Online Supporting Information
The Supreme Court as an Electoral Issue: Evidence from Three Studies

Abstract

Judicial nominations, particularly those to the Supreme Court, have been a salient topic in recent presidential and senate elections. However, there has been little research to determine whether judicial nominations motivate political behavior. Across three studies we demonstrate the important role judicial nominations play in influencing political behavior. In Study One, we analyze the extent to which voters perceive judicial nominations as an important electoral issue. We find that Republicans —and especially strong Republicans —are more likely to perceive judicial nominations as important. In Study Two, we analyze how congruence with an incumbent Senator's judicial confirmation votes influences voters' decision to vote for the incumbent. We find that congruence with a Senator's judicial confirmation votes is a strong predictor of vote choice. Finally, in Study Three, we analyze data from an original conjoint experiment aimed at simulating a Senate primary election where voters must select among co-partisans. We find that Republican subjects are more likely to select a primary candidate who prioritizes confirming conservative Supreme Court nominees. Among Democratic subjects, however, we find that Democratic candidates who prioritize the Court might actually suffer negative electoral consequences. Overall, our results demonstrate the importance of judicial nominations as an electoral issue.

Word Court: 8532

Keywords: Supreme Court; Elections; Political Behavior; Judicial Nominations

Contents

1 NORC Summary Statistics

Table 1: Summary statistics

Variable	Mean	Std. Dev.	Min.	Max.
Relative Importance of Supreme Court	-0.151	1.008	-4	2.143
Average Importance	3.838	0.682	1	5
Partisanship 7 point	3.755	2.012	1	7
Female	.508	-	0	1
White	0.634	-	0	1
Education	2.957	1.205	1	5
Age Group	2.891	1.359	1	5
Household Income	5.127	2.355	1	9
Web interview	1.810	0.391	1	2

2 2016 Turnout Intentions

In the main text, we demonstrated that voters perceived judicial nominations as an important electoral issue. However, we are unable to speak specifically to the implications that had on the 2016 election. National election studies with validated voter turnout such as the Cooperative Congress Election Survey (CCES) and the American National Election Study (ANES) did not include items about the Supreme Court or judicial nominations in their 2016 surveys. Further, searches of the Roper Archives for datasets including questions about the Supreme Court or judicial appointments during the 2016 election are limited. However, the NORC study does provide limited opportunity to determine the implications of judicial nominations on the 2016 election. The NORC survey asked respondents how likely they were to turnout to vote on a 1-11 scale, where 1 represents certain that they will not turnout to vote and 11 represents certain that they will turnout to vote. Thus, we can determine if individuals who viewed judicial appointments as more important were more likely to report that they would turnout to vote. Self-reported measures of intention to vote are somewhat unreliable, as individuals tend to over-report their likelihood of voting (Bernstein, Chadha and Montjoy 2001), thus we understand any evidence provided using such measures is somewhat limited. However, considering the limited survey resources

available, the question provides the best evidence obtainable with existing surveys.

In modeling the likelihood of turnout, we take two approaches. First, we utilize the full scale 1-11 scale and estimate an ordinary least squares (OLS) regression model. Second, we create a dichotomous indicator that takes the value of 1 if the respondent reported that they were certain they'd turnout (11) and takes the value of 0 if the respondent reported any other value and estimate a logistic regression model. The reasoning is that those who report that they are certain to turnout may be the most likely to actually turnout (Greenwald et al. 1987). In addition, we control for other factors known to influence turnout such as race, gender, income, and education. We also control for the average issue important a respondent gave to the non-Supreme Court options. The results are displayed in Table 2, and Figure 1 and Figure 2. The results demonstrate that individuals who viewed judicial appointments as more important were more likely to 1) state that they were more likely to turnout to vote in the presidential elections and 2) state that they were certain that they'd turnout to vote.

This indicates that beyond being viewed as an important issue in the 2016 presidential election, judicial appointments has behavioral implications as well. Individuals who viewed judicial appointments as more important were more likely to report that they would turnout in the presidential election. Thus, judicial appointments may have stimulated turnout among voters. Based on our analyses presented in Table 1 and Figure 2 of the main text, it would likely mean that judicial appointments would have boosted the turnout of strong Republicans potentially benefitting Donald Trump in the 2016 election.

However, the limited nature of self-report measures of turnout intentions prevent us from making strong conclusions about the role of judicial appointments shaping political behavior in the 2016 presidential election, outside of the fact that voters seemed to view judicial appointments as important. Thus, we regulate this analysis to an appendix. Further, we believe our analyses in Study 2 and Study 3 successfully demonstrate the implications the Supreme Court and judicial appointments can have on political behavior.

