

Tweeting Advice and Consent?

How Congress Talks About Supreme Court Nominations and Legitimacy Online

Abstract:

Supreme Court nominations represent a unique moment where Congress is given the opportunity to shape the Court via their constitutional duty of advice and consent. Importantly they have the ability to build the legitimacy of the Court by reinforcing the norms of the process and the qualifications of the nominee. The literature on Supreme Court nominations and real-world events have demonstrated that nominations are more contentious than in prior eras and that the ideology of judges is key to how political actors rate them. This paper uses the tweets of all sitting Congress members during the nominations of Amy Coney Barrett and Ketanji Brown Jackson to understand how they communicate about nominations and legitimacy. I find that while those closest to the process, the Judiciary Committee and senators more broadly, lead the conversation, both parties question the legitimacy of the process. The party in the minority paints the candidate as a partisan actor, but Democrats and Republicans differ in how they do this. These findings have implications for how we understand interbranch relationships, digital communication in Congress, and perceptions of the Court's legitimacy.

Keywords: Congress, Supreme Court, nominations, legitimacy, Twitter

Introduction

During the confirmation hearing of Amy Coney Barrett, Senator Marsha Blackburn (TN) tweeted this quote from the nominee:

Figure 1: Blackburn - Barrett Tweet

About 18 months later, during the confirmation hearing of Ketanji Brown Jackson, Senator Blackburn tweeted a quite different response of her own:

Figure 2: Blackburn - Jackson Tweet

To some degree, these tweets are in conflict with one another. In the first, Blackburn highlights the power of justices to change the law and in the second she insinuates that to do so would make a judge an “activist”. I highlight these two examples because they illustrate the differences in how a single Senator positions herself within her duty of advice and consent, the Constitutional role the Senate plays in Supreme Court nominations. In both cases, Senator Blackburn was on the Senate Judiciary Committee, and during both nominations she was the most active tweeter, tweeting over 40 times during both confirmations.

How do members of Congress communicate about Supreme Court nominations? And more importantly, what implications does it have on the legitimacy of the nomination process and the nominees themselves? Nominations represent a highly salient and short window where Congress has control over the shape of the Court and the public is highly engaged. I am interested in understanding which members of Congress lead the conversation online during

nominations and what the content of their communication is. This paper leverages the Twitter data of all sitting members of Congress to get a sense of how and what they communicate in this time.

Using over 2,000 hand-coded tweets from the confirmation hearings of Amy Coney Barrett and Ketanji Brown Jackson, I find three things. First, members of the Senate Judiciary and Senators more broadly lead communication on this issue, showing that their role of advice and consent influences their communication during this time. Second, that the party in the majority builds legitimacy around the nominee and the process, while also painting the objections of the minority as illegitimate. The party in the minority paints the process as illegitimate and the nominee as partisan. This is true for both hearings, despite the nominees having very similar legal qualifications and the circumstances of the nomination being very different.

Finally, using the text of these tweets, I look at the language the parties use to build or challenge legitimacy. In both cases, the majority party appeals to their duty to confirm and the qualifications of the nominee. Though the nominations occurred under quite different circumstances, when both parties were in the minority they painted the process as overly partisan. Democrats focused on the impact Barrett's confirmation would have on healthcare, the Affordable Care Act, and abortion, while Republicans focused on Jackson's history of sentencing and tied her legal philosophy to critical race theory. These findings have implications for how we understand digital communication in Congress, how views of the Court's legitimacy are communicated, and how the parties differ in their approach to nominees when they in the minority.

Congressional Power and Nominations

Supreme Court nominations are short, yet highly salient moments in American politics. A unique characteristic of nominations is that they bring together all three branches of government together in a singular political moment. The process of nominations, not just for the Supreme Court, has become an increasingly sophisticated one and one that has increasing impact on how policy is understood and implemented. For these reasons, political actors at numerous levels now play key roles in how judicial appointments happen in the American legal system (Cameron & Kastellec, 2023).

Confirmations give Congress the ability to shape judicial politics, sometimes for long stretches into the future. Though there are other options for the legislative branch to reign in the power of the judiciary, these options are largely off the table. Options such as jurisdiction stripping or court curbing remain open to Congress but are difficult to accomplish without large majorities (Handberg & Hill, 1980; Lewis, 2018; Nagel, 1964). Congressional threats to overturn Supreme Court decisions were once credible (Eskridge, 1991), but in our current political era, shifting national politics via legislation has become increasingly difficult because Congressional majorities are slim, and unified government is less common than it has been in the past (Lee, 2016). The outcome of this has been an increased importance of judicial nominations at all levels of the federal judiciary. Lifetime appointments give those in power a luxury that congressional majorities do not have – time (Ferejohn & Weingast, 1992). This has turned vacancies, particularly at the Supreme Court level increasingly contentious (Armaly & Lane, 2023; Scherer et al., 2008).

Key to the conflict over nominations is the Senate's role of advice and consent, the process by which the Senate confirms a president's nominee to the Supreme Court. Where it was

once common for there to be deference to the president or partisan patronage in nominations, there has been decreasing bipartisan support for nominees over time (Cameron & Kastellec, 2023; Scherer, 2005). The level of attention that Congress and the president give to the modern nomination process signals that the process is not simply vetting the nominee, but a process of political calculus (Epstein & Segal, 2005). There are individual characteristics that increase Congress' confidence in a nominee like experience in the federal judiciary (Shipan & Shannon, 2003). However, the ideology and legal philosophy of the judge is arguably the most important determining factor in the length and outcome of a confirmation (Epstein et al., 2006; McCarty & Razaghian, 1999).

Scholars have taken different approaches to understanding the exact strategy undertaken by political actors in the nomination process. While some might put forward the argument that judges act purely on legal principles, the consensus view in political science is that justices act in the direction of their political preferences with varying levels of constraint. There is a thread in the literature that debates whether the nomination process is an attempt to move the ideology of the median justice on the court (Cameron & Kastellec, 2016; Cottrell et al., 2019; Lemieux & Stewart, 1990; Moraski & Shipan, 1999). Adherents to the attitudinal model highlight that once a justice is confirmed to the Supreme Court, there are very few constraints in pursuing their ideological preferences in rulings (Segal & Spaeth, 2002). Additionally, the ability of members of Congress to impact the decisions of Supreme Court justices is quite limited after a nomination ends (Caldiera & Wright, 1988; Goelzhauser, 2011).

The literature around nominations drives home that these are highly political events, that members of Congress and the President view them as opportunities to shape the judicial branch, and that they've become increasingly contested over the last several decades. We should care

about confirmations because they represent a window into legislative power that opens unpredictably and have increased importance in modern politics. Additionally there is evidence that nominations are among the most salient activities surrounding the Supreme Court. Figure 3 shows Google Trends search data around the term “Supreme Court”. Nomination hearings are only surpassed in regard to the public interest by news of vacancies on the Court and landmark decisions.

FIGURE 2: Google Searches for “Supreme Court”

Legitimacy

Legitimacy as a concept is difficult to fully untangle, but is key to the Supreme Court’s power as an institution. One common way to think about legitimacy is to think of the public’s diffuse support for the institution (Easton, 1965; Gibson & Caldeira, 1992). In this framework, legitimacy is found in a general sense of goodwill toward the institution, granting the Court the ability to make legal decisions even when they are counterattitudinal to an individual. Tension around the Court’s ideological shift and the impact on its legitimacy have been central to discussions about the Court over the last decade. Gibson & Caldeira (2011) show that most Americans grant that there is some level of legal realism happening in Supreme Court decision-making, but that this does not hurt the Court’s overall perception to the public. More recent debates have extended this, arguing whether the perception of the Court is central to understanding its legitimacy (see Bartels & Johnston, 2013; Gibson & Nelson, 2015). Leveraging conservative and liberal decisions, Christenson & Glick (2019) find that decisions that counter an individual’s ideological preferences hurt legitimacy. Moreover, this harm is of a

greater magnitude than the positive effect of a decision in the individual's preferred direction, indicating that the penalty for going against public opinion may be a large hit to legitimacy. Additionally, hyperpolarized rhetoric around the Court from credible sources can damage legitimacy (Nelson & Gibson, 2019). Put together, legitimacy in the Court is fragile, rests on historic deference to the Court, but has faltered as the Court's perception has shifted and, in turn, rhetoric has become more politicized. The language from members of Congress can help or hurt this legitimacy, especially as the public watches them play a role in the functioning of the Court.

