# Elections and Government Accountability: Evidence from the U.S. State Courts*

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February 22, 2012

**Abstract**

We investigate the influence of electoral rules and voter information in elections on voting outcomes and accountability of incumbent public officials, using new data on election of state court judges in 40 states in the U.S. from 1990 to 2010. We find, first, that voting is very partisan in partisan judicial elections – i.e., there is a strong correlation between the Democratic "normal vote" and the Democratic vote share for judges – but not in non-partisan or retention elections. This partisan voting behavior cannot be attributed to clear differences between Democratic and Republican judges in their sentencing decisions, since such differences, if any, are small and not consistent. Second, we find that incumbent judges' quality has little effect on their vote share or probability of winning in partisan elections. By contrast, incumbent judges' quality has a substantial effect on their vote share and probability of winning in non-partisan elections. Incumbent judges' quality also has a noticeable effect on their vote share in retention elections, but the magnitude is rarely large enough to affect reelection. Evidence on turnout is consistent with a simple "voting cue" hypothesis. We find that about 94% of the voters who vote on the top office on the ballot also vote on judicial elections in partisan elections. However, when party affiliation of judicial candidates is not on the ballot, only about 71% of those who vote on the top office also vote on judicial candidates. In addition, the amount of media coverage affects voter turnout only in non-partisan elections.

**Keywords**: government accountability, candidate quality, judicial selection, electoral systems

*We thank Steve Coate, Morgan Kousser, and seminar participants at Caltech, Cornell, and Rotterdam Workshop for Political Economy for their helpful comments on earlier drafts of this paper. We also thank Michael Breish, Ana Catalano, Andy Hall, M.J. Ma, Greg Martin, Phan Nguyen, B.K. Song, and Matthaeus Weinhardt for their research assistance.

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# 1 Introduction

How can citizens select good government officials and hold them accountable for their behavior? This is a central question in political economics. In this study, we investigate how different characteristics of the electoral system affect the relationship between voter behavior and candidate quality. We focus on two prominent features: (1) partisan elections vs. non-partisan elections, and (2) competitive elections vs. retention elections. We ask whether these appear to increase or decrease the degree to which higher quality or better performing candidates receive more votes, and win more elections.

Why should these features of the electoral system matter? First, given the relatively strong party attachments of most U.S. voters, when voters know that candidates' party affiliations are listed on the ballot they might not search for other information that is more difficult to find and remember.[1] Information about candidate quality or performance is likely to fall into the "relatively difficult to find and remember" category. Second, party polarization in the U.S. has evidently been relatively high for at least the past two decades, and a variety of different models predict that when polarization is high candidate quality and performance will have less impact on voting outcomes.[2] In addition, many voters choose not to abstain non-partisan elections. It is possible that those who vote in non-partisan elections have more information of the "relatively difficult to find and remember" variety than those who do not.

We study these issues in the context of U.S. state judicial elections, focusing particularly on general jurisdiction trial court judges. We do this for reasons. First, there is unique variation in the rules by which state court judges are selected and retained (see Table 1 below). Second, in many states, one or more bar associations routinely evaluate the "quality" of judges and judicial candidates and publish these evaluations. In a few states, a state commission compiles and publishes evaluations. Newspapers often print stories about these evaluations as well. We use two newly collected data bases, one on election results and one on judicial evaluations. The election data covers state court judges in 40 U.S. states over the period 1990-2010. The judicial evaluation

[1] Stumpf and Culver (1992) make this argument: "In partisan [judicial] races, the political party label may give most voters all the information they seek."

[2] See, for example, Ashworth and Bueno de Mesquita (2008), Padro i Miquel (2007), and Besley et al. (2005). Banerjee and Pande (2007) yields similar kinds of predictions in multi-party environment.

data covers 13 states, but the time frame varies considerably across states and localities.

Our findings are easily summarized. First, we find that voting is highly partisan in partisan judicial elections – i.e., there is a strong correlation between the Democratic "normal vote" and the Democratic vote share for judges – but not in non-partisan or retention elections.[3] This partisan voting behavior cannot be attributed to clear differences between Democratic and Republican judges in their sentencing decisions, since such differences, if any, are small and not consistent.

Second, we find that the quality of judicial candidates has relatively little effect on their vote share or probability of winning in partisan elections. By contrast, the quality of judicial candidates has a substantial effect on their vote share and probability of winning in non-partisan elections and in primary elections.[4] Incumbent judges' quality also has a noticeable effect on their vote share in retention elections, although the magnitude is rarely large enough to affect reelection. It is possible that the presence of opposing candidates and a relatively high degree of competition are necessary in order for information about candidate quality to reach a large share of the electorate.[5]

Note that candidate quality matters even in partisan electoral systems, because the *primary elections* help to eliminate the low-quality candidates.[6] Partisan general elections do not do much to eliminate weak candidates, except in areas where the distribution of voters across parties is relatively balanced. When one party is favored in an area, competition in the favored party's primary is the key to preventing low-quality candidates from winning office. It is also possible that partisan electoral systems are more competitive than non-partisan elections overall, with more candidates, more contested elections, lower victory margins, and so on. However, we do not find

[3]We are not the first to document this. See Dubois (1980) for an early and thorough analysis, and Squire and Smith (1988) and Klein and Baum (2001) for experimental evidence. All of these studies, like almost all existing work, focus exclusively on appellate level judges.

[4]We are only aware of two previous studies that attempt to estimate the impact of bar association evaluations on voting. Goldstein (1979-1980) studies the 1977 judicial elections in Louisville, Kentucky. Dubois (1984) studies superior court elections in California over the period 1976-1980. Goldstein finds that bar association evaluations have a large impact on voting. Dubois finds a smaller effect, although it is still positive and statistically significant. Moreover, Dubois includes controls for incumbency, campaign spending, and newspaper endorsements in his regressions; since these are correlated with quality, his estimates probably understate the overall "reduced form" effect of quality, which is the quantity of interest to us. Since California and Kentucky use non-partisan elections, these findings are generally consistent with ours.

[5]Dubois (1980) makes this argument: "when judicial elections are highly competitive and controversial, voters demonstrate a remarkable ability to learn about candidates, to correctly match them with their positions [on issues], and to vote accordingly."

[6]Of course, "smoke-filled rooms" or party conventions might also eliminate these candidates. For example, the judicial nominating conventions used in New York do not appear to yield a larger percentage of "unqualified" candidates than the primaries in similar states such as Illinois and Pennsylvania.

Table 1: **Selection and Retention Rules for the State Trial Courts**

| No. of States | Initial Selection | Re-election | Set of States |
|---|---|---|---|
| 9 | Partisan Election | Partisan Election | AL, IN, KS, LA, MO NY, TN, TX, WV |
| 22 | Non-partisan Election | Non-partisan Election | AR, AZ, CA, FL, GA ID, IN, KY, MD, MI MN, MS, MT, NV NC, ND, OH, OK OR, SD, WA, WI |
| 3 | Partisan Election | Retention Election | IL, NM, PA |
| 10 | Appointment | Retention Election | AZ, AK, CO, IA, IN, KS, MO, NE, UT, WY |
| 11 | Appointment | | CT, DE, HI, ME MA NH, NJ, RI, SC, VA, VT |

Note 1: The classification is based on the selection and retention rule for the state trial (district) courts of general jurisdiction. Most of the states have the same selection rule for all levels of the state court.

Note 2: The selection systems can be divided into five groups. There are four states (Arizona, Indiana, Kansas, and Missouri) that have a within-state variation of two different systems (partisan or non-partisan election and appointment-retention election) at the district level. These states are included in both categories. For more details, see the website on judicial selection systems by the American Judicature Society (http://www.judicialselection.us/). In New Mexico judges are first appointed by the governor, then they must run in a partisan election, and subsequent elections are retention elections. In Maryland judges are either initially appointed by the governor or run in a non-partisan election.

Note 3: We classify a state as having non-partisan elections if party labels do not appear on the general election ballot. In Arizona (in some counties), Maryland, and Ohio, nominations are partisan but the general election ballot is non-partisan.

that this is the case.

Finally, the evidence on turnout is consistent with a simple "voting cue" hypothesis. We find that about 94% of the voters who vote on the top office on the ballot also vote on judicial elections in partisan elections. However, when party affiliation of judicial candidates is not on the ballot, only about 71% of those who vote on the top office also vote on judicial candidates. In addition, the amount of media coverage affects voter turnout only in non-partisan elections.

## 1.1 Related Literature

Our study contributes to the growing literature on the selection and retention of public officials. Besley and Coate (2003) show that selecting regulators through election as opposed to appointment yields the types of regulators who will conform to voters preference as opposed to the organized interests of the electricity industry. Other studies in the literature, e.g., Maskin and Tirole (2004), and Alesina and Tabellini (2007), analyze under what circumstances reelection incentives for public officials negatively affect voter welfare. Our study enriches this literature by documenting how the influence of popular elections on the quality of public officials depends on the specific design of the electoral processes, e.g., whether voters have information about party affiliations.

Our study also contributes to the large literature on the political and economic causes and consequences of judicial selection mechanisms. Hanssen (2004a, 2004b) analyzes the adoption of judicial selection mechanisms and argues that U.S. states with tight political competition between rival parties tend to have retention elections rather than partisan elections of judges. Hall (2001) documents statistics of judicial elections for state *supreme* court judges, such as the overall rate of incumbent judges being challenged and defeated, and the average vote share. In a recent book, Bonneau and Hall (2009) document important patterns in state *supreme* court elections, such as roll-off rates, rate of challenges against the incumbent, and campaign spending. Our large-scale analysis of state *trial* courts and state lower appellate courts deepens our understanding of judicial selection mechanisms substantially through an in-depth analysis of the influence of *district-level* characteristics (e.g., political ideology) of voters and the political environment (e.g., media cov-

erage) on functioning of judicial selection mechanisms.[7][8] We also use ratings data on judges to analyze how the design of electoral processes influence the relationship between candidate quality and electoral outcomes, which is a novel feature that substantially improves our understanding of how the electoral processes affect voter welfare.

