



Someone like Me: Descriptive Representation and Support for Supreme Court Nominees

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Abstract

Extant research on public support for judicial nominees finds that ideological congruence with the nominee is the most important factor in an individual's decision to support a nominee. The research presented in this article develops the theory that for individuals from underrepresented groups, a shared descriptive identity with the nominee will moderate the negative effect of ideological distance. We test our theory using the nominations of Clarence Thomas, Elena Kagan, and Sonia Sotomayor. Furthermore, we conduct placebo tests to determine whether the effect of ideology is moderated for underrepresented groups when a shared descriptive identity is not present. We find that in the context of the Thomas nomination, a shared racial identity led to increased support for Thomas among liberal African Americans. We find similar effects in the case of Kagan and conservative women. In the case of Sotomayor, we find that a shared ethnic identity led to increased support among conservative Latinos, regardless of gender. We conclude by discussing the implications our findings have for descriptive representation and presidential selection of judicial nominees.

Keywords

descriptive representation, Supreme Court nominations, identity, public opinion

Among American political institutions, the Supreme Court is the most insulated from the public. Justices are nonelected, and the public has no recourse against justices who issue unpopular decisions. Although Americans lack a formal mechanism to hold justices accountable, that does not mean the public has no influence over the institution's composition. Research by Kastellec, Lax, and Phillips (2010) shows that public opinion toward Supreme Court nominees influences how senators vote during the confirmation process. Thus, while the public may have no direct say in who is appointed to the Court, public opinion nevertheless is influential in shaping the composition of the institution.

Because public opinion can influence the confirmation process, understanding how the public forms opinions about nominees has important implications for studies of judicial composition and decision making. Previous studies have found that ideological congruence is the best predictor of individual support for nominees. While attention to ideology is critical for understanding public opinion toward nominees, previous studies are notable for their lack of attention to the role that descriptive characteristics may play in shaping public opinion. As the court diversifies, understanding how these descriptive characteristics shape public opinion is increasingly consequential.

Drawing on representation and social identity literature, we argue that in the absence of ideological congruence, a shared descriptive identity will predict whether individuals are likely to support nominees. We argue that members of underrepresented groups are more willing to support nominees with whom they disagree when the nominee is a member of the same underrepresented group. We test this theory using the nominations of Clarence Thomas, Elena Kagan, and Sonia Sotomayor. In the context of Thomas and Sotomayor, we find that a shared racial or ethnic identity moderates the negative effects of ideological incongruence, while gender moderates negative effects in the case of Kagan.

Our findings demonstrate the need to more broadly incorporate descriptive identities into analyses of public opinion toward judicial nominees and executive appointments. Increasingly, scholars are turning attention to the study of when and how underrepresented groups achieve

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representation through executive appointments, and recent research suggests these appointments can provide symbolic benefits to citizens (Liu and Banaszak 2017). As highly visible presidential appointments, Supreme Court nominees have the potential to confer symbolic benefits to Americans from the time of their nominations through their tenures on the bench. Understanding public opinion toward diverse nominees, and the groups that are likely to support these nominees, thus has important implications for studies of judicial politics and the broader literatures on executive appointments and representation.

Ideology and Public Support for Nominees

Public opinion toward Supreme Court nominees plays an important role in determining which nominees make it onto the Court. Kastellec, Lax, and Phillips (2010) find that state-level opinion toward nominees influences senators' decision to vote in support or against a nominee. When support is high, senators are more likely to vote to confirm the nominee than when support is low. In a follow-up study, Kastellec et al. (2015) find that senators give greater weight to the attitudes of co-partisans when voting on Supreme Court nominees than the opinions of constituents from the opposing party. Given the importance of public opinion during the confirmation process, it is critical to understand the dynamics that affect whether members of the public support nominees.

Extant research has established that a few factors are central to an individual's choice to support nominees. One of the earliest studies on public support for Supreme Court nominees conducted by Gimpel and Wolpert (1996) found that ideological congruence was the strongest predictor of support. Simply put, liberals support liberal nominees and oppose conservative nominees while conservatives support conservative nominees and oppose liberal nominees. Research since Gimpel and Wolpert (1996) has confirmed the importance of ideology in supporting Supreme Court nominees. Analyzing the 2006 nomination of Justice Alito, Gibson and Caldeira (2009) found that the amount of perceived ideological distance from Alito predicted support among members of the public. Individuals who perceived themselves as ideologically aligned with Alito were more likely to support his confirmation than individuals who perceived themselves as ideologically distant from him.

Using an experimental design, Hoekstra and LaRowe (2013) suggest that the decision of whether to support judicial nominees is driven in large part by three considerations: ideological congruence with the nominee, a belief that the nominee is qualified, and whether the nomination process was portrayed as divisive. Using a conjoint experimental design, Sen (2016)

finds that political cues such as ideology and co-partisanship are the best explanations of public support for judicial nominees.

While the literature on judicial politics has explored a variety of factors related to public support for nominees, this literature consistently shows that ideological congruence is by far the strongest predictor of support for nominees. While ideology may be the best predictor of public support for nominees, presidents cannot simply rely on support from co-ideologues when making nominations, as it would be bad strategy. Madonna, Monogan, and Vining (2016) find that when presidents engage in contentious Supreme Court confirmation battles, they are more likely to experience delays and failures in future judicial vacancies and important policy proposals. Thus, presidents should attempt to achieve some degree of cross-ideological support for their Supreme Court nominees if they want their future nominees and proposals to be implemented. Furthermore, presidents whose party does not control the Senate will need to achieve some degree of cross-ideological cooperation to ensure the opposition party will even consider the nominee. The benefits of cross-ideological support in the nomination process make it particularly important to understand the conditions under which individuals who are ideologically distant from a nominee are nonetheless likely to support them. We predict that shared descriptive identities—such as race, ethnicity, and gender—will moderate the negative effect of ideological distance on an individual's decision to support or oppose judicial nominees.

Race, Ethnicity, Gender, and Group Politics

Mansbridge (1999) highlights two positive effects of increasing descriptive representation for women and racial or ethnic minorities. The first is that institutions are most legitimate when they mirror the characteristics of the populations they represent (Mansbridge 1999). Research on legitimacy and the judiciary supports this argument. Scherer and Curry (2010) find that when African Americans believe they are equally or overrepresented in the judiciary, they view the judiciary as more legitimate.

The second benefit of diverse institutions is that underrepresented groups feel more a part of the political process and that their voice is valued (Mansbridge 1999; Sapiro 1981). This increased presence should lead members of underrepresented groups to display higher levels of trust and efficacy when they see fellow group members included in political institutions. While some scholars have found evidence of descriptive representation providing symbolic benefits (Atkeson and Carrillo 2007; Barnes and Burchard 2012; Desposato and Norrander 2009), others have found no effect (Gay 2002; Lawless

2004; Overby et al. 2005). Recent research, however, suggests that presidential appointments may send stronger signals about representation and that gender diversity in executive appointments can help shape broader attitudes toward women in leadership positions (Liu and Banaszak 2017; Morgan and Buice 2013). Understanding the dynamics of who is nominated to executive appointments, thus, has broad implications for representation and institutional legitimacy.

