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# Legislative diversity and the rise of women judicial nominees in the United States

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## ABSTRACT

What factors lead U.S. presidents to nominate women to judicial vacancies? We argue that gender diversity within the Senate creates an incentive for the president to select women for judicial positions. We posit two potential reasons for this. First, presidents may assume that women senators care about diversity in the judiciary, potentially creating an easier path for women nominees. Second, the president may view the presence of women in the Senate as a heuristic for public support for women in other areas of politics. Using data on judicial nominations between 1925 and 2020, we find that Senate gender composition is associated with a higher probability of a woman nominee being selected for a judicial vacancy. These findings have implications for women in politics, diversifying institutions, and nomination strategies pursued by presidents.

## ARTICLE HISTORY

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During its first year, the Biden administration successfully shepherded 40 judges through the confirmation process, the highest number during a president's first year since 1981.<sup>1</sup> Beyond the total number of nominees, Biden's picks were notable for being 75% women.<sup>2</sup> Though the number of women nominated by Biden is notable, increasing women's inclusion in the judiciary is part of a larger trend among presidents. President Jimmy Carter centered diversity in his administration, including creating a nominating commission to ensure that not only white-men were considered for judicial vacancies (Scherer 2005; Slotnick 2002). Prior to Carter, women had held just 1% of all Article III judgeships (FJC 2021). By the end of Carter's term, women held over 40 judgeships. Subsequent presidents have continued increasing the number of women in the judiciary, with every president nominating more women than his most recent co-partisan predecessor.<sup>3</sup>

As women's inclusion in the judiciary has increased, so too has the number of women in legislative office. Over the past 50 years, women's representation in Congress has risen from 3.7% in 1977 to 26.9% in 2023 (CAWP). Increases to women in the Senate in particular is likely consequential for presidents seeking to fill vacancies, as it is ultimately the Senate that has the power to confirm or reject nominees. Presidents do not make decisions in isolation. Rather, presidents are strategic actors who make decisions based on many political factors. Therefore, we should expect presidents to select nominees not simply based

on their preferences, but to make decisions by balancing their preferences with the likelihood of nominees being confirmed. Thus, presidents may appoint women based on strategic considerations. Research suggests that presidents can gain public favor by appointing women the judicial vacancies (Badas and Stauffer 2023), that women nominees attract support from ideologically distant women in the public (Badas and Stauffer 2018), and opposing women nominees can be costly for senators (Asmussen 2011). Indeed, evidence suggests that presidents are more likely to nominate women during times of partisan gridlock, seeking to capitalize on these factors by making it more difficult for senators to oppose these nominees (Asmussen 2011).

We examine the idea of strategic selection further, arguing that presidents nominate women to judicial vacancies in response to the changing gender composition of the Senate. We posit women's increased presence in the Senate serves as a heuristic for presidents in at least two ways. First, presidents may assume that women senators will be more supportive of women nominees. Second, more women senators may be seen as indicative of a public that is supportive of increasing women's presence in politics. In either case, we would expect to see presidential appointments of women increasing in response to changes in women's presence in the Senate.

## 1. Women nominees and presidential strategy

When filling judicial vacancies, the primary goal of any president is to select a nominee who approximates their own ideology (Nemacheck 2008). However, presidents have to make the case for their nominees on the basis of qualifications and experience rather than ideology alone (Badas 2020). So, behind ideological proximity, presidents are also concerned with nominating individuals with sterling legal credentials. Besides ideology and qualifications, the president has to consider the Senate and the public. The Senate is ultimately tasked with confirming nominees and the public can influence how senators vote on nominees (Kastellec, Lax, and Phillips 2010). These constituencies can push the president to consider factors such as gender, race, ethnicity, or professional background (Nemacheck 2008). We argue the changing gender composition of the Senate has sent cues to presidents about the types of nominees these constituencies are likely to accept in a way that incentivizes the selection of women nominees.

