

**Mobilizing Voters in State Supreme Court Elections:
Competition and Other Contextual Forces as Democratic Incentives**

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Abstract

Mobilizing Voters in State Supreme Court Elections: Competition and Other Contextual Forces as Democratic Incentives

To offer insight into the complex relationship between democratic processes and the judiciary and to expand our knowledge of elections in the United States, this paper examines ballot roll-off in 478 state supreme court elections in thirty-five states from 1980 through 1994. Specifically, I evaluate the extent to which voter participation is responsive to electoral competition, incumbency, and a variety of contextual forces that increase the salience of elections to voters and provide information about candidates. Results indicate that citizen participation is highly responsive to these factors, particularly electoral competition. Contrary to conventional wisdom and current claims, the electorate does not display universal indifference toward judicial elections or respond randomly to electoral incentives. In this regard, judicial elections bear a striking resemblance to elections for other offices and, under certain circumstances, may be quite effective for promoting democratic control of the bench. Further, contextual forces, including institutional arrangements governing the conduct of elections, have an important impact on voter mobilization and must be included in satisfactory accounts of electoral politics. Finally, replacing partisan elections with nonpartisan or retention elections has the consequence of significantly inhibiting voting, even when nonpartisan elections are contested. Thus, reform advocates' criticisms of judicial elections for their inability to mobilize voters largely have become a self-fulfilling prophecy.

The American electorate's ambivalence toward elections is pronounced. For offices at all levels of government, large proportions of the eligible electorate simply do not bother to vote,¹ causing scholars and politicians to ponder the likely effects of such behavior on the operations of the popularly elected institutions and to recommend solutions to enhance citizen participation. As even the most casual observer of politics understands, the foundations of representative democracy rest squarely on the willingness of citizens to go to the polls. Stated succinctly by Hajnal and Trounstein (2005, 515), "[a]t its core, democracy rests on the vote."

This problem of voter apathy seems particularly acute when those who actually do make it to the polls fail to complete their ballots. In fact, the phenomenon of ballot roll-off, whereby voters cast votes only for a selective set of offices, raises serious issues about legitimacy and accountability and thus has received considerable attention from scholars of electoral politics. By examining ballot roll-off in elections to the United States House of Representatives (e.g., Wattenberg, McAllister, and Salvanto 2000), state legislatures (e.g., Schaffner, Streb, and Wright 2001), a variety of local offices (e.g., Bullock and Dunn 1996; Schaffner, Streb, and Wright 2001), and on ballot propositions (e.g., Bowler, Donovan, and Happ 1992; Magleby 1984), scholars have determined that ballot roll-off, like voter turnout, varies significantly across elections and largely is the product of factors specific to each election, the external political environment, and institutional arrangements governing the conduct of elections. Especially important among these is electoral competition for enhancing voter activity. In essence, ballot roll-off does not reflect universal indifference that necessarily poses a threat to the democratic process or to the accountability function so essential to democracy.

Conspicuously absent from these critical discussions are judicial elections, including elections to the states' highest courts.² This striking omission seems particularly problematic given that the vast proportion (currently 87%) of the nation's judges must face voters regularly to retain their seats (National Center for State Courts 2002, 12) and given the extraordinary importance of state courts politically. Overall, state courts process almost 99% of the litigation in the United States, affecting the daily lives of citizens in ways that are staggering and, in the process, resolve some of the most controversial and divisive issues on the political agenda (Hall 1999; National Center for State Courts 2002).

From an electoral perspective, many judicial elections diverge from the negative stereotype of being "uniquely different" (Rottman and Schotland 2001, 1369) or of incumbents being "rarely challenged and infrequently defeated" (Dubois 1980, 33). As recent research demonstrates (Hall 2001a; Hall and Bonneau 2006), for example, defeat rates in state supreme courts are slightly higher on average than the United States House of Representatives, United States Senate, and statehouses. Understanding the electoral processes that surround these vital institutions, including the conditions under which citizens participate judicial selection, seems crucial.

From an analytical perspective, scholars have missed an outstanding opportunity for systematic comparative inquiry. Not only are the states diverse in the important features influencing citizen mobilization in the United States, but across thirty-eight states there are three different election systems - partisan, nonpartisan, and retention - operating simultaneously. Assessing the effects of these alternative systems in single models that also control for the wide range of other forces affecting elections can provide

much needed insight into the role played by institutional arrangements and other contextual forces in democratic politics. This seems especially important given the inattention to nonpartisan elections by scholars of electoral politics, despite their widespread use in the United States (Schaffner, Streb, and Wright 2001, 10).

In this paper, I begin to address these deficiencies by capitalizing on the theoretical richness of the political science elections literature and the analytical leverage of comparative state research designs. Specifically, I evaluate ballot roll-off in 478 supreme court elections from 1980 through 1994 in thirty-five states using partisan, nonpartisan, or retention elections to staff their supreme courts.³ By comparing these elections over time and across states, we can evaluate the effects of a host of election-specific and state-level contextual forces on the propensities of the American electorate to participate in elections. Thus, we can determine quite readily whether, and to what degree, voters respond to democratic incentives.

Overall, the theoretical implications of this inquiry are significant. Theoretically, understanding linkages between citizens and government is at the heart of a science of politics. By studying judicial elections comparatively with a focus on institutional and other contextual forces, we will improve our knowledge of judicial elections and begin to build theories of electoral behavior in these contests. Additionally, we will be able to refine our theories for other types of offices. Through the lens of democratic theory and the science of judging, ascertaining how citizens are drawn into the electoral arena is essential for building theories of judicial choice that accurately reflect the complex task of balancing pressures from democratic processes with norms of judicial independence.

From a practical perspective, this work will inform the debate currently raging in

the American states over electing judges. During the past several decades, judicial reform advocates have campaigned to replace partisan elections with nonpartisan elections and the Missouri Plan, which combines initial appointment with subsequent retention elections. Generally, reform advocates believe that partisan elections fail to achieve their primary goal of promoting accountability, reflected in part by low levels of voter participation. In response to this pressure, sixteen states since the 1960s have abandoned partisan elections for selecting their highest courts (Council of State Governments 1960-2004).⁴ However, some of the conventional wisdom underlying these reforms runs directly contrary to the science of elections, particularly regarding voter mobilization.

