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## Senatorial Behavior in Recent Supreme Court Confirmation Hearings

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**SENATORIAL BEHAVIOR IN RECENT SUPREME COURT CONFIRMATION  
HEARINGS**

A Thesis Submitted  
in Partial Fulfillment  
of the Requirements for the Designation  
*University Honors*

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Professor Donna Hoffman  
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This Study by: Alex Perrin

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## I. Introduction

Supreme Court confirmation politics has reached a high-water mark between the nominations for Elena Kagan in 2010 and Neil Gorsuch in 2017. The court since 2010 is now ideologically divided along party lines for the first time in its history thanks to Republican presidents nominating more ideological justices, beginning in the 1980's, in response to a more activist Warren court. These developments have taken shape in tandem with increased coverage of the hearings through television and various forms of media. This intensely partisan and political process in which the public is highly engaged offers the perfect stage for Senators to posture or engage in other political grandstanding tactics. They do this by peppering their questions with partisan propaganda and stances in hopes of maintaining the loyalty of their constituents. The question-asking behavior of Senators has been studied in numerous research projects but the rest of Senatorial rhetoric like posturing or statement making and dialogue has not. This research will attempt to study Senator behavior during the modern confirmation hearings to determine how much Senate posturing and dialogue occurs. The results have shown that out-party Senators (those Senators of the opposing party of the nominating president) are engaged in much higher levels of dialogue especially after 2016. Each party also changes the number of questions they ask based on whether they are out-party or in-party (those Senators of the same party of the nominating president). This study's results provide a more recent analysis of the salient confirmation process and add to the literature on confirmation hearings and Senator's behavior during them.

## II. Literature Review

Throughout our nation's history 165 people have been nominated to the Supreme Court. Of those, 128 have been confirmed by the Senate (McMillion, 2020). The Senate must confirm or reject each nominee from the president according to the Constitution. The Senate has altered their behavior, actions, and procedures to meet this demand throughout our history. The recent scenario has been shaped by various developments in the confirmation process and is centered around the public confirmation hearings held in the Senate Judiciary Committee. I will begin by exploring this evolution through the various points in history in which they have developed. Once the developments are clear I will then visit the literature on Senate behavior during the hearings. The behavior of Senators during the hearings has changed along with the hearings. Individual Senator's questioning and posturing is of a significant academic interest and while much has been studied on types of questioning and amount of questioning little is known about the posturing (defined as statement making) during the question-and-answer sections of confirmation hearings. A thorough survey of the history of the hearings as well as the modern research on Senate behavior during the evolved hearings will lay the groundwork for my original research.

Confirmation hearings have slowly become the national spectacle that they are today. The hearings today are a media frenzy which garners national attention as well as public interest on the individual Senators and the nominee. Stephen Carter (1988) describes the hearings as "the only effective device by which the people can signal their approval of the work of the Court or try to force a shift in course" (p.1190). The first hearings however were little more than a symbolic administrative duty. Throughout the history of the hearings different flashpoints have

altered how the hearings have taken place going from the quick process of the late 19th century to the long-drawn-out extravaganza of more recent times.

Confirmation hearings have become the main instrument during the Senate's role during the Supreme Court nomination process. The hearings however, are not Constitutionally mandated. The Constitution states that the president "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court ." It does not however state how the Senate should administer their "advice and consent." In 1816 Congress created the first standing committees, Judiciary being one of such committees, and in 1835 the Senate customarily began sending Supreme Court nominations through this committee (Beth and Palmer 2011, 5). These referrals were continued informally until 1868 when the Senate formally adopted the practice (Beth and Palmer 2011, 7). These early stages of the Senate determining its role in the "advice and consent" charge was shaped by an institutionalization process, but no hearings or question and answer formats had been used and most nominations to the high court were confirmed or (rarely) denied within days (McMillion 2022). During the early days of the republic, the Senate opted for a simple and quick process for advising and consenting. That would slowly begin to develop into a much more long and complex process as the hearings began to be instituted.

In 1873 the Judiciary Committee held its first hearings on a Supreme Court nominee. This hearing was closed-door and focused on one accusation against the nominee, George Williams, in which he allegedly used Department of Justice funds for household expenses. President Grant withdrew his nomination when the Judiciary Committee had concluded that the allegations were true (Collins and Ringhand 2016, 129; McMillion 2022). The Judiciary Committee did not hold a hearing again until the nomination of Louis Brandeis in 1916.

Brandeis' hearings were public. The nominee had faced a considerable backlash from the public and many other prominent political figures as soon as his nomination was announced. Brandeis was considered "the people's lawyer" and attracted much negative attention from conservatives and antisemites. Due to the backlash, Brandeis' hearings were made public; the lawyer himself never appeared or testified in the hearings as he vowed to stay silent and uninvolved. He was eventually confirmed, and the rancor ended (Abraham 1999, 136-37). So, for the first time a confirmation hearing was made public but the nominee was not present. The Judiciary Committee held hearings sporadically after 1916 but not until Harlan Stone's nomination in 1925 did a nominee ever physically appear at the hearings to answer questions (McMillion 2022). Stone's hearings however were closed and focused on one sole accusation (Collins and Ringhand 2016). 1925 marks the first confirmation hearing that the nominee was present to answer questions but they reverted back to private hearings.

Justice Hugo Black was confirmed by the Senate in 1937 and was met shortly after with proof of his involvement with the Ku Klux Klan. The Senate, still reeling from the drama of the Black confirmation, decided that the next nomination of Felix Frankfurter would be an opportunity to remedy the situation. The Senate vowed to scrutinize Frankfurter fully and to do this they held open public hearings in which Frankfurter was subjected to questioning from the committee (Collins and Ringhand 2016). This makes Frankfurter the first Supreme Court nominee to publicly answer questions from the Judiciary committee.

The Senate referred 11 nominations to the Judiciary Committee between 1939 and 1955. Only at two of these did the nominee appear at the hearings physically, Robert Jackson in 1941 and John Harlan in 1955 (Collins and Ringhand 2016, 132; McMillion 2022). John Harlan's hearing in 1955 marks the beginning of the unbroken streak of nominees appearing for testimony

at the hearings. It also constitutes the beginning of the modern period for Supreme Court Confirmation politics. After the Court's ruling in *Brown v. Board of Education* southern Democrats insisted on questioning all future nominees (Carter 1988, 193); this new norm has stuck ever since and every Supreme Court nominee since has been subjected to a public hearing.

Throughout this modern era, we have seen these relatively low stakes hearings be transformed into a national event contested by all kinds of third-party actors. This new state of play was created by various flashpoints in the modern era which slowly elevated the stakes of the hearings. I will now briefly review these few hot points of the modern period to show how the contentious nature of the most recent was produced.

Thurgood Marshall's nomination in 1967 by President Lyndon B. Johnson was the first confirmation hearing to move past just a few days. All together Marshall was questioned extensively by Senators for 5 days (Yalof 2008, 148). In 1968, LBJ was given an opportunity to replace Chief Justice Earl Warren. Warren announced his plans to retire once his successor was confirmed. LBJ proceeded to elevate his friend Abe Fortas to the Chief Justice slot and another friend, Homer Thornberry, to replace Fortas' seat. Senators were upset at the president's lame-duck status and therefore successfully filibustered the nomination. Johnson would eventually withdraw the nominations and accept defeat. Chief Justice Warren agreed to stay on for one more judicial term and then finally retired outright in May of 1969 (Yalof 2008, 148 and Greenberg 2005, 6-8). This move allowed the nomination out of the lame-duck president's hands and into the incoming President Nixon's.

