

# Gov 1539: Section 6

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March 26th, 2021

# The goals for today

- Epstein et al. 2006

- changing dynamics of Supreme Court nominations over 20th century.
- How to read empirical political science articles
  - reading strategies.
  - why reading top to bottom might not be the best choice.
  - where to focus / what to ignore.

- PBS - Supreme Court documentary

- politics of judicial vs. bureaucratic nominations.

- hiring vs. firing
- political considerations for each



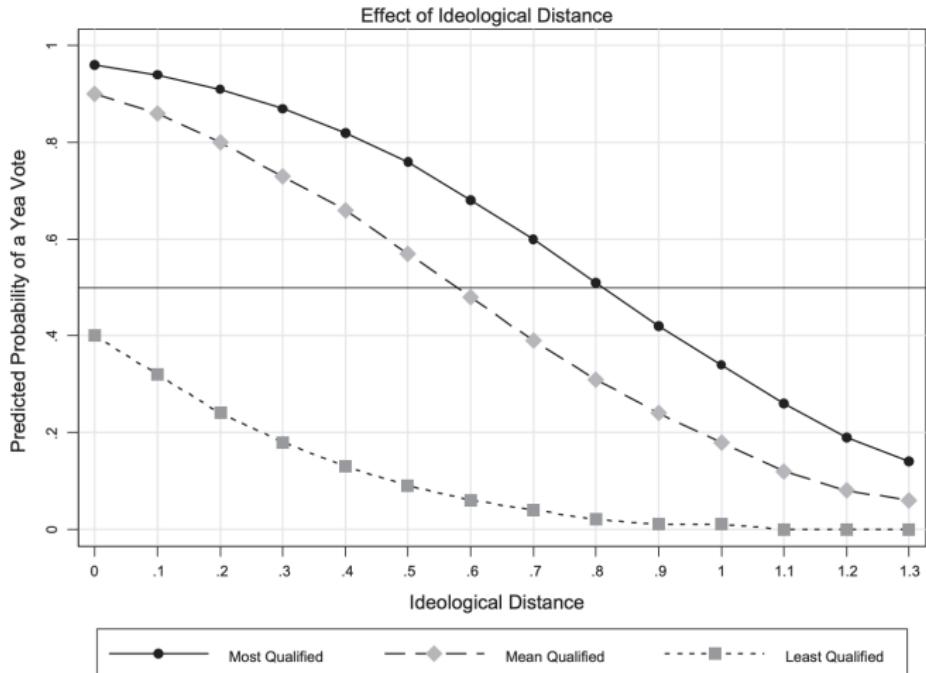


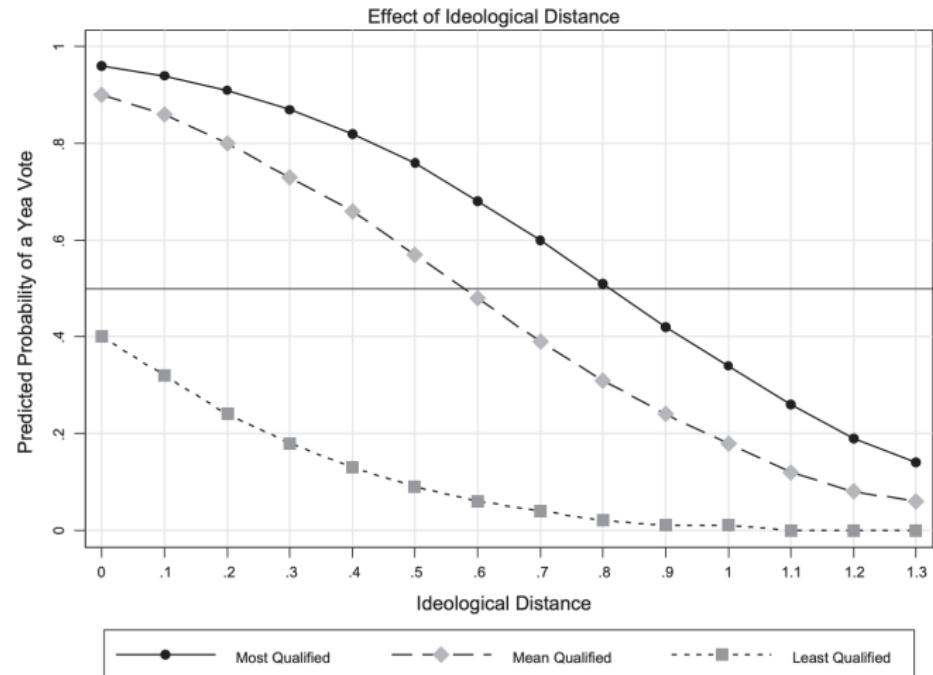
1986: Scalia (98-0) | 1987: Bork (42-58)

