



State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform

Author(s): Melinda Gann Hall

Source: *The American Political Science Review*, Vol. 95, No. 2 (Jun., 2001), pp. 315-330

Published by: [American Political Science Association](#)

Stable URL: <http://www.jstor.org/stable/3118123>

Accessed: 22/09/2010 16:28

Your use of the JSTOR archive indicates your acceptance of JSTOR's Terms and Conditions of Use, available at <http://www.jstor.org/page/info/about/policies/terms.jsp>. JSTOR's Terms and Conditions of Use provides, in part, that unless you have obtained prior permission, you may not download an entire issue of a journal or multiple copies of articles, and you may use content in the JSTOR archive only for your personal, non-commercial use.

Please contact the publisher regarding any further use of this work. Publisher contact information may be obtained at <http://www.jstor.org/action/showPublisher?publisherCode=apsa>.

Each copy of any part of a JSTOR transmission must contain the same copyright notice that appears on the screen or printed page of such transmission.

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.



American Political Science Association is collaborating with JSTOR to digitize, preserve and extend access to *The American Political Science Review*.

<http://www.jstor.org>

State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform

MELINDA GANN HALL *Michigan State University*

I address the controversy over how judges should be selected by analyzing the electoral fortunes of incumbents on supreme courts from 1980 through 1995 in the 38 states using elections to staff the bench. Court reformers argue that partisan elections fail to evidence accountability, while nonpartisan and retention elections promote independence. Thus, issue-related or candidate-related forces should not be important in partisan elections, and external political conditions should not be important in nonpartisan and retention elections. Results indicate that reformers underestimated the extent to which partisan elections have a tangible substantive component and overestimated the extent to which nonpartisan and retention races are insulated from partisan politics and other contextual forces. On these two fundamental issues, arguments of reformers fail. Moreover, the extraordinary variations across systems and over time in how well incumbents fare with voters, which bear directly upon the representative nature of elected courts, merit further explanation.

What determines how well judges seeking reelection fare with voters? Remarkably, we do not know, despite the fact that most judges in the United States must seek voter approval regularly to retain their seat. Perhaps this lack of knowledge reflects the general perception among scholars that judges are "infrequently challenged and rarely defeated" (Dubois 1980) or widely held beliefs derived from the legal culture that courts, which lack a formal representative function, are highly insulated from politics. Nonetheless, with few exceptions, we have little more than "unsystematic personal accounts and anecdotes of observers" (p. 34) about the forces that structure the electoral fortunes of judges.

Inextricably linked to considerations of judges' electoral performance is the debate currently raging in the states over the politics of institutional design and, specifically, the relative merits of the three types of election systems (partisan, nonpartisan, and retention elections) for staffing the bench.¹ Judicial reform advocates charge that partisan elections fail to achieve their goal of promoting accountability and thus should be abandoned. Instead, reformers favor nonpartisan elections and the Missouri Plan (also called the "merit plan") on the assertion that such schemes guarantee the preferred goal of independence. Yet, these arguments and the premises underlying the three election

Melinda Gann Hall is Professor of Political Science, Michigan State University, 303 South Kedzie Hall, East Lansing, MI 48824 (hallme@msu.edu).

A previous version of this article was presented at the 1998 APSA annual meeting and received the 1999 American Judiciary Society Award from the Law and Courts Section. I thank Lawrence Baum, Paul Brace, Ada Finifter, Laura Langer, and Ronald Weber for their comments on this work, and James Brent, Christine Day, Susan Haire, John Scheb, and Kevin Smith for their assistance in collecting portions of the data. All errors are my sole responsibility.

¹ States use partisan elections, nonpartisan elections (no party labels in the general election), and the Missouri Plan to select judges. Under the Missouri Plan, nominees for each vacancy are identified by a commission appointed by the governor, who makes the initial appointment from the list provided by the commission. The newly appointed justice immediately assumes office and then appears in the next general election to seek a regular term. Of course, variations from state to state occur with all three methods.

systems have not been subjected to scientific scrutiny, although they have guided the choices of state governments in recent decades.

To address this important controversy and to enhance our understanding of judicial elections, I evaluate the factors that govern how successfully state supreme court incumbents garner electoral support, measured as the percentage of the vote received. Data are drawn from all 643 elections to state courts of last resort from 1980 through 1995 in the 38 states that use elections to staff the high court bench.² My primary focus is on accountability and independence in alternative election systems, but I estimate general models of electoral outcomes that take into account characteristics of candidates, issues and other contextual forces, and institutional arrangements. Following standard practice, I define accountability as incumbent vote shares systematically influenced by issue-related or candidate-specific forces, *ceteris paribus*, and independence as electoral performance impervious to external partisan forces. Stated differently, accountability and independence are evidenced through the correlates of support for incumbents.³

Several qualifications to this research should be noted at the outset. First, I make no claim of assessing the overall success of the reform movement, and I do not address all concerns expressed by judicial reform advocates. Rather, I take a defined set of testable propositions fundamental to the reform movement and submit them to empirical evaluation. If these propositions are not supported by objective evidence, then the results will lend credence to the need for a more careful examination of the tenets of institutional design that have influenced state governments over the past several decades. Even so, this work will not demon-

² I will use "state supreme court" and "court of last resort" interchangeably.

³ Lowry, Alt, and Ferree (1998) provide a recent example of this approach. They define accountability as a relationship between changes in aggregate public revenues and spending, on the one hand, and vote and seat share in state gubernatorial and legislative elections, on the other.

strate the general wisdom or folly of either the reformers or partisan election advocates.

In addition, this study is conducted at the macro level and does not present evidence or draw conclusions about the behavior of individual voters. As such, this approach is consistent with studies of presidential (e.g., Erikson 1989; Hibbs 1987; Tufte 1978), congressional (e.g., Born 1986; Erikson 1990; Jacobson and Kernell 1983; Kramer 1971; Tufte 1978), and other state elections (e.g., Chubb 1988; Turett 1971) that use aggregate data to examine retrospective voting as a form of accountability. Although a macro approach does not permit the exploration of which individual voters respond to contextual information or why such responses occur, aggregate analysis facilitates an inquiry into whether election results are sensitive to certain stimuli, which is the basic question addressed here.

Finally, I do not examine the decisional propensities of individual justices or court majorities. Accountability and independence can be defined with reference to the individual and collective behavior of justices (Brace and Hall 1995, 1997; Brace, Hall, and Langer 1999; Hall 1987, 1992, 1995; Hall and Brace 1992), but these aspects are beyond the scope of my inquiry.

THE JUDICIAL SELECTION CONTROVERSY

One of the most enduring issues on the American political agenda is how to select judges for the state court bench. Because intense controversy is necessarily associated with decisions about who controls access to political power, judicial selection has generated endless debate (largely within the legal community), replete with claims and counterclaims about the various selection schemes. Almost universally, this discussion is framed as a conflict over the goals of electoral accountability and judicial independence (e.g., Champagne and Haydel 1993; Culver and Wold 1986; Dubois 1980; Hall and Aspin 1987; Lovrich and Sheldon 1983; Sheldon and Maule 1997; Watson and Downing 1969), and each election plan attempts to balance, albeit differently, these competing goals.⁴

Among the most significant controversies is whether partisan elections promote accountability, the presumed *raison d'être* of such systems. Reformers argue that partisan elections, characterized by lackluster campaigns devoid of issue content, are disconnected from substantive evaluations of candidates or other meaningful considerations relevant to the judiciary, which renders them ineffective as a means of accountability. As succinctly summarized by Dunn (1976, 285), the charge is that partisan elections do not "effectively or consistently serve the intended purpose for which they were designed." Indeed, Dubois (1980, 28) describes the reformers' arguments about the failure of partisan elections to secure popular control over the

courts as "the most fundamental and damning of the criticisms leveled against popular judicial elections."⁵ Interestingly, reformers have not been concerned with whether nonpartisan and retention elections promote accountability but, rather, with the alleged failure of partisan elections to do so.

There is a serious conflict in the literature between judicial reform advocates and political scientists over the ability of partisan elections to promote accountability. In pathbreaking work, several political scientists have documented that, at least under certain conditions, judicial elections reflect informed judgments by the electorate (e.g., Baum 1987; Dubois 1980; Lovrich and Sheldon 1983; Scheb 1983). Accordingly, election results in judicial contests vary systematically with assessments of the candidates and issues, which manifests linkages that constitute accountability.

In addition to these contradictory assertions about accountability, the literature is dominated by a host of unsubstantiated claims, particularly regarding the Missouri Plan, which now is favored by reformers. Indeed, many of the arguments by reformers "have been accepted largely without contradiction, not because of positive demonstrations of their validity but in the absence of research data to the contrary" (Dubois 1980, xi).

