Replacing Sandra Day O’Connor:

Gender and the Politics of Supreme Court Nominations

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Forthcoming in Journal of Women, Politics, and Policy

Abstract

The politics of Supreme Court nominations present a case in which gender issues are highly salient from abortion to diversity on the bench. However, confirmation politics are also tightly constrained by institutional pressure for party loyalty. In the battle to replace Sandra Day O’Connor, I find that gender had a limited impact on senators’ votes on the Roberts and Alito nominations. Republicans uniformly support the president’s nominees and the most liberal Democrats oppose them. However, gender does impact the votes of more moderate and conservative Democrats. Analysis of the explanations senators offer to justify their votes and build trust with constituents demonstrates that women, particularly Democratic women placed greater emphasis on women’s rights in their floor statements supporting the contention that female Senators prioritize women as a constituency and bring a different perspective to policy deliberations.
In the fall of 1991, the Senate’s handling of the Clarence Thomas-Anita Hill hearings galvanized the women’s movement and spurred many women to run for Congress. Women’s groups denounced the Senate as insensitive to the interests of women and highlighted the fact that there were no women on the Judiciary Committee and only two women in the Senate when it considered the allegations of sexual harassment made by Anita Hill. The furor over Thomas’s confirmation hearings contributed to the characterization of the 1992 elections as the “Year of the Woman” (Burrell 1994; Wilcox 1994). Eager to meet demands for more diversity in the Senate’s deliberation on nominees, Democrats appointed Dianne Feinstein (D-CA) and Carol Moseley Braun (D-IL) to the Judiciary Committee.

The Thomas confirmation battle and the subsequent appointment of two women to the Judiciary Committee, highlight the expectation that women will bring a distinctive viewpoint to the Senate’s deliberation of nominations to the federal courts. Indeed, the politics of judicial nominations are permeated by gender concerns from the status of *Roe v. Wade* to the symbolism of nominating women and minorities to the bench. At the same time, senators are tightly constrained by expectations to remain loyal to one’s political party and President reducing the importance of factors beyond partisanship and ideology (Epstein and Segal 2005; Epstein et al. 2006; Binder and Maltzman 2009). Moreover, institutional traditions make defeat of the President’s nominees more difficult than killing legislation as a bill’s opponents must only block the proposal from getting on the agenda while nominees are expected to come to the floor for a vote and require a public and sustained campaign to convince other senators to risk the necessary political capital to defeat them (Krutz, Fleisher, and Bond 1998).
The confirmation battles over George W. Bush’s Supreme Court nominees, John Roberts and Samuel Alito present the first opportunity to assess the impact of gender on nomination politics. The struggle to replace Sandra Day O’Connor, the first female justice and a swing vote on women’s rights, elevated the attention paid to gender concerns. Moreover, for the first time, women had a significant presence in the Senate during a confirmation fight as only two women served in the Senate when Clarence Thomas was confirmed. Only six female senators deliberated on the nominations of Ruth Bader Ginsburg and Stephen Breyer and both justices were confirmed by almost unanimous votes. Thus, the Roberts and Alito nominations allow us to examine the impact of gender on a senator’s decisionmaking in a case in which women’s rights issues are highly salient and institutional and partisan pressures loom large.

Despite the substantive and symbolic importance of gender in nomination politics, I find that, institutional and partisan constraints dominate senators voting decisions as Republicans uniformly supported the President’s nominees. However, gender did play a role in the voting decisions of moderate and conservative Democrats. Moreover, gender does influence senators’ explanations of their votes in floor debate. Women, particularly Democratic women, are more likely to refer to women’s issues when explaining their vote, providing evidence that female senators prioritize women as a constituency and bring a different perspective to policy deliberations.

The Women and Politics Literature: the Gender Dimensions of Nomination Politics

The vast majority of literature on the impact of women in office points to women’s issues variously defined as a key source of gender differences in legislative behavior. Representation theorists maintain that women bring a different perspective to
policy deliberation based on socialization and their unique life experiences. Female legislators will bring new issues to the agenda and act as more aggressive advocates for women’s interests (Mansbridge 1999; Williams 1998; Phillips 1995). Empirical research on the House of Representatives and state legislatures indicates that female legislators are more likely to prioritize issues related to women, children, and families. Even after controlling for party, ideology, and institutional position women are more likely to vote for, sponsor, cosponsor, and advocate on the floor for legislation related to women’s issues (Thomas 1994; Bratton and Haynie 1999; Reingold 2000; Swers 2002; Dodson 2006). The greatest gender differences are found in policy areas that can be most directly connected to consequences for women as a group, particularly bills that advance women’s rights such as policies related to reproductive rights and family leave (Dodson 2006; Swers 2002; Wolbrecht 2002; Gerrity, Osborn, and Mendez 2007). While the small number of women in the Senate has limited the ability for systematic analysis of gender differences among senators, Whitney’s (2001) interviews with the nine female senators indicate that the women do perceive gender differences in the leadership style and legislative priorities of female senators. In an analysis of floor debate in the 106th Congress, Osborn and Mendez (2010) find that female senators are more likely to speak about issues that are “directly relevant to women” including women’s health, crimes against women, and family issues such as child care and family leave.

The politics of Supreme Court nominations is infused with gender considerations. The importance of the courts in determining the scope of civil rights claims gives the Supreme Court a pivotal role in defining the parameters of women’s rights. (Mezey 2003). Among Supreme Court decisions, the status of Roe v. Wade is a primary
motivator for liberal and conservative political activists. Senators on both side of the aisle heavily scrutinize a nominee’s perceived position on Roe. Given the prominent role played by Democratic and moderate Republican women in legislative debates on abortion (Dodson 2006; Swers 2002), one might expect female senators to more carefully examine a nominee’s position on reproductive rights and other issues of gender equality.

The politics of descriptive representation is also an important focus of judicial nominations. The media and interest groups monitor the influence of diversity on a president’s appointments. Indeed, George W. Bush faced tremendous pressure to nominate a woman to replace Sandra Day O’Connor when she retired. Once appointed to the court, several studies indicate that gender influences the jurisprudence of the courts as female judges on the lower federal courts are more sympathetic to claims of employment discrimination and more likely to oppose restrictions on abortion (Boyd, Epstein and Martin 2010; Scherer 2005; Davis, Haire and Songer 1993; Songer, Davis, and Haire 1994). With regard to the Supreme Court, scholars find that the presence of Sandra Day O’Connor and Ruth Bader Ginsberg on the court increased support among the male justices for victims’ claims in sex discrimination cases and these two justices wrote a disproportionate number of the majority opinions on women’s rights cases (O’Connor and Segal 1990; Palmer 2002).

