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Going Public When Opinion Is Contested: Evidence from Presidents' Campaigns for Supreme Court Nominees, 1930-2009

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The standard "political capital" model of going public assumes presidents do not face mobilized opponents. But often presidents must fight against opponents who themselves go public. We propose studying such situations with an "opinion contest" framework and use new data on Supreme Court nominations to contrast the political capital and opinion contest approaches. From 1930 to 2009 presidents went public over Supreme Court nominees primarily when groups mobilized against the nominee. Republican presidents did so particularly when their nominee would move the Supreme Court's median to the right. When going public, presidents typically engaged in "crafted talk." Finally, going public was associated with more negative votes in the Senate, not fewer, because presidents went public over Supreme Court nominees only when battling an active opposition.

"Going public" is an important weapon for presidents as they seek legislative victories in Congress (Kernell 1986). Indeed, some have called it the core governing strategy of modern presidents (Edwards 2003).

Not surprisingly, studies of going public occupy a significant place in contemporary scholarship about the presidency. And, political scientists have learned a great deal about the practice (Edwards 2009 provides a masterful review). For example, historical studies

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have clarified the development of the practice over time, in a variety of forms and guises (Bimes 2009; Gamm and Smith 1998; Laracey 2002; Medhurst 1996; Tulis 1987). Empirical studies of its contemporary practice have moved from examples and anecdotes to systematic data on presidential efforts, the media response, the impact on public opinion, and consequences in Congress (Canes-Wrone 2001a, 2006; Cohen 2008, 2010; Edwards 2003; Rottinghaus 2010). Exciting new work integrates going public into comprehensive accounts of presidents' legislative strategies (Beckmann 2010).

Progress in theory development has been somewhat slower. Early studies of going public adopted a "political capital" theory in which the president could move public opinion rather easily, simply through the exertion of effort (Kernell 1986). A major refinement came with *conditional escalation theory* in which the popularity of issues acts as a constraint on the tactic's effectiveness and hence the president's willingness to employ it (Canes-Wrone 2001b, 2006). However, both approaches implicitly assume an uncontested information environment—the president's opponents do not initiate a public fight or countermobilize in response to a presidential initiative. Some scholars have begun to explore a further development, which we call *opinion contest theory*. This approach assumes the president faces competition in messages and hence a struggle over public opinion (see, e.g., Jacobs and Shapiro 2000; Rottinghaus 2010). Contested opinion theory adds a new level of strategic complexity to going public and makes its effectiveness more problematic.

In this article, we explore opinion contest theory and contrast it with political capital theory, using new data on going public and new data on interest group mobilization against the president. The data come from the same policy event repeated many times across multiple presidencies: presidential nominations to the U.S. Supreme Court. This research design may be distinguished from those involving repeated instances of the same speech (e.g., the State of the Union speech; see Cohen 1997), repeated instances of the same type of rhetoric (e.g., economic appeals; see Wood 2007), or multiple kinds of rhetoric across many programs or events (Canes-Wrone 2006; Edwards 2003; Rottinghaus 2010). By focusing on the same policy event, we implicitly control for many factors that vary across issues, programs, or policy arenas. In addition, we can tailor the predictions and our empirical models to the specific context of Supreme Court nominations. By the same token, however, our findings may be somewhat special to Supreme Court nominations.

That acknowledged, we examine the triggers for going public over Supreme Court nominees, the content of the president's messages, and their impact on Senate voting on nominees. Because we collect consistent data on interest group mobilization, we are able to explicitly address opinion contest theory. In addition, the length of our data—covering some 80 years, from 1930 to 2009—allows us to examine the historical development of going public over much of the 20th century and into the early 21st century, at least in this one arena.

There is little prior research on presidents going public on behalf of Supreme Court nominees. We discuss the principal study, Johnson and Roberts (2004), below. However, useful comparisons come from work examining going public on lower court nominations (Holmes 2007, 2008) and work examining interest group activity during nominations (Scherer 2005); for broader comparisons across types of nominations, see Krutz, Fleisher,

and Bond 1998. More generally, we know of no other work that contrasts the predictions of political capital theory and opinion contest theory and applies them systematically to data from a single frequently recurring policy event.

Our principal empirical findings are the following. Prior to about 1965, presidents virtually never went public over Supreme Court nominees, even (as in the case of Herbert Hoover's 1930 nominee, Judge Parker) when the nominee ran into serious trouble. But this changed thereafter, with presidents going public defensively when interest groups mobilized against the nominee. Beginning with Ronald Reagan, presidential efforts became significantly more intense. In addition, Republican presidents went public more aggressively when their nominee would move the median justice on the Supreme Court in a conservative direction. In explaining the intensity of going public, models based on opinion contest theory substantially out-perform political capital models. In fact, formal nonnested *F*-tests reject political capital models based on filibuster pivots or opposition seats in favor of an opinion contest model based on interest group mobilization against the nominee. In essence, presidents went public over Supreme Court nominees when—and almost only when—groups mobilized against the nominee. We also find that when presidents do go public over the nominee, they engage in what Jacobs and Shapiro call "crafted talk": they emphasize the nominee's professional qualifications and positive personal qualities, not his or her often extreme ideological commitments. Finally, as predicted by opinion contest theory, going public in an opinion contest is associated with more negative votes in the Senate, not fewer. This is because presidents go public over Supreme Court nominees only when battling a vigorous and active opposition. In short, at least for understanding going public over Supreme Court nominees, the data strongly favor an opinion contest perspective.

The article is organized as follows. The following section lays out the two frameworks for understanding going public and applies them to Supreme Court nominations. The next section reviews the data and methods employed in the study. Then, we examine the drivers of going public. The succeeding section looks at the content of the presidents' public messages about Supreme Court nominees. The penultimate section briefly examines the relationship between going public and Senate confirmation votes. The final section discusses the findings and concludes.

Theory and Empirical Expectations

We define *going public* as a legislative strategy in which the president attempts to manipulate public opinion via public statements in order to gain advantage in Congress. The immediate recipient of presidential rhetoric is the public, but the true target is Congress, which may respond to altered or mobilized public opinion in a fashion favorable to the president. From this perspective, going public may be distinguished from "opinion leadership" more broadly, which need not involve legislative strategy and may be undertaken as an endeavor valuable in and of itself. Examples of the latter include jaw-boning inflation or talking up the economy (Wood 2007), or playing the partisan blame game or beating the war drum (Rottinghaus 2010). In turn, going public and general opinion leadership—both

attempts to manipulate public opinion—may be distinguished from presidential responsiveness to public opinion (Cohen 1997; Druckman and Jacobs 2009), including presidential pandering to public opinion (Canes-Wrone and Shotts 2004).

As a logical matter, theories of opinion leadership must elaborate (1) a model of citizen message exposure (which may involve a theory of media behavior and a theory of citizen's media consumption) and (2) a model of opinion formation contingent on message exposure. Theories of going public must include both of these components, but also add (3) a model of legislating in which public opinion plays an important role. At present, theories of going public are less fully elaborated.

In our view, there are two broad variants of theory about going public: *political capital theory* and *opinion contest theory.* Both approaches have major implications for going public over Supreme Court nominees. Some implications are identical in both accounts, but others differ in important respects.

Political Capital Theory

The first theory offers a straightforward "political capital" view of going public: by expending valuable effort on public appeals, the president can alter public opinion in his favor, which then translates into a legislative victory. As a variant, conditional escalation theory adds an important caveat: the president's position must be popular with the public.

The basic political capital model is implicit in early discussions of going public and much popular discussion of the presidency (Kernell 1986). It assumes the president's words have a profound impact on public opinion. Of course, getting out the message takes work (it uses up "political capital") so presidents will be most inclined to do it (1) when they need to do it in order to win in Congress (the president's prospects for legislative victory are doubtful if he does not go public), (2) when legislative victory is particularly valuable for presidents, and (3) when their "political capital" is abundant (e.g., public approval is high).

Despite the theory's relatively long-standing vintage, to the best of our knowledge the basic model has never been formalized in detail (but note Canes-Wrone 2001, discussed momentarily). Consequently, the message exposure model, opinion formation model, and legislating model remain somewhat unclear. However, one might take the theory of message exposure and opinion formation to be similar to Zaller's (1992) one-message model with moderately informed citizens. Under this understanding, the political capital view assumes the public is rather likely to hear the president's message if he goes public; his is the only message they will hear; and voters will tend to find it convincing if they hear it. The implicit theory of legislating must involve a close connection between public opinion and legislative action: if the president can convert the public, Congress will follow. Two alternatives suggest themselves, a *partisan* approach and a *pivotal politics* approach. The partisan approach emphasizes the number of seats held by the president's opponents. In this account, going public converts opponents to the president's position, as public opinion shifts. The pivot-based approach emphasizes the position of the nominee relative to that of the filibuster pivot (Johnson and Roberts 2004). In this view, going public shifts the position of the key pivotal player, the filibuster pivot.

