

Just a Number? The Impact of Age on Federal Judicial Nominations

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Abstract

Lifetime appointments to the federal bench have the potential to provide long-term policy influence well beyond the tenure of the appointing president. Members of Congress and the president face age requisites, but none exist for the judicial branch. While younger judicial nominees have the potential to serve longer on the bench, older nominees may be more experienced. How, then, does age impact the potential confirmation of a judicial nominee to the federal bench? Using a dataset of 2,534 lower court nominations from 1981-2020, I find that age impacts a nominee's chances of being confirmed but this is conditional by court level. At the circuit level, older nominees are more likely to be confirmed while there is no effect at the district level. However, previous judicial experience can dramatically increase a young nominee's confirmation prospects. Further, following the 2013 "nuclear option", nominees to the circuit court are significantly younger but, are no longer less likely to be confirmed suggesting reduced confirmation hurdles may lead to a younger federal judiciary.

Introduction

Despite only four years in office, President Donald Trump reshaped the U.S. federal judiciary by nominating and confirming judges to approximately one-quarter of U.S. district judgeships, thirty percent of the court of appeals, and one-third of the U.S. Supreme Court. The ramifications and legacy of these judges will unfold over the next several decades (Hollis-Brusky and Parry 2021), in large part because President Trump emphasized nominating young individuals to these lifetime positions.¹ We know that age was a crucial factor in these nominations and that several of these nominations – including one of the youngest-ever federal judges at just 33 – were heavily scrutinized and called into question by professional legal organizations such as the American Bar Association.² Because of the lifetime nature of judicial appointments, President Trump emphasized nominating younger judges, going so far as to say “If you’re 60 or older, forget about [being nominated].”³

The focus on the age of judicial nominations has not been limited to President Trump. In 1975, President Ford nominated future Supreme Court justice Anthony Kennedy to the 9th Circuit Court of Appeals at just 38 because of his desire for young judges. President Obama, facing the unfavorable political climate of an opposition Senate, nominated Merrick Garland as his pick for the U.S. Supreme Court in part because of his advanced age.⁴ Clearly, presidents consider age when nominating to lifetime appointments (Goldman 1997; Nemacheck 2008). However, they must balance this desire against which candidates can be confirmed by the Senate (Epstein and Segal 2005; Martinek, Kemper and Winkle 2002; Moraski and Shipan 1999). This tradeoff is what I investigate.

Past studies of judicial nominations have thoroughly examined the selection and confirmation of federal judges. We know that nominee traits such as gender and race (Asmussen 2011; Solowiej, Martinek and Brunell 2005) impact the success (or failure) of a nomination. But, we know less of

¹Will Democratic Court Nominations Live up to Biden’s Promises- *The Nation*.

²Senate Confirms Trump’s Youngest Federal Judge to Serve in Tampa– *Tampa Bay Times*.

³‘If You’re 60 or older, Forget About It’: Trump Sells his Judiciary Takeover– *Politico*.

⁴Merrick Garland is Older than any Supreme Court Nominee since 1971. Here’s Why it Matters– *Vox*.

how another immutable trait – age – impacts a nominee’s confirmation prospects. While elected officials have constitutionally-mandated age requirements, federal judges – appointed for life – do not face this hurdle. Put another way, there are no age-related limitations in order to become a federal judge. That said, all judicial nominations must be confirmed by the Senate. How then does age influence the confirmation of federal judges?

I examine the affect of age on the success of lower court judicial nominations. The following sections provide a brief discussion on age and the federal judiciary as well as discussing the politics of judicial nominations. These foundations in place, I introduce my expectations for how age impacts nomination success. To test these predictions, I generate a dataset of over 2,500 circuit and district nominations from 1981 through 2020. The final sections examine my empirical modeling strategies, present results, and explore conclusions. Ultimately, I find that age impacts circuit nomination success, with older circuit nominees more likely to be confirmed. However, having prior federal judicial experience and a recent Senate rules changes (the 2013 “nuclear option”) mitigate the impact of age. Taken together, I provide evidence that the age of a nominee influences their confirmation chances conditioned on court level, prior experience, and provide initial evidence of an evolving confirmations process.

Age and the Judiciary

Although no formal requirements constrain the age of a judicial nominee, age-related norms permeate the nominations and confirmations process. For example, the American Bar Association (ABA) provides ratings of judicial nominees. These ratings are then used by the Senate as a measure of quality during committee meetings, hearings, and the eventual final vote. While the Constitution does not mention any specific age requisites, to gain a rating of at least “qualified” from the ABA, a typical nominee would need to be at least 37 years old. This assumes an typical educational path where an individual graduates college at 22, immediately goes to and completes three years of law school, and subsequently begins practicing law. But, to be rated as “qualified”,

the ABA calls for nominees to have at least 12 years of legal experience after law school.⁵ Therefore, while the U.S. Constitution does not mention a required minimum age, current norms require a qualified nominee to be at least 37 years old. Or, put another way, two years older than required to be president and 12 years older than the minimum age to serve in the House of Representatives.

Presidents have considered the age of nominees to the federal benches since at least President Franklin D. Roosevelt (FDR). In fact, a key component of FDR's court reform plan was to "bring new, young blood to the judiciary" (Goldman 1997, 35). And while FDR was concerned with appointing young judges, he – and subsequent presidents – were more concerned about *not* nominating older judges. For example, President Eisenhower was opposed to the appointment of "elderly judges" (Goldman 1997, 57). Even more extreme, President Carter had such a disdain for appointing older judges that the Senate had to intervene and pass a resolution "end[ing] discrimination against... arbitrary age barriers" (Goldman 1997, 275).

However, it was not until President Reagan that the age of a nominee took central stage. In order to promote his agenda, Reagan "select[ed] younger judges, which reflected a desire to prolong the Reagan legacy on the bench" (Goldman 1997, 337). When appointing judges, Reagan specifically wanted to choose individuals that could "serve for a long time" (Goldman 1997, 337). And, this strategy came into play at both ends of the age spectrum. Being older was enough to write off a candidate as older appointments ran "counter to the President's desire to appoint younger judges" (Goldman 1997, 337). Under Reagan, not only do we see the start of ideological appointees (Goldman 1997) but an emphasis on younger nominees that could continue Reagan's judicial legacy for decades.

When considering nominees, presidents aim to choose people that will enhance their "judicial legacy" (Goldman 1997). That is, presidents want to nominate like-minded judges who will continue promoting the president's agenda long after the president has left office. Intuitively, younger judges have the potential to sit on the bench longer. And, even in the face of Senate constraints, the president is generally successful in having their nominees confirmed (Cottrell, Shipan and An-

⁵Standing Committee on the Federal Judiciary- What It Is and How It Works

derson 2019). Because of this success, appointing younger judges can have lasting impacts on the ideological make-up of the bench. By nominating young judges, the president can shift the ideological composition of the courts (Katz and Spitzer 2014) and influence U.S. law and policy for decades to come.

While younger nominees have the potential to serve longer, they also present unique pitfalls. Younger nominees likely have spent less time in the legal field, leading to less experienced nominees. And, as experience is tied to ABA ratings, these nominees may be rated lower by the ABA. For example, the Trump White House bragged “The average age of circuit judges... [is] a full 10 years younger than the average age of President Obama’s circuit nominees.”⁶ However, President Trump also has the highest proportion of “not qualified” nominees since 1981. And, while there are many reasons a nominee could be rated as “not qualified”, it is important to note that President Trump’s “not qualified” nominees were significantly younger than those rated as “qualified” or “well qualified.”⁷

Another pitfall that presidents face when considering younger nominees is their lack of a long paper trail. Absent this history, presidents can fall victim to nominating judges that do not share their ideologies in the long run. For example, President Eisenhower, when asked if he had any regrets from his presidency, responded “yes, two, and they are both sitting on the Supreme Court [referring to Earl Warren and William Brennan]” (Abraham 2008, 208). President Trump, when selecting judges, was “adamant he wouldn’t make the blunder that Republicans accused George H.W. Bush of in selecting Souter, or George W. Bush in selecting Roberts” (Kaplan 2018, 50). Judicial nominations can represent a “buyer beware” situation for presidents, wherein presidents must be considerably forward thinking to ensure their nominees do not deviate ideologically in the future (Segal, Timpone and Howard 2000). Presidents want to ensure any judicial legacy promotes *their* ideals and that the judges they select will not become future regrets.