Voters and the Controversy Over Electing Judges

The charges against voters in judicial elections have been, and continue to be, serious.⁵ While there are numerous reasons why many scholars, practitioners, and organized interests criticize elections as a means for staffing the bench, the lack of voter participation, and ballot roll-off in particular, is one of the most basic. The conventional wisdom is that voters consistently “know nothing and care less” (1980, 36) about judicial elections and thus do not, and should not, not participate. In more recent parlance, voters and non-voters are plagued by “ignorance, apathy, and incapacity” (Geyh 2003, 63).

Consider, for example, recent statements by two of the nation’s most important court advocacy groups. First, the American Bar Association (ABA), which recommends that judicial elections be abandoned entirely, reported:

“[u]ninformed about the candidates’ positions on relevant issues, uncertain about the candidates’ qualifications or training, and unfamiliar with the candidates’ job performance, voters [in judicial elections] are often unable to cast an informed ballot and so decline to vote in judicial races” (2003, 129) .

Similarly, the National Center for State Courts (NCSC), commenting extensively on the “missing voter” in judicial elections, claimed that low voter turnout “reflects the limited amount and unsatisfactory nature of the information available to the public” and the “limited importance that the public attributes to the work of the judicial branch of government” (2003, 38).

More importantly, many election critics reject the notion that competition - one of the best documented and most important sources of information and excitement in elections - is likely to motivate voters in judicial elections. The NCSC contends that “judicial elections rarely grab and hold the public’s attention” (2002, 40) and dismisses the idea that voting in partisan elections is the result of “any excitement generated by contested, hard-fought campaigns” (2002, 38). Similarly, Geyh (2003), the legal pundit who coined the oft-cited “Axiom of 80” to refer to the purported dictum that 80% of the public favors judicial elections but 80% does not vote, asserts that it “is far from clear” (2003, 53) whether campaigns can mobilize voters. According to Geyh, campaign spending “has done little to relieve voter apathy and ignorance” (2003, 53). Like many in the legal community, Geyh views judicial elections “unsalvageable” (2003, 58).

Of course, these recent claims are entirely consistent with decades of attacks that began in earnest in the 1960s. Stated best by Dubois (1980, 36) in his seminal study of state supreme court elections:

“Critics of judicial elections have most frequently pointed to low voter turnout as the leading indicator that voters lack the necessary interest in, and knowledge about, contests for judicial office. The low level of voter participation in judicial elections is cited as evidence that an indifferent, apathetic, and ignorant electorate is unwilling and incapable of holding its judiciary accountable through elections.”

Similarly, Adamany and Dubois reported that voter turnout is “only slightly affected”

(1976, 743) by close contests. Thus, the general perception is that voters largely are impervious to mobilization efforts, even when incumbents are challenged and partisan labels are on the ballot.

On the other side of this debate are empirical studies of a variety of federal, state, and local elections.⁶ In sharp contradistinction to the proposition that voters cannot be sufficiently mobilized, a voluminous body of work, discussed in detail below, documents that while the proportion of eligible voters who go the polls in American elections often is low, both turnout and roll-off are the product of forces in the external political environment, institutional factors governing the conduct of elections, and the nature of the contests themselves. Particularly important among these is electoral competition.

Moreover, while systematic analyses of judicial elections are rare, several pathbreaking studies have documented that state supreme court elections bear a remarkable resemblance to elections to other political offices. Among other things, voters appear to make relatively informed choices. At least in the aggregate, the electorate distinguishes quality from non-quality challengers (Hall and Bonneau 2006) and casts votes retrospectively on issues relevant to the judiciary (Hall 2001a), even when partisan labels are not on the ballot (Baum 1987; Hojnacki and Baum 1992). Thus, the assumption of universal voter ignorance has been refuted empirically.

In this study, I evaluate whether the assumption of persistent voter apathy in judicial elections can be supported or rejected empirically. The general test is simple: if voters in the aggregate do not respond to forces that should inspire and facilitate voting, then ballot roll-off will not be affected significantly by the variety of contextual forces that enhance opportunities to cast meaningful ballots. Alternatively, if roll-off is

responsive to these forces, then the reformers may be wrong on this one particular dimension. In the words of Dubois (1980, 38):

“[t]o the extent that the levels of popular participation in state judicial contests can be manipulated by institutional arrangements related to the conduct of elections, then that portion of the case for the abolition of partisan elections based on the low level of public participation is most certainly undermined.”

Thus, this study joins a growing body of work (e.g., Bonneau 2005; Dubois 1980; Hall 2001a; Klein and Baum 2001) evaluating empirically whether recommendations for particular reforms are premised on sound assumptions.

Measuring Ballot Roll-Off

Before providing a theoretical framework for this inquiry and specifying a model that tests the above propositions, ballot roll-off first must be defined. In doing so, this study follows the well-beaten path established in earlier election studies: ballot roll-off is the percentage of the electorate casting votes for the major office on the ballot who do *not* vote in each supreme court race. Also consistent with previous work, this study defines the major office as “the presidential, gubernatorial, or U.S. senatorial contest which attracted the most voters in each election” (Dubois 1980, 66). Thus, higher values of ballot roll-off indicate lower levels of participation in supreme court races.

To calculate roll-off, I examine all elections to state supreme courts from 1980 through 1994 in the states using partisan, nonpartisan, or retention elections to staff the high court bench. This time frame corresponds nicely with other studies of supreme court elections (e.g., Baum 1987; Bonneau 2004; Bonneau and Hall 2003; Hall 2001a, 2001b), legislative elections (e.g., Hogan 1999; Wattenberg, McAllister, and Salvanto 2000), and local elections (e.g., Schaffner, Streb, and Wright 2001). From a practical perspective,

this is the only national judicial elections database ever assembled or currently available.⁷ In total, 478 elections from 1980 through 1994 in thirty-five states are available for analysis.⁸

Table 1 documents some fascinating patterns in these data by displaying average ballot roll-off in state supreme court elections by state. First and foremost, it is most understandable why many would criticize voters in state supreme court elections. These elections have a total average roll-off rate of 26.6%, or a pattern wherein at least one of every four voters already at the polls declines to vote in state supreme court races. However, Table 1 reveals a rather complex reality. Overall, the states, and elections within states, differ markedly, and there are reasons both to criticize judicial elections and to question some of the charges against them.

