

Effects of Selection Regimes on State Supreme Court Opinion Writing

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Abstract

How does the selection mechanism of state supreme court justices influence judicial behavior? Using text data from 1995 to 2019, this paper investigates whether the changes in selection methods, or the absence of change, influence the clarity of the opinions on both the court-level and the justice-level. Arkansas, North Carolina, and West Virginia have gone back and forth with judicial selection methods—from partisan to nonpartisan, or from nonpartisan to partisan. Some states, such as Alabama and Mississippi, have not changed their selection methods in the 24 year time period. Results suggest that courts that use a nonpartisan selection method may encourage justices to produce clearer opinions. Mississippi, a state that had nonpartisan courts during the time period of interest, indicated substantially significant results. However, the results indicate no significant change in clarity for states that changed from one selection method to another, or justices who served on the court in both selection regimes. These findings show that changing selection methods may not matter in relation to judicial behavior, but establishing a long-term selection method may influence the overall opinion writing culture of the court.

How does the selection mechanism of state supreme court justices influence judicial behavior? While judicial selection methods are not typically issues of public interest, efforts to change methods within states happen surprisingly frequently. Take the judicial selection history of the North Carolina Supreme Court, for example. Within a 15-year time span, North Carolina changed its selection method twice. In 2002, the General Assembly of North Carolina passed the Judicial Campaign Reform Act, which changed the selection of justices from partisan to nonpartisan elections. In 2011, the North Carolina House of Representatives passed a bill that would have changed the elections back to partisan elections, but the bill never became law. Five years later, Governor Pat McCrory signed a bill that was passed by the state legislature, which made the selection of judicial candidates partisan again in time for the 2018 state supreme court elections. These efforts demonstrate that politicians believe that selection methods are an integral part of how the state supreme court operates and can shape state politics in meaningful ways or, at the very least, change how justices behave.

At all levels of the judiciary, the credibility of a court decision depends on the longstanding tenet of legitimacy. State supreme courts, in particular, might not only feel obligated to align with the political figures who endorsed them, but also to the general electorate, who voted them onto the bench and has the power to vote them out. To consider how the interests of legitimacy and accountability influence judicial behavior, scholars have looked to opinion-writing. Judicial scholars have studied the causes and effects of how justices write opinions, and scholars of both the high court and lower courts have examined the text in the opinions from various angles. On the U.S. Supreme Court, justices write clearer opinions when they know that the case is of public interest ([Black et al. 2016](#)), but they write more complex opinions when they fear backlash from the public ([Owens and Wedeking 2011](#)). On the state supreme court level, justices write clearer opinions when their campaigns receive publicity ([Nelson 2013](#)).

Judicial opinions provide a window into future legal disputes. Clarity of the opinion is

relevant to attracting legal communities as well as various advocacy groups to consider novel arguments. Due to the variation of state supreme court selection methods and the occasional changes to selection methods, state supreme courts provide a unique opportunity to explore whether justices use opinion clarity as a proxy for the existence or absence of a partisan label. Since much of the focus on judicial opinion-writing has been on the U.S. Supreme Court, there has not been extensive scrutiny on whether institutional rules, such as judicial selection methods, could influence the decision-making behavior and opinion-writing of the justices. Research on whether these institutional mechanisms affect opinion writing has the potential to implicate how they shape the behaviors of elected justices.

Justices adjust their opinion writing style to respond to both institutional and individual-level changes. Using an original dataset of state supreme court opinions from 1995 to 2019 for Alabama, Arkansas, Mississippi, North Carolina, and West Virginia, I look at whether changes (or lack thereof) in state supreme court selection mechanisms result in changes in judicial opinion-writing on the court as a whole and justices as individuals. I find that the Mississippi Supreme Court, a long-time nonpartisan court, does produce clearer opinions, but there is no significant change in clarity for states that changed from one selection method to another, or justices who served on the court in both selection regimes. These results suggest that selection methods may not influence judicial behavior, but legacy selection methods may impact how justices write opinions.

Writing a Clear Signal

Clarity, as discussed in legal contexts, often refers to the precision of a specific ruling or holding. In this paper, I define opinion clarity as *the clarity of the opinion as a whole*. This paper will not examine how easy it is to apply a particular ruling to a case or future cases, but it is instead focused on how clearly the justices convey their rationale into text. Is the opinion as dense as James Joyce's *Ulysses* or as accessible as Shel Silverstein's *The Giving*

Tree? And do justices use opinion clarity as a way to appeal to their constituents?

Justices and members of the legal community pay special attention to the art of opinion writing. Opinion writing is the primary way that justices communicate with the world beyond the bench (Nelson 2014; Vickrey, Denton, and Jefferson 2012). For one, justices alter their opinion writing based on external influences. After the rise of television campaign advertising, for example, Nelson (2013) finds that elected justices produced more readable opinions. Second, studies have found that justices write clearer opinions to appeal to institutional norms. Justices tend to write clearer opinions when they know that the public cares about a certain case (Black et al. 2016). Conversely, justices tend to write more complex opinions when they exercise judicial review to avoid backlash from the public (Owens and Wedeking 2011). In other words, if the public cannot fully understand the opinion, they will be unable to critique it. These are not mere coincidences. It appears that the justices are aware of the impact of their opinions and alter their opinion writing style to meet the occasion.

People are more likely to consider clearer briefs to be credible and persuasive. Benson and Kessler (1986) demonstrate the impact of the *clarity* of judicial writing through an experiment. In their study, they find that respondents who read clearer legal briefs find the briefs credible and persuasive, while respondents who read briefs that are less clear and contain more legalese find the briefs unpersuasive and not credible. While direct public exposure to judicial opinions—or legal writing in general—tends to be rare or incidental, these encounters shape how the public perceives the court.

The public often encounters judicial opinions through the media, but media coverage of judicial opinions is most prevalent for U.S. Supreme Court decisions (Zilis 2015). On the state supreme court level, the relationship between the courts and the media is limited. Using the P. Brace, Langer, and Hall (2000) dataset that contain all state supreme court cases from 1995 to 1998, Vining Jr and Wilhelm (2011) find that only 1.46 percent of state supreme court cases are mentioned on the front page of the most widely circulated newspaper

of that state.

If the media conducts limited coverage of state supreme courts and the general public does not actively seek out state supreme court news, then why should we care about opinion clarity? For one, it is important to know whether justices care about their credibility in different electoral contexts (Gibson 2012). Even if most of the public remains ignorant about state supreme court decisions without media coverage, there are many stakeholders who care about the rationales presented in the opinions (Romano and Curry 2019). Members of the legal community may want to consider novel legal arguments for a variety of case areas (Ferguson 1990). Citizens, activists, corporations, and organizations may want to understand why justices voted the way they did and what the decision means for their legal future (Cross and Spriggs 2010). State legislators want a state supreme court that they can rely on to push their policy goals, not be constantly at odds with (Devins 2010). These stakeholders are the people who will in turn convey opinions to the public through their advocacy.

The theoretical focus of this paper is the relationship between judicial selection methods and clarity. Previous literature suggests that when justices want to be understood by or appeal to the public, they write clearly. As follows, nonpartisan justices should prioritize being understood because their lack of a partisan label puts them at an electoral disadvantage. When justices have other avenues of visibility, such as a clear partisan affiliation, writing clear opinions may become less of a priority. These changes may be the most significant to justices who have been in both nonpartisan and partisan courts. Justices who have been in two selection regimes may change their writing as a way to adjust to the institutional change, but justices who have only been in one selection regime do not experience the same adjustment period, thus the clarity of their writing does not change.

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label. Since much of the focus on judicial opinion-writing has been on the U.S. Supreme Court, there has not been extensive scrutiny on whether institutional rules, such as judicial selection methods, could influence the decision-making behavior and opinion-writing of the justices. Research on whether these institutional mechanisms affect opinion writing has the potential to implicate how they shape the behaviors of elected justices.

