

The People's Will: State Supreme Court Justices as Representatives

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Abstract

Electoral incentives dictate that “the people’s” representatives are primarily concerned with securing reelection. Can this expectation be applied to non-representative offices such as State Supreme Court justices? A majority of states use elections to choose non-policymakers such as State Supreme Court justices, but does this action cause justices to act similar to their representative counterparts? This study determines if justices respond to their constituency’s preferences. By looking at economic and criminal cases decided by the courts, I find two trends: (1) in an non-competitive election, the justices’ rulings show no significant relationship to their constituency’s preferences; (2) when faced with competitive elections, the rulings move closer to the constituency opinion for criminal cases, while in economic cases the rulings move closer to the justices’ party’s constituency opinion.

Introduction

In a highly visible 2008 state election, Diane Hathaway defeated Cliff Taylor, the incumbent Chief Justice of the Michigan Supreme Court. Facing a difficult reelection fight, Taylor campaigned on his record as Chief Justice, asserting that he fought to keep taxes low, and protected the interests of the taxpayerⁱ. While the opposition ran ads against him mocking Taylor's age and his inability to stay awake during court proceedings, Taylor chose to speak about issues rather than his ability to be a fair and impartial judgeⁱⁱ. Voters in Michigan got the taste of an evolving practice in judicial elections, issue position taking. This calls into question the influence of elections on State Supreme Court justices. Representation scholars have noted that in a democratic system, the people can remove their representative based on poor performance in regards to the constituents' interests (Arnold 1990; Cox and McCubbins 1993; Fenno 1978; Jacobson 2009; Mayhew 1974). Federal judicial scholars have found that federal judges act strategically in making their decisions, though not to the tune of constituency preferences (Baum 2004; Brest and Levinson 1992; Epstein and Knight 1997). Should state courts be any different? Based on the two types of literature, State Supreme Court justices appear to act more like representatives than judges. This paper finds that the interjection of elections, specifically competitive elections, force justices to rule to the tune of their constituency's preferences on criminal cases, and their party's constituency preferences on economic cases.

Previous research by Melinda Gann Hall (1995) finds that in cases dealing with capital punishment, justices do act in their own electoral self-interest by generally ruling within the bounds of constituency preferences. Does this hold for all types of cases, or do justices rule based on constituency preferences only when the cases are highly visible and invoke strong reactions from the electorate? Furthermore, it is unclear whether it is the threat of elections in

general or competitive elections that is creating this phenomenon. This article builds on Hall's (1995) study by expanding the theory to include economic and criminal cases and competitive versus non-competitive elections.

This paper proceeds as follows. The first section outlines the literature on judicial elections and the contrasting scholarly opinions on the use of elections for judicial selection. The second section outlines the hypotheses and expectations on how judges rule on economic and criminal cases. The third section defines the cases and methodology involved. The fourth section tests how judicial decision making responds to competitive elections. I conclude with the implications of this study suggestions for future research.

Literature Review

The normative and empirical literatures on state-level justices has not achieved consensus on recognizing the advantages and disadvantages of using elections as a method of selection. A number of factors, such as money, voter knowledge and partisanship can potentially affect how judges make their decisions. One argument suggests that judicial elections severely threaten the legitimacy of the judiciary as it calls into question whether or not judges are fair and impartial. Another argument claims that judicial elections allow for the selection of better justices. The courts, having no legislative or executive power rely on people's perceptions to serve as the source of their legitimacy. While a number of studies have pointed out that the mere existence of judicial elections does not challenge judicial legitimacy (Gibson 2008; Gibson 2009), the threat of impartiality may eventually lead to a threat to legitimacy in the future. Scholars have found that a number of reasons influence the public's perceptions on the court including prior experiences and perceptions of the courts' fairness. (Benesh 2006).

Those against judicial elections have called for new methods of selection. Recently, the American Bar Association released a study on judicial elections entitled “Justice in Jeopardy” in which they call for a transition to a system which only uses appointment as a method of judicial selection. In addition, a number of scholars have also called for revised methods of judicial selection given that too many factors compromise the impartiality of justices when they face elections (Czarneski 2005; Geyh 2003). These studies foreshadow the potential interference of electoral preferences intruding on the judicial decision making process.

