# The Effect of Electoral Competition on Judicial Decisionmaking

Michael J. Nelson*

Jeffrey L. Hyde and Sharon D. Hyde and Political Science Board of Visitors
Early Career Professor in Political Science
Affiliate Law Faculty
The Pennsylvania State University
mjn15@psu.edu

**Abstract**

How do elections affect elite decisionmaking? There is widespread disagreement on this point, but most of the evidence comes from races with limited variation in competition and institutional design. I theorize that the effect of competition depends on the presence of a party label on the ballot and focus on the judiciary where both competitiveness and the presence of a party label varies across space and time. Without the benefit of this cue, increased competition incentivizes judges to make more punitive decisions. To test this theory, I develop a new measure of electoral competition in judicial elections, compare it to existing measures of legislative competition, and examine temporal trends in competition. The evidence, based upon three different datasets covering both trial and appellate courts, contradicts conventional wisdom about the role of competition. It suggests that the reforms championed by prominent interest groups are misaligned with their ideological goals.

---

*The author would like to thank Bert Kritzer, Joanna Shepherd, Michael Kang, Tom Clark, Brandice Canes-Wrone, Sanford Gordon, and Greg Huber for sharing data and code. Steven Saroka, Steven Morgan, Jeremy R. Johnson, and Rahi Nigram provided excellent research assistance. Chris Bonneau, Melinda Gann Hall, Christopher Fariss, Rachael Hinkle, Morgan Hazelton, Keith Schnakenberg, Joshua Boston, and seminar participants at Penn State provided helpful comments.

How does the threat of losing one's job affect the choices made by elected officials? Previous evidence suggests that cross-sectional and temporal variation in *electoral competition* fuels both electoral responsiveness and the ideological valence of policymaking (Holbrook and Van Dunk 1993).[1] Yet these conclusions are based upon a subset of electoral contests in which electoral competition is relatively high, multiple candidates are allowed on the ballot, and voters are able to rely upon a party identification cue on election day. Such electoral rules characterize many electoral contests but limit the scope of inquiry.

As just one example, many elected officials in the U.S. and abroad are chosen in elections that are formally nonpartisan; indeed, about three-quarters of all municipalities in the United States use nonpartisan elections to select their elected representatives (Schaffner, Streb and Wright 2001). Outside of the United States, political parties have been formally prohibited from involvement in electoral arenas as diverse as Ancient Athens to modern Libya, Saudi Arabia, and Kuwait. Despite robust evidence that nonpartisanship affects rates of voter participation, vote choice, and the ideological valence of policy (Bonneau and Hall 2009; Wright 2008), we know virtually nothing about how electoral competition operates in ostensibly nonpartisan environments.[2] Yet there is good reason to believe that electoral competition has distinct effects in nonpartisan environments because voters in these contests are denied the most powerful piece of information—a partisan ballot cue—as they cast their ballot.

---

[1] *Electoral competition* (e.g. Holbrook and Van Dunk 1993) is a different concept than *party competition* (e.g. Ranney 1976), as explained below; the former relates to partisan control of state governments while the latter involves the average level of challenge faced by an elected representative seeking reelection.

[2] Adrian (1952) makes the important point that not all elections that are formally nonpartisan are devoid of partisan activity (see also Nelson, Caufield and Martin 2013); however, I refer to all elections without party labels on the ballot on election day as nonpartisan for the sake of clarity. Jurisdictions differ in the *de facto* and *de jure* involvement of political parties in their nonpartisan electoral contests.

The lack of this cue has consequences for both the composition of the electorate and the strategic calculus of incumbent politicians.[3] Voters are less likely to participate in nonpartisan elections, and the electorate in nonpartisan elections is skewed toward more sophisticated and conservative voters (Wright 2008). At the same time, the ballot cue available to voters in partisan elections provides political cover to incumbents who run in those elections, suggesting to voters the displeasing decision they heard about in a negative advertisement is an aberration, and their chosen party has deemed a candidate acceptable (Canes-Wrone, Clark and Kwang Park 2012). As a result, the lack of a party cue in nonpartisan elections provides elected officials with an incentive to cater to public opinion (Caldarone, Canes-Wrone and Clark 2009). These two factors—the composition of the electorate and the lack of political cover—suggest that electoral competition should have dramatically different effects in partisan and nonpartisan environments.

U.S. state judiciaries, where the majority of judges are elected using both partisan and nonpartisan electoral rules, provide a unique testing ground for theories about how electoral competitiveness is affected by the choice to provide voters with a party cue on election day. Additionally, conclusions drawn from judicial elections are generalizable to other types of elections (Gibson 2012; Hall 2001). The debate over this practice is fierce. Politicians, pundits, and professors regularly debate the "best" way to balance these competing ideals; conservative-leaning individuals and groups tend to favor partisan elections while liberals favor electoral rules that aim to mitigate the role of partisan politics in the judicial selection and retention processes.[4]

But, before we can understand how electoral competition and ballot rules combine to alter

[3]By "composition of the electorate," I refer to the types of voters who will vote in a judicial election rather than differences in the demographic composition of electoral districts.

[4]In a *partisan election*, multiple candidates compete against each other on election day and party labels appear on the ballot. In a *nonpartisan election*, multiple candidates may compete against each other on election day and party labels do not appear on the ballot. In a *retention election*, only one candidate appears on the ballot and voters face a binary choice about whether that candidate should remain in office.

judicial decisionmaking, we need to measure competition. Thus, in this paper, I first develop, validate, and make publicly available an original measure of electoral competition in state politics. New advances in data availability, namely the Kritzer (2015*a*) data on every state supreme court election since 1946, enable me to estimate the competitiveness of state judicial elections in every state-year for the past half-century. These new measures of electoral competition will be publicly available for the use of scholars in other applications.

I then test the theory across states, over time, and throughout the judicial hierarchy. I find that the level of electoral competition has major effects on the willingness of judges to support criminal defendants and that the direction of the effect is contingent upon the electoral rules used by states to retain their judges. For states that use traditional partisan elections to select their judges, the traditional expectations for electoral competition—which have their roots in V.O. Key's (1949) *Southern Politics in State and Nation*—hold. In other words, the effects of electoral competition in partisan *judicial* elections are similar to the effects of electoral competition in other partisan contests. Yet, when party labels are removed from the ballot (and, by extension, the organizational role of parties is weakened or removed from the electoral process), the effect of electoral competition is reversed, and more electoral competition results in harsher and more punitive decisions. These results are robust across three different datasets and the use of an alternative measure of electoral competition.

The results have important implications for the high-profile public debate over the effectiveness of party reforms (e.g. Masket 2016). In an ironic twist, the method of judicial retention supported by the conservative interest groups—partisan elections—leads to more *liberal* judicial behavior while the nonpartisan and retention election systems favored by more liberal groups like the Brennan Center for Justice and the Justice at Stake Campaign tend to lead to more *conservative* judicial behavior when those judges feel their careers are at risk. Moreover, the results have vital implications for our understanding of electoral competition more broadly, suggesting that the mechanism that links electoral competition and liberal policies is the important organizational roles that parties play in managing ballot access, supporting their candidates during the campaign,

and lending their party label to their candidates at the polls.

Overall, I make several important contributions. First, I develop a general theory to explain how the effects of electoral competition on elite decisionmaking vary based upon the electoral rules used to retain elected officials. Second, I introduce and make available to other scholars new state-year estimates of electoral competition in judicial elections since 1945. These data are the only comprehensive measure of electoral competition—a bedrock concept in the study of elite behavior—currently available to scholars of state courts. Third, I analyze the relationship between electoral competition in judicial and legislative races, demonstrating that the two are only closely connected when judges run in partisan elections. Fourth, I use this new measure to examine the effects of electoral competition on judicial decisionmaking in criminal cases. I show that electoral competition has entirely opposite effects in partisan and nonpartisan settings. The support for this hypothesis extends across types of criminal cases, across time, and across levels of the judicial hierarchy. Fifth, I demonstrate that support for the theory is robust to an alternative measure of electoral competition: the presence of television advertising in these races. Finally, I discuss the practical effects of these findings for the high profile debate over judicial selection taking place in statehouses, symposia, and seminar rooms across the country. The evidence indicates that the well-trodden positions taken by many reformers and interest groups over the past half-century are not aligned with their ideological interests. In short, methods of judicial retention have robust, but heretofore unknown, effects on the punitiveness of state judges.

## Two Competing Views of the Effects of Electoral Competition

Electoral competition is a bedrock concept in the study of politics. Yet, studies of judicial politics and state politics present starkly different views about how increased levels of electoral competition should affect the ideological valence of state policy. Research in (non-judicial) state politis has demonstrated that more competitive electoral environments are generally associated with more liberal policies (Dawson and Robinson 1963) and higher rates of voter turnout (Dye 1966; Bonneau and Hall 2009). Indeed, the literature on the relationship between electoral compe-

tition and the ideological valence of state policymaking is so clear that Barrilleaux (1997) writes "[e]xpectations about the effects of competition on policy-making are unambiguous: existing theory and empirical evidence from the American states consistently links electoral competition to the enactment of more liberal policies" (1997).[5]

This expectation has a rich history in the subfield, stemming from Key's (1949) pathbreaking *Southern Politics in State and Nation*. As Holbrook and Van Dunk (1993) sketch the logic:

> [E]lected officials in competitive areas will be highly responsive to constituency needs, due to the risk of electoral defeat... [D]ue to higher overall levels of voter participation in competitive environments, lower socioeconomic class interests will constitute a greater share of the electorate in competitive states than in non-competitive states. Therefore, in striving to represent the interests of their constituents, elected officials in competitive states will provide benefits to lower socioeconomic interests to a greater degree—and will display a greater propensity to support liberal policies (955).

In other words, because (a) electoral competition increases electoral participation and (b) those mobilized by electoral competition tend to be "have-nots" who favor liberal policies, increased electoral competition should lead policymakers to pass policies that are more liberal than those they would have passed in the absence of electoral competition.

However, this position—that increased electoral competition should lead to more liberal politics—directly contradicts a view, held strongly by observers of state judicial politics, that increased electoral competition is associated with more *conservative* politics. Scholars of judicial politics suggest that increased electoral competition should put additional pressure on judges to be "tough on crime" and therefore to impose longer or harsher sentences on criminal defendants. The empirical evidence supports this assertion. Berry (2015), reviewing the literature on the topic,

[5]Key and others refer to liberal policies broadly in their discussions. I follow a rich tradition in judicial politics, dating back to at least Nagel (1961), that classifies decisions by judges in favor of criminal defendants as liberal decisions.

states "[w]hile these studies used varying methodologies and examined a variety of states, court levels, and methods of election, *all found that the pressures of upcoming re-election and retention election campaigns make judges more punitive toward defendants in criminal cases*" (1, emphasis in original). As examples, Huber and Gordon (2004) found that Pennsylvania trial court judges sentenced more punitively as their election approached; Berdejó and Yuchtman (2013) reach the same finding in their study of Washington judges. Similarly, Gordon and Huber (2007) find that trial court judges retained using more competitive partisan elections sentence more punitively than their colleagues who face less competitive retention elections.

In the view of judicial politics scholars, public opinion is the mechanism that links increased competition to harsher sentences. By this view, it is a truism that the American people prefer judges who are tough on crime; greater levels of electoral pressure lead judges to reflect that viewpoint in their decisions in an attempt to appeal to their constituents. As former Oregon Supreme Court Justice Hans Linde (1987) has written: "Every judge's campaign slogan, in advertisements and on billboards, is some variation of 'tough on crime"' (2000). Many of the highest-profile anti-retention campaigns, such as the successful ones against Tennessee's Penny White and California's Rose Byrd, have emphasized justices' failures to vote to put criminal defendants to death. The anecdotal evidence on this point is bolstered by systematic empirical evidence. Hall (2001) has documented that voters in judicial elections cast their ballots retrospectively on the basis of violent crime. However, scholars of judicial politics have lacked a reliable and valid measure of electoral competition with which they could test this expectation directly.