Several studies in this stream of research also document the empirical relationship between the selection mechanisms and court decisions. For example, Gordon and Huber (2007) compare criminal sentencing decisions by appointed and elected judges in Kansas. They find that the probability of incarceration is higher and the average sentenced jail time is longer when elected judges determine the outcome. Lim (2012) also analyzes sentencing decisions in Kansas, and finds that the sentencing harshness of elected judges is strongly related to related to the political ideology of the voters in their districts while that of appointed judges is not. She estimates a structural model to estimate their preferences and reelection incentives, and also conducts counterfactual experiments of how the level of compensation for judges affect their reelection incentives and the relative advantages of each selection system. There also exist studies on the relationship between judicial selection systems and death penalty (e.g., Gelman et al. (2004), Blume and Eisenberg (1999)) and civil case adjudication (Tabarrok and Helland (1999)). We analyze major determinants of voting behavior under various electoral processes, which helps to understand the mechanisms through which judicial selection systems affect the behavior of judges.

# 2 Data

## 2.1 Data on Judicial Elections

Table 1 summarizes the various systems for selecting and retaining trial court judges. There are three main systems in which voters play a direct role. First, in 9 states, judges are selected and

[7] In a review of Bonneau and Hall (2009), Wasby (2009, p. 293) writes: "This makes limiting [Bonneau and Hall's] study to state high courts the book's greatest substantive defect, which is not adequately excused on the basis that 'obtaining systematic data on lower court elections over any substantial period is a nearly impossible task' (p. 18)... Presenting data limited to state high courts not only gives an incomplete picture, but also leaves the authors' paeans for elections to stand on only one use of a selection method. This is the same problem that results from over-attention to the U.S. Supreme Court – making generalizations based on far less than all appellate courts, much less trial courts."

[8] Baum (2003, p. 18) also calls for more data on lower state courts: "the electoral fates of lower-court judges are spotty and largely out of date... All of these trial court studies were carried out prior to the past two decades, before strong campaigns against judicial incumbents became more common. But that growth has occurred primarily at the supreme court level, so it is likely that trial (and intermediate appellate) judges continue to do very well at the polls. Research to test the accuracy of this surmise would be useful."

retained through partisan elections. That is, judicial candidates seek party nomination through primary elections, then candidates from each party compete against each other in the general election, and party affiliations are listed on the general election ballot.[9] Second, in 22 states, judges are selected through non-partisan elections. These are two-round systems. First, all judicial candidates run for elections without party labels on the ballot. Then, if no candidate wins a majority of the votes in the first round, the top two candidates compete in a runoff race. In almost all states, the first round elections are held at the time the state holds its primary elections, and the runoff elections are held at the time of the general election in the state.[10] Third, in 10 states judges are first appointed by the governor and then must face the voters at the end of each term in retention elections. These are elections with no opponents. Instead, voters choose whether or not to retain the judge ("yes" or "no"), and the judge continues in office if he or she receives a majority of "yes" votes.[11]

Tables 2 and 3 show summary statistics on the electoral data we have collected. The data contains results for judicial elections in 38 states, for all three levels of state courts – supreme courts, appellate courts, and trial (district) courts.[12,13] Table 2 shows the number of candidate-race observations and the data period for each state. The data period varies somewhat across states, but it covers the past two decades (1990-2010) for many states.

The second and the third columns of Table 3 present summary statistics on contestation and competition in partisan primaries and partisan general elections, respectively. They show two important features. First, partisan judicial elections exhibit a moderate, but non-negligible degree

[9] In New York candidates are nominated by party conventions rather than primaries. The *New York Times* argued that "These conventions are dominated by delegates handpicked by party bosses, who vote however the bosses tell them." In a similar vein, the *New York Sun* wrote: "The party conventions, which meet across the state in September for the sole purpose of nominating judicial candidates to the state Supreme Court, are unique to New York. They have long been criticized as a shame because they often feature little debate and evaluation of the candidates, with the delegates present often bestowing the party nomination to the candidates favored by the local party boss."

[10] In most of states that have non-partisan elections, there is no nomination of candidates from political parties. In Ohio, candidates are nominated in partisan primaries, but the party labels do not appear on the ballot in the general election. Michigan also has a similar process for the election of state supreme court judges.

[11] In Illinois a judge must receive a "yes" vote of 60% to be retained, and in New Mexico (after 1994) a judge must receive a "yes" vote of 57%.

[12] When a state has multiple trial courts, we include only "general jurisdiction" trial courts – these are the courts that handle general civil and felony crime cases. We exclude "limited jurisdiction" courts that are restricted to handling minor civil cases, misdemeanors, and traffic cases.

[13] The source varies by state. For the most recent years we collected it directly from state websites – the Secretary of State or chief state election official, or state elections board. For earlier years we received copies of official election results from the relevant state official.

Table 2: **Distribution of Election Data**

| State | Main Selection System | Number of Observations by Level and Election Period | | | | | | | Period |
|---|---|---|---|---|---|---|---|---|---|
| | | Supreme | | Appellate | | Trial | | | |
| | | Primary | General | Primary | General | Primary | General | Total | |
| AK | Appt + Ret | 0 | 3 | 0 | 2 | 0 | 106 | 111 | 1990-2010 |
| AL | Partisan | 18 | 50 | 68 | 51 | 304 | 623 | 1114 | 1992-2010 |
| AR | Non-partisan | 25 | 14 | 32 | 7 | 192 | 46 | 316 | 1992-2010 |
| AZ | Non-partisan | 0 | 18 | 0 | 69 | 67 | 196 | 350 | 1990-2008 |
| CA | Non-partisan | 0 | 18 | 0 | 227 | 895 | 234 | 1374 | 1990-2010 |
| CO | Appt + Ret | 0 | 13 | 0 | 33 | 0 | 336 | 382 | 1996-2010 |
| FL | Non-partisan | 0 | 39 | 0 | 321 | 1144 | 262 | 2990 | 1978-2010 |
| GA | Non-partisan | 17 | 19 | 34 | 43 | 655 | 670 | 1438 | 1996-2010 |
| IA | Appt + Ret | 0 | 19 | 0 | 28 | 0 | 661 | 708 | 1990-2010 |
| ID | Non-partisan | 26 | 2 | 11 | 0 | 168 | 8 | 215 | 1990-2010 |
| IL | Part + Ret | 44 | 28 | 216 | 135 | 2258 | 2166 | 4847 | 1990-2010 |
| IN | Partisan | 0 | 5 | 0 | 17 | 671 | 602 | 1295 | 2002-2010 |
| KS | Mixed | 0 | 28 | 0 | 62 | 668 | 1195 | 1953 | 1982-2010 |
| KY | Appt + Ret | 3 | 21 | 12 | 50 | 78 | 433 | 597 | 1999-2010 |
| LA | Partisan | 32 | 7 | 139 | 13 | 1078 | 143 | 1412 | 1996-2010 |
| MD | Non-partisan | 0 | 12 | 0 | 35 | 251 | 588 | 886 | 1990-2008 |
| MI | Non-partisan | 0 | 61 | 50 | 131 | 309 | 886 | 1437 | 1992-2010 |
| MN | Non-partisan | 10 | 24 | 0 | 44 | 68 | 639 | 785 | 2000-2010 |
| MO | Partisan | 0 | 9 | 0 | 52 | 250 | 548 | 859 | 1996-2010 |
| MS | Non-partisan | 24 | 39 | 0 | 40 | 0 | 136 | 239 | 1986-2000 |
| MT | Non-partisan | 31 | 32 | 0 | 0 | 215 | 179 | 457 | 1992-2010 |
| NC | Non-partisan | 13 | 32 | 36 | 58 | 56 | 260 | 455 | 1998-2008 |
| ND | Non-partisan | 17 | 17 | 0 | 0 | 222 | 192 | 448 | 1990-2010 |
| NE | Appt + Ret | 0 | 24 | 0 | 18 | 0 | 175 | 217 | 1990-2010 |
| NM | Part + Ret | 0 | 16 | 10 | 30 | 62 | 336 | 454 | 1996-2010 |
| NV | Non-partisan | 22 | 29 | 0 | 0 | 196 | 160 | 407 | 1998-2010 |
| NY | Partisan | 0 | 0 | 0 | 0 | 0 | 1135 | 1135 | 1990-2008 |
| OH | Non-partisan | 55 | 49 | 434 | 340 | 1753 | 1526 | 4157 | 1990-2008 |
| OK | Non-partisan | 0 | 34 | 0 | 65 | 576 | 362 | 1037 | 1990-2008 |
| OR | Non-partisan | 37 | 10 | 37 | 15 | 696 | 193 | 988 | 1990-2010 |
| PA | Part + Ret | 10 | 12 | 32 | 32 | 382 | 179 | 647 | 2001-2007 |
| SD | Non-partisan | 0 | 9 | 0 | 0 | 24 | 107 | 140 | 1990-2006 |
| TN | Partisan | 0 | 4 | 0 | 31 | 0 | 239 | 274 | 2000-2010 |
| TX | Partisan | 94 | 86 | 668 | 495 | 3224 | 2434 | 7001 | 1992-2010 |
| UT | Appt + Ret | 0 | 10 | 0 | 26 | 0 | 229 | 265 | 1990-2010 |
| WA | Non-partisan | 148 | 85 | 93 | 87 | 432 | 229 | 1074 | 1970-2010 |
| WI | Non-partisan | 18 | 28 | 9 | 72 | 474 | 1041 | 1642 | 1988-2010 |
| WY | Appt + Ret | 0 | 10 | 0 | 0 | 0 | 56 | 66 | 1996-2010 |
| Total | | 644 | 916 | 1881 | 2629 | 17368 | 19442 | 44104 | |

Note: When a state has primary-runoffs (general-runoffs), we count them as primaries (general elections) in this table. Since primary-runoffs and general-runoffs are rare, this classification does not affect the picture of our data in a meaningful way. There are states with variation across different levels of courts. In the case of such variation, we put the main selection system for the state trial courts. "Appt + Retention" refers to states with appointment and retention systems. "Part + Ret" refers to states with partisan elections followed by retention elections. "Mixed" refers to a case of within-state, cross-district variation. The total number for Florida includes 1224 observations of unopposed candidate-races that are not classified as primary or general elections.

of competition in terms of the frequency of challenges. Among 7674 primary races, 2026 races (26.4 %) are contested. Similarly, among 5372 general election races, 1663 races (31 %) are contested. However, the winners' vote share shows that challenges may not result in close elections frequently. On average, the vote share of winners in contested general elections is 57 percent.

