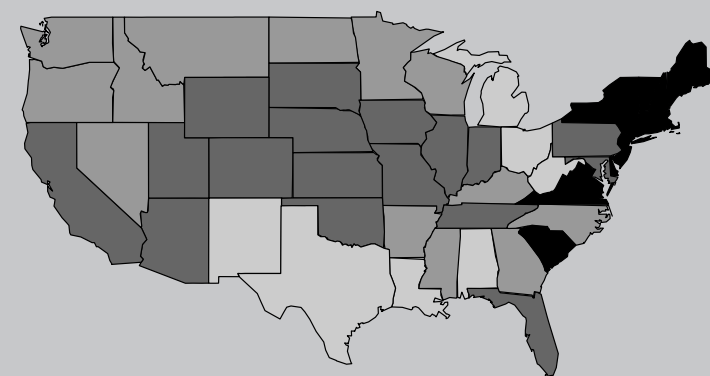


Elections and Explanations: Judicial Elections and the Readability of Judicial Opinions

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Introduction

How do judicial elections affect the propensity of judges to write opinions that are understandable to the public? I assess two hypotheses. First, the presence of these retention institutions also provides incentives for judges to justify their opinions in language that their constituents can readily understand. Second, when elected judges fear a difficult path to retention, they tend to write opinions that are more difficult for the average constituent to understand. Data analysis supports the first hypothesis while evidence for the second suggests that the effects of the electoral environment are conditional on the issue before the court.

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

Measuring Readability

- ▶ Use observable features of words (e.g. sentence length, word count, complexity of individual words) to determine the difficulty of a passage.
- ▶ Originally developed by educators to determine if children's reading abilities were appropriate for their grade level.
- ▶ Now widely used (e.g. readability of prescription drug pamphlets).

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

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

$$CLI = 0.0588 \left(\text{Letters per 100 words} \right) - 0.296 \left(\text{Sentences per 100 words} \right) - 15.8$$

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

$$SMOG = 1.0430 \sqrt{3+ \text{ Syllable Words} \times \frac{30}{\text{Total Sentences}}} + 3.1291$$

$$ASL = \frac{\text{Total Words}}{\text{Total Sentences}}$$

$$ARI = 4.71 \left(\frac{\text{Total Characters}}{\text{Total Words}} \right) + 0.5 \left(\frac{\text{Total Words}}{\text{Total Sentences}} \right) - 21.43$$

Validity of Outcome Variables

To illustrate the validity of my measures, the following table shows the estimates for three prominent works of children's literature:

