

# How Judicial Integrity Generates Public Support for Judicial Nominees\*

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How do citizens evaluate candidates for highest courts? We argue that the public demands judicial integrity from candidates, which depends on the public's perception of a candidate's political independence and her level of judicial professionalism. We employ a discrete-choice experiment in order to untangle the relative importance of both dimensions for gaining public support of a judicial nominee and to identify the type of nominee the public prefers most. We also identify the "price" in terms of deviation from the ideal of political independence citizens are willing to pay in order to receive

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a candidate with a high level of judicial professionalism. Our results clarify the conditions under which a judicial candidate's perceived lack of political independence can be compensated. Moreover, studying the public's ideal judge has major implications for understanding the mechanisms that explain legitimacy attributions to institutions that are, like the judiciary, not directly accountable to the public.

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9,746 words (excluding abstract and supporting information)

# 1 Introduction

How do citizens evaluate potential candidates for the highest courts? While the public does typically not select those judges directly, most of their decisions have important implications for the public at large. Although there seems to be no standard model democracies follow when selecting judges to the highest court, the comparative judicial politics literature shows that political elites overwhelmingly control the selection of judges (Hönnige, 2007, 2008; Venice Commission, 1997). How they play this out within recent constitutional crises, for instance in Hungary and Poland, reminds us that the selection of judges to the highest courts belongs to the fundamental challenges faced by newly established democracies.

Despite the fact that the public does not select candidates for highest courts directly, it is crucially important to understand the public's perception of those nominees. In fact, political elites even have a vital interest in selecting judicial candidates the public would support rather than, say, always choosing candidates who hold strong partisan ties. The comparative literature established above and beyond the best studied case, the US Supreme Court, shows that constitutional courts are influential political actors (e.g., Brouard and Hönnige, 2017; Hanretty, 2012, 2013; Hönnige, 2011; Krehbiel, 2016; Staton, 2006, 2010; Vanberg, 2001, 2015) that make decisions influencing the policy-making process and, therefore, the life of every citizen. Political elites as principals might have the power to stuff constitutional courts as agents. However, given that political elites also depend on the public themselves through popular elections, elites have an interest in selecting judicial candidates whose decisions are widely accepted by the public, and particularly when the court makes a decision in the political interest of the political elites.

What kind of judicial candidate does the public prefer? We argue that the public demands judicial integrity. This integrity is a function of a judge's professionalism and her political independence. The former refers to the vocational qualities of a candidate, the latter refers to a judge's impartiality. Political elites are well advised to appoint candidates the public perceives as persons of judicial integrity to the bench. This will facilitate acceptance of the court's decisions and contributes to the overall legitimacy of the judiciary.

We make three contributions. First, we present a novel theory – judicial integrity – which is applicable to any democratic political system in which political elites control the selection of judges but are responsive to the public. Using available cues from a candidate’s profile, the public perceives that nominee’s level of judicial professionalism and political independence and evaluates her judicial integrity. Therefore, a strength of our theory is that citizens need no expert knowledge to evaluate both dimensions.

The key requirement to study perceived judicial integrity among the public is the separation between correlates of judicial professionalism and political independence. Using traditional surveys to assess perceptions of each component of judicial integrity is challenging because in practice it amounts to assuming orthogonal, i.e. separable components. Our second contribution is to provide a research design, a discrete-choice experiment ([Hainmueller, Hopkins and Yamamoto, 2013](#); [Hainmueller and Hopkins, 2015](#); [Louviere, Hensher and Swait, 2000](#)), that allows us to untangle the relative importance of both dimensions for gaining public support of a judicial nominee, identify the type of nominee the public prefers and, most importantly, understand the trade-off the public implicitly makes when evaluating judicial candidates.

Our third contribution is that we are able to provide evidence from a non-US case that helps to put the US findings on the perception of Supreme Court nominees ([Rogowski and Stone, 2017](#); [Sen, 2017](#)) in a comparative perspective. To do so, we administered a discrete-choice experiment to a random sample of German citizens and leveraged a panel-design to test the reliability of the survey responses. Across two panel waves, we repeatedly presented respondents with pairs of profiles of judicial nominees for the German Federal Constitutional Court (FCC) that depend on personal characteristics, characteristics of who nominated them, and nominees’ political leanings all of which were randomly generated. Our study is not dependent on particular features of the political system of our case. The two dimension of judicial integrity – judicial professionalism and political independence – are prerequisites for the judiciary in any democratic regime. Hence, while we use our approach to map judicial integrity in one county, we provide the blueprint to map judicial integrity comparatively.

On the one hand, the results indicate that the public prefers politically independent nominees who also have a high level of judicial professionalism. Political independence is more important than judicial professionalism if respondents have to choose between respective judicial candidates. On the other hand, our research designs allows us to show for the first time that there is a price in terms of deviation from the ideal of political independence that citizens are willing to pay in order to get a candidate who ranks high on judicial professionalism. This means that judicial professionalism can compensate to some degree for the lack of political independence of a candidate. These findings have large implications for other institutions and their perceived reservoir of legitimacy that, like highest courts, are not directly accountable to the public.

## **2 Judicial Integrity through Judicial Selection**

In this section, we argue that the public's interests are vital when political actors nominate and select judges. Public support and acceptance are essential for an efficient judiciary (Vanberg, 2010). As recipient of judicial power, the public demands a judiciary of integrity. In this regard, perceived judicial integrity is a function of (1) a judge's judicial professionalism and (2) a judge's independence from politics.

### **2.1 Judicial Selection by the Public**

Despite having “no influence over either the sword or the purse” (Hamilton in Federalist 78), courts have become powerful political and societal players with broad privileges (Vanberg, 2001, 2015; Hanretty, 2013; Hönnige, 2011; Tate and Vallinder, 1995). However, the capability of political actors to oversee judicial action is limited. Instead, judges can easily develop own interests, and these interests may diverge from the interests of the political actors. Hence, rational political actors will apply strategies to prevent losing ties with the judiciary. Selecting favorable judges is the easiest way to do so. In fact, international comparison shows that political actors overwhelmingly control the selection of judges (Hönnige, 2008). However, why is it that political actors in democracies do

not always choose judges holding strong party ties?

The reason is that decisions taken by judges will not solely affect political actors, but the decisions also have implications for the society at large. Moreover, political actors are dependent on the public, who in turn is effected by judicial decisions. This is why vote-seeking and office-seeking political actors cannot simply appoint judges to make decisions in their own partisan interest. Instead, they need to appoint judges whose decisions, even if politically motivated, are also accepted by the public. In other words, judges who take actions need to be perceived with a certain level of integrity by the public in order for these actions to appear legitimate. When selecting judges, democratic political actors need to pay attention to a judge's personal and professional traits that enhance this judge's integrity among the public at large. These traits facilitate acceptance of the decisions taken by a respective judge. Only judicial integrity allows courts to work efficiently and for the benefit of the political system and the public. The US Supreme Court has restated the importance of judicial integrity in *Caperton v. A.T. Massey Coal Co., Inc.*, referring to the Concurring Opinion of Justice Kennedy in *Republican Party of Minnesota v. White*:

Courts, in our system, elaborate principles of law in the course of resolving disputes. The power and the prerogative of a court to perform this function rest, in the end, upon the respect accorded to its judgments. The citizen's respect for judgments depends in turn upon the issuing court's absolute probity. Judicial integrity is, in consequence, a state interest of the highest order.

(*Caperton v. A.T. Massey Coal Co., Inc.*, 129 S. Ct. 2252, 2266-67)

In this respect, the Supreme Court follows the guidelines published in volume two of the *Code of Conduct for United States Judges* by the United States Courts.<sup>1</sup> Canon 1 of these guidelines states that "A Judge Should Uphold the Integrity and Independence of the Judiciary." Hence, the judge herself needs to contribute to this integrity. What factors make a judge – at least perceived to be – a person of integrity?

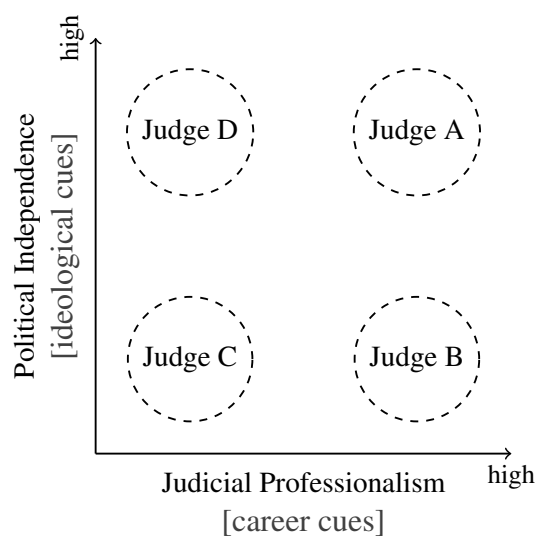
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<sup>1</sup>United States Courts: [http://www.uscourts.gov/sites/default/files/vol102a-ch02\\_0.pdf](http://www.uscourts.gov/sites/default/files/vol102a-ch02_0.pdf) [last access: 08/03/2017].

