Distorting the Electoral Connection? Partisan Representation in Confirmation Politics

Jonathan P. Kastellec
Dept. of Politics, Princeton University
jkastell@princeton.edu

Jeffrey R. Lax
Dept. of Political Science, Columbia University
JRL2124@columbia.edu

Justin H. Phillips
Dept. of Political Science, Columbia University
JHP2121@columbia.edu

April 20, 2010

Abstract

Do senators respond to the preferences of their states median voter or only to the preferences of their co-partisans? We study responsiveness using roll call votes on ten recent Supreme Court nominations. We develop a method for estimating state-level public opinion broken down by partisanship. We find that senators respond more powerfully to their partisan base when casting such roll call votes. Indeed, when their state median voter and party median voter disagree, senators strongly favor the latter. This has significant implications for the study of legislative responsiveness, the role of public opinion in shaping the personnel of the nations highest court, and the degree to which we should expect the Supreme Court to be counter-majoritarian. The methodological approach we present can be applied elsewhere to estimate opinion by state and partisan group, or by many other typologies, so as to study other important questions of democratic responsiveness and performance.

1 Introduction

Whom do legislators represent? Most scholars of public opinion and legislative behavior agree that constituents' preferences shape the behavior of their representatives in Congress (Mayhew 1974, Arnold 1990, Erikson, Mackuen and Stimson 2002, *inter alia*). There is, however, less consensus about *whose* opinion matters. Are some constituents better represented than others? Are lawmakers most responsive to the median voter or to subconstituencies, particularly their own partisans? The answers to these questions are important for understanding the quality of American democracy—if members of Congress are primarily (or only) responsive to their same-party constituents, it raises normative concerns of democratic performance and has implications for the study of legislatures, elections, and other features of American politics.

The possibility that lawmakers are more responsive to certain constituents has long been recognized (Miller and Stokes 1963, Clausen 1973, Fiorina 1974, Fenno 1978). This hypothesis, however, has been difficult to test due to the absence of accurate measures of preferences across subconstituencies. Researchers have often compensated by using demographic and economic proxies or by using diffuse survey-based measures such as average preferences across a range of policies or self-identified ideology. Such measures, while often rigorously constructed, can be problematic in two ways. First, they do not directly measure constituent preferences on the specific roll call votes being studied. Second, they do not share a common metric with roll call votes, seriously limiting the inferences that can reasonably be drawn. These problems may account, in part, for the conflicting and puzzling findings within the existing literature (c.f. Bishin 2000, Clinton 2006).

We overcome these limitations by generating estimates of opinion on specific votes broken down by subconstituency—in particular, partisan subconstituencies within a given state. To do so, we build on recent advances in opinion estimation—specifically, the technique of multilevel regression and poststratification [MRP]. We develop an extension of this method that allows more finely grained estimates of public opinion, broken down by

subgroup, in our case, a senator's in-party, opposite-party, and independent constituents.

We use this innovation to conduct a fine-grained study of responsiveness and representation, focusing on how senators cast votes on Supreme Court nominees. We connect senatorial roll call votes to *roll-call specific* subconstituency preferences. Since our opinion estimates and roll call votes are on a common scale, we can not only estimate the strength of the relationship between opinion and senatorial vote choice by subconstituency, but also how often a senator's vote is congruent with the preferences of same-party, opposite-party, and independent voters. This linkage thus generates more nuanced assessments of responsiveness in nomination politics than was previously possible.

From a substantive perspective, the question of who gets represented is most important when evaluating key votes cast by legislators—votes that are that are likely to have a lasting impact on their constituents. Few decisions are as consequential for and visible to the public as their votes to confirm or reject a nominee to the United States Supreme Court. While the outcomes of many votes are ambiguous or obscured in procedural detail, the result of a vote on a Supreme Court nomination is stark: either the nominee is confirmed, allowing her to serve on the nation's highest court, or she is rejected, forcing the president to name another candidate. Once a justice is confirmed, she serves, with life tenure, on the world's most powerful Court, whose policy reach extends to everything from the enforcement of contracts to whether a convicted murderer lives or dies. From a research design perspective, these votes are valuable because constituents from across the political spectrum care deeply about their outcomes (Gimpel and Wolpert 1996, Gibson and Caldeira 2009), several national public opinion polls are usually conducted for each nominee, and public opinion can vary widely across states and nominees and has been shown to influence voting on nominees (Kastellec, Lax and Phillips 2010).

We document that opinion on Supreme Court nominee frequently varies across partisan constituencies. Given this divergence, whether senators follow the preferences of the median voter or their partisan subconstituency can mean the difference between a vote to

confirm and a vote to reject. We show that senators do respond most to their own partisan constituents. After controlling for ideology, party, and a set of other factors, Democrats still listen more to Democrats and Republicans more to Republicans. Simply changing the composition of a nominee's supporters, leaving total support the same, can have striking effects on the likelihood that a senator votes to confirm a Supreme Court nominee. This extra weight given to partisan subconstituencies filters responsiveness to the public will in ways troubling to normative democratic theory.

2 Subconstituencies and legislators: theory and methods

The usual starting point for studying the linkages between voters and legislators—the Median Voter Theorem—predicts that under certain conditions, reelection-minded lawmakers will locate themselves at the ideal point of the median voter of the lawmaker's constituency (Downs 1957). As discussed in Clinton (2006), however, there is much empirical evidence suggesting that lawmakers often do not converge to the median voter. For example, House candidates do not always adopt identical ideological positions (Ansolabehere, Snyder and III 2001), and same-state senators frequently disagree (Bullock and Brady 1983, Krehbiel 1993). Subsequent theoretical work suggests that lawmakers cater to distinct subconstituencies—rather than the "geographic constituency," or the entire district or state—in order to maximize reelection prospects (Fiorina 1974, Fenno 1978, Bishin 2009). As Clinton (2006, 398) puts it, "If representatives reflect constituency preferences according to their importance in securing reelection we would expect that representatives are not uniformly responsive to constituency preferences."

Adjudicating between median and non-median theories of representation requires subjecting their predictions to empirical scrutiny. Testing expectations of differential representation, however, raises several methodological concerns. Foremost among these is the difficulty of accurately measuring the preferences of various subconstituencies. This chal-

lenge arises from a harsh constraint—the frequent lack of comparable public opinion polls across states or congressional districts. To compensate for this, scholars have pursued several alternatives, each with its own limitations. Early empirical research often used demographic and economic data as proxies for policy preferences. For instance, Peltzman (1984) considers the responsiveness of lawmakers to core constituents by including the average income, age, education, and race of those who voted for each senator as predictors in a model of roll call votes. He captures the preferences of the median voter by also including the characteristics of all state residents. While Census data are readily available, the relationship between state or district census variables and the preferences of constituents is often unclear and may vary widely across issue areas (particularly when moving from economic to social issues). Additionally, Erikson, Wright and McIver (1993) have shown that geography is often more important than socioeconomic variables when it comes to predicting voter attitudes.

Recent analyses have transitioned to survey-based measures of preferences. These measures are typically created by disaggregating respondents from national polls so that opinion percentages can be calculated for each state or district. To generate adequate subsample sizes, either many national surveys must be pooled (sometimes over numerous years) or very large surveys must be found. This severely restricts the type of preference measures that can be constructed (often in ways that make it difficult to accurately gauge the relative influence of different constituencies). Studies that have examined the relationship between legislators and constituency opinion have therefore relied on general measures of preference aggregated across hundreds or even thousands of votes covering various types and issues.

One variety of such a general measure is an index of desired policy liberalness, based upon responses to a series of policy-related survey questions. Usually a score is created by state or district for different partisan subconstituencies. This approach was used by Shapiro et al. (1990) in their investigation into the roll call votes of opposite-party same-state

senators and by Bishin (2000) in his study of key domestic policy votes in the Senate during the late 1980s and early 1990s. These studies each observed that the preferences of own-party constituents have the largest effect on a senator's voting behavior, indicating that models which fail to take subconstituency preferences into account are under specified.

There are some limitations to this particular approach. First, responses are not directly matched with relevant roll call votes. Instead, an assumption is made that voters who hold liberal, moderate, or conservative opinions on one set of policies will do so on the set of roll call votes being analyzed. However, other research has shown that survey respondents often hold ideologically inconsistent preferences across policy areas (Converse 1964). Furthermore, without accurate measures as to how voters want *specific* roll calls to be cast, there is not a common metric for opinion and votes, limiting the inferences that we can draw. A high correlation between roll call votes and the policy liberalness of a senator's same-party constituency reveals a strong relationship between the two, but it does not allow us to conclude whether same-party constituents are actually getting their senator to vote the way they want more often than the median voter or opposite-party constituents.

Disaggregation has also been used to estimate ideology by subconstituency. In an influential article, Clinton (2006) uses the five-point self-identified ideology question in Knowledge Networks surveys and the National Annenberg Election Survey to estimate the liberalness of a representative's geographic, same-party, and opposite-party constituencies. Using these measures, Clinton (like much of the prior research) observes that representatives are not completely responsive to the district, but he surprisingly finds that (a) *only* majority party Republicans are responsive to the preferences of same-party constituents while (b) Democrats are most responsive to the preferences of non-Democratic constituents. One concern is that the relationship between ideology and policy preferences is often weak, and so problems that derive from measuring policy preferences using self-identified ideology may account for Clinton's surprising result regarding Democratic members of Congress. Again, liberalness and roll call votes are not on a common scale, and, as Clinton notes

(407), "the inability to measure subconstituency preferences and voting behavior on a common scale prevents a definitive answer—we simply cannot see which constituency is closer" to the legislator's revealed preferences. As we explain below, using MRP, now we can.

In addition, existing research, while usually considering a large number of roll call votes, tends to focus on a relatively short window of time—sometimes as short as a single session of Congress. This makes it difficult to generalize findings. For instance, Clinton's finding that Democrats in the House of Representatives respond more to Republican constituents than to fellow partisans may be a function of the particular legislative or electoral strategies used by the party during the 106th session.

Finally, such papers aggregate many different types of votes. To be sure, pooling hundreds of types of votes also has its advantages, in that idiosyncrasies or details of any one policy area are averaged out. However, examining the general relationship between constituent opinion and roll call voting means that the two cannot be directly compared, complicating any analysis of representation (Bishin and Dennis 2002).

