

Public Support for Lesbian, Gay, and Bisexual Supreme Court

Nominees

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Abstract

Recently, there has been an increase in political attention to the demographic characteristics of judicial nominees in the United States and how they can affect public opinion from judicial scholars. Particular emphasis has been placed on race and gender (i.e., male versus female), with comparatively less focus on the lesbian, gay, bisexual, transgender, and queer (LGBTQ) community. This paper uses a conjoint experiment to evaluate the relationship between public support and lesbian, gay, and bisexual Supreme Court nominees. The results show that the general public is less likely to support bisexual and gay nominees than straight ones. It also shows that when someone is gay (bisexual), they are more likely to support a nominee who is gay (bisexual) as well, along with a strong partisan divide in supporting gay (bisexual) nominees. These results have implications for shared descriptive representation, symbolic representation, and the support of judicial nominees.

Introduction

Descriptive representation of marginalized communities is an essential facet of equitable governance, facilitating the progress of becoming a more representative democracy and ensuring that the voices of underrepresented groups are heard within political institutions. Within this context, the lesbian, gay, bisexual, transgender, and queer (LGBTQ) community constitutes a demographic that continues to be significantly underrepresented in the judiciary. Despite the advancements in LGBTQ rights and acceptance, the presence of LGBTQ individuals within the judiciary remains sparse. According to Root (2019), as of 2019, less than 1 percent of sitting

judges and only 1.4 percent of active judges on the federal bench identify as LGBTQ. Recent milestones, like the nomination and confirmation of Judge Beth Robinson, the first openly lesbian judge to serve on a federal appeals court during the Biden Administration, highlight how rare LGBTQ representation is in judicial roles (Gonzalez, 2021). By March 2024, President Biden has matched the record set by President Obama by the end of his presidency. During President Obama's eight years in office, the Senate confirmed 11 openly LGBTQ judicial nominees. Similarly, by March 2024, the Senate had already confirmed 11 of President Biden's openly LGBTQ judicial nominees during his first term, including Judge Beth Robinson's notable confirmation (The Leadership Conference of Civil and Human Rights, 2024). This underrepresentation has implications not only for the judiciary itself but also for broader issues of equity and representation. While the appointment of Judge Robinson and others like her marks a step toward inclusivity, it underscores the glaring absence of openly bisexual and transgender judges in the federal judiciary. The demographic composition of judges and justices is recognized as a strategic avenue for presidents to make history and cater to significant political constituencies (Kaslovsky et al., 2019). The recent nominations and confirmations within the Biden Administration, including Judge Robinson and Judge Ketanji Brown Jackson to the United States Supreme Court, exemplify the intersection of demographic characteristics and political appointments.

Existing literature on descriptive representation has predominantly focused on the realms of race and gender, investigating the impact of these characteristics on public opinion and political engagement (Kaslovsky et al., 2019; Gay, 2002; Atkeson and Carrillo, 2007; Haider-Markel, 2007). However, little attention has been paid to the role of non-binary genders and sexual orientations within the context of the judiciary despite their potential significance in influencing public attitudes. Research exploring the interaction between these characteristics and public perceptions is limited with extensive exploration of sexuality in relation to voter preferences and choices (Magni and Reynolds, 2021; Sanbonmatsu, 2002). Moreover, the research on public attitudes toward judicial nominees has indicated that Americans are more inclined to support nominees who share specific demographic attributes, highlighting the importance of these characteristics in shaping public opinions (Badas and Stauffer, 2018). However, the impact of a nominee's sexuality on public attitudes remains an area with limited empirical investigation. While existing literature has largely focused on race and gender in the

context of descriptive representation, there has been little attention given to non-binary genders and sexual orientations, particularly in the judiciary. Even though sexuality has been explored in relation to voter preferences and choices, the impact of a nominee's sexuality on public attitudes, especially within the judiciary, remains under-researched.

This paper fills the research gap by examining the relationship between judicial nominees' sexuality, non-binary gender, and public attitudes, expanding the scope of analysis beyond race, binary gender, and partisan differences. By incorporating these characteristics into the study design, the research enhances our understanding of descriptive and symbolic representation and their effects on public opinion, particularly within the LGBTQ community. It provides valuable insights into how the diverse characteristics of judicial nominees influence public attitudes, highlighting the significance of shared sexual identities in shaping perceptions of support among both the general public and key political parties (Democrats and Republicans). The study contributes to the broader discourse on Supreme Court representation by introducing sexuality and non-binary gender into the analysis, addressing gaps left by previous research. For example, while Kaslovsky et al. (2018) found evidence of support for coracial nominees, their findings did not explore the impact of shared sexual identities or non-binary gender on public support for judicial nominees. This paper extends the theoretical perspectives on descriptive representation, applying them to the LGBTQ community and suggesting that shared identities can enhance trust and support among co-sexual individuals. Ultimately, this research adds to the limited literature on LGBTQ representation in the judiciary and emphasizes the broader applicability of descriptive representation theories across different marginalized groups.

Unexpectedly, it provides valuable insight into the community's opinions of in-group and out-group and the parties. This study reveals that LGB individuals are more likely to support an LGB nominee as compared to a straight nominee. Moreover, the trust factor is also significantly lower towards a straight nominee. In fact, the effect is negative, which means that trust and support levels decrease considerably when there is a straight nominee. I also found partisan differences in trust and support of LGB nominees, with Republicans exhibiting less trust and support of LGB nominees compared to straight nominees. This has implications for the symbolic representation of LGB individuals because of the sense of safety and trust that comes with having LGB political elites in government. It is important to conduct additional research to test the specific mechanisms that explain why this is the case. A future time series and survey study

can tell us more about the evolution of preferences or discriminatory tendencies over time and include questions that can be designed to measure preferences, stereotypes, and discriminatory tendencies. The current paper aims to enhance our comprehension of the interaction between descriptive representation and public opinion in the context of the LGBTQ community's representation in the judiciary.

1. Prejudice, Discrimination, and Stereotypes

Recent research shows increased support of public opinion on LGBTQ rights (Abou-Chadi and Finnigan, 2018; Bishin et al., 2016; Golebiowska, 2001). Despite this, many political elites oppose LGBTQ policies and seek to implement anti-LGBTQ policies. Hostility and prejudice against the LGBTQ community creates some degree of penalization based on their descriptive characteristics and LGBTQ on their revealed sexual orientation (Magni and Reynolds, 2021). However, some studies indicate that people who have family members or friends who are part of the LGBTQ community tend to develop more positive attitudes towards the LGBTQ community (Herek and Glunt, 1993; Fingerhut et al., 2011). Further research has shown that younger Americans have been much quicker to accept and embrace gay rights than older Americans (Garretson, 2015; Brewer, 2003). It could be the case that having more persons of the LGBTQ community in the federal judiciary creates the positive exposure needed to increase positive attitudes toward this marginalized group.

Along with the hostility and discrimination toward the LGBTQ community comes homophobia and transphobia. Some theories suggest that negative attitudes about the community come from the context of religion and culture. They explain that religion is often a predictor of certain attitudes towards homosexuality (Worthen et al., 2017) and that those who attend church tend to express more negative attitudes toward homosexuality than those who do not attend (Allport 1996). Some researchers posit that culture and religion are essential to a country like the United States, and when it has a strong self-expressive cultural orientation, personal religious beliefs significantly affect attitudes about homosexuality (Adamczyk and Pitt, 2009). As a result, there is usually an expression of prejudice and discrimination toward sexual minorities (Haider-Markel, 2007). This is because discussions about the LGBTQ community frequently involve moral viewpoints, with political figures pushing to have the government endorse fundamental secular or religious values (Haider-Markel and Meier, 1996; Wald et al., 1996). This

underscores the significance of symbolism in these debates. Examples of this include political figures strongly opposing the idea of same-sex marriages, saying it goes against their religious beliefs. Another example is the debate over abortion. Some politicians argue for strict laws against it because of their religious views, while others believe women should have the choice.

Given the pronounced prevalence of hostility, bias, and discriminatory practices directed toward the LGBTQ community, it becomes imperative to understand the underlying significance of equitable representation for this marginalized demographic. This is because they are vastly underrepresented in all political institutions, specifically the federal judiciary. Research shows that having African Americans be represented in high places of power increases the trust of that institution from other African Americans; this is not the case for White Americans; When there is an increase in the representation of Black Americans, trust and legitimacy decrease from White Americans (Scherer and Curry, 2010). This could be true for other marginalized groups, specifically the LGBTQ community. There would be more trust in the institution when there is increased representation from someone belonging to the LGBTQ community and less trust from straight and White Americans. Public opinion is interconnected with the functioning of the Supreme Court through its influence on the Court's legitimacy, the implementation of its decisions, the actions of other branches of government, and the overall social and legal landscape. While the Court is designed to be insulated from political pressures, it is not entirely immune to the broader societal context in which it operates. This paper hopes to add to the literature on how negative attitudes toward this community may cause lower support for them in political institutions, specifically within the federal judiciary.

