

PATTERNS OF CAMPAIGN SPENDING AND ELECTORAL COMPETITION IN STATE SUPREME COURT ELECTIONS*

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One of the hottest topics in politics today is the method by which state supreme court justices are selected. The debate over whether judges should be appointed or elected (or some combination of both) is raging in several state legislatures, as well as in the media. State supreme court elections have been heavily criticized for the increasing amounts of money that have been raised and spent during campaigns for the state high court bench. In this article, I examine the trends in campaign spending and electoral contests in all contested state supreme court races from 1990 to 2000.

The election of judges is essentially an American phenomenon (Schotland, 1985). While state judges were initially appointed much like their federal counterparts, the election of judges started becoming common with the rise of Jacksonian democracy in the 1830s (Sheldon and Maule, 1997). Since that time, while judicial elections have undergone some changes (such as moving from partisan elections to nonpartisan or retention elections), they have been an enduring institution of political life in the American states. The fact that judicial elections have endured for so long, however, should not be taken as a sign that they are viewed as essential to the politics of state courts.

One of the constant themes of recent media coverage of state supreme courts is criticism of selecting judges for these courts by using electoral processes (e.g., Bell, 2001; *Birmingham News*, 2001; Campbell, 2002; Dickerson, 2001; Garcia, 2001; Goldberg, Holman, and Sanchez, 2002; Hampton, 2002; Marks, 2001; Marks and Hoke, 2001; *Pittsburgh Post-Gazette*, 2001; Popkey, 2001; Wenzel, 2001; Wohl, 2000). Criticism of electing judges has not been limited to the media alone, however. Some of the biggest critics of judicial elections are the judges themselves, who abhor needing to campaign to retain their seats on the state high-court bench (e.g., Davidson, 2001; Elliott, 2002; Glaberson, 2000b; Phillips, 2002; Welsh-Huggins, 2001).¹ The central argument advanced by these

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¹ Of course, some judges support judicial elections (e.g., Darden, 2001). For example, both candidates (Max Baer and Joan Orié Melvin) for the 2003 Pennsylvania Supreme Court seat came out in favor of electing judges during their second televised debate.

critics is that raising and spending campaign funds gives the appearance of impropriety, as winning candidates (much as winning candidates for legislative and executive offices) may feel indebted to their contributors and supporters and, thus, favor them in rulings on the bench. This compromises not only the integrity of the bench itself, but also the integrity of those who sit on the state high-court bench.

In this article, I examine recent trends in state supreme court elections in both campaign spending and electoral competition. The popular rhetoric is that these races are becoming more expensive (e.g., Farmer, 2001; Glaberson, 2000a; Lewis, 2002; Orndorff, 2002; Salter, 2002; Schotland, 2001) and less competitive (e.g., Berry, 2001; Campbell, 2002; but see Hall, 2001), yet, until recently, we lacked reliable, systematic data to evaluate these propositions. Specifically, I answer two questions:

1. Are state supreme court elections becoming more expensive?
2. Are state supreme court elections becoming less competitive?

DATA

To answer the questions posited above, I collected data on all competitive state supreme court elections from 1990 to 2000. I made extensive use of Hall's data set on state supreme court elections (which ended in 1995) and updated the data through the year 2000.² Additionally, to collect the campaign finance data, I contacted the relevant office in each state (usually located in the secretary of state's office) and obtained the official campaign finance disclosure reports filed by candidates for the state high-court bench.

The campaign finance reports were coded for total amounts spent by the candidates. While each state has different reporting requirements and different filing periods, they all require candidates to file a final report of all expenditures. Since I am primarily interested in the total spending for each candidate in these elections, the fact that the states have different filing requirements and periods does not impede my ability to analyze the data in a systematic fashion.

