

**Does Money Buy Voters? Campaign Spending and  
Citizen Participation in State Supreme Court Elections**

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## Abstract

In this paper, we investigate one highly significant aspect of the role of money in judicial elections: whether campaign spending increases citizen participation in the recruitment and retention of judges. Specifically, by using a two-stage modeling strategy that allows us to separate the mobilizing effects of challengers from the effects of money, we assess systematically whether relatively expensive campaigns improve the chances that citizens will vote in the 260 supreme court elections held from 1990 through 2004 in eighteen states using partisan or nonpartisan elections to staff the high court bench. We find that increased spending significantly improves citizen participation in these races. Whether measured as the overall spending in each election or in per capita terms, greater spending facilitates voting. We conclude, contrary to conventional wisdom about the deleterious effects of money in judicial elections, that campaign spending should serve as a means to *enhance* perceptions of courts by involving greater proportions of voters in the electoral process – perhaps the most powerful legitimacy conferring institution in democracy. Rather than alienating voters, expensive campaigns should strengthen the critical linkage between citizens and the bench by giving voters greater ownership in the outcomes of these races.

One of the most pressing issues on the American political agenda is the influence of private dollars in public institutions. Whether viewed from the perspective of the powerful impact of special interest organizations in the political process or the skyrocketing cost of election campaigns, the issue of money and its potentially corrosive effects on democracy is at the forefront of contemporary political discourse.

Particularly interesting among these considerations is the impact of money on the politics of the judiciary, not only with respect to recruitment and retention processes but also on the operations of courts themselves. In fact, considerable momentum is beginning to build among those scholars, practitioners, and organizations concerned with judicial reform to challenge the wisdom of judicial elections in light of the current trends toward increased competition and escalating campaign costs. Almost universally, the charge is that raising and spending money in heated campaigns will have deleterious effects on courts (e.g., Cann 2006; Geyh 2003).

Consider, for example, recent claims by the National Center for State Courts (NCSC), one of the nation's most important advocacy groups for the judiciary. According to the NCSC (2002, 7), “[j]udicial election campaigns pose a substantial threat to judicial independence ... and undermine public trust in the judicial system.” Sharing these perceptions is the American Bar Association (ABA), which cites the rise of heated campaigns and fundraising activities as evidence of the “excessive politicization of state courts” (2003, 89). As the ABA reports (2003, 125),

“[m]oney is the elephant in the room on judicial selection. It raises serious questions, such as how much money is required for judicial election, from whom does it come, what is the public perception, and so on.”

Precisely because of these concerns, the NCSC now recommends that partisan elections be replaced with nonpartisan elections, in an effort to reduce competition and “the need for large campaign contributions” (2002, 14). Taking a more extreme position, the ABA advocates that the election of judges be abandoned altogether in favor of commission-based appointive systems.

Scholars are beginning to echo these cries. Recent work describes the seeming impropriety of judges accepting campaign contributions from law firms regularly appearing in court, as well as possible influences of these contributions on the actual decisions of judges (e.g., Cann 2006; Champagne 1988; Walterburg and Lopeman 2000; Ware 1999). Of course, this work largely is in its infancy but does suggest that competitive and expensive elections might impair public confidence and potentially bias judicial outcomes.

In this paper, we enter this complex and rapidly evolving debate by investigating a different yet highly significant aspect of the role of money in judicial elections: whether campaign spending might have a positive effect on the democratic process by increasing citizen participation in the recruitment and retention of judges. Specifically, by using a research design and modeling strategy that allows us to separate the mobilizing effects of challengers from the effects of money, we can assess systematically whether relatively expensive campaigns improve the chances that citizens will vote. Our particular focus will be on the 260 state supreme court elections held from 1990 through 2004 in eighteen states using partisan or nonpartisan elections to staff the high court bench.<sup>1</sup>

Generally, we argue that campaign spending might be seen as a means to *enhance* perceptions of courts by involving greater proportions of voters in the electoral process –

perhaps the most powerful legitimacy conferring institution in democracy. In other words, expensive campaigns for state supreme courts should strengthen the critical linkage between citizens and the bench by giving voters greater ownership in the outcomes of these races and, as such, might provide a powerful antidote to some of the more negative consequences.

### **Measuring Mass Participation in State Supreme Court Elections**

While our primary question is whether campaign spending can serve to enhance citizen participation in state supreme court elections, we focus more broadly on the general conditions promoting voting in these contests. Unfortunately, we immediately are at a disadvantage, both theoretically and analytically. For although the study of voter participation in American elections is one of most thoroughly investigated topics in political science, studies of elections to the state court bench still are relatively rare.

