

Does Quality Matter? Challengers in State Supreme Court Elections

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We assess whether quality challengers in state supreme court elections have a significant impact on the electoral successes of incumbents and whether the electorate seemingly makes candidate-based evaluations in these races. To address these questions, we examine 208 elections to the states' highest courts from 1990 through 2000 in the 21 states using partisan or nonpartisan elections to staff their benches. From a Heckman two-stage estimation procedure that takes into account factors influencing challengers' decisions to run as well as factors affecting the electorate's choices among candidates, we find that quality does matter. Experienced challengers significantly lessen the electoral security of incumbents, and the electorate appears to evaluate challengers' qualifications. These findings stand in stark relief to traditional notions that the electorate is incapable of responding to candidate stimuli beyond incumbency and that judicial elections inherently are an ineffective means for securing popular control over the bench.

In this article, we examine the strategies of challengers and the choices of voters to answer a vitally important question about elections to the states' highest courts: does the *quality* of challengers have a significant impact on the electoral success of incumbents. In other words, do challengers with current or previous experience on the bench, and thus the ability to represent qualified alternatives to incumbents, reduce incumbents' vote shares, other things being equal. From a different perspective, we evaluate whether the electorate seemingly has the ability to make candidate-based evaluations by distinguishing qualified from unqualified challengers.

These intriguing though straightforward issues about the importance of candidate quality and the propensities of the electorate have significant theoretical import for illuminating the complex relationship between democratic processes and political institutions. As studies of elections to various types of offices have established, electoral competition forges observable linkages between citizens and government, enhancing the representative function. Among other things, incumbents chosen in relatively competitive races are more likely to defer to their

constituencies when casting votes on controversial issues rather than choosing policy alternatives that better reflect their own personal preferences (e.g., Hall 1995; Miller and Stokes 1963). Moreover, tighter margins of victory increase the likelihood of future electoral challenge and possible electoral defeat, thus promoting another cycle of competition to enhance the incumbent-constituency connection (e.g., Bonneau and Hall 2003; Hall 2001a; Stone, Maisel, and Maestas 2004). Finally, some challengers actually do win, and the resulting turnover can serve to bring the institution more in line with public preferences generally. Therefore, understanding electoral competition, and specifically whether challenger quality decreases the electoral safety of incumbents, is directly relevant for delineating the precise mechanisms through which democratic processes promote public policies consistent with citizen preferences.

On this question, numerous studies have evaluated the effects of candidate quality on the electoral fortunes of incumbents. Studies of the United States House of Representatives, United States Senate, and state legislatures all have established that quality matters. Candidates with previous electoral experience exert a significant impact on

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the votes garnered by incumbents, including incumbents' ability to retain their seats.

The question of whether the electoral fates of judges are affected by the quality of their challengers has yet to be addressed systematically. There are countless untested assertions in the burgeoning literature on judicial reform, but only a handful of empirical studies actually consider, and only indirectly, whether candidate quality matters. This pattern of neglect is surprising, given that most judges in the United States must face voters to retain their seats,¹ and that judicial elections, at least by some measures, are quite competitive. Consider, for example, reelection rates for the United States House of Representatives, United States Senate, Statehouses, and state supreme courts. From 1990 through 2000, reelection rates were, respectively, 94.1%, 89.3%, 85.1%, and 84.1%.² Thus, the likelihood of electoral defeat in state supreme courts is on average at least equivalent to, if not higher than, the electoral threat for other important offices. Moreover, seats in the House of Representatives, the quintessential representative institution, are much safer on average than state supreme court seats.

Assessing why various types of challengers decide to run in state supreme court elections and how voters respond are critical components for understanding judicial elections in their own right. Moreover, studying judicial elections comparatively with a focus on institutional and other contextual forces will provide insights into elections for other types of offices. From the perspective of democratic theory, ascertaining how the strategies of candidates and the choices of voters affect judges is essential for developing theories of judicial choice that accurately reflect the complex reality of balancing pressures from democratic processes with norms of judicial independence.

To contribute to these discussions, we examine all 208 elections to the states' highest courts from 1990 through 2000 in the 21 states using partisan or nonpartisan elections to staff their benches. Specifically, we assess the impact of challenger quality while simultaneously controlling for other important forces affecting elections to the state high court bench. If experienced challengers relative to their novice counterparts significantly lessen the electoral security of incumbents, we will need to rethink traditional notions that the electorate is incapable of responding to candidate stimuli beyond incumbency and that judicial elections inherently are an ineffective means

for securing popular control over the bench. Similarly, we will need to think more systematically about the manner in which institutional arrangements, including selection and retention mechanisms, structure the politics of courts.

The Judicial Selection Controversy

Directly implicated in this study is the controversy over judicial reform in the American states and the serious contradictions about the nature of judicial elections that have emerged between the scholarly and judicial reform literatures. While scientific work has documented the vital importance of challenger quality on the vote margins of incumbents in a variety of elected institutions, the court reform literature, which dominates today's thinking about designing courts, predicts the opposite for judicial elections. In fact, because of grave doubts about the ability of the electorate to make meaningful choices, reformers have long advocated that judicial elections be abandoned in favor of either executive appointment or the Missouri Plan, which combines initial appointment with subsequent retention elections not involving opponents.