The Senate is the most proximate group a president must appeal to with their nominee. While the public can exert pressure on presidents to select certain individuals, the Senate ultimately confirms or rejects these selections. As the number of women senators has increased, presidents may presume that these individuals will be more supportive of women nominees due to their shared gender. Indeed, gender diversity appears to be important to women senators. During the confirmation hearings of Sonia Sotomayor, Senator Dianne Feinstein (D-CA) lambasted the lack of women in the judiciary (Feinstein 2009). During the confirmation hearing of Neomi Rao, Senator Mazie Hirono (D-HI) highlighted her importance as the first South Asian woman to be nominated to the Court of Appeals (Hirono 2019), and in 2020 Senator Joni Ernst (R-IA) celebrated the nomination of Amy Coney Barrett as an important advancement for women (Ernst 2020). Further, research on public opinion indicates that women are more likely to support nominees with whom they disagree ideologically when those nominees are women (Badas and Stauffer 2018). Presidents may seek to exploit similar dynamics in

the Senate, viewing women nominees as a chance to select individuals who are more ideologically congruent while still drawing cross-party support.

Likewise, deliberation dynamics may send cues to presidents that women senators are more supportive of women nominees. Analysis of Supreme Court confirmation hearings finds that when questioning opposite-party nominees, women senators interrupt male nominees far more frequently than male senators (Boyd, Collins Jr, and Ringhand 2019). These dynamics may send cues to presidents that selecting women nominees is advantageous, as women senators appear to be more receptive to these nominees – at least in terms of their interactions in hearings. While Boyd, Collins Jr, and Ringhand (2019) find similar gendered patterns among men – with men less likely to interrupt men and more likely to interrupt women – this behavior is potentially more costly for male senators, as it involves possible objection or aggression aimed at women (e.g., Asmussen 2011). Moreover, King, Schoenherr, and Ostrander (2023) find that presidents are more likely to nominate women to vacancies when the relevant home state Senate delegation includes at least one woman.

Presidents may also pursue women nominees in an attempt to bolster public support. Polling regularly finds support for increasing gender diversity within the judiciary,<sup>4</sup> and research suggests that gender diversity enhances institutional legitimacy (Atkeson and Carrillo 2007; Clayton, O'Brien, and Piscopo 2019; Stauffer 2021). Presidents who select high numbers of women judicial nominees generally see boosts in support, while failing to nominate sufficient numbers of women results in poor public approval ratings. The increasing number of women nominated to the judiciary may, in part, be due to presidents attempting to tap into this underlying support. As the number of women serving in the Senate has increased, one possibility is that presidents view this as an indication of increasing public support for women's inclusion in political office. Indeed, as the number of women serving in the Congress has increased over the past several decades (CAWP 2021), public opinion scholars have observed consistent increases in the “gender egalitarian mood” of the country (Koch and Thomsen 2017). Of course, the election of women senators is a very crude measure (at best) of public support. While the election of women suggests a public that is open to women serving in politics, it does not necessarily signal *demand* for women. However, that does not mean that presidents do not use women's representation as a proxy for public mood. If presidents see the number of women serving in the Senate as a heuristic for public support for women in office, they may seek to take advantage of this support by nominating women (i.e., Badas and Stauffer 2018). Gaining this support could be critical for nominees as research on Supreme Court nominees finds that senators' votes in confirmation hearings are influenced by public opinion in their state (Kastellec, Lax, and Phillips 2010), and the public holds senators who deviate from these preferences accountable at the ballot box (Badas and Simas 2022). In short, there are at least two reasons to suspect that presidents may be incentivized to nominate women to judicial vacancies in response to changes in the gender composition of the Senate. Below, we test the degree to which presidential nominating patterns are linked to the demographic characteristics of senators.

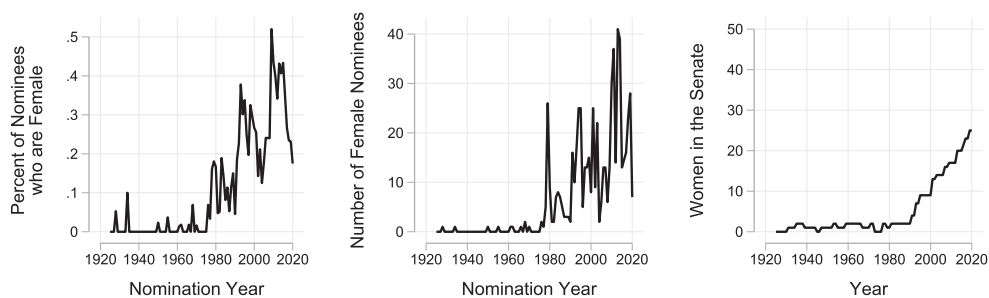
## 2. Data and methods

To test whether presidents are more likely to nominate women to judicial vacancies based on gender composition in the Senate, we use multiple sources to gather data

