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The Effects of Campaign Spending in State Supreme Court Elections

Chris W. Bonneau

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Electoral competition has been an important subject of political science research over the past several decades. This article examines the effects of campaign spending on electoral competition in state supreme court elections. Specifically, the author addresses the question, How do campaign expenditures affect the performance of incumbents in supreme court elections? The author finds that, just like elections to Congress and state legislatures, electoral competition in state supreme court elections can be understood by looking at characteristics of the candidates, the state and electoral context, and institutional arrangements.

Keywords: *state supreme courts; judicial selection; campaign finance; judicial elections*

Electoral competition has been an important subject of political science research over the past several decades. Through these studies, we have learned much about the determinants of electoral competition in a variety of settings: the U.S. Congress (e.g., Banks and Kiewiet 1989; Green and Krasno 1988, 1990; Jacobson 1978, 1980, 1985, 1989, 1990; Squire 1995), state legislatures (e.g., Cassie and Breaux 1998; Gierzynski and Breaux 1991; Giles and Pritchard 1985), and executives (e.g., Atkeson and Partin 1995; Bardwell 2002; Carsey and Wright 1998; Partin 2002; Svoboda 1995). In sum, these studies have concluded that electoral competition is determined by factors related to the candidates, issues, and the political context.

It is important to study and understand electoral competition because its presence (or absence) serves as a constraint (or lack thereof) on electoral actors. This is true even for seemingly "safe" electoral actors (i.e., elected officials who have little reason to fear electoral defeat). "Even 'safe' representatives who face challengers live with some fear that they may be defeated, and this wariness may constrain their actions" (Squire 1989, 282). Since behavior may be affected by electoral competition, understanding the nature of electoral competition becomes of paramount importance to our understanding of American political institutions composed of elected officials. This is true even for officials who run in seemingly low-information, low-salience elections, like judges (e.g., Hall 1995).

With few exceptions (Hall 2001; Hall and Bonneau 2006), electoral competition in judicial

elections has escaped systematic inquiry by political scientists. This is an important subject of inquiry, because as anyone living in a state in which judges are elected can attest, whether or not judges should be elected is an ongoing, and often acrimonious, subject of debate. On one side of the argument, there are those (both scholars and court observers) who argue that judges should not be forced to stand for election because allowing them to raise campaign funds creates an appearance of impropriety (e.g., Schotland 1985; Geyh 2003). On the other side of the debate are those who argue that judges are public officials and should be held accountable for their decisions by the public (e.g., Dimino 2004, 2005). Additionally, the electorate also seems to be squarely on the side of accountability. Despite concerns about the propriety of judges needing to raise money from contributors who may appear before them, voters support electing judges and have been reticent to eliminate judicial elections (e.g., Champagne and Haydel 1993; Geyh 2003; Dimino 2005).

Of particular concern to those who oppose judicial elections is the amount of money that is being spent on these campaigns. According to several accounts,

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judicial elections are involving increasing amounts of money (e.g., Bonneau 2004), and the outcomes of these races may be dictated by factors such as who spent the most money or political party affiliation (e.g., Champagne 2003; Phillips 2003; Geyh 2003; Hanssen 2004). Thus, these critics argue, not only do judicial elections have a potentially corrupting influence, but they are also institutional failures: if the outcomes of judicial elections are the product of outside factors like money or party identification, then the public is less able to hold judges accountable for their decisions. As Hall (2001, 316) wrote, "Reformers argue that partisan elections, characterized by lackluster campaigns devoid of issue content, are disconnected from substantive evaluations of candidates or other meaningful considerations relevant to the judiciary, which renders them ineffective as a means of accountability."

Despite these claims, we have little information on the processes that govern elections to the state high court bench (but see Hall 2001; Bonneau and Hall 2003; Hall and Bonneau 2006). Studies of both the U.S. Congress (e.g., Jacobson 1980, 1990) and state legislatures (e.g., Gierzynski and Breaux 1991) have reached the clear conclusion that not only does campaign spending affect electoral competition, but it also does so in predictable ways. Indeed, the importance of campaign spending on electoral competition cannot be overstated: if challengers fail to spend enough money on their campaign, their chances of victory are nonexistent. While a great deal of research has been conducted on the nature of campaign spending in congressional and state legislative elections, judicial elections have largely escaped systematic inquiry. Since elections are the means by which a vast majority of judges in the United States attain or retain their positions, this lack of knowledge means that we do not understand a fundamental aspect of judicial selection and its impact upon the politics of the judiciary. Given the direct link between electoral competition and judicial behavior (e.g., Hall 1992, 1995), failure to understand the nature of electoral competition in judicial elections means our understanding of the behavior of judges (once on the bench) remains incomplete.

