

ORIGINAL ARTICLE

# The Supreme Court as an electoral issue: evidence from three studies

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## Abstract

Judicial nominations, particularly those to the Supreme Court, have been a salient topic in recent presidential and senate elections. However, there has been little research to determine whether judicial nominations motivate political behavior. Across three studies we demonstrate the important role judicial nominations play in influencing political behavior. In Study 1, we analyze the extent to which voters perceive judicial nominations as an important electoral issue. We find that Republicans—and especially strong Republicans—are more likely to perceive judicial nominations as important. In Study 2, we analyze how congruence with an incumbent Senator’s judicial confirmation votes influences voters’ decision to vote for the incumbent. We find that congruence with a Senator’s judicial confirmation votes is a strong predictor of vote choice. Finally, in Study 3, we analyze data from an original conjoint experiment aimed at simulating a Senate primary election where voters must select among co-partisans. We find that Republican subjects are more likely to select a primary candidate who prioritizes confirming conservative Supreme Court nominees. Among Democratic subjects, however, we find that Democratic candidates who prioritize the Court might actually suffer negative electoral consequences. Overall, our results demonstrate the importance of judicial nominations as an electoral issue.

**Keywords:** Elections; judicial nominations; political behavior; Supreme Court

Although the American people do not cast votes for Supreme Court justices, the issue of filling court vacancies has played a prominent role in recent elections. After the February 2016 death of Justice Antonin Scalia, Senate Republicans ignited partisan fighting by announcing that they would not hold a confirmation hearing for anyone that then President Barack Obama nominated to fill the position, arguing that “the nomination should be made by the president that the people elect in the election that’s underway.”<sup>1</sup> The matter of court appointments resurfaced again in a 2017 special election to fill one of Alabama’s Senate seats. Even after Republican nominee Roy Moore was accused of child molestation, many of his fellow partisans—including Alabama Governor Kay Ivey—continued to support him on the grounds that “we need to have a Republican in the United States Senate to vote on things like the Supreme Court justices, other appointments the Senate has to confirm.”<sup>2</sup> More recently, the confirmation of President Donald Trump’s controversial nominee Brett Kavanaugh increased the salience of the judicial appointments just prior to the 2018 mid-term elections. The legacy of these partisan battles

<sup>1</sup>Senate Majority Leader Mitch McConnell to reporters, 23 February 2016; <https://www.npr.org/2016/02/23/467860960/senate-republicans-agree-to-block-obamas-supreme-court-nominee>; source: NPR.

<sup>2</sup>Alabama Governor Kay Ivey to reporters, 17 November 2017; [https://www.al.com/news/2017/11/gov\\_kay\\_ivey\\_to\\_vote\\_for\\_roy\\_m.html](https://www.al.com/news/2017/11/gov_kay_ivey_to_vote_for_roy_m.html); source: AL.com.

even led to calls for the 2020 Democratic Presidential hopefuls to release short lists of potential Supreme Court nominees in advance of the primaries.<sup>3</sup>

Overall, all of these recent examples highlight how discussions of the Supreme Court have become central to US electoral politics. But, although the existing literature informs us about the types of nominees that the public prefers (Sen, 2017; Badas and Stauffer, 2018; Krewson and Owens, (2021)) and suggests that Senators behave as though they are responsive to those preferences (Kastellec et al., 2010, 2015), more direct examinations of whether voters actually consider the Supreme Court and the potential for future vacancies when filling out their ballots are lacking. Do voters think about how their senators will ultimately shape the Court? Or do they simply vote based on the candidates before them? Across three studies we demonstrate that the Supreme Court and judicial appointments are an important electoral issue. First, we test media narratives about the importance of judicial appointments in the 2016 presidential elections. These media narratives framed judicial appointments as an important issue, and in particular, an issue especially important for Republicans. In our analysis, we confirm that voters did view judicial appointments as an important issue, and that strong Republicans were the most likely to do so. Second, we test whether voters hold incumbent Senators accountable for their votes on judicial nominees. Using data from the 2018 Senate mid-term elections, we find that voters who agree with their incumbent Senator's votes on the confirmations of Brett Kavanaugh and Neil Gorsuch were more likely to vote in support of the incumbent candidate. Although this effect is present for *both* Democrats and Republicans, Republican voters are most responsive when their Senator is congruent with them on both votes, Democrats, on the other hand, seem to be more willing to vote for an incumbent when there is only one congruent vote. These results suggest judicial appointments are more salient to Republican partisans. Third, we use a conjoint experiment to simulate Senate primary elections where voters must select among co-partisans. We find that Republican candidates who prioritize the Supreme Court—and especially when priming the idea of confirming ideologically conservative nominees—are preferred to Republican candidates who prioritize other issues. For Democratic candidates, prioritizing the Supreme Court has either no effect or even potentially a negative effect relative to other issues. Thus, our results again demonstrate that judicial appointments are especially important for Republican partisans.

Overall, our findings suggest that when thinking about Senate candidates, voters do consider the way that they may shape the court. They also contribute evidence to arguments that public attitudes toward the judiciary may not be as distinct as is often assumed (Ansolabehere and White, 2020; Rogowski and Stone, 2019) and suggest that in the minds of US voters, the branches of government are not entirely separate.

### 1. The Supreme Court as an electoral issue

We hypothesize that voters consider how candidates have or will vote on Supreme Court nominees. This expectation is consistent with studies showing that voters can and do punish those senators who are out of step with the preferences of their constituents (Ansolabehere and Jones, 2010; Kassow and Finocchiaro, 2011; Griffin et al., 2019). Although a voter's ability to correctly connect candidate behavior to the voting decision should vary with both the salience and the partisan nature of the issue (Dancey and Sheagley, 2013, 2016; Simas, 2018), we contend that Supreme Court confirmation votes should fall into the category of those that are factored into the voting calculus.

For one, the public appears to possess sufficient awareness of Supreme Court confirmations. Gibson and Caldeira (2009) find that large majorities of the public know the selection processes of the Supreme Court. Furthermore, recent polls suggest relatively high levels of attention and

<sup>3</sup>[https://www.washingtonpost.com/politics/democratic-presidential-candidates-come-under-pressure-to-release-supreme-court-picks/2019/10/15/2bf3bd34-efb-11e9-b2da-606ba1ef30e3\\_story.html](https://www.washingtonpost.com/politics/democratic-presidential-candidates-come-under-pressure-to-release-supreme-court-picks/2019/10/15/2bf3bd34-efb-11e9-b2da-606ba1ef30e3_story.html); source: Washington Post.

information. For example, 2016 polls found that seven-in-ten of those surveyed had heard about Justice Antonin Scalia's death and the vacancy on the court<sup>4</sup> and only 15 percent of respondents had no opinion of Merrick Garland, the individual nominated to fill Scalia's seat.<sup>5</sup> Similarly, only 24 percent of respondents indicated that they didn't know whether Neil Gorsuch should be confirmed in 2017.<sup>6</sup> And two polls taken in October 2018—only one month prior to the election—found that only 9 percent of respondents didn't know whether Brett Kavanaugh should be confirmed<sup>7</sup> and that only 5 percent of registered voters had heard nothing at all about his confirmation.<sup>8</sup> Overall, these polls suggest that a sizeable number of potential voters do possess the capability of connecting concerns about the court to senate votes.

