Appendix—Supporting Information for "Voting for Justices: Change and Continuity in Confirmation Voting 1937-2010"

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Appendix A: Measuring the Ex Ante Move-the-Median Impact of Nominees

To calculate the ex ante move-the-median impact of nominees we proceed as follows. First, for each natural court in the 1937-2010 period (that is, courts defined by stable membership), we calculate the average Martin-Quinn voting score for the justices, based on the three preceding years, at the time of end of the natural court. This procedure is intended to capture perceptions of the Supreme Court at the time of a nomination. We then convert this score to the Senate DW-NOMINATE space. Using these scores, we identify the median justice at the time of a nomination. We then replace the score of the exiting justice with the NSP score of the nominee replacing that justice (that is, his first dimension score scaled in the Senate DW-NOMINATE space). We then identify the score of the median justice that would have resulted if the nominee were confirmed and voted in accord with his or her NSP Score. The difference between the previous median justice's score and the new median justice's score is the ex ante move-the-median impact of the nominee. Occasionally two vacancies on the Court occur simultaneously. If so, we evaluate the impact of each nominee separately, in reference to the preceding natural court.

The figure below depicts the same information as in Figure 1F, but in a different way. It is an ordered dotplot with nominees ordered from most liberal to most conservative move-the-median nominees.

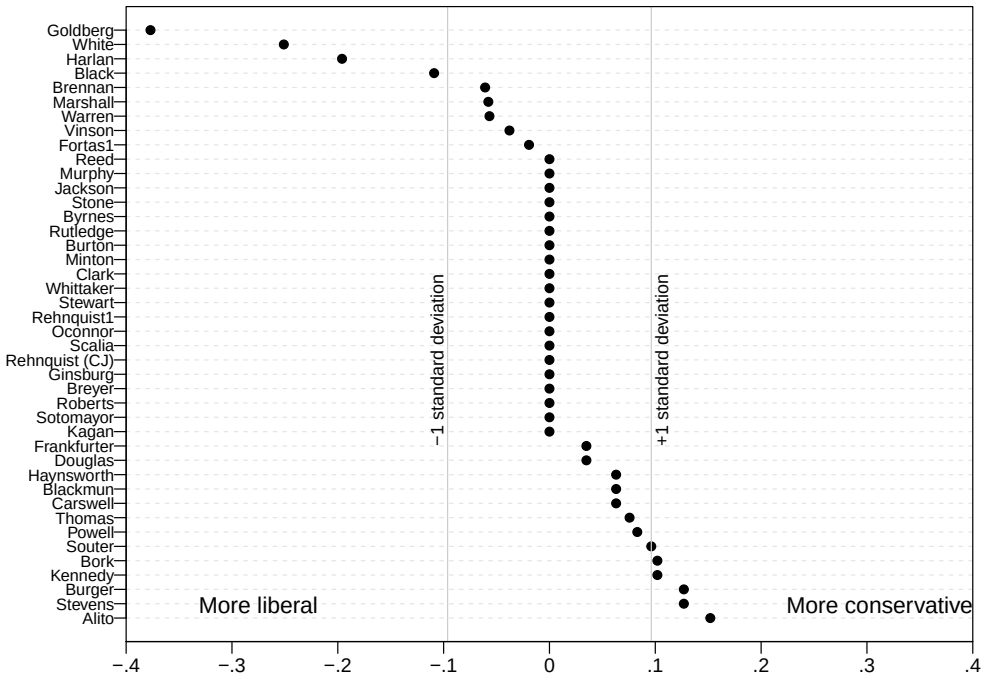

Figure A-1: *The degree to which each nominee would move-the-median, ordered from most liberal to most conservative.*

Appendix B: Measuring Nominee Ideology on the Second Dimension

Newspaper editorials do not consistently discuss the nominee's racial liberalism so they cannot be used to measure contemporary perceptions of this measure. Instead, we employ an inferential procedure to attribute second dimension DW-NOMINATE scores (N2 scores) to the nominees. This procedure is similar to that used by Giles, Hettinger, and Pepper to infer first dimension scores for Courts of Appeals judges.