An important caveat to the basic model comes from "conditional escalation" theory, formalized in a game-theoretic model of going public in a notable paper by Canes-Wrone (2001b). In this model, going public can help the president *only* if his preferred position is already popular among the public or will be persuasive and popular if he goes public. If the president's position is unpopular, going public will be self-defeating: public opinion—and hence legislator's induced policy positions—will move *away* from his preferred position. Therefore, the president's decision to go public must be *conditional on the president's position being popular.* This is a major distinction between simple political capital theory and conditional escalation theory. In the former, the president (not to put too fine a point on it) can virtually brainwash the public into believing whatever the president wants them to believe, given sufficient expenditure of effort. In conditional escalation theory, this is impossible. The impossibility affects the president's willingness to go public.

Note that an important implicit assumption throughout is that the president operates within an *uncontested information environment*. Otherwise, it would be necessary to model voters' beliefs in the face of competing messages, and the president's decision calculus would need to explicitly include the counterresponse of rivals if the president goes public. Calculations of this kind are central to opinion contest theory.

Opinion Contest Theory

Opinion contest theory considers situations in which the president does not or will not command the information environment. Rather, he responds to or anticipates a *competitive* information environment. Opinion contest theory is implicit or hinted at in some recent work, perhaps most notably Rottinghaus (2010) but also Jacobs and Shapiro (2000) and parts of Edwards (2003, e.g., chap. 10). It also has links with recent work on framing in competitive environments (Chong and Druckman 2007), models of positive and negative advertising during political campaigns (Harrington and Hess 1996), and models of opinion formation in the face of conflicting messages (Zaller 1992, chap. 9). Without articulating a complete theory here, we lay out some of the conceptual foundations of opinion contest theory.

Opinion contest theory analyzes two broad scenarios. In the first or *defensive* scenario, the opposition rather than the president initiates the fight over public opinion. For example, prior to much public effort by the president, the opposition attacks one of the president's legislative initiatives, a treaty negotiated by his administration, or the president's Supreme Court nominee. The president then faces a choice: he can maintain silence and accept probable defeat in the courts of public opinion (and thus, presumably, in Congress); or, he can fight back and enter a contest for public opinion. In this scenario, going public may be necessary to retain the support of even his own co-partisans (Edwards 2003, 244).[1] We call going public under this scenario *defensive,* as the president responds to an attack and may be trying merely to maintain the opinion status quo or salvage his position.

1. In some cases, the president may reach out to "persuadable" opposition voters, that is, people who normally oppose the president's position but who are cross-pressured or inclined to favor the president's position in this particular case (Hillygus and Shields 2008).

In the second or *offensive* scenario, the president has the option to move first but does so knowing the opposition will respond if he does. In this scenario, the president must ask himself whether his prospects of victory are better at low levels of conflict or at high levels—*taking into account the countermobilization his own efforts will provoke*. We call this variety of going public *offensive*, as the president himself initiates the contest over public opinion.

As noted in conditional escalation theory, the president's messages must be appealing to the public—or at least as appealing as he can make it. If the president is in a defensive position, or defeat will surely follow if he does not enter into an opinion contest, the president may find himself making the best of an unpopular position. As Jacobs and Shapiro (2000, 27, 44) emphasize, presidents often utilize "crafted talk," that is, selectively emphasizing parts of proposals that voters are predisposed to like, even if those parts are hardly the most important aspect of the proposal. Of course, as Jacobs and Shapiro also note, crafted talk can be quite vulnerable during a hot contest over opinion since opponents will be happy to point out what the president so conveniently omitted. In addition, many voters are so inattentive to politics that the president may be preaching to the deaf.

The altered strategic environment also leads to an important prediction of opinion contest theory. Consider the relationship between how much the president goes public and how well or poorly he does in Congress. Opinion contest theory predicts that greater presidential effort is likely to correlate with worse, not better, performance in Congress. The logic is the same as that behind the well-known finding that campaign spending by congressional incumbents is associated with lower rather than higher vote margins: incumbents only spend heavily when they face serious opposition (Erikson and Palfrey 2000). In a similar way, according to opinion contest theory, presidents go public when the opposition has already mobilized or in situations where going public is necessary despite an inevitable counterresponse. In these situations, the president's efforts may not fully offset those of his opponents. Despite the apparent negative relationship, however, contested opinion theory suggests presidents *would have done even worse* had they not gone public in a strategic fashion.

Implications for Supreme Court Nominations

Before considering the application of the theories to Supreme Court nominees, we should first ask whether there is reason to believe public opinion plays any role in Supreme Court nominations. Kastellec, Lax, and Phillips (2010) presents compelling evidence that state-level public opinion strongly affected the roll call votes of senators, at least in 10 recent and generally high salience nominations. In many of these nominations, public opinion was quite polarized by partisanship.

At the same time, over the past 80 years many Supreme Court nominations have been very low salience affairs. Tellingly, few polls were conducted for nominations prior to the O'Connor nomination in 1981. For nominations after about 1940 or so, polling was technologically possible, but public interest was lacking. In these low salience

nominations, public opinion was probably "latent," in the sense that—to the extent citizens thought about the nominee at all—they relied heavily on their prior impressions or beliefs about Supreme Court nominees. Gibson and Caldeira (2009) argue that absent evidence to the contrary, most Americans perceive Supreme Court nominees to be highly professional, fair, and nonpartisan or nonideological (see also American Enterprise Institute [AEI] 2006).

It is against this backdrop—probably favorable "latent" opinion in low salience nominations, polarized and seemingly influential opinion in recent high salience ones—that going public takes place.

Political Capital Theory and Supreme Court Nominations. The essence of political capital theory is as follows: the president will go public if the nominee is likely to run into significant opposition in the Senate if the president does not go public. What would lead the president to believe his nominee will run into significant opposition in the Senate? A partisan model of legislation points to the number of seats held by the president's opposition: when many seats are held by the opposition, the nomination may face danger. This line of reasoning then suggests:

> **PC 1a—(Opposition Seats):** Presidents will go public more intensely as more seats in the Senate are held by the opposition party.

In contrast, spatially oriented models of legislation downplay the importance of partisan control of seats and emphasize the spatial distance between the nominee and critical pivot players, e.g., the median senator or the filibuster pivots. Johnson and Roberts emphasize the latter (2004; see also Holmes 2007). Following them suggests:

> **PC 1b—(Filibuster Pivot):** Presidents will go public more intensely when the nominee is ideologically distant from the filibuster pivot farthest from the president.

Low-quality or scandal-plagued nominees may also find themselves in trouble in the Senate (Cameron, Cover, and Segal 1990; Cameron and Park 2010). Hence, presidents may need to go public on their behalf. On the other hand, low-quality nominees are apt to be unpopular with the public (AEI 2006). Conditional escalation theory then suggests that presidents will be less inclined to go public on the behalf of such nominees. In light of this ambiguity we do not suggest a "hypothesis" about nominee quality but will examine the impact of nominee quality on going public.

Political capital theory usually suggests that presidents with lots of "capital"—generally equated with presidential popularity—will be more inclined to use their "capital" than those with little. This suggests:

> **PC 2 (Presidential Popularity):** Presidents will be more likely to go public, and do so more intensely, the greater their approval by the public.

Political capital theory implies that presidents will be more inclined to go public on behalf of a nominee if the nominee is particularly valuable to the president. Plausibly,

nominees will be particularly valuable to the president if their confirmation will move the median justice on the Supreme Court toward the president (Krehbiel 2007).

> **PC 3—(High Value Nominee):** Republican presidents will go public more intensely for a nominee who moves the median on the Supreme Court in a conservative direction; Democratic presidents will go public more intensely for nominees who move the median in a liberal direction.

Opinion Contest Theory and Supreme Court Nominations. Opinion contest theory predicts that going public is closely tied to a mobilized opposition.

> **OC 1a (Mobilized Opposition):** The more the opposition mobilizes against the nominee, the more the president will go public.

Gibson and Caldeira's (2009) concept of "positivity bias" suggests an even stronger possibility: presidents will *not* go public *absent* opposition mobilization, because they do not have to—their nominee will do well.

> **OC 1b (Only Mobilized Opposition):** Controlling for the extent of opposition mobilization, the percent of seats held by the opposition and the distance of the nominee to the filibuster pivot will have no effect on the intensity of going public.

Opinion contest theory generates the same prediction as political capital theory about high-value nominees: presidents will be more inclined to go public on behalf of a nominee if the nominee is particularly valuable to the president. Again, nominees will be particularly valuable to the president if their confirmation will move the median justice on the Supreme Court toward the president.

> **OC 3—(High Value Nominee):** Republican presidents will go public more intensely for a nominee who moves the median on the Supreme Court in a conservative direction; Democratic presidents will go public more intensely for nominees who move the median in a liberal direction.

Because going public over Supreme Court nominations is a relatively high visibility event not allowing for microtargeting, presidents should adopt the "crafted talk" approach in their rhetoric.

> **OC 4 (Crafted Talk):** When the president goes public on a nominee, he will tout the qualifications and personal attributes of the nominee while avoiding discussion of the nominee's ideological extremity or partisan commitments.

As discussed earlier, opposition mobilization implies a negative relationship between votes and going public.

> **OC 5 (Rising Negative Votes):** The more the president goes public, the larger the percentage of negative votes against the nominee. This relationship will remain, even after controlling for the number of opposition seats, nominee quality, and extremity.

Previous Research

Maltese (1995) first noted the increasing use of going public over Supreme Court nominations. This paper used archival sources to corroborate that Presidents Richard Nixon and Reagan undertook concerted public relations campaigns on behalf of their nominees.