Second, opinions of the court and nominees appear to be sufficiently partisan. Indeed, a growing literature demonstrates that the public's opinions of the court and preferences for nominees are shaped by partisan, ideological, and policy agreement (Gimpel and Wolpert, 1996; Bartels and Johnston, 2012; Christenson and Glick, 2015, 2019; Badas, 2016, 2019a, 2019b; Sen, 2017). Moreover, partisan fighting and elite rhetoric further polarize these types of opinions (Rogowski and Stone, 2019). These findings collectively suggest, then, that "the Court, although in the past viewed as a more non-partisan institution, may be instead, and perhaps increasingly, viewed as a fundamentally political branch, more in line with other political bodies" (Sen, 2017, p. 390). Thus, we expect that congruence with a senator's position on a Supreme Court confirmation will factor into the voting calculus in much the same way that other important partisan issues do (e.g., healthcare; Nyhan et al., 2012).

Of course, we do not anticipate that all individuals will consider the courts to the same degree. Consistent with Sen (2017), we predict that the influence of court considerations will be greatest among the more politically knowledgeable. Although confirmation votes are highly salient and the type of partisan thinking that should enable the connection between Senate voting and court preferences does not necessarily require sophisticated calculation, we side with psychological literature finding that partisanship should matter more to those possessing the greatest amount of political knowledge (Zaller, 1992).

Moreover, we expect that there may also be partisan asymmetries. Republicans should be more likely to be concerned with partisan and ideological consistency at all levels. This expectation stems from the wealth of evidence presented by Grossmann and Hopkins (2016), and from additional research finding greater partisan loyalty and rhetoric among Republicans (Russell, 2018; Barber and Pope, 2019). More directly, Sen (2017) finds some evidence of partisan differences, as Republicans appear more willing to penalize a judicial nominee for leaning toward the opposite party. Furthermore, there is evidence that Republican elites focus more attention on the Supreme Court than Democratic elites, which may signal the Court's importance to Republicans in the mass public (Zaller, 1992). For example, Mark and Zilis (2018) find that Republicans are more likely to introduce Court curbing legislation than Democrats. Moreover, many studies have demonstrated how conservative activists and elites have shaped the judiciary through groups such as the Federalist Society (Scherer and Miller, 2009; Hollis-Brusky, 2015). Thus, there is greater institutionalization of the judiciary as a political issue within the Republican Party than the Democratic Party. As such, we expect to find stronger evidence of the influence of court considerations among Republicans than Democrats.

We test these expectations in the sections that follow. We first present public opinion data which support the proposition that judicial appointments are important to voters. We then present evidence that opinions on the confirmations of Justices Gorsuch and Kavanaugh were

<sup>4</sup><https://www.pewresearch.org/fact-tank/2016/02/24/scalias-supreme-court-vacancy-draws-much-public-interest-unlike-past-open-seats/>; source: Pew Research.

<sup>5</sup><http://i2.cdn.turner.com/cnn/2016/images/03/24/rel5c-.obama,scotus.pdf>; source: CNN ORC International Poll.

<sup>6</sup><https://www.pewresearch.org/fact-tank/2017/02/16/more-favor-than-oppose-gorsuch-nomination/>; source: Pew Research.

<sup>7</sup><https://poll.qu.edu/national/release-detail?ReleaseID=2574>; source: Quinnipiac Poll.

<sup>8</sup><https://www.politico.com/f/?id=00000166-5a76-dc50-affe-5ef639c30001>; source: Politico.

significantly associated with voting for Senate incumbents in 2018. Finally, we present an original experiment that isolates the potential role of Supreme Court considerations when evaluating potential Senate candidates.

## 2. Three studies on the Supreme Court as an electoral issue

### 2.1 Study 1: public opinion prior to the 2016 election

We begin by establishing the extent to which judicial appointments are important to voters. To do this, we use survey data from the NORC Center for Public Affairs Research (NORC). The survey was conducted between 15 September 2016 and 18 September 2016 via telephone and as a web-based survey and had a sample of 1022.<sup>9</sup> The survey asked about the importance of 18 different campaign issues (e.g., healthcare, crime, and unemployment), including Supreme Court appointments. Each respondent was shown a random subset of nine of these issues and asked to rate their importance on a 5-point scale ranging from “not important at all” to “extremely important.” After dropping respondents not asked about the Supreme Court, we are left with a sample of 513 individuals. Of those asked about Supreme Court appointments, 61.4 percent rated the issue as either very or extremely important and the modal response was very important. This appears to be fairly consistent among both Democratic and Republican respondents, as the percentages of the two groups rating Supreme Court appointments as either very or extremely important are 63.6 and 67.8, respectively.

Although these percentages may seem high, these evaluations only result in Supreme Court appointments ranking 13th of the 18 issues included. Given this, these raw importance scores should be considered in relation to all the issues rated. For example, if a respondent rates all eight non-Supreme Court appointment items as “extremely important” and also rates the Supreme Court appointment item as “extremely important,” this is less meaningful than a respondent who, on average, views the eight non-Supreme Court appointment items as only “somewhat important” but views the Supreme Court appointment item as “extremely important.” Based on this reasoning, we create a relative importance of Supreme Court appointments measure. To create this measure, we take the mean<sup>10</sup> importance score across the eight non-Supreme Court issues and subtract that from the importance rating the respondent gave to the Supreme Court appointments question. As such, positive values indicate that the respondent considered Supreme Court appointments to be more important than the average issue, whereas negative values indicate that the respondent considered Supreme Court appointments to be less important than the average issue. The distribution of our relative importance of the Court measure is presented in [Figure 1](#). The mean is  $-0.15$ , the standard deviation is 1, and the median is 0.

To explain the variation in the relative importance given to judicial appointments, we estimate an ordinary least squares (OLS) linear regression model. The regression predicts the importance of judicial appointments as a function of an individual’s partisanship, demographic traits such as age, gender, and race, and the mode by which the survey was administered.<sup>11</sup> To capture respondent partisanship, we create six dichotomous indicators from the 7-point scale that runs from strong Democrat to strong Republican. In our model, pure independents are the omitted reference category. The results of the OLS regression are presented in column 1 of [Table 1](#).

[Table 1](#) shows that when compared to pure independents, each group of partisans perceives the relative importance of judicial appointments to be higher ( $p < 0.11$ , in all cases. Two-tailed test.). To highlight this effect, we plot the predicted values by partisanship in [Figure 2](#). But, to further probe into the differences between the two parties, we conduct *F*-tests to determine whether the coefficients for the partisan groups are different. We find that strong Republicans perceived judicial appointments as significantly more important ( $p < 0.05$ , in all cases. Two-

<sup>9</sup>Data and documentation publicly available <https://ropercenter.cornell.edu/CFIDE/cf/action/catalog/abstract.cfm?type=&start=&id=&archno=31102937&abstract=here>.

<sup>10</sup>Results are substantively similar if we use participant’s median response across the eight non-Supreme Court issues.

<sup>11</sup>See the Supplementary appendix for full variable information.