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Table 2: Models of Turnout Intentions

	(1) OLS: Continuous Turnout	(2) Logit: Certain to Turnout
RI Judicial Appointments	0.614*** (0.176)	0.443** (0.143)
Average Issue Importance	1.438*** (0.299)	0.757*** (0.219)
Strong Democrat	−0.0200 (0.387)	−0.594 (0.604)
Weak Democrat	−1.377** (0.510)	−1.778** (0.545)
Lean Democrat	−2.324** (0.754)	−2.179*** (0.601)
Independent	−2.150** (0.650)	−1.717** (0.624)
Lean Republican	−1.142* (0.468)	−1.551** (0.584)
Weak Republican	−0.0525 (0.378)	−0.667 (0.584)
Female	−0.0547 (0.324)	0.0593 (0.258)
White	0.0407 (0.420)	−0.0290 (0.316)
Educational attainment	0.555*** (0.142)	0.420*** (0.114)
Age	0.324** (0.125)	0.404*** (0.110)
Household income	0.250*** (0.0747)	0.128* (0.0601)
Survey Mode	−0.523 (0.486)	−0.267 (0.397)
Constant	1.363 (1.453)	−3.421* (1.363)
Observations	511	511

Standard errors in parentheses

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

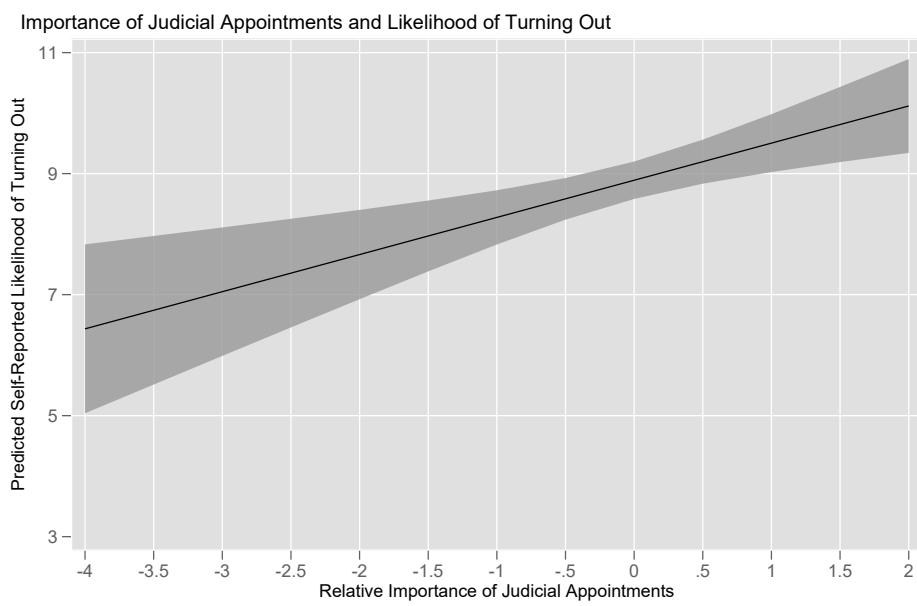Strong Republicans are the omitted reference group for partisan groups.
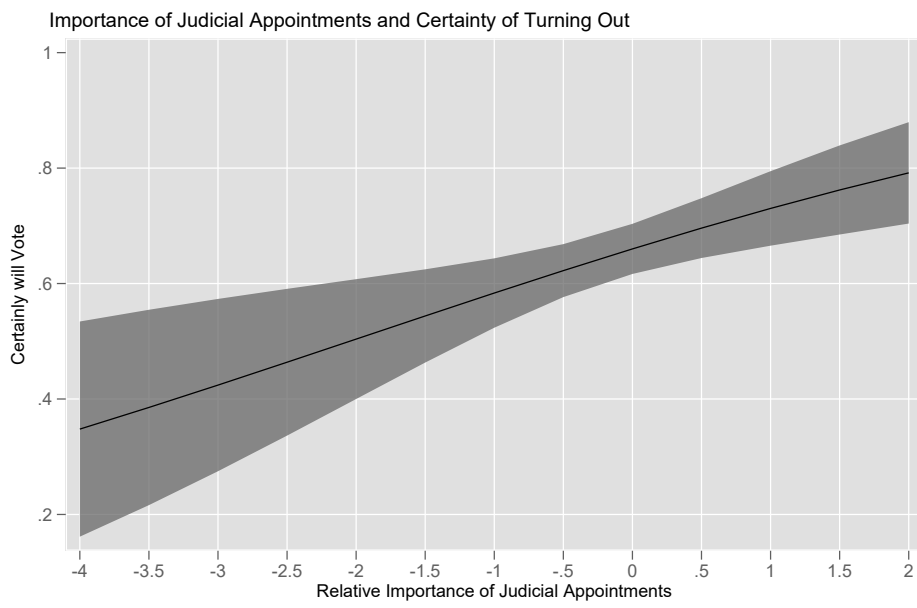
Figure 1: Predicted Values: OLS Turnout

Figure 2: Predicted Probabilities: Logit Turnout

3   CCES Summary Statistics

Table 3: Summary Statistics Analysis

Variable	Mean	Std. Dev.	Min.	Max.
Voted Incumbent	0.572	-	0	1
Number of Congruence Judicial Votes	1.061	0.858	0	2
Gorsuch Congruent	0.505	-	0	1
Kavanaugh Congruent	0.557	-	0	1
Abortion Congruent	0.451	-	0	1
Political Knowledge	0.868	0.225	0	1
Ideological Distance	0.409	0.331	0	1
Partisan Congruence	0.555	0.382	0	1
Female	52.78	-	0	1
White	0.838	-	0	1
Education	3.94	1.507	1	6
Age	55.366	16.469	19	94
Household Income	6.894	3.289	1	16