Studies on how the public perceives judicial decision-making suggest that there exists a trade-off between a court's professional behavior and judges ideological leanings. Accordingly, unanimous court decisions signaling judicial unity increase a court's acceptance among the public as well as its general appearance as apolitical (Baird and Gangl, 2006; Ramirez, 2008; Farganis, 2012; Walker, Epstein and Dixon, 1988). Unity among judges leads to the impression that the court has found a "correct" legal answer, while disagreement among judges may be perceived as an ideological divide among them, undermining their legitimacy (Smith, 1990). This makes a judicial nominee's reputation as fair, non-partisan, professional and impartial a key to judicial integrity. Several studies have shown that judicial acceptance decreases if judges are selected in a partisan election (Choi, Gulati and Posner, 2010; Jamieson and Hardy, 2008; Geyh, 2003). These partisan elections erode the public's trust in the bench (Jamieson and Hardy, 2008, 14). Nevertheless, there is also research that shows that the public views court decisions through subjective ideological lenses. Citizens' perceived ideological proximity to the court correlates with the perceptions of the court's legitimacy (Bartels and Johnson, 2010; Christenson and Glick, 2015; Johnston, Hillygus and Bartels, 2014). In sum, the former studies highlight the importance of judicial professionalism in the eyes of the public, while the latter studies outline that political independence is not necessarily a prerequisite of the judiciary.

Based on these findings, we argue that a judge's personal integrity is a function of *judicial professionalism* and *political independence*. The former refers to the vocational qualities. These include a judge's academic performance, her intellectual and legal capacities and her overall abilities to cope with complex legal questions and to apply legal doctrine in a systematic way. The latter — the political independence — refers to a judge's impartiality. Hamilton has already argued in *Federalist No. 78* that "it is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority." In other words, the judiciary protects the public from overwhelming state powers (similar Kelsen, 2008 [1931]). Hence, if a judge who is required to protect individuals affected by unjustified state action does not act in the interest of

Figure 1: Judicial Integrity as a Function of Judicial Professionalism and Political Independence



those individuals, this judge lacks judicial integrity. In this regard, independence is understood as judicial decision-making in the absence of legislative or executive influence. Therefore, a judge needs to be perceived as independent and impartial (Clark, 2011, 255).

Figure 1 summarizes the considerations made with regard to *judicial integrity* as a function of a judge's *judicial professionalism* (x-axis) and a judge's *political independence* (y-axis). While the public demands a certain level of integrity of the judiciary, individuals are not able to assess a judge's political independence and a judge's judicial professionalism objectively. Instead, the labels in squared brackets on the axis of Figure 1 illustrate that the public is likely to rely on cues based on a judge's career information and known or observed ideological leaning. Figure 1 outlines that such a two-dimensional logic implies four different ideal types of judges (Judge A to Judge D).

*Judge A* is a *technocratic judge*. This judge is regarded as following high professional standards with a solid judicial career and being perceived as politically independent. *Judge B* is a *politicized-technocratic judge*. This judge is also regarded as following high professional standards with a solid judicial career but, at the same time, is perceived as having strong political ties.



*Judge C* is a *politicized judge*. This judge is regarded as following low professional standards with no rigorous judicial career and perceived as having strong political ties. *Judge D* is a *non-politicized, non-technocratic judge*. This judge is regarded as following low professional standards with no rigorous judicial career but is also perceived as politically independent.

According to a pure legal model that emphasizes judicial professionalism and independence (Parcelle Jr., Curry and Marshall, 2011, 29-34), one could argue that the technocratic judge A would have the highest degree of judicial integrity, with strong independence from political influence, and a high degree of judicial professionalism. However, it is not relevant to derive judicial integrity from abstract legal concepts. Instead, judicial integrity is the result from the public evaluating the importance of the two dimensions shown in Figure 1. For instance, imagine two judicial candidates, who both graduated from law school and worked as a prosecutor. One of them, however, also made a career as a politician. We would expect the public to nevertheless prefer the candidate without a political career. While both candidates would be perceived to rank high on the judicial professionalism dimension, the second candidate is perceived as a politician rather than a politically independent former prosecutor. This is why *perceived* judicial integrity is relevant rather than how it is defined by precise legal concepts. In the next section, we suggest that individuals use available cues to evaluate both dimensions of judicial integrity when choosing between judicial candidates.

## **2.2 Choosing the Preferred Judge**

We have argued before that the public demands integrity and will therefore prefer a judicial candidate based on a mixture of considerations regarding (1) judicial professionalism and (2) political independence, as summarized in Figure 1. The public is likely to evaluate those dimensions by using cues based on known or observable personal traits of a nominee (Clark and Kastellec, 2015).

Individuals are likely to infer judicial professionalism from *career cues*. We assume that a former judge at a higher court, a prosecutor, or a lawyer will be perceived to have more hands-on experience with legal dispute resolution and show a higher commitment to active judicial duty

than a former law professor or a former politician, even if she has a law degree. Similarly, we argue that individuals are likely to infer political independence from *ideological cues*. Such cues can be taken from information about known or unknown political leanings or partisan ties of judicial candidates. Another source from which cues can be taken regarding the degree of political independence is information about the confirming institution of the judicial candidates. Suppose non-political legal experts would confirm judicial candidates in a transparent environment, such as public hearings. We assume that such information facilitates the public's perception of such a candidate as politically independent rather than when such candidates are confirmed by institutions that echo ideological preferences such as the government.

How does the public pit the two dimensions shown in Figure 1 against one another? In contrast to previous research, we argue that both dimensions of judicial integrity — political independence and judicial professionalism — are non-separable (e.g., [Lacy, 2001](#); [Stoetzer and Zittlau, 2015](#)). On the one hand, the public prefers judicial professionalism and impartiality in general ([Baird and Gangl, 2006](#); [Ramirez, 2008](#); [Farganis, 2012](#)). On the other hand, individuals are not reluctant to a political bias ([Bartels and Johnson, 2010](#); [Christenson and Glick, 2015](#); [Johnston, Hillygus and Bartels, 2014](#)). Loosely speaking, while I have a strong taste for an impartial, highly professional judge following legal doctrine, at the same time I like this judge to rule in favor of my ideological views when I am affected by the decision. This illustrates that the public evaluates both dimensions when making their choice — judicial professionalism and political independence — jointly and not independently from one another.

To learn more about citizens preferences on judicial integrity, we also need to understand how citizens make trade-offs between both evaluative yardsticks. How much is the public willing to compromise judicial professionalism in order to get more or less political independence? In order to better understand citizens preferences on judicial integrity, we therefore need a research design that can account for the fact that every nominee for the bench is likely to be perceived as combining multiple attributes at once, i.e. characteristics of both dimensions, judicial professionalism and political independence. We will lay out our research design in the following section and explicate

that a discrete-choice experiment is ideally suited for this purpose.

### **3 Experimental Design and Analysis**

We argued that the public demands a certain level of judicial integrity in order for the judges and their decisions to appear legitimate. Thus, political actors are well advised to nominate respectable candidates of integrity. How can we measure integrity to see which candidate is of lower or higher judicial integrity? One strategy, using traditional opinion surveys, would be to develop rather abstract questions to measure both dimensions of judicial integrity, political independence and judicial professionalism, as well as their perceived importance. Given that actual judicial candidates always combine attributes of both dimensions of judicial integrity, they are most likely to be non-separable (Lacy, 2001; Stoetzer and Zittlau, 2015). Thus, in order to understand citizens preferences on judicial integrity we need to understand how those dimensions are interrelated rather than keeping each dimension artificially separate by using traditional attitudinal questions.

We therefore employ a so-called discrete-choice experiment (DCE) (Hainmueller, Hopkins and Yamamoto, 2013; Hainmueller and Hopkins, 2015; Louviere, Hensher and Swait, 2000). Rather than measuring citizens' preferences directly, our research design allows us to infer citizens' preferences from actual choices respondents make when choosing among pairs of judicial candidates. Because we randomly generate the relevant attributes of each judicial candidate's profile, we can, by design, disentangle the importance of each dimension of judicial integrity rather than confounding it, even if those evaluative yardsticks are inseparably connected in citizens' minds. Thus, we can infer from respondents choice behavior between pairings of judicial candidates about the relative importance of various evaluative yardsticks the public employs when reasoning about potential judicial nominees.

We implemented our discrete-choice experiment as part of wave 26 of the Internet Panel (IP). Consequently, we ask respondents to evaluate profiles of potential nominees for the Federal Constitutional Court judges in Germany. The IP collects information on political attitudes and

preferences of respondents through bimonthly longitudinal online panel surveys. Although administered online, all surveys are based on a random probability sample of face-to-face recruited households from the German population, which were provided with access to Internet and special computers if necessary. Wave 26 (Version 1, 13 Jan 2017) includes  $N = 2,749$  registered participants and is representative of both the online and offline population aged 16 – 75 in Germany. Before we describe how we implemented our DCE within the IP, we shortly describe the substantive context we situate our experiment in.

### 3.1 Judicial Nomination at the German Federal Constitutional Court

For our experiment, we employ profiles of hypothetical judicial candidates for the German Federal Constitutional Court (FCC). The FCC represents an excellent case for two reasons. First, the German Court is the archetype of a Kelsenian European constitutional court and influenced the institutional design of many other constitutional courts, including the appointment procedure of bench members. This is an advantage with respect to generalizability. A second advantage concerning the external validity of our experiment is that characteristics of potential candidates are often publicly known and subject to public debates. Potential nominees and their attributes, including their legal expertise or partisanship, are controversially discussed and commented on in the media. This often leads to great public interest in the final candidate selection<sup>2</sup>.