Consequently, the literature has attempted to address the utility of this method of selection. Scholars have found that generally, judicial elections that involve higher level of competition are more expensive, and expensive races are quickly becoming the norm in judicial elections (Bonneau 2005; Bonneau 2007; Abbe and Herrnson 2003). Still, it is unclear whether there is a strong correlation between judicial decisions and campaign contributions (Arrington 1996; Cann 2002; Cann 2007). Based on this literature, campaign contributions may or may not influence judicial decision making.

Nevertheless, given that not all elections involve large sums of money, a “contributions related” explanation does not provide an answer to all types of judicial elections. Other scholars have attempted to either justify or criticize judicial elections in other ways. A number of scholars have found that judicial elections may simply be too difficult of a decision to make for the voting populace as they lack clear information on what they are voting on, especially if cues such as partisanship and elite knowledge are absent (Aspin and Hall 1987; Adamany and Dubois 1976; Baum 1987). Yet others find empirically that, at times, voters do make smart political decisions on judicial elections based on candidate quality and other issues (Hojnacki and Baum 1992;

Bonneau 2005; Bonneau and Hall 2009; Hall and Bonneau 2006). As a result, it is still unclear as to whether judicial elections are problematic regardless of their democratic nature.

If voters are able to make smart and political decisions and judicial elections are not difficult decisions for the electorate, the question to ask is whether the will of the people is heard in terms of judicial elections. If the will of the people is not heard, judicial elections cannot have an impact, or would have a negligible impact on judicial decision making. Scholars have found however, that in most cases, judicial elections are able to display the will of the people, or at the very least, potentially display the will of the people (Beechen 1973; Brace et al. 1999).

Given that the literature is split on whether judicial elections are an appropriate method of selection, one might wonder whether partisan elections are especially damaging to a fair and impartial judiciary. However, scholars have contested this belief in a number of ways. First, while critics point to the ideological nature of partisan elections, scholars have found that non-partisan and retention elections are just as ideological as partisan elections (Dimino 2004; Hall 2001; Streb 2007). Additionally, scholars have found that non-partisan elections tend to have lower turnout as voters are unable to rely on partisan cues to vote and the subsequent elections have random, inexplicable results (Hall and Bonneau 2008; Dubois 1979). While these studies clearly demonstrate that partisan elections are no more or less problematic than non-partisan and retention elections, they do not clearly demonstrate that judicial elections are justifiable.

Still, other scholars look at judicial elections from the perspective of the defeated justice, examining why justices lose. Previous research has found that justices do not lose for lack of campaign funds or random choice by the electorate. Instead, they lose because voters make decisions based on the characteristics of the justice, the attitude and nature of the state at the time of the election, and the institutional arrangements of the respective states (Bonneau 2007;

Bonneau 2005). This suggests that there is a systematic reason for why judges lose elections, but it is not clear whether judges take this into account when ruling on cases.

Another aspect of judicial elections that could impact whether elections affect judicial decision making is the challenger. Intuitively, one would expect that poor judges would yield strong challengers. However, scholars have found this to be untrue, and instead have found that electoral situations and institutional contexts are more relevant to why challengers enter races rather than the actual justice's performance (Bonneau and Hall 2003).

In summary, these studies demonstrate that despite the best effort of both sides of the debate, little cohesion exists on the empirical implications of judicial elections. As a result, it may be necessary to view literature on other aspects of American politics that deal with elections. This study uses the representation literature, traditionally applied to the study of the United States Congress, and applies it to a different institution- the State Supreme Court. Although this method is not commonly used, previous research has shown that this approach can be effective because judges have acted strategically when deciding public policy (Atkins 1972; Atkins and Zavoina 1974; Rohde 1972, Rohde and Spaeth 1976, Segal and Spaeth 1993). Yet, little research has established a link between judicial elections and decision making.

Representation

A common theme of representation is that it is inherently linked with democracy. For representation to work there must be some form of democratic accountability that requires the public to hold their representatives accountable for their policy. Weizen (1995) emphasizes the existence of a policy thermostat, in which the public sends a signal to adjust policy when the policy "temperature" differs from the preferred policy temperature. For the purposes of this

study, I focus on this specific type of representation, dynamic representation. Dynamic representation, as defined by Stimson et al. (1995) is if “public opinion changes and then public policy responds.” Here, policy responsiveness is defined as having two mechanisms. First, “elections change the government’s political composition, which is then reflected in new policy”, and second, “policy makers calculate future electoral implications of current public views and act accordingly.” The second mechanism is of particular interest as it is extremely relevant to judicial campaigns; if the State Supreme Court’s ideological direction changes, then the court is in line with one mechanism of policy responsiveness. Furthermore, if Supreme Court justices make decisions based on previous elections, then they are following the second mechanism of policy responsiveness, showing a distinct similarity to congressional representation.

