

Judicial Elections and Judicial Behavior

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Abstract

The increased attention that judicial elections have received over the past three decades from political scientists and legal scholars has taught us much about how these selection and retention institutions affect the work of courts. In this chapter, we review the evidence about how electing judges, rather than appointing them, affects judicial behavior. We argue that judicial elections direct judges to respond to public preferences just as elite reappointment mechanisms lead judges to pay increased attention to the desires of legislators and executives. In this way, there is no “perfect” way to select or retain judges. Instead, reformers must decide to whom they want courts to respond and design the judiciary accordingly. Then, we discuss the path forward for future research. Judicial elections present important (and underused) inferential opportunities for those seeking to understand judicial behavior. Studies of elite behavior in other institutions, the role of interest groups in elections, partisanship and the policymaking process, and the dynamics of candidate emergence in legislative elections all have obvious implications for studies of judicial elections. But, this potential can only be realized if researchers are willing to abandon disciplinary silos and use judicial elections as the laboratories for testing general theories that these institutional arrangements have the potential to be.

Keywords: judicial selection, judicial retention, retention elections, nonpartisan elections, partisan elections, electoral competition

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Introduction

Most judges in the United States have a direct connection to the public. Judges in 39 of the 50 U.S. states must win the support of voters to keep their seat on the bench. Worldwide, this is a rarity. Only a handful of countries use judicial elections to staff their courts. Some Swiss cantons and French municipalities elect their judges (Schotland 2001), and some Latin American countries, like Peru, Venezuela, and Costa Rica elect lower court judges or justices of the peace (Anenson 1997). Japanese judges face uncontested retention elections at the end of their terms (Ramseyer and Rasmusen 2001).¹ But, only Bolivia and the United States use judicial elections to select judges to courts with constitutional jurisdiction (Driscoll and Nelson 2012).²

Despite the uniqueness of this institutional arrangement, elections present important (and underused) inferential opportunities for those seeking to understand judicial behavior. By studying how elections affect judicial *selection*—the ability of someone to become a judge— and judicial

¹Generally, there are three types of judicial elections. In a partisan election, multiple candidates can compete for a seat on the bench and candidates' names appear alongside their party affiliation on the ballot. In a nonpartisan election, multiple candidates can compete for the same seat, but voters do not have access to candidates' party affiliations on the ballot. In retention elections, only the incumbent's name appears on the ballot, and voters are given a binary, "yes" or "no" choice about whether the judge should remain on the bench. For more information on the types of elections and the history of their use in the United States, see Shugerman (2012) and Hanssen (2004).

²Bolivia adopted judicial elections as part of a 2009 constitutional reform. Bolivians elect judges to their major national courts (including their constitutional court). Unlike the United States, where typically any candidate who gathers enough signatures can appear on the ballot, Bolivian judicial candidates have to be prescreened by the national legislature before appearing on the ballot. Bolivian judicial candidates run in nonpartisan elections and cannot run for reelection (Driscoll and Nelson 2015).

retention—whether that person can remain on the bench at the end of their term—scholars gain a window into how the broader political environment affects judicial behavior. In this way, judicial elections provide a unique opportunity to compare judges with other types of elites. Further, because the ability of unelected elites to have immense political power in democratic societies has long been an important normative concern (e.g., Bickel 1986), the study of judicial elections enables scholars to understand how having an independent (and democratic) base of support—the electorate—affects the relationship between the judiciary and other branches of government. Thus, though admittedly rare, judicial elections present theoretically rich opportunities for researchers.

This potential can only be realized if researchers abandon disciplinary silos and use judicial elections as laboratories for testing general theories. On the one hand, the study of elections is a cornerstone of political science. Research on candidate selection, electoral competition, and electoral vulnerability are all foundational areas of research for those who study legislative and executive elections (e.g., Jacobson 2009). Yet, judicial scholars have been slow to apply theories and findings from electoral politics to judicial politics. As a result, scholars have not fully leveraged the unique opportunity judicial elections provide researchers to test theories of elections in a different institutional context and, by extension, establish the generalizability of these fundamental theories.

On the other hand, scholars often test and develop theories of judicial behavior on a subset of judges: appointed judges (Segal and Spaeth 2002; Epstein and Knight 1998). Yet, in legislative and executive contexts, evidence abounds that elections affect elite behavior (e.g., Lazarus 2009; Lim and Snyder, Jr. 2021) and the ideological direction of policymaking (Key 1949; Gamm and Kousser 2021). Testing theories of judicial behavior across selection and retention regimes is therefore important to understand the limitations (and strengths) of prominent theories of judicial behavior.

The key argument of this chapter is that scholars of judicial behavior and electoral politics have much to learn from each other. Discussing four topics—the on-the-bench behavior of judges, the state judicial electoral environment, the demographic make-up of state supreme courts, and the

public's support for courts—we summarize the state of our understanding of elected judges and discuss how the broader study of elections might inform future inquiry. Because nearly all studies of elected judges concern the behavior of U.S. state judges, we focus our attention on the United States but make reference to opportunities for scholars to expand the inquiry geographically where possible. We conclude by charting some promising paths forward for this area of research. By fusing research on elections and courts, the future of this area of research is bright.

Judicial Elections and Judicial decision-making

The use of judicial elections has been the topic of heated and long-lasting debate among political scientists (e.g., Bonneau and Hall 2009; Caufield 2009), legal scholars (Tarr 2012), and advocacy groups (e.g., American Bar Association 2003). Opponents often suggest judicial elections erode judicial independence by directing judges to pay attention to the public's response to their decisions. To the extent that judges are viewed as impartial arbiters who must occasionally make unpopular decisions in order to protect minority rights, this dependence on public sentiment would harm the ability of judges to perform their unique role in a separation-of-powers system.

On the other hand, political scientists and others who have a more favorable view of judicial elections note that even the decisions of appointed courts tend to be congruent with public opinion (e.g., Marshall 2008). As stated by Hall (2014), appointive methods of judicial retention “obviate the representative function by disconnecting key mechanisms through which public preferences are translated into judicial votes” (335). And, to the extent that judges are important policymakers who make major decisions that affect citizens' rights and responsibilities, it may be better for judges to be beholden to public preferences than to act without regard to those affected by their decisions (Bonneau and Hall 2009).

This debate is premised, in large part, on the assumption that judges are doing something unique among political elites when deciding cases. We, by contrast, suggest that judicial behavior is a class of elite behavior. Rather than treating judicial behavior as *sui generis*, judicial behavior scholars should consider that *any* method of selection and retention has consequences for judicial

behavior and to theorize and model these aspects accordingly.³

George and Epstein (1992), for example, differentiate between legal (e.g. doctrines, precedents, and case facts) and extralegal (e.g. judicial ideology and court legitimacy) influences on judicial behavior. They propose an integrated model of judicial behavior that can be expressed mathematically as:

$$Pr(C_i = 1) = B_0 + \sum(B_g L_{ig}) + \sum(B_h P_{ih}) + \sum(B_j IN_{ij}) + e_i$$

Where C is a conservative outcome, L is a vector of legal constraints, P represents judicial preferences, and IN represents institutional considerations such as judicial legitimacy.⁴ These early “integrated” models of judicial behavior, originally developed to explain U.S. Supreme Court decision-making, prioritized understanding trade-offs between the constraints of law and a judges’ personal characteristics. This is not to say popular influence on judicial behavior was entirely overlooked. Early work found empirical evidence that judicial behavior and public opinion were correlated,⁵ but this relationship was often considered to be a downstream consequence of regular reappointment (Dahl 1957) or a strategy to maintain court legitimacy (Barnum 1985). Of course, these integrated models were originally developed to explain judicial behavior in the U.S. Supreme Court, a single court where judges served for life. Perhaps for this reason, the effects of selection and retention mechanisms in general models of judicial behavior slipped to the background of

³Some models of judicial behavior do this already. As one example, Segal and Spaeth (2002) argue that the influence of justices’ ideologies is likely to be particularly prominent at the U.S. Supreme Court because those judges have very minimal (if any) retention considerations: they serve for life and rarely (in the modern era) want to seek another political office.

⁴Recent evidence has shown the effects of each to be heterogeneous across justices Duck-Mayr (2022). We omit that complexity for illustrative purposes, but acknowledge it as a fruitful path for future research.