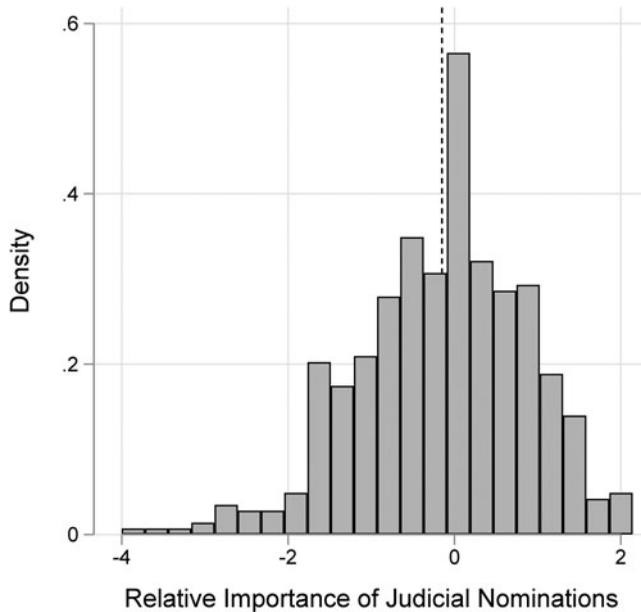


Figure 1. Distribution of relative important of judicial nominees. Dashed vertical line represents mean value.

tailed test.) than other partisan groups. Specifically, the predicted relative importance scores are  $-0.08$  for strong Democrats,  $-0.56$  for pure independents, and  $0.34$  for strong Republicans. This suggests that although both Democrats and independents generally perceived Supreme Court appointments as less important than other issues, strong Republicans viewed the issue as more important than the average. Thus, our results are consistent with both of our expectations and the general media narrative of the time that judicial appointments would be perceived as more important for Republican partisans.

However, it is worth noting that although the NORC survey shows some partisan variation in the importance of Supreme Court nominations,<sup>12</sup> it does not allow us to test for the role of political knowledge. Although we control for education, research suggests that education may be a poor proxy for the actual concept of political knowledge (Highton, 2009). Moreover, the NORC data do not allow us to test how these considerations relate to vote choice, as there were no questions about presidential or Senate candidate preferences. Therefore, in Study 2 we use an alternative data set to examine the hypothesized link between Supreme Court nominee preferences and voting.

## 2.2 Study 2: 2018 Senate elections

To examine whether the Supreme Court is an important issue for voters in Senate elections, we use data from the 2018 Cooperative Congressional Election Study (CCES).<sup>13</sup> We focus on all 2018 Senate races that featured a major-party incumbent opposed by a candidate from the opposite

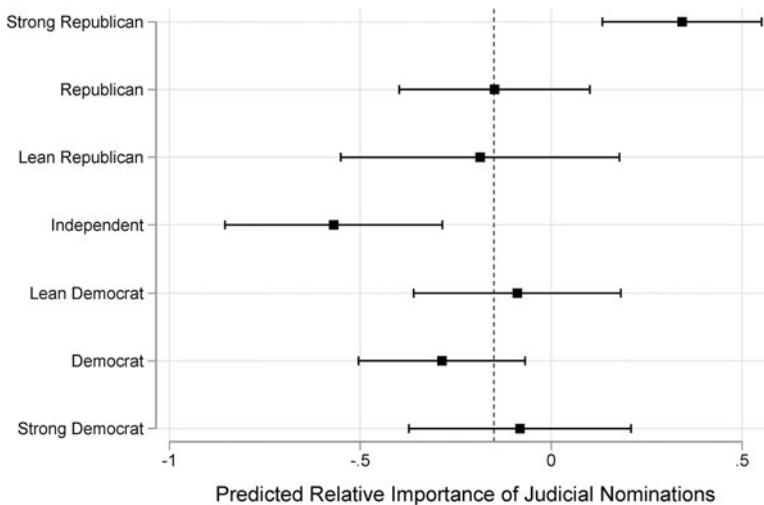
<sup>12</sup>In the Supplementary appendix we do demonstrate that those who viewed the judicial nominations as more important were more likely to report that they'd turnout to vote. However, the limited nature of self-report measures of turnout intentions prevent us from making strong conclusions about the role of judicial appointments shaping political behavior in the 2016 presidential election, outside of the fact that voters seemed to view judicial appointments as important. Thus, we regulate this analysis to a Supplementary appendix.

<sup>13</sup>For information, see <https://cces.gov.harvard.edu>.

**Table 1.** OLS importance of judicial appointments

	(1) Relative importance of judicial Nominations
Average importance	-0.307*** (0.0751)
Strong democrat	0.488* (0.212)
Weak democrat	0.283 (0.180)
Lean democrat	0.481* (0.194)
Lean republican	0.384 (0.238)
Weak republican	0.421* (0.194)
Strong republican	0.912*** (0.181)
Female	-0.240* (0.102)
White	-0.0830 (0.104)
Educational attainment	0.0827 (0.0477)
Age group	0.108** (0.0392)
Household income	0.0450 (0.0237)
Web survey	0.100 (0.131)
Constant	0.0504 (0.434)
Observations	511

Standard errors in parentheses.  
 Pure independents are the omitted reference category for partisanship.  
 \*p < 0.05, \*\*p < 0.01, \*\*\*p < 0.001.



**Figure 2.** Effects of partisanship on relative importance of judicial nominations. Dashed vertical line represents the mean relative importance of judicial nominations. From Table 1.

major party.<sup>14</sup> This leaves us with a sample of over 16,000 verified voters<sup>15</sup> from 27 states. Our dependent variable is whether the respondent voted for the incumbent candidate. This takes the value 1 if they did and 0 if they voted for one of the challengers.

All respondents were asked whether they supported or opposed the confirmations of Supreme Court nominees Neil Gorsuch and Brett Kavanaugh. We use respondents' answers to these two questions to measure congruence with the votes cast by their sitting senators. Specifically, we create indicators for whether a respondent was congruent with 0, 1, or 2 judicial confirmation votes.<sup>16</sup> This measure of congruence serves as our independent variable in determining the role that Supreme Court nominations play in vote choice.

Since these confirmation votes were highly polarized and only three senators in our sample did not vote the party line,<sup>17</sup> congruence is significantly correlated with shared partisanship ( $r = 0.72$ ). But, although the votes of the senators generally follow the same pattern, there is still significant variation in voters' preferences and how they line up with the votes cast by their senators. This is evident in Figure 3, which shows the distribution of congruence for each senator–voter partisan combination. When looking at partisans evaluating an incumbent senator from the same party, 27.60 percent of Democrats and 21.08 percent of Republicans disagree with one of their senator's confirmation votes. Conversely, when looking at partisans evaluating an incumbent senator from the opposite party, 28.04 percent of Democrats and 22.25 percent of Republicans agree with one of that Senator's votes. Altogether, 28.64 percent of the partisans in our sample side with the opposite party on at least one of the two confirmation votes. This is a nontrivial figure, especially when considering that we have restricted our focus to just verified mid-term voters, a group comprised of people who should be significantly more partisan and engaged than the average citizen.<sup>18</sup>

One assumption of our test of whether congruence with judicial confirmation votes influence a voter's decision to vote for or against the incumbent is that voters know how their incumbent voted on these judicial confirmations. In many cases, this assumption may not be met. Prior research has demonstrated that the public is by-and-large uninformed about political events (Delli Carpini and Keeter, 1996). And when looking specifically at knowledge of six 2005–2006 senate roll-call votes, Dancy and Sheagley (2016) report that the proportion of correct responses ranged from 0.31 to 0.57. Thus, we anticipate any effects of congruence should be conditional upon political knowledge. The CCES included six objective knowledge questions: the party in the majority of the US House, the party in the majority of the US Senate, and the party identification of the respondent's current US Senators, US House member, and governor. We code each as 1 if the respondent gives the correct answer and then take the mean across the questions answered. These knowledge items have a high degree of scale reliability ( $\alpha = 0.86$ ). The

<sup>14</sup>This omits the open-seat contests in Arizona, Tennessee, and Utah, the race in California, where the general election featured two Democrats, and the elections in Maine and Vermont, where the incumbents were independents.

