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Analyzing the Rhetoric of Supreme Court Confirmation Hearings

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(Received 27 April 2022; Revised 30 November 2022; Accepted 05 January 2023)

Abstract

Supreme Court confirmation hearings place the often-reclusive institution in the public spotlight and afford members of the Senate Judiciary Committee the ability to pursue important personal and party goals. I construct and evaluate a measure of rhetorical sentiment that considers the positive and negative behaviors of committee members during Supreme Court confirmation hearings between 1971 and 2020. While some observers have pointed to the evolving dynamics of confirmation hearings as being the result of key inflection points, I find that these events alone do not explain rhetorical behaviors. Instead, my results suggest that rhetorical behaviors have been predominately mediated by structures of party control and the balance of interbranch political power since at least the 1970s. I conclude by noting how these behaviors can further deteriorate the public's perceptions that the Court remains insulated from the contentious political environment.

Keywords: Supreme Court; Judicial Nominations; Confirmation Hearings

Introduction

It should come as little surprise that modern confirmation hearings for nominations to the Supreme Court generate political intrigue. What might have been historically viewed as a routine senatorial exercise of interviewing potential nominees before offering advice and consent regarding their qualifications is today frequently characterized as political theater. It is often accepted that the proceedings will conclude with a successful vote to confirm while few senators defect from the party line (Nemacheck 2008; Cameron, Kastellec, and Park 2013). Yet, some observers have noted a growing trend among members of the Senate Judiciary Committee to engage in grandstanding behaviors that attempt to tie extraneous political conditions to the nominees (Watson and Stookey 1987; Schoenherr, Lane, and Armaly 2020). These behaviors are especially troublesome when considering how they could facilitate residual consequences for the Court. Namely, if the tone of the hearings is consistently framed as contentious and politically driven, it could damage the Court's

preferred reputation as an institution beyond the veil of politics (Krewson and Schroedel 2020; Carrington and French 2021).

I examine these senatorial behaviors using a critical analysis of the rhetoric offered by members of the Senate Judiciary Committee during confirmation hearings between 1971 (William Rehnquist and Lewis Powell) and 2020 (Amy Coney Barrett). Leveraging a machine learning approach that measures the underlying sentiments – i.e., attitude and tone – of committee member rhetoric, I observe how the behavioral dynamics of confirmation hearings have evolved. Rather than being a response to a singular event such as the infamous Bork (1987) hearing, I find that complex rhetorical behaviors are an ongoing phenomenon that exists across every hearing since at least 1971. More specifically, my results suggest that these behaviors are often reflective of a senator's position as an in-party (i.e., those who share the political alignments of the nominee's appointing president) or out-party member, as well as the balance of interbranch political power.

My findings ultimately provide three significant contributions. First, I expand on prior research examining how Supreme Court confirmations have acquired a partisan tone since the failed Bork nomination. Several studies have contributed to the ongoing debate concerning the definitive impacts of Bork, though conclusions have been mixed (Guliuza, Reagan, and Barrett 1994; Ogundele and Keith 1999; Epstein, et al. 2006; Collins and Ringhand 2016). Others surmise how traditional emphases on a nominee's qualifications were replaced by ideological alignments and other demographic considerations when senators are deciding to confirm judicial nominees, Supreme Court or otherwise (e.g., Martinek, Kemper, and Van Winkle 2002; Epstein, Segal, and Westerland 2007; Boyd, Collins, and Ringhand 2018). However, analyses of senatorial voting represent only a single facet of the institution's role in the process and ultimately neglect the considerable degree of interactions between committee members and nominees. More recent literature by Farganis and Wedeking (2011), Schoenherr et al. (2020), and others have helped close that gap by analyzing committee members' question-asking behaviors, but more direct analyses are warranted. My research helps to further our understanding by focusing on the evolving rhetorical behaviors during the hearings. Rather than reaffirming beliefs that contemporary behaviors toward nominees emerged strictly from Bork or subsequent events, a critical understanding of rhetorical behaviors requires a broader consideration of political environments.

Second, while my findings lend support to critical observations that confirmation hearings have become increasingly contentious, these developments do not appear to be in direct response to greater ideological extremism among committee members. Instead, my results suggest a greater dependence on framing rhetorical behaviors in response to party dynamics and the balance of interbranch political power. Most notably, I find strong evidence supporting the strategic party goals outlined in prior literature. Schoenherr et al. (2020) suggest that in-party and out-party members approach the hearings with predefined goals and expectations. Namely, in-party members pursue an expedient coronation where they can champion the nominee's merits. Alternatively, out-party members collectively aim to "put Supreme Court nominees through a difficult and contentious process before letting them take their seats" (336). In theory, these mutually exclusive goals would not lead to direct conflict so long as the outcome was truly preordained. In practice, however, this is not always the case. Instead, they suggest, and my results support, an evolving set of behavioral expectations during periods of divided government. Under these circumstances, a majority out-party (i.e., when the Senate majority is not aligned with the president) not only maintains the motivation to pursue a contentious hearing but also the votes

to potentially derail the nomination. As a response to contentious rhetoric that now bears the potential of real obstructionist consequences, I observe how a minority in-party becomes more likely to respond in kind.

Finally, I conclude by noting how these trends can pose real consequences for the long-term political sustainability of the Court. Prior literature has observed how the public's support of the Court as an institution is rooted in perceptions of its institutional legitimacy (Jaros and Roper 1980; Baird and Gangl 2006), which can easily be placed at risk if the justices fail to remain secluded from the tumultuous political behaviors of the other branches. However, the political spectacle that accompanies Supreme Court confirmation hearings facilitate a unique environment that allows committee members – both within and beyond the nominating president's party – to pursue personal and party goals. While the electorate might not be drawn to the day-to-day operations of either institution, the hearings provide a unique environment that tends to capture the public's attention (Vining and Marcin 2014). I suggest that the Court, whose legitimacy hinges on perceptions of impartiality, can be further placed at risk if the justices' first and most salient period of public exposure is plagued by senatorial grandstanding and politicking.

The dynamics of Supreme Court confirmation hearings

At their core, Supreme Court confirmation hearings should be a routine exercise of Article II's power of the Senate to offer "advice and consent" to the executive's appointees. Yet, the speed and success of this process are contingent on the Senate Judiciary Committee, whose decisions to favorably discharge nominations ultimately determines whether the entire chamber will be given the opportunity to pass judgment in a final floor vote. As one of the original standing committees established in 1816, its broad legislative mandate provides it with oversight responsibility and the duty to manage the confirmations of all executive appointments to the judiciary. However, "what began as a largely nondescript committee with only limited input into the fate of Supreme Court nominees developed into a highly visible institution that plays a starring role in the confirmation process" (Collins and Ringhand 2016, 143). With this comes a unique political opportunity for committee members to hold hearings and question potential jurists for the nation's most important legal institution. It is here that we find a platform for senators to engage in strategic rhetorical behaviors through position-taking, posturing, and, more prevalently, grandstanding.

Recent observers note how the starring role of committee members has become increasingly reflective of the contentious nature of contemporary politics. Although several studies have drawn on a collection of theories to frame this development, I contend that two of the most frequently discussed hypotheses serve in conjunction as the primary mediators. First, observers often point directly to the importance of seminal events in the recent history of Supreme Court nominations (e.g., Totenberg 2011; Elving 2018; Wheeler 2018). These notably include the advent of televised hearings (1981), the contentious rejection of Robert Bork (1987), the hostility framing the Thomas (1991) and Kavanaugh (2018) hearings, and perhaps even the outright refusal to grant Merrick Garland a hearing (2016). Second, more recent literature has increasingly framed these developments as a reflection of political opportunities and interbranch power dynamics. Yet, much of this literature focuses on observable behaviors such as confirmation votes on the Senate floor (Epstein et al.

2006) or explores rhetoric more holistically through topical analyses or explorations of question and answering behaviors (Collins and Ringhand 2013, 2016; Farganis and Wedeking 2011; Schoenherr et al. 2020). Nonetheless, it could justifiably be expected that these theoretical motivations serve concurrently to explain the variation in rhetorical behaviors. I address these motivations below and develop a theoretical framework that considers these notable events and the conditions underlying competing party goals and the balance of interbranch political power.

