

# Accountability and Independence

## Judicial Elections and the Death Penalty

By

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# Chapter 1: Introduction

The debate over the best system to select state court judges rests primarily on the balance between accountability and independence in the judicial system. Judges are government officials, and just like those elected to the legislature their job is to represent the public and thus should be held accountable to the people they serve. However, the judicial branch was designed to be more independent from public opinion than the legislative branch to allow judges to make decisions based on the law, free from political pressures and influences.

This balance becomes especially relevant when looking at how to ensure judges are ruling impartially, particularly in criminal cases. Recently judicial campaigns, that were once not very publicized, have become multimillion dollar productions featuring expensive attack-ads and financed by interest groups. Between 2000 and 2014, an estimate of \$129 million was spent on TV campaign ads in state supreme court races alone (Greytak, Bannon, Falce and Casey 2015). Even more concerning is that of these TV ads run in the 2013-2014 election cycle, over half of them focused on the criminal justice record of the judicial candidates (Berry 2015). According to Kate Berry from the Brennan Center for Justice, these ads take on either a “soft-on-crime” or “tough-on-crime” approach. “Soft-on-crime” attack ads typically focus on a candidate’s experience as a criminal defense lawyer or on a specific decision they made as a judge in which they appeared lenient towards criminals. By portraying judicial candidates as being responsible for putting criminals like murders and rapists back on the streets, these ads play on the fears of voters. Other ads aim at supporting judicial candidates by portraying them as “tough-on-crime”. These ads typically focus on the candidate’s record of prosecuting criminals when they were an attorney, giving the maximum sentence in criminal cases as a judge, or having a strong ‘anti-crime’ position on an issue, such as being pro-death penalty. As judicial campaigns become more

widely publicized events, the electoral consequence of being labeled “soft-on-crime” by appearing lenient in criminal cases or having an unpopular position on an issue has become increasingly risky. But the focus on judicial candidate’s criminal justice record sends out a dangerous message to the judicial community that ruling for criminal defendants is bad and imposing harsh sentences is good. This way of thinking can pose a threat to the judicial independence that is necessary to ensure each individual’s right to a fair trial, especially those accused of committing a criminal act who could be facing extremely harsh sentences including the death penalty.

With the recent increase in spending and use of television ads in state court elections, the electoral risk for judges of making a decision that goes against popular opinion is very real. This risk was evident in 1986 when Chief Justice Rose Elizabeth Bird became the first Chief Justice of the California Supreme Court to be removed from office by voters during a retention election. Justice Bird was vocally against the death penalty and voted to reverse all 61 of the death sentences that were appeal during her time on the court. After several unsuccessful attempts to have her remove from office, Republican Governor Deukmejian ran a campaign labeling her “soft-on-crime” and attacking the way she voted on capital punishment appeals. Justice Bird was voted out of office the next retention election (Purdum 1999). Justice Bird’s defeat sent a message to the judicial community that having unpopular opinions and making “pro-defendant” rulings in criminal cases can have detrimental consequences and even judges their career.

This issue has been further exacerbated by recent court decisions. In 2002 the Supreme Court ruled in *Republican Party of Minnesota v. White* that based on the First Amendment right of free speech, judicial candidates are allowed to make announcements of their positions on political and legal issues during their campaign. Prior to this ruling, many states had rules baring

candidates from announcing their position on issues that could be brought before the court, including how they would rule on cases if elected. Now that judicial candidates are allowed to vocalize their position on issues like the death penalty during their campaigns, candidates may be more prone to running on “tough-on-crime” campaign platforms to appeal to voters and elected judges may feel added pressure to rule on cases based on promises they made during their campaign rather than on the specific facts of a case or on their own legal training. In 2010, the Supreme Court also struck down the federal ban on independent expenditures in elections in *Citizens United v. Federal Election Commission*, allowing for more money to be spent by corporations and outside groups in judicial elections. In Justice John Paul Steven’s dissent, he notes that the decision was made “when concerns about the conduct of judicial elections have reach a fever pitch” and that *Citizens United* “unleashed the floodgates of corporate and union general treasury spending in these races” (*Citizens United v. Federal Election Commission* 2010). Now that outside groups are able to spend unlimited amounts of money on campaigns, these groups have an even larger influence on the actions and decisions of judges who need their support and funding to win reelection. By striking down judicial campaign regulations and limitations, these cases have made it more and more difficult for state court judges to stay independent and impartial.

## Judicial Selection Methods

In order to find a solution for this balance between judicial independence and accountability, policy makers throughout American history have altered and adopted different judicial selection methods in order to find a system that allows judges to be both impartial and

representative. According to the National Center for State Courts (NCSC), judicial selection methods can be grouped into four main types of systems:

*Appointment-Based Systems* are the most similar to the method in which federal judges are placed into office because either the governor or legislature appoints a judge. But in state appointment-based systems there are usually term limits or maximum age restrictions unlike in the federal judiciary system in which judges serve for life. The American Bar Association recommends states use this system over any other selection method (American Bar Association 2003).

*Partisan Elections* are the most similar to elections in the legislative or executive branch. Judicial candidates run under a party label and are often chosen to be a party's candidate during a primary. The party affiliation of the judge is written next to the candidate's name on the ballot.

*Nonpartisan Elections* are competitive elections like partisan elections, but the party of the judicial candidate is not on the ballot. There are varying levels of nonpartisanship for these elections and in some states the party of the candidate is still widely known.

In *the commission-based system*, also referred to as the Merit Selection system or Missouri Plan, the governor appoints a judge from a list of potential candidates created by an independent commission. The *commission-retention system* is another form of this method, where a judge is selected through the commission-based system but the judge faces retention elections every few years in which voters vote "yes" to keep the judge in office or "no" to remove the judge from office. The American Bar Association recommends this type of election-based judicial system over partisan and nonpartisan elections (American Bar Association 2003).



## *History of State Judicial Selection Methods*

Although the United State Constitution outlines in Article II how federal judges are appointed, the method in which state court judges are selected is left up to each state to decide. When states originally entered the Union prior to the early-1800s, state court judges were appointed by either the governor or state legislature. The first wave of judicial selection method reforms began during the Jacksonian Era of the 1820s and 1830s. A movement to increase the accountability of state judges and transfer the power to select judges from the political elite to common voters led to Mississippi becoming the first state to implementing judicial partisan elections in 1832 (Geyh 2008). More and more states followed, and by the Civil War the majority of states used partisan elections to select state court judges.

However, by the end of the 19<sup>th</sup> century issues of corruption in the judicial system stemming from partisan elections and concerns that party bosses and public opinion had too much of an influence over state judges led to states once again altering their system of selecting judges. Many states with partisan elections began using nonpartisan elections in hopes that if judges no longer ran under a party label, party politics would have less of an influence over the judicial system. By 1930, twelve states had implemented nonpartisan election system (Geyh 2008). However, even with nonpartisan election there were still concerns that any form of competitive election would lead to an influence of party politics over state court judges. The Progressive Era of the early 20<sup>th</sup> century ushered in the commission-based system as a solution to the problems caused by judicial elections. In 1940 Missouri became the first state to implement the new system and by 1989 twenty-three different states had some sort of commission-based appointment plan, some with and some without retention elections (Geyh 2008).