The media attention and interest group focus on the level of diversity among a President’s nominees means that senators will pay attention to the symbolism of race and gender as they craft their confirmation vote strategies. The substantive and symbolic influence of gender on nomination politics highlights the need to investigate whether and
how gender impacts the decisions of senators as they fulfill their advice and consent duties.

**The Confirmation Literature: The Electoral and Institutional Constraints**

Although gender-related issues are a prominent feature of nomination battles, the electoral and institutional incentives senators face argue against a distinctive role for gender. Rational choice theorists and new institutionalists maintain that institutional structures and the electoral context constrain the ability of members to pursue their policy preferences. For example, in her analysis of gender differences in national security politics in the Senate, Swers (2007) found that gender stereotypes about women’s lack of expertise in national security policy combined with voter perception that the Democratic party is weak on defense creates an additional barrier for Democratic women as they work to gain credibility on these issues.

With regard to Supreme Court confirmation votes, senators’ operate in an environment where the fate of the nominee is central to the reputation and policy goals of the President. Presidents utilize their nominations to the court to extend their policy imprint beyond the years of their presidency creating intense pressure on members of the president’s party to support his nominees while members of the opposing party are compelled to mount a vigorous opposition. In deciding whether to oppose a nominee, senators also may respond to the president’s approval rating and whether he is in the last year of his presidency (Epstein et al 2006; Shipan and Shannon 2003; Segal, Cameron, and Cover 1992; Cameron, Cover, and Segal 1990; Krutz, Fleisher, and Bond 1998).

In addition to the president the interest groups that form the liberal and conservative bases of the two parties pay close attention to Supreme Court nominations.
The landmark decisions of the Warren Court on race, religion, and the rights of criminal defendants sparked the politicization of nomination politics and mobilized liberal and conservative activists (Goldman 1997; Bell 2002; Epstein and Segal 2005; Scherer 2005). The rejection of Reagan nominee, Robert Bork based on his conservative judicial philosophy was a landmark event in the polarization of nomination politics and the involvement of interest groups (Ogundele and Keith 1999; Goldman 1997; Maltese 1995). The acrimony reached new levels in the George W. Bush years when Democrats began filibustering appellate nominees and Republicans threatened to eliminate filibusters on judicial nominations by deploying a procedural tactic dubbed the “nuclear option.” (Epstein and Segal 2005; Binder and Maltzman 2009) While presidents and senators have developed messages to target activists and base voters, denouncing for example judicial activists who legislate from the bench, the average voter pays little attention to confirmation politics (Bell 2002; Scherer 2005; Steigerwalt 2010).

The politicization of court decisions and the involvement of interest groups means that senators pay close attention to a nominee’s ideological views. Studies of confirmation votes note that senators balance the nominee’s qualifications with their judicial philosophy. Over time, the importance of judicial philosophy has increased as the ideological distance between the senator and the nominee has become an increasingly important determinant of their vote (Primo, Binder, and Maltzman 2008; Epstein et al 2006; Shipan and Shannon 2003; Moraski and Shipan 1999; Segal, Cameron, and Cover 1992; Cameron, Cover, and Segal 1990).

Beyond the dynamics of presidential-congressional relations, senators’ votes are moved by the impact of the nomination on the composition of the court. Ruckman
(1993) notes that the confirmation process is more conflictual if the nominee represents a “critical nomination” that will shift the ideological balance of the court by for example, replacing a liberal with a conservative or creating a new ideological majority on the court. Other critical nominations include replacing the chief justice or nominations that threaten the loss of representation on the court for a particular social group (Ruckman 1993). The nomination of Samuel Alito combined several critical factors as his nomination represents the loss of a woman’s seat on the court and the replacement of a swing vote and ideologically moderate justice with a more strongly conservative jurist.

In sum, a senator’s actions on a Supreme Court nominee are highly constrained by a number of political and institutional factors. The impact of a Supreme Court nomination on the policy goals and reputation of the president makes the vote a key test of party loyalty for members of the president’s party. The consideration of a critical nomination requires a different standard for scrutiny. The heightened importance of nominations to party activists has important implications for senators’ ability to raise money and mobilize voters in their election campaigns.

**Replacing Sandra Day O’Connor: The Ultimate Gendered Context**

The battle to replace Sandra Day O’Connor placed gender considerations at the forefront of the confirmation fight. As the first woman on the Supreme Court, President Bush faced extreme pressure to replace O’Connor with another woman. O’Connor herself expressed disappointment when Bush did not tap a female nominee but turned instead to D.C. Circuit Court judge, John Roberts (Greenburg 2007). The death of Chief Justice William Rehnquist re-opened the debate when Bush decided to elevate Roberts to Chief Justice. Democratic senators were now engaged in a two-stage game in which their vote
on Roberts could send a signal to President Bush that could influence his decision of who
to nominate to replace O’Connor.

According to interviews with senate staff and interest group leaders and
contemporary media accounts, some senators, notably Minority Leader Harry Reid (D-
NV), believed that taking a stand against Roberts would send a warning to President
Bush not to select a more controversial nominee than Roberts and would maintain the
support of activists who wanted Democrats to protect hard won legal rights from a more
conservative jurisprudence. Alternatively, other Democrats believed that a vote in favor
of Roberts would demonstrate Democrats reasonable approach to nominations allowing
them to pressure Bush to nominate a more moderate candidate to replace O’Connor. A
favorable vote on Roberts could also be used as justification for opposition to a strong
conservative who was “out of the mainstream” of judicial philosophy. Judiciary
Committee leader, Patrick Leahy (D-VT) adhered to this viewpoint (Babbington and Balz
2005; Greenburg 2007). Ultimately, Roberts was confirmed by a vote of 78-22, which
included support from all Republicans and half the Democratic Senators.

Bush’s decision to nominate his White House Counsel, Harriet Miers for the
O’Connor seat set off a firestorm among conservatives who were wary of her
commitment to conservative jurisprudence. A public debate raged over whether
opposition to Miers was based on her judicial philosophy and qualifications or sexism
(Cochran 2005). After Bush withdrew the Miers nomination he tapped another male
appeals court judge, Samuel Alito. Democrats immediately denounced the nomination of
Alito as a capitulation to the far right. However, Democratic Senate leaders refused to
endorse a filibuster because they did not want to take the focus off the Iraq war and draw
public attention to a nominee they believed would ultimately be confirmed (Stern and Perine 2006b). With little chance for success Massachusetts Democrats, Ted Kennedy, the longtime liberal leader, and John Kerry, who needed to court the support of activist groups for a potential 2008 presidential run, teamed up to mount a last minute filibuster. The filibuster attempt failed as senators voted to invoke cloture by 72-25 with no Republicans and only half of Democrats supporting a filibuster. Ultimately Alito was confirmed by a vote of 58-42, the tightest margin of victory since Clarence Thomas. Only one Republican, Lincoln Chaffee (R-RI), a moderate in a tough re-election battle, voted against Alito and four Democrats supported his confirmation.