1.1 Symbolic, Descriptive, and Substantive Representation

Descriptive representation in politics has substantive and behavioral benefits that have significant policies and procedures implemented, and it also has a symbolic impact, leading to changes in the attitudes and behavior of the involved groups. For example, research shows that when the percentages of women's representation are higher, governing parties are more likely to keep their election promises (Homola, 2021). When focusing on state legislatures, Haider-Markel found that when there is higher LGBT representation, there is greater substantive representation for the community (Haider-Markel, 2007). However, when descriptive representation is lacking, it may lead to a sense of political disconnection and ineffectiveness, potentially resulting in decreased democratic engagement and voter participation (Pantoja and

Segura, 2003). This could be why marginalized groups may support or trust someone more if they descriptively represent them. Since the community is underrepresented, they are more willing to support someone from their community, even if they have different ideologies (Badas and Stauffer 2018). Social identity is defined as “that part of an individual’s self-concept, which derives from that individual's knowledge of that individual's membership of a social group, together with the emotional value attached to that membership” (Fischer-Neumann, 2014). This can explain public opinion research on why being represented descriptively can increase trust, support, and legitimacy within political institutions. Individuals derive a part of their self-concept from their membership in a social group. This membership, along with the emotional value attached to it, influences their attitudes and behaviors. When people see themselves represented descriptively—meaning that a representative shares key characteristics like race, gender, or sexual orientation—they are more likely to feel connected to the political process, trust the representative, and support their decisions. This mechanism explains why marginalized groups may show increased trust, support, and a sense of legitimacy toward political institutions when they feel represented by someone who shares their social identity.

According to the "minority empowerment" theory, descriptive representation promotes diversity and creates political opportunities for marginalized groups, which can encourage democratic engagement and involvement (Bobo and Gilliam, 1990). When race and gender are shared between respondent and candidate — in other words, the “shared descriptive representation theory— respondents will believe that the candidate will represent their interests more; this feeling is increased if people hold intersectional identities and multiple identities are being shared and represented (Montoya et al., 2021). The public may also use descriptive characteristics to decide if they support the court individually. This means that if a judge shares a descriptive characteristic with a person, they are more likely to support them. Since the public generally knows little about the judiciary and its judges, they focus more on the descriptive characteristic that matches them to gauge the amount of support they give them (Kaslovsky et al., 2019; McDermott, 1998). Scholars even state that when the judicial nominee shares a descriptive characteristic with someone, they are more likely to support them because of the shared characteristic, even when they disagree with them politically (Badas and Stauffer, 2018). This suggests that when minorities see themselves represented in the judiciary, it can help create more support and legitimacy for the institution.

Symbolic representation provides a source of identity and validation for individuals within a social group. When members of a marginalized community see someone who shares their identity in a position of power or influence, such as in political or judicial roles, it serves as a powerful symbol of recognition and inclusion. This symbolic representation can reinforce the social identity of individuals within that group, making them feel more connected to and valued by the political system (Fraser, 2000). Symbolic representation explains why descriptive representation (having representatives who share the characteristics of the group) leads to increased trust, support, and legitimacy. The symbolic presence of someone from their group in a position of authority can empower individuals, enhance their sense of belonging, and motivate greater political engagement and trust in the institutions they feel are now more representative of their identity. This emotional and psychological connection is what makes symbolic representation a crucial part of the broader concept of social identity in politics (Lawless, 2004; Campbell and Wolbrecht, 2006; Clayton et al. 2019). In the case of Supreme Court justices, it could be the case that the court decides on a case that could impact the LGBTQ+ community, and individuals a part of this community may expect them to rule in favor of a positive outcome. Even if the decision does the opposite and the LGBTQ+ member writes a dissent, this can still symbolically affect the LGBTQ+ community. These individuals may feel better that someone from their community was present in the decision-making process, representing their perspectives and concerns, even if the outcome was not favorable. The act of dissent by an LGBTQ+ justice can serve as a powerful symbol of resistance and advocacy within the legal system, reinforcing the community's belief that their voices are being heard at the highest levels of government. This symbolic representation can help maintain trust in the judicial system and foster a sense of continued engagement and hope within the community as they see their identity reflected in those who hold positions of authority. Thus, even in the face of adverse decisions, the presence of a representative from their community can provide emotional support and a sense of legitimacy to the institution, making symbolic representation a vital component of how social identity influences public perceptions and political behavior (Stokes-Brown and Dolan, 2010; Lawless, 2004; Lombardo and Meier, 2018). Reinforcing the fact that whether or not the representer fulfills their duties substantively, there can still be positive effects symbolically.

1.2 Public Opinion

Research on public opinion of judges and the judiciary states that the public bases their view of the court according to their ideological preferences and their perception of where they believe the court is ideologically and how this should also relate to how the public views the court's legitimacy (Bartels & Johnson, 2012), or how the public disagrees with judges' judicial decisions and how that can also affect public support of them (Gibson and Nelson, 2015). In terms of both race and gender, when marginalized people see themselves being represented descriptively, it increases trust within the institution and government (Gay 2002 and Mansbridge 1999). This area of research is limited regarding public opinion of the Supreme Court. Although some scholars argue that The Court is or should be viewed as distinct from other political institutions (Gibson and Caldeira, 2009), public opinion is necessary for the legitimacy purposes of the Court. It influences how the court is perceived, whether its decisions are respected and followed, and how it adapts to societal changes. A court that aligns with the values and expectations of the public is more likely to be seen as legitimate and effective in upholding the rule of law. Ways in which they evaluate legitimacy is through the court's fairness and impartiality. If the public believes that the court consistently delivers fair and unbiased decisions, it enhances its legitimacy (Bartels and Johnson, 2013). The decisions made by SCOTUS in the past have had a significant impact on the LGBTQ community, both positively and negatively. For example, *Lawrence v. Texas* (2003), This case struck down Texas's anti-sodomy law. *United States v. Windsor* (2013), this decision defined marriage as between one man and one woman for federal purposes but recognized same-sex marriages for federal benefits. *Obergefell v. Hodges* (2015), this decision legalized same-sex marriage across the United States. *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (2018), this decision opened the question of whether businesses can deny services to LGBTQ individuals based on religious objection. Court rulings have the potential to impact policies at multiple levels. While it is Congress or the lower courts that are responsible for implementing the rulings, their impact can still be felt by the community whether or not there is compliance. Non-compliance can affect how the community is represented in various aspects of society, such as employment, education, and public services. The public will also use descriptive characteristics when evaluating the courts' legitimacy. With the increase in the LGBTQ community, there also needs to be an increase in the effects of their descriptive representation, which this research area lacks. Public opinion of the LGBTQ community has been researched in political science regarding voter rights policy and policy

responsiveness. Research finds that when there is noncongruence between opinion majorities and public opinion, policy tends to be more conservative than voters desire, meaning there is less policy supporting gay rights (Lax and Phillips, 2009; Haider-Markel, 2006).

2. Theory

This lack of research serves as the motivation for this paper. To what extent do descriptive representation theories and findings apply to sexuality and non-binary gender? The shared descriptive representation theory is expected to apply to the LGBTQ community due to their underrepresented and marginalized status. Research suggests that when individuals from marginalized groups see themselves being accurately represented, they tend to have greater trust in the government and institutions (Gay, 2002; Mansbridge, 1999). This is also anticipated to be true for the LGBTQ community. This outcome involves aligning shared descriptive representation with the LGBTQ community, enhancing our knowledge and comprehension of their perspectives. This entails revealing the biases held by individuals external to the community and delving into the viewpoints held by members within the LGBTQ community itself. This paper tests whether the effects of descriptive representation (trust, support, fairness, etc.) can be positive/negative for the Supreme Court by including sexuality and non-binary gender as descriptive characteristics. The results of this paper serve to include public opinion on the Supreme Court and the inclusion of the LGBTQ community as a descriptive characteristic that people look for in the judiciary. The original theory states that people support others with the same characteristics (Kaslovsky et al., 2019; McDermott, 1998; Gay, 2002), and having shared experiences creates a sense of trust. Since they have gone through the same experiences, they believe those individuals can make decisions that would benefit them (Montoya et al., 2021). Due to the systemic oppression and discrimination faced by the LGBTQ community, there is careful consideration of the unique challenges and circumstances associated with this marginalized group, creating an expectation for members of this community to place trust in one another when provided with decision-making authority. This study contributes to the existing body of literature and exemplifies the presence of shared identity within the LGBTQ community, potentially offering a foundation for future research endeavors.