from 1925 to 2020. In the appendix, we select different starting points for our analyses to demonstrate the results are not an artifact of the years we investigate. One set of analyses begins in 1959 and another begins in 1981. The results of those analyses are substantively similar to those presented in this manuscript. Data on nominee gender comes from the Federal Judicial Center (FJC), which maintains a database of biographical information for all judicial nominees.<sup>5</sup> Our dependent variable is nominee gender; our unit of analysis is individual nominations. [Figure 1](#) plots the number of women nominees over time. The first panel displays the percentage of nominees in a given year who are women, while the second panel provides the raw number of women nominated. The figure shows a general increase of women nominees across time, with more women nominees appointed in years with Democratic presidents.

Our primary interest is how gender diversity in the Senate influences presidential nominations. We measure gender diversity as the number of women serving in the Senate. We use the number of women in the Senate because the Senate is the body tasked with confirming judicial nominees. Thus, if the president is attentive to Congressional gender diversity when making their nominations, it is more reasonable to assume that they pay attention to the Senate rather than the House. Data on the number of women senators comes from the Center for American Women and Politics and is plotted over time in the third panel of [Figure 1](#).

Besides the number of women senators, we must account for other factors that might influence presidential decision-making when filling judicial vacancies. Past research indicates women are more likely to be appointed during periods of gridlock (e.g., [Asmusen 2011](#)). We account for gridlock by 1) controlling for Senate polarization – taking the difference between the mean DW-Nominate scores of Democratic and Republican senators ([Poole and Rosenthal 2017](#)) – and 2) including a measure taking the difference between the president’s DW-Nominate score and the mean Senate DW-Nominate score.<sup>6</sup> We also control for presidential partisanship in our models. Past research shows that Democratic presidents highlight diversity in their judicial appointments to a greater extent than Republicans ([Holmes 2008](#)), are more willing to sacrifice ideological compatibility for the sake of diversifying the judiciary ([Hofer and Casellas 2019](#)), experience more pressure from party activists to make diverse nominations ([Scherer 2005](#)), and Democrats in the public are more rewarding of diverse appointments ([Badas and Stauffer 2023](#)). Moreover, research by [King, Ostrander, and Schoenherr \(2024\)](#) suggests that Republican and Democratic presidents engage in different decision-making when



**Figure 1.** Women judicial nominees and senators over time.

appointing women, with Republicans more likely to engage in “anchoring” (i.e., appointing women to seats previously held by women) while Democrats are broader in their appointment patterns. Likewise, the partisanship of the Senate might matter for much the same reason.<sup>7</sup> For this reason, we control for whether or not Democrats held a majority in the Senate at the time of a nomination.<sup>8</sup>