First, if a nominee was a former member of Congress, we employ his actual N2 score. If the nominee was a former Appeals Court judge, we use the average N2 score of the "sponsoring" senators from his identified state if the senators were from the same party as the president (if only one senator was a presidential co-partisan, we employ his or her score). If the nominee was a Courts of Appeals judge but both his Senate sponsors were opposition senators, we employ the president's N2 score. However, in the case of Southern Democrats Haynsworth and Carswell we treat their sponsoring senators (both Southern Democrats) as if

they were presidential co-partisans. Nominees who served on the D.C. Circuit cannot easily be matched with Senate sponsors; in this case, we treated the presidents as the sponsor. If the nominee was neither an ex-legislator nor a Courts of Appeals judge, we employ the N2 score of the president. All scores are converted into the Senate DW-NOMINATE space.

Appendix C: Heckman Model Estimates

As we noted in the article, equating voice votes with unanimous support for a nominee potentially introduces selection bias: if a roll call vote had been held on a nominee, it is possible that one or more senators would have voted against, meaning the voice votes are censoring nay votes. To investigate this possibility, we tested whether a Heckman sample selection model suggested such bias was present, and, if so, whether it affects the general inferences we have sought to make in this paper about senators' voting on Supreme Court nominees. This appendix reports the results of this investigation.

First, we develop a model for the selection equation. We hypothesized that the number of roll calls per Senate and increasing Senate polarization would predict the likelihood of a roll call vote. We also employ two additional measures. The first is the *salience* of the Supreme Court in American politics. A plausible measure of the Supreme Court's political salience is the number of front page stories about the Supreme Court (excluding stories about nominations) in *The New York Times* in the twelve-month period preceding a nomination. Such coverage overwhelmingly focused on the Court's decisions, particularly controversial cases. An exception concerned FDR's court-packing plan, which dominated news coverage of the Supreme Court in1937 and 1938 (162 and 163 stories, respectively). We omit the court-packing stories, in order to focus on coverage of the actions of the Court itself.

Figure A-2A depicts this measure over time. The public visibility of the Court fell after it accommodated the New Deal in the late 1930s and 1940s. But, the Court's presence in the media increased during the Warren Court, reaching a peak at the height of that Court's

activism in the late 1960s. The Court's salience declined again during most of the Burger and Rehnquist years. However, it increased briefly in the late 1980s, reflecting controversial decisions about abortion and capital punishment. At present, by this measure the political salience of the Supreme Court is moderate, at levels close to the mean for the 1937-2010 period.

The second additional measure is the *tone* of a nominee's coverage. Specifically, it is the percentage of news stories about the nominee in *The Los Angeles Times* that reported "bad news" about the nominee. Figure A-2B depicts this measure over time, and reveals no general time trends.

Table A-1 presents the results of six regression models, grouped into two sets of three models. Within each set, the first model is Heckman probit model; the second is a regular probit that treats voice votes as unanimous yea votes; the third model drops all voice votes. The first set (the "Basic models") estimates a single coefficient for the first dimension and second dimension effects, respectively. The second set (the "Extended models") allow the effect of distances to vary over time. Based on our theoretical expectations about when racial considerations should matter and the results seen in Figure 4 in the article, we divide our data into three periods: 1937-1953, 1954-1970, and 1970-2010. We estimate interactions of each distance measure with each regime. For each model, we employ robust standard errors clustered on the nominee.