This article examines effects of campaign spending on electoral competition in state supreme court elections. Specifically, I address the question, How do campaign expenditures affect the performance of incumbents in supreme court elections? I find that, similar to legislative races, the spending of the challenger promotes electoral competition but campaign

spending by the incumbent is not significant. Additionally, factors such as characteristics of the candidate, the electoral context, and institutional arrangements also affect electoral competition. Taken as a whole, the results suggest that, when deciding whom to support, voters behave in judicial elections much as they do in other elections. Thus, campaign spending (at least by challengers) can lead to enhanced electoral competition and this promotes electoral accountability.

The Importance of Money in State Supreme Court Elections

Why is money so important for success in state supreme court elections? Simply put, money has been found to buy candidates access to voters, both in legislative races (e.g., Jacobson 1980, 1990; Green and Krasno 1988, 1990; Gierzynski and Breaux 1991; Biersack, Herrnson, and Wilcox 1993) as well as state supreme court elections (e.g., Dubois 1984, 1986; Thielemann 1993; but see Arrington 1996). While being exposed to a candidate does not necessarily mean that a voter is more likely to vote for that candidate, in general voters are more likely to vote for candidates with whom they are familiar (Jacobson 1980; Aspin and Hall 1987; Alvarez 1997). Thus, in this regard, spending money benefits those candidates with whom voters are unfamiliar (generally nonincumbents), and thus promotes competition. With some exceptions, state supreme court elections take place in a shroud of anonymity and ignorance.¹ Not only are the candidates unfamiliar, but some voters may even be ignorant of the fact that an election is occurring (e.g., Schotland 1985; Arrington 1996). This is especially true in states like Idaho and Wisconsin, where elections for the state supreme court occur in the spring, and not in the fall with elections for other statewide offices.

Money therefore allows candidates to publicize their candidacies. This is important in elections for state supreme court because, unlike elections for governor or congress, candidates for the high court bench do not receive much "free" publicity (Thielemann 1993; Arrington 1996). A candidate for governor can receive free publicity by announcing a new policy initiative or by criticizing the incumbent. The same is true for candidates seeking a seat in Congress (Jacobson 1980). Candidates for the state supreme court are much more restricted in their ability to campaign by the canons of judicial ethics, which prohibit candidates from commenting on cases (and topics) upon which they

may eventually decide. While it is true that in *Republican Party of Minnesota v. White* (2002; 247 F 3d 854), the U.S. Supreme Court invalidated some of these restrictions on candidate speech, judicial candidates remain limited in how they can campaign compared to candidates for other offices. For example, the Model Code of Judicial Conduct states that judicial candidates cannot make promises or commitments about how they will decide pending or future cases. If they do so, they may have to recuse themselves from the case (or a whole class of cases). Hence, while a congressional candidate can receive free news coverage by proposing mandatory life sentences for convicted drug traffickers, a candidate for the state high court cannot. Furthermore, most state supreme court races have to compete with elections for other state and federal offices. This, coupled with the relative obscurity of state high court candidates in the first place, makes publicizing one's candidacy essential to success—and it makes such publicity expensive.

Electoral Competition and State Supreme Court Elections

Electoral competition is a necessary condition to ensure elected officials behave in a way congruent with the electorate. The more competitive the election, the more congruent the behavior of an elected official will be with the electorate. This is just as true for state supreme court justices as it is for legislative incumbents. In a series of pathbreaking studies, Brace and Hall have found that justices on the state high court bench do indeed alter their behavior in the presence of elections (Brace and Hall 1990, 1995, 1997; Hall 1992, 1995). For example, justices in elected states tend to dissent more than their appointed counterparts (Brace and Hall 1990; Hall 1992). That is, selection systems involving elections encourage justices to individually express their opinions, perhaps in an attempt to curry favor with certain segments of the electorate. More fundamentally than dissent rates, however, Hall (1995, 498) found that “the willingness of supreme court justices actually to condemn individual defendants to death may rest, at least to some extent, on general electoral conditions and the justices’ individual experiences with electoral politics.” The linkage between electoral competition and judicial behavior cannot be any clearer: decisions to sentence defendants to death is affected, at least to some degree, by the fact that judges face electoral competition. This suggests the necessity of understanding electoral competition to fully understand the nature of state supreme court decision making.

