

# Supreme Court Justices' Loyalty to the President

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## ABSTRACT

A statistical analysis of voting by Supreme Court justices from 1937 to 2014 provides evidence of a loyalty effect—justices more frequently vote for the government when the president who appointed them is in office than when subsequent presidents lead the government. This effect exists even when subsequent presidents are of the same party as the justices in question. However, the loyalty effect is much stronger for Democratic justices than for Republican justices. This may be because Republican presidents are more ideologically committed than Democratic justices are, leaving less room for demonstrations of loyalty.

## 1. INTRODUCTION

We are interested in loyalty and a related phenomenon—gratitude—in politics, an understudied topic, despite the extraordinary importance of these phenomena. Consider the appointment of a Supreme Court justice. As a matter of law, the justice owes no fealty to the president and is expected to act independently. Frequently cited examples of such independence include Justice Salmon P. Chase's rejection of war-funding legislation supported by President Abraham Lincoln, Justice Oliver Wendell Holmes's vote against President Theodore Roosevelt in an important

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antitrust case, and Justice Tom C. Clark's vote against President Harry Truman in the Steel Seizure case (Purdum 2005).

Yet many scholars (for example, Tribe 1985) reject this myth of the defiant justice.<sup>1</sup> And the suspicion that justices are not actually independent is widespread. What else could explain the defensive comments by Justice William Rehnquist, as described by a reporter (Greenhouse 1984, p. 1)? "In his speech, he appeared at pains to dispel the notion that Justices voted the way they did out of loyalty to the President who put them on the bench. While a new Supreme Court Justice might feel 'strongly loyal to the President who appointed him,' Rehnquist said, there are 'institutional pressures' within the Court itself that 'weaken and diffuse the outside loyalties of any new appointee.'" Maybe so, but how strong are these pressures?

After all, presidents clearly expect the justices they appoint not to interfere with their major political goals, and we cannot think of any cases in which a justice did. And many presidents have gone to great lengths to ensure loyalty on the Court. In 2005, President George W. Bush (hereafter, Bush 2) nominated Harriet Miers to the Supreme Court. Miers was the White House counsel and a close friend of Bush 2. While she was politically conservative, her ideological bona fides were not established, and Bush 2 later withdrew the nomination after opposition from conservatives, who accused him of cronyism (West 2005). President Barack Obama had more success with his nomination of Elena Kagan, his solicitor general (SG). Many other presidents successfully secured the appointment of people who were friends and confidantes. Franklin Delano Roosevelt (FDR) appointed several such justices, including Felix Frankfurter (Dawson 1978). Truman appointed his friend Fred Vinson, John F. Kennedy appointed his friend Byron White, and Lyndon Johnson appointed his confidante and lawyer Abe Fortas. The appointments were less about achieving ideological goals than about rewarding allies and friends—in the loose sense of patronage—and ensuring a sympathetic ear on the Supreme Court. And all this raises a question: did the appointees feel obligated by loyalty to advance the president's agenda, even if they had doubts about its legality?

To answer this question, we collected data on voting patterns of Supreme Court justices from 1937 to 2014. Our hypothesis is that justices vote in a way that favors the president who appointed them, controlling

1. However, see Epstein and Segal (2005) for empirical data.

for ideology and other relevant factors. We call this the loyalty effect—meaning personal loyalty to the president, not loyalty to groups (like parties) or ideas (like the Constitution). We predict that a justice will vote more often for the government when the appointing president is still in power, than later in the justice's term, under different presidents—regardless of the party of those subsequent presidents and their ideological similarity to the justice.

Consider, for example, Justice Stephen Breyer, who was appointed by President Bill Clinton. Under the well-established attitudinal model, it would not be surprising if Breyer voted more often for the government under Clinton than for the government under Bush 2. However, according to our hypothesis, Breyer would vote in favor of Clinton's position in litigation more often than in favor of Obama's, even though Obama is a Democrat like Clinton and would therefore take similar positions. Even if Obama's and Clinton's ideology were identical, Breyer would favor Clinton.

We conduct numerous tests of this hypothesis and find evidence of a loyalty effect. The effect is meaningful, statistically significant, and robust against alternative specifications. In the conclusion, we argue that empirical researchers should turn their attention to political psychology and political emotions in the operation of government. We examine one narrow topic—the role of loyalty in Supreme Court appointments, which is ideal for studying these phenomena because the president has no power over his nominees once they are confirmed. But we believe that the approach used in this paper can be applied more generally.

## 2. BACKGROUND AND THEORY

### 2.1. The Literature on Judicial Behavior

Numerous studies have established that Supreme Court justices engage in ideological voting (Segal and Spaeth 2002). This means that their votes in particular cases can be predicted (in part) from an ideological score based on the ideological direction of their previous votes, on the party of the president who appointed them, and on the public reaction to their nominations. Other studies have shown that justices behave strategically—that is, casting votes that may not be ideologically sincere but that help them achieve their ideological goals in the long term. Votes on cert petitions, for example, may help justices set the agenda in ways that advance their

ideological interests (Boucher and Segal 1995; Caldeira, Wright, and Zorn 1999; Black and Owens 2009).

A subset of this literature has examined justices' attitudes toward the US government. The government is by far the most frequent litigant before the Supreme Court. Embodied in the executive branch, it is also the Supreme Court's coequal branch and competitor. The government also enjoys an apparent advantage in the Solicitor General's Office (SGO), which houses a group of talented and experienced lawyers who litigate for the government before the Court. For this reason, the government enjoys an enviable win record, around 60 percent in the modern era (Black and Owens 2012, pp. 25–26).

But does the government enjoy this win record because of the experience and talent of SGO lawyers or for other reasons? One small but important point is that the government can (usually) avoid litigation before the Court by refusing to appeal losses and by settling if it believes that the other side will prevail (Zorn 2002). Thanks to the SGO's experience and institutional memory, the government is in a good position to make predictions about outcomes and to settle when it expects to lose. Scholars have also found mixed evidence that the SGO exercises influence over the justices because they respect its expertise or respond to the ideological signal that it sends (Segal 1988, 1990; McGuire 1995, 1998; Bailey, Kammoie, and Maltzman 2005; Black and Owens 2012), that some justices may favor the executive branch on the margin because of ideological reasons (Ducat and Dudley 1989b; Robinson 2012), and that justices tend to favor the executive branch in wartime and with respect to national security and foreign policy actions (Ducat and Dudley 1989b; Staudt 2011; Robinson 2012; King and Meernik 1999; Epstein et al. 2005; Howell and Ahmad 2012). All of these findings are intuitive and help to set the stage for our inquiry into whether justices' attitude toward the government may also reflect their personal relationship with the sitting president.

More directly relevant to our study is a group of papers that examine how justices' votes change with the passage of time. Scholars have identified a freshman effect (also called an acclimation effect) characterized by differences in ideological voting in the early years of a justice's tenure compared with later years (Hagle 1993). They have also found ideological drift: justices' ideologies, as reflected in their voting behavior, often change over time (Epstein et al. 2007; Sharma and Glennon 2013). And a few papers have looked into our topic: whether justices are more favorable to the government while the appointing president is in office than later in the justices' tenure.

Ducat and Dudley (1989b) examine the votes of lower-court federal judges as well as of Supreme Court justices in a data set consisting of cases related to presidential power. In addition to finding that Republican judges vote in favor of the president more than Democratic judges do, they find that a judge is more likely to vote for the appointing president (77.3 percent) than for a different president of the same party (71.1 percent) or a different president of a different party (62 percent). However, their study suffers from significant limitations. They do not disaggregate Supreme Court and lower-court judges, they do not control for many relevant variables, and they do not conduct statistical tests but instead examine the raw data. In a separate study, Ducat and Dudley (1989a) do report a statistical test, but only for federal district courts, and find that district judges are more likely to favor the appointing president than other presidents at a statistically significant level. Yates and Whitford (1998) and Yates (2002) test for whether a justice favors the appointing president in separation-of-powers-related cases. Only Yates (2002) finds (weak) evidence for this correlation. In addition, Yates (1999) finds evidence that judges modestly favor the appointing president in cases involving regulatory agencies when the agency is independent but not otherwise.