A majority of judges do drift ideologically (Epstein et al. 2007, 1998). The issue, to a president

⁶What Trump has done to the courts, explained – Vox

⁷The average age of “not qualified” Trump nominees was 43 years old compared to a “qualified” and “well qualified” average age of 50. This difference of means is significant at $p < 0.05$.

at least, is when a judge drifts in the *wrong* direction. A way presidents can protect themselves from judicial disappointments is to nominate individuals with longer paper trails. Owens and Wedeking (2012) show that “ideological drift” can be predicted. However, in order to properly predict potential drift, a breadth of speeches, opinions, and other writings are required. The more writings and documents a nominee has, the clearer the picture of a nominee’s current (and future) judicial philosophy. Older nominees are more likely to have a longer paper trail, due to their experience, from which a thorough examination and evaluation of nominees can occur and future rulings can be predicted.

While the president may select whomever they want for a nomination, the Senate ultimately decides confirmation. When considering a lifetime appointment, the Senate must weigh the tradeoffs associated with a nominee’s age. Older nominees may be more experienced, and considered more qualified by the ABA, than younger nominees. However, the Senate must also consider the negative attributes that are associated with age. For example, older judges’ written opinions are cited less often than younger judges (Kosma 1998; Posner 1995). Further, courts hear less cases, on average, as the age of the court increases (Teitelbaum 2006) leading to potential issues of judicial efficiency. When voting for confirmation to a lifetime appointment, the Senate must keep these tradeoffs in mind.

A unique aspect of lower court nominations, particularly for circuit nominations, is the discussion of a nominee’s potential to elevate to the Supreme Court. By its nature, the age of circuit judges impacts the age of the Supreme Court. Supreme Court nominees are almost exclusively chosen from the circuit courts (Black and Owens 2016; Choi, Gulati and Posner 2015; Norris 2020). Therefore, while the age of nominees to the circuit court nominees does not immediately affect the Supreme Court, the potential for downstream effects is there. For example, much of the news coverage surrounding President Biden’s selection of Ketanji Brown Jackson to the D.C. Circuit did not discuss Jackson’s future impact on the D.C. Circuit – where she was nominated – but instead her potential for elevation to the Supreme Court.⁸ As such, the Senate may not only

⁸For an example, see: Ketanji Brown Jackson, A Supreme Court Prospect, Is Confirmed to A Key Appeals Court – *NPR*

be considering the nomination in front of them but also the future implications that come with confirming a nominee.

The Senate is not the only entity that pays attention to the age of a nominee. In particular, the media, in addition to judicial philosophy or ideology, focuses its commentary on a nominee's age. For example, when examining President Trump's nominees, much of the media's discussion revolved around how Trump's nominees "are going to be ruling for decades to come."⁹ This, in conjunction with the large number of judicial vacancies, led to lengthy commentary of the lasting impact of Trump's young nominees.¹⁰ Conversely, other commentary have pointed to an aging judiciary and the issues associated with aging judges.¹¹ We see that the age of a nominee, both young and old, is not only important to the Senate during their deliberations but also to the media in their narrative of the judiciary. Or, as one *Washington Post* article stated, "to put it bluntly: the age of judges matters."¹²

Many studies focus on the behavior of judges after they are confirmed to their lifetime appointments. However, these studies gloss over an important precursor: confirmation. The relationship between age and nominations has been briefly evaluated for Supreme Court "shortlisters" (Nemacheck 2008, 126), but has not been thoroughly examined in confirmation politics, particularly at the lower courts. While presidents must weigh several factors when nominating a judge, all nominations must ultimately be confirmed (or denied) by the Senate. How age is considered, and what impacts it has on confirmation politics, provides necessary insight in the study of federal judicial nominations and confirmations.

Lower Court Nominations and Confirmations

Because of their significance, lower court judgeships are non-trivial appointments. District and circuit judges hear and decide the majority of case law within a given year in the United States

⁹Wave of Young Judges Pushed by McConnell Will Be 'Ruling for Decades to Come' – *NPR*

¹⁰Charting the Long-Term Impact of Trump's Judicial Appointments – *ProPublica*

¹¹The Oldest Bench Ever – *Slate*

¹²Trump picked the youngest judges to sit on the federal bench. Your move, Biden. – *The Washington Post*

(Steigerwalt 2010). Further, these judges are major influencers of U.S. law and policy (Corley, Collins and Calvin 2011; Goldman 1997; Westerland et al. 2010). Even the U.S. government recognizes this fact with by stating “the decisions made by the 12 Circuit Courts of Appeals across the country... are the last word in thousands of cases.”¹³ And, with a continually shrinking Supreme Court docket (Lane Forthcoming; Owens and Simon 2012), lower court decisions, and the judges that decide them, are increasingly important.

Many scholars, pundits, and members of the public focus exclusively on nominations to the U.S. Supreme Court. Of course, these are supremely important. Yet, district and circuit court judges have the final say in most cases (Steigerwalt 2010). Indeed, the Court of Appeals are the “*de facto* courts of last resort” in most federal court cases (Bowie, Songer and Szmer 2014, 26). Over time, we’ve seen the importance of district and circuit courts materialize with nominations to these courts becoming more contentious and increasingly scrutinized (Carter 1994; Dancey, Nelson and Ringsmuth 2020; Hendershot 2010; Steigerwalt 2010). Nominees are evaluated by not only their qualifications but also if they have any disqualifying characteristics (Carter 1994), including their age (Goldman 1997). Further, interest groups have taken a more active role, noticing – and at times attempting to sink the nomination of – nominees that may harm their organizations (Cameron et al. 2020; Goldman 1997; Scherer, Bartels and Steigerwalt 2008). Nominations to the lower courts are in the national spotlight- more and more featuring a confirmation process much like that of the Supreme Court.

Importantly, the circuit courts serve as a major source of “contenders” for the Supreme Court (Black and Owens 2016; Choi, Gulati and Posner 2015). Their significance cannot be undervalued and has led to monumental changes in the nominations process. Indeed, the 2013 “nuclear option” was not because of a Supreme Court pick but instead from the blockade of nominations to the D.C. Circuit Court. And, the nomination of circuit court judges continues to dominate the media to the present day. When Kentaji Brown Jackson was nominated to the D.C. circuit in 2021, she was immediately tapped as a potential Supreme Court pick. Much of the media’s discussion

¹³USCourts.gov– About the U.S. Courts of Appeals

of her confirmation surrounded her Supreme Court prospects as she “ticks off just about every box”¹⁴, including her age. With previous circuit court experience being almost a prerequisite for Supreme Court nominees¹⁵, circuit court nominations are of extreme importance. In essence, a circuit nomination is a potential stepping stone to the Supreme Court.

Unlike at the Supreme Court, district and circuit nominations face a unique hurdle: senatorial courtesy. Institutionalized by the use of “blue slips” (Binder 2007) in the Senate Judiciary Committee, this norm gives tremendous power to senators from the state of the nomination. In practice, if a senator disagrees with a nominee to their a court in their state, they use this norm to kill a nomination (Steigerwalt 2010). The use of a blue slip is the prerogative of the Senate Judiciary Chairperson and has varied over, particularly for circuit nominations opening up the possibility that once-disqualifying nominee characteristics (such as their age) may no longer be disqualifying.¹⁶ Even though each seat within a circuit is assigned to a specific state (Steigerwalt 2010), circuits cover multiple states and give “administration[s] more leeway in choosing nominees” (Goldman 1997, 13). And, while blue slip considerations are formidable, they are not the only consideration in the confirmations process (Binder and Maltzman 2004). Even so, senatorial courtesy and its formalized “blue slip” process is influential in lower court confirmations.

The increased scrutiny of lower court nominations has led to a particularized nominations process for district and circuit nominees. Nominations that “die” (or fail) in the Senate follow a pattern of “malign neglect” (Bond, Fleisher and Krutz 2009). Unlike Supreme Court nominations¹⁷, lower court nominees that may prove controversial, or that senators simply do not want to vote on, can be waited out and returned to the president at the end of a Congress. This phenomenon of senatorial delay and obstruction has been thoroughly studied (Bell 2002; Binder and Maltzman 2002;

¹⁴Kentaji Brown Jackson, A supreme Court Prospect, Is Confirmed to a Key Appeals Court– *NPR*

¹⁵Of the 18 unique Supreme Court nominees since 1980 (John G. Roberts was nominated twice), 15 (83%) had circuit court experience. Only Elena Kagan (U.S. Solicitor General), Harriet Miers (White House Counsel), William Rehnquist (Assistant U.S. Attorney) and Sandra Day O’Connor (Arizona State Court of Appeals) lacked circuit court experience.