Many people hold specific beliefs and tend to associate with others who share those beliefs (Converse, 1964; Elder and O'Brian, 2022). These beliefs form their way of viewing the world and often shape their opinions. For instance, someone with conservative views is more likely to

support ideas aligned with conservatism. Consequently, if someone falls outside of this conservative perspective, they may be viewed as less capable of making decisions in line with conservative values, leading to less support. This idea may apply to the LGBTQ community too, which means that sometimes people within the community may be hesitant to trust those who are not part of it. In both cases, people are generally more inclined to trust and support those who belong to their "in-group" rather than those seen as outsiders, the "out-group." This phenomenon can be theoretically characterized as "in-group favoritism," denoting the inclination of individuals to exhibit preference towards members of their own group due to their shared group identity, often prioritizing the welfare of in-group members over individuals belonging to out-groups (Mutz and Kim, 2017). Implicitly, individuals may assess judicial nominees by considering their perceived attributes and subsequently extend trust and support contingent upon their affiliation with the same social category. This research doesn't just contribute to what we know about the LGBTQ community valuing representation from within their own group. It also gives us more information about how they see people outside their group. For instance, we might think that the LGBTQ community supports its members, but how do they feel about those who aren't part of it? And why might they have doubts about trusting decisions made by those outsiders? This paper provides empirical evidence to help us find answers to these questions.

From the shared descriptive theory and in-group out-group theory, I create these hypotheses:

- *Hypothesis 1:* Nominees who identify as gay or bisexual will receive lower levels of support, trust, perceived fairness, and perceived qualifications compared to nominees who identify as straight.
- *Hypothesis 2:* Nominees who identify as non-binary will receive lower levels of support, trust, perceived fairness, and perceived qualifications compared to nominees who identify as female or male.
- *Hypothesis 3:* Gay and Bisexual respondents are anticipated to express greater support, trust, perceived fairness, and perceived qualifications for nominees who identify as gay or bisexual.¹

¹ A fourth hypothesis would be included regarding the shared identity of a non-binary respondent and judicial nominee, but the gender of the respondent was not asked in the survey.

Hypotheses 1 and 2 are grounded in in-group and out-group theory. Given that individuals identifying as gay, bisexual, and non-binary are considered minorities and often occupy the out-group position within various social groups in the United States, it is assumed that they will receive comparatively less support than their counterparts who identify as female, male, or straight. However, it is worth noting that while these individuals are part of a marginalized group, not all individuals within the out-group share identical moral values, particularly those aligned with conservative worldviews. This raises the possibility that gay, bisexual, and non-binary individuals may receive support on par with their straight, female, and male counterparts. Hypothesis 3 derives from the premise that shared experiences foster a sense of trust. In light of the notion that individuals who have undergone similar life experiences tend to believe that they can make decisions that would be advantageous to them (Montoya et al., 2021), it is hypothesized that this shared experiential bond will translate into heightened support for individuals within the LGBTQ community.

3. Data

Currently, no Supreme Court Justices openly identify as a member of the LGBTQ community (Lambda Legal, 2017). 14 out of 870 federal judges are openly gay or lesbian, and none are openly bisexual (Gonzalez, 2021); this is less than 1 percent compared to the 7.1 percent of Americans identifying as lesbian, gay, bisexual, or transgender (Jones J, 2022). Knowing these specific statistics is one of the motivations for this conjoint experiment. To see how respondents would feel seeing someone a part of the LGBTQ community in the judiciary. I investigated political attitudes on the sexuality and non-binary gender of Supreme Court nominees through a conjoint survey experiment. Respondents evaluated nominees as if there were a recent vacancy on the Supreme Court.² The survey took place on Amazon's Mturk with a sample of 1147 respondents in April 2022.³

The experimental setup was set up as follows. First, respondents were presented with a statement: "Suppose there is a recent vacancy on the Supreme Court; consider the following

² Although there was a current vacancy when the survey was running, the decision to omit this fact was due to not wanting to give and preconceived notion of who the respondents should favor considering then – Judge Jackson was already nominated.

³ Example of survey questions is provided in the Appendix.

individual is chosen to fill the vacant seat.” Respondents were then presented with five different randomized judicial profiles, including the nominees’ descriptive characteristics, the law school they attended, party affiliation, ABA rating, and preferred judicial philosophy. The descriptive characteristics that were shown were gender (male, female, and non-binary), Sexuality (straight, gay, bisexual), and race (Black, White, Hispanic, Asian, Native American). Male, female, and straight were weighed more to represent the society better, but these attributes were the only ones weighted more than the others; this only pertained to the characteristics within the judicial profile.

Since only about 7.1 percent of Americans identify as lesbian, gay, bisexual, or transgender (Jones J, 2022), we want to replicate that in our judicial profiles so that it can better represent society and respondents do not see an over-representation of LGBTQ candidates when evaluating the judicial profiles. This overrepresentation of LGBTQ candidates in a survey can hint to respondents at what the survey is about and may cause them to have biased answer choices. It is also the case that “in order to generalize to the target population of US adults [we] must weight respondents with certain background characteristics more heavily than others.” (Huff C and Tingley D, 2015). The decision to include Hispanic instead of Latino/a or Latinx was to be aware of randomness errors so we would prevent getting a profile whose gender is non-binary and is Latino/a or Latinx.

Table 1. Outcome Variables

Dependent Variable	Mean	Standard Deviation
	2.527	.0129
Support: “On a scale from strongly support to strongly oppose where would you place your level of support for this individual?”		
Trust: “On a scale of strongly trust to strongly distrust where would you place your level of trust for this individual?”	2.523	.0119
Fairness: “On a scale of very fair to not fair at all, how fairly do you believe this individual can make judicial decisions?”	3.017	.0146
Qualifications: “On a scale of extremely qualified to not qualified at all, how qualified do you believe the individual is?”	3.141	.0155

This would be an issue because someone identifying as non-binary would not identify with a gendered Latino/a term. Latinx was not used to avoid any complex terms respondents would not

understand. The use of gay instead of gay and lesbian can be understood for the same reasoning of possible randomness error of receiving a profile whose gender could be male or non-binary and sexuality is lesbian. The decision to include judicial philosophies in the judicial profiles is because political elites find this important when evaluating nominees and “that while partisanship and ideology strongly influence their public support, nominees’ judicial philosophies also matter.” (Krewson and Owens, 2021). These decisions impact the internal validity of the study. One of the strengths of this study is that it was able to manipulate and randomize multiple characteristics of the judicial nominees. The conjoint analysis helps us understand how different parts of a treatment or situation influence people's behavior. Instead of looking at one thing at a time, it considers multiple factors together. This allows researchers to see which factors have a stronger impact on people's choices and behavior (Hainmuller et al., 2014). The study may have limited external validity due to the extent of information provided in the candidate profiles. In real-life situations, the public may not be aware of crucial details such as the candidate's sexual orientation or judicial philosophy. Furthermore, the public may take into account several other factors besides what is mentioned in the candidate profile (i.e. policy concerns, media intake, etc.). Therefore, future studies should be done to understand the difference between candidates who display their sexuality for the public and candidates who are out but do not include their sexuality for the public to know.

In each profile, respondents were presented with 1 out of 8 law schools: New York University, Stanford, University of Chicago, Cornell, Columbia, Yale, Harvard, and Princeton. 1 out of 3 various Parties, Democrat, Republican, and Other. 1 out of 3 different ABA ratings, Well Qualified, Qualified, Not Qualified. 1 out of 5 different races, Black, White, Native American, Asian, Hispanic, and other. 1 out of 3 different Genders, Male, Female, and Non-Binary, and other. 1 out of 3 different Sexualities, Straight, Gay, Bisexual, and Other. Lastly, 1 out of 3 different Judicial Philosophies, Stare Decisis, Living Constitutionalism, and Originalism.

After each profile was presented, respondents were asked a series of questions across four dimensions: Support for the nominee, Trust in the nominee, Fairness of judicial decisions, and assessment of the nominee’s qualifications. Support and Trust were asked on a four-point scale, and Fairness and Qualifications were asked on a five-point scale. Table 1 shows what survey respondents were asked, along with summary statistics. The random assignment of respondents

to judicial profiles produces many different combinations of characteristics; 9,720 combinations were created from the characteristics of the judicial profile. Previous studies only focused on two genders and no sexuality characteristics; this increased the number of possible Supreme Court nominees in a counterfactual world.