Half of the sixteen members of the Federal Constitutional Court are elected by the lower house, the *Bundestag*, and half by the upper house, the *Bundesrat*, for a period of twelve years without reelection. The *Bundesrat* has to confirm a nominee with a two-thirds majority. The *Bundestag* has a selection committee that used to nominate and elect the candidates with a two-thirds majority. The plenum of the *Bundestag* was not involved. This rule recently changed: while this committee still nominates a respective candidate, the entire parliament needs to confirm

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<sup>2</sup>The nomination of Judge Peter Müller, a former Prime Minister of the State of Saarland, was the subject of controversial debate. Many court observers questioned his legal expertise and political independence after directly switching positions. The German newspaper “DIE ZEIT”, for instance, headlined: “Suddenly judge: but what qualifies him?” and presented an ironic candidate profile questioning his judicial professionalism. <http://www.zeit.de/2011/05/Bundesverfassungsgericht-Peter-Mueller> [lastaccess:08/03/2017]

each nominee without a public hearing by a two-thirds majority. The actual selection of judicial nominees for both Senates (8-judge panel) of the court is based on a complex inter-party agreement. The requirement of a two-thirds majority implies that the two major parties in Germany, the Social Democrats (SPD) and the Christian Democrats (CDU/CSU) need to cooperate with each other to achieve a necessary majority. They alternately nominate judges in both Senates. The respective smaller coalition parties (Greens and FDP) are allowed to nominate one candidate each in consent with the bigger parties from time to time (Brouard and Hönnige, 2017).

Eligible candidates for the constitutional court need to be at least 40 years old and have obtained a particular law degree (be qualified to hold the office of a judge). Thus, current constitutional court judges previously served as professional judges at various levels, for instance a federal court. These judges are perceived to have the highest degree of judicial professionalism. Other eligible candidates could be lawyers or, as it is often the case, politicians who possess a necessary law degree and who are perceived to have a lower degree of professionalism. Three of the eight judges in a Senate must be former judges from a federal court.

### **3.2 The Judicial Nominee Experiment**

We implement our *Judicial Nominee Experiment* using altogether six screens. Each respondent saw six pairs of profiles of judicial candidates that were presented side-by-side, with each pair of profiles on a separate screen. We describe profiles of our hypothetical would-be judicial nominees along seven attribute categories, from which we build our independent variables. Each of the seven attribute categories can take on multiple values. Attribute categories include (1) current occupation (politician, law professor, lawyer, judge at federal or regional court, prosecutor), (2) partisan leaning (none, CDU, SPD, FDP, Left party, Greens, AfD), (3) confirming institution (President, Upper house, *Bundestag* with and without public hearings, Constitutional Court Judge Selection Committee of the *Bundestag*, the government, non-partisan expert committee) (4) age (35, 40, 45, 50, 55, 60 or 65 years old), (5) origin (East or West German, each with or without migrational background), (6) gender (female, male), and (7) marital status (same-sex marriage, divorced, mar-

Figure 2: Example Screen of Candidate Profiles Used in the Experiment

The German Federal Constitutional Court is the only Court in Germany that is allowed to declare laws unconstitutional. Laws that have been rejected by the Federal Constitutional Court cannot be implemented afterwards.

Suppose there are the following candidates for nomination to the German Federal Constitutional Court. Please read the description of the potential judges carefully. Then, please indicate which of the two candidates you would personally prefer. Note that there is no wrong answer, it is solely about your personal choice.

	Candidate 1	Candidate 2
<b>Current Occupation</b>	Politician	Law Professor
<b>Origin</b>	West German	East German
<b>Gender</b>	male	female
<b>Age</b>	35	45
<b>Partisan leaning</b>	Close to SPD	Close to CDU
<b>Confirming Institution</b>	President	Government
<b>Marital Status</b>	Single	Divorced

If you had to choose between Candidate 1 and Candidate 2, which one of the two would you prefer?

**Candidate 1**    **Candidate 2**  
                     

*Note:* This table illustrates a random screen (translated by us) of our discrete-choice experiment. Each respondent saw six of such screens. While the order of all seven attributes was randomized between respondents, it did not change from screen to screen once determined for each respondent. Nevertheless, the values for each attribute that make up each candidate profile have been randomized across screens and respondents. Figure 9 in the Appendix provides an actual screen shot.

ried, single, widowed). Theoretically, we thus can generate  $(6 \cdot 7 \cdot 7 \cdot 7 \cdot 4 \cdot 2 \cdot 5 =)$  82,320 different judicial candidate profiles. In practice, each respondent gets to see a random subset from this universe of judicial candidate profiles.

In order to minimize the potential impact of the order in which these attributes are presented, so-called profile order effects (Hainmueller, Hopkins and Yamamoto, 2013), we randomized the order of the attributes between respondents. To ease the cognitive burden of respondents we fixed a randomly chosen order of the attributes across the six screens for each respondent. We present an example screen in Figure 2. After each screen, respondents were asked to report a preference for one of the profiles. Thus, each respondent ideally made up to six decisions between  $2 \times 6$  randomly generated profiles of judicial nominees. The choice outcomes of these decisions serve as our dependent variable.

For example, we might be interested whether respondents generally tend to choose female over male candidates. Such a gender effect might differ depending on how old the candidates are

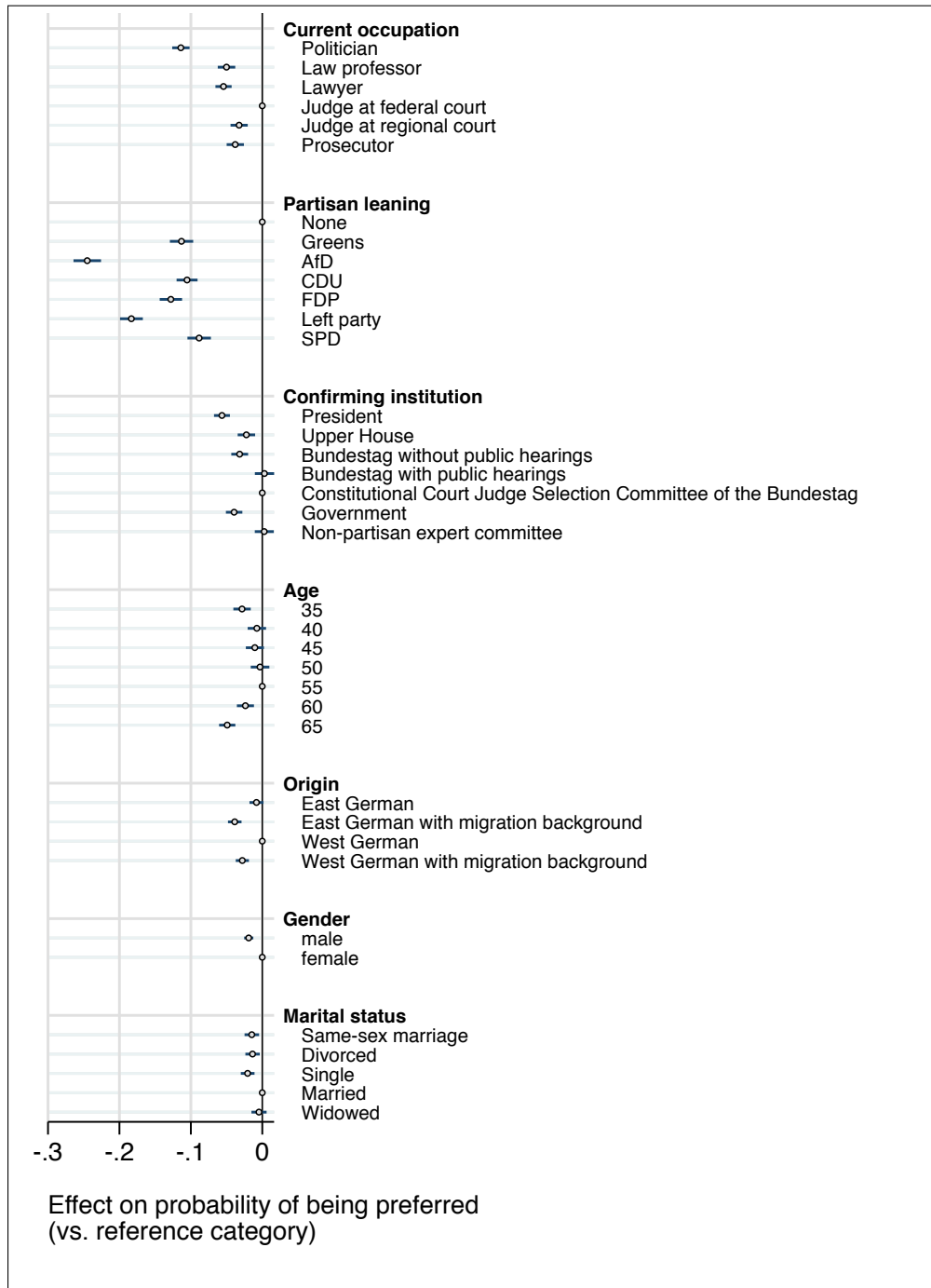
or whether the candidates are leaning towards a particular party. Following the strategy proposed by Hainmueller, Hopkins and Yamamoto (2013), we estimate *average marginal component effects* (AMCEs). The AMCE represents the average difference in the probability of being the preferred judicial candidate for the German FCC when comparing two different attribute values. Thus, the AMCE represents a quantity that summarizes the overall effect of gender, i.e. being male rather than female, despite heterogeneity in effect sizes across other attributes of the judicial candidates, including age or ideology, and so forth.

To sum up, the key advantage of our design is that the profiles of the would-be judicial nominees are fully randomized. This allows us to disentangle in particular attributes that cue judicial professionalism as well as political independence. Moreover, we can evaluate the relative importance of effects that might be otherwise correlated, because in reality those attributes are bundled together. Note that since the unit of analysis when analyzing a respondent's decision is the respective judicial candidate profile, we examine data for 32,988 different judicial candidates—each of our 2,749 respondents rated up to six pairings, with two candidate profiles per pairing. To obtain accurate uncertainty assessments, we cluster the standard errors by respondent because the observed choice outcomes are obviously not independent across the profiles rated by the same respondent.