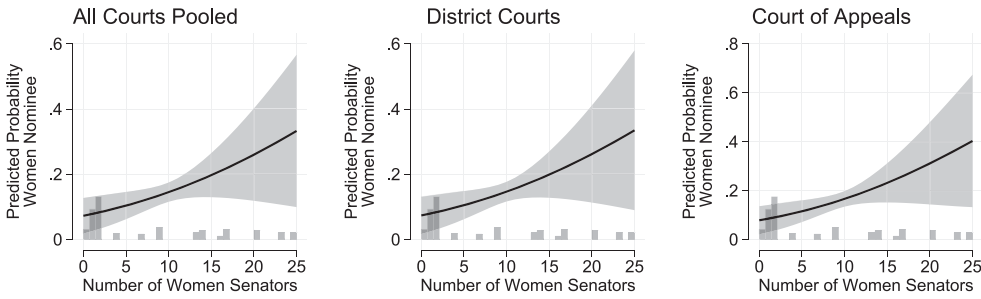
We estimate a set of random effects logistic regressions predicting whether a nominee is a woman. Model 1 is a pooled model that includes nominations to the Supreme Court, Courts of Appeals, and District Courts. Model 2 includes only District Court nominees and Model 3 includes only Court of Appeals nominees. This helps to account for potential differences in strategy when making appointments across levels of the judicial hierarchy (Binder and Maltzman 2009). Because there may be some factors that we cannot account for that may nonetheless influence a president’s willingness to select women nominees, we include random effects for Congress and president in our modeling. The random effect for Congress will also ensure the coefficient for the effect of “Women in the Senate” is due to an actual relationship rather than spurious based on a concurrent time trend. Table 1 presents the results. In the appendix, we analyze the data using a time series approach, collapsing the data by Congress such that the unit of analysis is the percentage of nominees who are women and estimate a generalized autoregressive conditional heteroskedasticity (GARCH) model. The results are substantively similar to those presented here.

The results in Table 1 support our hypothesis that presidents are more likely to appoint a woman to judicial vacancies when there are more women in the Senate. We plot the substantive effect across the range of women in the Senate in the first panel in Figure 2. The pooled analysis shows that moving from the mean (7) number of women senators to one standard deviation above the mean (15) is associated with an increased probability of a woman nominee by .078 (from .119 to .197). The result is consistent across levels of the judiciary. For the Court of Appeals, this change is associated with an increased probability of .097 (.134 to .231) and at the District Court an increase of .078 (from .121 to .199)

**Table 1.** Multilevel logit regression: female nominee.

	(1) Pooled	(2) District Courts	(3) Appeals Courts
Women in the Senate	0.0872* (0.0408)	0.0866* (0.0423)	0.0889* (0.0397)
Republican President	-1.607*** (0.342)	-1.602*** (0.350)	-1.611*** (0.304)
Democratic Senate	0.0710 (0.311)	0.142 (0.313)	0.0631 (0.251)
Senate Polarization	6.909* (2.957)	6.920* (3.090)	3.777 (2.840)
President Distance to Senate	5.871*** (1.380)	5.935*** (1.467)	3.848** (1.199)
Court Fixed Effects?	Yes	No	Yes
Constant	-8.807*** (1.807)	-9.623*** (1.784)	-6.159*** (1.497)
Proportional Reduction in Error	13.96%	13.96%	12.34%
Wald Chi-Square	91.12***	79.64***	60.85***
Observations	3587	2951	608

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

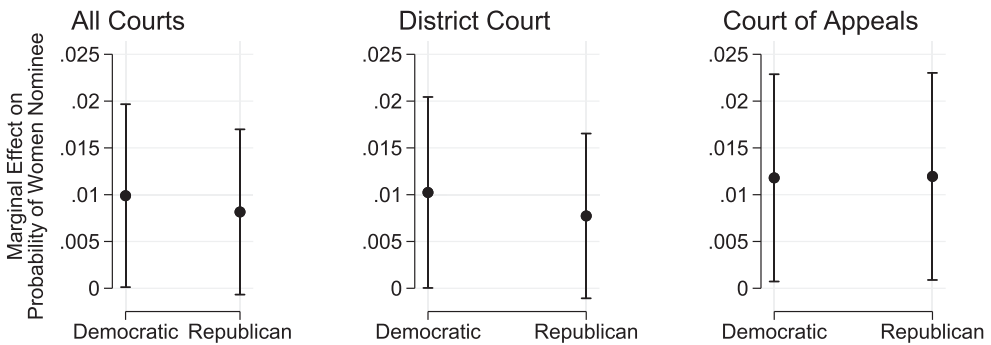


**Figure 2.** Probability of a woman nominee based on the number of women in the Senate. Histogram represents the distribution of women senators.