While advocacy groups and individuals interested in court design have proffered numerous criticisms of competitive judicial elections,³ one of the most fundamental and consistent assertions is that the electorate is incapable of distinguishing between qualified and unqualified candidates. Summarized effectively by Dubois, the classic reform literature describes voters as "ignorant about competing candidates" (1980, 64) and as "voting blindly" (1980, 5). In fact, this assertion readily became one of the cornerstones upon which judicial elections were, and are still being, attacked.⁴

Recent examples are not hard to find. The American Bar Association, which now recommends that state court judges be appointed, just reported:

"[u]niformed about the candidates' positions on relevant issues, uncertain about the candidates' qualifications or training, and unfamiliar with the

¹Twenty-one states use partisan or nonpartisan elections to retain their state supreme court justices, while 17 use retention elections.

²House and Senate data are calculated from Abramson, Aldrich, and Rohde (2002), and for gubernatorial elections from Scammon, McGillivray, and Cook (2001).

³The most recent criticisms of judicial elections center on the escalating costs of campaigns and on the effects of the Supreme Court's decision in *Republican Party of Minnesota v. White* (2002), which lifts bans on campaign speech in judicial elections.

⁴Excellent sources encapsulating the reform controversy and its dominant perspectives are Champagne and Haydel (1993) and Dubois (1980).

candidates' job performance, voters are often unable to cast an informed ballot." (2003, 129)

Similarly, the Citizens for Independent Courts Task Force asserts that "[v]oter awareness of candidates' qualifications has been limited . . . Winning elections often turns on factors irrelevant to candidates' credentials" (2000, 87). As a final example, Rottman and Schotland argue that "as long as forty-five years ago, exit polls and other polls have shown a startling lack of voter awareness of even names of the candidates" (2001, 1371–72).

However, there is a serious conflict between reform advocates and political scientists over the ability of the electorate to distinguish candidates in judicial elections. At least with respect to state supreme courts, several path-breaking studies have documented that the electorate does make informed choices and that these elections by many measures bear a striking resemblance to elections to other political offices (e.g., Baum 1987; Dubois 1980; Hall 2001b; Lovrich and Sheldon 1983). Rather than being unpredictable, competition in judicial races varies systematically with assessments of the candidates, evaluations of issues, and contextual forces generally operating in elections.

We enter this debate by asking whether one of the primary arguments used to oppose judicial elections has any merit. Specifically, we evaluate whether the electorate as a whole is responsive to challengers who in some way represent qualified alternatives to incumbents. If the general thrust of the critics' arguments is correct, candidate-specific forces unrelated to incumbency should not affect competition in judicial elections. Alternatively, if judicial elections are like other elections, the opposite should occur. Thus, this study joins a growing body of work (e.g., Dubois 1980; Hall 2001b; Klein and Baum 2001) that considers whether recommendations for particular institutional designs are premised on sound assumptions.

Challenger Quality in American Elections

A substantial body of research examines the effects of challenger quality in nonjudicial institutions. As Van Dunk summarizes, "[r]esearch at the congressional level has demonstrated that the quality of a challenger is one of the most important determinants of competition" (1997, 793). More recently, the importance of quality challengers has been documented in state legislative elections. We highlight these findings.

Challenger Quality in Congressional Elections

An extensive literature on the United States House of Representatives and Senate assesses the effects of candidate quality on the electoral success of incumbents and also evaluates the conditions under which incumbents attract quality challengers. While it is difficult to reduce such a large and complex body of work to a few simple propositions, especially given ongoing controversies in the literature, several patterns are apparent.

First, many House elections and some Senate races are low-key affairs that do not attract the attention of quality challengers, the media, or voters (e.g., Abramowitz 1991; Jacobson 1980; Krasno 1994; Ragsdale 1981). Second, a variety of forces serve to determine whether quality challengers take on incumbents, including the incumbent's performance in the previous election, strategic behavior by the incumbent, and other short-term and long-term forces in the political environment (e.g., Berkman and Eisenstein 1999; Bond, Covington, and Fleisher 1985; Jacobson 1997; Stone, Maisel, and Maestas 2004). Third, in both House and Senate elections, quality challengers fare substantially better with voters than their weaker counterparts (e.g., Abramowitz 1991; Jacobson 1989; Lublin 1994; Nicholson and Segura 1999; Squire 1989). Further, this pattern is present even when the effects of a host of other variables related to the candidates and trends in national and state politics are controlled.

Interestingly, these substantive results are robust across studies that use alternative measures of challenger quality. Whether measured as a dichotomy of whether the challenger has held elective office (e.g., Abramowitz 1988; Jacobson 1989), as separate dichotomies or ordinal scales based on challengers' personal characteristics or political experience (e.g., Bond, Covington, and Fleisher 1985; Krasno and Green 1988; Lublin 1994; Squire 1989), or using challengers' campaign expenditures (Bond, Covington, and Fleisher 1985), the consistent conclusion is that quality matters.

Challenger Quality in State Legislative Elections

As state politics scholars are keenly aware, attention to state legislative elections is scant. Nonetheless, a growing body of work is beginning to answer vital questions about state races, including the nature of the incumbency advantage (e.g., Garand 1991; Holbrook and Tidmarch 1991; Jewell and Breaux 1988; Weber, Tucker, and Brace 1991).

Most relevant for this inquiry, Van Dunk (1997) examined all races for 10 state legislatures from 1988 through 1992 and established that quality challengers (i.e., those who have been elected to any office) fared significantly better, both with respect to vote shares and winning seats, than their novice counterparts. Thus, although the evidence is limited, it does appear that challenger quality also is important at the state level.