Beyond the symbolism of appointing the replacement for the first female Supreme Court justice, O’Connor’s retirement highlighted substantive issues of women’s rights. O’Connor was a critical swing vote on issues related to abortion, affirmative action, and employment discrimination. Most recently, she was a pivotal figure in the Stenberg v. Carhart case regarding partial birth abortion. Thus, the nomination of Samuel Alito to replace O’Connor set up a critical nomination on several fronts as it represented a loss of a seat for women and a clear shift of the court to the right with the replacement of a moderate voice on women’s issues with a more clearly conservative jurist.

The first few years of the Roberts court saw a strongly conservative shift in jurisprudence on women’s rights. With slim 5-4 majorities the Roberts court issued major decisions that limited reproductive rights and made it more difficult for workers to bring claims of employment discrimination. In both cases, Justice Ruth Bader Ginsburg, the lone female justice, took the unusual step of reading her dissents from the bench as she accused the majority of being insensitive to women’s rights (Perine 2007; Barnes 2007).
Given the clear implications for women’s rights and the fact that Roberts and Alito generally vote together on these issues, how do we explain the fact that Republicans uniformly supported Roberts’ confirmation and only one Republican opposed the confirmation of O’Connor replacement, Samuel Alito? What led half of Democrats to support John Roberts and slightly less than half of all Democrats to reject a filibuster against Samuel Alito while almost universally opposing his confirmation?

**A Theory of the Role of Gender in Judicial Confirmation Dynamics**

Based on the dynamics of the confirmation process, I argue that in the presence of high levels of partisan and institutional pressure, the impact of gender on the confirmation vote will be minimal, even in a policy context in which substantive and symbolic gender considerations loom large, particularly the status of *Roe v. Wade* and the symbolic politics of nominating women and minorities to the federal bench. Despite the prominence of gender issues in nomination politics, the status of nominations as central motivators of the electoral bases of the parties while practically invisible to the average voter increases the costs of alienating leaders and colleagues by voting against the party’s position. This is particularly true when the senator is a member of the president’s party.

Indeed, a senator receives almost no electoral or policy benefits with constituents by voting in opposition to the party’s position on a nominee. As Mayhew (1974) and Arnold (1990) note, legislators are concerned with both claiming credit for good policy benefits and avoiding blame for bad policy outcomes. Thus, for a moderate Republican woman such as Olympia Snowe (ME) or Susan Collins (ME) who utilizes her pro-choice position to attract independent and Democratic voters, the link between for example, a vote against the Partial Birth Abortion Act as an indicator of support for the pro-choice
position is strong for the average voter. This vote will be heavily reported by the media and utilized by supporters and opponents in electoral campaigns.

By contrast, a vote on a Supreme Court nominee does not send the same clear signal to voters. Because judges are one person among a panel who are deciding cases and because the cases they will hear and decisions they will make are abstract and in the future, even a vote against a critical nomination such as Samuel Alito, a judge who clearly would move jurisprudence on abortion in a more conservative direction than his predecessor, Sandra Day O’Connor, would not carry the same electoral payoff/punishment with constituents in comparison to a vote against the Partial Birth Abortion Act. However, voting against the Supreme Court nominee of a Republican president and in defiance of one’s party leadership would incur a significant loss of political capital and good will among party colleagues in an institution that relies heavily on personal relationships for achievement of policy goals.

Moreover, votes on legislation are more easily nuanced than votes on nominees. When voting on legislation, a senator can cast votes for alternative amendments to allow him/her to both support and oppose the party while constructing a plausible explanation for constituents. Votes on nominees cannot be ameliorated by casting strategic votes on alternative proposals rather a senator must vote to seat the judge on the court or defy his/her party and president and oppose the nominee thereby raising the profile of the vote and the political stakes for the senator. Therefore, a senator will have less leeway to vote based on gender-related concerns in confirmation politics than one would have in deliberations on legislation.
In sum, one should expect that Republicans, even those moderates who are ideologically distant from the President will be inclined to support Roberts and Alito, while Democrats will be more likely to oppose the nominees and the most liberal Democrats will be among those who are most fervently opposed.

Hypothesis 1: Due to the overwhelming importance of partisan and ideological concerns on confirmation votes, gender will have a marginal impact on senators’ voting behavior even when gender issues are a highly salient factor in deliberations over a nomination as was the case with the battle to replace Sandra Day O’Connor.

Hypothesis 2: The institutional constraints of partisan pressure will weigh most heavily on the votes of senator’s from the President’s party so that even pro-choice Republicans who are ideologically distant from the nominee will support confirmation.

Under these conditions, the greater impact of gender will be found in senators’ explanations of their votes. Representation scholars note that the explanations senators offer in floor statements and press releases serve several purposes. At the constituent level members seek to build bonds of trust with voters to demonstrate that they are representing their interests. Within the institution, senators use their explanations as a signal to other senators and the White House of their policy priorities in an effort to influence future deliberations (Fenno 1978; Mansbridge 1999). While their vote will conform to the position of their party, female senators may be more likely than male party colleagues to utilize a judge’s jurisprudence on women’s issues to justify their stance on a nominee. For example, a female Democrat might be even more likely than a male Democrat to cite concerns about gender discrimination as the basis for her opposition. Similarly, a Republican woman may state that she accepts a nominee’s
assurances that he respects a right to privacy as justification for supporting a conservative nominee. If women, are more likely to highlight women’s rights concerns as motivating their votes, it would provide evidence that women bring a different perspective to policy deliberations and that women prioritize issues related to women’s rights. Moreover, a greater emphasis on women’s rights in their explanations would indicate that female senators perceive women as an important part of their constituency and electoral coalition even when they are seeking to assuage the concerns of constituents and regain the support of activists who are angered by the senator’s vote.

Hypothesis 3: Regardless of their vote, female senators will be more likely than their male partisan colleagues to refer to the nominee’s position on women’s issues in their vote explanations.

Analyzing Senators’ Positions on the Roberts and Alito Nominations

The Roberts and Alito votes presented senators with consecutive votes on critical nominations (Ruckman 1993). The Roberts vote filled the critical position of chief justice with a young nominee who could influence the direction of the Supreme Court’s jurisprudence for many years to come. The Alito vote would shift the ideological balance of the court by replacing a moderate conservative with a strongly conservative nominee and the nomination would mean a loss of representation for women on the court. Given the clear consequences for women’s rights, we analyze the factors that influenced the actions of senators as they deliberated on President Bush’s nominees.

The Judiciary Committee hearings and media accounts of the confirmation process were examined to determine what information members had available to them on Roberts and Alito’s records on women’s rights. To gain a deeper understanding of the
influences on senators’ positions and the institutional pressures they faced, Swers conducted a series of interviews with Senate staffers and liberal and conservative interest group leaders who are active in nomination politics.