Any understanding of electoral competition must begin with the importance of campaign spending by the candidates. While it is arguable whether electoral success can be “bought,” the dominant finding in the legislative literature is that electoral success can certainly be influenced strongly by campaign spending. This is especially true for challengers: to overcome the incumbency advantage and attain any name recognition, a challenger must spend money. In low-information, low-salience elections, like judicial elections (Dubois 1979, 1984; Schotland 1985; Aspin and Hall 1987; Champagne and Thielemann 1991; Arrington 1996; Klein and Baum 2001; Champagne 2003), campaign spending may be even more important.

The Climate of State Supreme Court Elections

To say that state supreme court elections, and the funding thereof, are a popular political issue is an understatement. There has been an abundance of proposed legislation, press coverage, and rhetoric about judicial elections in recent years. In many states that elect judges to the high court bench, legislators, candidates, and the opinion pages of local newspapers have called for either radical reform of the electoral process or the eradication of judicial elections altogether.

In December 2000, the chief justices of fifteen states, as well as others interested in the politics of judicial elections, gathered in Chicago at a special summit to discuss issues plaguing the conduct of judicial elections. This meeting, which culminated in a Call to Action, was primarily designed to address the “growing concerns about the million dollar war chests, attack advertising and even outright distortion of an opponent’s record that seems to have become more widespread” (Glaberson 2000b, 1). This summit came on the heels of two *60 Minutes* stories (1987, 1998), a *Frontline* investigation (1999), and countless law review articles and other reports in the popular media, all of which assume a strong, direct link between campaign expenditures and election outcomes (American Bar Association 1998; Hansen 1998; Glaberson 2000a, 2000b).

It is not just judges and the media who are calling for the reform or elimination of judicial elections. Former governors in states such as Michigan (Bell 2001; Dickerson 2001) and Pennsylvania (*Pittsburgh Post-Gazette* 2001) have proposed replacing elections for the state high court with appointments by the governor. Furthermore, since the 1960s, sixteen states have changed their method of selecting supreme

court justices, at least in part to insulate members of those courts from the electorate and the rigors of campaigning for office (Hall 2001), though this effort seems to have slowed down in recent years.²

Clearly, the issue of judicial elections (and the funding thereof) is one that is occupying increasing amounts of time on the public and legislative agenda. It thus becomes even more important to systematically examine and understand the dynamics of these elections, especially since states are changing their methods of selection on the basis of untested, unverified claims.

Research Design and Data

I examine contested incumbent-challenger state supreme court elections from 1990 to 2004 in all states that elect justices on either a partisan or nonpartisan ballot. The reason I limit my sample to contested races is that I am interested in the effects of campaign spending on vote totals. For uncontested seats, the vote total is always 100 percent, regardless of how much money is spent. Furthermore, while candidates who run unopposed may still raise and spend money, the fact that they are not being challenged means that they will raise and spend less money as well as devote less effort to raising money than if they were challenged. For these reasons, uncontested races are omitted,³ as are justices who stand for retention.⁴

There are twenty-two states that elect their justices on partisan and nonpartisan ballots,⁵ and I examine all of them here, with three exceptions. North Dakota, while electing justices on a nonpartisan ballot, does not require candidates to file campaign expenditure reports.⁶ Additionally, Illinois and Pennsylvania are not included because, while justices in these states are initially elected in partisan elections, they are retained in retention elections. Thus, there are no competitive incumbent-challenger races.

To properly specify models of state supreme court elections, I collected data on both the characteristics of the elections and of the candidates. Additionally, I have collected data on campaign expenditures for each election in the data set.

Research Question and Hypotheses

In this article, I am interested in what factors promote (or inhibit) electoral competition. Specifically, I am interested in the effects of campaign spending on

the electoral performance of incumbents, as well as if these effects vary depending on the institutional arrangements in the state.

