ELECTORAL VERDICTS
Incumbent Defeats in State Supreme Court Elections

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The election of judges has been an enduring, though controversial, institution. Although there have been many popular accounts of how these elections are decided by factors irrelevant to a fair and impartial judiciary, recent scholarship has shown that electoral competition in races for the state high court bench can be understood in systematic ways. Yet, although we know the factors that can make races more or less competitive, we lack understanding of the factors that contribute to the electoral defeat of sitting justices. In this article, I examine the determinants of electoral defeat for all incumbent state supreme court justices who ran for reelection between 1990 and 2000. Contrary to the arguments of those who claim that judicial elections are decided in a random, nonsystematic manner, I find that the probability of an incumbent's being defeated is based on characteristics of the candidates, the state and electoral context, and institutional arrangements.

Keywords: *state supreme courts; judicial politics; judicial elections; campaign spending; incumbency advantage; judges*

The nature of the incumbency advantage has been the source of much debate in the political science literature (e.g., Jacobson, 1997). Fundamentally, scholars have sought to ascertain whether the electoral advantage incumbents possess is endogenous to the office or if the campaign and election strategies of candidates (both incumbents and challengers) can significantly affect the probability that an incumbent will be returned to office. After all, if the incumbency advantage

automatically accrues to all officeholders, then the campaigns waged by candidates are essentially meaningless (at least in terms of the likelihood of winning office). In the context of this article, if incumbent state supreme court justices are reelected largely because they are incumbents, then not only should large amounts of money not be spent on these races, but there should also be little concern about the effects of this spending on the behavior of the justice when she is on the bench.

This is an important question because judicial elections have been characterized as ineffective (and inappropriate) mechanisms by which to select judges by both scholars (e.g., Campbell, 2002; Dunn, 1976; Schotland, 1985) and the media (Dickerson, 2001; Marks, 2001; Marks & Hoke, 2001; "Throw Out the Baby," 2001). These critics argue that given the low-salience and low-information nature of these elections, elections for the state high court bench are governed by a host of irrelevant factors, such as the candidate's last name or the partisan climate of the state. Implicit in these arguments is that whether an incumbent is returned to the bench is governed by many factors largely outside of the control of the incumbent. Aside from the debate over whether judges should be elected or appointed (or some combination of both), if the outcomes of judicial elections are completely outside the control of the candidates, then judicial elections are institutional failures, because their outcome is determined by idiosyncratic factors and not based on the candidates and their qualifications. Yet, at the same time, if these elections truly occur in a low-informational context, then it seems that there is much candidates can do to increase their visibility as well as their chances of electoral success.

In this article, I examine the factors that influence the likelihood an incumbent state supreme court justice will be defeated in her bid for reelection. Recently, there have been studies indicating that electoral competition in state supreme court races can be understood in much the same way as electoral competition in congressional and state legislative races (e.g., Bonneau & Hall, 2003; Hall, 2001a, 2001b; Hall & Bonneau, 2003). Also, Hall (1992, 1995) found that judges are less likely to dissent on key issues (such as the death penalty) when they are facing reelection. That is, she found that incumbent justices (just

like incumbent legislators) behaved in a strategic manner to minimize their chances of defeat.

Yet, despite their attempts to minimize defeat and the large electoral advantages they have by virtue of their status as incumbents, justices still lose their seats (and do so somewhat more frequently than we might expect). What explains these incidents of incumbent defeat? Do incumbents control their own electoral fates or are they affected by circumstances beyond their control (such as the electoral environment and institutional arrangements)? In this article, I answer these questions by examining the factors that contribute to the highest form of electoral sanction in races for the state high court bench: the defeat of incumbents.

THE NATURE OF THE INCUMBENCY ADVANTAGE

One truism of the congressional literature is that "incumbents are so consistently successful at winning elections, and everyone involved in politics knows it" (Jacobson, 1997, p. 20). This has been found to hold true in state legislative elections as well (e.g., Cassie & Breaux, 1998; Jewell & Cassie, 1998). That being said, reelection for incumbents is not inevitable. Indeed, although research has shown that "incumbency confers major electoral benefits, . . it also reveals that the benefits are neither automatic, nor certain, nor constant across electoral contexts" (Jacobson, 1997, p. 19). That is, there are certain things candidates can do to increase their chances of defeating an incumbent; by the same token, the incumbent can do certain things to either improve or reduce her chances of winning reelection.

