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# Presidential Strategy in the Judicial Appointment Process

## “Going Public” in Support of Nominees to the U.S. Courts of Appeals

Lisa M. Holmes

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I examine presidential use of public appeals on behalf of nominees to the U.S. courts of appeals from 1977 to 2005. Presidents Clinton and W. Bush have utilized this strategy far more regularly than did their predecessors. I find that presidents go public more often and more quickly on behalf of nominees facing a difficult confirmation climate, as well as on behalf of those who would diversify the bench. However, nominees who received more presidential support were not more likely to be confirmed by the Senate and appeared to be less likely to be confirmed. These findings indicate an important shift in presidential strategy concerning appointments to the courts of appeals in the newly politicized confirmation climate. These findings also provide evidence that presidents may be motivated by factors beyond confirmation success when determining how to expend public support on behalf of individuals nominated to these important courts.

**Keywords:** *presidential appointments; judicial appointments; judiciary; courts of appeals; “going public”; Senate confirmation process; court nominees*

**I**n May of 2005, a compromise reached by a group of senators resulted in the eventual confirmation of a handful of controversial nominees to the

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U.S. courts of appeals.<sup>1</sup> This compromise came as a result of ongoing political discord over the treatment of President Bush's nominees to the circuit courts, with many Republicans decrying the unfair treatment of Bush's nominees whereas Democrats continued to point to Republican efforts at preventing many of President Clinton's circuit court nominees from being confirmed (Goldman, Slotnick, Gryski, & Schiavoni, 2005). The political conflict over confirmation politics during George W. Bush's first term in office culminated with discussion of a so-called nuclear option that would change Senate rules to allow a simple majority vote to end a filibuster on a nominee (Goldman, Slotnick, Gryski, & Schiavoni, 2005). Although the 2005 compromise appears to have alleviated discussion of the nuclear option, modern appointment politics have become divisive enough to lead Goldman et al. (2005, p. 261) to conclude that "confirmation battles are played out on a battleground where compromise is always difficult and often impossible."

The process by which judges are selected to the lower courts was historically characterized by cooperation and has only recently become politicized (Maltzman, 2005). This politicization has resulted in increased delay and defeat in the confirmation process, influencing the ultimate composition of the bench (Bell, 2002; Hartley & Holmes, 2002; Martinek, Kemper, & Van Winkle, 2002; Scherer, 2005). Although presidential strategy with respect to the selection of nominees in the context of the newly contentious appointment process has been examined (Goldman et al. 2005; Massie, Hansford, & Songer, 2004), little is known about how presidents attempt to influence the confirmation process once a nominee is referred to the Senate for consideration. In this article, I examine use of an important presidential power—the power to "go public"—in the context of the modern judicial appointment process. This study examines presidential use of public appeals on behalf of nominees to the U.S. courts of appeals between 1997 and June 30, 2005.<sup>2</sup> Determining how presidents choose to utilize this power will provide a fuller understanding of presidential strategy in the politicized appointment process. In addition, if presidents are unable to help their nominees secure confirmation through the use of public appeals, their position in the modern lower court appointment process will be weakened in the face of increased partisan obstruction in the Senate and interest group opposition. Thus, it is important to determine whether presidents are able to influence Senate behavior through the use of their political capital.

## The U.S. Courts of Appeals and the Appointment Process

The U.S. courts of appeals have been referred to as “perhaps the least noticed of the constitutional courts” (Early, 1977, p. 100). This lack of notice, however, has belied the important role played by the courts of appeals in the American judicial system. These courts ensure uniformity in national law, provide judicial oversight of federal regulatory agencies, and provide the judicial determination in federal cases that are not subsequently heard by the U.S. Supreme Court (Songer, Sheehan, & Haire, 2000). As such, judges on these courts have always had an important role in the creation of judicial policy (Songer, Sheehan, & Haire, 2000). However, recent decades have seen an increase in the importance of these courts to the business of the American judiciary. Expanding federal law, increasing appellate caseloads, and the Supreme Court’s current norm of hearing fewer than 100 cases per year have all affected the power exerted by court of appeals judges in the creation of legal policy (Bell, 2002; Howard, 1981; Songer et al., 2000). The increased influence of these courts has resulted in greater attention to the process by which individuals are selected to these positions.

Previous studies have documented numerous changes in the modern appointment process for judges to the courts of appeals. The lower court appointment process has been characterized in recent years by increased confirmation delay and defeat (see Allison, 1996; Hartley & Holmes, 2002). Many studies have noted increased party polarization in Congress in recent decades (Evans & Lipinski, 2005; Fleisher & Bond, 2004; Jacobson, 2004). Increased party polarization in Congress has been found to influence the legislative process and the president’s ability to bargain with those in Congress (Edwards & Barrett, 2000; Fleisher & Bond, 2000; Jones, 2001). Research on the lower court appointment process has also attributed increased confirmation delay and defeat to increased party polarization in the Senate (Bell, 2002; Binder & Maltzman, 2002; Maltzman, 2005; Massie et al., 2004; McCarty & Razaghan, 1999; Nixon & Goss, 2001).

The rise of interest group involvement has also been linked to increased conflict in the lower court appointment process (Bell, 2002; Scherer, 2005). Interest groups have insinuated themselves in the appointment process because of their concern with the policy created by these judges (Scherer, 2005). The pressure placed on those in the Senate by interested outsiders has been found to influence judicial confirmation process and outcome

(Bell, 2002; L. M. Cohen, 1998; Scherer, 2005). Presidents today need to contend with the potentiality that highly motivated groups will expend resources to obstruct a nominee.

Last, the size of the federal judicial system has grown dramatically throughout the latter half of the 20th century (Bell, 2002). The increased number of positions on the U.S. courts of appeals means that the president and those in the Senate are constantly considering appointments to the courts of appeals today. In addition, the creation of many new positions “may also increase the tension between the Senate and the president as the latter attempts to use the appointment process to ensure the success of his agenda” (Bell, 2002, p. 42).

The increased importance of the courts of appeals to the creation of the body of American law has made these positions more politically salient and contentious. This has led to recent changes in how presidents select nominees, how those nominees are treated in the Senate, and how interested groups attempt to influence the process, all leading to a “severe deterioration in the process of advice and consent” (Maltzman, 2005, p. 410). What is less well understood, however, is how these recent changes have influenced presidential strategy and behavior once a nominee is referred to the Senate. A great deal of research has been conducted on the issue of how presidents attempt to secure support for their legislative agenda. Given the importance of and conflict in the modern court of appeals appointment process, it is important to understand if and how presidents are able to assist their nominees in securing Senate confirmation. This study now turns to the use of an important tool of presidential power—the use of public appeals—on behalf of nominees to the U.S. courts of appeals.