Table 3: **Summary Statistics of Partisan and Non-Partisan Elections**

| | | Partisan Elections | | Non-Partisan Elections | |
|---|---|---|---|---|---|
| | | Primary | General | 1st Round | 2nd Round |
| No. of States | | 16 | 16 | 22 | 22 |
| No. of Seats up for Election | | 6888 | 6888 | 10189 | 10189 |
| Total No. of Races | | 7674 | 5372 | 10189 | 1856 |
| No. of Uncontested Races | | 5648 | 3709 | 7427 | 923 |
| No. of Contested Races | | 2026 | 1663 | 2757 | 933 |
| No. of Candidates in | Mean | 2.8 | 2.0 | 2.6 | 2.0 |
| Contested Elections | S.D. | 1.4 | 0.2 | 1.0 | 0.1 |
| Winners' Vote Share in | Mean | .520 | .570 | .562 | .565 |
| Contested Elections | S.D. | .146 | .071 | .107 | .066 |

The fourth and fifth columns of Table 3 present summary statistics on contestation and competition in non-partisan first-round and runoff elections, respectively. Perhaps surprisingly, these elections exhibit levels of competition similar to those of partisan elections, in terms of the frequency of challenges and the overall distribution of winners' vote shares. The lack of a substantial difference between the partisan and non-partisan elections suggests the influence of party on election outcomes, if any, is more likely to take place through channels other than affecting the degree of competition.

Table 4 presents summary statistics on retention elections. Evidently, judges running in retention elections are much safer than those who face competitive elections, either partisan or non-partisan. The mean share of "yes" votes across states is 73.9 percent, and the standard deviation is 6.8 percentage points. Even the 10th percentile of the share of "yes" vote is around or above 65 percent in most of states, showing that almost all incumbents are extremely safe in retention elections. In our sample, only 34 judges lost their retention election.

Table 4: **Statistics of Retention Elections**

| | |
|---|---|
| No. of States | 20 |
| No. of Elections | 5405 |
| Share of Yes-Votes | |
| Mean | 0.739 |
| Std. Dev. | 0.068 |
| Minimum | 0.326 |
| 10th percentile | 0.646 |
| Median | 0.747 |
| 90th percentile | 0.820 |
| Maximum | 0.916 |

## 2.2 Data on Judicial Evaluations

Table 5 presents summary information on the judicial evaluations we have collected. In six states – Alaska, Arizona, Colorado, Kansas, New Mexico, and Utah – these evaluations are conducted by state commissions.[14] The evaluations for other states are conducted by state or local bar associations, or by groups of bar associations. Local bar associations typically only evaluate the local trial court candidates. In all cases these evaluations are based on comprehensive surveys of attorneys. In some cases they also incorporate surveys of other judges, court employees, and citizens who have served as jurors or witnesses. For consistency we focus on the attorney surveys.

The surveys ask for the respondents' views on a variety of performance criteria, including integrity, judicial temperament, knowledge of the law, communication skills, diligence, professional competence, and case management. Here are the items from the Colorado Commission on Judicial Performance survey:

1. Case Management:
    - 1a. Promptly issuing a decision on the case after trial.
    - 1b. Maintaining appropriate control over proceedings.
    - 1c. Promptly ruling on pre-trial motions.
    - 1d. Setting reasonable schedules for cases.
2. Application and Knowledge of Law:
    - 2a. Being able to identify and analyze relevant facts.

[14] A number of states have recently established similar commissions or pilot programs. See http://www.ncsc.org/topics/judicial-officers/judicial-performance-evaluation/state-links.aspx for details.

Table 5: **Summary of Judicial Evaluations Data**

| State | Type | Name of Evaluating Body | Period | Number |
|---|---|---|---|---|
| AK | State | Alaska Judicial Council | 1996-2010 | 152 |
| AZ | State | Arizona Commiss. on Judicial Performance Review | 2000-2010 | 384 |
| CA | Bar | Los Angeles County Bar Association | 1996-2010 | 216 |
| CA | Bar | Orange County Bar Association | 1996-2010 | 56 |
| CA | Bar | San Diego County Bar Association | 1998-2010 | 48 |
| CA | Bar | San Francisco County Bar Association | 2008-2010 | 14 |
| CO | State | Colorado Commiss. on Judicial Performance | 1996-2010 | 371 |
| FL | Bar | Dade County Bar Association | 2001-2010 | 487 |
| IL | Bar | Illinois State Bar Association | 1982-2010 | 4126 |
| IL | Bar | Chicago Bar Association | 1986-2010 | 1342 |
| IL | Bar | Chicago Council of Lawyers | 1986-2010 | 2252 |
| IL | Bar | Cook County Bar Association | 1986-2010 | 1846 |
| IL | Bar | Alliance of Bar Assn for Judicial Screening (Cook) | 2004-2010 | 769 |
| IA | Bar | Iowa State Bar Association | 1990-2008 | 729 |
| KS | State | Kansas Commission on Judicial Performance | 2008-2010 | 127 |
| KY | Bar | Louisville Bar Association | 2003-2010 | 98 |
| MI | Bar | Detroit Metropolitan Bar Association | 1992-2010 | 285 |
| MO | Bar | Missouri Bar Association | 2002-2006 | 156 |
| NE | Bar | Nebraska State Bar Association | 2002-2010 | 694 |
| NM | State | New Mexico Judicial Performance Eval. Commiss. | 2002-2010 | 194 |
| NV | News | Las Vegas Review Journal | 2000-2011 | 408 |
| NY | Bar | New York City Bar Association | 1997-2010 | 322 |
| OH | Bar | Judicial Candidates Rating Coalition (Cleveland) | 2002-2010 | 218 |
| OH | Bar | Columbus Bar Association | 1993-2010 | 625 |
| PA | Bar | Philadelphia Bar Association | 1991-2009 | 502 |
| PA | Bar | Allegheny County Bar Association | 2001-2009 | 168 |
| TX | Bar | Houston Bar Association | 1992-2010 | 1214 |
| TX | Bar | Dallas Bar Association | 1989-2011 | 1681 |
| UT | State | Utah Judicial Council | - | |
| WA | Bar | Seattle-King County Bar Association | 1990-2010 | 260 |
| WY | Bar | Wyoming State Bar Association | 1998-2010 | 87 |

2b. Basing decisions on evidence and arguments.

2c. Willing to reconsider error in fact or law.

2d. Issuing consistent sentences when the circumstances are similar.

3. Communications:

3a. Making sure all participants understand the proceedings.

3b. Providing written communications that are clear, thorough and well reasoned.

4. Demeanor:

4a. Giving proceedings a sense of dignity.

4b. Treating parties with respect.

4c. Conducting his/her courtroom in a neutral manner.

4d. Consistently applying laws and rules.

5. Diligence:

5a. Using good judgment in application of relevant law and rules.

5b. Doing the necessary homework and being prepared for his/her cases.

5c. Being willing to handle cases on the docket even when they are complicated and time consuming.

Although the surveys address the same general performance criteria, the details – the number of items, question wording, response categories, and so on – vary widely across states and bar associations. There is also considerable amount variation in how the surveys and other information are aggregated into summary evaluations. In most cases there is a bottom-line evaluation such as Well Qualified, Qualified, or Unqualified, Highly Recommended, Recommended, or Not Recommended, or (for retention elections) Retain or Do Not Retain. Other categories exist, including Outstanding, Strongly Recommended, Strongly Not Recommended, Adequate, Not Rated, and No Opinion. As a result, comparing across states requires considerable care.

To simplify our analysis we collapse the various categories into a dichotomous variable, which we call *Score*. We set *Score*=1 for all candidates with evaluations of Qualified or better, Recommended or better, or Retain, and *Score*=0 for candidates with evaluations of Not Qualified or worse, Not Recommended or worse, or Do Not Retain.[15]

[15]The Houston Bar Association does not provide a categorical bottom-line evaluation. Instead, for each candidate they report the fraction of respondents who rate the candidate Well Qualified, Qualified, or Not Qualified. We set *Score*=1 if more than half of the respondents gave a candidate a rating of Well Qualified or Qualified, and *Score*=0 otherwise.

State commissions and bar associations claim that one of the main reasons they evaluate judges and judicial candidates is to inform voters. The surveys conducted during the months preceding elections and the evaluations are released within a few weeks of election day. The evaluations also tend to receive a non-trivial amount of newspaper coverage when they are released. As usual, bad news is good news when it comes to generating eye-catching headlines: "Lawyers Rank 9 Judges 'Unqualified'," "Lawyers Rate PA Judge Unfit," "Bar Association Rates Two Judicial Candidates as Unqualified," and "Democrat Gets Negative Rating from Bar in County Court Race" are probably the types of headlines favored by editors. Sometimes, however, good news prevails: "Bar Group Rates Court Candidates – 6 in Appellate Race Given Top Marks."[16]

Although the survey items are not explicitly ideological or partisan, it is possible that the responses and resulting evaluations exhibit an ideological or partisan bias. Many conservative commentators argue that lawyers in general and bar associations in particular are liberal relative to the overall population. Thus, we might worry that evaluations are correlated with judges' ideologies or party affiliations. Even if they are not, voters might believe they are, and use them accordingly.

We check whether the evaluations from bar associations and state commissions appear to signal the ideological positions of candidates rather than quality, but find no consistent evidence for this. First, the correlation between evaluations and party affiliation of judges is small (see appendix Table A.6). Second, the correlation between judicial evaluations and the normal vote across precincts is also small – i.e., it is not that case that judges with higher evaluations receive a larger share of votes in Democratic precincts than in Republican precincts.

# 3 Findings

## 3.1 Partisan Voting in Partisan, Non-Partisan, and Retention Elections

We begin with an analysis of precinct-level data for a few states. For each precinct and year, we construct a "normal vote" measure by averaging the Democratic percentage of the two-party vote across all of the available federal and state partisan elections – president, U.S. senator, U.S. house, governor, state senator, state house representative, and various down-ballot offices such as state

[16] In order, these headlines are from: *Chicago Tribune*, October 12, 1988; *Philadelphia Inquirer*, May 14, 2010; *Ventura County Star*; October 19, 1993; *Syracuse Post-Standard*, October 0, 2009; *Chicago Tribune*, March 2, 1990.

attorney general, secretary of state, and state treasurer. We call this the *Democratic Normal Vote*. We then collect the percentage of the two-party vote won by the Democratic candidate in each of the available contested judicial elections, and call this *Democratic Vote for Judge*. For each judicial election, we then correlate the *Vote for Judge* against the *Democratic Normal Vote*.