Just as with federal campaign finance reports, candidates for the state supreme court must report the total amounts that they (and their campaign committees) have raised and spent. Omitted from these reports are independent campaign expenditures by people and interest groups. While independent expenditures have been on the rise in recent years (Goldberg, Holman, and Sanchez, 2002), it is impossible to ascertain just how much money is being spent (and for whom) since these expenditures are unregulated. Further, when there are multiple seats at stake in a state, independent advertisements may target (or promote) all candidates with a specific philosophy, position, and so forth. Determining

² See Hall (2001) for a discussion of this data set.

for whom this money is spent is problematic, to say the least. In contrast, since all candidates have to file campaign finance reports, we *know* how much money they spent on their campaigns. Thus, the figures reported here are based solely on the amounts spent by the candidates and their campaign committees. Absent reliable, systematic data on independent expenditures, this is not only a reasonable decision, but also a necessary one.³

I examine all contested elections in states that elect justices on either a partisan or nonpartisan ballot. The reason I limit my sample to contested races is that while candidates who run unopposed may still raise and spend money, the fact that they are not being challenged means that they will raise and spend less money than if they were challenged. The 1992 race in Montana is a good example of this. Justice Bill Hunt ran uncontested and spent \$12,057. Fellow incumbents Jean Turnage and Karla Gray, running in contested elections, spent \$209,304 and \$56,658, respectively.⁴ This suggests that the presence of a challenger affects the amount of money spent by candidates. For these reasons, uncontested races are omitted, although I will discuss them below when I talk about electoral competition.

Justices who stand for retention are also excluded from this study. While 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 (since justices in retention races can lose their bid to retain their seat by not gaining a majority of “yes” votes, while candidates running unopposed have no chance of losing), they are not studied here for a couple of reasons. First, candidates running for retention in some states (such as Alaska, Arizona, Colorado, Iowa, Nebraska, South Dakota, Utah, and Wyoming) are prohibited from campaigning and raising money altogether.⁵ Second, in states where candidates are allowed to campaign and raise money, few of them actually do so (e.g., Aspin, 1998; Griffin and Horan, 1979; Nicholson and Nicholson, 1994).⁶ Thus, there is very little information on campaign spending available for retention races.

³ It should be noted that independent expenditures have been increasing in recent years. For example, the U.S. Chamber of Commerce had never participated in judicial elections before 2000, but in that year they spent over \$10 million in elections in several states (Kozlowski, 2002). In past years, while the canons of judicial ethics in each state prohibited candidates for the state high-court bench from taking positions on many substantive issues that may eventually come before the court, independent groups were not subject to these regulations. However, given the Supreme Court’s decision in *Republican Party of Minnesota v. White* (2002) 247 F 3d 854, which invalidated many of these regulations prohibiting candidates from speaking, these independent expenditures may have less effect on future elections than they have had on past elections.

⁴ Turnage likely spent significantly more than Gray because he was challenged by a sitting justice for the chief justice position.

⁵ This information was obtained by contacting the relevant office in each state (usually located in the secretary of state’s office) and talking with someone knowledgeable about campaign finance regulations.

⁶ Candidates in California, Florida, Kansas, Maryland, Missouri, and Oklahoma routinely report no campaign activity or expenditures.

Further, while retention races are similar to contested partisan and nonpartisan elections in that an incumbent has the potential to lose the election, they are different from contested elections in other important respects, such as the average vote. The mean affirmative vote for candidates who stood for retention between 1964 and 1994 was 74.9 percent (Aspin et al., 2000). From 1990 to 2000, the average affirmative vote was 69.8 percent. However, the mean vote for candidates in contested partisan elections was 56.7 percent, and the average vote for candidates in contested nonpartisan elections was 55.6 percent. Clearly, retention elections are not as competitive as their partisan and nonpartisan counterparts. Further, very few incumbents are not retained. From 1990 to 2000, only 3 of 177 (1.7 percent) candidates for retention lost, compared to 27 of 110 (24.6 percent) incumbents who were defeated in contested partisan elections and 7 of 105 (6.7 percent) incumbents who lost their reelection bid in contested nonpartisan elections. 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.

