

Online Appendix

Coding

At least one author read through all circuit court transcripts to identify Supreme Court cases mentioned in the hearings. The vast majority of the coding was done by one author. The remaining three authors each read through five transcripts apiece (15 total) to identify any discrepancies with the other author's codes. The primary models in the paper are logistic regressions predicting whether a case is ever mentioned during our timespan, so we generally focused on the binary decision of whether a case should be included in the dataset or not. The search of 15 transcripts uncovered only one case (*Dalton v. Specter*) that was not in the dataset previously but should have been included. The case was added to the dataset. After identifying a small number of errors related to cases being included that should not be, one author examined cases that only appear in the dataset once to ensure that they should be included. In addition, one of the three non-original coding authors checked that each case mention was attributed to the correct senator.

Frequently Mentioned Cases

Table A.1 lists the most frequently mentioned Supreme Court cases. The unit of analysis is the nominee-senator dyad. As such, a case is counted as mentioned for each senator who raises the case at least once to a nominee. Additionally, if the same senator mentions the case to a different nominee, it is counted again. For example, if the same senator mentions *Roe v. Wade* to two different nominees, *Roe v. Wade* is given a tally of two. If two different senators ask the same nominee about *Roe v. Wade*, that case is given a tally of two. If the same senator asks the same nominee more than once about *Roe v. Wade*, that case is given a tally of one. We proceed this way, as opposed to counting the number of questions each senator asks each nominee about

a specific case, because it is not always clear where questions about a specific case stop and more general questions about that issue area begin.

Roe v. Wade stands out as, by far, the most referenced case, with more than two times the number of mentions as the next closest case, *United States v. Morrison*. Comparing case mentions in our dataset to Collins and Ringhand's (2013) measure of comments about cases at Supreme Court hearings between 1939-2010, we find expected overlap in the list of cases but also notable differences. The two most discussed cases at Supreme Court hearings through 2010 were *Roe v. Wade* and *Brown v. Board of Education*, respectively (Collins and Ringhand 2013, 148). These cases show up as first and fourth on our list, but two cases decided during the timeframe of our hearings, *United States v. Morrison* and *United States v. Lopez* are both discussed more than *Brown v. Board of Education*.

Table A.1
Most Frequently Mentioned Cases in Circuit Court Hearings (1993-2012)
By Unique Senator-Nominee Hearing Mentions

Case	Hearings Mentioned	Dem %
<i>Roe v. Wade</i>	49	61%
<i>United States v. Morrison</i>	26	62%
<i>United States v. Lopez</i>	23	48%
<i>Brown v. Board of Education</i>	16	69%
<i>Miranda v. Arizona</i>	14	93%
<i>Adarand v. Pena</i>	14	14%
<i>Planned Parenthood v. Casey</i>	12	67%
<i>Board of Trustees of Alabama v. Garrett</i>	12	67%
<i>Griswold v. Connecticut</i>	12	67%
<i>City of Boerne v. Flores</i>	12	33%
<i>Plessy v. Ferguson</i>	11	27%
<i>Romer v. Evans</i>	10	70%
<i>Bob Jones University v. United States</i>	9	78%
<i>Lochner v. New York</i>	8	75%
<i>Kimel v. Florida Board of Regents</i>	8	63%
<i>Lawrence v. Texas</i>	7	29%

Analyses with Senator-Nominee-Case Triads

When considering a senator's motivation for raising Supreme Court cases during circuit court confirmation hearings, one possibility is that senators bring up decisions that they disagree with when facing a nominee from the opposite party in an attempt to air concerns about what they see as poor legal precedents. A descriptive analysis in the paper suggests that a senator's party affiliation does not predict the types of cases she raises. As an additional test of this conclusion, we run models that account for senator-, nominee-, and case-specific information. We constructed a dataset that treats the senator-nominee-case triad as the unit of analysis. By way of comparison, Table 1 in the paper treats the case as the unit of analysis, and, as an example, asks whether *United States v. Morrison* was referenced in any hearing during our timespan. The triad dataset allows us to assess whether, for example, Senator Hatch asked nominee Goodwin Liu about *United States v. Morrison* at his hearing. This creates a dataset that can have over 20 million observations if we include every possible senator-nominee-case combination for cases decided post-1955. To make the analysis less computationally demanding, we focus on just the 1993-2008 model from the paper that looks at the likelihood a recently decided case is mentioned. We again use a four-year cutoff, with the cutoff based on the year of the decision and the year of the hearing. Some cases are therefore mentioned in the fourth year after the decision (e.g., a case decided in March 1993 but mentioned in May 1997 would be included). We also only use senators who actually attended a given hearing as opposed to all senators on the Judiciary Committee. The result is a dataset with close to 200,000 observations.