In addition to potential symbolic benefits, diverse appointments may be uniquely positioned to gain public support. Literature on support for candidates indicates that members of racial and ethnic minorities are likely to support candidates who share their racial or ethnic identity (Barreto 2007; Philpot and Walton 2007). While the literature on women's support for women candidates is mixed, there is evidence that in some contexts, women are more likely to support women candidates. We extend the logic of these literatures to the context of Supreme Court nominees. Although nonelected, Supreme Court Justices are highly visible to the public, have considerable influence over public policy, and have the potential to be viewed as representatives (Peretti 2001). We expect that members of the public are likely to use similar considerations when evaluating potential justices as opposed to legislators because most members of the public have some sense of the policy importance of the Supreme Court. Furthermore, judicial nominees provide an additional context to test for group-affinity effects because characteristics such as a nominee's race, ethnicity, and gender are often emphasized during the nomination process.

Racial and Ethnic Identity

In the race and ethnicity politics literature, several studies have found that racial and ethnic identity plays an important role in individual preferences for candidates (Barreto 2007; Philpot and Walton 2007; Stokes-Brown 2006; Tate 1994). Studies exploring the role of racial identity in the context of African Americans have found that African American candidates can serve as a mobilizing force for African Americans (Bobo and Gilliam 1990), and that support for these candidates is higher among African Americans in the electorate (Dawson 1994; Philpot and Walton 2007; Tate 1994).

Scholars have argued that this propensity to support descriptively similar candidates among African Americans is the result of race being a politically salient group identity (Conover 1984; Huddy 2013; Philpot and Walton 2007). Social psychologists have long been interested in the effects that identities such as race, ethnicity, and gender play in shaping social interactions, and how these identities shape individual behavior. Although not explicitly political identities, race, ethnicity, and gender can become politicized in

certain contexts and lead to cohesion among group members, though the scope of this cohesion varies depending on the group and context (Huddy 2013). One consequence of this cohesion is that group members may be motivated to support in-group candidates, who are seen as able to advance the group's interests.

An important caveat is that group members must identify or feel some sense of attachment to their respective groups for these identities to meaningfully influence political attitudes and behaviors (Conover 1984). The importance of group identification is readily apparent in research that suggests support for descriptively similar candidates is highest among those who most strongly identify with their racial group (Dawson 1994; Tate 1994). While much of this research has focused on candidates for elected office, we should expect to find similar effects in the context of Supreme Court nominees. Nomination hearings are high-profile political events, and the identities of justices are often salient factors during the process. This presents a context in which we would expect social identities to be politicized and lead individuals to support descriptively similar nominees.

While early studies on racial identity and candidate support explored African American support for African American candidates, increasingly, the literature has explored the role of ethnic identity among Latinos, finding similar effects (Barreto 2007; Bejarano 2013). In one of the first studies to address this question in the context of Latinos, Barreto (2007) analyzes the effect of Latino candidates on Latino turnout. Barreto finds that in cities in which a Latino mayoral candidate is present, Latino turnout rates are significantly higher. Barreto further finds that among Latinos who turned out, support for the co-ethnic candidate was high. These results were not bound by party, further suggesting strong support for a co-ethnic candidate because of a shared ethnicity.

This research suggests that race and ethnicity can play an important role in vote choice. We expect similar effects will be present when analyzing support for Supreme Court nominees. On this count, however, we note an important difference between Supreme Court nominees and political candidates. In the context of candidates, voters are asked to choose between competing options, whereas the decision to support a nominee is a decision on one individual. In this context, we expect that politically salient cues, such as shared partisanship and ideology, will be the most relevant predictors of individual support. Simply put, a shared ideology serves as a cue for individuals that they should support a nominee. When politically salient cues are lacking, individuals must rely on other cues to support the nominee. We argue that social identities such as race and ethnicity are especially powerful in this context. That is, these identities will be particularly useful in predicting crossover support for nominees.

There is some evidence in the literature to support this argument. Brians (2005) finds evidence that Republican women are willing to cross over and support Democratic women candidates. Among Democrats, the probability of supporting a Democratic woman was roughly equivalent. Zipp and Plutzer (1985) find evidence that gender serves as a salient cue to women Independent voters. In a follow-up study, Plutzer and Zipp (1996) find evidence that candidate gender influences vote choice among Independents, as well as evidence of crossover support for Democratic women candidates among female Republican voters. These pieces suggest that social identity cues may be especially salient to individuals who lack the cue of shared partisanship or ideology. We apply a similar reasoning to our hypotheses, suggesting that social identity cues are most salient in the absence of a political cue, in this case a shared ideology. Thus, we posit Hypothesis 1.

Hypothesis 1: A shared racial or ethnic identity between respondent and nominee will moderate the negative effects of ideological distance.

Gender Identity

Like race and ethnicity, gender has been studied through the lens of identity politics and group-affinity effects (Dolan 2008; Goodyear-Grant and Croskill 2011; Plutzer and Zipp 1996; Sanbonmatsu 2002). The findings on the extent to which women differentially support women candidates are mixed. While some scholars have found no relationship between gender and support for descriptively similar candidates (D. C. King and Matland 2003; McDermott 1997), others have found evidence that in certain contexts, women support women to a higher degree than men (Brians 2005; Dolan 1998; Paolino 1995; Plutzer and Zipp 1996). In general, women are a less cohesive group than African Americans and other racial minorities, resulting in a less developed sense of shared identity (Conover 1988).

However, existing evidence does suggest that in some contexts, women are more likely to support women. Sanbonmatsu (2002), for example, finds that many voters have a “base-line gender” preference, suggesting that women have a preference for female representation. Other research finds evidence of women supporting women at higher rates than men and suggests that support for same sex candidates can cross partisan lines (Brians 2005; Fox 1997; Plutzer and Zipp 1996). In part, women’s support for women is driven by considerations related to “group-salient issues,” such as concerns about sexual harassment, women’s underrepresentation, and other issues women are viewed as being uniquely positioned to address (Paolino 1995). Indeed, gender gaps are

most pronounced in electoral contexts where these issues are salient (Dolan 2008; Paolino 1995). Herrnson, Lay, and Stokes (2003) find that women candidates are advantaged when they run “as women” and target women voters.

Gender-affinity effects have most prominently been studied in the context of the 1992 elections, colloquially referred to as the “Year of the Woman.” Duerst-Lahti and Versteegen (1995) characterize 1992 as a year in which record numbers of women were elected, in part, due to the support of female voters. Dolan (1998) similarly finds that in 1992, women were more likely to support women House candidates than their male counterparts (see also Burrell 1994; Cook 1994). The effects observed in 1992 are thought to be in part a function of the significant emphasis placed on gender and gendered issues that election cycle. Thus, the extent to which we would expect women to support women at different rates than men is more context specific than for racial and ethnic minorities.

As with racial and ethnic identities, we expect that there will similarly be a gender-affinity effect regarding Supreme Court nominees. We formalize this expectation in Hypothesis 2. As with Hypothesis 1, we predict that ideology will remain the most important factor in determining support for a nominee. When ideological congruence is lacking, however, we expect that a shared gender identity will lead to increased support for nominees.

Hypothesis 2: A shared gender identity between respondent and nominee will moderate the negative effects of ideological distance.

At the Intersection of Race, Ethnicity, and Gender

The above discussion has largely assumed that when members of underrepresented groups are nominated to the Court, these individuals are either racial minorities *or* women. Historically, this has been the case. With the exception of Sonia Sotomayor, all racial or ethnic minority members of the court have been men. Female nominees before and after Sotomayor have all been white.