### **Judicial Appointment Politics and the Use of Public Appeals on Behalf of Nominees**

A great deal of scholarly work has focused on presidential use of public appeals in American politics. In his classic work on presidential power, Neustadt (1990, p. 30) argued that separation of authorities requires that a president be able to persuade others “that what the White House wants of them is what they ought to do for their own sake.” Building on Neustadt’s work on presidential power, Kernell (1997) focused on how recent presidents have changed the way they relate to members of Congress. Rather than bargain with individuals in the Congress, presidents increasingly promote their policies by appealing to the public. Given the realities of modern

politics—including divided government, the electronic media, and changes in the presidential selection process—presidents now routinely engage in this tactic to pursue their legislative agendas. Building on Kernell's thesis, much work has been done concerning the strategic use of public appeals by presidents in an effort to influence policy agendas and outcomes (Barrett, 2004; Canes-Wrone, 2001; Mouw & Mackuen, 1992).

Others, however, have argued that strategies aimed at mobilizing the public to communicate with Congress come with some risk. Utilizing public appeals to achieve legislative success is often unsuccessful, given that it requires that the president have the skill to motivate a generally inattentive public (Edwards, 1983, 1989). Given the uncertainty surrounding legislative success via public appeals, the continued use of public appeals by presidents is argued to be tailored toward achieving different goals, including rallying the president's political base or courting favor with particular interest groups or elites (Cohen, 2005; Edwards, 2003).

In the context of the history of appointments to the courts of appeals, Neustadt's (1990) thesis is persuasive in that presidents and those in the Senate had an ongoing relationship that required give-and-take to select judges acceptable to those with power over judicial appointments. This historic give-and-take has changed dramatically in recent years, resulting in a process that is increasingly contentious and influenced by partisan activists and interested groups (Scherer, 2005). Public appeals concerning nominees to the courts of appeals in the contemporary context may therefore be directed at particular groups or constituencies of interest to the president rather than in an effort to secure confirmation by influencing the legislative process. Previous research on presidential public appeals in support of judicial nominees has generally underutilized research on presidential use of public appeals and as such provides little advice on the question of why and to what effect presidents go public in support of their nominees to the courts of appeals.

Two studies that examined presidential use of public appeals supporting Supreme Court nominees were conducted by Maltese (1995) and Johnson and Roberts (2004). Maltese found that the Reagan administration signified a change in tactics concerning Supreme Court appointments, with presidents now personally involved in publicly supporting their nominees. He concluded (p. 454) that "going public is now part and parcel of a Supreme Court appointment process that is evermore concerned with public opinion."

In their examination of when presidents choose to call on their capital in support of Supreme Court nominees, Johnson and Roberts (2004) argued that recent presidents strategically employed this tactic in the appointment

process. They concluded that the spending of political capital through public appeals can help a president secure confirmation of a nominee when facing a hostile or unwilling Senate (see also Johnson & Roberts, 2005). In addition to these studies examining public support of Supreme Court nominees, Nemacheck (2004) found that Supreme Court nominations were utilized often in modern presidential election politics, whereas Scherer (2005) found that lower court appointments were utilized in presidential election politics as well.

With the exception of Scherer (2005), these studies have focused on nominations to the U.S. Supreme Court and do not provide information on whether and why presidents may be willing to expend political capital in support of lower court nominees. The process of appointing judges to the courts of appeals differs from that for Supreme Court justices in ways that would make presidential use of public appeals more noteworthy than is the case for Supreme Court appointments. Johnson and Roberts (2004, p. 667), for example, argued that “the nature of Supreme Court nominations mitigates the limitations and risks of the ‘going public’ strategy” given the highly public nature of this process and the fact that “there is no room for compromise” once a nominee is forwarded to the Senate. The nature of lower court appointments, however, may not mitigate the limitations and risks of the “going public” strategy as easily. Unlike for Supreme Court positions, at virtually any time in a president’s tenure there are likely to be any number of circuit court nominees pending on whose behalf capital could be spent. This is certainly the case in recent years, when the confirmation process has become bogged down in conflict and delay.

Furthermore, the regularity with which the president must deal with the Senate concerning nominations to the courts of appeals allows for an opportunity to utilize treatment of one nominee to influence subsequent nominations. Scholars have argued that delay in the confirmation process may be used as a tool to influence future nominations (Chase, 1972; Watson & Stookey, 1988). Similarly, the strategic use of public appeals by the president may send a signal to those in the Senate concerning which nominees and positions the president is willing to fight over publicly. Last, the history of the appointment process for positions on the lower courts has been characterized by even greater bargaining between the president and those in the Senate—namely, senators from the nominee’s home state—than is the case for appointments to the Supreme Court (Chase, 1972; Epstein & Segal, 2005; Harris, 1953). Thus, if recent presidents were to pursue public appeals on behalf of their circuit court nominees, it would represent an important shift in lower court appointment politics in an era when these selections became particularly contentious.

Scherer (2005, p. 159) found that presidents have discussed the importance of appointments to the lower courts in every presidential election since 1968 and that appointments are now “a fixture of key senatorial campaigns, mostly in the South.” Scherer’s study confirms that appointments to the courts of appeals have become more salient and contentious in recent years. However, she does not provide a systematic analysis of when and how presidents discuss specific nominees in a public forum. Although these previous studies provide some initial assessment of whether and to what effect presidents provide public support for their nominees to the Supreme Court and the lower courts, a systematic analysis is required to understand why and how presidents go public on behalf of specific lower court nominees and whether such efforts increase a nominee’s likelihood of successful confirmation.

### **Presidential Use of Public Appeals for Circuit Court Nominees**

To examine presidential use of the going public strategy in support of nominees to the courts of appeals, data on public mentions of circuit court nominees between 1977 and June 30, 2005, were collected from *The Weekly Compilation of Presidential Documents* and *The Public Papers of the Presidents*.<sup>3</sup> All presidential speeches, press conferences, and press releases were considered. A nominee was considered to have been mentioned publicly if that person’s name (or description, if the description was sufficiently specific to make it clear to whom the president was referring)<sup>4</sup> was discussed in the context of his or her appointment to the courts of appeals. Routine press releases announcing the name of a nominee were not included—nominee announcements were only included if they deviated from the typical practice of providing a basic, formal announcement of the nomination. Last, mention of a nominee in any context outside of the judicial appointment process was excluded. This coding scheme served to identify instances where a nominee was mentioned publicly by the president to make a point about that individual’s nomination or confirmation to the federal bench.