(Table 1 Goes About Here)

Specifically, ballot roll-off ranges from 2.4% to 65.1% across elections, and averages from 6.3% (Pennsylvania) to 50.0% (Iowa) across states. These differences of 44 to 63% across elections and across states are dramatic reflections of the extent to which voters can, and cannot, be mobilized in supreme court elections. Similarly, elections within single states can be quite similar or can differ substantially. For example, compare Alaska and Oklahoma, which have relatively minor fluctuations in voter participation across elections, to Alabama and New Mexico, which can see differences over 45%. Finally, each type of election is represented at the highest and lowest levels of citizen participation. Partisan, nonpartisan, and retention elections each can be highly interesting or dreadfully dull to voters. In sum, the extraordinary variations that occur in citizen participation both across and within states do not speak to a consistently

unmotivated electorate and simply beg scientific explanation.⁹

Voter Participation in State and Local Elections

The extensive literature on turnout and ballot roll-off in state elections provides an excellent theoretical basis for understanding the politics of judicial elections and for correctly specifying a model of ballot roll-off. While reducing a complex body of research to a few basic theoretical propositions necessarily results in oversimplification, studies at both individual and aggregate levels suggest that: 1) electoral competition enhances the salience of elections and provides information to voters; 2) partisanship is a critical force in elections, with partisan labels on ballots serving as important voting cues; 3) incumbency serves as a low-cost informational cue when partisan labels are absent; and 4) institutional arrangements create incentives or disincentives to vote and thus structure the manner in which voters are willing and able to participate.

Stated somewhat differently, voter turnout and ballot roll-off are a function of a variety of institutional arrangements (e.g., Dubois 1980; Francia and Herrnson 2004; Hall and Aspin 1987a, 1987b; Kim, Petrocik, and Enokson 1975; Schaffner, Streb, and Wright 2001) and other contextual forces (e.g., Bowler, Donovan, and Happ 1992; Bullock and Dunn 1996; Hogan, 1999; Magleby 1984; Milton 1983; Patterson and Caldeira 1983; Tucker 1986) that make elections interesting and important and also provide easily accessible information to voters. Reduced to the most basic element, voters vote when they have interest, readily available information, and choice.

Generally speaking with respect to context, factors related to each particular electoral contest and forces that characterize the overall political climate of each state

should influence the willingness of voters to complete their ballots in judicial races. Additionally, the formal means by which elections are organized and the manner in which choices are presented should affect the propensity to vote. Further, these institutional arrangements should interact with other forces influencing citizen participation. Indeed, a growing body of work (e.g., Bonneau and Hall 2003; Brace and Hall 1997; Hall 2001a) supports the proposition that institutional arrangements have a direct impact on the politics of courts and also condition the effects of contextual and other factors influencing judicial politics. With these basic theoretical tenets in mind, I hypothesize that the factors described in the following paragraphs and defined in Table 2 will have a significant impact on ballot roll-off in state supreme court elections.

(Table 2 Goes About Here)

Election-Specific Contextual Forces

As research across a host of elections suggests, the specific circumstances of each contest are important for influencing voter participation. Perhaps most important is competition, indicated by contested elections and narrow vote margins. Generally, competition stimulates voter interest, increases the salience of elections, and provides information upon which to vote (e.g., Johnson, Shaefer, and McKnight 1978). In studies of elections to offices other than judgeships, electoral competition definitively has been demonstrated to increase voter turnout in primaries (Jewell and Sigelman 1986) and general elections (Caldeira and Patterson 1982; Patterson and Caldeira 1983; Tucker 1986), including referendum elections (Magleby 1984). Competition also decreases ballot roll-off in municipal races (Bullock and Dunn 1996), state legislative elections (Austin et

al. 1991) and on ballot propositions (Vanderleeuw and Engstrom 1987). Similarly, studies of judicial elections have documented the critical importance of competition on turnout (Dubois 1980) and roll-off (Beechen 1974; Dubois 1980; Hall and Aspin 1987a, 1987b; Nichols and Strizek 1995), although there is some disagreement on this point (Adamany and Dubois 1976).

Given the overall thrust of the literature, this study hypothesizes that both the presence of challengers and closely decided races will reduce ballot roll-off in state supreme court elections.¹⁰ To estimate the effect of challengers, a variable (*Contested Seat*) is included in the model that assumes the value of 1 if the seat is contested, and 0 otherwise. While retention races necessarily all are coded 0, there is a great deal of variation among partisan and nonpartisan races on this dimension. In the elections to be evaluated in this paper, 84 of 127 (65.1%) partisan races and 70 of 131 (53.4%) nonpartisan races drew challengers in the general election.

Additionally, this study includes a dummy variable (*Hot Race*) to identify races narrowly won with 60% of the vote or less, the standard observed by “most leading students of marginality in congressional elections” (Weber, Tucker, and Brace 1991, 31), state supreme court elections (Bonneau and Hall 2003), and trial court elections (Hall and Aspin 1987a). In retention elections which preclude challengers, *Hot Race* reflects situations in which 60% or less of the electorate voted to retain the incumbent. From 1980 through 1994, 27 of 220 (12.3%) retention elections were closely competitive, while 52 of 131 (39.7%) nonpartisan elections and 71 of 127 (55.9%) partisan elections were won by tight margins. This variable is coded as dichotomous rather than continuous because of an anticipated threshold effect rather than a linear association. Theoretically,

the effect of the change in electoral margin from 55% to 70%, for example, should differ substantially from a 70% to 85% shift.

Another important election-specific feature that should rouse voters is the Chief Justice seat. Generally, voters should view these seats as more important than other seats on the court, particularly since Chief Justices have considerable administrative power in addition to deciding cases. Thus, I include the variable *Chief Justice Seat*, coded 1 to identify these situations, and 0 otherwise.