4   CCES Correlation between Congruence Indicators

Table 4: Cross-correlation table

Variables	Gorsuch	Kavanaugh	# Nominees	Ideological Dist.	Party Dist.	Abotion
Gorsuch	—					
Kavanaugh	0.4245	—				
# Nominees	0.8448	0.843	—			
Ideological Dist.	-0.362	-0.6379	-0.592	—		
Party Dist.	0.379	0.720	0.650	-0.664	—	
Abortion	0.229	0.304	0.316	-0.291	0.299	—

5   Congruence by Party, Members of the Public

Table 5: Mass Public Congrueny Nominees by Party

Party	Mean	Std. Dev.
Democrat	1.5	.68
Republican	0.5	.71
Independent	0.99	.75

6 Dates of CCES Congruence Vote Items

Table 6: Dates of Votes

Vote	Date
20 Week Abortion Ban Cloture	January-7-2018
Neil Gorsuch Vote	April-7-2017
Brett Kavanaugh Vote	October-6-2018
2018 Election	November-6-2018

7 Senator Voting Analysis of Individual Nominees

Here we estimate congruence with the Kavanaugh and Gorsuch confirmation votes individually rather than a count. Results for the entire sample indicate that congruence with both nominees predicted whether voters should vote for the incumbent candidate. The effect for Kavanaugh is much stronger than the effect for Gorsuch. Results across partisan groups are less clear. For Republicans, the Gorsuch vote did not significantly predict support for the incumbent. For Democrats, only at the higher end of the knowledge scale did the Gorsuch vote predict voting for the incumbent There could be many potential explanations for this. First, the Kavanaugh confirmation vote was much closer to the midterms than Gorsuch's confirmation vote. Second, while there was controversy surrounding both confirmations, in the context this of Gorsuch this included the claims that Republicans "stole" the seat from President Obama and the abolishing of the filibuster for Supreme Court nominees, that controversy appeared much more politically silent in the context of Kavanaugh as he faced claims of sexual assault. As we cannot adjudicate between these

competing claims, we believe the most defendable choice is to include congruence as a count.

Table 7: Logit Regression: Incumbent Vote

	(1) All	(2) Republican	(3) Democrat
Gorsuch	−0.151	−1.013	−0.124
	(0.338)	(0.668)	(0.518)
Kavanaugh	0.971**	1.602*	0.440
	(0.342)	(0.661)	(0.548)
Abortion	0.0855	−0.612	0.857
	(0.341)	(0.632)	(0.522)
Political Knowledge	−1.375***	−2.183**	−0.549
	(0.362)	(0.731)	(0.528)
Gorsuch × Knowledge	0.573	1.366	0.508
	(0.412)	(0.832)	(0.639)
Kavanaugh × Knowledge	2.958***	3.518***	3.063***
	(0.408)	(0.822)	(0.651)
Abortion × Knowledge	0.672	1.600*	−0.500
	(0.403)	(0.789)	(0.620)
Ideological Distance	−4.280***	−0.478***	−0.832***
	(0.213)	(0.0741)	(0.0522)
Party Agreement	4.446***	3.703***	2.740***
	(0.180)	(0.857)	(0.581)
Female	−0.0962	−0.442	−0.0235
	(0.105)	(0.227)	(0.153)
White	−0.519***	−1.214***	−0.691**
	(0.138)	(0.278)	(0.231)
Education	−0.0384	−0.0968	−0.00880
	(0.0373)	(0.0793)	(0.0547)
Age Group	0.0119***	0.0114	0.0185***
	(0.00335)	(0.00717)	(0.00491)
Family income	−0.0183	−0.0215	−0.000338
	(0.0168)	(0.0353)	(0.0252)
State Fixed Effects?	Yes	Yes	Yes
Constant	−0.949**	0.697	−1.04
	(0.571)	(1.326)	(0.864)
Observations	13194	6790	5011

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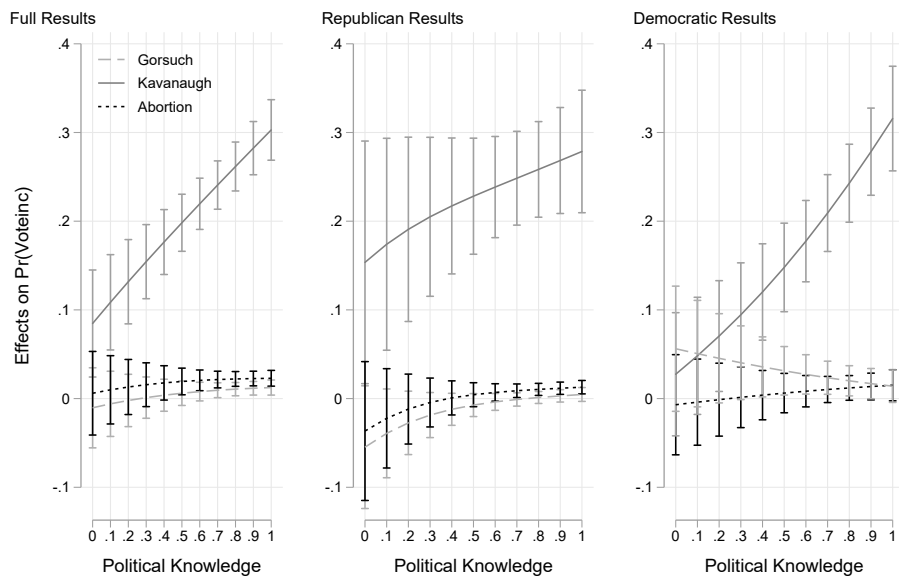
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Figure 3: Marginal Effects for Individual Nominees