President Nixon was met not only with the opportunity to fill Warren's chief justice seat but also the seat of Fortas who had also been forced to retire in May of 1969 due to pressures about his financial dealings with a convicted financier (Greenberg 2005, 7). Nixon nominated



Warren Burger to replace Earl Warren as chief justice. Burger's confirmation was anticlimactic, and he was confirmed in June of 1969 (Abraham 1999, 9-10; Kotlowksi 1996, 72-73). Nixon's attempt to replace Associate Justice Fortas' seat was not as straightforward. He first nominated Clement Haynsworth who seemed easily confirmable at first but was soon met with opposition for his financial dealings. Considering he was replacing a justice who had resigned for malpractice in finances it was not a good look and while he was recommended favorably by the Judiciary Committee he was ultimately rejected by the full Senate (Abraham 1999, 10-11; Kotlowksi 1996 73-74; Stone 2011, 9). This outright rejection was significant because between 1894 and 1968 the Senate had only outright rejected one nominee in 1930 on racist claims (Greenberg 2005, 6). The Haynsworth defeat was followed closely by Nixon's nomination of Harold Carswell. A notably lesser candidate than even Haynsworth, this nomination was seen as a slight to the Senate on the part of the president (Abraham 1999, 11). Carswell, while seen as less qualified, initially looked to be able to pass Senate confirmation until a speech he had made resurfaced in which he stated he was affiliated with the values of white supremacy. Carswell, like Haynsworth, was rejected by the Senate. A few days later Nixon reluctantly nominated a Minnesotan, Harry Blackmun, who was recommended by Warren Burger and had no trouble passing Senate confirmation (Abraham 1999, 11-12). This new Senate stance of pushing back against the president was a new development for the modern era and the hearings themselves became the medium in which the Senate could do this. This is evident with the hearings of Fortas, Haynsworth, and Carswell all stretching 5 days in length or more (McMillion 2022).

The turmoil of the many failed confirmation attempts of the late 1960's and early 1970's in some respects can be seen as a political backlash to the relatively activist Warren Court of the 1950's and 1960's. The Warren court was made of nominees from Democratic presidents,

Franklin Roosevelt and Harry Truman as well as liberal justices nominated by Eisenhower. The Warren court entrenched itself into civil liberties cases that were at the center of hot-button political debates in American society. None bigger than the court's decision in *Brown v Board* but also cases with school prayer, criminal rights, and others (Eisgruber 2007, 12). While the liberalism of the Warren court is sometimes overstated, the court did take on more rulings in civil liberties and expand the parameters of constitutional interpretation more than any other court in history (Wasby 1976, 71-73; Baum 1985, 22-23). This new perceived liberalization of the Supreme Court under Warren propelled confirmation politics into presidential elections, beginning with Nixon's 1968 campaign and growing with Ronald Reagan's 1980 campaign. Nixon pledged to nominate "Strict Constructionists" to the court and his Republican Party was outspoken about him nominating judges who would overturn such rulings like school prayer (Wasby 1976, 12-13). This new development in confirmation politics thrust more attention to the Senate's advice and consent apparatus as the court inserted itself into more perceived political areas and presidents began nominating more blatantly ideological justices. This is why the 20 years between 1968 and 1988 saw triple the failed nominations in the Senate compared to the previous 75 years combined (McMillion 2022).

In the 1980's, President Reagan, like Nixon before, promised to only nominate ideologically conservative judges in the strict constructionist mold to the high court. He also vowed to nominate the first woman sharing these views to the high court (Abraham 1999, 281-82). When the opportunity came in 1981, he nominated the Arizona native, Sandra Day O'Connor. Her hearing was the first to be televised. The televised hearings of today are a staple to the process, but during O'Connor's hearings little changed from the behavior of the Senator's and nominees alike. Not until a few years later at the hearings for Robert Bork and Justice

Clarence Thomas did public attention via television really start to shape the hearings and likewise the behavior of the Judiciary Committee and the nominees (Stone 2011, 449).

Robert Bork had been considered for the Supreme Court for years and when Lewis Powell announced his retirement in 1986 Reagan finally nominated the controversial lawyer. The nomination was met with intense backlash as Bork had a relatively public stance on many key civil rights issues and other controversial subjects. When the hearings took place Bork famously chose the honest route and stuck to some of his more ideologically conservative views. Because of this his nomination was rejected by the Senate. This is one of the first examples of Senators taking an outward stance against a nominee solely for ideological differences and eventually after another failed attempted nomination of Douglas Ginsburg, Reagan was forced to nominate a more moderate judge Anthony Kennedy (Abraham 1999, 298-99; Stone 389).

Clarence Thomas' nomination by George H.W. Bush to replace the historically liberal Justice Thurgood Marshall is remembered as one of the most sensationalized Supreme Court hearings. Thomas' confirmation hearings came in two parts. The first in which Thomas back pedaled on his record and was reticent on many issues and the second in which Professor Anita Hill came forward to allege sexual harassment in the workplace from Thomas. Thomas was narrowly confirmed, but his hearings were a spectacle to say the least (Yalof 2008, 162-163).

The hearings of the late 1980's and early 1990's, specifically those of Robert Bork and Clarence Thomas, ratcheted public attention and further ingrained the contentiousness of the confirmation hearings. They introduced a new sense of drama and sensationalism which had not been seen previously (Farganis and Wedeking 2014, 17). The Thomas hearings specifically introduced even the most unpolitical of the American public to the drama and contention of the

Supreme Court confirmation process as one survey shows 86% of Americans reported watching at least part of the Thomas hearings (Stone 2011, 449).

While president Clinton was able to nominate both Ruth Bader Ginsburg in 1993 and Stephen Breyer in 1994 (McMillion 2022), these two confirmations were not contentious as Clinton was focused on his domestic agenda and therefore put forth these two uncontroversial and well-qualified judges (Yalof 2008, 163). Between 1994 and 2005 there were no openings on the court (McMillion 2022). In 2005 Justice O'Connor announced her retirement and shortly after Chief Justice Rehnquist passed away creating two vacancies. President George W. Bush nominated John Roberts to take the position of Chief Justice. Roberts had worked in the Reagan Justice Department and had a relatively small paper trail for Senators to pounce on. His confirmation was won easily as he was replacing one of the courts most conservative justices; he was not seen as a big change agent (Yalof 2008, 167-68). Bush then nominated a colleague, Harriet Miers, to fill the Associate Justice position but then withdrew her name due to intense backlash from Republicans who thought Miers wasn't sufficiently experienced and lacked a pro-life background (Markels, 2005). Her nomination was replaced by the nomination of Samuel Alito. Alito's paper trail was significantly larger than Robert's, creating an uphill battle for the confirmation, as he was replacing the then swing vote on the court. His confirmation was one of the closest votes up until that time and foreshadowed the future contentiousness of court nominations (Yalof 2008, 168-69; Stone 401). The controversy of his nomination can also be linked to his nomination following the controversy of the Miers nomination.

In 2016, Justice Scalia's death left an opening on the court during an election year (albeit in March of 2016). The Republican controlled Senate Judiciary Committee for the first time in history refused to bring up President Obama's nominee, Merrick Garland (Eckerstrom 2018, 34-

35). Following the election of Donald Trump and the nomination of Neil Gorsuch to the Supreme Court, the same Senate Republicans chose to remove the option for filibustering Supreme Court nominees and therefore made Democratic opposition to the confirmation of Gorsuch moot (Flegenheimer 2017). This chaotic and political event which lasted an entire year showcased a completely novel principle in confirmation politics. The Gorsuch nomination became the second closest Senate vote in history at the time (McMillion 2022).