If candidates have some control over their fate in congressional elections, this suggests that in low-information, low-salience elections such as those for the state high court bench (Arrington, 1996; Champagne & Thielemann, 1991; Dubois, 1979, 1984; Jackson & Riddlesperger, 1991; Johnson, Schaefer, & McKnight, 1978; Klein & Baum, 2001; McKnight, Schaefer, & Johnson, 1978; Moog, 1992; Reid, 1996; Schotland, 1985), candidates will have even more control over their prospects for electoral success. This is because if neither the incumbent nor the challenger is generally well known by the electorate (an important source of the incumbency advantage), then an

incumbent supreme court justice may be more electorally vulnerable than a similarly situated legislative incumbent. However, the degree of this vulnerability is likely to depend on how effective a campaign the challenger runs. If the challenger is unable to mount a serious campaign to unseat the incumbent, then there is little reason to suspect that the incumbent is susceptible to defeat.

Examining the factors that predict the likelihood of an incumbent state supreme court justice losing her bid for reelection allows us the opportunity to test the incumbency advantage in a different institutional and electoral context. Does the incumbency advantage accrue to offices where the incumbent officeholder is not able to deliver special projects and benefits to her constituency? In addition, given the varied institutional context in which these elections occur, we can ascertain whether the incumbency advantage is stronger in partisan versus nonpartisan elections, elections held statewide or in a district, elections in single-member or multimember districts. Furthermore, the incumbency advantage may not accrue equally to all incumbents. Unlike most legislative incumbents, a significant proportion of judicial incumbents are facing the voters for the first time (since they were initially appointed to the bench to fill a vacancy). Do these incumbents have all of the advantages of their previously elected counterparts, or is the fact that they have not yet stood for election significant?

THE INCUMBENCY ADVANTAGE AND
JUDICIAL ELECTIONS

It is important to understand the dynamics of judicial elections for two simple reasons: They affect the composition of the bench, and the presence of elections serves as a constraint on electoral actors. From the congressional literature, we have learned that "Even 'safe' representatives who face challengers live with some fear that they may be defeated, and this wariness may constrain their actions" (Squire 1989b, p. 282). For example, a congressional incumbent who is facing reelection may feel compelled to support legislation she may otherwise oppose for fear of losing her seat. The more serious the electoral threat, the more constraint she will feel. The same should hold true for state supreme court incumbents.

As stated earlier, one of the biggest criticisms of judicial elections is that they are low-salience, low-information elections, and voters possess little, if any, information about the candidates. If this is the case, then how can elections be a mechanism by which judges are held accountable for their behavior while on the bench? Why should incumbents alter their behavior on the bench in the presence of an election if the voters are not aware of the behavior of the incumbent and thus do not consider the incumbent's behavior when making their electoral decisions? It is important to note that what has been found to affect the behavior of actors seeking reelection is solely due to the presence of the election itself. It has nothing to do with what the electorate knows, or does not know, about the candidates (e.g., Brace & Hall, 1990, 1995, 1997; Hall, 1992, 1995). Indeed, elections can be effective mechanisms by which to affect behavior even in the absence of knowledge by voters. All that is required is that the voters are minimally concerned about the actions of the political actors (Ferejohn, 1990; Key, 1961; Pomper, 1968).

Despite the differences in both the nature of the office and the electoral environment surrounding it, in many ways state supreme court elections closely resemble other, more prominent elections. For example, Bonneau and Hall (2003) find that about half of all contested races to the state high court bench involve candidates with prior judicial experience (quality challengers), whereas Van Dunk (1997) finds that only 24% of contested state legislative races involve candidates with prior elected experience. Furthermore, Squire (1989a) reports that only 58% of challengers to the U.S. Senate involve quality challengers. Relatedly, Bonneau (2004) finds that these races are much more likely to be contested at the end of the 1990s than at the beginning of the time period. Indeed, the uncontested state supreme court election is now the exception, not the norm.

State supreme court elections are similar to other elections in more than just the incidences of contestation or the quality of the challenger. In Table 1, I show the incumbent reelection rates from 1990-2000 in major state and federal offices.

In just about every election cycle from 1990 to 2000, there were a higher percentage of incumbents defeated in state supreme court elections than in elections to most other major state and federal offices. For example, in the 1996-1997 election cycle, whereas upwards of

TABLE 1
Incumbent Reelection Rate, 1990-2000 (All Races)

Year	House[a]		Senate		Governor[b]		State Supreme Court	
	Number	%	Number	%	Number	%	Number	%
1990-1991	391	96.1	29	96.7	16	69.6	34	87.2
1992-1993	325	88.3	23	85.2	3	75.0	35	83.3
1994-1995	349	90.2	24	92.3	19	86.4	24	82.8
1996-1997	361	94.0	19	95.0	8	100.0	28	84.9
1998-1999	394	98.3	26	89.7	23	95.8	24	88.9
2000	394	97.8	21	77.8	5	83.3	31	81.6
Total	2,214	94.1	142	89.3	74	85.0	176	84.6

a. The House and Senate data are taken from Abramson, Aldrich, and Rohde (2002).
b. These data are taken from Scammon, McGillivray, and Cook (2001).