### **3.3 Results of the Baseline Model**

We estimate a conditional (fixed-effects) logit model in order to predict the probability that certain judicial candidates are selected as FCC judge by the respondents based on the attribute values that make up a candidate's profile. They are included in the model as a set of indicator variables for each attribute level (omitting the reference categories). Figure 3 provides an overview of the estimated AMCEs and their corresponding 95% confidence intervals of the randomly assigned attribute values of judicial candidate profiles on the probability of being selected to the Federal Constitutional Court. All AMCE estimates are presented on the vertical axis. The points represent the AMCE point estimates while the bars represent their uncertainty. The points without horizontal

Figure 3: Average Marginal Component Effects of Profile Attributes on being selected as preferred Judicial Candidate



Note: This figure shows estimates of the effects of the randomly assigned attribute values of judicial candidate profiles on the probability of being chosen. AMCE estimates and their 95% confidence intervals are presented on the vertical axis. The points represent the AMCE point estimates and the bars represent their uncertainty. The points without horizontal bars denote the attribute value that is the reference category for each attribute. All estimates are derived from a benchmark conditional logit model with clustered standard errors.



bars denote the attribute value that is the reference category for each attribute.

We have hypothesized before that the public will demand judicial integrity and, hence, prefer a candidate on the basis of a mixture of considerations regarding their perception of the candidates' degree of judicial professionalism and their perceived level political independence. Individuals can infer judicial professionalism from career cues and political independence from ideological cues. We operationalize the career cues with the current occupation of the respective judicial candidate and ideological cues with the (non-) existence of partisan leanings and the type of confirming institution.

With respect to the judicial professionalism dimension, we find that judges who are currently employed at a federal court seem to be the most wanted candidates, and politicians are the least liked ones. For instance, politicians are about 11 ( $\pm 6$ ) percentage points less likely to be chosen over current judges at a federal court. Next to current federal judges, respondents seem to prefer judges at the regional court and prosecutors (the difference between both AMCEs is not significant at conventional levels). They are merely slightly less preferred (about 3  $\pm 6$  percentage points). Between the occupations that rank high and low in judicial professionalism there is finally the group of law professors and lawyers (whose AMCEs do not differ systematically as well). They are about about 5 ( $\pm 6$ ) percentage points less likely to be chosen over current judges at a federal court. Hence, we conclude that the public prefers judges that score seemingly higher on judicial professionalism more.

With respect to the political independence dimension, we find that, on average, ideological leanings of judicial candidates have a strong negative influence on the probability of being chosen compared to a politically independent candidate who does not lean towards any party. For instance, judicial candidates who lean towards extreme right (AfD) or left (Left party) parties are on average 25 ( $\pm 2$ ) and 16 ( $\pm 2$ ) percentage points less likely to be chosen over candidates without any partisan leanings. These are the strongest effects we find across all AMCEs we estimate. The effect of leaning towards a mainstream party (like all the remaining parties) relative to a politically independent judicial candidate is around 10 percentage points. Thus, people seem to prefer

judges without partisan leanings, i.e. candidates that are perceived to be politically independent. With regard to the confirming institution as another cue of political independence, we find that, on average, candidates seem to be less preferred if they are nominated by partisan actors such as the President or the Government. Judicial candidates who would be nominated by those political actors are about 5 ( $\pm$ .6) percentage points less likely to be chosen over judicial candidates nominated by the selection committee of the *Bundestag*, in which all parties are represented. In addition to the selection committee, equally preferred options are when the Bundestag confirms the nominations but, in contrast to current regulation, *with* public hearing or through a non-partisan expert committee. The respective size of the estimated AMCEs cannot be distinguished statistically at conventional levels. Somewhat less preferred are confirmations through the Upper House or the *Bundestag* without public hearings. People thus seem to like the transparency of confirmation hearings or confirmations by non-partisan expert committee, or by supposedly non-partisan or at least ideologically representative selection committees of the parliament. Hence, we conclude that, with respect to confirming institutions, respondents prefer politically independent judicial candidates, i.e., candidates who do not have a partisan leaning and are nominated in a non-partisan and transparent process.

In general, the estimated AMCEs are less strong for various socio-demographic attributes compared to the ones that supposedly cue judicial professionalism and political independence such as as current occupation, partisan leaning, and to some extent at least, the confirming institution. Would-be judges should rather be females and should be neither too young nor too old, without migration background, and better not single. In a way, the preferred socio-demographic characteristics of judicial candidates seem to be similar to the average of the respondents themselves.

To sum up, what type of candidate is perceived to have the highest level of judicial integrity? We find that the public's most preferred type with respect to integrity is a technocratic judge (Judge A from Figure 1). This judge is characterized by a high level of judicial professionalism, based on the relative importance of the current occupation as a judge at a federal court, and by a high level of political independence, based on the relative importance of non-existing partisan ties and

a transparent non-partisan confirmation procedure. Furthermore, we find that the least preferred judge is a politicized judge (Judge C from Figure 1). This ideal–typical judge is characterized by a low level of judicial professionalism, for instance due to her current occupation as a politician, her partisan leaning, and also is confirmed by a partisan institution. We thus conclude that respondents seem to have clear preferences about the judicial integrity of these two “extreme types”. While all those judge profiles are hypothetical, in reality no ideal type, neither a technocratic nor a politicized judge, has ever been appointed to the bench of the German FCC.

What is more interesting in this regard is the trade-off when respondents face a politicized–technocratic judge (Judge B) and a non-politicized, non-technocratic judge (Judge D). The crucial question here is what is more important to the public, perceived judicial professionalism or perceived political independence? We explicitly assess this trade-off subsequent to the robustness section. In the following section, we show that several assumptions we have to make in order to estimate our baseline model are justified and report further robustness checks.

### **3.4 Test of Model Assumptions and Robustness Checks**

In this section we report four different robustness and diagnostic tests. Our first diagnostic test involves checking whether there are any carryover effects (Hainmueller, Hopkins and Yamamoto, 2013). The assumption of no carryover effects implies that respondents would choose the same judicial nominee regardless of what particular candidate profiles they get to see on a screen. Hence, the AMCEs should not depend on the data of particular screens. We assess the plausibility of this assumption by estimating the AMCEs for the two profiles respondents see on their very first screen. Obviously, we expect the resulting AMCEs to be less precise because we merely use data of one rather than six screens. In the Appendix (Figure 7) we provide an overview of the estimation results. We find the estimated AMCEs to be very similar to the ones presented in Figure 3 with the full data. Thus, the results would not be different even if we would rely on data from the first screen only.

Our second diagnostic test explores the effect of potential individual heterogeneity. Previ-

ous research mainly focuses on one particular respondent characteristic that potentially introduces heterogeneity in their decision-making process, namely knowledge about the court (e.g., [Hoekstra, 2000](#); [Sen, 2017](#)). If decisions of respondents systematically differ depending on how much they know about the court, we would need to take this into account. Our respective analysis in the Appendix (Figure 8), however, shows that respondents value the respective characteristics of judicial nominees similarly, irrespective of their knowledge about the court.

Our third robustness check involves a balance test to explore our randomization procedure. Although we fully randomized the judicial nominee attributes within each profile, we assess whether it actually produces well balanced experimental groups in our sample. In the context of our experiment, we are mostly interested in whether the profile attributes are actually balanced. We therefore conduct a multivariate balance test by regressing a respondent characteristic on the 31 indicator variables for all profile attributes. There should be no effect of those indicator variables on predicting the outcome. We use our knowledge scale (which we developed for the previous diagnostic test) and run a ordered logit model in order to predict the respective scores of this knowledge scale (ranging from 0–2). Furthermore, using a likelihood-ratio test we find that the indicator variables of the candidate attributes are jointly insignificant. The respective  $\chi^2$ -value with 31 degrees-of-freedom is 29.47. Thus, the candidate attributes of the judicial nominees are jointly balanced.

Finally, our last robustness test leverages the panel design of our survey instrument. Owing to this design, we have the possibility to check for the stability and, hence, the reliability of the individual decisions respondents make in our discrete-choice experiment across panel waves. We implemented the same experiment with the same screens, showing the very same judicial candidates in the next wave of the *German Internet Panel* (wave 27) fielded one month later. 90% of all respondents (2486 out of 2749 respondents) of wave 26 have been re-interviewed in wave 27. We find that 11, 204 out of 14, 916 decisions lead to the same outcome for those 2486 respondents we have data across both waves. Thus, more than 3 out of 4 decisions when presented with the very same candidate attributes as one month before end up to be the same. We find the remarkable

evidence that the repeated decisions made by respondents are not done randomly (which would result in the same decision in 50% of all decisions).