Today the commission-based system is the most commonly used method by states to select their supreme court justices, and the majority of states with this system also hold retention elections. Nonpartisan elections have also increased in popularity among states in the last few decades. Although not as widely used as the other two systems, partisan elections and appointment-based systems are still used by some states to select their state supreme court justices.

## Research Summary

Much of the literature on state judicial politics focuses on how electoral pressures influence the behavior of judges on the bench. Studies have found that judges are less likely to dissent from the majority or go against public opinion when they are faced with the pressure of having to be reelected to keep their position (Hall 1992; Hall 1995; Hall 2014; Brace and Boyea 2008). State judges have also been found to become more punitive closer to elections (Huber and Gordon 2004). There are also a number of studies that compare the way different selection methods influence the voting behavior of supreme court judges, particularly in high-profile criminal cases such as capital punishment appeals. In one such study, public opinion is found to have a greater influence on judges that face competitive partisan elections than noncompetitive retention elections (Gordon and Huber 2007). This finding supports the commonly held view of prominent American legal organizations that competitive elections pose a threat to judicial independence (American Bar Association 2003). Another study found that justice's decisions are the most influenced by public opinion when they face nonpartisan elections and that justices facing retention elections also experience similar pressures but to a lesser extent (Canes-Wrone, Clark, and Kelly 2014). Other studies have found that judges selected through partisan elections are the most representative of the ideologies of voters, while judges selected through retention

elections are the least representative (Bonica and Woodruff 2012, Fitzpatrick 2009). Overall there is a consensus in the literature that electoral pressure influence judicial behavior, but there is not consensus in the literature on the effects of different judicial selection methods.

While there is a large body of research on the way electoral pressure and different selection methods influence judicial behavior, very little research has focused on how the voting behavior of judges affects their chance at electoral success. In other words, do voters actually take into account the way judges have previously voted on cases when casting their ballot for reelection? In this thesis, I am interested in observing the effect of how state supreme court justice's vote on death penalty appeal cases on their chances at being reelected or retained. I will be looking at how this relationship differs among judges that face commission-retention elections, partisan elections, and nonpartisan elections. Each system has different characteristics that allow for varying degrees of public influence on judicial voting behavior, and I will examine if this influence translates into electoral success or failure.

I hypothesize that the percentage of votes a supreme court justice casts to uphold or reverse a lower court's death penalty sentence in the term prior to an election or retention election will affect a justice's chance at electoral success differently depending on the type of judicial election they will face. I predict that the voting record of justices in partisan election systems will not significantly affect a justice's chance at reelection because voters rely on the information on the party affiliation more than the actual voting behavior of judicial candidates when deciding who to vote for.

In nonpartisan election systems voters are more likely to base their vote on a candidates voting record because they do not have partisan signals of party labels to influence their decision. I predict that justices who vote to reverse a lower court's death penalty sentence at higher rates

will receive less votes during elections because they appear “soft-on-crime”. Alternatively, I predict that the voting record of justices on death penalty appeals will not significantly affect justice’s chances at reelection in nonpartisan systems because justices strategically altered their voting behavior to increase their chance at reelection. Lastly, I hypothesize that justices in commission-retention systems who vote to reverse death penalty sentences at high rates will receive less votes in retention elections because unsatisfied voters have the option under this system of just removing a justice from office.

The results of this analysis will show that the voting behavior of supreme court justices in the term prior to an election does not have a significant effect on a judge’s electoral success in partisan and nonpartisan election systems. However, in commission-retention systems justice’s who vote to reverse death penalty sentences at higher rates do worse in retention elections. These findings support my hypothesis for both partisan election and commission-retention systems as well as my alternative hypothesis for nonpartisan elections.

## Chapter 2: Literature Review

The vast majority of early research done on state judicial elections focuses on the effect of having judicial elections on a judge's behavior while on the bench. Much of this research distinguishes between different judicial selection systems only by whether they are election or appointment based. However, a recent group of studies have sought to compare the effects of other differences in judicial selection methods.

### Electoral Pressure and Judicial Behavior

Much of the literature on judicial elections focuses on how electoral pressures influence the way judges behave while on the bench. Overall these studies conclude that competitive elections do have an affect on judicial behavior.

In two early studies done by Melinda Gann Hall, she found that when judges face competitive elections they behave in a way to maximize their chances at being reelected by minimizing electoral competition (Hall 1992, Hall 1995). In both studies she used data on the voting behavior of supreme court justices on death penalty appeal cases in four southern states, Kentucky, Louisiana, North Carolina, and Texas, that each had some form of election-based system for selecting justices. In her 1992 study she looked at the voting behavior of the liberal justices on each bench, who were the minority on typically conservative courts. She found that when faced with different electoral pressures, such as a narrow margins of success in a previous election, the liberal judges were more likely to vote with the court majority than dissent on political controversial cases like death penalty appeals. This result indicates that judges act strategically by avoiding unpopular dissents that could attract opposition and threaten their

electoral success. With her 1995 study, Hall added onto her findings by analyzing the voting behavior of all supreme court justices on death penalty appeals instead of just liberal justices. She found that electoral pressures not only encourage judges to avoid unpopular dissents in controversial cases but also directly influence the way judges vote on individual cases in order to appeal to voters. The findings from Hall's studies indicate that public opinion plays an influence on the way individual justice's vote on highly salient cases, like death penalty appeals, by encouraging justices to act strategically to minimize negative publicity and discourage potential competitors that could threaten their electoral success.

In a later paper, Hall studied how mandatory retirement laws affect how individual state supreme court justices rule in death penalty appeal cases. For her study she used the data from the State Supreme Court Data Project, which is a widely used dataset that includes information on all state supreme court decisions and individual justice votes from 1995 to 1998. Hall looked at individual justice's willingness to cast an 'unpopular liberal vote' to overturn a lower court's capital punishment sentence when brought on appeal. She compared the voting record of justices who were eligible to run for reelection with the voting record of justices who were retiring at the end of their term due to mandatory retirement laws to analyze how the pressure of facing reelection affects judicial behavior. After controlling for a number of different environmental, institutional state and legal factors, Hall found that justices who are forced to retire at the end of their term due to mandatory retirement laws are more willing to cast an 'unpopular liberal vote' than judges who have the option of running for reelection. These results indicate that justices who face elections cast votes on controversial cases that "are in part strategic" in order to appeal to voters and increase their chances at electoral success (Hall 2014).