Reasoning that presidents try to appoint Supreme Court justices who share the president's views, Segal (1990) hypothesized that a justice is more likely to favor the government when the appointing president is in office than at other times. However, using a data set consisting of cases from 1953 to 1982 in which the SG filed an amicus brief, he finds no evidence for his hypothesis. Brent (1998) uses a larger data set (1953–94) to test this hypothesis. While he finds no evidence that justices favor the appointing president, he also finds some evidence that justices favor the government when the party of the appointing president controls the presidency. However, he does not control for the ideological distance between the justice and the sitting president, leaving open the possibility that justices simply vote their ideology, which favors the government when a president of similar ideology controls it. Segal, Timpone, and Howard (2000) find consistency between the policy preferences of presidents (measured on a liberal/conservative scale) and the votes of their justices in civil liberties and economics cases, although this effect lasts only in the short term.

Robinson (2012) looks at the votes of Supreme Court justices in separation-of-powers decisions rendered from 1942 to 2007. His focus is

whether justices with experience in the executive branch are more likely to favor the president than justices without such experience. As we discuss, this finding is relevant to our interest in whether a prior relationship with the president influences a justice's voting behavior—although we are interested in the existence of a personal relationship between the future justice and the president, not simply whether the justice served in the executive branch. Also of relevance to our thesis, Robinson finds only very weak evidence that favorability toward the president declines with time but does find that the justices who are ideologically distant from the president are less likely to vote in favor of him in litigation, which implies favorability toward the appointing president because the appointing president is typically ideologically close to the justice.

While these papers helpfully provide context to our argument, we go beyond them in several ways. We use a larger data set, which allows us to control for more variables. But the main difference is our focus, which is the personal relationship between presidents and justices and the psychology of loyalty.

## **2.2. Friendship and Loyalty between the President and Supreme Court Justices**

Presidents balance numerous considerations when deciding whom to nominate for important positions. In the history of Supreme Court nominations, we can identify four models. Under the merits model, the president nominates a person who is most qualified for the position on the basis of the relevant professional norms. Under the patronage model, the president nominates someone to whom he owes a favor or whom he trusts to carry out his agenda. Under the ideology model, the president nominates a person with strong ideological credentials who can be trusted to vote in an ideologically consistent way. Under the constituency model, the president nominates a person with characteristics that are in political demand, such as a regional pedigree or a specific racial, ethnic, or religious identity (Epstein and Segal 2005; Goldman 1997).

Nearly all nominations can be classified according to these models, although some overlap. Theodore Roosevelt appointed Holmes on the merits but also because he believed that Holmes would support his progressive agenda. Benjamin Cardozo was also a merits appointment. Rehnquist, Antonin Scalia, and Clarence Thomas were all clear ideological appointments—perhaps Ruth Bader Ginsburg and Sonia Sotomayor were as

well. And it has long been thought that there was a “Jewish seat” on the Supreme Court, and in the last 30 years or more, it has become clear that women and people of color must be represented on the Court as well.

Historians of the Supreme Court have identified numerous appointments that follow the patronage model in whole or in part (see Scigliano 1971; Abraham 1992; Yalof 1999; Smelcer 2010). All of FDR's appointments were friends and political allies, people he knew well, although several of them—including William O. Douglas, Frankfurter, Hugo Black, and Robert H. Jackson—were meritorious as well. Truman's appointees—Harold Hitz Burton, Fred M. Vinson, Clark, and Sherman Minton—were cronies and allies and generally considered subpar justices (Yalof 1999, p. 39). While Dwight D. Eisenhower's appointments (like those of the other presidents) were politically motivated, and he selected people who he believed shared his ideological commitments, none of the five justices he appointed—Earl Warren, William Brennan, John Marshall Harlan, Charles Evans Whittaker, and Potter Stewart—had been his friends. (Warren and Brennan, of course, famously disappointed him.) White was a friend of Kennedy, Fortas a friend and political ally of Johnson. Since the 1970s, presidents have largely made appointments on the basis of the ideology and constituency models.

Scigliano (1971, p. 132) argues that a “sense of personal obligation” causes justices to favor the presidents who appointed them. He quotes Charles Pinckney, who said of the justices, “They are appointed by the President, . . . and if the moment after they receive their commissions, they were really so independent as to be completely out of his reach—that no hope of additional favor, no attempt to caress could be reasonably expected to influence their opinions, yet it is impossible for them ever to forget from whom they have received their present elevation” (p. 132). Scigliano (1971, p. 153) further argues that “the susceptibility of justices to presidential influence appears to be greater for justices who are personal or political friends of appointing presidents than for those who are not.” Scigliano (1971, p. 155) lists only Douglas, Vinson, and Jackson as those who could realistically expect an additional favor from the president such as support for presidential ambitions or a chief justiceship and Frankfurter, James F. Byrnes, Vinson, Fortas, and Douglas as justices who continued to give the president political advice after they took office (p. 156). So in most cases, if a sense of personal obligation on the part of a justice existed, it was not based on the expectation of reciprocation.

### 2.3. The Nature of Loyalty

Loyalty is the propensity to make sacrifices for the benefit of another. People have many reasons to be loyal. Loyalty can be just half of a quid pro quo; in economic models of cooperation, one agent's loyalty to another depends on the other's loyalty to the first. Sociologists and anthropologists have seen loyalty as an aspect of reciprocity, a fundamental organizing principle of society, illustrated by gift giving and related rituals (Mauss 2000; Simmel 1964). Loyalty can also be the result of indoctrination and education. People may learn to be loyal to political authorities; they may instinctively be loyal to family members; they may develop loyalty to friends and colleagues with whom they overcome common obstacles.

Loyalty can also result from gratitude. Psychologists believe that gratitude compels the beneficiary to reciprocate—by providing a benefit to the original benefactor if possible. Several studies, including Ames, Flynn, and Weber (2004), Bartlett and DeSteno (2006), Tsang (2007), and Algoe, Haidt, and Gable (2008), provide evidence of this reciprocity effect in experimental settings.

These considerations motivate our investigation into the loyalty effect. As Little (1995) observes, the legal independence of Supreme Court justices, which is designed to protect them from political pressure, could be undermined if the justices feel obligated to the president on the basis of social bonds or the act of appointment. Although we will look at some evidence about the mechanisms that cause the loyalty effect, we are focused on demonstrating the loyalty effect rather than explaining where it comes from. We suspect that justices, like other people, feel loyalty for many different reasons.

## 3. DATA AND APPROACH

### 3.1. The Data Set

We created a data set containing information about cases of concern to the president, using the US Supreme Court Database as our foundation. In its current version, the database covers all orally argued cases from the 1946–2015 terms; we added the orally argued cases from the 1937–45 terms (which were coded using similar protocols). We included only



orally argued cases that resulted in a signed opinion of the Court; we exclude all per curiam opinions.

To define a case as of concern to the president, we initially selected all cases in which the United States, an executive actor (for example, the attorney general or the president himself), or a US government agency is identified as the petitioner or respondent. However, because the database identifies only the lead parties to the case, cases in which one of these actors is a party but not a lead party are improperly excluded. Moreover, in a number of cases—especially in the 1940s—one government agency is pitted against another, so it is impossible to classify the president as the winner or loser. To address these problems, we added a variable indicating whether the solicitor (or attorney) general's office represented the petitioner or the respondent. We hand collected the data for the 1937–45 and the 2002–14 terms; we used Collins's (2008) data for 1946–2001.<sup>2</sup>

If the SG represented the United States, a federal agency, or various executive actors, the coding was straightforward: we coded on the basis of the SG's position—to reverse or affirm. If the SG did not represent the agency (the Interstate Commerce Commission in the 1940s) or the president (in say, *Clinton v. Jones*) or if the United States or the SG did not enter the case as an amicus curiae, then we coded the president's position as the same as the agency's. If the SG filed an amicus brief opposed to the agency's position, we coded the president's position on the basis of the SG's recommendation, not the agency's. In other words, the SG was our tiebreaker.

Following these rules, we created variables indicating whether the president (a combination of whether the United States/agency/executive actor was a party and whether the SG represented the United States/agency/executive actor) was the petitioner or the president was the respondent (again, combining United States/agency/SG cases).<sup>3</sup> We will call cases in which the president so defined was a petitioner or respondent “president cases.”

2. See Paul M. Collins, Jr., The U.S. Supreme Court Amicus Curiae Database, 1946–2001 (<http://blogs.umass.edu/pmcollins/data/>).

3. Because litigation continues across administrations, a question arises whether the president (or government) cares about the outcome of a case that began in a previous administration or simply feels obliged to continue the case. To address this ambiguity, we ran our tests under two different assumptions: that the relevant president is the one in office at the date of decision (reported) and that the relevant president is the one in office at the date of argument. There are no major differences in the results.

