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Paul Foote
Murray State University

Austin Trantham
Saint Leo University

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Commonwealth Review of Political Science

“Centralizing the Selection of Circuit Court Nominees in the George W. Bush, Obama, and Trump Administrations”

Author(s): Dr. Paul Douglas Foote, Murray State University, and Dr. Austin Trantham, Saint Leo University

Introduction

On Tuesday, November 8, 2016, Hillary Clinton (D), the first female presidential candidate nominated by a major political party, unexpectedly lost in the Electoral College to an unconventional populist named Donald J. Trump (R). According to Beckwith (2019), the election of a political outsider with no prior political experience represented a significant repudiation of business as usual by both parties in Washington, D.C. Trump’s anti-Washington appeal to white working-class voters outside major cities in pivotal manufacturing states proved to be the key factor in what several publications called “the most stunning upset in American history” (Beckwith 2019). In the 234 years of our Republic, no person has ever been elected to the presidency without serving in political office or the military. Crocket (2017) argued that previous U.S. presidents (1789 until 2016) entered the White House with an average of 13 years in public office and 5.6 years of military service. Presidents Zachary Taylor, Ulysses Grant, and Dwight

Eisenhower who also lacked prior political experience, served at least a combined 100 years in various military roles before assuming the highest office in the land.

During the 2016 campaign, Donald Trump pledged that he’d manage the government like a business if elected. He promised during one debate, “If we could run our country the way I have run my company, we would have a country that you would be so proud of” (Rampell, 2018). Former President Trump used a business-centric approach in the White House selection nomination process for appellate judges. Unlike his predecessors, Trump highly centralized the process in the hands of one or two individuals affiliated with the Federalist Society. The former president made packing the federal bench with conservative judges a focus of his administration and frequently reiterated his success in confirming his nominees (Pottle and Rogowski 2022, 627). In addition, Addicott (2019) claimed that the former president sought to ensure that his appellate

nominees were conservatives who espoused the originalist school of thought.

Bolick (2012) stated, "because of lifetime tenure, federal judgeships are among a president's most important and lasting legacies." Irons (2019) found that the public seems to have accepted that presidents most often place their political supporters on the U.S. Supreme Court, a practice that has happened throughout history. President Trump promised to appoint conservative judges in the mold of Antonin Scalia. Whereas Jimmy Carter benefitted from a 1978 Judgeship Bill that created 152 additional vacancies and possessed a large Senate Democrat majority for confirmation, Trump has inherited 103 judicial vacancies, more than any recent predecessor except Bill Clinton's 109 vacancies (Wheeler 2019).

Trump sought to leave an enduring legacy on the U.S. Courts of Appeals for decades by nominating attorneys in their late thirties and forties that maintain an "originalist" style of constitutional interpretation. In only one term of office, the Trump Administration could nominate 54 federal appellate judges, one short of the Obama Administration during two terms of office. Thirty percent of the judges on the nation's Court of Appeals were nominated by President Trump (Sherman M., et al., 2020).

The average age of circuit judges appointed by President Trump is less than 50 years old. Trump appears to be making a concerted effort to leave a lasting judicial legacy by nominating younger judges than his predecessors (Syed 2020). In tandem, Senate Majority Leader Mitch McConnell facilitated the most efficient judicial confirmation process of any other Senate leader in modern

history. According to Relman (2019), Trump has already filled more judicial lifetime appointments than any of his five most recent predecessors. It was McConnell who helped ensure the current administration would have a large number of vacancies to fill on the federal bench by obstructing many of former President Barack Obama's nominees. From 2015 until the end of 2016, President Obama was only able to confirm two appellate court judges and 18 district court judges. However, Trump has appointed three Supreme Court justices in four years, 54 appellate court judges, and 174 district court judges. As a result, the majority of circuit courts, eight of thirteen, now have conservative majorities, and the ideological balance of the Supreme Court has tipped in the conservative direction as a result of Trump's nominees. According to Johnson (2019), approximately one out of every four active judges on the United States Courts of Appeals has been appointed by President Trump. When Obama left office, 9 of the 13 federal circuits had a majority of judges appointed by Democratic presidents.