Descriptive results on presidential use of public appeals for circuit court nominees from 1977 to mid-2005 are provided in Table 1.<sup>5</sup> As can be seen, public mention of judicial nominees has existed throughout the period of this study. However, the regular utilization of this strategy by a president is a more recent phenomenon. Prior to 1999, presidents made only sporadic mention of circuit court nominees, with only 6 nominees discussed publicly (across eight



**Table 1**  
**Presidential Appeals on Behalf of Court of Appeals**  
**Nominees, 1977 to 2005**

President	Years	No. of Speeches Mentioning Nominees	No. of Nominees Mentioned	No. of Pending Nominees	Percentage of Nominees Mentioned
Carter	1977-1980	1	1	61	1.64
Reagan	1981-1988	6	4	86	4.65
H.W. Bush	1989-1992	1	1	46	2.17
Clinton	1993-1998	1	1	59	1.69
	1999	4	7	23	30.43
	2000/2001	25	12	25	48.00
	1993-2001	30	15	86	17.44
W. Bush	2001	1	1	27	3.70
	2002	28	6	26	23.08
	2003	28	7	32	21.88
	2004/2005	9	9	21	42.86
	2001-2005	66	15	50	30.00
Total	1977-2005	104	36	329	10.94

different speeches) throughout the Carter, Reagan, and H. W. Bush administrations in total. In 1999, President Clinton mentioned 7 circuit court nominees across four separate speeches. Since 1999, this is a strategy that has been employed even more frequently, with Clinton mentioning 12 of the 25 nominees pending during his last year in office and President George W. Bush mentioning 15 separate nominees (30% of the nominees referred) on 66 separate occasions throughout his first term in office.

Presidents Carter, Reagan, and H. W. Bush expended public effort for only a small handful of their circuit court nominees. President Carter mentioned only 1 nominee out of the 61 he forwarded for Senate consideration. President Reagan mentioned 4 out of 86 nominees, and H. W. Bush discussed only 1 of 46. Even during the years when circuit court nominees were discussed rarely, it is important to consider which individuals were determined worthy of mention. During the Carter administration, the only time Carter saw fit to mention an individual was on behalf of a minority nominee. During the Reagan administration, he also utilized public appeals more often on behalf of female or minority nominees, although he mentioned the troubled nomination of Daniel Manion on two separate occasions. The one public appeal on behalf of a nominee to the courts of appeals made by the first President Bush was made on behalf of a White male.

In subsequent administrations, it is apparent that political capital was expended more frequently and on behalf of a greater proportion of nominees. However, with many options available to them, recent presidents have expended public effort for only certain nominees. Of those who were discussed in public by the president, preliminary results indicate that such political capital was not spent equally among them. During the Clinton administration, 15 (or 17.44%) of his circuit court nominees were mentioned publicly, with Enrique Moreno (18 mentions) being discussed more often than other nominees. During the first 4.5 years of the current Bush administration, the president also expended more political capital on circuit court nominees, mentioning 15 of 50 (30%) publicly. Through mid-2005, more political capital was expended on the nominations of Priscilla Owen (29 mentions), Miguel Estrada (23 mentions), and Charles Pickering (14 mentions) than for other W. Bush nominees.

It is apparent that public mention of circuit court nominees is a tactic employed more often by recent presidents, as was expected given increased conflict in the circuit court confirmation process. This coincides with the increased politicization of the confirmation process and the increased likelihood of confirmation failure faced by Clinton and W. Bush nominees. The modern appointment process is less amenable to traditional bargaining tactics, possibly requiring that a president go public more frequently to secure confirmation for his nominees. Conversely, presidents may be using the politicized confirmation process as a means of courting favor with core constituents or like-minded groups. An analysis of which nominees are favored with the public support of the president will provide some insight into presidential motivation when going public on behalf of nominees.

## Dependent Variables and Method

Two aspects of a president's public support on behalf of a judicial nominee were of relevance to this analysis. First, I considered the extent of support given to a nominee by determining how many times the president discussed his nominees to the courts of appeals. Second, I examined the timing of public support to determine which nominees were discussed by the president soon after their referral to the Senate and which were discussed for the first time months or even years after being nominated. Both aspects relate to the effort a president extends in public support of a nominee, with the expectation that a president extends public support both more often and more quickly on behalf of nominees favorable to the president or

those more in need of support. Thus, two dependent variables were developed for this analysis. The first dependent variable measured the number of times a president mentioned a nominee in the context of the judicial appointment process. The second dependent variable measured the number of days between the date the nominee was first referred to the Senate and the date the nominee was first discussed by the president.

For the first model (*extent of support model*), the descriptive data regarding presidential use of public appeals for courts of appeals nominees indicate that most nominees received no public support by the president.<sup>6</sup> Of the 327 judges included in the analysis, presidents made no public comment on behalf of 291 (89%) of them. Of those who were discussed publicly, there was wide variation in how much public attention the president gave to his nominees, ranging from a high of 29 mentions to a low of 1 mention. A count model would be an appropriate method to utilize with a dependent variable measuring the number of public appeals on behalf of judicial nominees (Cameron & Trivedi, 1986; King, 1989). However, most of the observed counts of public mentions of nominees take the value of zero (meaning that no public mention was made of the nominee by the president), and the modal category of nonzero counts is 1 (meaning that only 1 public mention of the nominee was made by the president). In situations where the dependent variable contains many zero counts and relatively few nonzero and non-one counts, Cameron and Trivedi (1998) advocate the use of an ordered model such as ordered logit analysis.

Thus, the dependent variable for the *extent of support model* is an ordinal-level variable, measured as "0" for all nominees for whom no public mention was made, "1" for nominees for whom one or two mentions were made, "2" for nominees for whom 3 to 10 mentions were made, and "3" for nominees for whom more than 10 mentions were made. This is an appropriate coding scheme in that exactly half of the judges on whose behalf public effort was extended were discussed only 1 or 2 times, and half were discussed more frequently than that. Furthermore, this coding scheme serves to separate those nominees discussed with much greater frequency (defined as those discussed more than one standard deviation more often than the mean for nonzero cases) from those discussed with more typical regularity.<sup>7</sup> An ordered logistic regression model was employed to measure the influence of the various independent variables on the dependent variable concerning frequency of public mention of a nominee by the president.