Evaluating Supreme Court nominations

The politics of Supreme Court nominations illustrate both the importance of adjudicating between median and non-median theories of representation and the methodological difficulties in carrying out such adjudication. Kastellec, Lax and Phillips (2010) show that senators respond to state-level public opinion when casting roll call votes on Supreme Court nominees. This finding seemingly ties the Supreme Court, a potentially countermajoritarian institution, back to majority will. However, this study does not explore *to whom* senators respond. If senators respond with special attention to particular subconstituencies, this would undercut the majoritarian linkage once again.

Which subconstituencies in Supreme Court confirmation politics are likely to influence senators? One possibility is racial or ethnic groups. For example, public opinion among African-Americans and Hispanics loomed large in the politics surrounding the respective

nominations of Justice Thomas in 1992 and Justice Sotomayor in 2009 (Overby et al. 1992, Bishin 2009). In general, however, given the overall importance of partisanship in the Senate confirmation process (Epstein et al. 2006, Shipan 2008), we expect the views of partisan subconstituencies to play an important role in senators' voting decisions, for several reasons. First, primary elections allow such constituencies to attack incumbents who do not heed their partisan constituents' opinion. Indeed, Senate lore contains ominous warnings on this front. Despite being virtually unknown, Carol Moseley Braun defeated incumbent Senator Alan Dixon in the Illinois Democratic primary, principally campaigning against his vote to confirm Clarence Thomas (McGrory 1992). A second reason for giving partisan constituencies extra attention is the campaign funds that partisan activists can generate. Third, self-identified partisans are likely to have more intense views.

Testing whether senators respond more to the median voter or their in-party median requires us to generate nominee-specific estimates of public support, broken down by partisan constituencies. In doing so we must overcome the methodological limitations outlined above. Specifically, we need to have measures of subconstituency policy preferences that relate directly to roll call votes on Supreme Court nominees and that are on the same scale.

3 Data and Methods

Estimating state-level and constituency-level opinion

To generate the required measures of public opinion, we employ Multilevel Regression and Poststratification, or MRP, a technique developed and assessed by Gelman and Little (1997), Park, Gelman and Bafumi (2006), and Lax and Phillips (2009*a*). It combines detailed national survey data and Census data with multilevel modeling and poststratification to estimate public opinion. Importantly, it can generate accurate estimates of state or district-level opinion using a relatively small number of survey respondents—as few data as contained in a single national poll—so that we do not need to limit ourselves only to

those questions that are asked across many large national polls (as the existing literature is forced to do).

There are two stages to MRP. In the first, individual survey response is modeled as a function of demographic and geographic predictors included in the survey data, with individual responses nested within states nested within regions. The state of the respondents is used to estimate state-level effects, which themselves are modeled using additional state-level predictors such as region or state-level aggregate demographics. Those residents from a particular state or region yield information on how responses within that state or region vary from others after controlling for demographics. All individuals in the survey, no matter their location, yield information about demographic patterns which can be applied to all state estimates. The second stage is poststratification: the estimates for each demographic-geographic respondent type are weighted (poststratified) by the percentages of each type in actual state populations, so that we can estimate the percentage of respondents within each state who have a particular issue position.

Another way of explaining MRP is as follows. Often, survey responses are used unweighted. Sometimes, for greater accuracy, responses can be weighted using demographic information. MRP applies very finely tuned weightings, based on Census data, of relatively specific demographic-geographic types. Multi-level modeling is used to generate predicted responses for each of these specific demographic-geographic types. MRP compensates for small within-state samples by using demographic and geographic correlations.

As previous evaluations have demonstrated, MRP performs very well in generating accurate state-level estimates of public opinion (Gelman and Little 1997, Park, Gelman and Bafumi 2006, Lax and Phillips 2009*a*;*b*, Pacheco 2009). It consistently outperforms raw state breakdowns, even for large samples, and it yields results similar to actual state polls. A single national poll and simple demographic-geographic models (indeed, simpler than we use herein) suffice for MRP to produce highly accurate and reliable estimates.

Returning to the problem of public opinion on Supreme Court nominees, a "standard"

use of MRP is sufficient to generate *state*-level estimates of such opinion (Kastellec, Lax and Phillips 2010). A complication exists, however, in breaking down support across partisan constituencies. The second stage of MRP involves poststratifying the estimates based on the Census "5-Percent Public Use Microdata Sample's" population frequencies for every demographic-geographic type (e.g. college-educated Hispanic males aged 18-29 in New Jersey). Unfortunately, this Census data does not include partisan identification. Thus, using "basic" MRP, as in Kastellec, Lax and Phillips (2010), one can estimate the level of support for, say, Alito among college-educated Hispanic males aged 18-29 in New Jersey, but one *cannot* estimate the level of support among Republican, Independent or Democratic college-educated Hispanic males aged 18-29 in New Jersey. This means that using MRP to generate fine-grained estimates by variables not gathered by the Census (such as party or religion) was not possible.

We have devised a solution achieves this, in short, by using two levels of MRP. First, we model likely partisanship by demographic-geographic type (4,890 synthetic voter types), using individual survey responses about partisan identification (i.e. whether one is a Democrat, Republican or an Independent) and a set of demographic and geographic predictors. We then use our results to create an even finer weighting scheme, by demographic-geographic-partisan type (14,688 synthetic voter types). The estimated partisan distribution of any demographic-geographic type breaks that type into three sub-types, each with an estimated weight with respect to the state's total population. In short, the extra level of MRP has given us what we would have if the Census data included partisan identification. We can thus proceed with MRP on survey responses on Supreme Court nominees, generating simple estimates of state-level opinion but using a more finely grained weighting scheme—or, even more importantly, we can estimate the opinion of all three partisan subconstituencies in each state.

Beyond the substantive payoff we can get in this paper, importantly, this process extends earlier work on generating model-based estimates of opinion from national polls by

tripling the number of subgroups available for analysis, and by allowing for partisanship to enter MRP estimates, which is crucial given the role of partisan identification in opinion formation on many issues. Moreover, this methodology could be applied to any feature of individuals for which Census data is not available but which is included in polling data, so long as there are sufficient data for the purpose. To be clear, adopting the methodology below, one can create state-level opinion estimates, broken down by any variable for which there is sufficient polling data, even from a separate source, and which is included in the main substantive polls themselves.

For the purposes of the research question at hand, we collected every Gallup poll in 1980, 1990, 2000, and 2005 that asked party identification. For nominees whose nominations do not fall on Census years, we weight the Census data to reflect the results from the two closest decennials. The advantage of using a single polling organization is that Gallup's question wording did not change across these years: "In politics, as of today, do you consider yourself a Republican, a Democrat, or an Independent?"[1] We created an aggregated dataset, with 34,947; 10,601; 30,040; and 34,469 observations for 1980, 1990, 2000, and 2005 respectively.

For each year, we perform the two-level MRP procedure, as detailed in the appendix. This gives us the percentage support of those with an opinion by state and by sub-constituency. With such estimates now in hand, we can study partisan representation in an extremely well-defined set of votes, the correlates of which are quite well understood. And because we are considering ten roll call votes across different sessions of Congress the idiosyncrasies of any single vote are averaged out (though it is possible that there are idiosyncrasies within this type of roll call vote). Finally, and most importantly, our approach allows us to measure voting behavior and subconstituency preferences on the same scale. By studying confirmation votes (dichotomous policy choices) using survey questions that

[1] We followed standard practice and did not code "leaners" as members of either party. We code non-responses as Independents; such responses occur less than 4% of the time.

ask respondents whether their senator should vote in favor of a particular nominee, we have roll call votes and sub-constituency preferences on a common metric. This not only allows us to rigorously test the strength of the relationship between the preferences of various constituencies and senator roll call votes, but also to identify which constituent groups are getting their senator to vote the way they want.

Visualizing subconstituency opinion

We begin our exploration of the opinion estimates in Figure 1, which depicts kernel density plots of support among opinion holders, broken down by Democrats, Independents, and Republicans, across states. The nominees are ordered by increasing state-level mean support, although for clarity we place the three Democratic nominees last (Ginsburg, Breyer, and Sotomayor). The dots under each distribution depict the mean of that distribution. The vertical dashed lines depict median state-level support. Beginning with overall support, we can see that Bork and Miers had the lowest average support and also the widest spread of support, while O'Connor was the least controversial nominee, both in terms of highest mean support and lowest variance of support across states. In addition, Bork was the only nominee who received a vote for whom the balance of public opinion in a significant number of states was opposed to his nomination. The graph also reveals that support for nominees is always higher, on average, among constituents from the president's party. Indeed, among constituents of the president's party, average nominee support always exceeds 77%.

Figure 1 also reveals that polarization—defined as the difference between median Democratic and Republican opinion—varies across nominees and is highest among less popular nominees. Opinion on Alito was most polarized: his average support among Republican constituencies was 94%, compared to compared to only 36% among Democratic constituencies. Sotomayor's nomination generated a similar division of opinion: her average support among Democrat constituencies was 85%, compared to 30% of Republican constituencies. In contrast, the nominations of Thomas, Souter, O'Connor, Ginsburg, and

Breyer witnessed little to no polarization, with substantial overlap across constituencies.

Figure 2 explores the relationship between nominee support by constituency and state ideology. Support is on the y-axis; the x-axis depicts state ideology, using scores updated from Erikson, Wright and McIver (1993), ordered from less to more liberal. The light dotted lines denote 50% support. Moving from left to right, nominees are ordered first by the party of the president that appointed them and next by increasing polarization. We can see that for many nominees there is a weak relationship between state ideology and support for confirmation. For most nominees, more liberal states are more likely to support Democratic nominees, while more conservative states are more likely to support Republican nominees. The strength of this relationship, however, varies both across and within nominees. Republican constituencies almost uniformly supported Alito, for example. In contrast, support for Bork and Souter correlated fairly strongly with state ideology. Finally, all three constituencies overwhelmingly supported the nomination of O'Connor.

While Democrats in every state gave broad support to the three Democratic nominees, they tended to oppose most Republican nominees (except O'Connor) to varying degrees. Democrats in more conservative states were somewhat more likely to support the less popular Republican nominees. Republicans gave across-the-board support to Souter, O'Connor, Roberts, and Alito, and high support to the remaining Republican nominees. Republicans also tended to support the nominations of Ginsburg and Breyer, who were relatively uncontroversial nominees. Sotomayor, however, was uniformly opposed by Republican constituencies. Taken together, Figures 1 and 2 illustrate that the constituency senators respond to is likely to have a significant effect on roll call voting.