Throughout the history of Senate confirmations of Supreme Court Justices, the final floor votes on confirmation were rarely close. Rejection by the Senate was rare but not impossible before 1968. After 1968, in response to the Warren court's activism within more political issues and its expansion of constitutional protections, we see presidents more inclined to nominate ideological counterparts (Eisgruber 2007, 124) and the Senate more active in its determination to weigh in on these nominees. Since 1968 we have seen withdrawn and outright rejected nominees (Fortas, Carswell, Bork, and Miers), the closest votes for confirmation ever seen in the confirmation process (Thomas and Alito), as well as the first nominee to never be brought up in the Senate in the modern era (Merrick Garland). These developments have brought us to the contemporary scenario. The four most recent nominees to the Supreme Court were all confirmed along extremely thin lines. Why since 2016 has Senate confirmation been reduced to partisan battles?

Neal Devins and Lawrence Baum have highlighted in their 2016 study that when Elena Kagan took the seat of John Paul Stevens for the first time in court history every Democratically nominated Justice was to the left of every Republican nominated Justice. This is the first partisanly differentiated court in the entire history of the Supreme Court (Devins and Baum 2016, 309-11). This partisan split is a product of two things. First the process that began with

Nixon in which presidents nominate more ideological justices (Cameron, Kastellec, and Park 2013) especially within the conservative realm. Secondly, partially due to chance, every nominee from 1968 until Obama's nomination of Sonia Sotomayor in 2009 was put forth by a Republican president apart from President Clinton's two uncontroversial nominees (McMillion, 2022). Furthermore, the current court shows the partisanly differentiated, ideological split is still active after the 2022-2023 term and in fact larger (Rubin 2023). To gauge these results Devins and Baum viewed the Martin-Quinn scores which have been used to determine the ideological determination of each Supreme Court Justice since the 1930's. These scores reveal a court with an ideological split that also aligns with the partisanship of the nominating president. With this split happening after Kagan's confirmation, it makes sense why such fierce partisan battles and votes have occurred for the four nominees since Kagan.

Of the four, Gorsuch's nomination was embroiled in the politics of the Garland nomination and the removal of the filibuster. Kavanaugh's nomination was contentious due to the fact of him taking the seat of the then swing-justice Anthony Kennedy (thus changing the ideological balance on the court) even before the added complexities and drama of a sexual assault allegation. Barrett's nomination was especially contentious from the onset due to the vacancy being in an election year with the Republican Party in the opposite position it was just four years earlier with the Merrick Garland nomination. Even so, the confirmation was pushed through and Barrett, a conservative justice, took the seat of one of the most renowned liberal justices. The most recent SCOTUS nomination of Ketanji Brown Jackson by President Biden is an interesting one. Jackson had no clear scandals like other contentious nominees like Carswell, Bork, Thomas, or Kavanaugh. Her nomination was not consumed with a political battle like Gorsuch or Barrett. Nor was she replacing a justice of the opposite ideology. Yet her nomination

still narrowly passed the Senate floor vote. These recent nominations have proven to be partisan battles and so much so that public attention and support for the Supreme Court has fluctuated.

A series of studies examined legitimacy and public support for the Supreme Court (Krewson and Schroedel 2020; 2023; Krewson 2023). The study in 2020 and the follow-up in 2023 by Krewson and Schroedel looked at public support in various aspects for the court following the Kavanaugh hearings and shortly after. They found that amongst Democrats the support for the court had plummeted while amongst Republicans, support increased, creating a partisan gap. This is interesting because with this gap, Senators of opposing parties are more likely to vote and behave differently within the confirmation process as their relative constituents have an adversarial view of the nominating president and therefore the nominee as well. More interestingly, the 2023 adaption by Krewson looked at public support of the Supreme Court following the Barrett confirmation. He found that while public support for the court was low it didn't necessarily translate to a loss of respect for the institution. This tells us that the public has lowered their support for the political nature of the members of the court but that the respect for the power of the court itself is more stable. This is interesting because this could translate to increased interest in the confirmation process as this is the process in which the roster of the court itself is affected. Stephen Carter points out that for many Americans who are inevitably affected by the court's rulings, the Justices seem at a distant and almost mythical place and only during confirmation hearings do these judges become mortal and the people, through their representatives, are allowed to have their say in the court (Carter 1988, 1189). These ideas along with the increased partisanship of the court and the process has created the close votes and drama-filled confirmations of the four post-2016 nominees.

We know that the public is ever more interested in the Supreme Court and its members, as well as the confirmation process itself (Stone 2011, 449-50; Gibson and Caldeira 2009, 71) and thanks to full time coverage from multiple networks as well as newspapers, blogs, and online sources (Farganis and Wedeking 2014, 98-101) the public has easy access to the hearings. Pair that with the increased politics of it all, recent confirmation hearings are a political spectacle in which Senators can bask in the increased attention and manipulate the hearings for their own devices. We know for example that Senators will often both make their stances known throughout the hearings, as well as claim credit for certain political accomplishments (Collins and Ringhand 2016, 134).

If confirmation battles truly “represent the most visible and formal evaluation of the nominee's suitability and qualifications” (Watson and Stookey 1988, 186) in which the public pays close attention, how then have Judiciary Committee members altered their behavior in the hearings to account for the increased attention from constituents? The old norm of political scientists, journalists, and even politicians used to be that nominees dodge questions and therefore the hearings are meaningless. Elena Kagan even famously called them a “Vapid and Hollow Charade” but Farganis and Wedeking (2014) found that nominees are forthcoming most of the time and that no change had occurred in the honesty of nominees. This shows that while Senators and the media alike may complain of nominees being closed-mouthed, no such phenomenon occurs. Instead, Schoenherr and Lane (2020) argue that Senators don’t actually care about the forthcomingness of the nominee as evidenced by their voting patterns but rather care more about their ability to engage with the nominee as an act of building their reputation with their constituents. They go on further to prove that studying the question asking behavior of the Senators is of an increased interest due to this rationale.



The first change to Senator behavior is exhibited by the volume of questions asked during the hearings. The usual hearing before the modern era would only have a few questions (e.g., Byron White was only asked 6 questions in 1962), whereas today nominees are routinely asked hundreds and hundreds of questions throughout multiple days of the hearings by all the Senators of the Judiciary Committee (Farganis and Wedeking 2014, 19-20). This trend began in the 1980's with the onset of televised hearings and has stabilized into the norm in the modern era (Collins and Ringhand 2016, 136-37; Ringhand and Collins 2011, 598).

Secondly, the content of Senators' inquiries has changed and expanded. Senators beginning in the 1990's now ask significantly more questions aimed at a nominee's own opinions and viewpoints rather than basic factual information (Farganis and Wedeking 2014, 24-25). Farganis and Wedeking theorize this to be because of the increased attention paid by constituents and since constituents reward the party loyalty of Senators at election time (Carson 2008) Senators can "score points" by asking more substantive view-based questions. In addition to the rise in view-based questions there has been an increase in the number of unique questions put forth by Senators. The largest group of unique issues addressed is still ruled by topics under civil rights however (Ringhand and Collins 2011).