Of particular importance are discussions about judicial independence. Reformers assert that the Missouri Plan, of which retention races are a part, and to a lesser extent nonpartisan elections remove judges from the vicissitudes of interpartisan competition (Herndon 1962) and the "deleterious political influences present under the [partisan] elective approach" (Dunn 1976, 286). As expressed by the Missouri Plan's most vigorous advocates, its "greatest accomplishment has been to remove the judiciary from the contamination of politics" (p. 286). Nonpartisan elections also are presumed to have such properties, but retention races are touted as superior for promoting independence, despite the fact that judges must face voters. The general argument is that when partisan labels are removed from ballots and when challengers are not allowed to engage incumbents in what might easily become partisan brawls, judicial elections will center fully upon the professional qualifications of judges.

Fundamentally, there are reasons to doubt the claims of the reformers, despite the increased popularity of the Missouri Plan. One of the most basic arguments of those who favor the plan is that it produces a more qualified bench. To the extent that quality can be measured objectively, however, the evidence to date suggests that the Missouri Plan does not fulfill its promise. In a comprehensive study of state supreme courts, Glick and Emmert (1987) conclude that the professional credentials (e.g., prestige of legal education, legal and judicial experience) of judges are quite similar, regardless of the method of selection.

⁴ Two sources that effectively encapsulate the reform controversy and its dominant perspectives are Winters 1973 and Champagne and Haydel 1993. Atchison, Liebert, and Russell (1999) provide an extensive annotated bibliography of this vast literature.

⁵ Legislative selection and gubernatorial appointment, used in twelve states, have received scant attention from court reformers. Nonpartisan elections and the Missouri Plan are designed to replace partisan elections rather than appointment schemes.

Moreover, their findings are consistent with earlier studies (e.g., Canon 1972). Most basically, the Missouri Plan does not appear to result in the recruitment of judges who differ in any obvious ways from judges chosen by other methods. Therefore, in the absence of solid evidence, other assertions about the virtues of the Missouri Plan are suspect.

The lack of empirical verification notwithstanding, numerous states have abandoned partisan judicial elections and replaced them with nonpartisan and retention elections.⁶ Since the 1960s, sixteen states have changed the way in which they staff their highest court, and of these sixteen, twelve have chosen the Missouri Plan (Council of State Governments, 1960–98). Five states adopted the plan prior to 1960, and now a total of 17 states select the high court bench by this method. Moreover, the American Judicature Society (1991, 236), which believes that “instituting merit selection in every state is urgent,” continues the campaign for nationwide adoption of the Missouri Plan.

The charges about accountability and independence can be formulated into testable hypotheses. If the reformers are correct, two patterns should be apparent. First, the electoral performance of incumbents in partisan elections should not be systematically influenced by issue-related or candidate-related forces. Second, external political conditions should remain unimportant in determining how well incumbents perform in nonpartisan and retention races, although such forces may be significant in partisan elections. More generally, there should be pronounced differences among election systems in the types of forces that structure election returns.

PATTERNS OF COMPETITION IN CONTEMPORARY JUDICIAL ELECTIONS

To examine the character of contemporary state supreme court elections and to test the propositions discussed above about accountability and independence, I gathered data on all elections to state courts of last resort from 1980 through 1995 from a variety of sources. Most important were official reports of secretaries of state, obtained by mail or visits to state capitals. If official reports were not available, state “blue books” were searched. As a final measure, telephone conversations with sitting justices and clerks of court as well as newspaper searches on Lexis-Nexis were used.

The result is a complete set of returns, for both primaries and general elections, for every election over a sixteen-year period to every high court in all states which use elections for these positions (including both civil and criminal courts of last resort in Texas and Oklahoma). Sheldon and Maule (1997, 22) attribute the failure to understand selection processes to the lack of comprehensive data, observing that “judicial recruitment studies tend to focus on one or two states during

⁶ The Missouri Plan has won approval in seventeen states. Ten states still use partisan elections, and eleven use nonpartisan elections to staff their highest court.

TABLE 1. Percentage of State Supreme Court Incumbents Challenged for Reelection, 1980–95, by Type of Election System

Year	Nonpartisan Elections % (n)	Partisan Elections % (n)	All Elections % (n)
1980	56.5 (23)	52.6 (19)	54.8 (42)
1982	60.0 (20)	41.7 (24)	50.0 (44)
1984	42.1 (19)	56.3 (16)	48.6 (35)
1986	16.7 (24)	61.1 (18)	35.7 (42)
1988	33.3 (15)	73.7 (19)	55.9 (34)
1990	37.5 (24)	70.6 (17)	51.2 (41)
1992	54.5 (22)	65.0 (20)	59.5 (42)
1994	56.3 (16)	81.8 (11)	66.7 (27)
Total	44.2 (163)	61.1 (144)	52.1 (307)

Note: Odd-year data are merged with previous year. Results from multimember elections are calculated according to the Jewell (1982) procedure. See text and note 7 for greater detail.

one or two selection cases.” My study overcomes that deficiency and is the first research on supreme court elections that is national in scope. Overall, from 1980 through 1995, there were 643 elections to state supreme courts: 234 retention elections, 201 nonpartisan elections, and 208 partisan elections.

To supplement the election data and to identify such important characteristics as incumbency and dates of accession, I collected biographical data on incumbents seeking reelection and other winners from state blue books, *The American Bench, Martindale-Hubbell*, newspaper articles located through Lexis-Nexis, state supreme court websites, and telephone calls to clerks of court.

Tables 1 through 6 summarize various aspects of competition essential to discussions of accountability and independence. Because of the small number of elections in odd years, those data were merged with the previous year, only for the purpose of calculating descriptive statistics. Also, in the descriptive tables, results from multimember elections were adjusted using the procedure developed by Jewell (1982) to render results comparable to those for single-member races.⁷

Like accountability and independence, electoral competition is a complex concept that can be measured in a variety of ways. One indicator is the extent to which incumbents seeking reelection are challenged, a possibility precluded in retention elections. Table 1 displays the percentage of state supreme court justices challenged from 1980 through 1995 in nonpartisan and

⁷ Jewell (1982) first divided each candidate’s vote by the total votes in the district and then multiplied the result by the total number of seats within the district. As state politics scholars generally recognize (e.g., Tucker and Weber 1987; Weber, Tucker, and Brace 1991), this procedure produces vote totals equivalent to those for candidates in single-member districts. With these supreme court elections, the method simply requires multiplying the votes by two, since all multimember races involve two seats only per district.

TABLE 2. Average Vote for Incumbents and Winners of Open Seats in State Supreme Court Elections, 1980–95, by Type of Election System

Year	Retention Elections	Nonpartisan Elections			Partisan Elections			All Elections
		Open	Inc*	All	Open	Inc*	All	
1980	72.4	52.3	77.8	73.2	58.1	75.3	68.6	71.4
1982	74.4	66.6	74.8	73.4	61.1	82.6	77.2	75.2
1984	75.4	55.2	81.5	76.0	59.7	76.6	72.0	74.6
1986	69.9	71.3	91.2	88.3	58.9	71.9	69.0	75.8
1988	75.9	56.4	86.2	79.8	57.7	69.8	66.2	73.4
1990	67.1	53.4	80.5	77.5	66.5	62.5	64.2	69.2
1992	69.2	52.0	73.7	69.1	55.0	71.1	67.4	68.5
1994	66.3	57.3	75.2	69.7	52.5	61.4	57.9	65.2
Total	71.2	57.6	80.2	75.9	59.3	72.3	68.3	71.8
N	234	38	163	201	64	144	208	643

Note: Inc* = Incumbent seeking reelection. Odd-year data are merged with previous year. Results from multimember elections are calculated according to the Jewell (1982) procedure. See text and note 7 for greater detail.

partisan elections. As the table reveals, many justices did not draw opponents, although challenge rates vary substantially over time and across systems. The absence of challengers is especially characteristic of nonpartisan elections; a majority of incumbents in four of the eight election cycles examined did not face the possibility of losing their seat, and up to 83% (in 1986) of the justices seeking reelection in a single election cycle did not inspire challenge. Partisan elections were much more competitive by this standard. With the exception of 1982, most incumbents in partisan elections attracted opponents, and the challenge rate reached almost 82% in 1994. Even so, large proportions of justices in nonpartisan elections and partisan elections have little reason to feel insecure, since incumbents in these systems cannot be unseated if they are not challenged.