Modeling roll-call votes

We will study 10 recent Supreme Court nominees: O'Connor, Rehnquist (for Chief Justice in 1986), Bork, Souter, Thomas, Ginsburg, Breyer, Roberts, Miers, Alito, and Sotomayor.[2] We will present a multivariate analysis of roll call voting on Supreme Court

[2] These nominees are the only ones for whom sufficient polling data is available.

nominees by individual senators, so that we can control for other influences. Excluding Miers, and after abstentions, a total of 990 confirmation votes were cast on our remaining ten nominees, 74% of which were to approve the nominee.[3]

Our key tests evaluate how the probability of a confirmation vote changes as subconstituency opinion increases or decreases. Doing so requires careful accounting of not just nominee *support* by a particular group, but also potentially the *size* of that group. Thus, we operationalize public opinion and partisan composition in two ways, which are similar but require a different interpretation of key variables.

To illustrate our operationalizations, consider public opinion in Ohio on the confirmation of Justice Sotomayor. We limit the denominator to those with an opinion, which is 88.2% of Ohioans. Of those with an opinion, 29.1% are Democrats, 86.8% of whom say confirm; 31.9% are Republicans, 30.2% of whom say confirm, and 38.9% are Independents, 57.9% of whom say confirm. Of all opinion holders, 57.4% support confirmation.

Our first set of models measures supporters as the share of state opinion holders who support the nominee. A one-unit shift means that 1% of state opinion holders who fall into a particular category, such as constituents in a senator's party, switch from non-support to support. This shift is relative to the size of the state's opinion-holding population; what share of the party population this is depends on party size. That is, this unit shift flips a fixed share of the state population, but an unfixed share of the party population. (One cannot scale to both at the same time.) For Senator Voinovich, the Republican senator from Ohio in 2009, a unit shift in support consisting only of in-party opinion holders means that 1% of the total number of opinion holders in Ohio switch from no to yes, where the switchers consist only of Republicans. Support goes from 57.4% to 58.4% total support in Ohio, but only Republicans change, so that this shift means that 3.1% ($= \frac{1}{31.9}$) of Republicans move from no to yes, increasing support among Republicans from 30.2% to

[3] Roll call and other data for all nominees except Alito and Sotomayor come from Epstein et al. (2006); we collected data on the latter nominees.

33.3%. This setup thus makes it more difficult to discuss impact in terms of share of party, obviously. Next, consider Senator Brown, the Democratic senator from Ohio in 2009. Now, a unit shift in opinion holder support consisting only of Democrats still moves total support in Ohio from 57.4% to 58.4%, but this means that 3.4% ($= \frac{1}{29.1}$)of Democrats shifted from no to yes. The unit shift in opinion holders correlates to a different size share within party because party sizes differ. (In Oklahoma, with a similar share of opinion-holding Democrats as Ohio but a much larger share of opinion-holding Republicans, this 1% of opinion holders would correlate to 3.5% of Democrats but only 2.3% of Republicans).

The second set of models invokes the percentage of the relevant group who support the nominee; for instance, the percent support among opinion holders in the senator's party. Here, the scale is to the in-party size directly, but not to the state's opinion holding population as a whole. A one-unit shift in in-party percentage support means a shift of 1% of such constituents—but the actual share of opinion holders overall captured by such a shift depends on party size. So, to be clear, this unit shift flips a unfixed share of the state (opinion-holding) population, but a fixed share of the party population. Now, for Voinovich, if in-party support increases by one unit, this means that 31.2% of Republicans say yes instead of 30.2%. For Brown, a unit shift in-party means 87.8% of Democrats say yes instead of 86.8%. But this 1% of Republicans correlates to 3.1% of Ohioans, while the 1% of Democrats correlates to 3.4% of Ohioans (the Democrats being the slightly smaller party; in Oklahoma, 1% of Republicans correlates to a 2.3% swing of all opinion holders).

It is always possible to translate changes in one type of unit to the other, but the conversion depends on party sizes in the state. Hence, we present both sets of models. As will be seen below, the partisan constituency effect we find, while varying in absolute magnitude, is robust to model specifications. Predictors are labeled as follows:

All models

• *Supporters/opinion holders (S)*: the percentage of opinion holders that support the nominee.

• *Percentage of opinion holders in the senator's party (PSP)*: the percentage of opinion holders that share the senator's party affiliation.

• *Percentage of opinion holders in the opposite party (POP)*: the percentage of opinion holders that do not share the senator's party affiliation.

Set 1

• *Supporters in senator's party/opinion holders (SSP)*: the percentage of opinion holders that share the party affiliation with the senator in question *and* support the nominee ($SSP < PSP$, by definition).

• *Independent supporters/opinion holders (SI)*: the percentage of opinion holders who are Independents *and* support the nominee. (Out-party support is then $S - (SSP + SI)$).

Set 2

• *Supporters in senator's party/opinion holders in senator's party*: the percentage of in-party opinion holders that support the nominee ($= \frac{SSP}{PSP}$).

• *Supporters who are independents/opinion holders who are independents*: the percentage of Independents who support the nominee ($= \frac{SI}{1-(PSP+POP)}$).

Following existing studies, we also include as predictors of roll-call voting nominee quality, ideological distance between a senator and a nominee, partisanship, and presidential strength. These studies show that senators are likely to support high quality nominees and less likely to support ideologically distant nominees. Senators are also more likely to support nominees appointed by presidents of the same party, and by presidents with greater popular support. We add an additional control for state ideology.

• *Quality*: The degree to which a nominee is judged to be qualified to join the Court (according to an ideologically balanced set of newspaper editorials (Cameron, Cover and Segal 1990)). It ranges from 0 (least qualified) to 1 (most).

• *Ideological distance*: The ideological distance between the senator and the nominee, as measured using an institutional bridging technique that combines Common Space scores (Poole 1998) and Segal-Cover scores (1989). (Nominees chosen by presidents of the same

party as the Senate majority link senators' and nominees' ideal point estimates.)

• *Senator in president's party*: Coded 1 if the senator is a co-partisan of the president.

• *Presidential capital*: We use two measures to capture presidential capital. The first, *Strong president*, is coded 1 if the president was not in his 4th year of office *and* his party controlled the Senate at the time (Cameron, Cover and Segal 1990). We also use the more direct measure of public approval of the president, *Presidential approval*, based on the most recent Gallup poll taken before a nominee's confirmation vote.

• *State voter ideology*: We control for the possibility that senators respond to diffuse state-level ideology (rather than nominee-specific opinion) by including updated scores created by Erikson, Wright and McIver (1993). We recode this variable to match whether nominees are liberal or conservative (i.e. nominated by Democratic or Republican presidents, respectively), such that higher values indicate greater ideological support for the nominee. If the appointing president is a Democrat, higher numbers mean a greater percentage of liberal voters in a state; if the appointing president is a Republican, higher numbers mean a greater percentage of conservative voters. Thus, higher values of our recoded measure should always increase the probability that the senator votes to confirm a nominee.

4 Models and Results

Figure 3 shows results from seven multilevel logistic regressions (varying-intercept models, with votes grouped by nominee). Each plot depicts point estimates and 95% confidence intervals for a given predictor across a set of models. The horizontal gray lines are placed at zero; if a given confidence interval includes zero, this means the respective point estimate is not statistically different from zero at $p < .05$.

Before getting into the details of each model, we can summarize our main finding: there is indeed a large "partisan constituency effect." The models show that in-party nominee support has a strong and significant effect on roll call voting behavior, holding constant

support in the other party, support among Independents, support among both of these categories combined, or overall support; and holding constant the party composition of the state. For a senator teetering on the brink of a yes or no vote, flipping 1% of state opinion holders consisting of in-party constituents from opposition to support while leaving total support the same can increase the probability of a yes vote by about 8%. Shifting the position of 1% of in-party constituents to support while leaving total support the same increases the probability of a yes vote by about 2%.

As discussed above, the first set of models, in the left column, use units relative to the state opinion holder population. The set of models in the right column use units relative to party size. While both setups yield the same substantive findings, some implications are easier to see in a particular setup. The first model within each column (models 1.1 and 2.1) serves as a "baseline" model—they confirm the finding that overall state-level public opinion has a strong effect on roll call voting on Supreme Court nominees. These models are mathematically identical. All models include a predictor for the total level of nominee support, so that we can hold this constant for predictive purposes. All models hold the party configuration of the state constant (by including the percentage of opinion holders in the senator's party, as well as not in). Note that in Set 2 we rescale and center these variables in order to ease interpretation of an interaction term. The interpretation of all the remaining control variables—those who labels appear only in the left-hand column of Figure 3–remain unchanged across the two sets of models.

We begin our analysis of subconstituency opinion in Model 1.2. A unit change in support for a nominee among a senator's in-party constituents increases both in-party and overall support (so we sum the first two coefficients); the total effect of such an increase is thus $+.33$ $[.22, .44]$ (95% confidence interval). Holding overall support constant, the raw coefficient on in-party support shows the additional effect of in-party support compared to non-in-party support. If the senator is a Democrat, for instance, then the coefficient on in-party support gives the additional increase in the probability of a yes vote after flipping

1% of the state's opinion holders who are Democrats to supporting the nominee, minus the increase in probability from flipping 1% of non-Democratic opinion holders. If the type of support did not matter, the coefficient on in-party support would be zero; in fact, it is $+.30$ $[.14, .45]$. The coefficient on overall support shows the effect of flipping not-in-party (non-Democrats) constituents to supporting the nominee, holding in-party (Democratic) support constant. There is no statistically significant effect of this kind once we control for in-party support.

Model 1.3 adds independent support among opinion holders as a predictor. Now, holding total and independent support constant, the coefficient on in-party support shows the additional effect of in-party support compared to out-party support. This difference is statistically significant and of high substantive magnitude (which we discuss in detail below). The total effect of a unit of in-party support is roughly the same as in the previous model, $+.30$ $[.13, .47]$. The total effect of independent support, on the other hand, is not statistically different from zero ($+.09[-.17, .35]$). We also cannot conclude that the main effect of independent support is statistically different from the effect of out-party support (note the insignificant coefficient on independent support).[4] The effect of out-party support itself is essentially zero. We cannot conclude that in-party support and independent support have statistically different effects at more than the 85% confidence level. (This is perhaps not surprising given the wide confidence interval on the coefficient on independent opinion itself;the estimated difference in logit coefficients is $+.21$ $[-.22, .65]$.) However, as we show below, the substantive differences are quite large.