A number of other studies conclude that legislators do vote with their constituency and do so with some amount of regularity. This holds true especially for highly visible issues in which scholars have found that legislators vote with their constituency since any defection would serve as dangerous material for their opponents in re-election battles (Bartels 1991; Clausen 1973; Erikson 1978; Fiorina 1974; Kindon 1981; Miller and Stokes 1963). However, this theory raises a concern in regards to representation: if most representatives are safe and have clear incumbency advantages, why would they care about matching constituency concerns? This problem is especially relevant as judicial elections are even more clandestine to voters than congressional elections.

Examining competitive elections solves this problem as a number of scholars have found that when facing a competitive election, representatives follow their constituency’s needs (Friedman and Stokes 1965; Wahlke et al. 1962). If justices act like their congressional counterparts and react to their constituency preferences, it brings into question their impartiality

towards the law. That is, justices seem to care more about re-election and the views of the constituency rather than the interpretation of the law. Given a competitive election, if justices are representatives, then one would expect to see similar behavior.

Furthermore, other scholars have found there to be potential for a loss of public support in the courts. Scholars have argued that the method of selecting justices illustrates why the public generally supports the United States Supreme Court and not the State Supreme Court (Cann and Yates 2007).

As the literature shows, the method of election does not necessarily have an effect on judicial decision making. However, the issue as to whether judicial elections in general affect judicial decision making remains unclear, I argue that the amount of campaign finance, voter information, or method of election do not have a significant bearing on the judicial process. Instead, I hypothesize that judicial decision making relies most on the levels of electoral competition that each justice faces. In other words, if a justice faces a competitive election, they will likely move their decision making towards the mean constituency opinion.

Hypotheses

There is a natural overlap in the representation and judicial elections literature. As a result, I base my hypotheses off the general theory on congressional action as outlined by R. Douglas Arnold:

The theory assumes that members of Congress care intensely about reelection. Although they are not single-minded seekers of reelection, reelection is their dominant goal. This means simply that legislators will do nothing to advance their other goals if such activities threaten their principal goal. If reelection is not at risk, they are free to pursue other goals, including enacting their own visions of good public policy or achieving influence within Congress.ⁱⁱⁱ

Similarly, I hypothesize that justices sitting on state Supreme Courts care about reelection, and while that may not be their only goal, it is their primary one. If their reelection is not at risk, they

will either pursue their own agenda, or rule by the precedent set in their state. Based on this theory, I make four hypotheses.

Hypothesis 1: Justices that have faced competitive elections in the past will rule closer to their constituency's general opinion.^{iv} If justices are indeed more like representatives than justices, they will move towards their constituency's general opinion when they face competitive elections. Justices with less experience and a shorter tenure on the state Supreme Court tend to be challenged so it is can be expected that the justices who survive these challenges will move closer to their constituency's opinions (Bonneau and Hall 2009). Similarly, justices that have not faced competitive elections may or may not be far from their constituency's opinion as they have no reason to adhere to it but they may choose to as it may overlap with their overall goals.

Hypothesis 2: Justices that are appointed will generally be further from their constituency's opinion as they work at the behest of the appointing governor. Past scholars have found that appointed judges act differently from elected judges in that they are more partisan and can "significantly impair the function of judicial review (Bonneau and Hall 2009; Schneider and Maughan 1979).

Hypothesis 3: Justices that have electoral experience will be closer to the overall constituency's preferences. It is also necessary to control for electoral experience. Since the office is tailored to be an office of judicial interpretation rather than representation, I hypothesize that justices that have no electoral experience will be further from the mean as they rely on other cues to base their decisions on than constituency opinion.

Hypothesis 4: The distance between judicial decisions and constituency opinion will shrink when "constituency opinion" is replaced with "party constituency opinion". Given that there is a good amount of ballot roll off for lower races, I expect to see that judges move

strategically closer to their party's constituency opinion over the general constituency opinion. Given that most judicial races are low information races, justices will want to appeal to their core supporters rather than the general voting population for their state.