A second indicator of electoral competition is the percentage of the vote received by the incumbent or the winner of an open seat. Generally, the literature suggests that candidates win by large margins, although Dubois (1980) notes that about 22% of supreme court races through the 1970s were won with 55% of the vote or less. Similarly, Griffin and Horan (1979) report that incumbents in retention elections consistently receive up to 30% negative votes. Table 2 describes the average percentage of the vote garnered in state supreme court elections by incumbents or winners of open seats from 1980 through 1995. With this measure, larger vote shares indicate less competition. Thus, a justice not challenged for reelection in a partisan or nonpartisan election would receive 100% of the vote.

Based only on the overall means for the various election systems in Table 2, partisan elections are the most competitive, followed by retention elections and nonpartisan elections, respectively. In fact, retention races have become more difficult for incumbents by this measure than nonpartisan elections, both overall and, on average, year to year. Like patterns of electoral challenge, however, these data reveal a great deal of

variation over time and within systems. In 1982, for instance, incumbents in partisan elections received larger portions of the vote than incumbents in nonpartisan or retention elections. Overall, however, candidates in all three election systems can expect to win with sizable proportions of the vote.

Table 2 also demonstrates that the average vote for winners of open seats is significantly less than for incumbents, a pattern common to nonjudicial elections as well. This result is partially explained by the fact that many incumbents are not challenged, whereas open seats almost always involve opposing candidates.⁸ This general pattern does not describe partisan elections in 1990, however, in which incumbents did less well than winners of open seats.

Table 3 reports the percentage of supreme court races from 1980 through 1995 won by relatively thin margins, or 55% of the vote or less. Overall, 20.4% were hotly contested. Separately, 35.6% of the partisan

TABLE 3. Percentage of Close Races for State Supreme Court, 1980–95, for Open Seats and Incumbents Seeking Reelection

	Open Seats	Incumbents	All Elections
Retention	—	2.6 (234)	2.6 (234)
Nonpartisan	60.5 (38)	17.2 (163)	25.4 (201)
Partisan	37.5 (64)	34.7 (144)	35.6 (208)
Total	46.1 (102)	15.5 (541)	20.4 (643)

Note: "Close" races are those won by 55% or less of the vote. Results from multimember elections are calculated according to the Jewell (1982) procedure. See text and note 7 for greater detail. Open seats do not occur in retention elections.

⁸ Of the 38 open races in nonpartisan elections from 1980 through 1995, three (7.9%) attracted only one candidate. In partisan elections, four (6.3%) of sixty-four open races failed to generate competition.

TABLE 4. Percentage of State Supreme Court Incumbents Defeated, 1980–95, by Type of Election System

Year	Retention Elections	Nonpartisan Elections	Partisan Elections	All Elections
1980	0.0 (35)	4.3 (23)	26.3 (19)	7.8 (77)
1982	0.0 (28)	20.0 (20)	4.2 (24)	6.9 (72)
1984	0.0 (26)	15.8 (19)	0.0 (16)	4.9 (61)
1986	9.1 (33)	4.2 (24)	22.2 (18)	10.7 (75)
1988	0.0 (28)	6.7 (15)	15.8 (19)	6.5 (62)
1990	0.0 (34)	4.2 (24)	29.4 (17)	6.7 (75)
1992	4.3 (23)	9.1 (22)	25.0 (20)	12.3 (65)
1994	0.0 (27)	6.3 (16)	36.4 (11)	9.3 (54)
Total	1.7 (234)	8.6 (163)	18.8 (144)	8.3 (541)

Note: Odd-year data are merged with previous year. Results from multimember elections are calculated according to the Jewell (1982) procedure. See text and note 7 for greater detail.

elections, 25.4% of the nonpartisan elections, and 2.6% of the retention races were highly competitive. Generally, partisan elections are more likely to produce narrow margins of victory than nonpartisan or retention elections. In nonpartisan elections, however, close contests tend to be for open seats far more frequently than for seats held by incumbents, a pattern not present in partisan elections.

Table 4 examines the most extreme form of electoral competition: defeat. As the table reveals, justices in state courts of last resort on average are reasonably secure, especially in retention elections, in which the likelihood of defeat is quite low. Overall, among 541 incumbents seeking reelection, only 45 (8.3%) were ousted by voters. Yet, electoral insecurity varies significantly by time and place. For example, incumbents in partisan elections lose in one of every five or six elections, and 36% of incumbents running in such elections in 1994 were defeated. In addition, 20% were ousted in 1982 nonpartisan elections and 9% in 1986 retention elections. This is a radical departure from the widely held belief that justices have little to fear from voters.

The results in tables 1 through 4 are intriguing, but they are better appreciated when compared to elections for other offices. Table 5 provides this perspective by placing judicial elections side by side with elections to the U.S. House of Representatives, which is arguably the most highly accountable American institution by formal design. In the absence of such comparisons, competition in state supreme courts, on average, may seem low—perhaps too low to establish any meaningful connections between the electorate and the bench. Many incumbents are not challenged, many candidates garner large proportions of the vote, and justices seeking reelection, on average, have little reason to fear losing their seat. The fact of the matter, however, is that supreme court justices face competition that is,

TABLE 5. Competition in Races for State Supreme Court and the U.S. House of Representatives, 1980–94

	Percentage of					
	Incumbents Challenged		Vote for Incumbents		Incumbents Defeated	
	Courts	House	Courts	House	Courts	House
1980	54.8	86.9	67.0	65.5	7.8	9.3
1982	50.0	86.0	67.3	64.1	6.9	9.9
1984	48.6	83.7	69.0	65.9	4.9	4.6
1986	35.7	81.9	65.8	68.2	10.7	2.0
1988	55.9	80.9	69.0	68.2	6.5	1.7
1990	51.2	79.1	62.3	63.5	6.7	3.9
1992	59.5	91.0	62.0	63.1	12.3	11.7
1994	66.7	86.6	61.5	62.8	9.3	9.8
Total	52.1	84.4	65.4	65.2	8.3	6.5

Sources: For House races only: Abramson, Aldrich, and Rohde 1995; Jacobson 1999.

Note: Odd-year data are merged with previous year. Results from multimember elections are calculated according to the Jewell (1982) procedure. See text and note 7 for greater detail. Average votes for the justices were recalculated to be comparable to averages reported for the House, which omit uncontested races. Rather than exclude retention elections, in which incumbents never can be challenged by other candidates, the statistics reported include all retention races as well as contested nonpartisan and partisan races. If retention elections are excluded, state supreme court incumbents in contested races enjoy less support than representatives in similar circumstances. The average vote for incumbents in contested nonpartisan and partisan races from 1980–81 through 1994–95 was, respectively: 59.1%, 58.1%, 59.7%, 57.8%, 58.9%, 55.8%, 55.5%, and 54.3%.

by two of three measures, equivalent if not higher to that for the U.S. House.

With respect to the percentage of incumbents who attract opponents, members of the U.S. House face greater electoral peril than supreme court justices. Even in the least competitive year (1990), only 21% of House incumbents escaped challenge. Yet, average winning votes for supreme court justices and House incumbents are quite similar, whereas the overall defeat rate in supreme court elections is higher. Although justices are less likely to be challenged than House members, remarkably, on average, justices have a greater risk of being tossed out of office. The overall defeat rate for House members is 6.5%; it is 8.3% for Supreme Court justices.

Comparisons to other state elections lead to similar conclusions. Jewell (1994) reports that, from 1968 to 1988, 90.3% of the senators and 92.3% of the representatives in state legislatures retained their seat. Similarly, Monardi (1995) documents that races for secretary of state and treasurer typically produce incumbency success rates higher than 90%. Others have noted that electoral margins for state legislative incumbents are high and rising (Garand 1991; Weber, Tucker, and Brace 1991).⁹

⁹ Many elections in the United States simply do not produce

TABLE 6. States Ranked by Average Vote for Incumbents and Winners of Open Seats in State Supreme Court Elections, 1980–95