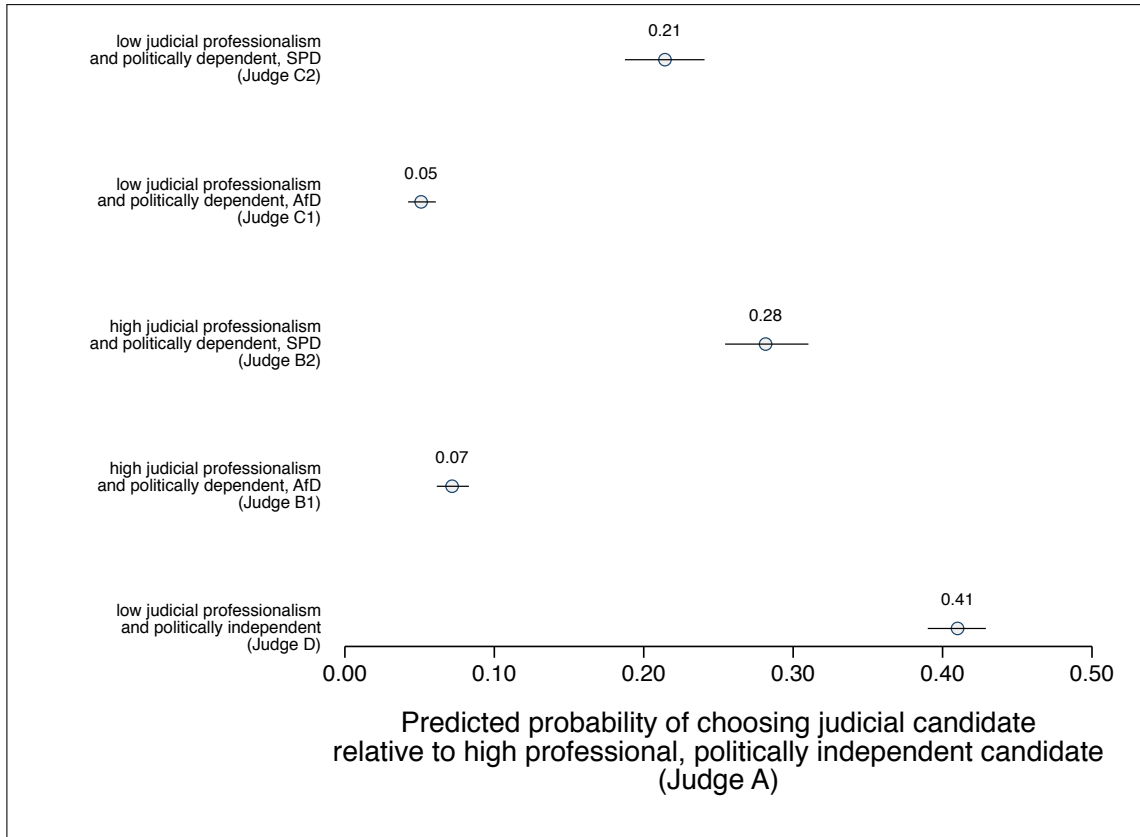
### **3.5 Evaluating the Trade-Off between Judicial Professionalism and Political Independence**

The analysis of our baseline model above makes transparent that candidate attributes related to judicial professionalism as well as to political independence determine which kind of judge will be preferred in the eyes of the public. Moreover, we basically find that candidates with higher judicial integrity are more likely to be chosen. In this section, we further explore the substantive meaning of these results in order to understand the implicit trade-off respondent's seem to make when choosing a judicial candidate. How important is a candidate's degree of judicial professionalism compared to her perceived level of political independence?

First, we fix one profile to generate a candidate who ranks as high as possible in terms of judicial integrity. Accordingly, this nominee is a non-partisan judge at a federal court who is going to be confirmed by a non-partisan expert committee. Consequently, she ranks high in terms of both judicial professionalism and political independence. Given the results from the baseline model in Figure 3, this baseline nominee will be on average preferred (the technocratic Judge A) against every other conceivable candidate.

Second, we systematically choose profiles of other judicial candidates that vary on both dimensions and subsequently compare the model's predictions of who will be chosen in a pairwise comparisons with our baseline nominee (Judge A). In order to operationalize the different judge types, we create five more twin sisters of Judge A. The first twin sister, Judge D, has exactly the same attribute values as our baseline judge but ranks lower in judicial professionalism given her current occupation as lawyer. Furthermore, we create two more twin sisters, Judge B1 and B2, who also have a high level of judicial professionalism. The only difference compared to Judge A is that they both rank low concerning political independence. While both are confirmed by the president, Judge B1 leans towards an extremist party (AfD) and Judge B2 leans towards a mainstream party

Figure 4: Evaluating the Trade-off between Judicial Professionalism and Political Independence



*Note:* This figure shows the simulated predicted probabilities of five different candidates when competing against candidate of highest judicial integrity, i.e. she ranks high on judicial professionalism and political independence. All simulations are derived from estimated coefficients of a baseline conditional logit model with clustered standard errors.

(SPD). Lastly, we create two more twin sisters, Judge C1 and C2, who rank lower in judicial professionalism (as Judge D) and political independence (as Judges B1 and B2, respectively).

Figure 4 provides the simulated predicted probabilities together with their respective 95% confidence intervals for those five twins as judicial candidates when competing against baseline judicial candidate, a technocratic Judge A, who ranks high on both dimensions—judicial professionalism and political independence.<sup>3</sup> Note that the respective estimation uncertainty of the predicted probabilities for each of the five pairings is always small enough such that all first-differences between any two values are systematic and, therefore, not due to chance alone. Our simulations

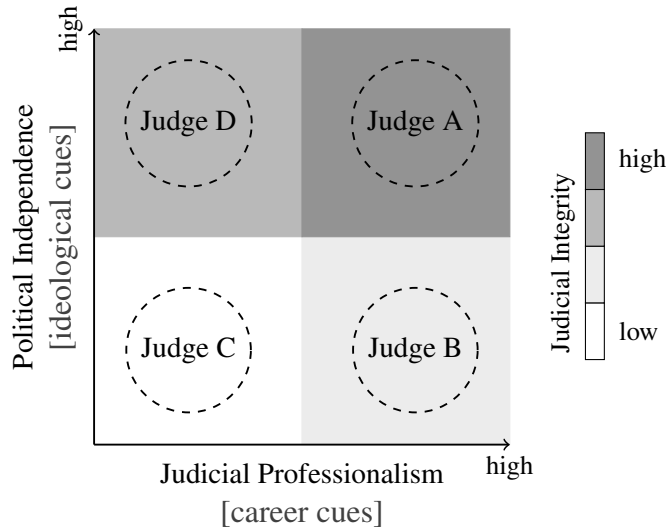
<sup>3</sup>We use a parametric bootstrap approach and calculate the respective choice probabilities based on 1000 draws from a multivariate normal distribution with a mean equal to the estimated coefficients and a variance that equals the estimated variance–covariance matrix of our baseline conditional (fixed-effects) logit model.

make transparent that on average the public seems to value political independence more than judicial professionalism. The politically independent candidate, Judge D, who ranks lower in judicial professionalism would lose against her baseline twin sister, Judge A, with on average 41 : 59, i.e., there is merely a 18 percentage point difference. This is the effect size that can be attributed to the difference of candidates ranking high or low in terms of judicial professionalism given our simulated scenarios.

Next we estimate the size of the effect that can be attributed to the difference of candidates ranking high or low in political independence given our simulated scenarios. We therefore concentrate on the pairwise comparisons of the candidates who, like Judge A, are also high in judicial professionalism but in contrast to Judge A rank low political independence, namely Judges B1 and B2. Both of them will lose a pairwise comparison against Judge A with 28 : 72, which is already a 44 percentage point difference in the case of Judge B2, and 7 : 93, respectively, which is even a 86 percentage point difference in the case of Judge B1. Even the smaller effect of both differences that represent the effect of political independence in case of Judge B2 is more than double the size of the comparable effect of judicial professionalism (18 vs. 44 percentage points). Hence, we conclude that the public seems to value relative differences in political independence more than in judicial professionalism in our simulated scenarios.

Moreover, our simulations show that the picture is more fine-grained when looking more closely at the political independence dimension. Examining the results for our hypothetical twins Judge B1 and B2 as well as Judge C1 and Judge C2, respectively, we see that the public seems to make a difference between leaning towards a mainstream party and an extremist party. Irrespective of the degree of political professionalism, the candidates leaning towards an extremist party are clearly perceived to have a lower level of political integrity than the candidates leaning toward mainstream parties. In fact, whether the candidates are perceived to have a high or low degree of judicial professionalism does not make much of a difference any more. In particular when looking at the simulated predicted probabilities for Judges B1 and C1, we can infer that candidates who lean toward extremist parties signaling to also hold extreme ideological views seem to have no

Figure 5: Judicial Integrity as viewed by the Public



acceptable level of judicial integrity in the eyes of the public.

What did we learn about the public’s preferences regarding judicial integrity? In the previous section we saw that the public prefers candidates who rank high on both judicial professionalism and political independence compared to candidates who rank low on these two dimensions. However, it is unlikely judicial nominees match those ideal types. Instead, we created several judges’ profiles with different levels of judicial professionalism and political independence. Subsequently, we compared their chances of being chosen in a pairwise comparison with an ideal candidate who is perceived to have a maximum of judicial integrity. The overall ranking of the judges is Judge  $A > \text{Judge } D > \text{Judge } B > \text{Judge } C$  with respect to their perceived judicial integrity. This rank order is illustrated in Figure 5, using different shades of gray. The rank order holds independent of a candidate’s support for mainstream or rather extremist ideological views. Therefore, if the public would need to choose among the candidates shown in Figure 5 the public values nuances in political independence more than in judicial professionalism.

In the next section, we expand our baseline model and analyze more systematically the relationship between judicial professionalism and political independence. In particular, we investigate



how much deviation from political independence citizens are “willing to pay” for a candidate who has a high level of judicial professionalism?

