Elections and Explanations: Judicial Elections and Opinion Readability

Michael J. Nelson
Department of Political Science
Washington University in St. Louis

INTRODUCTION

- Do elected judges write opinions that are more readable than those written by judges who do not stand for election?
- Do electoral circumstances affect the readability of judicial opinions written by elected judges?

THEORY

- Judges care about the accessibility of their opinions (Staton 2010).
- Readable opinions can build public support (Vickery et al. 2012).
  - Elected judges have an additional institutional need to attract institutional support.
  - **Elected judges should write more readable opinions.**
- But, each judge has unique electoral circumstances.
  - Judges foreseeing a difficult election may build public support through a different mechanism.
  - Legal symbols build public support (Gibson et al. 2012).
  - **Judges facing a difficult election should write less readable opinions.**
- Alternative explanations:
  - Political Environment
  - Case Salience
  - Intercourt Bargaining

READABILITY

- Use observable features of words (e.g. sentence length, word count, complexity of individual words) to determine the difficulty of a passage of text.
- Originally developed by educators to determine if children's reading abilities were appropriate for their grade level.
- Now widely used outside of education (e.g. readability of prescription drug pamphlets).
- Use four different measures:
  - Flesch Reading Ease Scale
  - Flesch-Kincaid Grade Level
  - Coleman-Liau Index
  - Gunning-Fog Index
- **Higher scores indicate more difficult texts.**

$$FRES = 206.835 - 1.015\left(\frac{Total\ Words}{Total\ Sentences}\right) - 84.6\left(\frac{Total\ Syllables}{Total\ Words}\right)$$

$$FKGL = 0.39\left(\frac{Total\ Words}{Total\ Sentences}\right) + 11.8\left(\frac{Total\ Syllables}{Total\ Words}\right) - 15.59$$

$$CLI = 0.0588L - 0.296S - 15.8$$

$$FOG = 0.4\left[\left(\frac{Total\ Words}{Total\ Sentences}\right) + 100\left(\frac{3+\ Syllable\ Words}{Total\ Words}\right)\right]$$

DATA AND METHODS

- Cases: State Search and Seizure majority opinions 2000-2010
- Outcome variable: Opinion Readability
- Explanatory Variables:
  - Electoral Institutions: Elected Judge, Previous Minimum Winning Vote Share
  - Political Environment: % Same Party Legislature, Divided Government, Author-Governor Same Party
  - Salience: *Amicus* Brief Filed
  - Bargaining: Written Dissent
  - Litigants: Public Defender, Pro Se Litigant
  - Legal Factors: Popular Opinion, Opinion Excludes Evidence
- Model: Linear Regression with random effects for state and author

Distribution of Outcome Variables
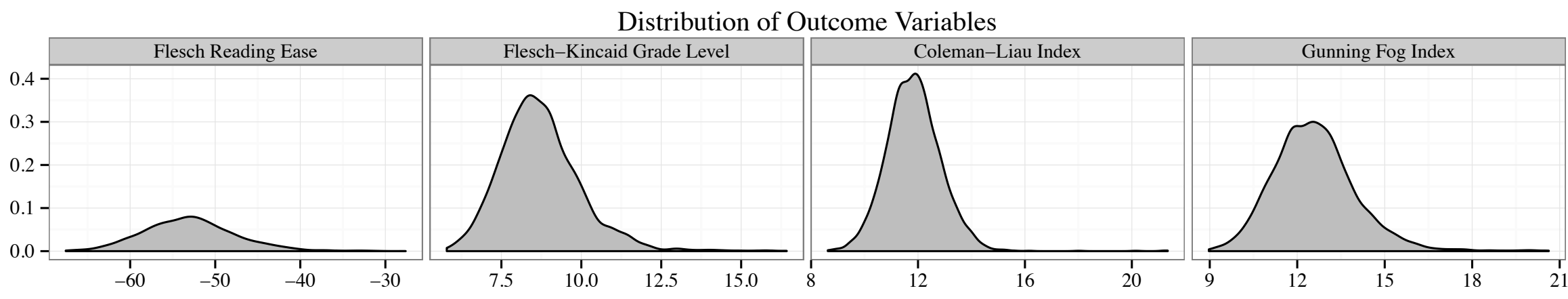
RESULTS: ALL JUDGES