Challenger Quality in Judicial Elections

As mentioned earlier, a considerable literature has been generated on the politics of judicial selection, replete with all sorts of claims about the purported advantages and disadvantages of the various selection schemes. With notable exceptions (e.g., Baum 1983, 1987; Bonneau 2004; Bonneau and Hall 2003; Dubois 1980; Hall 2001b; Hall and Aspin 1987; Lovrich and Sheldon 1983), however, judicial elections have not been examined systematically. Certainly our understanding of judicial elections lags behind even that of state legislative races to the extent that we understand little about the nature of competition in these races, including the role of challengers. And somewhat surprising is the fact that the only two studies evaluating, though indirectly, the effects of candidate quality in state supreme court elections produce opposite results.

Dubois (1984) established that ballot information about the candidates' occupations in California nonpartisan trial court elections, which by their very nature do not list the candidates' partisan affiliations, significantly increases competition by providing an advantage to incumbents and inferior court judges. In contrast, Klein and Baum (2001) documented through a series of experiments that such ballot information in Ohio Supreme Court elections, which also are nonpartisan, would influence voter turnout. Of course, it is possible that these differences in findings relate to differences in the dependent variables: Dubois (1984) assesses incumbents' vote shares while Klein and Baum (2001) examine voter turnout. However, given the confusion generated by existing work and the general lack of knowledge about judicial elections, we think it particularly important to assess whether candidate quality matters systematically across states.

This task seems particularly important since there are convincing reasons to think that candidate quality might matter even more in judicial elections than in other types of elections. Given formal qualifications for the state court bench—qualifications that are not placed on other offices—and the clearly hierarchical nature of the judiciary, voters reasonably might view lower court experience

as a prerequisite for the state high court bench.⁵ Thus, candidates who have served in the lower courts become more attractive by representing qualified alternatives to incumbents, while challengers who have never been judges might be viewed as failing to meet the basic job requirements.

Understanding Competition in State Supreme Court Elections

Our primary purpose is to assess the effects of challenger quality on the vote shares of state supreme court justices seeking reelection. We conceptualize supreme court elections as a two-stage process in which (1) challengers first make decisions about whether to run, and (2) the electorate chooses between candidates when challengers become involved. Theoretically, we expect challengers to be strategic when deciding whether to enter the electoral arena, basing their choices largely on the perceived vulnerability of incumbents. Moreover, we expect voters in the aggregate to be relatively rational when casting ballots, including differentiating between quality and nonquality challengers. Overall, we expect both challengers and the electorate to be responsive to the political and institutional context surrounding the election, court, and state.

Modeling Challengers

Specifically concerning stage one of the electoral process, or the factors that encourage challengers to enter the electoral arena, our dependent variable is whether a challenger is present in each race (*Contested*).⁶ As for independent variables, Bonneau and Hall (2003) recently have specified a model describing the conditions under which challengers in state supreme court elections decide to run, and we replicate that model. Generally, we expect challengers to run when incumbents are electorally vulnerable, supreme court seats are particularly attractive, the political and institutional context promotes competition, and a sizeable candidate pool exists. The specific variables predicting challengers, along with their measurement, are described in Table 1.

⁵Currently, 30 states require appellate court judges to be members of the state bar for five to ten years, 12 states require bar membership without specifying a minimum time, four states require judges to be "learned in the law" without additional clarification, and four states have no qualifications related to any of the factors just listed (Council of State Governments 1999, 133).

⁶We assembled elections data from a variety of sources, including official reports of Secretaries of State, state "blue books," *Book of the States*, and newspaper searches on Lexis-Nexis.

TABLE 1 Variable Descriptions for a Model of Challengers in State Supreme Court Elections

Variable	Variable Description
<i>Dependent Variable</i>	
Contested	= 1 if a challenger entered the supreme court race 0 otherwise
<i>Electoral Vulnerability of the Incumbent</i>	
Competitive Seat	= 1 if the incumbent supreme court justice won previously by a margin less than 60% 0 otherwise
New Appointee	= 1 if the election involves an incumbent initially appointed and facing his/her first election 0 otherwise
<i>Attractiveness of Supreme Court Seats</i>	
Salary	= supreme court base salary/state per capita disposable income, in dollars
Term	= length of the term of office for state supreme court, in years
<i>Political and Institutional Context</i>	
Unified Government	= 1 if the legislative and executive branches of state government are controlled by the same political party 0 otherwise
Partisan	= 1 if the election is a partisan election 0 otherwise
District	= 1 if the seat represents a district rather than the state 0 otherwise
<i>Candidate Pool</i>	
Lawyers	= number of lawyers in each state at the time of each election

Electoral Vulnerability. Of the candidate-specific factors that should influence the willingness of challengers to enter the electoral arena, first and foremost is the perceived strength of incumbent. Generally, candidates already occupying their positions enjoy an extraordinary advantage. Consistent with the voluminous body of work on nonjudicial elections, both Dubois's (1980) and Hall's (2001b) examinations of almost five decades of judicial elections across the states confirm this essential fact, while studies of single states document the same (e.g., Baum 1983; Volcansek 1981).

However, not all incumbents are similarly situated. We expect justices elected by relatively narrow margins to be more vulnerable than their more popular colleagues. Thus, we include *Competitive Seat* in stage one of our model, with the expectation that justices winning by less than 60% of the vote are more likely to be challenged in the next election. The 60% cutoff for defining competitive, or marginal seats is the standard observed by "most leading students of marginality in congressional elections" (Weber, Tucker, and Brace 1991, 31) and in state legislative elections (e.g., Jewell 1982).