Table 6 shows the results. The patterns are clear: Voting is highly partisan in partisan elections, and much less partisan in non-partisan elections and retention elections. For example, in Texas the average correlation between *Democratic Vote for Judge* and *Democratic Normal Vote* is 0.99, and in Pennsylvania the average correlation is 0.91. In North Carolina partisan elections the correlation is 0.93. In North Carolina non-partisan elections, on the other hand, the correlation is only 0.28. In non-partisan elections in Arkansas, California, Idaho, and Washington state the correlations are also small, and these probably overstate the true relationship because we assign partisanship to the judicial candidates to maximize the correlation. In Arizona and Colorado retention elections the correlations are also low.

In Illinois partisan elections the correlation is 0.91, while for Democratic incumbents in retention elections the correlation is just 0.37, and for Republicans incumbents in retention the correlation is 0.28. Note that the correlation is positive for Republican incumbents – i.e., Republican incumbents receive a larger percentage of "yes" votes in Democratic precincts than they do in Republican precincts – which is the opposite of what we expect under partisan voting. Recall that these are the *same* candidates running first in partisan elections and then later in retention elections.[17]

Note that in Ohio, with partisan primaries but no party labels on the ballot, the correlation in trial court races is 0.89.

We have county-level data for many other states. Although these analyses are cruder, they show the same basic patterns. In particular, the correlation between *Democratic Vote for Judge* and *Democratic Normal Vote* is much higher in partisan elections than in non-partisan or retention elections. In retention elections the correlations are also low.

[17] Using county-level data for the whole state, the correlation between *Democratic Vote for Judge* and *Democratic Normal Vote* is 0.71 in the partisan elections. For retention elections, the correlations are much smaller in absolute terms: 0.08 for Democratic judges and -0.29 for Republican judges.

Table 6: **Estimates of Partisan Voting Using Precinct Level Data**

| State | Area | Election Type | Court Type | Party Determination | N | Avg Corr |
|---|---|---|---|---|---|---|
| IL | Cook County | Partisan | trial | on ballot | 8 | 0.91 |
| NC | State | Partisan | trial | on ballot | 49 | 0.93 |
| NC | State | Partisan | appellate | on ballot | 20 | 0.97 |
| PA | Philadelphia County | Partisan | trial | on ballot | 11 | 0.88 |
| PA | Philadelphia County | Partisan | appellate | on ballot | 7 | 0.94 |
| TX | State | Partisan | trial | on ballot | 61 | 0.99 |
| TX | State | Partisan | appellate | on ballot | 32 | 0.99 |
| OH | Hamilton County | Nonpartisan | trial | partisan primary | 16 | 0.89 |
| OH | Hamilton County | Nonpartisan | appellate | partisan primary | 19 | 0.92 |
| AR | State | Nonpartisan | trial | maximum possible | 27 | 0.31 |
| CA | San Diego County | Nonpartisan | trial | maximum possible | 12 | 0.45 |
| ID | State | Nonpartisan | trial | maximum possible | 3 | 0.33 |
| NC | State | Nonpartisan | trial | previous election | 151 | 0.28 |
| NC | State | Nonpartisan | trial | maximum possible | 151 | 0.55 |
| WA | King County | Nonpartisan | trial | maximum possible | 16 | 0.45 |
| AZ | Maricopa County | Retention, D | trial | appointing governor | 74 | 0.17 |
| AZ | Maricopa County | Retention, R | trial | appointing governor | 126 | 0.06 |
| AZ | Maricopa County | Retention, D | trial | registration/groups | 30 | 0.40 |
| AZ | Maricopa County | Retention, R | trial | registration/groups | 16 | 0.02 |
| CA | San Diego County | Retention, D | appellate | appointing governor | 9 | 0.53 |
| CA | San Diego County | Retention, R | appellate | appointing governor | 14 | 0.26 |
| CO | State | Retention, D | appellate | appointing governor | 7 | 0.17 |
| IL | Cook County | Retention, D | trial | 1st election | 110 | 0.37 |
| IL | Cook County | Retention, R | trial | 1st election | 18 | 0.28 |
| IL | Logan County | Retention, R | trial | 1st election | 8 | -0.23 |

## 3.2 Candidate Quality and Voting in Partisan, Non-Partisan, and Retention Elections

Tables 7-15 present results on the relationship between judicial evaluations and election results in the various types of elections. Tables 7 and 8 covers Illinois, which has partisan general elections, primary elections, and retention elections. Tables 9 and 10 cover Texas, which has partisan general elections and primary elections. Tables 11 and 12 cover California and Washington, which have non-partisan elections. Tables 13 and 14 cover Ohio, which has partisan primary elections and non-partisan general elections, and sometimes called "semi-partisan." Table 15 covers several states with retention elections.

Tables 7, 9, and 11 show aggregate summary statistics on win percentages. Each observation is a candidate, and all elections – are included. The cell entries are means, with the associated number of observations in parentheses. These tables show that for all types of elections candidates with *Score*=1 are much more likely to win than candidates with *Score*=0. Overall, candidates who are judged to be Unqualified, Not Recommended, etc. rarely win office. In fact, such candidates constitute only 5.9 percent of the final winners for all of the candidates for which we have evaluations.

Table 7: **Win Percentage by Bar Association Score in Illinois**

| **Election Type** | Score=0 | Score=1 |
|---|---|---|
| Partisan General | 47.5<br>(99) | 76.6<br>(662) |
| Primary | 28.7<br>(331) | 59.1<br>(1099) |
| Retention | 73.2<br>(41) | 99.9<br>(1109) |

Note: All candidates with Bar Association scores are shown.
0=Not Recommended, 1=Recommended.

This appears to be moderately good news for democracy – at a minimum, the electoral process seems to be weeding out most of the least qualified candidates. However, there are a variety of possible reasons for this. One possibility, of course, is that voters learn the candidates' relative

Table 8: **Election Outcomes by Bar Association Score in Illinois**

| | **Win Percentage** | | | | **Vote Percentage** | | | |
|---|---|---|---|---|---|---|---|---|
| | Relative Bar Association Score | | | | Relative Bar Association Score | | | |
| **Election Type** | -1 | 0 | +1 | Diff | -1 | 0 | +1 | Diff |
| Partisan General | 34.3 (35) | 60.0 (130) | 70.6 (34) | 18.2 | 48.5 (35) | 53.2 (129) | 56.4 (34) | 4.0 |
| Primary | 19.4 (36) | 53.0 (66) | 88.2 (34) | 34.4 | 39.7 (36) | 50.5 (65) | 58.9 (34) | 9.6 |
| Retention | – | 73.2 (41) | 99.9 (1109) | 26.7 | – | 66.1 (41) | 77.5 (1109) | 11.4 |

Note: In the Partisan General and Primary panels, the Bar Association scores are as follows: -1 = candidate is Not Recommended and opponent is Recommended, 0 = both candidates are Recommended or both are Not Recommended, +1 = candidate is Recommended but opponent is Not Recommended. The Difference column shows $[\overline{V}(+1)-\overline{V}(-1)]/2$. Only contested races where the top two candidates received over 90% of the vote are included.

In the Retention panels, the Bar Association scores are as follows: 0 = incumbent is Not Recommended, +1 = incumbent is Recommended. The Difference column shows $[\overline{V}(+1)-\overline{V}(0)]$.

evaluations and vote accordingly. But it would not be surprising if other factors played an even more important role, including strategic entry (low-quality candidates are opposed more often), incumbency advantage (incumbents tend to receive higher evaluations but they might also enjoy other electoral advantages as incumbents), campaigning and media coverage (high-quality candidates might raise more money and receive favorable coverage as well as endorsements), and so on.

Tables 8, 10, and 12 carry the analysis a bit further. In these tables we restrict attention to contested races in which the top two candidates received more than 90% of the vote. [18] We then make one observation for each race. For partisan general elections the results are presented from the point of view of the Democratic candidate. For primary elections and non-partisan elections the results are presented from the point of view of the candidate whose name is first in alphabetic order. We call this candidate the "Alpha candidate." The cell entries are again means, with the associated number of observations in parentheses.

These tables show a clear pattern. In the Partisan General elections in Illinois and Texas (row

[18] Also, in the case of partisan general elections there must be one candidate from each of the major parties.

Table 9: **Win Percentage by Bar Association Score in Texas**

| **Election Type** | Score=0 | Score=1 |
|---|---|---|
| Partisan General | 32.5<br>(77) | 56.6<br>(396) |
| Primary | 43.4<br>(196) | 75.3<br>(519) |

Note: All candidates with Bar Association scores are shown.
0=Not Recommended, 1=Recommended.

Table 10: **Election Outcomes by Bar Association Score in Texas**

| | **Win Percentage** | | | | **Vote Percentage** | | | |
|---|---|---|---|---|---|---|---|---|
| | Relative Bar Association Score | | | | Relative Bar Association Score | | | |
| **Election Type** | -1 | 0 | +1 | Diff | -1 | 0 | +1 | Diff |
| Partisan General | 9.8<br>(51) | 17.3<br>(150) | 21.7<br>(23) | 6.0 | 44.8<br>(51) | 45.8<br>(150) | 47.6<br>(23) | 1.4 |
| Primary | 27.3<br>(22) | 44.2<br>(43) | 82.9<br>(35) | 27.8 | 42.2<br>(22) | 49.5<br>(43) | 61.0<br>(35) | 9.4 |

Note: The Bar Association scores are as follows: -1 = candidate is Not Recommended and opponent is Recommended, 0 = both candidates are Recommended or both are Not Recommended, +1 = candidate is Recommended but opponent is Not Recommended. The Difference column shows $[\overline{V}(+1) - \overline{V}(-1)]/2$. Only contested races where the top two candidates received over 90% of the vote are included.

1 of Table 8 and Table 10), the Democratic candidate is more likely to win if he or she has a higher evaluation than the Republican candidate, and he or she also receives a larger share of the votes. However, the differences are not huge. For example, moving from the average case where the candidates have the same evaluation – so the net difference in *Score* is 0 – to the average case where the Democrat has a higher evaluation – so the net difference in *Score* is +1 – the Democratic candidate's probability of winning increases by 10.6 percentage points in Illinois and 4.4 percentage points in Texas. The Democratic candidate's vote percentage increases by 3.2 percentage points in Illinois and 1.8 percentage points in Texas.