**Table 1.** President Cases: Votes Cast When the President Was the Respondent or Petitioner, 1937–2014 Terms

President in Office at Time of Decision	Respondent		Petitioner		Total (N)
	N	%	N	%	
FDR	1,873	54.98	1,534	45.02	3,407
Truman	2,157	49.61	2,191	50.39	4,348
Eisenhower	2,090	54.67	1,733	45.33	3,823
Kennedy	711	59.90	476	40.10	1,187
Johnson	873	41.45	1,233	58.55	2,106
Nixon	1,027	43.50	1,334	56.50	2,361
Ford	378	34.52	717	65.48	1,095
Carter	765	42.50	1,035	57.5	1,800
Reagan	1,230	33.48	2,444	66.52	3,674
Bush 1	630	45.45	756	54.55	1,386
Clinton	1,187	50.75	1,152	49.25	2,339
Bush 2	900	51.05	863	48.95	1,763
Obama	891	58.58	630	41.42	1,521
Total	14,712	47.75	16,098	52.25	30,810

**Note.** Bush 1 = George H. W. Bush; Bush 2 = George W. Bush.

Our data set covers 13 presidents (from FDR to Obama). Collectively, the president's interests were at stake in a substantial fraction of the 1937–2014 cases. Of the 70,633 votes cast by the 38 justices in our study (more on the justices below), the president was the respondent in 21 percent ( $N = 14,712$ ) and the petitioner in 23 percent ( $N = 16,098$ ). This amounts to 44 percent ( $16,098 + 14,712/70,633$ ) of all votes cast between the 1937 and 2014 terms, although the percentage has declined with time. During the FDR, Truman, and Eisenhower presidencies, more than half the votes were in cases in which the president was the petitioner or respondent. By Bush 2 and Obama, that proportion fell to about  $\frac{1}{3}$ .

Table 1 breaks down the participation data by whether the president was the respondent or petitioner. Overall, the president was the petitioner slightly more often than the respondent (52.25 percent versus 47.75 percent), but there is variation across administrations. At the low end are Kennedy and Obama, who were the petitioner in only about 40 percent of their cases; Ford and Reagan are at the high end (petitioner in about two thirds of their cases). Finally, note that certain administrations are overrepresented in the data: FDR (11 percent of all votes), Truman (14 percent), Eisenhower (12 percent), and Ronald Reagan (15 percent). And some administrations are underrepresented: Kennedy (4 percent), Gerald

**Table 2.** Votes in Favor of Presidents Serving during the 1937–2014 Terms, by Whether the President Was the Respondent or Petitioner

President in Office at Time of Decision	Respondent		Petitioner		Total	
	%	N	%	N	%	N
FDR	66.78	1,767	65.38	1,534	66.13	3,301
Truman	58.13	2,140	71.79	2,191	65.04	4,331
Eisenhower	54.59	2,090	71.55	1,733	62.28	3,823
Kennedy	48.1	711	83.19	476	62.17	1,187
Johnson	42.27	873	86.13	1,233	67.95	2,106
Nixon	50.63	1,027	78.86	1,334	66.58	2,361
Ford	59.52	378	79.92	717	72.88	1,095
Carter	52.94	765	75.65	1,035	66.00	1,800
Reagan	61.95	1,230	78.68	2,444	73.08	3,674
Bush 1	60.00	630	77.38	756	69.48	1,386
Clinton	58.38	1,187	66.41	1,152	62.33	2,339
Bush 2	48.00	900	76.01	863	61.71	1,763
Obama	35.35	891	72.86	630	50.89	1,521
Total	54.88	14,589	74.98	16,098	65.42	30,687

**Note.** Bush 1 = George H. W. Bush; Bush 2 = George W. Bush.

Ford (4 percent), George H. W. Bush (hereafter, Bush 1) (5 percent), and Obama (4 percent). This reflects the length of their presidencies and the declining number of cases on the Court's plenary docket.

### 3.2. Winning and Losing

For the president cases, we are interested in whether the president won or lost. Because we know whether the president was the petitioner or respondent, we can use the variable `partyWinning` in the Supreme Court Database (petitioner won equals one; petitioner lost equals zero).<sup>4</sup>

Table 2 shows the president's win rate, broken down by whether the president was the respondent or petitioner. Presidents do well in the Court, with 65 percent of all votes cast in their favor. This much the literature suggests. Less noticed is that there is considerable variation by president, from Reagan and Ford (over 70 percent) to Obama (51 percent). Note too that presidents are significantly ( $p \leq .05$ ) more successful when they are petitioner than when they are respondent (75 percent versus 55

4. For the 1937–2014 terms, we use the case's disposition to identify the winning party. Virtually all affirmed decisions and petitioner denied or dismissed decisions are wins for the respondent; virtually all reversed decisions and reversed and remanded decisions are wins for the petitioner. We hand checked all other dispositions for the president cases.

percent). This is not terribly surprising because the Court usually takes cases to reverse. Even so, presidents prevail at higher rates when they are respondents versus all other respondents (55 percent versus 39 percent).

The high win rates of presidents could reflect a number of factors. The various pro-executive doctrines in the law, from the *Chevron* doctrine to the state secrets privilege, are not among the explanations, as parties can settle in the shadow of the law. It may be that the payoffs from prevailing over the US government are exceptionally high for private litigants—perhaps in terms of prestige (for lawyers) and stakes (for litigants). They may gain in an expected sense by filing certiorari petitions even when they have little hope of prevailing. By contrast, the government lawyers probably take a more bureaucratic approach and settle when they think they will lose—except in the case of rare high-profile, politically charged cases in which they are ordered by their superiors to proceed. Be that as it may, the exceptionally low win rate of the Obama administration as a respondent is worthy of note; we do not yet have an explanation for it but are exploring it in other research.

### 3.3. The Justices

We are less concerned with the presidents' win rate than with their appointees' loyalty. Between the 1937 and 2014 terms, a total of 46 justices served on the Court. (This counts Rehnquist twice: as an appointee of Richard Nixon through the 1985 term and as a Reagan appointee thereafter.)<sup>5</sup> We eliminated the seven justices appointed before 1937 (James Clark McReynolds, Louis Brandeis, George Sutherland, Pierce Butler, Charles Evans Hughes, Owen Roberts, and Cardozo); we also excluded Harlan Stone's votes prior to his elevation to chief in 1941. This leaves us with 39 justices. (In many analyses, however, we eliminate Byrnes, Sotomayor, and Kagan because they served only under their appointing president.)

For these 39 justices, our focus is on whether they vote for their appointing president. Table 3 shows the raw data, with the justices ranked from most to least loyal. There's considerable variation in loyalty from White's 82 percent support for his president, Kennedy, to Kagan's 49 percent (the only justice below 50 percent) for Obama. Note that, over-

5. We use Rehnquist 1 to indicate Rehnquist prior to the 1986 term (as a Nixon appointee) and Rehnquist 2 to indicate Rehnquist from the 1986 term forward (as a Reagan appointee). No results presented in this paper change in any meaningful way if we treat Rehnquist as one justice appointed by two different presidents.

**Table 3.** Votes in Favor of the Appointing President, 1937–2014 Terms

Justice	% Votes in Favor of Appointing President	Total Votes While Appointing President in Office	Justice	% Votes in Favor of Appointing President	Total Votes While Appointing President in Office
White	82.00	50	Kennedy	65.22	23
Rehnquist 2	78.35	97	Rutledge	65.06	166
Alito	75.00	56	Roberts	64.52	62
Blackmun	73.20	194	Clark	64.34	129
Scalia	72.53	91	Ginsburg	64.13	223
Rehnquist 1	72.52	131	Murphy	63.93	366
Black	71.15	565	Whittaker	63.41	205
O'Connor	70.81	370	Byrnes	63.16	76
Burger	70.64	235	Stewart	62.39	117
Douglas	70.50	444	Fortas	61.87	139
Vinson	70.14	365	Stone	60.14	281
Reed	69.38	503	Harlan	60.14	291
Powell	68.25	126	Marshall	60.00	15
Souter	68.00	75	Stevens	58.82	34
Frankfurter	67.94	471	Thomas	57.50	40
Breyer	67.88	193	Goldberg	57.45	47
Minton	66.67	156	Sotomayor	53.52	142
Jackson	66.40	247	Warren	53.44	378
Burton	65.78	453	Brennan	50.00	242
Mean	65.76		Kagan	48.54	103

**Note.** Justices are ranked from highest to lowest level of support. Rehnquist 1 = Rehnquist prior to the 1986 term (as a Nixon appointee); Rehnquist 2 = Rehnquist from the 1986 term forward (as a Reagan appointee).  $N = 7,901$  votes.

all, the appointing president's win rate (65.76 percent) is not much different from the president's overall rate (65.4 percent; see Table 2).