Yet in the face of a diversifying court, it is becoming more likely that we will see more nominees who have multiple identities that are underrepresented. Because minority women simultaneously hold two identities, it is important to understand how these identities interact with one another and how this interaction influences public support for nominees who are women of color. Literature on minority women has increased in recent years; yet, research on group consciousness and in-group solidarity in the context of support for candidates and public officials remains sparse. Relatively few studies explore support for minority women in the context of candidate

support (see Philpot and Walton 2007 for a notable exception), and almost no research explores this in the context of judicial nominees.

Early research on minority women focused primarily on the study of black women (Gay and Tate 1998; Mansbridge and Tate 1992). These studies contended that race and gender were inextricably linked; an individual's racial experience informed their experience as a female and vice versa. Scholars of intersectionality argue that women of color face a "double-bind" (Cassese, Barnes, and Branton 2015; D. K. King 1988). Women of color often find themselves disadvantaged within their racial or ethnic groups on the basis of their gender, while facing disadvantage within their gender group on the basis of their racial or ethnic identity. This creates a political climate in which women of color are uniquely disadvantaged. This unique experience has led some scholars to argue that women of color have developed their own group consciousness rooted in the intersection of their race or ethnicity and gender (Philpot and Walton 2007).

If women of color have developed their own group consciousness, we expect that minority women will be especially likely to support a nominee who shares their race or ethnicity *and* gender. While the literature on co-ethnic and co-gender affinity effects is vast, comparatively less work has explored the role that the intersection of race or ethnicity and gender plays in support for candidates or public officials. A notable exception is the 2007 study conducted by Philpot and Walton. In their study, Philpot and Walton argue that black women have developed a group consciousness, and that this group consciousness makes them particularly likely to support candidates who are also black women. More recent work by Bejarano (2013) has begun to study this in the context of Latina candidates. If women of color have developed a unique social identity, we would expect them to exhibit an in-group bias toward other members of their group, that is, other women of color. Thus, in the context of minority female nominees, we expect that members of the public who share the nominee's race or ethnicity *and* gender will be the most likely to support them. As with our previous hypotheses, we expect that ideological congruence will remain the strongest predictor of support, but that a shared identity will moderate the negative effect of ideological distance.

Hypothesis 3: For female minority nominees, the negative effects of ideological distance will be moderated for respondents who share a racial or ethnic identity *and* gender identity with the nominee. This effect will be larger than the effects of a shared racial, ethnic, or gender identity alone.

While we expect that minority women will exhibit the highest levels of support for minority female nominees in

the absence of ideological congruence, we still expect that these nominees will be able to draw support from co-ethnic men and women who do not share their race or ethnicity. While women of color may have a distinct group consciousness, co-racial or ethnic men are still likely to feel an affinity toward these candidates based on their shared racial or ethnic identities. Evidence from Philpot and Walton (2007) supports this assertion. Here the authors find that black men were also predisposed to support black female candidates, although to a lesser degree than black women. Bejarano (2013) similarly argues that Latina candidates are also able to draw support from co-ethnic members of the public through a shared ethnic identity. Thus, we expect that when ideological congruence is lacking, minority men will be more likely than white men to support minority female nominees due to a shared racial or ethnic identity. Essentially, in this context we expect Hypothesis 1—which stated that a shared racial or ethnic identity will moderate the negative effects of ideological distance—to be true of minority men.

We similarly expect that in the absence of ideological congruence, minority female nominees will be able to garner support from women who do not share their racial or ethnic identity. Because minority women share a gender identity with women outside of their racial or ethnic group, we expect that women will support a minority female nominee to a greater extent than men when neither share the nominees' racial or ethnic identity.

In the context of a minority female nominee, we expect Hypothesis 2—which stated a shared gender identity will moderate the negative effects of ideological distance—to hold for women outside of the nominees' racial or ethnic group.

Data and Analysis

We test our hypotheses using the nominations of Clarence Thomas, Elena Kagan, and Sonia Sotomayor. Our theory states that descriptive identities such as race, ethnicity, and gender will moderate the negative effect of ideological distance when individuals are deciding whether to support nominees to the Supreme Court.¹ We use the Thomas nomination to test Hypothesis 1, which states that a shared racial identity will moderate the negative effect of ideological distance. Hypothesis 1 will find support if African American liberals are more likely to support the confirmation of Thomas than white liberals. We use the Kagan nomination to test Hypothesis 2, which posits that a shared gender identity will moderate the negative effect of ideological distance. Hypothesis 2 will find support if conservative women are more likely than conservative men to support Kagan's confirmation. The Sotomayor nomination provides a context in which we

can test all three of our hypotheses. Hypothesis 3 will find support if conservative Latinas are more likely to support Sotomayor than conservative Latino men, non-Latina women, and non-Latino men. Hypothesis 1 will find support in the context of Sotomayor if Latinos and Latinas who identify as conservative and very conservative are more likely to support Sotomayor's confirmation than conservative and very conservative white men and women. Hypothesis 2 will find support in the context of Sotomayor's confirmation if conservative and very conservative women are more likely to support Sotomayor than conservative and very conservative men. Again, we expect that ideological congruence will be the best predictor of support for a nominee. In the absence of this congruence, however, we argue that shared descriptive identity will provide a context in which individuals will be more likely to support a nominee.

Race and the Thomas Confirmation

In 1991, President George H. W. Bush nominated Clarence Thomas to fill a vacancy on the U.S. Supreme Court. Thomas would be the second African American nominated to the Supreme Court, and would be replacing the first African American to serve on the Court, Thurgood Marshall. After a prolonged confirmation hearing, Thomas was confirmed by the Senate by a 52-48 vote. Thomas's position as the second African American nominee and the fact that he was replacing the first African American to serve on the Court made his racial identity salient during his confirmation. Critics of President Bush suggested that he nominated Thomas simply because he was black. President Bush addressed such criticisms saying, "I don't feel he's a quota" and assured critics that he nominated Thomas not because he was an African American but because he was "the best man" for the job (Dowd 1991). Despite President Bush's assurance that he selected Thomas because he perceived him to be the most qualified for the job, Thomas's racial identity remained salient during the hearings and provided a racialized context in which the hearings were conducted (Thomas, McCoy, and McBride 1993).

The salience of Thomas's racial identity provides us a context to test Hypothesis 1, which states that a shared racial identity will moderate the negative effect of ideological distance. In this context, our theory will find support if African American liberals are more likely to support Thomas's confirmation than white liberals.

We test Hypothesis 1 using a 1991 Los Angeles Times survey, conducted between October 12 and 13, which evaluated public support for Thomas's nomination. While there were many opinion polls conducted on the Thomas nomination, we chose to use the Los Angeles Times survey because it oversampled African Americans. This gives us greater leverage to test for an effect of shared identity.

Table 1. Logistic Regression Models: Support for Thomas' Confirmation.

	(1) Base	(2) Full model
African American	1.882** (0.588)	1.974** (0.617)
Ideology (lib. to cons.)	0.351*** (0.094)	0.437*** (0.104)
African American × Ideology	-0.641* (0.252)	-0.697** (0.264)
Follows Hearings		0.372*** (0.088)
Education		-0.023 (0.078)
Age		-0.151** (0.051)
Partisanship (Dem. to Rep.)		-0.005 (0.062)
Female		-0.261 (0.146)
Constant	-0.805*** (0.223)	-1.328** (0.469)
Observations	1,263	1,252

Standard errors in parentheses.