The first question is whether the Heckman model detects selection bias. (We note that the selection equation does extremely well in predicting whether a roll call vote will take place; running a regression at the level of each nominee leads to a successful prediction in 41 out of 42 cases.) For each Heckman model, we cannot reject the null that the selection equation is independent of the treatment equation (i.e. the senators' votes model), meaning we cannot reject the null hypothesis of no selection bias. Comparing across models within each set, we can see that there is little statistical difference between the Heckman model and

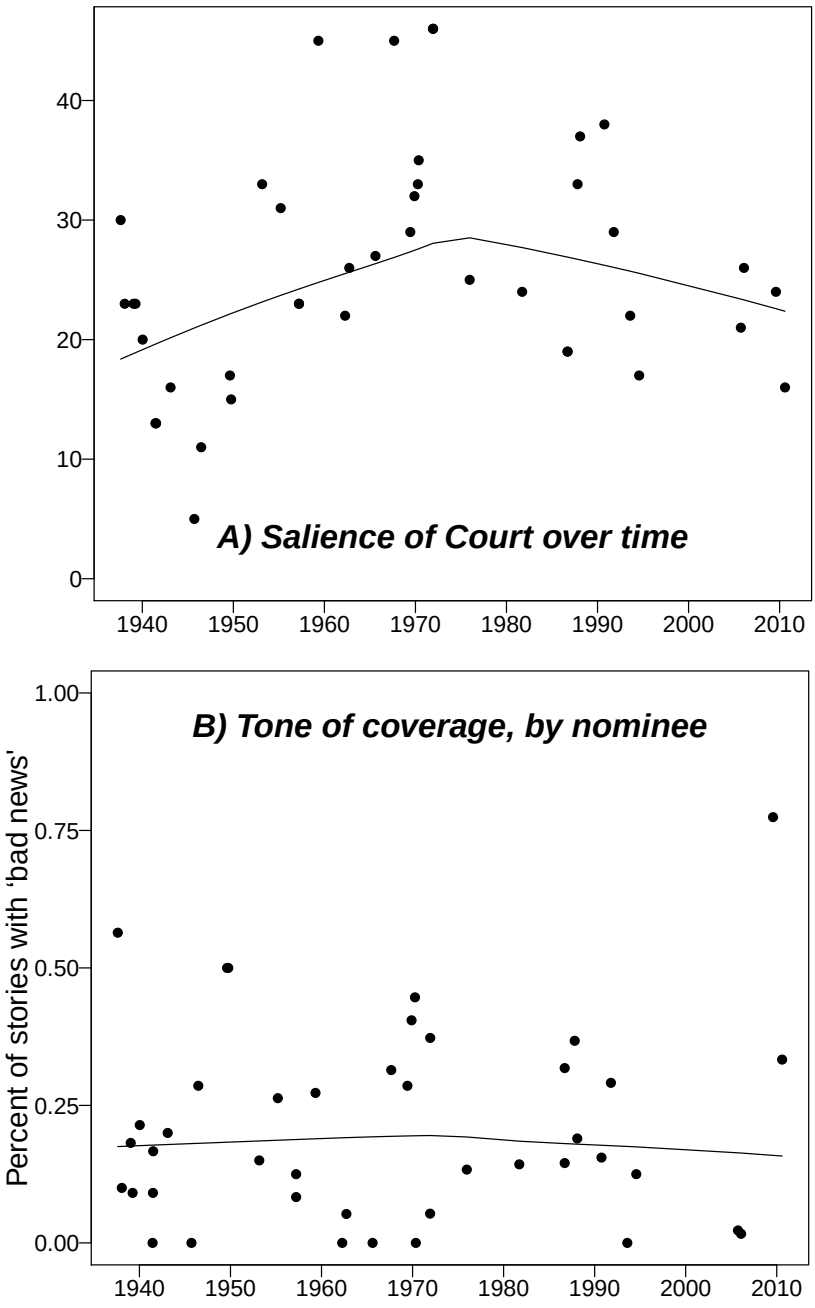

Figure A-2: *The salience of the Court and tone of nominee coverage, over time.*

either a model with voice votes treated as 1 or voice votes dropped. Thus, it appears that nominees who did not receive roll call votes truly were non-contentious nominees.