However, this comparison does not tell us much. Some justices may favor the appointing president because they favor all presidents; others may have the opposite disposition. And the data mask potentially important differences—for example, whether the case is a routine criminal case where the president stands in for a prosecutor or a structure-of-government dispute between the president and Congress or between the president and a state official.

To address these problems, our analyses draw comparisons between votes for the president when the appointing president is in office versus all other sitting presidents (Section 4.1) and between votes for the president when the appointing president is in office versus all other sitting presidents of the same political party as the appointing president (Sec-

tion 4.2). We also disaggregate the cases by type. Figure A1 shows each justice's loyalty, measured as the percentage of votes in favor of the appointing president minus the percentage of votes in favor of subsequent presidents of the same party.

An additional problem with Table 3 is that it does not distinguish between support for the president as petitioner versus respondent. This is a selection problem. We know that the Court more often reverses than affirms (see Table 2), and so if a particular presidential administration is more inclined to appeal lower-court decisions (which, in fact, is the case, as Table 2 shows), then the percentage of votes for that administration should be higher. (Of course, choosing to be the petitioner is itself a selection.) Looking at Table 1, for example, we would expect the Ford and Reagan administrations to win a higher percentage of their cases if only because they were far more often the petitioner than the respondent. The Kennedy and Obama administrations should lose more because they were the respondent in a higher percentage of cases. In fact, our data show that justices are more likely to vote for the appointing president when he is a petitioner (71.2 percent,  $N = 4,189$ ) than when he is a respondent (60.4 percent,  $N = 4,366$ ). The difference is statistically significant at the 5 percent level. This could explain why, for example, Obama's appointees (Kagan and Sotomayor) seem especially unsupportive: the Obama administration was the respondent in a greater percentage of cases than any other appointing president in our study except Kennedy (see Table 1). To deal with the selection problem, all our multivariate analyses control for whether the government was the petitioner or the respondent.

A third problem with Table 3 is that there may be idiosyncratic factors that account for the justice-by-justice results. Take Kagan's low rate. It could reflect her recusal in 17 of the 120 president cases the Court decided between the 2010 and 2014 terms. Had she voted for the government (Obama) in all 17 cases, her support rate would be closer to the mean. To deal with oddities in the data (and for other reasons), the analyses to follow pool all the votes. We adjust the standard errors using a cluster bootstrapping procedure (with 500 repetitions). The clustering accounts for within-justice correlation; the bootstrapping attends to the relatively small number of clusters (the justices) (see, for example, Cameron, Gelbach, and Miller 2008).

#### 4. RESULTS

We explore loyalty effects by drawing comparisons between justices voting for the president when the appointing president is in office versus voting for the president when any other president is in office (Section 4.1). In Section 4.2 we use a more stringent test in which we draw the comparison between the appointing president and presidents of the same party, not all other presidents. The first approach tests for whether Breyer favors Clinton over Bush 2 and Obama. The second approach tests for whether Breyer favors Clinton over Obama alone.

##### 4.1. Personal Loyalty to the Appointing President Compared to All Subsequent Presidents

Table 4 compares support for the appointing president versus support for all other presidents, by justice. Most justices (69 percent, or 25/36) cast a higher percentage of votes for their president than for all other presidents. The differences are statistically significant (in the correct direction) for only nine (not surprising given small *N*s, imbalances, or both). Six of the nine are Democrats. Scalia, David Souter, and Samuel Alito are the Republicans, although  $p < .10$  for Rehnquist 2, Sandra Day O'Connor, and John Roberts. Warren's and Clark's differences are significant but in the opposite direction. They appear to be ingrates.

In the aggregate, however, there are clear signs of loyalty, as Table 5 shows. Table 5 is the same as Table 4, but it pools votes and breaks them down by the party of the appointing president. Note that for all the comparisons, the justices are significantly more likely to vote for their president than for all others. (For this and all pooled analyses, including regressions, we exclude Byrnes, Sotomayor, and Kagan because they cast all their votes while the appointing president was in office.)

Do these results hold when we control for other variables that may affect voting for or against the sitting president? To address this, we estimated models using logistic regression. The dependent variable in all models is whether the justice voted for the president (equals one) or not (equals zero).

The independent variable of interest, Appointing President in Office, is whether the justice's appointing president was in office at the time the case was decided (equals one) or not (equals zero). So, again, the comparison is between voting for the president when the appointing president is still in office (equals one) versus voting for the president when any

**Table 4.** Votes for the Appointing President versus Votes for All Other Presidents, 1937–2014 Terms

Justice	President Is Not the Appointing President		President Is the Appointing President		Total Votes (N)
	%	N	%	N	
Stone	60.00	90	60.14	281	371
Black	55.50*	1,373	71.15	565	1,938
Reed	69.47	678	69.38	503	1,181
Frankfurter	55.02*	956	67.94	471	1,427
Douglas	43.08*	1,518	70.50	444	1,962
Murphy	58.82	306	63.93	366	672
Jackson	52.80*	447	66.40*	247	694
Rutledge	59.81	316	65.06	166	482
Burton	69.74	304	65.78	453	757
Vinson	62.79	43	70.14	365	408
Clark	73.35*	713	64.34	129	842
Minton	72.32	177	66.67	156	333
Warren	62.15*	391	53.44	378	769
Harlan	63.83	470	60.14	291	761
Brennan	55.96	1,417	50.00	242	1,659
Whittaker	59.02	61	63.41	205	266
Stewart	58.19	971	62.39	117	1,088
White	74.79	1,400	82.00	50	1450
Goldberg	62.35	85	57.45	47	132
Fortas	78.57	14	61.87	139	153
Marshall	53.95	1,075	60.00	15	1,090
Burger	73.06	631	70.64	235	866
Blackmun	67.74	936	73.20	194	1,130
Powell	67.30	630	68.25	126	756
Rehnquist 1	68.80	625	72.52	131	756
Stevens	54.25	1,259	58.82	34	1,293
O'Connor	64.95	545	70.81	370	915
Rehnquist 2	69.44	540	78.35	97	637
Scalia	58.19*	775	72.53	91	866
Kennedy	61.13	777	65.22	23	800
Souter	55.44*	478	68.00	75	553
Thomas	59.62	624	57.50	40	664
Ginsburg	51.78*	356	64.13	223	588
Breyer	53.76*	359	67.88	193	552
Roberts	50.89	169	64.52	62	231
Alito	58.43*	166	75.00	56	222

**Note.** Byrnes, Sotomayor, and Kagan served only under the appointing president. Rehnquist 1 = Rehnquist prior to the 1986 term (as a Nixon appointee); Rehnquist 2 = Rehnquist from the 1986 term forward (as a Reagan appointee).

\*  $p \leq .05$  (for the difference between the appointing president and all other presidents).



**Table 5.** Votes for the Appointing President versus Votes for All Other Presidents, by Whether the Justice Was Appointed by a Democrat or Republican, 1937–2014 Terms

Justices Included	President Is Not the Appointing President (%)	President Is the Appointing President (%)	Total Votes (N)
All	60.32*	66.25	29,264
Appointed by Democrat	59.06*	67.26	15,032
Appointed by Republican	61.44*	64.51	14,232

**Note.** Byrnes, Sotomayor, and Kagan are excluded because they lack comparisons with nonappointing presidents.

\*  $p \leq .05$ .

other president is in office (equals zero). Bivariate regressions show that Appointing President in Office is a significant predictor of voting for the president.

To control for public salience, we look at whether the decision appeared on the front page of the *New York Times* the day after the Court announced it, in which case the variable Important Case takes a value of one (otherwise zero). The measure was originally available only for the 1946 term forward; we did additional coding in order to extend it back to 1937, the beginning of our data set.

The regressions reported in Table 6 also control for known predictors of the justices' votes for or against the president:

*Pres Petitioner.* This indicates whether the president was the petitioner (equals one) or not (equals zero). Because of the Court's tendency to reverse, we expect a positive coefficient.