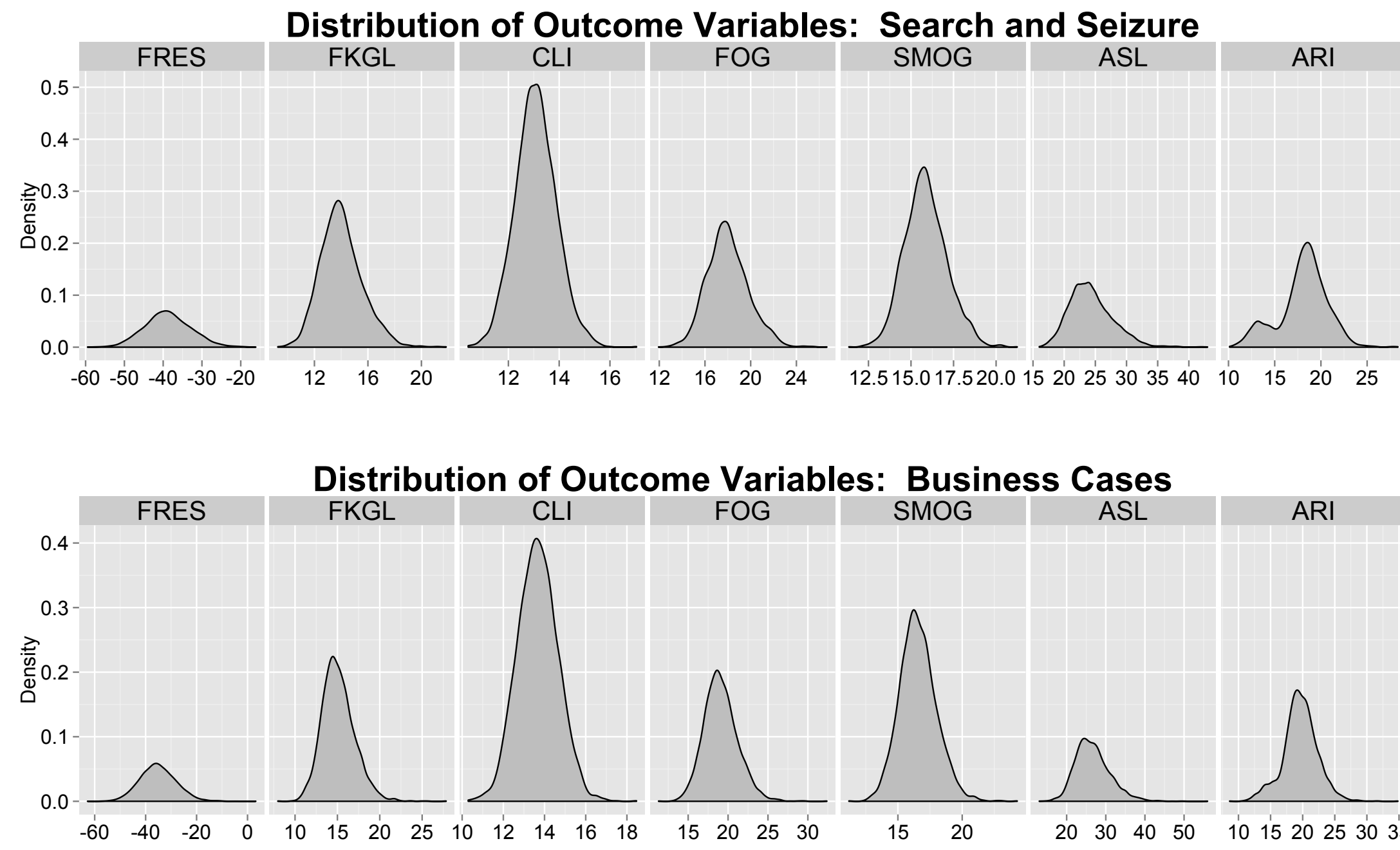
Measure	Interpretation	<i>The Cat in the Hat</i>	<i>The Wizard of Oz</i>	<i>Alice in Wonderland</i>
FRES	> -30 College Degree	-106.2	-84.2	-61.2
FKGL	Grade Level	0.2	4.2	12.2
CLI	Grade Level	0.6	5.8	8.9
FOG	Grade Level	2.9	6.3	14.2
SMOG	Grade Level	4.0	7.3	10.5
ASL	Higher = More Complex	6.0	10.0	29.0
ARI	Grade Level	0.4	7.1	16.6

Summary of Readability Measures with facial validity checks

Data and Methods

- ▶ Cases: Search and Seizure 2000-2010; Business Cases 2010-2012
- ▶ Outcome Variable: Opinion Readability
- ▶ Explanatory Variables:
 - ▷ Electoral Institutions: Elected Judge, Prior Advertising
 - ▷ Political Environment: % Same Party Legislature, Divided Government
 - ▷ Salience: *Amicus* Brief Filed
 - ▷ Bargaining: Written Dissent
 - ▷ Litigants: Public Defender, Pro Se Litigant
 - ▷ Legal Factors: Opinion Excludes Evidence, Pro-Business Decision, Case Complexity
 - ▷ State-Level Factors: Education Level, Court Professionalism
 - ▷ Judge Factor: Years on Bench
- ▶ Model: Linear regression with random effects for state and author

Distribution of Outcome Variables



Density plots of the readability of majority opinions in state supreme court opinions.