Finally regarding election-specific concerns, successful incumbents should affect voter mobilization, although these effects should be conditioned by election type. In partisan elections, one reasonably might expect incumbents to establish stable electoral coalitions over time, especially after the first successful election bid. This proposition is consistent with the sophomore surge phenomenon in legislative elections (e.g., Cover and Mayhew 1981; Holbrook and Tidmarch 1991) and with studies of competition in state supreme court elections (Hall 2001a). Thus, the powerful force of incumbency (e.g., Baum 1983; Dubois 1980; Hall 2001a; Volcansek 1981) should increase ballot roll-off.

Alternatively, in the absence of partisan labels, voters should seek other information about how to vote, and in this context, incumbency and the name recognition that accompanies incumbency become critical. Indeed, as incumbents continue to reappear for reelection, they become relatively familiar to the electorate, and this familiarity is reinforced by media coverage of the court. Thus, in retention and nonpartisan elections, incumbency should reduce ballot roll-off. In fact, this precise pattern recently has been documented by Schaffner, Streb, and Wright (2001) for nonpartisan mayoral and state legislative elections.

To measure the effects of incumbency, this study includes the variable *Successful Incumbent*, coded 1 for elections involving incumbents elected at least once, and 0 otherwise. Thus, this variable distinguishes between incumbents who have had at least one successful campaign from candidates who either are competing for open seats or were just appointed and are facing voters for the first time. In partisan and nonpartisan election systems, justices routinely are appointed to fill unexpired terms created largely by retirements. In retention systems, justices always are initially selected in this manner. To evaluate whether the effects of incumbency are conditioned by selection system, *Successful Incumbent* is included in a multiplicative term with *Partisan Election*.

State-Level Contextual Forces

Several contextual variables reflective of the broader political climate of each state should influence citizen participation in judicial elections. First is whether supreme court races typically are competitive. Numerous studies have established that environments in which elections historically are competitive, because of inter-partisan conflict or otherwise, produce higher levels of turnout (e.g., Dubois 1980; Hill and Leighley 1993; Jewell and Sigelman 1986; Patterson and Caldeira 1983). This fundamental feature of state politics also should influence ballot roll-off.

Hall (2001a) provides an excellent means to characterize the larger supreme court electoral climate by ranking the states according to the average percentage of the vote received by supreme court incumbents seeking reelection and winners of open seats from 1980 through 1995. Overall, average margins range from 53.9% in Pennsylvania to 96.7% in Idaho, for an overall average of 71.7%. Thus, I include *State Judicial*

Competition, coded 1 for states with historically above average competition (i.e., greater than 71.7%), and 0 otherwise (Hall 2001a).¹¹

Additionally, presidential elections affect the propensity to vote. Studies have established that turnout (e.g., Dubois 1980; Hill and Leighley 1993; Patterson and Caldeira 1983) and ballot roll-off (e.g., Dubois 1980; Nichols and Strizek 1995) are higher when presidential elections are on the ballot.¹² In essence, presidential elections, which always are salient, entice voters to the polls, but a significant number of these voters have no information about, or interest in, other races. Therefore, this study includes *Presidential Election* to capture these effects.

Finally with respect to state-level considerations, studies have documented the connection between education and both voter turnout (e.g., Hogan 1999; Jackson 1995; Kim, Petrocik, and Enokson 1975; Lovrich and Sheldon 1983; Patterson and Caldeira 1983; Sigelman et al. 1985) and ballot roll-off (e.g., Milton 1983). Educated people have a greater capacity to seek information, distinguish candidates, and make informed choices, and thus are more likely to vote. Therefore, this study includes an education variable, measured as the percentage of each state's population twenty-five years of age or older with high school diplomas at the time of each election (*State Education Level*). These statistics were derived from reports of the United States Bureau of the Census.¹³

Institutional Arrangements

Institutional arrangements governing elections should be important determinants of ballot roll-off in state supreme court elections. Indeed, examining the effects of formal structures on citizen participation goes directly to the heart of the matter with respect to

the controversy over judicial elections. Thus, the model estimated below includes a variable for partisan elections (*Partisan Election*) and another for retention elections (*Retention Election*), with nonpartisan elections omitted as the baseline category.

There are compelling reasons to believe that ballot type is a crucial determinant of voter mobilization. Perhaps the best evidence about judicial elections was presented by Klein and Baum (1999), who used an experimental design to determine that partisan information on ballots in judicial elections would substantially improve participation. These findings support the earlier observations of Dubois (1980) about differences in roll-off between partisan and nonpartisan elections. From the perspective of mayoral and state legislative elections, Schaffner, Streb, and Wright (2001) add to the evidence that removing partisan labels from ballots depresses turnout and increases roll-off. Thus, this study predicts that partisan elections will lessen roll-off in state supreme court elections.

Concerning retention elections, Squire and Smith (1988, 170) have established that retention elections may be “easily turned into partisan contests in the minds of voters” when voters know the partisanship of the appointing governor. Hall (2001a) confirms these conclusions by detecting a strong correlation between retention votes and several measures of partisan politics. Moreover, retention elections arguably always provide a choice in the form of a “yes” or “no” response about whether an incumbent should be retained. Therefore, this study predicts that retention races also will manifest lower levels of roll-off relative to nonpartisan elections.

A second important institutional dimension is the type of geographic constituency represented by the seat. While most supreme court justices are elected statewide, some are chosen from districts. Assessments of judicial retention elections reveal that statewide

racers decrease roll-off while district elections increase it (Hall and Aspin 1987a). However, according to Hall (2001a), the effects of constituency are conditioned by election type. In district-based elections, partisan elections are significantly more competitive than nonpartisan or retention elections. Among other things, with partisan labels on the ballot, the minority party has an incentive to field candidates where their effect might be greater in smaller constituencies, particularly when the minority party is concentrated geographically. Therefore, this study includes a variable for district elections (*District Election*) and also a multiplicative term (*District Election x Partisan Election*) to distinguish the effects of district elections by election system.¹⁴

Temporal Controls

Finally, I include dummy variables to control for any temporal effects in the model (1980-83, 1984-87, 1988-91). As alternatives, I estimated the model using single years and a trend variable. None was statistically significant and made no difference to any of the substantive results.