There are twenty-two states that elect their justices on partisan and nonpartisan ballots, and I examine all of them here, with two exceptions (see **Table 1**).⁷ North Dakota, while electing justices on a nonpartisan ballot, does not require candidates to file campaign expenditure reports.⁸ New Mexico is omitted because of data availability issues.⁹

STATE SUPREME COURT ELECTIONS OVER TIME

Not surprisingly given the popular reports of these elections, state supreme court elections have become more expensive throughout the decade of the 1990s (see **Table 2**).

Looking at all contested elections in this period, spending has increased, on average, from 1990 to 2000. In general, each successive election has been more expensive than the previous election. This holds true for both partisan and nonpartisan elections.

Partisan elections, in the aggregate, are always more expensive than nonpartisan elections (see **Table 2**). Indeed, it was only in 2000 that nonpartisan elections reached the spending levels achieved in partisan elections in 1992. However, while it is too early

⁷ Texas has two state supreme courts, 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.

⁸ Interestingly, North Dakota does require candidates to file reports detailing their list of contributors and the amount of each contribution.

⁹ When I contacted the appropriate official in New Mexico, I was told that campaign finance records were destroyed five years after the election, eliminating all races until 1996. I requested the 1998 reports, and, after repeated requests, was told they could not be located. However, there was only one contested race in 1998 and none in 2000, so omitting New Mexico does not pose serious problems for the analysis.

Table 1
States Included in Analysis by Selection System

Partisan	Nonpartisan
Alabama	Georgia
Arkansas	Idaho
Illinois	Kentucky
Louisiana	Michigan
North Carolina	Minnesota
Pennsylvania	Mississippi*
Texas	Montana
West Virginia	Nevada
	Ohio
	Oregon
	Washington
	Wisconsin

*Starting in 1994.

Table 2
Total Average Spending by Year, Contested General Elections, 1990-2000
(number of elections in parentheses)

Year*	All Elections	Partisan Elections	Nonpartisan Elections
1990	\$364,348 (30)	\$404,937 (18)	\$303,464 (12)
1992	576,282 (34)	663,063 (18)	512,404 (16)
1994	756,256 (31)	1,123,889 (16)	364,113 (15)
1996	579,350 (34)	722,419 (16)	452,177 (18)
1998	860,990 (31)	1,147,952 (16)	554,898 (15)
2000	801,108 (42)	846,465 (19)	763,639 (23)

* In this, and all subsequent tables, odd-year elections are combined with the previous even-year elections. For example, the data represented in 1990 contains all elections in 1990 and 1991, and so forth.

to tell if this is a trend or just an anomaly, the gap between spending in partisan elections and nonpartisan elections in 2000 was the smallest it has ever been.

While state supreme court elections are becoming more expensive, these spending figures do not factor in inflation. It could be the case that the rise in costs is due in large part to inflation. In **Table 3**, I adjust the spending figures in **Table 2** and report the spending amounts in 1990 dollars.

While the campaign spending increases are not as dramatic when measured in 1990 dollars, they are still becoming more expensive throughout the 1990s (see **Table 3**).

Table 3
Total Average Spending by Year in 1990 Dollars, Contested General Elections
1990-2000 (number of elections in parentheses)

Year	All Elections	Partisan Elections	Nonpartisan Elections
1990	\$364,348 (30)	\$404,937 (18)	\$303,464 (12)
1992	524,719 (34)	603,735 (18)	466,556 (16)
1994	649,062 (31)	964,585 (16)	312,502 (15)
1996	472,810 (34)	589,570 (16)	369,024 (18)
1998	670,789 (31)	894,358 (16)	432,316 (15)
2000	598,156 (42)	632,023 (19)	570,180 (23)

Table 4
Average Spending for Each Type of Candidate by Year,
Contested General Elections 1990-2000

Year	Incumbent	Challenger	Winner of Open Seat	Loser of Open Seat
1990	\$276,787	\$74,990	\$294,688	\$91,372
1992	288,903	229,099	321,455	376,686
1994	474,653	182,178	504,750	372,237
1996	367,175	245,641	284,455	224,920
1998	544,891	253,233	496,098	496,911
2000	476,009	378,046	384,716	321,087

Candidates for the state high-court bench are still spending more money in 2000 than they were in 1990 even when spending is measured in constant dollars.