<sup>15</sup>The CCES contracts with a private firm which allows the survey data to be matched to public voting records. For more information, see Ansolabehere and Hersh (2012). Models in the Supplementary appendix show that our results hold whether or not the sample is restricted to only verified voters.

<sup>16</sup>In the Supplementary appendix, we estimate congruence with the Kavanaugh and Gorsuch confirmation votes individually rather than a count. Results for the entire sample indicate that congruence with both nominees predicted whether voters should vote for the incumbent candidate. The effect for Kavanaugh is much stronger than the effect for Gorsuch. This could be due to the fact that Kavanaugh's hearing was more recent and in many ways more controversial. Results across partisan groups are less clear. For Republicans, the Gorsuch vote did not significantly predict support for the incumbent. For Democrats, the Gorsuch vote only predicted voting for the incumbent for those at the higher end of the knowledge scale.

<sup>17</sup>Joe Donnelly (D-IN) and Heidi Heitkamp (D-ND) voted in favor of Gorsuch's confirmation, while Joe Manchin (D-WV) voted in favor of both confirmations.

<sup>18</sup>Even if we restrict our sample to those at or above the mean level of knowledge, 28.52 percent of Democrats and 21.39 percent of Republicans disagree with at least one vote cast by their co-partisan senator. Similarly, 29.09 percent of more knowledgeable Democrats and 20.33 percent of more knowledgeable Republicans agree with at least one vote cast by a senator from the opposite party.

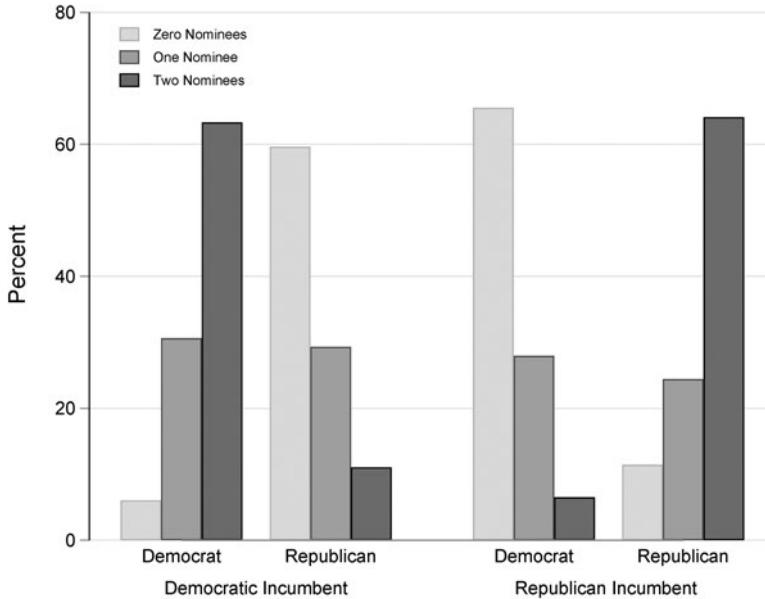


Figure 3. Distribution of congruence with Senator's confirmation votes by incumbent party and respondent party.

resulting variable ranges from 0 to 1 and indicates a rather high level of knowledge in our sample (mean = 0.72; standard deviation = 0.342; median = 0.83).<sup>19</sup>

To show how congruence on these confirmation votes compared to congruence on other roll calls, we also include a variable indicating whether the respondent's position on abortion after 20 weeks lines up with the way the incumbent senator voted on a motion of cloture on a bill that would ban such procedures. This will allow us to put our findings into perspective, as abortion is a highly salient and partisan issue. And to account for more general policy and partisan congruence, we include measures for partisanship and ideological distance. Partisanship is derived from the respondent's identification on the standard 7-point scale and is coded in the direction of the incumbent's party. Ideological distance is the absolute value of the difference between the respondent's self-placement on the 7-point ideological scale and where the respondent places the incumbent on that scale. Given that each of these measures is correlated with our measure of congruence,<sup>20</sup> we also interact each with knowledge so as to offer a more complete test of our hypothesis. Finally, we include a number of demographic controls and incumbent fixed-effects that account for the uniqueness of each of these 27 different contests.

Table 2 column 1 shows the results of a logistic regression model for all survey participants. The large, significant coefficients for both ideological distance and partisan congruence are as expected. Yet, even in the presence of these significant effects, the judicial nomination congruence variables are still positive and significant, and as anticipated, this relationship is conditional upon political knowledge. We plot the relationship between judicial nomination congruence, knowledge, and incumbent vote choice in Figure 4. Figure 4 shows that, on average as a respondent's political knowledge increases, they are more likely to reward or punish their Senators based on whether or not they agree with how the Senator voted in the judicial confirmation hearings.

<sup>19</sup>Although an ideal approach would be to ask respondents how their Senator voted on these policies, the CCES does not do this. Therefore, we do not have data on respondents' beliefs about how their Senator voted. We assume that those who have high levels of political knowledge are more likely to know how their Senators voted on these policies.

<sup>20</sup>As noted, the correlation between congruence and shared partisanship is  $r = 0.72$ . The correlations between congruence and both ideological distance and abortion agreement are  $r = -0.68$  and  $r = 0.41$ , respectively.

**Table 2.** Logit regression: incumbent

	(1) Everyone	(2) Republicans	(3) Democrats
One nominee congruent	0.101 (0.370)	-0.0311 (0.536)	0.149 (0.683)
Two nominees congruent	0.695 (0.428)	0.380 (0.736)	0.437 (0.736)
Abortion congruence	0.306 (0.321)	0.668 (0.517)	-0.298 (0.567)
Party agreement	0.794*** (0.0878)	0.996*** (0.207)	0.158 (0.243)
Ideological distance	-0.268** (0.104)	-0.0620 (0.168)	-0.190 (0.184)
Political knowledge	0.0421 (0.612)	3.100*** (0.890)	-4.010* (1.906)
One nominee × Knowledge	2.146*** (0.441)	1.678** (0.643)	3.345*** (0.865)
Two nominees × Knowledge	3.469*** (0.513)	3.447*** (0.890)	4.745*** (0.939)
Abortion × Knowledge	0.422 (0.377)	-0.218 (0.616)	1.290 (0.709)
Party agreement × Knowledge	0.0544 (0.107)	-0.637** (0.226)	0.522 (0.276)
Ideological distance × Knowledge	-0.663*** (0.126)	-1.039*** (0.206)	-0.474* (0.238)
Female	-0.0825 (0.0962)	-0.0721 (0.146)	-0.428* (0.210)
White	-0.470*** (0.132)	-0.848*** (0.221)	-0.863*** (0.250)
Education	0.0327 (0.0344)	0.0152 (0.0520)	0.0687 (0.0718)
Age group	0.00656* (0.00305)	0.0133** (0.00464)	0.00829 (0.00640)
Family income	-0.0114 (0.0157)	0.0233 (0.0240)	-0.0419 (0.0328)
Incumbent fixed effects	Yes	Yes	Yes
Constant	-2.841*** (0.669)	-3.671*** (1.010)	1.628 (1.835)
Observations	13,215	5019	6799

Standard errors in parentheses.  
\*p < 0.05, \*\*p < 0.01, \*\*\*p < 0.001.

