Online Appendix
Elevation Potential Among Circuit Court Nominees and Its Effect on the Senate's Confirmation Behavior

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Abstract

Using traits conventionally believed to lead to elevation from the circuit courts to the Supreme Court, this paper uses an item response model to estimate latent elevation estimates for each Circuit Court judge nominated and confirmed between 1901 and 2017. I validate this measure by showing that it predicts which circuit court judges are promoted to the Supreme Court and which end up on the president's Supreme Court shortlist. Further, I investigate how the Senate strategically responds to the nomination of Circuit Court nominees with high elevation estimates. The Senate takes longer to confirm nominees with high elevation scores, is less likely to confirm them by voice vote, and these nominees receive a greater share of nay votes. This paper concludes by suggesting additional uses for the elevation estimates.

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Summary Statistics

Table 1: Summary Statistics and Detail on Contol Variables

Variable	Mean	Std. Dev.	Min.	Max.	Description
Post Bork Nomination	0.3	-	0	1	1 if post Bork nomination 0 otherwise
Ideological Dis. Bwt President Senate	0.414	0.208	0.016	0.801	Difference in President's DW-NOMINATE score and the Senate median
Divided Government	0.271	-	0	1	1 if opposition party controls Senate 0 otherwise
Presidential Year	2.268	1.007	1	4	Year of president's term
Second Term	0.381	-	0	1	1 if president is in second term 0 otherwise
Female Nominee	0.134	-	0	1	1 if nominee is female 0 otherwise
Minority Nominee	0.101	-	0	1	1 if nominee is a racial or ethnic minority 0 otherwise
Appointment Month	10.363	6.401	1	24	The Congressional month during which the appointment was made
Opposition size	44.217	9.017	16	65	The number of Senate seats controlled by the opposition party
Polarization	0.584	0.162	0.27	0.976	The absolute difference between each Party's median DW-NOMINATE score

Time Dynamic Scores

Comment: Some readers may wonder whether it is appropriate to estimate a single model across the time being studied. It may be the case that elevation potential varies across time and that the Senate's response to high potential nominees also changes over time.

Response: Based on this concern I have conducted an additional robustness check. Specifically, I split the sample of nominees in half based on time period. This gives two samples of nominees, one from 19001-1976 and one from 1977-2017. From there I estimated new elevation potential scores using an item response model. The specific item response model is a 1 parameter model. With a smaller sample size the 2 parameter model presented in the main text does not converge due to sparseness of some of the items. The items perform similarly across the two time periods. After the scores are estimated, I rerun the models presented in the paper. The results demonstrate that the substantive effect of elevation potential is similar in the two time periods, but the levels of statistical significance varies. For time to confirmation: after 1977 the coefficient is 0.114 and the p-value is 0.09 and after 1977 the coefficient is 0.101 and the p-value is 0.47. For voice vote: after 1977 the coefficient is -1.370 and the p-value is 0.001 and before 1977 the coefficient is -1.05 and the p-value is 0.334[1]. I'd argue considering the effect size is relatively consistent this is more of an issue related to statistical power than the elevation estimates having difficult effects across time. Based on the fact that the items perform similar across time periods and that the effect size is consistent across time periods, I believe I am justified in presenting the single model that included in the published manuscript. Doing similar supplement analysis on the percentage of nay votes is not particularly feasible because the number of nominees who received a roll-call vote are small and these numbers do not evenly divide into the split sample.

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[1] Note: all women confirmed prior to 1977 were confirmed via voice vote.