Dependent Variable

The dependent variable is the percentage of the vote received by the incumbent state supreme court justice (*Incumbent Vote*).⁷

Independent Variables

The key independent variables of interest in this analysis are the amounts of spending by the candidates in the election.⁸ For incumbent-challenger races, consistent with the congressional and state legislative research, the amount spent by the incumbent (*Log of Incumbent Spending*)⁹ should not affect the electoral support of the incumbent (Jacobson 1980, 1990; Ansolabehere and Gerber 1994; but see Green and Krasno 1988, 1990; Thomas 1989). However, contrary to the findings about incumbent spending, for the reasons discussed above, challenger spending (*Log of Challenger Spending*) has been found to significantly affect the percentage of the vote received by the incumbent in a negative direction (Jacobson 1978, 1980, 1990; Gierzynski and Breaux 1991; Ansolabehere and Gerber 1994; but see Erikson and Palfrey 2000). That is, the more money spent by the challenger, the lower the incumbent's electoral support. I expect the same to hold true here. Unlike U.S. House races, the electoral constituencies of state supreme court candidates vary in size. Some candidates run statewide, while others run in districts. Even more fundamentally, some states are bigger than others. Thus, to control for the size of the electorate, I divide the spending amounts for both candidates by the size of the voting age population (e.g., Partin 2002).

While I am primarily interested in the effects of spending on the percentage of the vote received by the candidates, to properly specify the model other factors hypothesized to impact electoral support must also be included. These variables fall under three general categories: candidate characteristics, the state and electoral context, and institutional arrangements.

Candidate characteristics. In addition to the spending variables, there are two other candidate characteristics that should affect the incumbent's percentage of the vote. First, the quality of the challenger should matter. Challengers with prior judicial experience should fare better than candidates without such experience (Bonneau and Hall 2003; Hall and Bonneau 2006), just as candidates with prior elected

experience perform better than candidates without such experience in legislative races (Jacobson 1980; Green and Krasno 1988; Van Dunk 1997). Other things being equal, I expect that a challenger with prior judicial experience (*Quality Challenger*) will reduce the incumbent's percentage of the vote.

As discussed earlier, not all incumbents are alike. Incumbents who have previously won election have faced the electorate before and have had their candidacies approved. This is not the case for those who are facing their first election. Thus, incumbents who have not yet faced the electorate (*Appointed First*) may be more likely to receive less electoral support than their previously elected colleagues.

State and electoral context. Whether the incumbent was challenged in the primary should also affect her or his level of electoral support. Other things being equal, if an incumbent had to run in a primary as well as a general election, her or his percentage of the vote in the general election should be lower. This is because having to face a primary challenge is an indication of candidate vulnerability, and vulnerable candidates should receive fewer votes than nonvulnerable candidates. Hence, I include a variable that indicates whether the incumbent was challenged in the primary (*Primary*).

The climate of state supreme court elections in the states should also affect electoral competition. That is, if there is a history of competitive high court elections in a state, one would expect future elections to also be highly competitive (Burbank and Friedman 2002). I include a variable indicating whether there was a close state supreme court election (decided by 55 percent of the vote or less) in the most recent electoral cycle (*Prior Close Race*). As a measure of state supreme court competitiveness, it is expected that a previous competitive state supreme court race will lead to a lower percentage of the vote for the incumbent.

Like other elected officials, state supreme court justices may be held accountable for issues perceived to be under their control. There has been a significant body of literature demonstrating that voters make retrospective decisions on incumbent governors and legislators based on the state of the economy (Atkeson and Partin 1995; Niemi, Stanley, and Vogel 1995; Svoboda 1995; Carsey and Wright 1998). Furthermore, the same has been found in both presidential and congressional elections (e.g., Jacobson 1997). Applying this to state high court elections, Hall (2001) found that incumbent justices performed worse the higher the murder rate in their state, indicating that these incumbents were held responsible for the state of public safety. Consistent with this, I

expect that there will be more competition in incumbent-challenger races the higher the murder rate in the year prior to the election (*Murder Rate*).

Institutional arrangements. The most fundamental institutional arrangement is the type of election (e.g., Hanssen 2004). As has been noted earlier, some states elect their state supreme court justices on partisan ballots, while others do so on nonpartisan ballots. The only institutional difference between these two types of elections is that the political party affiliation of the candidate is listed on partisan ballots and omitted on nonpartisan ballots.¹⁰ However, this difference can be significant. As will be seen shortly, partisan elections are generally both more expensive and more competitive than nonpartisan elections. Thus, I include a variable that takes into account the type of race (*Partisan*).

Besides the type of election, there are two other institutional variables that should affect both competition and campaign spending. As discussed earlier, not all supreme court candidates run in statewide elections. Thus, I include a dummy variable to take into account the electoral constituency of the election (*District*). Districts tend to be more politically homogeneous than states. Consequently, I expect there to be less competition in districts compared to statewide races.

Finally, the term of office may affect the incumbent's percentage of the vote. Longer terms should be more attractive to candidates since there is increased job security (Bonneau and Hall 2003). Thus, there should be more competition for seats that have longer terms of office associated with them. To the extent that there is greater competition, the election should be closer. I expect that the longer the term of office (*Term*), the lower the incumbent's percentage of the vote will be.