Moreover, incumbency status in courts is derived from different means. State supreme court justices in elective systems often receive their positions through *ad interim* appointments to replace justices leaving office before completing their terms. These justices seeking their first election victory (*New Appointee*) should be more likely to attract opponents, even though they enjoy some advantage simply by virtue of holding the seat. Dubois (1980) and Hall (2001b) document exactly such a pattern.

Attractiveness of Supreme Court Seats. Salaries and other financial incentives should affect the willingness of challengers to run. Studies of the United States House of Representatives have documented that as salaries increase, members are more likely to seek to stay, while opportunities like "golden parachutes" encourage members to depart (e.g., Clarke et al. 1999; Groseclose and Krehbiel 1994; Hall and van Houweling 1995; Hibbing 1982). In the federal courts, the weight of the evidence (Spriggs and Wahlbeck 1995; Squire 1988) also supports the proposition that financial incentives like salaries and pensions affect retirements. It is reasonable, then, to expect salary

considerations to affect both incumbents' willingness to seek reelection and opponents' willingness to try to unseat them. Thus, we include in our model a measure of each state's base salary for their high court at the time of election, adjusted by state per capita disposable income to render salaries comparable across states (*Salary*).

Similarly, term length (*Term*) should influence the willingness of challengers to enter supreme court elections (Bonneau and Hall 2003). Longer terms of office reduce the time necessary to seek reelection over the span of a career, thereby lessening insecurity in tenure while removing incentives to be mindful of constituency preferences. Thus, we hypothesize that in states with longer terms of office for the high court, contested elections will be more prevalent.

Political and Institutional Context. Studies of all types of elections point to the importance of the state's political environment in affecting electoral competition. Of particular significance is a state's partisan climate. States characterized by higher levels of partisan competition (e.g., Dubois 1980; Hall 2001b; Leyden and Borrelli 1995) have more competitive elections. Therefore, the model estimated below includes such an indicator, measured as whether the legislative and executive branches are controlled by the same political party at the time of each election (*Unified Government*).⁷

Further, two institutional arrangements should encourage challengers to run in supreme court elections: partisan ballots and statewide constituencies. Unlike legislative elections, not all ballots in judicial elections list the candidates' partisan affiliations, and studies have demonstrated that challengers are more common in partisan elections than nonpartisan elections (e.g., Bonneau 2004; Dubois 1980; Hall 2001b). In fact, while the average rate of uncontested partisan elections from 1990 through 2000 is 18.8%, the rate for nonpartisan elections is 42.2%. Thus, we include a variable (*Partisan*) to identify elections held on partisan ballots, with the expectation that challengers should be more likely to run in these races, other things being equal.

Similarly, we expect electoral competition to vary between district-based and statewide constituencies, and that this relationship will be conditioned by election system. Election studies have established that smaller constituencies are less competitive (e.g., Hibbing and Brandes 1983). Thus, we expect challengers to run less frequently in districts than in statewide races. However, Hall (2001b)

has demonstrated that this effect is reversed in states using nonpartisan ballots. Therefore, we include a multiplicative term (*District* × *Partisan*) to distinguish the effects of district-based elections in partisan election states from district-based elections in nonpartisan states (*District*).

Candidate Pool. Finally, for challengers to emerge, there must be a pool of candidates from which to draw. For judges, this pool consists of licensed attorneys. More attorneys should translate into larger numbers challengers. To measure this effect, we include the number of attorneys in each state at the time of each election (*Lawyers*), identified by the American Bar Association (<http://www.abanet.org/marketresearch>).

Modeling the Vote Shares of Incumbents

In the second stage of our model of state supreme court elections, we seek to assess the factors that encourage the electorate to cast ballots supporting or opposing the incumbent. Thus, our dependent variable is the percentage of the vote for the incumbent (*Incumbent Vote*). As such, higher values indicate lower levels of competition.

Consistent with Hall (2001b), we posit a model of electoral choice that includes candidate- and issue-specific factors and institutional context. In this regard, we utilize some of the variables from the first stage of our model but now evaluate how these variables affect the decision calculus of the electorate rather than opponents. Generally, we expect voters in the aggregate to be able to distinguish between challengers with varying qualifications and also to be affected by context. Table 2 provides a complete list of the variables used in stage two of our model and their exact measurement.

Candidate-Specific Characteristics. One of the primary findings in the literature on legislative elections is that quality challengers significantly reduce incumbents' electoral fortunes (e.g., Abramowitz 1988, 1991; Bond, Covington, and Fleisher 1985; Jacobson 1980, 1989, 1997; Krasno 1994; Krasno and Green 1988; Lublin 1994; Nicholson and Segura 1999; Ragsdale 1981; Squire 1989; Van Dunk 1997). We expect this same effect in supreme court elections.

In the elections analyzed in this study, quality challengers were somewhat less common than nonquality challengers. From 1990 through 2000, only 47.1% of the elections drew challengers who were serving, or had served, on the bench. However, quality challengers were somewhat more successful than their novice counterparts. On average, incumbents facing nonquality challengers won with 59.7% of the vote while incumbents facing

⁷Unfortunately, measures like the Ranney Index or the Holbrook and Van Dunk (1993) measure have not been calculated regularly enough to provide a good fit for the time period in this study. *Unified Government* allows for temporal as well as cross-sectional variation in this important contextual dimension.