The principal quantitative account of going public over Supreme Court nominees is Johnson and Roberts (2004), which employs data from 28 nominations between 1949 and 1994. The paper adopts a political capital view of going public, combined with a pivotal politics approach to legislating. Hence, it focuses on the ideological distance between the nominee and the filibuster pivot. It also investigates several other variables (e.g. nominee quality and presidential approval). The paper finds that the distance to the filibuster pivot is consequential for going public, while presidential approval is negatively related to going public. Unfortunately, the count methods employed do not correct the standard errors for the extreme overdispersion of the data. Consequently, inference about the impact of variables on going public is problematic; nor are model fit and outliers address in much detail. In a separate analysis, the authors regress the residuals from a model of individual (negative) confirmation voting on the measure of going public. They find that increased levels of going public reduce the unexplained tendency of senators to vote no.

Holmes (2007, 2008) investigates going public over nominees to the U.S. courts of appeals from 1977 to 2005. In general, presidents did not go public over these nominees (presidents remained silent for 89% of the nominees studied). Employing an ordered logit (for zero, one, a few, and some mentions), the author finds that presidents go public when interest groups mobilize against the appeals court nominee. In addition, a larger distance between the nominee and the filibuster pivot is associated with heightened public appeals.

Data and Methods

Dependent Variable

Our measure of going public is derived from every public occasion in which a president mentioned a Supreme Court nominee by name, beginning with Herbert Hoover's nomination of Charles Evans Hughes in February 1930 and continuing through the confirmation of Barack Obama's nominee Sonia Sotomayor in August 2009, a total of 49 nominees.[2]

To identify each episode of going public about a Supreme Court nominee, we first performed electronic searches of the digital version of the public papers of the presidents available on line at the University of California at Santa Barbara, searching for all

2. All data used in this paper are posted and publicly available at the senior author's web page, http://www.princeton.edu/~ccameron/papers.html.

presidential mentions of the nominee by name.[3] We also searched the indexes of the published versions of *The Public Papers of the Presidency*. We restricted the identified mentions to the time period from the announcement of the nominee to the confirmation or other definitive outcome of the nomination. Our search uncovered 160 separate occasions (items in the *Public Papers*) in which presidents mentioned or discussed their nominee in public.

Following Wood (2007), we counted the number of sentences in each episode. In these sentences, the president discusses the nominee. Only sentences relevant to the nominee were counted as going public over the nominee. So, for example, if the president was asked multiple questions during a press conference including some about the nominee, only his comments about the nominee are coded as going public over the nominee; his comments about other matters during the interchange were not counted. This method of coding yielded 1,577 sentences, some 32 per nominee.

The individual sentences were then coded for their content, classifying each sentence into 16 distinct subject categories.[4] All sentences were coded independently by two coders. In almost all instances, the differences in coding between the two coders were very small and easily reconciled by them. In a few cases, disputes were broken by a third coder.[5]

Independent Variables

The partisan version political capital theory identifies as a key variable opposition seats in the Senate. We calculate the percentage of such seats from 1930 to 2009, thereby controlling for the changing size of the Senate over this period. We utilized the counts of partisan divisions from the historian of the Senate and the tables in Graff (1997).[6]

The spatial or pivotal politics version of political capital theory identifies as a key variable the distance of the nominee to the filibuster pivot. As a measure of perceived nominee ideology at the time of the nomination, we employed Cameron and Park's (2009) first dimension Nominate-scaled Perception (NSP) scores. We calculated the location of the more distal filibuster pivot using senators' DW-Nominate scores (Senate space) for each Senate at which a nomination occurred.[7]

Our data on interest group mobilization are derived from content analysis and coding of all articles in the *Los Angeles Times* covering Supreme Court nominations, from 1930 to 2009. Using key word searches in Proquest and the time period from the announcement of the new nominee until the final disposition of the nomination, we first identified every article reporting on Supreme Court nominations. We then identified every story mentioning interest groups and every story mentioning interest groups by

3. See http://www.presidency.ucsb.edu/ws/.

4. In some cases, a sentence inextricably contained elements addressing more than one category. In such a case, a proportionate share of the sentence was counted in each category.

5. Detailed coding rules and a spreadsheet with the coding of sentences in each public utterance are available on the senior author's web page, http://www.princeton.edu/~ccameron/papers.html.

6. The data from the historian of the Senate are available at http://www.senate.gov/pagelayout/history/one_item_and_teasers/partydiv.htm

7. http://www.voteview.com/.

name. For each interest group mentioned, we coded whether the group opposed or supported the nominee or was neutral. We thus identified the total number of stories with interest group mentions and the number of opposing groups.

Both theories suggest that more valuable nominees may stimulate more vigorous action by the president. As a measure of the value of nominees, we employ their impact on the spatial location of the median justice on the Supreme Court. To calculate the *ex ante* move-the-median impact of nominees we proceeded as follows. First, for each natural court in the 1937-2006 period (i.e., courts defined by stable membership), we calculated the average Martin-Quinn voting score for the justices, based on the three preceding years, at the time of the end of the natural court. This procedure is intended to capture perceptions of the Supreme Court at the time of a nomination. We then converted this score to the Senate DW-NOMINATE space. Using these scores, we identify the median justice at the time of a nomination. We then replaced the score of the exiting justice with the NSP score of the nominee replacing that justice (i.e., his first dimension score scaled in the Senate DW-NOMINATE space). We then identified the score of the median justice that would have resulted if the nominee were confirmed and voted in accord with his or her NSP Score. The difference between the previous median justice's score and the new median justice's score is the ex ante *move-the-median impact* of the nominee.

As a measure of scandal, we employ the coding from Cameron, Segal, and Key (2010). The authors base their coding on reportage in the *New York Times*. They code a story as indicating a scandal if it reported ethical or financial lapses, illegalities, misconduct, or allegations of unprofessional or unethical conduct as an attorney or judge. They did *not* code a story as indicating a scandal if the story simply reported opposition to the nominee or the existence of political controversy, for example, because the nominee had defended trusts or railroads (e.g., Charles Evan Hughes in 1930). Thus, the measure is not a measure of controversy but specifically one of scandals. To avoid imposing debatable retrospective judgments on the seriousness of the scandals, the authors coded as scandal even allegations that subsequent investigation demonstrated had little merit, for example, the allegations raised against Earl Warren by a known fugitive from justice.

As a measure of public approval of the president, we employ the standard Gallup measure, which is first available for the nomination of Hugo Black in 1937.[8]

Table 1 presents basic descriptive statistics on the data employed in this study.

Methods

Our dependent variable, total number of sentences about the nominee, is a count. Most analysts believe it worthwhile to use methods specifically adapted to counts, such as Poisson regression. However, as is widely understood, if count data are overdispersed (the variance is much greater than the mean), simple Poisson regressions dramatically understate the standard errors of coefficients. In fact, the sentence count data studied here are quite overdispersed. In such circumstances, the course preferred by many analysts is to correct the standard errors to reflect the over-dispersion by employing quasi-Poisson

8. Available at http://webapps.ropercenter.uconn.edu/CFIDE/roper/presidential/webroot/presidential_rating.cfm.

TABLE 1
Descriptive Statistics

Variable	*Dates*	*Nominees*	*Mean*	*Variance*	*Min*	*Max*
Total Sentences	1930-2009	49	32.2	3427.7	0	324
Pct. Opposition Seats	1930-2009	49	.434	.012	.18	.64
Abs. Filibuster Distance	1937-2009	45	.491	.041	.048	.785
Negative Interest Groups	1930-2009	49	4.5	76.7	0	50
Interest Group Stories	1930-2009	49	9.8	256.4	0	84
Presidential Approval	1937-2009	45	58.2	124.6	39	82
Move-the-Median (Rep)	1937-2009	45	.028	.002	0	.152
Move-the-Median (Dem)	1937-2009	45	.028	.006	0	.377
Scandal	1930-2009	49	.327	.224	0	1

methods (Wooldridge 2009). As an alternative, negative binomial regression may sometimes be appropriate, although this approach assumes a somewhat different data generating process (Wooldridge 2009). Here, we employ and report quasi-Poisson regressions. Substantively and statistically similar results hold in negative binomial and semilogarithmic ordinary least squares (OLS) regressions; these results are available on the senior author's web page.[9]

The Triggers: Why Do Presidents Go Public over Supreme Court Nominees?

We begin by examining basic patterns in the data; we then model the data parametrically.

Major Patterns in the Data

Figure 1 displays the dependent variable, counts of total presidential sentences discussing each Supreme Court nominee since 1930. Each circle indicates a single nominee. Prior to about 1965, presidents simply did not go public over their Supreme Court nominees, to any extent at all. Starting in the late Johnson administration, presidents began to do so for some nominees but at modest levels. However, the Reagan administration (1981-1988) was a watershed. During that administration, going public over nominees became routine and often vigorous. The Robert Bork nomination stands out as the most intense effort yet undertaken by a president on behalf of a Supreme Court

9. Available on the senior author's web page are two sets of supplementary tables, exactly paralleling Tables 2 through 4, below, performing the same analysis but using different methods. In the first set, we use negative binomial models, including zero-inflated NB. In the second, we use semi-logarithmic OLS. We also provide the S-Plus scripts used in the analysis reported here; implementation in R would be very similar, http://www.princeton.edu/~ccameron/papers.html. A rather different approach would treat the going public data as a time series. Unfortunately, the data are extremely irregularly spaced. How to handle extremely irregularly-spaced over-dispersed counts using time series methods appears at, or beyond, the current research frontier.