In a triad or dyad setup, pooling observations without accounting for the fact that units are repeated within the dataset (e.g., senator-nominee pairings are repeated for every case) can introduce bias (Green, Kim, and Yoon 2001). A fixed effects model with separate fixed effects

for each nominee-senator pairing would be ideal, although a key nominee-level variable we are interested in (party of the nominating president) does not vary within nominees so estimating it in a model with nominee-senator fixed effects is not feasible. We therefore include only senator fixed effects. We estimate both a conditional fixed effects logit and fixed effects OLS regression models. The two models have a different number of observations because the fixed effects logistic regression drops senators for whom the dependent variable does not vary (see Beck 2015). Given that there are tradeoffs to adopting OLS over logistic regression in a fixed effects framework, we estimate and present both models (see Beck 2015 for a fuller discussion of fixed effects logistic regression versus fixed effects OLS regression).

To test whether senators are more likely to bring up cases decided in the opposite direction to opposition nominees, we create dummy variables called Opposition Nominee and Opposite Case. Opposition Nominee is coded '1' if the senator is a Democrat and the nominating president is George W. Bush or the senator is a Republican and the nominating president is Bill Clinton or Barack Obama and '0' otherwise. The Opposite Case variable is coded '1' when the senator is a Democrat and the case is decided in a conservative direction or when the senator is a Republican and the case is decided in a liberal direction and '0' otherwise. For these analyses, we drop cases that do not have a clear decision direction. We then interact Opposition Nominee and Opposition Case to test whether senators are more likely to bring up cases that they disagree with ideologically to nominees selected by a president from the other party.

In the fixed effects logistic regression model, the Opposition Nominee coefficient is positive and statistically significant at $p < 0.05$. In the fixed effects OLS model, the interaction between opposition nominee and opposite case is statistically significant at $p < 0.05$. We therefore see some evidence that senators are more likely to bring up cases with which they disagree and

that the party of the nominating president may moderate this relationship. The results across the OLS and logistic regression model are not consistent, however, and, as the paper illustrates, senators do bring up both cases that they agree with and cases that they disagree with.

The triad analysis also largely confirms the results from the paper. Senators are more likely to mention cases that ruled a federal law unconstitutional, were narrowly decided, had more opinions, and were more salient. One notable inconsistency with the findings presented in Table 1 of the paper is that the justice salience measure (Black, Sorenson, and Johnson 2013) is negative and statistically significant while in Table 1 it was negative but not statistically significant.

Table A.2
Triad Senator Fixed Effects Models
Whether Case is Referenced at Hearings

VARIABLES	(1) Fixed Effects Logit	(2) Fixed Effects OLS
Opposition Nominee	1.001*** (0.351)	0.000242 (0.000185)
Opposition Case	0.511 (0.358)	-4.91e-05 (0.000170)
Opp. Nom X Opp. Case	-0.449 (0.457)	0.000457** (0.000229)
Federal Unconstitutional	1.624*** (0.230)	0.00760*** (0.000341)
State/Local Unconstitutional	-0.151 (0.334)	-1.09e-05 (0.000263)
Majority Votes	-0.248*** (0.0963)	-8.78e-05** (4.16e-05)
# of Opinions	0.281*** (0.0749)	0.000245*** (5.57e-05)
Media Salience	1.595*** (0.151)	0.000944*** (7.82e-05)
Justice Salience	-0.266*** (0.0932)	-0.000161*** (5.94e-05)
Alter Precedent	0.712** (0.308)	0.00137*** (0.000363)
Economic Case	-0.977** (0.433)	-0.000891*** (0.000170)
Civil Liberties Case	-1.314*** (0.246)	-0.00132*** (0.000150)
1990s Decision	-0.649** (0.252)	-0.000604*** (0.000136)
Constant		0.00142*** (0.000417)
Observations	149,637	198,156
R-squared		0.005
Number of ID	18	47

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

As a robustness test, we also ran models with fixed effects for each senator-nominee dyad. Since the party of the nominating president does not vary within nominees, we cannot estimate the interaction between party of the nominating president and the ideological direction of the case in a model with senator-nominee fixed effects. To get around this, we run separate models depending on whether the senator and nominating president are from the same party or opposite party. We can then assess whether we see different trends in the Opposite Case coefficient across the two models. When running a fixed effects OLS, the coefficient for the Opposite Case variable is positive and statistically significant in the opposition nominee model ($B=0.0005$, $p=0.004$) but not the same party model ($B=0.00004$, $p=0.77$). In the fixed effects logit models, more than half of the nominee-senator pairings are dropped due to a lack of variation, and the results are again inconsistent with the OLS models. Here we see a positive and statistically significant coefficient for the Opposite Case variable in the same-party nominee model ($p=0.04$), while in the opposite party model the coefficient is positive but not statistically significant ($p=0.53$). In sum, we see some evidence, albeit inconsistent evidence, that senators may be more likely to ask opposition partisans about cases that the senator disagrees with ideologically.

Count Models

Table A.3 presents the coefficients from a negative binomial regression model predicting the number of times a case is mentioned instead of simply whether the case is mentioned or not. The independent variables are the same as the independent variables in Table 1 in the paper. In general, the results are substantively similar to the logistic regression model presented in Table 1.