94% of the incumbent members of Congress were reelected (94% for the House and 95% for the Senate) and all eight governors up for reelection were reelected, only 84.9% of incumbent state supreme court justices were reelected. Furthermore, looking at all of the elections included in this study, only 84.6% of incumbent justices retained their seats on the state high court bench (about the same percentage as governors), compared to 94.1% of the members of the House and 89.3% of incumbent senators. Clearly, when looking at incumbent defeat rates, state supreme court justices have less electoral security than their legislative and executive counterparts.

In Table 2, I break down the success rate of incumbent justices by selection system.

Table 2 shows that incumbents are more likely to be defeated in partisan election states than in nonpartisan election states. This holds true for each election cycle in the data set. Overall, only 68.8% of incumbents seeking reelection in partisan election states are successful, compared with 94.5% of incumbents in nonpartisan states. This number for partisan election states is quite low when compared to elections for other offices (displayed in Table 1), which are all partisan affairs.

We have just seen that not only are incumbent justices defeated with some regularity in elections to the state high court bench but also that justices are more likely to be defeated in states with partisan elec-

TABLE 2
State Supreme Court Incumbent Success Rate by Selection System,
1990-2000 (All Races)

Year	Partisan			Nonpartisan	
	Number	%		Number	%
1990-1991	11	73.3		23	95.8
1992-1993	16	76.2		19	90.5
1994-1995	7	63.6		17	94.4
1996-1997	7	63.6		21	95.5
1998-1999	8	72.7		16	100.0
2000	6	54.5		25	92.5
Total	55	68.8		121	94.5

tions compared to nonpartisan elections. But is the method by which justices are selected the only significant factor in determining whether a justice will be defeated in her bid for reelection? What other factors might matter? It is to these questions that the analysis now turns.

DATA

I examine all contested incumbent-challenger state supreme court elections from 1990 to 2000. To properly specify the models, I collected data on both the characteristics of the elections and of the candidates. I use Hall's data set on state supreme court elections from 1980-1995[1] and supplemented this data set by extending it through the year 2000 and collecting campaign spending data on all races from 1990-2000.

I limit my analysis to contested partisan and nonpartisan races. That is, justices who stand for retention are excluded from this study. Although one could argue that justices up for retention are more similar to justices in contested partisan and nonpartisan races than they are to justices running unopposed in these elections (because justices in retention races can lose their bid to retain their seat by not gaining a majority of "yes" votes[2], whereas candidates running unopposed have no chance of losing), they are not studied here for two reasons. First, justices in some retention states are prohibited from campaigning for office, and so there is no campaign spending data for candidates in

these states. Second, even when justices are not prohibited from campaigning, they very rarely report campaign activity. In sum, there is very little campaign information available on retention races.

Furthermore, although retention races are similar to contested elections in that an incumbent has the potential to lose the election, they are different from contested elections in other important respects. First, the average vote for the winning candidate in retention elections is significantly higher than the average vote for the winning candidate in both partisan and nonpartisan elections. Aspin, Hall, Bax, and Montoya (2000) report that the mean affirmative vote for retention candidates from 1964 to 1994 was 74.9%. Furthermore, for the period under examination here (1990-2000), the mean affirmative vote was 69.8%. This is quite high compared to the percentage of the vote received by the winning candidate in both contested partisan (55.1%) and nonpartisan (57.4%) races during this time. Second, and relatedly, very few incumbents lose in retention races. Although 25 of 65 (38.5%) incumbents were defeated in contested partisan races and 7 of 74 (9.5%) incumbents were defeated in contested nonpartisan races during this time, only 3 of 177 (1.7%) supreme court justices were defeated in their bids for retention from 1990 to 2000. Taken together, it is clear that retention elections are significantly different from contested partisan and nonpartisan elections, and hence they are excluded from this study.

Twenty-two states[3] elect their justices on partisan and nonpartisan ballots, and I examine all of them here, with two exceptions. North Dakota, although electing justices on a nonpartisan ballot, does not require candidates to file campaign expenditure reports.[4] New Mexico is omitted because of data availability issues.[5]

HYPOTHESES

The dependent variable in this analysis is whether the incumbent was defeated in her bid for reelection to the state supreme court (*defeat*). The variable has a value of 1 if the incumbent was defeated and 0 otherwise. The literature on both state supreme courts and legislative elections suggests a variety of independent variables should affect the probability that an incumbent is defeated. Generally, the

likelihood that an incumbent will be defeated has been found to be related to characteristics of the candidate, the state and electoral context, and institutional arrangements.