Estimation Technique

Given the continuous nature of the dependent variable, ordinary least squares regression (OLS) was used to estimate the models. Further, because of the structure of the data, OLS standard errors were replaced with robust standard errors clustered by state.

Results

Table 3 reports the results of estimating a model of ballot roll-off in state supreme court elections. Overall, model performance is excellent. The model can account for

almost 61% of the variation in ballot roll-off, and all of the substantive variables are statistically significant in the theoretically predicted direction, indicating empirical support for each hypothesis. In essence, the electorate's tendency to vote or not to vote in state supreme court elections is neither random nor impervious to democratic incentives.

(Table 3 Goes About Here)

As Table 3 indicates, ballot roll-off in state supreme court elections is largely a function of context. Most preeminent of these forces are contested elections and partisan ballots. Challengers reduce roll-off by a sizeable 19%, other things being equal. Further, partisan elections shrink roll-off by 9.7% statewide and 12.6% in districts, when other factors in the model (including incumbency) are controlled. Overall, when partisan elections draw challengers, voters are much less likely to skip over supreme court races.

Similarly, tight margins of victory, caused by close competition between candidates in partisan and nonpartisan elections and by substantial disapproval of incumbents in retention elections, also helps keep voters at the polls. In these hotly contested elections, ballot roll-off is reduced by 4.3%.¹⁵ Standing alone, challengers taking on incumbents and running close races has the effect of mobilizing one of every four to five voters who otherwise would defect.

Regarding other election-specific contextual forces, chief justice races draw a better response from voters than other seats on supreme courts, reducing ballot roll-off by 4.8%. Further, incumbency is important but has opposite effects in different election systems. In partisan elections, incumbents increase ballot roll-off by 3.8% but decrease roll-off in retention and nonpartisan elections by about 2%. As others have suggested (e.g., Schaffner, Streb, and Wright 2001), these findings make a great deal of sense when

the importance of name recognition in the absence of partisan labels is considered.

State-level contextual forces similarly are significant. States characterized by typically competitive supreme court elections have lower rates of ballot roll-off by 5.1%. Also, education produces a 0.6% decline for each percentage increase in a state's high school graduates, indicating that states with highly educated electorates should witness significantly better participation in judicial elections. Finally, ballot roll-off is higher by 3.1% when presidential elections are on the ballot. Given the visibility of presidential elections and correspondingly higher levels of voter turnout, this is not surprising.

Returning to institutional arrangements, the type of election (partisan, nonpartisan, or retention) and geographic constituency (district or statewide) both have a resounding impact on voter mobilization in state supreme court elections. Overall, statewide partisan elections (*Partisan Election*) have 9.7% less roll-off than statewide nonpartisan elections (the baseline category), and statewide retention elections (*Retention Election*) have 11.9% less, when all other effects in the model (including incumbency) are taken into account. Similarly, district-based partisan elections reduce ballot roll-off by 12.6%, while district-based retention and nonpartisan elections actually increase roll-off by 9.3%, other things being equal. Plainly, the basic structure of elections provides critical incentives or disincentives for voters to participate in supreme court elections.

Finally, there do not appear to be any significant effects of the various election cycles in the model. As mentioned earlier, whether time is measured as single years, four-year cycles, or as a trend, none of the temporal variables is statistically significant.

While the results in Table 3 are important, comparing predicted values of roll-off for various combinations of the most theoretically significant variables places these

results in stark relief, particularly given the complexities in interpreting models with several interaction terms. Table 4 presents these results for partisan, retention, and nonpartisan elections under various conditions of incumbency, constituency, and competition. A quick glance at Table 4 leads to an immediate conclusion: competitive partisan elections are an excellent means for mobilizing voters in judicial elections.

(Table 4 Goes About Here)

Indeed, Table 4 illustrates the dramatic impact of electoral competition and election system on voter mobilization. First, consider predicted roll-off in statewide partisan elections. In the least competitive situations (i.e., no challengers, comfortable margins, traditionally non-competitive states), predicted roll-off is 34.7% without an incumbency advantage, and 36.6% otherwise. When close margins and competitive states are introduced, roll-off drops to 25.3% and 27.1%, respectively. However, when challengers are substituted for close margins and competitive states, roll-off drops to 15.8% without an incumbency advantage, and 17.6% otherwise. Finally, under all conditions of competition, predicted roll-off is 6.3% without the incumbency advantage, and 8.2% with it.

Similarly, from the most to least competitive conditions, predicted ballot roll-off in district-based partisan elections drops from 31.6% without an incumbency advantage and 33.4% with it, to 3.2% and 5.0%, respectively. In essence, partisan elections, regardless of constituency or incumbency, have an incredible capacity to mobilize voters when competition is keen. In fact, under these circumstances, roll-off is quite low.

These figures for contested partisan elections are consistent with ballot roll-off rates for other important offices. From 1988 to 1994 in the thirty-five states examined in

this paper, roll-off rates in contested elections for United States Senator, state Attorney General, state Secretary of State, and Treasurer were, respectively, 3.0%, 5.4%, 5.6%, and 7.1%.¹⁶ Similarly, in contested elections in 1992 for the United States House of Representatives, average roll-off was 6.0% (Wattenberg, McAllister, and Salvanto 2000). Thus, contested partisan elections for state supreme courts perform about as well in mobilizing voters as other contested elections for important state and national offices.

We do not see such striking similarities with nonpartisan and retention elections. Looking first at statewide nonpartisan elections, Table 4 illustrates that these elections are limited in their ability to attract voters, relatively speaking. Under the most competitive conditions, predicted roll-off is 16.0% without an incumbency advantage, and 14.0% with it. Of course, these figures are much lower than average for state supreme court elections but still are not as high as those for contested partisan elections under similar circumstances or for major non-judicial offices. When we remove the effects of narrow margins and competitive states but retain challengers, predicted roll-off rises to 25.4% without an incumbency advantage, and 23.4% with it. Compare these results to those for statewide nonpartisan elections without challengers. Even with narrow victories in traditionally competitive states, predicted roll-off without the incumbency advantage is 34.9%, and 32.9% with it. And notably, when all conditions of competition are absent, predicted roll-off rises to 44.4% without incumbency and 42.4% with it.