* $p < .05$. ** $p < .01$. *** $p < .001$.

Our dependent variable is a binary indicator measuring whether or not respondents supported the confirmation of Thomas, which is scored 1 if respondents supported confirming Thomas and 0 if respondents opposed or had no opinion on his confirmation. Because the dependent variable is binary, we fit a logistic regression model. Our independent variables of interest are whether the respondent was an African American, their ideology, and the interaction between the two. Ideology is measured on a three-point scale, including responses for liberal, moderate, or conservative. Because race is not necessarily independent from other variables that might predict support for presidential nominees, we fit two separate models. The first is a base model which only includes race, ideology, and the interaction between the two. The second model includes controls for other predictors of support such as partisanship, education, and attention to the hearings. The results of these regressions are presented in Table 1.

The coefficient for the interaction between African American and ideology is significant in both models. This indicates that for African Americans, having a shared racial identity with Thomas moderated the negative effects of ideological distance, independent of policy preferences. Because the effect predicted in Hypothesis 1 is interactive, the African American, Ideology, and African American × Ideology terms must be interpreted

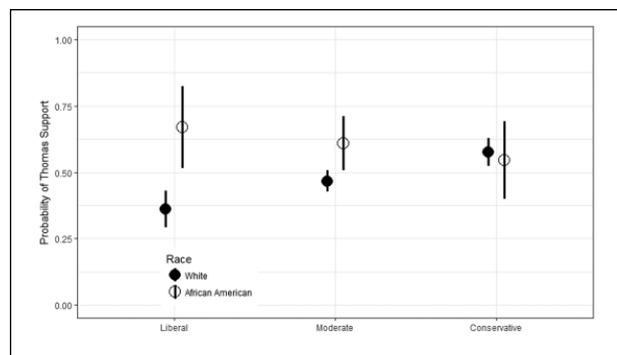


Figure 1. Predicted probability of supporting Thomas's confirmation by ideology and race. Displayed are point estimates and 95% confidence intervals derived from Table 1 Model 2.

in concert with one another. To facilitate the substantive interpretation of our results, we plot the predicted probabilities of supporting Thomas's nomination by respondent race and ideology. Predicted probabilities were calculated by holding all other variables to their mean or modal values and were generated using the estimates from Model 2 of Table 1. These results are presented in Figure 1. As Figure 1 illustrates, Hypothesis 1 is supported in the context of the Thomas nomination. Liberal African Americans were more likely to support Thomas than white liberals. Substantively, the probability of a liberal African American supporting Thomas's confirmation was .66 while the predicted probability for a white liberal was .36. We also observe differences in moderates' support for Thomas's confirmation. African American moderates have a predicted probability of .60 in supporting Thomas's confirmation while white moderates had a .46 predicted probability of supporting the nomination. We observe no difference in levels of support between African American conservatives and white conservatives, providing support for our hypothesis that a shared racial identity will moderate the effect of a conflicting political identity.

Gender and the Kagan Confirmation

In May of 2010, President Obama nominated Elena Kagan to the U.S. Supreme Court. The Senate confirmed Kagan by a 63-37 vote. Kagan was just the fifth woman to be nominated, and fourth confirmed, to the Court. Furthermore, Kagan's nomination and confirmation pushed the number of women on the Court to a record high of three. Discussions of Kagan's gender were salient during her confirmation hearings. In her opening remarks, Senator Dianne Feinstein praised Kagan's nomination and remarked that Kagan would be a wonderful role model for young women (Halloran 2010). Furthermore,

Kagan was asked numerous questions about gender discrimination (Collins and Ringhand 2013, 114). Given this gendered context, Kagan's confirmation offers an opportunity to test Hypothesis 2, which posits that the negative effect of ideological distance will be moderated for women evaluating a female nominee. Specifically, we expect that women who identify as very conservative and conservative will be more supportive of Kagan's nomination than men who identify as very conservative and conservative.

To test our hypothesis regarding the decision to support Kagan's confirmation, we use data from the 2010 Congressional Cooperative Election Survey (CCES), which was conducted in October and November.² The CCES is a nationally stratified matched sample that is implemented through a web-based interface.³ The 2010 CCES asked respondents a series of roll-call-style questions in which they were given the option of supporting or opposing certain issues before Congress. One of these roll-call questions asked whether respondents would support or oppose the nomination of Kagan to the Supreme Court. This serves as the dependent variable in our analysis. Respondents who supported the confirmation were scored as 1, and respondents who opposed or had no opinion were scored as 0.

To test Hypothesis 2, we fit three logistic regression models predicting support for Kagan's confirmation. We estimate three models because gender is not necessarily exogenous from partisanship or political preferences. Estimating three models allows us to determine whether any observed identity effect is due to a perception of shared preferences rather than group affinity. The first model is a base model that only includes respondent gender, ideology, and the interaction between the two. This model captures the effect of a shared identity without accounting for partisanship or policy preferences. The second model includes the variables from Model 1 and other demographic information and partisanship controls. The third model includes all the variables included in Model 2 and policy attitudes on abortion and approval of President Obama. This model captures whether there is an effect of shared identity independent of the preferences that are correlated with gender.⁴ By estimating separate models, we are able to determine whether any effects we observe are due to symbolic considerations or because respondents equate a shared gender with substantive policy congruence between themselves and the nominee. Ideology is measured using a five-point scale ranging from very liberal to very conservative with higher values indicating greater conservatism. Hypothesis 2 will find support if female respondents who identify as conservative and very conservative are more likely to support the confirmation of Kagan than male respondents who identify as conservative and very conservative. If a

Table 2. Logistic Regression Models: Support for Kagan’s Confirmation.

	(1) Base	(2) Without preferences	(3) With preferences
Ideology (lib. to cons.)	-1.967*** (0.024)	-1.838*** (0.024)	-0.770*** (0.048)
Female	-1.765*** (0.102)	-1.787*** (0.104)	-0.702*** (0.197)
Female × Ideology	0.585*** (0.029)	0.586*** (0.030)	0.237*** (0.056)
Partisanship (Dem. to Rep.)		-0.382*** (0.012)	-0.089*** (0.026)
Education		0.107*** (0.008)	0.107*** (0.015)
Age		0.009*** (0.001)	0.014*** (0.001)
African American		0.959*** (0.041)	-0.573*** (0.091)
Hispanic		0.091* (0.046)	-0.404*** (0.116)
Catholic		-0.207*** (0.033)	-0.024 (0.069)
Protestant		-0.408*** (0.029)	-0.152** (0.058)
Disapproval of Obama			-1.257*** (0.029)
Disapproval of Supreme Court			-0.217*** (0.028)
Pro-choice Attitudes			0.285*** (0.024)
Constant	6.370*** (0.0827)	6.002*** (0.104)	5.103*** (0.242)
Observations	50,745	50,745	46,539

Standard errors in parentheses.
*p < .05. **p < .01. ***p < .001.

desire for descriptive representation leads conservative women to be more supportive of the confirmation of Kagan than conservative men, the interaction between gender and ideology should be significant across all three models. If conservative women are more likely to support the confirmation of Kagan than conservative men due to a perceived policy alignment on salient issues, the interaction between gender and ideology should be statistically significant in the first model but should lose significance in the second and third models. The results of these three models are presented in Table 2.