We now move to the second set of models, which evaluate the effect of the percent of support for a nominee within a particular subgroup. Model 2.2 shows that percentage support among opinion holders in the senator's party has a significant effect on confirmation voting, controlling for support among all opinion holders. A unit increase in the percent

[4] We find no difference in the in-party opinion effect for senators in the presidents party and senators not in the president's party.

of in-party opinion holders that supports the nominee shows the effect of flipping 1% of in-party constituents from being opposers to supporters, and flipping enough not-in-party constituents from support to opposition to leave total support the same. If the type of support did not matter, this coefficient would be zero; it is $+.07$ $[.02, .12]$. Thus, we continue to see a strong partisan constituency effect.

Model 2.3 adds as a predictor supporters who are independent among independent opinion holders. The coefficient on this predictor gives the effect of increasing independent support at the expense of out-party support, while holding in-party and overall support constant. The estimated effect is large enough to be of substantive interest, but is not statistically significant. The coefficient on in-party support now gives the effect of flipping 1% of in-party constituents from being opposers to supporters, holding independent support the same, and flipping enough out-party constituents from support to opposition to leave total support the same. The coefficient on in-party support remains significant ($+.07$ $[.01, .13]$).

Finally, Model 2.4 tests whether the in-party effect is conditioned by the size of a senator's in-party constituency. The interaction term is positive and statistically significant ($+.09$ $[.04, .14]$)), indicating that the larger the size of the party base, the more important the in-party constituency effect is. The main effect on supporters in the senator's party gives the in-party size at average in-party size (due to rescaling). (This same effect could be seen in the first set of models with calculations adjusting for party size.)

Turning to the control variables, the "usual suspects" among predictors of confirmation roll-call voting perform as expected throughout, with the exception of the party identification of the senator himself/herself, a point we return to below. The baseline model shows that roll-call voting depends on the various "control" variables and on public support. Indeed, if we rescale the predictors to assess relative support (results available upon request), public support has a larger effect than any predictor other than ideological distance between a senator and a nominee. Note that after controlling for ideological distance

between senator and nominee *and* the party constituency effect, the party of the senator does not significantly affect voting.

All models perform well. Models 1.1 and 2.1 include only total support. The DIC (showing model fit relative to the effective number of parameters) of this model is 316. Simply swapping in-party opinion in place of overall opinion would significantly increase model fit, to a DIC of 303 (models not shown). Controlling for both overall support and in-party support, in Models 1.2 and 2.2, leads to DICs of 303 and 310 respectively.

Substantive Implications

In this section, we explore the substantive implications of the partisan constituency effect documented in our regression models. Figure 4 shows our main substantive findings. In the top panel, we show the effect of adding support of different types (calculated based on Model 2.3). The y-axis depicts the probability of a senator voting to confirm, while the x-axis depicts support relative to the average support among in-party, out-party, and independent constituents. For each curve, as the slope becomes more steep, the effect becomes larger. It's clear that in-party support has the largest substantive effect—moving from 10% below average to 10% above increases the probability of a yes vote from about .25 to near 1.

In the bottom panel, we hold total support constant and then change the percentage of support among the senator's party constituents (holding independent support constant) or the percentage of support among Independents (holding in-party support constant). Each type of change is at the expense of out-party support (so that total support stays constant). We assume a weak president and a senator of the opposite party, with means for all other variables. We extend the curves only over the range of opinion support levels in our data. If the partisan composition of opinion did not matter, both lines would be horizontal. Instead, we see a striking drop-off in likelihood of a positive confirmation vote as in-party support decreases, with a less sharp drop-off for independent support. Moving from 45% support in-party to 55% support in-party (keeping total support and independent support

constant) increases the likelihood of a positive vote from 45% to 62%. In-party percentage support ranges from 17% to 96% in our data. Shifting from minimum to maximum in-party support increases the likelihood of a positive vote from 11% to 96%. These examples show just how large an impact the partisan composition of nominee support has on roll call voting on Supreme Court nominations.

What is the bottom line for democratic representation given this constituency effect? To answer this, we turn to a congruence analysis, measuring how often a senator's vote on a nominee matches what the median voter among opinion holders in his or her state wants, and how often these votes match the median voter within particular constituencies. We present this information in Figure 5. We find congruence with the median voter of the entire state 79% of the time. Majorities of opinion holders in the president's own party get congruence slightly less than that. More importantly for assessing democratic representation, majorities among opinion holders in a senator's own party will see the vote they want 88% of the time, whereas those in the opposing party will only see the vote they want 50% of the time.

What happens when a senator's constituencies are in conflict? Eight percent of the time, neither the state median nor the party median favors confirmation; 3% of the time the party median favors confirmation and the state median does not; 18% of the time the state median does and the party median does not; and 71% of the time, both favor confirmation. When neither median favored confirmation, no senator voted yes. When the median favored confirmation and the party median did not, 28% of senators voted yes. When the median disfavored and the party median favored confirmation, 76% of senators voted yes. When they both favored confirmation, 91% of senators voted yes. This means that when the state median voter and the in-party median voter disagree, senators vote with their state median about 25% of the time and with their party median about 75% of the time. (This holds whether the state median preferred confirmation and the party median opposed it, or vice versa.)

To put this in context, consider the confirmation of Justice Sotomayor. Thirty-four of the senators who cast votes on Justice Sotomayor faced such conflicting constituencies. The four conflicted Democrats all voted with their party. Of the 30 conflicted Republican Senators, all but nine voted sided the party median against the median by voting against confirmation: Martinez (facing a large Hispanic constituency in Florida),[5] Lugar from Indiana, Maine's Collins and Snowe, Bond from Missouri, Gregg from New Hampshire, Voinovich from Ohio, Alexander from Tennessee, and Graham from South Carolina.

Suppose that the support of either the median voter or the party median voter perfectly predict how a senator votes. Then, vote totals for each of the nominees would be as shown in Figure 6. The fate of some nominees would not vary much if they moved to "Median Voter World" or "Party Median Voter World." Judge Bork would not have become Justice Bork in either alternate scenario. And those nominees at the bottom of the chart would also see little variation in their vote margins. On the other hand, Justices Alito, Rehnquist, Sotomayor and Roberts all show large gaps between the two scenarios. The voting on Justice Alito closely resembled that in' 'Party Median Voter World." Perhaps the most interesting pattern is that for Thomas: while the difference between the two alternate scenarios is small, both would lead to easy confirmations in comparison to the actual world in which other factors besides the two medians could influence voting, and Thomas narrowly was confirmed.

For another perspective, suppose we limit our roll-call voting analysis to those state-senator combinations where the median voter and the party median voter disagree (results available upon request). Then, we still find that in-party support drives confirmation vot-

[5] Overby et al. (1994) investigated whether voting on Justices Marshall and Thomas correlated to the percentage of blacks in a senator's home state, showing a negative correlation for the former and positive for the latter, but without controlling for state opinion. We investigated this form of subconstituency "opinion," but controlling for state opinion, finding that the percentage black still had a small positive effect for Justice Thomas's confirmation, while finding no such effect of percentage Hispanic on Justice Sotomayor's.

ing far more than non-in-party support. We next shift our dependent variable to the choice between voting with one's party constituency and one's state constituency in conflict situations (N=202). We found that members of the president's party and members of the majority party were significantly more likely to side with their party median over the state median. Higher presidential approval and higher nominee quality also correlated to a greater chance of voting with the party median over the state median.[6]

To show how stark the constituency effect is, we next ran a model similar to Model 2.3 but where support was dichotomized, with a dummy variable indicating if the overall state median supported the nominee and a dummy variable capturing if the senator's in-party constituents supported the nominee (where support $= 1$ if at least 50% of a given group support the nominee). Both variables are strongly influential and statistically significant (other variables behave normally). State Median support has an effect size of $+1.79(.70)$ and party median support of $+1.62(.51)$. Party median support (as compared to party median opposition) clearly has a large effect (up to a 40 percentage point increase in the probability of a positive confirmation vote) even controlling for median support.

In fact, we can simplify this still further. A model with only the state median correctly predicts 79% of votes (17% reduction in predictive error, compared to a modal prediction of "vote to confirm," which predicts 74% correctly). A model with only the party median correctly predicts 88% of votes (53% reduction in error). A model with both medians correctly predicts no better than that (and the coefficient on the party median is almost twice as large as that on the overall median). Thus, even crude indicators of constituency opinion yield findings substantively similar to our full analysis.[7]

[6] We also find no significant difference in in-party responsiveness between states with two senators of the same party versus states with split senate delegations.

[7] Given the findings of Clinton (2006), we also recoded opinion by group into Democratic, Republican, and Independent support (results not shown, available upon request). Democratic opinion has the larger effect, a result that stands in contrast to Clinton's finding for the votes he studied. However, we do not interpret this to mean that all senators care

5 Discussion and Conclusion

Confirmation politics is responsive to the public will—but not as broadly as we previously thought. We have conducted a rare fine-grained study of representation, focusing on votes by senators for or against the confirmation of Supreme Court nominees. We find that senators weigh the opinion of their fellow partisans more heavily, and that this "partisan constituency effect" has significant substantive effects on voting behavior. One advantage of our approach to studying representation is that we used a subset of Senate votes that are already well understood, allowing for the inclusion of context and controls to better assess partisan effects. While we find that senators are strongly responsive to public opinion when voting on Supreme Court nominees, their partisan loyalties filter this responsiveness in ways perhaps troubling to normative democratic theory.

Senators engage in a tradeoff in representing their median constituent and median party constituent. When that choice is pulled away from the median voter, a distortion to median representation occurs on top of any distorting effects due to the primary selectorate itself. That is, if senatorial candidates are chosen by somewhat more extreme electorates, that alone can mean that senators will not be perfectly representative of the state median. Thus, on top of their own ideological "score," they still give more attention to their in-party constituents can mean they are pulled further away still in their voting behavior. Majority control over policy becomes more difficult when the two parties do not converge towards the median, but instead represent influences of those to either side thereof. Our results suggest how elites can become polarized by electoral incentives. Even in a relatively smooth distribution of opinion, partisan groupings that have disproportionate influence

more about Democratic opinion than they do Republican opinion, but rather that more of the votes in play for this set of nominees (eight of ten by Republican presidents) are those of Democratic senators paying greater attention to the opinion of Democratic voters. Moreover, breaking down opinion this way, instead of by in- and out-party, leads to significantly worse model fit (higher DIC).

can lead to polarized voting behavior.