Another difference for this study is that since I focus on the direct exposure of respondents to the nominee profiles, it helps improve other observational studies that may have misperceived characteristics, unaware characteristics, and those that focus on a “single nomination contest to explore how descriptive attributes shape public opinion to the nominee and thus are not able to evaluate a counterfactual nominee.” (Kaslovsky et al., 2021). The data collected from the survey experiment is used to effectively study the amount of support based on the sexuality and gender of the nominee. It is also used to understand the effect of shared sexuality between the nominee and respondent on the amount of support. The results provide predicted margins of sexuality and gender on support, fairness, qualifications, and trust. It also provides the average marginal effect (AME) of shared sexuality. This represents the average difference in attitudes toward nominees among respondents who shared the same sexuality compared to those who did not.

4. Results

The analysis begins with examining four distinct models, each corresponding to a specific dependent variable: Support, Trust, Fairness, and Qualifications. In these models, the primary independent variables, Gender, and Sexuality, are incorporated alongside five control variables: Race, Party affiliation, Law School attendance, Judicial Philosophy, and ABA (American Bar Association) Rating. Notably, all of these variables were systematically integrated into the conjoint judicial profile characteristics.

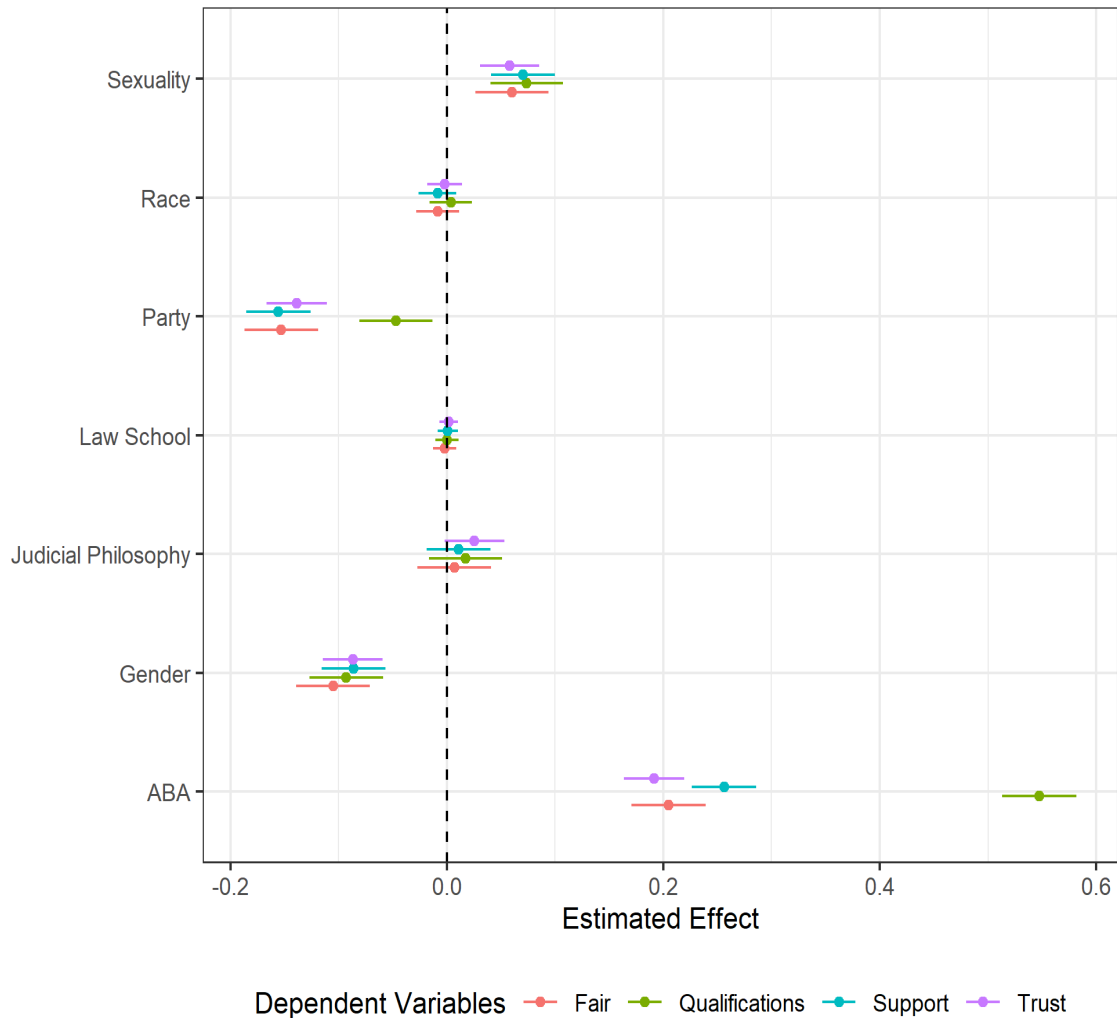


Figure 1 This shows the estimated effects for each independent variable used in the candidate profile according to each of the four dependent variables. Each dependent variable is represented by a different color with 95% confidence intervals.

Figure 1 represents all four models within a conjoint plot, revealing that both primary independent variables exhibit statistical significance across all four dependent variables, as do Party affiliation and ABA Ratings. In these models, Gender consistently exhibits a negative coefficient, suggesting that respondents express lower levels of Fairness, Trust, Support, and perceived Qualifications according to Gender, which indicates potential gender-related disparities in these assessments. Conversely, the sexuality variable in Figure 1 consistently displays a positive coefficient, implying that respondents associated with different sexuality levels tend to report higher levels of Fairness, Trust, Support, and perceived Qualifications, holding all else constant. This finding suggests there is significance for sexuality as a descriptive characteristic. I can attribute these findings to many things. First, including the Non-Binary

gender category within the model facilitates the incorporation of diverse perspectives and responses that may pertain specifically to individuals identifying as non-binary. This inclusion could account for the observed negative coefficients across the dependent variables.

Furthermore, a need exists for more comprehensive survey inquiries. A single question may be insufficient for comprehending the nuanced dynamics governing Support, Fairness, Trust, and Qualifications among respondents.

Consequently, augmenting the survey with follow-up questions related to all dependent variables becomes imperative to acquire more precise and insightful participant responses. Thirdly, these results could be due to the unbalanced sampling of Amazon's Mechanical Turk (MTurk). The descriptive statistics of MTurk sampling are known to be overwhelmingly Male, White, and Straight (Huff and Tingley, 2015). This could provide a limitation for this data because of the need for more diversity in the sample. Not having enough representation from the LGBTQ community in the sample provides a power issue for the findings and could explain why Sexuality and Gender have different effects across the four dependent variables. Lastly, these results could be attributed to social desirability bias. In the context of trust, individuals might perceive it as socially desirable to express higher trust levels, especially regarding sensitive or controversial topics related to sexuality. For example, individuals might be cautious about openly expressing low levels of trust in sexuality-related matters to avoid appearing biased, discriminatory, or insensitive to sexuality-related issues. This could result in them providing responses that indicate higher trust. This could be mitigated by changing the wording of the survey questions and using implicit measures to assess attitudes or beliefs indirectly, which can reveal subconscious biases that may not be disclosed through self-report. These limitations require further investigation, which would be great for future research.

I then analyze how sexuality can affect the public attitudes towards Supreme Court nominees. Figures 2-9 represent the first two hypotheses that those who are a sexual or gender minority are supported less than their majority counterparts. Figures 2-5 show the amount of Support, Trust, Fairness, and Qualifications respondents thought of the nominee based on sexuality. The results show consistency across all four variables.