Finally, I include a dummy variable for the year of the election, minus one year, to control for any temporal effects (1990, 1992, 1994, 1996, 1998, 2000, 2002).

For convenience, Table 1 provides a complete list of all of the variables and their measurement.

Estimation Technique and Models

When attempting to assess the influence of campaign spending on the vote, the dependent variable is the percentage of the vote received by the incumbent. While the dependent variable is continuous (percentage of the vote), models attempting to assess the effects of campaign spending on votes are susceptible to a potential simultaneity problem that can render the ordinary least squares (OLS) results both biased

Table 1
Variable Descriptions for a Model of Money and Electoral
Competition in State Supreme Court Elections

Variable	Variable Description
Vote	Percentage of the vote in the general election for the incumbent
Candidate characteristics	
Incumbent spending	Log of total campaign spending for the incumbent (1990 dollars)/size of voting age population (1,000s)
Challenger spending	Log of total campaign spending for the challenger (1990 dollars)/size of voting age population (1,000s)
Quality challenger	1 if incumbent was challenged by a candidate with prior judicial experience, 0 otherwise
Appointed first	1 if the incumbent was originally appointed to the court, 0 otherwise
State and electoral context	
Primary	1 if the incumbent was challenged in both the primary and general election, 0 otherwise
Prior close race	1 if a recent judicial election was decided by 55 percent of the vote or less, 0 otherwise
Murder rate	State murders and nonnegligent manslaughter per 100,000 population, lagged one year
Institutional arrangements	
Partisan	1 if the election is a partisan election, 0 otherwise
District	1 if the election is districtwide, not statewide, 0 otherwise
Term	Length (in years) of the term of office
Control variables	
1990, 1992, 1994, 1996, 1998, 2000, 2002	1 if election occurred in the designated year, 0 otherwise

and inconsistent. The argument is as follows: Challengers thought to have a legitimate shot at winning are likely to attract more contributions than those thought to have little chance at victory. Thus, the better the candidate's chances, the more money she or he will receive (and consequently be able to spend). The relationship between challenger spending and percentage of the vote is potentially reciprocal: money may help win votes, but the expectation that a candidate will receive votes also helps to bring in money. To the extent that this is true (that expected votes influence spending), then using OLS regression will overestimate the effects of challenger spending on votes. The same holds true for incumbents, but in the opposite direction: since the higher their expected vote, the less money incumbents spend, if expected votes influence spending then the OLS estimates will underestimate the effects of incumbent spending on votes.

Jacobson (1980, 1985) and others (e.g., Welch 1981; Green and Krasno 1988) have attempted to account for this problem by estimating two-stage least squares (2SLS) models. To do this, one needs to identify measurable variables that will affect contributions (and thus expenditures) without independently affecting the vote. This is no simple task. Furthermore, Jacobson (1985, 39) suspected that "no simultaneous

equation model of this type can be suitably identified." At the state legislative level, Giles and Pritchard (1985) were unable to identify a satisfactory instrumental variable to test for a reciprocal effect.

The use of 2SLS is problematic for theoretical reasons as well. For there truly to be a reciprocal relationship, the vote at time t must affect the money raised at time $t - 1$. However, this is not logical. Rather, as Gierzynski and Breaux (1991, 209) pointed out, "The expectation of how a candidate will perform affects the amount of money that candidates can raise and subsequently spend." Thus, the relationship is not

$$\text{Expenditures}_{t-1} \Leftrightarrow \text{Votes}_t$$

but

$$\text{Expectations}_{t-1} \Rightarrow \text{Expenditures}_{t-1} \Rightarrow \text{Votes}_t$$

Gierzynski and Breaux (1991) took into account the expectations of the closeness of the race to correct for potential simultaneity problems. They argued that expectations of the closeness of the race *before the campaign begins* are the best way to take into account the expected vote. Using state legislative races, they use the previous electoral margin of the incumbent to take into account expectations of competitiveness.

That measure, however, is inappropriate for state supreme court elections for a couple of reasons. First, the minimum term of office for state supreme court seats is six years, unlike the two-year term of state legislators. While it is eminently sensible to argue that an election in 1992 is affected by the election in 1990, it is difficult to conceive of how an election in 1996 is affected by an election in 1990, or even earlier. Second, unlike state legislative incumbents, a large proportion of incumbents are facing the electorate for the first time, and thus have no previous electoral margin. In this data set, 35.9 percent of incumbents in contested elections are facing the voters for the first time. Using a measure of prior electoral performance would mean excluding these incumbents, who make up more than one-third of the bench.