By comparison, the differences are much larger in the two-candidate primary elections. Moving from the average case with a net difference in *Score* of 0 to the average case where the Alpha

Table 11: **Win Percentage by Bar Association Score in California and Washington**

| **Election Type** | Score=0 | Score=1 |
|---|---|---|
| General | 19.0<br>(21) | 66.9<br>(121) |
| Primary | 24.8<br>(101) | 57.6<br>(302) |
| Total | 23.8<br>(122) | 60.3<br>(423) |

Note: All candidates with Bar Association scores are shown.
0=Not Recommended, 1=Recommended.

Table 12: **Election Outcomes by Bar Association Score in California and Washington**

| | **Win Percentage** | | | | **Vote Percentage** | | | |
|---|---|---|---|---|---|---|---|---|
| | Relative Bar Association Score | | | | Relative Bar Association Score | | | |
| **Election Type** | -1 | 0 | +1 | Diff | -1 | 0 | +1 | Diff |
| All | 7.1<br>(28) | 44.9<br>(69) | 81.8<br>(22) | 37.3 | 39.0<br>(27) | 48.8<br>(68) | 62.5<br>(22) | 11.7 |

Note: The Relative Bar Association scores are as follows: -1 = candidate is Not Recommended and opponent is Recommended, 0 = both candidates are Recommended or both are Not Recommended, +1 = candidate is Recommended but opponent is Not Recommended. The Difference column shows $[\overline{V}(+1) - \overline{V}(-1)]/2$. Only contested races where the top two candidates received over 90% of the vote are included.

candidate has a higher evaluation – so the net difference in *Score* is +1 – the Alpha candidate's probably of winning increases by 35.2 percentage points in Illinois and 38.7 percentage points in Texas. The Alpha candidate's vote percentage increases by 8.4 percentage points in Illinois and 11.5 percentage points in Texas.

The differences are similarly large in the non-partisan elections (primary or general) in California and Washington. Moving from the average case with a net difference in *Score* of 0 to the average case where the Alpha candidate has a higher evaluation – so the net difference in *Score* is +1 – the Alpha candidate's probably of winning increases by 36.9 percentage points, and the Alpha candidate's vote percentage increases by 13.7 percentage points.

In Ohio we know each candidate's party since they run in partisan primaries, but party is not printed on the general election ballots. The general election results in Table 14 are much closer to those for the "pure" non-partisan cases of California and Washington than the partisan cases of Illinois and Texas, especially in terms of the probability of winning.[19]

Table 13: **Win Percentage by Bar Assoc Score in Ohio**

| **Election Type** | Score=0 | Score=1 |
|---|---|---|
| Non-Partisan General | 28.6<br>(28) | 73.6<br>(159) |
| Primary | 81.2<br>(16) | 89.4<br>(104) |

Note: All candidates with Bar Association scores are shown.
0=Not Recommended, 1=Recommended.

Table 14: **Election Outcomes by Bar Association Score in Ohio**

| | **Win Percentage** | | | | **Vote Percentage** | | | |
|---|---|---|---|---|---|---|---|---|
| | Relative Bar Association Score | | | | Relative Bar Association Score | | | |
| **Election Type** | -1 | 0 | +1 | Diff | -1 | 0 | +1 | Diff |
| Non-Partisan General | 12.5<br>( 8) | 67.6<br>(34) | 83.3<br>(12) | 35.4 | 44.4<br>( 8) | 54.4<br>(34) | 59.7<br>(12) | 7.6 |

Note: The Bar Association scores are as follows: -1 = candidate is Not Recommended and opponent is Recommended, 0 = both candidates are Recommended or both are Not Recommended, +1 = candidate is Recommended but opponent is Not Recommended. The Difference column shows $[\overline{V}(+1) - \overline{V}(-1)]/2$. Only contested races where the top two candidates received over 90% of the vote are included.

In terms of vote percentage, the effects are similarly large in retention elections. On average, incumbent judges in Illinois with *Score* = 1 receive a vote percentage that is 11.4 percentage points higher than incumbent judges with *Score* = 0. Table 15 shows results for retention elections in states with commissions. Again, there are large differences in vote percentage between judges with *Score* = 1 and those with *Score* = 0. The results for winning percentage are more mixed. In Illinois, the difference is larger than for partisan elections but smaller than for primaries. However,

[19]The vast majority of primaries are uncontested, so we cannot conduct a separate analysis of contested primaries. This is also reflected in Table 13, which shows that over 80% of primary candidates win, almost regardless of their evaluations.

for the states with commissions the differences can be quite large. While very few judges receive a Do Not Retain recommendation, those who do are more likely to lose than win.

Note that we have ignored incumbency. That is, the findings in Tables 8, 10 and 12 combine the effects of *Score* with the effects of incumbency. However, although *Score* and incumbency are positively correlated, when we control for incumbency the large differences between the partisan and non-partisan cases are essentially unchanged. This is in part due to the fact that the incumbency advantage in trial court elections, while positive, does not appear to be very large.[20] The results for Illinois are indicative, since in these cases incumbency is held fixed – all retention elections involve incumbents, and all of the partisan primary and general elections are to fill vacancies.

Other cases exhibit similar patterns. New York has partisan general elections for judges, and nominations are made by party conventions. In New York City between 1999 and 2010, there were 160 Democratic candidates and 56 Republicans with New York City Bar Association (NYCBA) evaluations.[21] Among the Democratic candidates, 150 were Approved by the NYCBA (*Score*=1), 9 were Not Approved (*Score*=0), and 1 was Not Evaluated (dropped). All of the Democrats won election. Most likely, this is because judicial elections in New York are partisan and voters in New York City overwhelmingly identify with the Democratic party. New York has multi-seat races, so we can run regressions with race-specific fixed effects and thus compare candidates with different evaluations running at the same time for the same offices. After controlling for party affiliation (and race-specific fixed effects), the NYCBA evaluations appear to have essentially no effect on voting. The estimated coefficient on *Score* is 0.81 with a standard error of 1.02, implying that an Approved evaluation increases a candidate's expected vote share by less than 1 percentage point.[22] Since the typical Democrat won with a margin of about 15.5 percentage points, it is unlikely that the evaluations affect who wins and who loses.

The situation is similar in Pennsylvania, which also has partisan general elections, as well as partisan primaries. We have evaluations for 88 Democratic candidates and 24 Republicans who

[20] This is conditional on having two candidates in the race. A large proportion of incumbents are not opposed either in the primary or the general election.

[21] Because candidates in New York may be nominated by more than one party, 91 of the Democrats were also nominated by the Republican party.

[22] The number of votes available per voter varies across races, depending on how many positions are filled. We therefore also analyzed "normalize" vote-shares, where the vote-shares are multiplied by the number of votes per voter. The results are qualitatively similar to those for the raw vote-shares. In particular, the estimated coefficient on *Score* is not statistically significant or substantively large.

ran in a general election (not for retention) in Philadelphia or Allegheny counties – about half from the Philadelphia Bar Association and half from the Allegheny County Bar Association.[23] Among the Democratic candidates, 73 were Recommended and 15 were Not Recommended or Unqualified. All but one of the Democrats won election. Again, this outcome is likely due to the fact that Pennsylvania has partisan judicial elections, and Philadelphia and Pittsburgh are both heavily Democratic cities. Pennsylvania has multi-seat races, so we can run regressions with race-specific fixed effects and thus compare candidates with different evaluations running at the same time for the same offices. After controlling for party affiliation (and race-specific fixed effects), the bar evaluations appear to have essentially no effect on voting. The estimated coefficient on *Score* is -0.39 with a standard error of 0.56, implying that a Recommended evaluation decreases a candidate's expected vote share by less than one-have of one percentage point.[24] Thus, it is again unlikely that the evaluations ever affect who wins.

Fortunately, most of the lower-quality candidates in Philadelphia and Allegheny counties are eliminated in the primary elections – or at least in the Democratic primary, which is what matters. There were 53 candidates with *Score* = 0 running in Democratic primaries in our sample (we do not yet have primary election information for all years). Of these, only 11, or 20.8%, won a Democratic nomination and went on to the general election.

## 3.3 Partisanship and Sentencing

Next, we ask whether there are any clear partisan differences in the sentencing decisions of Democratic and Republican judges. This would provide a clear rationale for the partisan patterns exhibited in the voting data. In fact, however, we find few systematic differences in sentencing that are correlated with partisanship.

We employ criminal sentencing decisions from the National Judicial Reporting Program (NJRP). This database only reports information about the judicial district where each case was heard, not the individual judge hearing the case. However, for a large number of districts we can construct a mea-

[23] As in New York, candidates in Pennsylvania may be nominated by more than one party, so 62 of the Democrats were also nominated by the Republican party.

[24] As in New York, the number of votes available per voter varies across races, depending on how many positions are filled. We therefore also analyzed "normalize" vote-shares. Again, the results are qualitatively similar to those for the raw vote-shares.

Table 15: **Other States, Retention Elections**

| **Election Outcomes by State Commission Score** | | | | | | |
|---|---|---|---|---|---|---|
| | **Win Percentage** | | | **Vote Percentage** | | |
| | Relative Score | | | Relative Score | | |
| State | 0 | +1 | Diff | 0 | +1 | Diff |
| Arizona | 100.0 (3) | 100.0 (370) | 0.0 | 57.8 (3) | 73.1 (370) | 15.3 |
| Colorado | 33.3 (3) | 99.2 (367) | 65.9 | 51.0 (3) | 71.3 (367) | 20.3 |
| New Mexico | 33.3 (6) | 100.0 (180) | 66.7 | 46.4 (6) | 76.7 (180) | 31.5 |

Note: The scores are as follows: 0 = incumbent is Not Recommended, +1 = incumbent is Recommended. The Difference column shows $[\overline{V}(+1) - \overline{V}(0)]$.

sure of the overall partisan composition – the fraction of judges in the district who are Democrats – in each year. We can then investigate whether the sentences tend to be relatively harsher in districts with a smaller or larger fraction of Democratic judges.

Table 16 shows the results for Illinois, Texas and Ohio – these are the states for which we can measure the partisan composition of the district for a large number of cases. We use the NJRP data for the period of 1990-2006. The NJRP data contains detailed case-level information such as the nature and number of convictions, offense category, sentence length, and penal code citation. We analyze the relationship between the county-level share of Democratic judges and sentencing harshness for four different offense categories: violent crimes, property crimes, drug crimes, and other crimes. To minimize measurement error in sentencing harshness caused by heterogeneity of cases, we compare criminal cases only with other cases in the same year and with the same penal code citation. In order to classify cases, we generate penal code variable that takes the same value for all crimes in each year that has the same penal code citation for the 1st, 2nd, and 3rd most serious offenses. Then, for each category, we collect minimum and maximum sentence given for that penal code. The dependent variable we use, normalized harshness of sentencing is defined as

follows:

$$Relative\ Harshness = \frac{Sentence - min}{max - min}.$$

The independent variable of interest is *Share of Democratic Judges*. A positive coefficient on this variable implies that Democratic judges cast harsher sentences than Republican judges, and a negative coefficient implies the opposite.