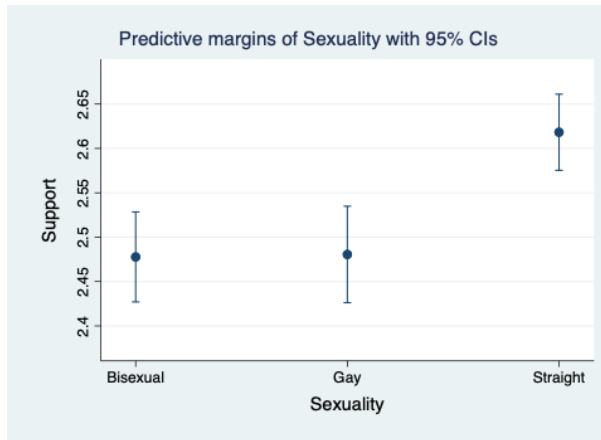


Figure 2

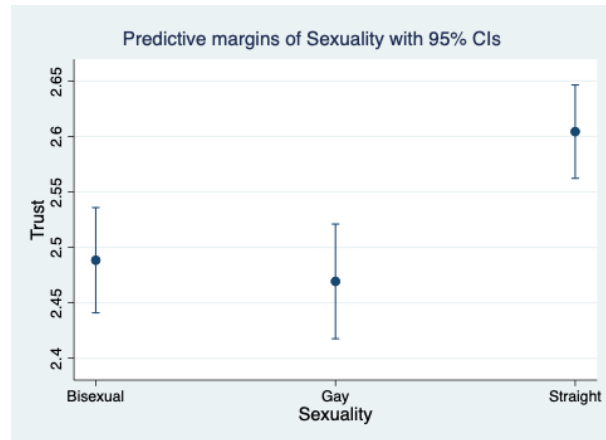


Figure 3

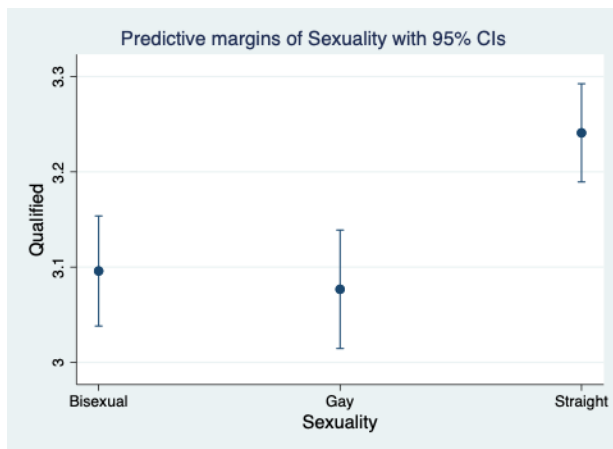


Figure 4

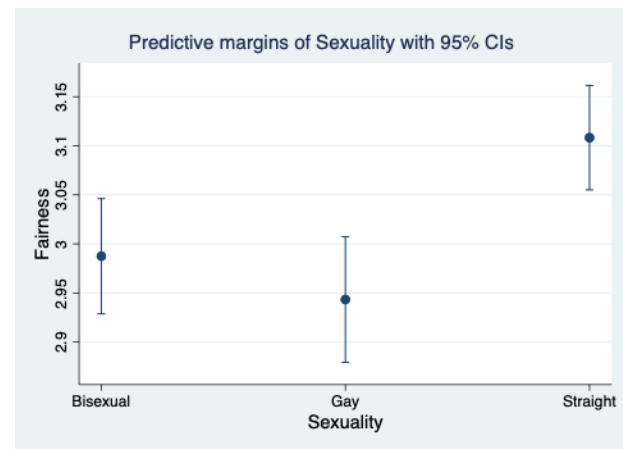


Figure 5

These figures show the predictive margins of each of the four dependent variables based on the sexuality of the nominee. The x-axis is whether the nominee in the candidate profile was Bisexual, Gay, or Straight. All three variables are statistically significant at the .05 level. The y-axis represents the four dependent variables where Support and Trust were measured on a 4-point scale, and Qualifications and Fairness were measured on a 5-point scale.

When a nominee is bisexual or gay, they receive less support and trust than when they are straight. Furthermore, it shows that respondents are less likely to believe they can make fair decisions when the nominee is gay or bisexual and are believed to be less qualified when the nominee is gay or bisexual compared to when they are straight. The points on the graph represent the coefficient estimates they are surrounded by straight lines representing the 95 percent confidence intervals. The x-axis shows whether the nominee was bisexual, gay, or straight. The y-axis shows the respondents' amount of Support, Trust, Fairness, or Qualifications. All of the variables, Bisexual, Gay, and Straight, are statistically significant, with p-values less than .000 across all dependent variables.

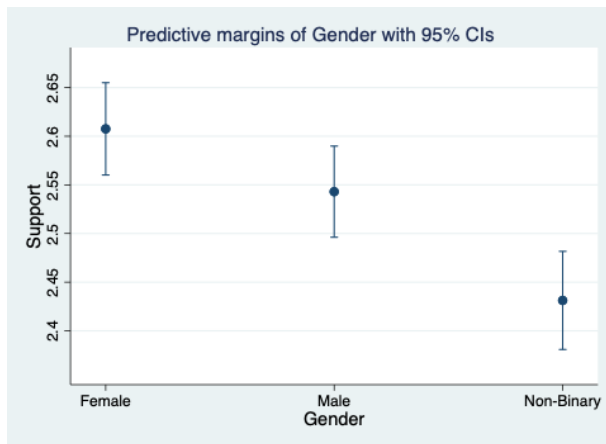


Figure 6

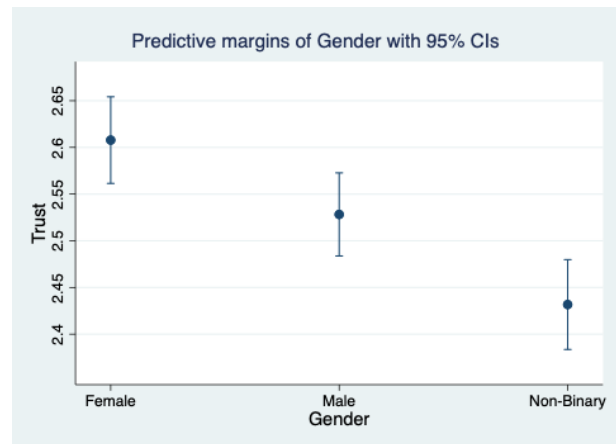


Figure 7

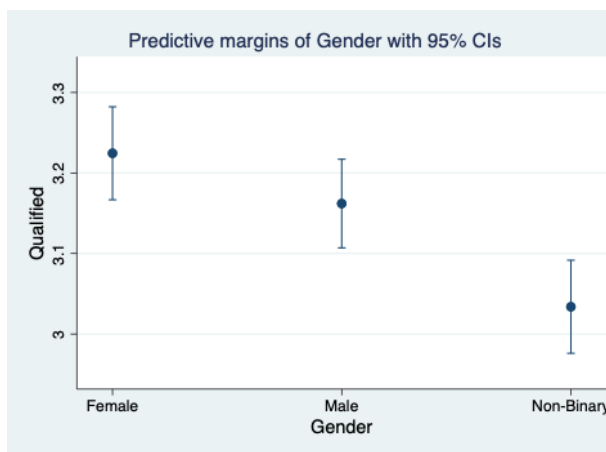


Figure 8

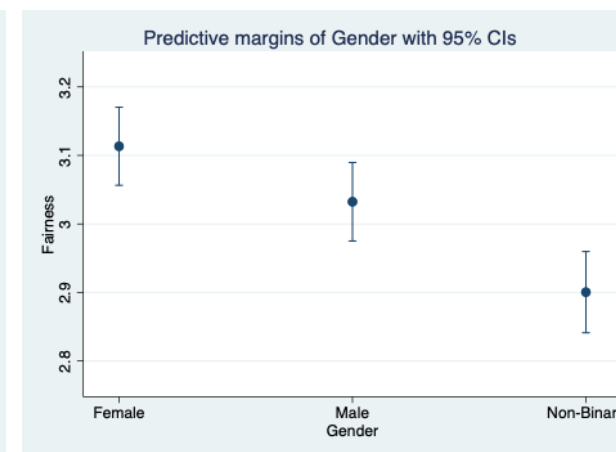


Figure 9

These figures show the predictive margins of each of the four dependent variables based on the gender of the nominee. The x-axis is whether the nominee in the candidate profile was Female, Male, or Non-binary. All three variables are statistically significant at the .05 level. The y-axis represents the four dependent variables where Support and Trust were measured on a 4-point scale, and Qualifications and Fairness were measured on a 5-point scale.

Figures 6-9 show how gender can affect the public attitudes of Supreme Court nominees. This corresponds with the second hypothesis that nominees are supported less when they are non-binary compared to when they are male or female. They show the amount of Support, Trust, Fairness and Qualifications respondents thought of the nominee based on gender. The results show consistency across all four variables. When a nominee is non-binary, they receive less support and trust than when they are male or female. It also shows that respondents are less likely to believe the nominee can make fair decisions when the nominee is non-binary and are believed to be less qualified when they are non-binary than when they are male or female.

