The Politics of Accountability in Supreme Court Nominations: Voter Recall and Assessment of Senator Votes on Nominees

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Abstract

While longstanding theories of political behavior argue that voters do not possess sufficient political knowledge to hold their elected representatives accountable, recent revisionist theoretical and empirical accounts challenge this view, arguing that voters can both follow how their representatives vote and use that information intelligently. We apply the revisionist account to the study of Supreme Court nominations in the modern era. Using survey data on the nominations of Clarence Thomas, Sonia Sotomayor, and Elena Kagan, we show that voters can and do hold senators accountable for their votes on Supreme Court nominees. In particular, we show that voters on average can correctly recall the votes of their senators on nominees, and that correct recall is correlated with higher levels of education and political knowledge. We then show that voters are more likely to approve of their senator if he or she casts a vote on a nominee that is in line with the voter's preferences. Finally, we show the magnitude of this effect is quite sizable, as it exceeds the effect of agreement on other high-profile roll call votes. These results have important implications for both the broader study of representation and for understanding the current politics of Supreme Court nominations.

A central question in the study of political institutions is the extent to which voters can hold their representatives accountable. Early foundational research in political behavior—e.g. Miller and Stokes (1963)—questioned whether citizens possessed sufficient political knowledge to be capable of sustaining accountability. Theories of political behavior that posit that voters do not meet this necessary conditions for accountability remain highly influential (Achen and Bartels 2016).

At the same time, a spate of recent "revisionist" studies have examined how well American citizens understand how their representatives vote on high profile roll calls, and whether they respond rationally to those votes in their assessments of their representatives (Ansolabehere and Jones 2010, Ansolabehere and Kuriwaki 2020, Clinton, Sances and Sullivan 2019, Dancey and Sheagley 2018, Jessee 2009, Shor and Rogowski 2018). This new strand of research challenges the traditional view by arguing that voters can generally follow how their representatives vote and can use that information in an intelligent manner. This picture is not completely rosy, from a utopian perspective of democratic theory. But, all in all, a degree of accountability does seem quite plausible.

In this paper we apply this new framework to the study of United States senators' voting on Supreme Court nominees. The fact that every Supreme Court vacancy in modern American politics becomes an instantaneous political fight means that votes on nominees are some of the most visible votes that senators will cast. We know that senators tend to follow their home states' public opinion on nominees (Kastellec, Lax and Phillips 2010)—especially the opinion of their co-partisan constituents (Kastellec et al. 2015). This connection between opinion and votes suggests a second path between voters and senators, in which voters both monitor their senators' votes on Supreme Court nominees, and reward or punish their senator based on whether their roll call vote on a given nominee accords with the voter's preference—for or against—a particular nominee. Yet, while there are theoretical reasons to suspect this second path, the evidence for it remains rather limited.

We present systematic and direct evidence that shows that voters hold senators account-

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able for their votes on Supreme Court nominees. In particular, we use survey data from the nominations Clarence Thomas (1991), Sonia Sotomayor (2009), and Elena Kagan (2010)—data that is particularly well suited to study electoral accountability. Using this data, we show that voters on average can correctly recall the votes of their senators on nominees, and that correct recall is correlated with higher levels of education and political knowledge. Next, we show that voters use this information to update their assessments of their senators—voters are more likely to approve of their senator if he or she casts a vote on a nominee that is in line with the voter's preferences. Finally, we show the effect of such agreement on voter evaluations is larger than we observe for other high profile roll call votes, such as the passage of the Affordable Care Act. These results have important implications for both the broader study of representation and for understanding the current politics of Supreme Court nominations.

2   The evolution of Supreme Court nominations and the prospects for accountability

Testing for democratic accountability is of course important across most issue areas, but Supreme Court nominations provide a rather interesting laboratory for assessing accountability. Figure 1 depicts the proportion of yea votes that every nominee with a roll call vote received on the floor of the Senate, from 1789 to 2018; we treat voice votes as unanimous support for the nominee. In the figure, we label nominees who received at least one nay vote. The figure shows that nominees in the late eighteenth century and early nineteenth century tended to receive high levels of support. The middle of the nineteenth century saw many failures and close calls, followed by a return to broad support around the turn of the twentieth century. The middle of the 20th century is quite notable for its low levels of contentiousness. Indeed, the majority of votes in this period were voice votes, meaning that not a single senator felt that it was worth going on the record as opposing the nominee.

Toward the end of the 20th century, nomination politics would shift decidedly. Even

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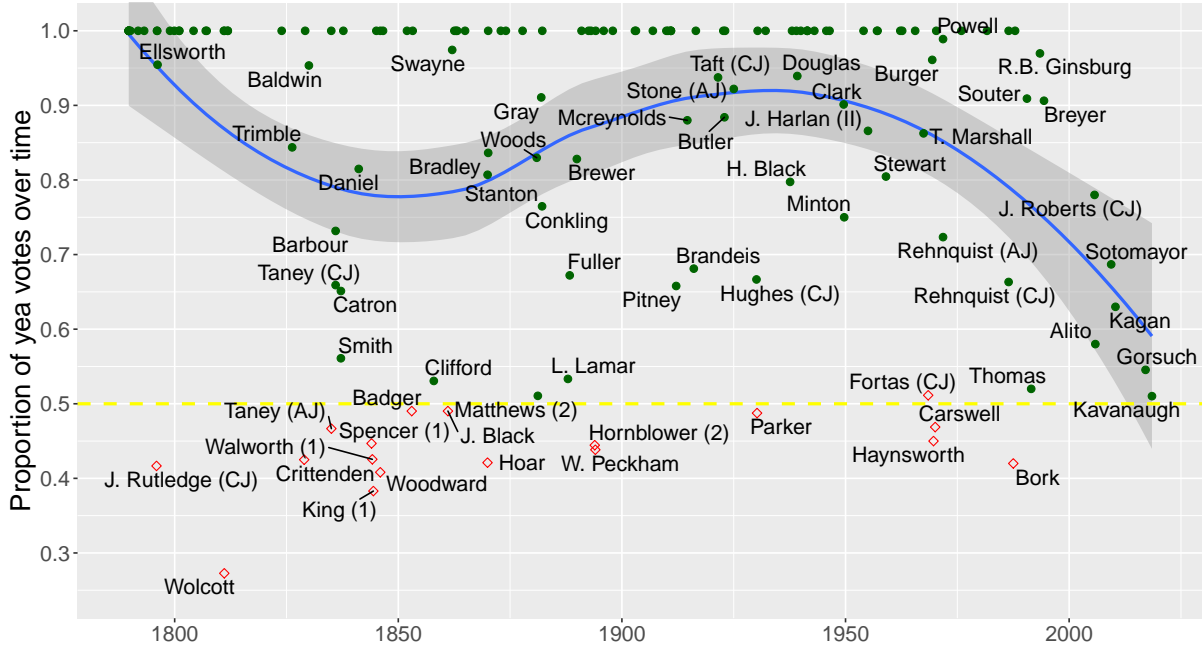
Figure 1: *The proportion of yea votes for Supreme Court nominees, 1789-2018. The figure excludes nominations that ended before the Senate acted on the nomination. We label nominees who received at least one nay vote. Nominees with voice votes are coded as having received 100% support. The (green) circles depict confirmed nominees, while the (red) diamonds depict nominees who were not confirmed.*

as the overall rate of confirmation has remained relatively high over the last few decades, Figure 1 shows that roll call votes on Supreme Court nominees have become increasingly contentious—particularly for nominees in the 21st century. No nominee this century has received more than 80% yea votes (John Roberts received 78%), and the last two nominees (Gorsuch and Kavanaugh), who were confirmed on near party-line votes, received 55% and 51% support, respectively. Thus, it appears to safe to conclude that we have entered a new and unprecedented era with respect to Senate voting on nominees.