Table 16: **Partisanship and Sentencing**

| Dependent Variable: **Relative Harshness of Sentence** Independent Variable: **Share of Democratic Judges** | | | | |
|---|---|---|---|---|
| Offense Category | Parameter Estimate | Std Error | $N$ | $R^2$ |
| **Illinois** | | | | |
| Violent | 0.041 | 0.043 | 16900 | 0.28 |
| Property | 0.002 | 0.016 | 31093 | 0.35 |
| Drug | 0.003 | 0.021 | 77094 | 0.42 |
| Other | -0.034 | 0.036 | 29817 | 0.31 |
| **Texas** | | | | |
| Violent | .023 | .096 | 24207 | 0.33 |
| Property | -.143$^{*}$ | .073 | 37927 | 0.40 |
| Drug | -.122$^{***}$ | .044 | 51268 | 0.44 |
| Other | -.009 | .079 | 22510 | 0.44 |
| **Ohio** | | | | |
| Violent | -0.190 | 0.358 | 1026 | 0.27 |
| Property | 0.070 | 0.368 | 1280 | 0.24 |
| Drug | 0.594$^{***}$ | 0.188 | 1399 | 0.25 |
| Other | -0.467 | 0.389 | 983 | 0.23 |

Note: Coefficient estimates are from four separate regressions. Control variables are: demographic composition of the population (race, gender, ethnicity, age), income, education, and crime rates. $^{*}$ and $^{***}$ mean the coefficient estimate being statistically significant at 10% and 1%-levels, respectively.

The result of the regressions show a mixed pattern. First, half of the point estimates are positive and half are negative. In Illinois the point estimates are all tiny, and none approaches statistical significance. Three coefficients are statistically significant at least at the .10 level. These three

suggest that Democratic judges are more lenient than Republican judges in drug cases and property cases in Texas, but more harsh in drug cases in Ohio.

Violent crimes constitute most of the "high-profile" cases that draw the attention of the public, so this category is probably the most important from the point of view of voting. For these cases there is essentially no difference between Democratic and Republican judges in Illinois and Texas. In Ohio the coefficient is negative but statistically insignificant.

Overall, the results suggest that the partisan voting behavior documented above cannot be attributed to voters responding to large and systematic partisan differences in the actual pattern of sentencing decisions.

## 3.4 Turnout

In this subsection, we document the variation in voter turnout across election systems. Specifically, we focus on the *relative* turnout, which is defined as follows: *Relative turnout* = number of votes cast on judicial elections/maximum number of votes cast on major elections (presidential, gubernatorial, U.S. house and U.S. Senate) on the same ballot.

The *relative* turnout, as opposed to the absolute turnout (the number of voters who cast a vote as a proportion of eligible voters), helps us to make an inference about the amount of information that voters have about judicial elections, for the following reason. A typical voter decides whether to go to the voting booth or not, by comparing the cost of voting and the benefit from voting on their preferred candidates in *major elections*.[25] Once a voter goes to the voting booth to vote in major elections, the additional cost of voting on other offices is negligible. Hence, the decision to vote in down-ballot elections, such judicial elections, on the same ballot is determined by how confident a voter is about his vote in those elections.[26] Therefore, focusing on the relative turnout allows us to focus on the *information*, as opposed to the cost of going to the voting booth, in the decision to vote in judicial elections.

The statistics on turnout, documented in Table 17, show a substantial difference between par-

[25]The benefit from voting can be non-negligible if voters take into account the welfare of a large group of citizens who share his political preference, as in the model by Coate and Conlin (2004).

[26]In the literature on voter turnout, scholars often argue that voters abstain from low-level elections, such as state court elections, primarily because they do not have information about candidates (e.g., Feddersen and Pesendorfer (1996)).

Table 17: Relative Turnout Rate by Types of Elections

| **average turnout rate (relative to the top of the ticket)** | |
|---|---|
| partisan contested (race has both Dem and Repub) | 93.9% |
| partisan uncontested (race is missing Dem or Repub) | 65.8% |
| nonpartisan, held in November | 70.1% |
| nonpartisan, not held in November (WI only) | 37.5% |
| retention | 71.8 % |

tisan and non-partisan elections in the turnout rate. It shows that there is very little roll-off, i.e., abstention in judicial elections by voters who voted in major elections, in contested partisan elections. 93.9% of the voters who vote in major elections also vote in judicial elections, if the judicial election is contested and partisan. On the other hand, only 70.1% of the voters who vote in major elections also vote in non-partisan judicial elections. This difference between partisan elections and non-partisan elections shows that the information about party affiliation of judges on the ballot is a key factor in the decision to vote in judicial elections. Table 17 also shows that there is very little difference in the relative turnout between non-partisan elections and retention elections. In retention elections, 71.8 percent of voters who vote on major elections also vote on judicial elections, which is similar to the case of non-partisan elections.

In summary, the substantial difference between partisan and non-partisan elections and the lack of difference between non-partisan and retention elections imply that information about party affiliation substantially affects the decision to vote, while competition by itself does not. This conclusion leads us to the following question: *Does the information about party affiliation on the ballot reduce voters' sensitivity to alternative sources of information about candidates?* We investigate this issue by estimating the influence of the amount of press coverage about judges on the turnout rates.

In analyzing the influence of the amount of press coverage on turnout, there is an obvious concern for endogeneity. A controversial court decision made by a judge can cause a large amount of press coverage and simultaneously increase voters' interest in that judge, and subsequently increase the level of turnout. Therefore, a regression of the turnout on the amount of press coverage may capture spurious correlations. To address this concern, we use the degree of match ("*congruence*") between judicial districts and the circulation of newspapers to proxy for the amount of

newspaper coverage about judges. (See Lim et al. (2010) for details of this approach, and Snyder and Strömberg (2010) for the usage of this approach for media influence on congressmen.)

The basic premise in this approach is that newspapers cover more stories about districts in which they have a large share of readers, which is empirically verified in Lim et al. (2010). Precisely, to construct the definition of *congruence*, we consider a simple positive relationship between the number of articles, $q_{md}$, that a newspaper $m$ writes about a judge in judicial district $d$ and the share of newspapers' readers that live in judicial district $d$, $ReaderShare_{md}$, that is,

$$q_{md} = \alpha_0 + \alpha_1 \times ReaderShare_{md}, \text{ where } \alpha_1 > 0.$$

Typically, multiple newspapers circulate in a judicial district. Hence, we aggregate over multiple newspapers sold in a judicial district. Congruence of judicial district $d$ is the average $ReaderShare_{md}$ weighted by the market share of each newspaper:

$$Congruence_d = \sum_{m=1}^{M} MarketShare_{md} \times ReaderShare_{md}$$

where $MarketShare_{md}$ is newspaper $m$'s market share in judicial district $d$.

Figure 1: Example - High Congruence and Low Congruence

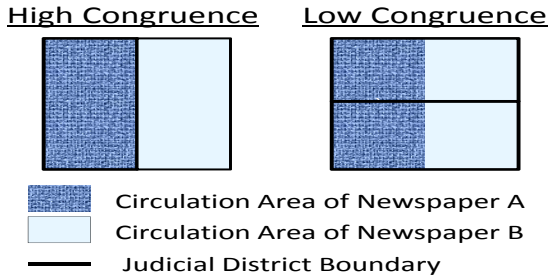


Figure 1 illustrates a case of high congruence and a case of low congruence. The left panel of the figure shows an example of perfect congruence between judicial districts and circulation areas of newspapers (a case of *congruence* equal to 1). In such a situation, events that take place in a judicial district are relevant to all the readers of the newspaper sold in that judicial district. Hence, newspapers cover a lot of stories about the court in that judicial district. In contrast, the right panel shows an example of poor congruence (a case of *congruence* equal to 1/2). In such a situation, events that take place in a judicial district are relevant only to half of the readers of the newspapers

sold in that judicial district. Hence, newspapers have a weaker incentive to cover stories about the court in that judicial district.

Our data on press coverage of state court judges, which is from Lim et al. (2010), contains 1193 judicial districts from more than 40 states. The congruence measure has mean .35, median .37, and standard deviation .31. In Lim et al. (2010), they collected a data set on the actual amount of press coverage about state court judges for 2004-2005, counting the number of newspaper articles that mention state court judges' name, using 1,400 newspapers in NewsLibrary.com and a list of 11,000 state court judges for 2004-2005. There are on average 81 newspaper articles per year, newspaper, and judicial district. They verify that there is indeed a statistically significant and substantial effect of *congruence* on the amount of coverage. Specifically, increasing *congruence* from 0 to 1 increases the amount of press coverage by 21 articles, which is robust to the inclusion of a large set of demographic characteristics in the regression.

To measure the influence of voter information from press coverage on turnout, we estimate the regression equation of the following form:

$$y_{it} = \beta_0 + \beta_1 * congruence_{it} + \beta_2 x_{it} + \beta_3 \gamma_{it} + \varepsilon_{it}, \tag{1}$$

in which $y_{it}$ is the level of relative turnout, $x_{it}$ is a set of variables on the number of candidates, $\gamma_{it}$ is a set of demographic variables, and $\varepsilon_{it}$ is a random disturbance. Table 18 shows the results of the regression of relative turnout rate on *congruence* and the number of candidates in elections. The result shows that there is no effect of *congruence* (the amount of press coverage coverage) on the relative turnout rate in partisan elections and retention elections. On the other hand, in non-partisan elections, there is a statistically significant positive effect of *congruence* on the relative turnout rate.