A Theory of Change in the Judicial Context

Originally conceived as an accountability mechanism for state supreme courts, judicial elections have become intertwined with questions of judicial legitimacy (Gibson 2008; Gibson et al. 2011). Debates center on whether state supreme court elections should be partisan or nonpartisan or even occur at all. As an accountability mechanism, judicial reform advocates, politicians, judges, and scholars disagree on the normative effects of partisan and nonpartisan judicial elections (Flango and Ducat 1979). Reform advocates prefer nonpartisan elections because of their perceived independence, yet nonpartisan elections are not insulated from partisan undercurrents. Consider the 5-4 decision of the Supreme Court case *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), which ruled that all judicial candidates, under the First Amendment, have the right to declare their views on controversial issues that may come before them on the bench. Since this decision, judicial candidates in nonpartisan elections have been allowed to state their political views, making nonpartisan elections subject to the same ideological pandering as their partisan counterparts.

Partisan elections allow candidates to campaign with a party label, while nonpartisan elections do not allow candidates to campaign under a party label. The party label in partisan elections imply a wealth of information about the candidate even if the voter knows little to nothing about the candidate, whereas nonpartisan elections operate on the assumption that voters have already done their research on the specific candidate. The success of partisan elections indicate that successful campaigns engage voters with low-cost access to information

through cues and labels, despite politicizing the judiciary as a result. In other words, partisan elections can help reduce ballot roll-off—when people cast votes for candidates running for prominent office positions, but ignore the other races on the ballot—in many low-information elections, judicial elections included (M. G. Hall and Bonneau 2013; Klein and Baum 2001).

With or without partisan labels, voters are on a constant search for cues to make decisions. Case in point: voters use partisan cues to make decisions even when the cues are not as obvious as a “Democratic” or “Republican” label on a ballot (Rock and Baum 2010). Voters look at how other high-profile political actors relate to candidates in low-information offices. And political actors often wield that power. Consider California Republican Governor George Deukmejian who, in 1986, publicly warned two associate justices up for reelection that he would oppose their retention unless they voted to uphold more death sentences (Champagne 2000).

Politicians also leverage party labels when it can be used to their party’s advantage. Consider the example of North Carolina. In 2002, a state legislature with a Democratic majority changed state supreme court elections from partisan to nonpartisan as part of the Judicial Campaign Reform Act. This was in response to the state supreme court giving a trial court judge power to draw new redistricting plans, which worried many veteran Democrats who feared losing their seats and made some Republicans believe that the courts were becoming too political. Yet, in 2016, a lame duck Republican governor and a Republican state legislature changed the selection method back to partisan in an effort to reduce the power of the incoming Democratic governor. Changing from partisan to nonpartisan (and vice versa) comes with numerous benefits for the majority party in control of the government, and may cost the minority party. As money in politics increases and campaign rules evolve, the evidence suggests that judicial elections have become alarmingly similar to other political elections (M. G. Hall and Bonneau 2013; Gibson 2009). And, as justices contemplate reelection on the bench, they must adapt to the electoral context in which they reside.

Given the research on judicial decision-making, we know a few things about how state

supreme court justices come to their decisions. First and foremost, law and precedent play pivotal yet inconsistent roles in state supreme court decision-making. In some cases, the U.S. Supreme Court even goes out of its way to motivate aggregated responses from the lower courts through its summary decisions (Masood, Kassow, and Songer 2019). With contemporary judicial scholars still leveraging the attitudinal model that has shaped the behavioralist’s understanding of the U.S. Supreme Court, it is difficult to abandon this view that all justices are simply ideological animals. Most state supreme court justices are likely ideological, but unlike U.S. Supreme Court justices, many of them have to face voters, who have preconceived views on how a justice should behave (e.g., justices should not act in an ideological manner) in upcoming elections. Voters hold elected justices accountable. And the popular models of judicial decision-making, developed with the U.S. Supreme Court life tenures in mind, do not consider the precarious forces that shape an elected bench.

Elected justices operate much like other elected officials. For one, public opinion is a distinct factor in decision-making for justices who operate in nonpartisan regimes. Scholars find that in nonpartisan elections, justices are more likely to cater to public opinion when it comes to salient cases, such as those involving abortion policy and the death penalty (Canes-Wrone and Clark 2009; Caldarone, Canes-Wrone, and Clark 2009; P. R. Brace and Hall 1997). In addition, recent work by Renberg (2020) finds that when justices in Tennessee,¹ Arkansas, and Mississippi, who were previously elected through partisan methods have to face nonpartisan elections, they write more dissenting opinions to signal their disagreement with the majority.

Campaign contributions, as court reformers fear, have an impact as well. A study on the Supreme Court of Georgia, a court with a nonpartisan selection method, finds that campaign contributions from lawyers and law firms directly affect the justices’ voting when they hear cases litigated by the same lawyers and law firms (Cann 2007). A different study shows that justices elected by partisan means are more likely to vote in favor of business interests as the

¹Tennessee changed from partisan selection methods to a system that combines an initial gubernatorial appointment and subsequent retention elections.

amount that businesses contributed to their campaign increases ([Kang and Shepherd 2011](#)). In essence, campaign contributions are influential in the judicial decision-making process in both partisan and nonpartisan elections. And while amicus briefs in the Supreme Court have generated some scholarly interest, there is recent work showing that in complex state supreme court cases, conservative briefs influence conservative justices, and that liberal briefs influence liberal justices ([Becker Kane 2017](#)). Justices are often adamant that they look to the law to make their decisions, but when reelection is at stake, justices will inevitably look to other factors to increase their appeal to voters.

To understand the context of the decision and how the justice chooses to frame it, written opinions offer a way to observe judicial behavior by looking at whether they write clearer opinions when they lose their partisan label. While judicial votes affect the lives of people with great immediacy, the written opinions serve a different function. Opinions are important for other reasons as well. For one, they provide context for the actual votes cast. It gives the justices a chance to justify their reasoning behind a particular decision. And it is what makes the judicial branch unique. No other governmental branch has to consider the burden of explaining their choices to the public in a long-form document. Second, opinions offer legal arguments to other similar cases happening to different people in different places. It provides a perspective that can be applied to analogous cases. Opinions are important, not only because they influence the lives of the parties involved, but its effects ripple through the judicial system far beyond the facts of the case.

This paper considers how written opinions provide a window into understanding how the court as an institution and how justices as individuals hedge (or not) in their writing to fulfill their duties of accountability and legitimacy. Since changes in selection mechanisms are an institutional change and justices who apply those changes do so on an individual level, I introduce hypotheses that address these concerns. First, I hypothesize that nonpartisan courts are more likely to produce clearer opinions than partisan courts. The court needs to produce clear opinions to signal the legitimacy of its decision to their constituents. As

follows, I would expect to see that courts that change from partisan to nonpartisan selections to produce clearer opinions than courts that change from nonpartisan to partisan. Second, I hypothesize that justices switch from being on partisan to nonpartisan courts are more likely to write clearer opinions than justices who switch from being on nonpartisan to partisan courts. In order to win elections, justices need a clear message. When the ultimate cue, such as a partisan label, is gone, then justices are more likely to resort to other options to appeal to the masses, such as writing clear opinions.

Data and Measures

Case Selection

I compare opinions over time from 1995 to 2019 within states that changed selection methods and across states that have different selection methods. Specifically, I look at three cases where the selection method changed from partisan to nonpartisan: Arkansas in 2000, North Carolina in 2002, and West Virginia in 2016. These states and time frame provide some consistency in terms of political ideology and writing style.² I also look at North Carolina in 2016, where it changed from nonpartisan back to partisan. For an additional comparison, I examine Alabama and Mississippi,³ which held partisan and nonpartisan elections during the time period of interest, respectively.

To conduct the analysis, I first obtain all reported opinions from LexisNexis for Arkansas, North Carolina, and West Virginia from the year 1995 to 2019. I then categorize the opinions by year and opinion type (i.e., majority opinion, concurrence, or dissent) and identify the author and disposition of the case. Figure 1 shows the total number of opinions published by each state by opinion type.

²Note that North Carolina changed its method from nonpartisan back to partisan in 2016.

