## Online Appendix: The Role of the Home State Senator

One of the most prominent existing explanations for appointments to lower courts is the role of home state senators. In the model presented above, I have assumed a single ideology is representative of the constraint the president faces from the senate. This necessarily limits the possible influence of home state senators.

The model essentially assumes that a single member of the senate is pivotal for all confirmation decisions within the senate at a given time. While the role of home state senators suggests that this might not be the case, this simplifying decision is not nearly as problematic as it initially seems. Consider how the results presented would change if blue slip senators were incorporated.[[1]](#footnote-1) Because only senators from the nominee’s home state can block the nominee through a blue slip, different ideologies would constrain the president for different appointments. However, for each potential nominee, at most two senators could constrain the president’s decision about where to nominate the potential judge. Each potential judge can only be considered for a position on one district court, one circuit court, and the supreme court. The same senator would serve as a constraint for nominations to the district and circuit court because the blue slip process is determined by the nominee’s home state.[[2]](#footnote-2) Since no blue slip process exists for the supreme court, a different senator (median of the senate, judiciary committee median, etc.) would pose the potential constraint for nomination to the supreme court. If the home state senator is unlikely to submit a negative blue slip, then the same senator would constrain the president for any court. For all states where this is the case, the results of the model as currently presented hold.

For states where the home state senator would submit a blue slip, this senator likely poses a greater constraint than the default senate ideology; otherwise the senator would not need to block the nomination. Because the blue slip process is largely private, there is no reason to expect senators symbolically block nominees. Thus, the senator would only present a blue slip if, without their attempt to block the nomination, the nominee would be confirmed. As a result, when a blue slip threat is present, the president faces greater constraint for placing the potential judge on a lower

court. For all states where this blue slip threat is present, the president would be biased towards not appointing the judge or appointing the judge to the supreme court.

The results of the model that predict where a potential judge is nominated or that predict non-selection of a judge would be biased by not incorporating more information abut the blue slip process. However, the results would be biased in the direction of the results I already find. The model is already biased towards placing judges on higher courts, so by incorporating home state senators, the magnitude of the effect would likely be stronger, though my conclusions would not change. Additionally, it is likely that more positions would remain vacant on courts where a blue slip threat is present. Because the vacancies are already more likely when the president is constrained, and the blue slip process produces greater constraint, this again, suggests the conclusions I reach would remain unchanged. Thus, it seems that while some results of the model might change slightly by incorporating the blue slip process, these changes would be minimal, and would not change the main conclusions drawn in this paper.

The results presented in the paper hold in a potential post blue slip world that seems a possibility in the current political climate. Already, the Republican majority in the senate has considered ignoring the courtesy generally extended to home-state senators of the other party. While it is remains to be seen whether a truly post blue slip world will emerge, to the extent that such a reality is possible, this paper certainly speaks to what we can expect in such a setting.

## Online Appendix: Model Specification

I programmed the model using Mathematica 11.0. In this technical appendix, I will de- scribe the program and give a complete overview of the parameters involved in the model

## Choice Set

To begin, I create a talent pool of potential judges and the four district, two circuit, and one supreme court. The model is simulated using talent pools of 500, 1000, and 2000 potential judges.[[3]](#footnote-3) For each potential judge and each judge on a court in the judiciary, certain pieces of information are stored. I randomly assign each judge or potential judge ideology and qualification scores. For each ideology score, I use a random number generator to assign any real number in [-1,1]. For each qualification score, I randomly assign each judge a score between 1 and 8 for the talent pool, 3-10 for the district court judges, 4-11 for circuit court judges, and 5-12 for supreme court judges, measured in increments of 0.5. That individual score is then divided by 12 (the highest possible qualification score a judge can have). For each potential judge, a geographic district is randomly selected from the four district courts.[[4]](#footnote-4)

## Payoff Functions

The payoff functions are programmed using the components described in the development of the model. The weights assigned to each level are 3 for the supreme court, 2 for circuit courts, and 1 for district courts. The weighted costs are the same for both accepting unqualified judges and rejecting qualified judges and are 0.3, 0.2, and 0.1 for supreme, circuit, and district court vacancies respectively. The weighted cost is multiplied by 0 if the judge's qualification score meets the threshold, or the inverse of the qualification score if it is below the threshold, for appointment costs and 0 if the judge's qualification score is below the threshold, or the judge's qualification score if the qualifications are above the threshold, for rejection costs. The threshold levels for the appointment costs are: for district court vacancies, for circuit court vacancies, and for supreme court vacancies. The threshold levels for the rejection costs are: for district court vacancies, for circuit court vacancies, and for supreme court vacancies. Each function has an input for each court ideology, the judge's qualifications, and the respective elite ideology.