⁵For a review, see Epstein and Martin (2010).

many studies of judicial choice.

But, most judges around the world do not work in an environment with such minimal retention concerns (Tiede 2022; Helmke 2002).⁶ It is therefore helpful to consider a revised integrated model of judicial decision-making which explicitly incorporates variables related to the preferences of those who retain a judge:

$$Pr(C_i = 1) = B_0 + \sum(B_g L_{ig}) + \sum(B_h P_{ih}) + \sum(B_j I N_{ij}) + \sum(B_m R_{im}) + e_i$$

Where the new variable R represents a vector of constraints imposed upon a judge by the entity that retains them. The implication of this revised model is that not only was a key source of constraint missing from the debate between legal and extralegal models, but that judges are subject to many of the same institutions and incentive structures of many legislators and executives. Put differently, elections introduce a trade-off between the preferences of judges and the preferences of their retention constituency, be it voters, a governor, or a legislature. The existence of this trade-off means there is some expectation that judges act as representatives of their retention constituency. Though judges are not commonly framed as representatives, a representational framework—widely used in other corners of political science—provides a useful theoretical toolkit for scholars wishing to understand when (and how) changes in retention methods (and the accompanying retention constituencies) affect judicial behavior. Treating judges as representatives in a general model of elite behavior naturally leads us to questions about when judges prioritize the preferences of voters over their own, and how the preferences of judges differ from their constituents.

There is a strong base of evidence that judges respond to their retention constituencies, be

⁶We focus in this section on judges' retention considerations—how they might need to modify their behavior to maximize the likelihood they will continue to serve—for two reasons. First, by definition, judges have already survived their selection institution when they reach the bench. Second, where selection and retention constituencies differ, judges tend to respond to their retention constituency (Savchak and Barghothi 2007).

they voters, legislators, or governors. Take, for example, studies of appointed judges in the U.S. States. Shepherd (2009) examines almost all state supreme court decisions between 1995 and 1998, demonstrating that judges facing gubernatorial or legislative reappointment vote strategically to retain their seats. As reappointment approaches, these judges are more likely to vote with litigants from the appointing branch. Similarly, Gray (2017) examines supreme court decisions in states where judges are retained by the legislature, finding that justices appointed by the minority party voted with the preferences of the legislature more frequently than those who could not be reappointed due to mandatory retirement.

Elected judges' behavior is also affected by their electoral environment. For example, Hall (1992) examined the behavior of state supreme courts on death penalty cases (see also Hall 1987, 1995; Brace and Hall 1997). Their work showed that justices were more likely to side with the court majority when facing competitive elections, and that single member districts, prior experience as a representative, and narrow vote margins correlated with voting in line with constituent opinion. Empirical evidence suggests that judges decide cases differently based on whether or not they are retiring (Brace and Boyea 2008; Hall 2014), when a decision was made in an election cycle (Berdejó and Yuchtman 2013), how salient an issue is to the public (Huber and Gordon 2004; Canes-Wrone, Clark and Park 2012; Canes-Wrone, Clark and Semet 2018; Lim 2013) and the composition of the electorate (Savchak and Barghothi 2007; Shepherd 2009; Lim, Snyder, Jr. and Strömberg 2010).

Given the above, retention mechanisms deserve significant scrutiny as a source of judicial behavior and decision-making. It is emphatically *not* the case that judicial elections induce a responsiveness to the political environment that is absent among appointed judges. Rather, both elections and appointment mechanisms function by focusing the attention of judges to the constituency they must please in order to maintain their seat on the bench. Those who design judiciaries, therefore, must make value judgments about *to whom* they want courts to respond, rather than to suggest that only elected courts are responsive to the broader political environment.

What are the features of the broader political environment that affect elected judges? In the

following sections, we answer this question by discussing research on the relationship between public opinion and the behavior of elected judges, the effects of different forms of judicial elections, and the competitiveness of the electoral environment.

Judicial Elections and Public Opinion

The most obvious difference between judicial elections and other forms of retention is the influence of the public. By directly tying judges' continued service on the bench to the electorate, judicial elections naturally suggest the effect of public opinion on judicial behavior is greater for elected judges than appointed judges.⁷ Assessing the relationship between public opinion and judicial behavior among elected (rather than appointed) judges has been perhaps the most pressing topic for those seeking to understand the consequences of judicial elections for judicial behavior.

Most studies on this topic have examined judicial behavior in high-profile criminal cases, especially death penalty cases (e.g., Traut and Emmert 1998; Brace and Boyea 2008; Brace and Hall 1997). Early studies in this vein used this case selection as a research design tactic under the assumption that voters are "tough on crime" and therefore decisions that uphold death sentences (or reach other similarly punitive outcomes) are congruent with public opinion. Hall (1987), for example, interviewed state supreme court judges who suggested that they would vote against their preferences in some death penalty cases rather than risk an insufficiently punitive vote that could ire voters and be used against them in an upcoming election.

If it is the case that elections make judges particularly wary of constituent preferences, we might expect the effect of public opinion to vary with the electoral cycle. After all, Judge Otto Kraus famously remarked that "no judge can ignore the political consequences of a decision near election time; 'that would be like ignoring a crocodile in your bathtub'" (qtd. in Linde 1987,

⁷Of course, there are other mechanisms through which public opinion might influence judges, such as a downstream effect of judicial appointments by elected officials (Mishler and Sheehan 1993; Dahl 1957) or the need of the courts to maintain popular support in order to secure institutional legitimacy (Caldeira and Gibson 1992).

2004). There is some evidence that this is the case. Judges that face more electoral pressure or are closer in temporal proximity to an election are more likely to uphold death sentences (Brace and Boyea 2008; Brace and Hall 1997; Hall 1995). No such correlation exists when judges are retiring (Hall 2014). This pattern appears to extend to not just capital cases, but criminal cases generally (Huber and Gordon 2004; Berdejó and Yuchtman 2013).

Beyond criminal cases, an emerging trend is that the correlation between judicial decisions and public opinion generally is contingent upon issue salience. There is good evidence that the behavior of elected judges follows public opinion on hot-button issues such as abortion (Canes-Wrone, Clark and Park 2012; Canes-Wrone and Clark 2009; Caldarone, Canes-Wrone and Clark 2009). Gibson and Nelson (2021) find the same pattern in their study of inequality-related cases, such as gay rights, class action policies, and election law. But, in a study of behavior in less-salient cases, Canes-Wrone, Clark and Semet (2018) found no discernible effect of public opinion on state supreme court judicial decisions in most environmental law cases across forty states. However, in instances where environmental cases became the subject of campaign attack ads, judges became more responsive to public opinion on the issue.

For unpopular judicial decisions to have electoral consequences, the public must be aware of them. For this reason, understanding trends in media coverage of state courts and how it ebbs and flows during the electoral cycle is important (Vining, Jr. and Wilhelm 2010; Vining and Wilhelm 2011). The bits of research that have been conducted suggest that media coverage of judicial decisions can motivate both judges and voters. For example, the influence of media coverage on judicial decisions has also shown to be more pronounced on elected, rather than appointed judges (Lim 2013). And, voters are more likely to turn out in judicial elections when they are salient (Bonneau and Hall 2009).

A natural question that follows from this discussion is to whose preferences are justices most responsive? Within the legislative politics literature, an extensive body of work examines how legislators differentially respond to constituents, interest groups, and donors (e.g., Fenno 1978). The extended party network theory proposed by Bawn et al. (2012) posits that voters have electoral

blind spots where it is difficult for them to evaluate policy positions and performance. By mobilizing around these blind spots, interest groups are able to disproportionately influence legislators (Kujala 2020). Applying this theory to judicial politics, we might expect interest groups to have a disproportionately large influence on the decision-making of elected judges. Work by Canes-Wrone and Clark (2009) and Canes-Wrone, Clark and Kelly (2014) found evidence that interest groups do influence decisions on abortion and the death penalty, but work in this area is still relatively limited. Future research should seek to understand (a) the conditions under which interest groups become involved in judicial elections, (b) the extent to which voters' judgments of judicial candidates are shaped by this interest group involvement and (c) whether judges are more likely to be responsive to the preferences of interest groups (or other elites) than the average citizen.