1 We evaluate the impact of gender on the confirmation vote for Chief Justice Roberts and the cloture and confirmation votes held on the Alito nomination. Finally, senators’ floor speeches and press releases were analyzed to determine the centrality of women’s rights issues to members’ vote explanations.

**Roberts Record on Women’s Rights**

As an appellate judge who had only been on the D.C. Circuit for two years, Roberts’s credentials allowed him to compile a record that was sufficiently conservative to satisfy conservative activists but it lacked the paper trail of jurisprudence that could galvanize liberal opponents. Evidence of Roberts’s views on women’s rights came largely from the briefs and memos he wrote while serving in the Reagan and Bush administrations. (Stern 2005a; Greenburg 2007).

Abortion and the existence of a right to privacy as its underpinning dominates debate on Supreme Court nominees. Elements of Roberts’s record suggested he might not support abortion rights. Memos from the Reagan and Bush years questioned a right to privacy and *Roe* (Stern 2005b). However, in his hearing Roberts, confirmed that the Constitution includes a right to privacy but remained vague about the scope of that right. He agreed that *Roe* is a precedent that has been reaffirmed. However, he did not commit to the necessity of upholding that precedent in future cases (Stern and Perine 2005). For senators who support reproductive rights, Roberts’s responses could be tailored to justify a vote for or against the nominee.
The other major women’s issue surrounding the Roberts appointment concerned his views on gender discrimination and civil rights enforcement. During the Reagan years, Roberts argued for a limited role for the courts and federal agencies in enforcing anti-discrimination laws such as the Title IX ban on sex discrimination in the schools. Other memos questioned the concept of pay equity and comparable worth. (Greenburg 2007). Roberts’s positions and the sarcastic tone of many of the memos led some senators and liberal groups to denounce Roberts as disrespectful of women and insensitive to women’s rights. While in the committee hearings Roberts stated that he supported equal rights for women, he refused to distance himself from either the content or the tone of his memos instead maintaining that he was acting as an advocate reflecting the views of his client, the Reagan administration (Greenburg 2007). Thus, a senator who supports vigorous enforcement of anti-discrimination laws could find much to criticize in Roberts’s record or he/she could choose to believe that memos written more than 20 years ago are not reflective of his current thinking and judicial temperament.

**Alito’s Record on Women’s Rights**

In contrast to Roberts’s short paper trail, Samuel Alito’s fifteen years of service as an appellate judge provided a long record of conservative jurisprudence on hot button issues ranging from abortion to executive power. As with Roberts, opponents also drew on memos that emerged from his work in the Reagan administration. The combination of this conservative record and the fact that Alito would replace O’Connor immediately made his nomination more contentious than the Roberts appointment.

Alito’s most controversial writings on women’s rights concerned abortion. Reagan era memos painted Alito as strongly opposed to abortion rights and a key player
in efforts to overturn or mitigate the effects of *Roe v. Wade* (Barbash 2005). As a judge on the third circuit, Alito heard what later became a landmark case, *Planned Parenthood of Southeastern Pennsylvania v. Casey*. In this case, Alito was the only justice who sought to uphold a requirement that women seeking abortions must notify their spouse. In his dissent, Alito dismissed concerns about the potential endangerment to women and focused instead on the interests of the state and the rights of the father (Greenhouse 2005).

Writing the majority opinion, O’Connor rejected Alito’s argument and struck down the spousal notification provision in reasoning that emphasized the rights of women under the Constitution (Barbash and Baker 2005). Alito’s dissent and O’Connor’s ruling became a major focus of questioning in his hearings and meetings with senators. Many Democrats cited this decision as a source of their opposition to Alito’s confirmation. Moreover, Alito refused to refer to *Roe v. Wade* as settled law. However, he did indicate his respect for precedent and stare decisis (Stern and Perine 2006a).

Beyond abortion, senators, particularly Democrats expressed concerns about Alito’s record of favoring business over workers in employment discrimination cases. Outside of his legal opinions senators questioned Alito about his membership in the Concerned Alumni of Princeton, a group opposed to Princeton’s efforts to admit more women and minorities. Alito cited his membership in the group in his Reagan administration application but he claimed to have no memory of the group (CQ Staff 2005; Stern and Perine 2006a).

Clearly, senators concerned with women’s rights had much to examine in Alito’s record from his views on reproductive rights to employment discrimination and his
membership in a club that opposed Princeton’s efforts to diversify its student body.

Particularly in the area of abortion, a major focus in Supreme Court nominations, Alito’s long written record would lead pro-choice senators to oppose Alito if they chose to base their vote on judicial philosophy. Pro-choice Republicans who wanted to find reasons to support Alito would have to rely on his statements in the hearings and private meetings with senators in which he indicated his respect for precedent and stare decisis.

**Predicting Senators’ Votes: Data and Methodology**

Despite their clearly conservative records on women’s rights, all Republican senators including the moderate pro-choice Republicans voted to confirm John Roberts and to invoke cloture on the nomination of Samuel Alito. Only Lincoln Chaffee (R-RI), who faced a tough re-election battle in a Democratic state, voted against Alito’s confirmation. Regardless of their pro-choice views, moderate Republican senators felt compelled to support their party caucus and their president’s nominee. While Republicans offered uniform support, Democrats split their votes with 23 Democrats supporting Roberts’ confirmation and 22 Democrats opposed. Similarly, 19 Democrats voted to invoke cloture on Alito while 25 Democrats opposed the cloture motion. However, all but 4 Democrats voted against Alito’s confirmation.

Regression analysis is employed to examine the impact of gender relative to the other important influences on Democratic senators’ nomination votes. Logit models were conducted on the Roberts confirmation vote and the Alito cloture vote. The dependent variables measure whether or not the senator voted to confirm Roberts (1=confirm) or to invoke cloture on Alito (1=yes for cloture). A final logit model pools the three votes. The dependent variable measures whether or not the senator voted (1=yes) to confirm
Roberts, invoke cloture on Alito, and confirm Alito. The model has the benefit of expanding the number of observations allowing for more precision in the results and decreasing the likelihood of falsely rejecting the null hypothesis that gender has no independent effect on senator’s votes. The pooled model also allows us to include the Alito confirmation vote in which only four senators voted to confirm the nominee, which increases the amount of information we have about senators’ voting decisions. Dummy variables for the Roberts confirmation and Alito cloture votes account for fixed effects related to these individual nominations, while the Alito confirmation vote is the comparison or “out category”. Because senators in the pooled model appear in the dataset multiple times, each time they cast a vote on a nominee, we employ clustered standard errors by senator to account for the fact that the votes are not independent from each other as the vote one senator casts on Roberts will be related to his/her votes on Alito.