The next question is how these estimates compare to the models we presented in the paper. We caution that while Model (1) in Table is very similar in substance to Models (2)

and (3) in Table A-1, we cannot directly compare the results of the extended probit models to the varying-intercept, varying-slope models. The latter is much more flexible, in that the slopes on the distance measures are not constrained to be the same in each period. Still, the conclusions one draws from each set of results is similar. In the extended models, *lack of quality*, *interest groups* and *move-the-median* are negative and statistically significant. Looking at the interactions, the second dimension is negative and statistically significant in the first and third periods, but is insignificant in the second period. The second dimension is insignificant in the 1st period and negative and statistically significant in the second period. The second dimension in positive and statistically significant in the third period; however, slight changes in the cutpoint between Periods 2 and 3 leads to an insignificant coefficient on the second dimension in the third period.

This illustrates that the results from the probit models are fairly sensitive to perhaps arbitrary choices about when to separate the periods; by estimating separate slopes on each nominee, the multilevel models presented above avoid this difficulty and are thus more robust. In addition, the bottom of Table shows the classification success of the probit models. We can see that while the extended models do better than the basic models, they still do not classify as well as the varying-intercept, varying-slope models, particularly in terms of predicting nay votes successfully. Thus, the multilevel models are a better fit to the data.

Finally, we note that while employing the Heckman model did not make a substantive difference in our study, there are likely other areas of legislative activity where it certainly might—for instance, evaluating roll call voting in treaties or other nominations. We encourage scholars of legislative politics to keep this possibility in mind.

	Basic models			Extended models		
	Heckman	Voice votes =1	Voice votes dropped	Heckman	Voice votes =1	Voice votes dropped
	(1)	(2)	(3)	(4)	(5)	(6)
Intercept	2.89*	3.09*	2.80*	3.62*	3.36*	3.46*
	(0.45)	(0.36)	(0.40)	(0.72)	(0.45)	(0.58)
Regime 2 (1954-1970)				-1.07*	-0.39	-1.02**
				(0.53)	(0.52)	(0.56)
Regime 3 (1971-2010)				-0.09	0.35	0.04
				(0.75)	(0.59)	(0.71)
Lack of quality	-2.16*	-2.23*	-2.14*	-1.64**	-2.10*	-1.56**
	(0.61)	(0.56)	(0.59)	(0.96)	(0.73)	(0.90)
Scandal	0.04	-0.00	0.09	-0.30	-0.20	-0.27
	(0.35)	(0.32)	(0.33)	(0.50)	(0.42)	(0.50)
Interest groups	-0.21*	-0.25*	-0.21*	(-0.32)*	-.34*	-.33*
	(0.06)	(0.05)	(0.06)	(0.06)	(.07)	(.06)
Move-the-median	-1.69	-0.58	-1.81	-3.03*	-1.64**	-3.17*
	(1.33)	(1.01)	(1.39)	(1.47)	(0.95)	(1.51)
Senator-nominee distance, first dimension	-2.54*	-2.65*	-2.49*			
	(0.49)	(0.44)	(0.47)			
Senator-nominee distance, second dimension	-0.14	-0.17	-0.13			
	(0.12)	(0.11)	(0.12)			
1st-dimension distance × Period 1				-7.20*	-3.26*	-7.07*
				(1.18)	(1.00)	(1.12)
1st-dimension distance × Period 2				-0.98	-1.26	-0.91
				(1.04)	(0.91)	(0.99)
1st-dimension distance × Period 3				-3.83*	-4.05*	-3.84*
				(0.47)	(0.50)	(0.48)
2nd-dimension distance × Period 1				-0.50	-0.05	-0.51
				(0.63)	(0.37)	(0.65)
2nd-dimension distance × Period 2				-0.45*	-0.48*	-0.45*
				(0.15)	(0.14)	(0.15)
2nd-dimension distance × Period 3				0.40*	0.39*	0.41*
				(0.12)	(0.13)	(0.12)
Selection equation						
Number of roll calls	0.01*			0.01*		
	(0.00)			(0.00)		
Salience	0.09*			0.09**		
	(0.05)			(0.05)		
Tone of news coverage	10.81*			10.98**		
	(6.13)			(6.22)		
Senate polarization	0.78			0.93		
	(4.28)			(4.19)		
Intercept	-7.85*			-7.95*		
	(3.63)			(3.64)		
Reject null of independent equations?	No			No		
N	3,922	3,922	2,473	3,922	3,922	2,473
% correctly classified, all votes	92	92	–	93	93	–
% correctly classified, non-voice	88	88	88	90	89	89
% correctly classified, nay votes	57	54	58	68	63	68