Legitimacy is not a latent trait of the judicial system, it is something that is made. This can happen within the judiciary via respect for precedent and limited usage of reversals (Cross, 2005; Klein & Hume, 2003). The court can also build legitimacy through the decision to hear a case (Caldeira et al., 1999) and through the legal principles they apply when deciding cases (Woodson, 2018). Increased descriptive representation in the form of Justices Thomas, Kagan, and Sotomayor has been shown to increase feelings of representativeness when thinking about the Court (Badas & Stauffer, 2018). The importance of representation in increased legitimacy goes further. Kastellec et al. (2010) provide evidence that Senators consider in-state public opinion when deciding how to vote, though they commonly vote party line when there is a conflict between state-level support and bipartisan support (Kastellec et al., 2015).

Legitimacy is created through certain actions and communicated in the explanation of these actions. In the example of respecting precedent, justices are not only allowing precedent to limit their behavior and communicating that respect for this legal restraint is important to the functioning of the Court. Justices can also do the opposite, as Justice Clarence Thomas did in his concurring opinion to *Dobbs vs. Jackson Women's Health Organization*, encouraging the Court to take on cases in an effort to overturn precedent. Scheb & Lyons (2000) refer to the belief that

legal principles outweigh political preferences as the “myth of legality” and their research shows that this view is held more frequently by elites than by the general public. In a similar line of work, Gibson, Caldeira, and Spence (2003) and Gibson and Caldeira (2009) highlight that there is a positivity bias ingrained in the public when making evaluations about the Supreme Court. If the power of the Supreme Court is heavily dependent on its legitimacy, the scholarly understanding of legitimacy is that it is a manufactured power. Not just in how the Supreme Court acts but in how other political actors act in relation to the Court.

Why Tweets?

Using Twitter data to study Supreme Court nominations may seem counterintuitive on its face. I want to make the argument that it’s an ideal source to examine the actions of members of Congress over a short, but highly focused period. Twitter is utilized globally at all levels of the political process (Jungherr, 2016; López de Ayala-López et al., 2016). Congress began using the platform over a decade ago and has completely incorporated tweeting into its political communication repertoire (Lassen & Bode, 2017; Lassen & Brown, 2011). We know that members of Congress will communicate on the platform as part of their job and do so to communicate with political elites.

Twitter is key to how Senators represent themselves to their constituents in the 21st century and Senators develop strategic rhetorical approaches based on their priorities in Congress (Russell, 2021). Twitter data can also help us understand differences in how parties communicate about the same issue and the priorities of individual members of Congress (Russell, 2018b, 2018a). Moreover, what members of Congress say and when they choose to communicate matters. Messages from members of Congress send important signals to constituents about what is important and how they should understand their actions in Congress (Grimmer, 2013).

The benefit of using Twitter data for this specific question is that it provides not only digital trace data during key periods, in this case, the days of Supreme Court nominations but also text that contains sentiment about the topic of interest and variations in frequency of communication. Alternatives such as press releases or floor speeches are typically only done once and have a greater cost attached to them. Nominations are also focusing events for the media in their coverage of the Supreme Court (Cameron & Kastellec, 2023). Given that the media and politically active elites more commonly utilize Twitter than the average citizen, I would expect there to be more focused communication from members of Congress around not only the nomination itself but also the legitimacy of the nominee and the process.

The audience on Twitter is not representative of the American public and we have evidence that members of Congress know this and communicate on the platform because they are trying to reach members of the press and political elites (Burnley, 2024). Additionally, as (Scheb & Lyons, 2000) point out, this is exactly the group that is more likely to perpetuate the “myth of legality” around the Supreme Court. Given the audience of Twitter is more plugged in and more susceptible to legitimacy communication, this makes the messages sent by members of Congress on Twitter about the Supreme Court nomination a theoretically rich place to understand how they communicate about the legitimacy of both the nomination process and the nominee themselves.

Hypotheses

The empirical approach of this paper is to better understand how Senators communicate their constitutional duty of advice and consent. Do they take this part of their job into the digital public sphere? And if so, what do they communicate about? Past research on how Senators use the platform gives us strong evidence that they should and that members of the judiciary

committee, those tasked with the confirmation hearings, would do so more than their colleagues. (Russell, 2021).

H1: Members of the Senate Judiciary will tweet more about the Supreme Court nomination process than their peers.

Additionally, I expect members of Congress to be influenced by the political factors surrounding the nomination. Because they view the ideological balance of the Court as key, I expect ideological change to the makeup of the Court to inspire more communication from members of Congress than situations when a nominee is replacing a justice with a similar ideology.

H2: Members of Congress will tweet more about the Supreme Court nomination process when an ideological change to the Court is happening.

Lastly, there will certainly be partisan differences in how members communicate because of how intense the battle over the Supreme Court has become. Content of communication is not solely a function of partisanship but also of whether a party controls the nominating process or not. Despite viewing the confirmation as a political process, I expect members in the majority to appeal to the myth of legitimacy rather than playing up the ideological goals of the process. In contrast, I expect the minority party to be the one to communicate concerns about the nominee and the legitimacy of the process.

H3: Majority parties are legitimacy builders, will paint the process as legitimate, and highlight the qualifications of their nominee

H4: Minority parties will question legitimacy and the nominee when ideological change is at stake, but will do so less when there is no ideological change to the court.

Data

The data for this project comes from XXXX's Twitter Election Project at XXXX University, which has been collecting data on presidents, governors, members of Congress, and nominees for Congress since 2019. The data set includes all available tweets from sitting members of Congress, scraped using a mix of the Twitter Intelligence tool and the Twitter API paired with nominee information and tweet metadata. In order to narrow down from the millions of tweets in the database to just the relevant tweets, I filtered accounts (both campaign and official) for sitting members of Congress during each confirmation hearing. I also filtered for the entire period of relevance for the nominations - from the day the seat was vacated to the day the nominee was eventually confirmed. Given the disparity in time periods and circumstances, this yielded a period that was far too large to be relevant to the questions at hand. As a result, the final analysis contains only tweets from the days of the confirmation hearings themselves. For Amy Coney Barrett's nomination, this period runs from October 12, 2020, through October 15, 2020, a period of four days. For Ketanji Brown Jackson's nomination, this period runs from March 20, 2022, through March 25, 2022, a period of six days. For the Barrett hearing, this brought the total number of tweets down to 4,149, and for the Jackson hearing the total number to 9,043.

The concepts of legitimacy and legality are complex and would be challenging to train a classifier model on. For greater validity, I hand-coded tweets on four different scales: whether they were about the confirmation process, whether they said something about the legitimacy of the process, whether they mentioned the legal qualifications of the nominee, and whether they painted the process as historic. To do this, I took the entire data set of tweets, unnested all

individual tokens from the individual tweets, removed stop words, and sorted by the most frequently used words (Grimmer et al., 2022). I used this set of tokens to create a dictionary, based on the most common words used, that were applicable to the Supreme Court, the nomination process, and the nominees¹. The set of words is displayed in Table 1 below. These were used to filter the 13,000 tweets down to just tweets that were about the nomination process. The filtering yields around 2,000 total tweets - 871 for Barrett's time period and 1,197 for Jackson's.