State	Election Type	Vote	Standard Deviation	N
Pennsylvania	Partisan/Retention	53.9	8.7	10
Ohio	Nonpartisan	54.7	8.3	20
Texas	Partisan	59.6	18.3	55
Tennessee	Partisan/Retention	60.1	28.4	13
Michigan	Nonpartisan	60.6	10.9	17
California	Retention	60.7	13.0	18
West Virginia	Partisan	62.5	21.0	6
Kentucky	Nonpartisan	63.4	24.9	17
Indiana	Retention	63.5	4.7	6
Alaska	Retention	64.4	6.3	8
Oklahoma	Retention	64.4	5.3	40
Montana	Nonpartisan/Retention	64.5	13.6	17
Missouri	Retention	65.1	5.9	14
Nevada	Nonpartisan	65.6	15.9	14
Illinois	Partisan/Retention	66.5	13.5	16
New Mexico	Partisan	66.8	21.8	11
Florida	Retention	69.6	5.2	19
Colorado	Retention	71.3	2.7	9
North Carolina	Partisan	71.6	25.7	23
Nebraska	Retention	72.9	5.1	16
Alabama	Partisan	74.5	20.7	26
Wyoming	Retention	74.8	8.4	13
South Dakota	Retention	75.3	5.5	6
Kansas	Retention	75.5	5.7	19
Louisiana	Partisan	75.8	22.7	14
Arizona	Retention	76.0	5.6	12
Wisconsin	Nonpartisan	77.1	23.0	11
Iowa	Retention	78.0	2.2	20
Arkansas	Partisan	78.1	20.5	16
Washington	Nonpartisan	78.6	23.1	29
Mississippi	Partisan	79.7	22.5	20
Utah	Nonpartisan/Retention	81.6	10.1	9
Maryland	Retention	84.3	3.8	12
Georgia	Partisan/Nonpartisan	86.9	19.1	24
Minnesota	Nonpartisan	87.2	18.2	17
North Dakota	Nonpartisan	89.0	23.4	10
Oregon	Nonpartisan	89.7	17.8	23
Idaho	Nonpartisan	96.7	11.7	13
All states	All elections	71.7	18.8	643

TABLE 7. Description of Variables Used in State Supreme Court Election Models

Variable	Variable Description
Dependent Variable	
Vote	Percentage of the vote for the incumbent
Political Context/Accountability	
Ideological Distance	Net difference between the justice's ideology and state citizen ideology at the time of the election
Murder Rate	State murders and nonnegligent manslaughter per 100,000 population, lagged one year
Partisan Context/Independence	
Ranney Index	Ranney Index of state partisan competition, as calculated and reported by Holbrook and Van Dunk (1993)
Partisan Challenger	1 if candidates of the opposite party compete in a partisan or nonpartisan race, or if a governor of the party opposite the incumbent justice in a retention race is elected on the same ballot; 0 otherwise
Candidate Characteristics	
New Appointee	1 if the election involves a justice initially appointed and facing his/her first election; 0 otherwise
Minority Candidate	1 if the incumbent justice or winner of an open seat is female, Hispanic, or African American; 0 otherwise
Institutional Arrangements	
District Election	1 if seat represents a district rather than the state; 0 otherwise
Term Length	Length of term (in years) for supreme court justices
Control Variables	
Multimember Race	1 for multimember elections or general elections with more than two candidates; 0 otherwise
1982–83 . . . 1994–95	1 if election occurred in the designated year; 0 otherwise

Table 6 arrays the 38 states according to the average vote for incumbents and winners of open seats in supreme court races from 1980 through 1995. Quite clearly, the states vary significantly along this dimension. Pennsylvania, Ohio, and Texas are the most competitive, with votes that average less than 60%. At the other extreme, North Dakota, Oregon, and Idaho virtually guarantee success for incumbents, with votes averaging 89% and higher. Interestingly, the five most competitive states (Pennsylvania, Ohio, Texas, Tennessee, Michigan) use all three types of election systems (nonpartisan, partisan, and retention), and the five least competitive (Idaho, Oregon, North Dakota, Minnesota, Georgia) all use nonpartisan elections.

In sum, looking only at overall patterns of competition in state supreme court elections and without placing these results in the broader political context, one reasonably might conclude, as have many in the past, that judicial elections are not likely to promote accountability and are not influenced by external po-

opposition (or therefore defeat). Judging solely by these indicators, elections in the United States arguably are a failure. According to Pomper (1980, 29), however, viewing democracy and elections from this perspective is "missing the point" since opposition and defeat are not necessary conditions for accountability.

itical forces. A detailed exploration of the data reveals a more complex truth. Competition, measured in numerous ways, varies significantly across states and over time. Also, when compared to the quintessential representative institution, the U.S. House of Representatives, competition in judicial races on several dimensions is not low. Furthermore, the extraordinary variations across systems and over time, which bear directly upon the representative nature of elected courts, warrant explanation.

SPECIFYING ELECTION MODELS FOR STATE SUPREME COURTS

Table 7 describes the variables used in the elections models estimated below. Because my goal is to assess the determinants of how incumbents fare with voters, open seats are excluded from the multivariate analysis.

The dependent variable (*Vote*) is the percentage of the vote cast for the incumbent, either as a percentage of the total vote for all candidates in each nonpartisan and partisan election, or as the percentage of positive votes to retain a justice in a retention election. In identifying each incumbent's vote share, both primary and general election results were used; this takes into account

the handful of situations in which competition occurs only in the primary and exclusion of these data would introduce systematic bias against largely one-party states.

Consider, for example, the hypothetical situation in which Justice A competes in a primary against multiple candidates and emerges with a plurality but not majority of the vote. She already has appeared in one election with multiple challengers and now must face an opponent in a second primary before being placed on the ballot in the general election. In the general election, because of a lack of partisan competition in the state, Justice A does not have an opponent. Looking only at general election results, she would be classified as having faced no opposition and as receiving 100% of the vote, a score identical to that for a justice who never was challenged at all. Clearly, these situations must be accounted for in comparative models of state elections. Therefore, for a justice challenged in the primary but not in the general election, the vote recorded is the primary vote (the final one if there was more than one primary). Of the 541 elections with incumbents, 30 (5.5%) fell into this category.

The critical independent variables test the assertion that partisan elections fail to promote accountability and that nonpartisan and retention elections protect independence. Regarding accountability, two variables indicative of the electorate's sensitivity to candidate-related and issue-related forces are included. The first is a demanding standard: The electorate should respond to ideological differences between themselves and the justices. Reformers assert that voters in partisan elections have not demonstrated the capacity to make informed choices, but case studies contradict this assertion (Baum 1987; Lovrich and Sheldon 1983; Lovrich, Sheldon, and Wassmann 1988; Squire and Smith 1988). Measuring *Ideological Distance* at the time of each election is straightforward using the Brace, Langer, and Hall (2000) supreme court justice ideology scores and the Berry et al. (1998) state citizen ideology scores. If the literature on the ability of voters to make reasoned choices in judicial elections is correct, then greater distance should be associated with lower levels of electoral support for incumbents across electoral systems. Alternatively, if reform advocates are correct, then distance should have no effect in partisan elections, because party affiliation of judges may exhaust the ideological information voters use.

In contrast, predictions about ideological distance in nonpartisan and retention elections can work in either direction, depending on which reform advocates are referenced. While some might consider ideological distance to bear upon the qualifications of candidates, others would disagree. As noted earlier, some believe that by removing partisan labels from ballots in nonpartisan elections and by eliminating labels and challengers in retention elections, voters will cast ballots largely based upon the justices' professional qualifications, defined solely with reference to legal experience and skill. Therefore, these advocates would expect no relationship between ideological distance and the electoral success of incumbents. Overall, however, reformers believe that removing partisan labels forces the

electorate to seek information beyond partisanship about the acceptability of incumbents, thus enhancing the quality of the electorate's knowledge and judgment. This is particularly important in largely one-party states where partisanship is not an accurate surrogate for political preferences.

The second indicator of accountability relates to issue evaluations. In gubernatorial and state legislative races, voters hold public officials accountable for poor economic conditions and increased taxes. Although studies are not without some contradiction (Svoboda 1995), research on gubernatorial elections (Atkeson and Partin 1995; Carsey and Wright 1998; Niemi, Stanley, and Vogel 1995; Svoboda 1995), subgubernatorial statewide elections (Monardi 1995), and legislative elections (Lowry, Alt, and Ferree 1998) reports retrospective voting based on the economy. Of course, this phenomenon at the national level has been well documented.

In judicial elections, arguably the most important policy focus for voters is crime. Whereas judges have no direct responsibility for economic conditions, it is not unreasonable to blame them, at least in part, for the public safety. From the perspective of justices' voting behavior, I (Hall 1995) demonstrate that when murder rates are high, elected justices are less likely to overturn death sentences precisely because they fear electoral retribution. Reform advocates have serious doubts about the ability of voters in partisan elections to respond to issues at election time and would consider such responses illegitimate in nonpartisan and retention contests for the bench. To explore these contentions, the models include a measure of each state's murder rate, lagged one year (*Murder Rate*), identified using the *Statistical Abstract of the United States*.¹⁰ Increases in the murder rate should have a negative effect on the electoral performance of incumbents if the electorate renders retrospective judgments characteristic of other elections.