Table A-1: *Heckman versus regular probit models of confirmation, treating voice votes as yea votes or dropping them altogether.* $^*p < .05$,$^* *p < .1$

Appendix D: The Next Divided Government Nomination

In the article, we noted the last three Supreme Court nominations (Alito, Sotomayor, and Kagan) saw an increase in the importance of ideology. A striking feature of these nominations is that all occurred under unified government. In fact, the last divided government nomination (Thomas) took place 20 years ago. Since the importance of ideology and polarization are increasing at the same time, it is natural to ask what might happen when the next divided government nomination occurs.

To explore these possibilities, in this section we perform two simulated confirmation votes across both types of possible divided governments: a Democratic president facing a Republican-controlled Senate and a Republican president facing a Democratic-controlled Senate. We construct two hypothetical senates—each with a 55-45 partisan split—based on the 111th Congress (2009-10), the last for which NOMINATE data is available. The 111th Senate comprised 59 Democrats and 41 Republicans. To create a Republican majority, we randomly took 14 Democrats, made them Republicans, and randomly drew a NOMINATE score (on the first dimension) for them based on the distribution of the ideal points of the 41 Republicans. Similarly, to make the Senates comparable in terms of partisan makeup, we reduced the Democratic majority to 55 by randomly taking four Democrat senators and undertaking the same procedure.

We describe our simulations assuming a Democratic president making the appointment; the Republican president scenario is symmetric. For completeness, we simulate senatorial responses for nominees ranging from -.5 to .6 in DW-NOMINATE space, since this is the observed range of the nominees over the 70-year period we study (see Figure 2A in the article). For simulated nominees of all possible ideologies, we then calculate the ideological distance between the nominee and the senator and predict whether the senator would vote for the nominee. We calculate this prediction based on the estimates in Model (3). For the intercept, we employ the average of the varying intercepts for the Alito, Sotomayor, and Kagan

nominations; likewise, we employ the average of their total slopes on ideological distance in the first dimension (i.e., the fixed effect for first dimension ideology plus the average of their varying slopes). At the nominee-level, we assume a high-quality nominee with a lack of quality score of .15 (it seems extremely unlikely a president would risk appointing a low quality nominee during divided government) and moderately high interest group involvement (34, the number that participated during John Robert's confirmation). Finally, we undertake separate simulations assuming the nominee is and is not a move-the-median nominee (of .2).

The results from the simulations are presented in Figure A-3. The left side depicts the simulations for a Democratic president facing a Republican Senate, while the right side depicts the results for a Republican president facing a Democratic Senate. The x-axis depicts potential nominee ideology, while the y-axis depicts the predicted number of yea votes. The solid line depicts the predicted vote margins for a nominee that does not move the median, while the dotted line depicts the predicted votes for a nominee who does. For reference, the tick marks on the top of the x-axis depict the actual first dimension NSP scores for all the nominees. We label a few of these for reference.

Beginning with a Democratic president facing a Republican president, if the nomination did not move the median, the simulations predict that the president would be somewhat constrained in his selection—a nominee as liberal as Justice Fortas, for example, would go down to certain defeat. However, a Democratic president could appoint someone as liberal as Justices Sotomayor and Kagan and eke out 50 votes. A move-the-median nomination, on the other hand, would significantly constrain the president. A nominee as moderate as Justice Breyer would barely be confirmed, according to the simulations.