## Connecting Competition, Crime, and Judicial Choice

Prior studies of the effect of electoral competition suggest opposing predictions about the relationship between electoral competition and judicial choice.[6] Yet the relationship between elec-

[6]A simple explanation for the two predictions might be that the literatures are too different to compare; the state politics literature focuses on legislative decisionmaking while the judicial politics view focuses on courts. Yet, Gibson (2012), Hall (2001), and others have demonstrated

toral circumstances and judicial decisionmaking has not been directly tested. I argue that the relationship between electoral competition and judicial behavior is contingent upon a specific electoral rule: the presence of a party label on the ballot. Because this electoral rule changes both the composition of the electorate and the strategic landscape in which a judge will need to secure reelection in diverging ways, the effects of electoral competition on judicial behavior similarly diverge.

The presence of a party label on the ballot is a major institutional difference among types of elections, especially judicial elections. Nonpartisan elections were part of a broader set of institutional reforms adopted by many states in the first half of the twentieth century that aimed to weaken political parties and to make government more businesslike (Adrian 1952). While the majority of state judges in the United States today stand for election, only a minority of those judges have the benefit of a party label next to their name on election day.[7]

The absence of a party label on the ballot on election day has dramatic consequences for electoral outcomes (e.g. Bonneau and Hall 2009; Wright 2008). A first major consequence of the nonpartisan ballot is its effect on the composition of the electorate. The nonpartisan ballot also raises the cost of voting thereby depressing turnout and increasing ballot roll-off (Bonneau and Hall 2009; Schaffner, Streb and Wright 2001; Holbrook and Weinschenk 2014). Among those who do cast a ballot, nonpartisan ballots are not entirely successful at severing the partisan electoral connection (Bonneau and Cann 2015), though voters are better able to select a candidate whose issue positions align with their views in partisan settings (Oliver and Ha 2007).[8] Importantly,

---

that courts and judicial elections are not *sui generis* and that conclusions about these institutions are typically generalizable (and vice-versa).

[7]The distribution of election types across the states has varied over time. For a definitive history, see Shugerman (2012). Where judicial elections are used outside of the United States, they are nonpartisan. Bolivia elects its national high courts in nonpartisan elections, and Japan uses nonpartisan retention elections to retain some of its judges (Driscoll and Nelson 2012).

[8]Lim and Snyder, Jr. (2015) suggest, however, that the increased costs of voting in nonpartisan elections might be helpful, as voters tend to vote more heavily on the basis of qualifications in

the decreased participation is not uniform; Schaffner and Streb (2002) find that less politically sophisticated voters are less likely to have a vote preference in nonpartisan elections than in partisan elections. In short, nonpartisan ballots skew the distribution of voters who select a candidate on election day.

The downstream effect of a skewed electorate is a rightward shift in policy. In one of the first studies of the effects of nonpartisan elections on policy outcomes, Adrian (1952) concluded that "under nonpartisanship, a much more conservative approach may be expected" from policymaking bodies (775). These observations gave way to a flurry of studies that sought to assess this claim (e.g. Hawley 1973; Welch and Bledsoe 1986; Schaffner, Streb and Wright 2007). As Wright (2008) summarizes the evidence regarding the effects of nonpartisan ballots on electoral politics and public policy, "[in nonpartisan systems], the unorganized and less attentive participate less and lose voice in the policy process, while policies align with the preferences of the better-off and business interests" (15). The bulk of the evidence has revealed an *ideological* advantage for conservative policies under nonpartisan systems.

Beyond the effect of nonpartisanship on the composition of the electorate, the lack of a party label on the ballot also has consequences for a politician's strategic calculus, especially on high salience issues. For judges, crime is the quintessential salient issue in campaigns (Hall 2001). Indeed, according to Caufield's (2007) analysis of advertising in state supreme court elections in 2002 and 2004, approximately one-third of television advertisements relate to a candidate's record on criminal justice-related issues, and criminal justice-related issues are often featured prominently in attack advertising. For example, an advertisement aired against Michigan judge Denise Langford Morris attacked her for a record that was purportedly "soft on crime for rappers, lawyers, and child pornographers" while suggesting that she "get tough on convicted criminals" (Brennan Center 2010). Moreover, as Baum (2003) has noted, "creating the impression that a judge is soft on crime can have great electoral impact" because such appeals are incredibly effective at persuading voters (35).

---

these elections.

In partisan elections, the presence of a party label insulates judges from these attacks. Though a challenger may attempt to label the incumbent judge as weak on crime, voters in judicial elections—like those in most elections—will make their decision based on their party identification (and, by extension, the party cue on the ballot) (Bonneau and Cann 2015). The presence of a party label on the ballot will therefore crowd out the negative information they heard during the campaign, lessening the effect of "weak on crime" attacks. Thus, the presence of the cue provides judges some protection against challengers' attacks because it crowds out other potentially relevant negative information.

The calculus is very different for those judges who run in nonpartisan and retention elections. Without the benefit of a party label on the ballot, an attack (either by an opposing candidate or by an interest group in a retention election) on a judge as "weak on crime" becomes very effective (Canes-Wrone, Clark and Kwang Park 2012). The lack of a party label to counteract such attacks means that such attacks—and not party identification—has the potential to become the biggest piece of information available to voters. Moreover, this nakedness increases the effectiveness of such attacks because voters will not be exposed to the swamping effect of a party cue—which could negate such attacks—on election day. As a result, judges in nonpartisan systems who wish to keep their jobs need to be very careful to be "tough on crime" in order to prevent someone from painting them as "weak on crime."

Combining these insights, nonpartisan elections lead to an electorate that generally favors more conservative policies and create a campaign environment in which judges who are insufficiently punitive face harsh electoral consequences. A judge in a partisan election system need be less concerned with a bulletproof punitive record because of the political cover provided to her by the party label that will appear next to her name on election day. Even in the face of a challenger who labels her "weak on crime," the partisan label next to the judge's name will assuage voters' concerns that a judge is sufficiently tough on crime by reminding the voter that the judge has the party's endorsement. Thus, partisan-elected judges should respond to increased electoral competition in a manner similar to other politicians who run in such elections.

For judges who run in nonpartisan elections, the need to be punitive increases with levels of electoral competition. When one of these judges faces conditions of low electoral competition, either because he will not be challenged or because margins of victory are traditionally very high, he need not worry about casting consistently punitive votes because the path to reelection is secure even in the face of an unpopular voting record. But, in situations of high electoral competition, the likelihood that a challenger will use an insufficiently punitive record against him is also high. As a result, the judge should adapt by building a punitive record to insulate him in his future electoral campaigns against these potent attacks.

In short, the need to broadcast toughness on crime is an interaction between potential political vulnerability and the absence of other informational signals about the politician. With this in mind, the central hypothesis guiding this research is that *increased electoral competition results in less punitive behavior for judges who run in partisan elections and more punitive behavior for judges who run in nonpartisan and retention elections.*

Indeed, a closer look at the judicial elections literature suggests that the conclusion that increased electoral competition in judicial elections is associated with conservative, "tough on crime" policies is really a conclusion that increased electoral competition in *nonpartisan elections* is associated with conservative policies. Indeed, studies that examine variation in electoral timing and judicial behavior often draw their samples entirely from nonpartisan and retention elections, leaving open the possibility that the relationship would be different—if not entirely the opposite—if the sample were partisan elections instead (Berdejó and Yuchtman 2013; Huber and Gordon 2004). More broadly, because partisan judicial elections are so much rarer than nonpartisan or retention elections, studies that examine judicial behavior across the 39 states in which judges stand for election examine a sample that includes a handful of partisan election states; given that states in which judges run without the aid of party labels swamp the sample, it is no surprise that the expected effect of nonpartisan elections—more conservative policies—is the general conclusion of these studies. They do not account for the fact that electoral competition may have a different effect in partisan and nonpartisan settings.

## Measuring Competition in Judicial Elections

Testing this theory requires a reliable and valid measure of electoral competition in judicial elections. Competition in U.S. elections has long been a concern of scholars of state politics. Today, there are two predominant approaches to conceptualizing competition: Ranney's (1976) index of *party* competition and Holbrook and Van Dunk's (1993) measure of district-level *electoral* competition. While both approaches measure the level of competition in a state's electoral system, the indicators they employ are quite different, and, as a result, they are each appropriate for use in certain applications.

First, the Ranney Index is a measure of system-level party competition. The index measures the strength of the Democratic party in state government, including the proportion of seats won by the Democratic party in the state legislative elections for each chamber, the percent of the vote won by the Democratic candidate in the gubernatorial election, and the amount of time the governorship and the state legislature were controlled by Democrats. The resulting index ranges from 0 to 1, with higher values indicating a stronger hold by the Democratic party on the institutions of state government. To create a measure of competition, rather than Democratic party strength, scholars typically "fold" the index so that values of .5, which represent perfect competition for the institutions of state government, become the high point of the index and the two endpoints of the original Ranney index become the low point of the measure (e.g. Shufeldt and Flavin 2012).

Second, the Holbrook and Van Dunk (1993) index (HVD) measures district-level electoral competition: the overall competitiveness of individual contests to fill seats in state legislatures. Holbrook and Van Dunk average together four indicators: (1) the percentage of the vote won by the winning candidate, (2) the winning candidate's margin of victory, (3) whether or not the seat is "safe" (won by more than 55% of the vote), and (4) whether or not the race was contested. The resulting index ranges from 0 to 100 with higher values indicating more electoral competition.

Importantly, *party* competition, as captured by the Ranney index, and *electoral* competition, as measured by Holbrook and Van Dunk, are different concepts. As Shufeldt and Flavin (2012) note, the two measures are correlated with each other to a high degree ($r = .68$ in Holbrook and

Van Dunk (1993)); however, the relationship has changed dramatically over time, even becoming negatively related in the 1990s. As a result, they suggest measures of electoral competition are useful for studies of individual-level decisionmaking while measures of party competition are more useful for studies of system-level policymaking. Because my focus is on the effects of competition on individual-level elite behavior, a measure of electoral competition is appropriate.

While both of these measures have enjoyed wide usage in the state politics literature, scholars have typically ignored the judiciary in their attempts to assess the extent of competition on judicial elections (Hall 2015). Moreover, when scholars have attempted to use measures of competition to explain court-related outcomes, they have been forced to rely upon measures which exclude the judiciary under the unstated assumption that competition for judicial offices mirrors competition for state legislative races, an assumption that has heretofore not been tested. For example, Bonneau and Hall (2009) use the Holbrook-Van Dunk index to assess the extent to which electoral competition in *legislative* elections affects voter participation in *judicial* elections.

The exception to this rule is Hall's (2015) recent study of television advertising in state supreme court elections. Hall, drawing upon Holbrook and Van Dunk (1993), estimates static measures of electoral competition for 20 state supreme courts in two periods of unequal length: 1980-1999 and 2000-2010, finding that nine states got more competitive in the latter time period, nine states got less competitive, and two states remained stable. However, beyond Hall's effort, scholars lack a consistent, available, reliable, and valid measure of competition in judicial elections. Moreover, we do not know how competition in judicial races mirrors that for legislative offices nor do we know how it affects judicial behavior. The first step in this inquiry is the creation of a reliable and valid measure of competition in judicial elections.

To this end, using the expansive data on judicial elections in the United States since 1946 compiled by Kritzer (2015*a*) (see also Kritzer 2015*b*), I have calculated a measure of district-level competition in state supreme court elections. I use the Holbrook and Van Dunk measure as a starting point, adding additional indicators used by Hall (2015). The measure includes five indicators of competition. The indicators are:

- *Vote Share*. The average vote share for the winning candidate in the $t$-year time span.
- *Vote Margin*. The average margin of victory for the winning candidate in the $t$-year time span.
- *Marginal Seats (55%)*. The percentage of races in the $t$-year time span in which the winning candidate won with less than 55% of the vote.
- *Incumbent Defeats*. The percentage of races in the $t$-year time span in which an incumbent was defeated.
- *Contestation*. The percentage of races that were contested in either the primary or general election.