*Ideological Distance.* The ideologically closer the justice and the sitting president, the more likely the justice will vote for the president. A justice's ideology is the career mean of his Martin-Quinn score; the sitting president's ideology is Poole's Common Space DW-NOMINATE score. To measure the ideological distance between the justice and the sitting president, we take the absolute value of the president's ideology minus the justice's ideology. We assume, in line with the literature, that ideology is unidimensional (Martin, Quinn, and Epstein 2005).

*Executive Branch Experience.* This indicates whether the justice worked in the executive branch (equals one) or not (equals zero). It may be the case that a justice who worked in the executive branch is, overall, more supportive of the president regardless of the identity of the sitting president (Robinson 2012).

**Table 6.** Logistic Regression of Voting for (Equals One) or against (Equals Zero) the President, 1937–2014 Terms

	All Justices		Appointed by Democrat		Appointed by Republican	
	(1)	(2)	(3)	(4)	(5)	(6)
Appointing President in Office versus All Others	.287* (2.97)	.194* (2.54)	.377* (2.40)	.266* (2.37)	.160* (1.97)	.086 (1.16)
Pres Petitioner	.637* (8.74)	.640* (8.91)	.516* (4.16)	.530* (4.67)	.764* (9.42)	.767* (9.42)
Important Case		-.385* (-8.33)		-.291* (-3.52)		-.479* (-10.25)
Ideological Distance		-.178* (-3.45)		-.217* (-3.22)		-.167* (-2.73)
Executive Branch Experience		.188* (2.18)		.043 (.38)		.424* (3.55)
Presidential Approval		.004* (2.83)		.005* (2.72)		.003 (1.33)
Constant	.089 (.99)	.127 (1.12)	.106 (.68)	.175 (.99)	.061 (1.04)	.116 (.69)
N	29,264	29,264	15,032	15,032	14,232	14,232

**Note.** The *t*-statistics are in parentheses. Standard errors are estimated with clustered bootstrapping (36 clusters overall: 18 Democrats and 18 Republicans), with 500 replications. Byrnes, Sotomayor, and Kagan are excluded because they lack comparisons with nonappointing presidents.

\*  $p \leq .05$ .

*Presidential Approval.* This is the mean percentage of job approval for the president aggregated to the term level. We imported the data using the procedure described in Dicle and Dicle (2012). For the 1937–40 terms, we computed the term means using data from the Roper Center. This variable ranges from 26.4 percent to 88.5 percent, with a mean of 55.1 percent (and a standard deviation of 12.8). We expect that the higher the approval, the higher likelihood of a vote in favor of the sitting president.

The results are consistent with our loyalty-effect hypothesis. Appointing President in Office is significant in the All Justices models and in three of the four models (and positive in the fourth) in which the data set is divided by the party of the justice. These results are strong for three reasons: baseline support for the government is so high, we control for Pres Petitioner and Ideological Distance,<sup>6</sup> and we cluster on justice.

For model 2, the probability of voting for the president when the president appointed the justice is .66 [95 percent confidence interval = .63, .68]; the probability falls to .61 [.58, .64] when the president did not appoint the justice (all else equal). These results are robust to other specifications. For model 4, the effect size for the Democrats is 66 percent support for the appointing president [62 percent, 70 percent] versus 60 percent for all others [56 percent, 64 percent]—a difference of 6 percentage points, all else equal.<sup>7</sup>

Looking at the other estimates, we find that Pres Petitioner is significant across the board. When the appointing president is in office, the likelihood of the president winning as petitioner is 72 percent [69 percent, 75 percent]; when the appointing president is the respondent, the percentage decreases to 58 percent [55 percent, 61 percent] (all else equal). When

6. As empirical studies indicate that ideological distance is a unidimensional variable (Martin, Quinn, and Epstein 2005), it is unlikely that our results for Appointing President in Office reflect an ideological factor not captured by Ideological Distance.

7. Could the results be due to the acclimation effect (Hagle 1993)? Since we control for ideological distance, it could not be the case that inexperienced justices are more likely to support the appointing president on ideological grounds. It is possible that inexperienced justices are more loyal to the president than experienced justices are, but that is not something that the acclimation literature discusses. In any event, to test for an acclimation effect, we compare the justices' voting behavior in their first year versus their second and third years and in their first and second years versus their third year. For the 11 justices who served for 3 years or more under their appointing presidents, there are no statistically significant differences in their propensity to vote for the appointing president over these periods, which suggests no evidence of an acclimation effect. Moreover, as Epstein et al. (1998) note, the acclimation effect is subsumed in a more general pattern of preference instability that extends over a justice's entire career.

**Table 7.** Predicted Probability of Voting for the President When the President Is or Is Not the Appointing President and When the President Is the Petitioner or the Respondent

	Appointed Justice	Did Not Appoint Justice
Petitioner	.72 [.69, .75]	.68 [.65, .71]
Respondent	.58 [.55, .61]	.53 [.50, .56]

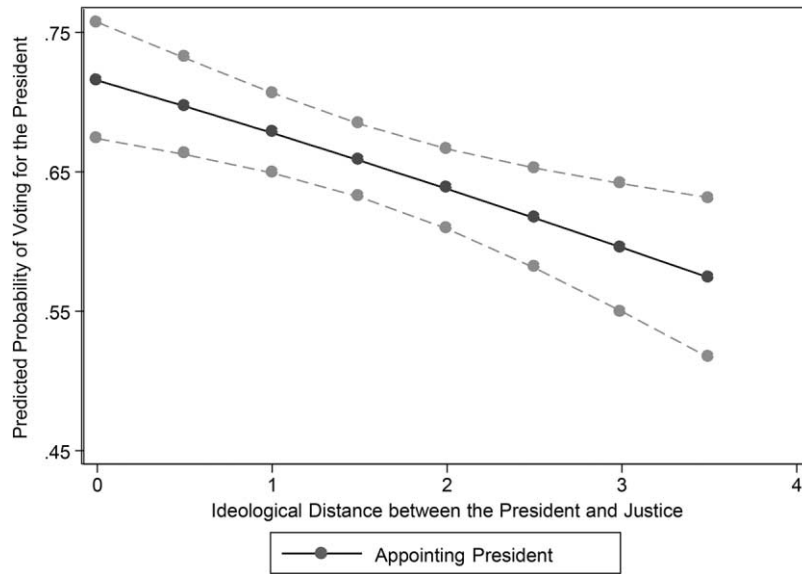
**Note.** Predicted probabilities are based on Table 6, model 2. The 95 percent confidence intervals are in brackets.

the appointing president is not in office, the likelihood of winning as petitioner is 68 percent [65 percent, 71 percent] versus 53 percent [50 percent, 56 percent]. These estimates show the petitioner effect, but they also show the loyalty effect, as Table 7 illustrates. When the president is the respondent and did not appoint the justice, his odds border on 50–50; he is much safer with his own appointees.

Another result is that Ideological Distance is significant and negative in all three models. This means that as the distance between the justice and the sitting president increases, the justice is less likely to vote for the sitting president. In the extremes, when a justice and the sitting president are ideologically quite close (for example, Anthony Kennedy–Reagan, O’Connor–Reagan), the odds of voting for the president are .68 [.65, .72]; when they are quite distant (for example, Douglas–FDR, Thomas–Bush 1), the odds fall to .49 [.40, .57], all else equal.

What is the relationship between Ideological Distance and Appointing President in Office? Not surprisingly, the distance between the appointing president and his justice is significantly shorter than distance between the justice and the other presidents: 1.3 versus 1.6. The minimum distance is not much different (about 0) but the maximum is 3.7 versus 4.7 (compare Figures 1 and 2). If we consider plausible ranges, as we do in Figures 1–3, one can see that at every level of ideological distance, a justice favors his appointing president.<sup>8</sup> Even when the distance is virtually 0 (justice is very close to the appointing president/justice is very close to the sitting president), the appointing president still has an edge: 72 percent versus

8. Figures 1 and 2 show the predicted probabilities based on Table 6, model 2, including 95 percent confidence intervals. We cut off ideological distance at 3.5. Figure 3 compares the predicted probabilities from Figures 1 and 2.



**Figure 1.** Predicted probability of voting for appointing president based on the ideological distance between the president and the justice.

67 percent, all else equal. Note too that the difference increases slightly as the distance grows. At maximum levels of distance, the difference is closer to 5 percent than 4 percent.