To assess whether gender considerations impact senators’ support for a nominee, we include a variable that indicates whether the senator is a woman (1=female senator). The other independent variables measure important factors that influence senators’ votes on nominations. Since judicial philosophy has become an increasingly important influence on confirmation votes, we utilize ideological distance scores developed by Cameron, Cover, and Segal (1990) and updated by Epstein et al. (2006). The scores capture the ideological distance between the nominee and the senator. Since voter opinion is of primary importance to senators, we use the state vote for President Bush in 2004 as a measure of constituent ideology. Given the importance of Supreme Court nominations to the electoral bases of the parties, a dichotomous variable measuring whether the senator is up for re-election in 2006 captures the heightened need of senators
who are in cycle to maintain the support of base voters and activists who raise money and mobilize votes for candidates. Finally, a variable indicating whether the senator is a member of the Judiciary Committee accounts for the fact that Judiciary Committee members play the largest role in vetting nominees and are looked to by other senators to provide information and signals of whether to support or oppose a nominee. Moreover, interest group leaders noted that the support of Judiciary Committee members was critical to gaining Democratic caucus support for a filibuster on appellate and Supreme Court nominees.

Insert Tables 1 & 2 Here

Analysis and Findings

The results in Tables 1 and 2 indicate that ideology is the most substantively and statistically significant predictor of senators’ votes. The ideological distance between the senator and the nominee was by far the most important influence on senator’s votes in the pooled model in Table 2 and the logit model of the Alito cloture vote in Table 1. Ideological distance borders on significance (pr=.11) in a two-tailed t-test as a determinant of a senator’s vote to confirm John Roberts. The reduced significance of ideology in the Roberts confirmation vote, likely reflects senators’ individual strategic calculations regarding how best to influence President Bush’s choice of the O’Connor replacement (ie. If a vote to confirm Roberts would demonstrate Democrats’ reasonable position or a vote against him would force Bush to nominate a more moderate candidate to replace O’Connor.) Conversely, for the Alito cloture vote, members could more easily rely on their ideological views as Alito embodied a critical nomination that would swing
the ideological balance of the court and replace the first female justice with a male nominee.

In addition to ideological distance, the state vote for Bush is also a statistically significant predictor in the pooled vote model and the Roberts confirmation vote model as Democratic senators from states with higher rates of voting for President Bush were more likely to vote for his nominees.\(^3\) The pressures of standing for re-election in 2006 weighed most heavily on the decision to invoke cloture on Alito’s nomination (pr=.11 in a two-tailed t-test on the Alito cloture model in Table 1) as senators feared being portrayed as obstructionists and did not want to draw attention away from issues that favored Democrats such as the Iraq war in an election year. Despite the fact that three of the Judiciary Committee Democrats, Senators Russ Feingold (D-WI), Herb Kohl (D-WI), and Ranking Member Patrick Leahy (D-VT) voted to confirm Roberts, membership on the Judiciary committee is not a significant predictor of voting on the nominations.

Insert Figure 1 Here

Taking into account the major influences on confirmation votes, gender does have some impact on senators’ voting decisions. While gender is always a substantively negative predictor of support for the nominees, it only approaches statistical significance (pr=.09) in a two-tailed t-test in the pooled logit model on all three votes. To gain a better understanding of the influence of gender, we developed predicted probabilities in which gender, ideological distance, and Bush’s vote in the state are varied to create a prediction for the probability that for example a conservative Democratic woman would vote to confirm John Roberts.\(^4\) Figure 1 demonstrates that across the board Democratic women are less likely to vote in favor of advancing the nominations of Roberts and Alito.
than are their male colleagues with similar ideological views and levels of constituent support for President Bush. However, given the baseline probabilities and the logit curve, the votes of the most liberal two quartiles of Democratic senators are entirely predictable based on their ideology. Thus, there is only an 8% mean probability that the most liberal Democratic women and a 19% average probability that the most liberal Democratic men would vote to confirm Roberts signifying that regardless of gender, the most liberal Democrats will not vote for President Bush’s Supreme Court nominees.

The importance of gender stems from its impact on the votes of the moderately liberal and conservative two quartiles of Democratic senators. It is among these senators that their confirmation votes are not entirely predictable from their ideology alone. Thus, among the moderate liberals, there is on average only a 36% probability that a female senator would vote to confirm John Roberts, while the mean probability that a male senator would confirm Roberts is 61%. Similarly, the mean probability that a moderately liberal Democratic woman would vote to invoke cloture on Samuel Alito is 26% compared to a 51% average probability that a moderately liberal male Democrat would vote for cloture. These results demonstrate that, in a political context that is permeated with gender considerations, ideology is the main driver of senators’ confirmation votes but gender does play a role as female senators exhibit a slightly more negative predisposition in their voting decisions and the marginal impact of gender is greatest among more ideologically conservative Democrats. Looking beyond the final vote, it is an open question whether the nominees’ conservative records on women’s rights exerted a greater influence on the views of women senators.

**Explaining the Vote**
It is possible that despite similar voting patterns, female senators focus more heavily on a nominee’s position on women’s rights as they seek to explain their vote. Senators utilize their explanations to achieve multiple goals. Richard Fenno (1978) writes that legislators’ explanation of their votes is key to understanding the relationship between representatives and their constituents. It is through these explanations that legislators establish their reputation with constituents and build the bonds of trust that allow them to take votes that are contrary to public opinion but reflect the legislator’s view of good public policy (Fenno 1978). Senators also use their public pronouncements as opportunities for taking positions that can bolster their electoral support with specific constituencies (Fenno 1978; Mayhew 1974; Hill and Hurley 2002). Given the high profile of a Supreme Court nomination, a senator’s vote and explanation of that vote is closely scrutinized by groups that provide financial and volunteer support in the next election campaign and by the media who will broadcast the senator’s position to constituents and voters.

If female senators are more likely to focus on women’s issues in their public explanations, it would support assertions that women prioritize women’s rights concerns and they view women and potentially women’s organizations as a distinct group within their election constituency (Mansbridge 1999; Williams 1998; Phillips 1995). Indeed, studies of floor debate in the House of Representatives demonstrate that women do perceive themselves as surrogates for women outside of their district, women are more likely to mention different constituencies of women in their speeches, and they are more likely to invoke their own unique perspective as women particularly their perspective as mothers (Shogan 2001; Walsh 2002).
Within the institution, senators also utilize their vote explanations to send signals to other senators and the White House. Thus, the vote explanation is an outlet for expressing one’s policy preferences even when the constraints of the institutional and political context determine the vote (Maltzman and Sigelman 1996; Hill and Hurley 2002). Moreover, senators can utilize their statements to influence the deliberative process by highlighting issues that require legislative attention. If women focus more heavily on women’s interests in their statements, it would indicate that women bring a different perspective to legislative debate and place greater weight on the importance of women’s issues (Mansbridge 1999; Williams 1998; Phillips 1995). Analyses of floor debate demonstrate that both Republican and Democratic women are more likely to mention women’s issues in their floor speeches, particularly issues that are directly related to women as a group such as women’s health and crimes against women (Shogan 2001; Walsh 2002; Osborn and Mendez 2010).