A core set of narratives have become commonplace to frame the burgeoning hostility framing modern confirmation hearings. Among them, scholars often analyze these behaviors as a reflection of grievances and other resentments directly or indirectly emanating from key events, most notably the failed 1987 nomination of Robert Bork (Guliuza et al. 1994; Ogundele and Keith 1999; Epstein et al. 2006). Before Bork, historical accounts would often reinforce that even opposing partisans appeared to recognize that the executive's power toward judicial appointments was not only solidified in the Constitution, but the Senate's advice and consent powers were largely marginalized to confirming that the nominee was qualified (Collins and Ringhand 2016). However, in the wake of Bork, the Senate's political dynamic supposedly altered toward a structure that placed a greater burden on the nominee's ideology and prospective voting behaviors. An extensive collection of literature draws several causal assumptions to frame this development, much of which centers on the proliferation of ideological extremism in the Senate toward all presidential nominees (Silverstein 1994; Krutz, Fleisher, and Bond 1998), the growth of interest group involvement in the confirmation process (Caldeira 1988; Vining 2011), or perhaps even the politicization of the Court following the Warren period.¹ In effect, beginning with Bork, critiquing a nominee's ideological or political views was no longer out of bounds. Instead, modern nominees can expect a sort of "democratic reckoning," whereby they "...are expected to provide their perspectives on a wide range of significant issues and affirm the existing constitutional consensus before taking their seats on the high Court" (Collins and Ringhand 2016, 141). Even considering alternative theories, this research collectively depicts an evolving set of behaviors that frames the Bork nomination as a "high-water mark" (Caldeira 1988, 538).

Yet, it is entirely plausible that Bork is not the only major inflection point, let alone the most important. More recent events, including the tumultuous Thomas hearing (1992), the Senate Republican majority's refusal to grant Merrick Garland a hearing (2016), and most recently the hostility plaguing the Kavanaugh hearing (2018), lend support to an evolving trend of interparty conflict in Supreme Court confirmation hearings. Approaching this framework through the lens of sentiment-driven rhetorical behaviors relayed by committee members in the hearings, it would be reasonable to expect tangible shifts toward greater hostility in the post-Bork era. Specifically, *I expect that the rhetoric employed by committee members will exhibit greater negativity in the post-Bork era that will iteratively become more pronounced over time.* That is, notwithstanding other unique conditions framing each hearing, the supposed effect of these key moments should correspond with greater prospects for negative sentiments to be observed among committee members' statements and remarks.

However, it is important to recognize that while longstanding resentments emerging from events such as the Bork hearing are routinely a point of contention, it should

¹A contention supported by Judge Bork himself (see Bork 1990; Epstein et al. 2006).

not be lost that committee members operate in response to political opportunities. Mayhew (1974) posited that members of Congress are in constant pursuit of reinforcing their electability through advertising their public image, credit-claiming on policies of importance, and using their offices to stake out popular positions. It is reasonable to expect these indicators of opportunity to be exercised when these hearings attract a captivated audience. Members should be motivated to boost their personal and party prestige by advertising their politics through sentiment-structured rhetoric. Indeed, recent developments have highlighted their growing dependence on politicking and grandstanding during hearings (Farganis and Wedeking 2011; Schoenherr, et al. 2020). Collins and Ringhand (2016) went so far as to attribute much of these behavioral dynamics directly to the motivations outlined by Mayhew (1974). However, while the Senate maintains the power to refuse nominees – and has done so before – confirmation hearings are virtually akin to a formality. Supreme Court confirmation hearings nearly always result in a nominee receiving a floor vote and a successful appointment to the Court (Krutz, et al. 1998; Moraski and Shipan 1999; Nemacheck 2008). This expectation was historically reinforced by the fact that parliamentary tactics and norms such as rejecting nominees through blue slips are seen as beyond the accepted practices of decorum for Supreme Court nominees (Denning 2001; Black, Madonna, and Owens 2014). Yet, the idea of a formality in this sense has experienced an evolving definition in recent decades. Even when committee members might not feel empowered to change the outcome, they have become adept at using the hearings to their advantage. Rather than viewing their role as facilitating a neutral fact-finding exercise, contemporary hearings facilitate a dynamic that tends to become more about a charged referendum on the contemporary political climate.

Although these expectations could potentially be replicated for all executive appointments, the Supreme Court produces an exceptional set of circumstances. Presidential administrations recognize that they are poised to nominate an individual to serve indefinitely in a prestigious position. However, their choice of a nominee is bound by interbranch constraints and institutional support (Nemacheck 2008). That is, presidents would have less flexibility to appoint a strong partisan when facing an opposition Senate during divided government, and perhaps even more so when the administration lacks strong public support.² In the most preferable political environment, an administration would be able to freely select a nominee, construct a supporting narrative that champions their merits, and view confirmation proceedings as a formality. Even if a minority of out-party senators aimed to obstruct, the president could rest assured that a successful appointment was inevitable. However, in situations of divided government, committee members recognize that the change in interbranch party alignments alters the strategic calculus (Schoenherr et al. 2020). Under these circumstances, a majority out-party not only has the motivation to engage in obstructionist behaviors, but now they also possess the capacity to impress real consequences that could ultimately derail the nomination. This variation in the balance of interbranch power could serve as a primary mediator of rhetorical

²For this work, I define *divided government* as circumstances in which the balance of interbranch party control dictates that the Senate majority party (and, by association, the majority of the Senate Judiciary Committee) is not aligned with the party of the sitting president of the United States. This definition does not consider the party balance of the House of Representatives because they do not provide any fundamental role in the confirmation processes of executive nominees to the federal judiciary.

behaviors because sophisticated in-party and out-party members recognize that these changing conditions necessitate different approaches to the hearings. As a result, *I expect that in-party members will be more likely to employ hostile (i.e., negative) rhetoric as a response to mutually hostile and obstructionist behaviors by out-party members during periods of divided government.*

I draw this assumption from findings observed by Schoenherr et al. (2020, 339) and provide a reproduction of their theoretical expectations in Table 1. Regardless of the interbranch power balance, it would be reasonable to expect out-party members to use combative rhetoric to instigate contentious hearings. They specifically note how “out-party senators seek to mitigate the damage of a confirmed nominee” (338), and a primary mechanism to achieve that would be to organize a narrative that frames the nominee as negatively as possible. However, the balance of interbranch political power ultimately determines whether negative framing by a contentious out-party bears the weight of real consequences. If it does not, then a majority in-party presumably has little motivation to reciprocate in a way that deters from the president’s framing of the nominee’s merits and acumen. Alternatively, if a minority in-party is suddenly thrust into a political battle, they would indeed be motivated to fight for the nominee. As a result, I expect “members of the president’s party [to] combat the out-party onslaught” with a similar usage of negative rhetoric (339). However, this expected behavior does not entirely indicate that minority in-party members are channeling their frustration through the nominee, but rather toward obstructing out-party members.

As noted previously, in-party members in the majority effectively pursue a coronation for their president’s nominee. To that end, maintaining the status quo position that their nominee would be an effective jurist remains their primary goal. Yet, this pursuit should not be entirely abandoned when the in-party is weakened to minority status. Instead, while they might be forced to relinquish their ability to pursue a coronation, they must attempt to maintain control of the narrative that their nominee is qualified while ensuring that their grievances are targeting the majority out-party, rather than the nominee directly. This is not to say that majority in-party members will otherwise allow the out-party to lambast their nominee unchecked, but rather that behaviors of in-party members will be dictated by the balance of interbranch political power. While in the majority, the preponderance of in-party rhetoric is likely to preference positivity in pursuit of their coronation and only deviate in occurrences directly targeting out-party members, lest they risk losing their control of the narrative altogether. Alternatively, with their power reduced to minority status,

Table 1. Senatorial Motivations and Expectations for Grandstanding

	Out-Party	In-Party
Divided Government	<u>Chance to Block</u> <ul style="list-style-type: none"> • Fight for Failed Nomination • Highlight Issues with Record • High Level of Engagement 	<u>Fight for the Nominee</u> <ul style="list-style-type: none"> • Victory Likely After Fight • Emphasize Party Narrative • High Level of Engagement
Unified Government	<u>Mitigate Damage</u> <ul style="list-style-type: none"> • Lack the Votes to Overturn • Multiple Questions • Medium Level of Engagement 	<u>Guaranteed Victory</u> <ul style="list-style-type: none"> • Have the Votes to Win • Follow Party Narrative • Low Level of Engagement

Note: Reprinted from Schoenherr, J.A., Lane, E.A., & Armaly, M.T. 2020. “The Purpose of Senatorial Grandstanding During Supreme Court Confirmation Hearings.” *Journal of Law and Courts* 8(2): 333–358.

their usage of negative rhetoric will become more pronounced as they are forced to reconcile with a majority out-party whose hostility bears the weight of real obstructionist consequences.