Using just the tweets about the confirmation period, I then read all 2,000 tweets and hand-coded them for four qualities. First, I simply coded whether or not the tweet was actually about the nomination process. For the Barrett hearing, this was about 65% of the total tweets and for the Jackson hearing this was about 67% of the tweets. Second, I coded the tweets for their content regarding the legitimacy of the process. Tweets that painted the process as normal or legitimate, or appealed to the legitimacy of the Court itself received a 1. In contrast, tweets that questioned the legitimacy of the process, or questioned the legitimacy of the Court in general, received a -1. Any confirmation tweets that did not discuss legitimacy received a 0.

Next, I coded all tweets for whether they highlighted the legal qualifications of the nominee or if they painted the nominee as partisan in some way. If the tweet highlighted the legal qualifications of the nominee, did not paint them in a partisan light, or mentioned them impartially, the tweet was coded 1. If the tweet highlighted the nominee as a political partisan or painted the nominee as unqualified the tweet received a -1. All other tweets received a 0. The process legitimacy and nominee legitimacy scales were then turned into four dummy variables that are used in the main analysis of the paper.

¹ The dictionary used is in the supplemental materials submitted with this paper.

Table 1: Example of Coding of Tweets

Results

Who Tweets?

Which members of Congress are tweeting about Supreme Court nominations? As these events have become issues of national debate, it is not out of the question that all members, even those in the House, might be quite vocal on the topic. Figure 2 shows the results of models that consider individual members' characteristics as the independent and control variables and whether or not they tweeted about the confirmation, communicated the process was partisan, or communicated that the process was legitimate. Linear probability models are used for ease of interpretation, where coefficient estimates can be interpreted as a change in the probability of tweeting holding all other factors equal. Additional model specifications can be found in the appendix.

First, being a member of the Senate Judiciary Committee is associated with a greater likelihood of tweeting about the confirmation and the process, indicating that the members of the committee were among the most active in communicating about the hearing. Additionally, being a Senator was associated with tweeting about the confirmation and painting the process as partisan. Being in the majority party for either hearing was associated with tweeting more about the confirmation and painting the process as legitimate. Being a Senator alone increased the likelihood of tweeting about the hearing by 35%, a substantial increase. Being a member of the Judiciary increased the likelihood of all three tweet types somewhere between 11% and 18%. This gives strong evidence for Hypothesis 1, that the members of Congress most active in communicating about the hearing are those most intimately involved in the process.

Figure 4: Linear Probability Estimates for Confirmation and Process Tweets

One confounder that is hard to control for when you are only dealing with two cases is whether communication around Supreme Court nominations is really about electioneering. This might especially be true for the Amy Coney Barrett hearing which took place mere weeks before the general election in 2020. The models above contain controls for whether a member was up for election in the next election. Across all three models, being in an election year is associated with tweeting less about the confirmation hearings. While the confirmation tweet and process legitimacy models are not statistically significant, the model including tweets that paint the process as partisan is statistically significant. If the theory goes that Democrats might paint Amy Coney Barrett as partisan in order to win voters, those up for election did less of this. This means those whole are up for reelection were less willing to communicate that the process was partisan in either case. While this does not completely negate the need for additional cases, it does indicate there is some reticence from members of Congress to weigh in when they face reelection soon. This includes controls for Trump's vote share in the 2016 election, a measure of the partisan strength of their district or state.

Figure XX shows the same models but now for content about the nominee herself. Importantly, members of the Judiciary Committee are more likely to paint the nominee as partisan but no different than their counterparts in highlighting the nominee as qualified. When other Senators or House members chimed in about the nomination, it was often a positive statement about the quality of the nominee. Senators are more likely than their peers in the House to communicate in both directions about the nominee, indicating that it is Senators who are driving the dialogue around the nominee on Twitter. The following section will explore this

more, but it is worth noting that those in the majority are exclusively portraying the nominee as qualified while those in the minority portray the nominee as partisan.

Party Differences

We should expect partisan differences in the way that the parties communicate about the nomination process, but some of this difference is not a function of ideological differences but of whether the party is in the majority or the minority at the time of the nomination. Figure XX shows the percentage of total tweets from each confirmation hearing that were about the nomination process or nominee. First, both parties are more active during the Barrett hearing than the Jackson hearing, meaning that the party that is leading the nomination is more likely to communicate about the hearing. Additionally, the degree to which the minority party is communicating around the respective hearings is notable. Democrats come close to matching the output of Republicans in the Barrett hearing. In contrast, during the Jackson hearing, Republicans tweet less than half as frequently as Democrats.

Moving to the content of the tweets themselves, Table XX shows the percentages of each of the different types of tweets I coded for - either positive or negative on the process or nominee. A breakdown for each hearing shows the relative frequency for each kind of tweet by the parties. The final two columns show the change in frequency by majority status between the two hearings. Thirty one percent of Democrats' tweets during the Jackson hearing painted the nomination process as legitimate or normal. Compare this to only 22.6% of Republicans' tweets painting the process as legitimate or normal during the Barrett hearing. This difference of 8.7% is statistically significant.

There are two main takeaways from Table XX. First, we see partisan differences in the message around the process between the hearings. Majority and minority members are both more positive about process legitimacy during the Jackson Hearing than they were during the Barrett Hearing. Given the unusual circumstances around the Barrett hearing, particularly in Republicans' willingness to go against their own precedent in confirming a justice during an election year, this is somewhat surprising. Additionally, both majority and minority parties were less likely to paint the Jackson hearing as a partisan process than they were the Barrett hearing. This result needs a bit of explanation as it might not seem clear what's going on here without reading the text of the tweets themselves. During both nominations, the majority party often painted the concerns of minority as partisan obstruction rather than good faith questions about the legitimacy of the process. The Barrett hearing was an abnormal hearing. Republicans painted Democrats' concerns as simply complaining they were losing a seat on the Court, not criticism about the speed with which the process happened. Couching concerns of legitimacy in partisan rhetoric, especially when norms are being violated, conveys a sense of illegitimacy about the process as well. You see far less of this, and understandably so, during the Jackson hearing. Only 15% of Democrats' tweets during the Jackson hearing did this same rhetorical move of painting Republican concerns as partisan obstruction.

The second takeaway is that we don't see any differences in legitimacy communication *about the nominee* between the hearings. This is actually quite important. Communicating that the nominee is qualified is only done by the majority party and communicating that the nominee is partisan is almost exclusively done by the minority party. Most notably, Democrats and Republicans paint the nominee as partisan at similar rates when in the minority. This demonstrates that even when the nominee does not represent an ideological shift in the Court, the

minority party still spends most of their communication highlighting their ideology. This kind of communication has the potential to shift the myth of legitimacy in the minds of the public.

Partisan rhetoric during nominations consistently frames judges as political actors.

Text Analysis

To give additional descriptive value to the paper, the content of the tweets themselves was analyzed to compare the differences in how members of Congress portrayed the two hearings. Above, I show that in both cases members of the minority portray the nominee as partisan. However, how the parties do this, the words they choose, and the implications are quite different. Following a bag of words approach, I counted the number of times all tweets from a confirmation hearing used a word and then calculated the relative frequencies each party used those words across the hearing. The results for the Barrett Hearing are shown in Figure XX. The x-axis shows the percentage of Republican tweets that use each word and the y-axis shows the percentage of Democratic tweets that use the same word. This means words used equally by the parties will be on the diagonal line and words used more frequently by one party will move off diagonal. Words are colored by the party that used them more frequently.