Across all three models, significant coefficients for the interaction between female and ideology indicate that conservative women’s shared identity with Kagan moderates the negative effect of ideological distance, independent of policy preferences. To simplify the interpretation of our results, we plot the predicted probabilities of supporting Kagan’s nomination by gender and

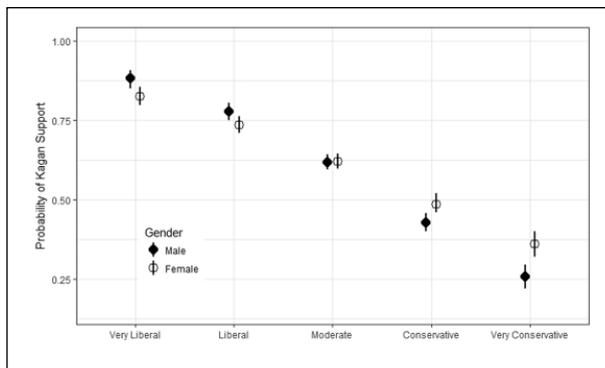


Figure 2. Predicted probability of supporting Kagan’s confirmation by ideology and gender. Displayed are point estimates and 95% confidence intervals derived from Table 2 Model 3.

ideology in Figure 2. Predicted probabilities were calculated by holding all other variables at their mean or modal values and were calculated using the estimates in Model 3 of Table 2. Substantively, conservative women are predicted to have a .06 higher probability of supporting Kagan’s confirmation than conservative men, and very conservative women are predicted to have a .10 higher probability of supporting Kagan’s confirmation than very conservative men. We observe no differences for those who identify as very liberal, liberal, or moderate, providing support for Hypothesis 2.

Ethnicity, Gender, and the Sotomayor Confirmation

In May of 2009, President Obama nominated Sonia Sotomayor to fill a vacancy on the U.S. Supreme Court. The Senate would go on to confirm Sotomayor by a 68-31 vote. Sotomayor’s nomination was historic because she was the first Latino to be confirmed to the Court. During the hearings, Sotomayor’s identity as a Latina drew much attention. Many senators questioned her about her remarks that a “wise Latina with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn’t lived that life” (McLaughlin and King 2009). Furthermore, Sotomayor’s nomination generated a great deal of attention in the public, especially among the Latino community. Manzano and Ura (2013) found that states with a higher percentage of Latinos had a greater number of Google searches for Sotomayor, and 82% of Latinos recognized her name.

These findings suggest that Sotomayor’s nomination was an important political event for many Americans and that Sotomayor’s identity as a Latina was particularly salient. This provides a compelling context to test Hypotheses 1, 2, and 3. In this portion of our analysis, we

apply Hypothesis 1 to Latino men and apply Hypothesis 2 to non-Latina women. Hypothesis 3 tests for group identity effects among Latinas as a result of shared ethnic and gender identity.

To test these hypotheses, we use data from the 2009 CCES, which was conducted in November and December. The 2009 CCES oversampled Latinos, which gives us greater leverage in testing our hypotheses in the context of Sotomayor's nomination. Like the 2010 CCES, the 2009 CCES asked respondents to answer a series of roll-call-style questions in which they were given the option of supporting or opposing issues that were before Congress; one of these questions asked respondents whether they would support or oppose the confirmation of Sotomayor. The response to this question serves as our dependent variable. Respondents who supported the confirmation were scored as 1 and respondents who opposed or had no opinion were scored as 0.

Similar to our analysis of public opinion and the Kagan confirmation, we are conscious of the idea that gender and ethnic identity are not necessarily exogenous from partisanship and policy preferences. As with our analysis of Kagan, we fit three separate logistic regression models. This allows us to test whether any observed identity effects are the result of shared identity or the perception of shared policy preferences. The first model is a base model that includes only gender, ethnicity, ideology, and the interactions between them. The second model accounts for other demographics and partisanship. The third model is a complete model that includes demographics, partisanship, and preferences on salient policy issues. If any observed effect is due to a shared ethnic identity, we should observe the effect across all three models. If any observed effect is due to policy alignment, the interaction between identity and ideology should be statistically significant in Model 1 but not Model 2 and Model 3. The results to these models are presented in Table 3.

To facilitate the interpretation of our results, we plot the predicted probability of supporting the confirmation of Sotomayor by the interaction between ideology, ethnicity, and gender in Figure 3. Predicted probabilities were calculated by holding all other variables to their mean or modal values and are estimated using the results from Table 3 Model 3. As Figure 3 demonstrates, in this context, we find support for just one of our hypotheses, Hypothesis 1. Latinos who identified as moderate, conservative, and very conservative were more likely to support the confirmation of Sotomayor than non-Latinos who identified as moderate, conservative, and very conservative. Substantively, Latinos who identified as moderate, conservative, and very conservative had a .08, .21, and .34 higher predicted probability of supporting the confirmation of Sotomayor than moderate,

Table 3. Logit Regression Model: Support for Sotomayor's Confirmation.

	(1) Base	(2) Without preferences	(3) With preferences
Hispanic	-1.693* (0.794)	-1.153 (0.73)	-1.185 (0.702)
Ideology (lib. to cons.)	-1.543*** (0.067)	-1.042*** (0.063)	-0.655*** (0.070)
Hispanic × Ideology	0.636** (0.227)	0.535* (0.214)	0.526* (0.208)
Female	-0.285 (0.280)	-0.672* (0.263)	-0.758** (0.274)
Female × Ideology	0.116 (0.081)	0.218** (0.076)	0.212** (0.078)
Hispanic × Female	0.577 (0.971)	1.121 (0.942)	1.330 (0.904)
Hispanic × Ideology × Female	-0.099 (0.283)	-0.287 (0.278)	-0.354 (0.263)
Partisanship (Dem. to Rep.)		-0.428*** (0.016)	-0.162*** (0.021)
Education		0.186*** (0.019)	0.169*** (0.022)
Age Group		0.005** (0.001)	0.012*** (0.002)
African American		0.864*** (0.131)	0.496*** (0.147)
Catholic		-0.116 (0.079)	-0.009 (0.089)
Protestant		-0.147* (0.068)	-0.048 (0.077)
Disapproval of Obama			-1.012*** (0.042)
Pro-choice Attitudes			0.202*** (0.034)
Increase border control funding			-0.810*** (0.106)
Constant	4.988*** (0.233)	4.154*** (0.243)	3.830*** (0.313)
Observations	12,173	11,848	11,642

Standard errors in parentheses.