More specifically, the extended party network theory suggests a number of testable hypotheses for which congressional election research has provided a template. Desmarais, La Raja and Kowal (2015) operationalized these networks via the financial contributions from interest groups to U.S. House candidates. They found that extended party network support both increased the electoral success of candidates and signaled ideological credibility to constituents. Does this relationship between party networks, electoral success, and ideological signaling persist in judicial elections? The potential amplification of ideological signals may have a particularly potent role in nonpartisan judicial elections given the lack of party cues voters typically rely on. Other research has found that party networks are distinct and more polarized than formal party organizations (Koger, Masket and Noel 2009), and that the talking points and language of these policy groups diffuse out to the language and text of politicians (Albert 2020). If these networks have a similar influence on judicial elections and decisions, we would expect to see a positive correlation between polarization and network support. Additionally, there may be evidence of ideological diffusion from networks to judges via amicus briefs or organizational platforms. Research by Corley (2008) has provided some groundwork on this question by leveraging plagiarism software to show diffusion from parties to judges. Testing for a similar relationship between interest groups and judges seems to be a natural extension of this work.

The Effects of Ballot Type

Not all elections are equal. The particulars of an electoral institution shape the incentive structure (and thus the behavior) of judges. Whether judges run in partisan, nonpartisan, or retention elections is perhaps the most significant feature of how an election is structured. Retention elections, for example are “elections in name only” because the rate of incumbent reelection in these races is over 95% (Aspin 2011). Likewise, in partisan elections, voters have a heuristic—the party affiliation listed next to each candidate’s name—they can rely upon in order to make a semi-informed decision at the polls. These signals are unavailable to voters in nonpartisan elections.

Evidence suggests that ballot type has several important effects in judicial elections. Nonpartisan-elected judges are more responsive to the preferences of the public than judges who face partisan elections (Caldarone, Canes-Wrone and Clark 2009; Gibson and Nelson 2021), perhaps because the partisan-elected judges benefit from a party cue listed on the ballot which acts as a form of political cover that can counteract negative campaign information voters have heard about a copartisan judicial candidate. Judges who face nonpartisan elections are more likely to uphold capital sentences (Canes-Wrone, Clark and Kelly 2014) and are more responsive to increased media coverage (Lim, Snyder, Jr. and Strömberg 2015). Indeed, party cues appear to provide a form of political cover that insulates judges from public scrutiny, although it is unclear to what extent this relationship is causal or a feature of an endogenous relationship between judicial decisions and the types of judges that tend to run and win in partisan elections.

Voters also behave differently in partisan and nonpartisan elections (Bonneau and Hall 2009; Bonneau and Cann 2015). For example, Lim, Snyder, Jr. and Strömberg (2015) measure candidate quality via ABA ratings and find that it has a larger effect on outcomes in nonpartisan elections. In absence of party cues, voters appear to rely more heavily on indicators of candidate quality to make decisions. This is consistent with the findings of Ash and MacLeod (2021), who find that judges elected by a nonpartisan process tend to produce higher quality judicial opinions. This creates a counteracting incentive structure: nonpartisan elections may both select higher quality judges inclined to produce better decisions, but also expose these judges to higher levels of public

scrutiny, thus encouraging lower-quality decisions issued with more frequency.

Moving forward, judicial scholars would do well to look at the literature on electoral rules and nonpartisan elections to inform their theory building and empirical testing. Consider, for example, the comparative electoral systems literature on party-centric rather than candidate-centric electoral systems. In party-centric electoral environments, elites can rely on the organization, resources, and support of a political party to aid in their reelection. As a result, elites in these systems can focus on building their party brand because their party's policy successes can translate into personal electoral success (Cox and McCubbins 1993). In candidate-centric systems, by contrast, candidates cannot rely on the resources of a party to steer voters in their direction. Instead, candidates in these electoral systems must build a personal brand, advertising themselves and their positions to encourage voters to select them on election day (e.g. Carey and Shugart 1995). Nonpartisan elections, which remove a candidate's party affiliation from the ballot on election day, are one electoral rule that encourages candidate-centric, rather than party-centric behavior among candidates. As a result, we might expect to see judges in nonpartisan electoral systems behaving in ways, such as issuing "popular" dissenting opinions in order to earn free media coverage and build a popular brand among voters.

Or, as another example, consider the strong literature on nonpartisanship in other state- and local-level elections. Schaffner, Streb and Wright (2001), reviewing this literature, note that the cost of voting in a nonpartisan election is higher than the costs of voting in a partisan election. Because less-politically sophisticated voters (who often tend to have liberal policy preferences) are also less likely to vote—particularly when the absence of a party cue raises the cost of voting—officials who are elected in nonpartisan elections often cater to more the preferences of a more sophisticated electorate (Rigby and Wright 2013; Welch and Bledsoe 1986). Understanding how ballot rules may cull the electorate—and therefore direct judges' responsiveness—is an important topic for those seeking to unravel the effects of electoral rules on judicial behavior.

Electoral Competition

Variation across elections of the same ballot type is another important research frontier. While scholars of state politics have devoted a great deal of effort to understanding the effects of increased levels of electoral competition for policymaking (e.g. Barrilleaux 1997; Gamm and Kousser 2021), scholars have typically ignored the judiciary in their attempts to assess the extent of competition in state elections (Hall 2015). Moreover, when scholars have attempted to use measures of competition to explain court-related outcomes, they have been forced to rely upon measures which exclude the judiciary under the unstated assumption that competition for judicial offices mirrors competition for state legislative races, an assumption that remains untested. In studies of judicial decision-making, scholars have used measures of party competition (Brace and Hall 1995), legislative electoral competition (Brace and Hall 1997), and individual-level judicial election returns (Hall 1992, 1995, 2014) to examine the relationship between electoral circumstances and judicial behavior in death penalty cases.⁸ Hall (2015) estimates static measures of electoral competition for 20 state supreme courts in two periods of unequal length: 1980-1999 and 2000-2010, finding that nine states got more competitive in the latter time period, nine states got less competitive, and two states remained stable. However, beyond Hall's effort, scholars lack a consistent, available, reliable, and valid measure of competition in judicial elections. Moreover, we do not know how competition in judicial races mirrors that for legislative offices nor do we know how it affects judicial behavior.

One plausible theory is that increased electoral competition will make judges pay more attention to public sentiment, becoming less likely to issue salient, unpopular decisions as election day approaches.⁹ Moreover, elections in and of themselves may not inspire responsiveness to public

⁸These measures have been used in other judicial contexts. Bonneau and Hall (2009) use the Holbrook-Van Dunk index to assess the relationship between *legislative* electoral competition and participation in *judicial* elections.

⁹But, of course, appointed courts may also reflect public opinion (Epstein and Martin 2010; Marshall 2008), illustrating that judicial elections are not a necessary condition for a judicial sys-

opinion. While a few highly-salient cases of voter responsiveness to judges' on-the-bench behavior exist—Rose Bird and her colleagues in California in the 1980s (Culver and Wold 1987) and the Iowa Supreme Court justices after their pro-same-sex marriage ruling (Buller 2012)—there are some good reasons to expect that the typical judicial election does not present enough of a threat of defeat to motivate a judge to change their behavior in response to increased electoral competition. After all, studies of state legislators find that the public rarely holds state legislators accountable on election day for poor ideological representation (Rogers 2017). Most state supreme court judges (and most of their decisions) happen outside of the public eye.¹⁰ Thus, future research on judicial elections must account for variation in the de facto likelihood that a judge will lose their seat in the next election when trying to estimate the effects of these retention institutions on judges' decision-making.

Judicial Elections and Selection Effects

To this point, we have focused primarily on judicial *retention*. But judicial elections also have important consequences for who seeks (and attains) judicial office that may have downstream consequences for judicial behavior and legal development. We see two major areas in which judicial elections may select particular “types” of judges that demand additional attention from researchers. First, broader trends in the electoral environment may cause changes in the types of people who seek judicial office and, by extension, are elected to the bench. Finally, the use of elections may (dis)advantage judges with particular demographic traits or prior professional experiences.

The Burgeoning Extremist Advantage

A first way in which elections outside of the courthouse may affect judicial policymaking comes through potential candidates' decisions about whether to run for office. Here, the broader literature on candidate emergence and success in American elections paints a stark picture for the term that is generally congruent with public opinion (but see Johnson and Strother 2021).