However, some judicial politics scholars are beginning to fill this gap. In particular, our analysis draws on three lines of work on the politics of state supreme court elections: Hall's (1999, 2001a, 2001b, 2006, 2007) analyses of ballot roll-off and electoral competition, Bonneau's (2004, 2005a, 2005b) work on campaign spending, and Bonneau and Hall's collaborative work (2003; Hall and Bonneau 2006) on the emergence and effects of challengers. Using the cumulative knowledge in these previous studies, all of which are grounded in the theoretical and methodological insights gained from studies of elections to non-judicial offices, we will generate a two-stage model of voter participation in supreme court elections by estimating: 1) the conditions under which

challengers enter these races, and 2) the correlates of voter participation in elections once contested, including the total amount of campaign spending for each seat.

Our basic research strategy is to capitalize on the significant analytical advantages of comparative state analysis, which in this case will include both temporal and cross-sectional variation, to examine the wide array of institutional and other contextual forces influencing the propensity to vote, as well as election-specific factors like campaign spending. In measuring citizen participation, we follow the example in judicial politics scholarship (e.g., Dubois 1980; Hall, 1999, 2006) and in studies of other less visible political offices (e.g., Bullock and Dunn 1996; Schaffner, Streb, and Wright 2001; Wattenberg, McAllister, and Salvanto 2000) by examining ballot roll-off rather than voter turnout. In doing so, we avoid the wide array of complicated issues about the best means for measuring voter turnout and of specifying models that adequately take into account the full range of factors driving voters to the polls for the top races. Thus, our basic research question more precisely can be formulated as asking why many citizens who actually go to the polls for the most visible races simply choose not to participate in elections to the state high court bench.

Specifically, we measure ballot roll-off as the percentage of voters casting votes for the major office on the ballot who do *not* vote in each supreme court race. Also consistent with previous work, this study defines the major office as “the presidential, gubernatorial, or U.S. senatorial contest which attracted the most voters in each election” (Dubois 1980, 66). Thus, higher values of ballot roll-off indicate lower levels of participation in supreme court races. With respect to the actual races, and as mentioned

above, we examine 260 partisan and nonpartisan state supreme court elections from 1990 through 2004 in eighteen states.

Generally speaking, it is remarkable that significant proportions of the electorate who actually do make it to the polls fail to complete their ballots. In fact, of the voters who go to the polls to choose among candidates for such highly visible offices as President, Senator, and Governor, substantial proportions fail to vote for other offices, even those offices with statewide responsibilities and constituencies like supreme court.

Consider, for example, the figures reported by Hall (1999) in her work on ballot roll-off in partisan, nonpartisan, and retention state supreme court elections from 1980 through 1994. According to Hall, ballot roll-off across these elections averaged 26.6%. However, there is incredible variation across elections and among the states. In individual elections, roll-off ranged from 2.4% to 65.1%, and roll-off ranged across the states from an overall average of 6.3% to 50.0%. Similarly, in the data to be analyzed in this study, ballot roll-off averaged 19.5% across all elections but ranged from -3.5% to 67.0% across individual elections and from 10.2% (New Mexico) to 51.8% (Georgia) across states. Thus, while it is clear that sizeable proportions of the electorate do not vote in supreme court elections even after having already gone to the polls, the extraordinary variation across elections and states suggests that much is at play in stimulating voters and that campaign spending has at least the possibility of being a significant mobilizing agent in these elections.

## **On the Nature of Contemporary Supreme Court Elections**

Over the decade of the 1990s, state supreme court races have become more contested (Bonneau and Hall 2003), competitive (Hall 2001a, 2007), and expensive (Bonneau 2004, 2005b). While there have been no systematic explanations to date for these trends, we might surmise that this seeming sea-change in judicial elections is related to several developments in the overall political context, summarized well in *Justice in Jeopardy* (ABA 2003). Among other things, supreme court dockets have experienced a proliferation of controversial cases with broad policy implications, perhaps in part because of the rising caseloads in the lower courts and the power of discretionary review now held by most state high courts. Second, the national government has demonstrated a pronounced tendency to devolve power to the states. This devolution has enhanced the power of the states' highest courts in an overall sense but also has produced a "new judicial federalism" in which the protection of individual rights is based on state constitutions rather than the United States Constitution. Third, many states have seen the demise of one-party dominance and instead now experience lively two-party competition. Finally, single-issue interest groups have emerged as major players in electoral politics in the United States, including elections to the state high court bench. Along these lines, groups may find it easier and more effective to attempt to win some public policy battles by controlling who sits on the bench rather than lobbying the legislature or working to elect its majority.