In general, the legal terms tend to be used by Republicans. Words like “judiciary”, “bench”, “hearing”, “legal”, “law”, and “record” all show up as common words for the GOP. You also see the kinds of words Republicans used to target Democrats like “attack” and “radical”. For Democrats many of their words focus on healthcare, the Affordable Care Act, and voting. They also mention Republicans by name (McConnell and Trump) and use words like “activism” and “originalist” to describe Barrett’s ideology.

Figure XX shows the same chart but for Ketanji Brown Jackson's confirmation. The Democratic side of the plot is filled with words highlighting the quality of the nominee. Additionally, right in the middle of the cloud "history" and "black" appear, showing that many Democratic tweets commemorated Jackson's place as the first Black woman on the Court. For their part, Republicans leaned heavily into partisan messaging around Jackson's history of sentencing sex offenders, which they perceived as "soft", and attempted to tie her legal philosophy to critical race theory. It is worth noting the differences here between the minority parties across these two hearings. Democrats broadly attempted to paint Barrett in terms of her impact on policy, while Republicans were much more personal about Jackson. Jackson did not represent a shift in the balance to the Court, so perhaps this focus on her person is because she played a less pivotal role in shifting the median justice. It is worth noting though that these personal attacks were happening to the first Black woman nominated to the Supreme Court and that racism and sexism are at play.

Discussion

This paper looks at just one way that members of Congress talk about Supreme Court nominations to get a better understanding of how ideas of legitimacy and nominee qualifications are communicated. There are several key takeaways from the analysis above. First, the majority of the communication about Supreme Court nominations comes from those closely involved with the process of confirmation itself – members of the Senate Judiciary Committee and Senators, more broadly. This is a reassuring finding in an age of national politics, where members often weigh in on cultural and political touchpoints beyond the scope of their jobs. As demonstrated in Russell (2021), members often weigh in on areas where they have policy expertise and make

work that they impact in Congress part of their rhetorical agenda. From the standpoint of digital representation, this is a normatively desirable outcome. The public is better served when the conversation online faithfully represents the conversation in Congress.

That said, the kind of messages these members tweet often paint the process of nominations as bitterly partisan and the nominees themselves as political actors. While past literature tells us that the majority of the country already views the Court through this lens (Cameron & Kastlelec, 2023; Scheb & Lyons, 2000), Congressional communication has not always been this straightforward on the issue. As the American public tunes in during confirmation hearings, how the Court is portrayed by Congress is important. The results above show that in both cases, with qualified nominees but highly different circumstances, members of both parties paint the process as highly partisan. Both parties were much more likely to talk about the legitimacy of the process during the Barrett hearing. Additionally, in both cases, the minority party spends the majority of their communication attacking the nominee.

Lastly, analyzing the text of the tweets themselves shows differences in how the parties framed the two nominations. When both parties had the majority, they mostly focused on the job at hand, tweeting about the Judiciary Committee's work and talking about the behavior of the minority party. When in the minority, the parties behaved much differently. Democrats tied the confirmation of Amy Coney Barrett to policy outcomes, while Republicans focused on Ketanji Brown Jackson's history. Even though Jackson did not represent a change in the Court's ideological makeup, Republicans still pushed hard against her, and ultimately most voted against her confirmation.

This paper is not without limitations and future work should look to continue the effort here. First, additional cases would help to expand our understanding of Congressional

communication strategy under different circumstances and over longer periods of time. If access to Twitter's API is opened again, differences between earlier hearings in the Twitter era would indicate whether the increase in delegitimizing tweets is a feature of the post-Garland era, or one that has been consistent over time. While this paper has important implications for how we think about Congress members doing their job, future work should consider whether this kind of language changes how the public views the Court. Decisions are likely still the most impactful source of the Court's legitimacy or lack thereof, but understanding how Congress' views of the Court might signal to the public would expand our understanding of the relationship between branches.

Works Cited

- Armaly, M. T., & Lane, E. A. (2023). Politicized Battles: How Vacancies and Partisanship Influence Support for the Supreme Court. *American Politics Research*, 51(1), 23–36.
<https://doi.org/10.1177/1532673X211064299>
- Badas, A., & Stauffer, K. E. (2018). Someone like Me: Descriptive Representation and Support for Supreme Court Nominees. *Political Research Quarterly*, 71(1), 127–142.
<https://doi.org/10.1177/1065912917724006>
- Bartels, B. L., & Johnston, C. D. (2013). On the Ideological Foundations of Supreme Court Legitimacy in the American Public. *American Journal of Political Science*, 57(1), 184–199.

- Caldeira, G. A., Wright, J. R., & Zorn, C. J. W. (1999). Sophisticated Voting and Gate-Keeping in the Supreme Court. *Journal of Law, Economics, & Organization*, 15(3), 549–572.
- Caldeira, G. A., & Wright, J. R. (1988). Organized Interests and Agenda Setting in the U.S. Supreme Court. *The American Political Science Review*, 82(4), 1109.
- Cameron, C. M., & Kastellec, J. P. (2016). Are Supreme Court Nominations a Move-the-Median Game? *American Political Science Review*, 110(4), 778–797.
<https://doi.org/10.1017/S0003055416000496>
- Cameron, C. M., & Kastellec, J. P. (2023). *Making the Supreme Court: The Politics of Appointments, 1930-2020*. Oxford University Press.
- Christenson, D. P., & Glick, D. M. (2019). Reassessing the Supreme Court: How Decisions and Negativity Bias Affect Legitimacy. *Political Research Quarterly*, 72(3), 637–652.
<https://doi.org/10.1177/1065912918794906>
- Cottrell, D., Shipan, C. R., & Anderson, R. J. (2019). The Power to Appoint: Presidential Nominations and Change on the Supreme Court. *The Journal of Politics*, 81(3), 1057–1068. <https://doi.org/10.1086/703382>
- Cross, F. (2005). Appellate Court Adherence to Precedent. *Journal of Empirical Legal Studies*, 2(2), 369–405. <https://doi.org/10.1111/j.1740-1461.2005.00054.x>
- Easton, D. (1965). *A framework for political analysis*. Prentice-Hall.
- Epstein, L., Lindstädt, R., Segal, J. A., & Westerland, C. (2006). The Changing Dynamics of Senate Voting on Supreme Court Nominees. *Journal of Politics*, 68(2), 296–307.
<https://doi.org/10.1111/j.1468-2508.2006.00407.x>
- Epstein, L., & Segal, J. A. (2005). *Advice and consent: The politics of judicial appointments*. Oxford University Press.

- Eskridge, W. N. (1991). Overriding Supreme Court Statutory Interpretation Decisions. *The Yale Law Journal*, 101(2), 331–455. <https://doi.org/10.2307/796805>
- Ferejohn, J. A., & Weingast, B. R. (1992). A positive theory of statutory interpretation. *International Review of Law and Economics*, 12(2), 263–279. [https://doi.org/10.1016/0144-8188\(92\)90046-T](https://doi.org/10.1016/0144-8188(92)90046-T)
- Gibson, J. L., & Caldeira, G. A. (1992). Blacks and the United States Supreme Court: Models of Diffuse Support. *The Journal of Politics*, 54(4), 1120–1145. <https://doi.org/10.2307/2132111>
- Gibson, J. L., & Caldeira, G. A. (2009). Confirmation Politics and The Legitimacy of the U.S. Supreme Court: Institutional Loyalty, Positivity Bias, and the Alito Nomination. *American Journal of Political Science*, 53(1), 139–155. <https://doi.org/10.1111/j.1540-5907.2008.00362.x>
- Gibson, J. L., & Caldeira, G. A. (2011). Has Legal Realism Damaged the Legitimacy of the U.S. Supreme Court? *Law & Society Review*, 45(1), 195–219.
- Gibson, J. L., Caldeira, G. A., & Spence, L. K. (2003). The Supreme Court and the US Presidential Election of 2000: Wounds, Self-Inflicted or Otherwise? *British Journal of Political Science*, 33(4), 535–556. <https://doi.org/10.1017/S0007123403000243>
- Gibson, J. L., & Nelson, M. J. (2015). Is the U.S. Supreme Court's Legitimacy Grounded in Performance Satisfaction and Ideology? *American Journal of Political Science*, 59(1), 162–174. <https://doi.org/10.1111/ajps.12107>
- Goelzhauser, G. (2011). Avoiding Constitutional Cases. *American Politics Research*, 39(3), 483–511. <https://doi.org/10.1177/1532673X10388144>
- Grimmer, J. (2013). *Representational Style in Congress: What Legislators Say and Why It*

