1; **p<0.05; ***p<0.01

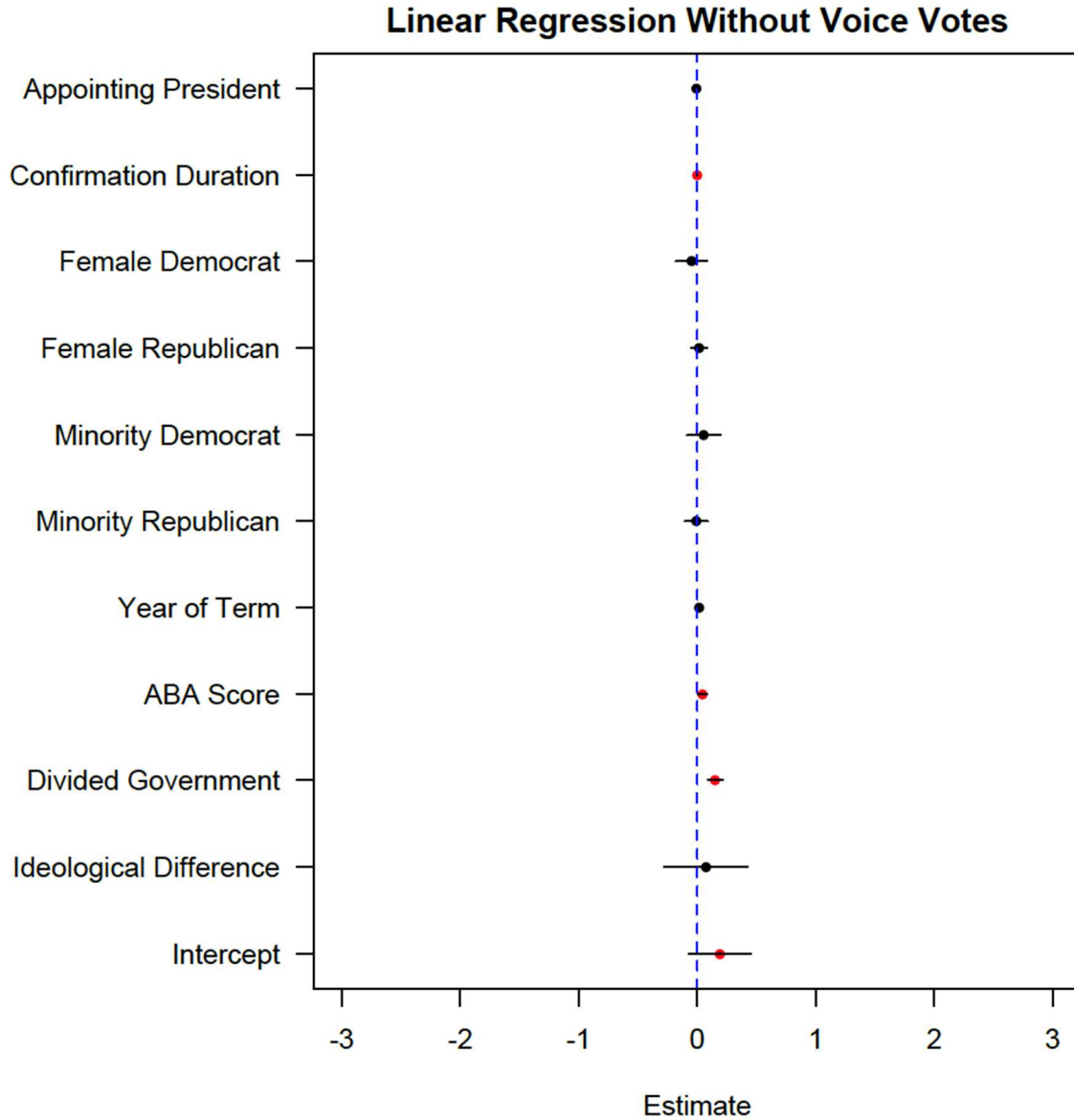


Figure 3: Coefficient plot for the linear regression, without voice votes, showing the impact of ideological distance between the Senate and the president and levels of bipartisan support for a nominee with confidence intervals for all variables. Significant variables have their coefficients colored red.