Table 2: Time Varying ATF Models

	(1) After 1977	(2) Before 1977
Elevation Estimate	0.114 (0.0679)	0.102 (0.145)
Ideological Distance btw Pres and Senate	0.283 (0.532)	−1.109 (0.589)
Divided Govt.	0.726** (0.247)	0.289 (0.275)
Presidential Year	−0.0172 (0.0671)	−0.0608 (0.0719)
Second Term President	−0.259 (0.157)	−0.0451 (0.163)
Female Nominee	0.0395 (0.0643)	0.826 (0.545)
Minority Nominee	0.191* (0.0742)	0.941** (0.328)
Opposition Size	−0.0262 (0.0287)	0.0217* (0.00983)
Polarization	2.444*** (0.684)	−1.332* (0.530)
Senate Month	Yes	Yes
Constant	4.328*** (0.936)	3.624*** (0.579)
Observations	329	318

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 3: Time Varying Logit Voice Models

	(1) Before 1977	(2) After 1977
Elevation Estimate	−1.050	−1.370***
	(1.087)	(0.414)
Ideological Distance	0.426	−3.169
	(3.701)	(1.855)
Divided Govt.	−1.148	0.221
	(1.217)	(1.106)
Presidential Year	0.115	−0.223
	(0.314)	(0.138)
Second Year	0.321	0.0743
	(0.678)	(0.319)
Female Nominee	−	−0.595
	−	(0.382)
Minority nominee	−1.143	−0.336
	(0.819)	(0.333)
Opposition Size	0.0800	0.0658
	(0.0491)	(0.125)
Polarization	−3.320	−15.67***
	(2.344)	(1.939)
Senate Month	Yes	Yes
Constant	1.347	9.938*
	(1.669)	(4.242)
Observations	315	329

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Annoying the Executive

Comment: Some readers may consider an alternative theoretical argument that positis Senators give more scrutiny to high potential Circuit Court nominees because they desire to annoy an opposition party president—who may be particularly attached to the nominee through the nominee's executive experience (Solicitor General or Justice Department work).

Response: I believe there are 2 explanations that limit the theoretical attractiveness of this argument. The first is that even the party aligned with the president has an incentive to give high potential nominees more scrutiny at the Circuit Court stage. For these members, they want to spend the extra time at the Circuit Court level and ensure a nominee has no background issues that could potentially come out later and derail a Supreme Court nomination. So I think the theory is broader than just the opposition party wants to delay or scrutinize high potential nominees, but both the aligned and opposition party want to scrutinize high potential nominees. I think this bares out because the elevation scores predict scrutiny even after accounting for things like divided government, polarization, and number of seats held by the opposition party. The second is that executive branch experience does not necessarily mean that the nominee is tied to the president currently appointing them. Many nominees served in the executive branch under different presidents than the president appointing them to the Circuit Courts. With that said, I re-estimate the scores without the executive branch experience items (Solicitor General and Justice Department experience) and re-estimate the models of scrutiny. I have done this and the results are presented in Table 4. The results demonstrate that even under the re-estimation, the substantive results in the manuscript are replicated. High elevation nominees receive more scrutiny. This suggests the theory is about creating a record for a future Supreme Court nomination rather than attempting to irk the president by delaying someone close to him.

Table 4: Scrutiny without Executive Branch Items

	(1) Time	(2) Voice Vote	(3) Nay Rate
Elevation no Executive Items	0.198*	−1.317**	0.0979*
	(0.0894)	(0.410)	(0.0470)
Post Bork	0.939***	−1.697***	0.0220
	(0.177)	(0.401)	(0.0774)
President Senate Distance	0.287	−3.035**	0.0182
	(0.337)	(1.044)	(0.141)
Divided govt	−0.322	0.617	0.0969
	(0.192)	(0.539)	(0.0816)
Presidential Year	0.0478	−0.146	−0.0158
	(0.0590)	(0.126)	(0.0241)
Second Term	0.0745	−0.406	−0.00858
	(0.125)	(0.293)	(0.0616)
Female Nominee	0.241***	−0.640	0.00629
	(0.0723)	(0.331)	(0.0269)
Minority Nominee	0.391***	−0.388	−0.0439
	(0.110)	(0.308)	(0.0408)
Month of Appointment	−0.0156*	0.0666***	−0.000141
	(0.00787)	(0.0184)	(0.00351)
Opposition Size	0.0332***	0.0705	−0.0121
	(0.00995)	(0.0418)	(0.00704)
Polarization	−0.147	−8.432***	−0.0821
	(0.521)	(1.791)	(0.295)
Constant	2.499***	5.718***	0.765*
	(0.385)	(1.609)	(0.281)
Observations	653	653	135

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Bias in the American Bar Association Rating

Comment Research has demonstrated that the American Bar Association scores are biased against female and minority nominees such that these nominees on average receive lower elevations than men nominees and white nominees (Sen 2014). Some readers may wonder whether this biases the resulting scores against female and minority nominees.