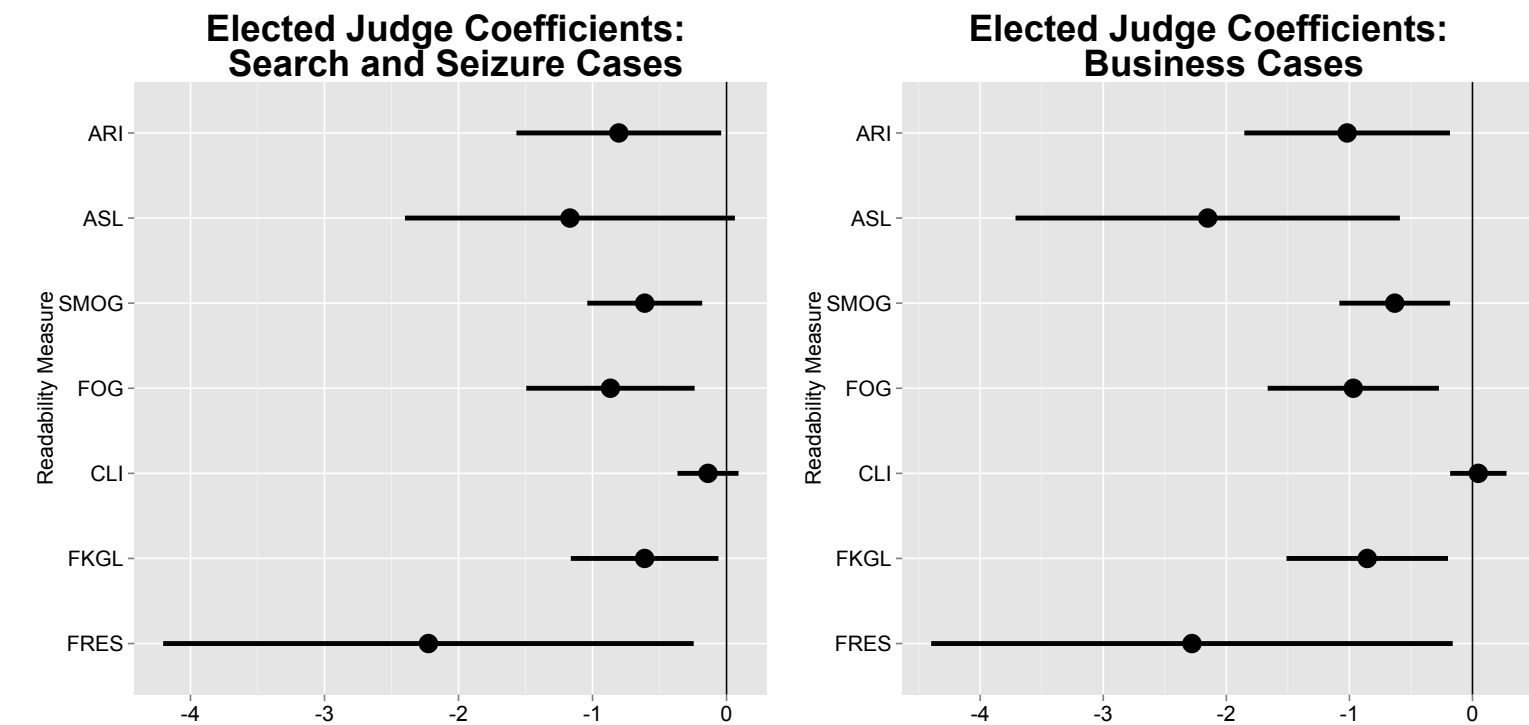
Results: Search and Seizure Cases

	FRES	FKGL	CLI	FOG	SMOG	ASL	ARI
Elected Judge	-2.22* (1.01)	-0.61* (0.28)	-0.14 (0.12)	-0.87* (0.32)	-0.61* (0.22)	-1.17 (0.63)	-0.80* (0.39)
Excludes Evidence	0.58* (0.26)	0.21* (0.07)	-0.05 (0.04)	0.26* (0.07)	0.17* (0.05)	0.50* (0.14)	0.26* (0.12)
Divided Government	-1.05* (0.28)	-0.29* (0.07)	-0.08* (0.04)	-0.32* (0.08)	-0.21* (0.06)	-0.60* (0.15)	-0.37* (0.13)
% Senate Same Party	-1.25 (0.94)	-0.21 (0.26)	-0.18 (0.12)	-0.19 (0.29)	-0.13 (0.20)	-0.19 (0.61)	-0.11 (0.44)
Public Defender	-0.62* (0.27)	-0.12 (0.07)	-0.09* (0.04)	-0.11 (0.08)	-0.07 (0.05)	-0.15 (0.15)	-0.10 (0.12)
Salient	1.58* (0.71)	0.47* (0.18)	0.11 (0.10)	0.40* (0.20)	0.26 (0.14)	0.97* (0.38)	0.44 (0.32)
Dissent	0.71* (0.26)	0.20* (0.07)	0.03 (0.04)	0.25* (0.07)	0.17* (0.05)	0.41* (0.14)	0.21 (0.12)
Years on Bench	0.05* (0.02)	0.02* (0.01)	0.003 (0.003)	0.02* (0.01)	0.01* (0.004)	0.04* (0.01)	0.02 (0.01)
Professionalization	5.24 (2.89)	1.63* (0.80)	0.45 (0.33)	1.97* (0.91)	1.33* (0.62)	3.76* (1.79)	2.75* (1.12)
sd(Judge)	1.59	0.60	0.14	0.63	0.41	1.54	0.83
sd(State)	2.70	0.75	0.30	0.86	0.59	1.66	1.00
Residual sd	5.09	1.24	0.73	1.41	0.98	2.66	2.27
N	2, 253	2, 253	2, 253	2, 253	2, 253	2, 253	2, 253

Note: *p<0.05

Linear regression estimates of opinion readability of state search and seizure opinions 2000-2010. Models include random effects for opinion author and state.