**Question:**

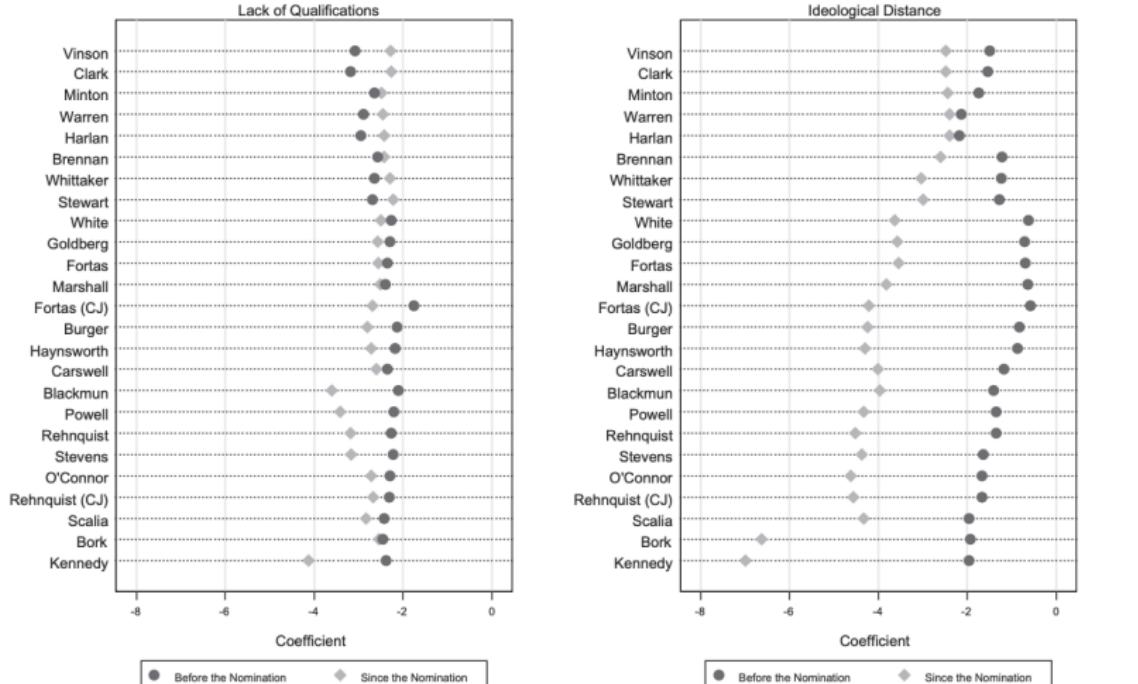
**Question:** did Bork nomination start a new era of Senate Supreme Court votes?

