Supplemental Appendix

There are several alternate specifications, or potential confounding variables, that we considered when constructing our model of senator behavior during Supreme Court confirmation hearings. We present them here. Table 3 contains three models. Model 1 in Table 3 is the negative binomial regression model with standard errors clustered on justice from the text of the paper; we include it here for comparison. The next two models are also negative binomial regression models with standard errors clustered on justice, but we consider the role of time. As we explain in the paper, our data spans nearly 30 years, and it is feasible that some aspect of senator behavior changed over this period. Model 2 includes a control for time, which is measured from 1-11, corresponding to a nominations order, which is not significant. Model 3 includes accounts for time-squared, which also fails to significantly contribute to the model.

Table 3: Negative Binomial Estimates of Supreme Court Confirmation Hearing Exchanges

	Model 1	Model 2	Model 3
In-Party Divided Government	2.272***	2.271**	2.195**
	(0.649)	(0.720)	(0.777)
Out-Party Divided Government	0.697	0.696	0.640
	(0.431)	(0.470)	(0.532)
In-Party Unified Government	−1.173***	-1.173***	−1.176***
	(0.186)	(0.193)	(0.181)
Public Opinion	−0.005	-0.005	−0.006
	(0.003)	(0.004)	(0.005)
Public Opinion * In-Party Divided Government	−0.023*	-0.023*	−0.022*
	(0.009)	(0.010)	(0.010)
Public Opinion * Out-Party Divided Government	−0.003	-0.003	−0.002
	(0.007)	(0.007)	(0.008)
Public Opinion * In-Party Unified Government	0.011***	0.011***	0.011***
	(0.003)	(0.003)	(0.003)
Time to Election	−0.031	-0.031	−0.032
	(0.036)	(0.037)	(0.037)
Ideological Distance	0.523***	0.522**	0.504**
	(0.145)	(0.163)	(0.164)
Qualifications	−0.261	-0.262	−0.270
	(0.174)	(0.174)	(0.160)
Percent of Interest Groups in Opposition	0.957***	0.960*	1.028**
	(0.145)	(0.378)	(0.335)
Senator Former Attorney	0.459***	0.459***	0.457***
	(0.081)	(0.080)	(0.081)
Time		-0.001	
		(0.022)	
Time-Squared			−0.001
			(0.002)
Constant	3.210***	3.211***	3.278***
	(0.256)	(0.321)	(0.395)
Natural Log of α	−1.691***	-1.691***	−1.692***
	(0.095)	(0.095)	(0.094)
Observations	185	185	185
AIC	1532.1	1532.1	1532.0
BIC	1564.3	1564.3	1564.2
Log Likelihood	−756.1	-756.1	−756.0

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

Table 4 contains three additional models. Like Models 1, 2, and 3 in Table 3, Model 4 is a negative binomial regression model with standard errors clustered on justice, though it includes Senate polarization, as measured by the difference in NOMINATE party means. We find no substantive or statistical differences relative to the model in the text, nor is polarization a significant predictor of confirmation hearing exchanges.

Model 5 is a multilevel negative binomial regression with varying intercepts for each nomination. As we note in the main text, senator-nominee exchanges are nested within confirmation hearings, which could indicate the need to use hierarchical modeling techniques (Gelman and Hill 2007). First, we note that AIC for Model 5 is ten points larger than the AIC for Model 1, indicating that Model 1 is a significantly stronger model than Model 5 (Long 1997). Additionally, we conducted a likelihood ratio test to compare the two models. We find that the difference between the pooled and multilevel models is not statistically significant (p=0.4659). Importantly, we find little in the way of substantive or statistical differences between Models 1 and 5. Thus, we feel comfortable that the specification we employ in the main text accurately models confirmation hearing exchanges.

Finally, we consider controversial nominees, who may face a greater number of questions. Model 6 shows a negative binomial regression with standard errors clustered by nomination, with an added variable to control for the "controversial" hearings of Robert Bork, Clarence Thomas, Samuel Alito, and Sonia Sotomayor. Controlling for controversy does not add explanatory power to the model, and the results are substantively the same when controlling for controversial nominees.