Two measures of partisan politics, which tap the concept of independence, are included in the models. Both reformers and political scientists expect states characterized by higher levels of partisan competition (see, e.g., Dubois 1980; Patterson and Caldeira 1983) to have competitive judicial elections when partisan labels appear on the ballot. This, of course, is precisely the sort of external politics that nonpartisan and retention elections are designed to preclude. To examine this question, including whether nonpartisan and retention elections are immune to partisan context, the models use the Ranney Index (*Ranney Index*) as recalculated by Holbrook and Van Dunk (1993). Higher scores on the index indicate higher levels of partisan

¹⁰ Violent crime rate is not used because the measure presents a comparability problem across states. Violent crime is a composite measure: murder and nonnegligent manslaughter, rape, robbery, and aggravated assault. The mix of crimes varies significantly across states and electoral systems. Correlations between murder rates and violent crime rates in retention, nonpartisan, and partisan election systems are, respectively, .82, .82, and .43. Thus, in partisan election states, violent crime includes fewer murders and a higher proportion of crimes such as aggravated assault, about which citizens may not be as concerned as they are about murder.

TABLE 8. Predicted Relationships between Indicators of Accountability and Independence, and the Electoral Performance of Incumbents in Judicial Elections, Derived from the Judicial Reform and Political Science Elections Literatures

	Retention Elections		Nonpartisan Elections		Partisan Elections	
	Reform	Elections	Reform	Elections	Reform	Elections
Ideological Distance	$\beta < 0$	$\beta < 0$	$\beta < 0$	$\beta < 0$	$\beta = 0$	$\beta < 0$
Murder Rate	$\beta = 0$	$\beta < 0$	$\beta = 0$	$\beta < 0$	$\beta = 0$	$\beta < 0$
Ranney Index	$\beta = 0$	$\beta < 0$	$\beta = 0$	$\beta < 0$	$\beta < 0$	$\beta < 0$
Partisan Challenger	$\beta = 0$	$\beta < 0$	$\beta = 0$	$\beta < 0$	$\beta < 0$	$\beta < 0$

competition, which should have a negative effect on incumbent vote shares.¹¹

Furthermore, election-specific partisan competition (that is, candidates of opposite parties directly challenging each other) should weaken the electoral performance of incumbents in partisan elections, as both political scientists and judicial reform advocates assert. This variable is not constant for partisan elections. In many races, competition occurs only in the primaries or is absent entirely. Alternatively, given the absence of partisan labels on the ballot, election-specific partisan competition should have little or no influence in nonpartisan or retention elections. To estimate these effects, a variable is included to indicate whether candidates of opposite parties appear in each general election (*Partisan Challenger*). For both partisan and nonpartisan elections, this variable is coded 1 if a partisan challenger is present, 0 otherwise. In nonpartisan elections, the partisan affiliations of challengers were identified through newspaper coverage of the elections. In both primaries and general elections in nonpartisan states, challengers frequently are from the same party as the incumbent.

Given the absence of challengers by design in retention elections, a different indicator is necessary to capture the presence of election-specific partisan pressures. Because voters tend to associate justices with governors who appoint them (Squire and Smith 1988), partisan challenger is coded 1 in retention elections when a governor of the opposite party to the justice is on the same ballot and wins, 0 otherwise. Obviously, this is an imprecise measure, but it seems a better alternative than ignoring the effect altogether.

To summarize this complex set of contradictory assertions, Table 8 compares the predicted relationships between the two sets of variables indicative of accountability and independence, on the one hand, and the proportion of the vote for incumbents in partisan, nonpartisan, and retention elections, on the other. In several situations, the reform literature and political science literature converge. There are important ways in which expectations diverge, however, and the models below provide explicit tests of these hypothesized relationships.

¹¹ The Holbrook and Van Dunk electoral competition measure is not used primarily because my concern is with partisan competition and not electoral competition.

Other Candidate-Specific Forces

Other forces can be expected to influence the ability of incumbents to garner votes in state supreme court elections. One is the type of incumbent present. Many incumbents will have an electoral advantage, but this may not be the case for justices initially appointed and seeking their first election to the court. In retention election states, all justices acquire their seat by appointment, and many justices in partisan and nonpartisan systems also are initially appointed to fill unexpired terms (Dubois 1980; Herndon 1962). Given their inexperience with supreme court campaigns and on the high court bench, appointed justices (*New Appointee*) appearing before voters for the first time in any type of judicial election may not fare as well as their more electorally experienced colleagues. In the elections examined here, 48.7% of the incumbents in retention elections, 33.7% in nonpartisan elections, and 27.8% in partisan elections were newly appointed.

In addition, minorities have not been particularly successful in gaining representation on state high courts. Glick and Emmert (1987) found that minorities under the Missouri Plan are disadvantaged with respect to initial appointment, although other work (Alozie 1988, 1996) fails to find a connection between gender or racial representation in courts of last resort and selection systems. More to the point, racial cues have been identified as important in judicial elections (Lovrich, Sheldon, and Wassman 1988; Squire and Smith 1988). Given that there may be prejudice against minority candidates, I hypothesize that female, African American, and Hispanic candidates will garner less support from voters than nonminorities across all three election systems (*Minority Candidate*).¹²

Institutional Arrangements

Institutional arrangements have been shown to be crucial forces in shaping electoral politics. In the context of state supreme courts, the primary institutional feature that should structure electoral outcomes

¹² Volcansek (1981) established that bar poll results and newspaper endorsements influenced vote shares in trial court elections held in the 1960s and 1970s in Dade County, Florida. Because such data are not available across the states or over time, these factors were not examined.

is the type of election. Generally, partisan elections should be more competitive than nonpartisan and retention elections, and nonpartisan elections should be more competitive than retention elections. Moreover, the election scheme should mediate the effects of candidates, issues, and other external pressures on the relative success of incumbents. Because it is critical to observe the effects of the independent variables across systems, separate models for each election system are estimated, which precludes an estimation of the direct effects of election system on electoral performance. Nonetheless, by observing differences across models, we can ascertain whether conditional effects are evidenced.

Aside from basic election scheme, the literature generally finds that smaller constituencies are less competitive than larger constituencies. For example, races for the U.S. Senate are less competitive in smaller states (e.g., Hibbing and Brandes 1983). Extending this generalization to courts, I hypothesize that justices chosen from districts (*District Election*) will face less competition, and thus receive a larger proportion of the vote, than justices selected statewide. I examine district versus at-large systems rather than state size mainly because the former have been shown to influence judicial voting behavior (Hall 1992, 1995).

Also, term length (*Term Length*), which can affect the decisions of judges (e.g., Brace and Hall 1995, 1997), should influence election results. A longer term of office should make a supreme court seat more attractive, enhance competition, and reduce the electoral performance of incumbents. In state supreme courts, terms range from six to twelve years.

Control Variables and Estimation Technique

The models include two sets of important control variables. First, a dummy variable is included to control for multimember elections and the unusual situation in which more than two candidates are present in the election (*Multimember Race*). By definition, these races necessarily result in lower vote percentages. Second, dummy variables for each election cycle minus one (1980–81) are included to control for the unique effects of each election and other temporal effects in the pooled models (1982–83, 1984–85, 1986–87, 1988–89, 1990–91, 1992–93, 1994–95).

Given the continuous nature of the dependent variable, ordinary-least-squares regression (OLS) was used to estimate the models. To address potential complications with pooling data across states, OLS standard errors were replaced with robust standard errors. Huber/White robust variance estimators, set to recognize the panel structure of the data, are robust to assumptions about within group (i.e., state) correlation and thus are preferred.

RESULTS

An intriguing portrait of state supreme court elections is presented in tables 9, 10, and 11. Perhaps the most important conclusion from Table 9 is that retention

elections are not impervious to partisan pressures, contrary to the claims of reformers. Supreme court justices who stand for retention in states characterized by competitive party politics or in elections with partisan cross-pressure (measured with reference to gubernatorial races) receive a significantly lower proportion of positive votes. In fact, the effect of statewide partisan competition (Ranney Index) is substantial, whereas partisan challenges in the particular races have a more modest effect (reducing votes to retain by about 3%). By these indicators, independence is not evidenced.

Accountability, however, at least by one measure, is present in retention elections. Although variations in ideological distance between citizens and incumbents do not influence the electoral fortunes of justices, higher murder rates do.¹³ Generally, a 10% increase in the murder rate reduces votes to retain by about 11%, a pattern consistent with aggregate-level retrospective voting. Of course, in the strictest sense, reformers would object to these types of associations.