Our results thus speak to greater debates on party discipline and the role of partisanship in the Senate. Senators are not otherwise interchangeable "ideal points," but behave quite differently based on party identification. Note that in some models, we find no effect of a senator sharing party affiliation with the nominating president, holding opinion constant. Why would this be the case? Our findings suggest that the reason for party differences existing after controlling for a senator's "ideal point" might be greater attention to subgroup public opinion rather than pure partisanship. What drives a party effect in simpler models might be that the senator is more attentive to his or her fellow partisans within his or her state, rather than falling into line with the president. Party matters by raising attention to a senator's in-party constituency, not perhaps through party discipline.

More broadly, our results provide a new understanding of the factors that drive the roll call votes of senators. We show, for example, how important constituent opinion is relative to other variables that are thought to matter, such as senator ideology and partisan loyalty. These results also speak to broader issues. In what might be called "Median Voter World," the electoral connection ties a representative back to his or her constituents strongly enough to make the median voter king. This seems a reasonable baseline for assessing democratic performance. If a representative gives extra weight to her fellow partisans back home, this implies a distortion of the electoral connection that ties a representative to his or her district or state, with policy pulled away from the median voter. Or, at least, the party-primary electoral connection would be undercutting the "regular" electoral connection. To some extent, this is inevitable in a less idealized world, in which representative democracy allows for a degree of shirking of majority will and for the median to lose on occasion. Yet even then one would not be comfortable with a high degree of shirking on important votes, such as Supreme Court confirmations.

Further, our results refine our understanding of the relationship between the public and the Supreme Court. There is a persistent debate in American politics over the proper

role of the Court in society, and the degree to which we should be concerned that unelected life-appointed justices can block the majority will, as enacted through its elected representatives. One of the few external checks on this possible counter-majoritarianism is political control by the president and senators over who becomes a justice in the first place—a check that only acts preemptively, through the confirmation process.

If the median voter controlled such nominations, fears of counter-majoritarianism would be ameliorated to some extent. However, if a senator's co-partisans are given disproportionate attention, the democratic linkage between Court and public is again called into question, and we have more reason to worry that the nomination and confirmation process might make the Court more counter-majoritarian, rather than less.

In a sense, combining previous findings with the results herein, we find what could be considered the worst of both worlds. Having Court membership strongly affected by public opinion, but mainly by polarized partisan public opinion, might be worse than having the senators ignore public opinion entirely. Or, to flip the normative concern, if one hopes confirmation politics to be above the fray of ill-informed public debate, and beyond the influence of the shallow lowest-common-denominator median voter, one might hope that public opinion had little effect on confirmation. But one would not want to see a weakening of responsiveness to the median voter because of added attention to party medians.

We end by reiterating a methodological point. We have extended earlier work on generating model-based estimates of opinion from national polls—an extension that can be applied in many other areas of research in the future. Two-level MRP will allow a researcher to estimate opinion within states or even potentially congressional districts, broken down by partisanship or many other factors, using data commonly available in surveys and the Census. We hope that this extension of the basic MRP approach will point the way towards more nuanced analyses of public opinion and its effects on public policy and choice, and more finely grained studies of legislative and policy-making behavior. Specifically, subgroup opinion estimates that are useful for the exploration of a wide variety of research

questions should now be in reach. Besides breaking down opinion using information currently used in Census weighting data, one can now estimate opinion by any categorization for which sufficient polling data are available (in the same polls or others). This innovation should allow researchers to continue to ask vital questions about the extent and quality of representation.

Appendix

We begin with the estimation of partisanship by demographic-geographic type. Let $y^{\text{DEM}} = 1$ denote a response of "Democratic" to Gallup's question, and 0 otherwise. Similarly, let $y^{\text{GOP}} = 1$ denote a response of "Republican" to Gallup's question, and 0 otherwise. For each year and each of these responses, we estimate separate multilevel logistic regression models, using the GLMER function ("generalized linear mixed effects") in *R* . We code responses as a function of race and gender (males and females broken down into black, Hispanic, or white and other); one of four age groups (18-29, 30-44, 45-64, and 65+); one of four education groups (less than a high school education, high school graduate, some college, and college graduate); sixteen groups capturing the interaction between age and education; state-level ideology (updated from Erikson, Wright and McIver 1993); poll; state; and region (Washington, D.C., as a separate "state" and separate region, along with Northeast, Midwest, South, and West).

For individual i ($i = 1, ..., n$), with indexes r, k, l, m, s, and p for race-gender combination, age category, education category, region, state, and poll respectively, we estimate the following model, first for Democrats: $\Pr(y_i^{\text{DEM}} = 1) = \text{logit}^{-1}(\beta^0 + \alpha_{r[i]}^{race,gender} + \alpha_{k[i]}^{age} + \alpha_{l[i]}^{edu} + \alpha_{k[i],l[i]}^{age,edu} + \alpha_{s[i]}^{state} + \alpha_{p[i]}^{poll})$ (1)

The terms after the intercept are modeled effects for the various groups of respondents:

$\alpha_r^{race,gender} \sim N(0, \sigma_{race,gender}^2)$, for $r = 1, ..., 6$ $\alpha_p^{poll} \sim N(0, \sigma_{poll}^2)$, for $p = 1, ...$

$\alpha_k^{age} \sim N(0, \sigma_{age}^2)$, for $k = 1, ..., 4$ $\alpha_l^{edu} \sim N(0, \sigma_{edu}^2)$, for $l = 1, ..., 4$

$$\alpha_l^{age,edu} \sim N(0, \sigma^2_{age,edu}), \text{ for } k = 1, ..., 4 \text{ and } l = 1, ..., 16 \quad (2)$$

That is, each is modeled as drawn from a normal distribution with mean zero and endogenous variance, as is the region effect. The state effects are modeled as a function of the region into which the state falls, religious percentage, and Democratic presidential vote share:

$$\alpha_s^{state} \sim N(\alpha^{region}_{m[s]} + \beta^{relig} \cdot relig_s + \beta^{presvote} \cdot presvote_s, \sigma^2_{state}), \text{ for } s = 1, ..., 51 \quad (3)$$

$$\alpha_m^{region} \sim N(0, \sigma^2_{region}), \text{ for } m = 1, ..., 5 \quad (4)$$

We then estimate the same model, but for Republican responses—i.e $\Pr(y_i^{\text{GOP}} = 1)$.

In the second stage, we use the coefficients that result from these estimations to calculate predicted probabilities of being a Democrat or a Republican for each demographic-geographic type. Let j denote a cell in our list of demographic-geographic types. The results above allow us to make a prediction of Democratic support, $\hat{\theta}_j^{DEM}$, and a prediction of Republican support, $\hat{\theta}_j^{GOP}$, based on the inverse logit given the relevant predictors and their estimated coefficients, as estimated in Eq. (1). We then calculate the predicted probability of being an Independent in each cell ($\hat{\theta}_j^{IND} = 1 - \hat{\theta}_j^{DEM} - \hat{\theta}_j^{GOP}$).

This procedures gives us an estimate of the percentage of Democrats, Republicans, and Independents in each of the 4,896 demographic-geographic types (96 within each state). For each cell j we have the population frequency derived from the Census sample from the respective year, using the 2000 sample for the 2005 estimates. We then split each cell j into three parts. That is, the preexisting cell frequency is multiplied by partisan group share, as calculated above, to create a new set of frequencies, with three times the original number of cells. This creates a new set of poststratification data, with weights for the proportion of Democrats, Republicans, and Independents among each of the original 4,896 demographic-geographic types. These weighting data contain 14,688 demographic-geographic-partisan types (4,896 $\times$ 3).

To formalize this, let N_j denote the actual population frequency of a given cell j. A given cell j will be split into three cells, with frequencies: $N_j\hat{\theta}_j^{DEM}$; $N_j\hat{\theta}_j^{GOP}$; and $N_j\hat{\theta}_j^{IND}$.

Let q denote a cell in this new poststratification file (to distinguish it from j), specifying a demographic-geographic-partisan type, and let N_q denote its population frequency.

With this party-poststratification data in hand, we can now turn to estimating public opinion on Supreme Court nominees among each partisan subconstituency in every state. To do so, we follow a similar procedure to that outlined above and that used in Kastellec, Lax and Phillips (2010). Instead of modeling partisan identification, we now model nominee support. We first model explicit support for the nominee ($y_i^{\text{yes}} = 1$) against other responses ($y_i^{\text{yes}} = 0$ for an explicit negative response, "don't know," or "refused"). This captures explicit positive support among all respondents, not simply those expressing an opinion. The specification of the model is similar to that given above in Eqs. 1-3, except we now add "Democrat" and "Republican" as individual-level predictors (Independents serve as the reference category). For $i = 1, ..., n$,

$$Pr(y_i^{\text{yes}} = 1) = \text{logit}^{-1}(\beta^0 + \beta^{DEM} \cdot DEM_i + \beta^{GOP} \cdot GOP_i + \alpha_{r[i]}^{race,gender} + \alpha_{k[i]}^{age} + \alpha_{l[i]}^{edu} + \alpha_{k[i],l[i]}^{age,edu} + \alpha_{s[i]}^{state} + \alpha_{p[i]}^{poll}) \quad (6)$$

The modeled effects are the same as in the first stage, except we replace presidential vote with state-level ideology in the state-level equation (state-level ideology is a better measure for capturing support for a liberal or conservative nominee; presidential vote is better at capturing partisan identification). Results are robust to using one or the other of these.

The poststratification proceeds in a similar fashion to the procedure we used above to generate the estimates of partisanship in each demographic-geographic cell. However, to increase the accuracy of our estimates of demographic-geographic-partisan frequencies, for each nominee we weight the cell frequencies based on the two nearest decennials to the year of nomination. Let z denote the number of years between the previous decennial and the year of nomination; N_q^t denote the cell frequency in the previous decennial; and N_q^{t+1} denote the cell frequency in the next decennial. Then, $N_q^{adj} = (1 - \frac{z}{10})N_q^t + \frac{z}{10}N_q^{t+1}$. For example, Justice Breyer was nominated in 1994, so we let his demographic-geographic-

partisan frequencies equal .6 $\times$ the 1990 frequencies + .4 $\times$ the 2000 frequencies.[8]

We then use the results model given in Eq. 1 to make a prediction of pro-nominee support, $\hat{\theta}_q$, for each cell q. We next poststratify, weighting the prediction by N_q^{adj}. Formally, let $\hat{\gamma}$ denote an estimate of nominee support at a given level of aggregation. For each state, we then calculate the estimated percentage who support the nominee, aggregating over each cell q in state s. Thus, $\hat{\gamma}_s = \frac{\sum_{q \in s} N_q \hat{\theta}_q}{\sum_{q \in s} N_q}$. This process yields estimates of explicit support for each nominee in each state.