To test these hypotheses, I run a number of multiple regressions to measure the effectiveness of each of the aforementioned variables judicial decision making.

Cases

To study the effects of judicial elections, I examine two case states, Michigan and Pennsylvania, which have large electorates. Both states generally display a moderate electorate, though both states have highly ideological partisans.^v As discussed earlier, given the nature of ballot roll off for judicial elections, it is important to test the effects of the general constituency as well as the partisan constituency.

Michigan

Michigan's state Supreme Court elects seven justices in partisan elections to eight year terms. Candidates must be nominated by their party, licensed to practice law in Michigan, and be under the age of seventy during their election. Vacancies on the court are filled by gubernatorial appointments.^{vi}

Michigan's recent history in terms of judicial elections makes it an interesting case to examine. The story at the beginning of this paper suggests that judicial elections in Michigan hinge on issues rather than judicial independence and knowledge of the law. Considering that this is a fairly new practice in Michigan elections, by using it as a case, this study captures judicial elections at the cusp of a change. Over the past decade, judicial elections in Michigan

have increasingly become about the issues. As early as the 2000 election, both parties spent over \$4 million on the judicial races in an effort to impact who would draw the congressional map (Waller 2000). By 2006, electoral races for the Supreme Court evolved to include “hot button” issues such as abortion, as seen in the aforementioned anecdote, eventually included economic and criminal issues as well (Wendland 2006). Compare this to the 1990s, when Supreme Court elections in Michigan were so clandestine that when searched for, no major news stories could be found addressing any of the elections for the office.^{vii}

Pennsylvania

Like Michigan, Pennsylvania also holds partisan elections to elect their state Supreme Court justices. The court consists of seven judges, each elected to ten year terms. Upon the completion of their term, a retention vote is held in which the voters vote “yes” or “no” on retaining the judge. In the event of a vacancy, the governor selects a temporary replacement which must be confirmed by the state senate.^{viii}

Similar to Michigan, Pennsylvania’s judicial elections have also increased in salience, although for different reasons. Over the past decade, Pennsylvania’s judicial election system has also gained attention after the *Republican Party of Minnesota v. White* ruling (allowing justices to discuss political issues). After the ruling, Pennsylvania amended its judicial code of conduct to include that candidates for office may express political opinions but cannot commit to an opinion on a prospective case (PA Code of Conduct, Canon 7). Since the ruling, an increasing number of candidates have expressed their views on a variety of issues ranging from economics to abortion (AP 2003; Infield 2009; Carpenter 2003). Again, Pennsylvania provides a case in which judicial elections are at a cusp in that their elections are rising in salience and as a result provide much

more generalizable results. Through examining these two states supreme courts, I show that there is a trend in judicial elections in states that are increasing in salience in terms of judicial elections.

Methodology

To measure representation, I borrow from Weisberg's (1978) equation to calculate dyadic representation:

$$\sum |d-R|/N$$

Where:

d= Mean District Opinion

R= Representative's roll call position

N= Number of pairs (districts)

To measure representation for each individual state Supreme Court justices, I use a simplified version of this formula, where I eliminate the summation and the N value as they are superfluous to the study. The new equation reads simply:

$$J = |d-R|$$

Where:

J= Distance from the mean constituency opinion

d= Mean Constituency Opinion

R=Judge's decision positions

To calculate the mean constituency opinion, I examine two aspects of public opinion, economic and criminal issues. I use the 2004 National Annenberg Election study to measure where voter opinion is on the two case states.

The survey questions for economic issues generally paralleled the types of cases that were examined to compile the judicial index. These questions were, "Do you favor or oppose

increasing the \$5.15 minimum wage employers now must pay their workers”; “Making it easier for unions to organize-do you favor or oppose this?”; and “The government placing limits on how much a person could collect if the jury finds that a doctor has committed medical malpractice-do you favor or oppose this?”. Generally speaking, the majority of the cases that are ruled on by state Supreme Court justices involve disputes amongst businesses and the individual, unions and corporations, and medical malpractice suits. Using these questions will create a strong measure of public opinion that parallels the cases examined in this article.