Table 4: Negative Binomial Estimates of Supreme Court Confirmation Hearing Exchanges

	Model 4	Model 5	Model 6
In-Party Divided Government	2.408**	2.236*	2.298*
	(0.733)	(0.926)	(1.120)
Out-Party Divided Government	0.816	0.665	0.723
	(0.496)	(0.912)	(0.952)
In-Party Unified Government	−1.189***	-1.172*	−1.172***
	(0.199)	(0.543)	(0.189)
Public Opinion	−0.003	-0.005	−0.005
	(0.005)	(0.006)	(0.004)
Public Opinion * In-Party Divided Government	−0.0246*	-0.0226	−0.0234
	(0.010)	(0.013)	(0.014)
Public Opinion * Out-Party Divided Government	−0.00417	-0.00244	−0.00322
	(0.007)	(0.013)	(0.013)
Public Opinion * In-Party Unified Government	0.011***	0.011	0.011***
	(0.003)	(0.007)	(0.003)
Time to Election	−0.031	-0.031	−0.031
	(0.036)	(0.022)	(0.037)
Ideological Distance	0.537***	0.518*	0.524***
	(0.153)	(0.235)	(0.153)
Qualifications	−0.268	-0.259	−0.267
	(0.165)	(0.217)	(0.205)
Percent of Interest Groups in Opposition	0.811*	0.950***	0.972**
	(0.404)	(0.288)	(0.301)
Senator Former Attorney	0.460***	0.458***	0.459***
	(0.080)	(0.071)	(0.079)
Polarization	0.454		
	(0.895)		
Controversial Nominee			−0.007
			(0.182)
Constant	2.863***	3.223***	3.200***
	(0.691)	(0.551)	(0.371)
Natural Log of α	−1.692***	-1.695***	−1.691***
	(0.0966)	(0.127)	(0.095)
ρ		0.001	
		(0.008)	
Observations	185	185	185
AIC	1532.0	1542.1	1532.1
BIC	1564.2	1590.4	1564.3
Log Likelihood	−756.0	-756.0	−756.0

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

Example of Senator-Nominee Exchange

The example of two consecutive exchanges documented in Figure 1 is typical of most of exchanges counted in our data. That being said, they are not all as straight forward with a simple question and answer. Below, we provide a more complex example of two exchanges from the Brett Kavanaugh hearings. Senator Leahy asked Kavanaugh about his knowledge of Manuel Miranda's access to the Democratic members of Senate Judiciary Committee's (SJC) computer files in the early 2000s. Miranda was counsel to the Republican members of the SJC at the time and Kavanaugh was White House counsel in charge of judicial nominations (Kranish 2018). Leahy and Kavanaugh kept interrupting one another during the discussion before either could complete a question or thought. Chairman Grassley finally interrupted, which caused the first exchange to end with a non-answer on behalf of Kavanaugh. The second exchange starts with Leahy apologizing and joking "I'm new here" and ends with Kavanaugh answering the question after multiple interruptions.

LEAHY: You and your family. We have a lot questions, and I know you've done a lot of preparation with some – a couple of our distinguished Republican colleagues about the questions you might be asked, but let me ask you something that normally isn't an issue during Supreme Court hearings.

You testified before this Committee in both 2004 and 2006 as part of your nomination the D.C. Circuit Court. Then you were nice enough to come by my office and chat with me last month. I asked you that if you changed anything in your prior testimony, and you said no. Is that still your position?

KAVANAUGH: It is, Senator. I told the truth. I was not read into the programs...

LEAHY: No, no, no. I'm not asking what we did about it. I just asked you if you would change anything in your...

KAVANAUGH: I'd like to explain if I can.

LEAHY: I'm going to give you a chance because I'm going to ask you a couple questions. Go ahead.

KAVANAUGH: Well, I just wanted to explain that at the last hearing in 2006 in particular, you were concerned, understandably, because there'd been two judicial nominees who had been involved in the legal memos, in the legal discussions around crafting the enhanced interrogation techniques and detention policies.

You were concerned whether I also was involved in those, and I made clear in response to those questions that I was not read into that program. That was 100 percent accurate. It's still accurate today. I think Senator Feinstein's report and the Office of Professional Responsibility report establish that I was not involved in those programs.

Now, there were two judicial nominees...

LEAHY: OK, I am going to go into that in a little bit. I don't want to go over my time as the preceding senator did. I want to stay...

KAVANAUGH: I just want – Senator, I just want to be clear. I want to reassure you.

LEAHY: I'm going to go into it. I'm going to give you a chance to speak a lot more...

GRASSLEY: Without...

LEAHY: ... but let me...

GRASSLEY: Hey, I'm not going to take time away from you, but I want to explain something. I said yesterday that if a question is asked within the 30 minutes that he can finish the question and it can be answered. So he did not go over his time.