To take into account expectations of the closeness of the race in state supreme court elections, I use a measure of competitiveness of past state supreme court elections. Specifically, I code for whether there was a close election (decided by 55 percent of the vote or less) in the latest election cycle for the state high court. While far from perfect, this gives an indication of how competitive state supreme court races have been and signals to potential contributors whether a challenger has a legitimate shot at winning. Thus, prior competitive judicial races should indicate to contributors that a legitimate challenger has a real chance of winning the election.

Still another potential problem involves the OLS standard errors. To satisfy the assumptions of OLS, the error processes must be assumed to have the same variance and all of the error terms must be independent of each other. While this assumption does not affect the coefficients, it does affect the standard errors. Because my data set includes multiple observations from the same state both over time and in a given year, in the strictest sense, observations within states might not be truly independent. To ensure that I am obtaining correct standard errors, I employ Huber/White/Sandwich robust variance estimators, set to recognize the panel structure of the data. These estimators are robust to assumptions about within-group (state) correlation.¹¹

Electoral Competition, Campaign Spending, and State Supreme Court Elections

Before proceeding to a multivariate analysis of the role of campaign expenditures in state supreme court elections, it is informative to get a flavor for what electoral competition and campaign spending in these

Table 2
Average Spending for Each Type of Candidate by Year, Contested Elections, 1990-2004 (1990 Dollars)

Year	Incumbent		
	Percentage of the Vote	Incumbent (\$)	Challenger (\$)
1990	55.79	276,787	74,811
1992	55.68	261,330	175,107
1994	54.32	407,184	155,768
1996	54.73	301,247	202,322
1998	58.90	422,706	201,007
2000	57.81	355,926	266,512
2002	58.45	269,735	184,498
2004	62.25	296,024	106,390
Average	57.27	323,936	175,376

elections looks like. Table 2 looks at the amounts of electoral competition and campaign spending depending on the type of candidate. As can be clearly seen, incumbents always spend more than challengers, on average. Furthermore, while electoral competition varies by year, there is a trend toward less competitiveness (the most recent four election cycles are less competitive than the average).

Table 3 shows the variation over time in competition and campaign expenditures. Over the period of this study, campaign spending has ranged from an average of more than \$351,000 to more than \$630,000 (using constant dollars). Somewhat surprisingly given the rhetoric in the media, state supreme court elections involving incumbents are not much more expensive in constant dollars in 2004 than they were in 1990. Furthermore, the data from 2002 and 2004, where significantly less spending occurred than in 1998 and 2000, suggest that spending in state supreme court elections may be returning to a lower level. There is generally also more spending in partisan elections than in nonpartisan elections (with the exceptions of 2000 and 2002). In terms of competition, at times partisan elections are more competitive, while at other times nonpartisan elections are more competitive. Overall, though, partisan races are more competitive.

While these tables are suggestive, they do not tell us about how campaign spending by incumbents and challengers affects their electoral success. It is to this topic that the analysis now turns.

The Role of Money in State Supreme Court Elections

In Table 4, we can see the effects of campaign spending on electoral competition.

Table 3
Average Total Spending by Year, Contested Elections
(Electoral Competition in Parentheses), 1990-2004 (1990 Dollars)

Year	All Elections	Partisan Elections	Nonpartisan Elections
1990	351,777 (55.79)	364,023 (52.73)	338,170 (59.53)
1992	475,428 (55.68)	552,785 (55.54)	391,040 (55.82)
1994	548,855 (54.32)	807,799 (52.81)	289,910 (55.83)
1996	507,919 (54.73)	757,743 (54.41)	329,473 (54.96)
1998	630,821 (58.90)	781,062 (53.77)	493,101 (63.60)
2000	611,502 (57.81)	576,789 (61.04)	633,197 (55.92)
2002	455,782 (58.45)	401,249 (54.95)	504,256 (61.00)
2004	402,418 (62.25)	406,322 (64.59)	400,465 (61.23)
Average	504,649 (57.27)	591,365 (55.87)	433,617 (58.39)