To draw a substantive example, we examine how the probability of an individual with the mean level of political knowledge (0.72) voting for the incumbent Senator varies across the number of congruence judicial confirmation votes. For an individual who is congruent with both votes, the probability of voting for the incumbent is 0.691 while the probability of voting for the incumbent is 0.584 and 0.460 for an individual who is congruent with one or zero judicial confirmation votes, respectively. These results demonstrate not only that congruence with judicial nominees is associated with an individual’s decision to vote for or against the incumbent candidate, but that the strength of this association is particularly substantive.

To further demonstrate the substantive effect of judicial confirmation votes, Figure 5 plots the marginal effect of congruence with one or two judicial confirmation votes and a cloture vote to ban abortion after 20 weeks. The cloture vote on the 20 week abortion ban is a good benchmark to compare the effect of Supreme Court confirmation votes for two reasons. First, abortion is a silent issue that shapes individuals political behavior in significant ways (Abramowitz, 1995; Layman and Carsey, 1998). Second, although the cloture vote was procedural and the substantive

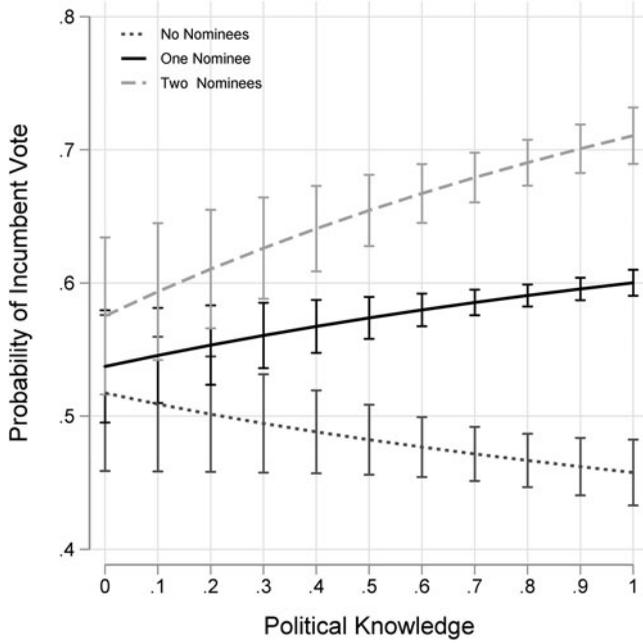


Figure 4. Effect of congruence with judicial nominees and political knowledge on incumbent vote. Results from Table 2, column 1.

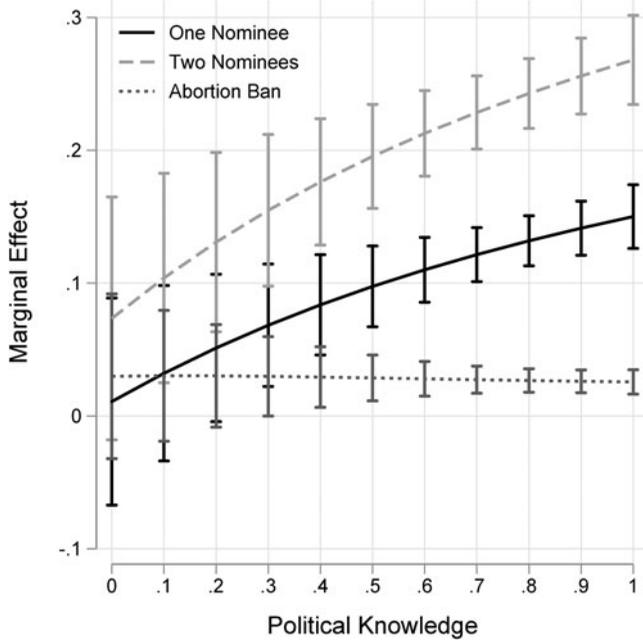


Figure 5. Marginal effects of congruence and political knowledge on incumbent vote choice. Comparing judicial nominees to abortion ban cloture congruence. Results from Table 2, column 1.

issue never came to the floor, the vote did receive substantial media coverage.<sup>21</sup> Figure 5 demonstrates that although congruence with the abortion ban cloture vote did increase the probability of voting for the incumbent Senator, the substantive effect is much smaller than congruence with judicial nominees. For example, at the average level of political knowledge, the effect of congruence with one judicial nominee is 4.55 times larger than the marginal effect of congruence with the abortion cloture vote, whereas congruence with two judicial nominees is 8.55 times larger. Thus, it appears that congruence with judicial confirmation is particularly salient in voters' decision-making calculus relative to other Congressional votes.

### 2.2.1 2018 Senate elections: partisan differences

Next, we subset the data by the respondent's party and re-estimate the model presented in Table 2. This allows us to determine if Supreme Court nominations are more important for Republican or Democratic partisans. These results are presented in Table 2 columns 2 and 3 and in Figure 6. The large partisan differences in the likelihoods of voting for the incumbent are likely due to the fact that only five out of the 27 races included in our sample featured a Republican incumbent. But, even with these differences, the results still demonstrate that congruence with confirmation votes—conditional upon political knowledge—is a significant predictor of vote choice for *both* Democratic and Republican partisans. An examination of the changes in probability, however, reveals that the results are also somewhat consistent with the expectation that the Supreme Court matters more for Republican partisans. For example, at the mean level of political knowledge (0.72), the change in the probability of voting for the incumbent that results from shifting from zero to two congruent votes is similar for both parties (0.251 for Republicans and 0.216 for Democrats). But, it appears that Republicans are more concerned with having their incumbent Senator congruent with *both* confirmation votes rather than just one. Shifting from one to two congruence nominees produces a large shift for Republicans (0.172) whereas the shift is much smaller for Democrats (0.027).

To further demonstrate the substantive effect of confirmation votes across partisan groups, Figure 7 plots the marginal effect of congruence on one or two judicial confirmations and compares that to the marginal effect of congruence on the 20 week abortion ban cloture vote by partisan groups. Figure 7 demonstrates that although congruence with the 20 week abortion ban cloture vote did slightly increase the probability of voting for the incumbent Senator for both partisan groups, the substantive effect of congruence on the 20 week abortion ban cloture vote is again much smaller than congruence with judicial nominees.

Thus, it appears that *both* Democrats and Republicans perceive judicial confirmation and judicial candidates as equally if not more important than other political issues. Figure 7 further highlights the fact that Republicans were particularly concerned with being congruent with *both* confirmation votes relative to Democrats who appear mostly to be motivated by having at least one congruent confirmation vote.

### 2.3 Study 3: primary vote experiment

Although the results presented thus far generally support our claims, the observational nature of the data used only allow us to show associations between the quantities of interest. Thus, in our final study, we use a conjoint experimental design (Hainmueller et al., 2015) to isolate the connection between the importance of judicial nominations and candidate preference. Conjoint experiments have become increasingly popular in the study of vote choice and candidate evaluation (Hainmueller et al., 2014; Franchino and Zucchini, 2015; Kirkland and Coppock, 2018; Badas and Stauffer, 2019; Ono and Burden, 2019). Furthermore, Hainmueller et al. (2015)

<sup>21</sup>See <https://www.nytimes.com/2018/01/29/us/politics/senate-abortion-ban-20-weeks.html>; The New York Time's coverage, for example.

