

Out of the Sample and One Step Ahead:  
Forecasting Supreme Court Confirmation Votes

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## **Abstract**

We propose and test a model to forecast confirmation votes for Supreme Court nominees.

Overall, the confirmation vote model is a substantial step in the forecasting of the level of formal opposition (nay votes) in the Senate. Nominee-based characteristics—qualifications and ideological extremism—are strong predictors of the percentage of nay votes a nominee can expect during the confirmation vote. Also, as another presidential election approaches, we provide forecasts of the formal opposition of potential nominees to the nation’s highest court.

Given the fact that every four years Americans choose their commander-in-chief, presidential elections seem to be perennially on the minds of pundits, politicians and political scientists. Another consequence of the frequency of elections is the fact that, every election, presidential and congressional forecasters attempt to predict the outcome as well as the margin of victory (the percent of the two-party vote share). An often overlooked aspect of the horserace towards the White House is the possibility of the president being fortunate enough to place one or more of his nominees on the Supreme Court. By appointing a nominee to the nation's highest court, a president can alter the legal landscape, having an effect on decisions and legal doctrine that can far outlast a given president's administration. Thus, the repercussions of the outcome from the November election extend to the potential change in membership at the Supreme Court. As such, we propose and test a confirmation vote model that forecasts the level of formal opposition a nominee to the nation's highest court will face.

Previous work on Supreme Court nominations has focused on the determinants of confirmation. At the most aggregate level of analysis, scholars have found that the factors that influence the binary confirmation outcome include whether the president's party controls the Senate, whether the President is in the fourth year of his term of office, and whether the justice being replaced is pivotal (Lemieux and Stewart 1988; Palmer 1983; Segal 1987). At the other end of the aggregation spectrum, votes by individual Senators on particular nominees, scholars have found strong influences of ideology (Cameron, Cover and Segal 1990; Overby, Henschen, Walsh and Strauss 1992), qualifications (Cameron, Cover and Segal 1990), interest groups (Caldeira and Wright 1998; Segal, Cameron, and Cover 1992), divided government, and whether president is serving in the last year of his term (Cameron, Cover, and Segal 1990).

In between these coarse and fine levels of analysis, no scholars have examined the simple percentage of votes that a candidate has received. While the final outcome of a nominee (confirm or not confirm) as well as the vote of given senator (yea or nay) are important, the actual level of formal support or opposition of a nominee before the Senate, too, is an important aspect to the advice and consent process. The degree of support signals to the president what he might be able to accomplish in subsequent nominations. This is punctuated by the fact that most presidents have had the fortune of placing more than one justice on the nation's highest court. Moreover, the level of support or opposition reveals to interest groups the possible position of the Senate and as such provides information as to whether it is worthwhile to "gear up" or not. The degree of formal support or opposition for a candidate of course is the level of analysis that election forecasters use (i.e., the percent of the vote), but no confirmation scholars using any of these levels of analysis have tested forecasts of their models. Forecasts are the most stringent test of a model, for forecasts guarantee out-of-sample predictions.

Overall, our model provides a solid and substantial step in the forecasting of confirmation votes. Nominee-based characteristics such as perceived ideological extremism and qualifications are driving determinants of the percentage of nay votes a nominee can expect before the Senate. Moreover, the institutional setting—divided government—also increases the percent nay votes. We also find that interest group participation influences the level of formal opposition a nominee will face during the confirmation vote.

The remainder of the paper will proceed as follows. First, we briefly examine the purpose of forecasting and its applications to presidential elections. Second, we present our hypotheses and the manner in which we test them. Lastly, we turn not only to a discussion of the results, but also the implications from our forecasts for Supreme Court confirmation votes.

## Forecasting

While the most common and well-known forecasting methods are survey polls tracking election horseraces, another method, mainly from the political science literature, uses econometric models to predict the popular vote for congressional or presidential elections. Specifying the dependent variable as the proportion of the two-party vote for either a candidate (if examining presidential elections) or the party (if examining congressional elections), these models utilize key independent variables (i.e., approval measures, economic indicators, economic evaluations, and electoral cycle) to generate predictions, or forecasts, of an upcoming election. While the predictors may vary by method, model and researcher (e.g., Campbell, 1996, 2001, 2004; Lewis-Beck and Tien, 1996, 2001, 2004; Norpoth 1996, 2001, 2004), the end goal is always to answer the same questions: who wins and by how much?

An important lesson from the forecasting literature is the application and utilization of out-of-sample and/or one-step-ahead forecasts to assess model fit, the accuracy of the predictions and the stability of the model. While econometric models generally generate predictions of probabilities or expected values based on the entire sample population, the purpose of forecasting is to make predictions of a dependent variable or occurrence that theoretically do not exist yet. Therefore, in order to assess the ability of the model to forecast accurately whatever is of interest to the researchers, forecasters must look to the data that are available: the sample. But, in doing so, there must be a guarantee that the predictions from the model do not come from the entire sample. For example, one cannot include observation  $x$  when forecasting a prediction of observation  $x$ .