¹⁰In fact, Lax and Phillips (2012) find no evidence that the responsiveness or congruence of state governments to public opinion is greater in states that use judicial elections.

future of state supreme court benches. While the conventional wisdom in state elections had been that ideologically extreme candidates are disadvantaged (Birkhead 2015), recent research challenges this view. In a recent study, for example, Handan-Nader, Myers and Hall (2022) examine the success of candidates in state legislative elections from 1992-2020. Their results demonstrate that the penalty for ideologically extreme candidates has almost vanished during this time period, and ideological extreme candidates may actually be *advantaged* in primary elections. If ideologically extreme candidates are more likely to win primary elections (and appear on a general election ballot) and then do not face a penalty for their extremity among the general electorate, these candidates with views outside the mainstream are becoming more likely to gain state legislative office.

Moreover, extremist candidates are becoming more common in American elections. Thomssen (2014) and Hall (2019) both demonstrate that ideologically moderate candidates are increasingly opting out of the electoral process, ceding the ballot to candidates with extreme policy positions. As moderate candidates become less likely to seek office, they demonstrate, extremist candidates are more likely to achieve electoral success. This, in turn, can fuel partisan and ideological polarization in legislatures.

The emergence of more extreme candidates and their increasing success on election day are important general trends in American elections that may also affect judicial elections. As judicial campaigns continue to be “nastier, noisier, and costlier” in each successive electoral cycle (Schotland 1985; Keith and Velasco 2022), moderate candidates may decide that their present positions are not worth the hassle (and negative personal experiences) that comes with securing a place on the ballot, raising money, and managing a time-intensive (and often costly) electoral campaign. Here, political scientists’ broader understanding of candidate emergence may have lessons for judicial scholars (e.g., Lawless and Fox 2005).

Moreover, because the pool of potential judicial candidates is smaller than for other elective offices (due to the requirement, either de facto or de jure that candidates must have a law degree to seek judicial office), these trends may be accelerated for judicial offices. Most plausible judicial candidates are successful attorneys, and many successful attorneys are well-compensated for their

work. In comparison, state judges are not particularly well-compensated (especially in some states) (Gibson and Nelson 2021). The relatively low salaries state judges receive (especially compared to the salaries that many successful attorneys can garner) means that many potential judges would take a financial loss in return for winning a seat on the bench. This financial barrier to office may accelerate the willingness of moderate judicial candidates who would prefer to stay in practice rather enduring a challenging election only to receive a pay cut in return for winning. On the other hand, extremist candidates' calculations may be different, prioritizing the ability to push state policy in accordance with their views over financial compensation.

This, of course, is just a hunch, one that demands empirical testing. Ultimately, it underscores the importance of understanding candidate emergence in judicial elections. Though it may seem far afield for scholars of judicial behavior, understanding how candidates come to the bench—and how that pool might vary over time—is important to understand trends in judicial decision-making over time. For example, if the trends that Thomsen (2014) and Hall (2019) note to be true of legislative candidates also hold for judicial candidates, then one could expect an increasing level of ideological and partisan polarization on elected courts in coming years.

The importance of candidate emergence has ramification for appointive courts, in the U.S. states and beyond. Substantively, appointive courts are filled by *someone* (or something). That appointing authority is often an executive or legislative body that is elected to office. If the legislators and governors who appoint judges—either to full terms or to interim vacancies—are themselves more extreme, they may become disproportionately likely to appoint candidates with more ideological extreme judges to state benches. Methodologically, scholars often measure judicial ideology using estimates of the preferences of those who appointed judges to office (Epstein et al. 2007; Giles, Hettinger and Peppers 2001). If the preferences of these appointing authorities becomes more extreme over time, our estimates of the judges they point will also become more extreme. To the extent that these increasingly-extreme appointing authorities appoint judges who mirror their policy preferences, these indicators will accurately measure an increasingly extreme judiciary. But, if these appointing authorities become more extreme but their judicial appointments do not reflect

that increasing extremism, then these sorts of ideology measures may become less accurate over time. Thus, it is important for those who study only appointed courts to pay close attention to the electoral environment in which appointing authorities reach their positions.

In short, the broader dynamics of state elections could have important consequences for the composition of state benches; because ideology is a powerful predictor of judges' voting behavior on both elected and appointed state courts, these trends may affect legal policymaking in the states, as the policies made by state courts become as polarized as the policies made by state legislatures (Grumbach 2021). Yet, scholars have not devoted nearly the attention to understanding the ideological dynamics of state electoral selection. This must change.

Judicial Selection and Judicial Diversity

The selection effects driven by the use of elective, rather than appointive, methods of filling the bench extend beyond the ideological extremism of potential jurists. An important debate in the study of judicial selection has sought to determine whether judicial elections enhance or slow the diversification of the bench. Again, studies have come to varied conclusions with some studies (e.g., Reddick, Nelson and Caufield 2009) selecting that judicial elections might inhibit judicial diversity and other studies (e.g., Frederick and Streb 2008) suggesting that female candidates may be *advantaged* in judicial elections. The bulk of the evidence (e.g., Hurwitz and Lanier 2003, 2008) suggest that methods of judicial selection are unrelated to the presence of women or nonwhite judges on state courts. Studying all state supreme court judges who served between 1990 and 2015, for example, Gibson and Nelson (2021) find neither women nor nonwhite judges were more likely to win office through judicial appointment than judicial election.

Additionally, this research generally emphasizes demographic diversity, though selection methods may lead to other inequities in the composition of the bench. It is perhaps not surprising that many justices of the South Carolina Supreme Court, whose vacancies are filled through legislative election, are filled by former members of that chamber. These effects may be more broadly felt: individuals who work in large law firms, for example, may both have sympathies for particular types of litigants or legal arguments and have the professional (and financial) networks that

will enable them to be competitive judicial election candidates. Similarly, individuals who worked as prosecutors—especially in U.S. Attorney’s offices or state attorney generals’ offices—may have political connections that make them better able to secure a political appointment than lawyers who work in other areas of practice. Though high-quality evidence on the relationship between prior area of practice and judicial behavior is less prevalent than the effects of demographic diversity (Boyd et al. 2010, Kastlelec 2013 but see Harris and Sen 2019, 2022), understanding how methods of judicial selection may fill the bench with judges with particular types of experiences (which may then affect their decision-making) is a topic of paramount importance.

Understanding the extent to which the use of elections or appointment may enhance the diversity of the bench is important normatively and also inasmuch as demographic diversity on the bench may enhance institutional legitimacy (Scherer and Curry 2010). But, by focusing on judges’ ascriptive characteristics, existing accounts of the effects of judicial elections on the diversity of the bench fail to account for differences among female or nonwhite judges. The sort of person who is able to navigate the political process to win an elite appointment may differ on a variety of dimensions than the typical person who has the temperament to jump through the hurdles of an election campaign.

For this reason, future research should consider the extent to which methods of judicial selection tilt the composition of the bench with judges whose differences are less visible. A burgeoning literature in the study of judicial behavior has demonstrated that judges’ personalities affect their on-the-bench behaviors (Hall 2018; Black et al. 2019), and psychologists have demonstrated that the personalities of those who seek elected office differ from the general population (Caprara et al. 2003; Scott and Medeiros 2020). Inasmuch as differences in personality both affect who runs for office (rather than who has the political mettle to secure an appointment) *and* also affect judicial behavior, understanding both how methods of staffing the bench are prone to select judges with particular personality traits is an important topic for future inquiry.

Further, understanding how selection methods affect judicial quality is another important topic. More generously, this can be framed as a trade-off between decision quality and rendering

services to voters. Choi, Gulati and Posner (2010) found that appointed judges tend to write higher quality opinions, but elected judges write significantly more opinions. While elected judges are more concerned with providing services to voters, appointed judges seem generally more occupied with legacy and creation of precedent. Ash and MacLeod (2015) present similar findings and argue that judges are “intrinsically motivated to provide high-quality decisions and that at the margin they prefer quality over quantity.” When judges face increased electoral demands decision quality declines in terms of how well researched opinions are and how frequently opinions are cited in the future. Similarly, using a discontinuity around the implementation of the Missouri plan, they find that judges produced higher quality work post-Missouri plan (Ash and MacLeod 2021). Judges shielded from voter influence tend to have better information, are more likely to rule counter to preconceived opinions, and make fewer mistakes than elected counterparts (Iaryczower, Lewis and Shum 2013).