State supreme court elections—especially nonpartisan elections—are unique because they can often be formally decided at the primary election stage or will go to a runoff election if no candidate receives a majority in the general election. For the calculation of all indicators involving vote share, I use the election, be it a general election, a primary election, or a runoff election, that determined the winner of the election. For contestation, I follow Nelson (2011) by examining whether a race was contested at any stage of the electoral process to appropriately assess electoral competition in one-party states and those nonpartisan elections that are decided in the primary election if a candidate receives a majority. Finally, I subtract indicators from 100 when necessary so that higher values of all indicators are associated with greater levels of competitiveness.[9]

Holbrook and Van Dunk average their indicators over a $t$-year time period to form a measure of competition. I take a similar approach. I have calculated electoral competition in 4-, 6-, 8-, and 10-year increments, though the measure used in this discussion and throughout the paper is based upon the 4-year variable. The 4-year measure correlates with the other measures at .94

[9]A handful of states elect judges by judicial district rather than statewide. Following the approach of other measures of electoral competition, I estimate electoral competition on a statewide basis.

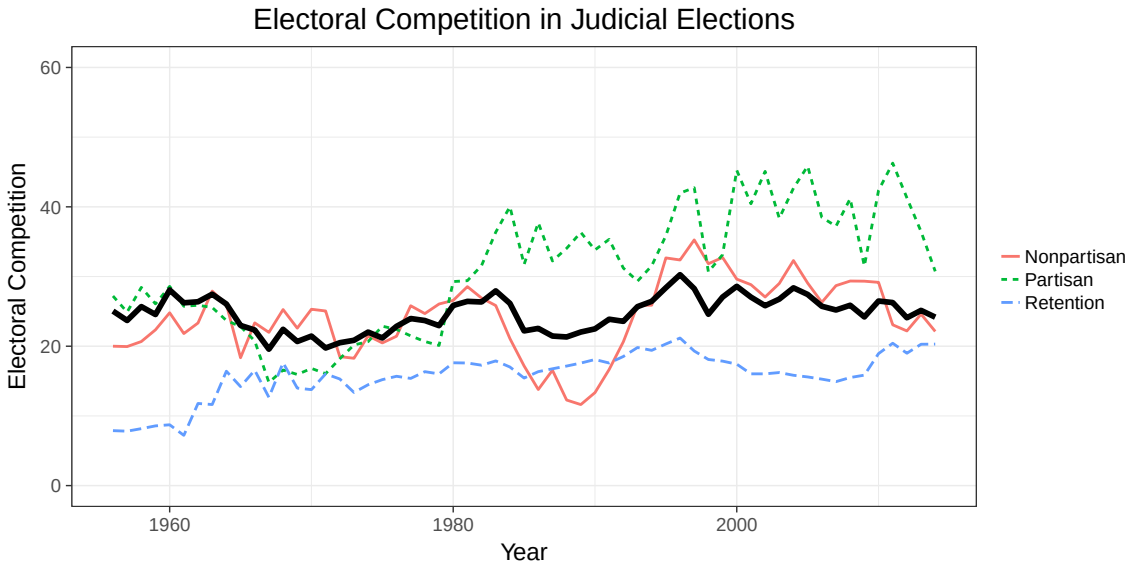


Figure 1: Electoral competition in judicial elections over time by ballot type. Higher values indicate more competition. The thick, solid line shows the average overall level of competition.

(6-year), .89 (8-year) and .85 (10-year). I have also investigated combining the measures using factor analysis rather than a simple average. The factor solution is strongly unidimensional; the factor loadings range from .47 (Incumbent Defeats) to .95 (Vote Share). With the exception of the Incumbent Defeats indicator, each indicator loads onto the single factor with a loading above .70. The indicators are also quite reliable, with a Chronbach's alpha of .82.[10] All of the substantive results discussed herein replicate with this alternative measure.

A first question to ask of this measure concerns variation in the competitiveness of judicial elections over time. Figure 1 shows variation over time in electoral competition in judicial elections. The thick black line in the figure shows the average overall level of electoral competition for each year while the thinner lines show the average level of electoral competition for each type of judicial election.[11]

[10]This is very similar to the reliability of the Holbrook and Van Dunk (1993) measure, which had a Chronbach's alpha of .89 (961, fn. 4).

[11]For the analyses of competition across ballot types, a state-year is only included in the calculation if it had that election type for the entire 4-year period.

Partisan elections are more competitive than nonpartisan elections, with average values of 34.9 (sd=23.0) and 25.9 (sd=18.1), respectively. Retention elections, unsurprisingly, are the least competitive, with an average value of 17.2 (sd=6.8). These differences provide some suggestive evidence that electoral competition is driven, in part, by the ability of political parties to control ballot access.

Figure 1 also enables us to draw some conclusions about changes in the competitiveness of judicial elections over time. Such conclusions are particularly important given the wide-ranging and heated debate surrounding the effects of the U.S. Supreme Court's decision in *Republican Party of Minnesota v. White* which overturned portions of many states' codes of judicial conduct and increased the ability of judicial candidates to campaign freely (Caufield 2009). Critics of the decision (e.g. Brennan Center for Justice 2010) have argued that the decision opened the floodgates for competitive and nasty judicial elections.

However, there is little evidence that this is the case. Looking at the black line in Figure 1, there is no evidence of an increase in electoral competitiveness since 2002, when *White* was decided. Indeed, looking across the entire range of data, there is no trend at all to the line. Indeed, it seems, competition has remained stable in judicial elections since the late 1950s. While elections may have become "nastier, noisier, and costlier" (Schotland 1985), they haven't become more competitive. Thus, these results support the conclusions of Hall (2015), Kritzer (2015*b*), and Bonneau, Hall and Streb (2011): the level of electoral competition in judicial elections has not changed markedly in the wake of *White*.[12]

The same is not necessarily true across time in individual states. Figure 2 plots electoral com-

[12]One must be cautious when drawing conclusions over time with respect to the various types of elections because the number of states that comprise each election type has changed over time. There is some evidence in Figure 1 that partisan and retention elections may be slightly more competitive today than they were in the 1960's, but nonpartisan elections are about as competitive today as they were in the 1960's. However, these changes are minor and the overwhelming story is one of stability in the level of electoral competition seen in judicial elections over time.

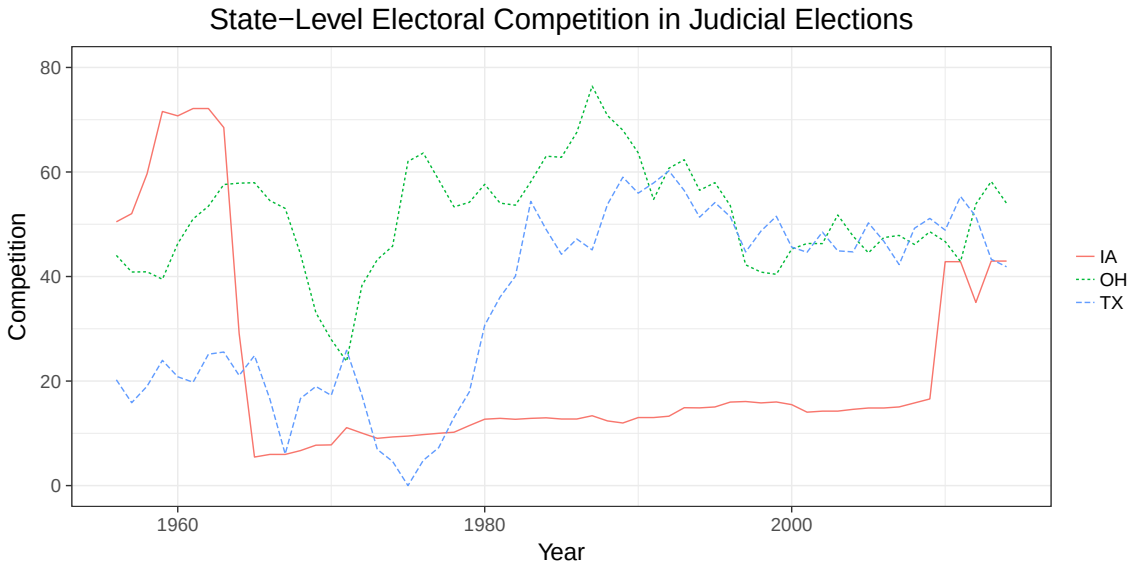


Figure 2: Electoral competition in specific state judicial elections. Higher values indicate more competition.

petition in state judicial elections in a handful of states over time. The state of Iowa perhaps best displays how time and changes in election type affect judicial competition. Iowa was a relatively competitive state in the late 1950s and early 1960s, using contestable elections to select its judges. However, after it switched to retention elections in the early 1960s, its level of electoral competition bottomed out, remaining there until 2010 when a highly focused and public anti-retention campaign was waged against the Court for a same-sex marriage decision. Still, even this highly public campaign was not enough to return Iowa to its pre-retention election levels of competition. Other states display markedly different trends; Texas is much more competitive now than it was in the 1960s, while Ohio's level of competition has fluctuated wildly in the short-term though the mean level of competition has remained relatively unchanged over the long-term.

Beyond questions about temporal variation in competition, a second question to ask of this measure concerns its relationship to measures of competitiveness in state legislative elections. Since many of the indicators of competition mirror those used in the HVD measure of electoral competition, one might expect the measures, as calculated by Klarner (2013), to correlate highly. This is not the case. The overall correlation between the HVD measure and the measure of electoral competition in judicial elections is $r = .02$.

At first glance, this might seem to pose a grave threat to the validity of the measure, since one would expect competition for control of one branch of government to mirror that of competition for control of another branch of government. This overall correlation masks important variation by ballot type. Indeed, in partisan elections, the correlation between the HVD measure of electoral competition in legislative races and the measure of electoral competition in judicial elections is .56. On the other hand, the correlation between legislative and judicial competition in nonpartisan elections and retention elections is negative: -.18 and -.08, respectively. In other words, when political party organizations have no formal role in ensuring that their party is represented on the ballot, the level of electoral competition becomes unrelated—or even inversely related—to the level of competition seen in state legislative races.

Finally, the mechanism suggested by the theory—that the type of election used to retain judges is associated with the distribution of "haves" and "have-nots" in the electorate—is directly testable using data from the 2012 Cooperative Congressional Elections Study, which queried respondents about whether or not they voted in judicial elections and includes over 50,000 respondents. Hill and Leighley (1992) developed a measure of class bias in state electorates that compares the ratio of wealthy voters to the total percentage of wealthy residents and the the ratio of poor voters to the total percentage of poor residents. Holbrook and Van Dunk (1993) justify the validity of the HVD measure, in part, based on its negative correlation (higher values indicate upper-class bias) with the Hill and Leighley measure ($r = -.45$), which suggests that "lower-class interests are better represented in the electorate in competitive states than in noncompetitive states" (961, fn. 1).

At first glance, the results suggest a positive correlation between the Hill and Leighley measure: $r = .22$ (N = 23). Substantively, this means that more competition is associated with more attention to upper-class interests (conservative policymaking), exactly as judicial scholars suggest. However, when we divide the data by election type, the correlations present a starkly different picture. For both nonpartisan elections and retention elections, the correlations remain positive: $r = .46$ for retention elections and a very high $r = .71$ for nonpartisan elections. For partisan

elections, the correlation is reversed: $r = -.20$. In other words, nonpartisan elections change the composition of the judicial electorate, just as Wright (2008) suggested was true in other types of nonpartisan election settings. In nonpartisan judicial elections, the electorate is composed of a higher proportion of "haves" than the electorate in partisan contests.

