

MOVING UP THE JUDICIAL LADDER
The Nomination of State Supreme Court Justices
to the Federal Courts

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State institutions have assumed increasingly important roles in policymaking. Moreover, prior research indicates that judicial experience has emerged as a particularly important factor in nomination to the federal courts. Despite these developments, justices from state Supreme Courts are not often nominated to the federal judiciary. This article identifies the factors that influence the nomination of state Supreme Court justices to the federal courts. The results indicate that partisan alignment between the nominee, senators, and president is a critical factor in nomination. Age is also a significant factor in predicting nomination; a justice's likelihood of being nominated peaks in her early 50s. Moreover, state high court justices who serve on relatively prestigious courts or have considerable seniority are less likely to be nominated to the federal courts thereby suggesting that visibility may not be an asset to state justices wishing to move to the federal courts.

Keywords: judge; selection; state; federal; Supreme Court

At first glance, state courts of last resort would seem to be an ideal source of judicial nominees for the federal courts. We know that, beginning with the Carter Administration, judicial experience has emerged as an increasingly important criterion for nomination to the federal trial bench (Baum, 1998; Goldman, 1997; Goldman, Slotnick, Gryski, & Zuk, 2001). Moreover, in the last 3 decades, state institutions have emerged as increasingly important and visible players in policymaking, and the state judiciary is no exception (Hall, 1999; Langer, 2002). Even though state Supreme Court justices would seem to be perfect candidates, given their type and level of experience, fewer than 5% of state Supreme Court justices selected to the state

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high court since 1965 have been nominated to the federal courts. Indeed, even when nominating individuals with state judicial experience, presidents often leapfrog over state Supreme Courts and draw their nominees from the lower state courts. Service on a state Supreme Court often represents the last stop in a judicial career.

At the same time that presidents and the U.S. Supreme Court have been granting the states increased power, state judicial decision making has become increasingly distinct from that at the national level. The new judicial federalism emphasizes state law and state constitutions; some state Supreme Courts have been expanding protections of individual rights beyond those guaranteed by the federal Bill of Rights, and have taken an activist role in such policy areas as school finance and civil rights (Baum, 1998; Tarr, 1998). Participation in such visible and controversial decisions may increase the visibility of state Supreme Court justices. However, state Supreme Court justices with long and public records of ruling on such cases may actually be less attractive to presidents. The trend of late suggests that presidents are eager to find qualified, politically appropriate candidates for the federal bench who have published few controversial opinions or scholarly works (Goldman et al., 2001; Slotnick & Goldman, 1997). At the same time, and for the same reasons, state justices may find state service an attractive career in and of itself. Moreover, the political and merit-related factors that increase the likelihood of being nominated to the federal courts may not be all that common among state Supreme Court justices. In this article, we examine the pool of state Supreme Court justices to discern the factors that may influence their nomination to the federal courts (both district and circuit) from 1965 to 2001, and we demonstrate that the relative rarity of those factors is one likely factor in steering presidents away from state Supreme Courts as sources of experienced judicial nominees.

INFLUENCES ON NOMINATION OF STATE HIGH COURT JUSTICES TO THE FEDERAL COURTS

Scholars have identified several characteristics that influence nominations to the Supreme Court including partisanship and ideology, the qualifications of the nominee, gender, and race (Abraham, 1999;

Cameron, Cover, & Segal, 1990; Overby, Henschen, Walsh, & Strauss, 1992; Segal, 1987). Nominations to the lower federal courts generally follow the same pattern with the additional complication of senatorial courtesy. Discussing the lower federal courts, Howard (1981) noted that, “though each appointment may be discrete, the recipe usually boils down to three related ingredients—professional competence, political participation, and personal ambition” (p. 17). Similarly, Baum (1998, pp. 110-111) suggested that presidents generally consider the same criteria in appointing judges across the three levels of the federal courts. He argued that, in particular, political factors (including the political leanings of the prospective judge as well as senatorial courtesy) have consistently been a central consideration in the nomination process.

Drawing on this previous research, we identify several factors that likely influence the nomination of state Supreme Courts justices to the federal courts.

POLITICAL FACTORS

Partisanship of the justice and senatorial courtesy. Presidents likely seek to reward members of their own party with choice judicial appointments. Moreover, partisanship may serve as a general measure of ideological congruence between the president and the nominee. The importance of such ideological congruence is reflected in both presidential rhetoric and party platforms (Rowland & Todd, 1991). Presidential track records demonstrate a strong relationship between partisanship and nomination: Presidents Carter through Clinton appointed members of the opposing party to only 6% of their total appointments to the lower federal court (Goldman et al., 2001).