APPENDIX B-BETA REGRESSION INFORMATION

While a linear regression works well for my purposes, generally beta regressions are more appropriate to model proportions as a dependent variable. Beta regressions are especially useful to model proportions, and by extension percentages, allowing researchers to model dispersion explicitly and naturally with a dependent variable measured continuously on the standard unit interval, i.e. $y \in (0, 1)$ (Smithson and Verkuilen, 2006). For the purposes of transparency and general curiosity, I have reproduced a brief explanation of the beta regression along with an explanation of the results from the beta regression analyzing the relationship between ideological difference between the president and the Senate and crossover voting.

As introduced by Ferrari and Cribari-Neto (2004), beta regressions assume that the dependent variable follows a beta distribution with a density given by

$$\pi(y; p, q) = \frac{\Gamma(p+q)}{\Gamma(p)\Gamma(q)} y^{p-1} (1-y)^{q-1},$$

where p and q are two parameters that index the distribution, $p > 0$, $q > 0$, y is the dependent variable of interest, and $\Gamma(\cdot)$ is the gamma function, which is a convergent improper integral given by the following equation,

$$\Gamma(z) = \int_0^{\infty} x^{z-1} e^{-x} dx, \Re(z) > 0$$

where x is any independent variable value. This density function for the beta distribution allows beta regressions to be highly flexible, since the beta density displays different shapes depending on the values indexing the distribution. The mean and the variance of y , the dependent variable of interest, in a beta distribution are given by the following equations:

$$E(y) = \frac{p}{(p+q)}$$

and

$$\text{Var}(y) = \frac{pq}{(p+q)^2(p+q+1)}$$

The beta regression model is defined with both the mean of the response defined as $\mu = p/(p+q)$ and a precision parameter, $\phi = p + q$. Additionally, the two parameters of the beta distribution are assumed to be functions of both the mean of the response and the precision parameter i.e. $p = \phi\mu$ and $q = (1-\mu)\phi$. Substituting μ and ϕ for the values of p and q makes the mean and variance of y , respectively,

$$E(y) = \mu$$

and

$$\text{var}(y) = \frac{\mu(1-\mu)}{1+\phi}$$

where $V(\mu) = \mu(1-\mu)$, so that μ is the mean of the response variable and ϕ is a precision parameter that has a negative relationship with the variance of y at fixed values of μ . With these new values, the density of y , under a beta distribution in the new parameterization, is written as

$$f(y; \mu, \phi) = \frac{\Gamma(\phi)}{\Gamma(\mu\phi)\Gamma((1-\mu)\phi)} y^{\mu\phi-1} (1-y)^{(1-\mu)\phi-1}, 0 < y < 1$$

where $0 < \mu < 1$ and $\phi > 0$ (Ferrari and Cribari-Neto 2004).

Since my dependent variable, crossover voting, which is operationalized as a percentage, follows this density of the beta distribution, I utilize the beta regression model defined as

$$g(\mu_i) = x_i^T \beta = \eta_i,$$

where $\beta = (\beta_1, \dots, \beta_k)^T$ is a $k \times 1$ vector of unknown regression parameters, the main coefficients for each of the independent variables in the model, $x_i = (x_{i1}, \dots, x_{ik})^T$ is the vector

of k independent variables and η_i is a linear predictor. $g(\cdot): (0,1)$ is a strictly increasing and twice differentiable link function (Cribari-Neto and Zeileis 2010). I have chosen to use a logit link function to model the data, the default function utilized by most beta regressions.

While the estimation of the beta regression is daunting and quite tedious, running a beta regression model functions similarly to any other regression model and simply requires careful examination of each of the variables included in the regression. Results from the beta regression between ideological difference between the president and the Senate and crossover voting along with each of the confounding variables previously discussed in the main body of the paper are reported in Table 2 and in a coefficient plot in Figure 2. Additionally, results from a beta regression excluding voice votes are reported in Table 4 and Figure 4. Compared to a generalized linear model utilizing the same variables, the beta regression was a better fit overall for the model as it had a lower Akaike information criterion (AIC) than the generalized linear model. However, strangely, compared to a beta-regressed model with just the control variables, it appears that the model estimated does not fit as well as a model estimated with just control variables.¹¹

However, despite these issues relating to model fit, the results from the beta regression largely concur with the results from the OLS regressions in Appendix A. Again, the relationship