Interestingly, the most expensive races, on average, were in 1994 and 1998, especially in partisan states (see **Table 3**). One potential reason for this may be the fact that these are midterm elections. Given that money is a finite resource and that contributors may have to prioritize to whom they give money, the absence of a presidential party candidate may free up more money for contributors to donate to state high-court candidates. Further, the absence of a presidential candidate on the ballot (and, hence, the absence of potential candidates) may cause candidates to spend more money because they are more dependent on their own campaigns to generate support and mobilize voters. That is, they cannot count on riding the coattails of the party's presidential candidate.

Spending by all types of candidates is higher in 2000 than it was in 1990 (see **Table 4**). This holds true even if we look at spending in 1990 dollars (not shown). It is not surprising that candidates are spending more money at the end of the decade as opposed to the beginning (since elections are more expensive), but this leads to the question of the effects this spending has on electoral competition. Thus, it is natural to ask:

Table 5
Average Percentage of the Vote by Year, Contested General Elections, 1990-2000*

Year	All Elections	Partisan Elections	Nonpartisan Elections
1990	56.64	55.73	58.00
1992	54.83	55.25	54.35
1994	53.11	52.66	53.58
1996	56.10	55.77	56.39
1998	57.87	53.98	62.02
2000	57.93	60.69	55.65

* In this table, as well as **Tables 7, 9** and **11**, this is the percentage of the vote received by the incumbent in incumbent-challenger races and the percentage of the vote received by the winner in open-seat contests.

Table 6
Average Percentage of Uncontested Seats by Year, General Elections, 1990-2000

Year	All Elections	Partisan Elections	Nonpartisan Elections
1990	43.64	32.14	55.56
1992	31.48	29.63	33.33
1994	27.91	11.11	40.00
1996	21.28	10.00	29.63
1998	17.95	0.00	31.82
2000	17.31	5.00	25.00

Have races for the state high-court bench become more competitive over the period of this study or simply more expensive? The answer to this question is provided in **Table 5**.

While state supreme court races were becoming more electorally competitive from 1990 to 1994, this trend was abruptly reversed beginning in 1996, and it now looks like the pattern is toward less competitiveness. Indeed, state supreme court elections, on average, were more electorally competitive in 1990 than in 2000. Looking at partisan and nonpartisan elections, no patterns are evident. Partisan elections are, in general, more competitive than nonpartisan elections, but the average percentage of the vote received by the winning candidate was over 60 percent in the year 2000 for contested elections in partisan states. Likewise, after having relatively competitive elections from 1990 to 1996, in 1998 contested nonpartisan elections were won by an average of over 62 percent.

Of course, electoral competition is only one way to measure competitiveness. An alternative way of examining electoral competition is to look at contestation. That is, are more state supreme court justices being challenged more frequently than in the past? The answer can be found in **Table 6**.

Table 7
Average Percentage of the Vote by Type of Election and Year, Contested General Elections, 1990-2000

Year	Incumbent-Challenger	Open Seats
1990	56.30	57.23
1992	55.35	53.73
1994	54.32	51.42
1996	54.22	60.02
1998	58.98	55.16
2000	57.99	57.81

More state supreme court elections are being contested at the end of the decade than at the beginning, further confirming the results of Bonneau and Hall, 2003 (see **Table 6**). This is true for both partisan and nonpartisan elections, although partisan elections still remain more likely to be contested than their nonpartisan counterparts. Thus, while we could not conclude that state supreme court races were becoming more competitive (in terms of the levels of electoral support received by the incumbent or winner), we can conclude that more of these races are being contested. Since contestation is a necessary condition for competitiveness, this indicates that the higher levels of spending occurring in these races are not deterring candidates from running for the state high-court bench, and perhaps we will see closer elections in the upcoming years. This is an important trend because, as Bonneau and Hall (2003:337) state, “Incumbents chosen in 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 personal preferences.” That is, in order for elections to constrain judges, there must be a legitimate likelihood that their behavior will be either rewarded or punished. Being challenged is a necessary first step in this process, because, as Squire (1989:282) argues, “[E]ven ‘safe’ representatives who face challengers live with some fear that they may be defeated, and this wariness may constrain their actions.”