This result is consistent with the implication of the partisan voting behavior documented in Section 3.1. If voters base their votes primarily on party affiliation, turnout rate can be high even when voters have almost no knowledge of judicial candidates' quality or court decisions. Furthermore, since the party affiliation on the ballot is sufficient information for the voters, the marginal effect of other information conveyed through media would not influence the decision to vote. On the other hand, in non-partisan elections, the shortage of voter information about judicial candidates leads to a low turnout rate. However, since party affiliation is not on the ballot (or judicial

Table 18: Voter Turnout and Congruence

| | Partisan | Non-partisan | Retention |
|---|---|---|---|
| Congruence | 0.0065 | 0.0444*** | 0.0171* |
| | (0.0149) | (0.0131) | (0.0106) |
| NN1 | -0.0657 | -0.3212*** | |
| | (0.1953) | (0.0384) | |
| NN2 | 0.1739 | -0.1369*** | |
| | (0.1946) | (0.0401) | |
| NN3 | -0.1230 | -0.1189*** | |
| | (0.2205) | (0.0422) | |
| NN4 | -0.0108 | -0.0842 | |
| | (0.2021) | (0.0689) | |
| $R^2$ | 0.61 | 0.72 | 0.77 |
| $N$ | 1695 | 2278 | 1893 |
| State fixed effects included. | | | |

Note: NN1, NN2, NN3, NN4 are dummy variables for elections with one, two, three, and four candidates, respectively. (NN5 is the omitted category.) Std. Errors are clustered at state-year level. Control variables included are: demographic composition of the population (race, gender, ethnicity, age), income, education, and crime rates.

candidates do not have party affiliation), voters will rely on other sources of information, which leads to positive marginal effect of media coverage on relative turnout. Lastly, in retention elections, incumbents judges almost never fail. Due to the absence of challengers and the feature that the governor (or the state legislature) selects a new judge when a vacancy is created, even a small degree of risk-aversion leads to yes-vote by voters. Therefore, the benefit from acquiring information about judicial candidates, on the voters' point of view, is negligible. Moreover, the information about judicial candidates generated by media coverage may not be disseminated effectively, due to the absence of challengers, which further reduces the influence of press coverage.

# 4 Conclusions

Partisan elections may be a good idea for some types of public offices, especially those for offices with a large policy-making component. Intense partisanship may come at a cost, however. In particular, if voters make their decisions mainly on the basis of party – or ideology, or ethnicity, race, or religion – then they might elect low-quality officials with the "right" party or ideology over high-quality politicians with the "wrong" party or ideology.

Trial court judges probably do *not* have a large policy-making role, and it is not clear that party

considerations should loom large. Evidently, however, when party labels are on the ballot voters rely heavily on these labels when voting. This cannot be explained by clear partisan differences in sentencing. More likely, it is due to the fact that the partisan cue is so easy to use.

More importantly, we find evidence that the relative quality of candidates has less effect on voting outcomes in partisan elections than in non-partisan elections. This suggests one possible cost to using partisan elections, and also suggests that partisan elections might be a bad idea for electing trial court judges.

Our findings on turnout rates are also consistent with the results on partisan voting behavior and the influence of candidate quality on voting. In partisan elections, most of voters who vote in major elections also vote in judicial elections, for which they may not have detailed information about candidates. In non-partisan and retention elections, a substantial proportion of voters abstain, indicating that only those who have information other than party affiliation vote in judicial elections. In nonpartisan elections, alternative sources of information other than party affiliation on the ballot seem to matter in the decision to vote

Finally, our study can be extended to analyze the following issues: (1) It is probably not a good idea to hold non-partisan primaries at the same time as regular partisan primaries, because the electorate is often highly skewed, depending on which party has highly contested primaries at the top of the ticket. How much of a problem is this in practice? (2) How does candidate quality interact with factors such as race and gender, and how does this differ across electoral systems? (3) Is "voter confusion" a factor when there are many candidates on the ballot, leading to a higher probability that lower-quality candidates win?[27]

[27]Here is a typical argument. It was made in the context of a primary election in Pennsylvania in which 27 candidates competed in at-large primary elections for 7 positions, 19 of whom ran in both parties' primaries. "With so many candidates, critics say, voters have little chance of making an informed decision... 'It's a crap shoot,' said Lynn A Marks, executive director of Pennsylvanians for Modern Courts, a statewide court-reform advocate. 'Too often, people vote for candidates not based on qualifications, but because of name recognition or ballot position or an ethnic name they relate to.' (From: "Judge Hopefuls Campaign on Name," by Andrew Conte, *Pittsburgh Tribune-Review*, Saturday, April 16, 2005).

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**Table A.1: Competition in Partisan Elections by State – Primary Elections**

| State | Seats up for Election | Number of Races | | | | | Number of Candidates in Contested Elections | | Winner's Vote Share in Contested Elections | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Total | Democrat | | Republican | | | | | |
| | | | UnCon-tested | Con-tested | Uncon-tested | Con-tested | Mean | Std Dev | Mean | Std Dev |
| AL | 577 | 198 | 59 | 56 | 32 | 51 | 2.3 | 0.5 | 0.591 | 0.091 |
| AR | 52 | 28 | 9 | 13 | 3 | 2 | 2.1 | 0.3 | 0.625 | 0.090 |
| AZ | 49 | 58 | 28 | 6 | 22 | 2 | 2.4 | 0.7 | 0.593 | 0.190 |
| IL | 764 | 1053 | 223 | 358 | 259 | 210 | 3.6 | 2.0 | 0.432 | 0.163 |
| IN | 407 | 491 | 150 | 38 | 240 | 63 | 2.4 | 0.7 | 0.553 | 0.101 |
| KS | 526 | 562 | 241 | 31 | 240 | 50 | 2.3 | 0.8 | 0.544 | 0.110 |
| MD | 104 | 206 | 36 | 67 | 37 | 66 | 2.6 | 1.2 | 0.638 | 0.141 |
| MO | 176 | 196 | 86 | 18 | 69 | 22 | 2.4 | 0.7 | 0.553 | 0.110 |
| MS | 12 | 11 | 5 | 5 | 0 | 1 | 2.0 | 0.0 | 0.637 | 0.107 |
| NC | 22 | 10 | 0 | 6 | 0 | 4 | 2.0 | 0.0 | 0.603 | 0.081 |
| NM | 104 | 49 | 20 | 13 | 13 | 3 | 2.4 | 0.8 | 0.546 | 0.091 |
| NY | 201 | – | – | – | – | – | – | – | – | |
| OH | 1300 | 1799 | 643 | 157 | 875 | 123 | 2.6 | 1.2 | 0.538 | 0.135 |
| PA | 51 | 100 | 4 | 47 | 5 | 44 | 3.0 | 1.2 | 0.521 | 0.133 |
| TN | | | | | | | | | | |
| TX | 2370 | 2913 | 1104 | 271 | 1239 | 299 | 2.4 | 0.8 | 0.565 | 0.110 |
| Total | 6888 | 7674 | 2608 | 1086 | 3034 | 940 | 2.8 | 1.4 | 0.520 | 0.146 |

Note: For the number of candidates and winners' vote share, we report only the statistics of the elections with single winners, because statistics of the elections in multi-winner elections are not comparable to those of single-winner elections. Arkansas used partisan elections until 1998, then switched to non-partisan elections. In Arizona, counties with populations of 250,000 or greater select state trial court judges through gubernatorial appointment and retention election, and all other counties use non-partisan elections. Indiana uses partisan elections with the following exceptions: Circuit Courts and Superior Courts in Vanderburg County and Superior Court in Allen County use non-partisan elections; and, Superior Courts in Lake and St. Joseph Counties use gubernatorial appointment and retention elections. In Kansas, 14 judicial districts use partisan elections, and the other 17 districts use gubernatorial appointment and retention elections. In Missouri, Jackson, Clay, Platte, and St. Louis counties use gubernatorial appointment and retention elections for state trial court judges, and all other use partisan elections. Gubernatorial appointment with retention elections are used for appellate and supreme courts. Mississippi used partisan elections until 1992. North Carolina used partisan elections for superior courts until 1998, and for appellate and supreme courts until 2002. New York uses party conventions rather than primaries to make judicial nominations. We do not yet have data on primary elections in Tennessee.

| Table A.2: Competition in Partisan Elections by State – General Elections | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| State | Seats up for Election | Total Number of Races | No. of Uncon-tested Races | No. of Con-tested Races | Number of Candidates in Contested Elections | | Winner's Vote Share in Contested Elections | |
| | | | | | Mean | Std Dev | Mean | Std Dev |
| AL | 577 | 573 | 422 | 151 | 2.0 | 0.0 | 0.553 | 0.067 |
| AR | 52 | 32 | 17 | 15 | 2.0 | 0.0 | 0.602 | 0.074 |
| AZ | 49 | | | | | | | |
| IL | 764 | 753 | 464 | 289 | 2.0 | 0.1 | 0.592 | 0.072 |
| IN | 407 | 404 | 304 | 100 | 2.0 | 0.1 | 0.574 | 0.063 |
| KS | 526 | 522 | 449 | 73 | 2.0 | 0.0 | 0.563 | 0.056 |
| MO | 176 | 174 | 135 | 39 | 2.0 | 0.2 | 0.576 | 0.088 |
| MS | 12 | 11 | 8 | 3 | 2.0 | 0.0 | 0.613 | 0.078 |
| NC | 22 | 22 | 2 | 20 | 2.0 | 0.0 | 0.518 | 0.022 |
| NM | 104 | 104 | 51 | 53 | 2.0 | 0.2 | 0.556 | 0.045 |
| NY | 201 | 201 | 16 | 185 | 2.1 | 0.3 | 0.588 | 0.088 |
| PA | 51 | 51 | 20 | 31 | 2.0 | 0.0 | 0.542 | 0.032 |
| TN | 173 | 173 | 132 | 41 | 2.0 | 0.2 | 0.578 | 0.134 |
| TX | 2370 | 2332 | 1674 | 658 | 2.0 | 0.2 | 0.565 | 0.068 |
| Total | 6888 | 5372 | 3709 | 1663 | 2.0 | 0.2 | 0.570 | 0.071 |

Note: For number of candidates and winners' vote share in contested elections, we report only the statistics of the elections in single-member districts, because statistics of the elections in multi-member districts are not comparable to those of single-member districts.