## Research Design and Data

Having discussed the measure of electoral competition, we now move to tests of the hypothesis. I test the hypothesis on three different datasets that span different areas of criminal law, different time periods, and different levels of the judicial hierarchy. Assessing the hypothesis in different contexts helps to ensure the robustness of the result and to discover limits to the generalizability of the theory and empirical results. The focus on criminal cases is merited because such cases are often flashpoints in judicial campaigns, as discussed above (Hall 2001). Criminal cases are the sorts of electorally salient cases where one would expect to see that judicial elections affect judicial behavior.

First, I rely upon a dataset of major criminal cases between 2008 and 2013 originally compiled by Shepherd and Kang (2014) that includes decisions by state supreme courts from 2008-2013 in cases involving violent crimes, as defined by the FBI, such as murder, rape, and aggravated assault. I supplement the dataset with additional information about public opinion and the judges, as described below.

Second, because the Shepherd and Kang dataset is relatively recent, I rely upon the dataset of death penalty decisions between 1980 and 2006 collected by Canes-Wrone, Clark and Kelly (2014). Death penalty cases provide a particularly good venue to assess the hypothesis because death penalty cases have been widely studied (Hall 1992; Brace and Hall 1993). Because citizens in every state with the death penalty favor its use, casting votes that favor the defendant are wildly unpopular and can have enormous adverse electoral effects (as Rose Bird and her California Supreme Court colleagues famously learned in 1986). As a result, the effects of competition may be particularly difficult to uncover in these data because judges have such a strong incentive to rule

in favor of the government (and, by extension, popular opinion) in these cases.

Third, to assess the extent to which any empirical support for the hypothesis is limited to state supreme courts, I draw upon data from a state that widely uses different selection and retention methods to staff its trial courts. As Gordon and Huber (2007) note, roughly half of Kansas trial court judges are retained using contestable partisan elections while the other half of its judges keep their jobs based on uncontestable retention elections (see also Lim 2013). Thus, an analysis of the sentencing practices of the Kansas judiciary between 1998 and 2003 has the benefit of holding law constant across courts (something that is impossible to do completely in cross-state studies of state supreme courts) while also examining sentencing behavior, an area of judicial behavior in which judges have wide discretion. An analysis of trial court behavior has two additional benefits: because trial court elections are less salient and more local than state supreme court elections, judges who sit on trial courts should feel less electoral pressure than their counterparts on state supreme courts; as a result, effects should be difficult to detect in these data. Additionally, trial court judges hear cases under mandatory jurisdiction, limiting issues of discretionary case selection that occur in some studies of appellate courts.

Finally, to demonstrate the robustness of these findings to an alternative measure of electoral competition, I present evidence that the results of the first study hold when an alternative measure of electoral competition—the amount of television advertising—is used in place of the newly-created measure of electoral competition. As Hall (2015) notes, television advertising is common—but not ubiquitous—in recent state supreme court elections, and advertising is particularly common in competitive races.

## Study 1: State Supreme Court Criminal Decisions

We begin the examination of the evidence for the hypothesis with the analysis of major criminal cases. I model the decision of an individual judge to cast a vote that provides relief–of any amount—to the original criminal defendant. In the language of Nagel (1961), this variable indicates whether the judge cast a liberal vote. The dependent variable is dichotomous, so I use logistic

regression to estimate the models. I estimate two models. In the first, I estimate the overall effect of electoral competition. Because I do not control for method of judicial selection in this model, I include fixed effects for state and year. In the second model, I estimate the differential effect of electoral competition by ballot type. Here, I cannot include fixed effects for state because states did not change methods of judicial selection during the time period thereby making them perfectly collinear with ballot type. Thus, I include only fixed effects for year in the second model.[13]

The analysis includes a number of independent variables. Most obviously, I include in the analysis indicator variables for the type of judicial elections used and interact these variables with the level of electoral competition to determine whether competition has a differential effect based on the type of election facing judges, as the theory predicts.

In addition to employing different methods of judicial retention, states vary in the extent to which their citizens want policies that are "tough on crime." Moreover, judges learn about constituent opinion and adjust their behavior accordingly (Nelson 2014). Enns (2016) documents that American national attitudes toward punitiveness have varied widely over the past quarter-century. The trends are equally important at the state level, where Enns (2016) demonstrates substantial cross-sectional variation in American's attitudes toward criminal punishment. While a majority of the public does favor strong punitive policies, individuals (and constituencies) vary in the extent to which they are supportive of these policies. Thus, I include Enns's (2016) measure of state-level punitiveness, derived from polling data related to crime and criminal justice. Enns demonstrates that the measure is a valid indicator of public opinion as it relates to criminal punishment, making it an ideal measure of issue-specific public opinion for this analysis. The variable ranges from 0 to 100, with higher values indicating publics that are more punitive.[14]

The likelihood that a judge votes to provide relief for a criminal defendant is unquestionably affected by the facts of the case (Segal 1984). For each case, Shepherd and Kang coded a number

[13]Appendix A contains additional model specifications that include random effects for state and year.

[14]Enns's data ends in 2010; I repeat the 2010 values for the later years in the dataset.

of case facts, including whether the original criminal defendant was convicted of murder, capital murder, rape, robbery, or aggravated assault, whether there were multiple victims, whether one of those victims was a child, and whether the original defendant was tried as a juvenile. I include each of these facts as dichotomous indicator variables, coded so that an increase in that variable corresponds with the presence of that factor.

Finally, judges vary in ways that may relate both to the extent to which they are affected by electoral competition and their propensity to behave in a particular way. Judges who are prior prosecutors may be harsher to criminal defendants (Tate 1981), so I include a dichotomous variable to indicate whether the justice is a prior prosecutor. I also include the judge's gender; both of these variables come from Bratton's database supplemented with additional research for newer justices. Additionally, Hall (2014) has found that judges behave differently as the end of their career approaches and they become freed from the electoral connection. To this end, I include the number of years the judge has served on the state supreme court as a measure of the judge's experience as well as their age in years to measure their proximity to retirement.

Table 1 displays the results of the analysis. Model 1 in Table 1 estimates the effect of electoral competition across all elected judges while Model 2 allows the effect of electoral competition to vary across different types of judicial elections. The most obvious conclusion that one can draw from Model 1 is the fact that, contrary to its effect in other areas of state politics, electoral competition appears to be associated with more *conservative* votes in state supreme courts. The coefficient on electoral competition is statistically significant and negative, meaning that judges are less likely to vote in favor of a criminal defendant. The size of the effect is moderate. All else equal, a change across the interquartile range of electoral competition is associated with a less than 5% decrease in the probability that a judge will vote to grant relief to a criminal defendant; across the range of electoral competition, the corresponding decrease is 8%.

To assess the differential effects that electoral competition might have based on election type, Model 2 in Table 1 includes multiplicative interaction terms between electoral competition and the categorical variables for election type. To best understand these results, the left panel of Figure 3

| | (1) | (2) |
|---|---|---|
| Electoral Competition | -0.01* | 0.00 |
| | (0.00) | (0.00) |
| Partisan Election | | -0.71* |
| | | (0.13) |
| Retention Election | | 0.22* |
| | | (0.10) |
| Partisan Election×Competition | | 0.01* |
| | | (0.00) |
| Retention Election×Competition | | -0.02* |
| | | (0.00) |
| Murder | -0.13* | -0.49* |
| | (0.06) | (0.05) |
| Capital Murder | -0.25* | -0.06 |
| | (0.06) | (0.05) |
| Rape | 0.15* | -0.10 |
| | (0.06) | (0.06) |
| Robbery | 0.06 | 0.05 |
| | (0.05) | (0.05) |
| Aggravated Assault | 0.06 | -0.19* |
| | (0.05) | (0.05) |
| Citizen Punitiveness | 0.00 | -0.03* |
| | (0.01) | (0.01) |
| Democrat | 0.41* | 0.28* |
| | (0.04) | (0.04) |
| Multiple Victims | -0.05 | -0.02 |
| | (0.04) | (0.04) |
| Juvenile Defendant | 0.55* | 0.70* |
| | (0.08) | (0.08) |
| Child Victim | 0.03 | 0.04 |
| | (0.05) | (0.05) |
| Prior Prosecutor | -0.03 | -0.02 |
| | (0.04) | (0.04) |
| Judge's Age | 0.01* | 0.02* |
| | (0.00) | (0.00) |
| Years on Court | 0.01* | -0.01* |
| | (0.00) | (0.00) |
| Female Judge | 0.02 | 0.05 |
| | (0.04) | (0.04) |
| Constant | -0.34 | 0.11 |
| | (0.67) | (0.37) |
| A.I.C. | 17935.20 | 18976.31 |
| Log Likelihood | -8919.60 | -9463.16 |
| N | 16104 | 16104 |
| Year Fixed Effects | Yes | Yes |
| State Fixed Effects | Yes | No |

Table 1: Logistic Regression Analysis of the Effects of Electoral Competition on Judicial Voting Behavior in Major Criminal Cases. The outcome variable is coded 1 if the judge voted to make the defendant better off (the judge voted liberally). * indicates significance at $p < .05$.

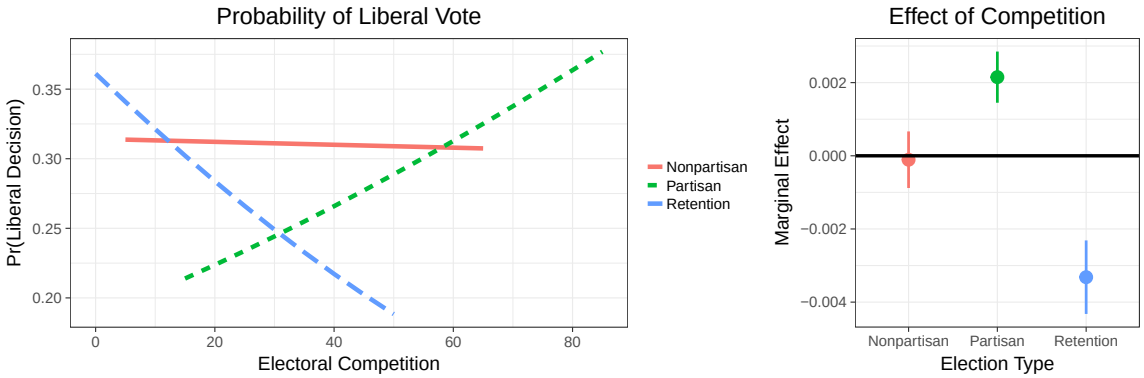


Figure 3: The left panel displays the predicted probability of granting relief to criminal defendants, by level of electoral competition and ballot type. The right panel displays the effect of electoral competition by election type.

graphs the predicted probability of a liberal vote for each election type. The results are consistent with the theory. Judges who run in partisan elections behave exactly as traditional theories of state politics predict: more electoral competition is associated with an increased likelihood that a judge casts a liberal vote. The story is quite different for judges whose party labels do not appear on the ballot, with both nonpartisan-elected and retention-elected judges becoming less likely to cast a liberal vote as electoral competition increases. Notably, however, judges who face contestable nonpartisan elections appear to be relatively unaffected by levels of electoral competition as they cast their votes, as the right panel of Figure 3 shows.

## Study 2: Death Penalty Decisions in State Supreme Courts

In the death penalty analysis, I follow Canes-Wrone, Clark and Kelly (2014) in modeling the decision of an individual judge to uphold the death sentence, a conservative vote. Because the dependent variable is dichotomous, I use logistic regression to estimate the models. For the analysis of death penalty decisions, I follow the approach used in Study 1 and include an independent variable that models a time trend. More information on the independent variables (which follow Canes-Wrone, Clark and Kelly (2014)), as well as full model results and alternative specifications, are available in Appendix B.