A word of caution is needed, though. Understanding the effects of judicial selection is not as simple as consulting a table to learn whether judges on a particular are “elected” or “appointed” to office. Judges commonly retire, die, are appointed to other courts, or leave office for other personal or professional reasons in the middle of their terms. In these cases, most states allow a governor or other appointive body to appoint a judge to serve, either until a special election can be held or for the remainder of a term. In practice, this means that many “elected” judges are actually appointed to office. Because these appointed judges carry an incumbency advantage with them into the next election (Bonneau and Hall 2009; Olson and Stone 2022), the composition of many formally elected courts are actually filled with a majority of judges who were first appointed to that court. In fact, Nelson and Gibson (2020) estimate that nearly a majority of formally elected state supreme court judges who served from 1990 to 2015 were actually initially appointed to office (see also Bratton and Spill 2002).

Judicial Elections and Judicial Power

Most of our discussion up to this point has focused on the effects of elections on *judges*, but these elections may also have important consequences for *courts* and their external relationships. A key concern for judicial reformers in the states has been the extent to which elections might damage the legitimacy of the judiciary; by dragging the judiciary into the electoral arena, elections risk equalizing judges with “ordinary politics” and the “Washington system” that citizens loathe (Gibson 2012; Hibbing and Theiss-Morse 1995). On the other hand, judicial elections free judges from their dependency on the executive or legislative branch, providing the judiciary with an independent base of political support separate from those whose actions they must review. Indeed, both the adoption of nonpartisan elections in the United States and their introduction in Bolivia were premised on arguments that the use of direct elections would restore faith in distrusted judiciaries (Driscoll and Nelson 2013; Shugerman 2012).

Political scientists have sought to provide some empirical clarity on these points, treating support for elected and appointive courts as an outcome variable to assess whether methods of selection or retention as associated with the public’s support for the judicial branch. Cann and Yates (2016) conduct an observational analysis, concluding that judicial elections are associated with a reduction in support for state courts (see also Benesh 2006). On the other hand, Nownes and Glennon (2016) and Nelson (2016) find that public support for elected courts is higher than support for appointive courts.¹¹ Further, Gibson (2012) studies how rough-and-tumble campaigns for judicial office affect judicial legitimacy and concludes that the benefits of judicial elections for judicial legitimacy outweigh the costs that come from typical campaigning. And, looking at the consequences of these institutions, some research suggests that elected courts may be advantaged compared to appointed courts in their ability to win public support for their controversial decisions (Crabtree and Nelson 2019). Thus, the effect of judicial elections on the public’s support for courts

¹¹Some studies also find null effects for the relationship between selection method and support for courts Kelleher and Wolak (2007).

is not well-understood.

While scholars of U.S. courts have focused on the correlates of judicial legitimacy, scholars of comparative courts and judicial behavior have devoted much attention to how a court's legitimacy may be an explanatory factor in its interactions with the public and with other branches of government (e.g., Krehbiel 2016; Staton 2010). As an example of how scholars of elected courts might expand their horizons by incorporating the literature on comparative courts, many formal theoretic models of interbranch relations assume that elites pay a cost for noncompliance with judicial decisions (Krehbiel 2016) or for attempting to pack courts (Vanberg 2015), and the size of this cost varies according with a court's level of public support. Inasmuch as methods of judicial selection might affect public support for courts, attempts to pack, stack, or ignore the judiciary may be more common according to the method used to select or retain judges (Leonard 2016) or according to the level of public support each court enjoys. Similarly, decisions of elected courts may be more difficult to override, just as the U.S. Congress is less likely to override U.S. Supreme Court decisions during periods in which that court has stronger public support (Nelson and Uribe 2017).

Furthermore, judicial elections may have important separation of powers consequences. Even elected judges lack the ability to enforce their own decisions, but they can renew their mandate with voters through periodic elections. In this way, judicial elections put courts on more equal footing with the legislative and judicial branches of government in ways that may have important separation-of-powers consequences. Perhaps for this reason, elected judges are more willing to use the power of judicial review (e.g., Langer 2002). Shugerman (2010), for example, charts the use of judicial review in historical perspective as states adopted judicial elections; he finds that state supreme courts became much more likely to use judicial review once state constitutions were amended to make those courts elected, rather than appointed.

Moving forward, scholars should endeavor to integrate findings from studies of comparative institutions and interbranch relations into study of judicial elections. The institutional variation provided by methods of selection and retention provides important variation in the level of support

enjoyed by state judiciaries while the federal nature of the system in which these institutions are used provides important consistency in legal rule and procedures that could provide a fertile testing ground both for theories of interbranch relations but also the effect of electoral systems on the balance of power in democratic systems.

Moving Forward

The increased attention that judicial elections have received over the past three decades from political scientists and legal scholars taught us much about how selection and retention institutions affect the work of courts. But, there is much work to be done, and researchers of all types would do well to expand their theorizing and empirical testing by looking outside of the judicial realm for inspiration. Judicial elections provide unique opportunities for testing general theories of elite behavior, electoral representation, and judicial decision-making. But, their potential can only be fully realized if scholars abandon their disciplinary silos.

No institutional choice—be it electing or appointing judges, allowing judges to serve for long or short terms, etc.—is without consequences. It is not the case that judicial elections make judges “political” while appointed judges act with “independence.” Rather, methods of judicial retention function to direct judges’ responsiveness: judicial elections lead judges to respond to public preferences just as elite reappointment mechanisms lead judges to pay increased attention to the desires of legislators and executives. In this way, there is no “perfect” way to select or retain judges. Instead, reformers must decide to whom they want courts to respond and design the judiciary accordingly. And, careful empirical scholarship has an important role to play in understanding the consequences of these institutional choices.

We conclude with some additional thoughts about how researchers should move forward. Data availability has been a persistent challenge in the judicial elections literature due to the fact that state court decisions are so numerous and labor intensive to code. As a result, researchers must often limit the scope of their research to a single issue area for which they can collect and label court decisions. This has had a significant impact on the scope and generalizability of research

findings in this area (e.g., Hall and Windett 2013). The bulk of the literature discussed in this review relies on criminal cases, particularly death penalty cases, while some work branches out to other areas such as abortion (Brace, Hall and Langer 1999) or tort (Tabarrok and Helland 1999) cases. This limitation in the scope of data used makes it challenging to test the boundaries of election influence on decision-making because it focuses so much on the issues that dominate campaigns and therefore are the issue areas where the effects of elections are most likely to be felt (Hall 2015). Questions such as where judicial and constituent beliefs systematically diverge and the relative elasticity of judicial beliefs remain unanswered in large part due to challenges in collecting and annotating data.

We call attention to this well-known shortcoming in the literature because it is ripe for solving. Recent advancements in natural language processing have introduced new tools to social science that excel in semantic-based inference. While previous methods that relied on bag-of-words analysis were able to infer high-level metrics such as topic labels or similarity between documents, contemporary large language models allow for automated labeling of sophisticated and specific concepts with accuracy that is on par, or close to, human levels of performance. These models are increasingly able to do so without large manually labeled training data sets (Rosa et al. 2021). Currently, researchers may limit their analysis to state supreme court cases on capital offenses within a certain time period due to resource constraints. Automated labeling with large language models present the opportunity to expand analysis across time and topics without imposing additional resource demands.

To date, scholars examining the effect of elections on judicial decision-making have been primarily interested in questions of judicial independence as measured by constituent influence on the directionality of opinions. The existence of this relationship is well established in the literature by now and we encourage further research into the nature of judicial independence. One such avenue of inquiry is to examine differences in the long term policy objectives of elected and appointed judges. For example, if elected justices are more likely to act as representative to their constituents, are they also more likely to leverage their position to achieve long-term policy

changes by either establishing or challenging precedent? This may also result in differences in the nature of opinions issued by elected judges. Are elected judges more likely to issue opinions they know will be overturned, less likely to cite relevant precedent that contradicts their preferences, or more likely to issue rulings that are broader or narrower in scope?