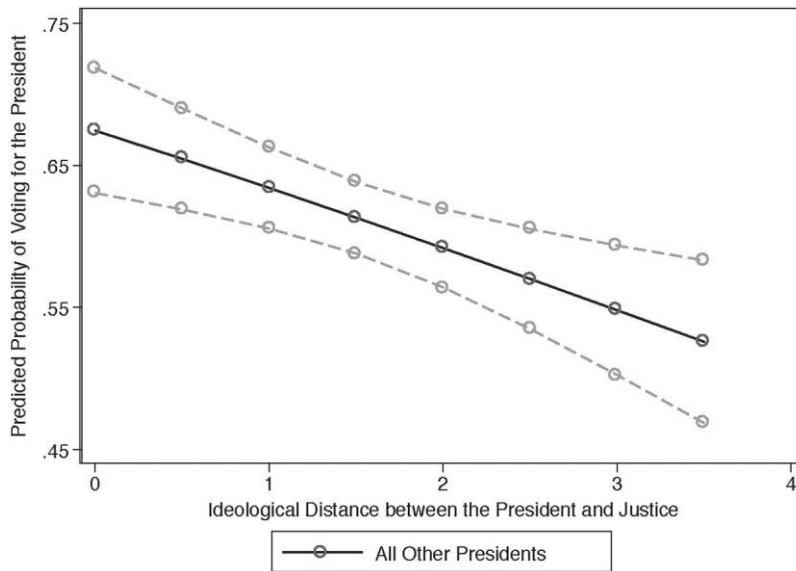
Important Case is negative and significant overall. Justices are less likely to vote for the president when the case appears on the front page of the *New York Times*.<sup>9</sup> This is perhaps surprising.

Executive Branch is positive and significant overall. But the result appears to be driven by the Republicans (seven worked in the federal executive branch).<sup>10</sup> Republicans who worked in the executive branch are 10 percentage points more likely to vote for the president than Republicans who did not: 69 percent [65 percent, 73 percent] versus 59 percent [56 percent, 62 percent].

Presidential Approval has a significant positive effect overall for the Democrats; for the Republicans it is positive but not significant. Overall, the probability of voting for a president with a very low approval rating is .60 [.57, .63]. It is .65 [.63, .68] for a president with a very high ap-

9. We also tried using the *Congressional Quarterly* list of important cases (Savage 2010). The results are the same for Appointing President, the variable of interest.

10. Harlan, Burger, Rehnquist, Scalia, Thomas, Roberts, and Alito.



**Figure 2.** Predicted probability of voting for nonappointing presidents on the basis of the ideological distance between the president and the justice.

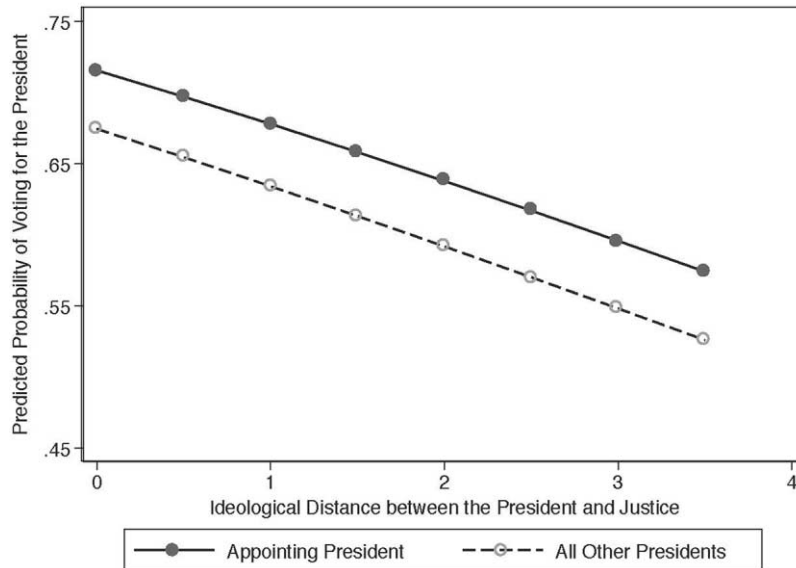
proval rating. But the president's own appointees show some loyalty even if their president is not popular, with a .63 [.60, .66] likelihood of voting for a very unpopular president versus .59 [.55, .62] for all others.<sup>11</sup>

In sum, we find evidence of a loyalty effect, although stronger for Democrats than for Republicans. But our tests do not rule out the possibility that justices' preference for the appointing president reflects partisan rather than personal loyalty. We address this concern in the next section.

#### 4.2. Personal Loyalty to the Appointing President Compared to Subsequent Presidents of the Same Party

We repeat the analysis from Section 4.1 except now the independent variable of interest compares voting for the president when the appointing

11. We also estimated the model after excluding criminal cases on the basis of the theory that many criminal cases are routine and so not a matter of concern to the president. Appointing President remains statistically significant overall and for the Democrats but not for the Republicans). Similarly, for our next set of regressions (reported in Table 10), exclusion of criminal cases does not change the results substantially; for Republicans, the results remain statistically insignificant, although the sign changes.



**Figure 3.** Difference in predicted probabilities of voting for appointing and nonappointing presidents on the basis of the ideological distance between the president and the justice.

president is in office versus voting for the president when the sitting president is of the same political party as the appointing president. This is a tougher test of the loyalty effect, as it eliminates the possibility that partisanship, rather than personal loyalty, explains why justices favor the appointing president.

As Table 8 shows, of the 39 justices in the study, we must eliminate 10 because they served either only under the appointing president or only under two presidents of different parties. For this analysis to work, we need justices who worked under at least two presidents of the same party: the appointing president and another.

For the remaining 29, 19 voted in favor of their president more often than in favor of another president of the same party. But for only seven of the 19 are the differences statistically significant in the direction that the personal loyalty account expects. Six of the seven are Democrats (four of the eight FDR appointees and both Clinton appointees). The Republican exception is that supposed turncoat Souter; he was significantly more supportive of Bush 1 than of Bush 2 (the only other Republican president during Souter's tenure). Clark is significantly more supportive of all other

**Table 8.** Votes for the Appointing President versus All Other Presidents of the Same Party, 1937–2014 Terms

	All Other Presidents of the Same Party		Appointing President		Total Votes (N)
	%	N	%	N	
Stone	60.00	90	60.14	281	371
Black	59.69*	841	71.15	565	1,406
Reed	67.22	479	69.38	503	982
Frankfurter	54.85*	536	67.94	471	1,007
Douglas	49.81*	791	70.50	444	1,235
Murphy	58.82	306	63.93	366	672
Jackson	51.85*	378	66.40	247	625
Rutledge	59.81	316	65.06	166	482
Clark	76.08*	301	64.34	129	430
Warren	63.33	30	53.44	378	408
Harlan	62.16	111	60.14	291	402
Brennan	53.65	863	50.00	242	1,105
Stewart	57.77	412	62.39	117	529
White	72.97	455	82.00	50	505
Goldberg	62.35	85	57.45	47	132
Marshall	57.37	190	60.00	15	205
Burger	76.62	432	70.64	235	667
Blackmun	68.23	683	73.20	194	877
Powell	68.99	445	68.25	126	571
Rehnquist 1	70.09	428	72.52	131	559
Stevens	54.83	755	58.82	34	789
O'Connor	65.61	285	70.81	370	655
Rehnquist 2	72.86	280	78.35	97	377
Scalia	62.72	346	72.53	91	437
Kennedy	65.23	348	65.22	23	371
Souter	50.00*	196	68.00	75	271
Thomas	63.78	196	57.50	40	236
Ginsburg	47.93*	169	64.13	223	392
Breyer	48.81*	168	67.88	193	361

**Note.** Byrnes is excluded because he served only under the appointing president. Burton, Vinson, Minton, Whittaker, Fortas, Roberts, Alito, Sotomayor, and Kagan are excluded because they served only under the appointing president and a president of a different party. Rehnquist 1 = Rehnquist prior to the 1986 term (as a Nixon appointee); Rehnquist 2 = Rehnquist from the 1986 term forward (as a Reagan appointee).

\*  $p \leq .05$ .

Democratic presidents than he is of his president, Truman. (And Burger is close to significant in the disloyal direction too.)