We begin by examining the direct effect of electoral competition on a judge's decision to

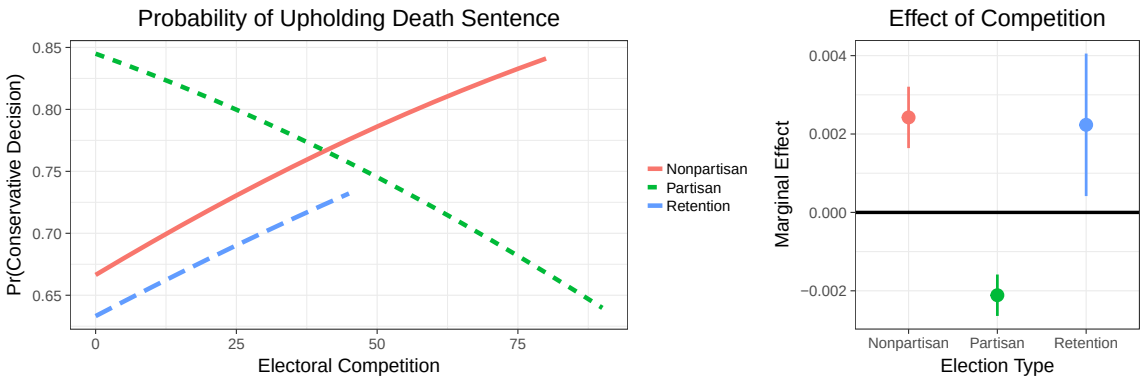


Figure 4: The left panel displays the predicted probability of a judge upholding a death sentence, by level of electoral competition and ballot type. The right panel displays the effect of electoral competition by election type.

cast a conservative vote that upholds the death sentence for the criminal defendant. Again, there is a statistically significant and substantively important effect of electoral competition with judges becoming 15% less likely to uphold a death sentence as electoral competition increases across its range. Notably, the direction of the effect here is opposite that found in the previous analysis: here, increased competition is associated with more *liberal* behavior.[15]

Second, to parse the differential effects of electoral competition by ballot type, we turn to Figure 4, which plots the predicted probability of a vote to uphold the death sentence (a conservative vote) across the range of electoral competition. The results lead to exactly the same conclusion as those drawn from the previous analysis. For judges selected in partisan elections, an increase in electoral competition is associated with more liberal voting behavior. The size of the effect is substantial: a full 20% decrease in the probability of a conservative vote across the observed range of electoral competition. The effects are similarly striking for nonpartisan and retention elections,

[15]The likely reason for this difference concerns the distribution of cases across election type. In the first analysis, over three-quarters of the cases in the sample came from states that use nonpartisan or retention elections. Because states that use partisan elections are also states with more active use of the death penalty, the proportion of observations from partisan election states rises to above one-third in the death penalty dataset, driving the direction of the effect of electoral competition further in the direction of partisan elections than nonpartisan elections.

though an increase in electoral competition is, as hypothesized, associated with more conservative voting behavior for these judges.

## Study 3: Kansas Trial Court Sentencing

Finally, to examine the generalizability of these findings to lower rungs of the judicial hierarchy, we examine the sentencing behavior of Kansas trial court judges. In this analysis, the outcome variable in the analysis is the number of months of prison assigned to the defendant at sentencing. Because the outcome is heavily skewed, I follow Gordon and Huber (2007) and use as the dependent variable $\ln(1 + \text{Assigned Prison Time in Months})$. For this analysis, I follow Gordon and Huber (2007) and use tobit regression with heteroscedasticity-consistent standard errors, clustered on the judge to model the sentences handed down to defendants in Kansas. Full model estimates, as well as more information about the independent variables used in the model, are available in Appendix C.

Recall that approximately half of the trial court judges in Kansas face partisan elections while the other half face uncontestable retention elections. For these judges, there is no overall effect of electoral competition on the severity of a judge's sentences. The effect of electoral competition does differ, however, by the type of election used to retain Kansas trial court judges. As Figure 5 shows (and, again, consistent with the theory), judges who face partisan elections tend to sentence less severely (more liberally) as electoral competition increases while judges who face retention elections tend to sentence more conservatively as electoral competition increases. However, as the right-hand panel of Figure 5 demonstrates, the effect is statistically significant for judges who run in retention elections; for judges who run in partisan elections, the effect is not statistically significant ($p = 0.07$). Inasmuch as Kansas trial court elections are neither particularly salient nor politicized, featuring none of the trappings of high profile contests for state supreme court seats in many states, that electoral competition exhibits effects consistent with those observed in state supreme court elections is striking.

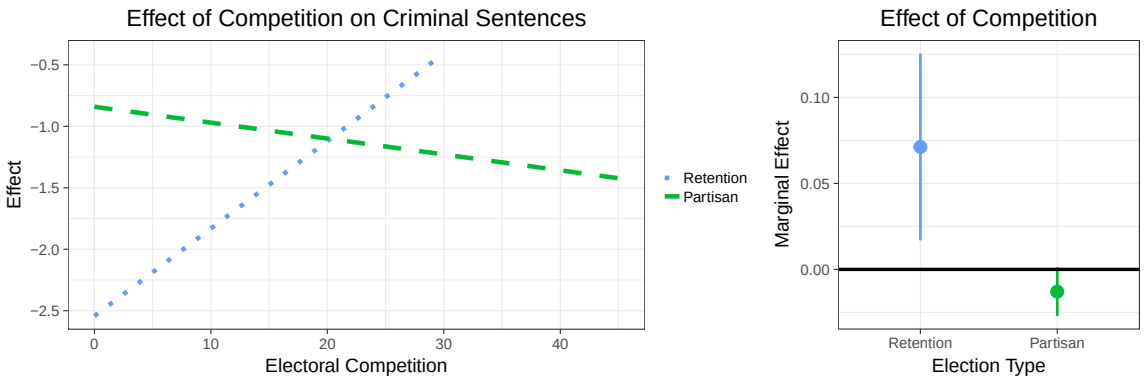


Figure 5: The left panel displays the predicted values of sentence length by level of electoral competition and ballot type from an analysis of the sentencing practices of Kansas trial court judges between 1998 and 2003. The right panel displays the effect of electoral competition by election type.

## Alternative Measure of Competition

One may be concerned that these results are driven by the measure of electoral competition. To this end, I replicate Study 1 using the amount of television advertising aired in the previous electoral cycle in that state. The data come from storyboards collected by the Brennan Center for Justice, along with the Center's records of the number of times each advertisement aired. The variable is measured as the number of advertisements aired (in thousands) in the previous electoral cycle.[16]

Figure 6 plots the predicted probability of a vote granting relief to a criminal defendant across the range of total campaign advertisements in the left panel. The patterns are exactly the same as those shown in Figure 3: more competitive environments—here denoted by vigorous campaign advertising—are associated with more liberal behavior by state supreme court judges who face partisan elections though the opposite relationship is true for those judges who face nonpartisan or retention elections. This establishes the robustness of these findings to an alternative measure of electoral competition.

[16]The analysis here includes only those state-years where television advertising was used in the previous electoral cycle.

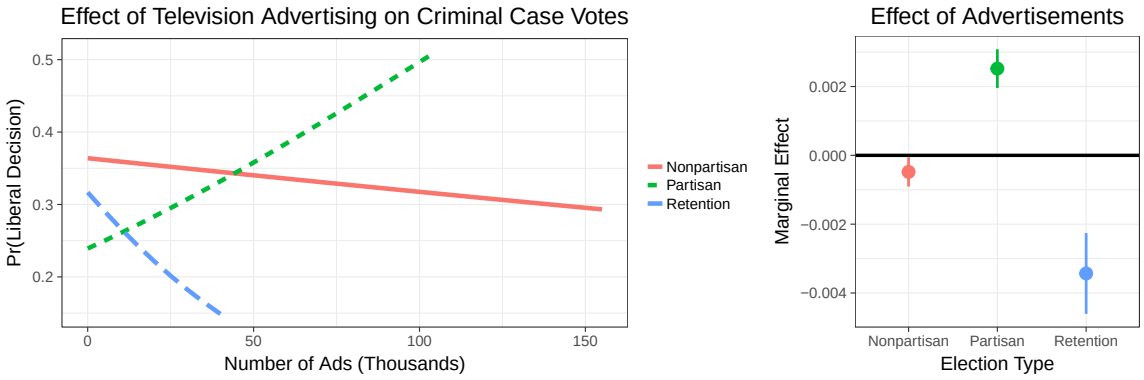


Figure 6: The left panel displays the predicted probability of granting relief to criminal defendants, by number of advertisements and ballot type. The right panel displays the effect of advertising by election type.

## Discussion and Conclusion

Our ability to understand the effect of electoral competition on elite behavior is limited by the relatively high rates of competition and uniform electoral rules that characterize many elections. State judicial elections in the United States provide a solution to this issue because electoral rules vary over space and time while rates of competition vary widely across states. Moreover, characterizing the effects of judicial elections on the choices justices make is one of the most vital projects in the study of state politics and one that has direct relevance to important debates that happen every year in statehouses across the country. Yet problems of data availability have made systematic analyses of the effects of electoral competition on judicial decisionmaking intractable. To this end, I have developed and validated a new measure of electoral competition in judicial elections and estimated the effect of electoral competition on judicial behavior in the United States. The results support a number of important conclusions.

First, I provide additional evidence to confirm a conclusion drawn by both Hall (2015) and Kritzer (2015*b*): levels of electoral competition in judicial elections have been relatively stable over the past half-century. Beyond documenting relative stability in levels of competition over time, I expand the scope of inquiry, examining for the relationship between electoral competition in the judiciary and electoral competition in the legislature. Comparing the two for the first time here,

I show that the two are essentially unrelated. Yet such an overall analysis masks the fact that the relationship is quite different across different sets of electoral rules. In partisan elections—those closest to the legislative elections used by Holbrook and Van Dunk (2013)—levels of competition in judicial elections mirror closely those seen in legislative elections. However, when parties are no longer charged with selecting and fielding candidates, levels of electoral competition in the legislature and in the judiciary become essentially unrelated to each other.

Second, relative aggregate stability in the competitiveness of state judicial elections over time does not mean that the effects of electoral competition on judicial behavior are unimportant. Indeed, both classic and contemporary theories of elite decisionmaking suggest that electoral competition has powerful effects on both elite and mass behavior. I further examined how variation in electoral circumstances affects the punitiveness of state judges. I found evidence, as hypothesized, that electoral rules condition the effect of electoral competition on judicial behavior. In line with the conventional wisdom, judges in partisan elections tend to become less punitive as electoral competition increases. This, as V.O. Key noted, likely results from the expansion of the electorate that accompanies increased electoral competition.

The effects are exactly opposite when partisan labels are removed from the ballot. In both contestable and uncontestable nonpartisan election jurisdictions, judges who face increased levels of electoral competition tend to become more conservative. I suggested that this increased punitiveness results from the prominence of "tough on crime" rhetoric in judicial campaigns and the effectiveness of this rhetoric against judges who are denied the political cover provided by party labels on the ballot.

Indeed, I provided preliminary evidence that the use of nonpartisan ballots changes the composition of the judicial electorate dramatically, increasing the proportion of the electorate that comes from the upper class. Because the relationship between electoral competition and the proportion of the electorate that is poor is reversed in nonpartisan elections compared to the partisan elections studied by Key (1949), the expected relationship between electoral competition and policymaking should also be reversed.

These results are robust, holding in different types of criminal cases decided by state appellate courts, in different time periods, and even in different levels of the judicial hierarchy. Moreover, the results hold when an entirely different measure of electoral competition—the amount of television advertising used in the last electoral cycle—is used in lieu of the measure of electoral competition.