How do these temporal trends fit within the broader literature on democratic accountability? Consider what nominations looked like around the period when Miller and Stokes (1963) established the conventional wisdom that most voters lack the knowledge and sophistication to hold their representatives accountable. In particular, consider the period of 1930 to 1970—and what nomination politics looked like from the perspective of senators for most

(though not all!) nominations in this period. Based on existing research on nominations, we know the following: with some notable exceptions (such as labor groups during the the nomination of John Parker), the small number of interest groups that existed in this period showed little appetite for getting involved in nomination politics (Cameron et al. 2020, Scherer 2005). In turn, the parties and presidents had relatively low interest in the policy outputs of the Court (Cameron et al. 2019, Yalof 2001)—again, there were a few exceptions, such as Southern Democrats' fury at the Court following *Brown v. Board of Education.* As as result, most nominations were sleepy affairs. This sleepiness resulted in both relatively low levels of media coverage and almost no polling about nominees (Kastellec, Lax and Phillips 2010). While public opinion may have existed even in the absence of polling, it's clear that most nominations in this period were of relatively low salience for both elites and the masses.

Now consider this state of affairs from the perspective of either classic soft-rational choice studies of Congress and the electoral connection (Arnold 1990, Fenno 1978, Mayhew 1974) or from formal rational choice models of political principal-agent relations (Ashworth and Bueno De Mesquita 2014, Besley 2006, Canes-Wrone, Herron and Shotts 2001, Ferejohn 1986, *inter alia*). The latter are sometimes dubbed *political accountability models*; the former do not employ formal theories, but their underlying logic is basically a story about accountability.

Accountability models come in all types of flavors. But, at their core they assume some sort of *attentive audience,* whether actual or potential. In other words, a political agent answers to a political principal who either pays attention or might conceivably pay attention to the agent's action, and/or the consequences of this action. In Mayhew's (1974) classic account, the desire for re-election—that is, approval by an "audience of voters"—can explain a great deal of the variation in the behavior of members of Congress. Arnold (1990) extends this idea to include the concept of "potential preferences" among the audience of voters—preferences that members believe might arise in the future as a result of activation by interested parties (such as interest groups) or by future challengers searching for campaign issues.

Senators, of course, had re-election concerns in our "early period," and certainly worried about taking positions that would displease their constituencies. But how exactly would this work with respect to Supreme Court nominations? Who exactly was the audience—real or potential? Before the explosion of interest groups and judicial activists in the 1970s and 1980s, no such audience existed for confirmation voting, except for the occasional highly salient nominee. A vote one way or the other for a Charles Whittaker, Stanley Reed, or Frank Murphy—who but the nominee knew? Who cared? Recall that the majority of votes in this period were voice votes, meaning that even if a particular voter took an interest in a confirmation vote, there would be no way to differentiate her senators' votes from those of other senators.

Nomination politics would change, of course, beginning gradually in the late 1960s and then accelerating in recent decades. The number of interest groups who cared about the Court exploded. The Court made a number of decisions, such as *Roe v. Wade*, that activated interest group and/or citizen interest in nomination politics. Coverage of nominations increased significantly, as did polling of citizens about nominees. Moreover, the nature of opinion holding shifted dramatically, with party polarization of views on Supreme Court nominees now a reliable fact of life (Kastellec et al. 2015). As a result, an audience for nomination politics developed.

How has this shift changed the incentives of senators when voting on Supreme Court nominees? Both the rising stakes of Supreme Court appointments as well as the greater visibility of nomination fights mean that votes on Supreme Court nominees can be some of the most consequential roll call votes that senators can cast. Recent research has established that senators tend to be in sync with the views of their constituents—particularly their partisan constituents–when voting on Supreme Court nominees (Kastellec, Lax and Phillips 2010, Kastellec et al. 2015). This, in turn, implies that senators face the risk of being thrown out of office if they are indeed out of step with their constituents (Canes-Wrone, Brady and Cogan 2002).

Indeed, we know from existing research that many Americans are both are aware of and care about their senators' votes on Supreme Court nominees (Hutchings 2001). For example, during the nomination of Samuel Alito in 2005 and early 2006, 75% of Americans thought it important that their senators vote "correctly" (Gibson and Caldeira 2009). Moreover, we can point to concrete examples of senators who ignore such concerns. Despite being virtually unknown, Carol Moseley Braun defeated incumbent Senator Alan Dixon in the Illinois Democratic primary of 1992, principally campaigning against his vote to confirm Clarence Thomas (McGrory 1992).

In addition, a few studies have directly examined the link between senators' votes on Supreme Court nominees and voters assessment of senators. Wolpert and Gimpel (1997) found that respondents' vote choice in the 1992 Senate elections was influenced by correctly recalling whether their senators voted to confirm or reject Clarence Thomas in 1991. Hutchings (2001) examined the prior question of which type of citizens were more likely to correctly identify the direction of their senators' votes on the Thomas nomination. More recently, Badas and Simas (2020) show that voters who agreed with their senators' votes on the 2017 and 2018 nominations of Neil Gorsuch and Brett Kavanaugh, respectively, were more likely to vote in support of their senator.

Our research both complements and extends this important existing research. Most importantly, we use the framework developed in Ansolabehere and Kuriwaki (2020) to tie the concepts studied more closely to accountability theory.[1] In particular, this framework allows us to account for the possibility that a citizen's evaluations of a senator's vote may be endogenous to the citizen's overall assessment of the senator. The framework also allows us to account for the role of party agreement in citizen assessments, which is particularly important for more recent nominations given the rise in partisan polarization among voters both overall and on Supreme Court nominees. Finally, the framework allows us to benchmark

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[1]Because they focus solely on responsiveness between voters of members of the House of Representatives, Ansolabehere and Kuriwaki (2020) in their analysis do not actually examine Supreme Court nominations, which are of course only voted upon by senators.

the magnitude of the effect of voter-senator congruence on Supreme Court nominees against other high salience roll call votes.