¹⁶This is particularly evident following the 2013 “nuclear option.” For example, since 2017, two different Senate Judiciary Committee Chairs (Senators Grassley and Graham) have publicly not honored blue slips for circuit appointments (See: Grassley rips up ‘blue slip’ for a pair of Trump picks and Lindsey Graham: Blue slips won’t derail Trump appeals court picks).

¹⁷The nomination and “malign neglect” of Merrick Garland stands as the lone exception.

Hendershot 2010; Martinek, Kemper and Winkle 2002; Nelson and Ostrander 2016). Deliberate delay provides senators with potential political cover of controversial nominees by not requiring a public vote.

Deliberate delay may also be a strategic consideration. Take, for example, the historic blockade of President Obama's judicial nominations during the 114th Congress (Slotnick, Schiavoni and Goldman 2017). While much of the discussion surrounded the Supreme Court vacancy following Antonin Scalia's death, the blockade led to President Trump inheriting a substantial number of district and circuit vacancies. As presidents strategically prioritize inherited vacancies (King and Ostrander 2020), Senate Republicans took a calculated risk by taking no action on dozens of lower court nominations and were rewarded. From the substantial nominations backlog, President Trump was able to transform the judiciary with young, conservative judges.

Judicial confirmations are a give-and-take between who the president *wants* and who they *can* have confirmed by the Senate (Cameron and Kastellac 2016; Krehbiel 2007; Moraski and Shipan 1999). For lower court nominations, the president must also concern themselves with sufficient support from the Senate Judiciary committee in order for a nomination to reach the Senate floor (Primo, Binder and Maltzman 2008). And, even though presidents are typically rather successful (Cottrell, Shipan and Anderson 2019), the Senate provides a strong check. While, in the past, presidents used recess appointments to work around the Senate (Graves and Howard 2010), they no longer remain an option (Black et al. 2011; Ostrander 2015). Further, only Senate confirmation results in a lifetime appointment. Therefore, in order to confirm judges, there is a strategic interaction between a president's preferred nominees and the constraints imposed by the Senate and the confirmation process.

Lower court nominations increasingly reflect their Supreme Court counterparts. They are non-trivial in nature, heavily scrutinized, and contentious. The news media reports on district and circuit nominations and confirmation hearings. Interest groups are involved in both supporting and opposing nominations. And, all makes sense as lower court judges are frequently the first, and often the final, say in most U.S. legal matters. Their nominations and confirmations are of extreme

consequence not only to the U.S. judiciary but for law and policy in the United States.

Investigating the Impact of Age on Confirmation Success

The ultimate goal of a nomination to the federal bench is confirmation. For the president, this gives them a chance to build their presidential legacy and impact policy after they leaves office (Goldman 1997). However, nominations must be confirmed by the Senate and lower court nominations are increasing in scrutiny, resembling Supreme Court nominations (Harvey and Holmes 2002). To determine the impact of age on confirmation success, I collect biographical information on each nominee using Senate Judiciary Questionnaires and judicial biographies from the Federal Judicial Center. I then use the age of a nominee at the time of their nomination as my key independent variable. The tradeoffs that come with age hinge on potential experience versus potential longevity to influence policy from the bench. While presidents may prefer the latter, they must consider that the Senate wants to confirm qualified nominees. As qualifications are intrinsically tied to years of service in the legal profession (as shown in ABA ratings)¹⁸, I am brought to my first hypothesis:

Expectation 1: Older nominees will be more likely to be confirmed than younger nominees.

While older nominees potentially have more experience, this may not always be the case. As the federal judiciary is a hierarchy, nominees to the circuit courts may have previous experience as district court judges. Being a previous lower court judge provides the nominee with valuable experience and may increase the nominee's qualifications regardless of age. In cases where the nominee has previous experience, a younger nominee does not mean a less experienced nominee, which could greatly help their confirmation chances. This leads me to my second hypothesis:

Expectation 2: For circuit court nominees, younger nominees with previous federal judicial experience will be more likely to be confirmed than older nominees with previous judicial

¹⁸Indeed, "Well Qualified" nominees are significantly older than "Qualified" nominees at both the circuit ($p < 0.00$) and district ($p < 0.00$) levels. See Table 5 in Appendix for difference-of-means tests.

experience.

Finally, the 2013 “nuclear option” dramatically reduced hurdles for confirmation of lower court judges. The reduction of the cloture threshold to a simple majority allowed for minority attempts at obstruction being easily overcome. Simply put, through this reform, nominations by a president with a Senate majority of the same party can push judicial nominations to confirmation without any minority party support. Following the rules change, nominees face a different confirmation process with ramifications including potentially more ideological nominees (Boyd, Lynch and Madonna 2015). With the lower cloture requirements, younger nominees – who previously may have faced minority obstruction because of their age – may no longer come against these obstacles. This, in turn, may lead to an overall younger crop of judicial nominees. There is some evidence for this as President Trump nominated 45 of the 50 – and 76 of the 100 – youngest judicial nominees since Reagan.¹⁹ As presidents use the judiciary to impact policy for decades after they leave office (Goldman 1997), it is sensible that the reduction in confirmation hurdles will lead to a prioritization of younger nominees. This leads me to my third hypothesis:

Expectation 3: Following the 2013 Rules Change, younger nominees will be more likely to be confirmed than older nominees.

Data & Methods

In order to investigate the impact of age on confirmation success, I collect a dataset of all lower court nominations from Presidents Reagan through Trump (1981-2020) totaling 2,534 nominations. I choose this time frame as it conforms with the beginning of more ideological lower court nominations under President Reagan (Goldman 1997). My unit of analysis is the individual nomination, not the nominee. Therefore, an individual may be nominated, have a failed nomination (or “returned to the President” at the end of a Congress), then re-nominated and ultimately confirmed in a later Congress. In this case, as I focus on the individual nomination, not the nominee,

¹⁹Trump picked the youngest judges to sit on the federal bench. Your move, Biden.— *The Washington Post*

an individual may have both “failed” and “successful” nominations within my data. This unit of analysis is common in nomination studies and allows for the continuity of institutional features within observations (Binder and Maltzman 2002; King and Ostrander 2020; Ostrander 2016).

In addition to the expectations above, I use several controls in my empirical models. I include personal characteristics of a nominee and utilize a dichotomous variable of if a nominee went to an “elite” law school²⁰, with a “1” coded as attending an elite law school, “0” otherwise. Further, I include a nominee’s rating from the American Bar Association²¹ as a factor variable of “well qualified”, “qualified”, and “not qualified”, using “well qualified” as the baseline category. To account for political circumstances of the Senate, I include a dichotomous variable “Divided Senate”, with a “1” denoting an opposition (or divided) Senate and “0” for a same-party (or unified) Senate with respect to the president. As lower courts are subject to potential blue slips, I account for the Senate composition of a state with “1” representing two allied senators, “2” for a mixed delegation, and “3” for two opposition senators. Further, since they uniquely deals primarily with administrative law and are not subject to home-state senator considerations (Primo, Binder and Maltzman 2008), I create a dichotomous variable for D.C. court positions, with D.C. courts coded as “1” and all other courts coded as “0”. Lower court nominations are routinely “returned” at the end of a congress and, as such, nominations later in the congressional calendar have less time to be successful. As delay, or malign neglect, may be prevalent (Bond, Fleisher and Krutz 2009), I include a numeric variable for the number of days left in the congressional session. Finally, I include presidential fixed-effects to control for any between-group heterogeneity unique to presidential administrations.

When modeling the impact of age on nominee success, I recognize the unique nature of each court level. As such, and as is commonplace in lower court studies (Martinek, Kemper and Winkle 2002; Primo, Binder and Maltzman 2008), I subset each model by court level and run separate

²⁰I follow (Johnson, Wahlbeck and Spriggs 2006) and code Harvard, Yale, Columbia, Stanford, Chicago, Berkeley, Michigan, and Northwestern as “elite.”