In **Table 7**, the average percentages of the vote received by incumbents and winners of open seats are displayed.

There is no discernible pattern toward more competitive elections in terms of type of election from 1990 to 2000, confirming what we saw in **Table 5**. While contested elections in 2000 were more expensive than elections in 1990, contested elections in 1990 were more competitive, both for incumbent-challenger contests and for races for open seats. Additionally, while 1994 was the most competitive year overall (although 1996 was slightly more competitive for partisan races), the 1994 election was characterized by large spending discrepancies between incumbents and challengers and the winners and losers of open seats (see **Table 4**). This further illustrates that contestation does not

Table 8
Average Spending for Each Type of Candidate by Method of Selection, Contested General Elections, 1990-2000

Selection Method	Incumbent	Challenger	Winner of Open Seat	Loser of Open Seat
Partisan	\$524,356	\$257,428	\$452,075	\$378,601
Nonpartisan	306,702	222,222	279,053	212,894

necessarily translate into competitiveness. While races for the state high-court bench are increasingly contested, they are not necessarily competitive.

In sum, while state supreme court races are becoming more expensive, they are not also necessarily becoming more competitive. However, it is important to note that races for the state high-court bench were more likely to be contested at the end of the 1990s than they were at the beginning of the decade (Bonneau and Hall, 2003). Thus, it may be premature to associate increases in campaign spending with decreases in electoral competition, since electoral contestation is a necessary first step to competitive elections.

PARTISAN VS. NONPARTISAN ELECTIONS

In addition to seeing how state supreme court elections vary over time, it is also interesting to see the variations by selection system. The tables above indicate that partisan elections, on average, are more expensive than nonpartisan elections. In **Table 8**, I break down this spending by type of candidate.

Incumbents in contested partisan elections spend the most money, on average, while losers of open seats in contested nonpartisan elections spend the least. Incumbents spend the most money, regardless of the type of election. Further, winners outspend losers in both partisan and nonpartisan elections. The spending patterns of candidates are the same in contested partisan and nonpartisan elections (incumbents spend more than challengers, winners spend more than losers) even though there is more spending in partisan elections overall (see **Table 8**).

Taken together, the findings in **Tables 2, 6, and 8** have some implications for states that are contemplating changing their method of selection for the state high-court bench or have already made such changes. For example, Arkansas switched from partisan elections to nonpartisan elections starting in 2002. While some speculated that these races may become more expensive (Wickline, 2001), the evidence here suggests that this may not be the case (see **Tables 2 and 8**). However, these races may be less likely to be contested, since nonpartisan races are more often uncontested than partisan races (see **Table 6**). Thus, in addition to lower spending, this institutional reform may also lower competition. This is something to be watched in the upcoming years.

Table 9
**Average Percentage of the Vote by Type of Election and Method of Selection,
 Contested General Elections, 1990-2000**

Selection Method	Incumbent-Challenger	Open Seat
Partisan	55.06	56.96
Nonpartisan	57.39	54.27