To assess senators’ justifications for their votes, senators’ speeches in the Congressional Record during floor debate on the Roberts and Alito nominations were examined as well as the statements of Judiciary Committee members at the business meeting where committee members vote on the nominee, and press releases of senators who did not make a floor statement. The analysis noted whether a senator mentioned an issue related to women or women’s rights and the nature of the issue, for example, abortion rights, gender discrimination, or a desire to see more women appointed to the court. The extent of the senators’ comments was also assessed. Thus, were women’s rights mentioned as one issue among a list or did the senator devote a more extensive portion of their speech to a discussion of their disagreement with the nominee’s record on
that issue. The extent to which a senator focuses on an issue is a good indication of the intensity they feel about the subject.

In the complicated dance of the confirmation process, there is a strong assumption that the president’s partisans will uniformly support and defend the nominee. Therefore, the majority of Republicans focused their comments on praising the nominee’s qualifications and temperament and avoided talking about judicial philosophy beyond making efforts to defend the nominee against the criticisms leveled by the opposition. Thus, the statements of Republicans focused on Roberts and Alito’s impressive credentials. They also spoke of their modest temperament and the fact that these men would not be activist judges who would seek to make law from the bench, an important signal to the conservative base.

Conversely, those who oppose the nominee, in this case Democrats must focus on issue positions to paint a picture of the nominee that demonstrates that he is out of the mainstream of judicial philosophy and will threaten important constitutional rights. Democratic senators expressed concerns about a wide range of issues including women’s rights, civil rights, business-labor issues, the limits of executive power, separation of church and state, and the judicial branches respect for congressional authority.

Finally, the cross-pressured senators, generally conservative Democrats and moderate Republicans who were heavily lobbied and subjected to intense media scrutiny, focused more on Senate procedure and the judges’ qualifications and temperament than on issues. Those who did mention issues (for example, moderate Republicans and Democrats who voted for Roberts) reiterated their commitment to a particular constitutional right, for example abortion rights and then explained why the nominees’
statements in the hearing and/or in their private meeting reassured the senator that the nominee would not threaten the future of fundamental rights, i.e. the nominee respects precedent and the senator does not believe he will seek to overturn *Roe*. Thus, the statements of cross-pressured senators reflected a strategy of blame avoidance rather than credit-claiming as Democrats from red states sought to avoid alienating conservative voters and moderate Republicans engaged in a political calculus that balanced loyalty to party and president with their electoral vulnerability.

Insert Table 3 Here

Looking at the prominence of women’s issues in statements across senators, Table 3 shows that the majority of Democrats pointed to women’s issues as they explained their votes. These explanations range from a brief mention of women’s rights among a list of other issues to extensive discussions of the nominees’ record on abortion. Only six male Democrats did not mention women’s issues in their remarks on either the Alito or Roberts nominations. Hailing from states that gave more than 50% of their votes to President Bush in 2004 these senators including, Mark Pryor (AR), Kent Conrad (ND), John D. Rockefeller (WV), Robert Byrd (WV), Tim Johnson (SD), and Ben Nelson (NE), wanted to avoid drawing attention to the nominee’s views on contentious issues for fear of alienating their more conservative constituency.

While most male Democrats (75% in the debate on the Roberts nomination and 69% in the debate over Alito) cited women’s issues in their explanations, Democratic women were even more likely than Democratic men to mention women’s issues as a key factor in their votes. Indeed all the Democratic women referred to women or women’s rights as they debated the Roberts nomination and all of the women except Mary
Landrieu (D-LA) pointed to a women’s issue as a source of their opposition to Justice Alito. Finally, Democratic women were much more likely than Democratic men to mention multiple women’s rights issues as they explained their votes. While only 9 of the 36 (25%) Democratic men discussed more than one women’s issue as they detailed their concerns with the Roberts nomination, 6 of the 9 (67%) Democratic women mentioned multiple women’s issues. Since Alito had a more controversial record than Roberts and he was replacing O’Connor, more Democratic men, 12 of 36 (33%) highlighted multiple women’s issues in their remarks on the Alito nomination while the number of Democratic women who cited multiple women’s issues remained steady at 67%.

Moreover, Democratic women were the only group of senators who focused more attention on women’s rights issues beyond abortion. While Democratic men and Republicans were most likely to mention abortion rights, Democratic women devoted even more attention to other women’s issues, including employment discrimination, family and medical leave, sexual harassment, and Alito’s membership in Concerned Alumni of Princeton. Using two sample tests of proportions (see Table 3), I find that across both the Alito and Roberts nomination debates, Democratic women were significantly more likely to mention women’s issues beyond abortion than were their male counterparts. These findings align with Osborn and Mendez (2010) analysis of senators’ participation in floor debate in the 106th Congress in which they find that female senators are more likely to mention topics directly connected to women in their floor speeches including women’s health, crimes against women, and family leave. However, abortion was the only women’s rights issue that did not exhibit gender differences in frequency of debate. The lack of gender differences in mentions of
abortion reflects its position as a touchstone of partisan debate and interest group concern making it a required subject of discussion for party members regardless of gender. Since other women’s rights issues do not attract the same level of partisan attention, gender differences in the prioritization of these issues emerge. The fact that Democratic women devote more attention to women’s rights issues outside of abortion supports the claim that group members bring new issues to the agenda and act as more vigorous advocates for group concerns.

Turning to Republicans, since the proponents of the nominee seek to highlight the qualifications of the nominee to delegitimize the opposition’s focus on judicial philosophy, far fewer Republicans than Democrats mentioned women’s issues in their statements of support for Roberts and Alito. For example, only 15 of the 50 male Republicans, or 30% mentioned a women’s issue in their explanation of their vote in favor of Roberts and only 18 or 36% of Republican men mentioned women’s issues in their remarks on the Alito nomination. Most Republican men referring to women’s issues did so to defend the nominee against Democratic criticisms or to condemn prior decisions of activist courts, particularly on abortion. Thus, 11 of the 15 Republican men who discussed women’s issues in their remarks on the Roberts nomination and 15 of the 18 Republican men who mentioned women’s issues as they defended the Alito nomination spoke about abortion. These references included condemning Democrats for using abortion as a litmus test, highlighting the accolades of pro-choice judges and attorneys who support Roberts or Alito, and denouncing specific decisions of an activist court, particularly the decision striking down partial-birth abortion laws.
In contrast to the gender differences found among Democrats, Republican women were no more likely than Republican men to refer to women’s issues in their remarks. Unlike Republican men, the Republican women who did speak about women’s issues did not make great efforts to defend the nominees against Democratic attacks about their sensitivity to women’s issues. Only two of the five Republican women spoke extensively about women’s issues, Susan Collins (ME) in her remarks on the Alito nomination and Olympia Snowe (ME) in defense of her vote for the Roberts nomination. Both explained why they believed the nominee would not overturn *Roe*. While Senators Hutchison (R-TX) and Dole (R-NC) made only passing references to women’s issues in their remarks on the Alito nomination, Hutchison did offer a brief explanation for Alito’s actions in a sexual harassment case. However, none of the Republican women tried to defend Alito’s membership in Concerned Alumni of Princeton or his decisions in other high profile cases criticized by Democrats.