Another possible avenue of inquiry is if the representative behavior of elected judges also influences how judges interact with other political actors such as interest groups and voters (e.g., Baum, Klein and Streb 2017). Legislative theories of party behavior and electoral accountability seem directly relevant to this question and could bring new insights to theories of judicial behavior. Extended party network theory predicts interest groups will have the most influence on issues and elections that are low salience to voters (Bawn et al. 2012). Given the relative low salience of judicial elections compared to legislators, this would predict that interest groups have relatively more influence over judicial decisions than they do legislators. Whether or not this is empirically true remains unanswered. Further, how do interest groups mobilize around judicial elections and what role do judges themselves play in this dynamic? Are interest groups seeking to instigate change through the courts more likely to fund judicial elections or more likely to bring cases to courts with elected judges? These are all important questions.

Scholars should also examine representation from the other side of the coin: the judge's perspective. Studies of the relationship between public opinion and elite behavior rely on the assumption that elites know their constituency preferences and can adjust their behavior accordingly. Yet, recent studies of state legislatures (Broockman and Skovron 2018) and congressional staff (Hertel-Fernandez, Mildenerger and Stokes 2019) reveal that elites often systematically misperceive public opinion, believing that their constituency holds more conservative beliefs than public opinion surveys reflect. We have no analogous evidence for judges, despite information that judges update their behavior when provided with constituency-level, issue-specific information about these preferences (Nelson 2014). This provides some suggestion that judges, too, may not be the best judges of their own constituents, a topic ripe for future inquiry.

Ultimately, despite their relative rarity worldwide, judicial elections have a lot to teach us

about judicial behavior. Scholars are increasingly looking to these institutions to examine the generalizability of theories of both electoral politics and judicial decision-making, and new endeavors on this front are promising. However, for these institutions to be maximally useful to scholars, researchers need to look beyond their comfort zones in their theory building and empirical testing: there is much to be gained from cross-pollination in this regard.

References

- Albert, Zachary. 2020. "Partisan Policymaking in the Extended Party Network: The Case of Cap-and-Trade Regulations." *Political Research Quarterly* 73(2):476–491.
- American Bar Association. 2003. *Justice in Jeopardy: Report of the American Bar Association Commission on the 21st Century Judiciary*. American Bar Association.
- Anenson, T. Leigh. 1997. "For Whom the Bell Tolls.. Judicial Selection by Election in Latin America." *Southwestern Journal of Law and Trade in the Americas* 4(2):261–300.
- Ash, Elliott and W. Bentley MacLeod. 2015. "Intrinsic Motivation in Public Service: Theory and Evidence from State Supreme Courts." *Journal of Law & Economics* 58(4):863–913.
- Ash, Elliott and W. Bentley MacLeod. 2021. "Reducing Partisanship in Judicial Elections Can Improve Judge Quality: Evidence from U.S. State Supreme Courts." *Journal of Public Economics* 201:104478.
- Aspin, Larry. 2011. "The 2010 Judicial Retention Elections in Perspective: Continuity and Change from 1964 to 2010." *Judicature* 94:218–232.
- Barnum, David C. 1985. "The Supreme Court and Public Opinion: Judicial Decisionmaking in the Post New Deal Period." *Journal of Politics* 47:652–665.
- Barrilleaux, Charles. 1997. "A Test of the Independent Influences of Electoral Competition and Party Strength in a Model of State Policy-Making." *American Journal of Political Science* 41:1462–1466.
- Baum, Lawrence, David Klein and Matthew J. Streb. 2017. *The Battle for the Court: Interest Groups, Judicial Elections, and Public Policy*. University of Virginia Press.
- Bawn, Kathleen, Martin Cohen, David Karol, Seth Masket, Hans Noel and John Zaller. 2012. "A Theory of Political Parties: Groups, Policy Demands and Nominations in American Politics." *Perspectives on Politics* 10(3):571–597.
- Benesh, Sara C. 2006. "Understanding Public Confidence in American Courts." *American Journal of Political Science* 68:697–707.
- Berdej6, Carlos and Noam Yuchtman. 2013. "Crime, Punishment, and Politics: An Analysis of Political Cycles in Criminal Sentencing." *The Review of Economics and Statistics* 95:741–756.
- Bickel, Alexander M. 1986. *The Least Dangerous Branch: The Supreme Court at the Bar of Politics*. Vol. 2nd Ed. New Haven, CT: Yale University Press.
- Birkhead, Nithaniel A. 2015. "The Role of Ideology in State Legislative Elections." *Legislative Studies Quarterly* 40(1):55–82.
- Black, Ryan C., Ryan J. Owens, Justin Wedeking and Patrick C. Wohlfarth. 2019. *The Conscientious Justice: How Supreme Court Justices' Personalities Influence the Law, the High Court, and the Constitution*. Cambridge University Press.
- Bonneau, Chris W. and Damon M. Cann. 2015. *Voters' Verdicts: Citizens, Campaigns, and Institutions in State Supreme Court Elections*. University of Virginia Press.
- Bonneau, Chris W. and Melinda Gann Hall. 2009. *In Defense of Judicial Elections*. Routledge.
- Boyd, Christina L., Lee Epstein and Andrew D. Martin. 2010. "Untangling the Causal Effects of Sex on Judging." *American Journal of Political Science* 54:389–411.
- Brace, Paul and Brent D. Boyea. 2008. "State Public Opinion, the Death Penalty, and the Practice of Electing Judges." *American Journal of Political Science* 52:360–372.
- Brace, Paul and Melinda Gann Hall. 1995. "Studying Courts Comparatively: The View from the American States." *Political Research Quarterly* 48:5–29.

- 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* 62:1265–1303.
- Brace, Paul R. and Melinda Gann Hall. 1997. "The Interplay of Preferences, Case Facts, Context, and Rules in the Politics of Judicial Choice." *Journal of Politics* 59:1206–1231.
- Bratton, Kathleen A. and Rorie Spill. 2002. "Existing Diversity and Judicial Selection: The Role of the Appointment Method in Establishing Gender Diversity in State Supreme Courts." *Social Science Quarterly* 30:115–142.
- Broockman, David E. and Christopher Skovron. 2018. "Bias in Perceptions of Public Opinion among Political Elites." *American Political Science Review* 112(3):542–563.
- Buller, Tyler J. 2012. "Framing the Debate: Understanding Iowa's 2010 Judicial-Retention Election Through a Content Analysis of Letters to the Editor." *Iowa Law Review* 97(5):1745–1786.
- Caldarone, Richard P., Brandice Canes-Wrone and Tom S. Clark. 2009. "Partisan Labels and Democratic Accountability: An Analysis of State Supreme Court Abortion Decisions." *Journal of Politics* 71:560–573.
- Caldeira, Gregory A. and James L. Gibson. 1992. "The Etiology of Public Support for the Supreme Court." *American Journal of Political Science* 36:635–664.
- Canes-Wrone, Brandice and Tom S. Clark. 2009. "Judicial Independence and Nonpartisan Elections." *Wisconsin Law Review* 2009:21–65.
- Canes-Wrone, Brandice, Tom S. Clark and Amy Semet. 2018. "Judicial Elections, Public Opinion, and Decisions on Lower Salience Issues." *Journal of Empirical Legal Studies* 15(4):672–707.
- Canes-Wrone, Brandice, Tom S. Clark and Jason P. Kelly. 2014. "Judicial Selection and Death Penalty Decisions." *American Political Science Review* 108(1):23–39.
- Canes-Wrone, Brandice, Tom S. Clark and Jee-Kwang Park. 2012. "Judicial Independence and Retention Elections." *Journal of Law, Economics, & Organization* 28:211–234.
- Cann, Damon M. and Jeff Yates. 2016. *These Estimable Courts*. Oxford University Press.
- Caprara, GianVittorio, Claudio Barbaranelli, Chiara Consiglio, Laura Picconi and Philip G. Zimbardo. 2003. "Personalities of Politicians and Voters: Unique and Synergistic Relationships." *Journal of Personality and Social Psychology* 84(4):849–856.
- Carey, John M. and Matthew Soberg Shugart. 1995. "Incentives to Cultivate a Personal Vote: A Rank Ordering of Electoral Formulas." *Electoral Studies* 14(4):417–439.
- Caufield, Rachel Paine. 2009. "Reconciling the Judicial Ideal and the Democratic Impulse in Judicial Retention Elections." *Missouri Law Review* 74:573–604.
- Choi, Stephen J., G. Mitu Gulati and Eric A. Posner. 2010. "Professionals or Politicians: The Uncertain Empirical Case for an Elected Rather than Appointed Judiciary." *Journal of Law, Economics, & Organization* 26:290–336.
- Corley, Pamela C. 2008. "The Supreme Court and Opinion Content: The Influence of Parties' Briefs." *Political Research Quarterly* 61(3):468–478.
- Cox, Gary W. and Matthew D. McCubbins. 1993. *Legislative Leviathan: Party Government in the House*. Berkeley: University of California Press.
- Crabtree, Charles and Michael J. Nelson. 2019. "Judging Judicial Review in the American States." *State Politics & Policy Quarterly* 19(3):287–311.
- Culver, John H. and John R. Wold. 1987. "Rose Bird and the Politics of Judicial Accountability in California." *Judicature* 70:78–88.
- Dahl, Robert A. 1957. "Decision-Making in a Democracy: The Supreme Court as a National