In the office's 232-year existence — from George Washington to the present— there has never been a president who has entirely lacked both political and military service, except for Donald Trump (Crockett 2017). The paper will proceed as follows. We begin by discussing Centralization Theory in the context of the presidential selection of judges. Next, we will review the major changes to the judicial selection system of circuit court judicial nominees under Presidents Ronald Reagan, George H.W. Bush, Bill Clinton, Barack Obama and Donald Trump. When President George W. Bush discontinued the long-term practice of asking the American Bar Association to vet potential judicial nominees, he created an opening for special

interest groups to control the vetting process. This change has centralized the judicial vetting process in ways that George W. Bush could not have realized (Lowrey 2019, 1), potentially offering more conservative judges perceived as extreme by mainstream legal scholars an opportunity to serve at the appellate level. President Trump's reliance on The Federalist Society membership in the selection process will be compared to Republican President George W. Bush.

The Federalist Society was founded in 1982 by a small group of conservative law students at Yale University and the University of Chicago. Its first faculty advisers were Robert H. Bork and Antonin Scalia. The group quickly spread to other campuses, and within a few years, it received an infusion of cash from conservative donors, including the Koch brothers. Law students with conservative tendencies joined The Federalist Society and were introduced to an extended network of law school chapters, publications, and seminars that would nurture them for their careers. By 2020, the Federalist Society included more than 70,000 members. The Federalist Society's primary goal is to influence decision-making by educating young lawyers to dismiss the contemporary method of constitutional interpretation taught in the nation's law school and instead endorse originalism as the only legitimate method of interpretation. Scherer and Miller (2009) maintain that Federalist Society membership is an "accurate and powerful predictor of an extremely conservative voting record," which future Republican presidents will rely upon as a consideration when nominating federal court judges (375). They found that the Federalist Society has a "statistically significant and substantively large impact on judicial decision-making behavior on the U.S.

Courts of Appeals" (373). The results of the Scherer and Miller study validate liberal interest groups' claims that Republican-appointed judges who are members of the Federalist Society are more conservative than judges who are not members (Scherer and Miller 2009, 376).

Centralization Theory

We contend that Trump relied more on centralization than other presidents due to his lack of political experience. Presidents have "centralized control over the selection of judges" because of the salience of judicial ideology and its importance for judicial outcomes (Lunch 1987, 160). A president's motivation to "politicize and centralize" is not a modern phenomenon but is an enduring component of the president's institutional incentive structure (Galvin and Shogan 2004, 478). By "centralizing" the policy-making process in the White House and "politicizing" the institutional system, presidents gain more personal autonomy and institutional authority (Moe 1989, 481). Galvin and Shogan (2004) found that the centralization of the judicial selection process allows presidential politics to play a more significant role in judicial nominations. Evidence shows that presidents take a more dominant role in judicial nominations by following the path of least resistance and prioritizing nominations in districts where they enjoy the greatest support (Pottle and Rogowski 2022, 628).

Goldman (1997) found that in the postwar era, lower court appointments reflected a partisan and not a policy agenda. In other words, presidents have used appointments to the lower federal courts to reward faithful party members and close party gaps—and not to support their policy agenda. This research

concluded that only the Reagan administration viewed "...the court as likely to affect the success or failure of its policy agenda." For the Reagan White House, Goldman argued, it was not enough to be a loyal Republican. Successful candidates for appointment also had to provide evidence of conservative policy views aligned with those of the administration. Giles, Hettinger, and Peppers' (2001) study suggests that policy preferences have been operating throughout the postwar period when the president is not constrained by senatorial courtesy. Dwight Eisenhower, John Kennedy, and Lyndon Johnson discussed less about policy in the selection process. He did not build the institutional framework to assure the policy congruence of appointees as did the Reagan administration. However, they did select federal judges who reflected their policy preferences.