LEAHY: OK, sorry. I didn't mean to hit a sensitive area. Let me ask you this. Between 2... (LAUGHTER) Between 2001 – I'm new here. (LAUGHTER) Between 2001 and 2003, two Republican staffers on this Committee regularly hacked into the private computer files of six Democratic senators, including mine. These Republican staffers stole 4,670 files and they used them to assist in getting President Bush's most controversial judicial nominees confirmed.

Now, the theft by these Republican staffers became public in late 2003 when the Wall Street Journal happened to print some of the stolen materials. The ringleader behind this massive theft was a Republican staffer named Manny Miranda, who had worked for one of the members of this committee. In a way was considered by many, both Republicans and Democrats, as a digital Watergate. Not – a theft not unlike what the Russians did in hacking the DNC. Now, during all this, you worked hand-in-hand in the White House with Manny Miranda to advance these same nominees were he was stealing material. Not surprisingly, you were asked extensively about your knowledge of this theft during both your 2004, 2006 hearings.

And I don't use the word extensively lightly. You were asked over 100 questions from six senators, both Republicans and Democrats and you testified – and you testified repeatedly that you never received any stolen materials, you knew nothing about it until it was public. You testified that if you had suspected anything untoward, you would have reported it to the White House counsel who would have raised it with Senator Hatch, especially as Mr. Miranda had worked for him.

And at the time, we left it there. We didn't know any better. Today, with the very limited amount of your White House record that has been provided to this committee – and it is limited – for the first time, we've been able to learn about your relationship with Mr. Miranda and your knowledge of these events.

So my question is this: Did Mr. Miranda ever provide you with highly specific information regarding what I or other Democratic senators were planning on asking certain judicial nominees?

KAVANAUGH: Senator, let me contextualize because I'm looking at what you're putting

up here first. (Inaudible).

LEAHY: Well, the question...

KAVANAUGH: That – that – what's up there is 100 percent accurate. As my memory.

LEAHY:OK. So let me ask you this. That's...

KAVANAUGH: Never knew or suspected, true. Never suspected anything untoward, true. Had I suspected something untoward I would have talked to Judge Gonzales...

LEAHY: And I've already...

KAVANAUGH: ... Would have talked to Senator Hatch. That – that's all 100 percent true.

Measuring State-Level Public Opinion

To create our measure of state-level public support for a Supreme Court nominee at the start of a confirmation hearing, we used multilevel regression and poststatification, a technique first popularized by Kastellec, Lax and Phillips 2010. By using demographic data available at the state and regional levels, as well as national polls, to "compensate for small within-state samples," the authors generate "highly accurate and reliable" estimates of state-level public opinion (771). To do this, they use three key data sources: (1) national polls that ask about the public's support of 11 different nominees up through the day of the confirmation vote on the Senate floor; (2) population statistics from the U.S. Census regarding the race, gender, age, and education levels of residents in each state; and (3) state-level estimates of ideology and religious affiliation.

By and large, we follow the same track as Kastellec, Lax and Phillips 2010 to generate our state-level estimates of constituent support for the nominee. Indeed, we use many of the same polls as Kastellec, Lax and Phillips (2010) and Kastellec, Lax, Malecki and Phillips (2015),[13] and use their estimates of state-level ideology and religious composition. The sole difference is that we constrain our estimates to surveys conducted prior to – or in the case of Stephen Breyer, on the very first day of – the confirmation hearings. This way, we can ensure that our estimates are not a function of the senator's behavior during the hearings. Using these polls – all of which contained nearly 1,000 respondents or more – along with U.S. census demographic data (from both the 5-Percent Public Use Microdata Sample, or PUMS, as well as the American Community Survey, or ACS) and state-level estimates of ideology and religious composition, we employ multilevel regression and poststratification (MRP) to derive our estimates. Just as researchers who precede us, our measure estimates the percentage of state citizens who support confirmation (at least among those who have an opinion on the nominee).

More specifically, using MRP to estimate state-level public opinion at the time of the confirmation hearing works in two stages. First, we modeled a respondent's answer to a question about a nominee (support or no support) as a function of individual, state, and regional predictors (race, gender, age, education level, state and regional location, and state-level ideology). Second, we weighted the first-stage estimates for each demographic-geographic respondent type by actual state populations. This produced estimates of public opinion for each state.

[13] We used the Roper Center's iPoll archives to locate national polls that asked about the public's support for Clarence Thomas before his initial confirmation hearing and identified one poll that met our requirements.