The effects of nonpartisan ballots and a lack of competition are more pronounced in district-based constituencies. Under the least competitive conditions, predicted roll-off is 53.8% without the incumbency advantage, and 51.8% with it. But even when competition is strongest (including challengers) and the incumbency advantage is present,

predicted roll-off remains at 23.3%.

Retention elections similarly are limited in their ability to mobilize voters. First, consider situations in which the effects of challengers are removed from partisan and nonpartisan elections. Under this scenario, retention elections are the least likely of the statewide systems to lose voters, whether the situation is otherwise competitive or whether there is an incumbency advantage. However, in all election systems except district-based nonpartisan elections, challengers trump retention elections when other contingencies are identical across systems.

Otherwise, predicted ballot roll-off in retention elections ranges from 21.1% in competitive statewide races with an incumbency advantage to 41.9% in non-competitive district elections without the incumbency effect. Thus, under the conditions most conducive to voting, about one of every five voters still will defect in retention elections.

Finally, it is important to observe that the predictions in Table 4 do not include the effects of chief justice races, education above or below average, or presidential elections, although the appropriate values can be derived quite readily using the OLS coefficients in Table 3 and the predicted values already in Table 4. Under these alternative conditions, predicted roll-off will change somewhat but the inferences will not.

Discussion

The analysis in this paper leads to one striking conclusion: substantial portions of voters can be mobilized to vote in state supreme court elections. The electorate simply does not reflect an indifference toward judicial elections that cannot be influenced in significant ways. Indeed, the portrait of a uniformly apathetic and unresponsive electorate is highly inconsistent with the empirical results generated in this study.

By manipulating ballots and geographic constituencies and by encouraging competition, the American states could significantly decrease ballot roll-off in state supreme court elections. In fact, one highly effective way to stimulate participation would be to adopt partisan elections and encourage competition through such means as term limits and public funding for campaigns.¹⁷ As this study documents, partisan elections, especially in conjunction with other contextual factors related to competition, substantially increase the willingness of voters to express their preferences in state supreme court elections, once these voters have already been mobilized in the first place.

Of course, these results would be meaningless unless voters are capable of making relatively informed choices. While this research cannot address this question directly, others already have. As mentioned, an important body of work has demonstrated that the electorate in supreme court elections distinguishes quality from non-quality challengers (Hall 2001a; Hall and Bonneau 2006) and votes retrospectively on issues relevant to judges, even when partisan labels are not on the ballot (Baum 1987; Hall 2001a; Hojnacki and Baum 1992). Beyond these studies, two fundamental tenets of political science speak to this issue: 1) partisanship is a relatively rational basis upon which to vote in elections, and 2) partisanship is an excellent predictor of supreme court justices' votes in the cases before their courts. Thus, in partisan elections, even if the electorate merely responds to partisan labels apart from other types of evaluations, these votes should represent relatively meaningful choices.

Interestingly, retention elections organized statewide also reduce ballot roll-off, relatively speaking. As suggested by Squire and Smith (1988), it seems plausible that these results occur, at least in part, because of a form of partisan politics in which voters

base their choices on the partisanship of appointing governors. Moreover, retention elections always provide a choice to retain or reject the incumbent, even though there are no alternative candidates on the ballot. Thus, it makes sense that compared to uncontested partisan and nonpartisan elections, statewide retention elections perform better. However, retention races always preclude challengers and are not as likely to generate heated campaigns. For these significant reasons, retention elections do not have the same capacity as partisan or nonpartisan elections to enhance electoral activity.

On the matter of nonpartisan elections, the verdict about the ability of these elections to engage voters also is mixed. While nonpartisan elections attract challengers and generate some narrowly won victories, removing partisan labels from ballots reduces voter participation considerably when these races are not contested. Moreover, contested nonpartisan district elections still do not perform as well as retention elections.

Thus, in the intense debate over judicial elections, it appears that the call for abandoning partisan elections may have been premature, at least based on arguments about the inability of these elections to mobilize voters. Stated succinctly, reformers have underestimated the extent to which partisan elections promote citizen participation in the judicial selection process when these elections are competitive. Moreover, reformers have greatly exacerbated the problem by advocating the replacement of partisan elections with nonpartisan and retention elections. From this perspective, the current criticism of voters across judicial election systems has become a self-fulfilling prophecy.

Of course, there may be excellent reasons not to select judges by partisan elections, or any other election scheme for that matter. In fact, popular control of the judiciary may be a highly undesirable goal. However, the evidence produced herein

makes it clear that attacks on partisan elections cannot reasonably be based on assertions about the consistent inability of these elections to engage voters.

More broadly, this study reveals that scientific accounts of elections developed and tested in studies of representative institutions are highly relevant to courts. Obviously much remains to be explained about judicial elections, including the demographics of voters versus those who opt out, and the consequences of roll-off on election outcomes and linkages between citizens and the judiciary. However, the findings in this paper suggest that the broader literature will serve as a useful foundation for these pursuits.

Also, because these results speak strongly to the importance of context in structuring electoral politics and the value of comparative state research designs, studies of judicial elections should be invaluable in informing investigations of elections for non-judicial office, particularly with respect to nonpartisan elections. Given how little we know about these important matters, such inquiries seem ripe for analysis.

Notes

¹ Hajnal and Trounstein (2005) summarize: “[a]t best roughly half of eligible voters vote in national elections. At worst, fewer than 10% vote in local elections.”

² There have been only two large-scale studies of voter participation in judicial elections. Dubois (1980) examined partisan, nonpartisan, and retention supreme court elections from 1948 through 1974 but excluded Southern states and district-based elections. Further, Dubois did not estimate an equation in which the relative effects of election systems were evaluated. Hall and Aspin (1987a) examined trial court retention races from 1964 to 1984 but excluded partisan and nonpartisan elections.

³ Consistent with studies of judicial elections (e.g., Dubois 1980; Hall and Aspin 1987a) and elections at the sub-gubernatorial level (e.g., Bullock and Dunn 1996; Nichols and Strizek 1995; Vanderleeuw and Engstrom 1987), I examine roll-off rather than turnout to gauge interest in judicial elections relative to the top draw on the ballot. Further, it is highly unlikely that turnout is determined by judicial elections when a presidential, senatorial, or gubernatorial contest is on the ballot.