## Appointment Process

I run the appointment process for 5000 round, saving the nominations from the latter 3000 simulations. At the start of the round, I evaluate whether it is a Senate and/or presidential election round. The first election occurs in round one. When an election occurs, the president and Senate ideologies are selected. In the first round, ideologies for the president and Senate are randomly selected from any real number in [-1,1]. For each subsequent round, if it is not an election round, the elite ideologies from the previous round carry over. If it is a presidential election round, with probability 0.25, the president is reelected, and with probability 0.75, he is replaced by a new president. If the president is reelected, the same presidential ideology will carry over to the next four round. If the president is not reelected, a new president is selected, and a new ideology randomly chosen. If it is a Senate election round, with probability 0.5, the same party maintains control of the Senate. If this occurs, the ideology of the Senate will move only slightly (to determine the new ideology of the Senate, a random number is selected from [-.1,.1] and added to the current Senate score). Alternatively, with probability 0.5, a new ideology is randomly chosen from [-1,1].

Next, vacancies occur at each level of the judiciary through a Poisson process. The parameter for the rate of vacancies is equal to 0.05 times the number of judges on the court. Once the number of judges who will leave is generated, the judges are randomly selected from the court and removed.

The status quo values are calculated for each court using the formulas described in the paper for each court. The judges that are between the president and the status quo are compiled into a list for each court. All of the court lists are compiled into one master list and sorted based on their distance from the president.

The algorithm starts. For each judge starting with the closest judge to the president, the algorithm determines each court for which she is eligible and located between the new president and the status quo. A judge is eligible for a court if the court is higher than the court she currently serves on and she lives in the district or circuit in which the court is located. The president’s payoff is calculated for assigning the judge to each eligible court. To determine the new court location, the judge is added to the court and the court location is calculated. The new court location as well as the location of the other courts, as determined by the ideology given the judges remaining on the court, plus any judges that have already been selected for that court, minus judges who have been promoted from the court, are run through the president’s payoff function. If the judge is already on a court, the judge is removed from the court they are currently on and both court scores are calculated to enter the president’s payoff function. Any individual costs for that judge for that position are also entered into the payoff function along with any costs the president has already paid in the selection process. Next, the Senate’s payoff is calculated for both confirming and rejecting the judge to each position.

If appointing the judge to at least one position improves the president’s payoff, the Senate’s payoffs for accepting and rejecting the judge are compared. Starting with the president’s most preferred position for the judge, the position that gives the president the highest payoff, if the Senate has a higher payoff for accepting the nomination, the judge is selected. If the Senate has a higher payoff for rejecting the judge, the payoffs are compared for appointing the judge to the president’s next preferred position. This continues until either the judge is selected to a position or has been considered for all positions. If the judge is selected for a position, the number of vacancies on that court is reduced by 1. If the judge is promoted from another court the number of vacancies on the court from which she is promoted increases by 1. If the president does not want to appoint the judge to any position, the president moves on to the next closest judge and the previous steps repeat. If the Senate would reject any appointment, the president moves on to the next closest judge and the process repeats. These steps are repeated until either all judges and potential judges have been considered for all positions or all vacancies are filled.

At the end of the algorithm, the newly appointed judges are each placed on their new court. The judge's qualification scores are increased commensurate with the court on which they are placed. If the judge is placed on a district court, her score increases points, if she is placed on a circuit court, her score increases if she is a new judge and if she was promoted from a district court, and if she is placed on the supreme court, her score increases if she is a new judge, if she was a district court judge, and if she was a circuit court judge.

At the end of each iteration of the model, some judges leave the talent pool and are replaced with new talent. When the new judges enter, their ideologies are centered around the president’s ideal point: Their ideologies are drawn from a normal distribution with a mean equal to the president’s ideology and a standard deviation of 0.15. The ideology scores are truncated in [-1,1]. Both the number of judges leaving and the number entering are drawn from a Poisson distribution. The rate parameter for the judges leaving is larger than the rate parameter for the replenishing set of judges. The number that reenter is truncated to ensure that the talent pool does not decrease below nine-tenths its original size.

## Online Appendix: Example

To help clarify the algorithm presented above, I start with a small example. Consider the judiciary in Table 1.

*<*INSERT TABLE 1 HERE*>*

To make this example tractable, I have limited the size of the judiciary to one supreme, one circuit, and one district court. I have also decreased the size of these courts to 3 members on the supreme court, 5 on the circuit court, and 3 on the district court. The talent pool consists of 3 members. The president’s ideal point is .6 and the senate’s, -.2. If the president does not appoint any judges, he receives a payoff of -6.75. This serves as the baseline by which the president decides whether to appoint judges. To find the portfolio of judges that maximizes the president’s payoff, I use the algorithm described above. The level where they are currently situated in the judiciary denotes judges: (t, d, c, or s) and their position in Table 1. For example, d1 is in position 1 on the district court and has an ideology of .1 and qualifications of .[[5]](#footnote-5)