Response The elevation estimates do not appear to be biased against female or minority candidates. I take two approaches to demonstrate this. First, I conduct a regression predicting elevation scores as a function of gender and minority status. The results demonstrate that women and minorities do not have significantly lower elevation scores. This is displayed in Table 5. Second, I re-estimate the irt model without the ABA item. There is a high correlation between the scores with and without the ABA scores. Figure 1 shows these correlations, with the line representing a lowess smoother. The bias found in other research may not influence the scores here much because of all the items, the ABA scores have the smallest discrimination and difficulty parameters and thus contribute the least amount of information to the scores.

Table 5: Elevation Scores and Bias

	(1) Elevation Estimate
Female Candidate	0.0756
	(0.0671)
Minority Candidate	−0.0448
	(0.0759)
Constant	−0.00540
	(0.0255)
Observations	664

Standard errors in parentheses
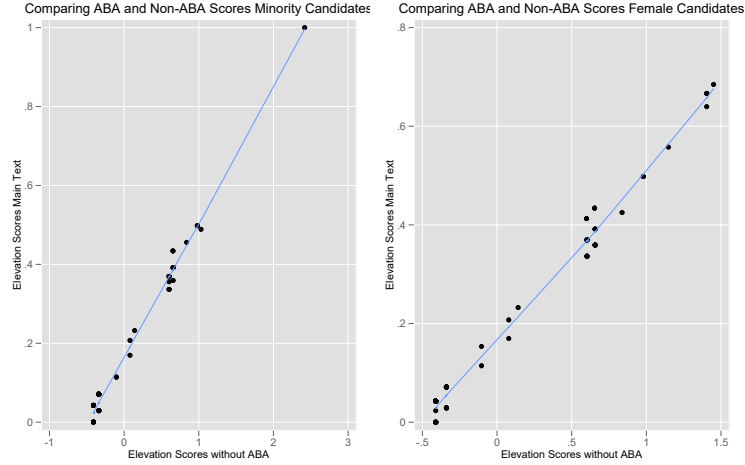
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Figure 1: Comparing Scores with and without ABA Scores for Female and Minority Candidates

Correlation between Elevation Items

Comment Readers may express concerns about colinearity among the variables in the IRT models and worry that this may bias the resulting elevation estimates.

Response: A correlation matrix is presented in Table 6. The results suggests that there is less correlation between items than one would assume. The levels of correlation likely do not amount to an extent that would bias the results. Second, colinearity is largely not an issue in latent variable models. The intention of a latent variable is to estimate a variable that we cannot directly observe, in this case potential for promotion to the Supreme Court, based on items we can observe. Since the observed items are all components of the single-dimension of the latent concept, it makes theoretical sense that there would be some level of correlation between them. However, this correlation is not a problem unless scoring yes on one item is conditional upon scoring yes on another item. For example, if you *could only* serve on the DC Circuit if you went to a T5 law school.

Table 6: Correlation Matrix

Variables	SG's Office	Justice Depart.	DC Circuit	SC Clerk	T5 Law	Young Nom.	Highest ABA
SG's Office	1.000						
Justice Department	-0.027	1.000					
DC Circuit	0.160	0.132	1.000				
SC Clerk	0.084	0.025	0.047	1.000			
T5 Law	0.102	0.007	0.092	0.231	1.000		
Young Nom.	0.030	0.081	-0.033	0.037	0.008	1.000	
Highest ABA	-0.034	-0.001	-0.007	0.085	0.026	0.027	1.000

References

Sen, Maya. 2014. "Is Justice Really Blind? Race and Appellate Review in U.S. Courts." *Journal of Legal Studies* 44.