¹¹ Akaike information criterion (AIC) measures the relative quality of a statistical model for a given set of data utilizing out of sample prediction. The AIC for a given model requires comparison with another linear model to determine whether a given model is a good fit for a dataset (Ward and Alquist 2018). The AIC for the beta regression was 385.3678 which was lower than the generalized linear model's AIC of 450.119. The lower AIC indicates that the beta regression was appropriate to model this data. Interestingly, the beta regression with the voice votes omitted completely, which eliminates a variable and a parameter, has the lowest AIC of 361.093, even when compared with a similar generalized linear model, which had an AIC of 426.8401. These results from AIC calculations suggest that estimating a beta regression that omits all voice votes, and thus omits the need for a confounder for voice votes, is the most appropriate method to model the data.

between the ideological distance between the president and the Senate and crossover voting is insignificant. All of the results on the confounders in the beta regression are consistent with the results for the confounders in the OLS regression. The consistency of the results for both the beta and OLS regressions show the robust nature of the results obtained in this study, demonstrating that from 1977 to 2008 ideological dissonance between the Senate and the president did not significantly impact cross-party support for nominees. Therefore, crossover voting and cross-party support are not necessarily dead for now, at least for lower federal court nominations.

Table 2: Ideological Distance's Effect on Cross-Party Votes in Judicial Nominations, Beta Regression

	<i>Dependent variable:</i>
	Crossover Voting
Ideological Difference	0.464 (0.321)
Divided Government	0.590*** (0.072)
Voice Vote	0.350*** (0.077)
ABA Scores	0.149*** (0.046)
Year of Presidential Term	0.018 (0.034)
Minority Republican	-0.072 (0.142)
Minority Democrat	0.111 (0.122)
Female Republican	0.008 (0.096)
Female Democrat	-0.107 (0.111)
Confirmation Duration	-0.001*** (0.0002)
Appointing President	-0.021 (0.026)
Constant	-1.096*** (0.273)
Observations	202
R ²	0.415
Log Likelihood	179.492
<i>Note:</i>	*p<0.1; **p<0.05; ***p<0.01