Yet a justice who shares the president’s party may still be an unlikely candidate for nomination. It is likely that presidents take into account the operation of senatorial courtesy, which is the Senate tradition of deferring to the individual U.S. senators of the state with a federal court vacancy. Senatorial courtesy has long been recognized as an important factor in determining both the choice of nominees and their fate (Ruckman, 1993). Indeed, the so-called *blue slip* policy that allows a senator to block a judicial nominee from his home state has figured prominently in recent debates over judicial appointments.

Prior research indicates that the behavior of Court of Appeals judges reflects the preferences of the senator (or home state party) rather than the president (Giles, Hettinger, & Peppers, 2001; Songer, 1982) to suggest a strong influence of senatorial preferences over the choice of the nominee. The operation of senatorial courtesy is stronger at the district court level (Goldman, 1967) but is still operational at times at the level of the appellate court as seats are, by tradition, apportioned across the states comprising the circuit. We therefore expect the chance of nomination to increase if the judge shares not only the political affiliation of the president but also that of both home state senators.

Presidents who served as governors. Several recent presidents have served as governors with direct experience appointing justices to state high courts including Carter, Reagan, Clinton, and George W. Bush. This is particularly true of Clinton and Bush who, in their services as governors, appointed six and seven individuals, respectively, to their state courts of last resort. Carter and Reagan appointed two and three justices, respectively. Even apart from direct experience with appointment to the state high court, presidents who have previously served as governors are likely to be relatively familiar with state Supreme Courts in terms of the breadth and substance of their work. Former governors, then, are more likely to recognize and value the experience gained by tenure on a state high court. We thus expect state Supreme Court justices who were serving during these presidential administrations to be relatively likely to be nominated to the federal courts.

Gender and race. The elevation of Thurgood Marshall to the Supreme Court introduced racial diversity in our highest court; indeed, when George Bush needed to replace Thurgood Marshall, there was little doubt that the President would find a suitable African American conservative (Baum, 1998). Likewise, once Reagan appointed Sandra Day O'Connor to the Court, many thought a gender seat was created. Clinton's appointment of Ruth Bader Ginsburg (and any future appointments of women) may relieve some pressure to appoint a woman to replace either O'Connor or Ginsburg, but it is unlikely that we will see a future Supreme Court without at least one woman sitting on the bench. Such pressure appears to exist both at the

lower levels of the national judiciary and within state courts. At the national level, prior research has demonstrated that Blacks and women are more likely to be appointed to all-White and all-male district courts, respectively (Spill & Bratton, 2001). Research at the state level has demonstrated that women are relatively likely to be appointed to otherwise all-male state Supreme Courts (Bratton & Spill, 2002). Given this pressure to maintain at least some level of diversity on the bench and the relative dearth of women and minorities across the federal courts, female and African American state Supreme Court justices may be more likely to be nominated to the federal courts.

Age. Age has traditionally been regarded as an important criterion for nomination to the federal bench (Goldman, 1997; Goldman et al., 2001). Presidents likely balance the desire to select individuals with judicial experience and who do not appear unusually young with the desire to appoint individuals who will serve long enough on the federal bench to have an impact and contribute to that president's judicial legacy. Goldman (1997) discussed presidential patterns in weighing age when making judicial selections; presidents generally avoided very young or relatively older judges. The average age of judges appointed was consistently between 49 and 55. We therefore expect age to have a curvilinear relationship with the probability of nomination; both relatively younger and relatively older state Supreme Court justices will be less likely to be chosen.

JUDICIAL QUALIFICATIONS

Though presidents almost certainly weigh political factors when nominating judicial candidates, judicial qualifications are a necessary factor for a successful appointment. Presidents know that extremely qualified candidates will likely face less political opposition, and they rarely choose nominees unable to meet with the approval of the American Bar Association (ABA) (Goldman et al., 2001). This balancing act is evident in contemporary politics. George W. Bush's first six nominees, although sharing his conservative leanings, received either "qualified" or "well qualified" ratings from the ABA (Ringel, 2001). We focus on four measures of judicial qualifications: seniority, the

prestige of the court, the justice's legal alma mater, and whether the justice was initially appointed to the state court.¹

Seniority on the state high court. Experience is generally considered a positive quality in candidates for office, and we expect that some level of experience is an asset for nomination to the federal courts. Yet in the case of state Supreme Courts, it is likely for several reasons that those with relatively long tenure are actually less likely to be nominated to the federal bench. First, those with longer tenure may find themselves in a position of relative statewide influence and may not wish to undergo the confirmation process to be elevated to the federal bench.² Second, long tenure on a state high court equals a long record of rulings including votes and opinions on visible and controversial cases. Such experience may increase the contentiousness of a nomination and therefore present obstacles to nomination. For instance, Hagle (1993) noted that Bush likely considered David Souter's lack of visibility as an asset when nominating him to the U.S. Supreme Court. Moreover, many of the factors that we describe here that we expect will increase the likelihood of elevation (for instance, political advantage, graduation from a top law school, etc.) can be identified in the first few years of a justice's career on the state high court. We therefore expect seniority, like age, to have a curvilinear relationship to the likelihood of nomination by having a positive relationship in the early years of service on a state Supreme Court but then having little effect or potentially a negative effect for relatively senior justices.