- Matters*. Cambridge University Press. <https://doi.org/10.1017/CBO9781139207782>
- Grimmer, J., Roberts, M. E., & Stewart, B. M. (2022). *Text as Data*.
<https://press.princeton.edu/books/hardcover/9780691207544/text-as-data>
- Handberg, R., & Hill, H. F. (1980). Court Curbing, Court Reversals, and Judicial Review: The Supreme Court versus Congress. *Law & Society Review*, *14*(2), 309–322.
<https://doi.org/10.2307/3053315>
- Jungherr, A. (2016). Twitter use in election campaigns: A systematic literature review. *Journal of Information Technology & Politics*, *13*(1), 72–91.
<https://doi.org/10.1080/19331681.2015.1132401>
- Kastellec, J. P., Lax, J. R., Malecki, M., & Phillips, J. H. (2015). Polarizing the Electoral Connection: Partisan Representation in Supreme Court Confirmation Politics. *The Journal of Politics*, *77*(3), 787–804. <https://doi.org/10.1086/681261>
- Kastellec, J. P., Lax, J. R., & Phillips, J. H. (2010). Public Opinion and Senate Confirmation of Supreme Court Nominees. *The Journal of Politics*, *72*(3), 767–784.
<https://doi.org/10.1017/S0022381610000150>
- Klein, D. E., & Hume, R. J. (2003). Fear of Reversal as an Explanation of Lower Court Compliance. *Law & Society Review*, *37*(3), 579–606.
- Lassen, D. S., & Bode, L. (2017). Social Media Coming of Age: Developing Patterns of Congressional Twitter Use, 2007-2014. In R. Davis, C. Holtz-Bacha, & M. R. Just (Eds.), *Twitter and Elections Around the World: Campaigning in 140 Characters or Less*. Routledge.
- Lassen, D. S., & Brown, A. R. (2011). Twitter: The Electoral Connection? *Social Science Computer Review*, *29*(4), 419–436. <https://doi.org/10.1177/0894439310382749>

- Lee, F. E. (2016). *Insecure majorities: Congress and the perpetual campaign*. The University of Chicago Press.
- Lemieux, P., & Stewart, C. (1990). *A Theory of Supreme Court Nomination*. Conference on Political Economy, Cambridge, MA.
- Lewis, K. M. (2018). *Congress's Power Over the Courts: Jurisdiction Stripping and the Rule of Klein* (R44967). Congressional Research Service.
- López de Ayala-López, M., Catalina-García, B., & Fernández-Fernández, J. (2016). *Spanish mayors' public communication on Twitter during local elections* (71st ed.). *Revista Latina de Comunicación Social*. <https://doi.org/10.4185/RLCS-2016-1146en>
- McCarty, N., & Razaghan, R. (1999). Advice and Consent: Senate Responses to Executive Branch Nominations 1885- 1996. *American Journal of Political Science*, 43(4), 1122–1143. <https://doi.org/10.2307/2991820>
- Moraski, B. J., & Shipan, C. R. (1999). The Politics of Supreme Court Nominations: A Theory of Institutional Constraints and Choices. *American Journal of Political Science*, 43(4), 1069–1095. <https://doi.org/10.2307/2991818>
- Nagel, S. S. (1964). Court-Curbing Periods in American History. *Vanderbilt Law Review*, 18(3), 925–944.
- Nelson, M. J., & Gibson, J. L. (2019). How Does Hyperpoliticized Rhetoric Affect the US Supreme Court's Legitimacy? *The Journal of Politics*, 81(4), 1512–1516. <https://doi.org/10.1086/704701>
- Russell, A. (2018a). The Politics of Prioritization: Senators' Attention in 140 Characters. *The Forum*, 16(2), 331–356. <https://doi.org/10.1515/for-2018-0020>
- Russell, A. (2018b). U.S. Senators on Twitter: Asymmetric Party Rhetoric in 140 Characters.

- American Politics Research*, 46(4), 695–723. <https://doi.org/10.1177/1532673X17715619>
- Russell, A. (2021). *Tweeting is leading: How senators communicate and represent in the age of Twitter*. Oxford University Press.
- Scheb, J. M., & Lyons, W. (2000). The Myth of Legality and Public Evaluation of the Supreme Court. *Social Science Quarterly*, 81(4), 928–940.
- Scherer, N. (2005). *Scoring Points: Politicians, Activists, and the Lower Federal Court Appointment Process*. Stanford University Press.
- Scherer, N., Bartels, B. L., & Steigerwalt, A. (2008). Sounding the Fire Alarm: The Role of Interest Groups in the Lower Federal Court Confirmation Process. *The Journal of Politics*, 70(4), 1026–1039. <https://doi.org/10.1017/S0022381608081036>
- Segal, J. A., & Spaeth, H. J. (2002). *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press. <https://doi.org/10.1017/CBO9780511615696>
- Shipan, C. R., & Shannon, M. L. (2003). Delaying Justice(s): A Duration Analysis of Supreme Court Confirmations. *American Journal of Political Science*, 47(4), 654–668. <https://doi.org/10.2307/3186125>
- Woodson, B. (2018). The Dynamics of Legitimacy Change for the U.S. Supreme Court. *Justice System Journal*, 39(1), 75–94. <https://doi.org/10.1080/0098261X.2017.1356253>

Tables

Table 1: Example of Tweet Coding

<i>Member of Congress</i>	<i>Username</i>	<i>Tweet</i>	<i>Coded</i>
Marsha Blackburn (R-TN)	@MarshaBlackburn	“The President has the constitutional privilege and duty to nominate a Supreme Court Justice”	Process - Legitimate
Dick Durbin (D-IL)	@SenatorDubin	“Republicans cutting every corner to jam through Judge Barrett’s nomination before Election Day. It’s unprecedented to vote to move forward on a nominee before the hearing has ended, but they did this morning. My motion to adjourn—and finish the hearing first—was denied.	Process - Partisan
Marsha Blackburn (R-TN)	@MarshaBlackburn	“Judge Amy Coney Barrett is an exceptionally qualified Supreme Court nominee. She is fair, impartial and dedicated to protecting the rights of all Americans.	Candidate - Qualified
Maggie Hassan (D-NH)	@SenatorHassan	“If Amy Coney Barrett is confirmed to the Supreme Court, she could be the deciding vote to overturn the Affordable Care Act”	Candidate - Partisan

Table 2: Difference in Tweet Frequency by Majority and Party Status

<i>Tweet Content</i>	Barrett Hearing		Jackson Hearing		Difference by Hearing	
	Majority (R)	Minority (D)	Majority (D)	Minority (R)	Δ Majority	Δ Minority
Process Legitimate	22.6% (53)	< 0.1% (3)	31.3% (185)	13.7% (30)	+8.7%*	+13.6%**
Process Partisan	32.1% (75)	57.6% (194)	15.2% (90)	19.6% (43)	-16.9%**	-38.0%**
nominee Legitimate	56.0% (131)	0% (0)	57.9% (342)	0% (0)	+1.9%	0.0%
nominee Partisan	0.1% (3)	63.8% (215)	0% (0)	66.2% (145)	-0.1%	+2.4%
Total Confirmation Tweets	234	337	591	219		