The points on the graph represent the coefficient estimates, surrounded by the straight lines that represent the 95 percent confidence intervals. The x-axis shows whether the nominee was female, male, or non-binary. The y-axis shows the amount of support, trust, fairness, or qualifications the respondents gave. The results show support for the second hypothesis. The graphs above show that all of the variables, Female, Male, and Non-Binary, are statistically significant with p-values less than .000 across all of the dependent variables. Since the findings have validated the first and second hypotheses, the focus shifts to understanding the reasons behind these outcomes. It is suggested that those with conservative views often have traditional beliefs, shaping their opinions and how they offer support. Consequently, when someone's perspective doesn't align with these conservative viewpoints, they might be perceived as less capable of making decisions in line with traditional ideals. This difference in perspective could result in lower support levels from individuals with conservative viewpoints, which means that sometimes, people within the community may be hesitant to trust the decision-making abilities of those not part of it.

Graphs 10-13 show the average marginalized effect of shared sexuality. These graphs test the third hypothesis that Gay and Bisexual persons will support a nominee more if they are gay or bisexual. In each model, we use the average opinions expressed by Gay and Bisexual respondents as the baseline for comparison when evaluating the sexuality of judicial nominees. This helps us understand how closely the sexuality of the nominees aligns with that of Gay and Bisexual respondents. Additionally, it considers how Gay and Bisexual respondents view judicial nominees who identify as Straight. These results show that when there is a shared identity of gay and bisexual between the respondents and the nominee, respondents have higher support and trust than when the respondents are straight and don't have shared characteristics in sexuality. For the dependent variable Support, only Bisexual and Gay are statistically significant with p-values less than .001. For the dependent variable, Trust, only Bisexual is statistically significant with a p-value less than .05. For the dependent variable, Fairness, none of the variables are statistically significant. Lastly, for the dependent variable Qualifications, only Bisexual is statistically significant with a p-value of less than .005. The points on the graph represent the average coefficient estimates, surrounded by the straight lines that represent the 95 percent confidence intervals.

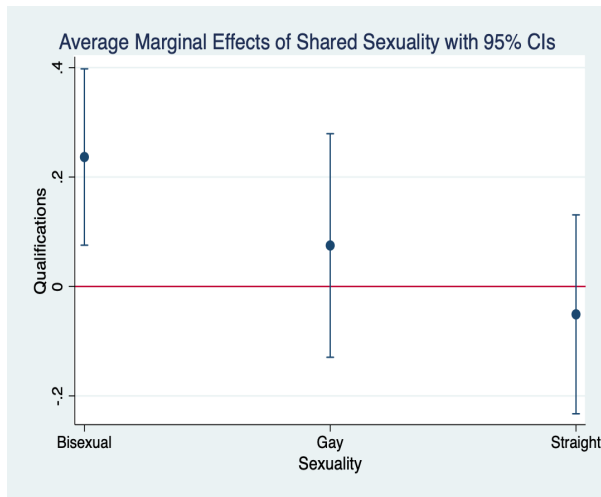


Figure 10

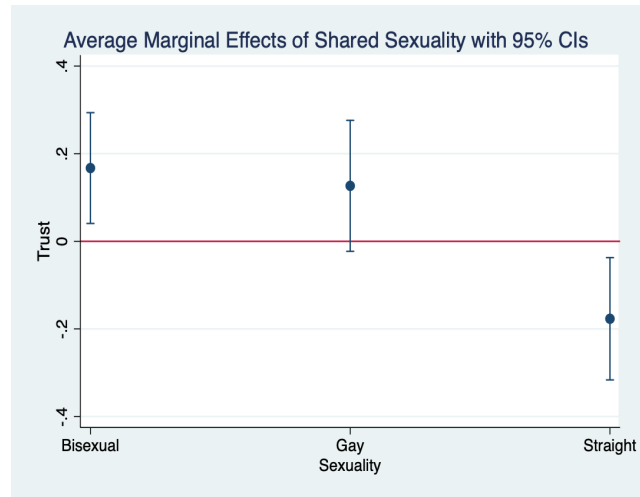


Figure 11

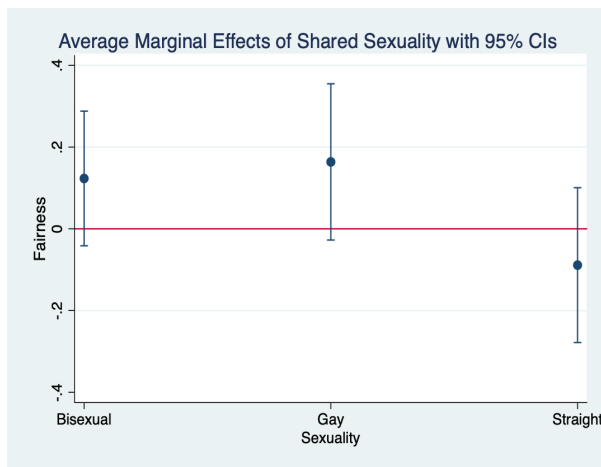


Figure 12

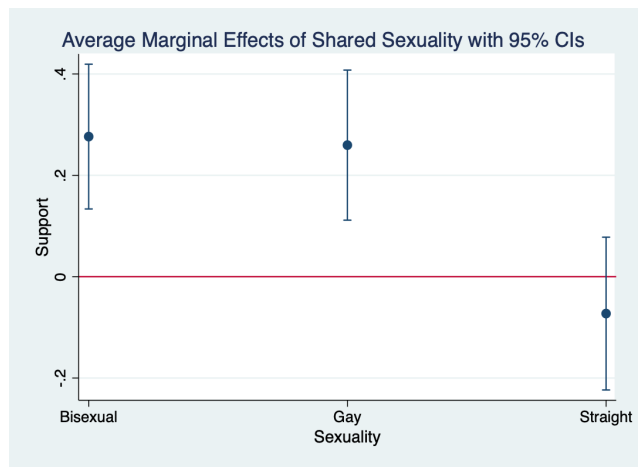


Figure 13

These figures show the Average marginal effect of each of the four dependent variables based on how Gay and Bisexual respondents reviewed Bisexual, Gay, and Straight nominees. The x-axis represents the sexuality of the nominee in the candidate profile, Bisexual, Gay, or Straight. The y-axis represents the four dependent variables where Support and Trust were measured on a 4-point scale, and Qualifications and Fairness were measured on a 5-point scale.

The findings indicate that respondents provide more support for Supreme Court nominees who share the same sexuality. There is not as much consistency in these results as before, meaning that only some variables were statistically significant across all dependent variables. None were statistically significant for the Fairness dependent variable, but Bisexual was statistically significant for all the other dependent variables. The inconsistent results may be because of the low amount of gay and bisexual respondents who took the survey⁴; because of

⁴ Descriptive statistics are available in the Appendix, these entail how many LGBTQ respondents took the survey.

this, it might affect the results. Secondly, MTurk's sample size is not as diverse as this study would need; an oversample of LGBTQ respondents may be required for further analysis to gain consistent results. The only variable that supports the third hypothesis is the dependent variable, Support. This means that Gay and Bisexual persons will support a nominee more if they are gay or bisexual. A reason gay and bisexual persons support those with their shared sexuality may be because they find comfort in those with the same sexuality. After all, individuals who have undergone similar life experiences tend to believe that they can make decisions that would benefit them (Montoya et al., 2021).

The public may also use descriptive characteristics to decide if they support the court individually. This means that if a judge shares a descriptive characteristic with a person, they are more likely to support them. This may be because since the public generally has little knowledge about the judiciary and its judges, they focus more on the descriptive characteristic that matches them to gauge the amount of support they give them (Kaslovsky et al., 2019; McDermott, 1998). Scholars even state that when the judicial nominee shares a descriptive characteristic with someone, they are more likely to support them because of the shared characteristic, even when they disagree with them politically (Badas and Stauffer, 2018). It is interesting to note that the survey results also reveal the perspective of LGB respondents towards straight nominees. It was found that LGB respondents have less trust and support for a straight nominee. This could be due to the perception of straight nominees as the out-group by LGB respondents. They may assume that these individuals do not share the same values, thus they would not make decisions that align with their beliefs. This research leaves the door open to explore how being transgender may affect support for a Supreme Court nominee, as there is still very little research done on this type of descriptive characteristic and to better understand the dynamics within the LGBTQ community. Future studies can also analyze how the discrimination of transgender individuals within the LGBTQ community has effects on public opinion. Further research is required to investigate the impact of transgender identity on support for a Supreme Court nominee, as there is limited research on this particular descriptive characteristic. It is also essential to analyze the dynamics within the LGBTQ community and how discrimination against transgender individuals from within the community affects public opinion. Future studies can shed light on these aspects and help us better understand the topic.