To obtain estimates for each partisan group in each state, we perform similar calculations, each time restricting the aggregation of probabilities in individual cells to a specific partisan subgroup. Letting qd denote Democratic cells, qr denote Republican cells, and qi denote Independent cells:

$$\hat{\gamma}_s^{\text{DEM}} = \frac{\sum_{q \in (s \cap qd)} N_q^{adj} \hat{\theta}_q}{\sum_{q \in (s \cap qd)} N_q^{adj}}; \qquad \hat{\gamma}_s^{\text{GOP}} = \frac{\sum_{q \in (s \cap qr)} N_q^{adj} \hat{\theta}_q}{\sum_{q \in (s \cap qr)} N_q^{adj}}; \qquad \hat{\gamma}_s^{\text{IND}} = \frac{\sum_{q \in (s \cap qi)} N_q^{adj} \hat{\theta}_q}{\sum_{q \in (s \cap q)} N_q^{adj}}$$

We next go through the process above a second time, this time modeling explicit disapproval of the nominee ($y_i^{\text{no}} = 1$) against other responses ($yI^{\text{no}} = 0$ for an explicit positive response, "don't know," or "refused"). We thus have estimates, for each partisan group in every state, the probability of an explicit yes *and* of an explicit no—with the remainder, the third category, being the "don't know," or " refused" category. We can then calculate the percentage of those in each state and each partisan group that say yes of those with an opinion (the first category divided by the sum of the first two). Indeed, we can calculate any breakdown of respondents or all state citizens by partisan type and response.[9]

[8] Since the latest Census data available is from 2000, we use 2000 data for the four nominations we study after 2000 (Roberts, Miers, Alito, and Sotomayor).

[9] Simply dropping "don't know" responses would invalidate randomness within type. Instead, we run two separate models. While the predictors we use in each response model vary slightly across nominees depending on demographic information available in the survey data, each model takes roughly the form above. The results of Lax and Phillips (2009*b*) strongly suggest that such minor variations are irrelevant. The goal is the best predictive

References

Ansolabehere, Stephen, James M. Snyder and Charles Stewart III. 2001. "Candidate Positioning in U.S. House Elections." *American Journal of Political Science* 45(1):136–59.

Arnold, R. Douglas. 1990. *The Logic of Congressional Action*. New Haven: Yale University Press.

Bishin, Benjamin. 2009. *Tyranny of the Minority: The Subconstituency Politics Theory of Representation*. Philadelphia, PA: Temple University Press.

Bishin, Benjamin G. 2000. "Constituency Influence in Congress: Does Subconstituency Matter?" *Legislative Studies Quarterly* 25(3):389–415.

Bishin, Benjamin G. and Christopher D. Dennis. 2002. "Heterogeneity and Representation Reconsidered: A Replication and Extension." *Political Analysis* 10(2):210.

Bullock, Charles S. III and David W. Brady. 1983. "Party, Constituency and Roll-Call Voting in the U.S. Senate." *Legisative Studies Quarterly* 8(1):29–43.

Cameron, Charles M., Albert D. Cover and Jeffrey A. Segal. 1990. "Senate Voting on Supreme Court Nominees: A Neoinstitutional Model." *American Political Science Review* 84(2):525–534.

Clausen, Aage R. 1973. *How Congressmen Decide: A Policy Focus*. St. Martin's Press: St. Martin's Press.

Clinton, Joshua D. 2006. "Representation in Congress: Constituents and Roll Calls in the 106th House." *Journal of Politics* 68(2):397–409.

Converse, Phillip. 1964. The Nature of Belief Systems in Mass Publics. In *Ideology and Discontent*, ed. David Apter. New York: Free Press.

model possible. To compare effects of predictors across nominees, we would use the same predictors in each model. Model details available upon request.

Downs, Anthony. 1957. *An Economic Theory of Democracy*. Addison Wesley.

Epstein, Lee, Rene Lindstadt, Jeffrey A. Segal and Chad Westerland. 2006. "The Changing Dynamics of Senate Voting on Supreme Court Nominees." *Journal of Politics* 68(2):296–307.

Erikson, Robert S., Gerald C. Wright and John P. McIver. 1993. *Statehouse Democracy Public Opinion and Policy in the American States*. Cambridge: Cambridge University Press.

Erikson, Robert S., Michael B. Mackuen and James A. Stimson. 2002. *The Macro Polity*. Cambridge: Cambridge University Press.

Fenno, Richard. 1978. *Home Style: House Members in their Districts*. Boston: Little, Brown.

Fiorina, Morris P. 1974. *Representatives, Roll Calls and Constituencies*. Toronto: Lexington Books.

Gelman, Andrew and Thomas C. Little. 1997. "Poststratification into Many Categories Using Hierarchical Logistic Regression." *Survey Methodology* 23(2):127–35.

Gibson, James L. and Gregory Caldeira. 2009. "Confirmation Politics and the Legitimacy of the U.S. Supreme Court: Institutional Loyalty, Positivity Bias, and the Alito Nomination." *American Journal of Political Science* 53(1):139–55.

Gimpel, James G and Robin M. Wolpert. 1996. "Opinion Holding and Public Attitudes Toward Controversial Supreme Court Nominees." *Political Research Quarterly* 49(1):163–76.

Kastellec, Jonathan P., Jeffrey R. Lax and Justin H. Phillips. 2010. "Public Opinion and Senate Confirmation of Supreme Court Nominees." *Journal of Politics* . forthcoming.

Krehbiel, Keith. 1993. "Constituency Characteristics and Legislative Preferences." *Public Choice* 23(1):235–66.

Lax, Jeffrey R. and Justin H. Phillips. 2009*a*. "Gay Rights in the States: Public Opinion and Policy Responsiveness." *American Political Science Review* 103(3). forthcoming.

Lax, Jeffrey R. and Justin H. Phillips. 2009*b*. "How Should We Estimate Public Opinion in the States?" *American Journal of Political Science* 53(1):107–21.

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

McGrory, Mary. 1992. "Thomas Fallout Begins Out of Chicago." *The Washington Post* March 29.

Miller, Warren E. and Donald E. Stokes. 1963. "Constituency influence in Congress." *American Political Science Review* 57(1):45–56.

Overby, L. Marvin, Beth M. Henschen, Julie Strauss and Michael H. Walsh. 1994. "African-American Constituents and Supreme Court Nominees: An Examination of the Senate Confirmation of Thurgood Marshall." *Political Research Quarterly* 47(4):839–55.

Overby, L. Marvin, Beth M. Henschen, Michael H. Walsh and Julie Strauss. 1992. "Courting Constituents? An Analysis of the Senate Confirmation Vote on Justice Clarence Thomas." *American Political Science Review* 86(4):997–1003.

Pacheco, Julianna. 2009. "Measuring State Public Opinion over Time using National Surveys: A Guideline for Scholars." Paper presented State Politics and Policy Conference in Raleigh, North Carolina, May 22-23.

Park, David K., Andrew Gelman and Joseph Bafumi. 2006. *State Level Opinions from National Surveys: Poststratification using Multilevel Regression*. Vol. 12 Stanford University Press pp. 375–85.

Peltzman, Sam. 1984. "Constituent Interest and Congressional Voting." *Journal of Law and Economics* 27(1):181–210.

Poole, Keith T. 1998. "Recovering a Basic Space from a Set of Issue Scales." *American Journal of Political Science* 42:954–93.

Segal, Jeffrey A. and Albert D. Cover. 1989. "Ideological Values and the Votes of U.S. Supreme Court Justices." *American Political Science Review* 83(2):557–65.

Shapiro, Catherine R., David W. Brady, Richard A. Brody and John A. Ferejohn. 1990. "Linking Constituency Opinion And Senate Voting Scores: A Hybrid Explanation." *Legisative Studies Quarterly* 15(4):599–621.

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

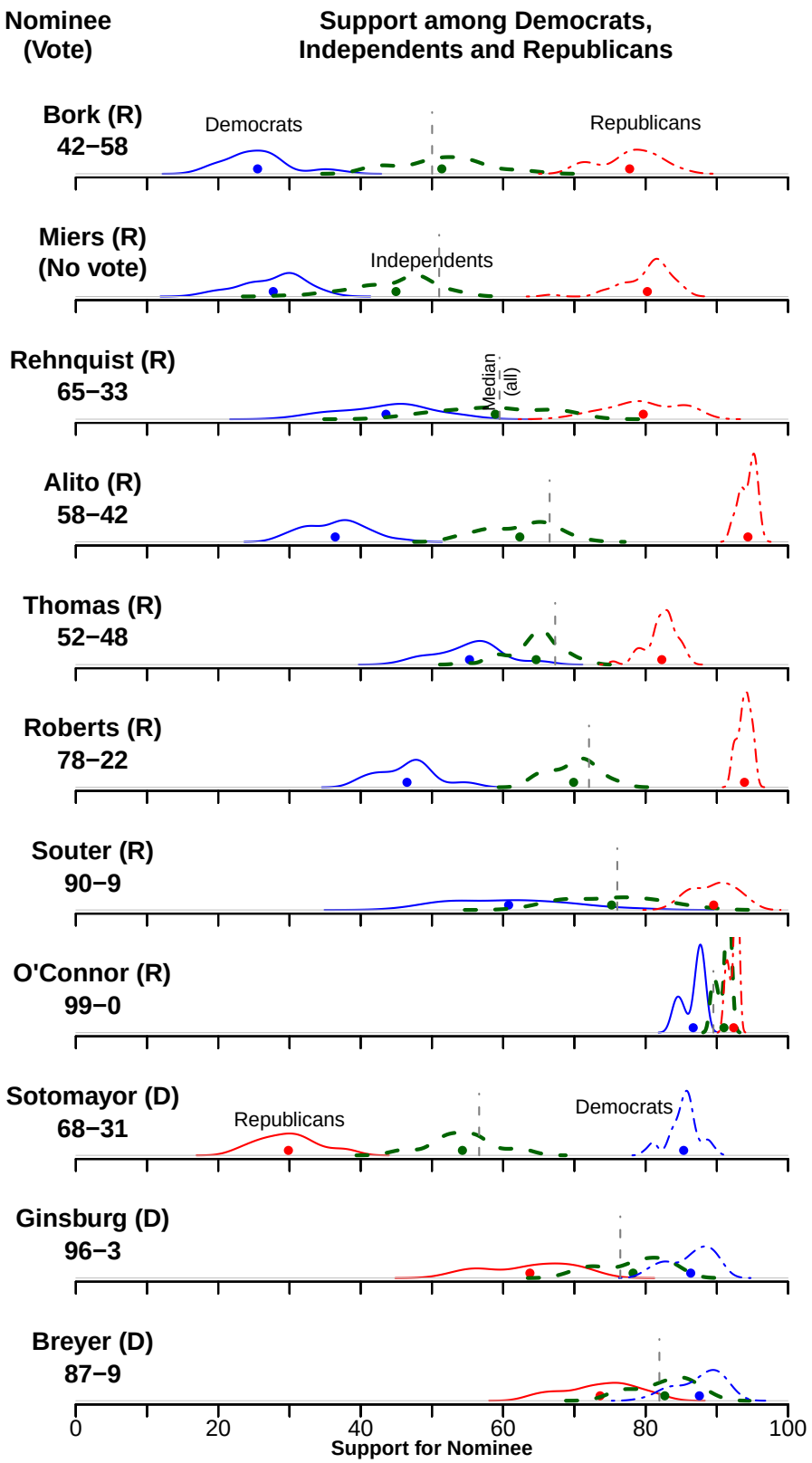

Figure 1: *The distribution of nominee support among Democratic identifiers, Independents and Republican identifiers.* The graph depicts kernel density plots of support among opinion holders. Nominees are ordered by increasing state-level mean support, except the three Democratic nominees (Ginsburg, Breyer and Sotomayor) appear last for clarity. The vertical dashed lines depict the median support across states. The dots under each distribution depict the mean of that distribution. Support is always higher, on average, among constituents from the president's party.