The error from that prediction is simply the residual, which is the difference between the prediction and the actual dependent variable. This is only an assessment of how well the model

fits the data. When the goal is to forecast, we are not necessarily concerned with how well the chosen model fits the data, but rather how well the fitted model forecasts future values (Enders 2004; Gujarati 2003).

There are generally two means of assessing the fit of the model to generate accurate future predictions: out-of-sample forecasts and one-step-ahead, out-of-sample forecasts. Out-of-sample forecasts exclude the relevant observation while still including observations both before and after the observation. For example, to generate a prediction for Ruth Bader Ginsburg's nomination to the Supreme Court, one would use the full sample population (even those nominations that came after such as Stephen Breyer) except for Ginsburg in estimating the model. One-step-ahead, out-of-sample forecasts exclude the relevant observation as well as all observations that follow the observation of interest; for convenience, we will refer to this method simply as one-step-ahead forecasts. Thus, using our previous example, the prediction for Ginsburg will only be based on estimates from nominations that came before Ginsburg was formally nominated to the position of associate justice. Both methods—one-step-ahead and out-of-sample forecasts—ensure that predictions generated from the model for a particular observation are not influenced by the inclusion of that observation. In other words, the prediction for Ginsburg's nomination does not include and is not driven by information on Ginsburg's actual nomination. For the purposes of this paper, both provide a solid and empirically rigorous means of assessing the ability of the model to answer the following questions: who gets confirmed and by how much? As such, we apply the lessons from the presidential and congressional elections forecasting literature to forecast judicial nominations.

## **Factors Influencing the Advice and Consent Process**

Although a majority of the research regarding the nomination and confirmation process has focused on the Supreme Court (e.g., Cameron, Cover and Segal 1990; Epstein, Lindstaedt, Segal and Westerland 2006; Segal, Cameron and Cover 1992; Shipan and Shannon 2003), a recent swing of scholarly work has attempted to sift through the factors affecting the process for nominees to the lower federal courts (e.g., Bell 2002; Binder and Maltzman 2002, 2004; Martinek, Kemper and Van Winkle 2002). In order to construct an appropriate confirmation vote model, we draw from much of the previous work on Article III confirmations at the District, Circuit and the Supreme Court levels.

While the justices face no electoral accountability, those nominating and confirming potential justices must answer to their constituents and special interests representing those constituents. A failure to be responsive to their constituents can have drastic repercussions for the political players in the advice and consent process. Thus, the level of formal opposition in the Senate during Supreme Court confirmations should reflect this constraint placed on the duly elected branches of government.

There is much documentation on how two factors—ideology and qualifications—strongly predict the likelihood of a given senator voting for a presidential nominee to the Supreme Court (e.g., Cameron, Cover and Segal 1990; Epstein, Lindstaedt, Segal and Westerland 2006). Cameron et al. (1990) find that as the ideological distance between a nominee and an individual senator grows so, too, does the propensity for that senator to vote nay during the confirmation vote. The significant negative effect of increasing ideological distance is also supported and well-documented by findings in Segal (1987) and Segal and Spaeth (2002).

While much of this work has been at the senators' vote choice, it can easily be extended and generalized to the overall level of nay votes a given nominee can expect to see. We hypothesize:

*Ideological Extremism Hypothesis:* Increasing ideological extremism should increase the level of formal opposition in the Senate during a confirmation vote.

The other nominee-specific characteristic found to have a strong effect is the nominee's qualifications. Epstein et al. (2006) as well as Cameron et al. (1990) find that increasing qualifications of a nominee drive down the likelihood a senator will vote nay during the confirmation roll call. For the lower federal courts, Martinek et al. (2002) find that the qualification rating from the American Bar Association (ABA) significantly increases the likelihood an Article III nominee will be confirmed. This conclusion finds much support in the Goldman (1997) examination, which details many instances where presidents seek to nominate individuals to the federal bench in accordance with the ABA's ratings. Based on this line of research, we hypothesize:

*Qualifications Hypothesis:* Increasing nominee qualifications should decrease the level of formal opposition in the Senate during a confirmation vote.

Of course, the confirmation process is greatly affected by the partisan composition of the coordinate branches of government as well as who participates in the process. Divided government tends to produce delay and lower productivity (Binder 1999; Coleman 1999). Looking at Supreme Court nominations from 1866 to 1994, Shipan and Shannon (2003) find that divided control directly effects the duration of a nomination for the high court. Binder and Maltzman (2002) and Bell (2002), in their examination of district court appointments, note that divided government increases the time a given nominee must wait before knowing his final fate (confirm or not confirm). Specifically speaking to the role of divided government and the final outcome of Supreme Court nominees, Cameron et al. (1990), Segal (1987) and Segal, Cameron

and Cover (1992) find that a “weak president” (working under divided government or in the last year of his term of office) significantly decreases the likelihood of a successful confirmation.