Paul Brace and Brent D. Boyea (2008) also analyzed how public opinion on salient issues such as the death penalty influences judicial voting behavior. For their study, they used data on how state supreme court justices voted on capital punishment appeal cases in thirty-one states. Each state in their sample had restrictions on judicial candidates discussing about their political position on issues and how they would vote in cases that might come before the court while campaigning. They compared variations in judicial voting behavior in states where justices are appointed and in states where justices are elected, and hypothesized that elected justice vote to reverse capital punishment sentences that are appealed less often than appointed justices because of the potential electoral consequences they might face. Brace and Boyea found that public opinion affects how justices vote by directly encouraging justices to uphold lower court's death penalty sentences when public opinion is in support of the death penalty. They also found that public opinion indirectly influences the ideological composition of state supreme courts because justices with ideologies consistent with public opinion are more likely to be elected (Brace and Boyea 2008). Thus, if public opinion is in support of the death penalty, a state supreme court is more likely to lean ideologically conservative.

Another study found that electoral pressure on judges not only affects the way they rule in criminal cases, but affects how punitive judges are in their sentencing. Gregory Huber and Sanford Gordon looked at sentencing data from the 1990s of around 22,000 criminal cases tried in Pennsylvania trial courts. In Pennsylvania judges are initially selected through competitive partisan elections but are up for confirmation every 10 years in noncompetitive retention elections. Huber and Gordon theorized that judges must balance between following their own personal ideological preferences and strategically trying to keep their position as a judge when voting on cases. If a judge is too lenient in sentencing, an opponent or interest group could use

that decision against them if they run for reelection. Voters are largely uninformed on specific qualities and attributes of judicial candidates, so one highly publicized decision could be the only information a voter uses to decide who to vote for. Thus, as judges near the end of their terms, they will favor trying to keep their position over their own personal ideological preferences and become more punitive in sentencing so as to not be perceived as “soft-on-crime”. The results of their study supported Huber and Gordon’s hypothesis that judges become more punitive closer to a reelection and they “attribute at least 1,818 to 2,705 years of incarceration” to harsher punitive sentencing due to electoral pressure (Huber and Gordon 2004).

## Judicial Selection Methods and Judicial Behavior

Recently some literature on state judicial system has focused on comparing different judicial selection methods, these works report conflicting results.

The American Bar Association (ABA) held the Commission on the 21<sup>st</sup> Century Judiciary in 2003 to discuss the effects of the increase in polarization in the state judicial system and make recommendations for best judicial selection practices. In the report written following the conference, the ABA made a series of recommendations based on the finding made during the conference for reforms designed to help protect judicial independence and ensure legitimacy (American Bar Association 2003). The ABA opposed the use of any form of judicial election including nonpartisan, partisan, and retention elections because “judges may feel the greatest pressure to do what is politically popular rather than what the law requires” (American Bar Association 2003). Instead the ABA recommends states use a commission-based appointment system where the governor appoints a judge from a pool of qualified applicants that have been selected by a nonpartisan commission and suggests that judges remain up for periodic judicial



performance evaluations. The ABA also recommends that judges be appointed for a single term of at least 15 years or until they reach an age limit so that they do not face a reelection process. According to the ABA, appointment-based systems would eliminate the need for judges to rely on donations and expensive, publicized campaigns that could jeopardize their independence from public opinion and party politics.

However, the ABA recognizes that many states will continue to use election-based systems and also made a set of recommendations for the best practices for judicial elections. First, the ABA recommends the use of retention elections with a commission-based system over all forms of competitive judicial elections, because judges are only compared to their own records, not those of other candidates. For states that use competitive elections, the ABA recommends the use of nonpartisan elections over partisan elections to ensure judges are selected based on their personal qualifications rather than their party affiliation. The ABA argues that in partisan elections the political of a judicial candidate is the most well-know and potentially the most important information for voters when casting their vote, which threatens judicial independence from party politics.

The recommendations made by the American Bar Association are supported by the findings in a later study done by Sanford Gordon and Gregory Huber, in which they analyzed how trial judges in Kansas alter their sentencing behavior based on the competitiveness of judicial elections. Kansas has a unique trial court system where fourteen districts use partisan elections and seventeen districts use commission-retention system to select judges, making it a good case study for analyzing the effects of different aspects of the two selection systems on judicial behavior. Gordon and Huber found that judges who are elected through competitive partisan election systems are more punitive when they sentence convicted felons than judges who are

appointed through the noncompetitive commission-retention system. Similar to Brace and Boyea (2008), they find that facing competitive elections directly influences judges to conform to public opinion in order to increase their electoral success rather than having an indirect effect of by selecting judges that are ideologically similar to that of voters (Gordon and Huber 2007).

However, in the past decade a number of studies have been done that question whether the ABA's fears and recommendations on judicial selection methods still hold today after the recent changes in judicial campaign styles. In 2012, Brandice Canes-Wrone, Tom S. Clark, and Jason P. Kelly used a database from 1980-2006 of approximately 12,000 decisions from around 2,000 death penalty cases to compare the effect of all four types of judicial selection methods on judicial behavior of justices presiding on state supreme courts. In their study they note that during the late 1970s and, a "new-style judicial campaign" emerged characterized by an increase in media attention, campaign spending, and interest group participation. According to Canes-Wrone, Clark, and Kelly, this change in campaign style came to national attention in 1986 when California Supreme Court Justice Bird lost her retention election after a campaign was run targeting her for her anti-death penalty position. In the study they compared the the voting behavior both before and after Justice Bird lost her election of on death penalty appeal cases in order to see how the change in election campaigns has altered the way justice behave under the four main types of judicial selection methods. Although the pre-Bird findings support the ABA's concerns and recommendations about the different judicial selection systems, their post-Bird findings indicates that with the "new-style judicial campaign", the ABA's recommendations no longer hold. Specifically, they find that judges are more responsive to majority opinion in nonpartisan election systems than partisan election systems. They also found that justices

appointed though commission-retention systems face similarly pressures as judges in nonpartisan systems, but to a slightly lesser extent (Canes-Wrone, Clark, Kelly 2014).

Adam Bonica and Michael J. Woodruff (2012) analyzed which judicial selection method results in the selection of justices who are the most ideologically representative of the voters of their state. Using a new method they developed to measure the ideology of state supreme court, Bonica and Woodruff measured the ideological alignment between justices and voters in states with appointment systems, commission-based systems, partisan election systems, and non-partisan election systems. They found that justices elected through partisan elections are the most representative of the ideology of voters of their state and that justices selected through commission-based systems are the least representative. They also compared nonpartisan and partisan election systems and found that judges selected through nonpartisan elections are less ideologically congruent with voters in their state and on average more ideologically extreme than justices selected through partisan elections. These results suggest that “by depriving voters of the informational value of partisan labels”, less representative judges are selected (Bonica and Woodruff 2012). These finding imply that the partisan elections ensure judicial alignment with the the ideologies of constituents better than other selection methods.