* $p < .05$. ** $p < .01$. *** $p < .001$.

conservative, and very conservative non-Latinos. The moderating effect of a shared ethnic identity was not significantly different between Latinos and Latinas. Because there is not a unique effect found among Latinas, we fail to find support for Hypothesis 3. This result does, however, support Hypothesis 1, which stated that a shared ethnic identity moderates the negative effects of ideological distance. This is true across each model specification, indicating the result is due to a shared identity rather than shared policy preferences. Furthermore, we do not find evidence to support Hypothesis 2 in the context of Sotomayor. Conservative

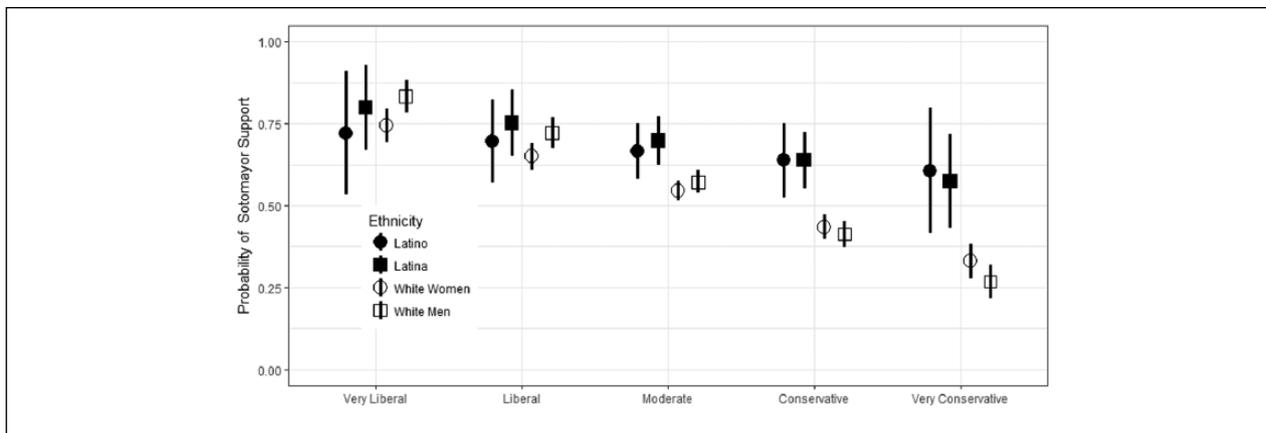


Figure 3. Predicted probability of supporting Sotomayor's confirmation by ideology and ethnicity and gender. Displayed are point estimates and 95% confidence intervals derived from Table 3 Model 3.

women who did not identify as Latina were no more likely to support Sotomayor than comparable men in our sample. Thus, in the context of Sotomayor, ethnicity seems to be the most salient descriptive identity.

Placebo Tests: Support for White Male Nominees

Our theory is that a shared descriptive identity will moderate the negative effect of ideological distance when individuals from underrepresented groups are making the decision to support nominees from the same underrepresented groups. We found support for this theory in each of the contexts in which we test for it. However, it may be the case that an unobserved confounder associated with these identities increases propensity to support nominees independent of a shared identity. For example, while men and women, Latinos and non-Latinos, African Americans and other races may all have an ideological identity, these identities may have different meaning within each group. If this were true, it could potentially invalidate our theory. Furthermore, it is possible that policy preferences that we are not able to control for cause the moderating effect we observe for these groups. To test whether something unobserved is causing our results, we conducted four placebo tests to determine whether gender and race moderate the effect of ideological distance in an individual's decision to support the confirmation of Stephen Breyer, John Roberts, Samuel Alito, and Merrick Garland.⁵ We selected these four nominees because they provide enough ideological diversity to test for moderating effects among both liberals and conservatives. In each of these four analyses, we find no evidence of a moderating effect, indicating that the moderating effect only occurs when a shared identity is present.

To estimate public support for the nominations of Stephen Breyer, John Roberts, Samuel Alito, and Merrick

Garland, we rely on a 1994 ABC News and *Washington Post* survey, a 2005 CBS News survey, 2005 Associated Press/IPSOS Public Affairs survey, and a 2016 Pew survey, respectively. Each of the surveys asked respondents whether they supported or opposed the confirmation of the nominee. All responses supporting the nominees were scored 1 and those opposing or offering no opinion were scored 0. These measures of support serve as our dependent variables. Because the dependent variables are binary, we fit four logistic regression models predicting support for the confirmation of Breyer, Roberts, Alito, and Garland. The results are presented in Table 4 and Figures 4 and 5.

Important for our theory is the lack of a significant effect for the interactions between female and ideology and African American and ideology variables, which are displayed in Figures 4 and 5. Based on this result, we do not find evidence of a moderating effect for women or African Americans when there is no shared gender or racial identity present. This further ensures that there is not an unobserved confounder that makes members of the groups analyzed here more supportive of nominees absent of a shared identity. The only contexts in which we find evidence of respondent race, ethnicity, or gender moderating the negative effects of ideological distance is when the nominee shares one of these descriptive identities with respondents.

Discussion and Conclusion

Ideological congruence is the most important predictor of an individual's support for Supreme Court nominees. Yet, in the modern nomination process, presidents must rely on at least a modicum of support from both senators and members of the public who are ideologically distant from the nominee. Despite the necessity of bi-partisan support,

Table 4. Logit Regression: Placebo Tests.

	(1) Breyer	(2) Roberts	(3) Alito	(4) Garland
Female	-0.151 (0.418)	-0.312 (0.690)	0.357 (0.199)	.007 (0.310)
Ideology (lib. to cons.)	-0.167 (0.095)	0.423* (0.179)	0.357 (0.199)	0.543*** (0.109)
Female × Ideology	-0.043 (0.124)	0.018 (0.224)	-0.042 (0.248)	-0.072 (0.146)
African American	-0.965 (0.690)	-0.958 (1.135)	2.066* (0.892)	1.016 (0.521)
African American × Ideology	0.240 (0.204)	0.298 (0.350)	-0.828* (0.364)	-0.444 (0.231)
Democrat	0.580** (0.225)	0.172 (0.103)	-0.080 (0.334)	1.448*** (0.204)
Republican	0.250 (0.223)	0.850* (0.401)	0.223 (0.323)	-0.066 (0.227)
Education	0.052 (0.051)	0.060 (0.100)	0.0179 (0.061)	0.174*** (0.303)
Presidential Approval	0.253*** (0.071)	0.882*** (0.258)	0.338*** (0.049)	0.206* (0.087)
Age	0.085 (0.061)	0.172 (0.103)	0.002 (0.005)	0.007* (0.003)
Constant	-0.561 (0.479)	0.533 (0.714)	0.557 (0.622)	-3.150 (0.379)
Observations	1,067	809	1,006	2,224

Standard errors in parentheses.

* $p < .05$. ** $p < .01$. *** $p < .001$.

little research has addressed the factors that lead individuals to support nominees with whom they are ideologically incongruent.

To address this gap, we theorized that in the absence of a shared ideology a shared social identity between members of the public and nominees would predict public support. Specifically, we theorized that a shared racial, ethnic, or gender identity would moderate the negative effects of ideological distance. Using the nominations of Clarence Thomas, Elena Kagan, and Sonia Sotomayor, our analysis largely supports our theory. In the case of Thomas, liberal African Americans were more likely to support Thomas than liberal whites. Similarly, conservative women were more likely to support Kagan's nomination than conservative men were. This effect was still present even when controlling for policy preferences, suggesting our effects were not due to perceived policy congruence.