3   Data and Methods

To study accountability in Supreme Court nominations, we apply the conceptual framework set forth in Ansolabehere and Kuriwaki (2020). The framework has three parts:

- **Correct recall of roll call votes.** Which types of voters are more likely to hold correct beliefs about senators' votes on nomination, as well as about their senators' party?

- **Does reality predict perceptions?** Does actual agreement on nominees and party predict perceived agreement?

- **Do perceptions affect evaluation?** Do perceptions of nominee agreement and party agreement affect evaluation of senators?

In the modern era, hundreds of polls have asked about Americans' opinions on Supreme Court nominees. But the Ansolabehere and Kuriwaki (2020) framework requires not just this information, but also *how citizens perceive their senators to have voted on a given nominee*, as well as voter assessments of their senators. Polls that ask both types of questions are not common, but fortunately they exist for three nominees: Clarence Thomas (1991), Sonia Sotomayor (2009), and Elena Kagan (2010).

For Thomas, we use the 1992 portion of the American National Election Study: Pooled Senate Election Study, 1988, 1990, 1992 [ASES] (Miller et al. 2005). The ASES contains 2,759 respondents, with at least 40 in every state (including Hawaii and Alaska). The survey was conducted in November and December 1992, in the weeks following the elections in November. The elections in 1992, famously dubbed "the year of the woman" (Dolan 1998), saw several female candidates win their Senate races, driven in large part by anger over how Anita Hill was treated during the Senate Judiciary Committee's hearings to review Thomas's nomination.

For Sotomayor and Kagan, we use the 2009 and 2010 versions of the Cooperative Congressional Election Study [CCES] (Ansolabehere 2012, 2013*a*). The "Common Content"

of the CCES provides a wealth of information about respondents, including their party identification and demographic variables. The specific questions we primarily focus on, however, coming from the Harvard "team" modules of the CCES in these years (Ansolabehere 2013b,c), both of which asked respondents about their recall of their senators' votes on nominees. We denote these the "2009 CCES" and "2010 CCES" for convenience. The surveys were conducted in the Fall, a few months after the confirmations of Sotomayor and Kagan (which both occurred in August of 2009 and 2010, respectively).[2]

The nomination of Thomas, of course, was an extremely high profile event due to the Anita Hill scandal. The nominations of Sotomayor and Kagan, by contrast, were more routine affairs. Both nominees were appointed by President Obama during his first two years in office, when the Senate was heavily controlled by Democrats, making their confirmations close to a sure thing from the start. Despite the relative lack of controversy, both were confirmed on near party-line votes, with Sotomayor and Kagan receiving only nine and five yea votes from Republicans, respectively. Due to their overall similarity, throughout the paper we combine the results from the 2009 and 2010 CCES polls into a single survey and present pooled analyses.[3]

3.1 Voter recall of senator votes

As we noted above, accountability models come in many different flavors, but a core assumption is that there is a real or potential audience for the actions of a politician. Of course, when it comes to sophistication and knowledge by the general public, reality may not accord

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[2]We note here that our use of the 2009 and 2010 CCES distinguishes our paper from Badas and Simas (2020). They use the 2018 CCES to study the nominations of Neil Gorsuch and Brett Kavanaugh—in particular, they compare respondents' reported preferences for confirmation of each nominee to senators vote on these nominees, and then find that congruence between voter preferences and senators' roll call voting predicts the respondents vote choice for senators. Unfortunately, no recall questions exist for the highly charged nominations of Gorsuch and Kavanaugh, and hence the 2018 CCES does not allow for the implementation for the Ansolabehere and Kuriwaki (2020). Accordingly, we we focus solely on the nominations of Sotomayor and Kagan (in addition to Thomas). As noted above, however, ours results compliment the conclusions in Badas and Simas (2020), as both papers show a strong relationship between roll call votes on nominees and voter assessment of senators)

[3]There is little substantive difference in the results when we analyze Sotomayor and Kagan separately.

with the logic of rational choice models (Achen and Bartels 2016). A necessary condition of our accountability story is that citizens—or, at least, a sufficient number of them—can successfully monitor the votes of their senators on nominees.

The question wording about voter preferences and recall differs across the three surveys, but is sufficiently comparable. In terms of recall, the 1992 ASES asked respondents, "Do you remember how Senator [name] voted on the Thomas nomination?" It then followed up with "Did (he/she) vote for or against Thomas?" For respondents who said they did not know, the survey asked "Would you guess that (he/she) probably voted for or against Thomas?" The 2009 and 2010 CCES asked, respectively, "The Senate considered the appointment of Sonia Sotomayor [Elena Kagan] to the U.S. Supreme Court. Did Senator [name1] vote for this appointment or against it?" These questions were repeated for the respondent's second senator.

In terms of voter preferences, the 1992 ASES asked, "Now, thinking for a moment about the nomination of Clarence Thomas to the Supreme Court last year. Following the committee hearings, the full Senate voted whether or not to make Clarence Thomas a Justice on the United States Supreme Court. At that time, were you for or against making Thomas a Supreme Court Justice?" The CCES asked "If you were in Congress, would you have voted for or against the confirmation of [Sotomayor/Kagan] to the Supreme Court?"

To measure respondent recall of senators' votes, we follow the example of Hutchings (2001, 852) and construct an index that takes on the following values:

- 0 if the respondent correctly recalled neither senators' vote.

- .5 if the respondent correctly recalled exactly one senator's vote.

- 1 if the respondent correctly recalled both senators' votes.[4]

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[4]For the 1992 ASES, we follow the lead of Hutchings (2001) and pool the guessing responses from the second question with the responses from the initial question. While correct guessing can affect the levels of recall, it should not affect our analysis below of which types of respondents are *more likely* to correctly recall their senators' votes. In addition, in calculating the index, for each poll we treat non-responses as equivalent to incorrect responses.

|	Thomas	Sotomayor/Kagan
Recall neither	45%	41%
Recall one	29%	14%
Recall both	26%	46%

Table 1: *Distribution of correct recall of senator votes by respondents in the 1992 ASES and 2009 and 2010 CCES polls.*

The distribution of this index for the nominees is presented in Table 1. From the perspective of democratic theory, interpreting this distribution is in the eye of the beholder. A pessimistic assessment is that nearly one-half of respondents could not recall at least one vote by their senators for both Thomas and Sotomayor/Kagan. A rosier view is that a majority of respondents correctly identified at least one of their senators' votes. And, for Sotomayor/Kagan, nearly 50% of respondents correctly identified *both* votes by their senators.

Of perhaps more interest than the levels of recall is variation in who is doing the recalling. For each survey, we coded variables that capture the concept of political engagement, such as education, political knowledge, and news interest. Figures 2 and 3 depict the levels of recall across each of the variables we collected, for Thomas and Sotomayor/Kagan, respectively (full details on the coding of these variables can be found in the appendix). For each panel in these figures, the vertical axis depicts the mean index of recall, while the horizontal axis depicts the levels of the respective predictor, moving from lower expected levels of recall to higher expected levels.