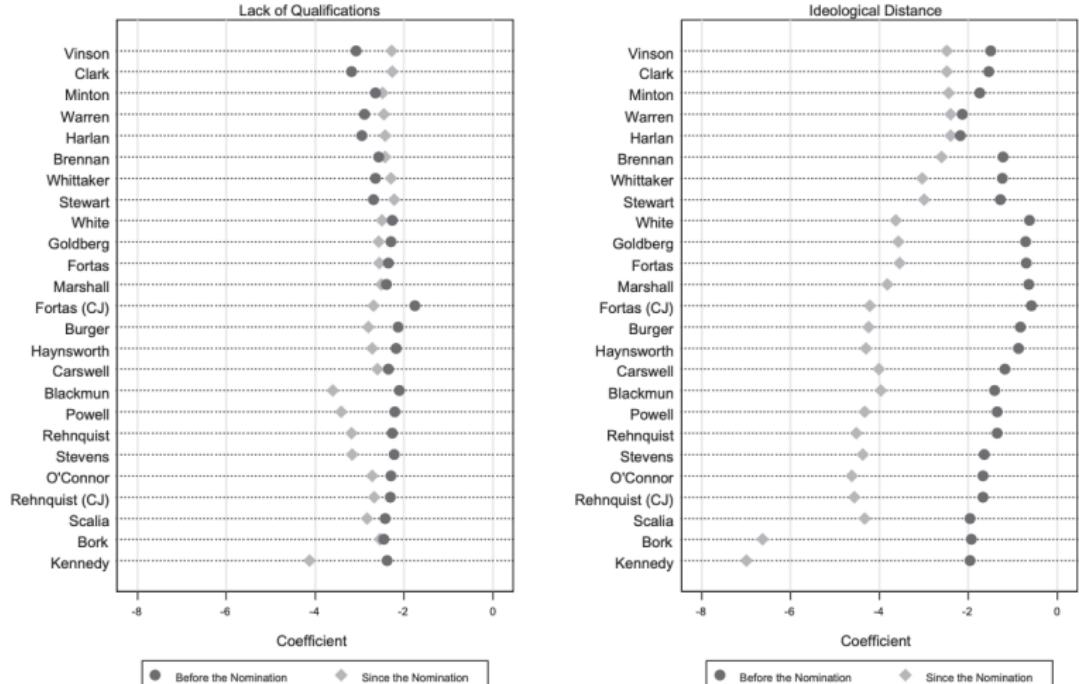
- **Results:** Senate is more concerned with ideology post-Bork, with two caveats:
  1. Senate started to be vote based on ideological distance of nominees much earlier in 1950s.
  2. Professional merit / experience still matters for nominees.





Probability of yes vote given ideological distance and qualifications.





Estimated effects of ideology / qualifications before and after each nomination.

# PBS Doc: Supreme Revenge: Battle for the Court

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- Very similar to Epstein et al. 2006
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- What do they do differently?
  - Focuses more on individual roles, especially Biden and McConnell.
  - Also emphasizes implications more: does politicization have long term consequences for court's legitimacy?

## PBS Doc: Supreme Revenge: Battle for the Court

*"A judge sworn to decide impartially **can offer no forecasts, no hints** for that would show not only disregard for the specifics of the particular case, it would display disdain for the entire judicial process."*

- Ruth Bader Ginsburg, during 1993 confirmation hearings.

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*"Justice Ginsburg with her characteristic pithiness used this to describe how a nominee should comport herself at a hearing. **No hints, no previews, no forecasts.** That had been the practice of nominees before her. But everybody calls it the Ginsburg rule because she stated it so concisely,"*

- Amy Coney Barrett, during 2020 confirmation hearings.

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    - Easy to forget, but this is prime exam stuff.

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  - Exact methodological approach
  - Statistics.
  - If something *feels* too in-the-weeds for your purposes, it probably is.
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  - Of course, I encourage you to be interested in this stuff - just not required, won't be tested, not discussed in section, etc. Useful if:
    - You have any interest in social science grad school / PhD.
    - You want methodological detail because you're doing thesis in this area.

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3. Then scan tables and figures for main results.
  - Even with little other information, a well-designed figure can tell you a lot.
4. Then read conclusion.
5. Finally, go back and read from top to bottom.
  - Theory, literature, etc. should be read carefully.
  - Statistics, methods, etc. you can usually skim or skip.