*Note: Table shows the percentages and frequencies (in parentheses) for each dependent variable in the dataset, displayed by hearing, majority status and party. For columns 6 and 7, the difference between majority status between the hearings is shown. For the majority party (col. 6), the expectation is that the change would be 0%. For the minority status, the expected change for the hypotheses is that the change $\neq 0$. Significance levels: $p < 0.05 = *$, $p < 0.01 = **$*

Figures



Figure 1: Senator Blackburn tweet from Barrett hearing



Figure 2: Senator Blackburn tweet from Jackson hearing

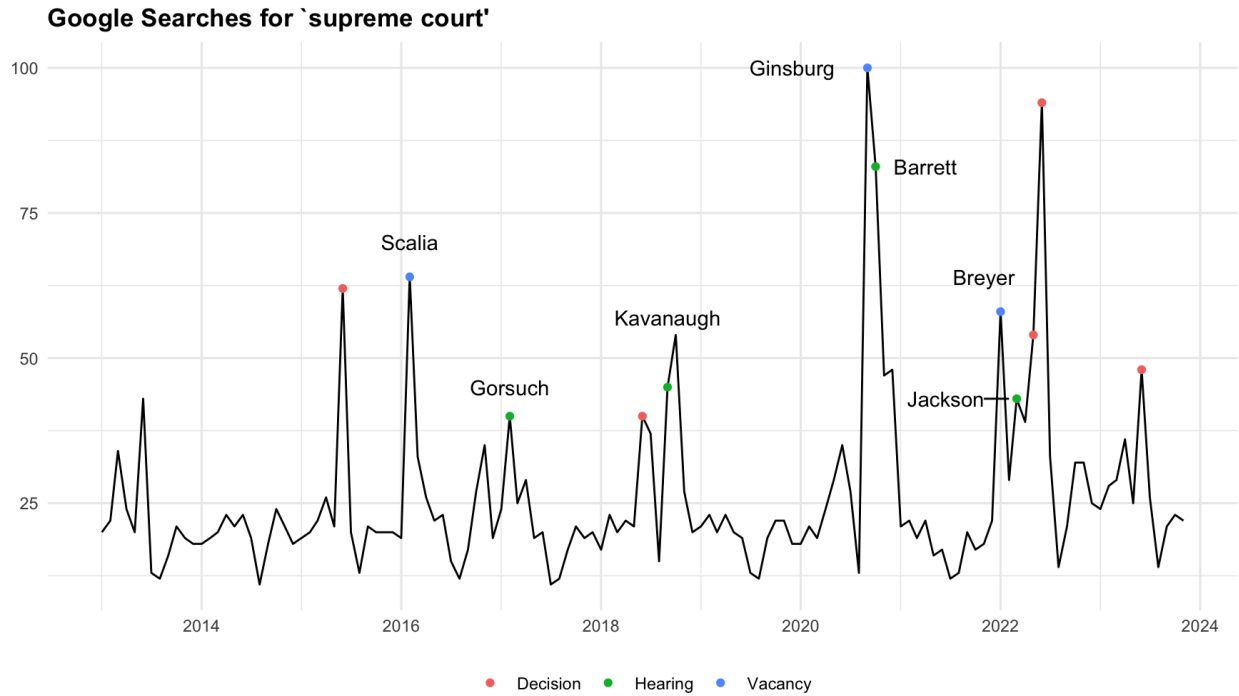


FIGURE 3: Google Searches for “Supreme Court”

The image shows Google trends data for the search term over the last decade with notable events highlighted.