TABLE 2 Variable Descriptions for a Model of Incumbent Vote Shares in State Supreme Court Elections

Variable	Variable Description
<i>Dependent Variable</i>	
Incumbent Vote	= percentage of the vote received by the incumbent
<i>Candidate Characteristics</i>	
Quality Challenger	= 1 if the challenger currently holds, or has ever held, a judgeship 0 otherwise
Trial Ct. Challenger	= 1 if the challenger is a current or former trial court judge 0 otherwise
Appellate Ct. Challenger	= 1 if the challenger is a current or former appellate court judge 0 otherwise
Former Supreme Court Challenger	= 1 if the challenger is a defeated supreme court justice 0 otherwise
New Appointee	= 1 if the election involves an incumbent initially appointed and facing his/her first election 0 otherwise
Spending Difference	= difference between the log of the incumbent's spending and the log of the challenger's spending
<i>Issues</i>	
Murder Rate	= state murders and non-negligent manslaughter per 100,000 population, lagged one year
<i>Institutional Context</i>	
No IAC	= 1 if the state has no intermediate appellate court 0 otherwise
Partisan	= 1 if the election is a partisan election 0 otherwise
<i>Temporal Effects</i>	
1990–91, 1992–93, 1994–95, 1996–97, 1998–99	= 1 if election occurred in the designated year 0 otherwise

quality challengers did significantly less well with 52.2%. Thus, there is at least some reason to think that quality might matter.

To estimate systematically whether the electorate seemingly distinguishes qualified from nonqualified challengers, we follow the well-beaten path (e.g., Jacobson 1989; Van Dunk 1997) of constructing a dichotomy (*Quality Challenger*) to distinguish experienced from inexperienced challengers. In the context of supreme courts, challengers who either have served, or are serving, on the bench can claim to possess the substantive expertise necessary for effective service while at the same time benefiting from the expertise and name recognition garnered from previous election campaigns. Therefore, these quality challengers should negatively affect incumbents' vote shares relative to their neophyte counterparts. Recall, however, that the judicial reform literature predicts the absence of a relationship between challenger quality and election returns.

Because of the critical importance of the challenger quality variable, however, we do not rely solely on a single dichotomy. Instead, we estimate a second set of models using more detailed measures to capture the type of service each challenger has, or does not have, on the bench. Generally, by using the two types of measures of candidate quality found in the legislative literature, we can draw conclusions more confidently about the similarity or dissimilarity of judicial races to legislative elections. Further, the detailed measures will allow us to reach more refined conclusions about the ability of the electorate to distinguish among types of challengers in supreme court elections.

Specifically, thinking of courts as a hierarchy in which appellate court service is more valuable than trial court service, with the possible exception of defeated supreme court justices who may be at a disadvantage for having been thrown off the high court, we can generate a series of dichotomies that take into account these various types of

experiences (*Trial Ct. Challenger*, *Appellate Ct. Challenger*, *Former Supreme Court Challenger*). Of course, we also must recognize that a small handful of states have no intermediate appellate courts (*No IAC*). Thus, in these states, trial court service becomes particularly important (*Trial Ct. Challenger × No IAC*).

Regarding other candidate-related factors, we include in stage two of our judicial elections model a measure of the incumbency advantage, or whether the justice seeking reelection initially was appointed to the supreme court and is facing the electorate for the first time (*New Appointee*). We expect these justices not only to be more susceptible to challenge, as in stage one of our model, but also to be less successful at the polls. Voters should know less about these justices, not be able to recognize their names as easily, and thus should be less inclined to support them.

Finally concerning candidate-related variables, we include in stage two of our model a measure of the relative ability of incumbents and challengers to spend money. Studies of legislative elections, both congressional and state, indicate that spending affects electoral competition. Generally, spending by the incumbent is unrelated to vote margins but spending by the challenger has adverse effects on the incumbent (e.g., Gierzynski and Breaux 1991, 1996; Green and Krasno 1988; Hogan 2004; Jacobson 1980, 1990). Further, some studies consider spending to be an alternative measure of candidate quality, with higher levels of spending indicating quality.

Given that some judicial elections occur in relative obscurity, perhaps in part because of canons that until recently prevented candidates from discussing political issues, we anticipate that the principal effect of spending will be found in *differences* between incumbents and challengers (*Spending Difference*) and not simply in the amount spent by either.⁸ Overall we expect greater positive disparities to generate higher margins for incumbents. Conversely, as challengers narrow the gap and in some cases outspend incumbents, we expect the electoral performance of incumbents to decrease. Consistent with standard practice in studies of legislative elections (e.g., Jacobson 1980), we log the spending variables to control

⁸As an alternative to spending differences, we estimated the models using separate measures of incumbent and challenger spending. In the model reported in Table 3, incumbent spending produces a coefficient of 1.477, significant at .046, and challenger spending has a coefficient of -1.577, significant at .001. Similarly, in the model in Table 4, incumbent spending produces a coefficient of 1.451, significant at .068, and challenger spending a coefficient of -1.616, significant at .001. Moreover, the substitution of individual spending for differences in spending does not alter any other substantive result. Thus, the findings about the effects of spending appear to be robust with regard to measurement and generally are consistent with legislative research.

for any nonlinearity and to make interpretation more intuitive by focusing on percentage increases rather than dollar increases.⁹

From 1990 through 2000, we see extraordinary variations across the states in dollars spent and in differences between incumbents and challengers. On average, incumbents outspend opponents, but in a few states challengers lessen the gap or outspend incumbents. The largest differences are in Texas for the civil court of last resort and West Virginia, where disparities approach \$700,000. The smallest differences are in Mississippi and Oregon, with the gap falling short of \$4,000. In per capita terms, the biggest gaps are in Louisiana (\$511) and Kentucky (\$438), and the smallest in Oregon (\$1) and Texas for the criminal court of last resort (\$5). We expect these variations in spending to provide considerable insight into the politics of supreme court elections.