### **3.6 Can Judicial Professionalism Compensate for Lack of Political Independence?**

In the previous section, we have seen that citizens generally prefer a politically independent candidate even if she has a low level of judicial professionalism over a candidate who has a high level of judicial professionalism but is not politically independent. This does not necessarily hold unconditionally. There might be a “price” in terms of deviation from the ideal of political independence that citizens are “willing to pay” in order to choose a candidate who ranks high in judicial professionalism (Judge type C) rather than a politically independent candidate who has a low level of judicial professionalism (Judge type D).

Our discrete-choice experiment is ideally suited to entertain such an interpretation even if both assumed evaluative dimensions are potentially non-separable. Given that we randomize all attributes, the estimated AMCEs allow us to estimate such “willingness-to-pay” coefficients, i.e. the degree of perceived lack of political independence citizens are still willing to accept in order to receive a candidate who ranks high in judicial professionalism. We suggest that deviating from the ideal of political independence can be measured using the perceived ideological distance between a judicial candidate and a respondent. Hence, we expand our baseline model and introduce ideological distance as another independent variable into our model<sup>4</sup>. We code ideological distance as the perceived absolute ideological distance between the perceived position of the party towards a judicial candidate is leaning and the respondent’s self-placement using a common left-right 1–11 scale. The resulting distance ranges between 0 and 10. The mean ideological distance to the judicial candidates which was assigned to the respondents is 2.3, with a standard deviation of 2.2.<sup>5</sup>

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<sup>4</sup>The results of this extended baseline model are reported in the appendix. They are similar to the baseline model in Figure 3, with the exception of the AMCEs reported for variables that are related to the political independence dimension.

<sup>5</sup>We set the ideological position of a politically independent judicial candidate to be on the same position where the respondent places herself on that scale. This implies that the ideological distance variable has no contribution in

We use the estimates of the extended baseline model to simulate the respective choice probabilities when choosing between a candidate with high judicial professionalism who lacks political independence and a candidate with low judicial professionalism who is politically independent. We conceptualize the lack of political independence as ideological distance and let it systematically vary across its entire range between 0, where the respondent's ideological self-placement and the placement of the respective party coincide, and 10, where they are perceived to be maximally apart. By doing so, we can simulate how much distance citizens are willing to accept before they start choosing the low judicial professionalism candidate who is politically independent. All other profile attributes are fixed at the values of the respective reference categories.<sup>6</sup>

Figure 6 provides an overview about the respective choice probabilities between a candidate who ranks high in judicial professionalism but lacks political independence and a candidate who ranks low in judicial professionalism but is politically independent. As before, judges at a federal court rank high and lawyers rank low on judicial professionalism. For our simulated scenarios, we fix the comparative impact of the confirming institution and set everyone to be confirmed by a non-partisan expert committee. In order to compare the 'willingness to pay' for a high level of judicial professionalism but partisan candidate with mainstream or extreme political views, we replicate all simulations for candidates who rank high in judicial professionalism and lean either towards the SPD or the AfD.

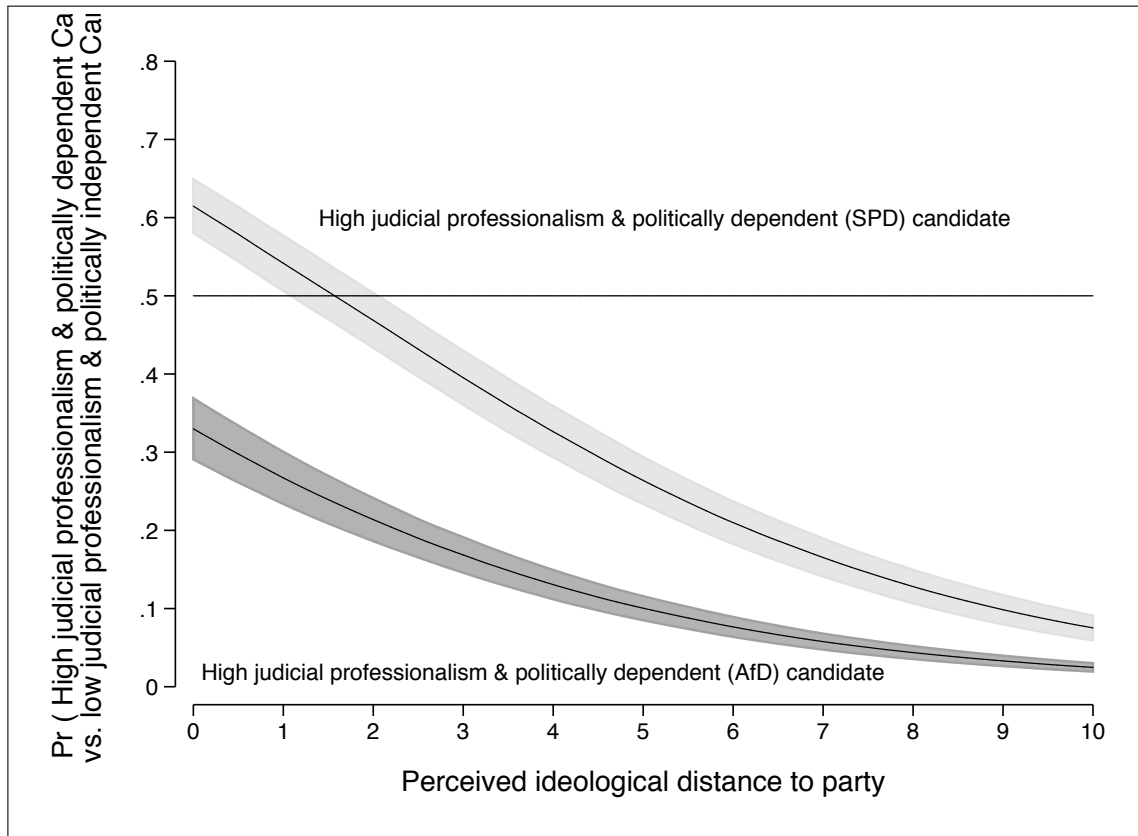
The results indicate that citizens are willing to pay for deviations from the ideal of political independence in terms of accepting a partisan candidate as long as the ideological distance is not too far and the candidates' political views are perceived to be mainstream (SPD) rather than extreme (AfD). In fact, the predicted probabilities of the candidate with high levels of judicial professionalism leaning towards the AfD are always below the .5 reference line, i.e., she is never preferred over her twin sister candidate with low levels of judicial professionalism but who is po-

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the model's systematic component when simulating the choice probabilities for such respondents.

<sup>6</sup>We use a parametric bootstrap approach and calculate the respective choice probabilities based on 1000 draws from a multivariate normal distribution with a mean equal to the estimated coefficients and a variance that equals the estimated variance-covariance matrix of our conditional (fixed-effect) logit model that includes ideological distance.

Figure 6: Willingness to Deviate from Political Independence to get high Judicial Professionalism Candidates



*Note:* This figure shows the estimated effect of perceived ideological distance on the predicted probability to prefer a high judicial professionalism (but politically dependent) candidate vs. a low judicial professionalism candidate who is politically independent. The area in which the curve intersects with the .5 reference line indicates the estimated willingness to pay the price to have a candidate with a high level of judicial professionalism on the bench. All predicted probabilities are derived from a benchmark conditional logit model with clustered standard errors controlling also for ideological distance.

politically independent. If citizens perceive a candidate to hold extreme political views, no advantage on the judicial professionalism dimension can compensate for that. Citizens are not willing to accept judicial candidates with extreme views, no matter how she ranks in judicial professionalism. This holds true even for respondents who place themselves in the same position on a left–right scale as the AfD-leaning candidate, i.e. where the perceived ideological distance is 0.

Looking at the upper curve of a candidate with a high level of judicial professionalism leaning towards the SPD shows that her predicted probabilities are sometimes above the .5 reference line, i.e. she is preferred over her low judicial professionalism twin sister who is politically independent as long as respondents do not see a large ideological difference between the party the

candidate is leaning to and her own ideological self-placement. As long as this distance is 0 or 1 units on the 11-point ideological distance scale, respondents seem to be willing to pay this deviation from the ideal of political independence in order to get a candidate with a high level of judicial professionalism. If this perceived distance is greater than 2 units, the “price” seems to be too high for the average respondent to pay in order to get a candidate with a high level of judicial professionalism on the bench.

To sum up, judicial professionalism can compensate for the lack of political independence if the perceived ideological distance is not too large and if it facilitates the choice of a partisan candidate with rather mainstream political views. As long as the candidate’s perceived ideological position is not reasonably similar to the respondent’s position on the same scale, though, citizens prefer an politically independent but low judicial professionalism candidate over an high judicial professionalism partisan candidate.

## **4 Conclusion**

This study seeks to explain how citizens evaluate candidates for highest courts. We argued that the public demands judicial integrity. When evaluating a nominee’s judicial integrity the public seems to value both, judicial professionalism as well as political independence. However, no expert knowledge is necessary in order to do that. Diagnostic cues from the candidates’ profile to infer their level of judicial professionalism and their degree of political independence are readily available. In fact, we find those experts who have a high knowledge about the court evaluate the same candidates similarly than novices who lack such factual knowledge.

In order to identify the public’s preferences for judicial integrity and in particular to disentangle the relative importance of both dimensions, we administer a discrete-choice experiment to a random sample of German citizens. We repeatably present respondents pairs of profiles of different types of judicial nominees that systematically vary across characteristics indicating among other things their level of judicial professionalism and their degree of political independence. Evaluating

the public's repeated choices of such profiles allows us to identify the relative importance of both dimensions, which profiles maximize judicial integrity and, consequently, gain the most public support.