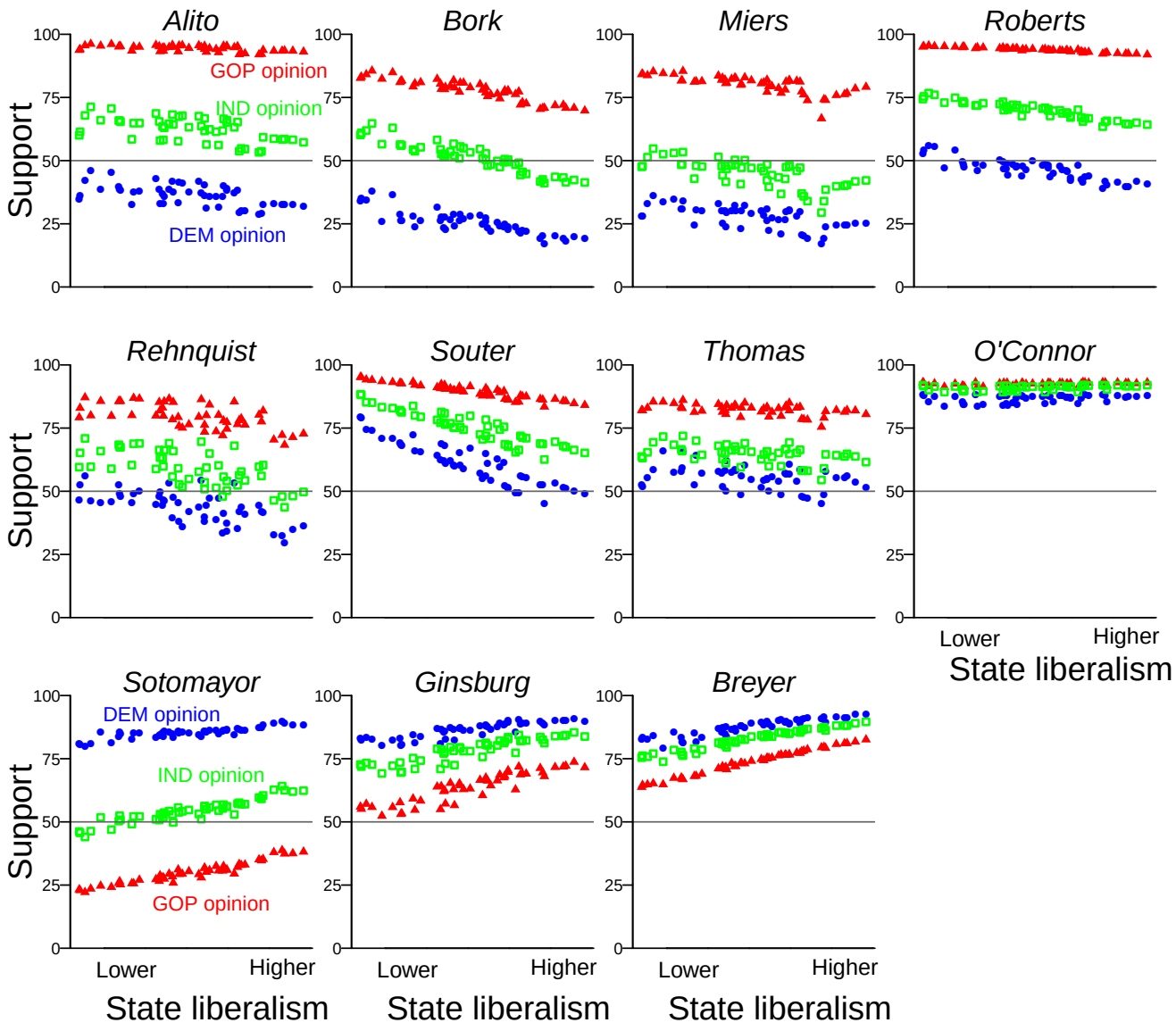

Figure 2: *Support for nominees, by partisan identification and state liberalism.* Support is displayed on the y-axis; the x-axis depicts state ideology, using scores updated from Erikson, Wright and McIver (1993), ordered from less liberal to more liberal. The light dotted lines denote 50% support. Moving from left to right, nominees are ordered first by the party of the president that appointed them and next by increasing polarization. The graphs reveal a relationship between state ideology that varies both across and within nominees.

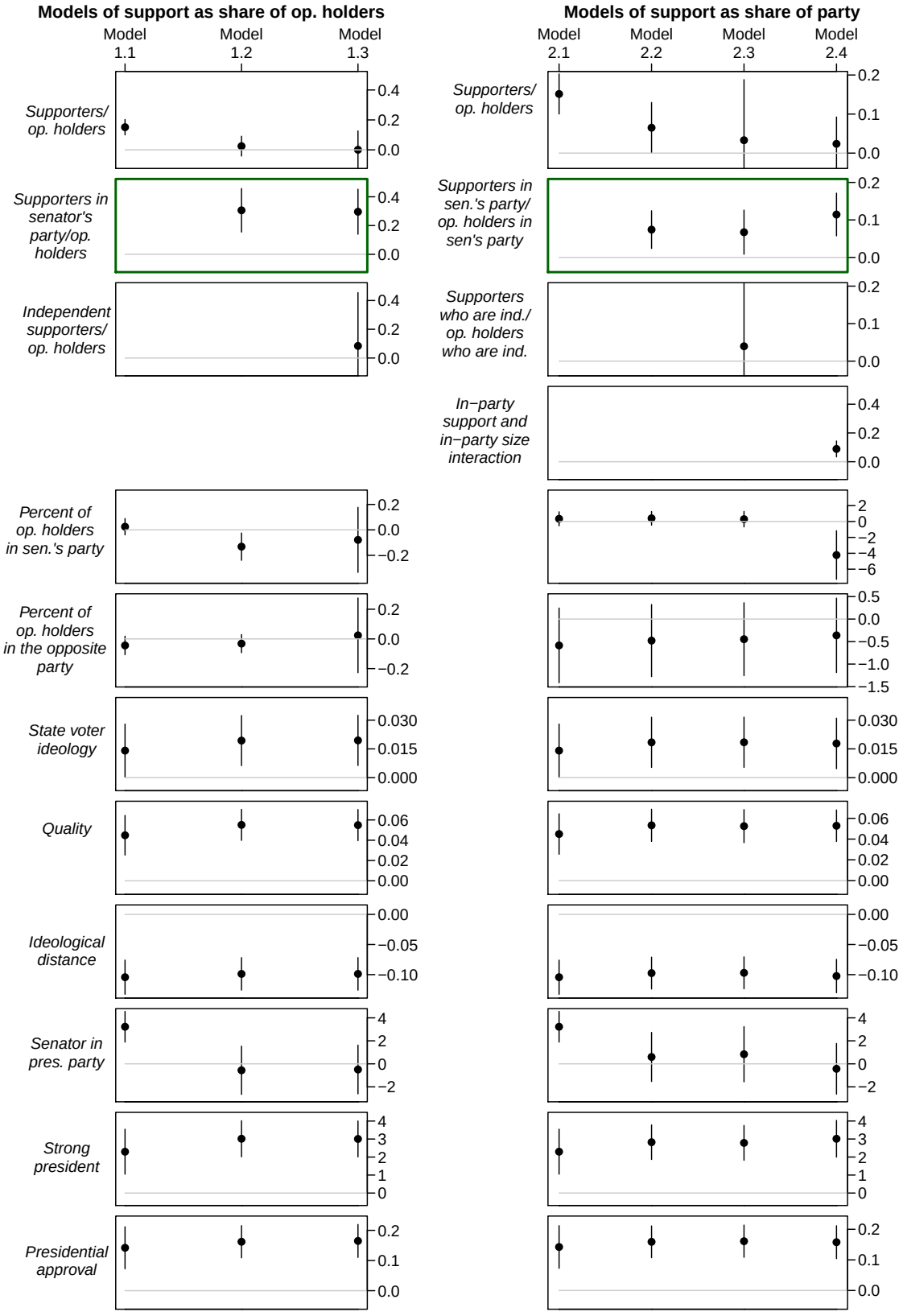

Figure 3: *Explaining roll call voting.* Each column depicts the results of a multilevel logistic regression. Each plot depicts point estimates and 95% confidence intervals for a given predictor across a set of models. The horizontal gray lines are placed at zero; if a given confidence interval includes zero, this means the respective point estimate is not statistically different from zero at $p < .05$. $N = 990$ for all models.