This finding, too, is echoed in Segal and Spaeth (2002). Thus, we hypothesize:

*Divided Government Hypothesis:* The level of formal opposition in the Senate during a confirmation vote should increase during divided government.

The role of organized interests cannot be ignored. Interest groups have played an active role in the nomination and confirmation process (Epstein and Segal 2005). Caldeira and Wright (1998) find that lobbying efforts by organized interests greatly affected senatorial vote choice during the Bork, Souter and Thomas nominations. Furthermore, Segal et al. (1992) find that interest group opposition significantly and systematically decreases the likelihood a senator will support a nominee during a confirmation vote. For lower court nominations, Scherer, Bartels and Steigerwalt (2008) find that interest group opposition greatly decreases the likelihood of confirmation as well as increases the duration of a nomination. We hypothesize:

*Interest Group Support Hypothesis:* Increasing interest group support should decrease the level of formal opposition in the Senate during a confirmation vote.

*Interest Group Opposition Hypothesis:* Increasing interest group opposition should increase the level of formal opposition in the Senate during a confirmation vote.

## **Data and Methods**

To test our hypotheses, we gathered information from the congressional record as well as transcripts from the nomination hearings for nominees to the Supreme Court from Tom Clark to Samuel Alito (1949 to 2006). The confirmation vote model can be written as follows:

$$\text{Percent Nay Votes}_i = \beta_0 + \beta_1 * \text{Ideological Extremism}_i + \beta_2 * \text{Qualifications}_i + \beta_3 * \text{Divided Government}_i + \beta_4 * \text{Interest Group Support}_i + \beta_5 * \text{Interest Group Opposition}_i + \varepsilon_i$$

As noted above, the dependent variable is the percentage of nay votes for a given nominee.<sup>1</sup> Please note that this model excludes those individuals who may have been formally nominated, but for whatever reason (i.e., withdrawal, etc.) never received a confirmation vote.<sup>2</sup>

For the ideological extremism of a given nominee, we take the absolute value of the -1 (extremely conservative) to +1 (extremely liberal) Segal-Cover scores (Segal and Cover 1989), which are derived from content analyses of newspaper editorials. The new variable ranges from 0 to 1, where increasing values translate into increasing perceived ideological extremism. We employ the Segal-Cover scores for perceived qualifications of a given nominee.<sup>3</sup> This variable, too, ranges from 0 to 1, where high values equate to higher levels of perceived qualifications. *Divided Government* is a dummy variable coded 1 for nominations under divided partisan control of the Senate and the executive branch, 0 otherwise.<sup>4</sup> *Interest Group Support* is the natural log of the number of groups testifying before the Senate Judiciary Committee in favor of a given nominee.<sup>5</sup> *Interest Group Opposition*, similarly coded as *Interest Group Support*, is the natural log of the number of groups testifying against the nominee.<sup>6</sup>

[Insert Table 1 about here.]

We estimated the confirmation vote model using Ordinary Least Squares (OLS) regression.<sup>7</sup> We present the estimates from the full sample OLS model in Table 1.<sup>8</sup> The adjusted  $R^2$  is a hearty 0.609. All but one of the variables is in the predicted directions and significant under traditional statistical standards. The only coefficient to not achieve significance under traditional statistical standards from either a one-tailed or two-tailed test is *Interest Group Support*.

Turning to the forecasts, the confirmation vote model performs quite well. The mean absolute difference between in-sample forecasts and out-of-sample forecasts is about 2 percent.

In other words, we subtracted the predicted level of formal opposition for a given nominee from a model using all observations (in-sample prediction) and the predicted level when excluding that observation in estimating the model (out-of-sample prediction). Taking the absolute value, the difference between the in-sample and out-of-sample predictions is about 2 votes if there were full participation in the Senate during the confirmation vote. Generally, the low percentage for the average absolute difference between in-sample and out-of-sample forecasts suggest that the confirmation vote model is rather robust. The forecasts are not greatly affected by the inclusion or exclusion of observations. While OLS estimation has small sample properties, the possibility of “overfitting” the data (i.e., specifying the model in order to account for everything or inflate the level variance explained by the model) increases as sample size decreases. This concern is alleviated, or at the very least, not as problematic here because the out-of-sample predictions are so close to the in-sample predictions, which should not happen if we did indeed “overfit” the model.

The model correctly predicts the outcome of the confirmation vote in all but two cases (Haynsworth and Bork). Thus, the out-of-sample forecasts predict correctly 93 percent of the outcomes (confirm or not confirm) while reducing the error from guessing the modal category (confirm) by about 33 percent.

We also estimated one-step-ahead forecasts for each nomination starting with White’s confirmation vote. We present comparisons of the out-of-sample forecasts, the one-step-ahead forecasts, and the actual percentage of nay votes for each nominee in the sample in Table 2.