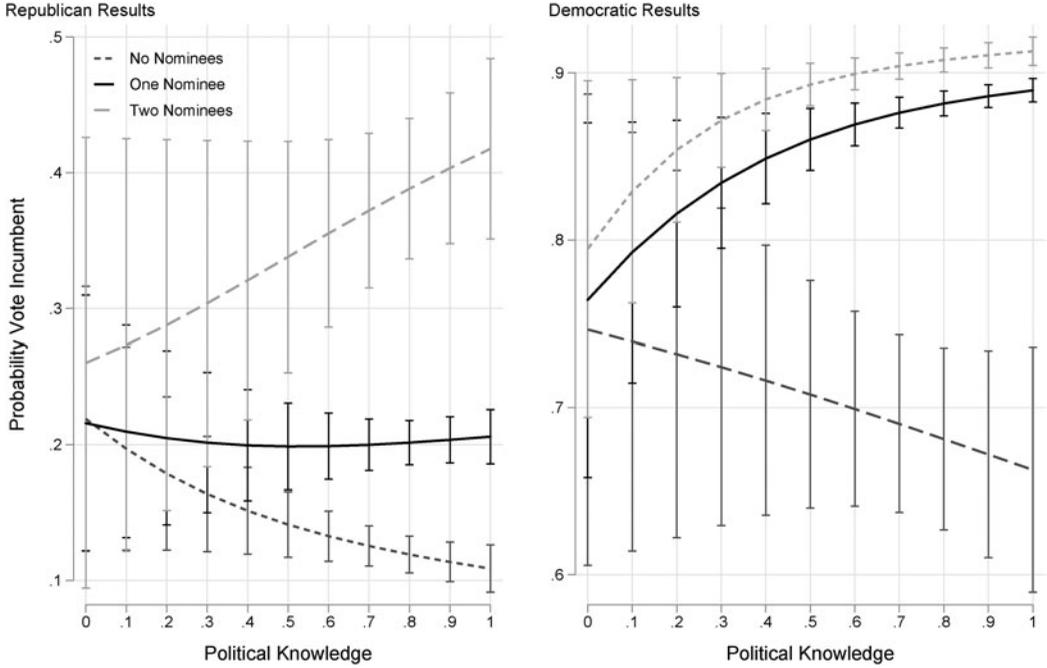


Figure 6. Effect of congruence with judicial nominees and political knowledge on incumbent vote choice by party. Results from Table 1, columns 2 and 3.

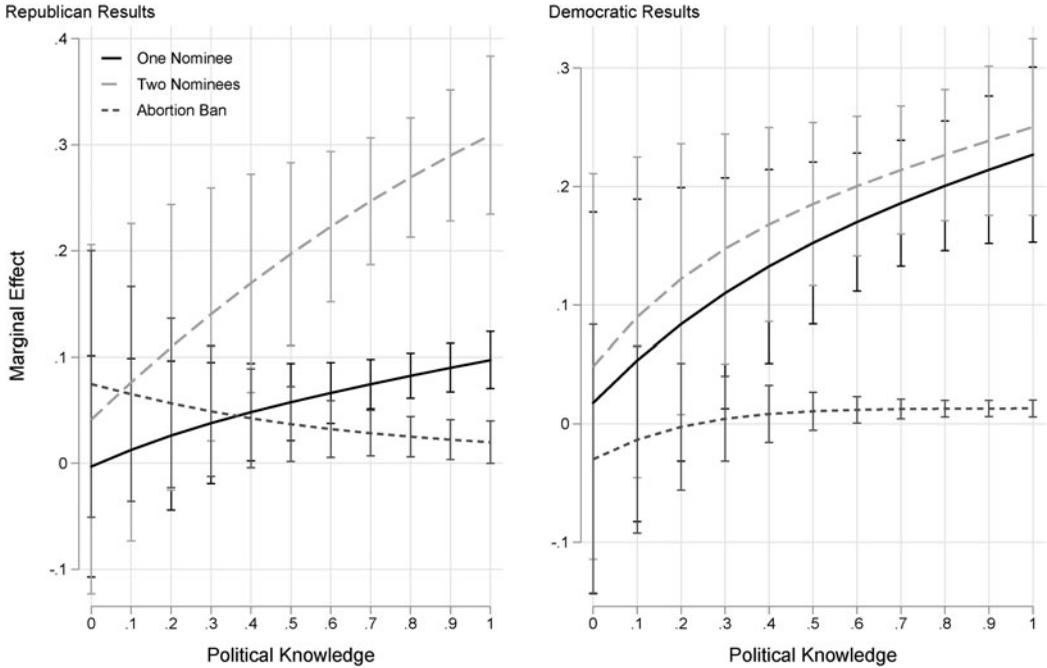


Figure 7. Marginal effects of congruence and political knowledge on incumbent vote choice by party. Comparing judicial nominees to abortion ban cloture congruence. Results from Table 2, columns 2 and 3.

make the case for the external validity of conjoint experiments by demonstrating that the results they produce predict real-world behavior.

Our experiment specifically told participants that they were engaging in a primary election in which they would be selecting a candidate from their own party to run in a general election context against the opposition party.<sup>22</sup> The use of a primary election in which both candidates were from the subject's own party allows us to determine whether partisans *select* candidates based on their focus on judicial appointments. This question is distinct from Study 2 which asks whether voters reward or punish incumbent candidates based on their judicial confirmation votes.

Our design follows the conventional candidate selection paradigm of voter choice conjoint experiments in which participants are provided with two completely randomized profiles and are asked to select the candidate they prefer.<sup>23</sup> Randomized profiles are constructed using attributes and levels. Attributes can be conceptualized as variables researchers are interested in studying. For example, candidate gender is often used as an attribute in conjoint designs. That attribute consists of levels or values that are displayed to participants. In the example of the gender attribute, the levels are often either female or male.

The focus of our conjoint experiment is an attribute which lists the candidate's number one issue priority. For both Republican and Democratic candidates, this attribute could take on one of 13 values. Eleven of these attribute values (listed in the Supplementary appendix) were included for comparison and varied by party to better match the appropriate platform and to increase the realism of the experiment. The remaining two values conceptualize a candidate's focus on Supreme Court appointments. For Republican candidates, the attribute can indicate that the candidate's priority is "confirming qualified Supreme Court nominees" or "confirming conservative Supreme Court nominees." For Democratic candidates, the attribute can indicate that the candidate's priority is "ensuring only qualified Supreme Court nominees are confirmed" or "blocking conservative Supreme Court nominees." The differences in how candidates' preferences are framed were done to increase the external validity of the study. At the time of our study, Donald Trump—a Republican—was president. And because the president nominates judicial nominees, it would not make sense that a Democratic candidate would be running on a platform to confirm liberal nominees. Therefore, our design allows us to determine whether ideological cues are required to activate support for candidates who prioritize the Supreme Court. As Sen (2017) demonstrates, the public is most concerned with political signals when deciding to support Supreme Court nominees. Thus, it may be expected that voters only respond to candidates who explicitly mention the Court in relationship to ideology. Our designs allow us to test this. In addition to our attribute indicating the candidate's number one issue priority, our conjoint experiment includes attributes on the candidate's age, gender, race, education, experience, recent media topics, chances of winning the general election, family life, and military experience.<sup>24</sup>

We fielded our conjoint experiment as part of a survey fielded on Amazon's Mechanical Turk (MTurk) between 25 January 2019 and 1 February 2019. To be eligible for participation, individuals had to be located in the United States and at least 18 years of age. Conducting research on MTurk has some potential limitations. Berinsky et al. (2012) show that MTurk samples tend to not be representative of the United States population and thus the external validity of studies conducted on MTurk may be diminished. However, despite non-representative samples, many studies have demonstrated that MTurk produces consistent results that replicate across nationally

<sup>22</sup>Each candidate had their party listed in their profile. Republican participants always viewed two candidates listed as Republicans on their profiles. Democratic participants always viewed two candidates who had their party listed as Democratic on their profiles. This was done to ensure participants recalled that they were engaging in a primary election context and did not accidentally try to assume partisanship based on other characteristics displayed.