Otherwise in retention races, candidate characteristics do not play much role in how incumbents fare with voters, and the effects of institutional arrangements are mixed. Neither minority candidates nor appointees seeking their first regular term do any better or worse with voters than do their colleagues. Also, contrary to expectations, incumbents with longer terms of office do not garner vote shares that differ significantly from incumbents with shorter terms. The type of geographic constituency is important in retention races, however. As predicted, justices elected from districts receive a higher level of support than incumbents elected statewide, by about 8%. Finally, several of the time-point dummy variables are significant, which indicates greater opposition to incumbents in these years relative to the baseline year, 1980–81. What is unique about these years warrants further investigation.

Nonpartisan elections bear a striking resemblance to retention elections, as Table 10 reveals. More specifically, nonpartisan judicial elections also fail to insulate incumbents from partisan politics or other contextual forces. Both state-level partisan competition and election-specific partisan competition have dramatic effects on the vote received by incumbents. In fact, the simple act of having a partisan challenger reduces the vote share of incumbents by about 22%, even though partisan labels do not appear on the ballot. Clearly, partisan considerations have not been eliminated from these races.

Some measure of accountability is present in nonpartisan elections. Support for incumbents varies with state murder rates: A 10% increase in the murder rate

¹³ To test for a stationarity problem with vote and murder rate, I created a trend variable and substituted it in the models for the time-point dummy variables. *Trend* is coded 8 in 1980–81 and decreased by one for each election cycle to 1994–95. In nonpartisan and partisan elections, *trend* is not statistically significant, which indicates no need for further diagnostics. In retention elections, *trend* is significant. Because these data are not a balanced panel, first-differencing, which is one possible solution, is problematic. Instead, I divided the data into two samples based on time and reran the models in retention election states. In both models, murder rate remains significant.

TABLE 9. Electoral Performance of State Supreme Court Incumbents in Retention Elections, 1980–95

	Coefficient	Robust Standard Error	t	Prob t
Ideological Distance	-0.047	0.035	-1.348	0.179
Murder Rate	-1.075	0.154	-6.989	0.000
Ranney Index	-18.931	6.455	-2.933	0.004
Partisan Challenger	-2.989	1.162	-2.572	0.011
New Appointee	0.716	0.985	0.726	0.468
Minority Candidate	-2.650	1.619	-1.637	0.103
District Election	8.252	1.501	5.497	0.000
Term Length	0.130	0.266	0.488	0.626
Multimember Race*	—	—	—	—
1982–83	2.947	1.564	1.884	0.061
1984–85	1.871	1.483	1.261	0.209
1986–87	-2.730	2.106	-1.296	0.196
1988–89	1.684	1.510	1.115	0.266
1990–91	-5.100	1.691	-3.016	0.003
1992–93	-5.876	1.977	-2.971	0.003
1994–95	-3.539	1.703	-2.077	0.039
Constant	95.865	5.673	16.897	0.000
Number of observations	234			
F (15, 218)	13.96			
Prob F	0.000			
R ²	0.416			
Root MSE	7.175			

*Multimember races do not occur in retention elections.

reduces incumbents' vote share by approximately 11%. As in the case of retention elections, ideological distance does not significantly influence the relative success of incumbents in nonpartisan contests for the state high court.

Table 10 also provides some evidence—not particularly reliable—that minority candidates for the state high court in nonpartisan elections garner fewer votes than their colleagues (by about 7%). Furthermore, incumbents elected from districts receive a significantly lower proportion of the vote (about 18%) than justices chosen statewide. In fact, the effects of geographic constituency are opposite in retention and nonpartisan elections, which suggests that the effects are conditioned by election system. Why this occurs is not immediately apparent and merits further investigation. Finally, compared to 1980–81, elections in 1986–87 were significantly less competitive, as incumbents received about a 12% increase in their vote share. Otherwise, as in the case of retention elections, new appointees and incumbents with longer terms fared no better or worse in nonpartisan elections than their colleagues.

Table 11 presents the results for partisan elections. Overall, these reveal some dramatic departures from

the stereotype offered by the judicial reformers. Generally, the electoral fortunes of incumbents are substantially less affected by state-level patterns of partisan competition than by partisan competition in each race. The presence of a partisan challenger lowers the incumbent's vote share by about 30%, whereas state-level partisan competition has no statistically significant effect.

The most fascinating results in Table 11 are those indicating electoral accountability in partisan elections. Unlike retention and nonpartisan systems, in partisan elections a variation in ideological distance is associated with changes in the electoral performance of incumbents. Overall, an increase of 10% in ideological distance reduces incumbent vote share by about 4%, a significant but not substantial change. Furthermore, an increase in the murder rate has a negative effect on how incumbents fare at the polls: An increase of 10% in the murder rate decreases electoral support by about 21%.

Moreover, except for the control variable for multimember races, no other variable is statistically significant, including the temporal variables. In sum, some forms of partisan politics are important in partisan judicial elections, thereby impeding independence, but

TABLE 10. Electoral Performance of State Supreme Court Incumbents in Nonpartisan Elections, 1980–95

	Coefficient	Robust Standard Error	t	Prob t
Ideological Distance	0.108	0.089	1.214	0.227
Murder Rate	-1.182	0.362	-3.261	0.001
Ranney Index	-71.208	20.296	-3.509	0.001
Partisan Challenger	-22.105	4.748	-4.656	0.000
New Appointee	-2.689	3.003	-0.896	0.372
Minority Candidate	-7.362	3.926	-1.875	0.063
District Election	-18.226	8.200	-2.223	0.028
Term Length	-1.898	1.516	-1.252	0.213
Multimember Race	-29.444	3.781	-7.786	0.000
1982–83	0.317	5.101	0.062	0.951
1984–85	5.563	4.510	1.234	0.219
1986–87	11.992	4.036	2.971	0.003
1988–89	4.093	5.034	0.813	0.418
1990–91	3.796	4.998	0.760	0.449
1992–93	-1.145	5.478	-0.209	0.835
1994–95	0.331	6.835	0.048	0.961
Constant	163.841	15.555	10.533	0.000
Number of observations	163			
F (16, 146)	29.40			
Prob F	0.000			
R ²	0.550			
Root MSE	17.09			

concerns about accountability in these elections appear to be misplaced.

DISCUSSION

One conclusion from this research is inescapable: Court reformers underestimate the extent to which partisan elections have a tangible substantive component and overestimate the extent to which nonpartisan and retention races are insulated from partisan politics and other contextual forces. As Dubois (1980, 96) succinctly notes about accountability, “the principal inquiry is whether the voting behavior of the electorate in judicial elections is ‘irrational’ as the critics assert, or whether it bears some relationship to the process of holding judges accountable for their decisions.” Evidence now documents that judicial elections, including partisan elections, are affected by candidate- and issue-based forces. On this point, arguments of the reformers fail.

Concerning independence, court reformers assert that “judges not identified by party will escape the ebb and flow of partisan tides” (Herndon 1962, 67) and that nonpartisan and retention elections will take politics out of the judicial selection process. Evidence now suggests that this is not the case. State-level patterns of

partisan competition as well as competition unique to each contest penetrate retention and nonpartisan elections. As Squire and Smith (1988, 170) observe, retention elections may be “easily turned into partisan contests in the minds of voters,” and it seems that nonpartisan elections similarly may be reconstituted. Moreover, in both nonpartisan and retention elections, the electoral performance of incumbents varies with fluctuations in murder rates, a pattern consistent with retrospective voting and inconsistent with norms of judicial independence. Perhaps as Glick (1978, 519) suggested more than two decades ago, “the Missouri Plan has produced a selection system that is much less visible than judicial elections. Yet the insulation seems only to obscure, not remove, many important partisan features and influences in judicial selection.”