For the second model (*timing of support model*), the descriptive data indicate that of those nominees discussed publicly by the president, the mean time between referral and the first public mention of a nominee was

392 days. Of those nominees discussed, wide variation existed with respect to how soon after referral the president extended his support. Nominees were discussed by the president as soon as 1 or 2 days after referral to the Senate. In addition, two nominees in the data set were extended public support by the president prior to their initial referral to the Senate. Conversely, other nominees were first discussed as long as 2 or 3 years after initial referral (with the longest time between referral and first public mention being 1,209 days). For this analysis, a model is required that will incorporate consideration of whether or not a nominee was discussed by the president, as well as the timing of the initial public support for those nominees who were discussed. For such a question, a Cox Proportional Hazards model is an appropriate method to utilize (Binder & Maltzman, 2002; Box-Steffensmeier & Jones, 2004; Solowiej, Martinek, & Brunell, 2005).<sup>8</sup> Using a Cox model, the coefficients show whether a variable increases or decreases the hazard rate. An increase in the hazard rate indicates that the variable has the effect of speeding up the president's public support of the nominee, whereas a decrease in the hazard rate indicates that the variable slows down the president's showing of support (Binder & Maltzman, 2002).

For the dependent variable in the *timing of support model*, cases in which a nominee was discussed by the president were coded as the number of days between the original referral date and the date of the first public mention of that nominee by the president. Cases where no public mention was made of the nominee were coded as the number of days the nomination existed in the confirmation process. The two cases in which a president made his only statement of public support on behalf of the nominee prior to his or her initial referral to the Senate resulted in a negative number for this variable and were dropped from this model.

## Independent Variables and Hypotheses

Previous research on lower court appointment politics was utilized to construct variables and develop hypotheses concerning their influence on the extent and timing of presidential support on behalf of circuit court nominees. Many analyses of the lower court confirmation process point to the increased partisan polarization in the process in recent years (Binder & Maltzman, 2002; Maltzman, 2005; Massie et al., 2004; Nixon & Goss, 2001). Furthermore, in their analysis of presidential support extended on behalf of nominees to the Supreme Court, Johnson and Roberts (2004) found that presidents are more likely to go public in favor of their Supreme

Court nominees when the president and those in the Senate are more ideologically distant. To account for this, a variable was added to measure the president's ideological relationship to the Senate. This variable (*president–filibuster pivot distance*) was determined by calculating the absolute distance between the first dimension DW-NOMINATE scores for the president and the furthest filibuster pivot (located at the 40th and 60th percentiles; see Binder, 1999) in the Senate (Poole & Rosenthal, 1997). The relevance of the filibuster pivot in the Senate—rather than the median senator—has been utilized or advocated in previous studies of judicial confirmation politics because of the reality that presidents need to take the likelihood of a filibuster into account (see Johnson & Roberts, 2005; Moraski & Shipan, 1999; Nixon & Goss, 2001). The *president–filibuster pivot distance* variable ranged from a low of 0.406 to a high of 0.859.<sup>9</sup> The first hypothesis for this analysis is as follows:

When the president is ideologically distant from the Senate filibuster pivot at the time of nominee referral, the president will extend public support more often (and more quickly) than when the president is ideologically similar to the filibuster pivot.

Interest groups have come to play an important role in the selection of judges to the U.S. Supreme Court and the lower federal courts (Bell, 2002; L. M. Cohen, 1998; Caldeira & Wright, 1998; Scherer, 2005; Segal, Cameron, & Cover, 1992). Research on the lower court appointment process highlights the contribution of interest group involvement to the contentious nature of modern appointment politics (Bell, 2002; L. M. Cohen, 1998; Scherer, 2005). Thus, a variable measuring the presence of *interest group opposition* to a nominee was included. Data for this dichotomous variable were collected from Scherer (2005, Table 5-1). The second hypothesis, derived from findings indicating that interest group involvement serves to politicize the confirmation process, states the following:

Presidents will go public more often (and more quickly) on behalf of nominees targeted by interest group opposition than for those without such opposition.

Many studies of the judicial appointment process have incorporated consideration of the timing of a nominee's referral to the Senate. The proximity of a nomination to a presidential election year (Binder & Maltzman, 2002, 2004; Martinek et al., 2002) and nominations referred in a president's second term (Martinek et al., 2002) have been found to increase confirmation

gridlock. Given this, two variables were incorporated to measure the timing of a referral with respect to a president's term in office. The first variable (*time in presidential term*) measured the proportion of a president's 4-year term that had expired at the time of nominee referral. This variable was expected to have a different influence on the two dependent variables in the analysis, however. Although nominees referred late in a president's term are less likely to be confirmed (and thus would be expected to be the subject of more extensive presidential support), presidents have less time to extend such public support. Therefore, the expectation with respect to the extent of public support variable is this:

Presidents will go public less often on behalf of nominees referred later in the presidential term than on behalf of nominees referred earlier.

However, if a president chooses to go public on behalf of a nominee referred late in a term, he will have to do so quickly, given that his term is coming to a close. Thus, with respect to the timing of presidential support variable, the hypothesis is as follows:

Presidents will go public more quickly on behalf of nominees referred later in the presidential term than on behalf of nominees referred earlier.

The second variable included to measure the timing of a referral relative to a president's term in office is a dichotomous variable for nominees referred during a president's *second term* in office. Given that these nominees face more difficulty in the confirmation process (Martinek et al., 2002), the hypothesis is as follows:

Presidents will go public more often (and more quickly) on behalf of nominees referred in a second term compared to first-term nominees.

Recent analysis of the lower court appointment process has highlighted the development of particular contention surrounding appointments to particular circuits (Goldman et al., 2005). Some seats (such as many on the Sixth Circuit Court of Appeals in recent years) have become controversial because confirmation gridlock of one president's nominees resulted in the inheritance of those seats by a subsequent, opposite-party president (Goldman et al., 2005). To determine whether presidents are more inclined to go public in support of nominees to these problematic seats, a dichotomous variable (*inherited seat*) was included measuring seats that were inherited by an opposite-party president.<sup>10</sup> The expectation concerning this variable is as follows:

Presidents will go public more often (and more quickly) on behalf of nominees referred to seats inherited from opposite-party presidents compared to nominees to other seats.