³Mississippi passed the Nonpartisan Judicial Election Act in 1994. Prior to 1994, Mississippi had partisan elections with gubernatorial appointments to interim vacancies, but judgeships were rarely contested in elections. I argue that enough time has passed between the first “change” in North Carolina in 2002 that Mississippi has already established itself as a steady nonpartisan state supreme court.

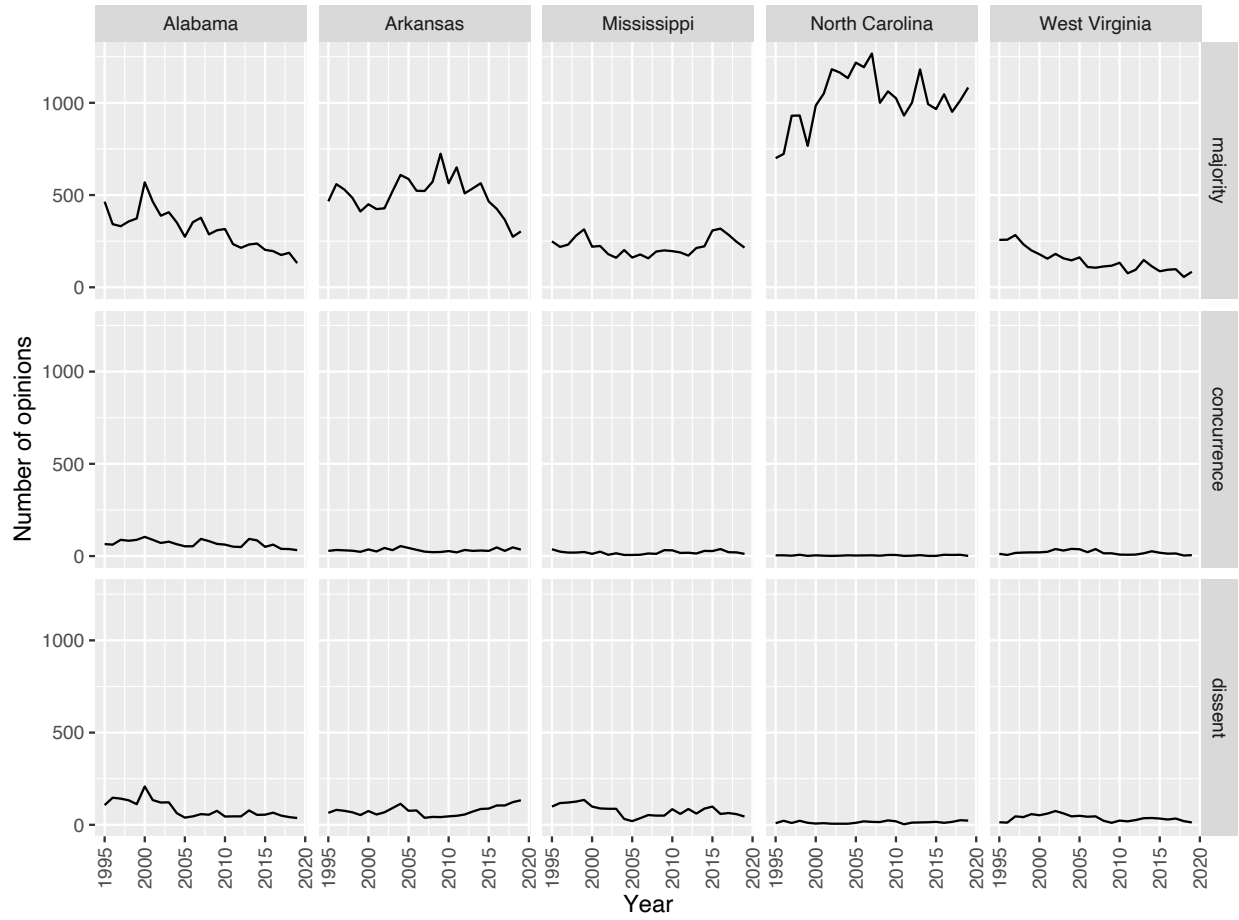


Figure 1: Total number of opinions published by each state, categorized by opinion type..

For unique court-level covariate effects, I collect information about the proportion of opinion types produced by a particular state supreme court within each state for each year. And for justice-level covariate effects, I also collect information about the author of the opinions that indicates whether the author is female, a racial minority, initially appointed, or running for reelection in the year the opinion is written, and calculate the *proportion* of justices with these characteristics. Justice-level characteristics are important to how justices present themselves to the public, or how they are perceived by the public. In certain electoral contexts, especially low-information ones, voters make assumptions about candidates based on their race or gender (McDermott 1998). Acknowledging their identity and how their identity is perceived by voters can influence the audience that the justices write for. And whether a justice was initially appointed may also speak to who they write for and in essence, work for (Curry and Hurwitz 2016). Furthermore, scholars have noted that justices change their behavior in reelection years when voting on salient cases (Canes-Wrone, Clark, and Kelly 2014).

Clarity Measure

The decision to measure clarity follows recent text analysis work in judicial literature in the past decade. With the ease of access to judicial opinions, scholars have taken the opportunity to examine the language of Supreme Court opinions. Notably, Supreme Court scholars have focused on the nature of opinions and votes (D’Elia-Kueper and Segal 2015), and the relationship between amicus briefs and opinions (McGuire, Vanberg, and Yanus 2007; Oldfather, Bockhorst, and Dimmer 2012; Evans et al. 2007). Further, scholars have also looked at how judges use language in their opinions and the subsequent impact of these language choices (Owens and Wedeking 2012; Owens and Wedeking 2011).

More recently, scholars have begun probing into state supreme court opinions. Recent work finds that state supreme court justices write to appease certain stakeholder groups who pay special attention to their opinions (Romano and Curry 2019). Some of the more

provocative works on state supreme court opinions have used text analysis to extract crucial aspects of the case to determine the ideological direction of each judge’s vote (M. E. Hall and Windett 2013; Windett, Harden, and Hall 2015). In fact, automated textual analysis methods have allowed researchers to generate data on state supreme court cases in years that are not included in the State Supreme Court Data Project (Bonneau, Hall, and Streb 2011; Bonneau and Cann 2015; M. G. Hall and Bonneau 2013). Innovations in state supreme court research have relied heavily on the text of the opinions and the text analysis resurgence that political science has embraced in the past decade.

There are distinct opinion types. Separate opinions have generated much discussion in both academic and legal circles. Recent empirical research shows that separate opinions are more than just a symbolic gesture—they are often windows into the justices’ true values and beliefs that go beyond the desire for compromise and they lay the groundwork for future majority opinions once the composition of the court changes (Way and Turner 2006). In fact, research finds that writing or joining a separate opinion is a reflection of a justice’s conditional policy preferences (Wahlbeck, Spriggs, and Maltzman 1999). In state supreme court research, there has been some focus on the role of dissents as well (P. Brace and Hall 1993, 1990), but far less inquiry into the role of concurring opinions (Kirman 1995). Given the distinction between separate opinions, I categorize the opinions into majority, concurring and dissenting opinions.