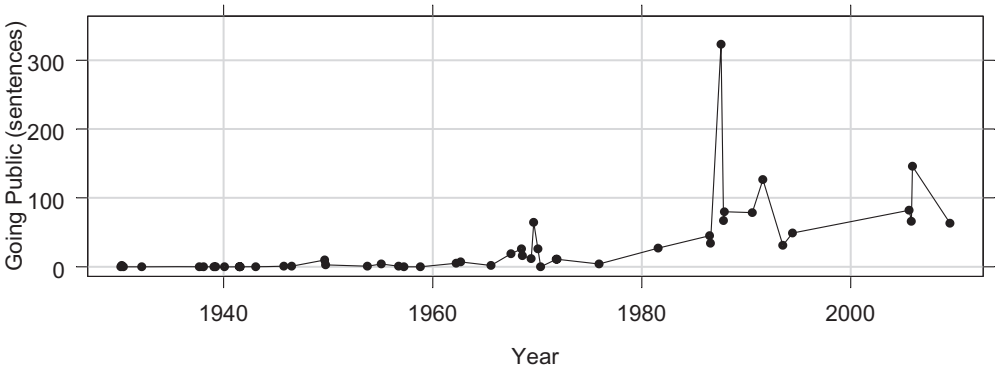

FIGURE 1. Going Public on Supreme Court Nominees 1930-2009. Shown are counts of total presidential sentences discussing Supreme Court nominees. Each circle indicates a single nominee.

nominee. Subsequent presidents have tended to follow in Reagan's footsteps—if not to the extent of the Bork nomination—by going public over their nominees at levels that typically met or exceeded all pre-Reagan efforts. The Clarence Thomas nomination (of President George H. W. Bush) and the Samuel Alito nomination (of President George W. Bush) stand out as occasions that also sparked extremely strong presidential efforts. The nominations of Ruth Bader Ginsburg and Stephen Breyer, though post-Bork, stimulated more modest presidential efforts.

Given these patterns, a satisfactory model of going public should answer two questions:

- First, why did Presidents Herbert Hoover, Franklin Roosevelt, Harry Truman, Dwight Eisenhower, and John Kennedy *not* go public over their nominees?
- Second, what explains the *wide variation* in the intensity of going public that occurred after about 1965?

In attempting to answer these questions, political capital theory highlights two key independent variables: the percentage of Senate seats held by the president's opposition, and the distance of the nominee to the more distal filibuster pivot. Figures 2 and 3 display these variables, respectively.

In Figure 2, the thick line at the 50% mark delineates unified-party and divided-party nominations. Nominations falling above the 50% line were vulnerable to rejection in a straight-party vote. The lower line indicates the cloture threshold (one-third prior to 1976, two-fifths thereafter). Nominations falling above the cloture threshold were vulnerable to straight-party filibusters by the opposition party. Almost every nomination since 1943 has been vulnerable in this sense. However, only one nominee was actually filibustered: the second Fortas nomination (for Chief Justice), offered by an unpopular lame-duck president within a month of a presidential election, an election subsequently won by the opposition.

Figure 3 displays the absolute distance between the nominee and the farther filibuster pivot, measured in Senate DW-NOMINATE space. Small distances required

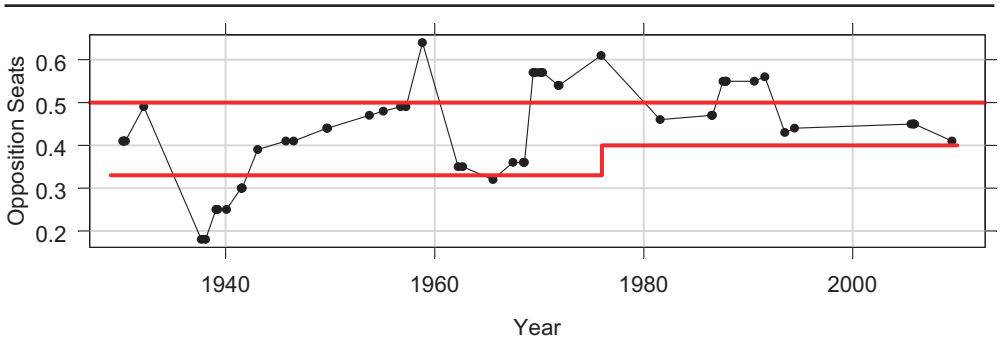

FIGURE 2. Percentage of Seats Held by the Opposition Party at Each Nomination, 1930-2009. The thick line at the 50% mark delineates unified-party and divided-party nominations. Nominations falling above the 50% line were vulnerable to rejection in a straight-party vote. The lower line indicates the cloture threshold (one-third prior to 1976, two-fifths thereafter).

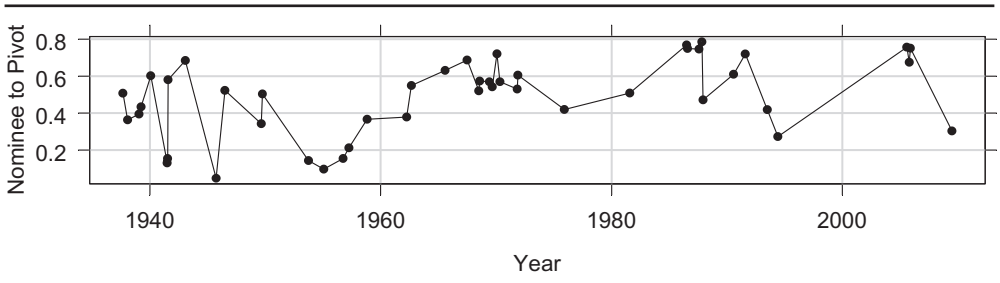

FIGURE 3. Ideological Distance of Each Nominee to the Senate Filibuster Pivot, 1937-2009. The distance is measured in Senate DW-NOMINATE space. There are always two filibuster pivots; the pivot chosen is the one farthest from the president.

either a large majority for the president's party or a "compromise" nominee ideologically not too distant from the opposition. Large distances occurred with an ideologically extreme nominee and either divided party government or only a small majority for the president's co-partisans.

Opinion contest theory highlights as the key variable interest group mobilization against the nominee. Figure 4 addresses interest group mobilization. In the upper panel, group mobilization is measured by the number of stories in the *Los Angeles Times* reporting interest group activity during the nomination. In the lower panel, mobilization is measured by the number of groups specifically identified by name as opposing the nomination or taking public actions against it. The National Organization for the Advancement of Colored People (NAACP) and organized labor mobilized against the 1930 Parker nomination, which went down to defeat. Otherwise, group mobilization was rare and tepid prior to about 1965. However, from the Bork nomination on, interest group mobilization against nominees became almost routine and frequently intense, with the exceptions of the two Bill Clinton nominees Ruth Bader Ginsburg and Stephen

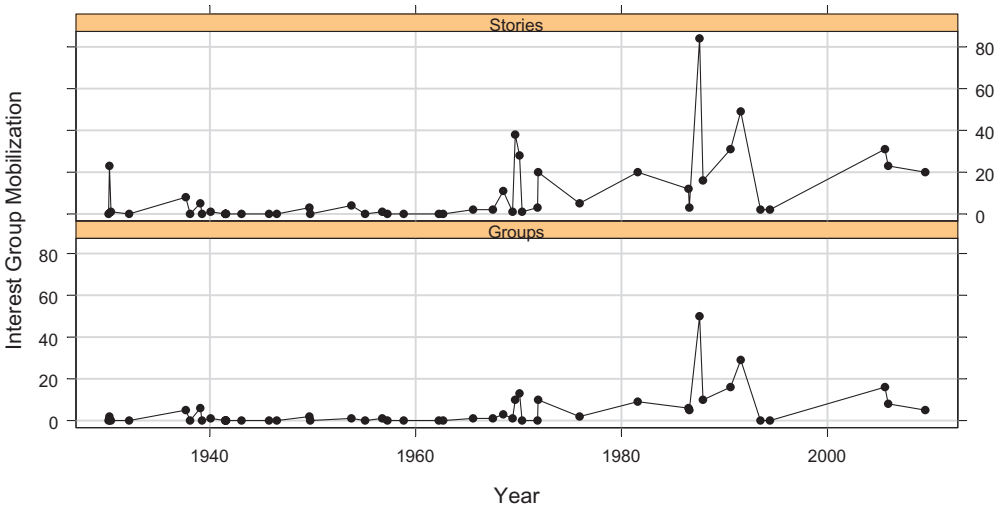

FIGURE 4. Interest Group Mobilization over Supreme Court Nominees, 1930-2009. In the upper panel, group mobilization is measured by the number of stories in the *Los Angeles Times* reporting interest group activity during the nomination. In the lower panel, mobilization is measured by the number of groups identified by name as opposing the nomination or taking public actions against it. Included are the three withdrawn nominees (Homer Thornberry, Douglas Ginsburg, and Harriet Miers).