In both Figures 2 and 3, the patterns are fairly clear, though generally stronger for Sotomayor/Kagan compared to Thomas. For most of the variables, higher levels of political engagement lead to higher levels of recall. The results are particularly strong for political attention and political knowledge.

One likely reason for the differences between Thomas and Sotomayor/Kagan (which also extend to the results that follow) is the changing historical context of these nominations. The Thomas nomination took place before the parties had reached their current levels of
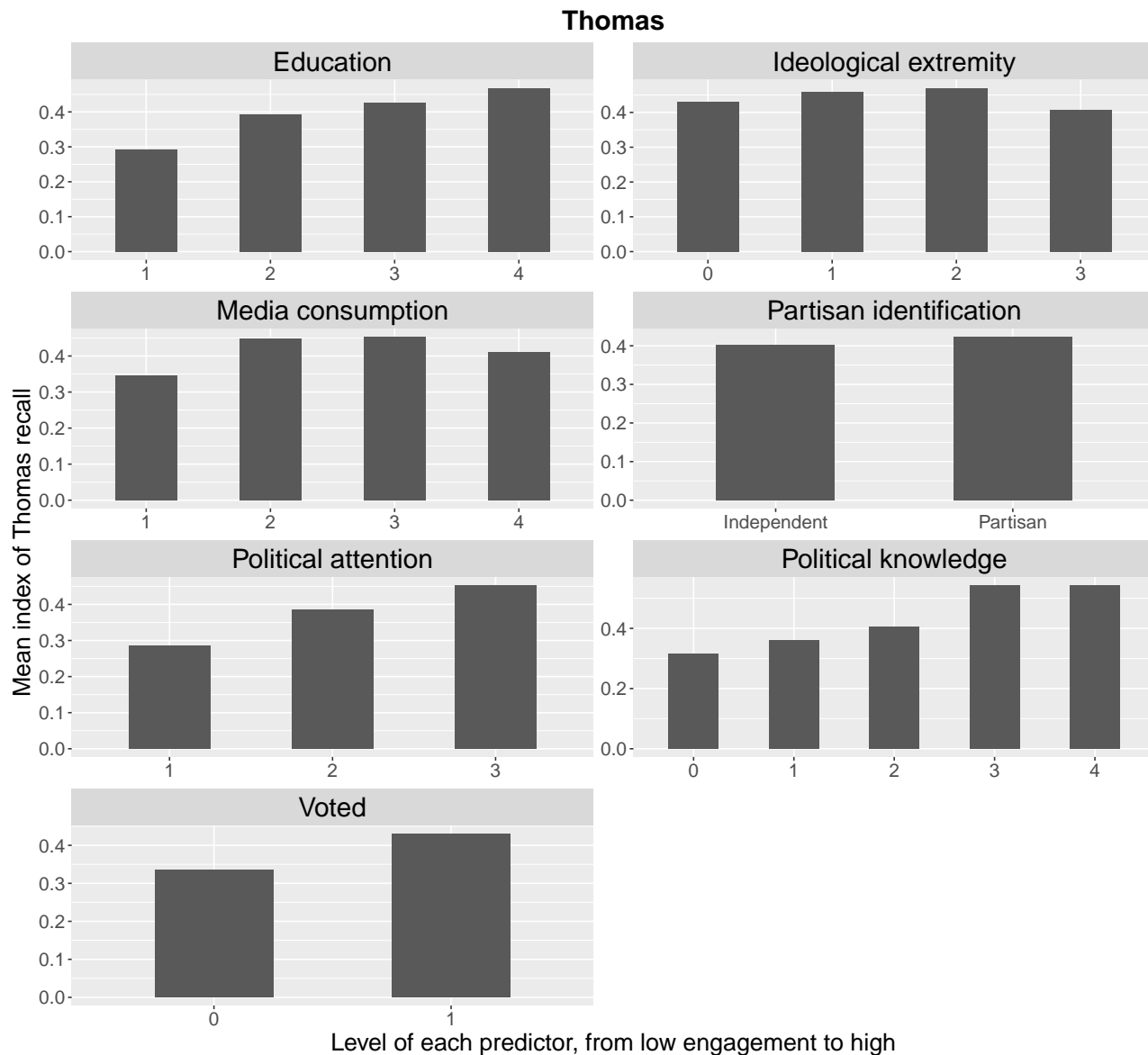
Thomas

Figure 2: *Political engagement and voter recall of senators' votes to confirm Clarence Thomas. For each panel, the vertical axis depicts the mean index of recall, while the horizontal axis depicts the levels of the respective predictor.*

polarization. In addition, Thomas's confirmation was ensured by the support of (now extinct) Southern Democrats, who voted yes in large part because of their sizable African-American constituencies (Overby et al. 1992). By 2009, the current era of extreme party polarization was firmly in place. These differences in party sorting and polarization surely made it easier for respondents to correctly recall the votes of senators by using party as a cue. (Note that in our analyses below we account for "party agreement"—both real and perceived— between respondents and senators when we examine the link between recall and evaluations

Sotomayor and Kagan
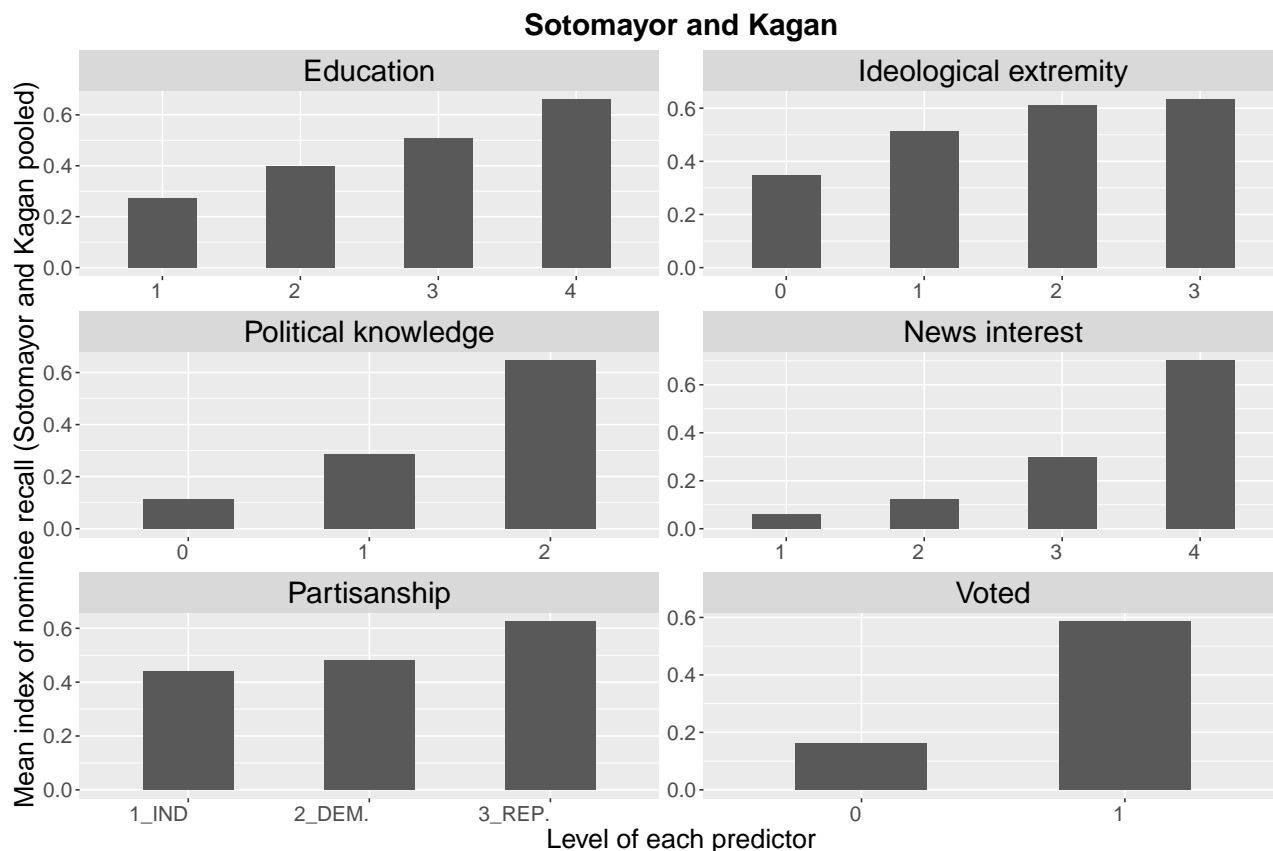
Figure 3: *Political engagement and voter recall of senators' votes to confirm So-tomayor/Kagan. For each panel, the vertical axis depicts the mean index of recall, while the horizontal axis depicts the levels of the respective predictor.*