The survey question for criminal issues is, “Generally speaking, when it comes to social issues, such as education, healthcare, abortion, guns, and crime, would you describe your political views as very conservative, conservative, moderate, liberal, or very liberal?” This gives an ideological value as to where the voter in each respective state stands on issues related to crime. Though there are clear limitations to the use of this question, it is the only viable question asked dealing with criminal issues.

Given that these questions do not allow for a responsive calculation of the median voter opinion, I use the mean constituency opinion as a measure of the constituency’s opinion. By utilizing this approach, I get the full opinion of where the state stands as a general populace and by party.

Using these values, I recode the responses based on a 1-5 scale in which a score of “1” corresponds to the most liberal answer in the survey question while a score of 5 corresponds to the most conservative answer in the survey question. For the economic questions, I took the average of the responses of each question and averaged those values together. This creates a mean constituency opinion value for economic issues.

Similarly, I recode the responses based on the social ideology question and use it as a mean constituency opinion value for criminal issues. These two composite values provide a point at which the justice who seeks reelection would want to stay close to.

To calculate the ideological scores, I recoded the responses to the aforementioned variables based on the respondents' self reported partisanship. This is summarized in Table 1.

[Insert Table 1 about here]

On economics, both states are more liberal on minimum wage, though more conservative on medical malpractice suits. This however averages out to a fairly moderate mean constituency opinion score. Pennsylvania displays a more conservative electorate on economics, though only by a small margin. As expected, both states display a highly ideological electorate when factored out by party. While there is some variation, both states are fairly ideological by party.

On criminal opinion, again both states display fairly moderate scores with Pennsylvania scoring just barely higher than Michigan. Both scores however, are higher than the economic scores suggesting that people may be more conservative on criminal issues. As was previously seen, both states display a highly ideological electorate when examined by party.

To calculate the judicial scores, I examine 185 decisions in the Michigan Supreme Court from 2003 to 2008 and 189 decisions in the Pennsylvania Supreme Court from 2004 to 2008. I calculate a judicial score by scoring the decisions dichotomously; a zero for a liberal decision and a one for a conservative decision. I then average the results for a composite score.

In regards to economic cases, I look at cases that involve labor unions, commercial disputes, employee actions in relation to their employers, and zoning regulations. Each justice received a score of "0" if they issued a liberal opinion or a "1" if they issued a conservative opinion. Conservative opinions are defined as any opinion that is anti-union, pro-business, anti-

individual, anti-liability, anti-injured person, and anti-bankrupt. Liberal opinions are the opposite.

Criminal opinions were also given a dichotomous score in which a liberal decision was given a score of “0” while a conservative decision scored a “1”. Here, liberal and conservative decisions were based simply on the rights of the accused versus the state. A conservative decision is defined as any opinion that is against the rights of the accused and for the prosecution.

Given that these are dichotomous scores, the average score for each justice would range from 0 to 1 while the mean constituency opinion score ranges from 1 to 5. To alleviate this problem, I divide the mean constituency opinion score by 5 to put it on a scale from 0 to 1, making it comparable to the justice score.

Upon first glance, it seems that there is a high correlation between party and judicial nominate scores. This is summarized in Table 2.

[Insert Table 2 about here]

This lends to hypothesis four in that the evidence indicates that State Supreme Court Justices rule in partisan ways. It is still unclear however, whether this increases or decreases based on elections.

Variables

I look at four dependent variables: the distance from the mean constituency opinion on economic cases and the distance from the mean constituency opinion on criminal cases to examine whether judges respond to the general constituency’s preferences; and the distance from

the mean party opinion on economic cases and the distance from the mean party opinion on criminal cases to examine whether judges respond to their party's preferences. These variables are all calculated using the equation mentioned earlier.

I also use three independent variables that generally measure how a justice is affected by the fact that they have to deal with elections. I use a dichotomous variable: competitive elections, in which each justice is assigned a "1" if they experienced a competitive election or a "0" for safe elections. Here, I define "competitive elections" as winning the race by ten points or under. As I mentioned earlier, judges that experience competitive elections should be more likely to adhere to either the general constituency's preferences or their party's preferences considering that justices who have faced competitive elections are generally more vulnerable than justices who won their seats by large margins.

I also look at whether a justice was appointed or not in which a justice receives a score of "0" if they were not appointed and a score of "1" if they were. This variable is used because, generally, justices who are appointed will most likely work at the favor of the governor who appointed them and will thus provide skewed results otherwise.