Breyer. Included in the figure are mobilizations around the three withdrawn nominees (Homer Thornberry, Douglas Ginsburg, and Harriet Miers).

In our view, the number of identified opposing interest groups is a more precise measure of group opposition than the number of stories mentioning interest groups. The latter may include groups mobilized in favor of a nominee.[10] However, the count of opposing interest groups probably understates the extent of interest group mobilization in the John J. Parker, Clement Haynesworth, and G. Harrold Carswell nominations since these pitched battles occurred before the vast proliferation of interest groups in the 1970s and after. We focus on the count of opposed groups but verify that results hold using counts of stories as well.

Both theories identify the move-the-median impact of nominees as potentially consequential, because such nominees are (plausibly) extravaluable to a president. Figure 5 displays the move-the-median impact of each nominee since 1937 (as discussed earlier). Byron White and Arthur Goldberg were both large liberal median movers. Many nominees since 1968 have been conservative median movers, though of rather modest dimension. Alito stands out as a more consequential conservative mover. No nominee since Thurgood Marshall (1967) has been a liberal median mover. (The statistical analysis distinguishes liberal from conservative median movers by employing two separate variables, "Dem-mover" and "Rep-mover" which take the absolute value of the move-the-median impact if it is in the correct direction and zero otherwise.)

10. If one uses the counts of stories rather than the counts of opposing groups in the regressions in Table 4, similar results obtain.

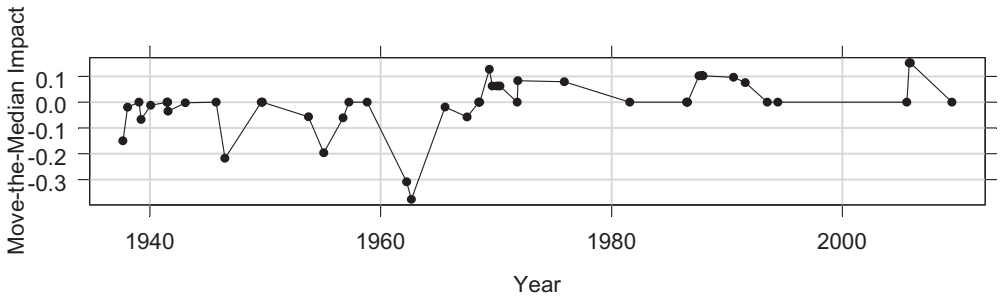

FIGURE 5. The Move-the-Median Impact of Each Nominee, 1937-2009. Shown is the impact on the location of the median member of U.S. Supreme Court, if the nominee had been approved and acted in accord with his or her Nominate Scaled Perception score. Positive scores indicates impact in the conservative direction, negative scores impact in the liberal direction.

Figure 6 examines the impact of the major variables, taken one at a time, on the intensity of going public. The figure focuses on the nominations that occurred from 1965 forward, as going public shows great variation in this era. Each y-axis displays the natural logarithm of 1 plus the number of sentences spoken by the president about the nominee.[11] The line in each figure is the fit from a locally weighted regression (a loess model, span = 1). Going public appears related to group mobilization and the move-the-median impact of conservative nominees (there were few liberal movers after 1964). The percentage of seats held by the opposition, the distance of the nominee to the filibuster pivot, and presidential approval seem to have little impact on the intensity of going public.

Fitting the Data

Tables 2, 3, and 4 display parametric models of going public over Supreme Court nominations. Five models, reflecting the discussion in Section 2, are shown in each table. The first two examine going public in the period from 1965 to the present. The other three present variations using as many nominations as possible given the variables employed in the regression. For example, Model 3 employs presidential approval and so begins in 1940 with the nomination of Frank Murphy, the first nominee for whom that variable is available. Each regression is a quasi-Poisson model that corrects for the substantial over-dispersion in the dependent variable.

The models in Table 2 explore the partisan version of political capital theory. In the post-1965 period, the percentage of opposition seats appears to have little or no impact on going public. Similarly, in two of the three models using much longer series of nominee this key variable fails to achieve conventional levels of statistical significance. However, in the sparsest model with the longest series it appears to have the predicted positive effect. We take these results as unfavorable for the partisan version of the political capital theory. Turning quickly to the other variables in Table 2, as suggested by

11. One was added to the number of sentences because the natural log of zero is undefined.

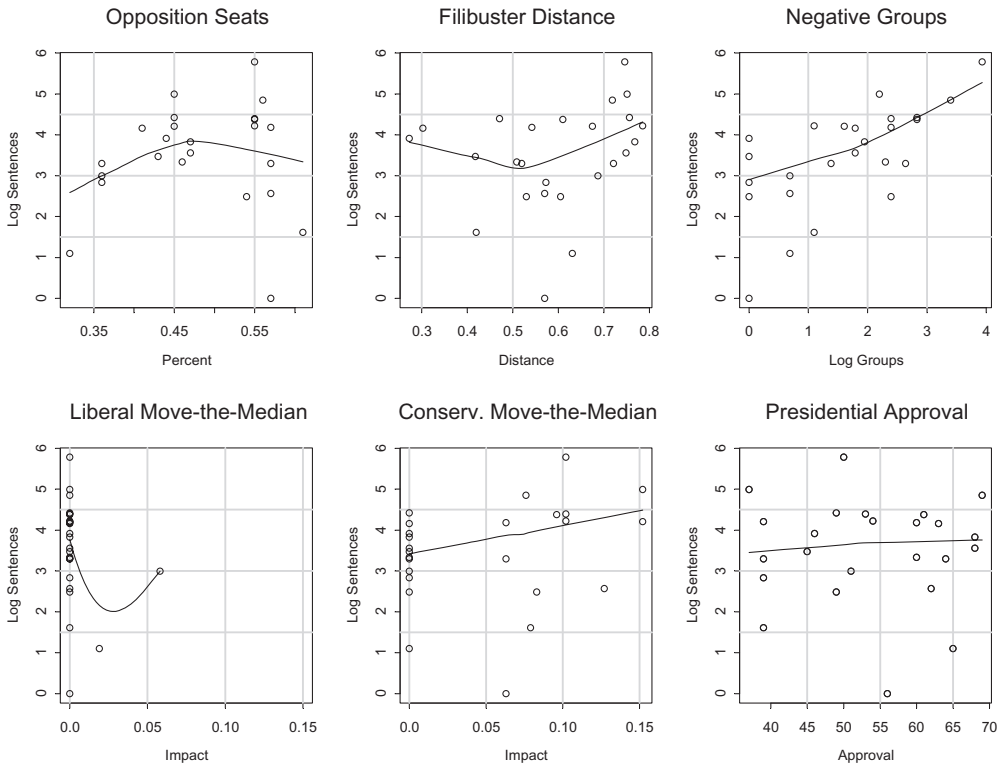

FIGURE 6. The Relationship between Going Public and Key Variables, 1965-2009. Shown on each y-axis is the natural logarithm of the number of sentences spoken by the president about the nominee. The line in each figure is the fit from a locally weighted regression (loess, span = 1).

Figure 1, recent presidents appear to have gone public somewhat more vigorously, commencing with President Reagan. The data show no evidence that Democratic presidents went public more vigorously for liberal median movers, but several specifications suggest Republican presidents did so for conservative median movers. Across the different specifications, accusations of scandal boosted going public, at least somewhat. Presidential approval does not achieve statistical significance in either model incorporating this variable and takes the "wrong" sign. As it happens, presidential approval at the time of the nomination tends to trend downward over the 80-year period while there is little going public early in the data; the negative coefficient probably reflects the trending of approval and should be seen as spurious.[12]

Now consider the spatial or pivotal politics version of political capital theory, explored in Table 3. The distance of the nominee to the filibuster pivot does not achieve conventional levels of statistical significance in the post-1965 period; however, it does do

12. None of the other variables appear affected by similar trending.

TABLE 2
Political Capital Models: Partisan Version

	Post-1965		*All Years*		
	Model 1a	*Model 2a*	*Model 3a*	*Model 4a*	*Model 5a*
Opposition Seats	1.26 (3.14)	.85 (2.74)	2.98 (2.04)	2.40 (1.94)	5.56 (1.87)
	0.40	0.31	1.51	1.24	2.97
Post-1980	1.69 (0.43)	1.67 (.42)	2.07 (0.32)	2.08 (0.33)	2.41 (0.33)
	3.90	3.99	6.42	6.34	7.21
Move-Rep	6.53 (3.37)	7.05 (2.75)	5.74 (2.55)	7.11 (2.27)	—
	1.94	2.57	2.25	3.14	
Move-Dem	15.53 (22.6)	14.85 (22.20)	0.98 (3.70)	0.44 (3.73)	—
	1.07	0.67	0.26	0.11	
Scandal	0.62 (.31)	0.62 (0.30)	0.59 (0.24)	0.58 (0.24)	0.42 (0.25)
	2.03	2.06	2.50	2.31	1.71
Approval	−0.00 (0.02)	—	−0.01 (0.01)	—	—
	−.27		−1.04		
Intercept	1.73 (1.42)	1.64 (1.36)	1.00 (1.01)	0.49 (0.91)	−.82 (0.94)
	1.22	1.21	0.96	0.53	−.88
Dispersion parameter	23.7	22.8	15.7	16.2	19.0
Years	1965-2009	1965-2009	1937-2009	1937-2009	1930-2009
n	25	25	45	45	49
df	18	19	38	39	45
Null deviance	1548.0	1548.0	3167.9	3167.9	3421.0
Resid. deviance	406.6	408.4	565.1	582.4	778.3
(Null-Resid)/Null	.74	.74	.82	.82	.77

Dependent Variable: Presidential Public Sentences about the Nominee. Quasi-Poisson regression models (standard errors corrected for over-dispersion). Standard errors in parenthesis, t-statistic on second line in each cell.

so in the longer series. (Model 5 cannot be estimated because ideology scores are not yet available for nominees prior to 1937.) The impact of the other variables is similar to that seen in Table 2.