Most relevant to the central probe of this paper is the Goelzhauser and Cann (2014) finding that state supreme court retention systems do not influence opinion clarity of salient cases. Building on that paper, I consider state supreme courts that have changed selection methods from partisan to nonpartisan, and justices who have been members of both selection regimes. While my study only contains a few select states, my sample looks at *all* opinions from 1995 to 2019 and contains justice-level information on the clarity of the opinions. While there are various measures for clarity, I follow Goelzhauser and Cann (2014) and use the Flesch Reading Ease (FRE) score. In addition to its common usage in text analysis

research within judicial politics, political science, and in policy-making circles, I also use it for its ease of interpretation (Goelzhauser and Cann 2014). In essence, the FRE has been used by researchers in this discipline and has held up to rigorous scrutiny.⁴

The dependent variable of *clarity* is calculated using the Flesch’s Reading Ease Score. The FRE is a readability score determined by a formula and measured from 0 (unreadable) to 100 (easily understood) (Flesch 1948). When interpreting the score, the simplest way to understand it is that a high score indicates that a passage is easy to read (clear) while a low score indicates that a passage is not easy to read (not clear). Here, *ASL* stands for average sentence length and is calculated with the following formula. *Nsy* stands for the number of syllables while *Nw* stands for the number of words.

$$206.835 - (1.015 * (\frac{Nsy}{Nw}) - (84.6 * (\frac{Nsy}{Nw})))$$

The constants are a result of the correlation on McCall’s *Standard test lessons in reading*, which measured the grade level of a child based on how well she understood a certain passage. From there, they used the passages from McCall, then took the average sentence length in words, average word length in syllables, average percentage of “personal words” (e.g., nouns with natural gender, pronouns except for neuter pronouns, and the words “people” and “folks”), and the average percentage of “personal sentences” (e.g., such as spoken sentences, questions, commands, requests, and other sentences addressed to the reader), exclamations, and grammatically incomplete sentences, and computed two multiple-correlation regression formulas. The first regression encompasses the average sentence length in words and average word length in syllables, while the second regression consists of the average percentage of personal words and personal sentences.

In regards to the opinions within the states of interest, Figure 2 shows that the average opinion for every justice on each court is a Flesch score of 50 to 60, which suggests that the

⁴In Appendix A, I show that the FRE measure is correlated to other measures of clarity, including the Powers-Sumner-Kearl’s Variation of Flesch Reading Ease Score (Flesch PSK), the Flesch-Kincaid Readability Score, the Coleman-Liau Estimated Cloze Percent (ECP), and Gunning’s Fog Index (FOG).

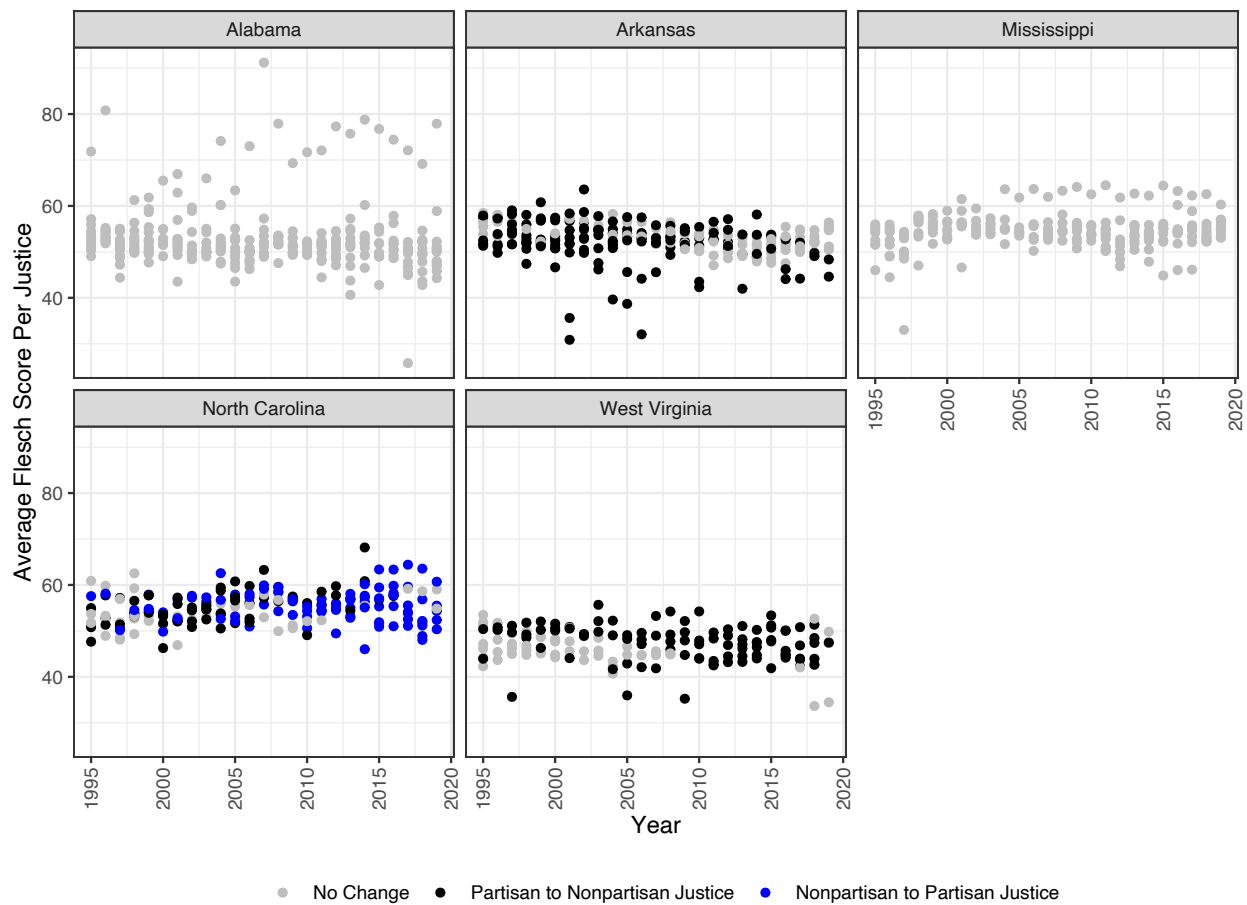


Figure 2: Descriptive plot of each of the states and the Flesch scores of justices under different regimes.

opinions are typically written at a high school or college reading level. Of course, since most state supreme court opinions contain legal language, the reader might also need to have some legal expertise or knowledge in addition to a high school or college education to understand them well.