- Policy-Maker.” *Journal of Public Law* 6:279–295.
- Desmarais, Bruce A, Raymond J La Raja and Michael S Kowal. 2015. “The fates of challengers in US house elections: The role of extended party networks in supporting candidates and shaping electoral outcomes.” *American Journal of Political Science* 59(1):194–211.
- Driscoll, Amanda and Michael J. Nelson. 2012. “The 2011 Judicial Elections in Bolivia.” *Electoral Studies* 31(3):628–632.
- Driscoll, Amanda and Michael J. Nelson. 2013. “The Political Origins of Judicial Elections: Evidence from the United States and Bolivia.” *Judicature* 96:151–160.
- Driscoll, Amanda and Michael J. Nelson. 2015. “Judicial Selection and the Democratization of Justice: Lessons from the Bolivian Judicial Elections.” *Journal of Law and Courts* 3(1):115–148.
- Duck-Mayr, JBrandon. 2022. “Explaining Legal Inconsistency.” *Journal of Theoretical Politics* 34(1):107–126.
- Epstein, Lee and Andrew D. Martin. 2010. “Does Public Opinion Influence the Supreme Court? Possibly Yes (But We’re Not Sure Why).” *University of Pennsylvania Journal of Constitutional Law* 13:263–281.
- Epstein, Lee, Andrew D. Martin, Jeffrey A. Segal and Chad Westerland. 2007. “The Judicial Common Space.” *Journal of Law, Economics, & Organization* 23:303–325.
- Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*. CQ Press.
- Fenno, Richard F. 1978. *Home Style: House Members in their Districts*. Little Brown.
- Frederick, Brian and Matthew J. Streb. 2008. “Women Running for Judge: The Impact of Sex on Candidate Success in State Intermediate Appellate Court Elections.” *Social Science Quarterly* 89:937–954.
- Gamm, Gerald and Thad Kousser. 2021. “Life, Literacy, and the Pursuit of Prosperity: Party Competition and Policy Outcomes in 50 States.” *American Political Science Review* 115(4):1442–1463.
- George, Tracey E. and Lee Epstein. 1992. “On the Nature of Supreme Court Decision Making.” *American Political Science Review* 86:323–337.
- Gibson, James L. 2012. *Electing Judges: The Surprising Effects of Campaigning on Judicial Legitimacy*. University of Chicago Press.
- Gibson, James L. and Michael J. Nelson. 2021. *Judging Inequality: State Supreme Courts and the Inequality Crisis*. Russell Sage Foundation.
- Giles, Micheal W, Virginia A. Hettinger and Todd Peppers. 2001. “Picking Federal Judges: A Note on Policy and Partisan Selection Agendas.” *Political Research Quarterly* 54(3):623–641.
- Gray, Thomas. 2017. “The Influence of Legislative Reappointment on State Supreme Court Decision-Making.” *State Politics & Policy Quarterly* 17(3):275–298.
- Grumbach, Jake. 2021. “Laboratories of Democratic Backsliding.” *Working Paper*.
- Hall, Andrew B. 2019. *Who Wants to Run?: How the Devaluing of Political Office Drives Polarization*. University of Chicago Press.
- Hall, Matthew E.K. 2018. *What Justices Want: Goals and Personality on the U.S. Supreme Court*. Cambridge University Press.
- Hall, Matthew E.K. and Jason Harold Windett. 2013. “New Data on State Supreme Court Cases.” *State Politics & Policy Quarterly* 13(4).
- Hall, Melinda Gann. 1987. “Constituent Influence in State Supreme Courts: Conceptual Notes and a Case Study.” *Journal of Politics* 49:1117–1124.

- Hall, Melinda Gann. 1992. "Electoral Politics and Strategic Voting in State Supreme Courts." *Journal of Politics* 54:427–446.
- Hall, Melinda Gann. 1995. "Justices as Representatives: Elections and Judicial Politics in the American States." *American Politics Quarterly* 23(4):485–503.
- Hall, Melinda Gann. 2014. "Representation in State Supreme Courts: Evidence from the Terminal Term." *Political Research Quarterly* 67(2):335–346.
- Hall, Melinda Gann. 2015. *Attacking Judges: How Campaign Advertising Influences State Supreme Court Elections*. Stanford University Press.
- Handan-Nader, Cassandra, Andrew C.W. Myers and Andrew B. Hall. 2022. "Polarization and State Legislative Elections." Working Paper. Available at https://stanforddpl.org/papers/handan-nader_myers_hall_polarization_2022/handan-nader_myers_hall_polarization_2022.pdf.
- Hanssen, F. Andrew. 2004. "Learning about Judicial Independence: Institutional Change in State Courts." *Journal of Legal Studies* 33:431–473.
- Harris, Allison and Maya Sen. 2022. "How Judges' Professional Experience Impacts Case Outcomes: An Examination of Public Defenders and Criminal Sentencing." Working Paper.
- Harris, Allison P. and Maya Sen. 2019. "Bias and Judging." *Annual Review of Political Science* 22:241–259.
- Helmke, Gretchen. 2002. "The Logic of Strategic Defection: Court-Executive Relations in Argentina Under Dictatorship and Democracy." *American Political Science Review* 96:291–303.
- Hertel-Fernandez, Alexander, Matto Mildemberger and Leah C. Stokes. 2019. "Legislative Staff and Representation in Congress." *American Political Science Review* 113(1):1–18.
- Hibbing, John R. and Elizabeth Theiss-Morse. 1995. *Congress as Public Enemy: Public Attitudes Toward American Political Institutions*. New York: Cambridge University Press.
- Huber, Gregory A. and Stanford C. Gordon. 2004. "Accountability and Coercion: Is Justice Blind When it Runs for Office?" *American Journal of Political Science* 48:247–263.
- Hurwitz, Mark S. and Drew Lanier. 2003. "Explaining Judicial Diversity: The Differential Ability of Women and Minorities to Attain Seats on State Supreme and Appellate Courts." *State Politics & Policy Quarterly* 3:329–352.
- Hurwitz, Mark S. and Drew Noble Lanier. 2008. "Diversity in State and Federal Appellate Courts: Change and Continuity Across 20 Years." *Justice System Journal* 29:47–70.
- Iaryczower, Matias, Garrett Lewis and Matthew Shum. 2013. "To Elect or to Appoint? Bias, Information, and Responsiveness of Bureaucrats and Politicians." *Journal of Public Economics* 97:230–244.
- Jacobson, Gary C. 2009. *The Politics of Congressional Elections*. 7th ed. Pearson Longman.
- Johnson, Ben and Logan Strother. 2021. "The Supreme Court's (Surprising?) Indifference to Public Opinion." *Political Research Quarterly* 74(1):18–34.
- Kastellec, Jonathan P. 2013. "Racial Diversity and Judicial Influence on Appellate Courts." *American Journal of Political Science* 57(1):167–183.
- Keith, Douglas and Eric Velasco. 2022. *The Politics of Judicial Elections, 2019-20*. Brennan Center for Justice.
- Kelleher, Christine A. and Jennifer Wolak. 2007. "Explaining Public Confidence in the Branches of State Government." *Political Research Quarterly* 60(4):707–721.
- Key, V.O. Jr. 1949. *Southern Politics in State and Nation*. New York: A. Knopf.
- Koger, Gregory, Seth Masket and Hans Noel. 2009. "Partisan webs: Information exchange and