The average percentage of the vote in incumbent-challenger contests is significantly different from the average percentage of the vote in open-seat contests for both partisan and nonpartisan elections (see **Table 9**). Incumbent-challenger contests in partisan elections are almost 2 percent more competitive than open-seat races. Curiously, this is reversed in nonpartisan states, with open seats being over 3 percent more competitive than incumbent-challenger contests. Indeed, the least competitive type of elections are incumbent-challenger races in nonpartisan states. This suggests that the incumbency advantage may be stronger in nonpartisan states than in partisan states, perhaps due to the absence of party labels on the ballot, which would disadvantage the lesser-known candidates (challengers). While incumbents generally win reelection to the state high-court bench, just as they routinely win election to the national and state legislature, this may be conditional on the type of election. When voters are able to identify the candidate's party affiliation, they are less likely to support the incumbent. That is, while voters in nonpartisan elections may be likely to support the incumbent (unless they are given compelling reasons not to do so), in partisan elections they may be more likely to support the candidate who shares their party identification, regardless of whether that candidate is the incumbent. Thus, not only is campaign spending conditional on the type of election, but electoral competition is, as well.

STATE-BY-STATE COMPARISONS

The final way in which the campaign spending and competition data will be described is by state. In addition to variations over time, by type of candidate, and by selection system, the political context of each state affects both spending and electoral competition. The aggregate analysis presented above, while interesting and informative, may mask certain state-by-state variations relevant to understanding both campaign spending and electoral competition. Even though two states may select justices in the same manner (i.e., partisan elections), there may be more campaign spending or more electoral competition in one state because of factors unique to the state. For example, consider Louisiana and Illinois, two states that select their justices by partisan elections in districts. As the following tables will demonstrate, races in Louisiana are both more expensive and more competitive. However, there are also more uncontested races in Louisiana. Thus, while the contested

Table 10
Average Spending for Each Type of Candidate by State, Contested General Elections,
1990-2000

State	Incumbent	Challenger	Winner of Open Seat	Loser of Open Seat
Partisan				
Alabama	\$602,762	\$517,456	\$1,010,295	\$761,620
Arkansas	60,855	26,214	244,295	250,105
Illinois	_____	_____	258,276	248,638
Louisiana	924,472	650,901	397,608	362,205
N. Carolina	202,342	107,124	250,924	148,820
Pennsylvania	_____	_____	991,216	1,121,768
Texas (Civil)	1,008,019	318,643	813,726	483,023
Texas (Crim.)	102,064	40,756	67,651	66,761
W. Virginia	711,193	180,138	400,038	235,295
Nonpartisan				
Georgia	\$128,591	\$77,334	_____	_____
Idaho	129,825	88,423	\$65,057	\$99,134
Kentucky	155,457	314,313	122,407	232,758
Michigan	619,722	442,439	578,928	250,025
Minnesota	108,489	4,381	57,061	8,954
Mississippi	267,910	271,565	191,461	71,465
Montana	138,406	111,384	291,918	178,240
Nevada	373,261	253,787	427,562	134,194
Ohio	562,642	329,791	391,553	451,198
Oregon	110,325	114,194	291,362	203,487
Washington	86,091	42,093	129,489	113,689
Wisconsin	367,316	326,159	405,349	461,053

races in Louisiana are more expensive and more competitive than those in Illinois, it is also less likely that a race in Louisiana will be contested. This indicates that factors unique to each state may also affect campaign spending and electoral competitiveness in state supreme court elections. Further, by looking at state-by-state variations, we can also see to what extent the aggregate results are being influenced by certain states (if at all).

In **Table 10**, the average spending for each type of candidate is broken down by state. Incumbents spend more money than challengers, except in Kentucky, Mississippi, and Oregon (all nonpartisan states). However, if only the second-place vote getter, as opposed to all challengers, is considered, then challengers in Mississippi spend \$231,231 and challengers in Kentucky spend \$105,197, both lower than the amount spent by incumbents. (Challengers continue to spend more than incumbents in Oregon.)