Prestige of the court. Although the prestige of a court is not a direct measure of an individual's judicial qualifications, it may serve as an indicator as such for two reasons. First, there may be more competition to achieve a position on a prestigious state Supreme Court, and, therefore, the selected candidates may be seen as more qualified for service on the federal courts. Second, prestigious state Supreme Courts likely handle relatively complex and important cases, as they tend to have discretion over their dockets. Decisions of these courts are likely more visible and cited more widely; these justices may be more well known and considered relatively highly qualified. Thus, it

is possible that justices that serve on relatively prestigious courts are more likely to be nominated to the federal courts.

There is an argument to be made, however, for the opposite expectation. In the legislative context, we know that the decision to run for legislative office depends in part on the attractiveness of the office one currently occupies (Rhode, 1979). The same is likely true for judicial careers; although justices do not run for federal office, they certainly can indicate the depth of their ambition to relevant decision makers. Justices who have achieved a high level of seniority or who serve on prestigious courts may not have much incentive to pursue federal judicial service. Their judicial ambition may be satisfied by the rewards of seniority or the demands of an appeals court of last resort; the costs of the often contentious confirmation process coupled with a commensurate loss of power may simply make elevation to the district or circuit courts a less attractive prospect. At the same time, as noted above, from the perspective of a president, individuals who have served on prestigious courts may be more likely to have ruled on relatively controversial cases; opinions on such cases may present obstacles to their nomination. Like Hagle (1993), Baum (1998) noted that David Souter's lack of visibility made him an especially attractive candidate. Visibility may introduce more conflict in the nomination process—something presidents may well wish to minimize.

Law school. We expect graduates from top law schools to be more likely to be nominated to the federal courts. Our reasoning is two-fold. First, top law schools are generally perceived to graduate students with stronger legal training and skills. Second, top law schools are perceived as less parochial in the sense that they may more effectively prepare students for an out-of-state legal career.

Appointment. The factors that influence the appointment of justices to state courts of last resort are likely similar to those that influence nomination to the federal courts: a mix of judicial qualifications and political considerations. Justices who are initially appointed have usually been vetted by governors and/or merit commissions and are thus more likely to have the qualifications that attract the notice of presidential staffs. Indeed, a cursory examination of the state justices

selected to a state high court from 1965 through the present reflects this difference: Approximately 16% of justices who were initially elected graduated from a top-15 law school compared to 28% of justices who were initially appointed. We thus expect justices that were initially appointed to the state court of last resort to be more likely to be nominated to the federal courts.

DATA AND METHOD

NOMINATION TO THE DISTRICT AND CIRCUIT COURTS

Our data set includes all justices selected to a state Supreme Court from 1965 to 1998 (1,028 justices); we identified all nominations of these justices from 1965 through 2001. The first nomination occurred in 1971; the last of the nominations occurred in 2001. We collected information regarding sex, race, partisan affiliation, law school background, date of birth, and prior political experience. We were able to collect a full set of information on 887 justices (approximately 86% of all state Supreme Court justices appointed during this period) who were then included in the analyses presented in the article.³

We develop an event history model to test our hypotheses regarding the factors that influence nomination of state Supreme Court justices to the federal courts. Event history models predict the probability of an event occurring in each case in each time period (in this case, in each year). The event history model is superior to alternatives such as ordinary least squares regression, because our hypotheses are not merely about whether a justice will be nominated to the federal courts but encompasses factors that increase (or decrease) the likelihood that a justice will be nominated at a particular time. Event history analysis allows us to include such temporal variation in the independent variables as well as constant factors like race and gender. This flexibility is particularly important with regard to the political factors that vary across time for each justice such as partisan congruence with the White House. That is, an event history model allows us to make comparisons across institutions, justices, and time.