[Insert Table 2 about here.]

While we conclude that the model predicts confirmation votes rather well, we do not want to overstate the predictive power of the confirmation vote model. As anticipated from an

OLS estimation of a continuous dependent variable that can only vary from 0 to 1, there are several predictions that are in the negative direction. In general, the negative out-of-sample and one-step ahead forecasts occur where the factors suggest little or no opposition. What is most reassuring about the dependability of the model is that, in these instances, the actual confirmation process had little or no opposition in the form of nay votes.

Ranging from about 1 percent to about 30 percent, the mean absolute difference between out-of-sample forecasts and the actual percentage of nay votes is about 11 percent.<sup>9</sup> This suggests that the model, on average, misses the mark by about 11 votes, if there were full participation in the Senate for a given confirmation vote. The mean absolute difference between the one-step-ahead forecasts and the actual percent nay votes is about 12.6 percent, or about 13 votes. The mean absolute difference between the out-of-sample and the one-step-ahead forecasts is about 5 votes. Please note that the one-step-ahead forecasts start with only 7 observations. As a result and as expected, the mean absolute difference between the two forecasts gets smaller as the one-step-ahead model gains more observations.

As shown in Table 2, the failed confirmation of Bork stands out. The absolute difference between the out-of-sample forecast and the dependent variable is about 30 percent, which is the largest difference in our sample of observations. Regarding lower federal court nominations, Goldman (1997) provides numerous examples of outliers and idiosyncrasies in the confirmation process. Bork, arguably, represents such an instance where qualifications and ideological extremism predict far less opposition than what actually occurred. Moreover, this is an instance where there was a visceral reaction against Bork that goes beyond anything in the model specification and thus gets picked up by the error term, or forecasting error.

We also attempted to determine whether or not the Bork nomination truly is an outlier in the Supreme Court confirmation process. We estimated the confirmation vote model excluding Bork as an observation and generated out-of-sample forecasts. The mean absolute difference between the percentage of nay votes and the out-of-sample forecasts decreases by about 1 percentage point. There are two conclusions from this finding. First, the little change in the mean absolute difference between the out-of-sample forecasts and the actual dependent variable suggests that the model, again, is quite stable to the inclusion and/or exclusion of certain observations. This translates into a conclusion that the model and its out-of-sample forecasts are generally robust. Second, when we exclude Bork, the mean absolute difference between the percent nay votes and the out-of-sample forecasts for nominations post-Bork increased. In other words, post-Bork out-of-sample forecasts became worse when we exclude the Bork confirmation vote. We follow the lead of Sidman, Mak, and Lebo (2008), who argue that presidential forecasting models should attempt to model the best average prediction rather than formulating models to account for idiosyncratic outcomes to increase the appearance of model fit. Accordingly, we present and propose the confirmation vote model as a modest, but significant contribution to the forecasting of confirmation votes for nominees seeking a seat on the nation's highest court.

## **Discussion**

We now turn to the implications of the confirmation vote model for future confirmations. In order to do so, we generated out-of-sample forecasts based on the model presented in Table 1. We offer predictions of what potential nominees may expect in terms of the percentage of nay votes.

[Insert Figure 1 about here.]

As to the effects of ideology on the percentage of nay votes, we see from the model that being an extreme nominee (Segal-Cover equals positive or negative one) costs the nominee 25 percent of the votes as compared to a moderate nominee (Segal-Cover equals 0). Figure 1 presents the out-of-sample forecasts by ideology and by unified or divided government. We discuss the potential formal opposition in the Senate if the president has the opportunity to fill a seat on the nation's highest court during a period of divided government.<sup>10</sup> As shown, the out-of-sample forecasts of the expected percentages of nay votes are higher for a candidate nominated during divided government compared to those that would be nominated during a period of unified government. During divided government, an ideological moderate would expect to have about 5 percent of the Senate voting nay to the confirmation. If there were full participation on the part of Senators, a nominee with average perceived ideological extremism will have 20 senators formally voicing opposition during the confirmation vote, *ceteris paribus*. A highly extreme candidate in terms of ideology has an out-of-sample forecast of about 30 percent nay votes if nominated by during divided government.

During a period of unified government, a moderate in terms of ideology can expect to see little or no opposition in the Senate. The out-of-sample forecast is actually 3 percent in the negative direction, but as discussed above, we take this prediction to mean there will be no opposition for a nominee, or at the very least, a negligible degree of opposition. As extremism of ideology becomes average with respect to previous Supreme Court nominees, a potential nominee will have about 12 votes against his or her confirmation if there were full participation in the Senate during unified government. According to the out-of-sample forecast, an ideologically extreme nominee can expect the percentage of nay votes to rise to about 22 percent.

[Insert Figure 2 about here.]