Constructing a text-based algorithm

To measure the behaviors of Senate Judiciary Committee members during Supreme Court confirmation hearings, I expressly focus on their rhetoric between the joint hearings of William Rehnquist and Lewis Powell in 1971 and the Amy Coney Barrett hearing in 2020.^{3,4} Transcripts for hearings between 1971 and 2018 were retrieved from the R-Street Institute (Weissman and Marcum 2019). Alternatively, statements and other remarks from the Barrett (2020) hearing were manually coded from C-SPAN's video transcriptions. The unit of analysis is measured as an individual statement or remark offered by a committee member,⁵ rather than as the continuous dyad of interaction shared between them and a nominee. As such, the number of observations is equal to the total number of statements or remarks offered by members of the Judiciary Committee, which collectively totals to ($n=$) 20,984.

I observe behaviors by measuring the sentiments expressed in committee member rhetoric, which considers the underlying positive, negative, or neutral feelings they are relaying. The emergence of sentiment classification models represents a promising collection of methodological strategies in the social sciences, though they require careful specification to derive meaningful and reliable inferences. My analysis incorporates a supervised learning approach for Naïve Bayes classification of committee members' rhetoric. The algorithm applies Bayes' Rule to observe the probability that a statement or remark is in a categorical classification given an approximate mapping of distinct features from a set of training data (Grimmer, Roberts, and Stewart 2022). Doing so provides a corresponding score to represent the sentiment of the rhetoric, which can subsequently be converted to a categorical or binary scale to represent its underlying positive, negative, or neutral features. The result is a process that is "simple, fast, and shown to be surprisingly robust to classification tasks with sparse and noisy training data" (Clark et al. 2018, 107).⁶ It further provides relief for concerns that might arise from alternative classification procedures. For example, among the most popular alternatives is the classification of text strings based on adjacent matches with a list of positive and negative words (e.g., Hu and Liu 2004).

³Though confirmation proceedings for William Rehnquist and Lewis Powell were held in a joint hearing, I was able to make a clear distinction between the periods focusing on either nominee, rather than measure them collectively as a single observation period.

⁴A distinction was made between the initial hearings for Clarence Thomas and Brett Kavanaugh and those subsequently held due to allegations of sexual impropriety. The statements from both nominees' hearings are included in the dataset, but the distinction was made to better observe whether any identifiable shifts in rhetorical behaviors might exist in response to such allegations being necessary to reconvene the committee.

⁵Statements or remarks from third-party witnesses or other non-members of the Judiciary Committee were not included in this analysis. The purpose of this omission was to maintain methodological consistency by ensuring that the ideological preferences of each speaker could be measured using the NOMINATE/Judicial Common Space scale (Epstein, Martin, Segal, and Westerland 2007; Lewis et al. 2022). Apart from the extended testimonies of Anita Hill (Thomas) and Dr. Christine Blasey Ford (Kavanaugh), remarks from non-committee members were generally restricted to single statements of support with no cross-examination of the nominees.

⁶Also, see Zhang (2004).

However, these are routinely prone to validity errors because they “assume the measures created from a dictionary are correct and then apply them to the problem” (Grimmer et al. 2022, 182). In an environment like confirmation hearings, where frequently used words and phrases can present alternative meanings based on their usage,⁷ universally defined sentiment associations will almost surely produce misclassifications. Instead, a Naïve Bayes approach corrects these concerns by allowing a sample set of data to guide the classification process.

I began by manually coding a sample of 1,177 statements and remarks from the full set of observations, which was subsequently used as training data to compute a term-document matrix of frequent features. These features represent the most common words found across the training sample and are used to estimate their relative predictive weights. In essence, the classifier can estimate rhetorical sentiments using Bayes’ theorem guided by the relative frequency of unique terms and other features observed in the training data.⁸ I provide the accuracy report of the Naïve Bayes classifier in the appendix (Table A1). Even with a training set that represents approximately five percent of the total observations, the classifier was able to internally validate negative and positive remarks from a sample testing set with precisions of 82 percent and 76 percent, respectively. Notwithstanding any knowledge of the contextual substance of each remark or statement, the classifier’s ability to correctly estimate classifications at a consistent rate underscores its reliability and validity.^{9,10} I offer the distribution of classified rhetoric on a categorical scale in Table 2.¹¹

Research design

Using the sentiment classification procedure, I observed the rhetoric offered by members of the Senate Judiciary committee across 18 Supreme Court confirmation hearings between 1971 and 2020. However, the underlying forces that steer each member’s approach to the hearings are likely multidimensional. To evaluate this more directly, I constructed a multinomial logit design with standard errors clustered by each hearing and committee member (dyad) that considers the probability of positive or negative rhetoric. Furthermore, owing to the theoretical framework that rhetorical behaviors vary as a reflection of key events in the contemporary history of confirmation hearings, I conducted two sets of estimations controlling for additional key events beyond the Bork hearing and the advent of televised hearings.

⁷For example, among the most frequently used words was *judge*, which can have divergent meanings if used as a noun to address a nominee (i.e., *a judge*), as opposed to a verb (i.e., *to judge*).

⁸For example, “*concerned*” was observed several times across the training set and almost always contained within remarks that were labeled as being more negative. As a result, the algorithm’s predictions will bear greater weight to classify remarks as being more negative when they contain this term. The same intuition can be replicated for positive terms, such as “*compliment*,” which was observed six times and almost always within positive rhetoric.

⁹For comparison, a robustness test using the BING sentiment lexicon (Hu and Liu 2004), a classification procedure that uses adjacency matches from a predefined list (dictionary) of positive and negative words, was able to correctly classify only 40.05 percent of the same training sample.

¹⁰To further reinforce the robustness of the classifications, I provide a collection of samples in the appendix (Table A2).

¹¹The respective sentiment classification distributions are provided in the appendix materials (Figure A1).

Table 2. Distribution of Committee Member Rhetoric Sentiment Classifications by Hearing

Hearing	Year	Negative	Neutral	Positive
Rehnquist	1971	321	137	183
Powell	1971	117	46	71
Stevens	1975	118	49	86
O'Connor	1981	224	90	232
Rehnquist (CJ)	1986	550	221	440
Scalia	1986	184	95	197
Bork	1987	942	454	567
Kennedy	1987	315	135	271
Souter	1990	410	177	342
Thomas I	1991	500	256	440
Thomas II	1991	738	333	363
Ginsburg	1993	339	165	362
Breyer	1994	321	189	301
Roberts	2005	517	219	415
Alito	2006	605	226	418
Sotomayor	2009	402	177	335
Kagan	2010	483	196	340
Gorsuch	2017	700	499	472
Kavanaugh I	2018	1041	607	737
Kavanaugh II	2018	229	162	162
Barrett	2020	326	182	253

Total observations = 20,984.

Note: Categorical labels were determined by assessing the frequency distribution of the rhetorical classifications, where *Negative* = [min, -0.77], *Neutral* = [-0.76, 0.77], and *Positive* = [0.78, max].

While the mean sentiment score was measured as -0.551 , I specifically define positive or negative rhetoric as those whose estimated score was classified as greater than 0.78 or less than -0.77 , respectively. The purpose of this was to mitigate concerns of misrepresenting procedural or otherwise neutral rhetoric as relaying positive or negative sentiments. This is a real concern given a situation where the classifier observed an insignificant yet common feature found in the training data and subsequently estimated its sentiment as being marginally greater than or less than absolute zero. Creating these thresholds, which represent approximately 80 percent of the total observations, helps to ensure that rhetoric is indeed presenting sufficient features to qualify as definitively positive or negative.