The silence of Republican women is all the more striking because there was a conscious effort by the Bush administration and Republican Senate leadership to combat criticism that the nominees were insensitive to women’s rights (Stern 2006; Manning 2006). The vocal support of female senators as spokespersons for a woman’s viewpoint would be helpful to that goal. Indeed, senate staffers and interest group leaders noted that no one expected the moderates to publicly campaign for the nominees. They were just happy with their silence. However, several Republican staffers noted that party leaders tried to get the conservative women to play a more active role in defending the nominees but they could never get them to come to the floor and attend press conferences.
In sum, as part of their larger effort to portray Roberts and Alito as outside the mainstream of judicial philosophy, Democrats devoted more attention to the nominees’ positions on women’s issues than Republicans did. Among Democrats, Democratic women were more likely than were Democratic men to focus on women’s issues, to discuss issues beyond abortion, and to mention multiple women’s issues in their speeches. Given the small number of Republican women in the Senate, we cannot draw firm conclusions about their behavior. Yet, Republican women did not devote more attention to women’s issues in their vote explanations in comparison to Republican men. Moreover, Republican men were more likely to utilize their remarks to mount a defense of Roberts and Alito’s positions on women’s issues than were Republican women.

**Conclusion**

The politics of Supreme Court nominations is pivotal to the future of women’s rights in the United States a fact that is reinforced by the Roberts court decisions limiting abortion rights (*Gonzales v. Carhart*) and making it more difficult to bring claims of employment discrimination (*Ledbetter v. Goodyear Tire & Rubber Co.*). While research demonstrates that the policy impact of female officeholders is strongest in areas that can be most directly connected to women as a group, gender plays a limited role as a determinant of votes on Supreme Court nominations. Instead, senators are guided by partisanship and ideology. The demands for party loyalty are particularly stringent for members of the President’s party. Ideological distance from the nominee largely rules the vote decisions of opposition party senators. Still gender does have an impact on the votes of the more cross-pressured moderate and conservative Democrats.
In this rigid political atmosphere, the impact of gender is more clearly reflected in senators’ explanations of their votes. Through their explanations senators seek to build trust with constituents and send signals to important electoral groups, fellow senators, and the White House. Female senators, particularly Democrats were more likely to point to women’s issues as a priority in their evaluation of the nominee, to address issues of gender equality beyond abortion, and to devote extensive portions of their statements to gender-related concerns. The centrality of women’s rights to the vote explanations of Democratic women provides some evidence for the claim that women bring a distinctive perspective and set of issue priorities to deliberations over policy. Thus, gender differences found in research on state legislatures and the House of Representatives also hold true in the much less studied and unique institutional context of the U.S. Senate. Yet, the politics of Supreme Court nominations and the actions of conservative Democrats and moderate Republicans also demonstrate that policy preferences do not translate easily into legislative actions. Rather senators’ behavior is guided by significant institutional and political constraints that channel and inhibit a senators’ ability to pursue preferences based on gender.
Table 1
Logit Analysis of Democratic Senators Votes on the Roberts Confirmation Vote and the Alito Cloture Vote (Standard Errors in Parentheses)

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Roberts Confirmation</th>
<th>Alito Cloture</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female Senator</td>
<td>-1.11 (0.95)</td>
<td>-1.08 (1.18)</td>
</tr>
<tr>
<td>Ideological Distance</td>
<td>-5.18 (3.22)</td>
<td>-12.42* (6.04)</td>
</tr>
<tr>
<td>2004 State Vote for Bush</td>
<td>.13^ (0.08)</td>
<td>.175 (0.12)</td>
</tr>
<tr>
<td>Judiciary Committee Member</td>
<td>.4 (0.94)</td>
<td>-.94 (1.47)</td>
</tr>
<tr>
<td>Up for Re-election 2006</td>
<td>-.06 (0.77)</td>
<td>1.88 (1.18)</td>
</tr>
<tr>
<td>Constant</td>
<td>-3.48 (4.73)</td>
<td>-3.0 (7.7)</td>
</tr>
<tr>
<td>Log Likelihood</td>
<td>-22.89</td>
<td>-13.93</td>
</tr>
<tr>
<td>Log Likelihood Ratio Chi Square</td>
<td>16.58</td>
<td>32.32</td>
</tr>
<tr>
<td>Psuedo-R2</td>
<td>.27</td>
<td>.54</td>
</tr>
<tr>
<td>N</td>
<td>45</td>
<td>44</td>
</tr>
</tbody>
</table>

^p<=.1 *p<=.05 **p<=.01 ***p<.001
### Table 2
Logit Analysis of Democratic Senators Votes on Roberts Confirmation Vote, Alito Cloture Vote, and Alito Confirmation Vote with Clustered Standard Errors by Senator (Robust Standard Errors in Parentheses)

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Vote</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female Senator</td>
<td>-1.17^</td>
</tr>
<tr>
<td></td>
<td>(0.7)</td>
</tr>
<tr>
<td>Ideological Distance</td>
<td>-6.28^</td>
</tr>
<tr>
<td></td>
<td>(3.43)</td>
</tr>
<tr>
<td>2004 State Vote for Bush</td>
<td>.19*</td>
</tr>
<tr>
<td></td>
<td>(0.08)</td>
</tr>
<tr>
<td>Judiciary Committee Member</td>
<td>.11</td>
</tr>
<tr>
<td></td>
<td>(0.83)</td>
</tr>
<tr>
<td>Up for Re-election 2006</td>
<td>.96^</td>
</tr>
<tr>
<td></td>
<td>(0.53)</td>
</tr>
<tr>
<td>Roberts Confirmation Vote</td>
<td>4.02***</td>
</tr>
<tr>
<td></td>
<td>(0.96)</td>
</tr>
<tr>
<td>Alito Cloture Vote</td>
<td>3.54***</td>
</tr>
<tr>
<td></td>
<td>(0.93)</td>
</tr>
<tr>
<td>Constant</td>
<td>-10.15*</td>
</tr>
<tr>
<td></td>
<td>(5.14)</td>
</tr>
<tr>
<td>Log Pseudolikelihood</td>
<td>-45.32</td>
</tr>
<tr>
<td>Wald Chi Square</td>
<td>27.03</td>
</tr>
<tr>
<td>Psuedo-R2</td>
<td>.47</td>
</tr>
<tr>
<td>N</td>
<td>134</td>
</tr>
</tbody>
</table>