8 Congruence on Judicial Confirmation Votes and Partisan Congruence

In the main text, we demonstrated that voters hold incumbents accountable based on whether or not they are congruent with Supreme Court confirmation votes cast by those Senators. Considering the fundamental vote of partisanship in elections, some may argue that voters are unwilling to punish co-partisans for incongruent Supreme Court confirmation votes. Here we seek to assuage those concerns by re-estimating the models presented in Table 3 of the main text but with an interaction for number of congruent votes and partisan congruence. If the argument that voters are unwilling to punish co-partisans than at the highest and lowest level of partisan congruence there should be limited effects of congruence with judicial confirmation votes, and the bulk of the effect should be limited to independent and partisan leaners. The reestimated model is presented in Table 8 and the predicted probabilities across the range of partisan congruence are presented in Figure 4. The results demonstrate that across the entire range of partisan congruence that voters reward and punish incumbents based on the incumbent's votes on Supreme Court confirmations. Thus, the effect of congruence with Supreme Court confirmation votes is not limited to independents or weak partisans but is present for all voters.

Table 8: Logit Regression: Incumbent Vote

	(1) Incumbent Vote
One Nominee	0.928***
	(0.201)
Two Nominees	2.241***
	(0.268)
Party Agreement	0.716***
	(0.0378)
One Nominee× Party Agreement	0.209***
	(0.0494)
Two Nominees× Party Agreement	0.252***
	(0.0634)
20 Week Abortion Ban	0.597***
	(0.0820)
Political Knowledge	0.827***
	(0.162)
Ideological Distance	−0.749***
	(0.0259)
Female	−0.0658
	(0.0751)
White	−0.377***
	(0.0974)
Education	0.0522
	(0.0272)
Age Group	0.00441
	(0.00237)
Family Income	−0.0191
	(0.0124)
State Fixed Effects	Yes
Constant	−2.866***
	(0.400)
Observations	17380

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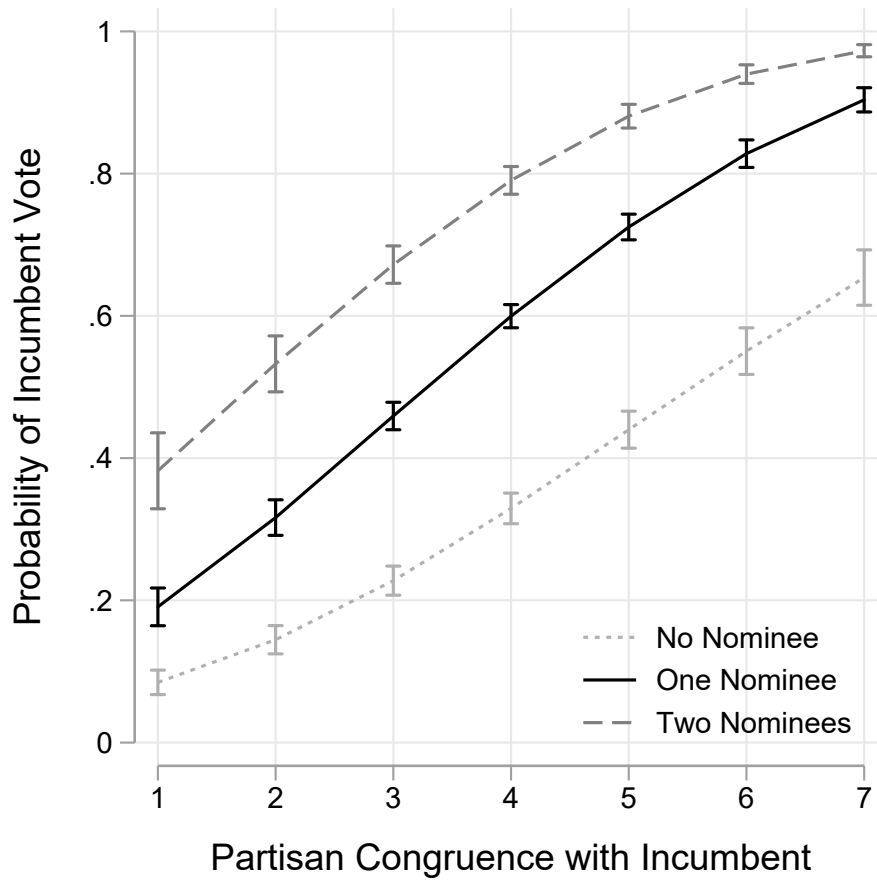
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Figure 4: Marginal Effects for Individual Nominees

9 Three-Way Interaction

In the main text of the manuscript, we estimate separate models for Democrats and Republicans to separate the effect by party. In our analysis, we argue that this is because the effect of Republicans is mainly isolated from moving from 1 to 2 nominees, while Democrats appear satisfied with one nominee. Here we estimate a model with a three-way interaction to test the significant differences across the marginal effects. We find that at political knowledge levels greater than .81, the marginal effect for congruence with two nominees is greater for Republicans tan Democrats. Further, across all levels of political knowledge the marginal effect of congruence with one nominee is greater for Democrats than Republicans. We interpret these results together to mean the Republicans are more concerned with being congruent with both nominees.