Table 4
Money and Electoral Competition

	Coefficient	Robust Standard Error	<i>t</i>	<i>p</i> > $ t $
Incumbent spending	0.974	0.803	1.21	.121
Challenger spending	-1.792	0.496	-3.61	.001
Quality challenger	-3.676	1.825	-2.01	.030
Appointed first	-2.303	1.112	-2.07	.027
Primary	-0.088	0.939	-0.09	.463
Prior close race	-2.159	0.917	-2.35	.015
Murder rate	0.370	0.215	1.72	.052
Partisan	-2.952	1.329	-2.22	.020
District	-4.616	1.877	-2.46	.012
Term	1.359	0.579	2.35	.016
1990	-8.173	3.128	-2.61	.009
1992	-8.558	3.591	-2.38	.014
1994	-7.282	4.080	-1.78	.046
1996	-8.071	3.292	-2.45	.013
1998	-0.512	3.352	-0.15	.440
2000	-5.057	3.485	-1.45	.082
2002	-6.312	4.174	-1.51	.074
Constant	55.472	5.152	10.77	.000

Note: Dependent variable: percentage of vote for incumbent. All tests of significance are one-tailed tests. $N = 166$. $F(17, 18) = 212.72$. $\text{Prob} > F = .000$. $R^2 = .490$. Root MSE = 8.092.

Similar to both national and state legislative elections, the amount of spending by the incumbent does not increase her percentage of the vote. Simply put, the incumbent cannot increase her or his percentage of the vote by spending more money. This does not mean that the incumbent can spend no money and expect to win; rather, just as Jacobson (1978, 1980, 1997) has consistently found with legislative elections, this is likely due to strategic behavior by the incumbent. Incumbents only raise (and spend) money when they are electorally vulnerable. The more electorally secure the incumbent is, the less money he or she will need to raise and spend. Furthermore, incumbents are

generally more well-known than their challengers. Spending money adds little to the voters' knowledge of the incumbent. Thus, incumbent spending is simply less effective at attracting votes than challenger spending. However, also like legislative elections, the amount of campaign spending the challenger does matter. For every 1 percent increase in challenger spending, the incumbent's level of electoral support decreases by almost 1.8 percentage points. A challenger can increase her or his level of electoral support simply by spending more money. The findings here suggest that even though voters may not have as much knowledge about state supreme court candidates as they do about legislative candidates, they have enough information about incumbents to render additional spending ineffective.

The quality of the challenger also has an affect on the incumbent's electoral fortunes. Challengers who have prior judicial experience reduce an incumbent's percentage of the vote by almost 3.7 points, confirming the findings of Hall and Bonneau (2006). Additionally, incumbents who are facing their first election are also electorally disadvantaged. Indeed, on average, incumbents who were appointed and are facing the electorate for the first time will receive more than 2 percentage points less support than their previously elected counterparts.

Looking at the state and electoral context, the presence of a prior state supreme court race significantly affects the incumbent's vote share. If there was a close election in the most recent electoral cycle for the state high court bench, incumbents can expect to have their percentage of the vote reduced by about 2.1 percentage points, other things being equal. Unlike Hall's (2001) assertion, the murder rate was not a significant predictor of electoral competition. In addition to this study looking at a different time period (1990-2004) than the Hall study (1980-1995),

this study also takes into account campaign spending and the quality of the challenger, factors that were not included in Hall's study. This likely explains the different findings.

Finally, in terms of the institutional arrangements, incumbents running in partisan elections perform about 3 percentage points worse than incumbents running in nonpartisan elections, other things being equal. Also, incumbents running in districts fare about 4.6 points worse than their counterparts in statewide elections. Finally, the length of the term of office is insignificant.¹² A likely explanation for this is that almost 89 percent of the cases in this analysis were races for six- or eight-year terms of office. Thus, the vast majority of cases were for shorter terms of office.

Conclusion

Just like elections to Congress or state legislatures, electoral competition in state supreme court elections can be understood by looking at characteristics of the candidates, the state and electoral context, and institutional arrangements. Contrary to the rhetoric of the antielection reformers, the outcomes of these elections are neither random nor unpredictable.

Most basically, while incumbents cannot increase their percentage of the vote simply by spending more money, challengers are able to do so. This suggests that adopting strict campaign finance regulations would serve to strengthen incumbents and decrease electoral competition. The reason for this is that incumbents begin the campaign with a large advantage in terms of name recognition and generally have more money at their disposal. These advantages need to be overcome by a challenger. One simple way a challenger can try to overcome the incumbency advantage is by spending money, and given the results here, this spending would, in general, help them garner more electoral support. However, capping either contributions or expenditures would likely have the effect of depressing the amount of spending by challengers, thereby strengthening the incumbency advantage.