Bonica and Woodruff’s findings on commission-based systems are also supported by a study done by Brian T. Fitzpatrick (2009). Fitzpatrick questioned the claims of many legal organizations, like the American Bar Association, that commission-based systems are the most insulated selection method from the influence of party politics. He hypothesized that instead of removing party politics from the judicial selection system, commission-based systems “may simply move the politics of judicial selection into closer alignment with the ideological preferences of the bar” (Fitzpatrick 2009). Fitzpatrick’s finds that justices selected through

commission-based systems tend to be liberal than perhaps justice voters would have selected through other election-based methods. This finding implies that justices selected through commission-based systems are less representative of voters of their state. Fitzpatrick also argues that justices are held the least accountable to constituents in commission-based systems based on incumbent loss rates. State supreme court justices across state win 99% of retention elections while incumbent justices running for reelection lose 23% of the time in partisan elections (Fitzpatrick 2009). Thus commission-retention systems insulate judges from being voted out of office because once a judge is appointed to office in commission-retentions systems it is highly unlikely he or she will be removed by voters. According to Fitzpatrick, this illustrates the power that bar associations have over the state judicial system in states with commission-retention selection methods because they have a large amount of control over the initial selection process of justices.

Chris W. Bonneau and Melinda Gann Hall (2009) corroborate Fitzpatrick's findings. They found that judicial incumbents in partisan elections are defeated 31.4% of the time while incumbents in nonpartisan elections are defeated only 5.2% of the time and justices in retention elections are voted out of office only 1.3% of the time. According to Bonneau and Hall, these results indicate that that "retention elections seek to have the benefit of appearing to involve the public, but in actuality function as a way of blessing the appointed judge with a false aura of electoral legitimacy" (Bonneau and Hall 2009)

Thus, there are conflicting findings within the current literature on the different types of judicial selection methods. There are also several different indicators used by these studies to measure the effects and implications of the different types of selection methods on state's judicial systems. Some studies look at how closely the ideology of selected judges match with

the ideology of voters in that state, while others look at incumbency defeat rates or the voting patterns of judges on controversial cases. Results found using any of these measurements can be interpreted as indicating a judge is being held accountable by voters or that public opinion is posing a threat to the impartiality of judicial rulings. Thus, there is also a struggle within the current literature on judicial selection methods on how to weigh the importance of keeping judges accountable with making sure judges are impartial and independent from outside influences.

## Chapter 3: Theory and Hypothesis

Much of the research that has been done on judicial selection methods focuses on the effects of different selection systems on the behavior judges, but very little research has focused on how different selection methods affect the way voters vote in judicial elections. In my research I look at how much of an impact the voting behavior of state supreme court justices on capital punishment appeals actually affects the way voters vote when justices are up for reelection or retention. Because of variations in the way retention, partisan, and nonpartisan elections work, I hypothesize that the responsiveness of voters to the decisions judges make on capital punishment appeals will differ between election type. Based on existing research and literature, I have developed a theory on voter responsiveness to judicial behavior for each of the three judicial election types.

### Partisan Election Theory

In partisan judicial elections, the political party of a judicial candidate is the most readily available information for voters. Since typically voters are not as well informed about specific attributes of the judicial candidates, the political party a candidate is running for in a partisan judicial election may be the only reason voters vote for a particular candidate. Many voters who have a strong alliance to a particular party may only along party lines and therefore any specific characteristics of a judicial candidate would be irrelevant to their vote. Furthermore, having partisan judicial elections gives voters information about what a judicial candidate's position is on certain issues and how they are likely to vote on cases, based on the common ideological views of the political party they belong to. For death penalty appeals, voters can reasonably infer

that judicial candidates running on the Republican ticket will be more pro-Death Penalty than judicial candidates running on the Democrat ticket based simply on each major party's position on the issue.

Therefore, I predict that the voting behavior of state supreme court justices on capital punishment cases will make a very small impact if any on how well justices do when running for reelection. Typically, the ideological composition of a state's supreme court in states with partisan elections will mirror the partisanship levels of the electorate; more conservative states will have more conservative state supreme courts and visa versa. Thus the voting record of state supreme court justices may already be fairly well aligned with the majority opinion of voters. Although attacks ads on a candidate's voting record may influence some voter's decisions, ultimately the partisanship of a judge will be the most important factor to the majority of voters. Logically, individuals who are liberal would prefer a liberal supreme court over a conservative supreme court and individuals who are conservative would prefer a conservative supreme court over a liberal supreme court. Therefore, voters will be more concerned with the partisanship of judicial candidates than their previous voting record. Furthermore, if a judge is attacked for their decision on a death penalty sentences during their reelection campaign, the attack would appear as more of a Democrat versus Republican issue than an issue with the voting behavior of the actual individual justice.

*H: The voting record of justices in partisan election systems on death penalty appeals will not significantly affect a justice's chance at reelection.*

## Nonpartisan Election Theory

Unlike partisan election systems, in nonpartisan election systems voters do not given the information on the partisanship of a candidate to use to make electoral decisions. Thus an attack ad labeling a candidate as being “soft-on-crime” may be the only information about a candidate a voter has seen before deciding who to vote for in nonpartisan systems, which is supported by the findings in previous studies (Bonica and Woodruff 2012). Therefore, I predict that judges who vote to reverse death penalty appeal at higher rates will receive fewer votes during elections because they will face harsher criticism on their voting record.

*H1: Justices who vote to reverse death penalty sentences of lower courts at higher rates will receive fewer votes during elections in nonpartisan election systems.*

However, there are two characteristics of nonpartisan elections that may cause a different result to occur. If we take the findings from Canes-Wrone, Clark, and Kelly’s study into account, the effect of judicial voting behavior on death penalty appeals may already be negated by the effect of perceived electoral pressure on justices during their term. They found that “judges in nonpartisan election systems are between 35 and 45 percentage points more likely to uphold a death sentence than judges in partisan election system” (Canes-Wrone, Clark, and Kelly 2014). This indicates that judges that are elected to the court through nonpartisan elections are aware of the potential consequences that could result from voting to reverse death penalty appeals on their chances of reelection, so they adjust their voting behavior to appear “tough-on-crime”. The effect of the way judges vote on death penalty appeals cases on their reelection success may be skewed because they are strategically voting to prevent being attacked on their criminal justice record.



Second, fewer nonpartisan elections are contested than partisan elections. Between the years 1990-2004, a study on partisan and nonpartisan elections found that 82.4% of partisan elections were competitive while in only 59.9% of nonpartisan elections did judicial candidates face competition from another candidate (Bonneau and Hall 2015). If judges are not contested when up for reelection, then they automatically will win an election so the way they voted during their previous term will not affect their chances at electoral success. Furthermore, if a judicial election is not competitive there will mostly likely be very few ads attacking run to targeting judges voting record that would influence voters. Because nearly half of all nonpartisan elections end up being noncompetitive because of a lack of challenger, in many nonpartisan elections whether or not a judge has voted to reverse capital punishment sentences at high rates could be irrelevant.