Our results indicate that the public's ideal typical candidate combines both, a politically independent nominee that also has a high level of judicial professionalism. Thus, the public prefers the robe and not a policy-maker wearing it. However, we also observe some interesting trade-offs when such an ideal typical candidate is not available. The results suggest that political independence is more important than judicial professionalism if respondents had to choose between respective judicial candidates, i.e., the public seems to value relative differences in political independence more than in judicial professionalism given our simulated scenarios. However, no matter the degree of political professionalism, judicial candidates leaning towards an extremist party are clearly perceived to have a lower level of political integrity than candidates leaning toward mainstream parties.

Furthermore, our research designs allows us to estimate to what degree citizens are willing to accept the lack of political independence of a nominee if getting a candidate on the bench with a higher level of judicial professionalism. We find that judicial professionalism can compensate for the lack of political independence. Citizens are "willing to pay" a price in form of some acceptable deviation from the ideal of political independence for a candidate that ranks high on judicial professionalism. As long as the perceived ideological distance is not too large and the partisan candidate leans towards a mainstream party, citizens are willing to compensate missing political independence with a higher level of judicial professionalism.

The hypothetical judicial profiles in our discrete-choice experiment describe potential nominees for the bench of the German FCC. This court is the archetype of a Kelsenian constitutional court, which influenced the institutional design of highest courts in many other democracies. There is reason to believe that the findings based on a typical case travel also to other cases with similar highest courts and, therefore, contributes to the comparative literature. In addition, our discrete-choice experiment provides a blueprint to replicate such experiments in equivalent populations of

citizens of other democracies as well. Most importantly, though, nothing in our theory is specific to the German context we are studying here. Thus, there are plenty of opportunities to apply our theory and map the perception of judicial integrity comparatively.

More research is needed to identify the boundary conditions of our theory in order to derive expectations about the relationship between political independence and judicial professionalism in democracies that, for instance, might not apply similar eligibility requirements for highest court judges than the case we studied here. An interesting “most-different” design would be to compare the results from this study, for instance, with a similar study using a French population of citizens. Candidates for the *Conseil constitutionnel*, the constitutional court in France, neither are required to have formal legal qualifications nor are they appointed in a particular non-partisan way ([Venice Commission, 1997](#)).

Finally, our findings also have important implications for understanding the transformation process of the current democratic system of governance. During this transformation process newly created institutions, like highest courts, are mushrooming around the globe, that are not directly accountable to the public. We can observe that elected officials delegate more and more power to non-elected actors in order to make public policy. Regulatory bodies staffed with specialists, central banks or as the institution we focus here, highest courts, are prime examples of such institutions that consists of non-elected actors that are not directly accountable to the public. Because of their role in the chain of delegation within the policy-making process such institutions act as *agents* for elected officials in their role as *principals*. This transformation of the democratic system of governance obviously undermines the traditional understanding of democratic accountability and, thus, has implications for how legitimate the public perceives such system of governance including the relevant political actors. Given that elected officials as principals are also themselves agents of the public, the public functions as a “second-order” principal. The implication of our results based on this observation is that the selection process to staff such institutions becomes an important but yet not well understood mechanism to legitimize the policy-making process. Our findings imply that if elected officials consistently select candidates to staff such institutions with candidates the

public does not prefer, decisions of such institutions are less likely to be seen as legitimate. Conversely, even if institutions are not directly accountable to the public, the public perception of the appointment process might become instrumental in building-up a reservoir of legitimacy within the policy-making process using the public as an indirect but ultimate resource.

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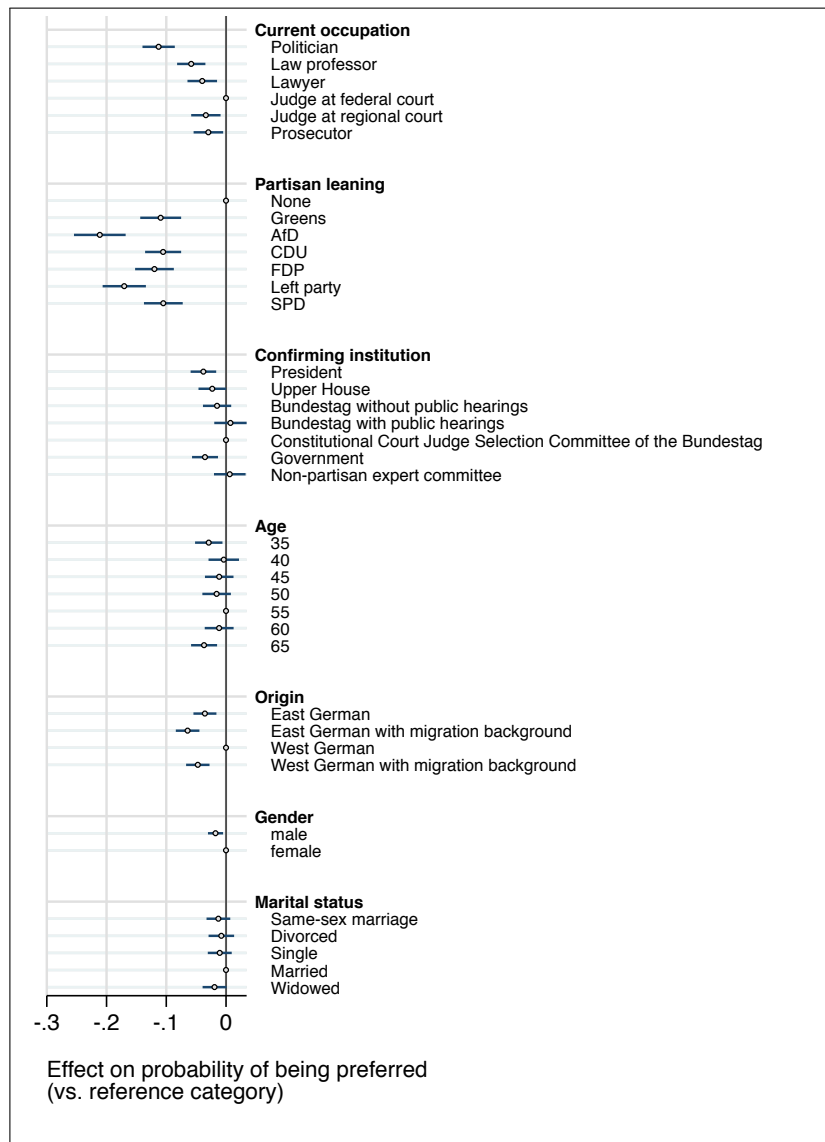
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# Online Appendix: Assumption of No Carryover Effects

One diagnostic test involves checking whether there are any carryover effects (Hainmueller, Hopkins and Yamamoto, 2013). We assess the plausibility that assumes no carryover effects by estimating the AMCEs for the two profiles respondents see on their first screen only. Figure 7 provides an overview of the resulting AMCEs. The estimated AMCEs are very similar to the ones presented in Figure 3. Thus, the results would not be different even if we relied on data from the first screen only.

Figure 7: Assumption of No Carryover Effects

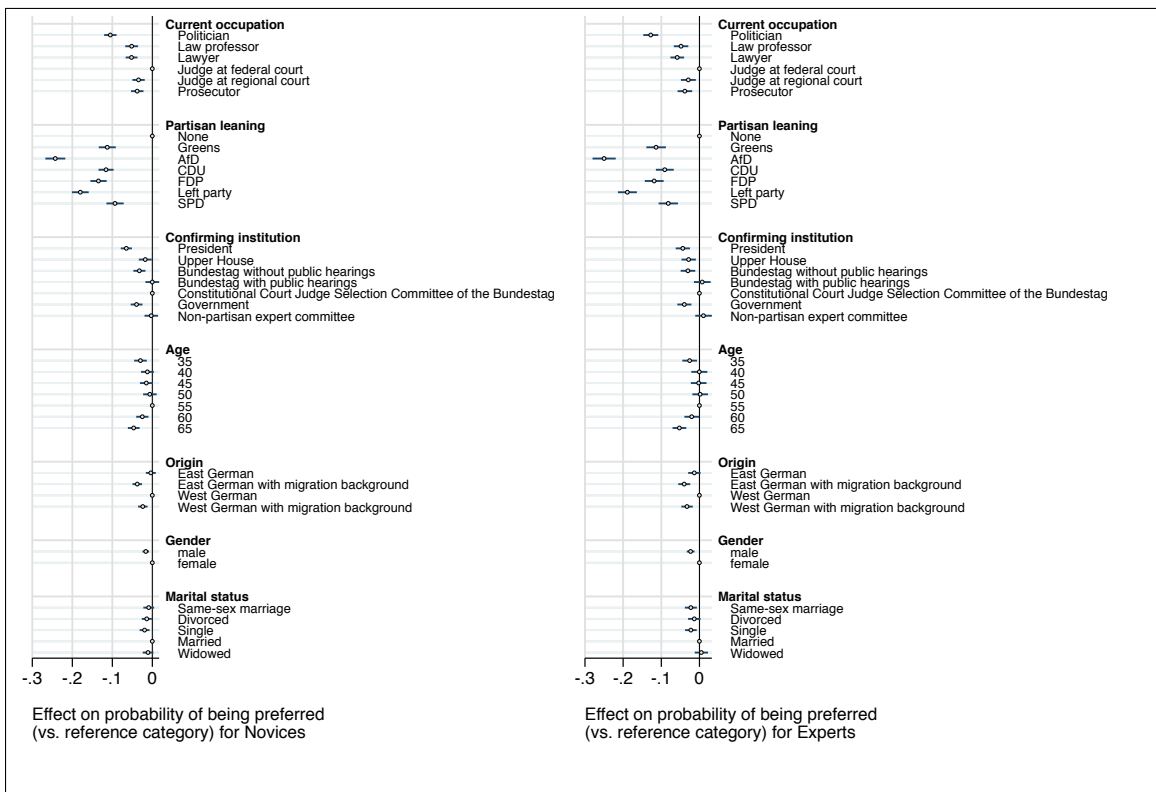


Note: This figure shows estimated AMCEs of the randomly assigned attribute values of judicial candidate profiles on the probability of being selected to the Federal Constitutional Court similar to Figure 3. The difference is merely that we only use the data from the first screen. The results are virtually the same with slightly larger standard errors, of course, because the sample size is obviously reduced. There seems to be no spillover effects across the six screens.