Characteristics of the candidates. The amount of money spent by the candidates should affect the likelihood of an incumbent defeat, although not in the same fashion. One of the dominant findings from the congressional elections literature is that campaign spending by the incumbent is unrelated to her level of electoral support (e.g., Ansolabehere & Gerber, 1994; Jacobson, 1978, 1980, 1990; but see Green & Krasno, 1988; Thomas 1989). This is largely due to the advantages of incumbency: Incumbents are much better known than their challengers and thus benefit less from campaign spending. On the other hand, campaign spending by challengers has been found to be significantly related to incumbent electoral performance at both the congressional and state legislative levels (Abramowitz, 1988, 1989; Ansolabehere & Gerber, 1994; Gierzynski & Breaux, 1991, 1996; Jacobson, 1978, 1980, 1990; Squire, 1989a; Thielemann & Wilhite, 1995; but see Erikson & Palfrey, 2000). This is because to make their candidacies known to the electorate, candidates must spend money. Because most challengers begin the race in relative obscurity, the more money they spend, the better known they will become, and hence the better they will perform electorally (Jacobson, 1980).

What may be more important than individual candidate spending in low-information elections such as state supreme court elections, however, is the ratio of spending between the candidates and not the amount of spending by the individual candidates. In general, as in congressional elections, incumbent state supreme court justices have more resources at their disposal and generally can outspend their opponents (Bonneau, 2004). Thus, incumbent justices are usually able to effectively respond to the levels of spending by their opponents. This is important because although an incumbent justice cannot control the level of spending by her opponent, she can control her own level of spending. Thus, I expect that other things being equal, the larger the ratio of incumbent spending to challenger spending (*spending ratio*), the lower the probability of an incumbent's losing.[6]

Unlike most congressional incumbents, not all incumbents are equal in state supreme court elections. Some incumbent state supreme

court justices are facing voters for the first time. This occurs because some justices resign their office before the end of their term and a replacement is appointed to fulfill the remainder of the term of office. Hence, there are candidates who run as incumbents despite the fact that they have never faced the electorate. Indeed, from 1990 to 2000 over 38% of the justices up for reelection initially attained their seats by appointment. Because these incumbents have never faced the voters before, they may not have all of the advantages of incumbents who have previously won election (or they may not be as skilled at using the advantages that come with the office). Regardless, if one of the advantages of incumbency is that the incumbent has previously won election, and thus been endorsed by the electorate (Jacobson, 1997), then incumbents who have not yet been elected (*appointed first*) should be more likely to lose than their previously elected counterparts (Schotland, 1985).

At the same time, these incumbents should also benefit more from campaign spending. That is, although campaign spending by elected incumbents has generally not been found to affect their electoral fortunes, this may not necessarily hold true for appointed incumbents. Since these candidates have not yet been endorsed by the electorate, they may not have the same level of visibility as their previously elected colleagues. Indeed, their name recognition and visibility may not be much higher than their opponent's. Given this, I expect that appointed incumbents will benefit more from campaign spending than elected incumbents. I specify an interaction term to test for this (*Spending Ratio × Appointed First*).[7]

The quality of the challenger also should affect the likelihood that the incumbent will be reelected. Candidates with prior judicial experience should fare better than candidates without such experience (Hall & Bonneau, 2003), just as candidates with prior elected experience perform better than candidates without such experience in legislative races (Green & Krasno, 1988; Jacobson, 1980; 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.

State and electoral context. The political party of the incumbent is also important, as it might also influence her electoral support. Yet it is

not sufficient simply to include a variable measuring the incumbent's political party. Some incumbents might be punished by the electorate simply for belonging to the "wrong" political party (Campbell, 2002). However, there is no reason to think that an incumbent might be more likely to lose simply because she is a Democrat or Republican. In some states, being affiliated with a particular political party may help a candidate's chances of winning election, whereas in others it will hinder the candidate's hopes. How consonant the incumbent's party identification is with other elected officeholders in the state is an indication of how divergent the justice is with the preferences of the electorate. A Democratic judge in a state that recently elected a Republican governor and senator and who voted for a Republican presidential candidate in the last election is more likely to be out of step with the electorate than a Republican judge under the same conditions. The more out of step the incumbent is with the electorate, the more likely she will be defeated. Thus, I need to devise a measure that takes into account a candidate's party, conditional on the current partisan climate of the state.[8]

The measure I develop is a composite measure that takes into account the current partisan consonance among the statewide elected officials in the state (*partisan consonance*). If the incumbent justice and the winning presidential, gubernatorial, and senatorial candidates are all of the same party, then there is a high degree of partisan consonance and the incumbent should be less likely to be defeated.[9] Likewise, if the justice is of the opposite party of the winning presidential, gubernatorial, and senatorial candidates, then this lack of partisan consonance should lead to an increase in the likelihood of an incumbent's losing her bid for reelection.[10]

The specific state supreme court electoral context should also affect the likelihood of defeat. In some states, justices are easily reelected, with incumbent defeats being an aberration. In other states, incumbent justices lose with frequency. In states where incumbents lose with frequency, an incumbent is more likely to lose her bid for reelection than if she were running for reelection in a state in which incumbents are rarely defeated (Burbank & Friedman, 2002). That is, incumbent defeats breed incumbent defeats. Although some incumbent defeats are idiosyncratic to be sure, some states have a history of competitive elections for the state high court bench (Hall, 2001a), and

winning reelection to the state supreme court in these states is far from a sure thing. Thus, I include a variable indicating whether an incumbent justice lost in the most recent state supreme court election (*recent defeat*). For example, if an incumbent justice lost in Texas in 1992, then this variable takes the value of 1 for all high court elections in Texas in 1994.