Table 9: Logit Regression: Incumbent Three-Way Interaction

| | (1) |
	Vote Incumbent
1 Nominee	−0.160
	(0.510)
2 Nominee	0.306
	(0.682)
Abortion Same	0.475
	(0.374)
Party Agreement	1.003***
	(0.139)
Ideological Distance	−0.181
	(0.121)
Political Knowledge	0.944
	(0.720)
1 Nominee × Know	1.800**
	(0.612)
2 Nominees × Know	3.535***
	(0.821)
Abortion Same × Know	0.212
	(0.445)
Party Agree × Know	−0.178
	(0.163)
Ideological Dis. × Know	−0.775***
	(0.149)
Democrat	−1.402
	(0.827)
1 Nominee × Democrat	0.473
	(0.860)
2 Nominee × Democrat	0.435
	(1.011)
Democrat× Know	0.556
	(0.994)
1 Nominee × Democrat × Know	1.229
	(1.047)
2 Nominee × Democrat × Know	0.882
	(1.247)
Female	−0.159
	(0.115)
White	−0.743***
	(0.159)
Education	0.0354
	(0.0406)
Age group	0.00924*
	(0.00359)
Family Income	−0.000998
	(0.0187)
Incumbent Fixed Effects[17]	Yes
Constant	−3.049***
	(0.800)
Observations	12044

Standard errors in parentheses
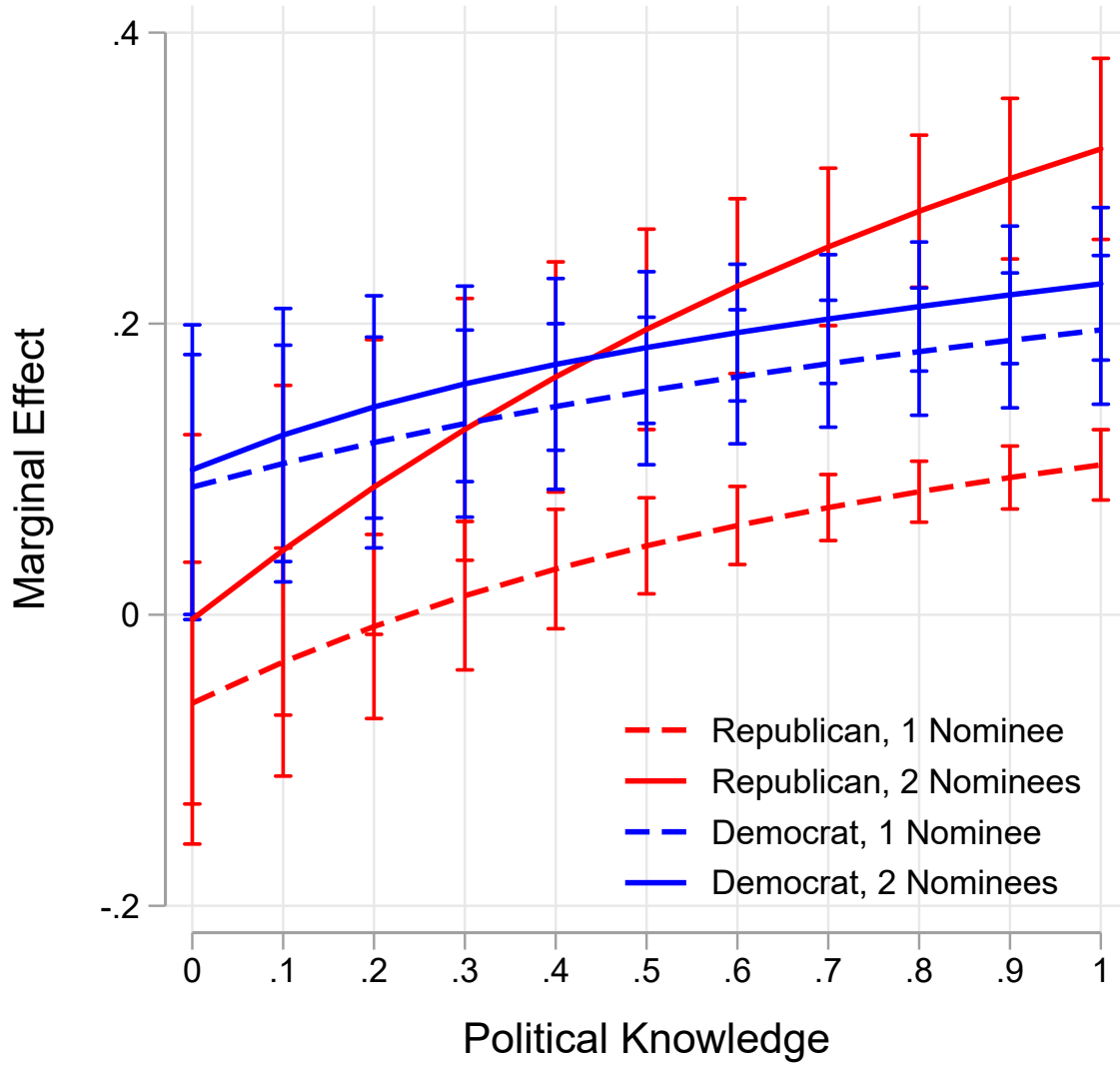
Figure 5: Three Way Interaction