Three additional variables were included to measure the influence of certain nominee characteristics on the president's use of public support. Presidents like to highlight the qualifications of their nominees and, even in the absence of formal qualification requirements, strive to place highly qualified individuals on the bench (Epstein & Segal, 2005). Previous research on the politics of the judicial appointment process has typically included consideration of nominee qualifications through the use of American Bar Association (ABA) ratings of nominees (Binder & Maltzman, 2002; Goldman, 1997; Johnson & Roberts, 2004; Martinek et al., 2002; Nixon & Goss, 2001).<sup>11</sup> The *ABA rating* variable was coded on a 6-point scale, with a "6" indicating a nominee of the highest rating and a "1" indicating nominees with the lowest ratings.<sup>12</sup> Although nominees with higher ABA ratings have been found to experience an easier time in the confirmation process (Binder & Maltzman, 2002; Martinek et al., 2002), presidents like to highlight their nominees' qualifications (Epstein & Segal, 2005). Therefore, there is a weak expectation that

Presidents will go public in support of more highly qualified nominees more often (and more quickly) compared to lesser qualified nominees.

In addition to appointing nominees of high quality, recent presidents have focused sincere attention on providing greater racial and gender diversification of the federal bench (Goldman et al., 2005; Goldman, Slotnick, Gyski, & Zuk, 2001; Solberg, 2005). Recent research on the use of the going public strategy also found that presidents may direct their public comments to particular groups or elites (J. E. Cohen, 2005; Edwards, 2003). The expectation, then, is that presidents will extend public support on behalf of female and minority nominees because of their interest in diversifying the bench as well as their ability to use these nominees to appeal to particular constituencies. Two dichotomous variables (*female nominee* and *minority nominee*)<sup>13</sup> were included, and the final hypotheses for this analysis are as follows:

Presidents will extend public support more often (and more quickly) on behalf of female nominees than on behalf of male nominees.

Presidents will extend public support more often (and more quickly) on behalf of minority nominees than on behalf of nonminority nominees.

**Table 2**  
**Independent Variables: Summary Statistics**

Independent Variables	<i>N</i>	Min.	Max.	<i>M</i>	<i>SD</i>
President–filibuster pivot distance	327	0.406	0.859	0.681	0.149
Interest group opposition	327	0.000	1.000	0.165	0.372
Time in presidential term	327	0.031	0.999	0.474	0.258
Second-term nominee	327	0.000	1.000	0.303	0.460
Inherited seat	327	0.000	1.000	0.092	0.289
ABA rating	327	2.000	6.000	4.746	1.492
Female nominee	327	0.000	1.000	0.190	0.393
Minority nominee	327	0.000	1.000	0.165	0.372

Note: ABA = American Bar Association.

Basic descriptive statistics for these independent variables are provided in Table 2.

## Results

The results of the ordered logistic regression analysis<sup>14</sup> (measuring the influence of the independent variables on the extent of presidential support of circuit court nominees) and of the Cox Proportional Hazards model<sup>15</sup> (measuring the timing of a president's initial show of support on behalf of a nominee) are provided in Table 3.<sup>16</sup> With respect to the *extent of public support*, the ordered logit model performs well overall, and many variables were statistically significant in the predicted directions. Political polarization is relevant in that presidents extend more public support on behalf of nominees referred when the president's relationship to the Senate (as defined by the president's ideological distance from the Senate's filibuster pivot) is more strained compared to when the president and the filibuster pivot are more ideologically aligned. In addition, presidents go public more frequently in support of nominees hindered by interest group opposition, those nominated in a president's second term, and those nominated to inherited seats. These findings all support the argument that presidents use public support on behalf of nominees who are more likely to face difficulty in the confirmation process.

The results of the *extent of public support* model also indicate that presidents go public more frequently on behalf of female and minority nominees. Although there is some support for the idea that these nominees may have more difficulty in the confirmation process (Nixon & Goss, 2001), others



**Table 3**  
**Models of Presidential Use of Public Appeals, Court**  
**of Appeals Nominees, 1977 to 2005**

Variables	Ordered Logit Model; DV:	Cox Proportional Hazards Model;
	Number of Speeches	DV: Days Until First Speech
	Coefficients	Coefficients
President–filibuster pivot distance	9.606 (4.599)*	4.381 (7.916)
Interest group opposition	2.465 (0.494)***	1.671 (0.489)***
Time in presidential term	0.417 (0.830)	42.186 (10.868)***
Time in term*Log(_t)	—	-7.486 (1.934)***
Second-term nominee	1.835 (0.580)**	2.588 (0.875)**
Inherited seat	1.636 (0.631)**	1.460 (0.599)*
ABA rating	-0.095 (0.164)	-0.248 (0.165)
Female nominee	1.315 (0.460)**	0.321 (0.399)
Minority nominee	1.659 (0.572)**	16.449 (3.594)***
Minority*Log(_t)	—	-3.010 (0.622)***
cut1	11.631 (4.120)	
cut2	12.684 (4.134)	
cut3	14.574 (4.180)	
N	327	325
Log likelihood	-103.852	-56.673
Chi-square	43.010	67.300
Probability > chi-square	.000	.000

Note: Robust standard errors are in parentheses. DV = dependent variable; ABA = American Bar Association.

\* $p < .05$ , two-tailed. \*\* $p < .01$ , two-tailed. \*\*\* $p < .001$ , two-tailed.

have found that the race or sex of a circuit court nominee does not influence the confirmation process (Martinek et al., 2002). Most recent presidents (including Clinton and W. Bush—the presidents who have gone public on behalf of nominees to the greatest extent) have been interested in diversifying the circuit bench (Goldman et al., 2005; Goldman et al., 2001; Solberg, 2005). Thus, public support on behalf of female or minority nominees is most likely attributable to a president's interest in pursuing his agenda and courting like-minded elites and groups. The only two variables that did not have a statistically significant influence on the dependent variable (the timing of the referral in relation to the president's term and the nominee's ABA rating) were expected to have a weaker influence on the dependent variable.

The results of the *timing of public support* model are similar in many respects to the results of the *extent of public support* model. Presidents were

found to go public more quickly in support of nominees hindered by interest group opposition, those nominated to inherited seats, and those nominated in a president's second term. In addition, presidents go public more quickly on behalf of minority nominees. Unlike the results from the *extent of public support* model, presidents also go public more quickly on behalf of nominees referred later in the president's term, as was expected. In this model, however, presidents do not go public more quickly on behalf of female nominees or those referred when the president's relationship with the Senate filibuster pivot is more ideologically distant.