Measuring positive or negative sentiments as the dependent variable rather than incorporating an additional dependent variable of neutral speech was a conscientious choice to best discern what underlying factors motivate members of the committee to incorporate their partisanship or other rhetoric with strong sentiments, rather than simply approaching the hearings as neutral arbiters. Further, using a multinomial, as opposed to a continuous dependent variable, helps to reduce concerns of over-inflating the coefficients. Estimated scores derived from the Naïve Bayes classifier vary considerably from approximately -246 to $+1117$, though approximately 98 percent of the observations are captured between -25 and $+24$. Normalizing the scale would still conserve the outliers and risk biasing the coefficients. Even then, sizable scores are almost surely the result of a statement containing voluminous text, rather than being definitively more negative or positive. For example, Senator John McClellan's opening statement from the joint Rehnquist and Powell hearing in 1971 contained over 1,200 words and was measured as a -17.55 by the classifier. Offered only a few minutes later, another comment from Senator McClellan was measured as

a -7.67 but contained only 51 words. Rather than measure the variance in sentiment between the two as a difference of 10 negative units, it would be more appropriate to recognize that the scale is likely reflective of there simply being more negatively associated words in the long opening statement, as opposed to it being more negative outright. The independent variables are grouped into two primary categories that consider the factors mediating committee members' rhetorical behaviors as a result of key inflection points in the recent history of confirmation hearings, as well as competing interests of party control and the balance of interbranch political power. Apart from those directly concerning the theoretical framework and corresponding hypotheses, I further include a set of additional terms focusing primarily on demographic considerations that have been identified in prior literature as other factors of importance.

The first group considers pivotal moments in the recent history of Supreme Court confirmation hearings that have been identified as key inflection points. The expectation is that evolving behaviors observed during the hearings are the result of long-standing grievances emanating from pivotal moments, as well as potentially in response to the hearings providing a platform to pursue political goals before a captivated audience. I measure this using a series of temporal fixed effects that include the Bork nomination in 1987, as well as the periods following the Thomas (1991) and Kavanaugh (2018) hearings. Apart from contentious hearings, I also incorporate periods following advent of televised hearings beginning with the O'Connor hearing in 1981, as well as the period following the Senate's refusal to grant consideration to Merrick Garland in 2016. However, to diminish concerns of inadvertently introducing multicollinearity by not disentangling contemporary hearings such as Kavanaugh from registering as satisfying multiple key events variables, I frame the Bork, Thomas, Garland, and Kavanaugh variables as eras to reflect the existence of a hearing during periods when they would be purported to have the greatest effect.¹²

The Bork term is specifically employed to test the substantive effects of the hearing as it has been assessed in the prior literature (e.g., Guliuzza et al. 1994; Ogundele and Keith 1999; Epstein, et al. 2006; Collins and Ringhand 2013), most notably being the belief that earlier hearings generally displayed diminished expectations of contentious behaviors than those following and including Bork. The second variable draws on theories established in prior research (Farganis and Wedeking 2011; Schoenherr, et al. 2020) that the capacity for committee members to pursue personal and party goals was elevated as a response to the hearings being televised, which began with the O'Connor hearing in 1981.

The second group considers the dynamic linking party goals and the balance of interbranch political power. At the core of this dynamic is the importance of party alignments and the balance of interbranch political power identified by Schoenherr et al. (2020). I frame these conditions in the form of interaction terms that indicate whether a committee member is aligned with the in-party, as well as whether the hearing occurred during a period of divided government. While out-party members have an incentive to frame their rhetoric as a hostile interrogation of the nominee, in-party members face competing goals depending on whether they are in the

¹²In essence, *Bork Era* hearings would include Bork (1987) through Souter (1991), the *Thomas Era* would include Thomas (1991) through Kagan (2010), the *Garland Era* would only include Gorsuch (2017), and the *Kavanaugh Era* would include Kavanaugh (2018) and Barrett (2020).

majority. I expect that minority in-party members will respond in kind to hostile rhetoric when the majority out-party's onslaught has the potential to derail the nomination.

However, it is also necessary to consider what other factors might embolden or stymie rhetorical behaviors motivated by this dynamic. Chief among them is the recognition that rhetoric offered by committee members is not exclusively reserved for nominees, nor would we expect in-party members in either a majority or minority position to direct negative sentiments at the nominee. As such, to consider the effect of whom their rhetoric is targeting, I include two dichotomous terms indicating whether a member's rhetoric is directed at the nominee or a fellow committee member. The purpose of two dichotomous terms, rather than one indicating whether their rhetoric was followed by a nominee's response, is to compensate for the (albeit limited) breadth of interactions with non-committee members. Rather than risk conflating the coefficients of a single dichotomous term, I was sure to observe whether rhetoric directed at committee members was not directed at a witness or other speakers such as Anita Hill (Thomas) or Dr. Christine Blasey Ford (Kavanaugh).

Furthermore, I incorporate additional considerations as a reflection of the contemporary political climate and the ideological congruity shared between committee members and nominees. I begin by including the public approval of the nominee's appointing president as observed by Gallup (2021) in the period nearest the confirmation hearing. The purpose of this is to consider how the president's institutional support potentially mediates their nominating power and the behaviors of both in-party and out-party members (e.g., Nemacheck 2008). While both coalitions are expected to pursue party goals, it would be reasonable to expect diminished rates of negative rhetoric if the president were especially popular. Even if an out-party would prefer to frame the hearings using negative rhetoric, they might view a contentious interrogation of a nominee as counterintuitive to their long-term electoral success if doing so forces them to reconcile with popular support for the president's agenda. Apart from presidential approval, I include two variables that represent the influence of the political environments framing the hearings. The first is a continuous variable observing the time (in months) between a hearing and the next presidential election, and the second is a dichotomous term indicating whether the hearing occurred during a midterm or general election year. These variables consider factors that mediate the committee members' pursuit of Mayhewian goals. Namely, it addresses whether the proximity to an upcoming election cycle motivates different behaviors among committee members who might choose to frame the hearings in ways that benefit their personal and party goals.

Finally, recent literature has shown how ideological extremism and congruity shared between senators and nominees have become increasingly important components of confirmation hearings for executive nominees, both including and beyond the Supreme Court (Martinek et al. 2002; Epstein et al. 2006; Epstein, Segal, and Westerland 2007; Boyd et al. 2018). While the collective behaviors of in-party and out-party members might be best understood through the lens of competing party goals (Schoenherr et al. 2020), it should not be lost that committee members themselves are political actors with distinct beliefs. Even as every member of an out-party might be expected to approach the hearings with greater hostility than those who share the appointing president's party, the magnitude of that hostility could vary reflective on how much ideological congruence they share with the

nominee. As such, I included a variable measuring the comparative ideological distance separating a committee member from the nominee in a NOMINATE-JCS common space (Epstein, Martin, Segal, and Westerland 2007; Lewis et al. 2022),¹³ where an absolute value greater than zero corresponds with diminishing ideological congruity.¹⁴ I further consider the ideological extremity of the individual committee member. Prior literature measuring variation in senatorial behaviors toward executive appointees has found that intensifying polarization of legislators often corresponds with diminished confirmation rates and greater expectations of contention among the parties (Krutz et al. 1998). I frame this condition by measuring a committee member's extremity as the absolute value of their respective NOMINATE score, where scores greater than zero denote greater ideological extremity.

Apart from the core theoretical frameworks, I include a final group of controls that measures a collection of demographic and other occupational conditions. The first is a set of dichotomous terms indicating a committee member's legal education and prior public legal experience. Schoenherr et al. (2020) drew from prior research that observed markedly different senatorial behaviors among those with prior experience as lawyers (Miller 1995). They specifically observed how their skillset would reasonably lead to performing better at "engaging with nominees" (345) because they have more experience with the hearings' cross-examination format. The second variable is another dichotomous term indicating whether the committee member was female. While only seven percent of the committee members between 1971 and 2020 were female, behaviors such as those of hostility displayed by then-Senator Kamala Harris during the Kavanaugh hearing (2018) raise questions about whether female members approach their rhetorical behaviors dissimilarly from their male colleagues (Arnholz 2020). The final variable draws from research that merges judicial confirmations and intersectionality studies by indicating whether the nominee was female. Between 1971 and 2020, five hearings included female nominees.¹⁵ While this does not constitute a majority of the nominee population, observers have noted that the experiences of female nominees are pointedly different from their male counterparts. For example, Ringhand and Collins (2010) observed significant variation in committee members' question-asking behaviors toward female nominees (629–631),¹⁶ most notably as it relates to female nominees expecting more significant volumes of interrogatory questions related to their judicial philosophy. I expect that variation in a nominee's gender will serve as an additional mediator of rhetorical behaviors, at least insofar as interrogatory questions challenging their judicial acumen and philosophy would sensibly be perceived as relaying negative rhetorical behaviors.¹⁷

¹³See also Poole (2005); Poole and Rosenthal (2001).

¹⁴For nominees who served on a Circuit Court of Appeals before their appointments, I assign their score as it was measured during the year before their appointment. For those who did not (e.g., Justices Rehnquist, Powell, O'Connor, and Kagan), I assign the score relative to their first year on the Court.