⁴ To select supreme court justices, sixteen states use the Missouri Plan (retention elections), nine states use partisan elections, and thirteen states use nonpartisan elections.

⁵ Champagne and Haydel (1993) is an excellent source describing the controversy over judicial elections. Also, Hall (2001a) discusses the conflict between judicial reform advocates and political scientists over judicial elections, while Schaffner, Streb, and Wright (2001) describe a similar conflict in the legislative and executive context.

⁶ There is some dissent in the legal community over judicial selection. For example, Dimino (2004) recently asserted that “merit selection seeks to keep in office

those judges the public would oppose if voters had access to all the information available in other campaigns,” and that nonpartisan elections “are organized to decrease the likelihood that members of the public will vote at all” (2004, 811).

⁷ These data, described in Hall (2001a), were collected over a six year period from numerous sources, including secretary of state reports obtained by mail or visits to state capitals, state blue books, telephone calls with sitting justices and clerks of court, and newspaper searches. Obviously the data readily available for federal and gubernatorial elections are not assembled or easily acquired for many other important state offices.

⁸ Consistent with common practice, two types of supreme court elections, which preclude a calculation of roll-off, must be excluded: 1) elections held during the regular November cycle without a presidential, senatorial, or gubernatorial race on the ballot; and 2) elections held at times other than the regular November cycle. For these two situations, scholars have yet to calculate normal turnout and thus there is no baseline from which to gauge participation in judicial elections. More importantly from a theoretical perspective, we should have strong reasons to expect that the factors influencing citizen participation in that minority of supreme court elections not held contemporaneously with other major elections will differ significantly from the factors influencing supreme court elections otherwise held. Thus, pooling these observations would be highly problematic, and these issues would not be solved simply by looking at turnout rather than roll-off. Also along these lines, multi-member races are excluded because of the difficulty of coding such critical variables as competition and incumbency. In total, 73 of 551 general elections, or 13.2%, are excluded by these criteria.

⁹ Ballot roll-off in state supreme court elections is less on average than the four

mayoral elections recently analyzed by Schaffner, Streb, and Wright (2000), which ranged from 33-35% in partisan elections to 37-43% in nonpartisan contests.

¹⁰ Another excellent indicator of competition is campaign expenditures. However, such data simply do not exist for many judicial elections in the 1980s and are just being gathered for the 1990s to the present. Even so, reporting requirements, if any, vary considerably across the states.

¹¹ I estimated the model in Table 3 using the folded Ranney Index of partisan competition instead of *State Judicial Competition*. The Ranney Index was not significant, an unsurprising result since this measure taps legislative competition more than overall state competition (King 1989).

¹² There is one exception: Hall and Aspin (1987a) did not detect any differences in roll-off in trial court retention elections between presidential and midterm elections.

¹³ The U.S. Bureau of the Census does not collect statistics annually on education. Therefore, values were interpolated for missing years.

¹⁴ All of the partisan election states also use party column ballots. Thus, it is not possible to disentangle these two types of effects.

¹⁵ While there is, no doubt, some circularity with this measure, deriving an independent measure (e.g., news coverage, expenditures) that is valid over time and across states represents an impractical and, in some states, impossible task. Thus, because electoral margins are simple and straightforward, this indicator of election intensity frequently is used with state elections (e.g., Austin et al. 1991; Jackson 1997; Hogan 1999; Patterson and Caldeira 1983). Nonetheless, I estimated the model in Table 3 without *Hot Race*. Generally, while the overall performance of the model is reduced, the

deletion of *Hot Race* does not affect the direction or significance of any other coefficient.

¹⁶ I collected data about these state elections from each state's blue books and webpages, and gathered data about national elections from *America Votes*.

¹⁷ In the 1970s, Beechen (1974) urged the states to adopt public financing of judicial elections. To date, only Wisconsin and North Carolina provide public funding, although the NCSC now advocates this practice.

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Table 1**Average Roll-Off (in Percentages) in State Supreme Court Elections, 1980 – 1994**

State	Election Type	Mean	Std. Dev.	Minimum	Maximum	N
Pennsylvania ¹	Partisan (this case) or retention	6.25	0.00	6.25	6.25	1
Nevada	Nonpartisan	10.30	6.05	2.70	22.87	14
Arkansas	Partisan	12.85	3.97	8.72	18.27	4
Alaska	Retention	13.25	1.44	10.10	14.75	8
Louisiana	Partisan	14.03	0.00	14.03	14.03	1
Montana ²	Nonpartisan or retention	14.64	5.76	2.42	28.03	16
Wyoming	Retention	15.33	2.65	9.20	18.83	13
South Dakota	Retention	17.26	3.32	12.32	20.58	6
Texas	Partisan	17.32	13.27	4.40	45.72	46
North Carolina	Partisan	18.98	15.79	6.04	46.08	15
Ohio	Nonpartisan	19.58	5.11	7.20	30.29	20
New Mexico	Partisan	20.37	18.56	6.09	54.84	11
Oklahoma	Retention	20.91	2.36	16.94	25.89	40
Illinois	Partisan or retention	21.17	13.12	3.33	42.42	16
North Dakota	Nonpartisan	22.37	9.16	4.24	31.12	9
Colorado	Retention	24.85	3.03	19.59	29.12	9
Florida	Retention	25.15	5.70	13.38	33.40	19
Missouri	Retention	25.82	4.40	19.47	32.31	11
Mississippi ³	Partisan to nonpartisan	26.35	10.59	10.65	39.74	5
Minnesota	Nonpartisan	26.55	7.65	15.21	38.92	15
California	Retention	26.80	10.41	4.01	37.45	18
Nebraska	Retention	27.43	11.40	18.00	53.80	8
Utah ⁴	Nonpartisan to retention	28.05	3.22	20.63	31.67	9
Arizona	Retention	28.16	3.86	22.05	35.08	12
Alabama	Partisan	28.72	16.58	6.44	51.71	26
Kansas	Retention	29.32	4.46	23.39	37.07	19
Michigan	Nonpartisan	29.59	3.66	25.61	33.66	5
Oregon	Nonpartisan	30.26	12.37	16.19	45.68	6
West Virginia	Partisan	37.92	0.72	37.41	38.43	2
Washington	Nonpartisan	38.07	9.88	16.93	48.59	23
Kentucky	Nonpartisan	39.25	15.02	17.71	65.13	11
Maryland	Retention	46.82	8.46	28.45	57.69	12
Indiana	Retention	48.84	10.54	34.08	60.05	6
Georgia ⁵	Partisan to nonpartisan	49.37	8.95	34.75	61.00	22
Iowa	Retention	50.00	4.31	39.10	54.14	20
ALL STATES	ALL ELECTIONS	26.56	14.17	2.42	65.13	478

¹ Pennsylvania and Illinois use partisan elections for initial terms, and retention elections otherwise.