Through the lens of judicial reform, there may be excellent reasons not to choose judges in partisan elections. The high defeat rate, for example, may have negative consequences of all sorts. I simply assert that several propositions traditionally used to criticize partisan elections and to promote nonpartisan systems and the Missouri Plan do not survive scientific scrutiny. Therefore, it seems imperative to reassess other premises upon which the politics of institutional design have rested and to give more careful and informed

TABLE 11. Electoral Performance of State Supreme Court Incumbents In Partisan Elections, 1980–95

	Coefficient	Robust Standard Error	t	Prob t
Ideological Distance	-0.390	0.186	-2.100	0.038
Murder Rate	-2.102	1.033	-2.034	0.044
Ranney Index	-18.033	36.010	-0.501	0.617
Partisan Challenger	-30.042	4.375	-6.867	0.000
New Appointee	-3.951	3.663	-1.079	0.283
Minority Candidate	-0.702	4.876	-0.144	0.886
District Election	1.271	8.428	0.151	0.880
Term Length	-2.462	2.118	-1.162	0.247
Multimember Race	-29.798	6.880	-4.331	0.000
1982–83	1.723	6.333	0.272	0.786
1984–85	-3.458	7.118	-0.486	0.628
1986–87	-1.602	6.667	-0.240	0.810
1988–89	5.423	7.593	0.714	0.476
1990–91	-8.877	8.538	-1.040	0.300
1992–93	3.828	6.412	0.597	0.552
1994–95	-7.536	7.786	-0.968	0.335
Constant	147.625	25.810	5.720	0.000
Number of observations	144			
F (16, 127)	17.14			
Prob F	0.000			
R ²	0.551			
Root MSE	17.727			

thought to the actual, not presumed, consequences of choosing one form of selection over another. For example, reformers have asserted that the negative effects of justices having to seek campaign contributions are lessened in retention elections. Yet, no systematic comparisons among systems have been made.

Regarding scholarship, this work demonstrates the importance of studying judicial elections comparatively. Quite obviously, much remains to be explained, including the effects of judicial voting records, off-bench behavior, and campaign expenditures on the ability to garner votes. Ascertaining why certain variables in this analysis did not perform as expected (such as term length) also would be an excellent start. More broadly, such crucial matters as why incumbents retire or resign rather than seek reelection, why challengers (especially quality challengers) decide to take on particular incumbents, and why incumbents lose are fruitful areas for inquiry and would add much to the dialogue about democratic processes and the American judiciary. Finally, considerations of why states adopt particular selection systems in the first place, a fascinating inquiry in its own right, also may provide important clues about significant patterns and trends that subsequently emerge in these alternative schemes.

Key (1961, 459) stated it best: "Elections matter, and

they serve in the political system as a basic connection between public opinion and government. The problem is to indicate how this linkage occurs and on what kinds of questions it seems most clearly controlling." Judicial politics scholars should take up this challenge.

APPENDIX A: DETAILED CODING OF THE RANNEY INDEX AND IDEOLOGICAL DISTANCE

Ranney Index

The original Ranney Index (Ranney 1976) was calculated for each state over a given period as an average of the proportion of seats won by Democrats in state legislative elections, the Democratic percentage of the vote in gubernatorial races, and the percentage of time the Democrats controlled the governorship and state legislature. Folded to remove partisan direction, the measure ranges from .5 (no competition) to 1.0 (perfect competition). The Ranney Index has been criticized, however, because the gubernatorial election component is a dimension distinct from the others (King 1988). Holbrook and Van Dunk (1993) recalculated the folded Ranney Index for the 1981–88 period using outcomes in state legislative elections only, thus eliminating the multidimensionality problem and creating a more robust measure.

Ideological Distance

Ideological distance is the absolute value of the difference between each justice's ideology score, measured using the Brace, Langer, and Hall (2000) party adjusted ideology (PAJID) scores, and citizen ideology at the time of each election, measured using the Berry et al. (1998) citizen ideology scores. For example, if PAJID is .75 and citizen ideology is .50, ideological distance equals .25.

More specifically, Berry et al. (1998) constructed an annual measure of the ideological preferences of each state's citizenry and each state's governmental elite by combining a variety of indicators. They calculate citizen ideology annually for each state as a function of the proportion of the electorate preferring the district's congressional incumbent (measured using election returns), the ideology of the district's incumbent (based on interest group ratings), the proportion of the electorate preferring the challenger (measured using election returns), and the ideology of the challenger (measured using election returns). These scores, calculated separately for each district, are averaged to produce a single score for each state. Berry et al. (1998) calculate elite (or government) ideology by aggregating ideology scores for the governor and the major party delegations in each house of the state legislature (generated from information about the ideology of members of Congress), based on a series of assumptions about power relationships among the various actors. Both citizen and elite ideology scores range from 0 (most conservative) to 100 (most liberal).

Brace, Langer, and Hall (2000) create a PAJID score for each party adjusted justice by weighting Berry et al. ideology scores by the justices' partisan affiliations. Specifically, for each justice Brace, Langer, and Hall first identify either the elite ideology of the state at the time a justice was first appointed or citizen ideology at the time a justice was first elected, using the Berry et al. ideology scores. They assume that the preferences of the justices will be consistent with the political context at the time of their initial selection and will more closely mirror the actor (state government or electorate) actually making the initial choice. Brace, Langer, and Hall then generate partisan weights for the Berry et al. scores by using logit to predict the partisan affiliations of the justices as a function of the initial ideology score, computing probabilities and pseudo residuals, and then multiplying the pseudo residual by ideology and adding the product to the ideology measure. Finally, they scale the scores to range from 0 (most conservative) to 100 (most liberal). Brace, Langer, and Hall demonstrate that PAJID is a valid measure of preferences that significantly outperforms partisan affiliation.

APPENDIX B: SUMMARY STATISTICS FOR EXPLANATORY VARIABLES BY TYPE OF ELECTION SYSTEM

	Mean	S.D.	Minimum	Maximum
Vote				
Retention	71.24	9.08	33.84	88.94
Nonpartisan	74.01	24.61	20.32	100.00
Partisan	67.27	23.31	16.92	100.00
Ideological Distance				
Retention	20.71	13.20	.60	55.23
Nonpartisan	18.86	16.35	.05	53.32
Partisan	8.54	7.78	.11	30.20
Murder Rate				
Retention	7.16	3.31	1.3	14.6
Nonpartisan	6.13	3.54	.6	17.5
Partisan	11.39	3.10	4.8	20.3
Ranney Index				
Retention	.84	.07	.74	.99
Nonpartisan	.88	.09	.73	1.00
Partisan	.75	.07	.64	.97
Partisan Challenger				
Retention	.29	.45	0	1
Nonpartisan	.19	.39	0	1
Partisan	.50	.50	0	1
New Appointee				
Retention	.49	.50	0	1
Nonpartisan	.27	.45	0	1
Partisan	.20	.40	0	1
Minority Candidate				
Retention	.16	.37	0	1
Nonpartisan	.19	.40	0	1
Partisan	.16	.37	0	1
District Election				
Retention	.14	.35	0	1
Nonpartisan	.08	.28	0	1
Partisan	.21	.41	0	1
Term Length				
Retention	8.09	2.21	6	12
Nonpartisan	6.91	1.37	6	10
Partisan	7.55	1.61	6	12