1. *Vacancies occur.* There are two vacant positions in the judiciary: one on the supreme court and one on the circuit court.
2. *Lists of judges or potential judges located between the president’s ideology and the status quo are compiled for each court.* Using the median, the supreme court status quo is -.55. Using the mean of the medians of all permutations of three judge panels, the circuit court status quo is -.5. The judges whose ideologies are located between the president’s ideology and the status quo for the supreme court are t1, t3, c3, c5, d1, d2, and d3. The judges who ideologies are located between the president’s and the status quo for the circuit court are t1, t3, d1, d2, and d3.
3. *The lists for each court are aggregated into a master list.* The list of all possible judges to be considered are: t1, t3, c3, c5, d1, d2, and d3.
4. *Starting with the judge who is located closest to the president, the president’s payoff is calculated for each possible appointment for that judge.* The judge closest to the president’s ideal point is c5. This judge is already on the circuit court, so she can only be appointed to the supreme court. If the president appoints c5 to the supreme court, his payoff is -6.78.[[6]](#footnote-6)
5. *If the president receives a higher payoff for appointing the judge to at least one of the positions than for not appointing her to any, the judge is appointed to the position that gives the president the highest payoff and that the senate will confirm.* The president’s payoff does not increase when appointing the judge to the vacant position.
6. *If the president does better by not appointing the judge (or if the senate will block the appointment to any position), the president moves on to the next closest judge.* Because, the president does better by not appointing the judge, the next judge is considered.
7. *Steps 4-6 repeat until all vacancies are filled or all judges have been considered for all positions.*
   1. The next closest judge is a two-way tie between t3 and d3. For both judges, the president’s payoff is calculated for appointing the judge to the circuit court vacancy and to the supreme court vacancy. His payoff increases appointing either judge to either court, but the senate would reject any nomination.[[7]](#footnote-7)
   2. The next closest judge is d1. If d1 is appointed to either court, the president’s payoff increases, and his payoff is greatest for appointing to the supreme court. The senate’s payoff is higher for approving the nomination to the supreme court than rejecting, so d1 is appointed to the supreme court. Because the judge is promoted from a district court, there are now vacancies on the circuit and district courts. Because there are still vacant positions, the process continues. The president’s baseline payoff when considering judges for the remaining vacancies is now his payoff for having appointed d1 to the supreme court, which is -4.76.
   3. The next closest judge is d2. Because this judge is already on the district court, she can only be appointed to the circuit court. The president’s payoff is improved by appointing d2 to the circuit court, but the senate would reject.
   4. The next closest judge is t1. The appointment of t1 to any position makes the president worse off, so she is not appointed to any position.
   5. There are no judges remaining from step 3, so the algorithm ends. In this example, the president appoints d1 to the supreme court vacancy and leaves the resulting district court appointment and the circuit court appointment open for future rounds.

This preliminary example reveals a number of key features of the model. Conventional wisdom about appointments suggests that both the circuit and supreme court vacancies should have been filled by judges with ideologies near the president’s ideal point. The judge’s qualifications played a key role; many of the judges located near the president’s ideal point were not qualified for the vacant positions. Constraint also played a role: the president and senate had divergent preferences. The finiteness of the pool of judges also affected the results, with only three potential judges, the president did not have many options to fill the two vacancies.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Level | 1 | 2 | 3 | 4 | 5 |
| Supreme | Vacant | (.9, ) | (-.2, ) |  |  |
| Circuit | (.9, ) | Vacant | (-.1, ) | (-1, ) | (.5, ) |
| District | (.1, ) | (.5,) | (.4,) |  |  |
| Talent | (-.5,) | (-.7,) | (.4,) |  |  |

Table 1: The judiciary consists of one supreme court, one circuit court, and one district court. The columns reflect the individual members of each court or talent pool. The judges and potential judges are represented by their ideology and qualification scores: (ideology, qualifications).

1. For lower court appointments, senators from the nominee's home state are sent a blue slip, in which their opinion of the nominee is requested (Binder and Maltzman 2002). If a senator sends back an unfavorable blue slip for the nominee, this often serves to effectively block confirmation of the nominee. [↑](#footnote-ref-1)
2. While there are two senators from every state that could submit a negative blue slip, scholars have summarized this constraint using a single ideology score for each state, which is determined by the likelihood that a negative blue slip will be submitted (Binder and Maltzman 2002). [↑](#footnote-ref-2)
3. Some might think that the talent pool sizes I have utilized in this simulation are too small and thus unrealistic. However, it is important to remember that these are the talent pool sizes for a reduced judiciary, with just 7 courts. Compared to the United States Judiciary, with closer to 110 courts, the relevant talent pool size in the United States system would increase by a factor of 15 suggesting talent pool sizes of 7,500, 15,000 and 30,000. Additionally, the algorithm includes a nearly 10% turn over within the talent pool in each year, with the new judges centered around the president's ideal point. This suggests the president would consider close to 40,000 potential judges per presidential term in the United States context. Additionally, I have estimated the model with a talent pool of 10,000 still finding the same general patterns emerge. When aggregated to a realistic judiciary size, this would mean that the president would consider around 195,000 judges while in office. [↑](#footnote-ref-3)
4. Because each district is in a particular circuit, the circuit is also assigned this way. [↑](#footnote-ref-4)
5. Consistent with the qualification scores used in the computational model, these qualification scores are meant to reflect an additive scale anchored by the highest possible level of qualifications, 12. [↑](#footnote-ref-5)
6. Note, because this judge is already on a court, she must be removed from her current position and the new circuit court location must be calculated in addition to the new supreme court location. [↑](#footnote-ref-6)
7. Because neither potential judge has high qualifications, the senate would pay no cost for rejecting. [↑](#footnote-ref-7)