of senators.)

To test more systematically the relationship between political engagement and voter recall, for each nominee we used a principal components analysis to create a single factor score that summarizes all of the variables in Figures 2 and 3. Table 2 presents four OLS models— two each for Thomas and Sotomayor/Kagan—in which the dependent variable is the index of recall. Each model contains the factor scores of engagement; we standardize the scores by centering and dividing by two standard deviations. Models (2) and (4) include controls for gender, race, age, and party identification (though they are omitted from the table for clarity). In each model, the coefficient on political engagement is positive and significant. In line with the graphical results above, the relationship is stronger for Sotomayor/Kagan, compared to Thomas. A shift of two standard deviations in engagement predicts a 45-percentage-point increase in recall for the former; even for Thomas, a two-standard deviation

	Thomas		Sotomayor/Kagan	
	(1)	(2)	(3)	(4)
Political engagement	0.12*	0.11*	0.45*	0.45*
	(0.02)	(0.02)	(0.01)	(0.01)
Constant	0.46*	0.45*	0.55*	0.55*
	(0.01)	(0.04)	(0.005)	(0.005)
Controls?	No	Yes	No	Yes
Observations	1,854	1,833	7,311	7,311
R^2	0.02	0.03	0.24	0.24

Table 2: *OLS models of voter recall as a function of political engagement. In each model, the dependent variable is the index of recall. Political engagement is a factor score based on a principal components analysis of the variables shown in Figures 2 and 3. Models (2) and (4) include, but do not display, controls for gender, race, age, and party identification.* *p<0.05.

shift predicts a roughly 10% increase in recall.

In sum, we find the necessary conditions for accountability with respect to voting on Supreme Court nominees to exist. Overall, voters do a decent job of identifying how their senators voted on these nominees. And, as we expect, the ability to correctly recall correlates quite significantly with levels of political engagement among citizens. This is especially so for the nominees in 2009 and 2010, by which point the modern era of strong party polarization had solidified.

3.2   Does reality predict perceptions?

The next stage in our accountability analysis is to ask whether *actual* agreement on nominees predicts *perceived* agreement? In other words, does the reality of roll call voting and party agreement shape voter perceptions of roll call voting and party agreement?

To flesh out our approach for the rest of the paper, we reproduce Figure 1 from Ansolabehere and Kuriwaki (2020) in Figure 4, which summarizes the relationships between actual agreement, perceived agreement, and evaluations. While policy representation is important for accountability, party identification, of course, also plays a role in linking citizens and representatives. The Ansolabehere and Kuriwaki (2020) approach accounts for the importance of party by allowing the interplay of actual party agreement and perceived

Figure 4: Figure 1 from Ansolabehere and Kuriwaki (2020), which summarizes the relationships between actual agreement, perceived agreement, and evaluations.

agreement to inform citizens' assessment of their representatives. Thus, under this conceptual framework, actual party agreement and actual issue agreement (where "issue" for our purposes means a confirmation of a Supreme Court nominee) predict perceived party and issue agreement.

We turn to evaluations of senators shortly, but for now we focus on the "first stage" question of whether reality predicts perceptions. Following Ansolabehere and Kuriwaki (2020), we define "perceived nominee agreement" as follows:

- +1 if a respondent's preference (based on how she would have voted on the nominee) is <u>the same</u> as respondent's perception of senator vote (i.e. the respondent would have voted yes (no) and perceives the senator as having voted yes (no)).

- 0 if the respondent does not have an opinion on the nominee or does not express an interest.

- -1 if a respondent's preference (based on how she would have voted on the nominee) is <u>opposite</u> to the respondent's perception of senator vote (i.e. the respondent would vote yes (no) and perceives the senator as having voted no (yes)).

Next, we define "actual nominee agreement" in the same manner, but substituting the senator's actual vote instead of the respondent's perception of the vote.

We code "perceived party agreement" as follows:

- +1 if the respondent identifies with the <u>same party</u> she perceives the senator to be (i.e. the respondent identifies as a Republican (Democrat) and perceives the senator as being a Republican (Democrat).

- 0 if the respondent is an Independent or is unsure of her senator's party.

- -1 if the respondent identifies with the <u>opposite party</u> as she perceives the senator to be (i.e. the respondent identifies as a Republican (Democrat) and perceives the senator as being a Democrat (Republican)).

We define "actual party agreement" in the same manner, but substituting the senator's actual party identification instead of the respondent's perception of it.

With these measures in hand, we can now examine how well reality predicts perceptions, in terms of nominee votes and party agreement. In doing so, we note that from this point forward, we analyze the "long" version of the data, in which each respondent appears twice, once for each of their senators. To account for non-independence across the paired observations, we employ robust standard errors, clustered on the respondent.[5] Finally, for models with control variables, we include demographics, party identification, political engagement, and an "actual ideological agreement" variable that is similar in thrust to the party agreement variable (see the appendix for more details).

Table 3 presents parallel regressions for Thomas and Sotomayor/Kagan. For each, perceived nominee agreement is the dependent variable in the first two models, while perceived party agreement is the dependent variable in the final two models. Models (1) and (3) do not include control variables, while Models (2) and (4) do include them, though we omit their presentation in the interest of space.