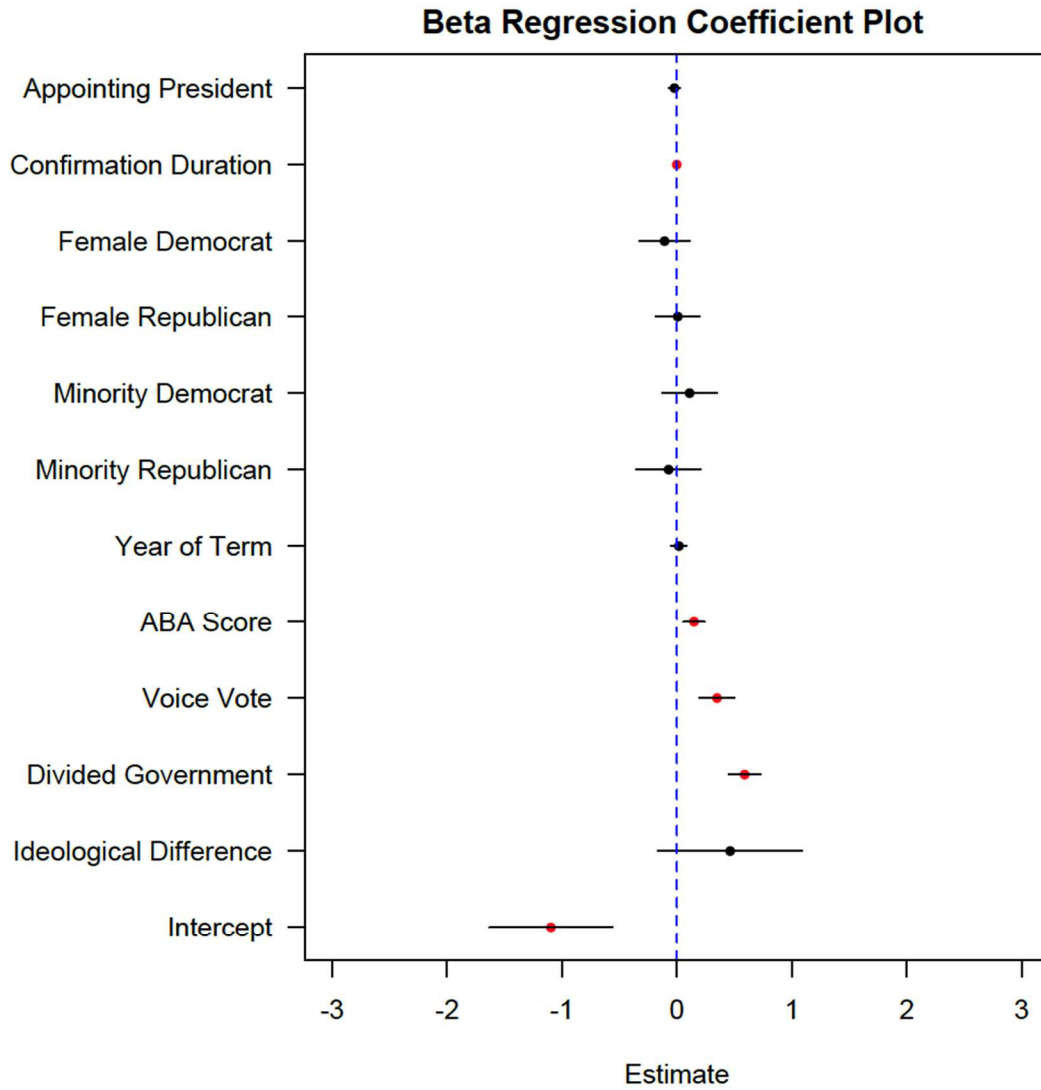


Figure 2: Coefficient plot for the beta regression showing the impact of ideological distance between the Senate and the president and levels of bipartisan support for a nominee with confidence intervals for all variables. Significant variables have their coefficients colored red.

Table 4: Ideological Distance's Effect on Cross-Party Votes in Judicial Nominations, Beta Regression Without Voice Votes

	<i>Dependent variable:</i>
	Crossover Voting
Ideological Difference	0.191 (0.329)
Divided Government	0.548*** (0.074)
ABA Scores	0.166*** (0.048)
Year of Presidential Term	0.007 (0.035)
Minority Republican	-0.059 (0.148)
Minority Democrat	0.127 (0.127)
Female Republican	0.003 (0.101)
Female Democrat	-0.124 (0.116)
Confirmation Duration	-0.001*** (0.0002)
Appointing President	0.036 (0.023)
Constant	-0.993*** (0.284)
Observations	202
R ²	0.367
Log Likelihood	169.547
<i>Note:</i>	*p<0.1; **p<0.05; ***p<0.01