Compared to increasing ideological extremism, nominee qualifications have the reverse effect on the percentage of formal opposition during a confirmation vote. A poorly qualified nominee (Segal-Cover qualifications score equals .11, e.g., Carswell, the lowest in our sample), loses 36 percent of votes as compared to a highly qualified nominee (Segal-Cover qualifications score equals 1.0, obtained by several).<sup>11</sup> Figure 2 presents the out-of-sample forecasts by level of nominee qualifications and by partisan uniformity of the executive and legislative branches. If the majority of the Senate were partisan kin of the president, the president's nominee with an average level of qualifications can expect 12 percent of the confirmation vote to be negative, *ceteris paribus*. The out-of-sample forecast of the percentage of nay votes would drastically increase to about 38 percent if a president attempted to appoint a nominee with low qualifications. If a president nominated a candidate with high qualifications during unified government, the out-of-sample forecasts predict about 2 votes opposing confirmation if there were full participation in the Senate.

When compared to a nominee under a unified government between the Senate and the executive, a potential candidate under divided government can expect to face more opposition across all levels of qualifications. If a president were to seek to confirm a nominee of high level qualifications, the nominee can expect to have about 10 percent of the confirmation vote expressing formal opposition to placing the nominee on the Supreme Court. According to the out-of-sample forecasts, the expected percent nay votes would continue to rise to about 20 and 46 percent as nominee qualifications fell to average and low levels, respectively.

[Insert Figure 3 about here.]

Figure 3 presents the out-of-sample forecasts for unified and divided government by varying levels of interest group participation. Please note that the effect on interest group

opposition is nonlinear given our coding strategy. The effect of no organized interest opposition (zero interest groups opposing the nominee) versus ten groups opposing the nominee is an increase of about 11 in the percentage of nay votes. Increasing the number of groups opposing a nominee from 10 to 20, the increase is only about 1 nay vote if there were full participation in the Senate. Turning to the forecasts, a president's nominee can expect to have about 12 percent of confirmation voters expressing opposition when there is little or no interest group opposition to his candidate under a period of divided government. This out-of-sample forecast for the percentage of nay votes rises, as suggested by the confirmation vote model, when the number of opposing organized interests increases. The percentage of nay votes increases to 20 and 24 as interest group opposition rises to average and high levels, respectively. Under unified government, a nominee can expect to see little or no formal opposition in the form of nay votes (3 percent) when organized interests do not oppose confirmation. Similar to presidents nominating under divided government, the out-of sample forecasts of the percent nay votes rises as opposition by interest groups rises as well. A nominee can expect to see about 12 or 16 nay votes when the number of interest group opposition is average or high, respectively.

As depicted in Figure 3, the change in out-of-sample forecasts of going from low to high levels of interest group support is an increase of 15 in the percentage of nay votes for candidates for a vacancy on the nation's highest court under instances of divided and unified government. This variable does not achieve statistical significance and therefore we cannot reject the null hypothesis that the effect of interest group support is indistinguishable from zero.

## **Conclusion**

The repercussions of a failed confirmation and/or a high level of formal Senate opposition include sidelining the president's other legislative efforts, providing senators and

organized interests with a highly salient and publicized opportunity for criticism of the executive (especially for nominating the “wrong” candidate), and delaying the process of placing an individual to fill the vacancy on the Supreme Court. The last of these repercussions ensures a legacy of legal doctrine and decisions that potentially far outlasts this or even the next administration.

By taking lessons from congressional and presidential forecasters, we presented the confirmation vote model as a modest but significant step in the examination of Supreme Court confirmations. By utilizing methods employed in the forecasting of presidential elections, this paper not only serves as the starting point for a bridging of the presidential election forecasting and the judicial nominations literatures, but also provides insights to the possible repercussions of replacing one or more Supreme Court justices. This model incorporates and confirms much of the literature on Article III confirmations, but goes beyond predictions of the likelihood of confirmation or not by examining the levels of formal opposition of nominees seeking a place on the Supreme Court. From this perspective we can not only decipher who gets confirmed and by how much, but also the signal that the level of formal opposition sends signals to the president and organized interests. The receptiveness of both groups to the level of opposition in the Senate can influence future nominations and thus the composition of the nation’s highest court.

The confirmation vote model and the out-of-sample forecasts suggest that nominating presidents must be mindful of the potential perceptions of both qualifications and ideology of a given nominee. These two nominee-specific characteristics account for much of the explained variation in the model<sup>12</sup> and thus are strong predictors in the level of formal opposition in the Senate. These characteristics also have a mild correlative effect on the level of interest group opposition, which in turn has a strong relationship with interest group support. Lower levels of

qualifications and higher levels of ideological extremism correlate positively with the level of interest group opposition.<sup>13</sup> This offers mild evidence that interest groups also pay attention to these two nominee-specific characteristics and organized interest participation, as discussed above, can increase the level of formal opposition during the confirmation vote. Already working on a deficit of about 8 percent nay votes, presidents nominating under divided government should be especially cautious regarding a nominee's perceived ideological extremism and qualifications. Failure to properly account for such characteristics can have drastic and negative effects for not only the nominee but also for the president's agenda and lasting legal legacy.