Another measure is electoral experience. This is measured dichotomously with a "0" if they have experience and a "1" if they do not. Again, justices that have electoral experience should show awareness to public opinion and the policy preferences of their constituents. Those justices who do not have electoral experience will not be aware of the need to be responsive to constituents and will rule accordingly. All of the variables are summarized in Table 3.

[Insert Table 3 about here]

The use of these variables will reveal whether judicial elections impact how justices make their rulings. Specifically it will reveal whether justices who fear retribution by voters will adhere strictly to the will of the people or whether they will operate as an independent judiciary.^{ix}

Results

With the understanding that the “N” in this study is fairly small, I run three bivariate regression models with each dependent variable to distinguish the significant relationships. I then run a full model with the significant variables with each of the independent variables. The first set of results examining economic issues are summarized in table 4.

[Insert Table 4 about here]

This first model examines the effects of competitive elections, whether the justice was appointed, and whether the justice has electoral experience on the justice’s judicial nominate score’s distance from the mean constituency opinion. Here, the only significant variable that has effect is whether the justice was appointed or not. In line with hypothesis two, this model suggests that those justices that are appointed are more likely to rule in a manner that is further away from the mean constituency opinion.

Another model is required to examine the effects of the independent variables on the distance of the each justice’s judicial nominate score from the mean party opinion. These results are summarized in Table 5.

[Insert Table 5 about here]

In this model, when the distance from the party's mean opinion is used as the dependent variable, I find that only the competitive election variable is significant. Justices who have experienced competitive elections are more likely to make decisions that are closer to their party's mean opinion on economic issues. This is in line with hypothesis four. Here, in contrast to the general constituency model for economic issues, appointment has no significant effect on the justice's nominate score's distance.

Given that the correlation between party and criminal judicial nominate scores was lower, a model examining purely criminal cases is required. This model is summarized in Table 6.

[Insert Table 6 about here]

Unlike the constituency model for economic issues, here the competitive elections variable is significant. This suggests that justices are less likely to deviate from the mean opinion if they face a competitive election. This is in line with hypothesis one. It is interesting to note that here, competitive elections are significant while in the constituency model for economic issues it was not. I will discuss possible reasons for this in the next portion of this paper.

The fourth model, examining the effects of the independent variables on the distance of each justice's nominate scores from the mean party opinion is summarized in Table 7.

[Insert Table 7 about here]

This model has results that contrast all the other models in that none of the independent variables are seen having a significant effect on the distance from the mean party opinion. The adjusted R^2 for all of the other models were relatively high, and for this, it is extremely low. What accounts for this? It is likely that all justices, regardless of party affiliation would like to portray themselves as "tough on crime"; or at the very least, would like to protect themselves from an attack about their crime record. As a result, it is safe to assume that Democrats who experience

competitive elections are likelier to move towards the general constituency opinion rather than their party's opinion as the party's opinion will be considerably more liberal than the general constituency opinion.

Implications and Conclusions

Do Supreme Court justices act more like representatives than independent justices? Based on these results, the answer is a resounding yes. To summarize, justices generally do take into account their constituency preferences if they are fearful of reelection. However, whose preferences they move towards is based on the type of case they are ruling on. On economic cases, judges who have faced a competitive election move towards their party's mean opinion. This is probably because of issues dealing with ballot roll off in that the justices want to appeal to their core constituency. On criminal cases however, judges who have faced competitive elections move towards the general constituency mean opinion. As mentioned, this is likely due to the Democrats in the model who move to the more conservative general constituency mean opinion in order to protect themselves from a "soft on crime" label.

Based on this, it can be said that state Supreme Court justices take constituency preferences into account when ruling on a case, especially after facing a competitive election. However, this does not provide a definitive answer as to the merits of judicial elections. State Supreme Court literature dictates that judges are influenced in a number of ways when making decisions, this study simply confirms that electoral concerns are influential to judicial decision making (Hall 1987). While it can be argued that this is an example of institutional problems that

affect judicial impartiality, it can equally be argued that having justices acknowledge constituency preferences strengthens democracy. However, it is possible that this behavior may have an eventual long-term effect on the State Supreme Court's legitimacy. James Gibson (2009) finds that in his West Virginia poll on citizens' attitudes towards the state judiciary, 74.1 percent find "strictly following the law" as a very important characteristic for a Supreme Court Justice to have. In contrast, 45.1 percent believe it is very important for a Supreme Court Justice to "represent the majority" and only 18.9 percent believe it is very important for a justice to "base decisions on party affiliations." While Gibson's cases and the cases examined in this study are different, it can be inferred that generally, people want an independent judiciary that bases their decisions on the state constitution, not the opinions of the citizens.