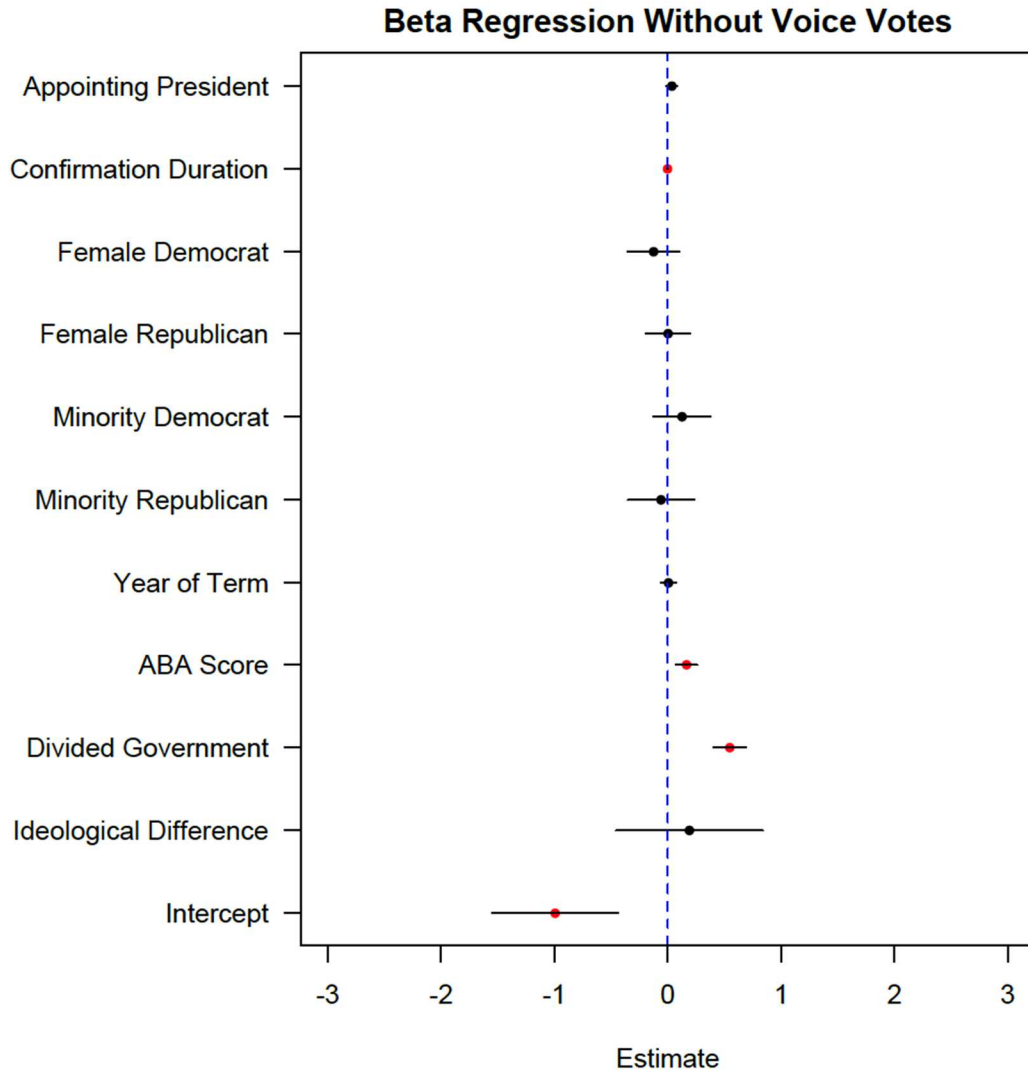


Figure 4: Coefficient plot for the beta regression, without voice votes, showing the impact of ideological distance between the Senate and the president and levels of bipartisan support for a nominee with confidence intervals for all variables. Significant variables have their coefficients colored red.

APPENDIX C- Ideological Difference Scores for the 95th to 110th Congresses

Formula for Determining Ideological Differences= $|\text{President's Ideology}-\text{Average Senator's Ideology}|$

Absolute value for the difference of the president's ideology minus the average senator's ideology—all from First Dimension DW-NOMINATE Scores

95th Congress (1977-1979)-Average senator: -0.100615385; POTUS (Carter): -0.504;
Ideological Difference: 0.403384615

96th Congress (1979-1981)-Average senator: -0.0696743; POTUS (Carter): -0.504;
Ideological difference: 0.4343257

97th Congress (1981-1983)-Average senator: 0.030435644; POTUS (Reagan): 0.692;
Ideological difference: 0.661564356

98th Congress (1983-1985)-Average senator: 0.029950495; POTUS (Reagan): 0.692;
Ideological difference: 0.662049505

99th Congress (1985-1987)-Average senator: 0.025574257; POTUS (Reagan): 0.692;
Ideological difference: 0.666425743

100th Congress (1987-1989)-Average senator: -0.017445545; POTUS (Reagan): 0.692;
Ideological difference: 0.709445545

101st Congress (1989-1991)-Average senator: -0.015607843; POTUS (HW Bush): 0.557;
Ideological difference: 0.57260783

102nd Congress (1991-1993)-Average senator: -0.032343137; POTUS (HW Bush): 0.557;
Ideological difference: 0.589343137

103rd Congress (1993-1995)-Average senator: -0.016686275; POTUS (Clinton): -0.438;
Ideological difference: 0.421313725

104th Congress (1995-1997)-Average senator: 0.046699029; POTUS (Clinton): -0.438;
Ideological difference: 0.391300971

105th Congress (1997-1999)-Average senator: 0.06532; POTUS (Clinton): -0.438;
Ideological difference: 0.37268

106th Congress (1999-2001)-Average senator: 0.066362745; POTUS (Clinton): -0.438;
Ideological difference: 0.371637255

107th Congress (2001-2003)-Average senator: 0.033594059; POTUS (George W. Bush): 0.693;
Ideological difference: 0.659405941

108th Congress (2003-2005)-Average senator: 0.0398; POTUS (George W. Bush): 0.693;
Ideological difference: 0.6532

109th Congress (2005-2007)-Average senator: 0.066188119; POTUS (George W. Bush): 0.693;
Ideological difference: 0.626811881

110th Congress (2007-2009)-Average senator: 0.046; POTUS (George W. Bush): 0.693;
Ideological difference: 0.647