^p<=.1 *p<=.05 **p<=.01 ***p<.001
Figure 1: Predicted Probability of Voting "Yes" on Roberts Confirmation and Alito Cloture

Note: Ideological distance is varied at the 25th (conservative) and the 75th (most liberal) percentiles of the Democratic party, as well as at the 38th percentile (moderately liberal), the 2nd quartile median, and at the 63rd percentile (liberal), the 3rd quartile median. The values for the Bush vote share are varied at the same percentiles, low, moderately low, moderately high, and high Bush vote share, respectively. The values for judiciary committee member and up for re-election are set at zero. For the Roberts vote, the nominee dummy variables are set at "1" and "0" for Roberts and Alito, respectively. For the Alito cloture vote, the nominee dummy variables are set at "0" and "1" for Roberts and Alito, respectively.
Table 3.
References to Women’s Issues in Senators’ Explanations of their Roberts and Alito Confirmation Votes
(Number of Senators in Parentheses)

<table>
<thead>
<tr>
<th></th>
<th>Women’s Issue</th>
<th>Abortion</th>
<th>Other Women’s Issue</th>
<th>Women’s Issue</th>
<th>Abortion</th>
<th>Other Women’s Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Roberts</td>
<td></td>
<td></td>
<td>Alito</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dem. Men</td>
<td>75%</td>
<td>58%</td>
<td>42%</td>
<td>69%</td>
<td>53%</td>
<td>50%</td>
</tr>
<tr>
<td>Dem Women</td>
<td>100%*</td>
<td>78%</td>
<td>88%^</td>
<td>89%</td>
<td>67%</td>
<td>89%*</td>
</tr>
<tr>
<td>(N=9)</td>
<td>(9)</td>
<td>(7)</td>
<td>(8)</td>
<td>(8)</td>
<td>(6)</td>
<td>(8)</td>
</tr>
<tr>
<td>Difference</td>
<td>*</td>
<td>n.s.</td>
<td>^</td>
<td>n.s.</td>
<td>n.s.</td>
<td>*</td>
</tr>
<tr>
<td>of Proportions</td>
<td>(p=.05)</td>
<td>(p=.28)</td>
<td>(p=.09)</td>
<td>(p=.19)</td>
<td>(p=.45)</td>
<td>(p=.03)</td>
</tr>
<tr>
<td>Repub Men</td>
<td>30%</td>
<td>22%</td>
<td>12%</td>
<td>36%</td>
<td>30%</td>
<td>22%</td>
</tr>
<tr>
<td>(N=50)</td>
<td>(15)</td>
<td>(11)</td>
<td>(6)</td>
<td>(18)</td>
<td>(15)</td>
<td>(11)</td>
</tr>
<tr>
<td>Repub Wom</td>
<td>20%</td>
<td>20%</td>
<td>20%</td>
<td>60%</td>
<td>40%</td>
<td>20%</td>
</tr>
<tr>
<td>(N=5)</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
<td>(3)</td>
<td>(2)</td>
<td>(1)</td>
</tr>
<tr>
<td>Difference</td>
<td>n.s.</td>
<td>n.s.</td>
<td>n.s.</td>
<td>n.s.</td>
<td>n.s.</td>
<td>n.s.</td>
</tr>
<tr>
<td>of Proportions</td>
<td>(p=.64)</td>
<td>(p=.92)</td>
<td>(p=.61)</td>
<td>(p=.29)</td>
<td>(p=.72)</td>
<td>(p=.92)</td>
</tr>
</tbody>
</table>

Note: Two-sample tests of proportions are used to determine whether the difference between the proportion of Democratic (Republican) men and Democratic (Republican) women speaking for example on a women’s issue during the debate over the Robert’s nomination is significant.
References


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Segal, Jeffrey A., Charles M. Cameron, and Albert D. Cover. 1992. “A Spatial Model of


As part of a larger project on the influence of gender on senators’ policy decisions, Swers interviewed 42 staffers associated with 38 Senators including staffers to 17 Republicans and 21 Democrats. The interviews were conducted between 2004 and 2008. The interview subjects include chiefs of staff, legislative directors, legislative assistants, legislative counsels, committee staff, and campaign managers. Some have worked for multiple senators. One former Democratic Senator and one former Republican Senator who served in either or both the 107th and 108th Congresses were also interviewed. The interest group leaders interviewed included 5 individuals from 3 liberal groups and 3 individuals from 3 conservative organizations. All interviews were anonymous. Direct references to senators are used when the interview subject is not on the personal staff or when the staffer granted permission.

The ideological distances scores developed by Epstein, Lindstadt, Segal, and Westerland utilize the Segal Cover scores that employ newspaper editorials to develop an ideological ranking of Supreme Court nominees. These scores are transformed through statistical bridging techniques to make them compatible with Poole-Rosenthal Common Space scores that place senators on a common liberal-conservative dimension. The ideological distance variable represents the squared value of the difference between the common space scores of the nominee and the senator (See Epstein et al. 2006 for further information).

The ideological distance scores and the presidential vote scores are highly correlated with a correlation coefficient of .6. However, the fact that state vote for Bush reaches statistical significance in two of the three models indicates that the ideological distance and presidential vote variables are picking up distinct and robust effects.

The predicted probabilities were developed using Clarify: Software for Interpreting and Presenting Statistical Results (Tomz, Wittenberg, and King 2003). The program runs 1000 simulations and allows one to vary characteristics of the senators while setting all other variables to a constant value. We varied ideological distance by setting the distance at the 25% (conservative) and 75% (most liberal) quartiles among Democrats. For the moderate liberals, the distance variables were set at the midpoint between the 25% and 50% quartiles (38%). For liberals the distance variables were set at the midpoint between the 50% and 75% quartiles (63%). The state vote for President Bush was set at the midpoint between the 50% and 75% quartile (63%). The state vote for President Bush was set at the 25% quartile (most liberal), the midpoint between the 25% and 50% quartile (liberal), the midpoint between the 50% and 75% quartile (moderate liberal) and the 75% quartile (conservative). The dichotomous variables, Judiciary Committee member and up for re-election were set at the mode of 0. The Roberts confirmation and Alito cloture vote dummy variables were set to 1 when predicting their specific vote and 0 otherwise.