However, Gibson (2009) shows that the courts are not in threat of losing their legitimacy amongst the electorate, at least within the state of West Virginia, though for different reasons. It is unclear whether this trend will continue. Given that both cases in this study are just beginning to have competitive judicial elections, it is conceivable that the legitimacy of the courts in these states, and for that matter, other states that are in a similar position, may eventually be challenged. However, to gain meaningful conclusions on this matter, one would have to replicate Gibson's 2009 study in terms of these states. Nevertheless, the mere threat of the state Supreme Court system losing its legitimacy due to elections is a reason to reexamine the usage of this method of judicial selection. Ultimately it is clear that judicial elections do affect how justices make decisions on the courts, especially on salient issues like crime in which the state Supreme Court is expected to be the end of the line for criminals.

Tables

Table 1: Mean Constituency Opinions-Crime and Economy

Michigan Voter data

Category	Mean voter Opinion	N
Crime Ideology (All)	3.17	363
Crime Ideology (Republican)	3.58	108
Crime Ideology (Democrat)	2.75	120
Minimum wage (All)	1.71	140
Minimum wage (Republican)	2.21	38
Minimum wage (Democrat)	1.27	64
Union (All)	1.36	250
Union (Republican)	1.7	66
Union (Democrat)	1.14	70
Malpractice (All)	3.46	232
Malpractice (Republican)	4.07	70
Malpractice (Democrat)	2.96	92

Pennsylvania Voter Data

Crime Ideology (All)	3.28	587
Crime Ideology (Republican)	3.75	215
Crime Ideology (Democrat)	2.97	207
Minimum Wage (All)	1.67	261
Minimum Wage (Republican)	2.37	75
Minimum Wage (Democrat)	1.2	112
Union (All)	1.37	351
Union (Republican)	1.58	118
Union (Democrat)	1.23	142
Malpractice (All)	3.7	411
Malpractice (Republican)	4.26	134
Malpractice (Democrat)	3.21	168

Source: 2004 National Annenberg Elections Study

Table 2: Judicial Nominate Scores by Economic and Criminal Cases					
Justice	Party	Economic Case Average Score	N=	Criminal Case Average Score	N=
Marilyn Kelly	D	0.02	98	0.2	91
Stephen Markman	R	0.84	96	0.9	93
Maura Corrigan	R	0.89	97	0.94	92
Robert Young	R	0.82	99	0.89	90
Michael Cavanagh	D	0.1	99	0.3	90
Elizabeth Weaver	R	0.56	98	0.81	91
Clifford Taylor	R	0.88	99	0.85	90
Ronald Castille	R	0.43	51	0.86	125
Thomas Saylor	R	0.43	42	0.8	123
Michael Eakin	R	0.51	53	0.88	122
Max Baer	D	0.33	52	0.71	124
Ralph Cappy	D	0.44	45	0.71	97
Sandra Newman	R	0.3	21	0.83	64
Debra Todd	D	0.29	19	0.79	26
Seamus McCafferey	D	0.33	19	0.96	26
Cynthia Baldwin	R	0.48	30	0.45	48
Russell Nigro	R	0.44	30	0.59	46
		<i>Correlation Economic Judicial Score=</i>		0.66	
		<i>Correlation Criminal Judicial Score=</i>		0.42	

Table 3: Description of the Variables

Variable	Description
<i>Dependent Variables</i>	
Distance from the mean constituency opinion- Economic Issues	Judicial "Nominate Score" on Economic Issues -Mean Constituency Opinion on Economic Issues
Distance from the mean constituency opinion- Criminal Issues	Judicial "Nominate Score" on Criminal Issues -Mean Constituency Opinion on Criminal Issues
Distance from the mean party opinion- Economic Issues	Judicial "Nominate Score" on Economic Issues -Mean Party Opinion on Economic Issues
Distance from mean party opinion-Criminal Issues	Judicial "Nominate Score" on Criminal Issues -Mean Party Opinion on Criminal Issues
<i>Independent Variables</i>	
Competitive Election	"0" if the Justice has not experienced a competitive election; "1" if the Justice has experienced a competitive election
Appointment	"0" if the Justice was not appointed to the Supreme Court; "1" if the justice was appointed to the Supreme Court
Electoral Experience	"0" If the justice has no electoral experience; "1" if the Justice has electoral experience