Lastly, relationships and behaviors of in-party and out-party Senators have broadened. Historically not every Senator asked a question but since the late 1980's every Senator has participated in the hearings by asking questions and using their time (Farganis and Wedeking 2014, 22). What's more, the number of comments from majority and minority party members on the Judiciary Committee have equalized. Historically the majority party controlled the comments and questions of the hearings, but since the 1980's it has equalized (Collins and Ringhand 2016, 142). This means that in-party and out-party Senators are asking equal questions and using equal

amounts of screen time. Schoenherr and Lane (2020) also theorize that in-party Senators simply “Shepard the nominee to confirmation” and therefore ask only qualifying questions to showcase the nominees' perks. Conversely, out-party Senators now mitigate the damage of having to watch the coronation of an alternate party’s candidate by attempting to make the hearing, and in turn, the nominee, as contentious and stained as possible. This dynamic is relatively new and is significantly reinforced in the post 2016 era where the filibuster is now removed allowing the in-party nominee to breeze to confirmation with only a bare majority, as well as the fact that the Supreme Court is ideologically split along party lines as well.

So, if we know that all Senators, minority and majority party, now use their time and that they all engage in more substantive questioning to fulfill their constituents, how else do Senators use their air time during these highly salient proceedings? And have we seen a change? As stated above, much research has been done on the content of the questioning by Senators of the Judiciary Committee, but no study has attempted to quantitatively determine how much posturing is done by Senators during the hearings. Posturing can be defined as Senators making statements rather than asking questions during the hearings. Collins and Ringhand (2016) found that credit claiming and position taking is common during the hearings, but these acts cannot happen if Senators are engaged solely in questioning. I am curious to know how much time is used for actual questioning and how much is used for Senators to make lengthy claims and assertions about anything while their constituents pay close attention.

Through the literature I have outlined six key developments that have evolved the confirmation process, especially the hearings, into a political firestorm. The first was the onset of live questioning of the nominees which began with targeted hearings for controversial nominees and after *Brown v. Board*, a consistent norm (c.1955). Second, in reaction to the more activist

Warren court of the 1950's and 1960's, Republican presidents began to nominate more ideologically conservative justices beginning with Nixon, solidifying with Reagan, and continuing to the present day. Third, in reaction to more strongly ideological nominees, the Senate's willingness to be more assertive in its rejection and scrutiny powers heightened. Fourth, because of the presidents' willingness to put more ideological justices on the court, beginning in 2010, the court is now securely partisan and therefore confirmation politics has become a battle of the parties and centered on nominee ideology over everything else. Fifth, with the advent of televised hearings in the 1980's constituent viewership has skyrocketed (thanks to the contentious hearings of Bork and Thomas which were now publicly accessible through television). And lastly, the political drama which unfolded in 2016 in which the Senate ignored a president's nomination and subsequently removed the filibuster power of the minority party brought political games to the forefront of the already drama-filled process.

These six developments have worked in tandem to create the political battle which unfolds anytime a vacancy is created on the court. As Gibson and Caldeira (2009) put it, the "Near prospect of a vacancy is equivalent to sharks smelling the scent of blood in the water" (p.5). This intense environment creates a perfect stage for Senators to posture on one of the foremost political spectacles of our modern government. Because of this, studying Senator behavior especially after 2016 is of paramount scholarly interest.

### **III. Research Question**

We know from Schoenherr and Lane (2020) that in-party and out-party Senators behave differently. We also know that beginning in the 1980's partisanship and ideology aligned and began to affect Senate voting and behavior more than any other factor (Cottrill and Peretti 2013).

Knowing that, this study is interested in determining if in and out party senators behave differently during the hearings.

As the court increasingly became more divided in the modern era, the behavior of each party changed. I hypothesize that out-party senators will engage in more posturing during the hearing than in-party senators who are concerned with “shepherding” or easing the nominee to confirmation. I speculate they will do this in three ways, engaging in more dialogue (increased back-and-forth between the Senator and nominee), asking more questions, and increased posturing (through statement-making).

The court slowly became more partisan beginning in the 1980’s as a reaction to the Warren Court activism but the confirmation of Elena Kagan in 2010 solidified the split. That was followed by political gaming with the failed Merrick Garland nomination and the subsequent confirmation of Neil Gorsuch in 2017. This was due in part to increased partisanship across the federal government but characterized by the elimination of the filibuster and allowance for more contentious nominees as well as the refusal of the Congress in 2016 to take up the nomination of Garland at all. Post-2016 nominees to the high court are faced with bitter partisan drama as each party rails from the political games played with the Garland nomination.

In response I ask, have Senators on the Judiciary Committee changed their behavior in the post-2016 political environment? In answering my own question, I hypothesize that post-2016 confirmation hearings will exhibit higher levels of posturing, questioning, and dialogue than in pre-2016 hearings. Both in and out party senators now face a bigger battle in the nomination process and therefore the thirty-minute period allowed each Senator will be more thoroughly used and filled with more posturing than just normal conversation.

## I. Methodology

The Supreme Court is now rooted in a partisan divide unlike anything we have seen in the history of the court. Confirmation hearings are widely available and have become a national evaluation of the high court. Senators on the Judiciary Committee can question nominees for the bench on anything they deem necessary. With the elimination of the filibuster and the increased partisan politics surrounding nominations it is interesting to see how Senators on the Judiciary Committee have changed their behavior during the hearings to account for increased scrutiny, higher levels of attention on the hearings, and deepening partisan dynamics.

To see this change, I engaged in content analysis of six Supreme Court confirmation hearings. I analyzed the six most recent confirmation hearings for which transcripts are available. These hearings are John Roberts' hearing in 2005, Samuel Alito's in 2006, Sonia Sotomayor's hearing in 2009, Elena Kagan's in 2010, Neil Gorsuch's in 2017, and Brett Kavanaugh's from 2018.

For the purpose of this study only the first round of questions (the first 30-minute period allotted to each Senator on the committee) were examined. I assume here that Senators hoping to grasp their moment in the increased attention of the hearings will offer what they deem most important during the first round of questioning. For most hearings this occurs on day 2 and in some cases may carry over and finish on day 3. This is because day 1 is filled with procedural items, introductions, and formal statements of different groups and officials affiliated with the nominee. Hearing transcripts were accessed from the official government publishing office website (U.S. Congress, 2005-2018).

Each of the six hearings' first round of questions were extracted. In all six hearings each Senator was given 30 minutes to use as they wished during the first round. I only began

collecting once the 30-minute timer began and then stopped collecting when the clock was stopped. Here is an example from Chairman Specter's remarks at the beginning of Samuel Alito's hearing:

Chairman SPECTER. Since there are no older guys involved or gals, we can consider the marathon, but we will keep it within bounds. **You can start the clock.** I will maintain the clock meticulously, as we have maintained timing as our Judiciary Committee practice. Judge Alito, you will be faced with many, many questions on many topics. I am going to start today with a woman's right to choose, move to Executive power, and then hopefully within the 30 minutes pick up congressional power...  
(U.S. Congress, 2006)

I did not begin coding until the bolded words as that indicates the clock was started. There was always procedural talk in between Senator's time. All of this was not included in the extracted remarks. Sometimes the clock was paused during remarks to allow for procedural talk. In these instances I also stopped recording until the clock was restarted. Here is an example of this from Senator Harris' remarks during the Kavanaugh hearing:

Senator HARRIS. First of all, I would like you to——

Senator LEE. Hold on.

Senator HARRIS [continuing]. Pause the clock.

Senator LEE. He——

Senator HARRIS. Thank you.

Senator TILLIS [presiding]. The clock is paused.

Senator HARRIS. Thank you.

Senator LEE. Pause the clock. Let me raise my objection.

Senator TILLIS. The Senator is recognized.

Senator LEE. This town is full of law firms.

(U.S. Congress, 2018)

In this excerpt I stopped recording when Senator Harris requested the clock be paused. I began collecting again when it was restarted.