Our analysis of Sotomayor's nomination provides evidence that a shared ethnic identity between Sotomayor and survey respondents moderated the negative effects of ideological distance. However, we observed no substantive differences between Latinos and Latinas, counter to our expectations. We also found no evidence of a shared gender identity moderating the effect of ideological distance among non-Latina women. These findings have

several possible explanations. The first is that in this context, ethnicity was more salient than gender. To the extent that Sotomayor's gender was evoked, it was largely linked to her ethnicity (Towner and Clawson 2016). This may have made it difficult for white women to feel a sense of shared identity with Sotomayor. This simultaneously may have made her ethnic identity so salient that both Latinos and Latinas responded to the same degree. In this case, ethnicity may have been the dominant frame through which individuals viewed Sotomayor's nomination, leaving little room for a shared sense of gender identity to develop. A second potential explanation is linked to the historic nature of Sotomayor's nomination. As the first Latino nominee, Sotomayor may have generated a particularly strong level of support from members of the Latino community. If this is the case, we might expect that subsequent female minority nominees would draw higher levels of support from women of color in the public. As the Court continues to diversify, there will be more opportunities to explore this relationship.

More diverse nominees have implications for American political institutions. When nominees from traditionally underrepresented groups are confirmed, they alter the composition of the Supreme Court. Theoretical arguments contend that institutions are most legitimate when they mirror the characteristics of the population they represent (Mansbridge 1999). In this sense, the inclusion of members from traditionally underrepresented groups could help to strengthen the institutional legitimacy of the Supreme Court. Indeed, research on the federal courts suggests that when African Americans believe they are proportionally or overrepresented in the courts, they view the courts as more legitimate (Scherer and Curry 2010).

In addition to legitimacy considerations, the inclusion of traditionally underrepresented groups can engender support for political institutions among these groups. Although evidence from legislatures is somewhat mixed, research does suggest that increases in women's representation can lead to increased feelings of efficacy (Atkeson and Carrillo 2007), trust, and satisfaction in government (Karp and Banducci 2008), and engagement and participation (Barnes and Burchard 2012; Desposato and Norrander 2009, but see Lawless 2004). Among racial and ethnic minorities, research indicates that increases in descriptive representation can lead to increased feelings of pride and political engagement (Banducci, Donovan, and Karp 2004; Bobo and Gilliam 1990; Gurin, Hatchett, and Jackson 1989). The effect of co-racial or ethnic representation on trust and efficacy is more mixed. While some have found little evidence that descriptive representation increases feelings of trust and efficacy (Banducci, Donovan, and Karp 2004; Overby et al. 2005), others have found that beliefs about group representation are an important determinant of trust (Tate 2003).

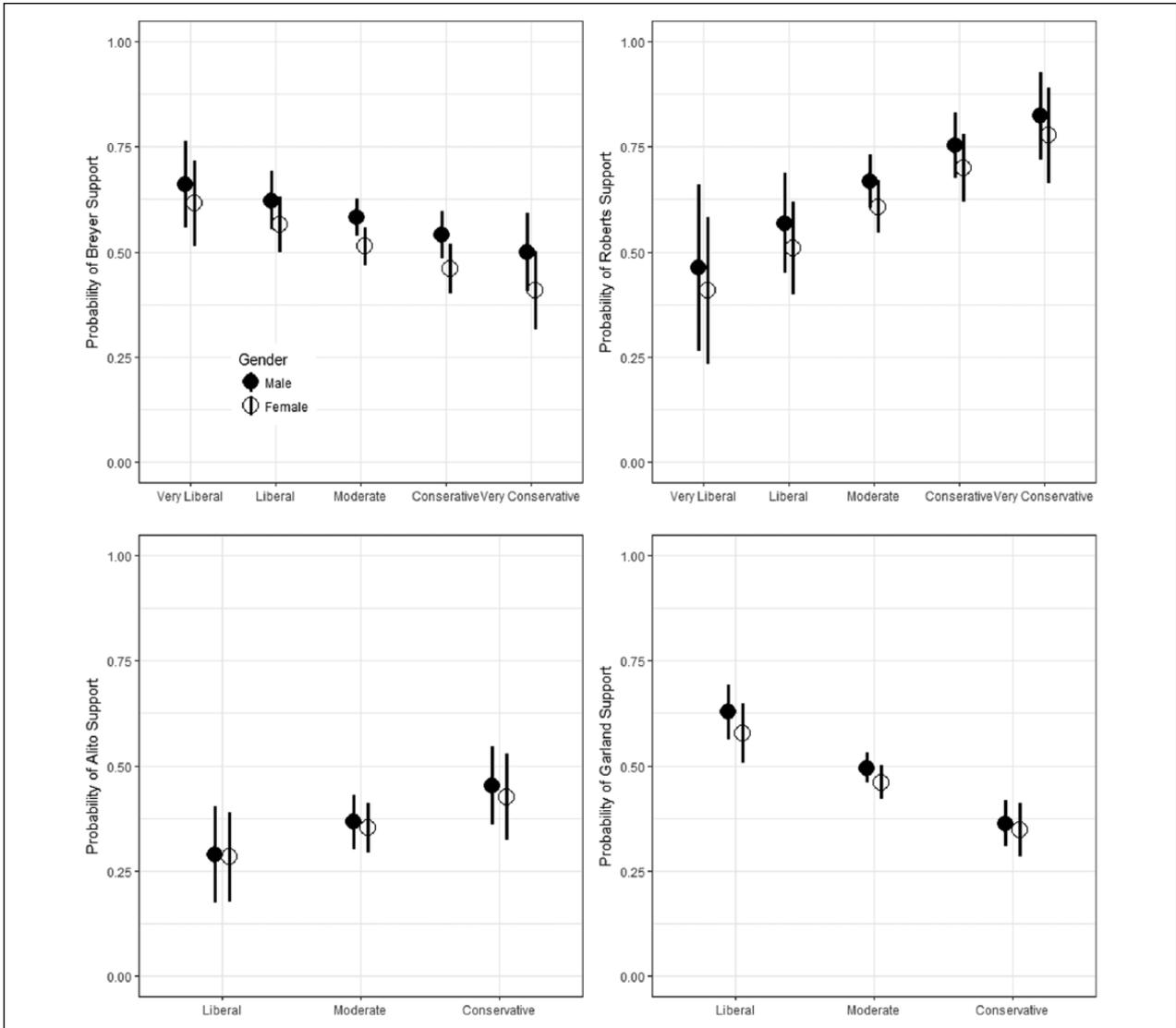


Figure 4. Predicted probability for the placebo tests by ideology and gender. Displayed are point estimates and 95% confidence intervals derived from Table 4.

Recent research indicates that these symbolic benefits can be gained from nonelected political officials; indeed, Liu and Banaszak (2017) suggest that women’s inclusion in cabinet appointments inspires increased participation among women. Although more research is needed to determine whether similar effects exist for trust and efficacy, this research suggests that inclusion in nonelected positions can provide symbolic benefits to members of underrepresented groups. As highly visible executive appointments, we expect that Supreme Court nominees would illicit similar effects, though additional research is needed to confirm this expectation. Exploring when and how these nominees induce participation, and feelings of trust and efficacy, represents an avenue for future research.