According to Trump's campaign legal advisor Jenna Ellis, the former president had "fulfilled his promise to appoint originalist judges who are guardians of our rights and freedoms for the next half-century of American jurisprudence" (Loiaconi 2020). Since Trump used a streamlined business-centric approach towards determining which appellate judicial nominees would be not only conservative but also beholden to the originalist philosophy, he relied on centralized information from White House Counsel Don McGahn and his deputy Leonard Leo who were former executive leaders of the Federalist Society. The swift pace of judicial confirmations reflected the acumen of McGahn, who had been "a main driver of the Trump selection process" (Pottle and Rogowski 2022, 629). According to Leonard Leo, "There has been a movement on the court towards being more originalist

and textualist, and this is the trend that Trump wants to continue" (Livini 2018). To more fully understand why Trump decided to centralize the judicial selection process in the purview of only two individuals, the following section discusses the key administrative changes in the judicial selection process from the Republican Nixon White House to the Trump Administration.

The Increasing Centralization of the Judicial Selection Process from the Reagan White House to the Trump Administration

The Office of White House Counsel advises the President, the Executive Office of the President, and the White House staff on legal issues. Most importantly, the Office of White House Counsel's proximity is at the intersection of law, policy, and politics. Before analyzing the dramatic changes implemented by the Trump Administration, we must discuss the substantive adaptations that have led to a centralization of the judicial selection system. Since the Nixon Administration, several administrations have developed procedures to identify ideologically like-minded judicial nominees (Haire, Edwards, and Hughes 2013, 137). White House aide Tom Charles Huston wrote a memorandum for the president in which he claimed:

Through his judicial appointments, a President has the opportunity to influence the course of national affairs for a quarter of a century after he leaves office...It is necessary to remember that the decision as to who will make the decisions affects what decisions will be made...The President can establish precise guidelines as to the type of man he wishes to appoint

and establish a White House review procedure to assure that each prospective nominee recommended by the Attorney General meets the guidelines...He (the President) may insist that some evidence exists as to the attitude of the prospective judge toward the role of the court...The criteria he can establish are as varied as the views held in different political, social, and legal circles today (Goldman 1991, 294).

The two major centralized changes to the judicial selection system during the Reagan administration were (1) the systematic screening process emphasizing judicial philosophy, which included extensive personal interviews of key candidates, and (2) the establishment of the President's Committee on Federal Judicial Selection. This committee met regularly at the White House and exercised shared control of the nomination process. Dick Thornburgh, who had been appointed attorney general for the Reagan Administration in August of 1988, was retained by George H.W. Bush. Thornburgh decided to end the Office of Legal Policy, which had been the center of the judicial selection process in the Justice Department, and to establish a new office in the Justice Department, the Office of Policy Development, to deal with non-judicial legal policy matters.

Most importantly, Thornburgh asked the American Bar Association (ABA) to discontinue the consideration of judicial nominees' political or ideological views when conducting the ABA rating process (Goldman 1991, 295). Although the ABA denied considering the viewpoints of judicial candidates, the attorney general did not find

the response satisfactory and decided that the Reagan administration would no longer consult with the ABA committee unless it reversed itself on the issue. The practice of excluding the ABA from the White House vetting process would continue in subsequent Republican presidential administrations.

The centralization of the judicial selection process continued during the George H.W. Bush administration, which interviewed judicial candidates to ascertain how they would decide certain cases and/or whether they favored overturning Supreme Court precedents such as *Roe v. Wade*. In another component of the screening process, the White House Counsel's Office Assistant Lee Liberman analyzed judicial opinions and how candidates considered legal problems and arrived at judicial solutions. Evidence suggests that there was consensus between George H.W. Bush Justice Department and the White House Counsel's office when evaluating candidacies and applying the criteria set by the president (Goldman 1991, 298). Both the Reagan and Bush administrations used the Presidential Commission on Federal Judicial Selection which consisted of the Attorney General, the Deputy Attorney General, the Assistant to the President for Personnel, and the Assistant to the President for Legislative Affairs. Furthermore, the White House Chief of Staff was also a committee member but did not frequently attend the meetings. Regarding opening up the process to outside groups, the George H.W. Bush administration was the first to invite the co-founder of the Federalist Society, Lee Liberman Otis, to lead its judicial selection process. Both the Reagan and Bush administrations aimed to nominate conservative judges, and membership in the Federalist Society was a proxy for adherence

to conservative ideology (Devins and Baum 2017, 341).