The Senators' words were separated from the nominee's words to allow for data collection. That is, during the thirty-minute period, all senatorial rhetoric was separated from the rhetoric of the nominee during the same period.

Data collected includes the word count of Senator rhetoric as well as the nominee. Also counted was a category I am calling 'utterances.' These are counted as any unbroken pattern of speech. One utterance is a time when a Senator or nominee begins speaking until another person begins speaking. Then, when the senator or nominee begins speaking again the second utterance lasts until another person speaks again. Here is an example from John Roberts' hearing when Senator Feingold and Judge Roberts were interrupting each other:

Senator FEINGOLD. It is often included, if you list decisions that are sort of considered some of the worst decisions in the history of the Supreme Court—

Judge ROBERTS. Yes.

Senator FEINGOLD.—with *Plessy v. Ferguson* and *Dred Scott* and others. Is that a fair characterization of your view—

Judge ROBERTS. Yes.

Senator FEINGOLD.—of *Korematsu*?

Judge ROBERTS. Yes.

(U.S. Congress, 2005)

In this example Senator Feingold would be counted with 3 utterances and Justice Roberts with 3 as well. In cases where a pause in speech occurs but the speaker doesn't change, it is all counted toward one utterance. This is evidenced by this example from Justice Gorsuch's hearing:

Judge GORSUCH. Well, Mr. Chairman, you are right. There were two lists, as I recall, over the summer. And I was not on the first list. And I remember having breakfast one day with a friend, who may be here. Bryan? There you are. You remember this?

[Laughter.]

Judge GORSUCH. We were having breakfast one day, and he said, "Neil, you are not on the list." And I said, "You are right. I am not on the list." He said, "You should be on the list." And I said, "I love my life in Colorado. I would not change a thing. I am a happy man. I have a loving wife, beautiful home and children, a great job with wonderful colleagues. I am a happy person." I am walking away from breakfast, and I get an email from Bryan saying, "There is a new list—"

[Laughter.]

Judge GORSUCH. "And you are on it." That was the first I heard of it.

(U.S. Congress, 2017)

With this example Justice Gorsuch would be counted under one utterance because, while laughter and a pause in speech occurred, no change in speaker took place.



These utterances were collected because they could be a good indication of increased dialogue between the Senator and nominee. If a certain Senator has more utterances, it could indicate increased back-and-forth with a nominee as well as possible increases in interrupting the nominee.

Lastly, the quantity of sentences was also collected. For Senators these sentences were further divided into statements and questions. A question was constituted by a question mark while statements were everything else. Here is an excerpt of three enumerated utterances from Senator Harris during the Kavanaugh hearing:

1. Well, because you referred to it, I would like to know——
2. I would assume that you think it is constitutional if you think it is a tool.
3. I agree. And in fact, to that point, in his confirmation hearing in 2005, Chief Justice Roberts, when asked about Section 2 and whether it was constitutional said, quote, “I have no basis for viewing it as constitutionally suspect, and I do not.” Do you agree with Chief Justice Roberts that the law is not constitutionally suspect, or do you have a different view? (U.S. Congress, 2018)

In this excerpt of three of Senator Harris’ utterances she would be counted with making four statements and one question, and five overall sentences. Notice that even though she was interrupted in utterance one it is still counted as a statement. Since interruptions are common in the hearings, all examples of it occurring at the end of an utterance were counted as a statement. Sometimes sentences were changed midway, or speakers paused. In the transcript these are evidenced by hyphens like the one above in Senator Harris’ remarks. If these occurred but were not at the end of an utterance they were ignored. Here is an example from Senator Feinstein’s remarks from Justice Gorsuch’s hearing:

“And I would be very happy to—because I think you will see that we did not make this up, okay?” (U.S. Congress, 2017)

In this example, Senator Feinstein would be counted as having one question. While there was a breakup in speech, no new sentence was begun, so this utterance has one sentence, and that sentence is a question due to the question mark.

This data allowed me to see how Senators were using their first thirty-minute period during the hearings. I was able to track the number of questions and statements made and see if any patterns were present (and if there were increases over time). The number of statements would be a key to understanding how much posturing has occurred versus the number of questions in the same period. I also could determine how much dialogue was occurring by viewing the number of utterances.

To test my first set of hypotheses of whether out-party Senators engage in more statement making (posturing), question asking, and utterances, I sorted the data by party and hearing. Then, I used directional (one-tailed) t-tests to determine if out-party senators engaged in significantly higher levels in each of the three categories in each of the six hearings observed.

For my second hypothesis the data from the pre-2016 hearings (Roberts, Alito, Sotomayor, and Kagan) were pooled together and the data from the post-2016 hearings (Gorsuch and Kavanaugh) were also pooled together. The data was pooled regardless of party. That is, no differentiation was made by party. Then, more directional (one-tailed) t-tests were used to determine if the post-2016 hearings had significantly higher levels of statement-making, question-asking, and dialogue.

Furthermore, I divided the pooled data by party. I completed the same t-tests on a set of just Democratic data and then by Republican data. This was to determine if one party or the other could assume responsibility for any changes in the post-2016 hearings.

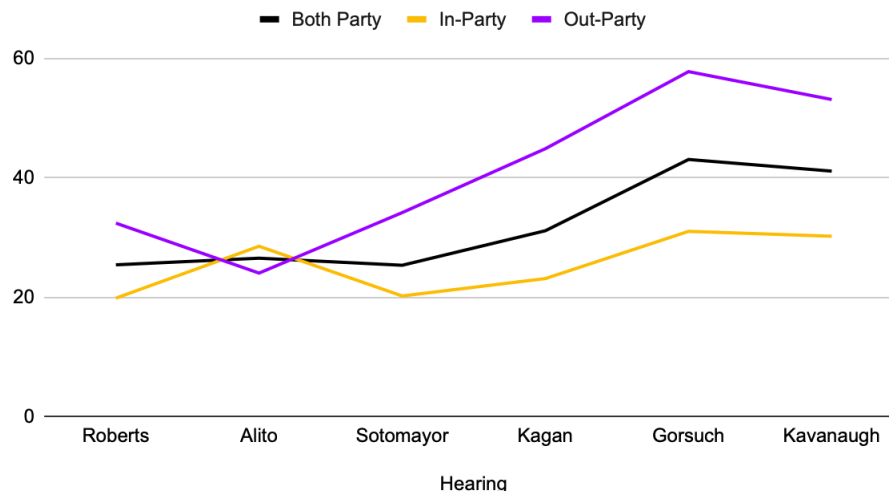
## II. Results

Each of the three categories present an individual perspective on the developments of Supreme Court confirmation hearings. Utterances, statements, and questions and their quantity within Senator rhetoric during the hearings can be a bellwether in the dynamics of the hearings.

Utterances are characterized by distinct periods of speech between other speakers. By looking at the utterances of Senators we can see how much dialogue between the Senator and nominee is occurring during each thirty-minute segment. A lower average number of utterances would indicate less back-and-forth, less interrupting, and more Senatorial rhetoric as they use more of the 30 minutes to speak. I also found in my research that in instances where utterances were low, Senators gave long-winded speeches and then followed with yes-or-no or simple questions. These simpler questions garner less activity by the nominee and therefore lowers the back-and-forth between the nominee and Senator. A higher number of utterances indicates more dialogue between nominee and Senator and might indicate more interrupting as each interruption creates another utterance.

Figure 1 depicts the average number of utterances by Senators in the hearings over time as well as the average number of utterances of in and out party Senators.