More practically, drawing nominees from traditionally underrepresented groups may also be good strategy for presidents. Nemacheck (2008) notes that nominees must be selected strategically. Ideally, presidents want to select nominees who share their ideology. Yet, the nominee must also be able to draw at least some support from senators who are ideologically distant. Our findings suggest that nominating individuals who are members of traditionally underrepresented groups is a viable strategy for presidents when making nominations. Members of traditionally underrepresented groups enjoy high support from co-ideologues and are able to draw support from individuals who do not share their ideology but do share a social identity with the nominee. This suggests that presidents can strategically nominate members of underrepresented

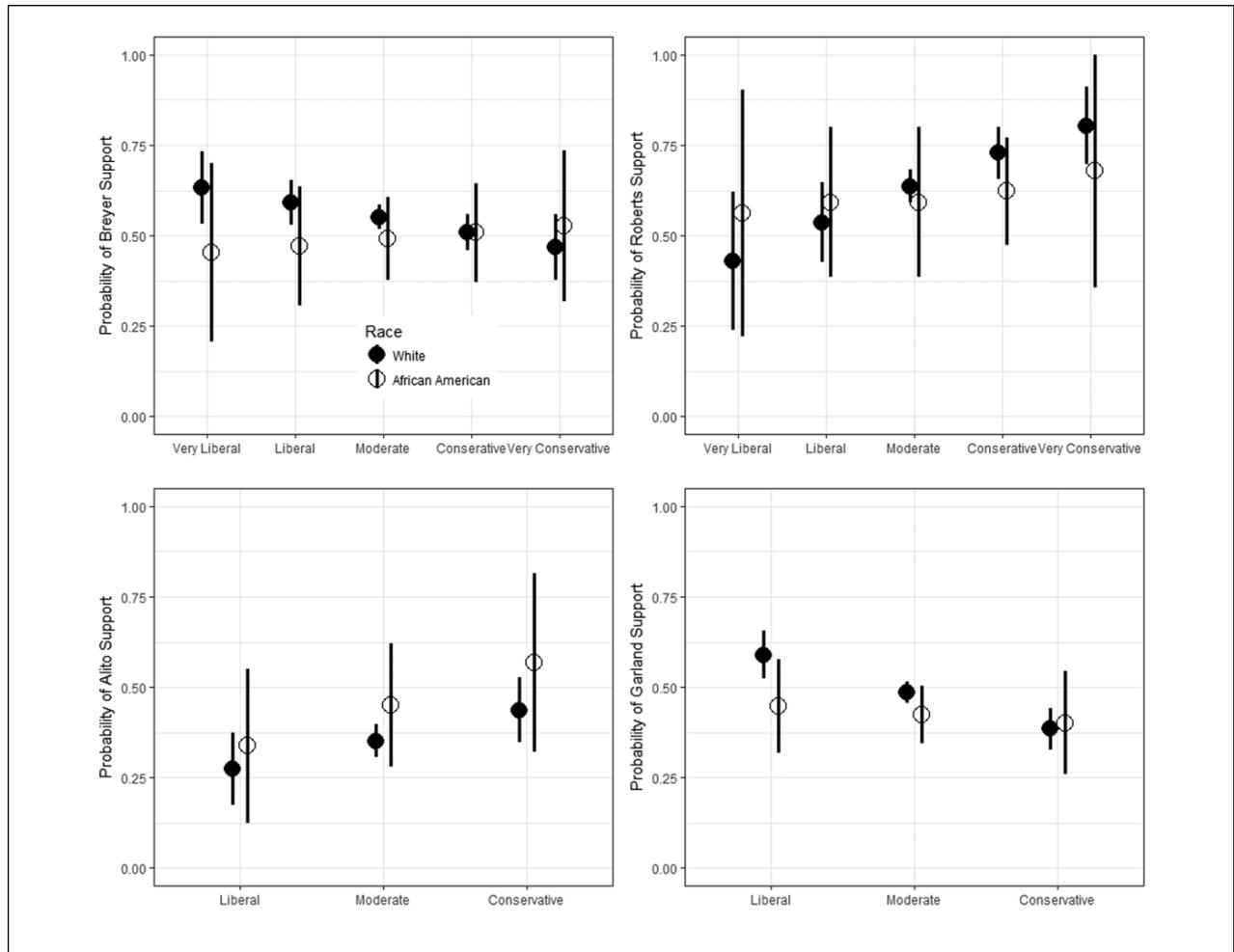


Figure 5. Predicted probability for the placebo tests by ideology and race. Displayed are point estimates and 95% confidence intervals derived from Table 4.

groups to increase public support for nominees, which in turn puts pressure on the Senate to confirm. Future research should also analyze the role that shared descriptive identities between senators and nominees play in the nomination process. Work by Cameron, Cover, and Segal (1990) and Epstein et al. (2006) suggests that characteristics such as judicial quality serve as valence dimensions in Senate voting behavior, allowing high-quality nominees to draw support from senators who are ideologically distant. Future research should analyze whether senators from underrepresented groups similarly treat diversity as a valence dimension.

By strategically nominating members of underrepresented groups, presidents may be able to achieve greater congruence between themselves and their nominees than they otherwise would by appointing white men. There is some evidence that this process occurs. Overby et al. (1992) find support for this in the context of the nomination of Clarence Thomas; senators from states with

higher percentages of African Americans were more likely to vote for his confirmation than those from states with fewer African Americans. However, in the context of the nominations of Thurgood Marshall and Sonia Sotomayor, Overby et al. (1994) and Steigerwalt, Vining, and Stricko (2013) find no evidence that percentages of African Americans or Latinos in their state influenced senators' confirmation vote. However, both sets of authors suggest that the unique context of each nomination may explain their findings. Thus, as the Supreme Court becomes more diverse, there will be greater opportunity to determine whether nominees from underrepresented groups are able to garner increased support. Our findings highlight the need to incorporate descriptive identities into analyses of public opinion toward nominees. Understanding how descriptive characteristics shape opinion toward nominees, and the broader influence of these nominees, will become increasingly important as the Court continues to diversify.

Authors' Note

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Notes

1. Due to constraints in the data, in this study, we use objective group membership as our indicator rather than a measure of group attachment. Conover (1984) argues that objective group membership does not automatically equate to identification with a group. This is a limitation of the present study. While we acknowledge this limitation, we do not view it as detrimental to our analysis. Our use of objective group membership is consistent with previous studies on group politics and support for descriptively similar candidates (Philpot and Walton 2007). Furthermore, because we are using objective group membership as our indicator, the effect sizes in our analysis are likely conservative estimates of the effect of shared racial, ethnic, or gender identity. If we find results in this context, we expect that effects will be present and larger when group attachment is accounted for.
2. Elena Kagan was confirmed to the Supreme Court on August 5. Thus, respondents on the Congressional Cooperative Election Survey (CCES) were asked questions after Kagan was confirmed. To determine whether this effected out results, we replicated the analysis presented here using data from a July 16–21 CNN/ORC Poll that included 1,468 respondents. We were able to replicate our results using this survey. Based on this replication, we are confident that the timing of the survey did not introduce bias into our results. The results of this analysis can be found in the online appendix.
3. Cross validations against the CCES to mail and random-digit telephones methods indicate the CCES approximates a nationally representative sample (Ansolabehere and Rivers 2013).
4. We are not able to control for preferences across all relevant issues. This is a weakness of our research design and the surveys we use to test our hypotheses. However, abortion and presidential approval are both salient in the

context of judicial nominations so we believe this captures the preferences most important to respondent support.

5. In our placebo tests, we are unable to determine whether a moderating effect is present for those with a Latina or Latino identity because the surveys do not include enough Latina or Latino respondents to have enough leverage to make meaningful inferences for Latina or Latino individuals across ideological groups.

Supplemental Material

Replication data for this article are available with the manuscript on the *Political Research Quarterly* (PRQ) website.

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