*Alternate H: The voting record of justices in nonpartisan systems on death penalty appeals will not significantly affect a justice's chance at reelection success.*

However, there could be another explanation for the number of uncontested seats that would led support to my original hypothesis for nonpartisan election systems. Running against an incumbent is potentially more difficult in nonpartisan elections than in partisan elections because challengers do not have a base of voters that will vote for them over the incumbent simply because of the political party they are from. Therefore, popular judges in nonpartisan systems are less likely to be challenged because the chances of electoral success by a challenger is low. Thus there is the possibility that judge's voting behavior on death penalty appeals could affect if a judge is contested or not; judges who vote to reverse lower court's death penalty

sentence's at high rates will be contested more often because challengers have a better chance of winning against a judges who has been labeled "soft-on-crime" due to their voting record.

*H1.2: Justices who vote to reverse the death penalty sentences of lower courts at higher rates will be contested more often and therefore receive fewer votes in reelections.*

## Commission-Retention System Theory

In commission-retention systems, supreme court justices face issues similar to those in nonpartisan elections when up for retention. Like in nonpartisan systems, judges in commission-retention systems do not run on a political party's ticket. Therefore, if a judge votes to reverse the death penalty sentences of lower courts at a high rate, he or she runs the risk of being labeled "soft-on-crime", which could potentially be the only information a voter hears about a judge before voting to retain them or not. Retention elections are also noncompetitive, so in every retention election judges are only compared to themselves rather than another candidate competing for the position. This effects a judge in two of ways. First, all judges in retention elections are incumbents and therefore have a voting record on cases in the state supreme court which is not true of all judicial candidates in partisan and nonpartisan election systems. Second, judges up for retention cannot automatically win an election because they are unopposed also unlike in partisan and nonpartisan election systems, so every retention election a judge faces the possibility of being voted out of office. Thus, every candidate up for retention has faced similar pressures to vote strategically on cases in order to increase their chance at success during their next retention election. However, since judges in retention elections are only compared to their own record, their voting record on capital punishment appeals would have to be extreme in one

way or another to garner enough public attention to make more than 50% of voters to actually vote to kick them out of office.

*H: Justices who vote to reverse the death penalty sentences of lower courts at high rates will receive fewer votes during retention elections.*

# Chapter 4: Research Design

## Data Collection

To test my hypothesis, I created a dataset of judicial election results from ten states that have the death penalty from the years 1980 to 2006. I obtained data on individual justice's votes and the partisanship of individual justice from the dataset collected by Canes-Wrone, Clark, and Kelly for their 2014 study "Judicial Selection and Death Penalty Decisions", which they kindly shared with me. The dataset included over 12,000 decisions on around 2000 death penalty appeal cases to the highest court of appeal in 26 states. I collected data on judicial election results and other justice and state specific information by consulting state general election result reports, justice's biographies, and state court websites.

## Dependent Variable

The main dependent variable in this study is the percentage of votes an incumbent justice received in a nonpartisan, partisan or retention election, which I named *Vote Received in Election*. Using the percentage of votes a justice receives rather than just if a justice wins or loses an election allowed me analyze a justice's degree of electoral success more closely and gave me greater variation in my data. I collected this information by using past election results for general elections which I found on the state election commission or Secretary of State website for each state in my sample.

To test my main hypothesis' I only used the data for justices who ran for reelection or were up for retention at the end of their term, but I also collected on data how justices who were retiring at the end of the term voted on capital punishment appeals during the term leading up to

their retirement. This information allowed me to test if there are any differences in voting behavior for justices who are facing the electoral pressures associated with running for reelection or being up for retention as opposed to justices who are not facing electoral pressures because they are retiring.

For partisan and nonpartisan elections, justices sometimes run unopposed if no one runs against them, so they automatically receive 100% of the vote. To be able to control for this factor that could bias my dependent variable, I also created the variable *Unopposed*. I coded observations where at the end a justice faces a competitive election 0 and observations where at the end a justice is unopposed 1. I coded all retention elections 0 since retention elections are not competitive elections and I did not code terms where a justice was retiring at the end.

## Independent Variable

The independent variable in this study is the percentage of votes a judge casts over the course of one term in office to reverse the death penalty sentences of a lower court, which I named *Percent Sentences Reversed*. This information allows me to look at the voting behavior of a judge during a term prior to an election or retirement. I created each data point by dividing the number of votes an individual justice casted to reverse a lower court's capital punishment sentence by the total number of death penalty appeals a justice voted on over the course of one term in office. I chose to look at the percentage of death penalty appeals where a justice reverses a lower court's ruling instead of just looking at the raw number of sentences reverse, because the number of death penalty appeals each state supreme court hears varies depending on the state. It should be noted that due to this variation in the number of death penalty appeals each state

supreme court hears, the difference in a justice voting to uphold or reverse one sentence could potentially lead to a large change in overall percentage points for some justices.

I obtained this data from the dataset created by Canes-Wrone, Clark, and Kelley that had information on the way individual justice's voted on death penalty appeal cases. In their published paper that used this dataset, they coded upholding a sentence as 1 and reversing a sentence as 0. However, in the dataset they shared with me the coding was reversed so uphold was coded 0 and reverse was coded 1, which is how I coded the information in my dataset. To compile the information on the total number of votes each justice cast to uphold or reverse capital punishment sentences, I sorted all the data by judge name on excel and then used a pivot table that allowed me to add up the votes for each year a justice served on the bench. By collecting data on the voting behavior of justices for individual years within a term, I was able to track changes in voting over the course of a term. By adding together these datasets, I was also able to create my variable *Percent Sentences Reversed*.

## Judicial Selection Systems

Each term is coded for the judicial selection system that was in place for the judge that served that term. For five of the states in my dataset, Tennessee, Utah, Arizona, Georgia and North Carolina, the judicial selection system changed between the years 1980 and 2006, so there are terms served by justices from the same state that are coded for different judicial selection systems. There are three variables, *Retention Election*, *Partisan Election*, and *Nonpartisan Election*, for the three different judicial selections systems. I coded each variable 1 if the term is served under that system and 0 if the term is not. When conducting the analysis of my data I will run separate regressions with the data from each category of judicial selection systems to see if

the voting behavior of a justice influences the way voters vote depending on the election system in place.

## Judge-level controls

By collecting data for terms where a justice is running for reelection or retention as well as retiring at the end of the term, I am also able to compare the electoral effect of facing an election on justice's voting behavior. I named this variable *Retire* and coded observations where justices were running for reelection or retention at the end of the term zero 0 and observations where justices were retiring at the end of the term 1 (or in the middle of term in some cases). Because judges who are retiring no longer face the electoral pressure of having to appeal to voters to get reelected or retained at the end of their term, I predict that justices who are retiring will reverse death sentences of lower court's at higher rates than justices who are not.

I also collected data on the age of each justice at the time of their reelection or retirement and named this variable *Age*. Recently several states have banned the death penalty, illustrating that public approval of the death sentence has decreased in recent years. Therefore, I predict that older justices would be more conservative in their views toward the death penalty and would vote to uphold death penalty sentences at higher rates than younger judges.