Table 9 mirrors Table 5. It pools support for the federal government



**Table 9.** Votes for the Appointing President versus All Other Presidents of the Same Party, by Whether the Justice Was Appointed by a Democrat or Republican, 1937–2014 Terms

Justices Included	All Other Presidents of the Same Party		Appointing President		Total Votes (N)
	%	N	%	N	
All	61.22*	10,915	66.18	6,144	17,059
Appointed by Democrat	59.10*	5,105	67.38	3,700	8,805
Appointed by Republican	63.08	5,810	64.36	2,444	8,254

**Note.** Byrnes is excluded because he served only under the appointing president. Burton, Vinson, Minton, Whittaker, Fortas, Roberts, Alito, Sotomayor, and Kagan are excluded because they served only under the appointing president and a president of a different party.

\*  $p \leq .05$ .

across all appointees and breaks down the percentages by Democrats and Republicans.

Overall, the justices vote more often for the government when the president who appointed them is in office than when another president of the same party is in office. Note, however, that the Democrats drive the loyalty effect; the Republican vote difference is not statistically significant.

The logit models in Table 10 confirm the finding in the raw data: compared with the Republicans, the Democrats are significantly more loyal to their appointing president than to other presidents of the same party (the coefficients on Appointing President in Office are positive but not significant for models 5 and 6; they are positive and significant for all other models). The size of the effect strikes us as large: all else equal (using model 4), the predicted probability of voting in favor of the president when a Democrat was appointed by the sitting president is .66 [.62, .71]; it is .60 [.55, .65] for all other Democratic presidents. As before, Pres Petitioner is hugely important, Executive Branch Experience is important for Republicans but not for Democrats, and Presidential Approval is significant for the Democrats but not for the Republicans. Ideological Distance is significant for the Republicans, while it is no longer significant for Democrats.<sup>12</sup> Important Case is negative and significant.

12. As a further, even stronger test, we checked whether justices favor the appointing president over that president's successor even if the successor is of the same party (for example, are Franklin Delano Roosevelt's [FDR's] appointees less supportive of Truman?). It

**Table 10.** Logistic Regression of Voting for or against the President When the Appointing President Is in Office versus All Other Presidents of the Same Party, 1937–2014 Terms

	All Justices		Appointed by Democrat		Appointed by Republican	
	(1)	(2)	(3)	(4)	(5)	(6)
Appointing President in Office versus All Others of Same Party	.261* (3.44)	.173* (2.25)	.387* (3.52)	.263* (2.10)	.104 (1.19)	.030 (.39)
Pres Petitioner	.680* (8.79)	.688* (9.10)	.596* (5.07)	.602* (5.37)	.767* (7.85)	.769* (7.74)
Important Case		-.299* (-4.54)		-.228* (-2.11)		-.379* (-5.61)
Ideological Distance		-.115* (-2.13)		-.089 (-1.66)		-.191* (-2.74)
Executive Branch Experience		.182 (1.76)		.012 (.09)		.520* (3.59)
Presidential Approval		.005* (2.54)		.007* (2.51)		.001 (.21)
Constant	.092 (1.33)	-.055 (-1.37)	.075 (.62)	-.149 (-1.63)	.095 (1.44)	.246 (.99)
N	17,059	17,059	8,805	8,805	8,254	8,254

**Note.** The *t*-statistics are in parentheses. Standard errors are estimated with clustered bootstrapping (29 clusters overall; 14 Democrats and 15 Republicans), with 500 replications. Byrnes is excluded because he served only under the appointing president. Burton, Vinson, Minton, Whittaker, Fortas, Roberts, Alito, Sotomayor, and Kagan are excluded because they served only under the appointing president and a president of a different party.

\*  $p \leq .05$ .

### 4.3. Why Are Democrats More Loyal to the President than Republicans Are?

What explains the greater importance of the loyalty effect for Democratic justices than for Republican justices? To explore the possibility that a particular president is pulling the results one way or another, we aggregate the data in Table 8 to the administration level. Table 11 shows the results.

If Democratic presidents were looking for loyalty in their appointees, they mostly succeeded—especially FDR and Clinton. The notable exception here is Truman. His one appointee included in this analysis, Clark, was anything but loyal, voting for Kennedy and Johnson significantly more often than for Truman. This striking result is at odds with Clark's reputation as an uberconservative. Still, Clark does not wash out the Democratic loyalty effect. (The results in Table 11 hold in logits controlling for whether the president was the petitioner or the respondent.) It may well be that party identification matters less than the identity of specific presidents. Clinton and FDR may have sought out loyal justices while other presidents pursued other priorities.

The early Republican justices were no more supportive of their appointing presidents than of later Republican presidents. But that began to change with Reagan and continued with Bush 1. The differences in neither case are large (and, in fact, the significant Reagan effect disappears when we control for whether the president was the petitioner or the respondent). But that their appointees show even small signs of loyalty is a break with past Republican administrations. Whether this reflects the proclivities of modern Republican justices, the characteristics of Reagan/Bush 1, or the start of a loyalty trend, we will only be able to say when or if the two Bush 2 appointees have a chance to vote in cases brought by another Republican administration.

Another possibility is that the parties look for different things in Supreme Court justices. Perhaps Republican presidents choose Republican

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turns out that in all cases in our data set, the successor president was the prior president's vice president and hence a part of the appointment regime. Nonetheless, we found, using logit models, clustering on justice, and controlling for petitioner/respondent, that the relevant justices do favor, at a statistically significant level, the appointing president over the same-party successor. The results are driven by FDR's appointees (.68 for FDR and .58 for Truman). When we disaggregate and test by administration, only FDR's appointees favor the appointing president over the same-party successor president at a statistically significant level. In the other cases (Kennedy/Johnson, Nixon/Ford, and Reagan/Bush 1), there are very few votes.

**Table 11.** Votes for the Appointing President versus All Other Presidents of the Same Party, by Presidential Administration, 1937–2014 Terms

	All Other Presidents of the Same Party		Appointing President		Total Votes (N)
	%	N	%	N	
FDR appointees (Stone, Black, Reed, Frankfurter, Douglas, Murphy, Jackson, and Rutledge)	57.02*	3,737	67.66	3,043	6,780
Truman appointee (Clark)	76.08*	301	64.34	129	430
Eisenhower appointees (Warren, Harlan, Brennan, and Stewart)	55.72	1,416	55.54	1,028	2,444
Kennedy appointees (Goldberg and White)	71.30	540	70.10	97	637
Johnson appointee (Marshall)	57.37	190	60.00	15	205
Nixon appointees (Burger, Blackmun, Powell, and Rehnquist)	70.62	1,988	71.28	686	2,674
Ford appointee (Stevens)	54.83	755	58.82	34	789
Reagan appointees (Rehnquist, O'Connor, Scalia, and Kennedy)	66.32*	1,259	72.12	581	1,840
Bush 1 appointees (Thomas and Souter)	56.89	392	64.35	115	507
Clinton appointees (Ginsburg and Breyer)	48.37*	337	65.87	416	753

**Note.** Byrnes is excluded because he served only under the appointing president. Burton, Vinson, Minton, Whitaker, Fortas, Roberts, Alito, Sotomayor, and Kagan are excluded because they served only under the appointing president and a president of a different party.

\*  $p \leq .05$ .

justices for their ideological commitments, whereas Democratic presidents choose Democratic justices with a range of other considerations in mind—including gender and racial diversity, patronage, and the like. Republican justices may feel gratitude to the appointing president, but they do not allow it to influence their votes because of the importance that they attach to their ideological goals. Democrats, with weaker ideological commitments, are more likely to be influenced by loyalty.

However, while the intuition that Republican justices are more ideologically zealous than the Democrats is widespread (at least among liberal law professors), we find no statistical evidence for this view, which may reflect the salience of Scalia and Thomas. We tried numerous tests. First, we looked at voting consistency. We hypothesized that ideologues would vote with more ideological consistency over time than (for lack of a better term) pragmatists—measured by the standard deviation from ideologically predictable votes. However, the differences in standard deviation for Republicans and Democrats—using both Martin-Quinn scores and Segal-cover scores—are statistically insignificant. Second, we hypothesized that during the confirmation process ideologues would receive greater opposition from interest groups, but again there is not a statistically significant difference between Republican nominees and Democratic nominees. Finally, we compared the Common Space scores of senators voting for Republican and Democratic nominees and again find no evidence that either type of justice received more votes from ideologically extreme senators. We are left with more questions than answers, but these are important questions that are worthy of further research.