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 & Partin, 1995; Carsey & Wright, 1998; Lowry, Alt, & Ferree, 1998; Niemi, Stanley, & Vogel, 1995; Svoboda, 1995). Furthermore, the same has been found in both presidential and congressional elections (e.g., Jacobson, 1997). Applying this to state high court elections, Hall (2001a) found that incumbent justices performed worse the higher the murder rate in their state was, indicating that these incumbents were held responsible for the state of public safety. Consistent with this, I expect that the higher the murder rate in the year prior to the election (*murder rate*), the higher the probability that the incumbent will lose her bid for reelection.

Institutional arrangements.[11] The most fundamental institutional difference between state high court elections is the type of election. As has been noted earlier, some states elect their justices on partisan ballots, whereas others do so on nonpartisan ballots. The only 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. Given the differences in incumbent electoral success seen in Table 2, I would expect that incumbents are more likely to be defeated in partisan states (*partisan*) than in nonpartisan states.

In addition to the partisan nature of the race, some state supreme court justices run statewide, whereas others have to run in districts. Hall (2001a) found that candidates running in nonpartisan district elections received more than 18% less of the vote (although this result did not hold in partisan elections), suggesting that district elections have different effects on electoral outcomes in different selection systems. This may be due to the fact that districts are more likely to

be politically homogeneous than states. Thus, in a Democratic-
dominated district, a nonpartisan election is likely to be more compet-
itive than a partisan election, where all of the Democratic voters can
easily identify their candidate. Thus, I include a dummy variable to
take into account the electoral constituency of the election (*district*) as
well as an interaction term that takes into account the effects of both
electoral constituency and selection system (*Partisan × District*).

The term of office should also affect the incumbent's percentage of
the vote. Longer terms should be more attractive to candidates
because there is increased job security (Bonneau & Hall, 2003). Thus,
there should be more competition for seats that have longer terms of
office associated with them. The higher the level of competition, the
more likely an incumbent is to lose. I therefore expect that the prob-
ability of the incumbent's losing will increase when longer terms of
office are at stake (*term*).

Finally, not all states have elections for the state supreme court in
each election year in this data set. Also, the likelihood of defeat in a
given year may also depend upon idiosyncratic factors not taken into
account in this model. Thus, I also include a dummy variable for the
year of the election minus 1 year, to control for any temporal effects
(*1990*, *1992*, *1994*, *1996*, *1998*).[12] For convenience, Table 3 displays
all of the variables in this analysis and their exact measurement.

RESULTS

Because the dependent variable is dichotomous, I estimate the
model using probit. Because my data set includes multiple observa-
tions from the same state both over time and in a given year, in the
strictest sense observations within states might not be truly indepen-
dent. 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 assump-
tions about within-group (state) correlation.

The results from the model of incumbent defeat can be seen in
Table 4.

As expected, the higher the spending ratio between the incumbent
and challenger, the lower the chances of the incumbent's losing, but

TABLE 3
Variable Descriptions for a Model of Incumbent Defeats
in State Supreme Court Elections

Variable	Variable Description
Dependent variable	
Defeat	1 if incumbent was defeated
	0 otherwise
Candidate characteristics	
Spending ratio	Natural log of total campaign expenditures for the incumbent divided by natural log of total campaign expenditures for the challenger
Appointed first	1 if incumbent was originally appointed to the Court
	0 otherwise
Quality challenger	1 if incumbent was challenged by a candidate with prior judicial experience
	0 otherwise
State and electoral context	
Partisan consonance	Degree of partisan consonance between the incumbent and the presidential, gubernatorial, and senatorial winner (see Note 10)
Recent defeat	1 if an incumbent was defeated in the most recent judicial elections in that state
	0 otherwise
Murder rate	State murders and nonnegligent manslaughter per 100,000 population, lagged 1 year
Institutional arrangements	
Partisan	1 if the election is a partisan election
	0 otherwise
District	1 if the election is in a district, not statewide
	0 otherwise
Term	Term (in years) of office for the seat
Control variables	
1990, 1992, 1994, 1996, 1998	1 if election occurred in the designated year
	0 otherwise

only for those incumbents who are facing the electorate for the first time (although this falls just outside the conventional level of significance). This indicates that appointed incumbents can effectively respond to campaign expenditures by their opponent simply by spending more money. The same is not true for incumbents who have previously faced the electorate. Thus, although challenger spending may lead to an increased probability the incumbent will lose (at least when the incumbent has not yet faced the electorate), incumbents can