# Unsuccessful nominations to Cabinet

Person chosen	Position	Year	Chosen by	Outcome	
Lucius Horatio Stockton	War	1801	John Adams	Withdrawn	
Henry Dearborn	War	1815	James Madison	Withdrawn	
Roger B. Taney	Treasury	1834	Andrew Jackson	Rejected, 28–18	
Caleb Cushing	Treasury	1843	John Tyler	1st time: Rejected, 27–10	
David Henshaw	Navy			2nd time: Rejected, 29–2	
James Madison Porter	War			Rejected, 34–8	
James S. Green	Treasury			Rejected, 38–3	
Thomas Ewing	War			Rejected, <i>vote not recorded</i>	
Henry Stanberry	Attorney General	1868	Andrew Johnson	Withdrawn	
Charles B. Warren	Attorney General	1925	Calvin Coolidge	Rejected, 29–11	
Lewis Strauss	Commerce	1959	Dwight D. Eisenhower	1st time: Rejected, 41–39	
John Tower	Defense	1989	George H. W. Bush	2nd time: Rejected, 46–39	
Zoë Baird	Attorney General	1993	Bill Clinton	Rejected, 49–46	
Kimba Wood	Attorney General			Withdrawn	
Bobby Ray Inman	Defense			Withdrawn	
Anthony Lake	Director of Central Intelligence			Withdrawn	
Hershel Gober	Veterans Affairs			Withdrawn	
Linda Chavez	Labor	2001	George W. Bush	Withdrawn	
Bernard Kerik	Homeland Security	2004	Barack Obama	Withdrawn	
Tom Daschle	Health and Human Services	2008		Withdrawn	
Bill Richardson	Commerce			Withdrawn	
Judd Gregg	Commerce			Withdrawn	
Andrew Puzder	Labor	2016	Donald Trump	Withdrawn	
Ronny Jackson	Veterans Affairs	2018		Withdrawn	
Patrick M. Shanahan	Defense	2019		Withdrawn	
John Ratcliffe	Director of National Intelligence	2019		Withdrawn; confirmed in 2020	
Chad Wolf	Homeland Security	2021		Withdrawn	
Neera Tanden	Office of Management and Budget	2021	Joe Biden	Withdrawn	

## Reagan Cabinet nominations

# Epstein et al. 2006 - similar development for Cabinet

Secretary of Energy					
James B. Edwards	Dec 20, 1980	Jan 14, 1981	Jan 20, 1981	Jan 22, 1981	93-3 No.14
Donald Hodel	Nov 5, 1982	Dec 1, 1982	Nov 15, 1982	Dec 8, 1982	86-8 No.399
John Herrington	Jan 10, 1985	Jan 31, 1985	Jan 18, 1985	Feb 6, 1985	93-1 No.3
Secretary of Health & Human Services					
Richard Schweiker	Dec 11, 1980	Jan 6, 1981	Jan 20, 1981	Jan 21, 1981	99-0 No.4
Margaret Heckler	Jan 12, 1983	Feb 25, 1983; Mar 3, 1983	Feb 22, 1983	Mar 3, 1983	82-3 No.8
Otis Bowen	Nov 7, 1985	Dec 10-11, 1985	Dec 4, 1985	Dec 12, 1985	93-2 No.373
Secretary of Housing & Urban Development					
Samuel Pierce, Jr.	Dec 22, 1980	Jan 13, 1981	Jan 20, 1981	Jan 22, 1981	98-0 No.11
Secretary of Interior					
James Watt	Dec 22, 1980	Jan 7-8, 14, 1981	Jan 20, 1981	Jan 22, 1981	83-12 No.13
William Clark	Oct 13, 1983	Nov 1-2, 1983	Oct 19, 1983	Nov 18, 1983	71-18 No.379
Donald Hodel	Jan 10, 1985	Feb 1, 1985	Jan 23, 1985	Feb 6, 1985	93-1 no.4
Secretary of Labor					
Raymond Donovan	Dec 16, 1980	Jan 12, 27, 1981	Jan 20, 1981	Feb 3, 1981	80-17 No.19
William Brock III	Mar 20, 1985	Apr 23, 1985	Apr 17, 1985	Apr 26, 1985	voice vote
Ann McLaughlin	Nov 3, 1987	Dec 8, 1987	Dec 1, 1987	Dec 11, 1987	94-0 No.408
Secretary of State					
Alexander Haig, Jr.	Dec 16, 1980	Jan 9-10, 12-15, 1981	Jan 20, 1981	Jan 21, 1981	93-6 No.3
George Shultz	Jun 25, 1982	Jul 13-14, 1982	Jul 1, 1982	Jul 15, 1982	97-0 No.216
Secretary of Transportation					
Andrew Lewis, Jr.	Dec 11, 1980	Jan 7, 1981	Jan 20, 1981	Jan 22, 1981	98-0 No.12
Elizabeth Dole	Jan 5, 1983	Jan 26, 1983	Jan 25, 1983	Feb 1, 1983	97-0 No.1
James Burnley	Oct 8, 1987	Nov 17, 1987	Nov 3, 1987	Nov 30, 1987	74-0 No.387
Secretary of Treasury					
Donald Regan	Dec 11, 1980	Jan 6, 1981	Jan 20, 1981	Jan 21, 1981	98-0 No.6
James Baker III	Jan 8, 1985	Jan 23, 1985	Jan 18, 1985	Jan 29, 1985	95-0 No.1
Nicholas Brady	Aug 5, 1988	Sep 13, 1988	Aug 10, 1988	Sep 14, 1988	92-2 No.328