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<sup>1</sup> Several nominees to the nation's highest court did not actually have a roll call vote for their confirmation. During the time period we examine, there are six nominees (Warren, Brennan, Whittaker, White, Goldberg, and Fortas) for which the Senate opted to conduct a voice vote. We checked the congressional record and count any senators formally listed as voicing opposition during the voice vote as nay votes.

<sup>2</sup> Although there is a roll call vote in regards to the Fortas nomination to Chief Justice, the vote was in actuality a cloture vote. Therefore, under our case selection process, the second Fortas nomination is not included in the sample. We also estimated the confirmation vote model including Fortas's nomination to Chief Justice; the substantive interpretation as well as the out-of-sample forecasts overall do not change.

<sup>3</sup> This measure was updated by Segal for all nominations after Justice Kennedy. Please also note that Segal et al. (1992) and Cameron et al. (1990) interact the variables for qualifications and ideological distance (between a senator and a given nominee). We also estimated a model including an interaction between ideological extremism and qualifications. As expected, the effect of ideological extremism is mitigated by increasing qualifications. More importantly, the substantive results and forecasts comport with the confirmation vote model presented here. Also, the mean absolute difference from the confirmation vote model and the model with the interaction suggest that there is no significant difference between the two sets of predictions.

<sup>4</sup> For the observations included in the sample, there were no instances of a president nominating a potential justice during the last year of his term in office, which is another component found to be a significant predictor of the likelihood a senator will vote against a nominee by Cameron et al. (1990), Segal (1987) and Segal, Cameron and Cover (1992). During the time period we examine, President Johnson did attempt to nominate Fortas to Chief Justice and Homer

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Thornberry to Associate Justice, but neither received a confirmation vote and both were excluded from this examination. While it would have been optimal to test the effect of the president serving in the last year of his term in office, we are unable to do so in this examination.

<sup>5</sup> We gathered the data for nominations starting with from 1971 (Rehnquist and Powell) to present at <http://www.gpoaccess.gov/congress/senate/judiciary/scourt.html>. For Supreme Court nominations prior to 1971, we consulted the formal transcripts of the Senate Judiciary Committee's nominations hearings.

<sup>6</sup> There are several nominees with no interest group support, no interest group opposition, or both. In order to take the natural log of these observations, a value of .0001 was added to each observation of *Interest Group Support* and *Interest Group Opposition*.

<sup>7</sup> Please note that we tested a specification in which the number of nay votes was the dependent variable. The model results using OLS regression and the general substantive conclusions remain the same. We opt to utilize the percent of nay votes given the low number of observations, the fact that the appropriate model for the alternative dependent variable is an event count (which does not have small sample properties), and the number of total senators has indeed changed during the time period examined.

<sup>8</sup> This sample is clearly a cross-section because nominations do not occur every year and, in our sample, there are some nominations that occur in the same year. Accordingly, we attempted to decipher if there was a path-dependency in the dependent variable. In other words, we tested for whether or not the percentage of nay votes was stationary. In every one of the tests, we rejected the null hypothesis that the percent of nay votes is a unit root, suggesting that common time series adjustments such as first differencing are inappropriate at this juncture. Moreover, tests for

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serial correlation (i.e., Breusch-Godfrey and Durbin's alternative test) suggest that we cannot reject the null hypothesis of no serial correlation.

<sup>9</sup> The mean absolute difference between in-sample forecasts and the actual percent nay votes is approximately 9 votes. The distribution of the dependent variable is not normal where a large number of the observations cluster at little or no formal opposition from the Senate for a given nominee. This can lead to inefficiency in the estimates from the confirmation vote model and an inflation of the absolute forecasting error. While there are maximum likelihood solutions to remedy this problem, they require a larger sample due to maximum likelihood methods having only asymptotic properties. Given the small number of observations here, we opt to use OLS given its small sample properties. Moreover, the distribution of the error term comports with OLS assumptions. The error term has a mean zero; the Jarque-Bera test of the distribution of the error term suggests that we can not reject the null that the error term is normal.

<sup>10</sup> All other variables were held at their means or modes. Rather than setting values at minimums and maximums, we use the 5 and 95 percentiles of each of the independent variables as low and high values, respectively.

<sup>11</sup> <http://ws.cc.stonybrook.edu/polsci/jsegal/qualtable.pdf>

<sup>12</sup> While the adjusted  $R^2$  for the confirmation vote model is about 0.610, exclusion of the all variables other than qualifications and ideological extremism decreases the adjusted  $R^2$  to about 0.494. This indeed supports the suggestion the perceived ideological extremism and qualifications are strong determinants in the confirmation vote model.

<sup>13</sup> The raw (unlogged) number of interest groups opposing the nomination correlates with lowering qualifications and increasing ideological extremism at about 0.077 and 0.163, respectively. The raw (unlogged) number of interest groups supporting the nomination

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correlates with lowering qualifications and increasing ideological extremism at about 0.226 and 0.022, respectively.