I also anticipate that Republican justices vote to uphold death penalty sentences on average at higher rates than Democrat justices based on each major party's positions on the death penalty. I obtained information on the partisanship of individual justice's from Canes-Wrone, Clark, and Kelly's dataset. Although in their published study they coded Democrat judge's as 0 and Republican justice's as 1, in the dataset they shared with me the coding was switched. For my dataset I coded terms served by Republican justices as 0 and terms served by Democrat

justices as 1 and I named the variable *Partisanship*. Canes-Wrone, Clark, and Kelly collected the information on party affiliation for justices in partisan election systems from state judicial election results, but for commission-retention systems and nonpartisan elections the information was not as readily available. For justices in commission-retention systems, they used the party of the governor that appointed the justice as an indicator of the party affiliation of the justice. For justices in nonpartisan systems, they “searched through the American Bench biographical directories, local newspapers via Lexis Nexis, and existing datasets” (Canes-Wrone, Clark, Kelly 2014). They left out data from the dataset on judges they were unable to collect partisanship information for.

I also collected data on the gender and race of each justice. I collected this data by looking through biographical directories for the justice in my sample that were made available on either individual state court websites or on court history websites. I named the variable indicating the justice’s gender *Female* and coded terms served by male justices 0 and terms served by female justices 1. I predicted that since women are typically more liberal than men, female justices will be more likely to vote to reverse a lower court’s death sentence than men. I named the variable indicating a justice’s race *Non-white* and coded terms served by white justices 0 and terms served by non-white justices (African-American, Asian, Hispanic, etc.) 1. I anticipated that since minorities are typically more ideologically liberal, non-white justices will be more likely to vote to reverse a lower court’s death sentence.

## Other Control Variables

Because there is a higher voter turnout for general elections during presidential election years, I included a control variable for whether the reelection or retention election year was the



same as a presidential election year, and named the variable *Presidential Election Year*. If the election at the end of a justice's term was not on a presidential election year, I coded it 0 and if it was I coded it 1. I also controlled for variation in the partisanship of each state by creating the variable *State Partisanship*. To find the information for this variable, I looked up the general election results for each presidential election between the years 1980 and 2006 for each state in my sample and identified which presidential candidate won the general election in each state. I used the party of the presidential general election winner in each state as an indicator for the overall partisanship of the state during the four years following the election. If a justice's term ended on a year in the four years following a state voting for a democratic candidate, I coded it 0 and if it ended in the four years following a state voting for a Republican candidate, I coded it 1. I also controlled for state-fixed effects by making a dummy variable for each state.

## Chapter 5: Results and Analysis

For my statistical analysis, I collected a total of 237 observations of different individual judicial terms from ten different states. Of the data I collected, 170 of the observations were terms where the justice was up for reelection or retention at the end of the term and 67 of the observations were terms where the justice retired or left the court during or at the end of the term. I grouped the observations in three categories based on which judicial election system, commission-retention, partisan elections, and nonpartisan elections, a state used to select justices during the times period of the observation. Table 1 shows the distribution the data I collected on the three selection methods for each state. As illustrated in Table 1, some states switched selection methods between the time frame of 1980 to 2006 that the data was collected, so there are some states that are under the category of two different selection methods.

<b>Table 1</b>					
Observations By State and System					
Commission-Retention		Partisan Election		Nonpartisan Election	
State	Terms	State	Terms	State	Terms
TN (1994-)	14	AR (pre-2001)	10	AR (2001-)	1
UT (1985-)	14	GA (pre-1983)	13	GA (1983-)	13
AZ	30	NC (pre-2004)	4	NC (2004-)	4
FL	41	AL	43	WA	39
		TX	19		

Observations: Table 1 shows the judicial election system each states in my dataset used and how many observations I collected for each state between the years of 1980 and 2006. Some states switched judicial selection methods between this time frame which is shown in the table.

### Primary Results

To test my hypothesis<sup>7</sup>, I ran a multivariate regression for each selection method with the percentage of the total votes a justice received in an election as the dependent variable (*Vote*

*Received in Election*) and the percentage of death penalty sentences a justice reversed over the course of their term as the main independent variables (*Percent Sentences Reversed*). I also included other relevant control variables (*Presidential Election Year, Age, Female, Non-white*) and controlled for state-fixed-effects. I did not include data on the percentage of votes a justice receives in partisan and nonpartisan elections for uncontested elections when I ran the regressions for those election systems. The results of these regressions are show in Table 2.

The results for the regression run using the data on partisan elections supports my that the voting record of justice will not significantly affect a justice's reelection success in a partisan election system. Table 2 shows that the percentage of votes a justice receives during partisan elections (*Percent Vote Received*) is not significantly affected by the percentage of capital punishment sentences a justice reversed (*Percent Sentences Reversed*).

The results for the regression using the data on nonpartisan elections give the same results as the regression for partisan elections, which does not support my hypothesis for nonpartisan elections that justices who vote to reverse capital punishment sentences at higher rates will receive fewer votes when running for reelection in a nonpartisan election system. These results do however support my alternative hypothesis that judicial voting behavior on death penalty appeals does not affect a justice's chance at reelection in a nonpartisan election. To test my explanation for my alternative hypothesis that justice strategically alter the way they vote on death penalty appeals to decrease the chance of potential electoral competition, I ran a regression using the data on if a nonpartisan election is contested or not as my dependent variable (*Unopposed*) and *Percent Sentences Reversed* as my independent variable. My results did not indicate that there was any statistically significant impact of the way justice's vote on death penalty appeals throughout the term leading up to a nonpartisan election on if a justice

<b>Table 2</b> Vote Received in Election, Death Penalty Sentence Reversal Rate, and Judicial Selection Systems			
Independent Variables	State Level Fixed Effects		
	Commission-Retention	Partisan	Nonpartisan
	Coefficient (Standard Error)	Coefficient (Standard Error)	Coefficient (Standard Error)
Percent Sentences Reversed	-0.06** (0.02)	0.03 (0.14)	0.01 (0.17)
Presidential Election Year	-1.26 (1.42)	1.98 (4.52)	-0.58 (3.52)
Age	-0.08 (0.1)	0.12 (0.35)	-0.17 (0.46)
Female	0.61 (1.73)	6.18 (5.87)	7.13 (6.99)
Non-White	-1.25 (2.51)	-8.83 (8.69)	-3.32 (18.9)
Constant	84.95 (6.34)	51.9 (22.12)	66.7 (33.31)
	$R^2=0.603$ F=11.80 n=71	$R^2=0.135$ F=0.60 n=35	$R^2=0.555$ F= 0.94 n=15

Vote Received in Election Regression Results: Table 2 shows the results of a multivariable regression run with the percentage of votes received in an election as the dependent variable for each of the three different types of judicial selection elections.

is contested or not during that election. Although my findings lend support to my alternative hypothesis, I was unable to provide proof for my explanation for it.