Method and Results

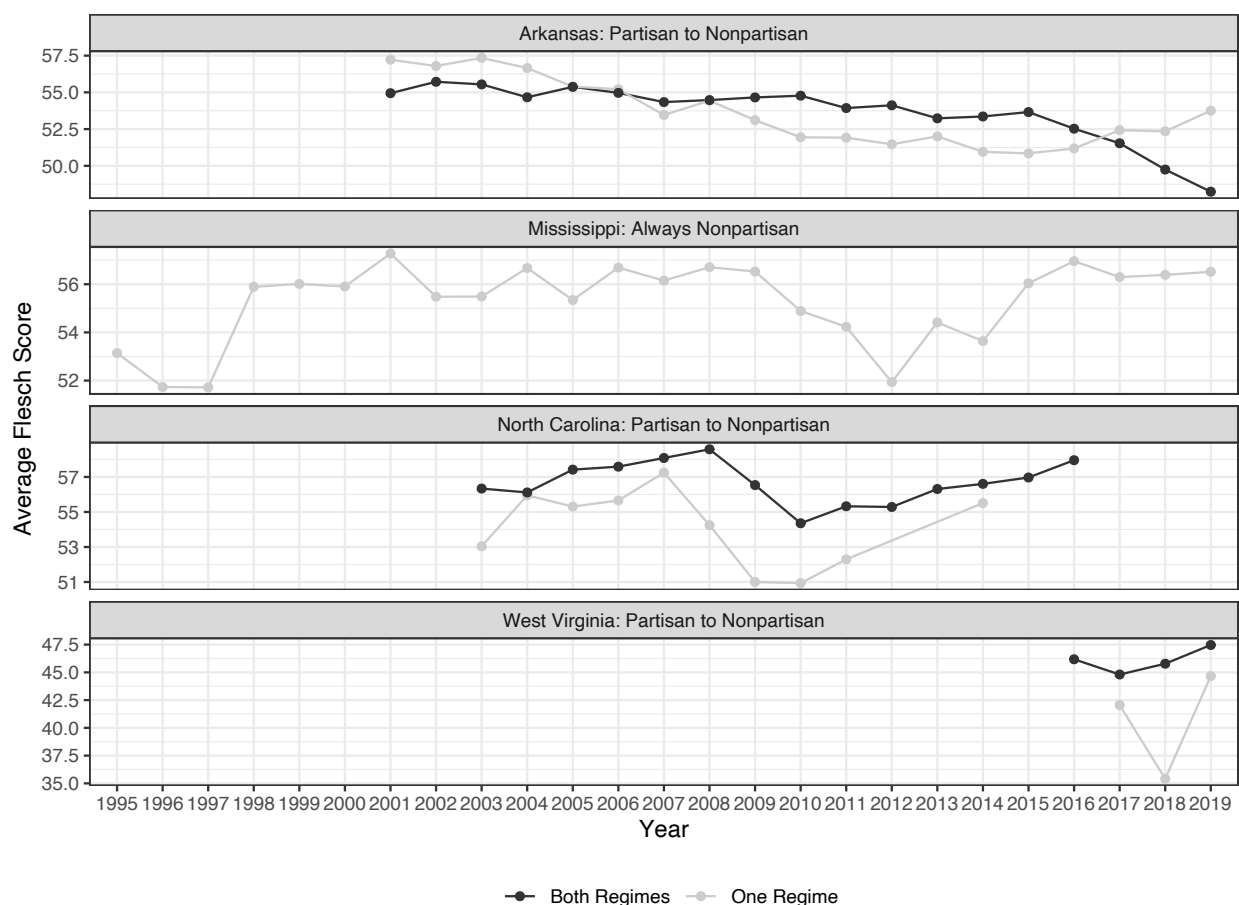


Figure 3: Descriptive plot of the partisan to nonpartisan states and the partisan state, and the average Flesch scores of their opinions.

I first conduct a court-level analysis on the relationship between state selection mechanisms and opinion clarity. Figure 3 shows the average opinion clarity in each state within each year for states that changed from partisan selection methods to nonpartisan selection

methods as well as the state that has only ever had nonpartisan selection methods within the time period of interest. There is limited data on North Carolina's transition from nonpartisan to partisan since the change was rather recent, but this study believes that the three years of opinion can provide some insight into the change.

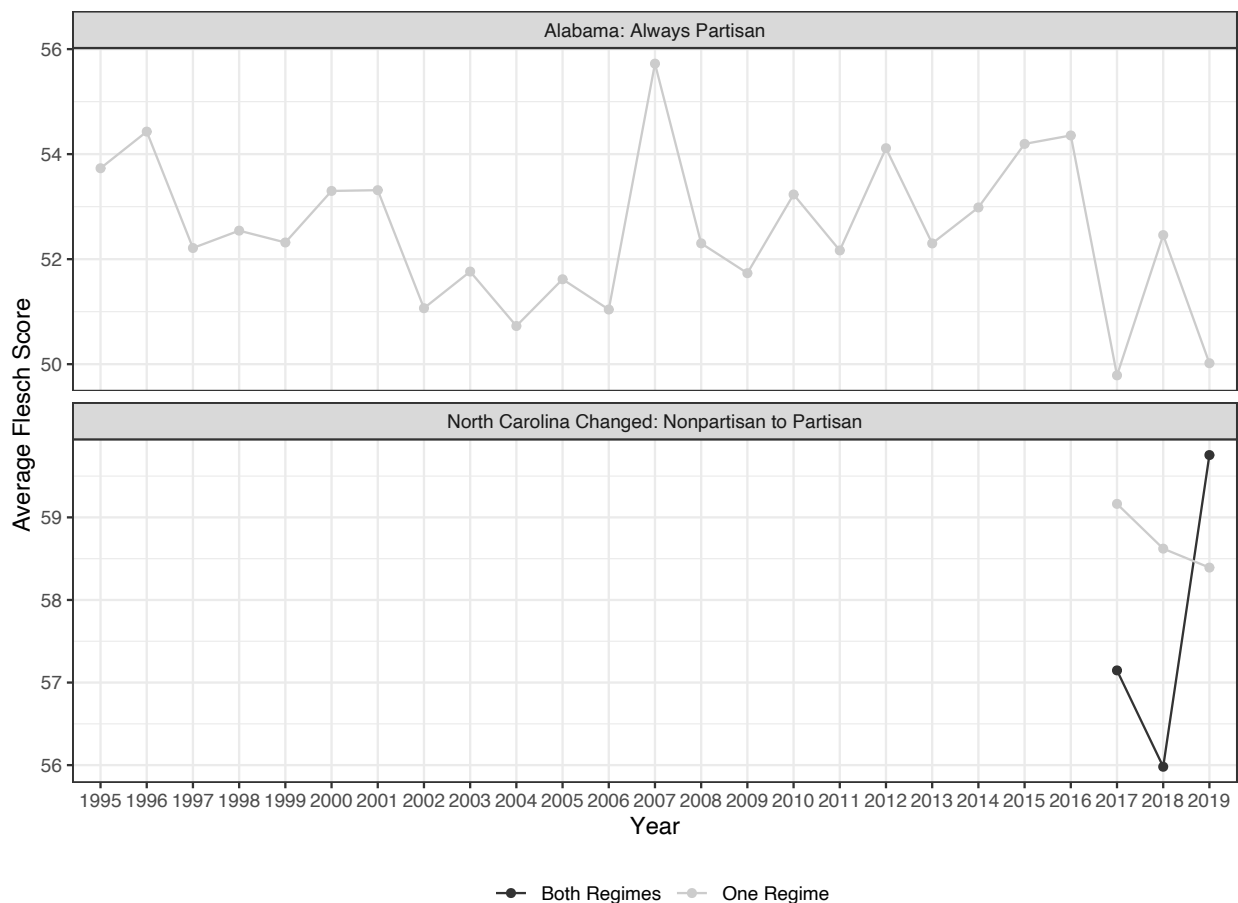


Figure 4: Descriptive plot of the nonpartisan to partisan states and the partisan state, and the average Flesch scores of their opinions.

Figure 4 shows the average opinion clarity in each state within each year for states that changed from nonpartisan selection methods to partisan selection methods as well as the state that has only ever had partisan selection methods within the time period of interest. While Arkansas, Mississippi, and North Carolina hover around 50 to 60, West Virginia does experience a nosedive in readability in 2018. It is worth noting that in 2018, the West Virginia House of Delegates voted to impeach all five justices on the Supreme Court of

Appeals of West Virginia on corruption charges, and only two of the members remained on the court. Naturally, this debacle may have contributed to the relatively average opinion clarity in 2018, though, in general, the West Virginia scores are consistently lower than the other states.

Since my dependent variable is continuous, I estimate my models using ordinary least squares regression (OLS) regression. In addition, I replaced the OLS standard errors with robust standard errors clustered by state in the court-level analysis and justices in the justice-level analysis.⁵