Figure 1: Average Senator Utterances



Source: Original Dataset

Figure 1 shows that utterances have trended up between the Roberts and Kavanaugh hearing. Out-party Senators have increased at a higher rate than in-party Senators. This drastic rise began modestly with the Kagan hearing and then dramatically with the Gorsuch and Kavanaugh hearings. In all cases except the Alito hearing, out-party Senators have a higher average number of utterances than in-party Senators. This could be due to the political drama of the Harriet Miers nomination and subsequent withdrawal creating a situation where the in-party Republicans were motivated to do more due diligence in that hearing. Lastly, Figure 1 shows that the difference between the average number of utterances of both out-party Senators and in-party Senators has increased (and the increase is observed starting with Kagan).

To further examine this difference and to test the first part of my first set of hypotheses, I ran a test of statistical significance. I hypothesized that out-party Senators would engage in more dialogue and aggressive interviewing tactics than in-party Senators, as could be measured by utterances. Which party is in-party, and which is out-party changed over the sample. Across the

sampled hearings the party which was the majority party of the Senate correlated to the in-party of the nomination. Which party was the in-party and out-party as well as the actual member on the Judiciary Committee for each hearing is noted in the Appendix. Table 1 shows the results of the T-test.

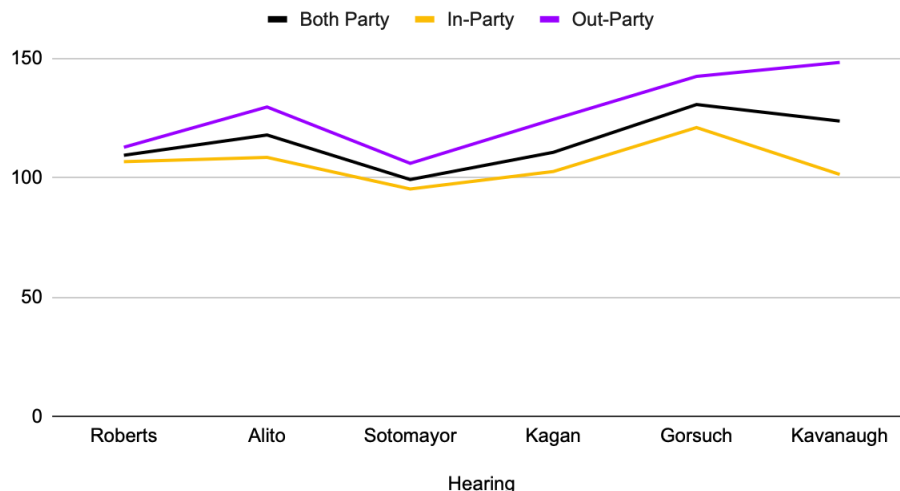
<b>Table 1</b>					
<b>Senator Utterances</b>					
	<b>In-Party</b>		<b>Out-Party</b>		<b>T-Test</b>
<i>Hearing</i>	<i>Mean</i>	<i>(St. D)</i>	<i>Mean</i>	<i>(St. D)</i>	<i>T-value</i>
Roberts	19.8	10.4	32.38	8.02	2.81**
Alito	28.5	14.52	24	10.09	-0.74
Sotomayor	20.17	6.48	34.14	16.94	2.59**
Kagan	20.08	8.03	44.86	19.19	3.49**
Gorsuch	31	15.15	57.78	13.01	4.19***
Kavanaugh	30.18	30.18	53.1	19.63	2.78**
*P ≤ 0.05					
**P ≤ 0.01					
***P ≤ 0.001					
Source: Original Data Set					

Table 1 indicates that in all hearings except for Alito's the results are significant in the direction expected. This shows that in all hearings except for Alito's that out-party Senators are engaging in much more dialogue with the nominee than the in-party Senators. This phenomenon reached a height during the Gorsuch hearing presumably due to the increased political capital at stake after the failure of the Garland nomination. Democrats (the out-party during the hearing) used the question-and-answer section to more thoroughly grill Gorsuch. Through the research process I noticed that when utterances were higher it usually was because the Senator was engaging in a more aggressive question-and-answer format. As opposed to the long-winded statements and simple questions of a low utterance period, a high utterance period was characterized by aggressive questioning as well as many follow-up questions as well as much

more interruptions. In this case Senators ask harder questions and follow-up questions but then also interrupt the nominee much more. This format is more popular for an out-party Senator trying to contest the nomination of the other party's candidate and it also affords a Senator to be seen publicly as being hard on a nominee. My first hypothesis finds support for the utterances portion of data collection. As my results indicate, out-party Senators have (with the exception of the Alito hearings) engaged in significantly more dialogue and back and forth with the opposing nominee.

Utterances can show dialogue but what about the actual breakdown of rhetoric by type? Statements were any sentence that was not a question. Theoretically, in a question-and-answer portion of a hearing one would expect to see a larger number of questions than statements. However, it doesn't take a political scientist to observe the hearings to see that much of Senators' rhetoric is statements versus actual questions. This indicates a potential for posturing, giving their desired information, and setting up their questions. Figure 2 shows both the average number of statements in each hearing, as well as the average number of statements per hearing of in and out party Senators.

Figure 2: Average Senator Statements



Source: Original Dataset

Figure 2 shows that the average number of statements has remained relatively stable over the hearings. There was a dip at the Sotomayor hearing and a small increase between the Kagan hearing and the Gorsuch hearing. Figure 2 also shows that the Kavanaugh hearing sees a significant split between in-party and out-party average statements. This is probably due to the drama of that hearing involving sexual-assault allegations. Democrats (the out-party Senators of that hearing) were emboldened to speak more and make a stance against the nominee. I also ran t-tests to determine if out-party Senators make a significantly larger number of statements than in-party Senators. This is to continue testing hypothesis number 1 to see if out-party Senators engage in more posturing (indicated by how many statements they made) than in-party Senators. Table 2 shows the results of the t-tests.

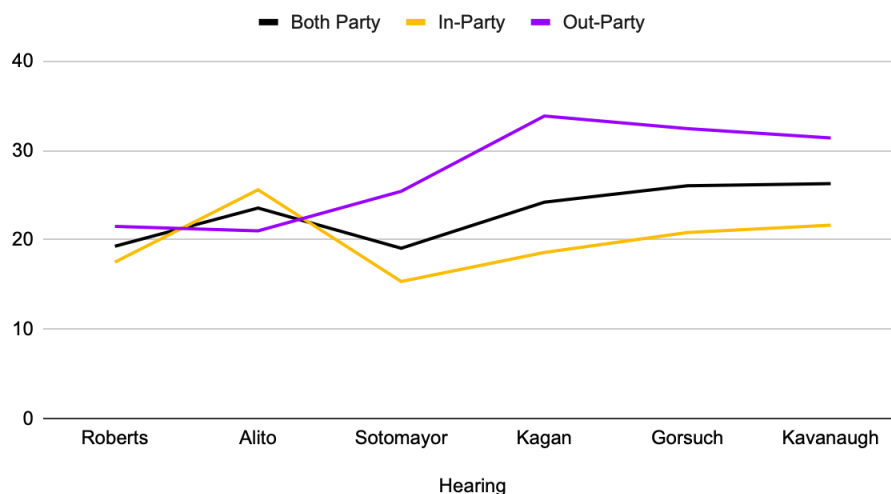
<b>Table 2</b>					
<b>Senator Statements</b>					
	<b>In-Party</b>		<b>Out-Party</b>		<b>T-Test</b>
<i>Hearing</i>	<i>Mean</i>	<i>(St. D)</i>	<i>Mean</i>	<i>(St. D)</i>	<i>T-Value</i>
Roberts	106.7	31.64	112.75	45.51	0.33
Alito	108.5	42.19	129.63	53.83	0.94
Sotomayor	95.25	31.72	106	31.93	0.71
Kagan	102.58	31.34	124.43	35.33	1.4
Gorsuch	121	50.81	142.45	44.48	0.99
Kavanaugh	101.36	43.18	148.3	46.8	2.39*
*P ≤ 0.05					
**P ≤ 0.01					
***P ≤ 0.001					
Source: Original Data Set					