Turning to the right panel in Figure A-3, the simulations suggest that a Republican president facing a Democratic Senate would be even more constrained—at least relative to Republican presidents in recent decades. In no scenario is a nominee as conservative as Roberts or Alito (or even Burger) confirmed. Even in a non-move-the-median scenario, the

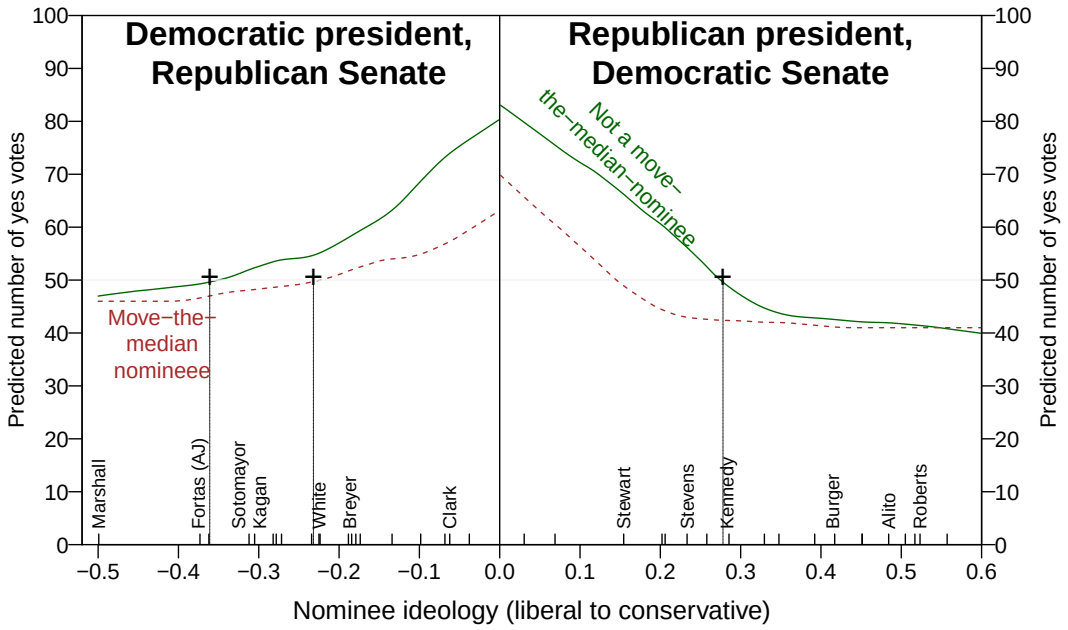

Figure A-3: *Divided government counterfactuals. Each line depicts the predicted number of yea votes in the Senate as the potential nominee's ideology goes from most liberal to most conservative, for both a move- and non-move-the median nomination. The cross-hatches show the respective thresholds to gain 50 votes. The tick marks on the top of the x-axis depict the actual first dimension NSP scores for all the nominees. We label of a few of these for reference. The simulations suggest that presidents would be constrained significantly in their choice of nominees when facing a Senate controlled by the opposition party, especially for a move-the-median nominee.*

simulations suggest that a Republican president would have to appoint a nominee about as conservative as Justice Stevens was perceived to be. If, on the other hand, a nominee moved the median, our model predicts that a Republican president would be severely constrained, and would have to nominate someone no more conservative than Justice Stewart.

Of course, the point predictions generated by these simulations should be taken with a grain of salt. But they do suggest that the era of polarized politics could lead to a historic showdown when next a divided government vacancy occurs. On the one hand, the president could simply choose to pick a moderate nominee. Alternatively, if he does not, the Senate could simply refuse to confirm his nominee until the president moderates his choice, leading to a sustained vacancy on the high court.