Issue-Specific Characteristics. While studies of gubernatorial and state legislative races have demonstrated that electoral margins suffer when the economy is poor (Atkeson and Partin 1995; Carsey and Wright 1998; Leyden and Borrelli 1995; Niemi, Stanley, and Vogel 1995; Svoboda 1995), Hall (2001b) has documented a similar form of retrospective voting in judicial elections based on the public safety; murder rate is significantly related to electoral support for supreme court justices seeking reelection. Therefore, we include in our model below a measure of each state's murder rate, lagged one year (*Murder Rate*), and predict that higher murder rates will decrease electoral support for incumbents, other things being equal.

Institutional Context. Concerning institutional arrangements, we expect incumbents in partisan elections to fare less well with voters than their colleagues in nonpartisan elections. Historically, partisan elections have been more competitive, both with regard to attracting challengers (Bonneau and Hall 2003) and lowering vote margins (Dubois 1980; Hall 2001b). Thus, we include a variable (*Partisan*) to identify elections held on partisan rather than nonpartisan ballots. However, we should note that in these data, incumbents in nonpartisan elections do not fare any better than their partisan colleagues. In contested nonpartisan elections, the average vote share for incumbents from 1990 through 2000 was 57%, while in partisan elections it was 55%.

Temporal Effects. Finally, we include dummy variables for each election cycle minus one (2000–2001) to control for the effects of each specific election and other temporal

⁹We collected campaign finance data from official state reports.

effects in the models (1990–91, 1992–93, 1994–95, 1996–97, 1998–99).

Estimation Technique

We conceptualize elections to state supreme courts as a two-stage process and thus utilize the Heckman procedure (Heckman 1979) first to estimate a model predicting the presence of challengers and then correct for this selection bias in our model evaluating vote shares. Because contested supreme court elections occur only about 66% of the time and are not random events (Bonneau and Hall 2003), estimating vote shares without taking into account the likelihood of being challenged in the first place could lead to biased estimates and potentially erroneous inferences (e.g., Ansolabehere and Gerber 1996; Bonneau 2005; Hogan 2003).¹⁰ Thus, in the first stage of our model, we analyze all elections, both contested and uncontested, and then correct for this nonrandom event in the second stage of our model examining contested elections only (or situations in which *Incumbent Vote* cannot be 100%).¹¹ Additionally, we use robust variance estimators, which are robust to assumptions about within-group (i.e., state) correlation.

Results

Which factors explain why challengers decide to take on state supreme court justices and how well these incumbents fare with voters? We address these important questions in Tables 3 and 4. Table 3 includes our general dichotomous measure of candidate quality while Table 4 presents the detailed measures.

As Table 3 illustrates, the likelihood of challengers entering state supreme court elections is predictable and reflects, at least to some extent, strategic thinking about the probability of winning. Challengers go after incumbents who are the most electorally vulnerable, either because they hold marginal seats or because they suffer an atten-

uated incumbency advantage by virtue of never having been elected.

Similarly, political and institutional context matters. Challengers are less likely to enter the electoral arena in states characterized by unified government, or lower levels of partisan competition. Also, challengers are more likely to appear in statewide partisan elections (*Partisan*) and in district-based nonpartisan elections (*District*), but are less likely to run in district-based partisan elections (*District* × *Partisan*). As predicted, the effects of partisan electoral systems on the likelihood of contested state supreme court races are dependent on whether the election is held statewide or in a district.

Further, Table 3 documents that the size of the candidate pool is important for challengers to decide to run. The higher the number of lawyers, the more likely there is to be an opponent. This pattern is not surprising, given the requirement that candidates for the high court bench be licensed attorneys.

At first glance, two of the results in stage one of our model are perplexing. Contrary to Bonneau and Hall (2003), we find that *Salary* and *Term*, which measure the attractiveness of state supreme court seats, do not play a role in determining whether supreme court elections are contested. However, we think the divergence is explained by differences in the time periods covered by our respective studies. Bonneau and Hall (2003) examined elections only up through 1995, while we include elections through 2000. During the decade of the 1990s, challengers increasingly became interested in state supreme court elections, at a time when salaries and terms remained relatively constant. In 1990–91, half (50.0%) of all supreme court elections were uncontested, while only 25.0% were uncontested in 2000. In fact, in 1998–99, uncontested races hit a decade low of 17.9%. Thus, for whatever reasons, supreme court seats have become much more attractive overall, quite apart from such features as salary and term.

In sum, challengers' decisions to run are not random. As in congressional or state legislative elections, certain factors either increase or decrease the likelihood of contested supreme court elections. In this regard, an important fact to notice about Table 3 is the chi-square test of independent equations. The significant result provides empirical support for our theoretical argument: not taking into account the process by which state supreme court races are contested can lead to biased coefficients and potentially incorrect substantive inferences. Having controlled for this bias, we now turn to the second stage of our model, which examines the factors explaining the electoral fortunes of incumbents.