TABLE 4
Incumbent Defeats in Contested State Supreme Court Elections

Variable	Coefficient	Robust SE	z	p > |z|
Spending ratio	−1.658	1.248	−1.330	.092
Spending Ratio × Appointed First	−7.301	4.654	−1.570	.059
Appointed first	8.651	4.891	1.770	.039
Quality challenger	0.279	0.564	0.490	.311
Partisan consonance	−0.316	0.105	−3.020	.002
Recent defeat	0.601	0.312	1.930	.027
Murder rate	−0.189	0.056	−3.400	.001
Partisan	2.168	0.613	3.530	.000
District	1.164	0.561	2.080	.019
Partisan × District	2.921	0.666	4.380	.000
Term	−0.419	0.126	−3.330	.001
1990	−0.019	0.830	−0.020	.491
1992	0.192	0.612	0.310	.377
1994	−0.176	0.658	−0.270	.395
1996	−0.606	0.617	−0.980	.163
1998	−1.879	0.510	−3.680	.000
Constant	4.145	1.666	2.490	.007

$N = 124$
Pseudo $R^2 = 0.453$
Log likelihood = −34.814
% correctly predicted = 81.29
Proportional reduction in error[a] = 18.72

NOTE: Dependent variable = probability that an incumbent will be defeated.
a. Calculated according to Hagle and Mitchell (1992): (% correctly classified − % in modal category) × 100 (100 − % in modal category).
All p values are one-tailed tests of significance.

overcome the effects of challenger spending simply by spending more money themselves. Given the campaign monetary advantages incumbents generally have over challengers (Bonneau, 2004), it seems that appointed incumbents can essentially neutralize the effects of challenger spending on their chances of electoral success. However, the same cannot be said for elected incumbents. This suggests that the incumbency advantage does not accrue equally to all incumbents. Certainly, an incumbent who has been appointed to the bench has more electoral advantages than her nonincumbent challenger. However, she does not benefit as much from her incumbency as her colleagues who have faced the electorate before. The fact that the coefficient for appointed first is statistically significant confirms this

conclusion: When the log of the spending ratio is zero, appointed incumbents are more likely to lose than those who have previously won election. (Although her failure to benefit from the incumbency advantage does mean that she has more personal control over her electoral fate as she can decrease her chances of losing simply by spending more money.)

Although the campaign spending gap was found to be significant, the quality of the challenger is not statistically significant. A challenger's prior judicial experience has no effect on the probability of an incumbent's losing, although Hall and Bonneau (2003) have found that such a challenger does make the election more electorally competitive. In terms of the state and electoral context, the higher the degree of partisan consonance between the justice and the governor, most recently elected senator, and presidential choice, the lower the likelihood of defeat. This is as expected. When the incumbent justice belongs to a political party that is not winning elections to other offices, she is more likely to be defeated, other things being equal.

In addition, an incumbent is more likely to lose her reelection bid if an incumbent in her state lost her bid for reelection in the previous election cycle. This suggests that the state supreme court electoral climate in the state affects elections for the state high court bench (just like the general partisan electoral climate in the state). The more competitive the state, the higher the likelihood of defeat.

Contrary to expectations, a higher murder rate leads to an increase in the likelihood that an incumbent will win reelection. This is somewhat curious, especially given the results of Hall (2001a), who found that a higher murder rate leads to more electoral competition. Although higher murder rates lead to more electoral competition, voters do not appear to hold incumbent justices completely responsible for the state of public safety in their state, in contrast to what has been found in legislative and executive races. That is, although the murder rate may promote electoral competition, it is not an important enough factor to lead voters to unseat an incumbent. This may be because voters associate public safety more with the police and other public officials than with judges. Furthermore, in cases where the challenger is a lower court judge (almost half the cases in the data set), voters may hold *both* candidates responsible, thereby not rewarding one (the challenger) at the expense of the other (the incumbent).

Finally, all of the institutional variables attain significance. Incumbents are more likely to lose in partisan elections (whether they are held statewide or in districts). They are also more likely to suffer electoral defeat in nonpartisan district elections than they are in statewide nonpartisan elections. Furthermore, the longer the term of office at stake, the lower the likelihood that an incumbent will lose. This is contrary to expectations but may be due to the fact that 90% of the cases in the data set (and 84% of all the incidents of incumbent defeat) are for 6- and 8-year terms of office.[13] Moreover, justices having served for a longer period of time (say, 10 or 12 years) may be perceived by voters as having more experience (and thus being of higher quality) than their colleagues who have only served for a relatively short time, say, 6 years. Consequently, these justices who have served longer terms would be less likely to be turned out of office. At any rate, although longer terms of office contribute to the likelihood that an incumbent will be challenged (Bonneau & Hall, 2003), they do not increase the probability that the incumbent will lose her bid for reelection.