Table 11
Average Spending Per Capita for Each Type of Candidate by State, Contested
General Elections, 1990-2000

State	Incumbent	Challenger	Winner of Open Seat	Loser of Open Seat
Partisan				
Alabama	\$188.33	\$159.33	\$309.67	\$232.17
Arkansas	33.29	14.19	134.11	136.51
Illinois	_____	_____	179.15	116.76
Louisiana	2,014.31	1,502.87	760.81	762.02
N. Carolina	35.01	18.52	45.17	27.76
Pennsylvania	_____	_____	108.32	122.62
Texas (Civil)	75.95	24.44	64.95	37.14
Texas (Crim.)	7.75	3.22	5.08	4.82
W. Virginia	506.19	128.21	285.73	167.85
Nonpartisan				
Georgia	\$24.51	\$14.29	_____	_____
Idaho	149.87	98.24	\$74.01	\$112.78
Kentucky	358.59	796.33	292.87	514.39
Michigan	85.80	61.04	80.12	34.90
Minnesota	31.13	1.30	17.50	2.75
Mississippi	404.65	410.65	294.55	110.53
Montana	226.52	180.13	454.93	269.46
Nevada	318.97	223.98	397.70	133.82
Ohio	67.79	39.55	47.68	55.07
Oregon	45.36	46.69	113.11	78.99
Washington	21.29	10.33	30.98	29.10
Wisconsin	95.41	84.77	106.35	120.72

Winners generally spend more than losers, although there are notable exceptions—Arkansas, Idaho, Kentucky, Ohio, Pennsylvania, and Wisconsin (see **Table 10**). If only the second-place vote getter—the primary loser—is considered, the results remain the same, except for in Wisconsin, where the primary loser spent, on average, \$148,960, which is less than the incumbent.

In terms of highs and lows, incumbents on the Texas Supreme Court spent the most money in their reelection bids, while incumbents in Arkansas spent the least. Challengers for the state supreme court in Louisiana spent the most money in their election attempts, while those in Minnesota spent the least. The Louisiana statistic is interesting, considering candidates there run in districts and not statewide. Perhaps challengers spend this much money because the incumbency advantage is stronger in

Louisiana than in other states. Looking at open seats, winners of elections in Alabama spent the most and winners in Minnesota the least. Finally, in terms of the losing candidates in open-seat elections, those in Pennsylvania spent the most, and, once again, those in Minnesota spent the least.

Clearly, there is much variation in campaign spending by state. However, it is possible that the results presented in **Table 10** are driven, at least in part, by the size of the state. That is, state supreme court races in Texas may be more expensive simply because Texas is a large state. In **Table 11**, I report the average spending per capita.¹⁰

While incumbents for the Texas Supreme Court spent the most money on their bids for reelection (see **Table 10**), on average, once the size of the voting age population is taken into account, races for the state high-court bench in Louisiana are the most expensive (see **Table 11**). Incumbents seeking reelection to the Louisiana Supreme Court spent over \$2,000 per capita. In contrast, per capita spending for incumbents running for reelection to the Texas Court of Criminal Appeals was only \$7.75. When looking at challengers, once again, those seeking to unseat incumbents in Louisiana spent the most, while those in Minnesota spent the least—only \$1.30 spent, on average, per capita.

Not surprisingly, both winners and losers of open seats in Louisiana were the highest spending candidates in their category, spending over \$760 per capita. In terms of the lowest spending in open-seat races per capita, winners in races for the Texas Court of Criminal Appeals spent just over \$5 and losers in Minnesota spent less than \$3.

When one is looking at spending at the state level, it is important to look at spending per capita (see **Table 11**). Races in Louisiana and Arkansas, for example, are much more expensive when controlling for the size of the voting age population than they are when we just look at the absolute amount of spending (see **Tables 10** and **11**). Conversely, races for the Texas Supreme Court and the Pennsylvania high court are not as expensive when looking at spending per capita. Despite these differences, it is clear that there is much variation between states, and the state in which the election is occurring is an important source of variation beyond that which can be accounted for by institutional variables, such as selection system (see **Table 10** and **11**).