Specifically, we estimate a logistic model as well as a discrete-time logistic model. Discrete-time logistic models are commonly used in

the international relations literature (Beck, Katz, & Tucker, 1998) and, as such, are appropriate to predict rare events. The difference between the two is that, in the former, we use seniority (measured as years served) and the square of seniority on the right hand side of our model; in the latter, we use dichotomous variables to measure seniority (for instance, a dichotomous variable coded 1 if the justice is serving in his first year and 0 otherwise, a dichotomous variable coded 1 if the justice is serving in his second year and 0 otherwise, etc.). The advantage of the first analysis is that it is much easier to analyze and present the results regarding our expectations about the effect of seniority, and it uses all information available.⁴ The unit of both analyses is the justice year; each justice could serve on the state court for several years, and a record for each year for each justice is included in the database. Justices who are not nominated remain in the database until they leave the state court for other reasons. Our dependent variable in both analyses is coded 1 if the justice was nominated in that year to the federal courts. Here, *federal courts* includes appointment to either the district and circuit courts following service on the state Supreme Court; no state Supreme Court justice during our time period was elevated directly to the U.S. Supreme Court.⁵

INDEPENDENT VARIABLES: POLITICAL FACTORS

We expect that state Supreme Court justices who share partisan affiliation with both the president and the two home state senators will be more likely to be nominated. It is likely that sharing the president's affiliation is the most important factor; to test this expectation, we include a dichotomous variable that equals 1 if the state court justice is of the same political party as the president and 0 otherwise. As discussed above, presidents may also consider the partisanship of the home state senators, and we therefore include a second dichotomous variable that equals 1 if the state Supreme Court justice shares the partisanship of both the president and the two home state senators. The estimate for this variable taps into any additional effect of senatorial courtesy for state high court justices who share the president's party.

To examine whether state Supreme Court justices were relatively likely to be nominated to the federal courts by presidents who once served as governors, we include a dichotomous variable that is coded 1

if the president once served as chief executive of his state. To capture our expected curvilinear relationship between age and the likelihood of nomination, we include the age of the state Supreme Court justice as well as the square of the age of the justice. Finally, to test our expectations regarding gender and racial diversity, we include two dichotomous variables, one coded 1 if a state Supreme Court justice is female and 0 otherwise and one coded 1 if a state Supreme Court justice is African American and 0 otherwise.

INDEPENDENT VARIABLES: JUDICIAL QUALIFICATIONS

As described above, we wish to test the effect of four qualification-related variables on the nomination of state Supreme Court justices to the federal bench: seniority, prestige of the state Supreme Court, the prestige of the justice's law school, and whether the state justice was initially appointed to the state court. We anticipated that seniority would initially have a positive relationship on the likelihood of nomination; for relatively senior justices, however, there would be either no relationship or a negative relationship. As noted above, in our first logistic analysis, we include seniority and the square of seniority on the right hand side of the model. These two variables allow us to capture any curvilinear relationship between seniority and the likelihood of nomination. The discrete-time logistic analysis includes dichotomous variables for each year in which a state Supreme Court justice is nominated to the federal courts; the estimates of the effect of these dichotomous variables allow us to measure the effect of seniority.

For prestige of the state Supreme Court, we use Caldeira's 1983 rankings of state courts. We convert his rankings to a 1 to 50 scale (50 = most prestigious). To further measure whether some courts serve as springboards to the federal bench, we include a dichotomous variable coded 1 if there has been a prior nomination from that court and 0 otherwise.

For the prestige of the graduating law school, we use Cooper's (1990) ranking of the 15 most prestigious law schools.⁶ The variable is coded 1 if the justice graduated from a top-15 school and 0 otherwise. For appointment, we include as an independent variable a dichotomous variable coded 1 if the state Supreme Court justice was initially appointed to that court and 0 otherwise. We also control for the pas-

TABLE 1
Logit Analysis: Effect of Political Factors and
Judicial Qualifications on Likelihood of Nomination of State
Supreme Court Justices to the Federal District and Circuit Courts

<i>Independent Variables</i>	<i>Coefficients</i>	<i>Means</i>	<i>Range</i>
Political factors			
Party congruence: judges & president	1.743 ^{††} (.450)	.45	0-1
Party congruence: judges, president, & senators	0.677 [†] (.332)	.16	0-1
Presidents who formerly served as governors	0.393 (.757)	.02	0-1
Female justice	0.491 (.441)	.11	0-1
African American justice	0.626 (.626)	.04	0-1
Age	1.053 ^{††} (.353)	57.64	30-87
Age squared	-0.010 ^{††} (.003)	3,392.65	900-7,569
Judicial qualifications			
Top-15 law school	0.702 [†] (.322)	.24	0-1
Initially appointed to state Supreme Court	0.015 (.327)	.67	0-1
State Supreme Court ranking	-0.019 [†] (.011)	27.73	1-50
Another justice from that court has been nominated in the past	0.358 (.335)	.37	0-1
Seniority	0.256 [†] (.124)	7.58	1-37
Seniority squared	-0.013 [†] (.007)	88.70	1-1,369
Controls			
Available seats on federal bench	-0.044 (.072)	1.69	0-23
Years since 1965	-0.042 [†] (.020)	22.06	0-36
Constant	-32.459 ^{††} (9.376)		
Sample size	9,023		
Probability > χ^2	< .01		
Pseudo R^2	.14		

NOTE: Dependent variable: coded 1 if justice is nominated to federal bench; standard errors in parentheses.