Similarly to previous administrations, George W. Bush formed a committee of White House and Department of Justice officials to identify and screen nominees. However, in contrast to Clinton, the judicial process became more centralized within the White House Counsel's Office, which was actively involved with the screening and interviewing of potential candidates to discern the degree to which the candidate shared the president's judicial philosophy (Goldman 2005). The Obama Administration differed from George W. Bush's selection process by prioritizing the selection of women and minorities to fill vacancies on the appeals court bench. President Obama adopted judicial selection procedures that involved Republican home-state senators. Like the George W. Bush administration, Obama also placed the White House Counsel's Office at the forefront of identifying judicial nominees.

President Trump not only continued the practice of elevating the White House Counsel's office to a prominent role but further centralized the judicial selection process by concentrating the decision-making on former White House Counsel Don McGahn and his deputy Leonard Leo. Trump considered judicial nominees one of his top priorities and consulted with the Federalist Society for assistance in identifying potential candidates for the courts of appeals (Zengerle 2018, 1). McGahn is a member of the Federalist Society but had not attended an Ivy League law school or worked in an appellate law practice. Instead, he is an expert in campaign finance and election law. As White House Counsel, McGahn exercised unprecedented control over judicial

appointments (Zengerle 2018, MM30). The Federalist Society, once an insignificant organization, has become the "ruling conservative elite, whose membership includes at least four sitting U.S. Supreme Court justices and whose executive vice president Leonard Leo was heavily involved in the White House's judicial nomination process" (Lowrey 2019, 1). According to Edward Whelan, a noteworthy conservative legal activist who wrote that "no one has been more dedicated to the enterprise of building a Supreme Court that will overturn *Roe v. Wade* than the Federalist Society's Leonard Leo" (Tobin 2017, 4).

In previous White Houses, judicial nominations were typically outsourced among officials from different parts of the administration. For instance, under George W. Bush, there was a judicial-selection committee composed of people from the White House Counsel, Office of Political Affairs, Office of Legislative Affairs, and officials from the Justice Department. This tended to produce a leveling effect. Judicial nominees were eliminated in committee. However, under Trump, the selection process was exclusively centralized within the White House Counsel's Office, with McGahn and his deputy, Robert Luther, and about ten associate counsels identifying and then scrutinizing candidates. Zengerle (2018) maintained that Trump's judicial selection process is unique in White House history. Trump's uncommon lack of prior public office experience and partisan networks lead him to highly centralize the process in two men from the Federalist Society rather than input from a more formal and deliberate bureaucratic process when selecting judicial nominees for the U.S. Courts of Appeals.

Prior to Trump's inauguration, Don McGahn, Leonard Leo, and other members of Trump's transition team began vetting potential judicial candidates to fill all the empty seats on the bench. Working with then-Senate Majority Leader Mitch McConnell, McGahn and transition officials devised a strategy to speed confirmations through the Senate: Trump would prioritize appellate judges, rather than district court appointments and initially fill vacancies from states with two Republican senators or from states with Democratic senators that Trump had won. Like George W. Bush, Trump refused to allow the American Bar Association to vet potential judges before they were nominated. This decision created a political vacuum in the White House that permitted the former executives of the Federalist Society immense access to the selection process. The Trump administration notified the ABA on March 17, 2017, that they would no longer receive special access to background information on judicial candidates before their nomination. Some ABA advocates criticized the action as a response to the group's low ratings of several former President Trump's judicial nominees. Some critics argued that the ABA ratings favored liberal judges over conservatives. According to the Federal Judicial Center (FJC), as of December 2, 2019, the ABA had rated 209 of Trump's nominees, 140 were rated "well-qualified," 60 were rated "qualified," and nine were rated "not qualified." The Senate would not necessarily wait for the ABA to complete its vetting before the nominees were given hearings. Finally, the Judiciary Committee would also more regularly take the unusual step of holding confirmation hearings for two appellate nominees at a time.