Reagan Cabinet nominations

# Epstein et al. 2006 - similar development for Cabinet

Secretary of Education					
Betsy DeVos	Nov 23, 2016	Jan 17, 2017	Jan 20, 2017	Feb 7, 2017	51-50 <a href="#">No. 54</a>
Secretary of Energy					
Rick Perry	Dec 14, 2016	Jan 19, 2017	Jan 20, 2017	Mar 2, 2017	62-37 <a href="#">No. 79</a>
Dan R. Brouillette	Oct 18, 2019	Nov 14, 2019	Nov 7, 2019	Dec 2, 2019	70-15 <a href="#">No. 367</a>
Secretary of Health & Human Services					
Tom Price	Nov 29, 2016	Jan 18, 2017 Jan 24, 2017	Jan 20, 2017	Feb 10, 2017	52-47 <a href="#">No. 61</a>
Alex Azar	Nov 13, 2017	Nov 29, 2017 Jan 9, 2018	Nov 14, 2017 Jan 8, 2018	Jan 24, 2018	55-43 <a href="#">No. 21</a>
Secretary of Homeland Security					
John Kelly	Dec 12, 2016	Jan 10, 2017	Jan 20, 2017	Jan 20, 2017	88-11 <a href="#">No. 30</a>
Kirstjen Nielsen	Oct 11, 2017	Nov 8, 2017	Oct 16, 2017	Dec 5, 2017	62-37 <a href="#">No. 305</a>
Chad Wolf <sup>2</sup>	Aug 27, 2020	Sep 23, 2020	Sep 10, 2020		
Secretary of Housing & Urban Development					
Ben Carson	Dec 5, 2016	Jan 12, 2017	Jan 20, 2017	Mar 2, 2017	58-41 <a href="#">No. 77</a>
Secretary of Interior					
Ryan Zinke	Dec 15, 2016	Jan 17, 2017	Jan 20, 2017	Mar 1, 2017	68-31 <a href="#">No. 75</a>
David Bernhardt	Feb 4, 2019	Mar 28, 2019	Mar 11, 2019	Apr 11, 2019	56-41 <a href="#">No. 77</a>
Secretary of Labor					
Andrew Puzder <sup>3</sup>	Dec 8, 2016		Jan 20, 2017		
R. Alexander Acosta	Feb 16, 2017	Mar 22, 2017	Mar 7, 2017	Apr 27, 2017	60-38 <a href="#">No. 116</a>
Eugene Scalia	Jul 18, 2019	Sep 19, 2019	Sep 11, 2019	Sep 26, 2019	53-44 <a href="#">No. 313</a>
Secretary of State					
Rex Tillerson	Dec 13, 2016	Jan 11, 2017	Jan 20, 2017	Feb 1, 2017	56-43 <a href="#">No. 36</a>
Mike Pompeo	Mar 13, 2018	Apr 12, 2018	Mar 20, 2018	Apr 26, 2018	57-42 <a href="#">No. 84</a>
Secretary of Transportation					
Elaine Chao	Nov 29, 2016	Jan 11, 2017	Jan 20, 2017	Jan 31, 2017	93-6 <a href="#">No. 35</a>
Secretary of Treasury					
Steve Mnuchin	Nov 30, 2016	Jan 19, 2017	Jan 20, 2017	Feb 13, 2017	53-47 <a href="#">No. 63</a>
Secretary of Veterans Affairs					
David Shulkin	Jan 11, 2017	Feb 1, 2017	Jan 20, 2017	Feb 13, 2017	100-0 <a href="#">No. 64</a>
Ronny Jackson <sup>4</sup>	Mar 28, 2018		Apr 16, 2018		
Robert Wilkie	May 18, 2018	Jun 27, 2018	Jun 20, 2018	Jul 23, 2018	86-9 <a href="#">No. 163</a>