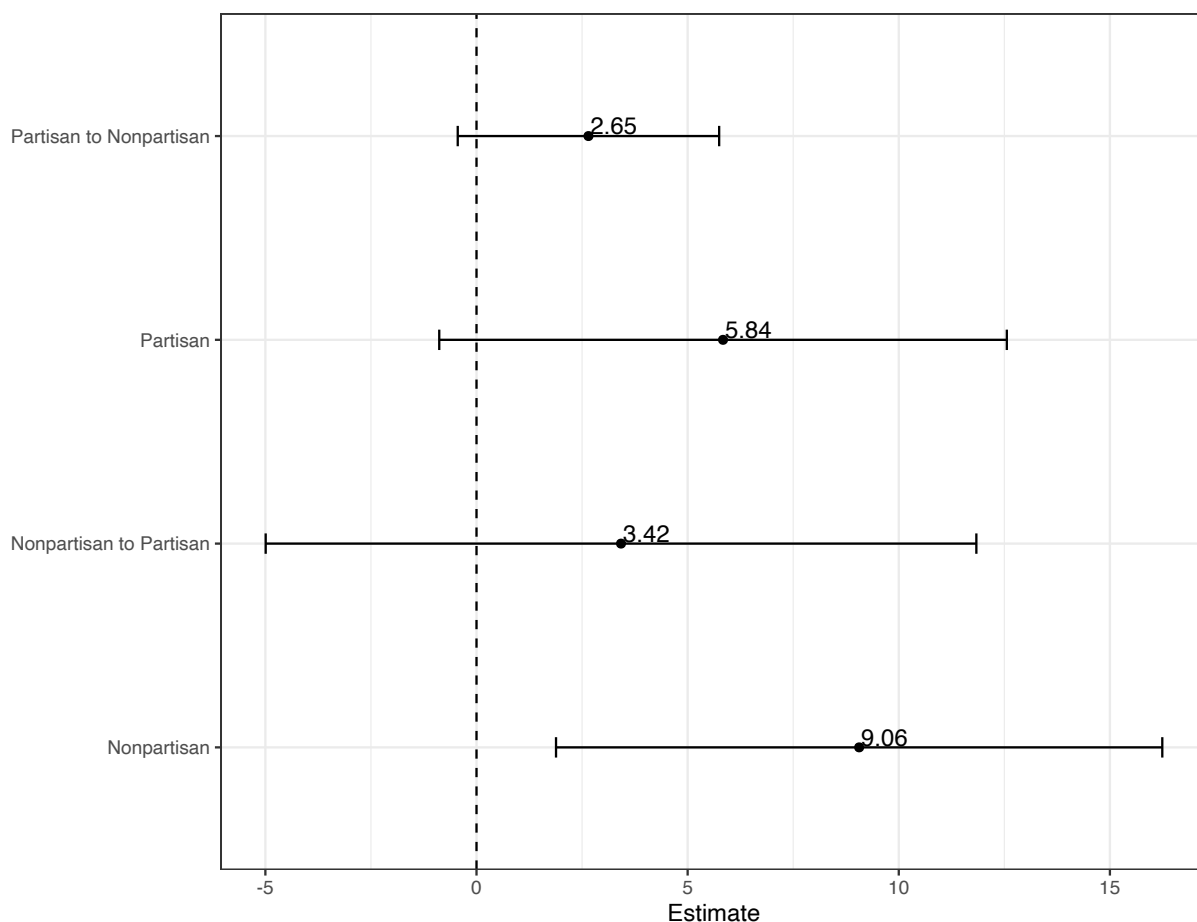


Figure 5: Coefficient plot results of the court-level analysis.

Figure 5 reports the results of estimating a model of clarity in state supreme court

⁵Appendix B provides graphs that illustrate that a difference-in-difference analysis would not be productive to this analysis, since the states do not pass the parallel trends assumption. States are also vastly different from each other, so it is difficult to justify how states are the same in some instances and not others.

opinion-writing. In general, the model performance is high. The model accounts for 64% of the variation in clarity. Moreover, one of the substantive variables, courts that have remained nonpartisan, is in the expected negative direction and is statistically significant. Opinions produced by the Mississippi Supreme Court are about nine points more clear than opinions from other states within the analysis. While the other substantive variables—partisan to nonpartisan states, nonpartisan to partisan states, and partisan states—are positive, they are not statistically significant.

To provide a sense of the changes in clarity, keep in mind that every 10 points is approximately a new reading grade level. In this case, when a court goes from being nonpartisan to partisan, the clarity of the writing decreases about more than half a grade level. While most state supreme court opinions are written for students in grade school, the grade levels represent an estimate of much additional skill and knowledge is required to understand the opinions. For instance, one can consider the additional *time* necessary to obtain those skills and knowledge to understand the opinions. If there are nine months in a school year, then the average opinion produced by a court that went from nonpartisan to partisan elections requires a person to spend approximately an entire school year studying and honing their skills in order to understand the opinion.

I then conduct a justice-level analysis on the relationship between state selection mechanisms and opinion clarity. In this analysis, I only look at justices who have been part of both selection regimes in their respective states. Figure 6 shows that overall, justices in North Carolina wrote less clear opinions once their state changed from a nonpartisan to partisan selection method, with Justice Paul Newby seeing a drop in nearly eight points. Justice Robin Hudson is the only justice whose opinions increased in clarity.

Figure 7 shows that when justices change from partisan to nonpartisan selection methods, their opinions tend to increase in clarity. Again, the North Carolina justices are the most interesting. The average clarity of Justice Newby’s opinion increased by about eight points when his state changed from partisan to nonpartisan. The change also seems to have the

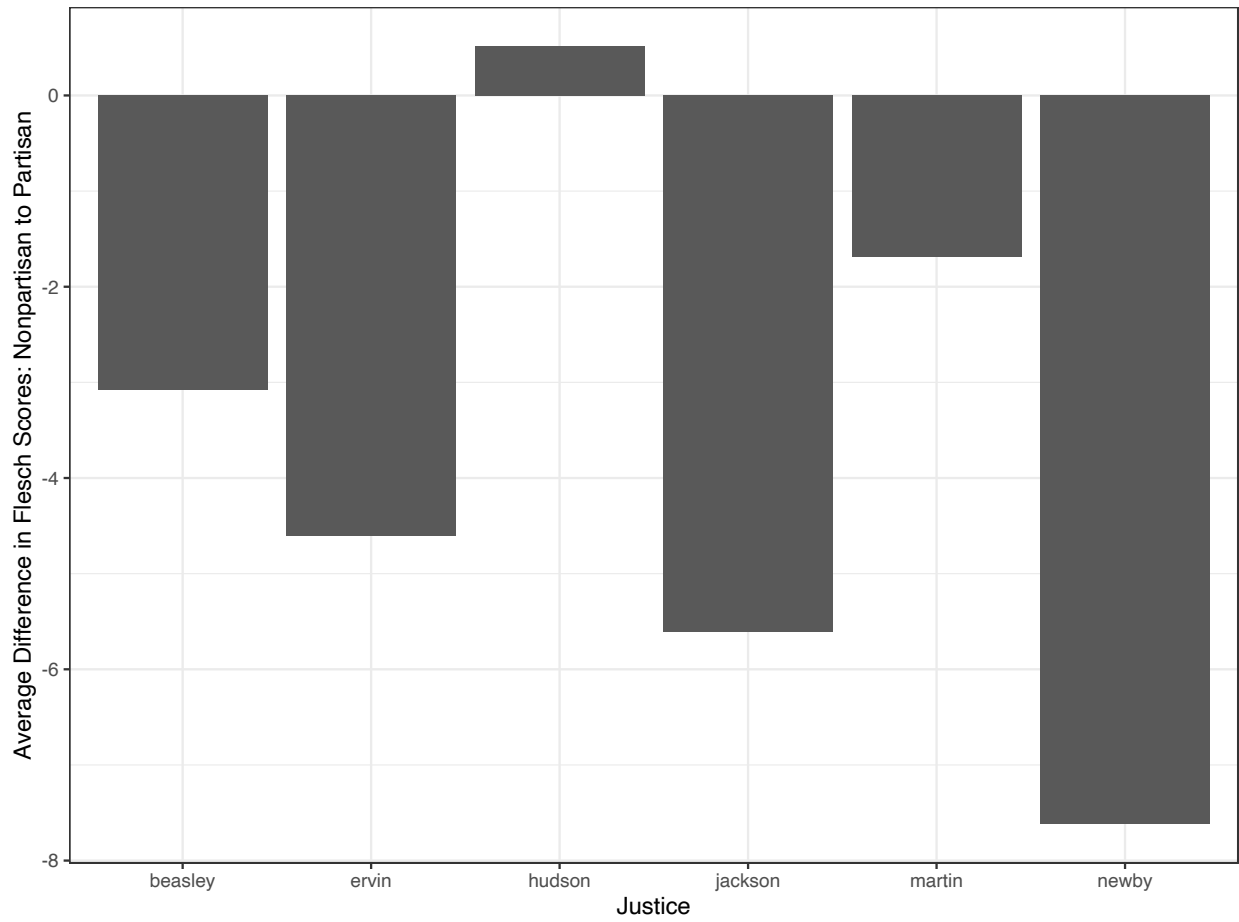


Figure 6: Coefficient plot results of the justice-level analysis.