10 Conjoint Example

	Choice 1	Choice 2
Likelihood of winning the general election	Likely	Somewhat unlikely
Family Life	Widowed	Married with 4 children
Gender	Male	Male
Education	High school degree	High school degree
In the News Recently for	Named one of the state's most influential people	Tweeted a joke mocking handicapped individuals
Partisanship	Democratic	Democratic
#1 Issue Priority	Blocking conservative Supreme Court nominees	Reducing government waste
Age	65	47
Race	Hispanic	Black
Prior political experience	Incumbent Senator	President of the school board
Military Experience	National guard service	National guard service

Figure 6: Conjoint Profile Example: Democratic Participant

11 Conjoint Attributes and Levels

Republican issues: Confirming qualified Supreme Court nominees; Confirming conservative Supreme Court nominees; Repealing the Affordable Health Care Act; Reducing regulation on businesses; reducing government waste; reducing government spending; protecting school choice and charter schools; none listed; increasing military spending; ending the war on drugs; decreasing spending on foreign aid; cutting taxes; building a border wall on the Mexican border.

Democratic issues: Ensuring only qualified Supreme Court nominees are confirmed; Blocking conservative Supreme Court nominees; Reducing government waster; Providing a pathway to citizenship for undocumented immigrants; Passing Medicare for all; None listed; Increasing taxes on the highest income brackets; Increasing spending on public education; Increasing regulation on big business; Increasing government spending on the arts and sciences; Ending the War on Drugs; Developing a better social safety net; Decreasing military spending

Age: 75; 71; 68; 65; 63; 58; 55; 52; 50; 47; 42; 40; 35; 33; 30

Gender: Female; male

Education: Trade school; medical degree; master's degree; law degree; high school dropout; high school degree; GED; bachelor's degree

Experience: State representative; Senate intern; President of the school board; No prior experience; Member of the House of Representatives; Mayor of a small city; Mayor of a large city; Incumbent Senator; Community organizer; City council member; Assistant to the Governor

Recent Media: Tweeted joke mocking handicapped individuals; taking the lead in public opinion polls; received state-wide award for volunteer service; named one of the state's most influential people; named in connection to several campaign finance scandals; endorsed by the state legislature; endorsed by the local newspaper; endorsed by the governor; could not recall the length of a Senator's term in office; caught lying about qualifications; Accused of sexually harassing an intern; Accused of sexual assault while a teenager

Changes of winning the General Elections: Very likely; Likely; Somewhat likely; Toss-up; Somewhat unlikely; Unlikely; Very unlikely

Family Life: Single (never married); Single (divorced); Married with no children; Married with 4 children; Married with 3 children; Married with 2 children; Married with 1 child

Military Experience: Retire from the U.S Army; None; National guard service; Military reservist

12 Conjoint Full Results

In the main text, we presented abbreviated results that only demonstrated that attribute of interest. Here we present the full results. Figure 7 displays the results for Republicans and Figure 8 displays the results for the Democrats. Outside of our attribute of interest, we see that the attributes function as expected by previous research.