Overall, the connection between reality and perception is extremely strong—again, however, much more so for Sotomayor/Kagan compared to Thomas. For the former, perceived agreement on nominee votes predicts a 40 percentage point increase in actual agreement with a senator. Furthermore, while (unsurprisingly) perceived party agreement predicts actual party agreement even more strongly, the "cross-effect" of perceived party agreement on actual nominee agreement is much weaker than the "straight" effect of perceived nominee agreement on actual nominee agreement. Thus, perceived agreement is *not* operating directly through partisanship–actual nominee agreement (i.e. issue-based agreement) is doing much of the work.

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[5]Almost of all the new empirical work on accountability discussed above has focused on the relationship between voters and members of the House of Representatives. This simplifies matters since each voter has only a single representative. From a theoretical perspective, citizens' assessment of their two senators may be correlated. In the interests of simplicity, we ignore this theoretical correlation (while accounting for it empirically via the clustering of standard errors), though it is certainly a worthwhile endeavor for future work.

	Thomas				
	DV: Perceived Thomas agreement			DV: Perceived party agreement	
	(1)	(2)		(3)	(4)
Actual nominee agreement	0.10***	0.12***		0.02**	0.03**
	(0.01)	(0.02)		(0.01)	(0.01)
Actual party agreement	0.04**	0.04*		0.21***	0.21***
	(0.01)	(0.02)		(0.01)	(0.01)
N	5,518	3,666		5,518	3,666
R^2	0.02	0.03		0.13	0.18
Control variables?	No	Yes		No	Yes
	Sotomayor and Kagan				
	DV: Perceived nominee agreement			DV: Perceived party agreement	
Actual nominee agreement	0.40***	0.40***		0.10***	0.08***
	(0.01)	(0.01)		(0.00)	(0.01)
Actual party agreement	0.12***	0.10***		0.70***	0.67***
	(0.01)	(0.01)		(0.00)	(0.01)
N	15,381	14,456		130,558	14,385
R^2	0.48	0.50		0.67	0.68
Control variables?	No	Yes		No	Yes

Table 3: *OLS regressions of voters' perceptions of nominee vote and party of senator. In each model the dependent variable is perceived nominee agreement. For models (2) and (4), control variables include: education, gender, race, age, partisanship, and the factor score of political engagement used based on the variables in Figures 2 and 3. $^*p<0.05$.*

So far we have shown that the public as a whole can make sense of how their senators vote on Supreme Court nominees, and that citizens' perception of these votes are grounded in the actuality of senatorial decisions. The seeds for accountability are there. The final step in our analysis is to examine whether these perceptions actually map onto support for or opposition to citizens' elected representatives.

3.3 Do perceptions affect evaluation?

To study evaluation, we use as a dependent variable whether a respondent approved of her senator or not.[6] Before turning to a regression analysis, Table 4 breaks down citizen approval of senators by perceived nominee and party agreement. The table is essentially a cross-tab— each cell depicts the mean level of approval among a particular combination of nominee and

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[6]Studies of accountability in the House also often look at whether a respondent voted for a House member in the previous election. The fact that senators have six-year terms with staggered electoral cycles complicates such an analysis and leads to missing data issues, so we rely on straight approval here.

	Thomas			
	Perceived Party Agreement			
		Agree	DK/Ind.	Disagree	Total
	Agree	87%	88%	84%	87%
Perceived nominee agreement	DK/No interest	87%	85%	82%	85%
	Disagree	67%	67%	58%	66%
	Total	79%	81%	73%	*80%*

	Sotomayor-Kagan			
	Perceived Party Agreement			
		Agree	DK/Ind.	Disagree	Total
	Agree	90%	68%	38%	82%
Perceived nominee agreement	DK/No interest	79%	52%	31%	57%
	Disagree	54%	14%	6%	12%
	Total	83%	45%	15%	*50%*

Table 4: *Approval of senators by perceived nominee and party agreement. Each cell depicts the mean level of approval among a particular combination of nominee and party agreement. The exterior rows and columns depict the marginal distributions, while the percentage in the bottom right-hand corner depicts the overall mean level of approval.*

party agreement. The exterior rows and columns depict the marginal distributions, while the percentages in the bottom right-hand corners depict the overall means.

A number of interesting patterns emerge from Table 4. First, if we condition on perceived party agreement (i.e. moving up and down the columns) moving from perceived nominee disagreement to perceived agreement is always associated with a sizable increase in mean levels of approval. Again the differences are much larger for Sotomayor/Kagan than for Thomas. Even among those who perceive themselves as in party agreement with a senator, moving from perceived nominee disagreement to agreement means a shift from 54% approval to 90% approval. Similarly, among those who perceive themselves as of the opposite party as a senator, moving from perceived nominee disagreement to agreement means a shift from 6% approval to 38% approval. Thus, even accounting for party identification, whether voters perceive themselves as in agreement or disagreement on these nominees has significant implications for whether they approve of their senator.

While the magnitudes are smaller, the overall pattern on perceived nominee agreement

for Thomas remains. For example, among those respondents who are in party agreement, moving from perceived nominee disagreement to perceived nominee agreement predicts a shift from 67% approval to 87% approval. Conversely, conditional on nominee agreement, moving across party disagreement has little predictive effect on approval. Again, what this means is that nominee agreement is doing more work than party agreement.

The same pattern does not hold, however, for Sotomayor/Kagan: change in perceived party agreement predict massive changes in perceived nominee agreement. For instance, among respondents who perceive they are in agreement with their senator's party, 90% support their senator. This percentage drops to 38% among respondents who perceived they are not of their senator's party. This difference between Thomas and Kagan/Sotomayor, again illustrates the acceleration of party polarization between 1991 and 2010 (although the relatively lower salience of the latter two nominations compared to Thomas could also be a factor here).[7]

Regression analyses We next present several regression models to more systematically examine whether perceptions about nominee votes affect evaluation. Returning to Figure 4 above, Ansolabehere and Kuriwaki (2020) note that evaluations of a representative may affect citizens' perceptions of issue and party agreement, raising the possibility of endogeneity (or reverse causation). Accordingly, they implement instrumental variables regressions in their paper, allowing actual issue and party agreement to serve as an instruments for perceived issue and party agreement. The exclusion restriction assumption here, which we think is reasonable, is that "actual issue and party agreement only matter indirectly through the constituents' beliefs about how the legislator voted on key issues and with which party the legislator is aligned" (Ansolabehere and Kuriwaki 2020, 41).

Table 5 presents parallel regressions for Thomas and Sotomayor/Kagan. In each model, whether a respondent approved of her senator is the dependent variable. The first two models

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[7]Interestingly, if we simply examine the the overall level of support for senators, it was much higher in 1991 (80%) higher than in 2009 and 2010 (50%). Americans seemingly thought more highly of their senators 30 years ago than they do today, another difference that is presumably due to higher levels of polarization.