In short, it appears that the choice of ballot type changes the both composition of the electorate and the strategic calculus for judges which, in turn, shapes their behavior on the bench. These results provide further confirmation of Hall's (2015) claim that the adoption of nonpartisan elections has wide-ranging effects. Hall writes: "[t]hese deliberate choices made by states about selection and retention mechanisms not only define the fundamental rules under which elections operate but also create alternative strategic contingencies that structure the manner in which voters receive and use information and the extent to which incumbents are insulated from external political forces" (6). These findings take Hall's statement a step further: not only do nonpartisan elections change voter behavior, but they also change the composition of the electorate and, by extension, judicial decisionmaking as well.

Perhaps most importantly, these results have obvious implications for the popular debate over the "best" way to select and retain judges in the states. While interest groups and reformers who tend to advocate liberal policies have long advocated the removal of party labels from ballots while conservative groups have favored partisan elections, these results suggest that both sides are exactly incorrect. Indeed, both sides of the debate are arguing for institutions that lead to judicial decisions of which they disapprove. These results further suggest that reformers need to focus not only on changing electoral institutions but also on the party apparatuses that recruit, support, and defend candidates; beyond the presence of a party label on the ballot, these results show, variation in the on-the-ground reality of these elections has vital consequences for the outcomes supported by elected judges. The implications of these findings for institutional reform extend far beyond the judiciary and suggest that reforms that were progressive in premise do not yield progressive policies in practice.

There are three obvious opportunities for follow-up research. First, the scope of this study is limited to criminal cases, which are the most prominent cases in judicial electoral campaigns (Baum 2003; Hall 2001). It may be that, as the costs of campaigning have increased, the effects of electoral competition are also related to a desire for judges to satisfy donors even when underdogs are particularly likely to be represented in the electorate. Moreover, the omnipresence of "tough on crime" rhetoric in these campaigns may open a role for public opinion to have differential effects in other important issue areas, such as morality policy. Thus, an examination of the generalizability of these findings to other issue areas is important.

Second, while this paper has tested the theory using data from judicial campaigns, given the widespread use of nonpartisan elections in judicial elections, the theory itself is general and could be tested in other areas, like the Nebraska legislature or the many local-level offices that also use nonpartisan elections. Outside of the United States, other types of electoral rules could provide further tests of the theory. For example, candidate-centric electoral systems with intra-party competition require voters to select among multiple candidates (including potential copartisans); because such systems similarly weaken the power of the party cue at the ballot box, electoral competition in these systems may function in a manner similar to its effects in nonpartisan elections (Carey and Shugart 1995).

Finally, the measure of electoral competition will be made publicly available to scholars for use in additional inquiries. Electoral competition may well affect other aspects of judicial behavior, from creating incentives for judges to dissent and attract media coverage to creating reasons for judges to alter their opinion-writing style in an attempt to be more accessible to voters when they face a rough road to retention. Outside of the judicial arena, scholars have demonstrated that electoral competition colors an important and wide-ranging set of political activities. Now, scholars can examine its effect on the judicial branch, as well.

## References


Adrian, Charles R. 1952. "Some General Characteristics of Nonpartisan Elections." *American Political Science Review* 46:766–76.

Barrilleaux, Charles. 1997. "A Test of the Independent Influences of Electoral Competition and Party Strength in a Model of State Policy-Making." *American Journal of Political Science* 41:1462–1466.

Baum, Lawrence. 2003. "Judicial Elections and Judicial Independence: The Voter's Perspective." *Ohio State Law Journal* 64:13–42.

Berdejó, Carlos and Noam Yuchtman. 2013. "Crime, Punishment, and Politics: An Analysis of Political Cycles in Criminal Sentencing." *The Review of Economics and Statistics* 95:741–756.

Berry, Kate. 2015. *How Judicial Elections Impact Criminal Cases*. Brennan Center for Justice.

Bonneau, Chris W. and Damon M. Cann. 2015. *Voters' Verdicts: Citizens, Campaigns, and Institutions in State Supreme Court Elections*. University of Virginia Press.

Bonneau, Chris W. and Melinda Gann Hall. 2009. *In Defense of Judicial Elections*. Routledge.

Bonneau, Chris W., Melinda Gann Hall and Matthew J. Streb. 2011. "White Noise: The Unrealized Effects of *Republican Party of Minnesota v. White* on Judicial Elections." *Justice System Journal* 32:247–268.

Brace, Paul and Melinda Gann Hall. 1993. "Integrated Models of Judicial Dissent." *Journal of Politics* 55:914–935.

Brennan Center for Justice. 2010. "Buying Time – 2010." Available at `http://www.brennancenter.org/analysis/buying-time-2010` (Accessed 1 May 2016).

Caldarone, Richard P., Brandice Canes-Wrone and Tom S. Clark. 2009. "Partisan Labels and Democratic Accountability: An Analysis of State Supreme Court Abortion Decisions." *Journal of Politics* 71:560–573.

Canes-Wrone, Brandice, Tom S. Clark and Jason P. Kelly. 2014. "Judicial Selection and Death Penalty Decisions." *American Political Science Review* 108(1):23–39.

Canes-Wrone, Brandice, Tom S. Clark and Jee Kwang Park. 2012. "Judicial Independence and

Retention Elections." *Journal of Law, Economics, & Organization* 28:211–234.

Carey, John M. and Matthew Soberg Shugart. 1995. "Incentives to Cultivate a Personal Vote: A Rank Ordering of Electoral Formulas." *Electoral Studies* 14(4):417–439.

Caufield, Rachel P. 2007. "Campaigning for Judge: How the Tone and Tenor of Judicial Election Campaigns is Changing." in *Running for Judge*, ed. Matt Streb, NYU Press.

Caufield, Rachel Paine. 2009. "Reconciling the Judicial Ideal and the Democratic Impulse in Judicial Retention Elections." *Missouri Law Review* 74:573–604.

Dawson, Richard E. and James A. Robinson. 1963. "Interparty Competition, Economic Variables, and Welfare Policies in the American States." *Journal of Politics* 25:265–289.

Driscoll, Amanda and Michael J. Nelson. 2012. "The 2011 Elections in Bolivia." *Electoral Studies* 31:628–639.

Dye, Thomas R. 1966. *Politics, Economics, and the Public: Policy Outcomes in the American States*. Chicago: Rand McNally.

Enns, Peter K. 2016. *Incarceration Nation: How the United States Became the Most Punitive Democracy In The World*. Cambridge University Press.

Gibson, James L. 2012. *Electing Judges: The Surprising Effects of Campaigning on Judicial Legitimacy*. University of Chicago Press.

Gordon, Stanford C. and Gregory A. Huber. 2007. "The Effect of Electoral Competitiveness on Incumbent Behavior." *Quarterly Journal of Political Science* 2:107=138.

Hall, Melinda Gann. 1992. "Electoral Politics and Strategic Voting in State Supreme Courts." *Journal of Politics* 54:427–446.

Hall, Melinda Gann. 2001. "State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform." *American Political Science Review* 95:315–330.

Hall, Melinda Gann. 2014. "Representation in State Supreme Courts: Evidence from the Terminal Term." *Political Research Quarterly* 67(2):335–346.

Hall, Melinda Gann. 2015. *Attacking Judges: How Campaign Advertising Influences State Supreme Court Elections*. Stanford University Press.

Hawley, Willis D. 1973. *Nonpartisan Elections and the Case for Party Politics*. New York: John Wiley and Sons.

Hill, Kim Quaile and Jan E. Leighley. 1992. "The Policy Consequences of Class Bias in State Electorates." *American Journal of Political Science* 36:351–365.

Holbrook, Thomas and Emily Van Dunk. 1993. "Electoral Competition in the American States." *American Political Science Review* 87:955–962.

Holbrook, Thomas M. and Aaron C. Weinschenk. 2014. "Campaigns, Mobilization, and Turnout in Mayoral Elections." *Political Research Quarterly* 67(1):42–55.

Huber, Gregory A. and Stanford C. Gordon. 2004. "Accountability and Coercion: Is Justice Blind When it Runs for Office?" *American Journal of Political Science* 48:247–263.

Key, V.O. Jr. 1949. *Southern Politics in State and Nation*. New York: A. Knopf.

Klarner, Carl. 2013. "Other Scholars' Competitiveness Measures." Available At: `https://dataverse.harvard.edu/dataset.xhtml?persistentId=hdl:1902.1/22519` (Accessed 3 May 2016).

Kritzer, Herbert. 2015*a*. *State Supreme Court Election Data*. Harvard Dataverse, `http://dx.doi.org/10.7910/DVN/1P1JFG`.

Kritzer, Herbert M. 2015*b*. *Justices on the Ballot: Continuity and Change in State Supreme Court Elections*. Cambridge University Press.

Lim, Claire S.H. 2013. "Preferences and Incentives of Appointed and Elected Public Officials: Evidence from State Trial Court Judges." *American Economic Review* 103(4):1360–1397.

Lim, Claire S.H. and James M. Snyder, Jr. 2015. "Is More Information Always Better? Party Cues and Candidate Quality in U.S. Judicial Elections." *Journal of Public Economics* 128(August):107–123.

Linde, Hans A. 1987. "Elective Judges: Some Comparative Comments." *Southern California Law Review* 61:1995–2006.

Masket, Seth. 2016. *The Inevitable Party: Why Attempts to Kill the Party System Fail and How They Weaken Democracy*. Oxford University Press.

Nagel, Stuart S. 1961. "Political Party Affiliation and Judges' Decisions." *American Political Science Review* 55:843–850.

Nelson, Michael J. 2011. "Uncontested and Unaccountable? Contestation Rates in Trial Court Elections." *Judicature* 10:208–217.

Nelson, Michael J. 2014. "Representative Justice? Public Opinion and the Criminal Justice System." *Journal of Law and Courts* 2:117–152.

Nelson, Michael J., Rachel Paine Caufield and Andrew D. Martin. 2013. "OH, MI: On Empirical Examinations of Judicial Elections." *State Politics & Policy Quarterly* 13:495–511.

Oliver, J. Eric and Shang E. Ha. 2007. "Vote Choice in Suburban Elections." *American Political Science Review* 101(3):393–408.

Ranney, Austin. 1976. "Parties in State Politics." *Politics in the American States* 3rd ed., edited by Herbert Jacob and Kenneth Vines:Boston: Little, Brown & Co.

Schaffner, Brian F. and Matthew Streb. 2002. "The Partisan Heuristic in Low-Information Elections." *Public Opinion Quarterly* 66:559–81.

Schaffner, Brian F., Matthew Streb and Gerald Wright. 2001. "Teams without Uniforms: The Nonpartisan Ballot in State and Local Elections." *Political Research Quarterly* 54:7–30.

Schaffner, Brian F., Matthew Streb and Gerald Wright. 2007. "A New Look at the Republican Advantage in Nonpartisan Elections." *Political Research Quarterly* 60:240–49.

Schotland, Roy A. 1985. "Elective Judges' Campaign Financing: Are State Judges' Robes the Emperor's Clothes of American Democracy?" *Journal of Law and Politics* 2:57–167.

Segal, Jeffrey A. 1984. "Predicting Supreme Court Cases Probabilistically: The Search and Seizure Cases, 1962-1981." *American Political Science Review* 78:891–900.

Shepherd, Joanna and Michael S. Kang. 2014. *Skewed Justice*. American Constitution Society. `http://skewedjustice.org` (Accessed 1 May 2016).

Shufeldt, Gregory and Patrick Flavin. 2012. "Tow Distinct Concepts: Party Competition in Government and Electoral Competition in the American States." *State Politics and Policy Quaterly* 12(3):330–342.

Shugerman, Jed. 2012. *The People's Courts*. Harvard University Press.

Tate, C. Neal. 1981. "Personal Attribute Models of the Voting Behavior of U.S. Supreme Court Justices: Liberalism in Civil Liberties and Economics Decisions, 1946-1978." *American Political Science Review* 75(2):355–367.