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**Table 1. Model of Formal Opposition during a Confirmation Vote**

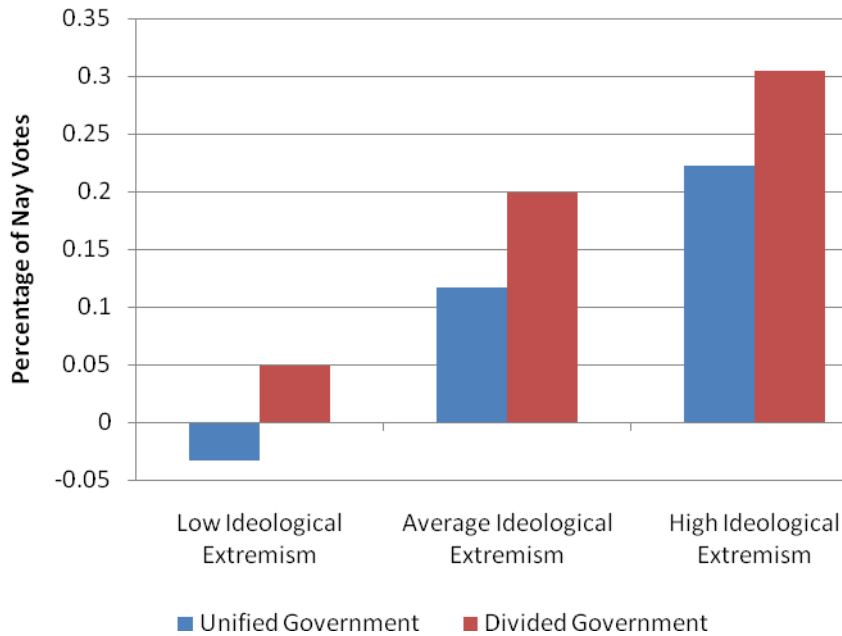
	Coefficient	S.E.	<i>p</i> -value*
Ideological Extremism	0.255	0.080	0.004
Qualifications	-0.410	0.082	0.000
Divided Government	0.082	0.045	0.080
Interest Group Support	0.013	0.008	0.137
Interest Group Opposition	0.009	0.005	0.083
Constant	0.272	0.079	0.002
N	29		
Adjusted R <sup>2</sup>	0.609		

\**p*-values are based on two-tailed tests of statistical significance

**Table 2. Comparing Percent Nay Votes, Out-of-Sample and One-Step-Ahead Forecasts**

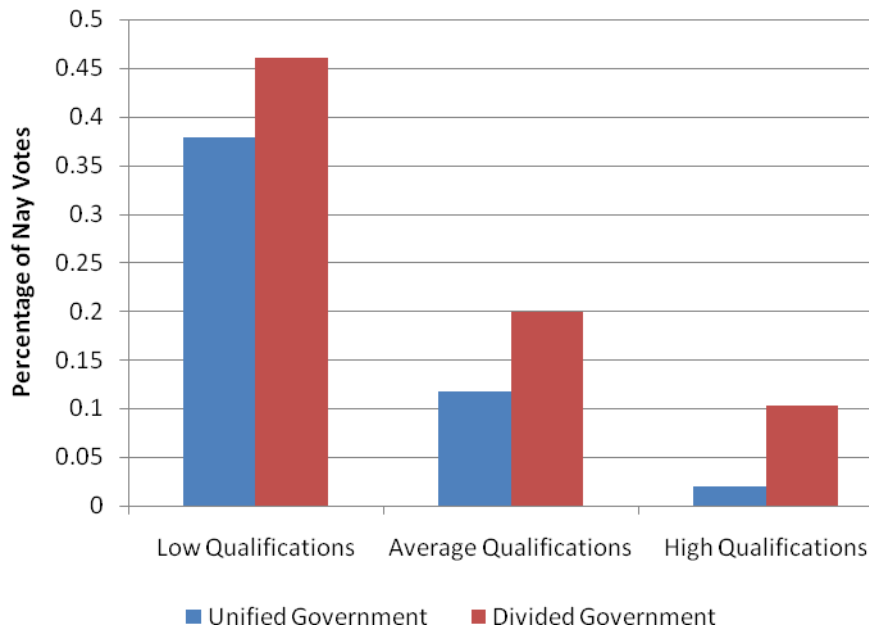
Nominee	Yea Votes	Nay Votes	Percent Nay	Out-of-Sample Forecast	Absolute Difference b/w Out-of-Sample Forecasts & % Nay	One-Step-Ahead Forecasts	Absolute Difference b/w One-Step-Ahead Forecasts & % Nay
Clark	73	8	0.099	0.372	0.274	--	--
Minton	48	16	0.250	0.136	0.114	--	--
Warren (CJ)	92	4	0.042	0.074	0.032	--	--
Harlan	71	11	0.134	0.192	0.058	--	--
Brennan	94	2	0.021	0.137	0.116	--	--
Whittaker	96	0	0.000	-0.181	0.181	--	--
Stewart	70	17	0.195	0.084	0.111	--	--
White	100	0	0.000	-0.012	0.012	-0.020	0.020
Goldberg	99	1	0.010	-0.042	0.052	0.118	0.108
Fortas	100	0	0.000	0.153	0.153	0.136	0.136
Marshall	69	11	0.138	-0.006	0.143	-0.132	0.270
Burger (CJ)	74	3	0.039	0.083	0.044	0.178	0.139
Haynsworth	45	55	0.550	0.398	0.152	0.262	0.288
Carswell	45	51	0.531	0.574	0.042	0.593	0.062
Blackmun	94	0	0.000	0.111	0.111	0.153	0.153
Powell	89	1	0.011	0.161	0.150	0.140	0.128
Rehnquist	68	26	0.277	0.251	0.026	0.203	0.074
Stevens	98	0	0.000	0.126	0.126	0.101	0.101
O'Connor	99	0	0.000	-0.058	0.058	-0.113	0.113
Rehnquist (CJ)	65	33	0.337	0.401	0.064	0.319	0.018
Scalia	98	0	0.000	0.199	0.199	0.085	0.085
Bork	42	58	0.580	0.278	0.302	0.249	0.331
Kennedy	97	0	0.000	0.133	0.133	0.143	0.143
Souter	90	9	0.091	0.197	0.106	0.185	0.094
Thomas	52	48	0.480	0.453	0.027	0.442	0.038
Ginsburg	96	3	0.030	-0.016	0.046	-0.063	0.094
Breyer	87	9	0.094	0.080	0.014	0.067	0.027
Roberts	78	22	0.220	0.120	0.100	0.082	0.138
Alito	58	42	0.420	0.173	0.247	0.173	0.247