	Dependent variable:			
	FRES	FKGL	CLI	FOG
Elected	−1.947*	−0.464*	−0.352*	−0.704*
	(1.033)	(0.271)	(0.183)	(0.307)
Divided Government	−0.665*	−0.180*	−0.068	−0.218*
	(0.219)	(0.049)	(0.043)	(0.056)
Author-Governor Same Party	−0.298	−0.046	−0.083*	−0.083
	(0.206)	(0.047)	(0.042)	(0.053)
% St. Senate Same Party	−1.659*	−0.332*	−0.146	−0.294
	(0.736)	(0.175)	(0.157)	(0.197)
Public Defender	−0.610*	−0.090*	−0.130*	−0.085
	(0.213)	(0.047)	(0.041)	(0.054)
Pro Se	0.391	0.211	0.197	0.111
	(0.681)	(0.150)	(0.131)	(0.171)
Amicus	0.595	0.027	0.091	−0.023
	(0.494)	(0.109)	(0.095)	(0.124)
Excludes Evidence	−0.500*	−0.138*	−0.206*	−0.097*
	(0.222)	(0.049)	(0.043)	(0.056)
Dissent	0.237	0.032	−0.005	0.076
	(0.208)	(0.046)	(0.040)	(0.053)
Popular Decision	−0.577*	−0.100*	−0.139*	−0.111*
	(0.212)	(0.047)	(0.041)	(0.053)
Constant	−49.425*	9.500*	12.453*	13.590*
	(0.999)	(0.257)	(0.182)	(0.291)
N	2,889	2,889	2,889	2,889
Log likelihood	−8,610.765	−4,274.620	−3,877.692	−4,655.612
BIC	17,333.090	8,660.801	7,866.945	9,422.786
Note:				*p<0.1

RESULTS: ELECTED JUDGES

	Dependent variable:			
	FRES	FKGL	CLI	FOG
Prior Vote Share	−1.323	−0.375*	−0.397*	−0.468*
	(0.931)	(0.206)	(0.172)	(0.236)
Divided Government	−0.647*	−0.169*	−0.082*	−0.215*
	(0.251)	(0.056)	(0.047)	(0.064)
Author-Governor Same Party	−0.165	−0.025	−0.012	−0.067
	(0.237)	(0.054)	(0.044)	(0.061)
% Senate Same Party	−2.818*	−0.491*	−0.476*	−0.478*
	(0.938)	(0.220)	(0.175)	(0.248)
Public Defender	−0.681*	−0.097*	−0.111*	−0.109*
	(0.249)	(0.054)	(0.046)	(0.062)
Pro Se	0.615	0.287*	0.235*	0.180
	(0.762)	(0.165)	(0.142)	(0.190)
Amicus	1.656*	0.208	0.228*	0.213
	(0.638)	(0.139)	(0.119)	(0.159)
Excludes Evidence	−0.594*	−0.156*	−0.207*	−0.127*
	(0.261)	(0.057)	(0.049)	(0.065)
Dissent	0.415*	0.064	0.041	0.109*
	(0.228)	(0.050)	(0.042)	(0.057)
Popular Decision	−0.554*	−0.097*	−0.127*	−0.108*
	(0.248)	(0.054)	(0.046)	(0.062)
Constant	−50.061*	9.328*	12.467*	13.264*
	(0.908)	(0.210)	(0.166)	(0.239)
N	2,292	2,292	2,292	2,292
Log likelihood	−6,814.346	−3,342.953	−2,981.642	−3,654.389
BIC	13,737.010	6,794.226	6,071.604	7,417.098
Note:				*p<0.1

CONCLUSIONS

- Elected judges write slightly more readable opinions

- Some evidence that judges in electoral trouble write less readable opinions

- Future Work:
  - Survey Experiment to verify relationship between opinion readability and public support for courts.
  - Additional issue areas (self-incrimination, equal protection, takings)
  - Effects of electoral environment on the constitutional grounding of state judicial opinions