Table 4 explores opinion contest models. Across the five models, the intensity of going public increased when more groups mobilized against the nominee. Thus, this relationship held in both the post-1965 period and in all the periods studied. Moreover, the magnitude of the estimated coefficient is stable across all five models. As before, the models suggest the intensity of going public increased from President Reagan forward; the magnitude of the coefficients on this variable are very similar to those in the previous models. Again the models suggest that Republican presidents worked harder on behalf of conservative median movers, while Democrats did not for liberal median movers. The magnitude of the coefficients on "Move-Rep" is quite consistent with those in the earlier models. As before, presidential approval displays the wrong sign; in the longer model, approval appears to be statistically significantly different from zero. (Again, we view this relationship as spurious, reflecting the trending in presidential approval.) The effect of scandal accusations is estimated to be somewhat smaller than in the previous models. This may suggest that interest group mobilization and accusations of scandal are linked.

TABLE 3
Political Capital Models: Filibuster Distance Version

	Post-1965		*All Years*		
	Model 1b	*Model 2b*	*Model 3b*	*Model 4b*	*Model 5b*
Filibuster Distance	1.16 (0.87)	1.08 (0.84)	1.47 (0.69)	1.39 (0.68)	
	1.33	1.29	2.14	2.02	
Post-1980	1.60 (0.39)	1.59 (0.38)	1.91 (0.32)	1.92 (0.32)	
	4.06	4.14	6.01	6.04	
Move-Rep	5.73 (2.71)	6.25 (2.37)	5.74 (2.24)	6.73 (1.99)	
	2.11	2.63	2.55	3.38	
Move-Dem	9.03 (20.82)	9.43 (20.54)	−1.04 (3.71)	−1.21 (3.74)	
	0.43	0.46	−0.27	−0.32	
Scandal	0.70 (0.26)	0.67 (0.24)	0.76 (0.21)	0.70 (0.20)	
	2.72	2.77	3.64	3.51	
Approval	−0.01 (0.02)	—	−0.01 (0.01)	—	
	−0.41		−0.93		
Intercept	1.80 (0.97)	1.49 (0.60)	1.52 (0.79)	0.91 (0.44)	
	1.85	2.47	1.92	2.07	
Dispersion parameter	21.1	20.3	14.4	14.4	
years	1965-2009	1965-2009	1937-2009	1937-2009	1930-2009
n	25	25	45	45	49
df	18	19	38	39	45
Null deviance	1548.0	1548.0	3167.9	3167.9	
Resid. deviance	372.3	375.8	534.3	546.8	
(Null-Resid)/Null	.76	.76	.83	.83	

Dependent Variable: Presidential Public Sentences about the Nominee. Quasi-Poisson regression models (standard errors corrected for over-dispersion). Standard errors in parenthesis, t-statistic on second line in each cell.

In sum, the models in Tables 2 through 4 offer very little support for the opposition seats hypothesis and mixed support for the filibuster pivot hypothesis. The models offer consistent support for the mobilized opposition hypothesis. The models offer little or no support for the presidential popularity hypothesis. They offer consistent support for the high value nominee hypothesis, at least for Republican presidents.

Which Framework Better Explains Going Public? A systematic comparison of the frameworks requires nonnested hypothesis tests, since the three frameworks employ a set of nonoverlapping variables (percent of opposition seats, filibuster distance, and negative groups). (Of course, the frameworks also share several variables [e.g., scandal].) Here we employ a nonnested F-test (Greene 2003; Kennedy 2003).[13] First, we construct a series of "encompassing models" employing the variables from two frameworks at a time (Davidson and MacKinnon 1993). Then we test whether the key variables, taken

13. Hastie and Pregibon (1993) suggest that the F-test is appropriate for comparing quasi-Poisson models.

TABLE 4
Opinion Contest Models

	Post-1965		*All Years*		
	Model 1c	*Model 2c*	*Model 3c*	*Model 4c*	*Model 5c*
Negative Groups	0.03 (0.01)	0.03 (0.01)	0.03 (0.01)	0.03 (0.01)	0.03 (0.01)
	4.88	4.95	4.68	4.59	5.17
Post-1980	1.41 (0.28)	1.40 (0.27)	1.87 (0.28)	1.88 (0.28)	2.24 (0.31)
	5.07	5.18	6.72	6.78	5.16
Move-Rep	4.97 (1.82)	5.33 (1.67)	5.58 (1.91)	6.45 (1.76)	—
	2.73	3.19	2.93	3.66	
Move-Dem	8.69 (14.44)	8.81 (14.16)	−0.93 (3.20)	−1.09 (3.15)	—
	0.60	0.62	−0.27	−0.35	
Scandal	0.33 (0.20)	0.31 (0.19)	0.42 (0.20)	0.37 (0.19)	0.30 (0.23)
	1.65	1.61	2.07	1.89	1.30
Approval	−0.01 (0.01)	—	−0.01 (0.01)	—	—
	−0.54		−1.10		
Intercept	2.53 (0.63)	2.23 (0.29)	2.31 (.65)	1.64 (0.25)	1.66 (0.28)
	4.04	7.76	3.54	6.31	5.90
Dispersion parameter	10.2	9.7	10.9	10.9	15.7
years	1965-2009	1965-2009	1937-2009	1937-2009	1930-2009
n	25	25	45	45	49
df	18	19	38	39	45
Null deviance	1548.0	1548.0	3167.9	3167.9	3421.0
Resid. deviance	176.3	179.3	373	386.6	575.6
(Null-Resid)/Null	.89	.88	.88	.88	.83

Dependent Variable: Presidential Public Sentences about the Nominee. Quasi-Poisson regression models (standard errors corrected for over-dispersion). Standard errors in parenthesis, t-statistic on second line in each cell.

one at a time, contribute significantly to the fit of the encompassing model, employing an *F*-test. If one key variable does not but the other does, the test rejects one framework in favor of the other. As is typical of nonnested tests, both frameworks tested may be accepted and both may be rejected.

Table 5 displays the results for each of the five models estimated in Tables 2 through 4. The rows labeled 1a and 1b pit the partisan version of political capital theory against the opinion contest approach. As shown, partisan political capital theory is consistently rejected in favor of opinion contest theory. The rows labeled 2a and 2b pit the pivotal politics version of political capital theory against opinion contest theory. Again political capital theory is rejected in favor of opinion contest theory in every model. Finally, the rows labeled 3a and 3b pit the two versions of political capital theory against one another. In the two models with longer series of data, the partisan model is rejected in favor of the pivotal model. But both models are rejected in the post-1965 models.

These formal statistical tests strongly favor the opinion contest framework over both of the alternatives. They also support the "only mobilized opposition" hypothesis: controlling for interest group opposition, opposition seats and distance to filibuster pivot have little impact on going public.

TABLE 5
Nonnested Hypotheses Tests

Test	*Model 1 (Post 1965)*	*Model 2 (Post 1965)*	*Model 3 (1937-2009)*	*Model 4 (1937-2009)*	*Model 5 (1930-2009)*
1a. *Groups* vs. Groups + Seats	.000	.000	.000	.000	.000
	(24.0)	(25.51)	(18.14)	(17.8)	(17.04)
1b. *Seats* vs. Groups + Seats	.267	.210	.486	.741	.106
	(1.3)	(1.69)	(.49)	(.11)	(2.71)
2a. *Groups* vs. Fili. + Groups	.000	.000	.000	.000	—
	(18.19)	(19.21)	(16.59)	(16.33)	
2b. *Fili* vs. Fili + Groups	.784	.859	.250	.286	—
	(0.08)	(0.03)	(1.37)	(1.17)	
3a. *Filibuster* vs. Fili + Seats	.222	.233	.051	.070	—
	(1.60)	(1.52)	(4.06)	(3.47)	
3b. *Seats* vs. Fili + Seats	.523	.981	.183	.327	—
	(0.05)	(0.00)	(1.84)	(.99)	

Values in parentheses are *F*-values, values in the cells are Pr(F), that is, the probability that the variable in italics in the "Test" column improved the fit of the indicated encompassing model. Probabilities above .10 suggest the variable does not improve the encompassing model; values below .10 suggest it does.

Model Performance. Although the data strongly favor the opinion contest framework, the question remains: How well do the opinion contest models actually capture variation in going public? And, what is the substantive impact of mobilized opposition? Figure 7 addresses the first question, focusing on Model 4c, covering the years 1937-2009.