²¹I fully acknowledge that the ABA rating system has several flaws. ABA ratings are shown to be biased against women and minorities (Sen 2014a), biased against Republican nominees (Smelcer, Steigerwalt and Vining 2012), and not correlated with future indicators of judicial “success” (Sen 2014b). However, these ratings are used by the Senate Judiciary Committee during their evaluation of nominees. Further, and importantly, they allow me to compare all nominees regardless of confirmation success.

regressions for the circuit and district courts. Further, circuit court nominees potentially have experience as district court judges. Because of this, and to be more conservative in my estimates, I separately model circuit judges with previous federal court experience (*i.e.*, previous district court judges) and those with no previous experience.²² Finally, I recognize the potential impact the 2013 “nuclear option” – a Senate rules change reducing confirmation hurdles for lower court nominations – and include a dichotomous variable for whether a nomination occurred prior to the rules change (coded “0”) or after the rules change (coded “1”). For all of my models, I have one dependent variable: success of a nomination (or confirmation). As my dependent variable is dichotomous – success or failure – I use logistic regression to examine my hypotheses.

Findings

Age and Nomination Success

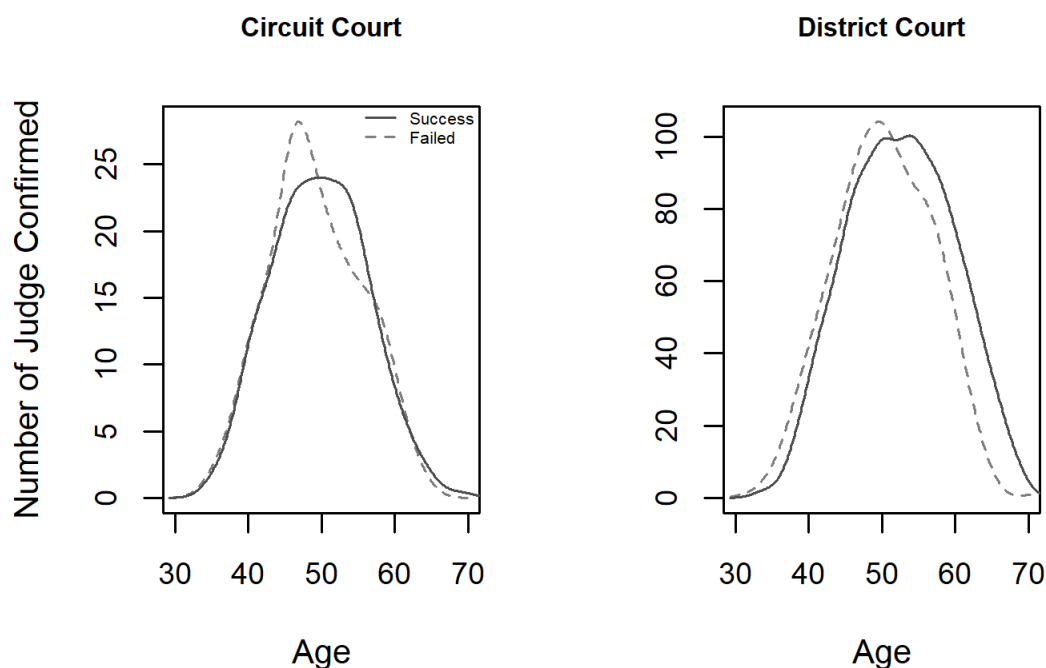
I begin my examination of age and judicial nomination success with a descriptive analysis. Figure 1 shows that, generally, failed nominations occur at a higher frequency for younger nominees. This is true at both the circuit and district court level but is particularly pronounced at the circuit level, with failed nominations prominently skewing towards younger nominees. Conversely, successful nominations feature no prominent skew but have an older average age. From a simply descriptive look, there is initial evidence younger nominees are less successful, particularly at the circuit court level.

While the descriptives provide preliminary evidence of a relationship between age and confirmation, I use logistic regression to further investigate the impact of age on nomination success. Table 1 provides the logistic regression estimates for nomination success for circuit²³ and district court nominations. As shown in Table 1, age has a significant impact on nomination success, but only for circuit court nominees. At the circuit court level, older nominees are more likely to be

²²Substantive effects remain the same regardless of model specification. See Table 6 for comparisons.

²³Only “first time” circuit nominations are included for this analysis. Judges with previous lower court experience (*i.e.*, previous district court judges) are removed for this analysis.

Figure 1: Age of Successful and Failed Nominations



confirmed (or “successful”) than younger nominees. However, age has no affect on nomination success for district court nominations suggesting the impact of age is subjective to the court hierarchy. This result provides support for my first expectation, that older nominees will be more successful than younger nominees, but only at the circuit level.

Figures 2 and 3 provide the predicted probabilities of success by age for circuit and district nominations, respectively. I follow the observed values approach (Hanmer and Kalkan 2013), and create predicted probabilities of success using 1,000 simulations. Factor variables are held at their modal values.²⁴ As Figure 2 shows, circuit nominations are more likely to be successful with older nominees.²⁵ A 45-year old nominee has a 35% likelihood of confirmation. Compare this to a 60-year old nominee’s 50% likelihood of confirmation, a 15 percentage point increase, and the impact of age on nomination success is evident for circuit nominees. Conversely, Figure 3

²⁴Modal values are an ABA rating of “well qualified”, an “allied” senate coalition, and George W. Bush set as the president.

²⁵Figure 6 in the appendix provides the first differences plot for circuit and district nominations.

Table 1: Nomination Success

	<i>Dependent variable:</i>	
	Success	
	Circuit	District
Age	0.050*** (0.019)	0.008 (0.010)
Days Left	0.003*** (0.001)	0.005*** (0.0003)
Elite School	0.298 (0.240)	−0.108 (0.151)
Qualified	−0.226 (0.248)	−0.274** (0.129)
Not Qualified	−0.103 (0.984)	−0.668 (0.532)
Divided Senate	−0.868*** (0.301)	−0.615*** (0.168)
Mixed Delegation	−0.179 (0.307)	−0.093 (0.159)
Opposed Delegation	−0.143 (0.281)	−0.727*** (0.149)
D.C. Court	−0.575 (0.423)	−0.177 (0.413)
H.W. Bush	−0.463 (0.615)	−0.279 (0.338)
Clinton	−2.069*** (0.520)	−0.571** (0.280)
W. Bush	−3.001*** (0.502)	−1.407*** (0.274)
Obama	−2.725*** (0.535)	−2.435*** (0.254)
Trump	−1.437*** (0.544)	−2.648*** (0.270)
Constant	−1.268 (1.067)	1.045* (0.566)
Observations	422	1,888
Log Likelihood	−238.038	−844.115
Akaike Inf. Crit.	506.077	1,718.231

Note: *p<0.1; **p<0.05; ***p<0.01

demonstrates age having no impact on nomination success at the district level. Interestingly, the predicted probabilities of confirmation for circuit nominations are much lower than district, likely a result of their stature in the court hierarchy and perceived importance.

Figure 2: Probability of Success (Circuit Nominations)

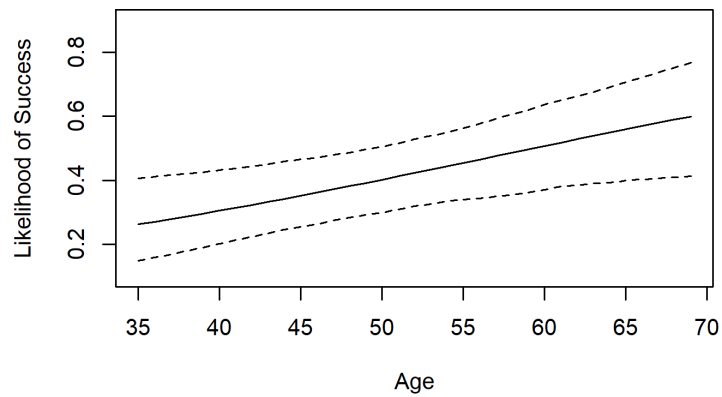
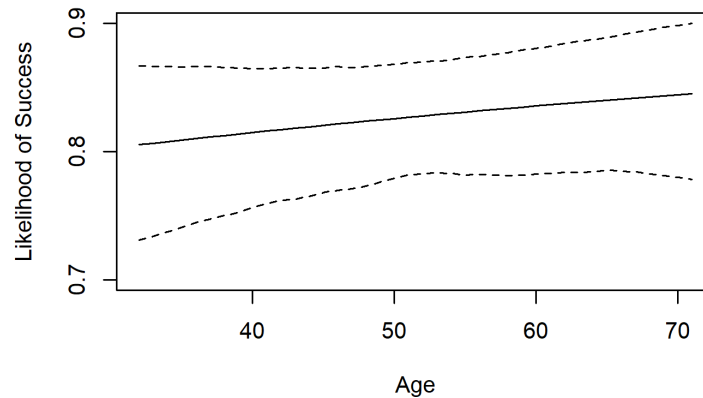


Figure 3: Probability of Success (District Nominations)



In addition to age, I find that personal and institutional factors impact nomination success, with some variation by court level. District court nominees rated as “qualified” by the ABA are less likely to be confirmed compared to those rated “well qualified.” Similarly, at the district court level, nominations in opposed delegations – or in states with two senators of the opposite party

of the president – are less likely to be confirmed compared to allied delegations. This finding demonstrates the strength of blue slips for district court nominations. Delegation composition has no impact at the circuit level, emphasizing the diminishing power of the blue slip based on the court hierarchy.