¹⁰This type of correction is not necessary for offices in which uncontested races are less frequent if not rare, like elections to the United States Senate.

¹¹Because the second stage of our model examines the effects of different types of quality challengers, one might argue that we should use the factors predicting the likelihood of *quality* challengers, versus any type of challenger, in stage one. However, Bonneau and Hall (2003) found that the *same* factors predict both situations: whether an incumbent is challenged at all and whether quality challengers emerge.

TABLE 3

	Coefficient	Robust SE	Z	P > z	Expected β
Stage 1: Challengers in State Supreme Court Elections, 1990–2000					
Competitive Seat	1.297	0.182	7.133	0.000	$\beta > 0$
New Appointee	1.314	0.196	6.707	0.000	$\beta > 0$
Salary	0.053	0.090	0.585	0.558	$\beta > 0$
Term	0.078	0.116	0.667	0.505	$\beta > 0$
Unified Government	−0.804	0.179	−4.499	0.000	$\beta < 0$
Partisan	1.398	0.434	3.223	0.001	$\beta > 0$
District	1.301	0.547	2.380	0.017	$\beta > 0$
District × Partisan	−2.618	0.447	−5.862	0.000	$\beta < 0$
Lawyers	0.000	0.000	3.936	0.000	$\beta > 0$
Constant	−2.385	1.044	−2.285	0.022	—
Stage 2: Incumbent Vote Shares in State Supreme Court Elections, 1990–2000					
Quality Challenger	−4.668	1.988	−2.348	0.019	$\beta < 0$
New Appointee	−3.332	1.244	−2.678	0.007	$\beta < 0$
Spending Difference	1.576	0.472	3.338	0.001	$\beta > 0$
Murder Rate	−0.011	0.216	−0.052	0.958	$\beta < 0$
Partisan	−2.781	1.557	−1.786	0.074	$\beta < 0$
1990–91	−0.923	1.899	−0.486	0.627	—
1992–93	−1.425	2.497	−0.571	0.568	—
1994–95	−1.171	2.531	−0.463	0.644	—
1996–97	−2.653	2.967	−0.894	0.371	—
1998–99	4.091	2.445	1.674	0.094	—
Constant	59.569	2.488	23.938	0.000	—

Stage 1 dependent variable: *Contested*

Stage 2 dependent variable: *Incumbent Vote*

Mean of dependent variable = 56.85

Number of observations = 198

Censored observations = 69

Uncensored observations = 129

Log likelihood = −522.462

$\chi^2(5) = 11.36$

Prob > $\chi^2 = 0.045$

Test of independent equations: $\chi^2(1) = 4.79$

Prob > $\chi^2 = 0.029$

Looking at the results in Table 3, we see that the electorate seemingly does respond to candidate-specific forces in state supreme court elections. The significance of *Quality Challenger* suggests that voters are able to distinguish the candidates by their qualifications, a finding consistent with studies of legislative elections at both state and national levels. Challengers in supreme court elections with experience on the bench perform almost 5% better than their inexperienced counterparts. While this may not immediately seem important, given that the average incumbent's vote is only 56.8% during the time frame of our study, the challenger's relative experience or inexperience could well mean the difference between an incumbent's

reelection or defeat in many of these contests. Further, in a somewhat less dramatic manner, even if the incumbent were to survive the bid for reelection, the closeness of the race could alert the incumbent to the potential perils of ignoring constituency preferences on controversial matters of public policy while setting in motion a likely pattern of contested races in the future. In short, quality challengers enhance democratic pressures on state supreme courts.

Other candidate characteristics also are significant influences on incumbents' vote shares in state supreme court elections. As with challengers' decisions to run, the incumbency advantage is important. Those justices who have not yet faced the electorate perform just over 3%

TABLE 4

	Coefficient	Robust SE	Z	P > z	Expected β
Stage 1: Challengers in State Supreme Court Elections, 1990–2000					
Competitive Seat	1.260	0.190	6.630	0.000	$\beta > 0$
New Appointee	1.308	0.194	6.740	0.000	$\beta > 0$
Salary	0.059	0.107	0.560	0.578	$\beta > 0$
Term	0.077	0.119	0.650	0.517	$\beta > 0$
Unified Government	-0.814	0.182	-4.470	0.000	$\beta < 0$
Partisan	1.427	0.412	3.470	0.001	$\beta > 0$
District	1.333	0.542	2.460	0.014	$\beta > 0$
District \times Partisan	-2.688	0.445	-6.040	0.000	$\beta < 0$
Lawyers	0.000	0.000	4.060	0.000	$\beta > 0$
Constant	-2.436	1.156	-2.110	0.035	—
Stage 2: Incumbent Vote Shares in State Supreme Court Elections, 1990–2000					
Trial Ct Challenger	-4.379	1.832	-2.390	0.017	$\beta < 0$
Trial Ct Challenger \times No IAC	-8.705	3.004	-2.900	0.004	$\beta < 0$
Appellate Ct Challenger	-5.022	2.867	-1.750	0.080	$\beta < 0$
Former Supreme Court Challenger	-3.197	6.538	-0.490	0.625	$\beta < 0$
No IAC	6.514	3.473	1.880	0.061	$\beta = 0$
New Appointee	-3.370	1.239	-2.720	0.007	$\beta < 0$
Spending Difference	1.615	0.467	3.460	0.001	$\beta > 0$
Murder Rate	0.104	0.194	0.540	0.592	$\beta < 0$
Partisan	-3.287	1.366	-2.410	0.016	$\beta < 0$
1990–91	-0.552	1.877	-0.290	0.769	—
1992–93	-1.622	2.363	-0.690	0.492	—
1994–95	-0.716	2.445	-0.290	0.770	—
1996–97	-2.449	3.000	-0.820	0.414	—
1998–99	4.681	2.305	2.030	0.042	—
Constant	58.540	2.341	25.000	0.000	—