Table 4: Bivariate Models and Full OLS Regression Model- General Economic Opinion

Variables	Model (A)	Model (B)	Model (C)	Full Model
<i>Distance from General Economic Average</i>				
Competitive Election	-0.11 (.08)			
Appointed		.27***(.06)		.27***(.06)
Electoral Experience			-.17 (.08)	
Constant	.26*** (.05)	.15*** (.03)	.34*** (.07)	.15*** (.03)
N=	17	17	17	17
R-Squared	0.13	0.55	0.2	0.55
Adjusted R-Squared				0.52
Prob>F				0.000

*P<.05 **P<.01 ***P<.001

Table 5: Bivariate Models and Full Model OLS Regression- Party Economic Opinion

Variables	Model (A)	Model (B)	Model (C)	Full Model
<i>Distance from Party Economic Average</i>				
Competitive Election	-.15**(.04)			-.15**(.04)
Appointed		.06 (.06)		
Electoral Experience			-.027 (.07)	
Constant	.25*** (.03)	.17*** (.03)	.21** (.06)	.25*** (.03)
N=	17	17	17	17
R-Squared	0.43	0.06	0.01	0.43
Adjusted R-Squared				0.4
Prob>F				0.004

*P<.05 **P<.01 ***P<.001

Table 6: Bivariate Models and Full Model OLS Regression- General Criminal Opinion

Variables	Model (A)	Model (B)	Model (C)	Full Model
<i>Distance from General Criminal Average</i>				
Competitive Election	-0.12** (.03)			-0.12** (.03)
Appointed		.07 (.06)		
Electoral Experience			-0.001 (.06)	
Constant	.26*** (.03)	.19*** (.03)	.21*** (.05)	.26*** (.03)
N=	17	17	17	17
R-Squared	0.36	0.08	0.00	0.36
Adjusted R-Squared				0.32
Prob>F				0.01

*P<.05 **P<.01 ***P<.001

Table 7: Bivariate Models and Full Model OLS Regression- Party Criminal Opinion

Variables	Model (A)	Model (B)	Model (C)	Full Model
<i>Distance from Party Average</i>				
Competitive Election	-.09 (.05)			-
Appointed		.01 (.06)		-
Electoral Experience			.006 (.06)	-
Constant	.20*** (.03)	.17*** (.03)	.16** (.05)	-
N=	17	17	17	-
R-Squared	0.18	0.00	0.00	-
Adjusted R-Squared				-
Prob>F				-

*P<.05 **P<.01 ***P<.001

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Endnotes

ⁱ Committee to re-elect Cliff Taylor- www.clifftaylor.com

ⁱⁱ “Sleeping Judge” article by Michigan Democratic Party

ⁱⁱⁱ R. Douglas Arnold. *The Logic of Congressional Action*. (New Haven: Yale University Press, 1990), 5.

^{iv} Here, competitive elections are defined as winning an election by +/- 10 percentage points.

^v This is discussed in more detail in the following section in which survey data from the National Annenberg Elections Study of 2004 is used to measure these claims. Based on this data, on a scale of 1-5, where 1 is liberal and 5 is conservative both states find themselves around 3 where Michigan is slightly more liberal than Pennsylvania.

^{vi} Information on the Michigan State Supreme Court provided by the State Court Administrative Office of Michigan.

^{vii} I used the Google news archives to search for any articles with the keywords “Michigan”, “State”, and “Supreme Court.” Of the 46 articles that were found, none of them covered the election of judges.

^{viii} Information about the Pennsylvania Supreme Court was taken from Chapter 33 of the Pennsylvania Code of Judicial Conduct. This information can be acquired by accessing the website: <http://www.pacode.com/secure/data/207/chapter33/chap33toc.html>.

^{ix} It is important to note that in the initial run of data, I controlled for ideology using party as an indicator of judicial ideology. In every model, ideology had a statistically insignificant effect on all of the dependent variables. As a result, I have omitted the variable from the analysis.