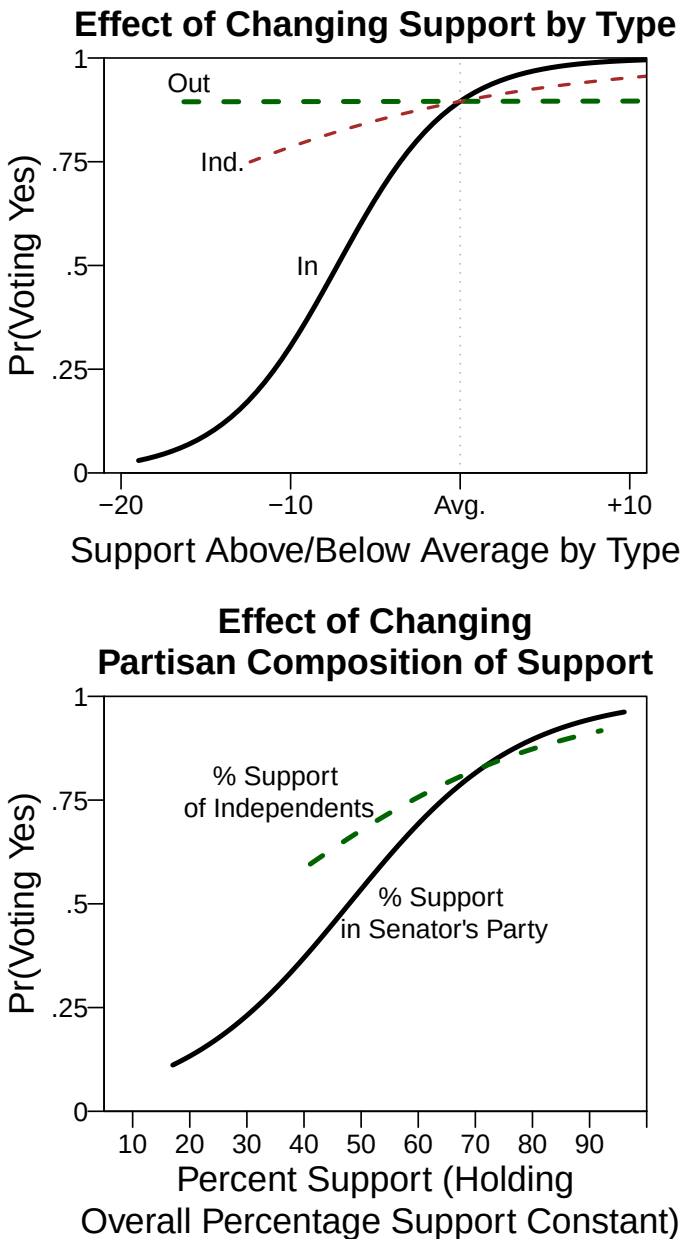

Figure 4: *The substantive effects of public opinion on roll call voting, across constituencies.* In the top panel, we show the effect of adding support of different types (calculated based on Model 2.3). The steeper the slope the larger the effect. In the bottom panel, we hold total support constant and change the percentage of support among the senators party constituents (holding independent support constant) or the percentage of support among Independents (holding in-party support constant). Each type of change is at the expense of out-party support (so that total support can stay constant). If the partisan composition of opinion did not matter, both lines would be horizontal. In both panels, we extend curves only over the range of opinion support levels in our data. We assume a weak president and a senator of the opposite party, with means for all other variables.

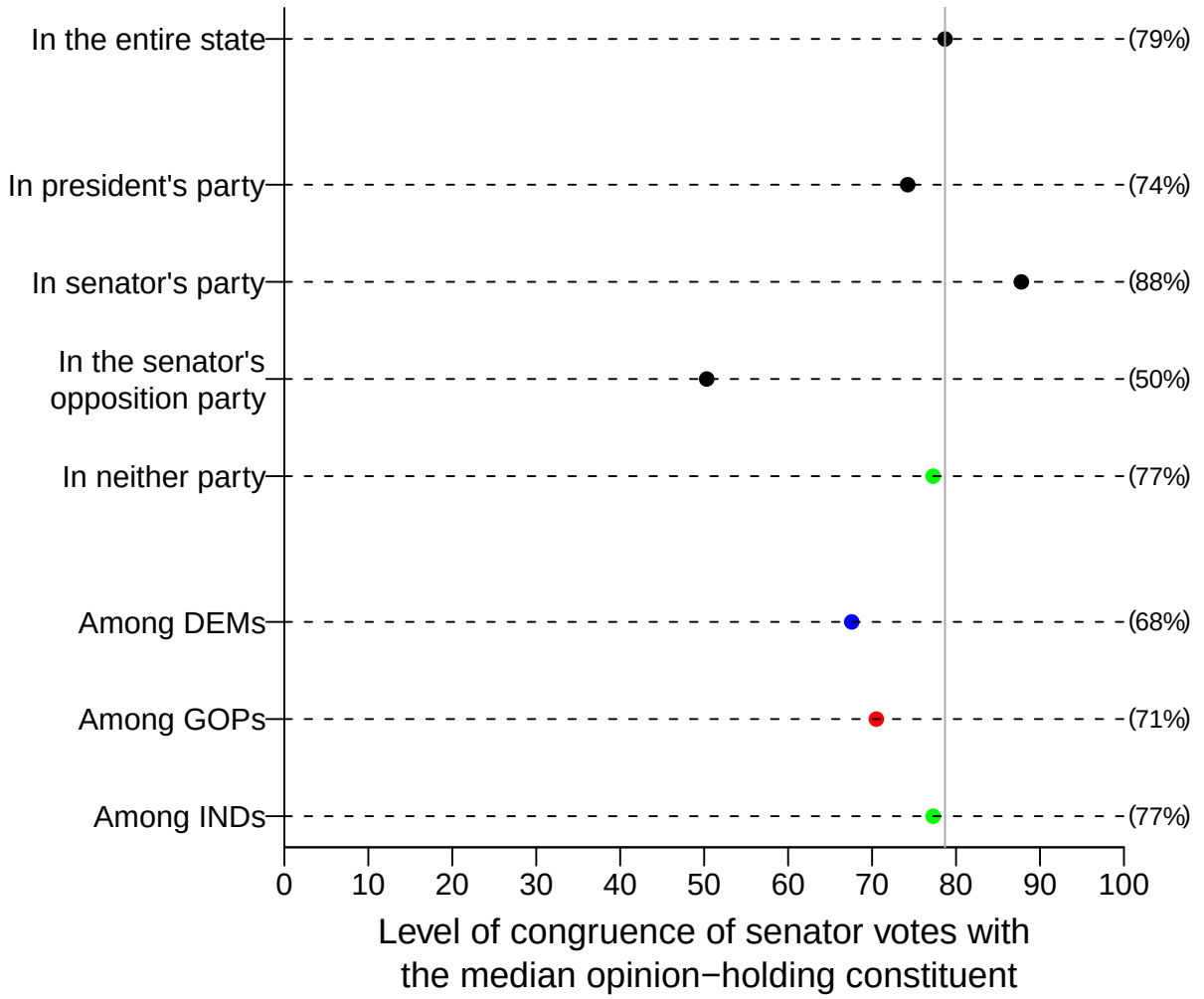

Figure 5: *Congruence in roll call voting on Supreme Court nominees, across constituencies.* Each point depicts the level of congruence with the median voter (among opinion holders) in the respective groups, while the numbers in parentheses denote the actual values. Congruence is high across most groups, especially among constituents in the same party as their senator or same party as the president. The vertical gray line marks the level of congruence with respect to all opinion holders, the comparison group for all measures below it. The median member of the senator's own party is more likely to get what he or she wants than the state's median voter. Given that different parties have controlled the White House (and therefore nominations to the Court) over the period in question, the median Independent voter in each state has overall been more likely to get what he or she wants then the party medians.

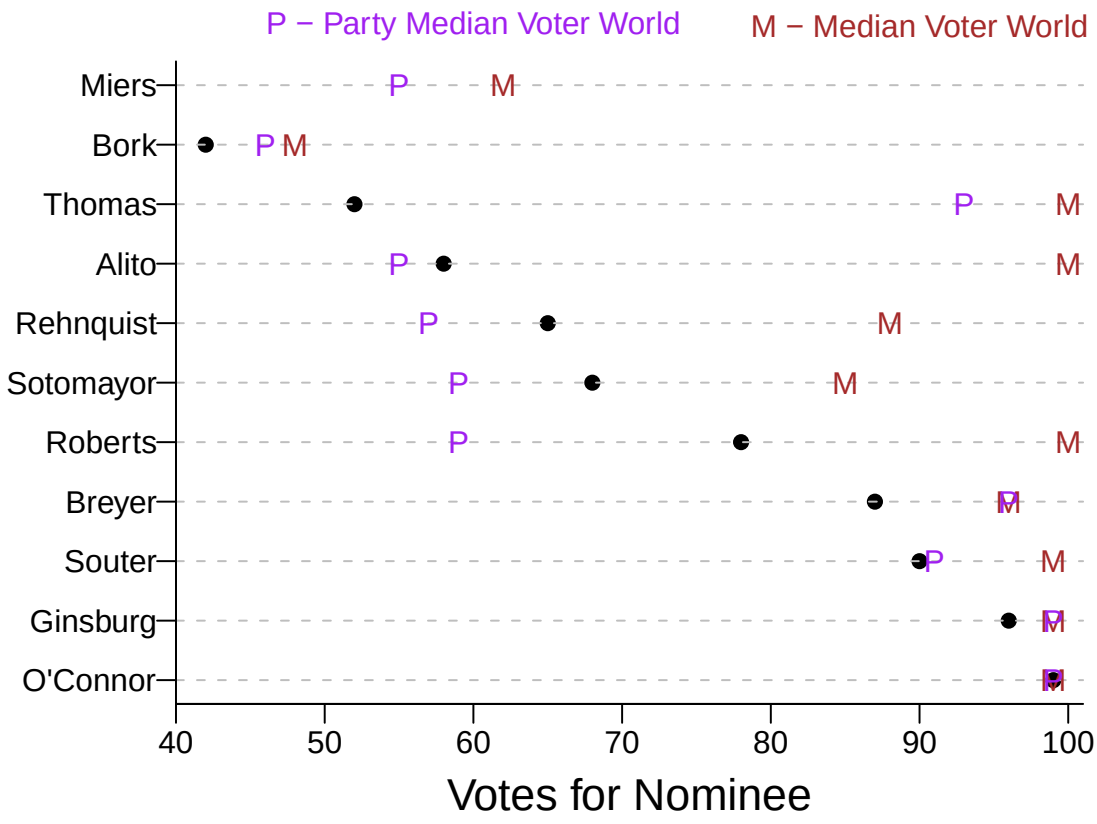

Figure 6: *Votes for nominees in Median Voter World and in Party Median Voter World.* Each point depicts the actual number of votes each nominee received. Compared to this are the number of votes each nominee would have received if the median voter in each state (among opinion holders) controlled the senator's vote as well as the number of votes that would have been received if the median voter in the senator's party controlled the senator's vote.