	Thomas			
	OLS Regressions		IV Regressions	
	(1)	(2)	(3)	(4)
Perceived nominee agreement	0.11***	0.11***	0.08	0.08
	(0.01)	(0.01)	(0.06)	(0.07)
Perceived party agreement	0.03*	0.03*	0.15***	0.13**
	(0.01)	(0.01)	(0.03)	(0.04)
N	3,674	2,561	3,674	2,561
R^2	0.05	0.07	0.02	0.04
Control variables?	No	Yes	No	Yes
	Sotomayor and Kagan			
	OLS Regressions		IV Regressions	
Perceived nominee agreement	0.19***	0.18***	0.27***	0.25***
	(0.01)	(0.01)	(0.02)	(0.01)
Perceived party agreement	0.24***	0.24***	0.22***	0.23***
	(0.01)	(0.01)	(0.01)	(0.01)
N	14,473	13,129	9,418	13,129
R^2	0.41	0.43	0.44	0.42
Control variables?	No	Yes	No	Yes

Table 5: *OLS and IV regressions of whether voters approve of their senators on perceived nominee and party agreement. For models (2) and (4), control variables include: education, gender, race, age, partisanship, and the factor score of political engagement used based on the variables in Figures 2 and 3. $^*p<0.05$.*

are OLS models, while the second two models are IV regressions. Models (1) and (3) do not include control variables, while Models (2) and (4) do include them, though we omit their presentation in the interest of space.

Again, we find weaker effects for Thomas but strong effects for Sotomayor/Kagan. For Thomas, perceived nominee agreement is a significant predictor of senator approval in the OLS models, but the coefficient is not significant in the IV models; whether this is due to endogeneity or just noise is difficult to say. By contrast, the results for Sotomayor/Kagan are clear and of a sizable magnitude in the both the OLS and IV regressions. Depending on the model, a one-unit shift in perceived nominee agreement results in an 18 to 25 percentage-point increase in the likelihood of the respondent approving of the senator. In addition, these effects are all estimated quite precisely. Thus, we are confident that in the modern period, voters hold Supreme Court justices accountable for their votes on Supreme Court nominees.
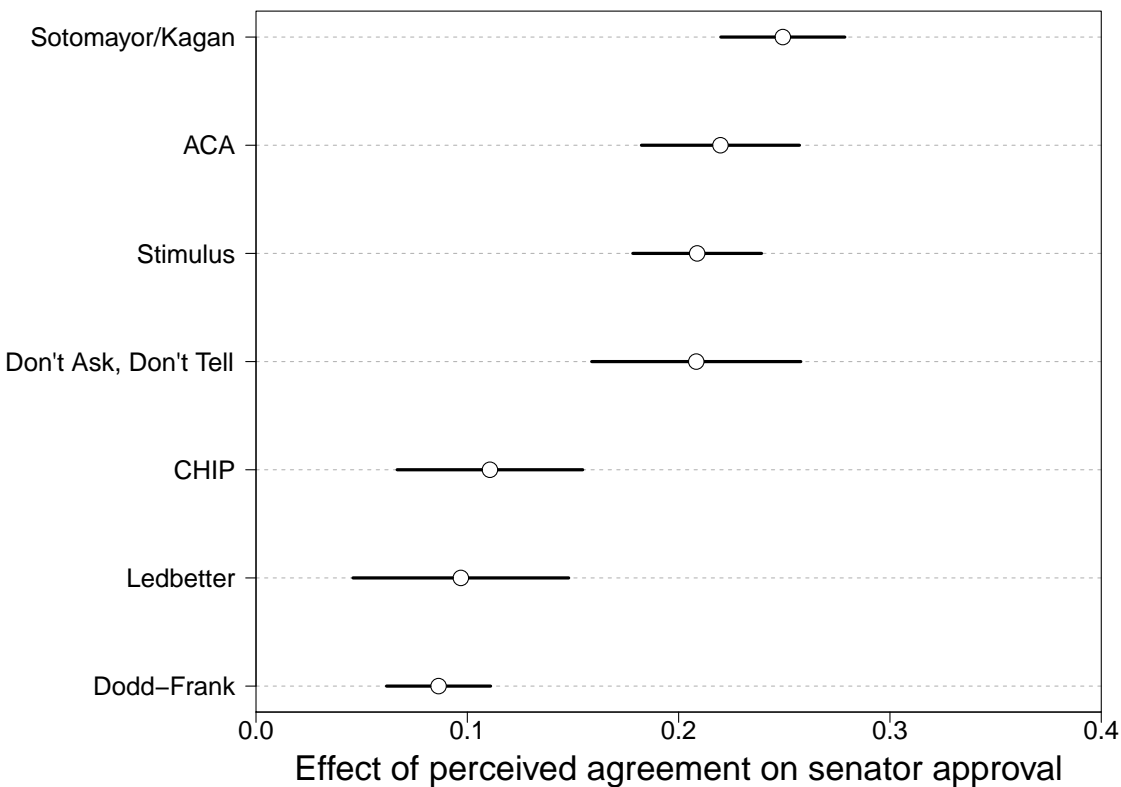
Figure 5: *Effects of perceived issue agreement for Sotomayor/Kagan and other high profile roll call votes in 2010.*

3.3.1 Comparing nominations to other issues

One way to benchmark the effect of perceived nominee agreement on senator approval is to compare it to the effects seen in other high profile votes. The 2009 and 2010 CCES asked respondents to cast a number of "roll call votes" on several salient issues, including the 2009 stimulus package; the 2010 passage of the Affordable Care Act ("Obamacare"), the 2010 repeal of "Don't Ask, Don't Tell"; the 2009 expansion of the Children's Health Insurance Program (CHIP); the 2009 passage of the Lily Ledbetter Fair Pay Act of 2009; and the 2010 Dodd-Frank bill on financial regulation. For each of these issues, we ran regressions parallel to those on our nominees in Table 5. We focus on the IV models with controls, though the results are the same no matter which model we use.

Figure 5 shows the results of these parallel analyses. (We present the full regressions for

each in the appendix.) The points depict the coefficient from "perceived issue agreement," with the issue varying by different roll calls. The horizontal lines depict 95% confidence intervals. The graph reveals that perceived agreement on all of these issues influences voters' assessments of their senators. Notably, however, the effects seen for Sotomayor/Kagan are effectively tied for the largest in magnitude with the ACA, the Stimulus and Don't Ask, Don't Tell—each predicts a 20- to 25-percentage-point shift in approval. The coefficients for CHIP, Lily Ledbetter, and Dodd-Frank are roughly half as large.