The top panel in the figure compares the actual intensity of going public (solid line and circles) with the level predicted by Model 4c in Table 4 (dotted line in the figure).[14] The bottom panel shows the difference between the actual and predicted levels (the residuals). The predictions track the actual data very closely, including the Bork nomination. In the early period, the model very slightly but consistently over-predicts going public. The most notable residual occurs from underpredicting the intensity of going public in the Haynesworth nomination. The Haynesworth nomination took place before the vast proliferation of interest groups so that relying on the number of mobilized opponents understates the intensity of the opposition effort, hence, the model underestimates the presidential response.

Figure 8 addresses the substantive impact of mobilized opponents on the intensity of going public, again using Model 4c. The left-hand panel shows the estimated intensity of going public at different level of group mobilization for a nominee similar to Haynesworth or Carswell (pre-1980 nominee, with scandal, moves median justice in a conservative direction). Point-wise approximate 95% confidence intervals are shown with bars. Estimated sentences increase from about 10 with no group mobilization to about 50 with 50 groups mobilized. The right-hand panel is similar, for a nominee similar to Robert

14. We employ Model 4c as it covers an extended period (1937-2009) while parsimoniously incorporating key variables.

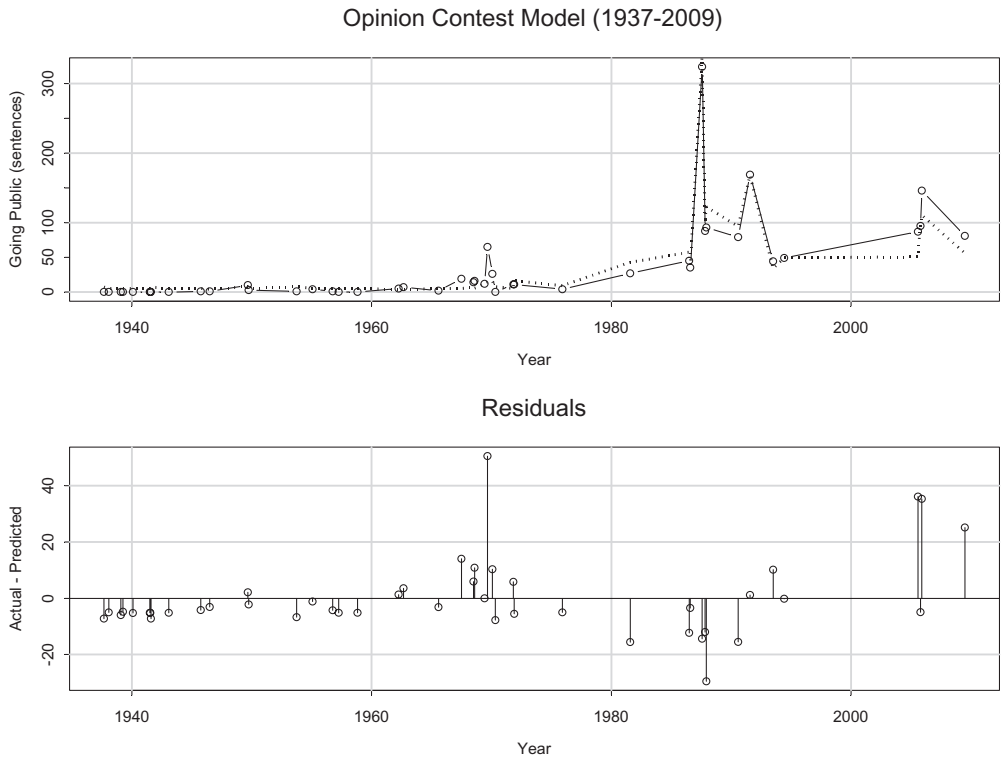

FIGURE 7. Performance of the Opinion Contest Model, 1937-2009. The top panel compares the actual intensity of going public with the level predicted by Model 4c (Table 4). The bottom panel shows the difference between the actual and predicted levels.

Bork (post-1980, scandal, conservative median mover). Estimated sentences increase from about 90 with no group mobilization to about 330 with 50 groups mobilized. Actual levels in those two nominations are shown with an "x" in the figure. Reagan's effort for Bork was almost exactly that predicted by the model; Nixon's effort for Haynesworth was more intense than predicted though, though his effort for Carswell was similar to the predicted level.

Crafted Talk: What Do Presidents Say When They Go Public?

Presidents nominate specific individuals to the U.S. Supreme Court for many reasons: to alter the ideological make-up of the Supreme Court and thus advance specific policy goals, to appeal to or reward a particular voting bloc, or even to advance a crony (Yalof 1999). But when challenged over a nominee, the president's public rhetoric consistently portrays the nominee as a superbly qualified, fair and nonpartisan jurist, with a heart-warming personal story that stands as a testament to American virtues. And, they often suggest that opposition to the nominee is purely partisan, politically motivated, and unworthy of serious consideration.

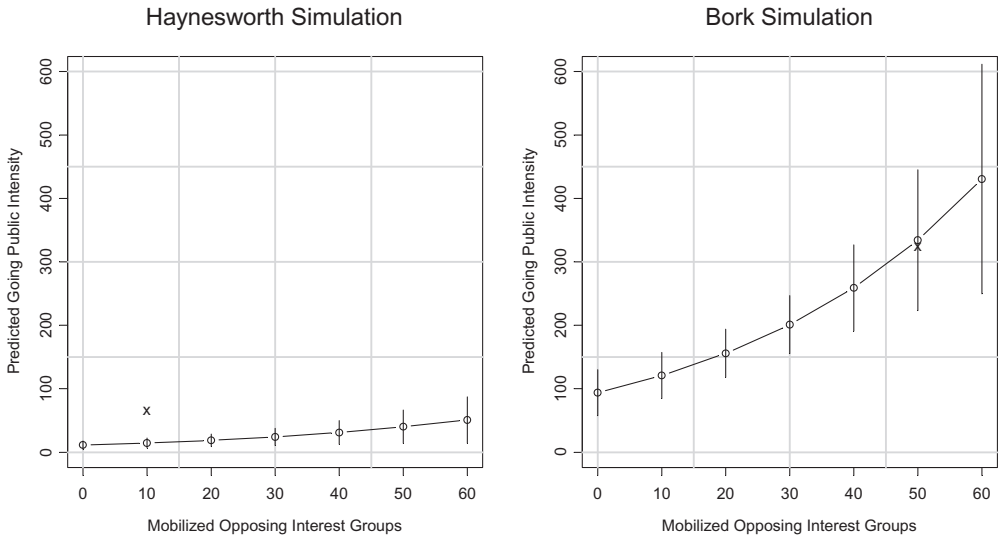

FIGURE 8. Substantive Impact of Mobilized Opposition. The left-hand panel shows the estimated intensity of going public at different level of group mobilization for a nominee similar to Haynesworth or Carswell (pre-1980 nominee, with scandal, moves median justice in a conservative direction). Point-wise approximate 95% confidence intervals are shown with bars. The right-hand panel is similar, for a nominee similar to Bork (post-1980, scandal, conservative median mover).

TABLE 6
Content of Presidential Rhetoric about the Nominees, 1930-2009

Category of Sentence	*Total Presidential Effort*
Professional Qualifications	415
Confirmation Process	369
Personal Attributes of Nominee	242
Nonpartisan Nominee	189
Ideology of Nominee	109
Deny Scandal	70

Shown are the total numbers of sentences devoted to each category of rhetoric.

Table 6 indicates the content of presidential rhetoric about Supreme Court nominees over the last 80 years, classified into six broad categories. As shown, presidents emphasized their nominee's professional qualifications—his or her education, experience, and temperament. Presidents also spent considerable time discussing the process itself, for example, hoping for a smooth and speedy confirmation, and denouncing the opposition. In some cases, the president used code phrases to hint at the nominee's ideology (e.g. "law and order"). More commonly, however, ideologically extreme partisans were described as nonideological and nonpartisan.