The results for the regression for the commission-retention election data support my hypothesis that justice who vote to reverse death penalty sentences at high rates will receive fewer votes during retention elections. The results show that the percentage of votes a justice casts to reverse death penalty sentences (*Percent Appeal Reversed*) has as statistically significant ( $p<0.05$ ) effect on the percentage of votes a justice receives during a retention election (*Percent*

*Vote Received*). This indicates that for each one-point increase in the percent of votes a justice casts to reverse the death penalty sentences of lower court's in the term prior to a retention election, the percentage of votes a justice receives in the retention election decreases by 0.06 points. Although the relationship is not very large, the results show that there is a negative correlation between justice voting to reverse capital punishment sentences and the percentage of votes a justice receives in a retention election.

None of the other control variables I included were statistically significant.

## Additional Results

After obtaining my primary results, I ran a multivariate regression with the percentage of vote to reverse the capital punishment sentences of lower courts over a course of a justice's term as the dependent variable (*Percent Sentences Reversed*). My main independent variables that I tested were the different elections systems: *Retention Election*, *Partisan Election*, and *Nonpartisan Election*. The omitted indicator for the judicial election systems was nonpartisan elections and therefore the effects of retention elections and partisan elections are estimated compared to nonpartisan elections. I also included control variables specific to the state and year as well as judge specific attributes and I included a dummy variable for state fixed effects. The results of the regression are shown in Table 3 below.

Both the variable *Retention Election* and *Partisan Election* were highly statistically significant ( $p < 0.01$ ). These results indicated that justices that face retention elections or partisan elections vote to reverse lower court's capital punishment sentences less than justices facing nonpartisan elections. Furthermore, the results indicate that justice's facing retention elections vote to reverse lower court's capital punishment sentences at lower rates than justices facing

<b>Table 3</b> Death Penalty Sentence Reversal Rates and Judicial Selection Methods	
Independent Variables	State Level Fixed Effects
	Coefficient (Standard Error)
Retention Election	-62.08*** (13.29)
Partisan Election	-48.21*** (16.16)
Presidential Election Year	3.07 (3.06)
State Partisanship	6 (5.39)
<i>Judge Attributes</i>	
Retire	-6.14 (4.25)
Partisanship	3.22 (4.16)
Age	-0.46** (0.24)
Female	-8.22* (4.97)
Nonwhite	9.79* (5.87)
	$R^2=0.254$
	F=3.92
	n=226

Notes: \*\*\*p<0.01, \*\*p<0.05, \*p<0.10

Death Penalty Sentence Reversal Rate Regression Results: Table 3 shows the results of a multivariable regression run with the percentage of death penalty sentences a justice reverses over an entire term as the dependent variable. Nonpartisan election is the omitted variable, so the results for retention election and partisan election are compared to nonpartisan election.

partisan elections.

The other independent variables that were statistically significant were *Age* (p<0.05), *Female* (p<0.1), and *Non-White* (p<0.1). Originally when I ran the regression I did not include the age of a justice as a variable and just included the variable *Retire* to indicate if a justice was retiring at the end of the term or not. In my initial results *Retire* was statistically significant, but

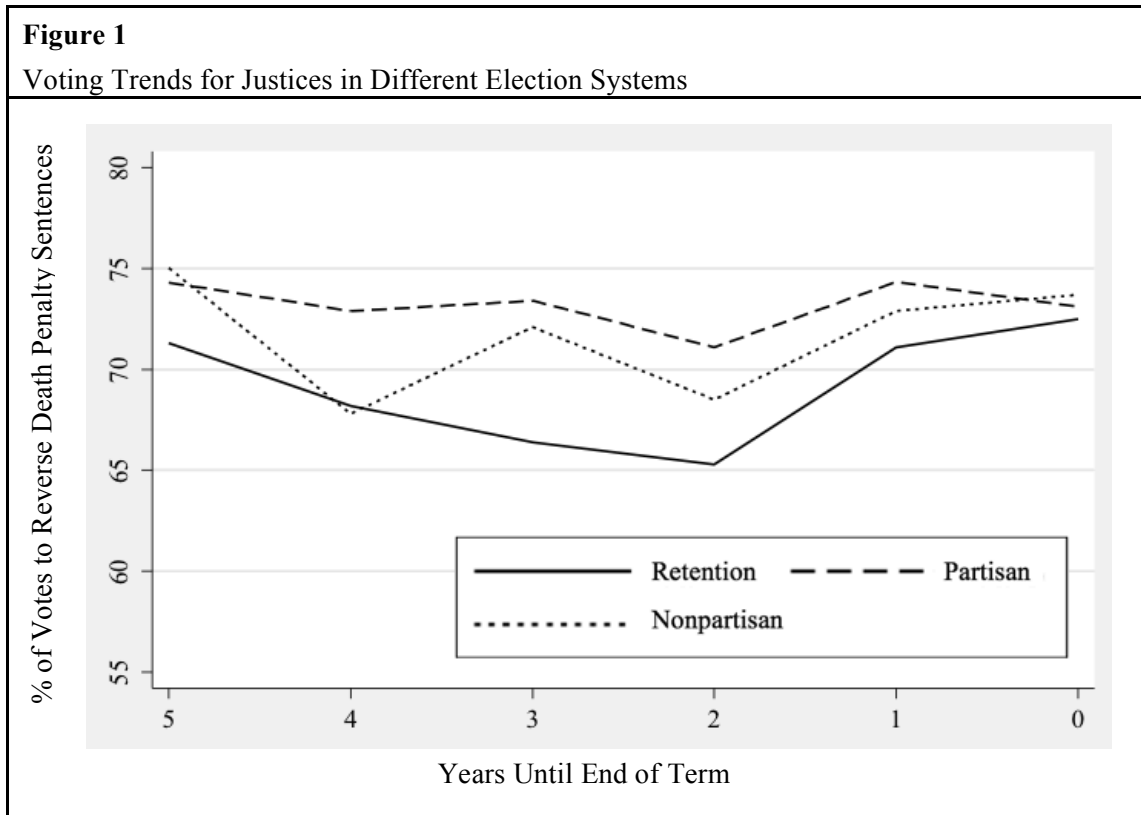
the coefficient was negative indicating that if a justice was retiring at the end of their term they vote to reverse death penalty sentences at lower rates than justices that are up for reelection or retention. This result was surprising to me because it contradicted the results found in previous studies comparing the voting patterns of justice who were retiring with those up for reelection (Hall 2014). However, when I added the age of a justice as an independent variable into the regression, the variable *Retire* was no longer statistically significant. The variable *Age* is statistically significant and its negative coefficient indicates that older judges reverse lower court's capital punishment sentences at lower rates than younger judges indicating that older justice are more prone to uphold the death penalty. Since justices who are retiring are typically older, the two variables had some explanatory overlap.