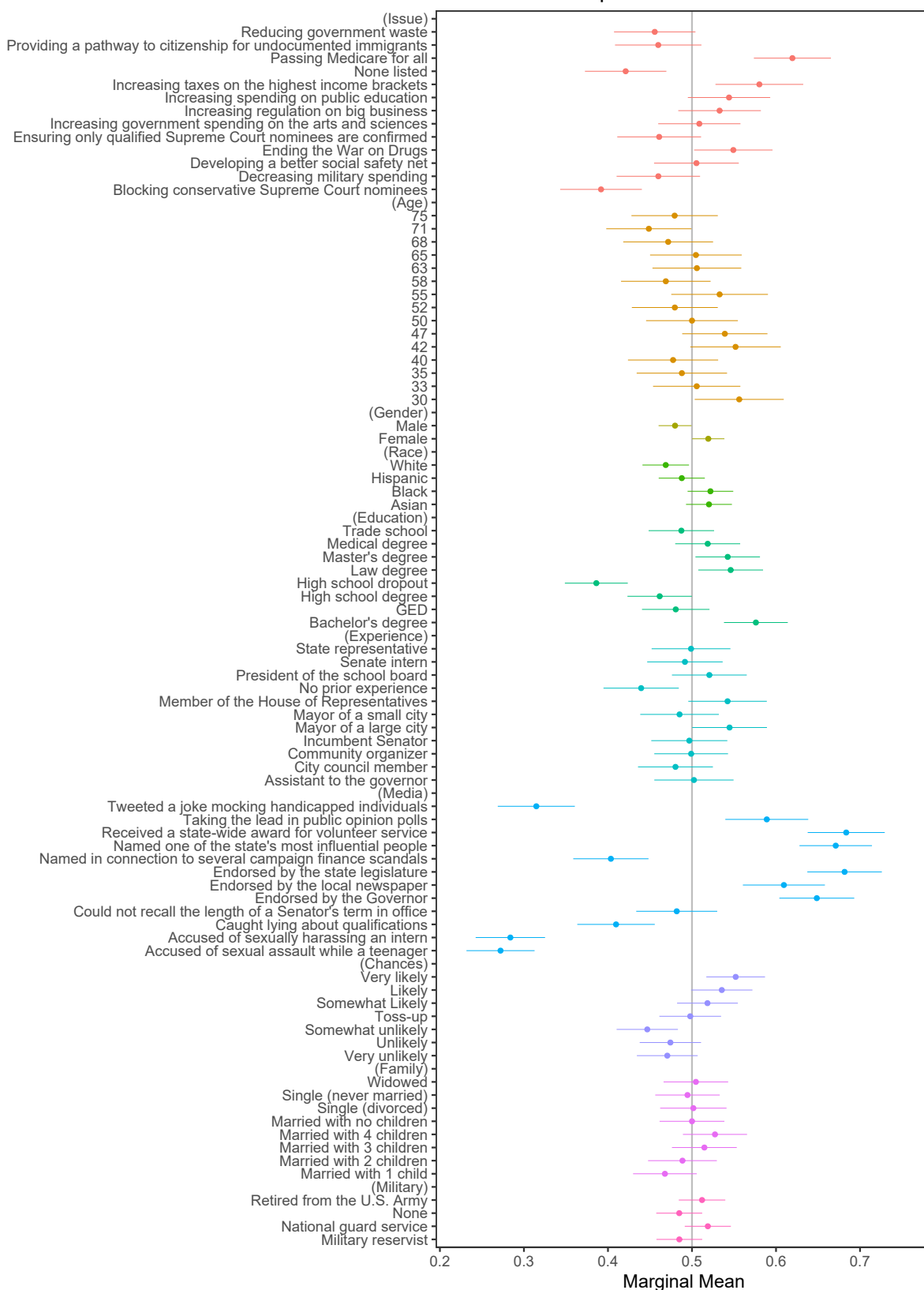Figure 7: Full Conjoint Results: Republicans

Figure 8: Full Conjoint Results: Democrats

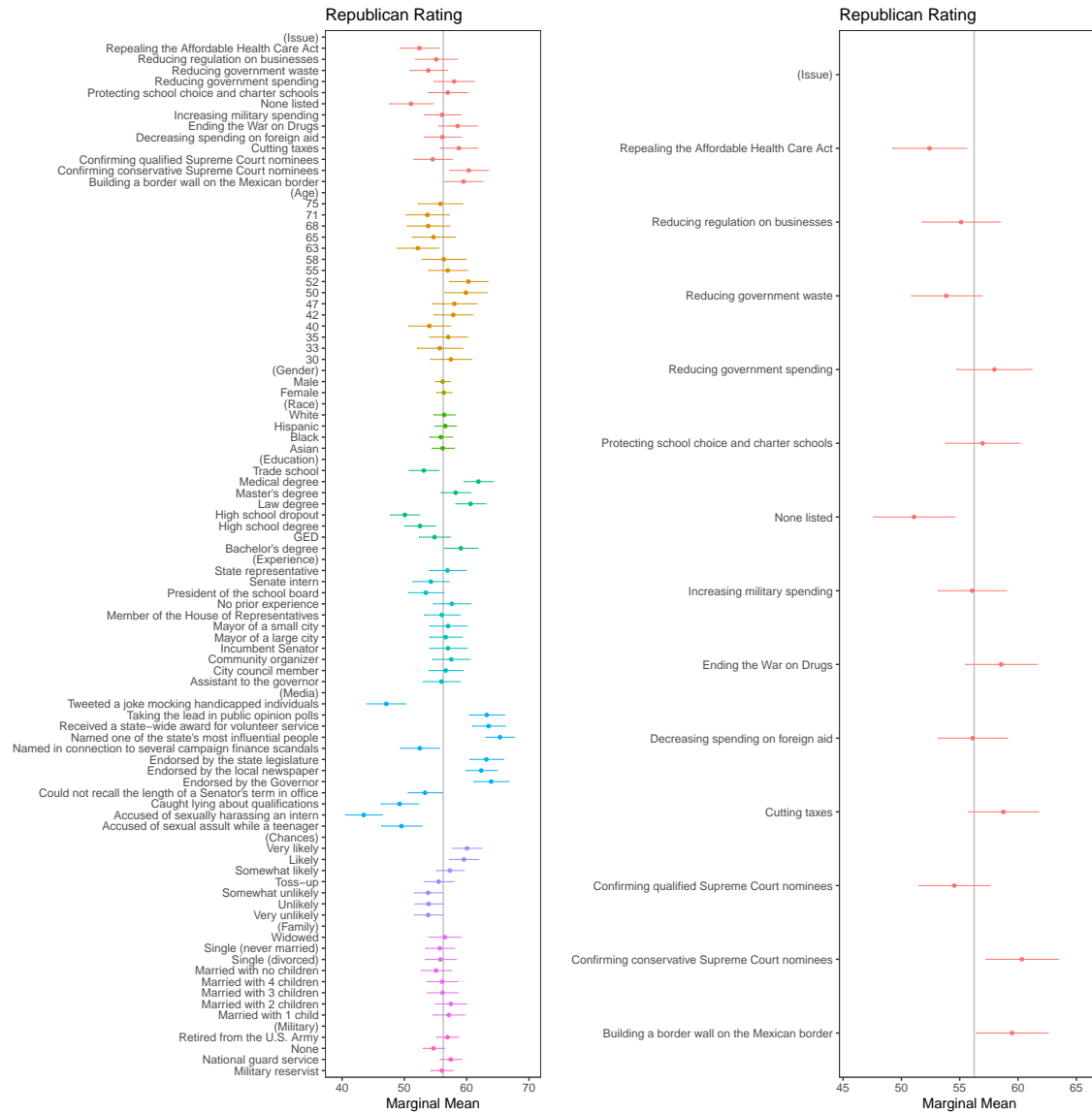# 13 Conjoint Experiment Candidate Rating Results