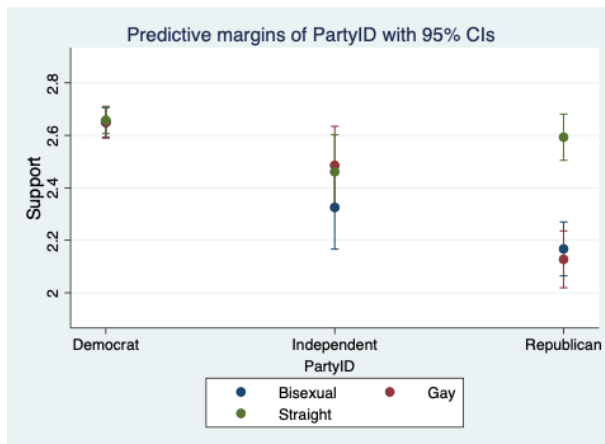


Figure 14

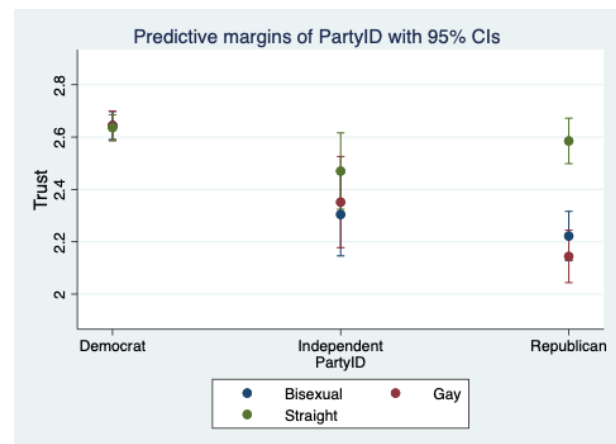


Figure 15

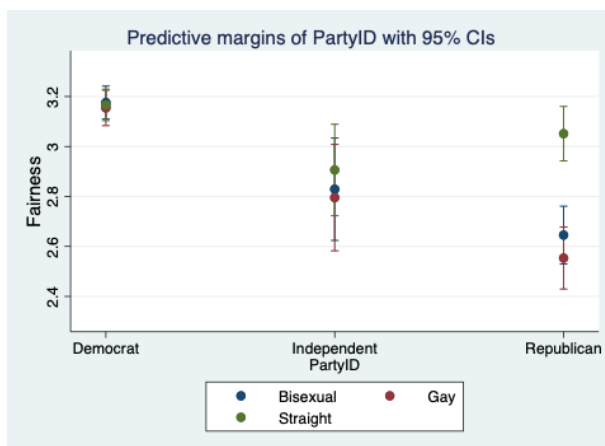


Figure 16

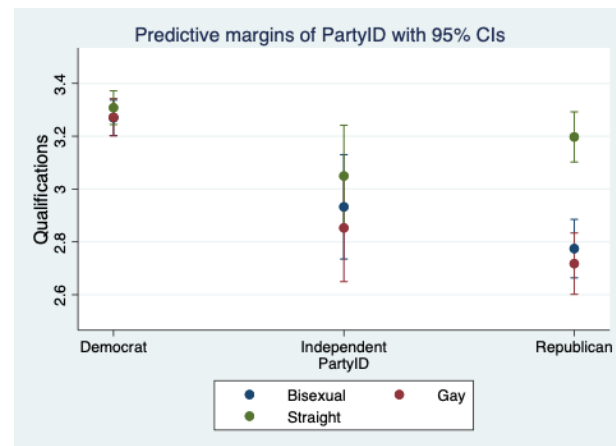


Figure 17

These figures show the predictive margins of each of the four dependent variables based on the party identification of the respondent and how they reviewed the sexuality of the nominee in the candidate profile. All variables are statistically significant at the .05 level. The x-axis represents the party identification of the respondent, Democrat, Independent, or Republican. The y-axis represents the four dependent variables where Support and Trust were measured on a 4-point scale, and Qualifications and Fairness were measured on a 5-point scale.

Subsequently, I examined potential disparities in evaluations based on political affiliation, specifically probing how individuals aligned with different political parties assess Supreme Court nominees based on their sexual orientation. While this did not adhere to a specific hypothesis, it holds significance as it sheds light on whether members of distinct political parties exhibit varying levels of support for judicial nominees who identify as gay or bisexual. The above figures show the amount of Support, Trust, Fairness, and Qualifications respondents thought of the nominee's sexuality based on the respondents' party identification.

The results show consistency with the Democrat variable evaluating all sexualities the same across all four dependent variables, being statistically significant with p-values less than .000. For Independents, there is a difference between sexualities, but the differences are not great. Each sexuality is statistically significant with p-values less than .000. For Republicans, the results show that when a nominee is gay or bisexual, they support and trust them less than when the nominee is straight and believe that a nominee is not as qualified or make fair decisions when they are gay or bisexual. All variables are statistically significant across all dependent variables with p-values less than .000. The x-axis shows whether the respondent was a Democrat, Independent, or Republican. The y-axis shows either the amount of Support, Trust, Fairness, or Qualifications the respondents gave. The different points show whether the nominee was gay, bisexual, or straight.

These findings can be elucidated by examining respondents' perceptions of decision-making processes within sexual minority groups. Assuming that individuals identifying as Republicans and adhering to conservative worldviews prioritize moral convictions as their primary decision-making framework, they may believe that LGB nominees would arrive at decisions misaligned with their ethical principles. Consequently, this perception could lead them to regard such nominees as less proficient in making decisions that align with conservative values, ultimately resulting in diminished support. As we learned from the previous results, both Republicans and LGB respondents penalized their out-group. I expect that Republicans may penalize LGBTQ nominees more than Democrats due to differences in ideological beliefs and values. The Republican Party tends to have a more conservative base that often emphasizes traditional views on gender roles, sexuality, and family structures. These values can lead to skepticism or outright opposition to LGBTQ individuals, particularly in positions of authority like judicial nominees, as these nominees may be perceived as being less aligned with conservative principles. In contrast, the Democratic Party generally has a more progressive stance on issues related to LGBTQ rights, equality, and inclusion. Democrats are more likely to support policies and nominees that reflect these values, viewing LGBTQ representation in the judiciary as a positive step toward broader social justice and equity. This ideological difference is why Republicans might be more likely to penalize LGBTQ nominees, seeing them as part of an "out-group" that does not align with their values, while Democrats are more likely to support

them as part of an inclusive and diverse society. This is interesting because we can further test as to what specific mechanisms are driving this in a future study.

5. Conclusion

The current composition of the Supreme Court includes individuals from various demographic backgrounds, such as White women, Hispanic women, African American men, and most recently, an African American woman, Judge Ketanji Brown Jackson. However, it still lacks diversity regarding other underrepresented groups, notably the LGBTQ community. This research introduces hypothetical scenarios through randomized judicial profiles, exploring the potential inclusion of LGBTQ individuals as Supreme Court nominees. The findings reveal that respondents generally express more significant support for heterosexual nominees compared to gay or bisexual ones. Additionally, respondents exhibit more robust support for male and female nominees over non-binary nominees. Notably, gay and bisexual respondents tend to provide more support for nominees who share their sexual orientation. These findings align with the stated hypotheses, although some aspects of shared sexual orientation yielded inconclusive results, likely due to the sample's limited representation of LGB respondents.

This paper sheds light on how a person's sexuality and gender identity, including non-binary identities, can influence public perceptions of judicial nominees. It also delves into how individuals affiliated with different political parties evaluate nominees based on their sexuality. While some aspects of the findings concerning shared sexuality yielded inconclusive results, conducting another survey with a larger representation of gay and bisexual individuals may help resolve this inconsistency across the four dependent variables. The results of this study, in conjunction with those of Kaslovsky et al., suggest that individuals from marginalized communities, including the LGBTQ community, may encounter reduced support if they become judicial nominees. There appears to be a notable connection between marginalization, underrepresentation, and the potential negative impact of anti-LGBTQ policies on attitudes towards the LGBTQ community. Given the LGBTQ community's high exposure to hostility, prejudice, and discrimination, it becomes increasingly vital to understand the significance of their representation in political institutions. This is particularly relevant since the LGBTQ community remains significantly underrepresented in various political institutions, especially the federal judiciary. Understanding the impact of the Supreme Court's case decisions on policy representation is crucial, as it directly affects the lives of the public. It's equally important to

recognize the significance of LGBTQ representation on the court, not just for policy concerns but for the community as a whole. This paper demonstrates that having an LGB nominee on the court who shares the same sexuality with an LGB person can increase trust and support, highlighting the value of LGB representation in improving public opinion. Upon conducting further tests, we can gain insight into the implications of this for the judiciary as an institution and its relevance to other political bodies such as the executive or legislative branch. In the face of ongoing anti-LGBTQ policy initiatives, it becomes crucial to ensure that all segments of the LGBTQ community are adequately represented across political institutions. Research has also indicated that individuals with family members or friends in the LGBTQ community tend to hold more positive attitudes towards them. Therefore, increased visibility of LGBTQ community members in political roles could foster more positive societal attitudes, presenting an avenue for further research.