The results also indicated that female justices vote to reverse death penalty sentences at significantly lower rates than male justices and non-white justice reverse death penalty sentences at higher rates than white justices. Surprisingly, the partisanship of a justice is not a statistically significant factor on the voting behavior of a justice, which goes against the theory that conservative judges uphold death penalty appeals at higher rates than liberal judges.

## Other Trends

I also looked at the voting trends for justices over the course of their entire term. I collected the percentage of death penalty sentences a state supreme court justice upheld for each year leading up to an election, including the year of an election. For uniformity I included data up to five years until the year of an election because most state that I collected data on had six year terms for the state supreme court. The percent of sentences a justice upholds is the highest

toward the beginning of a justice’s term five years before an election and decreases during the middle of



Voting Trends: The graph above shows the average rates justices vote to reverse lower court’s capital punishment sentences over the course of their term for justice selected through different selection methods.

their term. On average justice’s reverse the highest percentage of sentences two years before an election but begin upholding sentences at higher rates leading up to the election.

The average voting trends of justices facing the three different types of judicial elections are shown in Figure 2. When broken down between the three judicial election systems, there are distinct differences in the voting trends of justices facing different election types over the course of their term. The voting pattern of justices facing retention elections is the most similar to the overall voting pattern voting justice to uphold death penalty sentences at the highest percent in the beginning and end of a term. Retention elections provided the most observations, so this



possibly could the overall voting trend I found in my data of supreme court justices. Justices in my sample facing partisan elections voted to uphold death penalty sentences at the highest overall percentage over course of their term out of the three selection methods. Justice facing nonpartisan elections upheld capital punishment sentences at the second highest percentage, followed by justices facing retention elections.

I also looked at the average percentage of votes justices receive in each different election system. Of the sample I collected, 99% of justices in commission-retention systems were successful during retention elections, implying that a justice loosing a retention election is very rare. The one justice in my sample that was voted out of office during a retention election was Justice Penny White from Tennessee. She was appointed to the Tennessee States Supreme Court in 1994 shortly after Tennessee had implemented a commission-retention system to chose state court judges. Before her 1996 retention election, an aggressive “Just Say No” campaign against her was launched by the newspaper, the *Nashville Banner*. Specifically, the newspaper focused on a decision written by White on a capital punishment appeal case where she reversed a lower court’s death penalty sentences. Justice White was voted out out of office in 1996 and is continues to be the only Tennessee State Supreme Court justice to ever loose a retention election (Hartman 2000). However, Justice White serves as an exception. My data indicates that justices rarely ever loose retention elections which is supported by finding from previous studies (Fitzpatrick 2009, Bonneau and Hall 2009).

I also looked at trends in the percentage of justices in partisan and nonpartisan elections who were unopposed. I found in the data I collected that 28% of partisan elections and 71.4% of nonpartisan elections were noncompetitive elections because the justice ran unopposed. Thus, in many partisan and nonpartisan elections, incumbent justices regardless of their voting behavior

on death penalty appeals or other controversial cases automatically win elections. Although the regression I ran to try to explain why some justices in nonpartisan elections are unopposed did not offer any significant results, further research into what factors increase the likelihood of a justices being unopposed would help in better understanding the effects of competitive judicial elections.

## Chapter 6: Conclusion

The primary goal of this thesis was to test if voters in judicial elections are actually responsive to the way a state court judge votes on cases, particularly cases that have to do with controversial issues, when deciding whether or not to reelect or retain a judge. I compared if there were different levels of voter responsiveness to judicial behavior depending on what time of election system, partisan, nonpartisan, or retention, a justice ran in. The results of my study lend support to my hypothesis for voter responsiveness to judicial behavior in partisan and retention elections as well as my alternative hypothesis for nonpartisan election systems.

In this thesis, I found that the way state supreme court justices vote on capital punishment appeals does influence how successful a justice is during a retention election, but not in partisan and nonpartisan elections. The conclusion that can be drawn from these findings is that the characteristic specific to retention systems encourages voters in some way to be responsive either directly or indirectly to judicial behavior that characteristics of partisan and nonpartisan election systems do not. But these findings again pose the same old question of accountability versus independence. Does the influence of judicial behavior on how voters vote in retention elections indicate that retention elections encourage voters to hold justice's more accountable for the decisions they make? Or does this indicate that retention elections result in justice's being punished for making unpopular decisions threatening their independence? And does the lack of apparent influence of judicial voting behavior on how voters vote in partisan and nonpartisan elections indicate that voters are not holding justice's accountable for their behavior? Or, that partisan and nonpartisan elections have an insulate effect on justice's because voters do not vote against a justice for making unpopular decisions in a way that significantly impact their chances at reelection? I suggest possible answers to these questions based on my other findings.

Although, voters appear to be the most responsive to a justice's voting behavior in the way they vote during retention elections, my other findings suggest that this does not indicate retention elections allow voters to hold justice's more accountable. Rather, as Fitzpatrick (2009) and Bonneau and Hall (2009) suggest, retention elections seem to give judges appointed in commission-retention systems the appearance that they are accountable to voters through retention elections but are actually fairly insulated from being removed from office. I found that 99% of justices remain in office after a retention election, indicated that California Chief Justice Elizabeth Bird and Tennessee Justice Penny White were the exceptions, not the norm. However, I my findings on judicial behavior shown in Table 3 and Figure 1 also indicate the justice's in retention elections are in part responsive in the way they vote on capital punishment cases to public opinion. Overall, my findings can suggest that although retention elections have an insulating effect on justice's from being removed from office, voters do communicate to justice's their level of support and preferences for the way a justice votes on cases through retention elections.

For partisan and nonpartisan elections, the findings of my research indicate that judicial voting behavior does not directly affect the percentage of votes a justice receives when running for reelection, my others results that there are other possible ways that justice's are held accountable for voters in these systems. However, based on the theory behind my hypothesis for partisan elections and my alternative hypothesis for nonpartisan elections that were supported by my findings I suggest that justice's voting behavior could be held accountable to voters in different ways than just through an election. The support and endorsements a candidate receives from their political party for their reelection campaign could vary depending on how well aligned a candidates previous voting record is with a party's platform. Or as previously suggested, the

voting behavior of a justice in nonpartisan elections could influence their chances at being contested when running for reelection, which could indirectly influence a justice's chance at being reelected. Further research on what factors influence how well incumbent justices fair when running for reelection in partisan and nonpartisan systems would be useful in further evaluating the merit of these systems.

Regardless of which system is used, having judicial elections allows voters to have some level of influence over state judicial systems. This influence can be a positive influence by allowing voters to elect candidates who representative of their ideologies and hold elected judges accountable for their behavior. This influence can can also be negative a negative influence by forcing judges to vote on cases to appeal to voters which could threaten the impartiality of judge's decisions. Either way, since judicial elections have become an integral part of state judiciary systems, researchers and policy makers alike will continue to face the task of finding a balance between accountability and independence in the judicial selection process.

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