Welch, Susan and Timothy Bledsoe. 1986. "The Partisan Consequences of Nonpartisan Elections and the Changing Nature of Urban Politics." *American Journal of Political Science* 30:128–39.

Wright, Gerald C. 2008. "Charles Adrian and the Study of Nonpartisan Elections." *Political Research Quarterly* 61(1):13–16.

# Supplemental Information

## Appendix A Criminal Case Analysis Additional Results

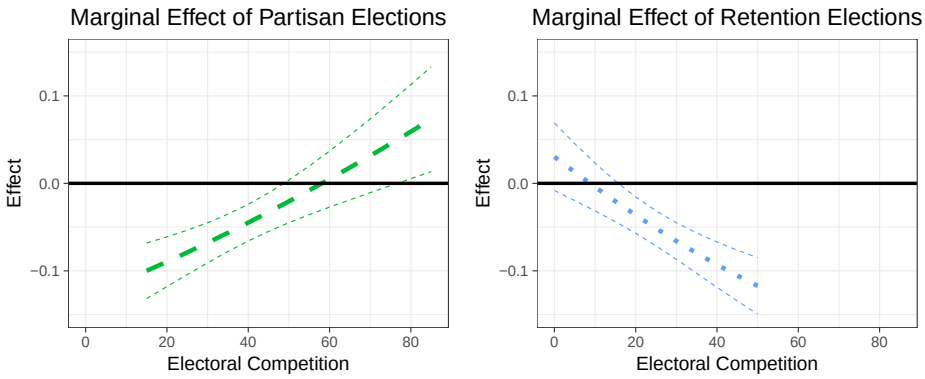


Figure A1: Marginal effects of partisan and retention elections (compared to nonpartisan elections) on conservative votes in death penalty cases. Model estimates come from Table 1. The dotted line indicates the 95% confidence interval.

In addition to the predicted probabilities discussed in the text, one might be curious about differences in the effect of ballot type on judicial decisionmaking across the range of electoral competition. Figure A1 displays these effects, plotting the marginal effect of partisan elections (versus nonpartisan elections) in the left-hand panel and the marginal effect of retention elections (versus nonpartisan elections) in the right-hand panel. Overall, it appears that the differences between partisan and nonpartisan elections come at low levels of electoral competition; under these conditions, judges who face partisan elections sentence *less* punitively than those who run in nonpartisan elections. Looking at the right-hand panel, we see that there are no differences between retention and nonpartisan elections at low levels of competition, but that retention-elected judges tend to sentence less harshly than their nonpartisan-elected counterparts when they face higher levels of electoral competition.

Additionally, the analysis of the Shepherd and Kang dataset in the paper does not account for state-level variation in the model that allows the effect of electoral competition to vary by election type because no state changed election types over the time period in the Shepherd and Kang dataset and, as a result, fixed effects for state would be perfectly collinear with election type. To account

for state-level variation, I have estimated a model with random effects for state and year, shown in Table A1. The results are robust.

Finally, Table A2 provides the results of the analysis reported at the end of the paper which establishes that the findings are robust to an alternative measure of electoral competition: the amount of television advertising used in the previous electoral cycle.

| | (1) | (2) |
|---|---|---|
| Electoral Competition | -0.01* | 0.00 |
| | (0.00) | (0.00) |
| Partisan Election | | -1.00* |
| | | (0.49) |
| Retention Election | | 0.32 |
| | | (0.34) |
| Partisan Election×Competition | | 0.02* |
| | | (0.01) |
| Retention Election×Competition | | -0.02* |
| | | (0.01) |
| Murder | -0.14* | -0.15* |
| | (0.06) | (0.06) |
| Capital Murder | -0.25* | -0.24* |
| | (0.06) | (0.06) |
| Rape | 0.15* | 0.14* |
| | (0.06) | (0.06) |
| Robbery | 0.05 | 0.05 |
| | (0.05) | (0.05) |
| Aggravated Assault | 0.05 | 0.05 |
| | (0.05) | (0.05) |
| Citizen Punitiveness | 0.00 | 0.00 |
| | (0.01) | (0.01) |
| Democrat | 0.40* | 0.40* |
| | (0.04) | (0.04) |
| Multiple Victims | -0.05 | -0.05 |
| | (0.04) | (0.04) |
| Juvenile Defendant | 0.56* | 0.57* |
| | (0.08) | (0.08) |
| Child Victim | 0.02 | 0.02 |
| | (0.05) | (0.05) |
| Prior Prosecutor | -0.04 | -0.04 |
| | (0.04) | (0.04) |
| Judge's Age | 0.01* | 0.01* |
| | (0.00) | (0.00) |
| Years on Court | 0.01 | 0.01 |
| | (0.00) | (0.00) |
| Female Judge | 0.02 | 0.02 |
| | (0.04) | (0.04) |
| Constant | -1.76* | -1.48* |
| | (0.59) | (0.64) |
| sd(State) | 0.68 | 0.68 |
| sd(Year) | 0.04 | 0.03 |
| A.I.C. | 18017.55 | 18004.24 |
| Log Likelihood | -8990.77 | -8980.12 |
| N | 16104 | 16104 |

Table A1: Logistic Regression Analysis (Including Random Intercepts for State and Year) of Electoral Competition on Judicial Voting Behavior in Major Criminal Cases. The outcome variable is coded 1 if the judge voted to make the defendant better off (a liberal vote). * indicates significance at $p < .05$.

| | (1) |
|---|---|
| TV Advertisements (Thousands) | 0.00* |
| | (0.00) |
| Partisan Election | -0.61* |
| | (0.09) |
| Retention Election | -0.22 |
| | (0.13) |
| Partisan Election×TV Advertisements | 0.01* |
| | (0.00) |
| Retention Election×TV Advertisements | -0.02* |
| | (0.01) |
| Murder | -0.02 |
| | (0.08) |
| Capital Murder | -0.01 |
| | (0.07) |
| Rape | 0.01 |
| | (0.08) |
| Robbery | 0.19* |
| | (0.07) |
| Aggravated Assault | 0.39* |
| | (0.07) |
| Citizen Punitiveness | -0.03* |
| | (0.01) |
| Democrat | 0.08 |
| | (0.05) |
| Multiple Victims | -0.21* |
| | (0.06) |
| Juvenile Defendant | 0.60* |
| | (0.10) |
| Child Victim | 0.20* |
| | (0.07) |
| Prior Prosecutor | 0.05 |
| | (0.05) |
| Judge's Age | 0.02* |
| | (0.00) |
| Years on Court | 0.01* |
| | (0.00) |
| Female Judge | 0.16* |
| | (0.06) |
| Constant | -0.50 |
| | (0.53) |
| A.I.C. | 9671.10 |
| Log Likelihood | -4810.55 |
| N | 7954 |
| Year Fixed Effects | Yes |
| State Fixed Effects | No |

Table A2: Logistic Regression Analysis of the Effects of Electoral Competition (Measured Using Television Advertising) on Judicial Voting Behavior in Major Criminal Cases. The outcome variable is coded 1 if the judge voted to make the defendant better off (the judge voted liberally). * indicates significance at $p < .05$.

## Appendix B Death Penalty Analysis Measurement and Results

The data for the death penalty analysis comes from the Canes-Wrone, Clark and Kelly (2014) analysis of death penalty decisions issued by state courts of last resort between 1980 and 2006. The dependent variable is dichotomous and takes a value of 1 if the judge voted to uphold the lower court's decision to impose the death penalty and 0 if the judge voted to provide relief to the defendant.

The model includes a series of control variables taken from Canes-Wrone, Clark and Kelly (2014). First, I include a centered, three-year moving average of state-level public support for the death penalty measured using multilevel regression with poststratification. Second, partisanship or ideology may affect the decision to impose the death penalty; hence the model includes a dichotomous variable that takes a value of 1 if the judge is a Republican. Third, judges may become more punitive as the end of their term approaches, so the models include a variable that takes a value of 1 if a judge is slated for reelection or reappointment within the next two years and 0 otherwise. Fourth, judges may behave differently if they are freed from the electoral connection, so I include two additional variables. The first is coded 1 if the judge is a Republican facing Mandatory Retirement at the end of their term, -1 if the judge is a Democrat facing Mandatory Retirement, and 0 otherwise. The second measures whether the judge is a lame duck after losing an election or choosing not to seek reelection. The variable is coded 1 for Republican lame ducks, -1 for Democratic lame ducks, and 0 otherwise. Fifth, the model includes a series of dichotomous variables for a variety of case facts: whether a police officer was killed, whether the crime was a rape, whether the crime was a robbery, whether there were multiple victims, and whether the victim was a female.

| | (1) | (2) |
|---|---|---|
| Electoral Competition | -0.01* | 0.01* |
| | (0.00) | (0.00) |
| Partisan Election | | 1.06* |
| | | (0.12) |
| Retention Election | | -0.15 |
| | | (0.12) |
| Partisan Election×Electoral Competition | | -0.03* |
| | | (0.00) |
| Retention Election×Electoral Competition | | 0.00 |
| | | (0.01) |
| Public Opinion | 0.19 | 3.22* |
| | (0.61) | (0.40) |
| Electoral Proximity | 0.11* | 0.09* |
| | (0.05) | (0.04) |
| Mandatory Retirement | 0.16* | 0.27* |
| | (0.07) | (0.07) |
| Lame Duck | 0.01 | -0.34 |
| | (0.24) | (0.24) |
| Cop Killed | 0.57* | 0.55* |
| | (0.12) | (0.11) |
| Rape | 0.22* | 0.18* |
| | (0.06) | (0.06) |
| Robbery | 0.23* | 0.23* |
| | (0.05) | (0.05) |
| Multiple Victims | 0.28* | 0.24* |
| | (0.05) | (0.05) |
| Female Victim | 0.14* | 0.13* |
| | (0.05) | (0.05) |
| Response to SCOTUS Decision | -2.22* | -2.15* |
| | (0.16) | (0.15) |
| Homicide Rate | 0.00 | 0.03* |
| | (0.01) | (0.01) |
| Time Trend | 0.02* | 0.03* |
| | (0.00) | (0.00) |
| Constant | 0.64 | -2.72* |
| | (0.50) | (0.36) |
| A.I.C. | 12323.35 | 12692.90 |
| Log Likelihood | -6124.67 | -6328.45 |
| N | 11343 | 11343 |
| State Fixed Effects | Yes | No |

Table B1: Logistic Regression Analysis of the Effect of Electoral Competition in Death Penalty Cases. The dependent variable is coded 1 if the judge voted to uphold the death sentence (cast a conservative vote). * indicates significance at $p < .05$. Model 1 assesses the overall effect of electoral competition on decisionmaking while Model 2 assesses the effect of electoral competition by type of election.

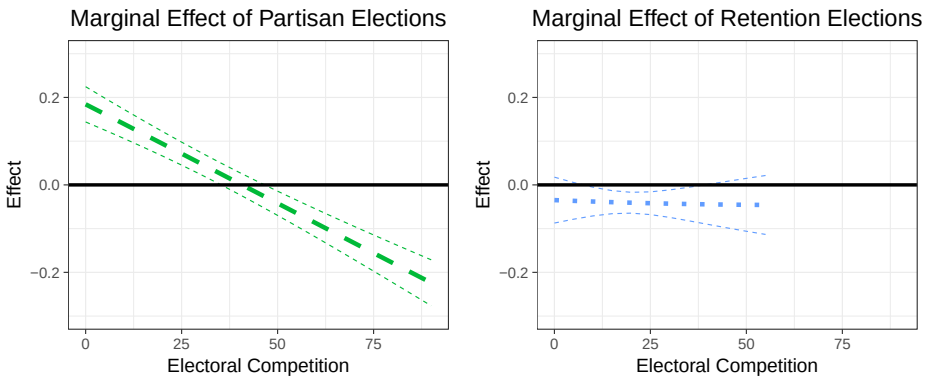


Figure B1: Marginal effects of partisan and retention elections (compared to nonpartisan elections) on conservative votes in death penalty cases. Model estimates come from Table B1. The dotted line indicates the 95% confidence interval.