Institutional factors influence nomination success for both circuit and district nominations. The number of days left in a congressional session affects the success of a nomination. The earlier a nomination is made in a session, the more likely it is to succeed regardless of court level. This is intuitive as nominations made late in a congressional session have less time to be acted on, can be “returned to the president,” and re-nominated the next Congress. Further, the political makeup of the Senate impacts confirmations as nominations under divided government are less likely to succeed. Finally, with the exception of H.W. Bush, I find that every president is less successful in having their nominees confirmed than baseline of Reagan. This is likely a reflection of the increased scrutiny, and political polarization, lower court nominations have faced over time (Dancey, Nelson and Ringsmuth 2020; Goldman 1997; Hartley and Holmes 2002).

The Impact of Previous Judicial Experience

While ABA ratings can be used as a proxy for experience, nominees may receive similar ratings whether they previously served as a federal judge or not. For example, in the 116th Congress (2019-2021), Joseph F. Bianco (2nd Circuit) and Eric D. Miller (9th circuit) both unanimously received ABA ratings of “well qualified” despite varying degrees of previous judicial experience. Prior to his nomination to the second circuit, Judge Bianco served as a federal district court judge for 13 years. Conversely, Judge Miller had no previous judicial experience at any level. While results in my previous section show that circuit nominations are more likely to succeed for older nominees, can previously serving as a federal judge counteract the impact of age? Put another way, does practical experience increase a nomination’s likelihood of confirmation?

In order to investigate the impact of age, previous federal judgeship, and circuit confirmation success, I use logistic regression and include a dichotomous variable, “Previous Judge.” This

variable is coded as “1” if the nominee previously served as a district court judge, “0” otherwise. Importantly, for this analysis, I include all circuit court nominations regardless of previous federal judicial experience. Table 2 provides the outputs of two models: 1) a base model with “Previous Judge” included and 2) a model with an interaction for age and “Previous Judge.”

As the base model of Table 2 shows, findings are substantively similar to Table 1 with regards to the impact of age, days left, divided government, and presidential fixed effects on circuit court nomination success. As the age of a nominee increases, they are more likely to be confirmed. Nominations earlier in a session and those under unified government have a higher likelihood of confirmation. And overall success has decreased across presidential regimes for circuit nominations compared to a baseline of Reagan. Additionally, the base model in Table 2 demonstrates that previous federal judges (*i.e.*, district judges nominated to a circuit position) are more likely to be confirmed to the circuit court than nominees with no previous federal judicial experience.

What impact does the interaction of previous judgeship and age have on confirmation? For that, we turn to the interactive model of Table 2, which includes the interactive effect of age and previous judgeship. As interaction terms in logistic regression are not easily interpretable, and I want to determine whether a difference exists between nominations of a prior federal judge and non-judges, Figure 4 presents the first differences for three simulated predictions^{26,27}: 1) “old” vs. “young” nominees with previous judicial experience, 2) “old” vs. “young” nominees with no previous judicial experience, and 3) “old” nominees without judicial experience vs. “young” nominees with previous judicial experience. In Figure 4, a value below zero indicates a younger nominee is more likely to be confirmed while a value above zero means an older nominee is more likely to be confirmed. Confidence intervals that cross zero are not statistically significant.

Figure 4, shows that age and previous judgeship provides an interesting interactive effect. Consistent with earlier results, nominees without previous judicial experience are significantly more likely to be confirmed if they are older. However, this effect disappears when a nominee has previously served as a district court judge. There is no difference between old and young nominees

²⁶Figure 7 in the Appendix provides predicted probabilities for the simulations.

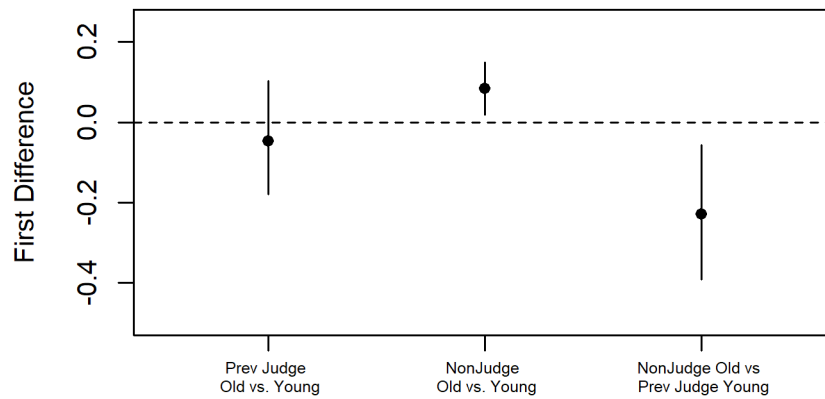
²⁷First differences values are held at the first and third quartile values for age.

Table 2: Circuit Court Nomination Success- Previous Judge

	<i>Dependent variable:</i>	
	Success	
	Base Model	Interactive Model
Age	0.034** (0.017)	0.046** (0.019)
Days Left	0.003*** (0.001)	0.003*** (0.001)
Elite School	0.089 (0.218)	0.111 (0.219)
Qualified	-0.086 (0.233)	-0.088 (0.235)
Not Qualified	0.093 (0.983)	0.047 (0.979)
Previous Judge	1.027*** (0.298)	4.825** (2.415)
Divided Senate	-0.639** (0.265)	-0.693*** (0.268)
Mixed Delegation	-0.054 (0.271)	-0.088 (0.273)
Opposed Delegation	-0.052 (0.257)	-0.068 (0.258)
D.C. Court	-0.359 (0.402)	-0.368 (0.405)
H.W. Bush	-0.446 (0.547)	-0.449 (0.550)
Clinton	-1.769*** (0.450)	-1.791*** (0.453)
W. Bush	-2.858*** (0.439)	-2.886*** (0.442)
Obama	-2.294*** (0.459)	-2.357*** (0.464)
Trump	-1.184** (0.489)	-1.215** (0.492)
Age \times Previous Judge		-0.072 (0.045)
Constant	-0.722 (0.968)	-1.287 (1.034)
Observations	535	535
Log Likelihood	-290.150	-288.861
Akaike Inf. Crit.	612.300	611.722

Note: *p<0.1; **p<0.05; ***p<0.01

Figure 4: First Differences Previous Judge Success



that both have experience as a federal judge. Indeed, the effect flips with younger nominees more likely, though not statistically significantly so, to be confirmed. Further, Figure 4 provides evidence that practical experience can supersede the impact of age. Younger nominees that were previously judges are more likely to be confirmed than older nominees without a previous judgeship. Therefore, while age is important for nominees lacking previous experience, this effect can be eliminated, or even flipped, when a nominee has federal judicial experience.

Following the 2013 “Nuclear Option”

I begin with an examination of nominees before and after the 2013 “nuclear option.” While Expectation 3 focuses specifically on the confirmation – not selection – of nominees, it is still beneficial to check if the age of nominees has dramatically altered following the 2013 rules change. Table 3 provides a difference-of-means test comparing the age of circuit and district nominees before and after the rules change. As seen in Table 3, there is a significant shift in age of circuit court nominees. After the rules change, circuit nominees are, on average, two years younger than before. However, there is no change in district court nominee age. That said, Table 3 provides evidence that post-nuclear nominees are significantly younger, but only for the more prestigious circuit courts.

Table 3: Difference of Means (Age):
Before vs. After Rules Change

	Age (Mean)		p-value
	Before Change	After Change	
Circuit	50.5	48.2	0.00***
District	50.0	50.4	0.28

Note: *p<0.1; **p<0.05; ***p<0.01

The 2013 “nuclear option” substantially changed nomination politics (O’Connell 2015; Ostrander 2017). By reducing the cloture threshold requirement, lower court nominations are able to be confirmed without *any* minority party support. This has led to more partisan nominations (Boyd, Lynch and Madonna 2015) and a dramatically different confirmation process. In order to examine the impact of the 2013 rules change on age and nomination success, I use logistic regression and include the variable “Rules Change.” Table 4 provides four regression outputs: 1) base model for circuit nominations with the rules change variable included²⁸, 2) a model for circuit nominations with age and the rules change interacted, 3) base model for district nominations with the rules change variable included, and 4) a model for district nominations with age and the rules change interacted.