Of course, money is not the only relevant factor in these elections. Challengers with prior judicial experience perform better than those without such experience, and incumbents with previous electoral victories perform better than their appointed counterparts. Also, things such as the competitiveness of state supreme court elections in the state and the type of election also affect electoral competition. While some of these factors are outside of the control of the

candidates, the one aspect they have the most control over is campaign spending.

Unlike congressional and state legislative elections, state supreme court elections have been relatively ignored in the political science literature despite not only their importance, but also their analytical leverage. This study has shown that both competition and campaign spending, as well as the effects of campaign spending on competition, vary according to institutional arrangements, along with characteristics of the candidate and state. While there is more to be done, this article has shown the relevance of institutional structures on such fundamental electoral variables as competition and spending, as well as the importance of understanding electoral competition and its consequences for the state high court bench.

Notes

1. While this is less true in partisan elections (since the voters do have the political party affiliation of the candidates), it is still true to the extent that most of the candidates themselves are relatively unknown to most of the voters (Champagne and Thielemann 1991).

2. In fact, unlike earlier decades, most of the recent movement (since 1990) has been states switching from partisan elections to nonpartisan elections, and not to retention elections. In the period of this study, four states switched methods of selection: Tennessee (partisan to retention), Mississippi (partisan to nonpartisan), Arkansas (partisan to nonpartisan), and North Carolina (partisan to nonpartisan).

3. I also estimated the model using a two-stage Heckman model, where the first stage is whether the incumbent is contested (Bonneau and Hall 2003), and the second stage is the incumbent's percentage of the vote (Hall and Bonneau 2006). Thus, this method uses all races—contested and uncontested. The results are substantively very similar to the results obtained by using ordinary least squares (OLS). (The only minor difference is *Murder Rate*, which is significant in the Heckman model, while it is not in the OLS specification—though it is very close.) Additionally, the Wald test of independent equations is not significant (Prob > chi-square = .163), indicating that there is no selection bias introduced by omitting uncontested races. For these reasons, I conclude that there is no statistical bias caused by omitting uncontested races in this analysis and report the OLS results here.

4. While one could argue that justices up for retention are more similar to justices in contested races than they are to justices running unopposed (since justices in retention races can lose their bid to retain their seat by not gaining a majority of "yes" votes, while candidates running unopposed have no chance of losing), they are not included here for a couple of reasons. First, the vast majority of candidates up for retention do not campaign and raise money (e.g., Hanssen 2004). Thus, there is simply no campaign finance data. Second, while retention races are similar to contested partisan and nonpartisan elections in the respect that an incumbent has the potential to lose the election, they are different from contested elections in other important respects. For example, Aspin et al. (2000) reported that the mean affirmative

vote for retention candidates from 1964 to 1994 was 74.9 percent, suggesting that these races are, on average, not very competitive. Additionally, from 1990 to 2004, only 3 of 233 (1.3 percent) candidates up for reelection were defeated, far lower than the number of incumbents defeated in partisan and nonpartisan races (Bonneau 2005).

5. Texas has two courts of last resort, one that handles exclusively civil cases (Texas Supreme Court) and one that has exclusive jurisdiction over criminal matters (Texas Court of Criminal Appeals). Both courts are included in this analysis.

6. Interestingly, North Dakota does require candidates to file reports detailing their list of contributors and the amount of each contribution.

7. This is adjusted for multimember races using the procedure suggested by Jewell (1982).

8. I adjust these figures for inflation and convert the actual amount of spending into 1990 dollars.

9. Because there is likely to be some diminished returns with extremely high amounts of campaign spending, I take the log of per capita spending for both incumbents and challengers (e.g., Partin 2002).

10. Of course, some nonpartisan elections more closely resemble partisan elections than other nonpartisan elections. In Michigan and Ohio, though the candidates run in nonpartisan general elections, the candidates are nominated by the parties. In other states, candidates are prohibited from revealing their political party affiliation. That being said, while variations exist, the literature documents that the inclusion of the candidate's party identification is a very important piece of information provided to the voters and scholars have documented that there are many significant differences in the conduct of judicial elections simply based on whether the election is partisan or nonpartisan (e.g., Hall 2001; Hall and Bonneau 2006; Bonneau 2005).

11. Because my hypotheses are directional, all tests of significance are one-tailed tests (e.g., Long 1997; Wooldridge 2000).

12. While $p = .016$, it is in the opposite direction than hypothesized.

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