¹⁵O'Connor (1981), Ginsburg (1993), Sotomayor (2009), Kagan (2010), and Barrett (2020).

¹⁶See also footnote 67, page 629.

¹⁷Owing to the presence of several temporal fixed effects terms representing key events in the recent history of Supreme Court confirmation hearings, I provide two sets of multicollinearity diagnostics for the explanatory variables in the appendix (Tables A3 and A4) using Variable Inflation Factor (VIF) analysis, which are disseminated to consider the presence of the interaction term between the hearing existing during divided (unified) government and whether a committee member is positioned in the in (out) party coalition. While there are select cases of potential confounders, especially the terms denoting the predicted target of a member's rhetoric, there does not appear to be a concerning degree of multicollinearity observed on average

Table 3. Multinomial Logistic Regression of Rhetorical Behaviors

Variable	Limited Key Events				Additional Key Events			
	Positive		Negative		Positive		Negative	
	Coef.	RSE	Coef.	RSE	Coef.	RSE	Coef.	RSE
Bork Era	-0.331	(0.13)*	-0.338	(0.11)**	0.263	(0.18)	-0.279	(0.15)
Thomas Era					-0.035	(0.12)	-0.223	(0.11)*
Garland Era					-0.530	(0.16)**	-0.768	(0.15)***
Kavanaugh Era					-0.558	(0.16)***	-0.316	(0.13)*
Televised Hearing	0.159	(0.25)	0.251	(0.21)	-0.360	(0.25)	0.199	(0.20)
Unified x In-Party	0.268	(0.14)	0.096	(0.11)	0.345	(0.13)*	0.057	(0.10)
Divided x Out-Party	0.520	(0.13)***	0.222	(0.11)	0.067	(0.14)	0.105	(0.13)
Divided x In-Party	0.505	(0.17)**	0.690	(0.16)***	0.131	(0.19)	0.548	(0.16)**
Directed At Nominee	-0.579	(0.17)**	0.774	(0.14)***	-0.702	(0.17)***	0.795	(0.15)***
Directed at Committee	0.662	(0.18)***	-0.348	(0.14)*	0.569	(0.18)**	-0.346	(0.14)*
Election Year	0.015	(0.08)	0.045	(0.07)	0.068	(0.08)	-0.067	(0.07)
Months Until Pres. Election _(t)	0.007	(0.003)*	0.004	(0.003)	0.008	(0.003)*	0.006	(0.003)*
Ideological Distance	-0.223	(0.18)	0.492	(0.15)**	-0.115	(0.16)	0.438	(0.15)**
Member Extremity	0.121	(0.24)	-0.237	(0.21)	0.387	(0.24)	-0.081	(0.21)
President Approval	-0.001	(0.004)	0.0005	(0.004)	-0.0007	(0.004)	-0.0001	(0.003)
Law Degree	-0.167	(0.011)	0.213	(0.08)*	-0.159	(0.09)	0.195	(0.08)*
Public Experience	0.144	(0.07)	-0.095	(0.07)	0.143	(0.07)	-0.084	(0.07)
Female Member	-0.052	(0.12)	0.119	(0.10)	0.048	(0.11)	0.152	(0.10)
Female Nominee	0.572	(0.10)***	0.282	(0.09)**	0.389	(0.10)***	0.167	(0.10)
Constant	0.294	(0.37)	-0.545	(0.33)	0.642	(0.35)	-0.429	(0.33)
R ²			0.09				0.10	

Observations = 20,984.

Robust standard errors clustered by hearing and committee member.

Note: Eras indicate the period from denoted hearing to the next key event.

* $p < 0.05$.

** $p < 0.01$.

*** $p < 0.001$ with a two-tailed test.

Results

I offer the results of the multinomial models in Table 3, much of which conform to the theories of confirmation hearing dynamics and the conditions framing them as depicted in my theoretical framework. Further analysis of predicted probabilities reinforces these findings. My results ultimately question the conventional wisdom that key events, most notably the contentious framing of the Bork nomination, serve as the primary instigators of hostility in the recent history of Supreme Court confirmation hearings. The incorporation of key events, beyond and including Bork, does little to explain the variation in rhetorical behaviors across hearings. I instead observe how much of these behaviors appear reflective of party alignments and the balance of interbranch political power. This dynamic not only serves as the most significant and consistent predictor but has been such since at least the 1970s.

A natural question that emerges from my results in Table 3 is whether there are specific inflection points that instigated modern behavioral expectations in confirmation hearings. That is, does there exist a discernable shift toward greater expectations of positive or negative rhetoric coinciding with notable events? Moving

across any of the model combinations. I provide an additional set of model results omitting these terms in the appendix materials (Table A5).

toward evolving trends in party alignments and the balance of interbranch political power yields intuitive answers. Confirmation hearings were historically viewed as an extension of the president’s prerogative. Nominees were not only expected to be confirmed with overwhelming margins (Krutz et al. 1998; Moraski and Shipan 1999; Nemacheck 2008), but parliamentary tactics, negative blue slips, and other obstructionist behaviors were viewed as beyond the accepted practices of decorum (Denning 2001; Black et al. 2014). Though Bork was not the first nominee to be rejected, it is often framed as the event that set the standard for contemporary hearings. Indeed, my initial hypothesis was that the interparty hostilities commonly observed in contemporary hearings would emanate from Bork and continue to compound over time. However, an analysis of rhetorical behaviors across successive hearings suggests that this contention is not only incorrect, but the belief that pre-Bork hearings were invariably defined by neutral rhetoric appears to be inaccurate (Figure 1). Notwithstanding greater ideological polarization among committee members over time, I observe how considerable variation in rhetoric was not only prevalent from both in-party and out-party members prior to Bork, but the hearing’s immediate impact on rhetorical behaviors was not as pronounced as might have been believed.

Future analyses will be necessary to better disseminate the changing topical areas explored in each hearing. However, differences in the topical substance observed in rhetorical behaviors do not negate the reality that definitive differences in interparty rhetorical behaviors were nonetheless prevalent in hearings preceding Bork. While personal critiques might have increased during the Bork hearing, similar behavioral trends were not believed to emerge again until the Thomas hearing in 1991, nor were they considered to be especially prevalent during the Ginsburg (1993) hearing. At best, inferences drawn from Bork and subsequent hearings appear to be mixed, and there does not exist a single event where hearings became invariably hostile. While some of the events across both models relay varying degrees of statistical significance,

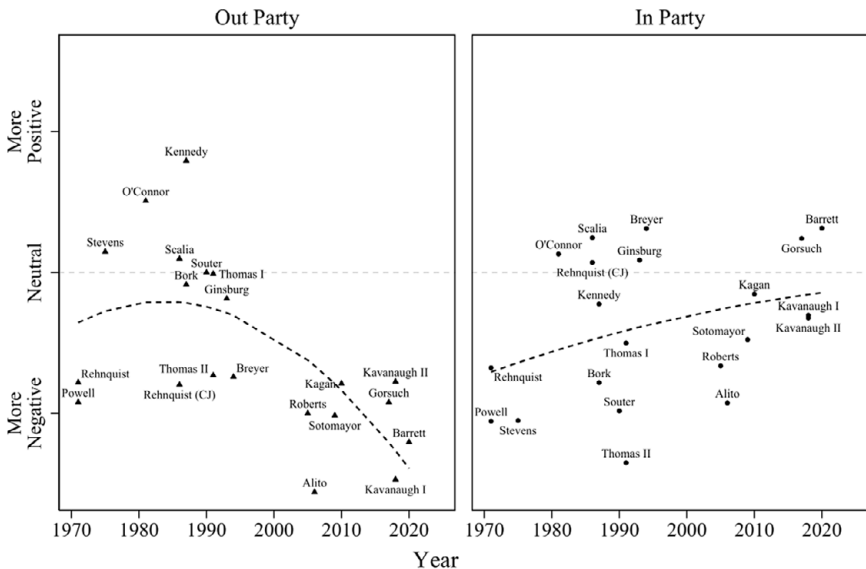


Figure 1. Average Rhetoric Sentiments by Hearing and Party Alignment.