| Table A.3: Competition in Non-Partisan Elections by State – First Round | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | | No. of Candidates in Contested Elections | | Top Vote-getter's Vote Share in Contested Elections | |
| State | Total Number of Races | No. of Uncontested Races | No. of Contested Races | Mean | Std Dev | Mean | Std Dev |
| AR | 109 | 41 | 68 | 2.3 | 0.7 | 0.568 | 0.092 |
| AZ | 53 | 44 | 9 | 2.8 | 1.6 | 0.554 | 0.100 |
| CA | 358 | 50 | 308 | 2.8 | 1.3 | 0.583 | 0.140 |
| FL | 1689 | 1505 | 184 | 3.2 | 0.9 | 0.461 | 0.112 |
| GA | 804 | 660 | 144 | 2.6 | 1.2 | 0.587 | 0.122 |
| ID | 182 | 164 | 18 | 2.3 | 0.5 | 0.579 | 0.081 |
| IN | 27 | 23 | 4 | 2.8 | 0.8 | 0.526 | 0.110 |
| KY | 361 | 232 | 129 | 2.4 | 0.9 | 0.559 | 0.096 |
| LA | 795 | 559 | 236 | 2.8 | 1.1 | 0.549 | 0.113 |
| MD | 82 | 78 | 4 | 2.0 | 0.0 | 0.615 | 0.052 |
| MI | 504 | 348 | 155 | 3.3 | 1.7 | 0.529 | 0.122 |
| MN | 504 | 443 | 61 | 3.0 | 3.1 | 0.596 | 0.146 |
| MS | 111 | 58 | 53 | 2.4 | 0.8 | 0.565 | 0.098 |
| MT | 154 | 128 | 26 | 2.9 | 1.3 | 0.545 | 0.116 |
| NC | 166 | 99 | 67 | 2.7 | 1.2 | 0.537 | 0.128 |
| ND | 167 | 145 | 22 | 2.7 | 1.2 | 0.554 | 0.144 |
| NV | 151 | 71 | 80 | 3.1 | 1.4 | 0.541 | 0.134 |
| OK | 544 | 348 | 196 | 2.5 | 0.9 | 0.571 | 0.106 |
| OR | 702 | 601 | 101 | 2.9 | 1.3 | 0.547 | 0.129 |
| SD | 83 | 59 | 24 | 2.4 | 0.8 | 0.569 | 0.126 |
| WA | 467 | 328 | 139 | 2.6 | 1.1 | 0.560 | 0.115 |
| WI | 1033 | 801 | 232 | 2.7 | 1.2 | 0.579 | 0.124 |
| Total | 10189 | 7427 | 2757 | 2.6 | 1.0 | 0.562 | 0.107 |

Note: For number of candidates and winners' vote share in contested elections, we report only the statistics of the elections in single-member districts, because statistics of the elections in multi-member districts are not comparable to those of single-member districts.

**Table A.4: Competition in Non-Partisan Elections by State – Second Round**

| State | Total Number of Races | No. of Uncon-tested Races | No. of Con-tested Races | No. of Candidates in Contested Elections | | Winner's Vote Share in Contested Elections | |
|---|---|---|---|---|---|---|---|
| | | | | Mean | Std Dev | Mean | Std Dev |
| AR | 9 | 0 | 9 | 2.0 | 0.0 | 0.564 | 0.039 |
| AZ | 3 | 3 | 0 | | | | |
| CA | 105 | 0 | 105 | 2.0 | 0.0 | 0.563 | 0.052 |
| FL | 125 | 0 | 125 | 2.0 | 0.0 | 0.557 | 0.046 |
| GA | 345 | 309 | 36 | 2.0 | 0.2 | 0.577 | 0.065 |
| ID | 5 | 0 | 5 | 2.0 | 0.0 | 0.552 | 0.026 |
| IN | | | | | | | |
| KY | 26 | 3 | 23 | 2.0 | 0.0 | 0.581 | 0.062 |
| LA | 85 | 12 | 73 | 2.0 | 0.0 | 0.569 | 0.094 |
| MD | 0 | 0 | 0 | | | | |
| MI | 70 | 0 | 70 | 2.1 | 0.3 | 0.548 | 0.040 |
| MN | 14 | 0 | 14 | 2.0 | 0.0 | 0.585 | 0.066 |
| MS | 4 | 0 | 4 | 2.0 | 0.0 | 0.563 | 0.068 |
| MT | 51 | 4 | 47 | 2.0 | 0.0 | 0.586 | 0.069 |
| NC | 22 | 0 | 22 | 2.0 | 0.0 | 0.554 | 0.037 |
| ND | 163 | 123 | 40 | 2.0 | 0.0 | 0.592 | 0.068 |
| NV | 43 | 0 | 43 | 2.0 | 0.0 | 0.574 | 0.058 |
| OH | 112 | 47 | 65 | 2.1 | 0.2 | 0.534 | 0.109 |
| OK | 53 | 6 | 47 | 2.0 | 0.0 | 0.555 | 0.044 |
| OR | 67 | 40 | 27 | 2.0 | 0.0 | 0.560 | 0.044 |
| SD | 7 | 0 | 7 | 2.0 | 0.0 | 0.559 | 0.043 |
| WA | 312 | 274 | 38 | 2.0 | 0.0 | 0.570 | 0.049 |
| WI | 97 | 1 | 96 | 2.0 | 0.0 | 0.579 | 0.061 |
| Total | 1856 | 923 | 933 | 2.0 | 0.1 | 0.565 | 0.066 |

Note: For number of candidates and winners' vote share in contested elections, we report only the statistics of the elections in single-member districts, because statistics of the elections in multi-member districts are not comparable to those of single-member districts.

| Table A.5: Competition in Retention Elections by State | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | Shares of Yes-Votes | | | | | | |
| State | No. of Elections | Mean | Std Dev | Min | 10th Pctile | Median | 90th Pctile | Max |
| AK | 106 | 0.655 | 0.050 | 0.519 | 0.604 | 0.652 | 0.720 | 0.775 |
| AZ | | | | | | | | |
| CA | 245 | 0.688 | 0.064 | 0.520 | 0.587 | 0.699 | 0.762 | 0.801 |
| CO | 382 | 0.709 | 0.058 | 0.378 | 0.635 | 0.721 | 0.770 | 0.822 |
| FL | 329 | 0.702 | 0.047 | 0.549 | 0.635 | 0.709 | 0.762 | 0.810 |
| IA | 708 | 0.746 | 0.055 | 0.376 | 0.679 | 0.756 | 0.801 | 0.852 |
| IL | 1284 | 0.768 | 0.054 | 0.511 | 0.705 | 0.777 | 0.827 | 0.885 |
| IN | 33 | 0.696 | 0.037 | 0.595 | 0.649 | 0.702 | 0.732 | 0.780 |
| KS | 690 | 0.754 | 0.063 | 0.509 | 0.673 | 0.757 | 0.837 | 0.905 |
| MD | 47 | 0.845 | 0.040 | 0.746 | 0.779 | 0.861 | 0.883 | 0.899 |
| MO | 394 | 0.682 | 0.043 | 0.543 | 0.624 | 0.686 | 0.736 | 0.780 |
| MT | 108 | 0.813 | 0.057 | 0.591 | 0.730 | 0.832 | 0.877 | 0.916 |
| NE | 217 | 0.720 | 0.057 | 0.326 | 0.665 | 0.730 | 0.775 | 0.825 |
| NM | 129 | 0.732 | 0.070 | 0.505 | 0.642 | 0.751 | 0.810 | 0.861 |
| OK | 99 | 0.643 | 0.044 | 0.557 | 0.574 | 0.660 | 0.690 | 0.720 |
| PA | 83 | 0.759 | 0.085 | 0.476 | 0.634 | 0.778 | 0.838 | 0.865 |
| SD | 9 | 0.830 | 0.011 | 0.812 | 0.812 | 0.829 | 0.846 | 0.846 |
| TN | 33 | 0.745 | 0.018 | 0.703 | 0.715 | 0.753 | 0.760 | 0.768 |
| UT | 265 | 0.795 | 0.052 | 0.460 | 0.745 | 0.798 | 0.853 | 0.886 |
| WY | 66 | 0.780 | 0.046 | 0.493 | 0.743 | 0.786 | 0.820 | 0.847 |
| Total | 5405 | 0.739 | 0.068 | 0.326 | 0.646 | 0.747 | 0.820 | 0.916 |

Note: California, Florida, Oklahoma, and Tennessee use gubernatorial appointment and retention election for state appellate courts and supreme courts. In Montana, incumbent judges who are unopposed in the first round run for retention elections at the time of general elections. South Dakota uses gubernatorial appointment and retention election only for the state supreme court.

| Table A.6: Partisan Differences in Judicial Evaluations | | | | | |
|---|---|---|---|---|---|
| | | Average Score | | | |
| State | Evaluating Body | Dem | Rep | Diff | P-val |
| AK | Alaska Judicial Council | | | | |
| AZ | Arizona Commiss. on Judicial Performance Review | 1.00 | 0.99 | 0.01 | 0.19 |
| | | (122) | (218) | | |
| CA | Average Across All Associations | | | | |
| CO | Colorado Commiss. on Judicial Performance | 0.99 | 0.99 | 0.00 | 0.79 |
| | | (498) | (199) | | |
| FL | Dade County Bar Association | | | | |
| IL | Average Across All Associations | 0.85 | 0.84 | 0.01 | 0.64 |
| | | (2453) | (1656) | | |
| IA | Iowa State Bar Association | 1.00 | 0.99 | 0.01 | 0.49 |
| | | (93) | (386) | | |
| KS | Kansas Commission on Judicial Performance | 0.97 | 0.95 | 0.02 | 0.67 |
| | | (67) | (44) | | |
| KY | Louisville Bar Association | | | | |
| MI | Detroit Metropolitan Bar Association | | | | |
| MO | Missouri Bar Association | 0.96 | 0.99 | -0.03 | 0.18 |
| | | (190) | (101) | | |
| NE | Nebraska State Bar Association | 0.98 | 0.99 | -0.02 | 0.13 |
| | | (207) | (188) | | |
| NM | New Mexico Judicial Performance Eval. Commiss. | 0.98 | 1.00 | -0.02 | 0.43 |
| | | (117) | (37) | | |
| NV | Las Vegas Review Journal | | | | |
| NY | New York City Bar Association | 0.94 | 0.54 | 0.41 | 0.00 |
| | | (68) | (56) | | |
| OH | Average Across All Associations | 0.83 | 0.93 | -0.09 | 0.00 |
| | | (233) | (312) | | |
| PA | Average Across All Associations | | | | |
| TX | Average Across All Associations | 0.75 | 0.78 | -0.03 | 0.20 |
| | | (545) | (687) | | |
| UT | Utah Judicial Council | | | | |
| WA | Seattle-King County Bar Association | | | | |
| WY | Wyoming State Bar Association | 0.93 | 0.90 | 0.03 | 0.65 |
| | | (54) | (29) | | |