## Trump Cabinet nominations

# Epstein et al. 2006 - similar development for Cabinet

Secretary of Agriculture					
Tom Vilsack	Dec 8, 2020	Feb 2, 2021	Jan 20, 2021	Feb 23, 2021	92-7 <a href="#">No. 63</a>
Attorney General					
Merrick Garland	Jan 7, 2021	Feb 22, 2021	Jan 20, 2021	Mar 10, 2021	70-30 <a href="#">No. 114</a>
Secretary of Commerce					
Gina Raimondo	Jan 7, 2021	Jan 26, 2021	Jan 20, 2021	Mar 2, 2021	84-15 <a href="#">No. 70</a>
Secretary of Defense					
Lloyd Austin	Dec 9, 2020	Jan 19, 2021	Jan 20, 2021	Jan 22, 2021	93-2 <a href="#">No. 5</a>
Secretary of Education					
Miguel Cardona	Dec 23, 2020	Feb 3, 2021	Jan 20, 2021	Mar 1, 2021	64-33 <a href="#">No. 68</a>
Secretary of Energy					
Jennifer Granholm	Dec 17, 2020	Jan 27, 2021	Jan 20, 2021	Feb 25, 2021	64-35 <a href="#">No. 66</a>
Secretary of Health & Human Services					
Xavier Becerra	Dec 8, 2020	Feb 23, 2021 Feb 24, 2021	Jan 20, 2021	Mar 18, 2021	50-49 <a href="#">No. 125</a>
Secretary of Homeland Security					
Alejandro Mayorkas	Nov 23, 2020	Jan 19, 2021	Jan 20, 2021	Feb 2, 2021	56-43 <a href="#">No. 12</a>
Secretary of Housing & Urban Development					
Marcia Fudge	Dec 8, 2020	Jan 28, 2021	Jan 20, 2021	Mar 10, 2021	66-34 <a href="#">No. 113</a>
Secretary of Interior					
Deb Haaland	Dec 19, 2020	Feb 23-24, 2021	Jan 20, 2021	Mar 15, 2021	51-40 <a href="#">No. 119</a>
Secretary of Labor					
Marty Walsh	Jan 8, 2021	Feb 4, 2021	Jan 20, 2021	Mar 22, 2021	68-29 <a href="#">No. 127</a>
Secretary of State					
Antony Blinken	Nov 23, 2020	Jan 19, 2021	Jan 20, 2021	Jan 26, 2021	78-22 <a href="#">No. 7</a>
Secretary of Transportation					
Peter Buttigieg	Dec 16, 2020	Jan 21, 2021	Jan 20, 2021	Feb 2, 2021	86-13 <a href="#">No. 11</a>
Secretary of Treasury					
Janet Yellen	Nov 30, 2020	Jan 19, 2021	Jan 20, 2021	Jan 25, 2021	84-15 <a href="#">No. 6</a>
Secretary of Veterans Affairs					
Denis McDonough	Dec 11, 2020	Jan 27, 2021	Jan 20, 2021	Feb 8, 2021	87-7 <a href="#">No. 55</a>

## Biden Cabinet nominations

## Politics of judicial vs. bureaucratic nominations

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Highest-level bureaucratic appointments (e.g. Cabinet) seem to have followed politicization pattern set earlier by Supreme Court.

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What are **similarities** between judicial and bureaucratic nominations?

- highest-profile offices (SC / Cabinet) up to Senate confirmation.
- media scrutiny at highest-level
  - probably highest for SC, then Cabinet, then lowest for other bureaucrats / lower courts.
- have become more politicized over time.
  - SC seems to have gotten more controversy first. Why might this be?

# Politics of judicial vs. bureaucratic nominations

What are **differences** between judicial and bureaucratic nominations?

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What are **differences** between judicial and bureaucratic nominations?

- judges across system generally get lifetime appointments. Cabinets generally serve at-will of President.
  - many rank-and-file bureaucrats will get tenure protections, but not Cabinet / higher level admins.
- lower-level judicial nominations can “set up” pool for SC nominations in the future. Cabinet is generally drawn from a wider pool.
  - e.g. Barrett, Gorsuch, Kavanaugh, etc. were all drawn from U.S. Circuit Courts of Appeals.
  - Fudge was in the House, Rouse was a professor, Walsh / Buttigieg were mayors, etc.