- party networks.” *British Journal of Political Science* 39(3):633–653.
- Krehbiel, Jay N. 2016. “The Politics of Judicial Procedures: the Role of Public Oral Hearings in the German Constitutional Court.” *American Journal of Political Science* 60(4):900–1005.
- Kujala, Jordan. 2020. “Donors, Primary Elections, and Polarization in the United States.” *American Journal of Political Science* 64(3):587–602.
- Langer, Laura. 2002. *Judicial Review in State Supreme Courts: A Comparative Study*. State University of New York Press.
- Lawless, Jennifer L. and Richard L. Fox. 2005. *It Takes a Candidate: Why Women Don’t Run for Office*. Cambridge University Press.
- Lax, Jeffrey R. and Justin H. Phillips. 2012. “The Democratic Deficit in the States.” *American Journal of Political Science* 56(1):148–166.
- Lazarus, Jeffrey. 2009. “Party, Electoral Vulnerability, and Earmarks in the U.S. House of Representatives.” *Journal of Politics* 71(3):1050–1061.
- Leonard, Meghan E. 2016. “State Legislatures, State High Courts, and Judicial Independence: An Examination of Court-Curbing Legislation in the States.” *Justice System Journal* 37(1):53–62.
- Lim, Claire S.H. 2013. “Preferences and Incentives of Appointed and Elected Public Officials: Evidence from State Trial Court Judges.” *American Economic Review* 103(4):1360–1397.
- Lim, Claire S.H., James J. Snyder, Jr. and David Strömberg. 2010. “Measuring Media Influence on U.S. State Courts.” Working Paper.
- Lim, Claire S.H. and James M. Snyder, Jr. 2021. “What Shapes the Quality and Behavior of Government Officials? Institutional Variation in Selection and Retention Methods.” *Annual Review of Economics* 13:87–109.
- Lim, Claire S.H., James M. Snyder, Jr. and David Strömberg. 2015. “The Judge, The Politician, and the Press: Newspaper Coverage and Criminal Sentencing Across Electoral Systems.” *American Economic Journal: Applied Economics* 7(4):103–135.
- Linde, Hans A. 1987. “Elective Judges: Some Comparative Comments.” *Southern California Law Review* 61:1995–2006.
- Marshall, Thomas R. 2008. *Public Opinion and the Rehnquist Court*. State University of New York Press.
- Mishler, William and Reginald S. Sheehan. 1993. “The Supreme Court as a Countermajoritarian Institution? The Impact of Public Opinion on Supreme Court Decisions.” *American Political Science Review* 87:87–101.
- Nelson, Michael J. 2014. “Responsive Justice? Retention Elections, Prosecutors, and Public Opinion.” *Journal of Law and Courts* 2:117–152.
- Nelson, Michael J. 2016. *Judicial Elections and Support for State Courts*. In *Judicial Elections in the 21st Century* Ed. Chris W. Bonneau and Melinda Gann Hall. Routledge, p. 217-232.
- Nelson, Michael J. and Alicia Uribe. 2017. “Opportunity and Overrides: The Effect of Institutional Public Support on Congressional Overrides of Supreme Court Decisions.” *Political Research Quarterly* 70(3):632–643.
- Nelson, Michael J. and James L. Gibson. 2020. “Measuring Subjective Ideological Disagreement with the U.S. Supreme Court.” *Journal of Law and Courts* 8(1):75–94.
- Nownes, Anthony J. and Colin Glennon. 2016. “An Experimental Investigation of How Judicial Elections Affect Public Faith in the Judicial System.” *Law & Social Inquiry* 41(1):37–60.
- Olson, Michael P. and Andrew R. Stone. 2022. “The Incumbency Advantage in Judicial Elections: Evidence from Partisan Trial Court Elections in Six U.S. States.” *Political Behavior* Forthcom-

- ing.
- Ramseyer, J. Mark and Eric B. Rasmusen. 2001. "Why are Japanese Judges So Conservative in Politically Charged Cases?" *American Political Science Review* 95:331–344.
- Reddick, Malia, Michael J. Nelson and Rachel P. Caufield. 2009. "Racial and Gender Diversity on State Courts." *The Judge's Journal* 48:28–32.
- Rigby, E. and G. C. Wright. 2013. "Political Parties and Representation of the Poor in the American States." *American Journal of Political Science* 41:1462–1466.
- Rogers, Steven. 2017. "Electoral Accountability for State Legislative Roll Calls and Ideological Representation." *American Political Science Review* 111(3):555–571.
- Rosa, Guilherme Moraes, Ruan Chaves Rodrigues, Roberto de Alencar Lotufo and Rodrigo Nogueira. 2021. "To Tune or Not To Tune? Zero-shot Models for Legal Case Entailment." *Proceedings of the Eighteenth International Conference on Artificial Intelligence and Law* June 2021:295–300.
- Savchak, Elisha Carol and A.J. Barghothi. 2007. "The Influence of Appointment and Retention Constituencies: Testing Strategies of Judicial Decisionmaking." *State Politics & Policy Quarterly* 7:394–415.
- Schaffner, Brian F., Matthew Streb and Gerald Wright. 2001. "Teams without Uniforms: The Nonpartisan Ballot in State and Local Elections." *Political Research Quarterly* 54:7–30.
- Scherer, Nancy and Brett Curry. 2010. "Does Descriptive Race Representation Enhance Institutional Legitimacy? The Case of the U.S. Courts." *Journal of Politics* 72(1):90–104.
- Schotland, Roy A. 1985. "Elective Judges' Campaign Financing: Are State Judges' Robes the Emperor's Clothes of American Democracy?" *Journal of Law and Politics* 2:57–167.
- Schotland, Roy A. 2001. "Financing Judicial Elections, 2000: Change and Challenge." *Law Review of Michigan State University Detroit College of Law*, 2001(3):849–900.
- Scott, Colin and Mike Medeiros. 2020. "Personality and Political Careers: What Personality Types are Likely to Run for Office and Get Elected?" *Personality and Individual Differences* 152:109600.
- Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press.
- Shepherd, Joanna M. 2009. "Are Appointed Judges Strategic Too?" *Duke Law Journal* 58:1589–1626.
- Shugerman, Jed. 2012. *The People's Courts*. Harvard University Press.
- Shugerman, Jed Handelsman. 2010. "Economic Crisis and the Rise of Judicial Elections and Judicial Review." *Harvard Law Review* 123:1061–1150.
- Staton, Jeffrey K. 2010. *Judicial Power and Strategic Communication in Mexico*. Cambridge University Press.
- Tabarrok, Alexander and Eric Helland. 1999. "Court Politics: The Political Economy of Tort Awards." *Journal of Law and Economics* 42:157–188.
- Tarr, G. Alan. 2012. *Without Fear or Favor: Judicial Independence and Judicial Accountability in the States*. Stanford University Press.
- Thomsen, Danielle M. 2014. "Ideological Moderates Won't Run: How Party Fit Matters for Partisan Polarization in Congress." *Journal of Politics* 76(3):786–797.
- Tiede, Lydia. 2022. *Judicial Vetoes: Decision-making on Mixed Selection Constitutional Courts*. Cambridge University Press.
- Traut, Carol Ann and Craig F. Emmert. 1998. "Expanding the Integrated Model of Judicial De-

- cision Making: The California Justices and Capital Punishment.” *Journal of Politics* 60:1166–1180.
- Vanberg, Georg. 2015. “Constitutional Courts in Comparative Perspective: A Theoretical Assessment.” *Annual Review of Political Science* 18:167–185.
- Vining, Jr., Richard L. and Teena Wilhelm. 2010. “Explaining High-Profile Coverage of State Supreme Court Decisions.” *Social Science Quarterly* 91(3):704–723.
- Vining, Richard and Teena Wilhelm. 2011. “Measuring Case Salience in State Courts of Last Resort.” *Political Research Quarterly* 64:559–572.
- Welch, Susan and Timothy Bledsoe. 1986. “The Partisan Consequences of Nonpartisan Elections and the Changing Nature of Urban Politics.” *American Journal of Political Science* 30:128–39.