From Table 4, my base models’ results reflect my previous analyses. For circuit nominations, older nominees are significantly more likely to be confirmed than younger nominees. For district courts, age has no impact on the success of a nomination. Interestingly, as the base models show, I find contrasting impacts of the “nuclear option” on nomination success by court level. While the rules change does not impact circuit nomination success, it does for district nominations. Post-nuclear district nominations are significantly more likely to be confirmed than pre-nuclear nominations.

Perhaps one of the most interesting results of the rules change is the interactive effect of age and the rules change at the circuit court level. While the rules change on its own does not signif-

²⁸For circuit models, I exclude previous federal judges, similar to Table 1. Results do not substantively change when previous federal judges are included.

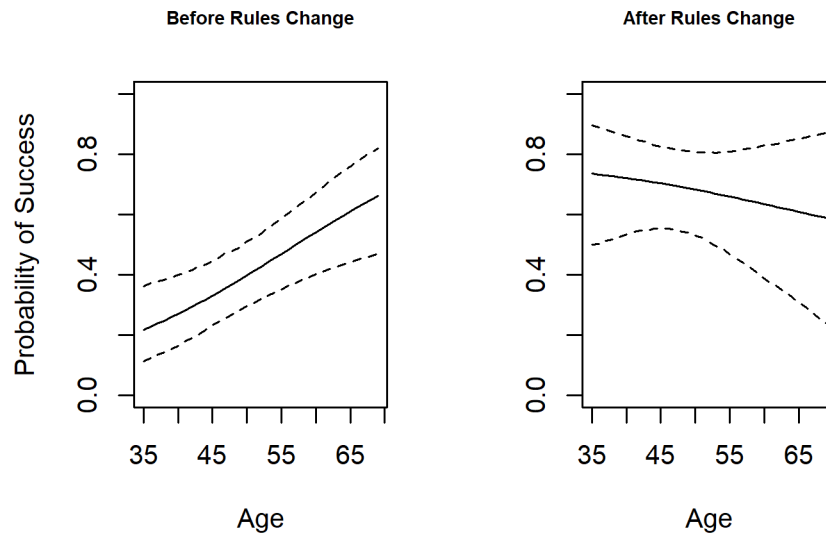
Table 4: Nomination Success- 2013 Rules Change

	<i>Dependent variable:</i>			
	Success			
	Circuit Base	Circuit Interactive	District Base	District Interactive
Age	0.050*** (0.019)	0.069*** (0.022)	0.009 (0.010)	0.012 (0.012)
Days Left	0.004*** (0.001)	0.004*** (0.001)	0.005*** (0.0004)	0.005*** (0.0004)
Elite School	0.277 (0.241)	0.253 (0.243)	-0.094 (0.152)	-0.098 (0.153)
Qualified	-0.224 (0.248)	-0.252 (0.252)	-0.289** (0.130)	-0.290** (0.130)
Not Qualified	-0.095 (0.987)	-0.107 (0.961)	-0.728 (0.536)	-0.746 (0.536)
Divided Senate	-0.947*** (0.305)	-0.950*** (0.307)	-0.791*** (0.177)	-0.794*** (0.177)
Mixed Delegation	-0.193 (0.307)	-0.142 (0.308)	-0.118 (0.160)	-0.115 (0.160)
Opposed Delegation	-0.150 (0.282)	-0.130 (0.284)	-0.796*** (0.151)	-0.792*** (0.152)
D.C. Court	-0.537 (0.426)	-0.444 (0.431)	-0.246 (0.417)	-0.250 (0.417)
H.W. Bush	-0.401 (0.616)	-0.432 (0.621)	-0.160 (0.339)	-0.156 (0.339)
Clinton	-2.055*** (0.521)	-2.136*** (0.528)	-0.537* (0.281)	-0.540* (0.282)
W. Bush	-3.023*** (0.504)	-3.093*** (0.511)	-1.361*** (0.276)	-1.367*** (0.276)
Obama	-2.993*** (0.568)	-3.087*** (0.576)	-2.829*** (0.278)	-2.839*** (0.279)
Trump	-2.380*** (0.845)	-2.732*** (0.869)	-3.575*** (0.377)	-3.597*** (0.380)
Rules Change	0.929 (0.634)	5.633** (2.467)	0.849*** (0.238)	1.318 (1.040)
Age × Rules Change		-0.092** (0.047)		-0.009 (0.020)
Constant	-1.330 (1.070)	-2.186* (1.164)	1.080* (0.568)	0.922 (0.662)
Observations	422	422	1,888	1,888
Log Likelihood	-236.961	-235.013	-837.610	-837.502
Akaike Inf. Crit.	505.921	504.026	1,707.219	1,709.004

Note:

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

Figure 5: Predicted Probability of Success: Circuit Nominations



icantly increase nomination success, it does alter the impact of age. Figure 5 shows the predicted probabilities of nomination success by age. The left side of the graphic shows a statistically significant relationship between age and nomination success before the rules change wherein older nominees were more likely to be confirmed than younger nominees.

However, as the right hand of Figure 5 shows, this effect disappears following the 2013 rules change. After the “nuclear option”, age no longer impacts circuit court nomination success.²⁹ While younger nominees are actually *more* likely to be confirmed, they are not significantly so. Moreover, younger nominees are significantly more likely to be confirmed following the rules change than before. Younger nominees previously faced low prospects of confirmation: 33% for 45-year old nominees. However, in the post-nuclear age, they are significantly more likely to be confirmed with 45-year old nominees having a 70% likelihood of confirmation. From these results, we see that the 2013 rules change had a substantial impact on age and circuit court nominations.

The ramifications of the 2013 rules change are evident. The removal of the barrier of relative youth to confirmation success has eliminated the impact of age. Further, younger nominees tend to be more successful potentially incentivizing their nominations. Combined with the findings in

²⁹Figure 8 in the Appendix shows the first differences of age before and after the rules change.

Table 3 above showing post-nuclear nominees are significantly younger at the circuit level, we may soon expect to see not only younger nominees, but also higher confirmation success rates at circuit level resulting in a younger judiciary, a longer judicial legacy (Goldman 1997), and more potential Supreme Court contenders (Black and Owens 2016; Choi, Gulati and Posner 2015).

Conclusions

Federal judges, once confirmed, serve for life. Presidents must consider the tradeoffs of nominating a young judge— who has the potential to serve for several decades— to an older nominee— who may be more qualified— and may face a simpler confirmation process. The Senate must consider the long-term ramifications of confirming nominees to judicial appointments. How does this tradeoff impact confirmation success? Or, put another way, how does the age of a nominee affect their likelihood of being confirmed? My findings add to the literature of nomination and confirmation politics and show that the age of a nominee impacts their confirmation prospects but the court hierarchy and changes to Senate rules alter the effects.

For circuit court nominations, older nominees are more likely to be confirmed to lifetime positions. However, the age of a nominee makes no difference at the district level. This finding speaks to the court hierarchy and the desire for older, more experienced nominees to serve the more prominent appellate courts. As circuit nominees make-up the vast majority of Supreme Court contenders (Black and Owens 2016; Choi, Gulati and Posner 2015; Nemacheck 2008), confirming more experienced nominees to the Courts of Appeals is intuitive. Further, as only around one-quarter of district court judges are “promoted” to the circuit courts, the insignificant impact of age makes sense as their is little upwards mobility to worry about.

While older nominees are generally more successful at the circuit court, certain conditions alter the influence of age on confirmation. Having previously served as a district court judge eliminates the impact of age for circuit nominations. Further, previous judicial experience increases a younger nominee’s likelihood of confirmation when compared to an older nominee with no judicial experience.

rience. Although age may be considered a proxy for experience, actual judicial experience is a crucial factor in curtailing the negative effects of relative youth.