One limitation of this study is that it is not entirely inclusive of the LGBTQ community and leaves room for further research to try and reach this goal. For example, this study cannot test a shared descriptive analysis of Non-binary as a gender. Since it is the case that most people need to be more knowledgeable of the judiciary, it could be the case that the judicial profiles present more information to respondents than they would have in the real world. An example of this would be the inclusion of judicial philosophy. Most of the public may not know what each of the philosophies means, but, this does not mean they should not be included since we know that “while partisanship and ideology strongly influence their public support, nominees’ judicial philosophies also matter.” (Krewson and Owens, 2021). However, there is still a chance that the profiles are not as generalizable. The Supreme Court is often viewed as a somewhat isolated institution because the public does not elect its members. This can lead some to believe that public opinion doesn't significantly impact the Court's decisions. For future research, it would be valuable to replicate this study but focus on state supreme courts, such as the one in Texas, where judges are elected. This could help us understand how voting behavior and elections influence public opinion in the context of state supreme courts.

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APPENDIX A: Survey Question

pid Generally speaking, do you consider yourself as a Democrat, Republican, Independent, or something else?

- Democrat (1)
 - Republican (2)
 - Independent (3)
 - Other (4)
-

Q71 What is your sexuality?

- Gay (1)
 - Straight (2)
 - Bisexual (3)
-

Q72 What is your race?

- American Indian or Alaska Native (1)
 - Asian (2)
 - Black or African American (3)
 - Native Hawaiian or Other Pacific Islander (4)
 - White (5)
-

Display This Question:

If Generally speaking, do you consider yourself as a Democrat, Republican, Independent, or something... = Democrat

pidd Do you consider yourself a strong Democrat or not a strong Democrat?

- Strong Democrat (1)
- Not a strong Democrat (2)

Display This Question:

If Generally speaking, do you consider yourself as a Democrat, Republican, Independent, or something... = Republican

pidr Do you consider yourself a strong Republican or not a strong Republican?

- Strong Republican (1)
- Not a strong Republican (2)

Display This Question:

If Generally speaking, do you consider yourself as a Democrat, Republican, Independent, or something... = Independent

Or Generally speaking, do you consider yourself as a Democrat, Republican, Independent, or something... = Other

pidi Do you consider yourself closer to the Democrats, closer to the Republicans, or neither?

- Closer to Democrats (1)
- Closer to Republicans (2)
- Neither (3)

Display This Question:

If Generally speaking, do you consider yourself as a Democrat, Republican, Independent, or something... = Democrat

Or Do you consider yourself closer to the Democrats, closer to the Republicans, or neither? = Closer to Democrats

demi How important is being a Democrat to you?

- Not at all important (1)
 - Not very important (2)
 - Moderately important (3)
 - Very important (4)
 - Extremely important (5)
-

Display This Question:

If Generally speaking, do you consider yourself as a Democrat, Republican, Independent, or something... = Republican

Or Do you consider yourself closer to the Democrats, closer to the Republicans, or neither? = Closer to Republicans

repi How important is being a Republican to you?

- Not at all important (1)
 - Not very important (2)
 - Moderately important (3)
 - Very important (4)
 - Extremely important (5)
-

edu What is the highest level of school you have completed or the highest degree you have received?

- Less than high school degree (1)
 - High school graduate (high school diploma or equivalent including GED) (2)
 - Some college but no degree (3)
 - Associate degree in college (2-year) (4)
 - Bachelor's degree in college (4-year) (5)
 - Master's degree (6)
 - Doctoral degree (7)
 - Professional degree (JD, MD) (8)
-

dob In what year were you born? (please enter only four digits. For example 1976)

Q81 Are you Spanish, Hispanic, or Latino/a?

- Yes (1)
 - No (2)
-

Q82 What region of the United States do you live in?

- The Midwest (1)
- The South (2)
- The West (3)
- The Northeast (4)
- The Northwest (5)
- The East (6)

End of Block: Political Demographics

End of Block: Block 7

Start of Block: Block 10

Suppose there is a recent vacancy on the Supreme Court, consider the following individual is chosen to fill the vacant seat.

Law School	Princeton
ABA Rating	Not Qualified
Race	Hispanic
Judicial Philosophy	Living Constitutionalism
Party	Democrat
Sexuality	Gay
Gender	Male

Judicial profile 1 ⁵

Suppose there is a recent vacancy on the Supreme Court, consider the following individual is chosen to fill the vacant seat.

Q18 On a scale from strongly support to strongly oppose where would you place your level of support for this individual?

- Strongly Support (1)
 - Somewhat Support (2)
 - Somewhat Oppose (3)
 - Strongly Oppose (4)
-

Q19 On a scale of strongly trust to strongly distrust where would you place your level of trust for this individual?

- Strongly Trust (1)
 - Somewhat Trust (2)
 - Somewhat Distrust (3)
 - Strongly Distrust (4)
-

⁵ This is an example of what the judicial profile looked like for respondents. Each of the attribute levels were randomized and a different profile was shown five times.

Q20 On a scale of Very fair to Not fair at all, how fairly do you believe this individual can make judicial decisions?

- Very Fair (1)
 - Somewhat Fair (2)
 - Somewhat Unfair (3)
 - Not Fair At All (4)
-

Q73 On a scale of Well qualified to Not qualified, how qualified do you believe the individual is?

- Well Qualified (1)
- Somewhat Qualified (2)
- Not Qualified (3)
- Not Qualified at all (4)

APPENDIX B: Descriptive Statistics Table

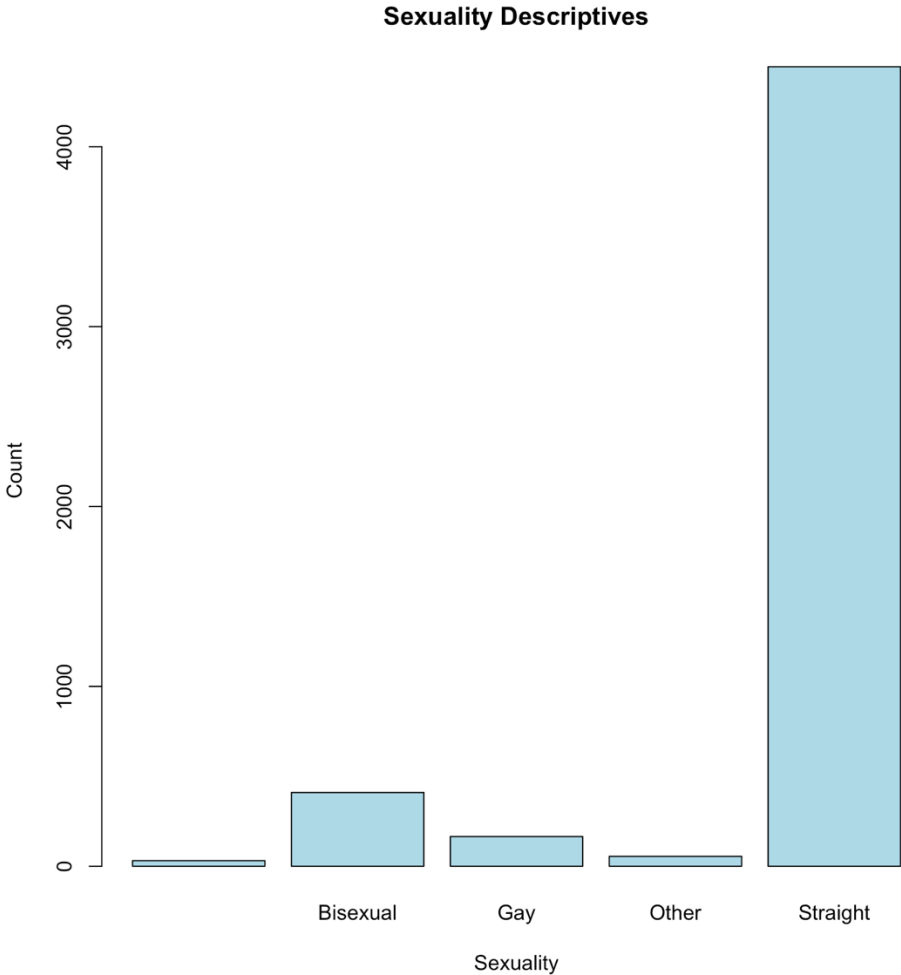


Figure 18