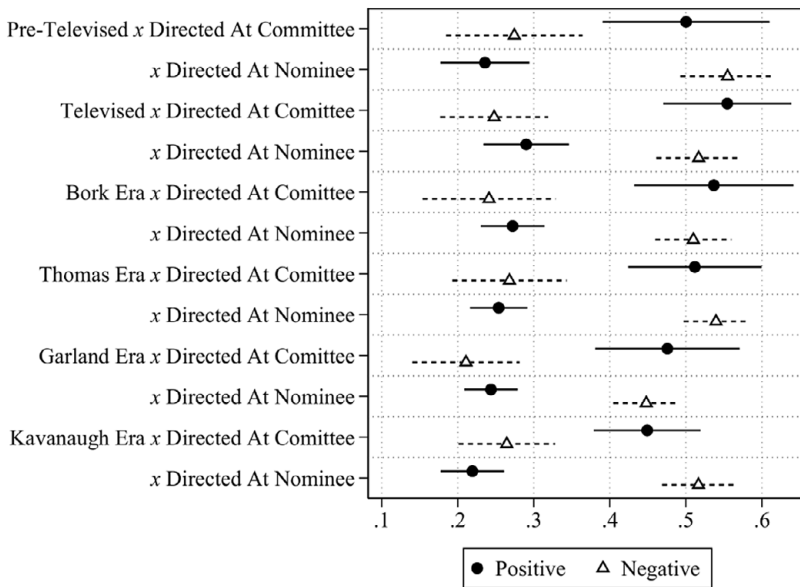


Figure 2. Predicted Rhetorical Behaviors by Rhetoric Target Across Key Events Eras.

a critical analysis of their purported effects reflective of the target of a committee member’s rhetoric reveals few insights (Figure 2).

I find a greater reliance on positive rhetoric when targeting fellow committee members, as well as greater negativity for rhetoric targeting the nominees, a pattern that is effectively repeated across every observation period between 1971 and 2020. At no point do I find a clear difference to indicate that any of these key events significantly altered rhetorical behaviors. These findings present an interesting dichotomy. While Bork is often considered the primary inflection point for framing the contention found in modern confirmation hearings, its effects do not seem to sufficiently explain rhetorical behaviors. That is not to contend that the hearing did not have a fundamental impact on subsequent hearings. Rather, the perception of Bork being the definitive event where rhetoric became invariably negative is not fully capturing the dynamic. Even more, recent events such as the Republican Senate majority’s refusal to grant a hearing to Merrick Garland and the tumultuous Kavanaugh hearing appear to relay little influence on the longitudinal variation. Instead, a critical analysis of Figure 1 reveals alternative insights from Bork and subsequent contentious hearings that might serve to better explain the variation in rhetorical behaviors.

Most notably during Bork and most of the Thomas hearing, the in-party appeared to express more negative rhetorical behaviors than the out-party. While this might appear to contradict the abundance of literature that has framed both hearings as being among the most contentious, it actually reinforces the importance of party dynamics and the balance of interbranch political power. As it directly relates to my second hypothesis, I expected that in-party members would express divergent rhetorical behaviors reflective of their position as the committee’s majority or minority party. Under conditions of divided government where members of the president’s party are in the minority, my results suggest that rhetorical behaviors

in-party members are moderated by the balance of interbranch political power. This expectation was perhaps most pronounced in the Bork and Thomas hearings when in-party members were in the minority and forced to respond to hostility by the majority out-party. Prior literature has found that members of the appointing president’s party can pursue party goals in the hearings, which would reasonably include rhetoric that reinforces support for the nominee. However, an in-party lacking majority status on the committee alters the strategic calculus. Schoenherr et al. (2020) aptly illustrate these competing interests by considering the fundamental goals of in-party and out-party members reflective of whether they believe grandstanding behaviors would have a substantive effect on the outcome. Even though nominees are often assured of a favorable report from the committee and an eventual confirmation, this does not negate the capacity for members to push and pull at the nominees and other committee members themselves. I reflect on these behaviors in Figure 3, which broadly reaffirms the expectations outlined by Schoenherr et al. (2020).

Regardless of their capacity to derail a nomination, out-party members are more likely to promote negative rhetoric geared toward grandstanding that could instigate contentious hearings. This flows naturally with normative assessments that often depict competing partisans attempting to frame the nomination as either a referendum on the nominee’s partisanships or a reflection of the underlying political climate. Yet, a concentrated analysis of their rhetorical behaviors in periods when they represent the majority party provides a notable insight. Namely, the out-party’s proclivity to incorporate positive rhetoric relays a positive and significant effect in the model with limited key events. Future analyses will be necessary to better discern this behavior, but it is indeed possible that their majority position emboldens their desire

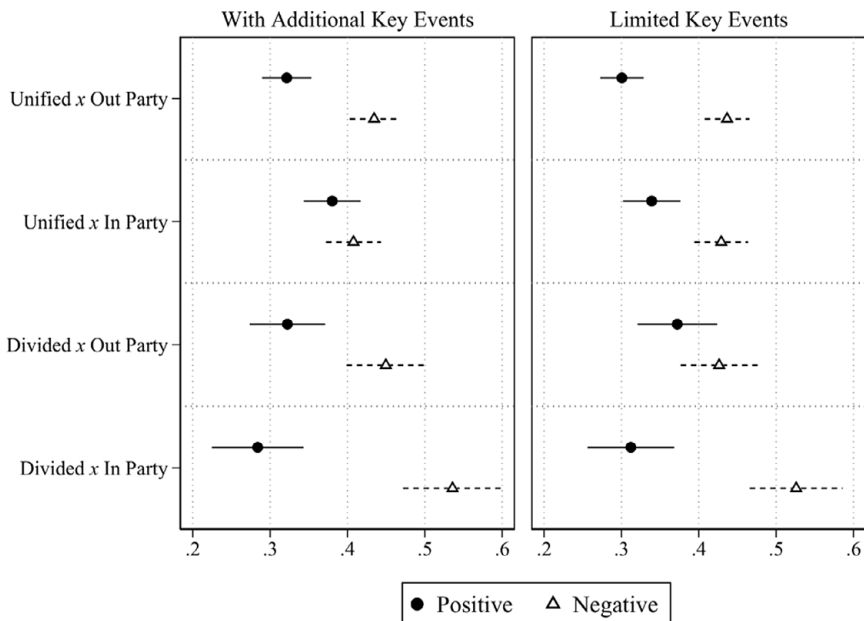


Figure 3. Predicted Probabilities of Rhetorical Behaviors by Divided or Unified Government.

to approach the hearings with a professional demeanor, knowing that they ultimately control the reins of the hearing. Nonetheless, it should still be recognized that even as their potential to employ positive rhetoric is greater under these circumstances, they generally remain dependent on negativity as their primary rhetorical strategy (Figure 3).

However, what is perhaps more consequential are the behaviors of in-party members. Though in-party members surely have an interest to paint the nominee – and the appointing president – in a positive light, the ultimate goal is a successful and preferably expedient process. Alternatively, when facing majority opposition in the committee, in-party members appear increasingly likely to employ negative rhetoric.¹⁸ In periods of unified government when a majority in-party can be confident that any opposition's effort to derail the nomination is for naught, they are significantly inclined to express positive sentiments. However, my results provide a notable caveat. While positive rhetoric becomes increasingly expected from an in-party majority, this does not eliminate their usage of negative rhetoric. These members surely recognize they have the votes to discharge the nomination favorably, but they are not entirely willing to allow a contingency of out-party members to grandstand unchecked. This rhetorical balancing act is necessary for a majority in-party to combat an out-party onslaught without overtly compromising their goal of maintaining a coronation. Alternatively, when an out-party becomes the majority in the committee and their opposition efforts become a legitimate threat to confirming the nominee, in-party members appear more willing to respond in kind to a contentious framing of the proceedings. Rather than conceding the narrative to a potentially obstructive majority, they recognize that fighting for the nominee must become an organized party effort.

Through this dynamic, it becomes clear that factors mediating rhetorical behaviors should be viewed through the lens of both competing party goals and the balance of interbranch power. Indeed, the dynamic is best explained when the two factors are amalgamated. While the rhetorical behaviors of out-party members are most consistently negative, in-party members express divergent behaviors reflective of whether the out-party's onslaught can potentially derail the nomination. Yet, observed independently, neither factor fully explains the variation (Figure 4). Only by observing the dynamic as a set of non-mutually exclusive party interests mediated by the balance of interbranch power does it become evident that behaviors are mediated by multifaceted conditions.