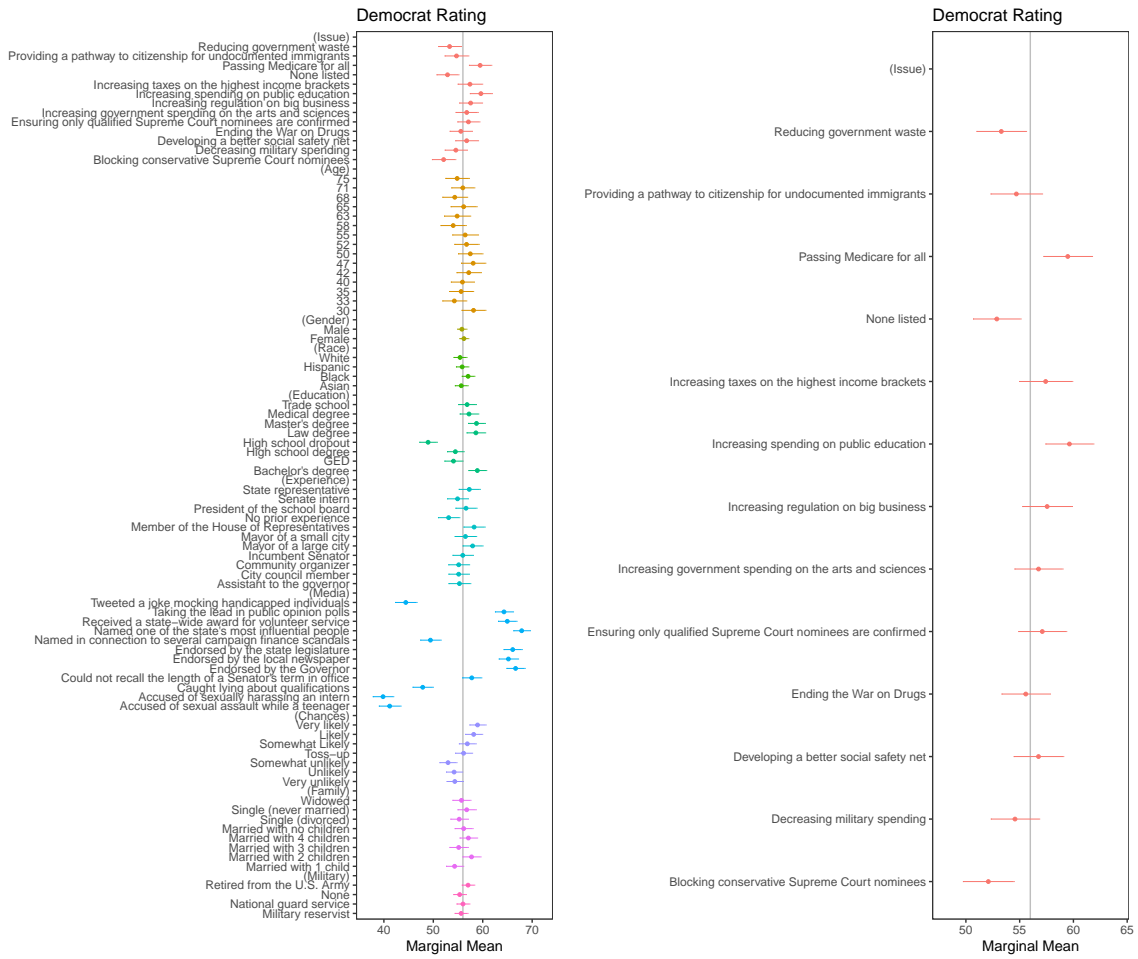Figure 9: Rating Results for Republican Participants

Figure 10: Rating Results for Democratic Participants

References

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