The findings of the *timing of public support* model indicate that presidents go public more quickly in response to targeted opposition to specific nominees but not in response to an overall decay in the president's relationship with those in the Senate. In addition, presidents extend public support quickly on behalf of those nominees for whom time is of particular relevance to their prospects in the confirmation process. Last, the finding that recent presidents go public more quickly in support of minority nominees, but not on behalf of female nominees, likely stems from the recent interest of presidents in courting minorities through judicial appointments (Solberg, 2005). Thus, the forwarding of a minority nominee to the Senate provides the president with an opportunity to direct a public appeal to a particular group, regardless of whether or not the individual nominee is in danger of confirmation failure.

It has been established that recent presidents have provided public support on behalf of a greater proportion of their nominees than did their predecessors. In addition, presidents have extended a greater amount of public support on behalf of nominees who face more obstacles in the confirmation process as well as those who would diversify the bench. Presidents are less influenced by the general nature of their relationship with the Senate when deciding how quickly to go public to support a nominee, but they instead make these decisions based on which specific nominations are targeted by interest groups or are nominated at unfavorable times. With an understanding of how presidents decide when and how much public support is shown on behalf of nominees, I turn to an examination of the ramifications of presidential use of public support to the confirmation prospects of courts of appeals nominees.

### **Public Support and Confirmation Success**

Although the previous analysis indicates that presidential strategy has changed in recent years toward more routine public support of circuit court

nominees, it is also important to consider the impact that the going public strategy has had on the outcome of the confirmation process. Did the expenditure of this sort of political capital on behalf of certain nominees improve their prospects in the confirmation process? In the context of literature on presidential use of the going public strategy, some have argued that this strategy can be an effective way of pursuing a president's agenda in Congress (Barrett, 2004; J. E. Cohen, 1995; Kernell, 1997). Others, however, have concluded that the strategy is risky or ineffective in terms of securing the president's legislative agenda (Edwards, 1983, 1989; Powell & Schloyer, 2003).

In their analysis of the influence of public support of Supreme Court nominees on confirmation success, Johnson and Roberts (2004) found that public support by the president improved the confirmation prospects of Supreme Court nominees by decreasing the number of "no" votes cast against publicly supported nominees. In concluding this, Johnson and Roberts utilized Segal and Spaeth's (2002) predicted number of votes cast in opposition to confirmation and compared that to the actual number of "no" votes cast in the Senate. In this analysis of the impact of public appeals on the confirmation outcome for courts of appeals nominees, however, the Segal and Spaeth predicted vote outcomes utilized by Johnson and Roberts are unavailable—as are the actual vote outcomes for many nominees—necessitating an alternate approach.

To determine the impact of the going public strategy on the outcome of the confirmation process, I utilized a logistic regression model measuring confirmation success, similar to that utilized by Martinek et al. (2002). For this model, the dependent variable was a dichotomous variable coded "1" for nominees who were successfully confirmed by the Senate and "0" for those nominees who were not successfully confirmed by the Senate as of June 30, 2005.<sup>17</sup> The results of three models of confirmation success are provided in Table 4.

Given that the independent variables utilized in the models discussed in Table 3 were derived from previous research on the lower court confirmation process, these variables were also included in the models of confirmation success. Two additional variables of interest were included in the models provided in Table 4. First, a variable measuring the extent of the president's support on behalf of a nominee was included. This variable (*number of speeches*) was coded as the number of speeches the president made on behalf of a nominee. The second variable measured the timing of the president's first showing of public support on behalf of a nominee. This variable (*timing of first speech*) was coded as "0" for those nominees on whose behalf no public mention was made. For those whom the president

**Table 4**  
**Logistic Regression Analyses of Confirmation Success, Court**  
**of Appeals Nominees, 1977 to 2005**

Variables	Model 1 Coefficients	Model 2 Coefficients	Model 3 Coefficients
Number of speeches	-0.118 (0.062)#	—	-0.130 (0.082)
Timing of first speech	—	-0.573 (0.676)	0.248 (0.824)
President-filibuster pivot distance	-2.942 (1.575)#	-3.120 (1.567)*	-2.952 (1.580)
Interest group opposition	-1.283 (0.410)**	-1.339 (0.409)**	-1.309 (0.421)**
Time in presidential term	-3.591 (0.830)***	-3.414 (0.805)***	-3.611 (0.829)***
Second-term nominee	-0.859 (0.376)*	-0.849 (0.384)*	-0.885 (0.379)*
Inherited seat	-0.229 (0.851)	-0.524 (0.725)	-0.222 (0.858)
ABA rating	0.112 (0.103)	0.082 (0.104)	0.117 (0.104)
Female nominee	0.446 (0.464)	0.393 (0.450)	0.422 (0.466)
Minority nominee	-0.055 (0.483)	-0.131 (0.478)	-0.095 (0.492)
Constant	5.735 (1.115)***	5.920 (1.120)***	5.738 (1.114)***
<i>N</i>	327	327	327
Log likelihood	-118.282	-120.453	-118.225
Chi-square	54.890	53.460	55.510
Probability > chi-square	.000	.000	.000

Note: Robust standard errors are in parentheses. ABA = American Bar Association.  
 #  $p < .10$ , two-tailed. \* $p < .05$ , two-tailed. \*\* $p < .01$ , two-tailed. \*\*\* $p < .001$ , two-tailed.

did discuss, this variable was coded as the number of days between a nominee's referral and the president's first speech, divided by the number of days in a presidential term. This number was then subtracted from 1, resulting in a coding scheme where a number closer to 1 meant that a nominee had been publicly supported more quickly after referral, and a number closer to 0 meant that public support had taken longer to occur. For the two nominees on whose behalf presidential support occurred *prior* to referral, this coding scheme resulted in a number slightly greater than 1, indicating that their support came even earlier (relative to their referral date) than it did for nominees mentioned soon after referral.<sup>18</sup> This variable ranged from 0 to 1.076, with a mean of 0.081 and a standard deviation of 0.244.

The first model provided in Table 4 incorporates the *number of speeches* variable into the analysis. This variable just misses being statistically significant in the negative direction at the  $p < .05$  level ( $p = .057$ ), providing some evidence that the extent of a president's support of a nominee *decreases* that nominee's likelihood of confirmation success.<sup>19</sup> The

overall model performs well, and many other variables in the model have a statistically significant influence on confirmation success in the expected direction.