Unlike ordinary least squares coefficients, the coefficients from probit models cannot be straightforwardly interpreted to gauge substantive significance. In Table 5, I calculate the predicted probability[14] of an incumbent's losing her bid for reelection under a variety of interesting scenarios.[15]

If all of the variables are held at their means, the incumbent has an 8.3% chance of losing her bid for reelection. However, a variety of circumstances can increase (or decrease) the chance the incumbent will lose. It is clear that the spending ratio is a key determinant of incumbent defeat, at least for appointed incumbents. The narrower the ratio of spending between the incumbent and the challenger, the higher the likelihood of defeat. For example, lowering the spending ratio by one standard deviation leads to an 84.7% probability the (appointed) incumbent will lose. This suggests that limiting the amount of money that could be spent on a campaign may serve to weaken the incumbency advantage and better give challengers a chance to win the election (assuming the campaign limits were set at meaningful levels— that is, so the incumbent would run up against them although the challenger would not).

Holding all other variables at their means, if an incumbent is the only member of her political party among the most recent gubernato-

TABLE 5
Predicted Probabilities for Key Variables in Table 4

Situation[a]	% Probability of Incumbent Defeat
All at mean	8.3
Lower appointed incumbent spending ratio[b]	84.7
No partisan consonance[c]	17.1
Complete partisan consonance[d]	3.4
Recent incumbent defeat	17.6
Lower murder rate[e]	24.6
Partisan statewide	29.0
Partisan district	55.6
Nonpartisan statewide	0.8
Nonpartisan district	7.2
6-year term	16.3
8-year term	3.9
10-year term	0.9
12-year term	0.2

a. All variables are held at their means, except the variable listed.
b. Spending Ratio × Appointed First at 1 standard deviation lower.
c. Partisan consonance set at 0.
d. Partisan consonance set at 3.
e. Murder rate at 1 standard deviation lower.

rial, senatorial, and presidential winners (that is, if she is a Democrat and the others are Republicans, or vice versa), her chance of defeat is 17.1%. In contrast, if the incumbent shares the same political party affiliation as those other officers, her chance of defeat is reduced to 3.4%. This shows how perceptions of the incumbent being out of step with the electorate can have serious electoral consequences for her. Moreover, if an incumbent lost in the last election cycle, a current incumbent has a 17.6% chance of losing. Thus, the state supreme court electoral context can significantly affect the likelihood of an incumbent losing.

Some of the more interesting scenarios relate to the institutional variables. Incumbents running in statewide partisan elections have a 29.0% chance of losing, holding all other variables at their means, whereas if they are running in a nonpartisan, statewide election, their chance of losing is only 0.8%. Incumbents in partisan states are clearly more electorally vulnerable than their nonpartisan counterparts, other things being equal. This holds true in district-based elec-

tions as well: Incumbents in partisan, district-based elections have a 55.6% chance of defeat, compared to a 7.2% chance in a nonpartisan, district state. In terms of the length of the term of office at stake, incumbents running for 6-year terms have a greater chance of being defeated than those running for longer terms of office (although there are only 11 elections for a 10-year term and 2 elections for a 12-year term, so we should be careful about making too much of these results).

Thus, although many incumbents are likely to be reelected, there are a variety of situations in which incumbent defeat becomes much more likely. Furthermore, some of these situations can be controlled by the candidates themselves. However, as Tables 4 and 5 demonstrate, the state and electoral context as well as institutional arrangements also contribute significantly to the likelihood that an incumbent justice will be defeated.

CONCLUSION

Given the increasingly competitive, contentious, and expensive elections for the state high court bench, these results offer important qualifications to those who criticize judicial elections for being ineffective mechanisms of selecting judges. The analysis has shown that the defeat of incumbent state supreme court justices, much like the defeat of incumbent members of Congress and state legislatures, can be predicted by characteristics of the candidates, the state and electoral context, and institutional arrangements. Incumbent defeats of justices are not random; they can be understood in much the same way as incumbent defeats of other elected officials.

What does this article have to say about the ability of judges to control their electoral fates? The evidence presented here indicates that the outcome of judicial elections is not completely dictated by factors outside of the incumbent's control. An appointed incumbent can increase her probability of winning reelection simply by spending more money, for example, although her previously elected counterparts do not have this luxury. Of course, there are other factors that affect the election. Thus, the partisan identification of the judge (or information gleaned from paid advertising in the campaign) helps contribute to the incumbent's losing her bid for reelection. Given that there are differ-

ences between Democratic and Republican judges (just as there are differences between Democratic and Republican legislators), it is not surprising that incumbents are more likely to lose when partisan affiliation is on the ballot as a cue for voters to use. Furthermore, the degree of partisan consonance, a competitive state supreme court election climate, and institutional arrangements also help contribute to the likelihood an incumbent will be defeated. An incumbent is more likely to lose her bid for election simply because of the current electoral climate in the state (judicial and otherwise) or because of the manner in which the election is conducted, things outside of her control.