Table A.3
Negative Binomial Regression Models

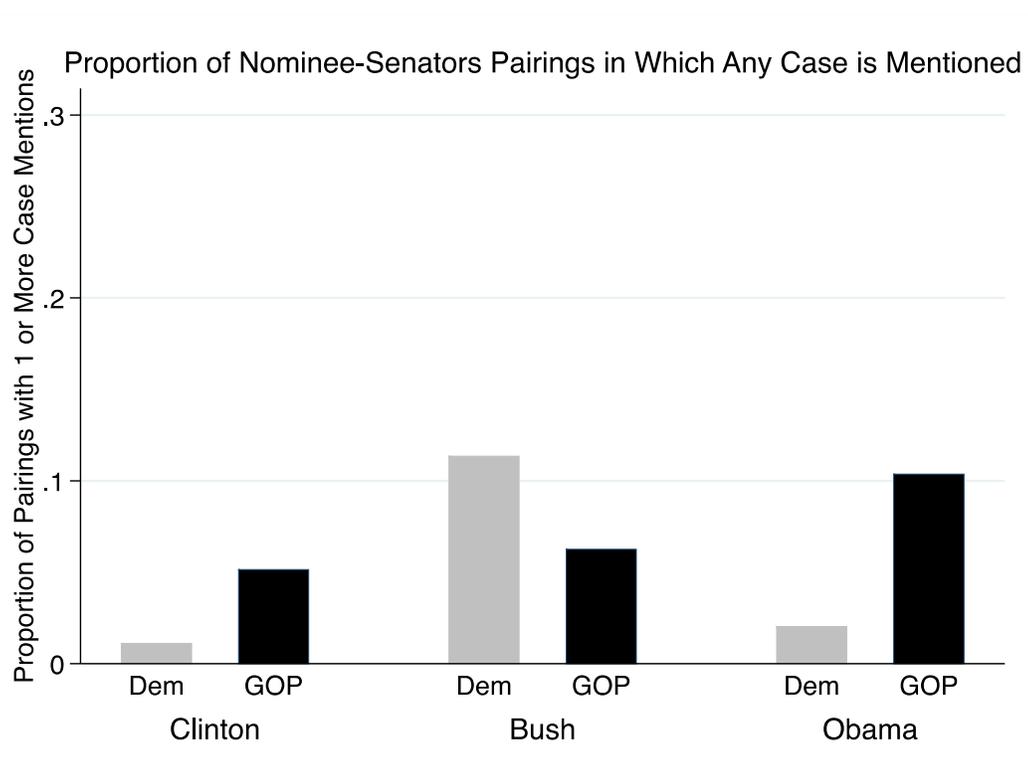
VARIABLES	1993-2008	1979-2008	1955-2008
Federal Unconstitutional	1.848*** (0.512)	1.965*** (0.474)	2.075*** (0.468)
State/Local Unconstitutional	0.0627 (0.556)	0.173 (0.367)	0.909*** (0.311)
Majority Votes	-0.202 (0.125)	-0.0409 (0.0876)	0.114 (0.0818)
# of Opinions	0.199 (0.128)	0.303*** (0.0954)	0.481*** (0.0846)
Media Salienc	1.474*** (0.245)	1.681*** (0.187)	1.567*** (0.150)
Justice Salienc	-0.0404 (0.195)	-0.144 (0.131)	
Liberal Decision	-0.179 (0.347)	0.498** (0.251)	0.380 (0.240)
Unspecifiable Decision	-21.25 (31,648)	-1.085 (1.234)	-1.564 (1.321)
Precedent Alteration	0.941 (0.664)	0.238 (0.556)	0.278 (0.495)
Economic Cases	-0.769 (0.565)	-0.970** (0.441)	-1.147*** (0.421)
Civil Liberties Cases	-1.037** (0.434)	-0.600* (0.329)	-0.583* (0.308)
1950s Cases			-3.205*** (1.100)
1960s Cases			-2.228*** (0.419)
1970s Cases		-26.84 (1.715e+06)	-1.529*** (0.356)
1980s Cases		-1.031*** (0.302)	-1.095*** (0.330)
1990s Cases	-0.898** (0.359)	-0.188 (0.273)	-0.338 (0.309)
Constant	-1.930* (1.038)	-3.786*** (0.798)	-5.256*** (0.732)
Observations	1,256	2,994	6,099

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Nominee-Senator Case Mentions for All Senators

Figure A.1 replicates Figure 1 in the paper but with senators who did not attend a hearing coded as not asking about a case (as opposed to treated as missing). In this setup, the proportion of senators who ask a nominee about a case declines considerably, but the general patterns across parties and administrations remain consistent with Figure 1.

Figure A.1



References

- Beck, Nathaniel. 2015. "Estimating Grouped Data Models with a Binary Dependent Variable and Fixed Effects: What are the Issues?" Annual Meeting of the Society for Political Methodology, July.
- Black, Ryan C., Maron W. Sorenson, & Timothy R. Johnson. 2013. "Toward an Actor-Based Measure of Supreme Court Case Salience: Information-Seeking and Engagement during Oral Arguments." *Political Research Quarterly* 66: 804-818.
- Collins, Paul M. & Lori A. Ringhand. 2013. *Supreme Court Confirmation Hearings and Constitutional Change*. New York: Cambridge University Press.
- Green, Donald P., Soo Yeon Kim, and David H. Yoon. 2001. "Dirty Pool." *International Organization* 55: 441-468.