Table B1 displays the results of the model discussed in the text of the paper. Figure B1 displays the marginal effect of election type (with nonpartisan elections as the baseline category) on voting behavior, using the estimates from Table B1. Overall, it appears that partisan-elected judges are more likely than nonpartisan-elected judges to vote conservatively at low levels of electoral competition, but the effect is reversed at higher levels of electoral competition. Conversely, nonpartisan-elected judges and retention-elected judges vote no differently at extreme levels of electoral competition, while retention-elected judges are less likely to cast a conservative vote at middling levels of electoral competition.

To match the analysis in Study 1, Model 2 in Table B1 does not include fixed effects for state. A small handful of states do change election types over the course of the Canes-Wrone, Clark, and Kelly dataset, meaning that the same model can be estimated with fixed effects for state. Table B2 displays the results of these models while Table B3 displays the results of a similar analysis that includes random effects for state. Overall, the results are almost identical to those discussed earlier and in the body of the paper. The only substantive difference is that the coefficient for Retention Election which becomes positively-signed and statistically significant.

| | (1) | (2) |
|---|---|---|
| Electoral Competition | -0.01* | 0.00 |
| | (0.00) | (0.00) |
| Partisan Election | | 0.99* |
| | | (0.16) |
| Retention Election | | 0.80* |
| | | (0.28) |
| Partisan Election×Electoral Competition | | -0.01* |
| | | (0.00) |
| Retention Election×Electoral Competition | | -0.02* |
| | | (0.01) |
| Public Opinion | 0.19 | 0.95 |
| | (0.61) | (0.64) |
| Electoral Proximity | 0.11* | 0.11* |
| | (0.05) | (0.05) |
| Mandatory Retirement | 0.16* | 0.15* |
| | (0.07) | (0.07) |
| Lame Duck | 0.01 | -0.08 |
| | (0.24) | (0.24) |
| Cop Killed | 0.57* | 0.57* |
| | (0.12) | (0.12) |
| Rape | 0.22* | 0.20* |
| | (0.06) | (0.06) |
| Robbery | 0.23* | 0.22* |
| | (0.05) | (0.05) |
| Multiple Victims | 0.28* | 0.28* |
| | (0.05) | (0.05) |
| Female Victim | 0.14* | 0.15* |
| | (0.05) | (0.05) |
| Response to SCOTUS Decision | -2.22* | -2.31* |
| | (0.16) | (0.16) |
| Homicide Rate | 0.00 | -0.02 |
| | (0.01) | (0.02) |
| Time Trend | 0.02* | 0.02* |
| | (0.00) | (0.00) |
| Constant | 0.64 | -0.60 |
| | (0.50) | (0.54) |
| A.I.C. | 12323.35 | 12289.43 |
| Log Likelihood | -6124.67 | -6103.72 |
| N | 11343 | 11343 |
| State Fixed Effects | Yes | Yes |

Table B2: Logistic Regression Analysis of the Effect of Electoral Competition in Death Penalty Cases Including Fixed Effects for State. The dependent variable is coded 1 if the judge voted to uphold the death sentence (cast a conservative vote). * indicates significance at $p < .05$. Model 1 assesses the overall effect of electoral competition on decisionmaking while Model 2 assesses the effect of electoral competition by type of election.

| | (1) | (2) |
|---|---|---|
| Electoral Competition | -0.01* | 0.00 |
| | (0.00) | (0.00) |
| Partisan Election | | 0.97* |
| | | (0.16) |
| Retention Election | | 0.49* |
| | | (0.24) |
| Partisan Election×Electoral Competition | | -0.02* |
| | | (0.00) |
| Retention Election×Electoral Competition | | -0.02* |
| | | (0.01) |
| Public Opinion | 0.31 | 1.04 |
| | (0.59) | (0.60) |
| Electoral Proximity | 0.11* | 0.11* |
| | (0.05) | (0.05) |
| Mandatory Retirement | 0.16* | 0.16* |
| | (0.07) | (0.07) |
| Lame Duck | 0.01 | -0.09 |
| | (0.24) | (0.24) |
| Cop Killed | 0.57* | 0.57* |
| | (0.12) | (0.12) |
| Rape | 0.22* | 0.20* |
| | (0.06) | (0.06) |
| Robbery | 0.24* | 0.23* |
| | (0.05) | (0.05) |
| Multiple Victims | 0.28* | 0.28* |
| | (0.05) | (0.05) |
| Female Victim | 0.14* | 0.14* |
| | (0.05) | (0.05) |
| Response to SCOTUS Decision | -2.23* | -2.30* |
| | (0.15) | (0.16) |
| Homicide Rate | 0.00 | -0.02 |
| | (0.01) | (0.01) |
| Time Trend | 0.02* | 0.03* |
| | (0.00) | (0.00) |
| Constant | 0.23 | -0.73 |
| | (0.51) | (0.54) |
| sd(State) | 0.60 | 0.55 |
| A.I.C. | 12378.90 | 12343.11 |
| Log Likelihood | -6174.45 | -6152.55 |
| N | 11343 | 11343 |

Table B3: Logistic Regression Analysis of the Effect of Electoral Competition in Death Penalty Cases Including Random Effects for State. The dependent variable is coded 1 if the judge voted to uphold the death sentence (cast a conservative vote). * indicates significance at $p < .05$. Model 1 assesses the overall effect of electoral competition on decisionmaking while Model 2 assesses the effect of electoral competition by type of election.

## Appendix C Sentencing Analysis Measurement and Results

The data come from two places. I requested and received the Gordon and Huber (2007) data from the Kansas Sentencing Commission along with the other variables they used in the Gordon and Huber (2007) study to enhance comparability. The measure of electoral competition includes all but one of the indicators (incumbent defeats) used in the measure of electoral competition employed in the appellate court analyses.

To ensure the comparability of the findings, all of the remaining variables in the study are measured in the same way as in Gordon and Huber (2007). The measure of Electoral Proximity ranges from 0 (when the judge's new term begins or when he wins reelection on the general election day) to 1 (when the election is just days away) and resets to zero on the day of the filing deadline for the impending election when a judge in a contestable election learns that she will be unchallenged. The measure has a mean of 0.50 with a standard deviation of 0.26.

The model includes a number of control variables. These variables include the number of counts in the conviction, the type of crime (assault, criminal threat, robbery, sex crime, theft, burglary, crime carried out with a firearm), whether the sentence was reached by a jury or a plea bargain, whether counsel was private or appointed, and the presumptive prison sentence for the top count in the case (which is determined by the defendant's prior criminal history). I also include characteristics of the victim (government/law enforcement official, child) and characteristics of the defendant (race, ethnicity, gender, age, sex offender status). I also include a set of district-specific control variables, including presidential turnout, presidential vote share, mean retention vote share, the proportion of the district that is nonwhite, the proportion of the district that is urban, and the crime rate.

The models all include year fixed effects both to account for any time trends in the data and to account for prosecutorial discretion. As Nelson (2014) notes, prosecutors, like judges, may respond to public opinion. In the Kansas case, this concern is mitigated by the fact that all prosecutors have the same four-year electoral calendar while judges have staggered terms. Thus, the year fixed effects also soak up variation related to the prosecutor's electoral calendar.

## C.1 Results

Table C1 displays the results of the models discussed in the body of the paper. Figure C1 plots the marginal effect of partisan elections over the range of electoral competition. The figure demonstrates that partisan elected judges sentence more punitively than retention-elected judges at low levels of competition; however, as electoral competition increases, the difference between the two types of judges is not statistically distinguishable.

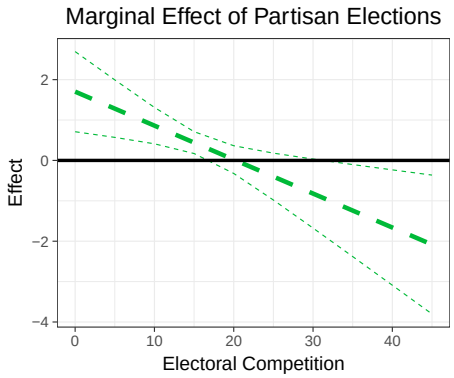


Figure C1: Marginal effect of partisan elections (compared to nonpartisan elections) on sentencing behavior in criminal Kansas District Court cases. Model estimates come from Table C1. The dotted line indicates the 95% confidence interval.

| | (1) | (2) |
|---|---|---|
| Electoral Competition | -0.01 | 0.07* |
| | (0.01) | (0.03) |
| Partisan Election | 0.35* | 1.70* |
| | (0.14) | (0.51) |
| Partisan Election×Competition | | -0.08* |
| | | (0.03) |
| ln(1+Presuptive Prison) | 1.15* | 1.14* |
| | (0.02) | (0.02) |
| First Guideline Regime | 0.35* | 0.34* |
| | (0.17) | (0.17) |
| Second Guideline Regime | 0.23* | 0.23* |
| | (0.11) | (0.11) |
| Number of Add'l Counts | 0.15* | 0.15* |
| | (0.02) | (0.02) |
| Persistent Sex Offender | 1.90* | 1.90* |
| | (0.40) | (0.40) |
| Felony Committed with Firearm | 1.58* | 1.59* |
| | (0.14) | (0.14) |
| Assault | 0.13 | 0.13 |
| | (0.27) | (0.26) |
| Criminal Threat | -0.41 | -0.42 |
| | (0.28) | (0.28) |
| Robbery | 0.80* | 0.80* |
| | (0.26) | (0.26) |
| Sex Crime | 0.90* | 0.90* |
| | (0.30) | (0.30) |
| Theft | 0.18 | 0.17 |
| | (0.28) | (0.28) |
| Burglary | 0.26 | 0.26 |
| | (0.28) | (0.27) |
| Victim was Gov't Official | 0.94* | 0.93* |
| | (0.19) | (0.19) |
| Victim was Child | -0.09 | -0.09 |
| | (0.16) | (0.16) |
| Appointed Counsel | 0.87* | 0.88* |
| | (0.07) | (0.07) |
| Plea Bargain | -1.02* | -1.02* |
| | (0.09) | (0.09) |
| Defendant Nonwhite | 0.12 | 0.11 |
| | (0.06) | (0.06) |
| Defendant Male | 1.28* | 1.28* |
| | (0.12) | (0.12) |
| Defendant Hispanic | 0.18 | 0.17 |
| | (0.10) | (0.10) |
| Judge's Age | 0.15* | 0.15* |
| | (0.02) | (0.02) |
| Judge's Age$^2$ | 0.00* | 0.00* |
| | (0.00) | (0.00) |
| Proportion Nonwhite | 1.35 | 1.50* |
| | (0.69) | (0.68) |
| Urban | -0.64* | -0.74* |
| | (0.29) | (0.29) |
| Crime Rate | 0.01* | 0.01* |
| | (0.00) | (0.00) |
| Kansas S.C. Retention Yes Pct. | -0.04 | 6.45* |
| | (1.77) | (3.13) |
| Constant | 0.96* | 0.96* |
| | (0.02) | (0.02) |
| A.I.C. | 36149.89 | 36140.16 |
| Log Likelihood | -18039.95 | -18034.08 |
| N | 18141 | 18141 |
| Year Fixed Effects | Yes | Yes |

Table C1: Tobit regression of the effect of electoral competition on sentence length in Kansas trial courts. Higher values indicate longer sentences (more conservative policy outcomes). * indicates significance at $p < .05$. Model 1 assesses the overall effect of electoral competition on decisionmaking while Model 2 assesses the effect of electoral competition by type of election.