Table 2 shows that across all hearings except for Kavanaugh's out-party Senators were not making a statistically higher number of statements than in-party Senators. As said above the increased drama of the Kavanaugh hearing could account for why his hearing does show significance. From the research I argue that in-party Senators are engaging in statement making just as much as out-party Senators to coronate their candidate as well as alleviate the aggressiveness of the opposite party. That is, it is in each Senator's interest, regardless of their position, to be visible and engaged. In so many in-party Senator's portions they would devote time to sort of rebut something a Senator of the out-party had lodged at the nominee in a previous portion. Also, in-party Senators were engaging in more commentary on the nominee and the circumstances around the nomination. I argue these are the reasons as to why there is no large difference in the number of statements across the parties. Thus, I do not find support that out-party Senators are significantly different in their statements than in-party Senators.



Lastly, I looked at the actual number of questions being asked by the Senators. Figure 3 shows the average number of questions per Senator in each hearing as well as the average number of questions per Senators of both the in and out party.

**Figure 3: Average Senator Questions**



*Source: Original Dataset*

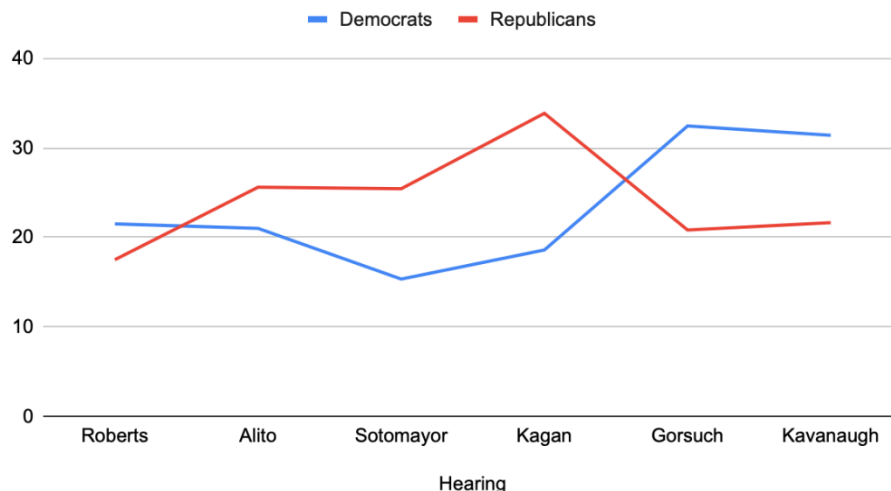
Figure 3 shows that the average number of questions of out-party Senators and in-party Senators has diverged beginning in the Sotomayor hearings. Average number of questions for out-party Senators is above the in-party average in all hearings except for Alito's again. The gap between in and out party Senator's average number of questions looks to have narrowed slightly at the Kavanaugh hearing. I ran t-tests again to test this difference as well as the final part of my first hypothesis. Table 3 shows the results.

<b>Table 3</b>					
<b>Senator Questions</b>					
	<b>In-Party</b>		<b>Out-Party</b>		<b>T-Test</b>
<i>Hearing</i>	<i>Mean</i>	<i>(St. D)</i>	<i>Mean</i>	<i>(St. D)</i>	<b>T-Value</b>
Roberts	17.5	9	21.5	6.12	1.07
Alito	25.6	12.66	21	5.4	-0.96
Sotomayor	15.33	7.34	25.43	14.55	2.03*
Kagan	18.58	5.74	33.86	19.41	2.59**
Gorsuch	20.82	9.76	32.44	8	2.87**
Kavanaugh	21.64	15.38	31.4	15.38	1.65
*P ≤ 0.05					
**P ≤ 0.01					
***P ≤ 0.001					
Source: Original Data Set					

Table 3 shows that in the Sotomayor, Kagan, and Gorsuch hearings out-party Senators were asking significantly more questions than in-party Senators. In the earlier hearings (Roberts and Alito) as well as the Kavanaugh hearing, no such significance is detected. It is likely that the Kavanaugh hearings were so unusual in the wake of sexual assault allegations and the threat that posed to the nominee that both parties' Senators were asking questions – one party to accuse, and the other to defend.

Table 3 shows that there is a statistically significant difference in the number of questions being asked in the Sotomayor, Kagan, and Gorsuch hearings. The Kavanaugh hearing represents a moment when in-party Senators were uniquely rallied to ask more questions in defense of a divisive nominee. This could represent a developing pattern in which Kavanaugh's hearing is an exception to the pattern which began in the Sotomayor hearing. To look at this differently I graphed the data by each party rather than by in and out party which changes throughout the dataset. Figure 4 shows this.

Figure 4: Average Number of Questions by Party



Source: Original Dataset

Figure 4 takes a perspective that ignores in and out party status. This could show whether either party is differing in their question-asking behavior. Figure 4 shows no real pattern of differing behaviors by party but it does highlight that while Kavanaugh's hearing did not demonstrate a significant difference between in and out party Senators, it wasn't a sizable shift from the previous Gorsuch hearing. To further investigate this, I ran t-tests by party. That is, I tested each party individually to see if there was a significant difference in the number of questions they asked during a hearing for an opposing nominee versus a sympathetic nominee. I assessed between the data of when Democrats were the out-party (Roberts, Alito, Gorsuch, and Kavanaugh hearings) and when they were the in-party (Sotomayor and Kagan hearings) and then the inverse with Republicans. I did this to see whether each party is significantly shifting their question asking behavior between being the in-party and the out-party. Table 4 shows the results.

<b>Senator Questioning by Party (In vs. Out)</b>					
	In-Party		Out-Party		T-Test
<i>Party</i>	<i>Mean</i>	<i>(St. D)</i>	<i>Mean</i>	<i>(St. D)</i>	T-Value
Democrats	16.96	6.66	27.03	10.98	4.01***
Republicans	21.38	10.83	29.64	17.05	-2.12*
*P ≤ 0.05 **P ≤ 0.01 ***P ≤ 0.001					
Source: Original Data Set					

Table 4 shows that this means that Senators of each party are altering how many questions they ask depending on the friendliness of the nominee. Both Democrats and Republicans ask significantly different numbers of questions based on their status, the in-party or the out-party. So, while Table 4 shows that both parties differ their question-asking behavior based on status of in or out across the hearings, Table 3 shows that a unique trend emerges beginning with the Sotomayor hearing in which the out-party is asking significantly more questions than the in-party (note that the Kavanaugh hearing is an outlier for political reasons).

My first set of hypotheses offered varied findings. The first part, in which I tested Senator utterances to gauge the amount of dialogue between the Senators and nominees, offered support for my argument that out-party Senators engage in more dialogue with the nominee than in-party Senators. Secondly, no significant difference between in-party and out-party Senator's statement making was found. It appears that while out-party Senators do make more statements, posture more, they do not do it significantly more than in-party Senators, apart from the Kavanaugh hearing. Thirdly, Table 3 and Figure 3 show that beginning with the Sotomayor hearing, out-party Senators began asking significantly more questions than in-party Senators. The Kavanaugh hearing saw this gap diminished, but his hearing was unique in its political circumstances.