As noted above, presidents may have different incentives to nominate women based on partisanship. While the results in Table 1 indicate that Republican presidents are less likely to nominate women compared to Democratic presidents, they do not tell us whether Republican presidents respond to changes in the Senate’s gender composition in a way that is different from Democrats. To evaluate this, we estimate interactive models; we find no evidence that the relationship between Senate gender composition and the probability of selecting a woman nominee differs by presidential party. In both cases the marginal effect is positive and the effect is not significantly different among Democratic and Republican presidents (all courts  $p = .67$ , district courts  $p = .54$ , appeals courts  $p = .97$ ). These results are presented in Figure 3. This is not to say partisanship is unimportant when it comes to selecting woman judicial nominees. As we note, Democrats are more likely to select women for judicial positions than Republicans, but it does not appear the Democratic and Republican presidents respond differently to the gender composition of the Senate when making their nomination choices.

### 3. Conclusion and implications

We offer new insights into the relationship between women’s inclusion in the office across multiple branches of government. We argued that legislative diversity creates an incentive structure for presidents to increase the number of women they nominate



**Figure 3.** Marginal effect of women in the Senate by president party.  $P$ -values for differences between Democrats and Republicans: all courts  $p = .67$ , district courts  $p = .54$ , appeals courts  $p = .97$ .

to fill judicial vacancies. We proposed at least two reasons why more women senators might induce presidents to nominate women to judicial vacancies. First, presidents may presume women senators are more inclined to support women nominees, or may at least be less harsh with these nominees during confirmation hearings. Second, presidents may view women senators as a heuristic for public support for women in office, presuming that representation in the legislature implies a public that is supportive of women's representation. While we are unable to adjudicate between these two mechanisms in the present manuscript, we view untangling the dynamics underpinning this relationship as a fruitful opportunity for future research. Regardless of the mechanism, under each of these explanations, we would expect to see presidents nominating more women to the judiciary in contexts where gender diversity in the confirming body is higher. In this sense, while we are unable to untangle exactly *why* presidents are more inclined to nominate women when gender diversity in the Senate is high, we can suggest that legislative diversity creates strategic incentives for presidents in some way.

Our research contributes to a growing body of scholarship examining under what conditions selecting women for judicial vacancies may be viewed as “good strategy” (e.g., Asmussen 2011; Badas and Simas 2022; Badas and Stauffer 2018, 2022). Understanding the dynamics underpinning presidential decision-making in this regard has important implications for women's inclusion in office and our understanding of political representation. Moreover, our research highlights that women's inclusion in one fora of politics downstream consequences for inclusion in other institutions (see also Strickland and Stauffer 2021). Though we provide an initial look at the relationship between gender diversity in legislative politics and judicial politics, we hope that more scholars examine these downstream, inter-branch relationships in the future.

## Notes

1. <https://www.nytimes.com/2021/12/18/us/politics/biden-judges-reagan-record.html>.
2. <https://www.washingtonpost.com/politics/interactive/2021/biden-judge-diversity/>.
3. <https://www.pewresearch.org/fact-tank/2018/10/02/trump-has-appointed-a-larger-share-of-female-judges-than-other-gop-presidents-but-lags-obama/>.
4. See Badas and Stauffer (2023).
5. The FJC's database includes only nominees who are confirmed. However, the FJC maintains a list of nominees who were not confirmed, which we use to identify the gender of unconfirmed nominees. Thus, our data includes *all* nominees.
6. Nominees from the Hoover administration are excluded; Hoover does not have a DW-Nominate score.
7. King, Ostrander, and Schoenherr (2024) also show that when a blueslip holding Senator is a woman, the president is more likely to nominate a woman. Blueslips are a norm in the context of judicial nominations. This means that the full Senate will typically defer to the views of the senators from states where a nominee will be seated (Binder 2007). If a home state senator opposes a nominee, this in most cases is enough to delay or defeat confirmation of a nominee (Binder 2007). Considering the power granted to home state senators, presidents may strategically nominate women when a member of the nominee's home state senator delegation is a woman. In the appendix we test the robustness of our main finding by adding an additional control for whether one of the home state senators is a woman. Due to data availability, we analyze nominations between the 97th and 116th Congress. The results to these analyses show our key result is robust to including a control for whether the home state delegation includes a female senator.



8. The results are substantively similar whether we use Democratic control of the Senate or total number of Democratic senators.

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## Disclosure statement

No potential conflict of interest was reported by the author(s).

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