# Online Appendix: Individual Heterogeneity - Knowledge about the Court

Figure 8 shows the effects of the randomly assigned judicial nominee attributes on the probability of being selected conditional on respondents' knowledge about the court. We have two questions in which respondents need to identify the correct name of a judge currently sitting on the bench. Respondents who do not correctly identify any of the two individuals (Susanne Baer, Judge of the first Senate and Chief Justice Voßkuhle) comprise the group of *Novices* (roughly 62% of all respondents in wave 26). The remaining group are *Experts*. In the left panel of figure 8, we see estimates for respondents with low levels of knowledge (*Novices*). The right panel shows estimates for respondents with high knowledge about the court (*Experts*). Estimates are based on the same conditional logit estimator with clustered standard errors; bars represent 95% confidence intervals. Again, as in figure 3, the points without horizontal bars denote the attribute value that is the reference category for each attribute. We find that the patterns of characteristics are generally similar for respondents, irrespective of their particular knowledge about the court.

Figure 8: Average Marginal Component Effects of Profile Attributes on the Probability of being selected by Knowledge about the Court.




*Note:* This figure shows estimated AMCEs of the randomly assigned attribute values of judicial candidate profiles on the probability of being selected to the Federal Constitutional Court similar to Figure 3. The difference is merely that we divided up the sample into *Novices* and *Experts*, based on two knowledge items that ask about particular judges on the court. The results are virtually the same across both samples, which indicates that both types of respondents evaluate judicial candidates in similar ways.

## Online Appendix: Original Screenshot (in German)

Figure 9 shows an original screenshot of our discrete-choice experiment as implemented in wave 26 of the German Internet Panel (GIP).

Figure 9: Actual Screenshot (in German) of one Pairwise Comparison Used in the Experiment


Gesellschaft  
im Wandel
Hilfe

Das Bundesverfassungsgericht ist das einzige Gericht in Deutschland, das beschlossene Gesetze prüfen und nachträglich ablehnen kann. Die vom Verfassungsgericht abgelehnten Gesetze dürfen dann nicht mehr angewendet werden.

Angenommen, für das Amt eines/-r Bundesverfassungsrichters/-in gibt es die beiden folgenden Kandidat/-innen. Bitte lesen Sie die Beschreibung der möglichen Kandidaten/-innen für das Richteramt gewissenhaft durch. Anschließend geben Sie bitte an, welche/-n der beiden Kandidaten/-innen Sie persönlich als Bundesverfassungsrichter/-in bevorzugen. Dabei gibt es keine falsche Antwort, es geht ausschließlich um Ihre persönliche Wahl.

	Kandidat/-in 1	Kandidat/-in 2
<b>Herkunft</b>	Westdeutschland mit Migrationshintergrund	Ostdeutschland mit Migrationshintergrund
<b>Geschlecht</b>	männlich	männlich
<b>Alter</b>	35	45
<b>Nähe zu einer Partei</b>	Steht der SPD nahe	Steht der CDU nahe
<b>Ausgewählt durch</b>	den Deutschen Bundestag nach nichtöffentlicher Anhörung	den Deutschen Bundestag nach öffentlicher Anhörung
<b>Derzeitiger Beruf</b>	Professor an einer Universität	Professor an einer Universität
<b>Familienstand</b>	ledig	ledig

Wenn Sie zwischen Kandidat/-in 1 und Kandidat/-in 2 wählen müssten, welche/-n der beiden würden Sie eher bevorzugen?

Kandidat/-in 1

Kandidat/-in 2

< Zurück

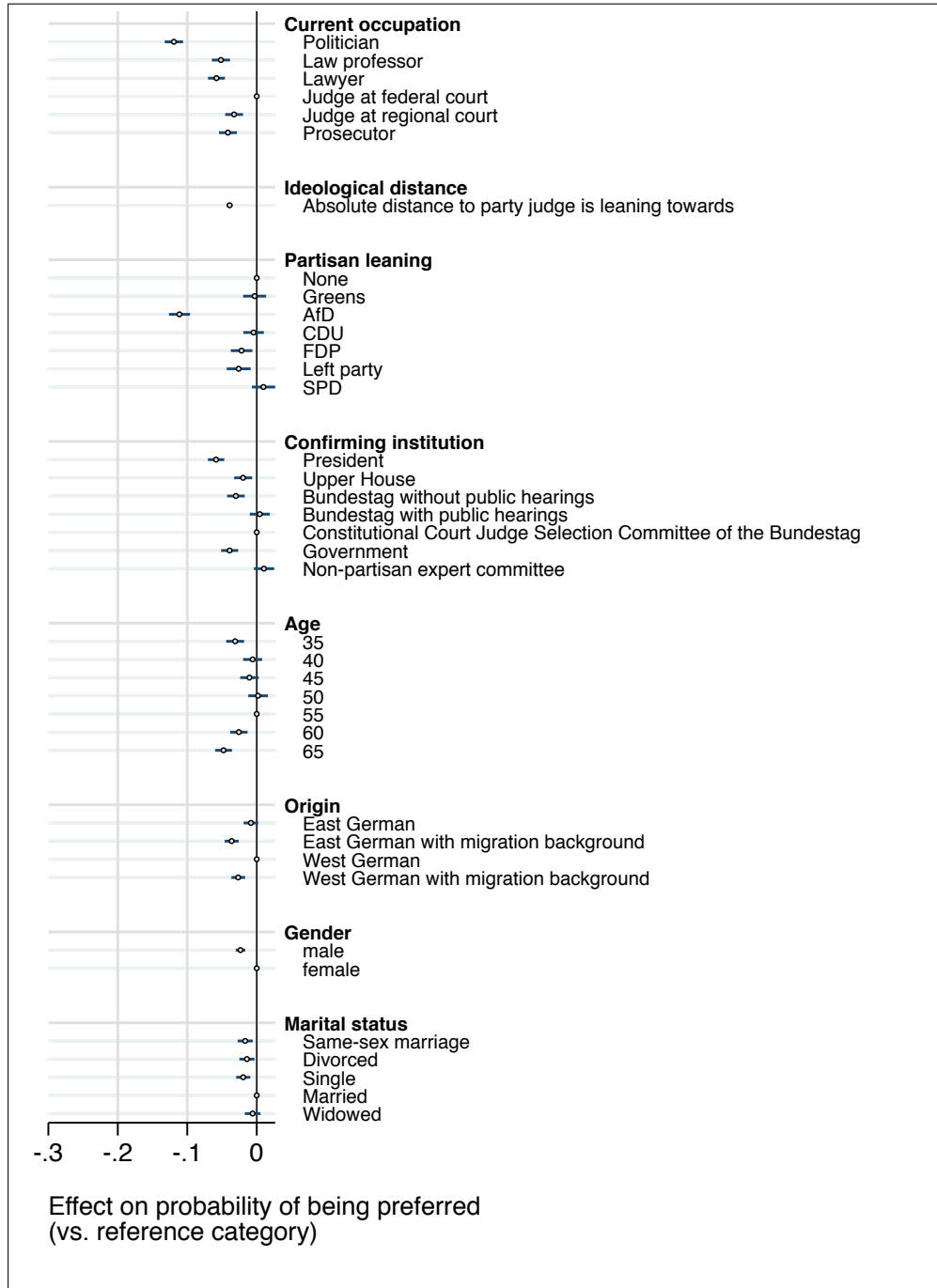
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Note: The following screenshot is an exemplar of an actual screen (in German) respondents saw at each stage of our discrete choice experiment.

## **Online Appendix: Extended Baseline Model Including Perceived Ideological Distance**

Figure 10 provides an overview of the estimated AMCEs for our extended conditional logit model including perceived ideological distance. The results are very similar to the baseline model we presented previously in Figure 3, with the exception of the AMCEs of variables that are related to the political independence dimension. Controlling for the perceived ideological distance, the difference between parties essentially disappears. The major exception seems to be the AfD, for which we can identify a huge valence disadvantage of more than 10 percentage points. Additionally, candidates leaning towards the FDP and the Left party encounter small but systematic valence disadvantages. Moreover, the AMCE of the perceived ideological distance is very precisely estimated, indicating that the effect is real and not due to chance. The interpretation of this coefficient is straightforward. On average, citizens prefer judicial candidates who lean towards a party that is closer to their ideological position if no politically independent nominee is present.

Figure 10: Average Marginal Component Effect of Perceived Ideological Distance within an extended Conditional Logit Model



Note: This figure shows estimates of the effects of the randomly assigned attribute values of judicial candidate profiles on the probability of being selected to the Federal Constitutional Court, including the absolute distance between the respondent's ideological self-placement and the placement of the respective party a judge is leaning towards. AMCE estimates and their 95% confidence intervals are presented on the vertical axis. The points represent the AMCE point estimates and the bars represent their uncertainty. The points without horizontal bars denote the attribute value that is the reference category for each attribute. All estimates are derived from a benchmark conditional logit model with clustered standard errors.