Are there also state-by-state variations in terms of electoral competition? In some states, incumbent-challenger contests are more competitive, while in other states, this label belongs to races for open seats (see **Table 12**). Further, some partisan states have more competitive incumbent-challenger races (such as Louisiana and North Carolina), while others have more competitive open-seat contests (such as Alabama and Arkansas). It is important to remember that only contested races are included, so these

¹⁰ To obtain this, I divided the average amount of campaign spending by the size of the voting age population in the state. For those states who hold elections in districts (as opposed to statewide), the size of the voting age population in the district is used.

Table 12
Average Percentage of the Vote by Type of Election and State, Contested
General Elections, 1990-2000 (number of elections in parentheses)

State	Incumbent-Challenger	Open Seats
Partisan		
Alabama	57.14 (11)	56.39 (6)
Arkansas	65.18 (3)	55.41 (3)
Illinois	———— (0)	54.89 (8)
Louisiana	47.18 (3)	51.85 (3)
N. Carolina	49.40 (11)	58.72 (1)
Pennsylvania	———— (0)	52.43 (4)
Texas (Civil)	62.14 (17)	56.29 (3)
Texas (Crim.)	52.73 (12)	59.12 (8)
W. Virginia	50.28 (2)	66.91 (4)
Nonpartisan		
Georgia	55.66 (3)	———— (0)
Idaho	49.53 (2)	57.21 (1)
Kentucky	50.19 (5)	47.77 (4)
Michigan	56.34 (11)	47.21 (3)
Minnesota	63.77 (9)	62.32 (1)
Mississippi	50.76 (9)	62.08 (2)
Montana	57.11 (3)	54.20 (3)
Nevada	51.12 (3)	56.62 (3)
Ohio	60.30 (11)	57.77 (3)
Oregon	61.98 (2)	51.38 (1)
Washington	57.27 (10)	55.07 (6)
Wisconsin	63.66 (4)	56.94 (2)

data do not speak to whether an incumbent (or other candidate) is likely to be challenged. However, these data do indicate that in competitive elections, incumbents in some states are likely to have quite a battle on their hands.

Looking at the highs and lows, the most competitive state for incumbent-challenger contests is Louisiana (which is somewhat surprising since these elections occur in districts, and not statewide),¹¹ while Arkansas is the least competitive, with incumbents

¹¹ The reason this is surprising is because districts tend to be more politically homogeneous than states. Thus, we would expect statewide races to be more electorally competitive because both candidates are likely to have more electoral support in a heterogeneous environment than in a homogeneous environment (where one candidate would be advantaged, perhaps heavily).

being reelected with 65 percent of the vote, on average. Open seats in Michigan are the most competitive in that category, while those in West Virginia are not very competitive at all—the winners receive over two-thirds of the vote. This is interesting because both Michigan and West Virginia elect their justices in multimember districts. Just as with campaign spending, there are interesting variations between states that cannot be accounted for by institutional factors.

In sum, there is extraordinary variation between states both in campaign spending and electoral competitiveness. Incumbents generally outspend challengers, on average, and winners usually outspend losers. However, there are cases where challengers do outspend incumbents, and where losers outspend winners. Further, in some states incumbent-challenger contests are most likely to be highly competitive, while in others it is the races for open seats.

CONCLUSION

This article detailed the amounts of campaign spending and electoral competitiveness in contested state supreme court elections from 1990 to 2000. It was seen that state supreme court races were both becoming more expensive and less electorally competitive, although they were being contested at a higher rate at the end of the decade than at the beginning. However, that is all that can be said at this point: We cannot conclude on the basis of this analysis that the decrease in electoral competition is due to the increased amounts of campaign spending. Nor can we say that the increase in contestation is due to the effects of campaign spending. These topics need to be explored in future research. Further, we cannot say anything about the effects this increase in campaign spending is having on judicial outcomes or the implications of this increase for an impartial judiciary. These are other topics that need to be explored in future studies.

This article also demonstrated the extraordinary variation that exists in the states in terms of campaign spending and electoral competition. Spending and competition were seen to vary over time, by type of race, by type of election, and by state. This wide variation once again illustrates the advantages of studying politics in the American states, and sheds some light on the characteristics of state supreme court elections. **jsj**

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