More broadly, this analysis points to important qualifications to the incumbency advantage. Contrary to existing studies of congressional and state legislative elections, the results here indicate the incumbency advantage does not accrue equally to incumbents. Specifically, appointed incumbents are more electorally vulnerable than their previously elected colleagues. However, appointed incumbents are able to increase their likelihood of victory simply by spending more money. Furthermore, incumbents running in partisan elections are more likely to lose than incumbents running in nonpartisan states. This suggests that institutional structures, as well as the type of incumbent, also serve to modify the incumbency advantage in important ways. States currently considering changing their method of judicial selection (or those who recently have done so, such as Arkansas and North Carolina) may find that moving from partisan elections to nonpartisan elections has the (perhaps unintended) effect of strengthening the incumbency advantage.

Most basically, this analysis suggests that the incumbency advantage is more complex than previously thought and that to fully understand the dynamics of elections, we need to take into account institutional arrangements along with characteristics of the candidates and the electoral context.

NOTES

1. See Hall (2001a) for a discussion of this data set.

2. In Illinois, judges must receive 60% of the vote to be retained. In all other states, judges must only receive a majority.

3. Texas has two state courts of last resort, one that deals exclusively with civil claims (Texas Supreme Court) and one that only hears criminal cases (Texas Court of Criminal Appeals). Both courts are included here.

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

5. In New Mexico, until recently campaign finance records were destroyed 5 years after the election occurred. This eliminates all records, except for the 1998 and 2000 elections. When I attempted to get the records for the 1998 election, I was told they could not be located. After successive attempts to obtain these data failed, I decided to omit New Mexico from the analysis. Fortunately, New Mexico had only one contested election in 1998 and none in 2000. Consequently, its omission should not cause any problems for this analysis.

6. There are 12 cases in which the challenger reported no campaign spending. Because I am logging the spending variables and then dividing by the challenger's spending (and neither operation can be done in the presence of zeros), those candidates who reported spending no money are coded as spending $1.

7. Alternatively, I could estimate separate models for elected incumbents and appointed incumbents. However, although appointed incumbents are a nontrivial part of the sample, there are not enough cases to estimate the full model on just the appointed incumbents.

8. The political party of the incumbent is easy to determine in partisan elections: It is listed on the ballot. However, it is also relatively easy to determine in nonpartisan races from the biographies and past political experience of the candidates. Furthermore, as those who live in states with "nonpartisan" elections know, the candidates generally provide voters with enough information to ascertain the party of the candidates.

9. If there is no election for the office in a given year in the state, then I use the result from the most recent results. Thus, if there was no gubernatorial or senatorial race in 1994, then I use the 1992 results. The same is true for nonpresidential years (I use the 1992 results for 1994, etc.).

10. This measure ranges from 0 to 3. It is 0 if the justice is of the opposite party than the winning gubernatorial, senatorial, and presidential candidates, 1 if the justice is of the same party as one of the others, 2 if the justice is of the same party as two of the others, and 3 if the justice is of the same party as all of the others.

11. The presence of a multimember race should also affect electoral outcomes. Competition in multimember districts has been found to be higher than in comparable single-member districts (Cox & Morgenstern, 1995). However, because there are no cases of incumbents losing in multimember races, I cannot include this variable in the analysis here despite its theoretical relevance.

12. Elections held in odd years are grouped with the previous year's elections. So, for example, *1990* contains all of the elections in 1990 and 1991.

13. Given this distribution, one might wonder about alternative ways to code *term*. I opt for the conventional way (using the years of office), because some reformers have suggested that the length of the term of office is one way to build the prestige of a court and to make a seat more valuable. Furthermore, Bonneau and Hall (2003) found that incumbents are more likely to be challenged the longer the term of office is. Thus, it is a natural extension of this literature to hypothesize that the longer the term of office, the more likely a defeat will be. In addition, the length of the term of office is one of the institutional factors that can be manipulated by states (like the type of election and electoral constituency), and it is interesting to see how this kind of institutional manipulation would affect the likelihood of incumbent defeats (if at all).

14. Predicted probabilities were generated using CLARIFY (Tomz, Wittenberg, & King, 1999; King, Tomz, & Wittenberg, 2000).

15. There are zero cases in which the incumbent lost while the challenger spent no money (coded here as $1). Thus, because I am interested in explaining the conditions under which

incumbents are defeated, the 12 cases in which incumbents ran against a challenger who spent no money are excluded from this part of the analysis only.

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