[†] $p < .05$. ^{††} $p < .01$.

sage of time (measured as years since 1965) as well as for the number of open seats in the justice's district and circuit court for each year.

RESULTS

Our logistic regression results for the first analysis are presented in Table 1.⁷ In Table 2, we present several hypothetical cases to illustrate the effects of partisanship, prestige, and law school. These results are

TABLE 2
Hypothetical Cases

<i>Hypothetical Case Number</i>	<i>Political Advantage</i>	<i>Top-15 Law School</i>	<i>State (Ranking of Court)</i>	<i>Probability of Nomination</i>
1	Shares partisanship with president and senators	Yes	ME (10th least prestigious)	.060
2	Shares partisanship with president only	Yes	ME (10th least prestigious)	.032
3	Does not share partisanship with president and senators	Yes	ME (10th least prestigious)	.006
4	Shares partisanship with president and senators	Yes	MN (10th most prestigious)	.034
5	Shares partisanship with president only	Yes	MN (10th most prestigious)	.018
6	Does not share partisanship with president and senators	Yes	MN (10th most prestigious)	.003
7	Shares partisanship with president and senators	No	ME (10th least prestigious)	.031
8	Shares partisanship with president only	No	ME (10th least prestigious)	.016
9	Does not share partisanship with president and senators	No	ME (10th least prestigious)	.003
10	Shares partisanship with president and senators	No	MN (10th most prestigious)	.007
11	Shares partisanship with president only	No	MN (10th most prestigious)	.009
12	Does not share partisanship with president and senators	No	MN (10th most prestigious)	.002

NOTE: All other variables set at mean values.

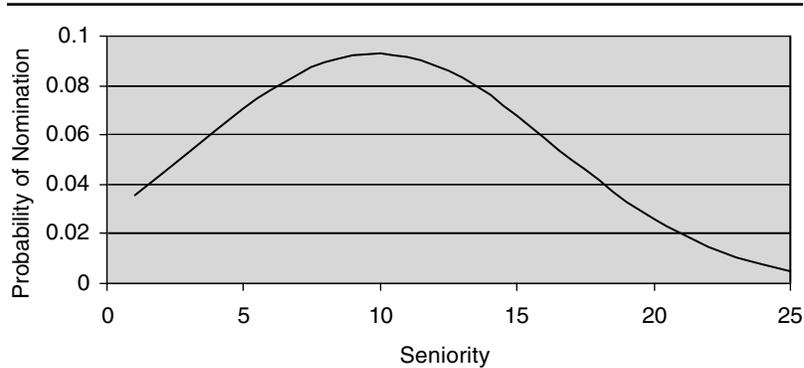


Figure 1: Effect of Seniority on Probability of Nomination

substantively similar to the results from the discrete-time logistic regression (using the dichotomous variables to measure seniority), which are presented in the appendix.⁸

There is little surprise that the political context, in terms of a justice's partisan alignment with the key players in judicial nominations—the president and the home state senators—makes a significant and substantial contribution to the likelihood of a nomination.⁹ A comparison of Hypothetical Case 1 to Hypothetical Case 3 clearly illustrates this point. Furthermore, as the parameter estimates and hypothetical cases illustrate, justices who graduated from top law schools are also not surprisingly more likely to be nominated to the federal courts. These findings complement prior descriptive analyses of presidential choices. We also find that justices who serve on relatively prestigious courts are less likely to be nominated to the federal bench.

In Figure 1, we plot the effect of seniority on the likelihood of nomination. Our findings indicate that, not surprisingly, justices have little chance of being nominated to the federal courts during their first year of service on the state high court. Indeed, no such case exists in our data. Once that first year has passed, it appears that more senior justices have a greater chance of nomination to the federal courts until approximately their 11th year of service. These findings are replicated in the discrete-time analysis presented in the appendix. Beyond this point, the analysis indicates that very few justices are nominated to the federal courts. In our data, only three (about 6%) nominated judges

fall into this category. This is not only because of the smaller pool of such judges. A sizable number (about 23%) of all judges have served more than 11 years; more than 40% of all judges who have retired do so after serving at least 11 years.