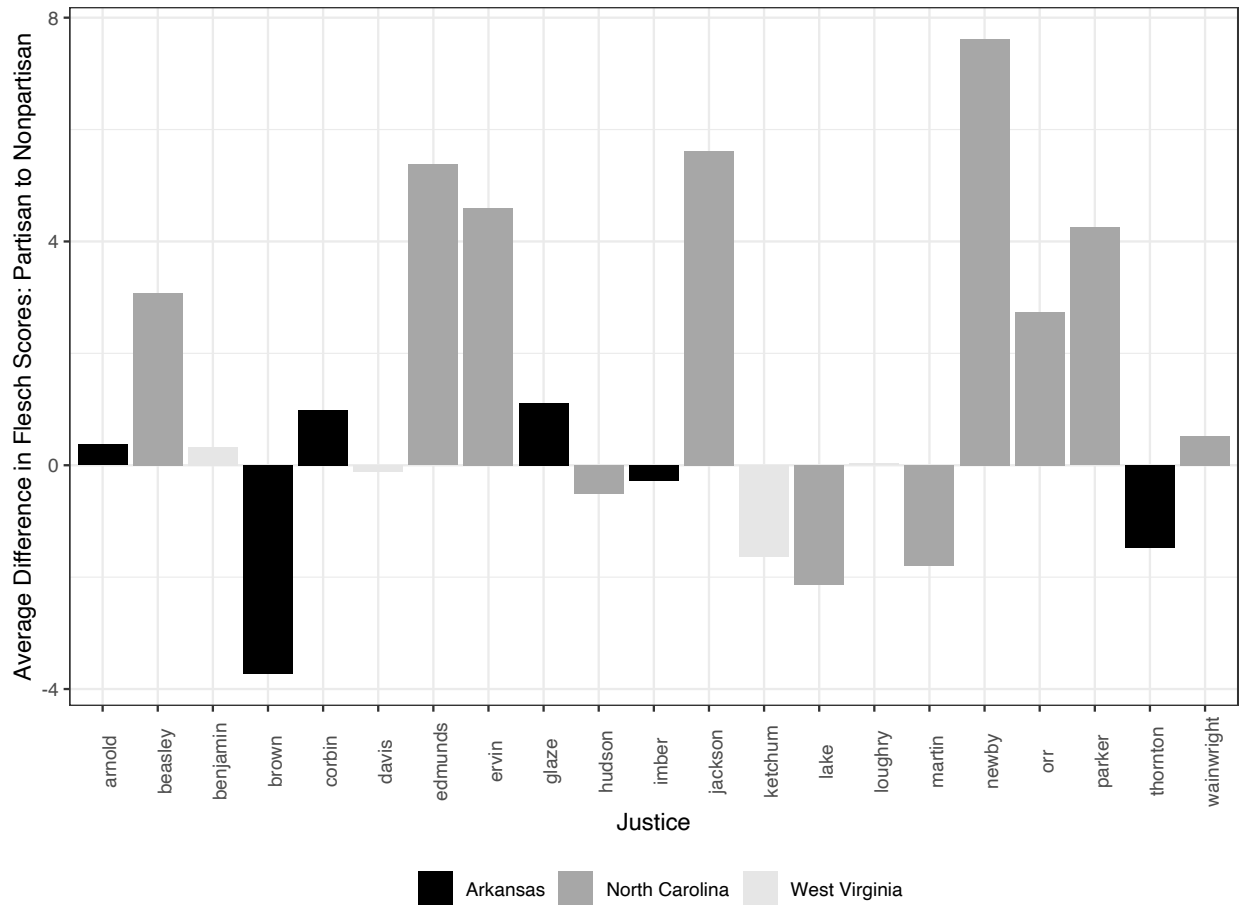


Figure 7: Coefficient plot results of the justice-level analysis.

same effect on the other North Carolina justices, except for Justice Hudson, whose opinion clarity decreased just slightly. Arkansas Justice Robert Brown's opinions decreased nearly four points in clarity.

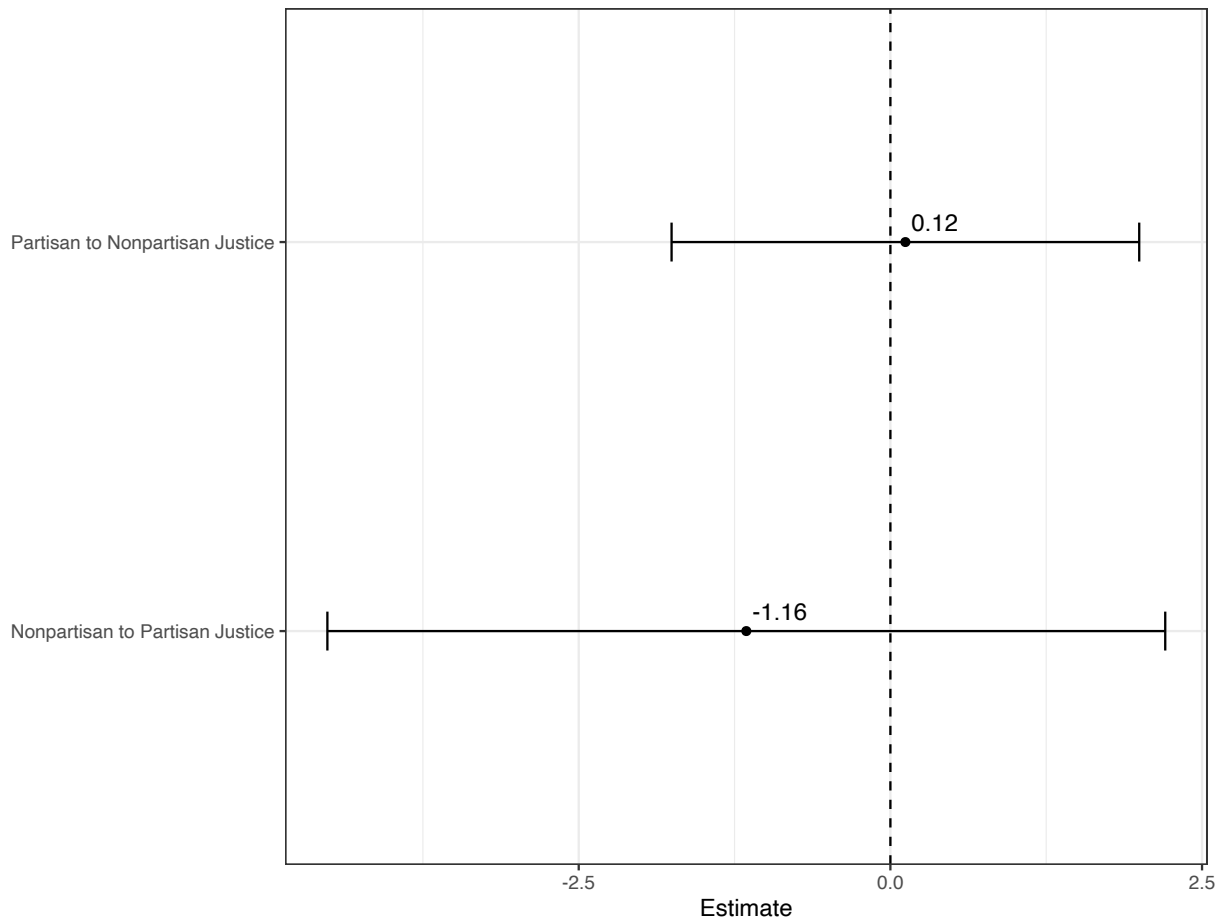


Figure 8: Coefficient plot results of the justice-level analysis.

Figure 8 reports the results of estimating a model of clarity in state supreme court opinion-writing. The model accounts for 10% of the variation in clarity. When looking at individual justices, Figure 8 demonstrates that there are no substantive effects on a justice's opinion clarity when they switch from one selection regime to the other. The direction of the coefficients do, however, conform with the hypothesis. The results show that justices who went from being in a partisan regime to a nonpartisan regime produce slightly clearer opinions. Further, justices who were in nonpartisan regimes and went to partisan regimes

wrote less clear opinions. While these results are not substantively significant, it is worth noting that being in a nonpartisan regime may encourage justices to write with more clarity while partisan regimes may have the opposite effect.