Figure 9 shows the changing character of presidential rhetoric over time, indicating the volume of presidential sentences in the three most prominent categories for each

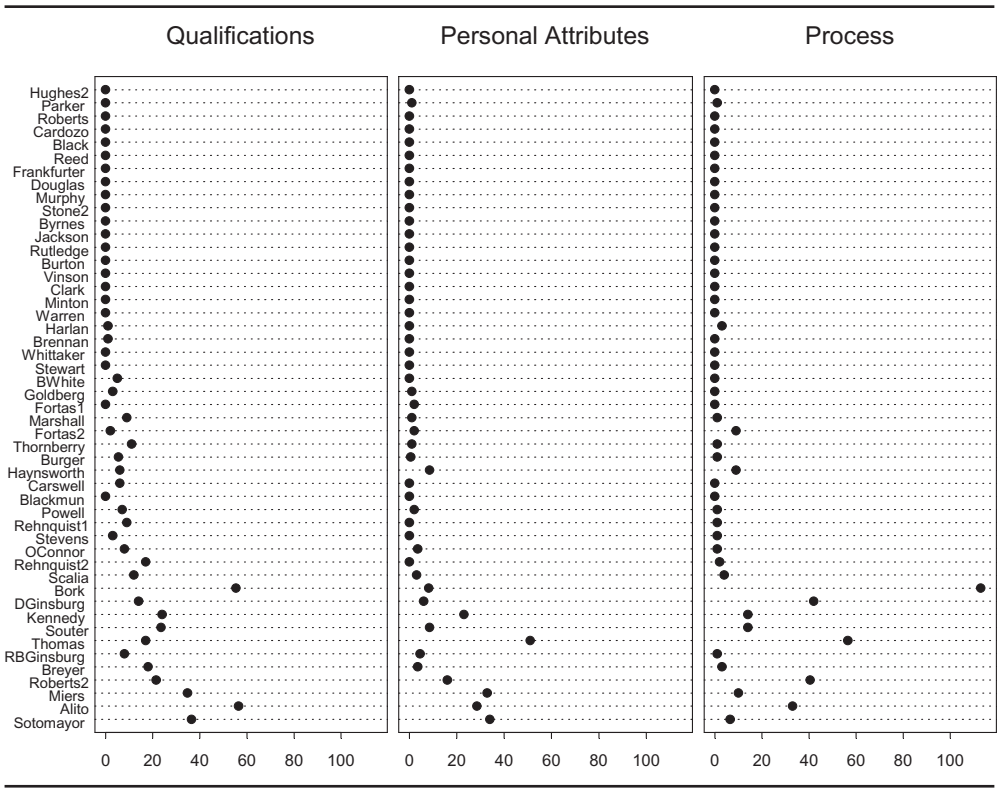

FIGURE 9. The Changing Content of Presidential Rhetoric about Supreme Court Nominees.

nominee between 1930 and 2009. The large increase in volume of presidential rhetoric about the nominees resulted from many more statements emphasizing the nominees' outstanding professional qualifications and wonderful personal attributes, and from statements decrying a politicized process. Variations in varieties of rhetoric can be seen across the nominees. For example, President George H. W. Bush emphasized Thomas's personal attributes and the process but spent less time on that nominee's qualifications, while President Obama emphasized Sonia Sotomayor's qualifications and personal attributes and spent little time discussing the process (e.g., denouncing as political those who attacked the nominee as racially biased).

In some sense, the content of presidents' messages about their Supreme Court nominees is hardly surprising: when the nominee comes under attack, presidents rejoin by trying to make their nominee appear as appealing as possible to voters. Most voters value professionalism and moderation in Supreme Court justices and are open to or supportive of nominees with particular personal attributes (women, African American, and so on) (AEI 2006). Accordingly, presidents emphasize their nominee's professional qualifications and personal attributes while glossing over the weaknesses targeted by interest group opponents, including ideological extremity. In short, presidential rhetoric about nominees is "crafted talk."

Going Public and Confirmation Votes

Opinion contest theory predicts that the more the president goes public, the *fewer* confirmation votes a nominee should receive. The reason is that presidents go public only when their nominee faces active opposition from interest groups. While the president's effort helps the nominee, it does not completely offset the work of the interest groups.

Figure 10 shows the percentage of "yea" votes received by each nonwithdrawn nominee from 1930 to 2009, arrayed against the intensity of going public. Also shown is the fit from a simple OLS regression. The relationship between confirmation votes is noisy but definitely negative.[15]

More complex estimation methods applied to the confirmation voting data, taking into account the endogeneity of going public, ought to show a positive relationship between confirmation votes and going public, controlling for the intensity of group opposition, nominee quality, and nominee ideology. But this task would be a considerable undertaking in itself and is beyond the scope of this paper (see Erikson and Palfrey 2000 for analysis of a similar problem).

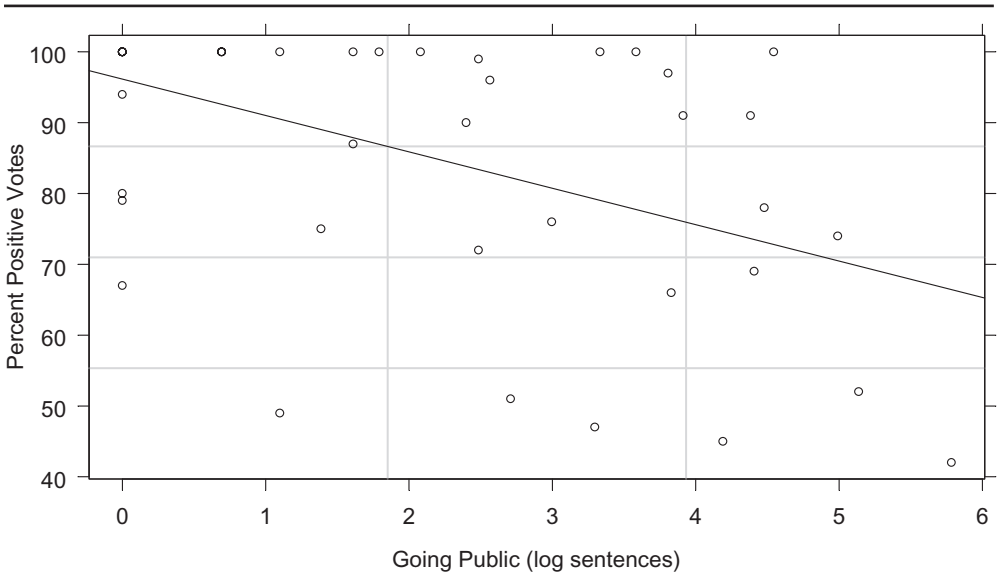

FIGURE 10. Going Public and Confirmation Votes, 1930-2009. The y-axis is the percentage of "yea" votes for the nominee. The x-axis is the natural logarithm of intensity of going public (presidential sentences). Circles show the relationship in each nomination; the line is the fit from a simple linear model (discussed in text). Voice votes are counted as unanimously favorable and withdrawn nominees are not included.

15. The bivariate regression of percent positive votes and log sentences yields: 96—5.1*log(sentences), with a t-value on log(sentences) of −3.9 (p = .0003), adjusted $r^2 = .24$.

Discussion and Conclusion

Figure 1 suggested two empirical puzzles: First, why did Presidents Hoover, Roosevelt, Truman, Eisenhower, and Kennedy virtually never go public over their Supreme Court nominees? Second, why did subsequent presidents do so but with widely varying levels of intensity? The statistical analysis answers both questions with a simple story grounded in opinion contest theory. First, in the earlier period interest groups almost never mobilized against Supreme Court nominees. As a result, the presidents in this period did not find themselves in an opinion contest and consequently did not go public. Second, starting in the late 1960s, organized interest groups began to mobilize against Supreme Court nominees; after about 1980, they sometimes did so in battalions. Whenever groups mobilized, presidents defended their nominee by going public, employing "crafted talk" emphasizing the nominee's attractive features. However, if interest groups did not mobilize, neither did the president, because he did not have to—success in Congress was virtually assured regardless of Congress's composition or the ideology of the nominee. This simple story finds corroboration in both the content data and the vote data. And, it accounts for most of the variation in the intensity data over an 80-year period.

But not *all* the variation. Several other patterns deserve comment. First, the models of intensity consistently point to a concerted effort by Republican presidents to shift the ideological composition of the U.S. Supreme Court. If a nominee was likely to move the location of the Court's median justice in a conservative direction, Republican presidents defended the nominee more aggressively. There is no evidence that Democratic presidents did the same for liberal median-moving nominees. However, two caveats on in order. On the one hand, conservative median movers occur primarily in the later part of the data. So, the "Republic activism" finding should be understood as applying to *more recent* Republican presidents. On the other hand, the liberal median movers occur only in the earlier part of the data. So, we have no evidence of "Democratic apathy" among recent Democratic presidents. At the time we write, it remains an open question whether a contemporary Democratic president would go "all out" to move the median justice in a liberal direction.

Second, the case of President Hoover and Judge Parker deserves a closer look. The nomination apparently is in accord with the statistical models: few groups mobilized, and the president did not go public. But the two groups that did mobilize—the NAACP and organized labor—were able to put the nomination is serious peril. In fact, the Parker nomination strongly resembles the Haynesworth nomination, which provoked a strong reaction from President Nixon. Why did Hoover, in contrast, remain silent? An intriguing possibility is that Hoover adhered to the Republican, nonplebiscitary model of the presidency identified by Laracey (2002). This intriguing possibility is better addressed through archival research than through the statistical methods employed here.

What can we learn about going public, more broadly, from Supreme Court nominations? Supreme Court nominations are special—at least seemingly—in that they confront presidents with a distinct problem: the president simply *must* name a nominee.

In a practical sense, filling an empty seat on the Supreme Court is obligatory, not discretionary. At least since the mid-1960s there is a possibility that interest groups will mobilize against the nominee. And since the early1980s, many groups may do so. When this happens, the president necessarily finds himself in a contest for public opinion, and he must enter the lists—go public—to shore up his nominee's prospects of confirmation. If the nominee has engaged in unethical or questionable behavior, has been a committed partisan, or holds extreme political views, the president will have to rely on crafted talk to make the best case he can.

In our view, Supreme Court nominations are not actually as special as they initially appear. In an age of polarized elites, multitudinous interest groups, and a fragmented media, virtually every major policy demarche by the president can stimulate a mobilized, well-funded, and articulate opposition. The president will then find himself in an opinion contest, of the kind familiar from post-1980 Supreme Court nominations. Those nominations are thus a laboratory for the new American politics.

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