Changes to the confirmations process have shifted how age influences confirmation at the circuit level. Following the reduction of cloture to a simple majority in 2013, older nominees are no longer more likely to be confirmed. In the post-nuclear era, nominees are younger and the impact of age on circuit nominations has disappeared. As the rules become less constraining, we may continue to see nominee attributes dramatically change. For example, without the concern of minority party obstruction, future nominations may be more ideological than their predecessors (Boyd, Lynch and Madonna 2015). Younger nominees are a natural extension, as the minority party can no longer prevent the majority from installing like-minded judges to lifetime appointments. And, while younger nominees are not currently confirmed at a significantly higher rate, it is not absurd to predict this will happen in the near future. If President Biden continues the trends of President Trump, we are likely to see a dramatic shift in the age of the U.S. federal judiciary.

This piece adds an important contribution to the growing judicial nominations and confirmations literature. It explores an often overlooked aspect of a nominee's profile, their age, and demonstrate its impact on confirmation. As federal judges are confirmed for life, it makes sense that presidents would want to nominate younger judges to serve longer. However, in doing so, past presidents have actually hurt their confirmation prospects. However, this piece also exemplifies the changing nomination process. In a post-nuclear era, these findings no longer hold and trend in the opposite direction. Future research should continue to keep a close eye on nominee age and confirmation success. Because, as these findings show, age is anything but "just a number" when it comes to lifetime appointments.

References

- Abraham, Henry J. 2008. *Justices, Presidents, and Senators: A History of U.S. Supreme Court Appointments from Washington to Bush II*. Rowman & LittleField Publishers, Inc.
- Asmussen, Nicole. 2011. "Female and Minority Judicial Nominees: President's Delight and Senators' Dismay?" *Legislative Studies Quarterly* 36(4):591–619.
- Bell, Lauren Cohen. 2002. "Senatorial Discourtesy: The Senate's Use of Delay to Shape the Federal Judiciary." *Political Research Quarterly* 55(3):589–608.
- Binder, Sarah A. 2007. "Where do institutions come from? Exploring the origins of the senate blue slip." *Studies in American Political Development* 21(1):1–15.
- Binder, Sarah A. and Forrest Maltzman. 2002. "Senatorial Delay in Confirming Federal Judges." *American Journal of Political Science* 46(1):190–199.
- Binder, Sarah A. and Forrest Maltzman. 2004. "The Limits of Senatorial Courtesy." *Legislative Studies Quarterly* 29(1):5–22.
- Black, Ryan C., Anthony J. Madonna, Ryan J. Owens and Michael S. Lynch. 2011. "Assessing Congressional Responses to Growing Presidential Powers: The Case of Recess Appointments." *Presidential Studies Quarterly* 41(3):569–588.
- Black, Ryan C. and Ryan J. Owens. 2016. "Courting the President: How Circuit Court Judges Alter Their Behavior for Promotion to the Supreme Court." *American Journal of Political Science* 60(1):30–43.
- Bolson, Toby and Judd R. Thorton. 2014. "Overlapping Confidence Intervals and Null Hypothesis Testing." *The Experimental Political Scientist* .
- Bond, Jon R., Richard Fleisher and Glen S. Krutz. 2009. "Malign Neglect: Evidence That Delay Has Become the Primary Method of Defeating Presidential Appointments." *Congress & the Presidency* 36(3):226–243.
- Bowie, Jennifer Barnes, Donald R. Songer and John Szmer. 2014. *The View from the Bench and Chambers: Examining Judicial Process and Decision Making on the U.S. Courts of Appeals*. Charlottesville, VA: University of Virginia Press.
- Boyd, Christina L., Michael S. Lynch and Anthony J. Madonna. 2015. "Nuclear Fallout: Investigating the Effect of Senate Procedural Reform on Judicial Nominations." *The Forum* 13(4):623–641.
- Cameron, Charles M., Cody Gray, Jonathan P. Kastellac and Jee-Kwang Park. 2020. "From Text-book Pluralism to Modern Hyperpluralism." *Journal of Law Courts* 8(2):301–332.
- Cameron, Charles M. and Jonathan P. Kastellac. 2016. "Are Supreme Court Nominations a Move-the-Median Game?" *American Political Science Review* 110(4):778–798.

- Carter, Stephen L. 1994. *The Confirmation Mess: Cleaning Up the Federal Appointments Process*. Basic Books.
- Choi, Stephen J., Mitu Gulati and Eric A. Posner. 2015. "The Role of Competence in Promotions from the Lower Federal Courts." *The Journal of Legal Studies* 44(S1):S107–S131.
- Corley, Pamela C., Paul M. Collins and Bryan Calvin. 2011. "Lower Court Influence on U.S. Supreme Court Opinion Content." *The Journal of Politics* 73(1):31–44.
- Cottrell, David, Charles R. Shipan and Richard J. Anderson. 2019. "The Power to Appoint: Presidential Nominations and Change on the Supreme Court." *Journal of Politics* 81(3):1057–1068.
- Dancey, Logan, Kjersten R. Nelson and Eve M. Ringsmuth. 2020. *It's Not Personal: Politics and Policy in Lower Court Confirmation Hearings*. University of Michigan Press.
- Epstein, Lee, Andrew D. Martin, Kevin M. Quinn and Jeffrey A. Segal. 2007. "Ideological Drift Among Supreme Court Justices: Who, When, and How Important?" *Northwestern University Law Review* 101(4):1483–15242.
- Epstein, Lee and Jeffrey A. Segal. 2005. *Advice and Consent: The Politics of Judicial Appointments*. Oxford University Press.
- Epstein, Lee, Valerie Hoekstra, Jeffrey Segal and Harold J. Spaeth. 1998. "Do Political Preferences Change? A Longitudinal Study of U.S. Supreme Court Justices." *The Journal of Politics* 60(3):801–818.
- Goldman, Sheldon. 1997. *Picking Federal Judges: Lower Court Selection from Roosevelt through Reagan*. University of California Press.
- Graves, Scott and Robert Howard. 2010. "Ignoring Advice and Consent? The Uses of Judicial Recess Appointments." *Political Research Quarterly* 63(3):640–653.
- Hanmer, Michael J. and Kerem Ozan Kalkan. 2013. "Behind the Curve: Clarifying the Best Approach to Calculating Predicted Probabilities and Marginal Effects from Limited Dependent Variable Models." *American Journal of Political Science* 57(1):263–277.
- Hartley, Roger and Lisa Holmes. 2002. "The Increasing Senate Scrutiny of Lower Federal Court Nominees." *Political Science Quarterly* 117(2):259–278.
- Harvey, Anna and Lisa Holmes. 2002. "The Increasing Senate Scrutiny of Lower Federal Court Nominees." *Political Science Quarterly* 117(2):259–278.
- Hendershot, Marcus E. 2010. "From Consent to Advice and Consent: Cyclical Constraints within the District Court Appointment Process." *Political Research Quarterly* 63(2):328–342.
- Hollis-Brusky, Amanda and Celia Parry. 2021. "In the mold of Justice Scalia: The Causes & Consequences of the Trump Judiciary." *The Forum* 19(1):117–142.
- Johnson, Timothy R., Paul J. Wahlbeck and James F. Spriggs. 2006. "The Influence of Oral Arguments on the U.S. Supreme Court." *American Political Science Review* 100(1):99–113.

- Kaplan, David A. 2018. *The Most Dangerous Branch: Inside the Supreme Court's Assault on the Constitution*. Crown.
- Katz, Jonathan N. and Matthew L. Spitzer. 2014. "What's Age Got to do with it? Supreme Court Appointees and the Long Run Location of the Supreme Court Median Justice." *Arizona State Law Journal* 46.
- King, Jonathan M. and Ian Ostrander. 2020. "Prioritizing Judicial Nominations after Presidential Transitions." *Presidential Studies Quarterly* 50(3):592–610.
- Kosma, Montgomery N. 1998. "Measuring the Influence of Supreme Court Judges." *Journal of Legal Studies* 27(2):333–372.
- Krehbiel, Keith. 2007. "Supreme Court Appointments as a Move-the-Median Game." *American Journal of Political Science* 51(2):231–240.
- Lane, Elizabeth A. Forthcoming. "A Separation-of-Powers Approach to the Supreme Court's Shrinking Caseload." *Journal of Law and Courts* .
- 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.
- Moraski, Bryon J. and Charles R. Shipan. 1999. "The Politics of Supreme Court Nominations: A Theory of Institutional Constraints and Choices." *American Journal of Political Science* 43(4):1069–1095.
- Nelson, Michael J. and Ian Ostrander. 2016. "Keeping Appointments: The Politics of Confirming United States Attorneys." *Justice System Journal* 37(3):211–231.
- Nemacheck, Christine. 2008. *Strategic Selection: Presidential Nomination of Supreme Court Justices from Herbert Hoover through George W. Bush*. University of Virginia Press.
- Norris, Mikel. 2020. "Judicial Nominations to the Court of Appeals and the Strategic Decision to Elevate." *Justice System Journal* 41(2):118–138.
- O'Connell, Anne. 2015. "Shortening Agency and Judicial Vacancies Through Filibuster Reform? An Examination of Confirmation Rates and Delays From 1981 to 2014." *Duke Law Journal* 64:1645–1715.
- Ostrander, Ian. 2015. "Powering Down the Presidency: The Rise and Fall of Recess Appointments." *Presidential Studies Quarterly* 45(3):558–572.
- Ostrander, Ian. 2016. "The Logic of Collective Inaction: Senatorial Delay in Executive Nominations." *American Journal of Political Science* 60(4):1063–1076.
- Ostrander, Ian. 2017. "The Politics of Executive Nominations in the Post Nuclear Senate." *Congress & the Presidency* 47(4):752–776.