My second hypothesis deals with the aftermath of the 2016 partisan drama. I hypothesized that post-2016 hearings (Gorsuch and Kavanaugh) will have higher numbers of dialogue (utterances), posturing (statements), and questions. Table 5 shows the results of the t-tests.

<b>Table 5</b>					
<b>Pre-2016 vs. Post 2016</b>					
	Pre-2016		Post-2016		T-Test
	Mean	St. Dev.	Mean	St. Dev.	T-Value
Utterances	27.11	13.5	42.05	20.46	4.71***
Statements	109.16	37.63	127.1	48.56	2.2*
Questions	21.53	11.22	26.17	12.36	2.05*
*P ≤ 0.05					
**P ≤ 0.01					
***P ≤ 0.001					
<b>Source- Original Data Set</b>					

Table 5 indicates that there was a significant increase in all three categories after 2016. The number of utterances increased significantly. I argue this is because of increased attention paid to nominees after 2016. There is support for my second hypothesis in saying that post-2016 hearings have significantly higher numbers of dialogue, posturing, and questioning.

Finally, I went one step further. I divided this second hypothesis by party. I did this to see if either party can take credit for this increase after 2016. Table 6 and Table 7 show the results of the t-tests by party.

<b>Table 6</b>					
<b>Pre-2016 vs. Post 2016 (Democrats Only)</b>					
	Pre-2016		Post-2016		T-Test
	Mean	St. Dev.	Mean	St. Dev.	T-Value
Utterances	24.25	8.88	55.32	16.54	9.41***
Statements	107.83	40.15	145.53	44.53	3.25***
Questions	18.68	6.53	31.89	12.12	5.46***
*P ≤ 0.05 **P ≤ 0.01 ***P ≤ 0.001					
<b>Source- Original Data Set</b>					

<b>Table 7</b>					
<b>Pre-2016 vs. Post 2016 (Republicans Only)</b>					
	Pre-2016		Post-2016		T-Test
	Mean	St. Dev.	Mean	St. Dev.	T-Value
Utterances	30.47	16.99	30.59	16.31	0.03
Statements	110.74	34.95	111.18	47.1	0.04
Questions	24.88	14.37	21.23	10.48	-1.03
*P ≤ 0.05 **P ≤ 0.01 ***P ≤ 0.001					
<b>Source- Original Data Set</b>					

Table 6 shows that after 2016, Democrats had a significant increase in utterances, statements, and questions. Table 7 shows that after 2016, Republicans had very small insignificant increases in all three categories and even a decrease in the number of questions asked. These two tables in tandem can show that Democrats can assume the credit for the significant increase in all three categories after 2016. Because they are reacting to the specific situations documented above – in which they felt aggrieved by the way the in-party was handling the unique situation of each nominee. Furthermore, their status as the out-party in both post-2016 hearings indicates that after 2016 out-party Senators were significantly increasing their dialogue, posturing, and question proposing. I argue this is due to the Democrats being on the receiving

end of all of the 2016 political struggles and then becoming subject to two subsequent opposing nominees.

My first set of hypotheses that out-party Senators would engage in more dialogue, posturing, and question-asking was only proven partially correct. Out-party Senators did engage in significantly more dialogue. Out-party Senators did not engage in more posturing than in-party Senators though. This continues Collins and Ringland's findings in their study (Collins and Ringland 2016, 142). They found that beginning in the 1980's the two parties' contribution to total hearing dialogue equalized. They did not differentiate between statements and questions though. The question-asking behavior alone offers some new insights. Beginning with the Sotomayor hearings, out-party Senators began to ask significantly more questions than their in-party peers. The split tightens with the Kavanaugh hearing but I would argue that this is an outlier rather than the end of the trend. It appears that in more recent hearings that out-party Senators are now outpacing in-party Senators in the number of questions they are posing to the nominee. Both Republicans and Democrats ask significantly more questions when they are the out-party versus when they are the in-party, however.

In the post-2016 political environment tensions have risen between the two parties especially within judicial politics. It makes sense then, that the two post-2016 hearings in this study see Senators exhibiting much higher numbers of utterances, statements, and questions than in the four previous hearings. There is support for my hypothesis that post-2016 hearings see Senators engaging in more back and forth with the nominees as well as posturing more and asking more questions. This uptick was especially prominent within Democratic Senators. This is most likely because their political opposition to the nominees was made moot by the removal of the filibuster and their previous nominee was ignored by the opposing side just a year before.

### III. Limitations

There are some limitations to these findings. Firstly, the dataset for this study only consisted of the first round of questioning. This was done to simplify the collection process but further studies that incorporate all rounds of questions could prove informative.

Secondly, this study was only able to analyze up to the Kavanaugh hearing. Two successive confirmation hearings have occurred since Kavanaugh's in 2018. Those hearings were for now Justice Amy Coney Barrett and now Justice Ketanji Brown Jackson. These two hearings were not included due to no official transcript being available at the time of this study. The inclusion of these hearings could prove compelling for my hypotheses. These two hearings could show if the upward trend continues. Barrett's nomination was met with political backlash due in part because she was a conservative appointee replacing a notoriously liberal justice. This political fanfare could have affected the trends seen in this study. The results of the Jackson hearing could show if the trend flips when the parties flip. In Jackson's hearing the Democrats were the in-party, and the Republicans were the out-party. This is the sole hearing in which this has occurred in the post-2016 environment.

Lastly, this study was quantitative, meaning only the number of utterances, statements, and questions were coded. Any variance of qualitative studies could be undertaken along these lines in differing ways that could prove complementary to my hypotheses and possibly provide more nuance.



#### IV. Conclusion

Overall, this study adds to the research on confirmation hearings and senatorial behavior. It specifically adds a new body of data aimed at determining levels of specific rhetorical behaviors Senators engage in during the hearings. Studies have looked at questions and question-asking but few if any dive into the posturing behaviors of the Senators or into the dialogue format utilized. It also broadens the focus of these studies to the most recent hearings available. Finally it adds to the body of research aimed at determining differences in behavior of in and out party Senators and adds a quantitative perspective on these differences.

Schoenherr and Lane (2020) argued that in-party Senator's "shepherd" nominees to confirmation. The current study finds this phenomenon true. In-party Senators engage in significantly less dialogue than out-party Senators. This occurs because these Senators ask only qualifying questions. Schoenherr and Lane also found that out-party Senators are emboldened to make the hearing and therefore the nominee as contentious and stained as possible. (Schoenherr and Lane, 2020) My study found support for this as out-party Senators engage in significantly more dialogue than their in-party counterparts, as evidenced by the number of utterances.

The 2016 debacle of an ignored nomination and removal of a means of political opposition paved the way for more contentious hearings in the years to follow. This study has shown that after 2016 Senators have altered their behavior, specifically those in the Democratic party who represent the out-party of the Gorsuch and Kavanaugh hearings. This shift could prove monumental to future confirmation hearings. More studies would need to occur to determine if this upward trend continued through to the two most recent nominees, but the trend is emerging.

Supreme Court confirmation hearings will remain some of the most salient events in modern American politics. Research on them is fruitful but more is always necessary. Studying

the hearings provides key insights not only into the realm of judicial scholarship but also on the political landscape of the time as Senators play up to the attention of the public. Confirmation hearings will remain a staple of Judicial and Legislative politics for years to come and this study provides insight into these alternatively not so “vapid and hollow” proceedings.

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