Newt Gingrich stated that Trump sought to make the impression that he "would be reliable in terms of conservative judges because that would calm down and consolidate a very large bloc of his coalition." In other words, what concerned The Federalist Society and The Heritage Foundation was that Trump would accept their advice on judicial nominees. "Membership in the Federalist Society is critical to the credentialing conservative lawyers." Michael Greve said this: "On the left, there are a million ways of getting credentialed; on the political right, there is only one way in these legal circles" (Devins and Baum 2017, 344). Irons (2019) quoted former President Trump's speech to a group of evangelical Christian leaders before the 2016 election: "We are going to have great judges, conservative, all picked by the Federalist Society."

Hypotheses

Former President Trump considered law school prestige as an important factor in the overall success of the nominee in the Senate confirmation process. The more prestigious the law school degree of the judicial candidate, the more likely they are to sail through confirmation. Wan (2018) further cites the allure of "intellectual horsepower" in nominating individuals from elite Ivy League law schools due to their selectivity. Trump prioritized promoting those from Harvard and Yale over non-elite institutions.

H1: Judicial nominees for appeals court who attended a prestigious law school were more likely preferred by former President Donald Trump than by either

former Presidents George W. Bush or Barack Obama.

Since Trump's White House Office desires to leave an indelible ideological imprint on the nation's federal courts, the president will be advised to nominate younger judicial candidates that could remain on the courts for decades. Trump's first Supreme Court selection, Neil Gorsuch, was the youngest nominee since the 1990s (Freking 2018). Being able to mold the federal bench in the president's image may also allow judicial decision-making on public policy to be ideologically aligned with their preferred preferences.

H2: Younger age cohorts for appellate court nominees were more likely selected by former President Donald Trump than either former Presidents George W. Bush or Barack Obama.

As previously discussed, Trump has publicly stated that he does not mind choosing all of his nominees from the list provided by the Federalist Society. Also, his previous White House Legal Counsel, Don McGahn, who had tremendous authority over selecting judicial nominees, was a former member of the Federalist Society. The judicial philosophies of originalism and textualism articulated well by the Federalist Society scholars are attractive to former President Trump's conservative policy of placing more judges in the mold of former Supreme Court Justice and Federalist Society cofounder Antonin Scalia.

H3: Former President Donald Trump nominated a higher percentage of judicial candidates who are members of the Federalist Society than former President George W. Bush.

Data Sources

We wanted to develop a composite profile to understand better the kinds of nominees selected as appellate judges. To do this, we collected data from various sources, including biographical information found through the Federal Judicial Center (FJC) and official Senate Judiciary Committee questionnaires completed by each nominee before official hearings.[2]

Several characteristics that might attract presidents searching for appellate court nominees include what Scigliano (1971) calls "professional" qualities. Using biographical data from the Federal Judicial Center and Senate Judiciary Committee questionnaires, we first analyzed where judicial nominees earned their law degree. With the "Top 14" law schools[3] historically viewed as the most prestigious in the country, earning a J.D. from one of these elite institutions signals superb legal education. It represents legal knowledge that is beneficial when deciding complex legal questions. The law school's prestige was coded as a simple binary variable with "1" representing a nominee's graduation from a Top 14 law school and "0" otherwise.

Apart from educational background, a candidate's age and rating from the American Bar Association represent other logical selection factors that a president may consider when deciding who to nominate for a position on one of the appellate courts. Given that federal judicial appointments are for life, we theorize that a president would likely wish to appoint a younger nominee rather than someone older who would likely not be able to serve as long on the bench. Again, This data was gathered from the FJC and Senate Judiciary Committee questionnaires

submitted by each nominee. We operationalized age as two distinct conditions: (a) the nominee's actual age at Senate confirmation and (b) their membership in a given ten-year age cohort. Ages by cohort were categorized as follows: justices confirmed between the ages of 30-39 were coded as "1," those confirmed between 40-49 were coded as "2," and a "3" was given to those 50-59 years of age. Finally, older justices confirmed at ages 60-69 were coded as "4".