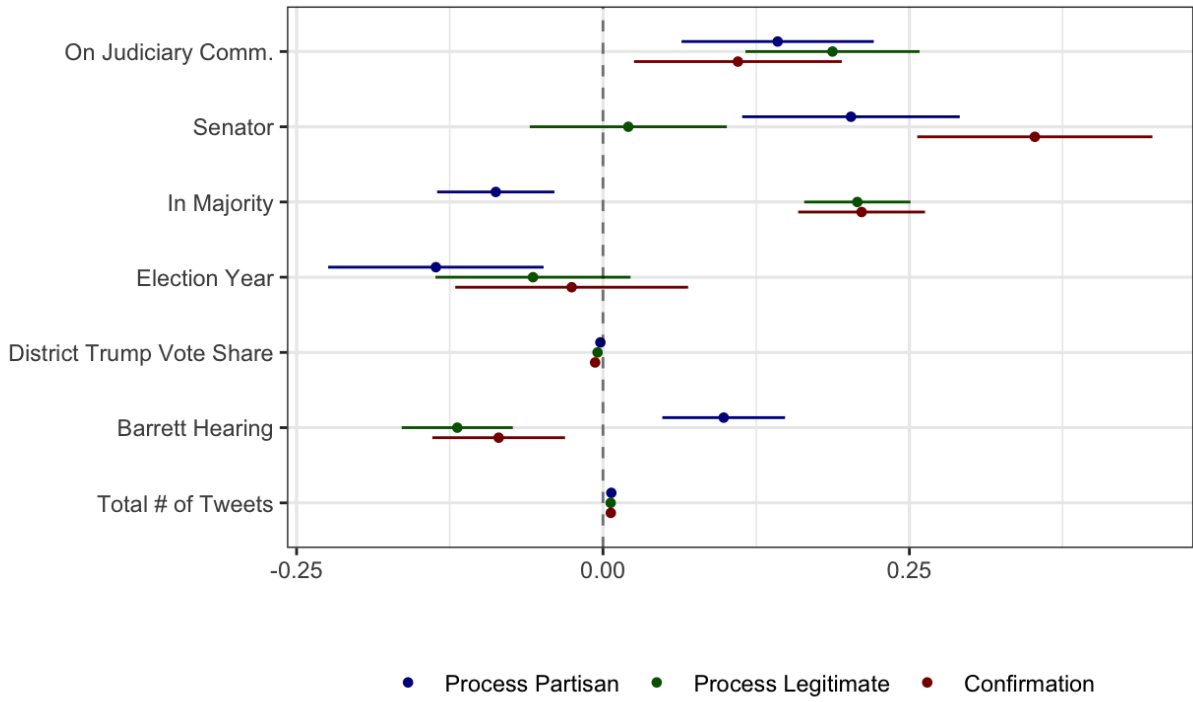


Figure 4: Linear Probability Estimates for Confirmation and Process Tweets

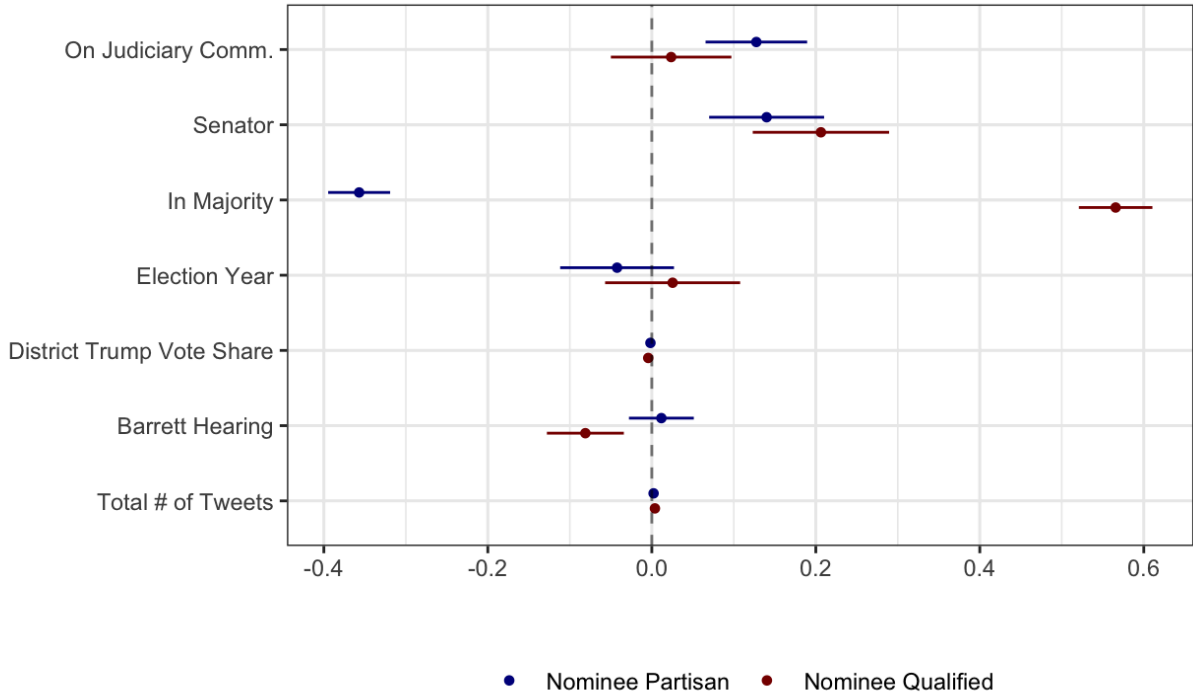


Figure 5: Linear Probability Estimates for Nominee Tweets

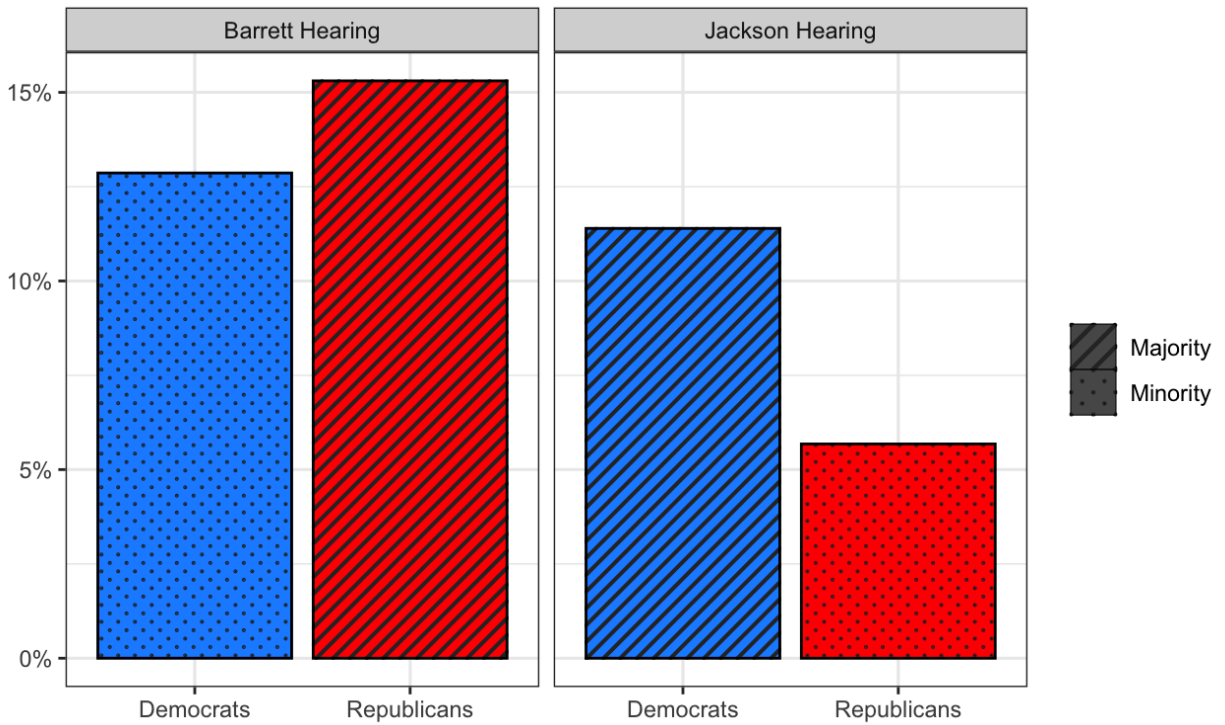


Figure 6: Party Differences in Twitter Activity

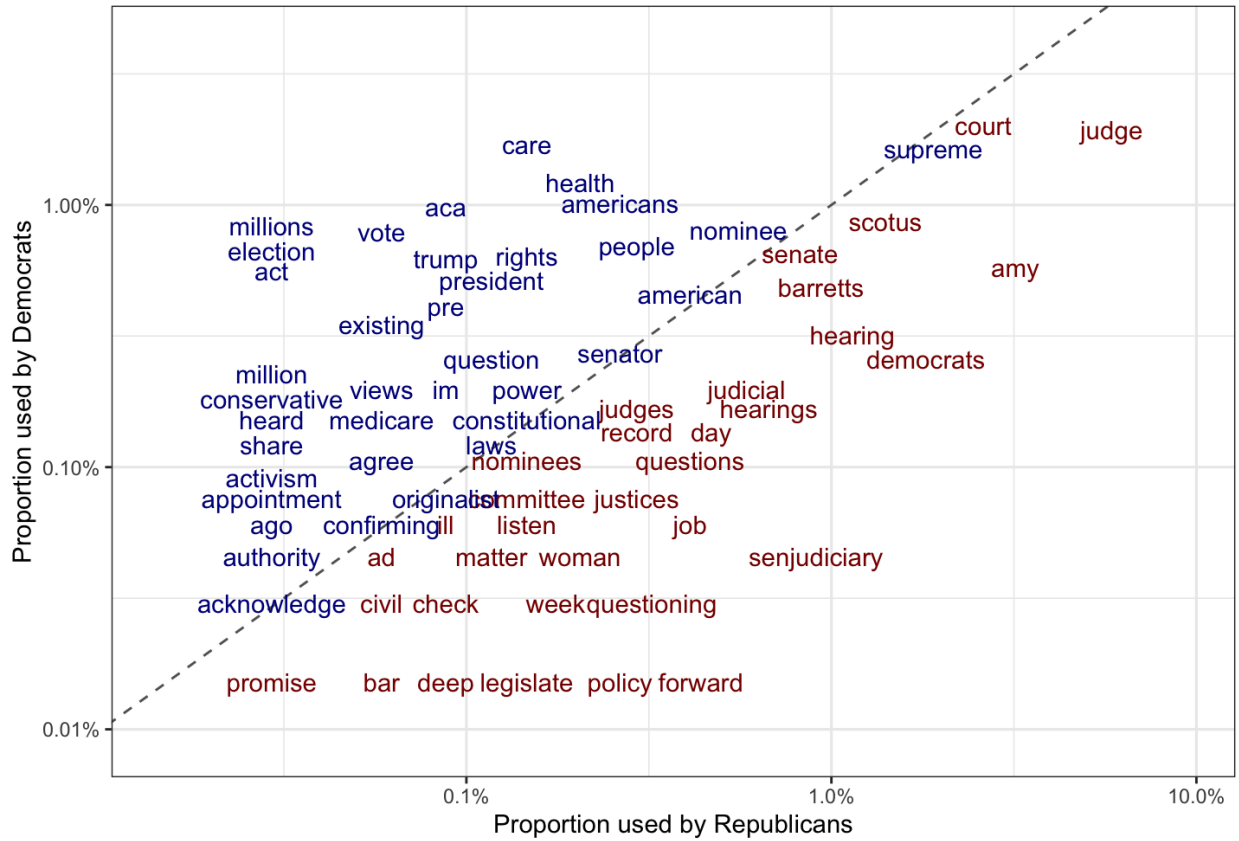


Figure 7: Word usage differences between parties during the Barrett hearing

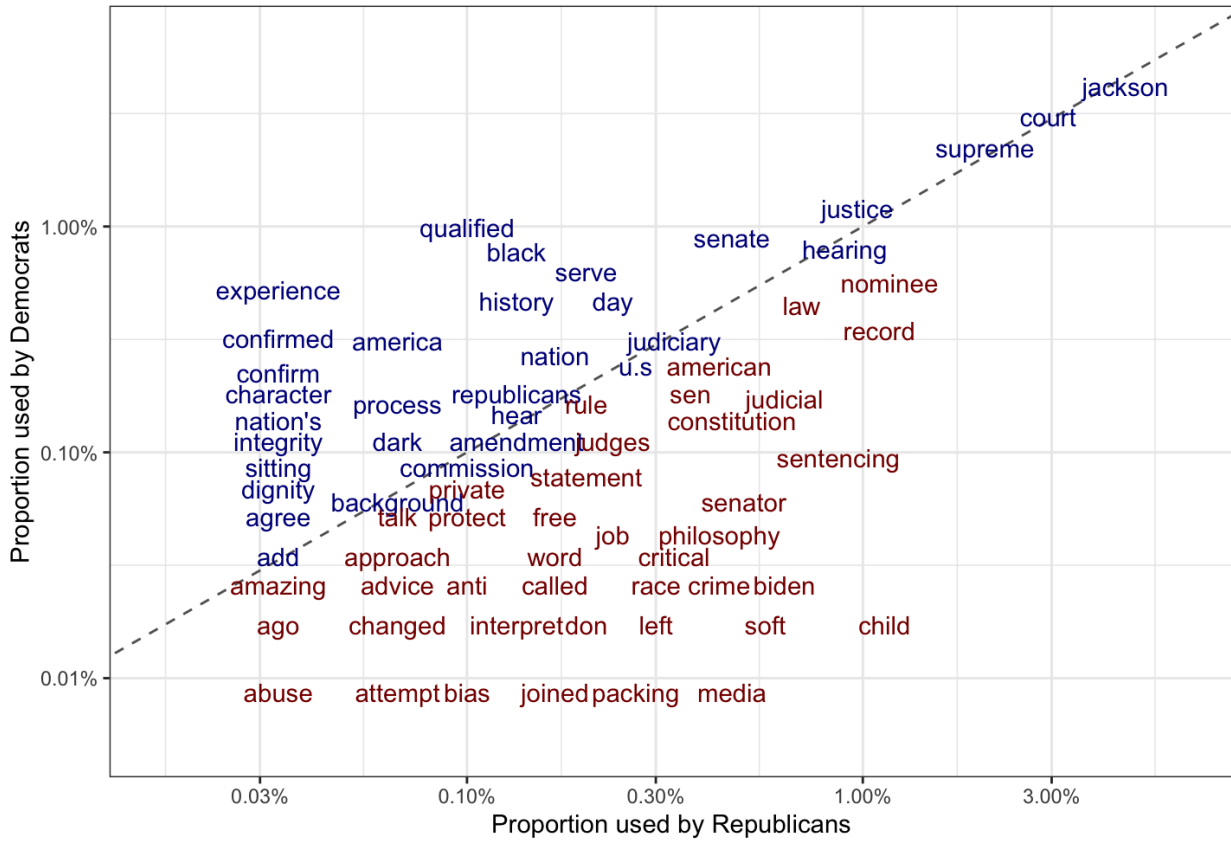


Figure 8: Word usage differences between parties during the Jackson hearing

Appendix

Appendix A: Dictionary of Terms

judge
barrett
court
supreme
amy
coney
scotus
justice
nomination
nominee
barretts
confirmation
senjudiciary
judicial
hearings
courts
legal
confirmacb
judiciary
confirmed
judges
confirm
amyconeybarrett
jackson
ketanji
jackson's
judiciarydems

The table above shows the terms used to filter out non-confirmation related tweets. The list was put together with a mix of inductive and deductive strategies. Obvious terms were added first to begin process, but additional terms were added by looking through raw tweet data and seeing words and hashtags commonly used by MCs to signal confirmation related tweets.

Appendix B: Regression Output

	<i>Dependent variable:</i>				
	Confirm Tweet (1)	Process - Legitimate (2)	Process - Partisan (3)	Candidate - Qualified (4)	Candidate - Partisan (5)
On Judiciary Comm.	0.110** (0.043)	0.187*** (0.036)	0.143*** (0.040)	0.024 (0.037)	0.127*** (0.032)
In Majority	0.211*** (0.026)	0.208*** (0.022)	-0.087*** (0.024)	0.566*** (0.023)	-0.357*** (0.019)
Senator	0.352*** (0.049)	0.021 (0.041)	0.202*** (0.045)	0.206*** (0.042)	0.140*** (0.036)
Election Year	-0.026 (0.048)	-0.057 (0.041)	-0.136*** (0.045)	0.025 (0.042)	-0.042 (0.035)
Trump Vote Share	-0.006*** (0.001)	-0.004*** (0.001)	-0.002*** (0.001)	-0.004*** (0.001)	-0.002*** (0.001)