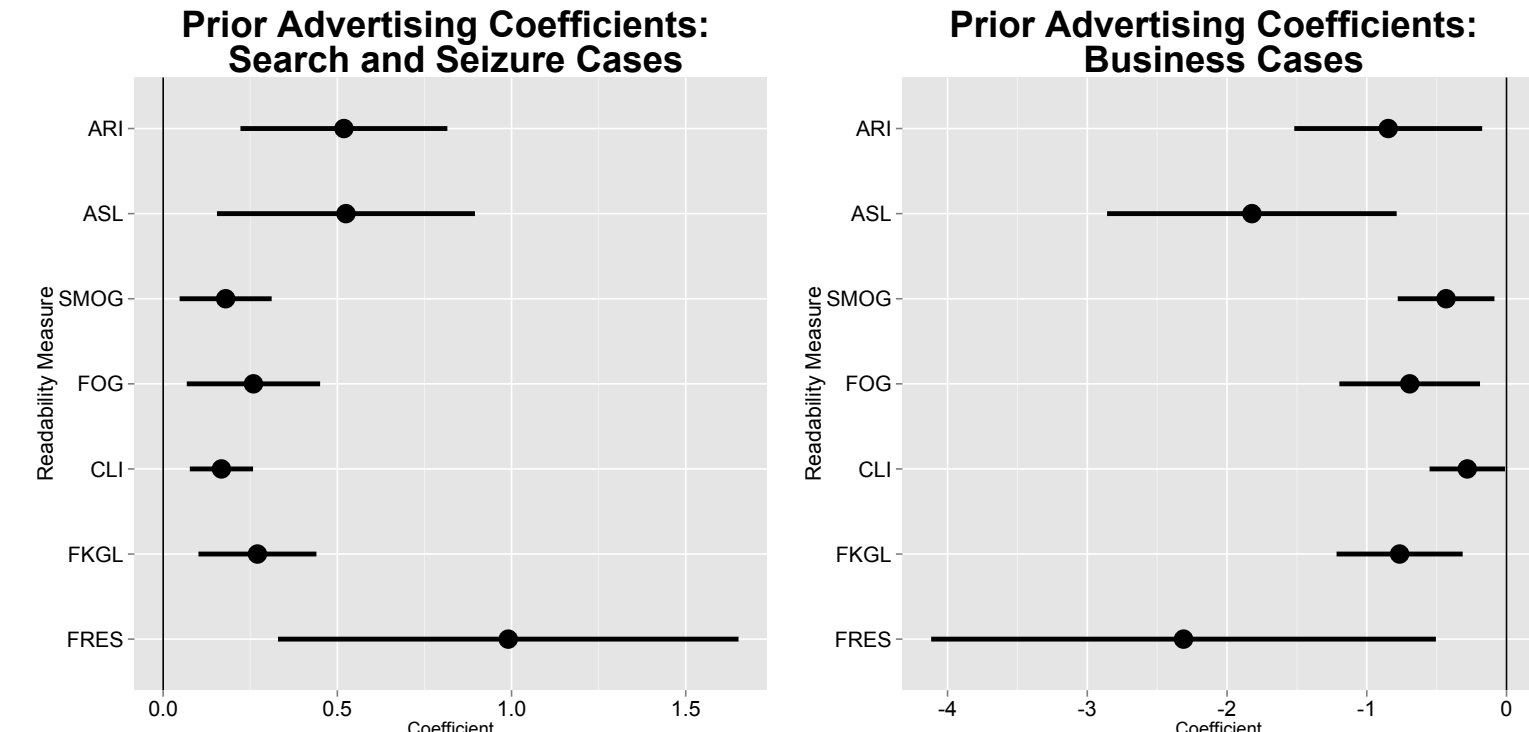
Results: Elected vs. Appointed Judges



Nomograms showing the estimated effect of being an elected judge on the readability of state supreme court majority opinions in search and seizure cases 2000-2010 (left panel) and business cases 2010-2012 (right panel). The black bars are 95% confidence intervals.