These effects of prestige of the court and of seniority suggest that visibility may not be an asset to justices seeking to be elevated to the federal courts. Lengthy records of service on a state bench likely correlate highly with a voluminous and public record of decisions that can provide fodder for interest groups and senators wishing to delay or derail a nomination. As noted above, from a political perspective, the ideal candidate for the federal courts is qualified, has appropriate partisan and ideological credentials, and has published few controversial opinions or scholarly works (Goldman et al., 2001; Slotnick & Goldman, 1997).

Furthermore, those who have achieved a position of seniority on a state court of last resort (particularly a prestigious court) may not desire elevation to the federal courts. Although a federal appointment may be perceived as a plum position, in some senses, it can also be viewed as a step down from a collegial court dealing with questions of state and federal constitutional significance. Seniority on a state high court is generally accompanied by greater influence. For instance, in a majority of states, the chief justice position either rotates across justices or is rewarded based on seniority. And, because most litigation, significant and otherwise, begins and ends in the states, state high courts can be attractive places in which to spend a judicial career.

Finally, as expected, age also initially contributes to the likelihood that a state justice will be nominated for the federal courts. This positive effect of age peaks when a justice is approximately 53 years of age. As a justice ages beyond this, age has a negative effect on the likelihood of nomination. This relationship is illustrated in Figure 2.

Our results also indicate that, controlling for other factors, state Supreme Court justices are becoming over time less likely to be nominated for the federal bench. This, too, may reflect the disadvantage of visibility; state Supreme Courts have become generally more visible over time. The remainder of our variables, although generally in the expected direction, does not achieve statistical significance. Women and African Americans were no more likely to be nominated for the federal courts than White men.¹⁰ Presidents who have served as gover-

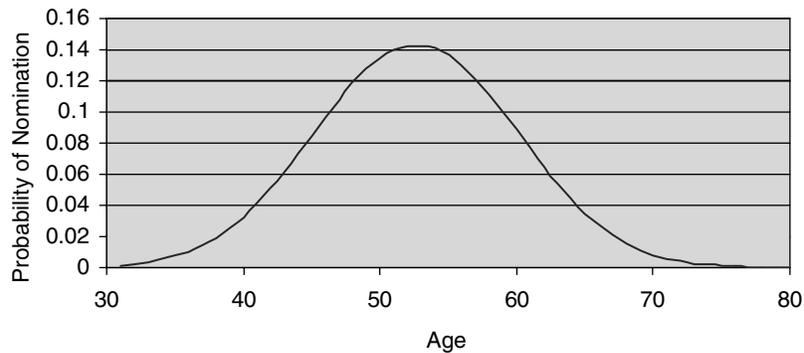


Figure 2: Effect of Age on Probability of Nomination

nors are more likely, but not significantly more likely, to nominate state Supreme Court justices. The method of initial selection to the state court (appointment vs. election) has no significant effect on the likelihood of nomination to the federal bench.

CONCLUSION

The general findings of our article suggest that, from the state Supreme Court justice's perspective, nomination to the federal bench is not likely. When a few of the relevant factors occur, nomination is hardly out of the question. Hypothetical Case 1 illustrates this point; in any particular year, a justice who meets the most important political and merit-related criteria has roughly a 1 in 10 chance of being nominated. Moreover, as Figures 1 and 2 illustrate, being of a certain age and seniority increases the likelihood of nomination. But, although there is a large pool of state Supreme Court justices at any given time, very few of these justices meet the political and merit-related qualifications for the federal courts. Most state Supreme Court justices have not graduated from top-15 law schools, and many serve on more prestigious courts. More important, most justices retire within 10 years of serving on the state high court thereby leaving a relatively small window of opportunity for elevation. The likelihood that the political factors will align themselves favorably during this window is not high. Finally, the average justice is about 52 years of age when appointed to

the state high court. It is at approximately this age when the likelihood of elevation to the federal courts begins to decline. As Baum (2001, p. 133) noted, more than two thirds of all state Supreme Court justices serving in 2000 had previously served on a lower court. It may be that service on a lower state court puts one in good stead for service on either the federal bench or the state high court, but there simply is not enough time within a judicial career to do both.