**Figure 1. Out-of-Sample Forecasts by President and Ideological Extremism**



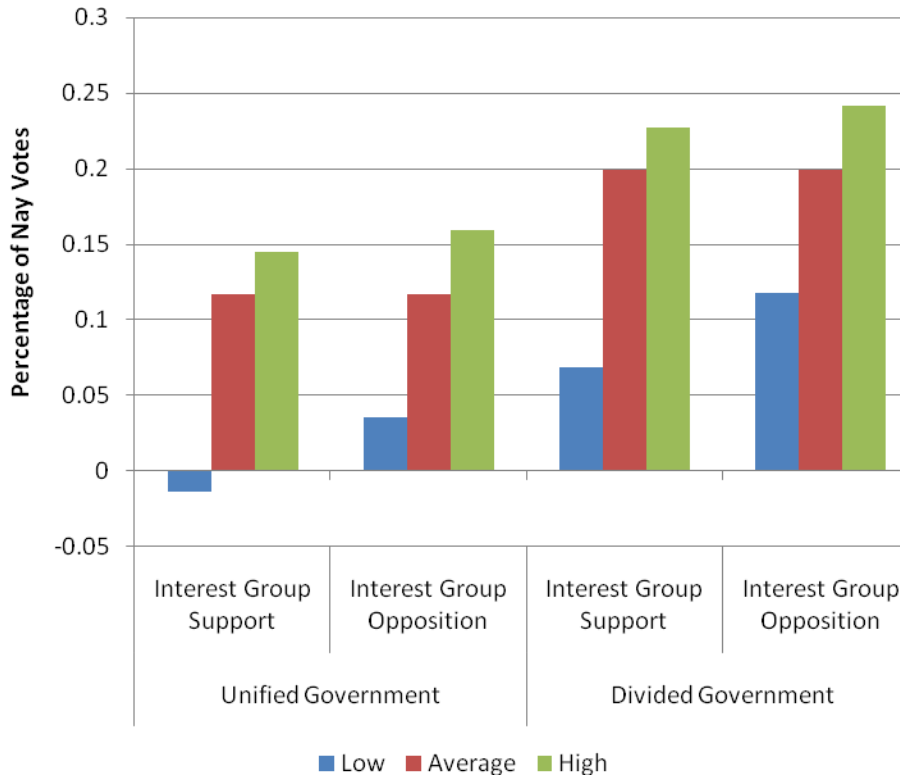
Please note: all other variables were held at their means. For low and high values of the variable of interest, the 5 and 95 percentiles of the independent variables were used.

**Figure 2. Out-of-Sample Forecasts by President and Qualifications**



Please note: all other variables were held at their means. For low and high values of the variable of interest, the 5 and 95 percentiles of the independent variables were used.

**Figure 3. Out-of-Sample Forecasts by President and Interest Group Participation**



Please note: all other variables were held at their means. For low and high values of the variable of interest, the 5 and 95 percentiles of the independent variables were used.