<sup>23</sup>We also ask that participants rate each candidate on a scale ranging from 0 to 100. Those results (which are available in the Supplementary appendix) are substantively similar to those on vote choice.

<sup>24</sup>Complete details on the attributes we use and the levels they can take are presented in the Supplementary appendix. An example of what participants were asked to view is also available in the Supplementary appendix.

representative samples (Thomas and Clifford, 2017; Coppock, 2019). To further ensure data quality, we use the protocol developed by Winter et al. (2019) to ensure participants are located in the United States and that each participant completed the survey only a single time. We recruited 779 participants who each viewed five sets of candidate profiles. Our sample consisted of 517 Democrats and 262 Republicans.<sup>25</sup> Although Republicans are underrepresented, the repeated measures give us sufficient statistical power. Moreover, findings that liberals and conservatives on MTurk closely mirror liberals and conservatives in the general public (Clifford et al., 2015) should help ease concerns about the generalizability of our results.

To test whether voters are responsive to a candidate's discussion of the Supreme Court, we compared marginal means (Leeper et al., 2020). Due to the forced choice nature of our candidate selection experiment, the overall mean of a candidate being selected is 0.50. The marginal mean represents the probability of a candidate being selected conditional upon an attribute level being displayed. Means above 0.5 indicate that the particular attribute level increases support for a candidate while means lower than 0.5 indicate that the particular attribute level decreases support for a candidate. Due to the complete randomization of profiles, each attribute level is independent of all other attribute levels.

### 2.3.1 Republican participants

We first analyze the Republican participants. The marginal means and their 95 percent confidence intervals are displayed in Figure 8. For ease of visualization, only the issue priority feature is displayed. Full results are available in the supplementary appendix. The results indicate that Republican participants are more likely to favor candidates who mention the Supreme Court. However, this effect is limited to candidates who explicitly mention confirming conservative Supreme Court nominees. Republican primary candidates whose number one issue priority is confirming conservative Supreme Court Justices are selected 57 percent of the time, or 7 percent more than the baseline ( $p < 0.05$ , two-tailed test). Candidates mentioning confirming qualified Supreme Court nominees did not see an increase in support. Those candidates were selected 47.4 percent of the time, which did not significantly differ from the baseline of 50 percent. Furthermore, confirming conservative Supreme Court nominees was among the most popular priority for all Republican candidates and one of few that significantly increased support from the baseline.<sup>26</sup> These results further validate our observational survey data, which demonstrated that Republican voters viewed the Supreme Court as an important issue. Additionally, these results support the general findings of Sen (2017) who found that the public were particularly concerned with judicial ideology when evaluating potential judicial nominees.

### 2.3.2 Democratic participants

Now we turn to the Democratic participants. The results are presented in Figure 9. For ease of visualization, only the issue priority feature is displayed. Full results are available in the supplementary appendix. Contrary to what we found with Republican participants, Democratic participants do not respond positively to mentions of Supreme Court nominees. Democratic candidates whose number one issue priority was "ensuring only qualified Supreme Court

<sup>25</sup>Pure independents are omitted from our analyses.

<sup>26</sup>We fully grant that this may be somewhat time dependent. As the agenda shifts to new topics, Republican voters may find that other issues are more popular. However, recent events lead us to think that judicial nominations will remain salient in the long term. First, judicial nominations remained salient in the 2020 elections. This is evidenced by the strong focus on the nomination votes of Senators Collins, Tillis, Jones, and Capito and the attention to judicial reform in the 2020 presidential election. This means for the last three major election cycles judicial nominations have been a salient issue. Second, the composition of the Court makes it likely to remain salient. One Justice is over 80 years old, and two are over 70 years old. This means there will likely be more vacancies in the near future. Third, the Court now has a conservative majority. This is the first time the Court has had a clear ideological majority in a generation. This will likely make it easier for Republican candidates to credit claim actions of the Court and Democratic candidates run against the Court.

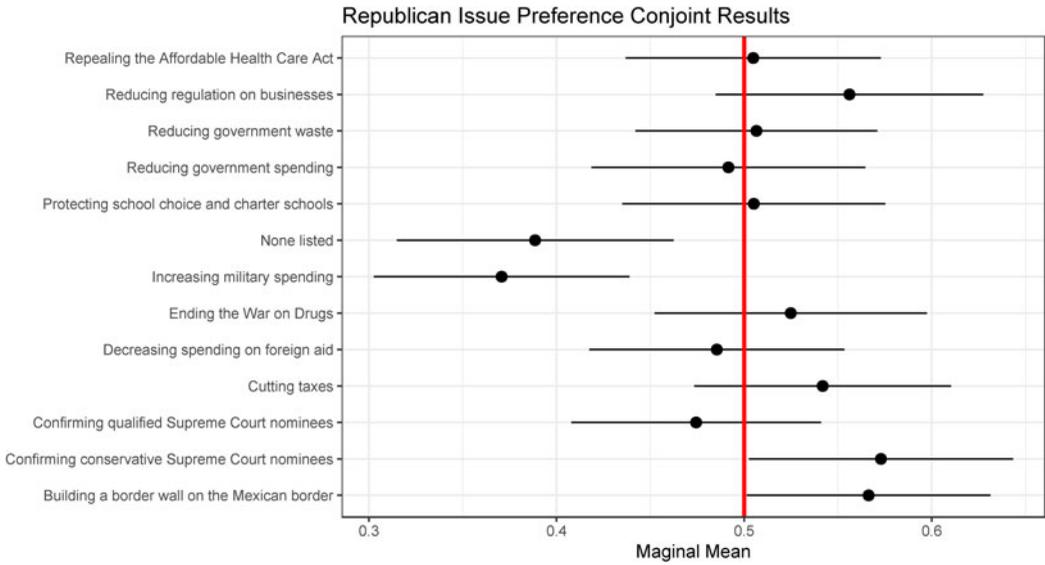


Figure 8. Results for Republican participants.