The second model incorporates the *timing of first speech* variable into the model, with less success. The model still performs well, with the same independent variables showing evidence of a statistically significant influence on confirmation success as in the first model. However, the variable of interest in this model—the timing of the president’s showing of public support—has no statistical relationship to a nominee’s confirmation success. Nominees do not benefit from an early show of support by the president, but nor are they hindered, as they are when a president makes many public speeches on a nominee’s behalf.

The third model incorporates both variables of interest into the same model. As can be seen from the last column of Table 4, neither of the presidential support variables has a statistically significant influence on confirmation success in this third model, although the *number of speeches* variable becomes statistically significant (at the  $p < .05$  level) in the negative direction when Estrada and Owen are excluded from the analysis. Because both the *number of speeches* variable and the *timing of first speech* variable have an equal (and large) number of cases coded as 0, the correlation between these two variables is fairly high (0.615), likely accounting for the failure of the *number of speeches* variable to achieve statistical significance at even the  $p < .10$  level in this third model.

To determine the magnitude of the substantive effects of the independent variables on the dependent variable of confirmation success, the factor change in odds was calculated based on the confirmation success model that includes the *number of speeches* variable but excludes the *timing of first speech* variable (Model 1 from Table 4).<sup>20</sup> The factor change in odds for the statistically significant (at the  $p < .10$  level) variables is provided in Table 5. Holding the other independent variables in the model constant, a one standard deviation increase in the number of speeches made on behalf of a nominee ( $SD = 2.62$ ) decreased the odds of being confirmed by a factor of .734 (Long & Freese, 2006).

The results provided in Tables 4 and 5 provide evidence that going public on behalf of circuit court nominees decreases their chances of confirmation success, even when controlling for interest group opposition and other factors that weaken the president’s position vis-à-vis the Senate. Unlike Johnson and Roberts’s (2004) conclusion that public support of Supreme Court nominees improved their chances in the confirmation process, my findings indicate that such public support for circuit court

**Table 5**  
**Magnitude of Substantive Effects on Confirmation Success**

Variables	Coefficient	Factor Change in Odds
Number of speeches	-0.118	0.734
President-filibuster pivot distance	-2.942	0.644
Interest group opposition	-1.283	0.277
Time in presidential term	-3.591	0.396
Second-term nominee	-0.859	0.424

nominees decreased their chances of confirmation. However, when a president is quick to provide public support on behalf of a nominee, that nominee is neither benefited nor harmed by the president's actions. Presidents appear to have dual motives for providing public support on behalf of nominees. They publicly support those who are hindered by interest group opposition and an ideologically distant Senate. They also support those who are likely to appeal to particular constituencies. Regardless of the motivation, however, a president's nominees do not benefit from a president's extensive use of public support.

## Conclusion

Recent literature on presidential use of public speeches indicates that legislative success may not be the primary consideration when a president chooses to go public and that presidents target their public messages to narrow audiences or interested groups (J. E. Cohen, 2005; Edwards, 2003). My findings provide evidence that presidents select nominees for public support who may be useful in appealing to particular constituencies. This conclusion is supported by additional research determining that presidents often target their comments about specific circuit court nominees to select audiences of core supporters or interested groups (Holmes, 2007).

My findings also indicate that presidents are responding to the prevailing political and electoral context when deciding if and how to support their nominees. Presidents attempt to help nominees who are already facing a confirmation process less likely to treat them favorably. However, a nominee hindered by interest group opposition, a Senate unfavorable to the president, and poor timing relative to the president's term in office appears to be further disadvantaged when the president gets involved in this manner. Public support of Supreme Court nominees has been found to help secure

successful confirmation (Johnson & Roberts, 2004). Furthermore, Gibson and Caldeira (2006) argue that it is generally difficult to mount successful opposition to a nominee to the Supreme Court. The U.S. courts of appeals are different institutions than is the U.S. Supreme Court, and it is possible that these courts do not benefit from the same "reservoir of goodwill" that stymies effective mobilization against Supreme Court nominees (Gibson & Caldeira, 2006).

For these nominees, presidential involvement in the form of public support may serve to ingrain the ideological opposition mounted against a nominee by interested groups and partisan opponents in the Senate. This paradox (that the extent of a president's support of a nominee troubled by partisan polarization and interest group opposition only causes increased difficulty for the nominee) is similar to that found in the literature on campaign spending in congressional elections (see Jacobson, 1978, 2004). Jacobson (2004, p. 44) finds that "[f]or incumbents, spending a great deal of money on a campaign is a sign of weakness rather than strength. In fact, the more money they spend on the campaign, the worse they do on election day." Similarly, drawing additional attention to a nominee already targeted by interest group opposition and senatorial resistance may be a sign of weakness on the part of a president unable to secure the confirmation of his most troubled nominees.

A president's inability to translate his political capital to successful confirmation of his nominees will as well have an impact on the composition of the courts of appeals. The modern judicial appointment climate has rendered bargaining over particularly problematic nominees less likely between the president and those in the Senate, but presidents are unable to compensate for this with increased public pressure on those in the Senate to confirm these nominees. In addition, the recent involvement of interest groups in the lower court confirmation process becomes even more crucial in light of my findings, given that presidents are unable to overcome interest group opposition to nominees with the use of the bully pulpit.

Although it has not been shown to benefit individual nominees, there is reason to believe that the strategic use of public appeals on behalf of nominees to the courts of appeals will continue in the future. Presidents should be expected to continue this practice for nominees who are having difficulty securing confirmation, particularly when a nominee's characteristics make her more attractive for public comment by the president. The long-term implications of this change in presidential strategy to the circuit court appointment process are still unknown. The give-and-take between the president and those in the Senate over appointments to the courts of appeals

has been altered by increased confirmation delay, interest group involvement, and an increased willingness on the part of recent presidents to go public on behalf of their nominees. Whether going public in this capacity will continue to heighten the politicization of the appointment process remains to be seen, but is an important question to consider for those interested in judicial appointment politics, presidential power, and interest group influence on legislative and executive behavior.

### Notes

1. The compromise resulted in the confirmation of Priscilla Owen, Janice Rogers Brown, and William Pryor, but not Henry Saad or William Myers (Hulse, 2005).