Discussion

Judicial elections have long attempted to balance the tenets of legitimacy and accountability. I find evidence in the Mississippi Supreme Court that suggests that a long-term nonpartisan selection method may encourage clearer opinions, while I do not find any substantive effects for courts or justices who change from one regime to the other. In other words, the results demonstrate that *changes* in selection method do not influence the clarity of opinions, but established selection methods are likely to have an impact.

Much of the judicial literature demonstrate that courts operate based on legitimacy. In order for constituents to find the court legitimate, they must be able to understand the court's decisions. One way that courts can ensure that happens is to produce clearer opinions that are accessible to the public. The results suggest that changing selection methods have no effect, but established selection methods have a substantive effect. When states change from one selection method to another, there are norms in each particular court that may take years to evolve. Institutional rules take time to become norms.

On the individual level, I find no effect for justices who have transitioned between different selection regimes. The lack of an effect suggests that institutional rules changes, such as how justices get elected to the court, does not appear to affect the clarity of the opinions. It is possible that justices may change their behaviors in other ways, such as how they vote, what they ask in oral arguments, or what they do on the campaign trail. This, however, does not mean that other factors about the justices do not influence the clarity of the opinions. The regression models suggest that justice-level and opinion-level characteristics seem to influence writing styles more than institutional rule changes.⁶

⁶Regression tables are in Appendix A.

Future research can explore other questions in changes in selection methods. This paper looks at only one of the potential ways justices signal or withhold their signals when there is an institutional change. Investigating voting behavior is a natural next step. It may also be worthwhile to consider whether certain selection methods are more effective at preventing ballot roll-off in certain contexts, such as in especially competitive states. Finally, a direction to consider is to look at the relationship between selection methods and judicial candidate behavior. Does selection methods change what judicial candidates say in debates and interviews? Does they alter the nature of the print, TV, and social media ads? The relationship between selection methods and *how* judicial candidates run for office offers fruitful research ideas in this general topic.

Overall, this study suggests that changing selection methods do not influence clarity of opinions, but established selection methods can have an effect. While it is tempting to conclude that changing selection methods is a futile, performative exercise, the results in Mississippi provide some indication that employing a nonpartisan selection method could force the court as a whole to signal more through writing clearer opinion writing. Politicians, reformers, and academics often debate the costs and benefits of different types of selection methods, but the results of this study indicate that they should consider the long-term effects of each selection method and how its application may shape the culture of the court.

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Appendix A: Regression Tables

Court-Level Analysis

	Opinion Clarity
Intercept	53.34*
	[50.06; 56.61]
Partisan to Nonpartisan	2.65
	[−0.44; 5.75]
Nonpartisan to Partisan	3.42
	[−4.99; 11.84]
Partisan State	5.84
	[−0.88; 12.56]
Nonpartisan State	9.06*
	[1.88; 16.24]
Female	1.87
	[−8.43; 12.17]
Racial Minority	5.93
	[−3.60; 15.45]
Appointed Justice	−6.33
	[−15.96; 3.30]
Reelection	2.21
	[−6.67; 11.09]
Dissent	−28.45*
	[−48.82; −8.09]
Concurrence	−4.64
	[−26.34; 17.06]
Crime	6.58
	[−26.59; 39.74]
Year FE	Yes
R ²	0.74
Adj. R ²	0.64
Num. obs.	125
RMSE	2.09
N Clusters	5

* 0 outside the confidence interval.

Table 1: Regression table of model that estimates the relationship between states who changed from one regime to the other or never changed regimes, clustered by state.

Justice-Level Analysis

	Opinion Clarity
Intercept	52.41*
	[51.46; 53.37]
Partisan to Nonpartisan Justices	0.12
	[−1.76; 2.00]
Nonpartisan to Partisan Justices	−1.16
	[−4.52; 2.20]
Female	−0.25
	[−1.44; 0.93]
Racial Minority	0.79
	[−0.47; 2.04]
Appointed Justice	−0.07
	[−1.06; 0.93]
Dissent	−1.54*
	[−2.18; −0.91]
Concurrence	−1.34*
	[−2.24; −0.44]
Reelection	0.02
	[−0.91; 0.94]
Crime	3.34*
	[3.03; 3.66]
State FE	Yes
Year FE	Yes
R ²	0.10
Adj. R ²	0.10
Num. obs.	27230
RMSE	8.23
N Clusters	126

* 0 outside the confidence interval.

Table 2: Regression table of model that estimates the relationship between justices who changed from one regime to the other, clustered by justice.

Appendix B: Testing for Parallel Trends

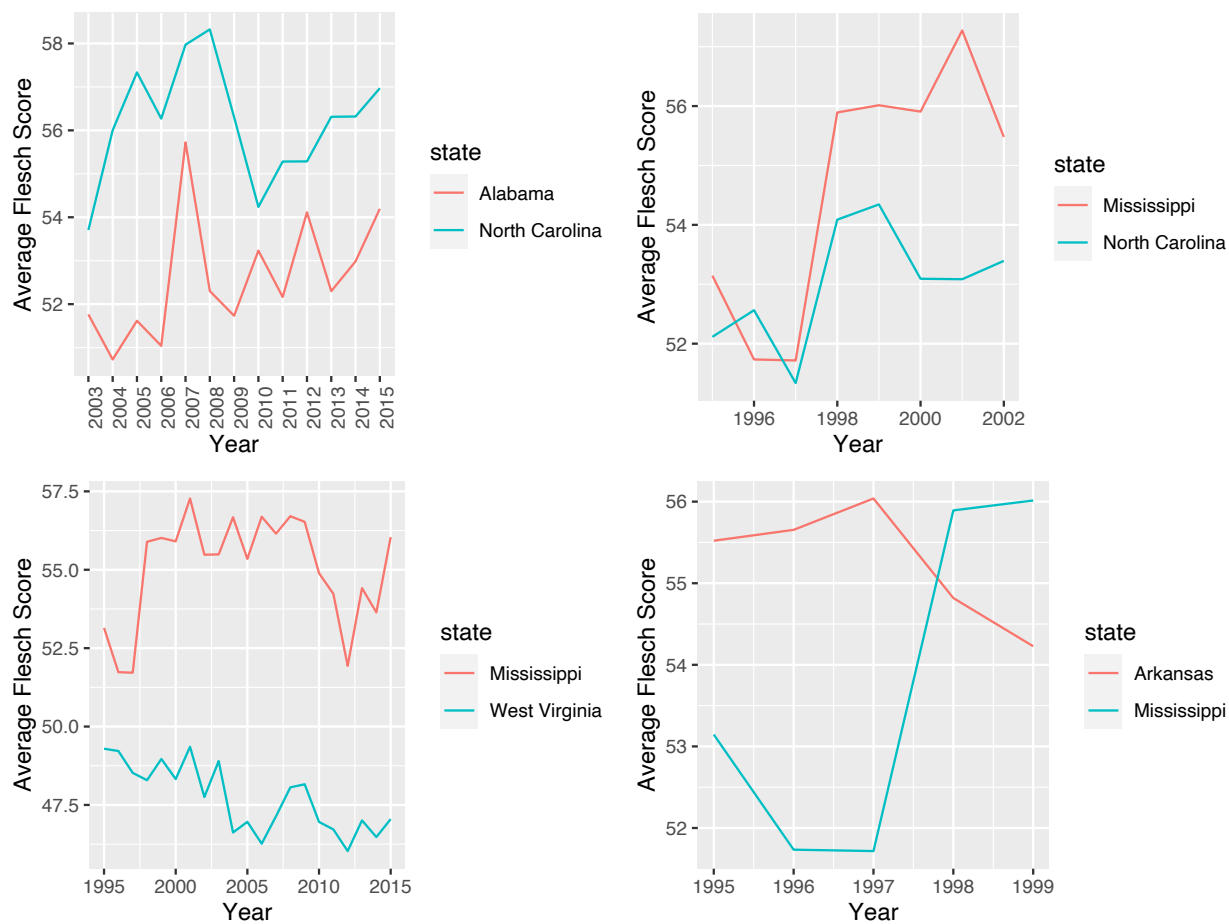


Figure 9: States do not meet the parallel trends assumption to perform a difference-in-difference analysis.