Stage 1 dependent variable: *Contested*

Stage 2 dependent variable: *Incumbent Vote*

Mean of dependent variable = 56.85

Number of observations = 198; Censored = 69, Uncensored = 129

Log likelihood = -522.425

$\chi^2(5) = 18.93$

Test of independent equations: $\chi^2(1) = 4.15$; Prob > $\chi^2 = 0.042$

worse, other things being equal, than their colleagues who have previously won elections to the high court bench.

Similarly, differences in campaign spending between incumbents and challengers are important in determining incumbents' electoral performance in state supreme court elections. As Table 3 documents, a 1% increase in spending by the incumbent over the challenger can add about 1.6% to the incumbent's vote share, a substantively significant impact considering the average competitiveness of these elections.

Surprisingly, however, no factors beyond the candidates affect incumbents' vote shares. The coefficients for murder rate and partisan elections are not significant.

Thus, our findings about these two variables diverge from previous findings (Hall 2001b).

Again, we think time explains these differences. Hall (2001b) examined elections from 1980 through 1995, and we know that supreme court elections (especially nonpartisan elections) increasingly began to attract challengers in the early 1990s. Thus, while voters in the past may have voted retrospectively in the absence of challengers, they now have the ability to respond more directly to incumbents by favoring, or not favoring, alternative candidates. Of course, it may be the case that Hall's results are an artifact of model specification. Hall's models do not take into account quality challengers or the two-stage nature of the

electoral process. Even so, however, Hall's overall conclusions about the nature of judicial elections are entirely consistent with these.

Measuring candidate quality as a dichotomy is consistent with much of the work on legislative elections. However, given the crucial nature of this variable to our theoretical argument and our strong desire to make direct comparisons between judicial and legislative elections, we present a more refined set of indicators in Table 4, thus rendering this study even more comparable to the wide range of legislative studies on this subject. Please note that the specifications of both stage one and stage two in Table 4 are identical to those in Table 3, with the exception of the candidate quality measures.

As Table 4 clearly indicates, the electorate not only responds to basic differences between challengers but also appears to differentiate between types of judicial experience. Generally, in states without intermediate appellate courts, the effects of trial court experience are about twice that of states providing more frequent opportunities to serve on the bench. Similarly, in states with intermediate appellate courts, trial court experience is important, but appellate service is even more so, albeit by a somewhat smaller increment. Interestingly, former justices seeking to reclaim their seats do not have a significant effect on incumbents' vote margins. However, this result should be viewed cautiously, since there are only two such cases in these data, and it is not at all certain whether this type of experience should be viewed theoretically as positive or negative.

The effects of trial court experience in states without intermediate appellate courts seem particularly significant. These challengers reduce the vote shares of incumbents by almost 9%, an effect that is quite dramatic given the competitiveness of state supreme court elections. Beyond this result, trial court and appellate court experience serves to reduce incumbent's margins from 4.4% to 5.0%, depending on the service involved. When incumbents win on average with only 56.8% of the vote, a 4–5% reduction often can mean the difference between winning and losing. In sum, the bottom line is that candidate quality in judicial elections matters.

Conclusion

In the preceding pages, we have argued that in order to understand the dynamics of state supreme court elections, scholars must consider carefully both the strategies of challengers and the choices of voters. Potential challengers

must decide whether to enter the electoral arena, and the electorate must then decide whether to support the incumbent given available alternatives. Failure to consider both of these processes could lead to erroneous inferences about the politics of supreme court elections.

More specifically, our results indicate that the decisions of challengers and voters, at least in the aggregate, make a great deal of sense. Challengers take into account the electoral vulnerability of the incumbent as a primary factor in choosing whether to run. Similarly, the electorate takes into account judicial experience when selecting among candidates. Stated differently, challengers appear to enter state supreme court races when they might have a reasonable chance of winning, and voters in the aggregate cast ballots for incumbents after considering whether opponents may, or may not, be qualified.

Further, our analysis reveals that judicial elections are governed by many of the same factors influencing legislative elections. Among other things, challengers are more likely to run in states characterized by competitive party politics, and the quality of challengers makes a great deal of difference to the electoral success of incumbents.

From a broader perspective, judicial politics scholars must think more systematically about the manner in which institutional arrangements, including selection and retention mechanisms, structure the politics of courts. This article joins a growing body of literature documenting these effects.¹²

Most importantly, this work suggests that state supreme court elections are more democratic, and their results more substantively meaningful, than opponents of these elections generally contend. As scholars, we need to rethink traditional notions that the electorate is incapable of responding to candidate stimuli and that judicial elections inherently are an ineffective means for securing popular control over the bench. Our analysis reveals much to the contrary.

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¹²Delineating how justices balance democratic pressures with the norm of judicial independence will be critical. As quality challengers take on incumbents and, in many cases, generate narrow margins of victory, these justices chosen in particularly competitive elections should, in turn, have an incentive to reduce future electoral challenge and reprisals by voting consistently with constituency preferences on publicly salient issues. In short, the politics of judging in the nation's elected courts surely is more complex than currently understood or widely believed.

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