Finally, analyzing the various control terms yields an interesting set of mixed results, though the most notable insight reinforces the multifaceted framework. While I find mixed results concerning the presence of a looming election cycle and the gender of the nominee, I observe a more consistent trend of escalating negativity among those members who share little ideological congruity with the nominee. The significance of this variable in both models reinforces the findings of prior literature that have drawn attention to ideology as an increasingly prevalent determinant of senatorial behaviors toward judicial nominees (Martinek et al. 2002; Epstein et al.

¹⁸To reinforce this dynamic, I illustrate these behaviors across each hearing without controlling for the predicted target of the member's rhetoric and consider divergent structures of unified and divided government in the appendix materials (Figure A2). The most immediate distinction is the noticeable homogeneity in rhetorical behaviors. Irrespective of a hearing following or preceding Bork, I find that rhetoric follows similar trends reflective of party alignments and the balance of interbranch political power.

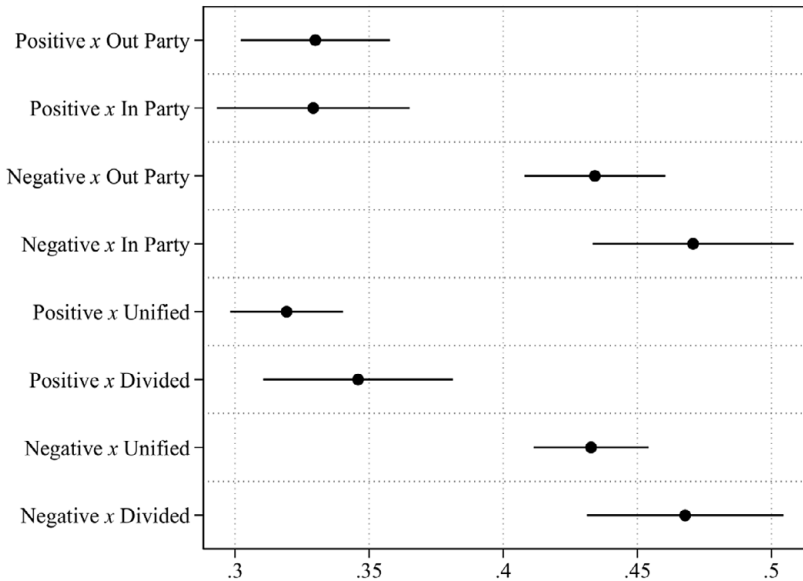


Figure 4. Predicted Rhetorical Behaviors by Party Alignment or Balance of Interbranch Political Power.

2006). I further find that those on the committee with a law degree are indeed more likely to relay negative rhetoric. Prior research has suggested that senators familiar with the legal environment tend to behave differently than their counterparts (Miller 1995). Further analyses will be needed to better understand this dynamic, though an inference can be drawn that those without public legal experience are inclined to view proceedings as a political exercise.

Discussion

In his opening statement of the Gorsuch nomination (2017), Senator Chuck Grassley offered a brief reprisal of what he expected for the coming days: “Judge, I am afraid... you will get some questions that will cause you to scratch your head. Truth be told, it should puzzle anyone who ever takes a civics class... We have heard all of that stuff before. It is an old claim, from an even older playbook.” In many respects, Senator Grassley’s assessment is a poignant illustration. Many observers would argue that the hearings have adapted a greater set of antagonistic and political overtones. However, while many might assume that today’s contentious hearings are the result of stricter partisanship and the accumulation of events including and succeeding the infamous Bork nomination in 1987, I find that this is not the case. Instead, my results suggest that the factors mediating the rhetorical behaviors of committee members are rooted firmly in the dynamic linking the pursuit of partisan goals and the balance of interbranch political power.

This research analyzed the underlying behavioral dynamics of Supreme Court confirmation hearings. I leveraged a sentiment classification procedure to observe rhetoric offered by members of the Senate Judiciary Committee between 1971 and 2020. My work draws attention to understanding rhetorical behaviors as a reflection

of underlying political conditions, rather than a simple response to burgeoning animosity beginning with the Bork hearing. The core hypotheses underpinning my analysis were that conditions of party alignments would motivate the use of sentiment-driven rhetoric by committee members and that these behaviors would manifest most definitively as a response to the Bork hearing and other seminal events in the recent history of confirmation hearings. Indeed, while I do not discredit the fundamental role that Bork played in framing contemporary hearings, insofar as personal critiques of the nominee have surely become more prevalent, my results cement the importance of an underlying party dynamic. I fail to observe any consistent trend that might explain how Bork, or any subsequent hearing plagued by perceptions of hostility, served as a major inflection point. Rather, party control and the balance of interbranch political power have served as the primary mediators of rhetorical behaviors since at least the 1970s.

Existing theories routinely asserted a dependency for legislators to pursue personal and party-based Mayhewian goals, and that this pursuit would extend to Supreme Court confirmation hearings (e.g., Schoenherr et al. 2020). Most notably, my results reveal that although out-party members intuitively have the motivation to frame the hearings negatively in an attempt to obstruct, it is not generally expected that these behaviors will be equally reciprocated by a majority in-party during periods of unified government. However, situations of divided government alter the strategic calculus of both parties and instead facilitate a greater propensity for a minority in-party to employ negative rhetoric. While these effects could potentially be moderated to some extent by a committee member's ideological congruity with the nominee, the dynamic integrating party control and the balance of interbranch power consistently serves as a significant predictor across the disaggregated models.

These findings collectively suggest an unfortunate reality. While much of the rhetoric in any given hearing might be neutral commentary or chitchat, it does not negate a greater longitudinal dependence on framing the hearings in a contentious manner that reinforces party goals. Yet, while these developments are troubling for political discourse in the long term, we must also consider the potential for residual consequences this might have for the Court. Scholars have acutely recognized that the Court's prestige is deterministic of the public's faith in its legitimacy (Jaros and Roper 1980; Baird and Gangl 2006). In essence, because the Court lacks an enumerated mechanism to enforce its own decisions, its ability to compel cooperation from the other branches ultimately lies with the people's perception that the institution possesses legitimate political power. However, if that support erodes, the Court risks losing its institutional legitimacy. At the heart of this theory is the belief that the public views the Court as insulated from the contemporary and contentious political environment. Yet, with much of the public's attentiveness to the Court arising from salient events such as confirmation hearings and controversial decisions (Gibson and Caldeira 2009), we must consider that any hyper-partisan confirmation process could produce a spillover effect that taints the integrity of the Court.

Unfortunately, while nominees themselves surely have a vested interest in maintaining professionalism and impartiality, they cannot manage the behaviors of committee members with personal and party goals. Indeed, some of these concerns appear to be manifesting. Recent studies by Krewson and Schroedel (2020) and Carrington and French (2021) observe diminishing rates of institutional support for the Court in the wake of contentious confirmation hearings. Sustaining these partisan behaviors will almost certainly serve to further diminish the Court's legitimacy. If the

public's first exposure to a potential Supreme Court justice is perpetually framed as political theater, then it very well risks an erosion of the public's faith in their ability to adjudicate objectively.

Observing these rhetorical behaviors provides a holistic illustration of the conditions that frame how members of the Senate Judiciary Committee approach their advice and consent responsibilities for nominees to the nation's most important legal body. Future studies should devote themselves to expanding the foundational aspects of this work. Namely, while this research incorporates nearly 21,000 statements and remarks from Supreme Court confirmation hearings spanning 1971 to 2020, more work can be done. This could include incorporating more contemporary hearings as they arrive, as well as assuming the challenging task of analyzing those before 1971. Furthermore, future works should also take advantage of this work's empirical strategies. Advancements in machine learning procedures are finally reaching a level of incorporation in the social sciences that is both user-friendly and provides infinite applicability to new avenues of research, especially for studies of judicial politics.

Acknowledgments. The author would like to offer their sincerest gratitude to Dr. Richard Vining (University of Georgia), Dr. Jessica Schoenherr (University of South Carolina), and Dr. David Hughes (Auburn University – Montgomery) for their support in developing this work.

Competing interests. The author declares no conflicts of interest.

Data availability statement. Replication materials for this work are available on the Journal of Law and Courts Dataverse archive.