##### 5. JUSTICE-PRESIDENT RELATIONS

We investigate some evidence about why justices might feel loyalty toward the appointing president. Ames, Flynn, and Weber (2004) argue that a beneficiary feels gratitude toward a benefactor if the benefactor was motivated by affection or sympathy and not when the benefactor acted for instrumental reasons. A hypothesis is that justices are more likely to vote for their president if they were friendly with or worked for him and so perceive the appointment as arising out of a relationship. We must limit this analysis to the Democrats: only two Republicans worked for their appointing president (Rehnquist and Thomas), and no Republican president appointed one of his pals.

Beginning with cronies, Scigliano (1971) and the other sources

(Wrightsmann 2006; Yalof 1999; Abraham 2007) tell us that 13 justices in our data set had a personal relationship with the president (we would add Kagan, for 14). Two, Brynes and Kagan, served only under their appointing president; four others served during only one Democratic administration (Burton, Vinson, Minton, and Fortas). That leaves us with eight cronies: Black, Frankfurter, Douglas, Frank Murphy, Jackson, Clark, White, and Arthur Goldberg.

On the basis of Table 8, we know that four of the five FDR appointees (all except Murphy) were significantly more likely to vote in favor of FDR over all other subsequent Democratic presidents, while the Truman appointee, Clark, was significantly less likely to vote for Truman than for Kennedy and Johnson (the other Democratic presidents during his time on the Court). White was more supportive of Kennedy than of other Democratic presidents but not significantly so.

We estimated logic regressions (unreported) to test the hypothesis that a justice who was a friend of the president favored the appointing president more than a justice who was not a friend of the president. Regardless of the specification, in no model did the variable Friends (as a main effect or interacted with Appointing President in Office) produce a significant coefficient, though Appointing President in Office continued to exert a significant and positive effect. On the basis of these results, we are still left with some loyalty effect for the Democratic appointees, but we cannot conclude that cronyism explains it.

Eleven Democrats (formally) worked for the president, but we have appropriate comparisons for only eight: Stanley Reed, Douglas, Murphy, Jackson, Clark, White, Goldberg, and Thurgood Marshall. (Kagan and Brynes served only under the appointing president and Vinson under no other Democratic president.) Again, we estimated a host of models (unreported) to assess whether justices who worked for their appointing president were more likely to vote for them. And, again, while Appointing President in Office was always positive and significant, the variable Work had no effect, whether as a main effect or interacted with Appointing President in Office. In sum, we find no evidence for the hypothesis that justices with prior relationships with the appointing president favor that president more than other justices do.

## 6. CONCLUSION

We have found evidence of a loyalty effect among Supreme Court appointees.<sup>13</sup> Justices are more like to vote in favor of the government of the president who appointed them than in favor of later governments, even after controlling for ideological and other relevant factors. Of particular interest, the effect is much stronger for Democratic judges than for Republican judges. We can only speculate as to why this is so. One possibility is that the Republican party takes more seriously judicial ideology and that appointees are either selected based on their ideological commitment or made to understand that ideology should prevail over other considerations in decision making. The Democratic party, by contrast, seems to seek justices on the basis of the patronage and constituency models. Justices who are chosen on the basis of these models by definition will have weaker ideological commitments, leaving more room for them to vote on the basis of other considerations like loyalty. And although we found no evidence that, among the Democrats, a prior friendly relationship predicted favoritism toward the appointing president, this may be due to the paucity of data rather than to the absence of an effect. It is striking that many Democratic justices did have prior relationships with the president, while none of the Republicans did.<sup>14</sup>

We also observe an interesting U-shaped curve over time (see the Appendix). The loyalty effect is high for FDR's appointments, then low for the period extending from Truman to the 1970s, and then high again thereafter. It is hardly surprising that FDR's appointments would show considerable loyalty to him. They were committed New Dealers, admirers of FDR, and in most cases advisers as well. They may have felt alienated from subsequent Democratic presidents. In the middle period, many of the justices were cronies or patronage appointments (Truman's, Kennedy's, and several of Johnson's); others were chosen for reasons of political expediency (Eisenhower's and Nixon's). It is possible that the cronies felt that they had paid their dues and owed nothing more to the presi-

13. Our finding is consistent with Peppers and Giles (2012), who found that justices are more likely to attend the State of the Union Address of the president who appointed them than of other presidents. Interestingly, the study found no evidence that partisanship or ideology played a role in attendance. That said, the loyalty indicated by the symbolic act of attending a speech is not the same as favoring the appointing president by voting in his favor in actual cases.

14. Rehnquist worked in the Nixon executive branch before he was appointed, but the president barely knew who he was until his name was suggested.

dent, while the other appointees understood that they were chosen for their political usefulness and did not feel much gratitude for that.

The last period begins roughly with Reagan, who placed a great deal more weight on the ideological leanings of appointees than earlier presidents did (with the partial exception of Nixon). Reagan wanted committed conservatives rather than party loyalists or personal friends. While his successors did not all feel the same way, henceforth confirmation battles became more intense, media coverage of Supreme Court appointments increased, and the stakes grew larger in the public mind. Perhaps for this reason, justices felt loyalty toward the appointing president, who publicly backed them despite the intense media glare, public scrutiny, and political opposition.

We hope our findings will stimulate interest in the role of the emotions in politics, or what we call the political emotions. There are many other contexts in which gratitude or loyalty—among other emotions or dispositions—can influence political relationships. Governors appoint high-court judges in many states, and executive branch officials at all levels of government appoint bureaucrats. A standard view is that many such appointments reflect patronage considerations—elected officials repay campaign workers and other supporters by giving them offices. For example, Hollibaugh, Horton, and Lewis (2014) find evidence that Obama appointed political supporters (defined as those with weaker credentials and more political connections than others) to numerous government positions, albeit subject to constraints—they were typically appointed to less important agencies and to agencies whose mission was already aligned with Obama's political agenda. One can think of loyalty—whether generated by gratitude or something else—as an additional factor that helps ensure that the appointee continues to act in the president's interest, and in this way a complement to patronage.<sup>15</sup>

In the political economy literature, a great deal of research has focused on the question of why politicians tie their hands by creating institutions that insulate bureaucrats from the appointers' influence. Moe (1989) argues that politicians use these institutions to entrench their policy choices against reversal once those politicians have left power. Gailmard and Patty (2007) argue that bureaucratic insulation may improve the competence of bureaucrats, enabling politicians to supply higher-quality public goods—the benefits of which offset the loss of control.<sup>16</sup> However, if grat-

15. Conceivably, it could be a substitute as well.

16. See Mueller (2015) for further discussion and citations.



itude, friendship, and other emotional bonds ensure loyalty by subordinates to politicians, then institutional insulation will be undermined.

#### APPENDIX: THE LOYALTY EFFECT OVER TIME

In Figure A1, the height of the bars equals, for each justice, the percentage votes for the appointing president minus the percentage votes for subsequent presidents of the same party. As the quadratic trend line shows, the distribution over time follows a U-shaped curve.

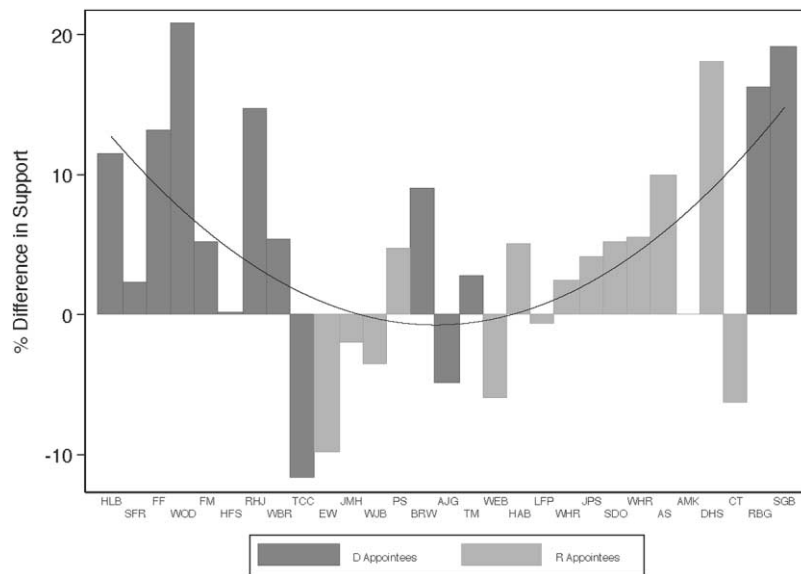


Figure A1. Loyalty effect over time

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