² Montana uses nonpartisan elections in contested races, and retention elections otherwise.

³ Mississippi changed from partisan elections to nonpartisan elections in 1994.

⁴ Utah changed from nonpartisan elections to retention elections in 1982.

⁵ Georgia changed from partisan elections to nonpartisan elections in 1984.

Table 2**Variable Descriptions for a Model of Roll-Off in State Supreme Court Elections**

Variable	Variable Description
Dependent Variable:	
Ballot Roll-Off	= percentage of voters casting ballots for top offices who do <i>not</i> vote in the supreme court election
Independent Variables:	
<i>Election-Specific Contextual Forces</i>	
Contested Seat	= 1 if there is more than one candidate in the general election 0 otherwise
Hot Race	= 1 if the election was won by 60% of the vote or less 0 otherwise
Chief Justice Seat	= 1 if the seat being filled is the Chief Justice position 0 otherwise
Successful Incumbent	= 1 if the election involves an incumbent with previous electoral wins (i.e., the seat is not an open seat, or the incumbent is not an appointee seeking first election) 0 otherwise
<i>State-Level Contextual Forces</i>	
State Judicial Competition	= 1 for states with above average competition in supreme court elections from 1980-1995, calculated by Hall (2001a) 0 otherwise
Presidential Election	= 1 if a presidential election is on the ballot 0 otherwise
State Education Level	= percentage of the state population 25 years of age or older with a high school diploma
<i>Institutional Context</i>	
Partisan Election	= 1 if the election is a partisan election 0 otherwise
Retention Election	= 1 if the election is a retention election 0 otherwise
District Constituency	= 1 if the election is district-based rather than statewide 0 otherwise
<i>Temporal Context</i>	
1980-1983, 1984-1987, 1988-1991	= 1 if the election occurred in the years indicated 0 otherwise

Table 3**A Contextual Model of Ballot Roll-Off
in State Supreme Court Elections, 1980 – 1994**

Variable	Coefficient	Robust Std. Error	t	P>t
<i>Election Context</i>				
Contested Seat	-18.9665	2.3180	-8.18	0.000
Hot Race	- 4.3188	1.3496	-3.20	0.003
Chief Justice Seat	- 4.7515	1.1051	-4.30	0.000
Successful Incumbent	- 1.9923	0.9188	-2.17	0.037
Successful Incumbent x Partisan Election	3.8080	1.3806	2.76	0.009
<i>State Context</i>				
State Judicial Competition	- 5.0909	2.7371	-1.86	0.072
Presidential Election	3.0793	0.9911	3.11	0.004
State Education Level	- 0.6192	0.2462	-2.51	0.017
<i>Institutional Context</i>				
Partisan Election	- 9.6513	3.4545	-2.79	0.008
Retention Election	- 11.8820	4.3934	-2.70	0.011
District Constituency	9.3496	3.6730	2.55	0.016
District Constituency x Partisan Election	- 12.5725	5.0199	-2.50	0.017
<i>Temporal Context</i>				
1980-1983	- 1.8504	3.3633	-0.55	0.586
1984-1987	- 3.5357	2.2230	-1.59	0.121
1988-1991	0.3236	1.5855	0.20	0.840
Constant	90.9919	20.4164	4.46	0.000

Dependent Variable = Ballot Roll-Off

Regression with robust standard errors clustered by state

Number of clusters (states) = 35
Number of obs = 478
F(17, 34) = 55.50
Prob > F = 0.0000
R-squared = 0.6097
Root MSE = 8.9974

Table 4

**Predicted Values of Ballot Roll-Off (in Percentages)
Based on the Estimated OLS Model in Table 3***

Type of Election	No Incumbency Advantage		Incumbency Advantage	
	High Competition No Challengers	Low Competition No Challengers	High Competition No Challengers	Low Competition No Challengers
Statewide Partisan	25.28	34.73	27.12	36.58
Statewide Retention	23.09	32.54	21.06	30.51
Statewide Nonpartisan	34.94	44.40	32.91	42.36
District Partisan	22.11	31.56	23.95	33.41
District Retention	32.49	41.94	30.46	39.91
District Nonpartisan	44.34	53.79	42.33	51.76
	High Competition Challengers	Low Competition Challengers	High Competition Challengers	Low Competition Challengers
Statewide Partisan	6.32	15.77	8.16	17.61
Statewide Nonpartisan	15.98	25.43	13.95	23.40
District Partisan	3.15	12.60	4.99	14.44
District Nonpartisan	25.37	34.83	23.34	32.79

Incumbency Advantage:

Successful Incumbent = 1

No Incumbency Advantage:

Successful Incumbent = 0

High Competition No Challengers:

Hot Race = 1; State Judicial Competition = 1; Contested Seat = 0

Low Competition No Challengers:

Hot Race = 0; State Judicial Competition = 0; Contested Seat = 0

High Competition Challengers:

Hot Race = 1; State Judicial Competition = 1; Contested Seat = 1

Low Competition Challengers:

Hot Race = 0; State Judicial Competition = 0; Contested Seat = 1

Otherwise: Chief Justice Seat = 0; Presidential Election = 0; State Education Level = Mean Value;
1980-1983 = 0; 1984-1987 = 0; 1988-1991 = 0

* All predicted values are computed from the OLS estimates in Table 3 using CLARIFY software (Tomz, Wittenberg, and King 2003).