Supplementary materials. To view supplementary material for this article, please visit <https://doi.org/10.1017/jlc.2023.2>

References

- Arnholz, Jack. 2020. "When Kamala Harris Took on Brett Kavanaugh and Bill Barr." <https://abcnews.go.com/Politics/kamala-harris-brett-kavanaugh/story?id=72331829>.
- Baird, Vanessa A., and Amy Gangl. 2006. "Shattering the myth of legality: The impact of the media's framing of Supreme Court procedures on perceptions of fairness." *Political Psychology* 27(4): 597–614.
- "Barrett Confirmation Hearing." C-SPAN video. <https://www.c-span.org/video/?476315-1/barrett-confirmation-hearing-day-1-part-1>.
- Black, Ryan C., Anthony J. Madonna, and Ryan J. Owens. 2014. "Qualifications or Philosophy? The Use of Blue Slips in a Polarized Era." *Presidential Studies Quarterly* 44(2): 290–308.
- Bork, R. H. 1990. "The Tempting of America: The Political Seduction of the Law." *BYU Law Review* 1990(2): 665–672.
- Boyd, Christina L., Paul M. Collins Jr, and Lori A. Ringhand. 2018. "The role of nominee gender and race at US Supreme court confirmation hearings." *Law & Society Review* 52(4): 871–901.
- Cameron, Charles M., Jonathan P. Kastellec, and Jee-Kwang Park. 2013. "Voting for justices: Change and continuity in confirmation voting 1937–2010." *The Journal of Politics* 75(2): 283–299.
- Caldeira, G. A. 1988. "Commentary on senate confirmation of supreme court justices: The roles of organized and unorganized interests." *Kentucky Law Journal* 77(3): 531–538.
- Carrington, Nathan T., and Colin French. 2021. "One bad apple spoils the bunch: Kavanaugh and change in institutional support for the Supreme Court." *Social Science Quarterly* 102(4): 1484–1495.
- Clark, Tom S., Jeffrey K. Staton, Yu Wang, and Eugene Agichtein. 2018. "Using Twitter to study public discourse in the wake of judicial decisions: Public reactions to the supreme court's same-sex-marriage cases." *Journal of Law and Courts* 6(1): 93–126.
- Collins, Paul M., and Lori A. Ringhand. 2013. *Supreme Court confirmation hearings and constitutional change*. Cambridge University Press.

- Collins, Paul M., and Lori A. Ringhand. 2016. "The Institutionalization of Supreme Court Confirmation Hearings." *Law & Social Inquiry* 41(1): 126–151.
- Denning, Brannon P. 2001. "The Judicial Confirmation Process and the Blue Slip." *Judicature* 85(5): 218–226.
- Elving, R. 2018. "What happened with Merrick Garland in 2016 and why it matters now." <https://www.npr.org/2018/06/29/624467256/what-happened-with-merrick-garland-in-2016-and-why-it-matters-now>.
- Epstein, Lee, René Lindstädt, Jeffrey A. Segal, and Chad Westerland. 2006. "The changing dynamics of Senate voting on Supreme Court nominees." *The Journal of Politics* 68(2): 296–307.
- Epstein, Lee, Jeffrey A. Segal, and Chad Westerland. 2007. "The increasing importance of ideology in the nomination and confirmation of Supreme Court justices." *Drake Law Review* 56(3): 609–636.
- Epstein, Lee, Andrew D. Martin, Jeffrey A. Segal, and Chad Westerland. 2007. "The judicial common space." *The Journal of Law, Economics, and Organization* 23(2): 303–325.
- Farganis, Dion, and Justin Wedeking. 2011. "No hints, no forecasts, no previews": An empirical analysis of Supreme Court nominee candor from Harlan to Kagan." *Law & Society Review* 45(3): 525–559.
- Gallup, Inc. 2021. "Presidential Job Approval Center." <https://news.gallup.com/interactives/185273/presidential-job-approval-center.aspx>.
- Gibson, James L., and Gregory A. Caldeira. 2009. "Confirmation politics and the legitimacy of the US Supreme Court: Institutional loyalty, positivity bias, and the Alito nomination." *American Journal of Political Science* 53(1): 139–155.
- Grimmer, Justin, Margaret E. Roberts, and Brandon M. Stewart. 2022. *Text as Data: A New Framework for Machine Learning and the Social Sciences*. Princeton University Press.
- Guliuza III, Frank, Daniel J. Reagan, and David M. Barrett. 1994. "The senate judiciary committee and supreme court nominees: Measuring the dynamics of confirmation criteria." *The Journal of Politics* 56(3): 773–787.
- Hu, Mingqing, and Bing Liu. 2004. "Mining and summarizing customer reviews." In *Proceedings of the Tenth ACM SIGKDD International Conference on Knowledge Discovery and Data Mining* 168–177.
- Jaros, Dean, and Robert Roper. 1980. "The US Supreme Court: Myth, diffuse support, specific support, and legitimacy." *American Politics Quarterly* 8(1): 85–105.
- Krewson, Christopher N., and Jean R. Schroedel. 2020. "Public views of the US supreme court in the aftermath of the Kavanaugh confirmation." *Social Science Quarterly* 101(4): 1430–1441.
- Krutz, Glen S., Richard Fleisher, and Jon R. Bond. 1998. "From Abe Fortas to Zoe Baird: Why some presidential nominations fail in the Senate." *American Political Science Review* 92(4): 871–881.
- Lewis, Jeffrey B., Keith Poole, Howard Rosenthal, Adam Boche, Aaron Rudkin, and Luke Sonnet. 2022. *Voteview: Congressional Roll-Call Votes Database*. <https://voteview.com/>.
- Martinek, Wendy L., Mark Kemper, and Steven R. Van Winkle. 2002. "To advise and consent: The Senate and lower federal court nominations, 1977–1998." *The Journal of Politics* 64(2): 337–361.
- Miller, Mark C. 1995. *The High Priests of American Politics: The Role of Lawyers in American Political Institutions*. Knoxville: University of Tennessee Press.
- Moraski, Bryon J., and Charles R. Shipan. 1999. "The politics of Supreme Court nominations: A theory of international constraints and choices." *American Journal of Political Science* 43(4): 1069–1095.
- Mayhew, D. 1974. *Congress: The Electoral Connection*. New Haven, CT: Yale University Press.
- Nemacheck, Christine L. 2008. *Strategic Selection: Presidential Nomination of Supreme Court Justices from Herbert Hoover through George W. Bush*. University of Virginia Press.
- Ogundele, Ayo, and Linda Camp Keith. 1999. "Reexamining the impact of the Bork nomination to the Supreme Court." *Political Research Quarterly* 52(2): 403–420.
- Poole, Keith T. 2005. *Spatial Models of Parliamentary Voting*. Cambridge University Press.
- Poole, Keith T., and Howard Rosenthal. 2001. "D-nominate after 10 years: A comparative update to congress: A political-economic history of roll-call voting." *Legislative Studies Quarterly* 26(1): 5–29.
- Ringhand, Lori A., and Paul M. Collins Jr. 2010. "May it please the senate: An empirical analysis of the senate judiciary committee hearings of Supreme Court nominees, 1939–2009." *American University Law Review*. 60(3): 589–642.
- Schoenherr, Jessica A., Elizabeth A. Lane, and Miles T. Armary. 2020. "The Purpose of Senatorial Grandstanding during Supreme Court Confirmation Hearings." *Journal of Law and Courts* 8(2): 333–358.
- Silverstein, Mark. (1994). *Judicious Choices: The New Politics of Supreme Court Confirmations*. New York: W. W. Norton & Company.

- Totenberg, Nina. 2011. "Thomas confirmation hearings had ripple effect." <https://www.npr.org/2011/10/11/141213260/thomas-confirmation-hearings-had-ripple-effect>
- U.S. Const. art. II, § 2, cl. 2
- Vining Jr, Richard L. 2011. "Grassroots mobilization in the digital age: Interest group response to supreme court nominees." *Political Research Quarterly* 64(4): 790–802.
- Vining Jr, Richard L. & Marcin, Phil. 2014. "An economic theory of Supreme Court news." *Political Communication* 31(1): 94–111.
- Watson, George, and John Stookey. 1987 "Supreme Court confirmation hearings: A view from the Senate." *Judicature* 71(4): 186–196.
- Weissman, Shoshana, and Anthony Marcum. 2019. "Supreme Court Confirmation Hearing Transcripts, As Data." <https://www.rstreet.org/research/supreme-court-confirmation-hearing-transcripts-as-data/>
- Wheeler, Lydia. 2018. "The lasting effect of Kavanaugh's confirmation hearings." <https://thehill.com/regulation/court-battles/410214-the-lasting-effect-of-kavanaughs-confirmation-hearings/>.
- Zhang, Harry. 2004. "The Optimality of Naive Bayes." *Aa* 1 (2): 3–8.