On the one hand, the relative size of the effects for Sotomayor/Kagan are quite surprising. Recall that these were relatively low salience and low-key nominees, whereas the ACA and the stimulus were enormous pieces of legislation that generated tons of media coverage and partisan bickering. On the other hand, compared to complex legislation, Supreme Court nominations are very straightforward affairs, with outcomes that are quite stark: either the nominee is confirmed, allowing her to serve on the nation's highest court, or she is rejected, forcing the president to name another candidate. In this process, note Watson and Stookey (1995, 19): "there are no amendments, no riders and [in recent decades] no voice votes; there is no place for the senator to hide. There are no outcomes where everybody gets a little of what they want. There are only winners and losers." It seems quite plausible that this clarity allows voters to easily update their assessments of their senators based on their perceptions of how they voted on Supreme Court nominees.

4   Conclusion

Summarizing their pioneering work on voter recall and accountability, Ansolabehere and Jones (2010, 584, citations in original) wrote:

> Individuals' beliefs reflect a mix of hard facts learned from the media, campaigns, and other sources and inferences drawn from other facts, especially party labels (see, e.g., Aldrich (1995); Cox and McCubbins (1993)). Importantly, though, constituents on average hold accurate beliefs about the roll-call voting of [r]epresentatives, which allows the public collectively to hold politicians

accountable.

In this paper we have presented a variety of empirical evidence that supports this assessment when it comes to senatorial votes on Supreme Court nominees.

In particular, after the Thomas, Kagan, and Sotomayor nominations, many voters were aware of their senators' confirmation votes and perceived them correctly. In addition, citizens' evaluations of senators tracked their perceived agreement or disagreement with the senators' roll call votes on the nominees. We applied the instrumental variables approach pioneered in Ansolabehere and Jones (2010) and Ansolabehere and Kuriwaki (2020) to these data; the results suggest the correlations were causal. In other words, constituents' perceived agreement or disagreement with their senators' confirmation votes on Thomas, Sotomayor, and Kagan caused changes in constituent evaluations of their senators and in citizen vote choices. The size of these effects is comparable to those arising from such high-profile roll call votes as the Affordable Care Act and the 2009 stimulus package.

These empirical findings assume greater significance when combined with earlier studies showing the responsiveness of senators to co-partisan public opinion on Supreme Court nominees. The evidence on constituents in the current paper in some sense closes the "circle of democratic accountability:" constituents—both co-partisan and opposite party members– track roll call votes on Supreme Court nominees and reward or punish senators accordingly, and senators' roll call votes on Supreme Court nominees respond to the preferences of co-partisan constituents (Kastellec et al. 2015). One cannot definitely establish that citizen monitoring and reward causes voter responsiveness, but the overall patterns are exactly what the revisionist accounts of democratic accountability would predict. Conversely, it is not what scholars taking the traditional dim view of democratic accountability would lead us to expect.

Supreme Court confirmations are, of course, just a single venue for studying democratic accountability, and an unusual one at that. Recent Supreme Court appointments are highly visible and confirmation votes are very easy to understand. These features distinguish

Supreme Court appointments from many, or perhaps even most, issues in modern governance. At the same time, Supreme Court nominations afford an interesting case, though hardly a "crucial" one in the sense of Eckstein (1975): If accountability for senator actions does not work in such a favorable setting, how could it work in problematic ones? But, accountability does seem to work here—or at least so the empirical evidence suggests.

Although one cannot use the evidence presented here to infer much about accountability in low visibility, substantively opaque issues, the results are highly suggestive for future Supreme Court nominations. In all likelihood, these nominations will also prove controversial, highly visible, and easy to understand. The evidence presented here thus suggests constituents will follow their senators' confirmation votes, register them accurately, and remember them. Then, the agreement or disagreement of the senator's vote with constituent preferences will likely carry consequences for constituent evaluations of senators and citizen choices at re-election time.

Unanswered questions remain, even in this narrow context. An outstanding one is, what determines citizen preferences about Supreme Court nominees? Should one think of citizens making rather sophisticated evaluations of the likely policy positions of nominees? Do citizens value nominee quality and qualifications? Or, do citizen rely primarily on cues from elite actors, particularly the president and interest groups (**?**)? Whatever the origin of citizen preferences about nominees, however, they seem to have consequences because citizens hold senators accountable for their confirmation votes.

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A Appendix

In this appendix we provide additional coding details on the data used in the paper.

A.1 Measuring political engagement

We used the following variables to measure the political engagement of the respondents in the 1992 Senate Election Study:

- **Education** We divide education levels into four groups: 1=less than high school, 2=high school graduate, 3=some college, 4=college graduate.

- **Ideological extremity** The survey asked respondents a standard 7-point ideology question, ranging from very liberal to very conservative. We center this index at zero and take the absolute value, such that higher values indicate more extreme self-placement.

- **Media consumption** We construct an index based on the following variables:

    - Days in the past week spent watching television.
    - Days in the past week having read a newspaper.
    - How many stories did you read, see or hear regarding the campaign in this state for the U.S. Senate?

    We aggregate these responses, then create a 4-point scale based on the quartiles of this aggregate distribution.

- **Partisan Identification** An "independent" is anyone who identifies as such; a partisan is anyone else (including leaners).

- **Political attention** The survey asked: "Some people don't pay much attention to political campaigns. How about you? Would you say that you were very much interested, somewhat interested, or not much interested?" We code this variable from 1 to 3, by increasing attention.

- **Political knowledge** The ASES asked respondents to identify the job or political office of (then) Chief Justice William Rehnquist, Speaker of the House Tom Foley, Vice President Dan Quayle, and Vice President-elect Al Gore. From these responses, we build an index of knowledge from zero to four (pooling "don't knows" with incorrect responses).

- **Voted** Did the respondent vote in the 1992 presidential election (based on self-reporting)?

We used the following variables to measure political engagement of the respondents in the 2009 and 2010 CCES:

- **Education** Same as above.

- **Ideological extremity** Same as above.

- **Political Knowledge**: Coded 0 if the respondent could not correctly identify the party in control of the U.S. House of Representatives or the U.S. Senate; 1 if the respondent correctly identified the party in control of either the House or Senate; 2 if the respondent correctly identified the party in control of both chambers (the Democrats were in control of both chambers in 2009 and 2010).

- **Partisan Identification** Same as above.

- **News interest** The survey asked: "Some people seem to follow what's going on in government and public affairs most of the time, whether there's an election going on or not. Others aren't that interested. Would you say you follow what's going on in government and public affairs ...?" We code answers as follows:

    - Hardly at all=1
    - Only now and then=2
    - Some of the time =3
    - Most of the time=4

- **Voted** Did the respondent vote in the 2008 presidential election (based on self-reporting)?

A.2   Coding actual ideological agreement

To code the variable "actual ideological agreement," we follow the procedure outlined in Ansolabehere and Kuriwaki (2020). The variable is the proximity between respondent's self-reported ideology and senator's first dimension DW-NOMINATE score. Respondent's ideology is taken from their placement on a 7-point scale ranging from "Very Liberal" to "Very Conservative," standardized to range from -1 to +1. NOMINATE scores lie between around -1 (Democrats) and +1 (Republicans). The absolute difference between the two measures are then flipped so positive values indicate less distance, and ranges from -1 to +1.