Barrett Hearing	-0.085*** (0.028)	-0.119*** (0.023)	0.098*** (0.026)	-0.081*** (0.024)	0.012 (0.020)
Total # of Tweets	0.006*** (0.001)	0.006*** (0.001)	0.007*** (0.001)	0.004*** (0.001)	0.002*** (0.001)
Constant	0.576*** (0.065)	0.204*** (0.055)	0.236*** (0.061)	0.074 (0.057)	0.346*** (0.048)
Observations	1,049	1,049	1,049	1,049	1,049
R ²	0.325	0.293	0.299	0.472	0.359
Adjusted R ²	0.320	0.289	0.294	0.469	0.355
Residual Std. Error	0.399	0.334	0.369	0.345	0.291
F Statistic	71.577***	61.727***	63.397***	133.168***	83.227***

Note:

*p<0.1; **p<0.05; ***p<0.01

Table B1: Linear Probability Model Output for Types of Tweets

	<i>Dependent variable:</i>				
	Confirm Tweet (1)	Process:Legitimate (2)	Process:Partisan (3)	Candidate:Legitimate (4)	Candidate:Partisan (5)
On Judiciary Comm.	1.639*** (0.420)	0.755*** (0.179)	0.389*** (0.144)	0.361 (0.240)	1.081*** (0.256)
In Majority	0.753*** (0.102)	1.365*** (0.162)	-0.279*** (0.104)	7.507 (93.076)	-7.738 (116.678)
Senator	0.882*** (0.195)	0.391* (0.235)	0.717*** (0.172)	1.285*** (0.277)	0.596** (0.240)
Election Year	-0.419* (0.221)	-0.099 (0.209)	-0.430*** (0.161)	0.354 (0.284)	-0.550** (0.239)
Trump Vote Share	-0.020*** (0.003)	-0.020*** (0.005)	-0.010*** (0.003)	-0.020*** (0.005)	-0.002 (0.007)
Barrett Hearing	-0.228** (0.105)	-0.615*** (0.152)	0.414*** (0.110)	-0.185 (0.191)	0.379 (0.238)
Total # of Tweets	0.031*** (0.005)	0.025*** (0.004)	0.025*** (0.004)	0.026*** (0.005)	0.020*** (0.006)
Constant	0.319 (0.276)	-1.643*** (0.316)	-0.871*** (0.235)	-7.555 (93.077)	-0.893* (0.507)
Observations	1,049	1,049	1,049	1,049	1,049
Log Likelihood	-472.416	-341.994	-443.700	-325.568	-210.252
Akaike Inf. Crit.	960.832	699.989	903.400	667.137	436.504

Note:

*p<0.1; **p<0.05; ***p<0.01

Table B2: Probit Output for Types of Tweets