- Owens, Ryan J. and David A. Simon. 2012. "Explaining the Supreme Court's Docket Size." *William and Mary Law Review* 53(4):1219–1285.
- Owens, Ryan and Justin Wedeking. 2012. "Predicting Drift on Politically Insulated Institutions: A Study of Ideological Drift on the United States Supreme Court." *Journal of Politics* 74:487–500.
- Posner, Richard. 1995. *Aging and Old Age*. Chicago: University of Chicago Press.
- Primo, David, Sarah Binder and Forrest Maltzman. 2008. "Who Consents? Competing Pivots in Federal Judicial Selection." *American Journal of Political Science* 52(3):471–489.
- Scherer, Nancy, Brandon L. Bartels and Amy Steigerwalt. 2008. "Sounding the Fire Alarm: The Role of Interest Groups in the Lower Federal Court Confirmation Process." *Journal of Politics* 70(4):1026–1039.
- Segal, Jeffrey, Richard Timpone and Robert Howard. 2000. "Buyer Beware? Presidential Success through Supreme Court Appointments." *Political Research Quarterly* 53:557–595.
- Sen, Maya. 2014a. "How Judicial Qualification Ratings May Disadvantage Minority and Female Candidates." *Journal of Law and Courts* pp. 33–65.
- Sen, Maya. 2014b. "How Minority Judicial Candidates Have Changed, but the ABA Ratings Gap Has Not." *Judicature* 97(7):46–53.
- Slotnick, Elliot, Sara Schiavoni and Sheldon Goldman. 2017. "Obama's Judicial Legacy." *Journal of Law and Courts* pp. 363–422.
- Smelcer, Susan Navarro, Amy Steigerwalt and Richard L. Vining. 2012. "Bias and the Bar: Evaluating the ABA Ratings of Federal Judicial Nominees." *Political Research Quarterly* 65(4):827–840.
- Solowiej, Lisa A., Wendy L. Martinek and Thomas L. Brunell. 2005. "Partisan Politics: The Impact of Party in the Confirmation of Minority and Female Federal Court Nominees." *Party Politics* 11(5):557–577.
- Steigerwalt, Amy. 2010. *Battle Over the Bench: Senators, Interest Groups, and Lower Court Confirmations*.
- Teitelbaum, Joshua C. 2006. "Age and Tenure of the Justices and Productivity of the U.S. Supreme Court: Are Term Limits Necessary?" *Florida State University Law Review* 34:161–182.
- Westerland, Chad, Jeffrey A. Segal, Lee Epstein, Charles M. Cameron and Scott Comparato. 2010. "Strategic Defiance and Compliance in the U.S. Courts of Appeals." *American Journal of Political Science* 54(4):891–905.

Appendix A: Supplemental Models and Figures

Table 5: Difference of Means (Age) by ABA rating

ABA Rating	Age (Mean)	
	Circuit	District
WQ vs. Q	50/48***	51/49***
WQ vs. NQ	50/52	51/44***
Q vs. NQ	48/52	49/44**
<i>Note:</i> *p<0.1; **p<0.05; ***p<0.01		

Table 5 provides difference of means tests for age and ABA ratings by court level. At both the circuit and district level, nominees rated as “well qualified” are significantly older than “qualified” nominees. At the district level, “well qualified” are also significantly older than “not qualified” and “qualified” are significantly older than “not qualified.”

Table 6: Circuit Nominations With and Without Previous Federal Judges

	<i>Dependent variable:</i>	
	Success	
	(1)	(2)
Age	0.050*** (0.019)	0.042** (0.017)
Days Left	0.003*** (0.001)	0.003*** (0.001)
Elite Law School	0.298 (0.240)	0.023 (0.214)
Qualified	−0.226 (0.248)	−0.236 (0.229)
Not Qualified	−0.103 (0.984)	−0.073 (0.964)
Divided Senate	−0.868*** (0.301)	−0.612** (0.259)
Mixed Delegation	−0.179 (0.307)	0.058 (0.266)
Opposed Delegation	−0.143 (0.281)	−0.059 (0.254)
D.C. Court	−0.575 (0.423)	−0.414 (0.397)
H.W. Bush	−0.463 (0.615)	−0.550 (0.541)
Clinton	−2.069*** (0.520)	−1.880*** (0.444)
W. Bush	−3.001*** (0.502)	−2.962*** (0.433)
Obama	−2.725*** (0.535)	−2.343*** (0.452)
Trump	−1.437*** (0.544)	−1.364*** (0.485)
Constant	−1.268 (1.067)	−0.802 (0.966)
Observations	422	535
Log Likelihood	−238.038	−296.567
Akaike Inf. Crit.	506.077	623.134
<i>Note:</i>	*p<0.1; **p<0.05; ***p<0.01	

Table 6 shows the logistic regression models with previous federal judges removed (Model 1) and previous federal judges included (Model 2) at the circuit court.

Figure 6: First Differences of Age

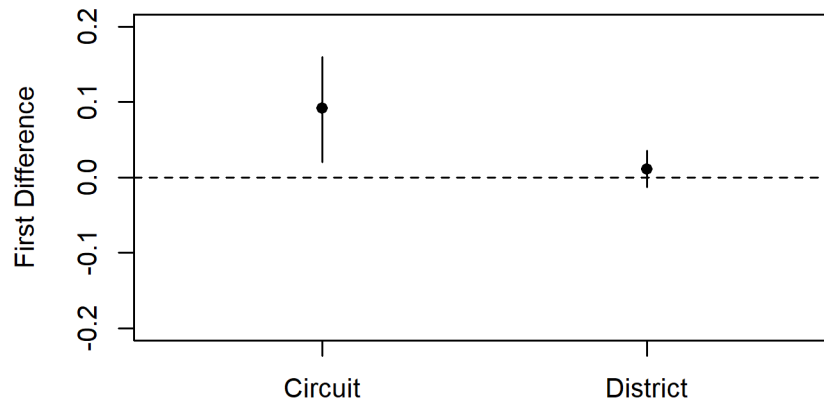
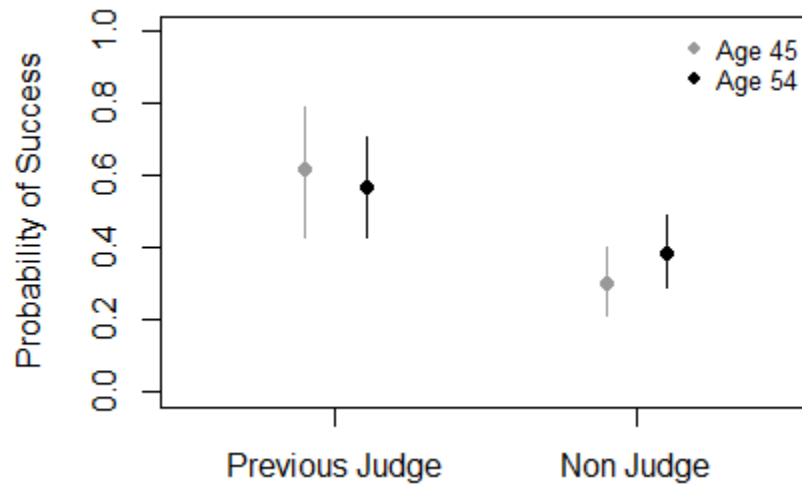


Figure 7: Probability of Success: Previous Federal Judge



Note: while the confidence intervals for “Non Judge” overlap, this does not imply statistical insignificance (Bolson and Thorton 2014).

Figure 8: First Differences: Age and 2013 Rules Change
(Circuit Nominations)