The next indicator of an appellate court nominee's background that we examined is their membership in The Federalist Society. This organization is composed of conservative judges and, therefore, can be viewed as a reliable indicator for a restrained judicial philosophy more preferable to Republican presidents. During the 2016 presidential campaigns, former President Trump notably publicized a list of Federalist Society members who he would select from in the event of a Supreme Court vacancy. Thus, we may assume that this membership in the Federalist Society may also be a factor in understanding Trump's selection of appellate court nominees. This variable was coded

dichotomously, with "1" representing a nominee's membership in the Federalist Society and "0" signifying non-membership.

Methodology and Analyses

To compare the degree to which former President Trump differs from his two most recent predecessors in office, we use descriptive analysis to develop a complete picture of the centralization theory in judicial appointments. Nomination data for presidents prior to George W. Bush was either missing or incomplete within the Senate Judiciary Questionnaire.

H1 theorizes that those who attended a top-tier law school will be more likely chosen as an appellate court nominee by former President Donald Trump than by former Presidents Bush and Obama. Table 1 shows support for this prediction. The current Chief Executive nominated nearly three-quarters (71%) of his nominees to appeals court positions attending law schools in the "top 14" category, giving credence to this factor as a factor in judicial selection. Bush and Obama only had 57% and 49% of their respective selections as receiving formal legal training at a top school.

Table 1. Law School Attendance of Appeals Court Nominees

<u>President</u>	<u>Years in Office</u>	<u>Top 14 School</u>	<u>Not Top 14 School</u>	<u>Total</u>
George W. Bush	8	35 (57%)	26 (43%)	61 (100%)
Barack Obama	8	27 (49%)	28 (51%)	55 (100%)
Donald Trump	4	39 (72%)	15 (28%)	51 (100%)
<u>Total</u>	20	101 (60%)	69 (40%)	170 (100%)

Source: American Bar Association

We next provide various breakdowns of the appellate court judges by age. As noted previously, a nominee's age can be a significant consideration for presidents as they will logically want to nominate younger individuals so that their judicial impact may be felt for a longer period of time than older individuals. H2 predicts that Donald Trump will select younger justices over his immediate White House predecessors. Table 2 demonstrates support for this statement; Trump's nominees are, on average, 48—two years younger than the Bush average of 50 while Barack Obama seemingly nominates the oldest average justices at age 53. Table 3

divides the nominee's ages into "Under 50" and "Over 50" categories while supporting Trump's use of youth as a consideration in his appellate nominations. A majority of Trump's judges (63%) are under fifty years old, compared with Bush (43%) and Obama (27%). Both men have a higher percentage of judges older than fifty (57% for Bush and 73% for Obama) than Trump's smaller 37%. Finally, Table 4 systemically divides nominees by decade cohort from 30-39 to 60-69. As can be seen, the hypothesis is again supported as Trump has 30 of 51 (59%) of nominees aged 40-49 and an additional 35% (18 of 48) in their fifties—94% total. Bush and Obama, by contrast, have fewer in these cohorts.

Table 2. Average Age of Appeals Court Nominees at Senate Confirmation

<u>President</u>	<u>Years in Office</u>	<u>Average Age</u>
George W. Bush	8	50 Years
Barack Obama	8	53 Years
Donald Trump	4	47 Years
<u>Total Average</u>	20	50 Years

Source: Calculated by authors from Senate Judiciary Questionnaire

Table 3. Age Cohorts of Appeals Court Nominees (Under/Over 50)

<u>President</u>	<u>Years in Office</u>	<u>Under 50</u>	<u>Over 50</u>	<u>Total</u>
George W. Bush	8	26 (43%)	35 (57%)	61 (100%)
Barack Obama	8	15 (27%)	40 (73%)	55 (100%)
Donald Trump	4	35 (65%)	19 (35%)	54 (100%)
<u>Total</u>	20	76 (45%)	94 (55%)	170 (100%)