Indeed, presidents often look beyond the state high court to state lower courts in selecting nominees. For instance, from 1990 to the present, approximately 29% of appointments to the federal district and circuit courts were elevated from a state lower court.¹¹ Why might a president choose to look to the lower state courts for current nominees? In some important aspects, the pool of lower state court judges is quite similar to the pool of justices serving on the state high courts but much larger. The average age of state Supreme Court justices serving in 2001 was approximately 61; about 21% graduated from top-15 law schools. A supplementary analysis we performed of approximately 800 intermediate appellate judges at the state level indicates that the average age of these lower court judges was approximately 58, and approximately 17% of these judges graduated from top-15 law schools.¹² Moreover, there is little reason to believe that one would find significant differences in partisanship if such data were readily available. So, from the perspective of a president, many lower state court judges might well be attractive candidates. And, even more important, the pool of these judges serving at any point in time is much larger than the pool of state Supreme Court judges. Just the pool of intermediate court judges (in the states with such courts) is almost three times larger than the pool of state Supreme Court justices, and the pool of judges in original jurisdiction courts is even larger. Even if the *percentage* of lower court judges who graduated from top-15 law schools is slightly lower than the corresponding percentage of state Supreme Court justices, the *number* of such judges is higher. Given the low likelihood that a state Supreme Court justice fits the profile of the ideal candidate, we find it not surprising that presidents might look to the lower courts to find suitable nominees.

The lower state courts may be particularly attractive sources of nominees for presidents who are seeking to avoid highly visible candidates. We find that the visibility that accompanies a seat on the state

Supreme Court may be a significant obstacle to a federal nomination. We noted at the beginning of this article that state high courts, in general, are enjoying increased influence and visibility, yet this has clearly not translated to an increased move of state high court justices to the federal bench. In our analyses, both the length of service and the prestige of the court were negatively related to the likelihood that a justice would be selected. Moreover, over time, state Supreme Court justices, in general, are less likely to be nominated. These findings suggest that visibility may in fact be a disadvantage to nomination.

For the reasons described above, we predict that the frequency with which state high courts serve as a source of federal judicial nominees will not increase in future years. The political criteria will either remain fairly constant or become even more difficult to meet. Many states are experiencing sharp electoral divisions, and it is not uncommon for the two senators from a single state to diverge markedly in terms of partisanship and ideology. This political context, of course, applies to all potential judicial nominees; however, state Supreme Court justices have a record of ruling on relatively controversial issues such as the death penalty and abortion rights. For example, John Ashcroft's senatorial opposition to the candidacy of Ronnie White for the federal bench was based on White's votes on a handful of death penalty cases before the Missouri Supreme Court. Additionally, the difficulty of the federal nomination process, coupled with the opportunity to serve many years on an increasingly powerful state institution, may discourage potential nominees from throwing their hat into the ring for consideration.

The merit-related factors also are unlikely to change in such a way that would increase the likelihood that state Supreme Courts would serve as a source of nominees for the federal courts. The percentage of newly appointed state Supreme Court justices who graduated from a top law school has remained fairly constant in the past 3 decades: 26% in the 70s, 27% in the 80s, and then actually dropping to 20% since 1990. State selection systems continue to favor the home-grown judge trained at the state's major public institutions, which are sometimes but not always nationally prestigious. The informal requirement of the federal courts for a law degree from a nationally recognized institution will likely continue to prevent many state Supreme Court justices from being considered for elevation.

APPENDIX
Discrete Time Logistic Model: Effect of Political Factors
and Judicial Qualifications on Likelihood of Nomination of State
Supreme Court Justices to the Federal District and Circuit Courts

<i>Independent Variables</i>	<i>Coefficients</i>	<i>Means</i>	<i>Range</i>
Political factors			
Party congruence: judges & president	1.766 ^{††} (.450)	.45	0-1
Party congruence: judges, president, & senators	0.687 [†] (.333)	.16	0-1
Presidents who formerly served as governors	0.431 (.766)	.02	0-1
Female justice	0.476 (.443)	.11	0-1
African American justice	0.610 (.629)	.04	0-1
Age	1.076 ^{††} (.362)	57.64	30-87
Age squared	-0.011 ^{††} (.003)	3,392.65	900-7,569
Judicial qualifications			
Top-15 law school	0.654 [†] (.324)	.24	0-1
Initially appointed to state Supreme Court	0.081 (.330)	.67	0-1
State Supreme Court ranking	-0.020 [†] (.011)	27.73	1-50
Another justice from that court has been nominated in the past	0.388 (.341)	.37	0-1
Judicial qualifications: seniority			
2nd year of service	-2.858 [†] (1.246)	.13	0-1
3rd year of service	-2.097 [†] (1.200)	.12	0-1
4th year of service	-2.166 [†] (1.204)	.11	0-1
5th year of service	-1.991 [†] (1.199)	.11	0-1
6th year of service	-2.313 [†] (1.230)	.10	0-1
7th year of service	-2.149 [†] (1.227)	.09	0-1
8th year of service	-1.920 (1.225)	.08	0-1
9th year of service	-2.041 (1.258)	.07	0-1
10th year of service	-1.446 (1.222)	.06	0-1
11th year of service	-1.928 (1.320)	.06	0-1
15th year of service	-2.051 (1.500)	.03	0-1
16th year of service	-1.721 (1.500)	.03	0-1
Controls			
Available seats on federal bench	-0.044 (.075)	1.69	0-23
Years since 1965	-0.045 [†] (.020)	22.06	0-36
Constant	-29.823 [†] (9.612)		
Sample size	6,614		
Probability > χ^2	< .01		
Pseudo R^2	.14		