2. Although the original intent was to end the analysis with the close of the 108th Congress, the compromise reached in May of 2005 concerning the status of some of W. Bush's most controversial nominees was of enough importance to continue the analysis until the middle of 2005. Speeches made in the first 6 months of 2005 that mentioned nominees referred prior to the close of the 108th Congress were included in the analysis. Nominees referred for the first time in the opening months of 2005 were not added to the analysis.

3. Nominations made to the U.S. Court of Appeals for the Federal Circuit were excluded from the analysis because of the court's specialized status (Carp, Stidham, & Manning, 2004).

4. On some occasions, a president discussed a specific nominee without mentioning his or her name. One such example occurred in Louisville, Kentucky, on September 6, 2002, when President Bush discussed nominating a

really, really fine woman from Texas to one of the appellate benches. This woman was ranked highly qualified by the American Bar Association. She ran statewide in my State of Texas and got over 80% of the vote. She's highly respected by Republicans and Democrats. And I named her to a higher bench. And today her nomination was rejected by the United States Senate.

This description, without using her name, clearly concerned Bush's nomination of Priscilla Owen. Nameless descriptions of this level of specificity result in the nominee's name being attached to the speech in the index to *The Weekly Compilation of Presidential Documents* and *The Public Papers of the Presidents*. Cases such as these were coded as being examples of the "going public" strategy because the president was clearly invoking the image of a specific nominee to make a point, even without using the nominee's name.

5. For this analysis, Pamela Rymer and Ferdinand Fernandez were each included as Reagan nominees, although they were nominated by H. W. Bush when they failed to be confirmed before Reagan left office. Similarly, Roger Gregory was listed as a Clinton nominee although he was confirmed after being renominated by W. Bush in 2001. In addition, on six occasions during the time frame of this study, a president made reference to the appointment of a nominee to the courts of appeals after that nominee had been confirmed or withdrawn. Given that public discussion of a nominee no longer engaged in the confirmation process can have no effect on that nominee's appointment status, these references were dropped from the analysis.

6. Because of missing data, two cases were dropped from the subsequent analyses. These two cases were excluded from this descriptive analysis as well.



7. Alternate coding schemes were utilized for the dependent variable (including collapsing all cases above the mean for nonzero cases into one category) with no substantive change in the results.

8. As a parametric alternative, a Weibull model was run. The results from the Weibull model were similar but with larger standard errors, suggesting that the Cox model is more appropriate (Binder & Maltzman, 2002; Box-Steffensmeier & Jones, 1997). In addition, the adequacy of the Cox model was assessed using Cox-Snell residuals, finding the model to be properly specified (Box-Steffensmeier & Jones, 2004). Analyses of delay in the confirmation process generally use the Cox Proportional Hazards model as well (see Binder & Maltzman, 2002; Nixon & Goss, 2001; Solowiej, Martinek, & Brunell, 2005). The use of the Efron method for breaking ties is most appropriate (Box-Steffensmeier & Jones, 2004) and was used here, but alternative methods were used with no substantive difference in results.

9. DW-NOMINATE scores are available at <http://voteview.uh.edu/dwnomin.htm>.

10. Research on judicial confirmation politics has as well indicated that certain vacancies are more “critical” to the ideological and partisan composition of the bench than are others (see Binder & Maltzman, 2002; Ruckman, 1993; Shipan & Shannon, 2003). Therefore, I included a variable measuring the impact a nominee would have on the partisan composition of the circuit as an alternative to the *inherited seat* variable. The partisan impact variable, however, proved to have no influence on the dependent variables and was thus dropped from the analysis. The results indicate that presidential attention to circuit court nominees is based on conflict surrounding certain inherited seats, rather than that associated with seats “critical” to the partisan composition of the circuit.

11. Although the ABA’s (American Bar Association’s) formal role in the nominee selection process was ended by President Bush (Goldman, Slotnick, Gyski, & Schiavoni, 2005), the ABA still completes a report on all nominees, and those reports are available to interested senators.

12. The specific coding scheme for the *ABA rating* variable was as follows: 1 = *not qualified*; 2 = *qualified (majority)/not qualified (minority)*; 3 = *qualified*; 4 = *qualified (majority)/well qualified (minority)*; 5 = *well qualified (majority)/qualified (minority)*; and 6 = *well qualified*.

13. The “minority” variable was coded as “1” for nominees identified as being African American, Asian American, Hispanic, Native American, or Arab American, and “0” otherwise (see Martinek, Kemper, & Van Winkle, 2002).

14. To determine that the parallel regression assumption of the ordered logit model had not been violated, a Brant test was run (Brant, 1990; Long & Freese, 2006). None of the variables in the model achieved statistical significance, indicating no violation of this assumption.

15. The proportional hazards assumption is a primary concern when fitting a Cox model (Box-Steffensmeier & Jones, 2004). Proportional hazards “refers to the effect of any covariate having a proportional and constant effect that is invariant to when in the process the value of the covariate changes” (Box-Steffensmeier & Jones, 2004, pp. 131–132). The validity of this assumption was tested using the Schoenfeld residuals (Box-Steffensmeier & Jones, 2004), finding that two variables (*time in the presidential term* and *minority nominee*) showed evidence of potential nonproportional hazards. The preferred correction of including an interactive effect between the problematic variable and a function of time was incorporated (Box-Steffensmeier & Jones, 2004; Collett, 2003).

16. Each model was run with the Estrada and Owen cases excluded. With 23 and 29 speeches made on their behalf, respectively, there was concern that these highly public and controversial nominees may have skewed the results of the models. Excluding these cases had no substantive impact on the results of either model.

17. As discussed in Note 2, the analysis was extended 6 months beyond the end of the 108th Congress to capture the influence of the May 2005 compromise that avoided the potential "nuclear option" and affected the confirmation status of some of President Bush's most controversial (and publicly discussed) nominees.

18. The confirmation success models were also run after dropping the two cases in which a nominee was supported by the president prior to referral with no substantive change in the results.

19. These findings are consistent regardless of whether the independent variable of interest is coded as the number of speeches made by the president on behalf of a nominee, as a dummy variable measuring whether or not any speeches were made on behalf of a nominee, or as the ordinal-level variable utilized in the *extent of public support* model. The inclusion of any version of this independent variable had a statistically significant negative influence on the dependent variable of confirmation success (at the  $p < .10$  level or better).

20. The factor change in odds was calculated using the *listcoef* function in Stata 9. The factor change in odds was calculated as the factor change in odds for a unit increase in the independent variable for dichotomous variables. For all other variables, the factor change in odds was calculated for a standard deviation increase in the independent variable.

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