REFERENCES

- Abramson, Paul R., John H. Aldrich, and David W. Rohde. 1998. *Change and Continuity in the 1996 Elections*. Washington, DC: Congressional Quarterly Press.
- Alozie, Nicholas O. 1988. "Black Representation on State Judiciaries." *Social Science Quarterly* 69 (December): 979–86.
- Alozie, Nicholas O. 1996. "Selection Methods and the Recruitment of Women to State Courts of Last Resort." *Social Science Quarterly* 77 (March): 110–26.
- American Judicature Society. 1991. "Editorial: Judicial Nominating Commissions—the Need for Demographic Diversity." *Judicature* 74 (February–March): 236.
- Atchison, Amy B., Lawrence Tobe Liebert, and Denise K. Russell. 1999. "Judicial Independence and Judicial Accountability: A Selected Bibliography." *Southern California Law Review* 72 (January/March): 723–810.
- Atkeson, Lonna Rae, and Randall W. Partin. 1995. "Economic and Referendum Voting: A Comparison of Gubernatorial and Senate Elections." *American Political Science Review* 89 (March): 99–107.
- Baum, Lawrence. 1987. "Explaining the Vote in Judicial Elections: The 1984 Ohio Supreme Court Elections." *Western Political Quarterly* 40 (June): 361–71.
- Berry, William D., Evan J. Ringquist, Richard C. Fording, and Russell L. Hanson. 1998. "Measuring Citizen and Government Ideology in the American States, 1960–93." *American Journal of Political Science* 42 (January): 327–48.
- Born, Richard. 1986. "Strategic Politicians and Unresponsive Voters." *American Political Science Review* 80 (June): 599–612.
- Brace, Paul, and Melinda Gann Hall. 1995. "Studying Courts Comparatively: The View from the American States." *Political Research Quarterly* 48 (March): 5–29.
- Brace, Paul, and Melinda Gann Hall. 1997. "The Interplay of Preferences, Case Facts, Context, and Structure in the Politics of Judicial Choice." *Journal of Politics* 59 (November): 1206–31.
- Brace, Paul, Melinda Gann Hall, and Laura Langer. 1999. "Judicial Choice and the Politics of Abortion: Institutions, Context, and the Autonomy of Courts." *Albany Law Review* 62 (April): 1265–1303.
- Brace, Paul, Laura Langer, and Melinda Gann Hall. 2000. "Measuring the Preferences of State Supreme Court Justices." *Journal of Politics* 62 (May): 387–413.
- Canon, Bradley C. 1972. "The Impact of Formal Selection Processes on the Characteristics of Judges—Reconsidered." *Law and Society Review* 6 (May): 579–93.
- Carsey, Thomas M., and Gerald R. Wright. 1998. "State and National Forces in Gubernatorial and Senate Elections." *American Journal of Political Science* 42 (July): 994–1002.
- Champagne, Anthony, and Judith Haydel. 1993. *Judicial Reform in the States*. Lanham, MD: University Press of America.
- Chubb, John E. 1988. "Institutions, the Economy, and the Dynamics of State Elections." *American Political Science Review* 82 (March): 133–54.
- Council of State Governments. 1960–98. *Book of the States*. Lexington, KY: Council of State Governments.
- Culver, John H., and John T. Wold. 1986. "Rose Bird and the Politics of Judicial Accountability in California." *Judicature* 70 (August–September): 80–9.
- Dubois, Philip L. 1980. *From Ballot to Bench: Judicial Elections and the Quest for Accountability*. Austin: University of Texas Press.
- Dunn, Patrick Winston. 1976. "Judicial Selection and the States: A Critical Study with Proposals for Reform." *Hofstra Law Review* 4 (Fall): 285–304.
- Erikson, Robert S. 1989. "Economic Conditions and the Presidential Vote." *American Political Science Review* 83 (June): 567–76.
- Erikson, Robert S. 1990. "Economic Conditions and the Congressional Vote: A Review of the Macrollevel Evidence." *American Journal of Political Science* 34 (May): 373–99.
- Garand, James. 1991. "Election Marginality in State Legislative Elections, 1968–86." *Legislative Studies Quarterly* 16 (February): 7–28.
- Glick, Henry R. 1978. "The Promise and Performance of the Missouri Plan: Judicial Selection in the Fifty States." *Miami Law Review* 32: 510–41.
- Glick, Henry R., and Craig Emmert. 1987. "Selection Systems and Judicial Characteristics: The Recruitment of State Supreme Court Justices." *Judicature* 70 (December–January): 228–35.
- Griffin, Kenyon N., and Michael J. Horan. 1979. "Merit Retention Elections: What Influences the Voters?" *Judicature* 63 (August): 78–88.
- Hall, Melinda Gann. 1987. "Constituent Influence in State Supreme Courts: Conceptual Notes and a Case Study." *Journal of Politics* 49 (November): 1117–24.
- Hall, Melinda Gann. 1992. "Electoral Politics and Strategic Voting in State Supreme Courts." *Journal of Politics* 54 (May): 427–46.
- Hall, Melinda Gann. 1995. "Justices as Representatives: Elections and Judicial Politics in the American States." *American Politics Quarterly* 23 (October): 485–503.
- Hall, Melinda Gann, and Paul Brace. 1992. "Toward an Integrated Model of Judicial Voting Behavior." *American Politics Quarterly* 20 (April): 147–68.
- Hall, William K., and Larry T. Aspin. 1987. "What Twenty Years of Judicial Retention Elections Have Told Us." *Judicature* 70 (April–May): 340–7.
- Herndon, James. 1962. "Appointment as a Means of Initial Accession to Elective State Courts of Last Resort." *North Dakota Law Review* 38 (January): 60–73.
- Hibbing, John R., and Sara L. Brandes. 1983. "State Population and Electoral Success of U.S. Senators." *American Journal of Political Science* 27 (November): 808–19.
- Hibbs, Douglas A., Jr. 1987. *The American Political Economy: Macroeconomics and Electoral Politics in the United States*. Cambridge, MA: Harvard University Press.
- Holbrook, Thomas M., and Emily Van Dunk. 1993. "Electoral Competition in the American States." *American Political Science Review* 87 (December): 955–62.
- Jacobson, Gary C. 1999. "Impeachment Politics in the 1998 Congressional Elections." *Political Science Quarterly* 114 (Spring): 31–51.
- Jacobson, Gary C., and Samuel Kernell. 1983. *Strategy and Choice in Congressional Elections*. New Haven, CT: Yale University Press.
- Jewell, Malcolm E. 1982. *Representation in State Legislatures*. Lexington: University Press of Kentucky.
- Jewell, Malcolm E. 1994. "State Legislative Elections: What We Know and Don't Know." *American Politics Quarterly* 13 (October): 495–514.
- Key, V.O., Jr. 1961. *Public Opinion and American Democracy*. New York: Alfred A. Knopf.
- King, James D. 1988. "Interparty Competition in the American States: An Examination of Index Components." *Western Political Quarterly* 41 (December): 779–90.
- Kramer, Gerald. 1971. "Short-Term Fluctuations in U.S. Voting Behavior, 1896–1964." *American Political Science Review* 65 (March): 131–43.
- Lovrich, Nicholas P., Jr., and Charles H. Sheldon. 1983. "Voters in Contested, Nonpartisan Judicial Elections: A Responsible Electorate or a Problematic Public?" *Western Political Quarterly* 36 (June): 241–56.
- Lovrich, Nicholas P., Jr., Charles H. Sheldon, and Erik Wassmann. 1988. "The Racial Factor in Nonpartisan Judicial Elections: A Research Note." *Western Political Quarterly* 41 (December): 807–16.
- Lowry, Robert C., James E. Alt, and Karen E. Ferree. 1998. "Fiscal Policy Outcomes and Electoral Accountability in American States." *American Political Science Review* 92 (December): 759–74.
- Martindale-Hubbell. 2000. "On-line Lawyer Locator." May 25. <http://www.martindale.com/locator> (accessed March 28, 2001).
- Monardi, Fred M. 1995. *Elections at the Sub-Gubernatorial Level*. Ph.D. diss. University of Wisconsin, Milwaukee.
- Niemi, Richard G., Harold W. Stanley, and Ronald J. Vogel. 1995. "State Economies and State Taxes: Do Voters Hold Governors Accountable?" *American Journal of Political Science* 39 (November): 936–57.
- Patterson, Samuel C., and Gregory A. Caldeira. 1983. "Getting Out the Vote: Participation in Gubernatorial Elections." *American Political Science Review* 77 (September): 675–89.
- Pomper, Gerald M. 1980. *Elections in America: Control and Influence in Democratic Politics*. New York: Longman.
- Ranney, Austin. 1976. "Parties in State Politics." In *Politics in the American States*, ed. Herbert Jacob and Kenneth Vines. Boston: Little, Brown. Pp. 52–92.

- Reineke, Mary, and Jeaneen C. Wilhelmi, eds. 1978. *The American Bench: Judges of the Nation, 1977–1978*. Minneapolis, MN: Reginald Bishop Foster & Associates.
- Scheb, John M., II. 1983. "Is Anyone Listening? Assessing Influence on Merit Retention Elections in Florida." *Judicature* 67 (September): 112–9.
- Sheldon, Charles H., and Linda S. Maule. 1997. *Choosing Justice: The Recruitment of State and Federal Judges*. Pullman: Washington State University Press.
- Squire, Peverill, and Eric R.A.N. Smith. 1988. "The Effect of Partisan Information on Voters in Nonpartisan Elections." *Journal of Politics* 50 (February): 169–79.
- Svoboda, Craig J. 1995. "Retrospective Voting in Gubernatorial Elections: 1982 and 1986." *Political Research Quarterly* 48 (March): 135–50.
- Tucker, Harvey J., and Ronald E. Weber. 1987. "State Legislative Election Outcomes: Contextual Effects and Legislative Performance Effects." *Legislative Studies Quarterly* 12 (November): 537–53.
- Tufte, Edward R. 1978. *Political Control of the Economy*. Princeton, NJ: Princeton University Press.
- Turett, J. S. 1971. "The Vulnerability of American Governors: 1900–1969." *Midwest Journal of Political Science* 15 (February): 108–32.
- Volcansek, Mary L. 1981. "An Exploration of the Judicial Election Process." *Western Political Quarterly* 34 (December): 572–77.
- Watson, Richard A., and Rondal G. Downing. 1969. *The Politics of the Bench and the Bar*. New York: John Wiley and Sons.
- Weber, Ronald, Harvey Tucker, and Paul Brace. 1991. "Vanishing Marginals in State Legislative Elections." *Legislative Studies Quarterly* 16 (February): 29–48.
- Winters, Glenn R. 1973. *Selected Readings: Judicial Selection and Tenure*. Chicago: American Judicature Society.