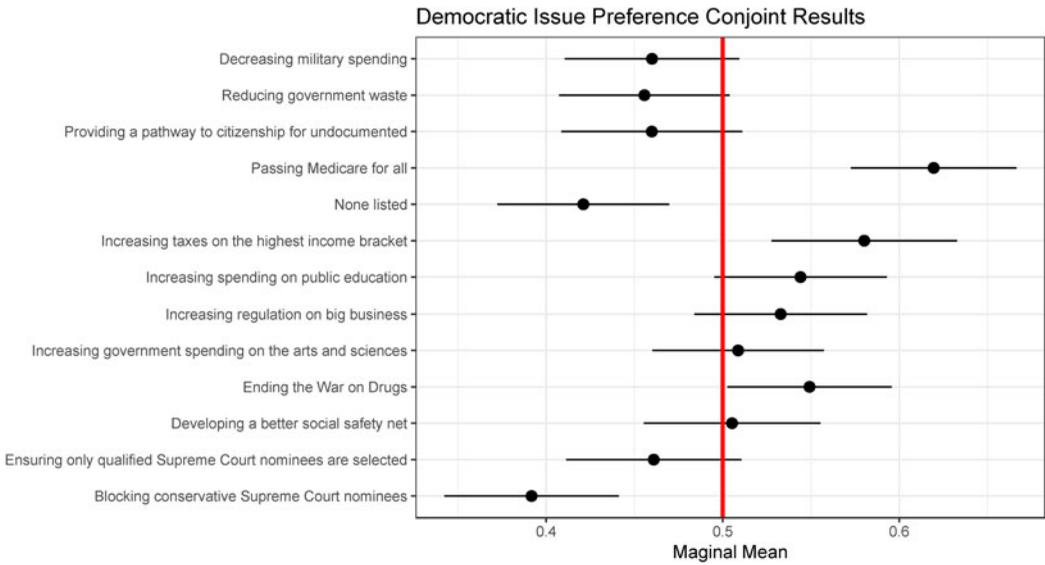


Figure 9. Results for Democratic participants.

nominees were confirmed” were selected 46 percent of the time, which did not vary significantly from the baseline of 50 percent. On the contrary, Democratic candidates whose number one issue priority was “blocking conservative Supreme Court nominees” were punished by Democratic participants and selected just 39.1 percent of the time, which represents a significant departure from the baseline ( $p < 0.05$ , two-tailed test). Furthermore, blocking conservative Supreme Court nominees was the least popular issue priority for Democratic candidates. Although this result may be somewhat surprising, the survey experiment was conducted after President Trump and the Republican controlled Senate had confirmed both Neil Gorsuch and Brent Kavanaugh to

the Supreme Court. Considering President Trump and the Republican Senate's success confirming two conservative nominees, it may be the case that Democratic participants saw this as a losing issue and that reflected poorly on the candidate. Moreover, the differences between a majority party (i.e., the Republicans) issue statements and a minority party (i.e., the Democrats) issue statements may have elicited different responses. That is, although our Republican treatments emphasized ideology and the positive forward movement of an agenda, the Democratic treatments necessarily involved obstruction that may have been viewed as partisan. This is important, as prior research indicates legislative behavior perceived as overly partisan or as contributing to gridlock is more likely to be punished (Carson et al., 2010; Flynn and Harbridge, 2016). Yet, whatever the reason, these results do further validate our observational survey data which demonstrated that Democratic voters viewed the Supreme Court as a less important issue than the Republicans. In our conjoint experiment, the Supreme Court did not positively—and even negatively—affected candidate selection.

### 3. Implications and conclusions

Although the US government contains three separate branches, the analyses presented here suggest that preferences for one spillover into considerations of another. Specifically, we find evidence consistent with the argument that Supreme Court nominations factor into the voting decisions of a substantial subset of Americans. Across three studies, we show that partisans are more likely to consider the Supreme Court appointments as an important electoral issue, both Democrats and Republicans are more likely to vote for incumbent Senators when they agree with the confirmation votes cast by those senators, and Republicans are more likely to support candidates who make appointing conservative justices a priority. These results are consistent with the increasingly partisan and “team” nature of US politics (Abramowitz and Webster, 2016) and offer new insights into how voters evaluate both sitting senators and judicial nominees. A resulting implication is that maintaining ideological consistency at all levels may be so important that voters may be willing to compromise on the personal quality of the nominees and candidates. Indeed, the Republican candidates in our experiment received a significant boost only when promising ideological conservative judicial nominees; a promise of high-quality nominees did not alter support in any significant way. In the context of recent events, this may help explain how Roy Moore was still able to earn over 48 percent of the vote in his 2017 Alabama Senate race and why opinions about Gorsuch and Kavanaugh's confirmation were so polarized. Whether this apparent commitment to ideology is driven by actual issue stances or more symbolic, identity-driven concerns (Mason, 2018) is something that future work should explore. Recent evidence (Chen and Bryan, 2018) is more consistent with the former, but more precise testing is needed.

In addition, more should be done to probe the partisan asymmetries in our results. Although our findings of greater importance among Republican respondents is consistent with other studies suggesting that the Republican party is the more ideological of the two parties (Grossmann and Hopkins, 2016), we cannot ignore the possibility that majority versus minority status may also be at play. Each of our three studies focused on a time where Republicans controlled both keys to the nomination process: the presidency and the Senate. Studies conducted when one or both are under Democratic control may produce different results. Similarly, the ideological balance of the Supreme Court may also play a role. Scalia's passing effectively left the Supreme Court with a 4-4 ideological split, undoubtedly increasing the stakes in the battle over his replacement. Were the compositions more lopsided, individual voters may adjust the weights that they apply.

On the whole, our results indicate that the Supreme Court and judicial appointments are an important electoral issue. This suggests that although voters have no direct say in the nomination or confirmation of judicial candidates, they are aware of their indirect influence on the process and behave accordingly. First, as Kestel et al. (2010, 2015) demonstrate, through voicing

their opinions as judicial nominees are pending. Senators then consider these opinions when deciding whether or not to confirm nominees. Second, as our research demonstrates, voters can influence the process by rewarding or punishing Senators based on their votes. If voters do not like the nominees their incumbent Senator confirms, our findings indicate that voters will be more likely to vote them out of office—even after accounting for partisan and ideological congruence. This twofold mechanism through which voters influence the confirmation process potentially assuages concerns over the counter-majoritarian nature of the judiciary (Bickel, 1962), as it indicates that voters have more influence than traditionally assumed.

Although our results demonstrate the importance of the Supreme Court and judicial appointments as an electoral issue, they do not speak to the implications for the judiciary as a whole. For example, in 2016 then-candidate Donald Trump released a list of potential Supreme Court nominees and promised to select nominees exclusive from that list.<sup>27</sup> In the 2020 Democratic primary, candidates are pressured to release names of potential nominees.<sup>28</sup> Furthermore, many of the 2020 Democratic primary candidates have released proposals for judicial reforms that seek to undo or minimize the influence of President Trump's judicial nominees.<sup>29</sup> As candidates increasingly use the judiciary for electoral gains, it raises questions about how the judiciary can maintain its legitimacy and legalistic image in the face of increased importance, scrutiny, and polarization (Bartels and Johnston, 2012; Bartels, 2015). Furthermore, publishing lists of potential judicial nominees has implications for the capacity of the individuals named to be independent and fair judges (Black and Owens, 2016). Thus, future studies should probe how the electoral importance of the Supreme Court and judicial appointments relate to the judiciary's legitimacy and the behavior of the judges implicated in such electoral appeals.

**Supplementary material.** The supplementary material for this article can be found at <https://doi.org/10.1017/psrm.2021.20>.

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<sup>27</sup><https://www.nytimes.com/2016/05/19/us/politics/donald-trump-supreme-court-nominees.html>; source: New York Times.

<sup>28</sup>[https://www.washingtonpost.com/politics/democratic-presidential-candidates-come-under-pressure-to-release-supreme-court-picks/2019/10/15/2bf3bd34-eeef-11e9-b2da-606ba1ef30e3\\_story.html](https://www.washingtonpost.com/politics/democratic-presidential-candidates-come-under-pressure-to-release-supreme-court-picks/2019/10/15/2bf3bd34-eeef-11e9-b2da-606ba1ef30e3_story.html); source: Washington Post.

<sup>29</sup><https://www.nytimes.com/interactive/2019/us/politics/supreme-court-democratic-candidates.html>; source: New York Times.

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