The Electoral Environment

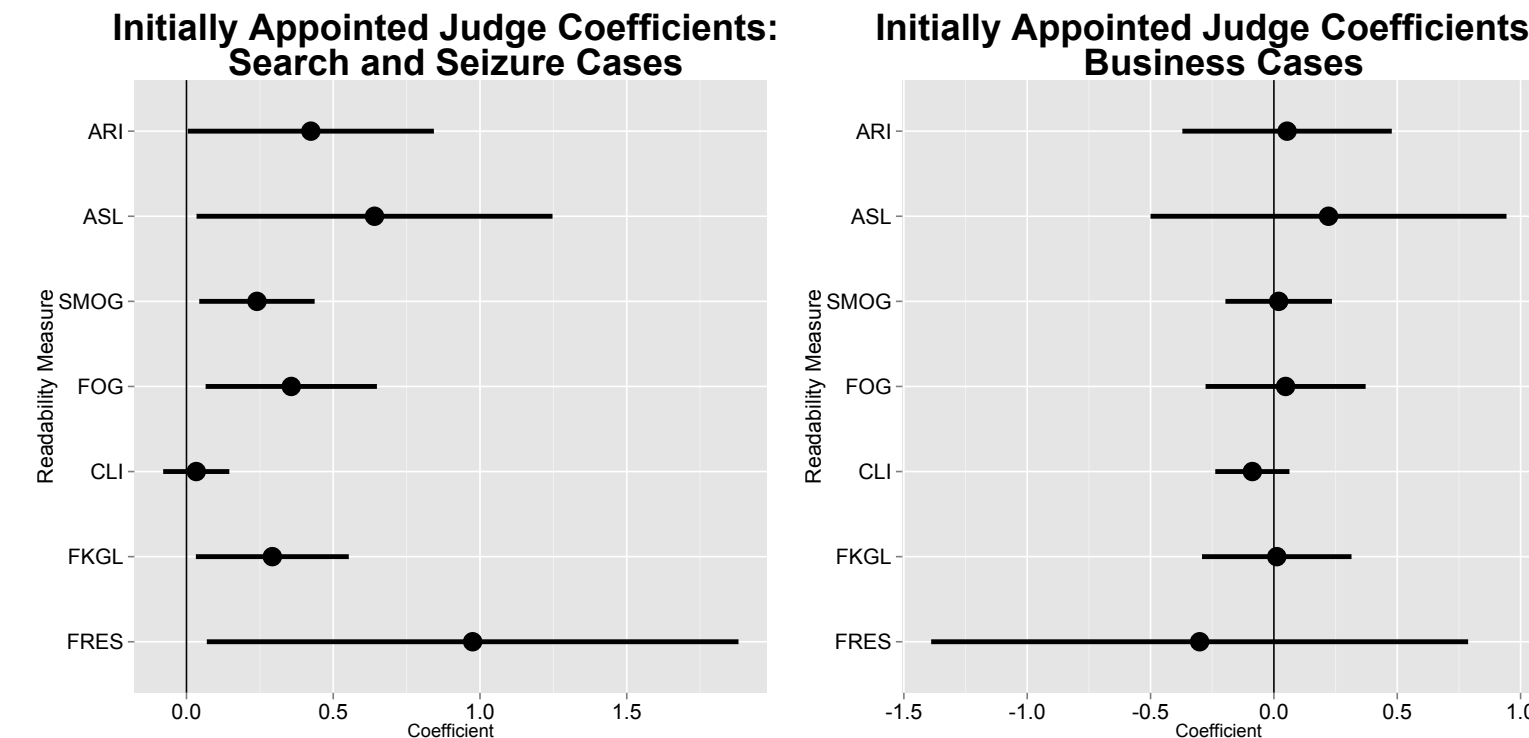
My second hypothesis suggests that elected judges should write opinions that are less readable as their expected electoral environment worsens. I regress the amount of television advertising in the past two years on readability.



Nomograms showing the estimated effect of prior advertising on the readability of state supreme court majority opinions in search and seizure cases 2000-2010 (left panel) and business cases 2010-2012 (right panel). The black bars are 95% confidence intervals.

Initial Selection or Retention?

What appears to be the effect of elections may be spurious if elected judges are initially selected because they are better communicators. Here, I regress initial selection method on readability to assess this concern.



Nomograms showing the estimated effect of being an initially appointed judge on the readability of state supreme court majority opinions in search and seizure cases 2000-2010 (left panel) and business cases 2010-2012 (right panel). The black bars are 95% confidence intervals.

Conclusions

- ▶ Elected judges write slightly more readable opinions.
- ▶ Some evidence that judges in states with a history of competitive elections write opinions that are less readable; appears to depend on issue.
- ▶ Future Work:
 - ▷ Survey experiment to verify relationship between readability and public support.
 - ▷ Effects of judicial retention on constitutional grounding of state court opinions.

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