NOTE: Dependent variable: coded 1 if justice is nominated to federal bench; standard errors in parentheses. Comparison category for dichotomous variables measuring seniority is the 22nd year of service.

[†] $p < .05$. ^{††} $p < .01$.

NOTES

1. Although individual American Bar Association scores would be a good measure for individuals, these ratings are not compiled until after the president announces a nomination or provides the American Bar Association Committee on the Federal Judiciary with notice of a pending nomination. Thus, these ratings are only available for those state justices who are elevated.

2. Not all state Supreme Court justices serve for life terms; still, the length of their terms is considerable. Additionally, although some justices must serve a short first term (e.g., 2 years prior to retention or reelection), the second and subsequent terms tend to be much longer (e.g., 6 to 12 years). Although there is a trend toward more expensive general and retention elections, this recent trend has not affected the extremely high rates of incumbency of state Supreme Court justices.

3. The most common two sources of missing data were age and political partisanship.

4. The second analysis, on the other hand, provides a more precise control for the duration variable (that is, for seniority); on the other hand, its disadvantage is that it eliminates cases in which no justice of that seniority was nominated. That is, if no justice serving in his or her 15th year is nominated, the discrete-time logistic model eliminates these cases from the analysis. It therefore uses less information than the straightforward regression analysis.

5. Seven justices were included in the analysis that were nominated to the federal courts soon, but not immediately, after leaving their state high courts. The substantive conclusions of the article do not change if these justices are dropped from the analysis. Moreover, two justices in the database served on their state courts after serving on the district courts; these justices are coded as not nominated to the federal courts.

6. An alternative list of the top-15 law schools is produced by *U.S. News and World Report*; 14 schools appear on both lists. It should also be noted that such lists are relatively stable over time.

In the analysis presented in this article, we included nominations both to the federal district and circuit courts. Baum (2001, p. 103) noted that the criteria that are important for nomination to the different levels of the federal bench are becoming increasingly similar over time. We did conduct a number of separate analyses comparing justices nominated to the district court to justices who were not nominated to either level of the federal judiciary, justices who were nominated to the circuit court to justices who were not nominated to either level of the federal judiciary, and justices who were nominated to the circuit court to justices who were nominated to the district court. The findings from these analyses were generally similar to those presented in the article: Political advantage increases the likelihood of elevation to either the district or circuit court, whereas service on a prestigious Supreme Court and high seniority on the state Supreme Court decreases that likelihood. The sex of the justice had a more pronounced effect for nomination to the circuit court, and a degree from a top law school was a more important determinant for nomination to the circuit court. These analyses are available from the authors.

8. We also performed alternative analyses including a Cox event history analysis and an event history analysis using a Weibull distribution. The pattern of substantive and statistical significance is consistent across all analyses.

9. Because there is no reason to expect shared partisanship with the two home state senators to have an effect independent of shared partisanship with the president, we do not include that independent variable. If included in the model, shared partisanship with the two home state senators does not have a statistically significant independent effect. The estimated effect of the interaction between shared partisanship with the president and shared partisanship with the home state senators fails to reach statistical significance but actually increases in magnitude to suggest

that the loss of significance is because of multicollinearity introduced by including all three variables in the model. These results are available from the authors.

10. Of course, the inclusion of both age and seniority introduces a fair amount of multicollinearity into the analysis. Such multicollinearity should inflate the standard errors but not influence the magnitude of the effect of gender or race. If age is removed from the model, the effects of the sex and the race of the justice increases in magnitude, and the effect of the sex of the justice becomes statistically significant. These changes in magnitude cannot be accounted for by multicollinearity, and they underscore the importance of including age in the model to avoid biased estimates.

11. Data were gathered from the Federal Judicial Center Web site available at www.fjc.gov/newweb/jnetweb.nsf.

12. Information was gathered from the various state Web sites, the Martindale-Hubbell director, and Lexis-Nexis. More than 80% of all intermediate court judges were included in the sample.

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