Source: Calculated by authors from Senate Judiciary Questionnaire

Table 4. Age Cohorts of Appeals Court Nominees (Age Cohort)*

<u>President</u>	<u>Years in Office</u>	<u>30-39</u>	<u>40-49</u>	<u>50-59</u>	<u>60-69</u>	<u>Total</u>
George W. Bush	8	2 (3%)	24 (39%)	32 (53%)	3 (5%)	61 (100%)
Barack Obama	8	0 (0%)	15 (27%)	34 (62%)	6 (11%)	55 (100%)
Donald Trump	4	3 (6%)	32 (59%)	18 (35%)	1 (2%)	54 (100%)
<u>Total</u>	20	5 (3%)	71 (42%)	84 (50%)	10 (6%)	170 (100%)

Table 5. Federalist Society Membership of Appeals Court Nominees*

<u>President</u>	<u>Years in Office</u>	<u>Member</u>	<u>Non-Member</u>	<u>Total</u>
George W. Bush	8	15 (30%)	35 (70%)	50 (100%)
Barack Obama	8	0 (0%)	54 (100%)	54 (100%)
Donald Trump	4	45 (83%)	9 (17%)	54 (100%)
<u>Total</u>	20	60 (38%)	98 (62%)	158 (100%)

Note: Totals may not sum to 100% due to rounding. Source: Calculated by authors from Senate Judiciary Questionnaire

*Note: Due to data availability, this analysis does not include data for 11 appellate court judges appointed by George W. Bush and 1 appellate court appointment made by Barack Obama. All nominations for Donald Trump are represented. Source: Calculated by authors from Senate Judiciary Questionnaire

An ANOVA test was conducted to provide statistical support to the specific descriptive finding between the mean age of each president's nominees at their Senate confirmation hearing. The resulting F-value

was 9.47 with a corresponding probability of 0.0001. This result indicates a significant difference between the average age of Donald Trump's nominees at 47 compared with the mean age of 50 for George W. Bush's circuit

court selections and 53, the age for the judges selected by Barack Obama.

Finally, we predict that Trump, compared to former President George W. Bush, will nominate more Federalist Society members to the appellate courts (H3). We find strong support for this statement in Table 5. Trump overwhelmingly selects more members of the Federalist Society as appellate nominees (82%) over Bush (30%). Overall, we find some level of descriptive support for our stated hypotheses. In summary, an appropriate composite for a nominee would be (1) an alumnus or alumna of a Top 14 law school, (2) younger, under 50, (3) with a “Well-Qualified” rating from the American Bar Association, and (4) a member of the Federalist Society.

Conclusion

Donald Trump assumed the presidency after winning the November 2016 election with no prior governmental experience—the first Oval Office resident with these distinctions. We theorize that this lack of political expertise may lead Trump to utilize other factors when deciding who to nominate for an appellate court judgeship. Our hypotheses center around three key factors: (1) law school prestige, (2) nominee age, and (3) membership in The Federalist Society. We also want to examine whether former President Trump differs from his most recent Republican predecessor: George W. Bush.

We will use an original dataset of professional and personal characteristics collected from the Federal Judicial Center (FJC) and nominees’ answers on Senate Judiciary Committee questionnaires to test whether these qualities are present in Trump’s appellate court nominees. A series of

descriptive analyses show that former presidents may indeed be considering background characteristics when nominating appeals judges and that his preferences differ somewhat from former Presidents Bush. Many of our hypotheses were supported. A higher percentage of Donald Trump’s choices for appeals courts have attended a Top 14 law school (H1), are younger in age (H2), and are Federalist Society members (H3). There are additionally noticeable differences in the percentage of nominees meeting these criteria between Trump and his two most recent predecessors. For instance, Trump was 53% more likely to select a judge with a Federalist Society membership than during the George W. Bush administration. The data analysis also supports a relationship between the nominee’s ideology and several of our factors, including Top 14 law school attendance, age, and membership in the Federalist Society. The ANOVA test reinforced the idea that the ages of Trump’s younger circuit court appointees were significantly different compared to his White House predecessors.

During his presidency, Donald Trump streamlined and centralized the selection process for appellate judges in the hands of the Federalist Society’s former executive officials. Future administrations may continue this increased degree of centralization as they attempt to curry favor with influential partisan groups by allowing them outsized influence in the judicial selection process. This behavior ultimately hurts a democratic society where voters cast ballots partially based on a presidential candidate’s preferred judicial candidates, not those of conservative activists.

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