Regardless of the exact causes, however, these well-documented changes in the competitiveness and cost of judicial elections have significant consequences. Among other things, campaign spending increases the size of incumbents' electoral margins and



reduces the likelihood of defeat (Bonneau 2005a). Moreover, in open seat races, the effects of campaign spending are even more pronounced (Bonneau 2006). As the literature suggests (e.g., Coleman and Manna 2000), campaign spending is an effective way for candidates to publicize themselves and their views on relevant issues. In turn, this information mobilizes voters and influences their choices.

This is highly relevant for understanding ballot roll-off because one of the most fundamental reasons voters choose not to participate in elections is the lack of information about the candidates (e.g., ABA 2003; Dubois 1980; Hojnacki and Baum 1992; Rottman and Schotland 2001). Whatever one's views of the propriety of judges (and candidates) campaigning and spending money in order to obtain (and retain) their seats, we cannot deny that competitive, vigorous campaigns reduce information costs to voters and provide them with facts about the candidates, both of which increase the likelihood of voting. Thus, campaign spending is a key component to understanding the nature of participation in elections, including those to the state high court bench.

It is most instructive to consider the exact nature of campaign spending in state supreme court elections by examining expenditures in recent elections. Table 1 displays these data by election cycle, using two different measures for each race: 1) total spending in dollars and 2) dollars spent per capita (calculated as total spending in dollars divided by the voting age population of the state). As Table 1 documents, the average amount spent in each election from 1990 through 2004 was \$725,975 overall, or \$714.33 per capita. These figures reflect a starting point in 1990 of \$372,461 and \$133.95, respectively, and an end point in 2004 of \$1,042,628 and \$3,348. Thus, we clearly can see the increasingly expensive nature of these races.

However, two *caveats* are in order. First, we think that the extraordinary per capita costs in 2004 are an anomaly in that several races were incredibly and unusually competitive and expensive. Second, the increases in spending have not been monotonic. Obviously much is at play here that needs further explanation. Nonetheless, we expect that these variations will have a considerable impact on the willingness of citizens to participate in state supreme court elections.

(Table 1 Goes About Here)

For a different look at money in supreme court elections, Table 2 displays campaign expenditures by state. Again, we see significant variation across the states in the cost of judicial elections, whether measured as total spending or on a per capita basis. Least costly in total dollars are elections in Minnesota, where the average campaign costs only about \$108,185. Compare this to Alabama, Louisiana, and Michigan, where the average campaign approaches or exceeds \$1.5 million. We see different rankings on a per capita basis. While Minnesota remains the least expensive state with respect to campaign expenditures, Illinois now emerges as the most expensive, followed by Louisiana and West Virginia. But again, the figures in Illinois and West Virginia are inflated by the grossly disproportionate spending that took place in the 2004 race between Gordon Maag and Lloyd Karmeier in Illinois, and between Warren McGraw and Brent Benjamin in West Virginia, both of which were among the most expensive supreme court races in American history. We do not know if this will continue.

(Table 2 Goes About Here)

## **Modeling Ballot Roll-Off in State Supreme Courts**

Our primary goal is to assess the effects of campaign expenditures on the willingness of voters to participate in these elections. In doing so, we employ the Heckman two-stage modeling strategy to take into account the conditions under which elections draw challengers and the conditions under which voters participate in these elections once contested.

We have both theoretical and practical reasons for using the Heckman procedure. Theoretically, we must distinguish between the conditions that promote competition and those that cause voters to participate in general elections, including campaign expenditures. Essentially, because contested elections constitute a censored sample, failure to control for these effects would present a serious threat to valid inference. Stated succinctly, voters have little reason to participate in uncontested elections. Irrespective of whether the voter participates in these races or not, the candidate listed on the ballot will win. Similarly, we seek to disentangle the effects of the presence or absence of challengers from the effects of the actual amounts spent by candidates in their campaigns.

Practically speaking, either the states do not consistently report spending data for uncontested elections or the amounts are so small that they would seriously distort any empirical analysis by giving disproportionate weight to the uncontested cases. Thus, we treat the uncontested races as missing on the dependent variable and then estimate a two-stage Heckman model controlling for the likelihood that the race is contested. While the dependent variable is not missing in the traditional sense, because of the stark differences between contested and uncontested elections, and because many uncontested races are

missing information on our key independent variable, analyzing the data this way is appropriate and will produce unbiased estimates and more robust conclusions.

### **Stage One: Challengers in State Supreme Court Elections**

The dependent variable in the first-stage of our model of ballot roll-off in state supreme courts is whether there are at least two candidates in the general election (*Contested*). In specifying the independent variables, we merely replicate Bonneau and Hall (2003; Hall and Bonneau 2006), except that we add one theoretically important variable (described below) to capture the effects of a landmark Supreme Court decision that occurred after the initial Bonneau and Hall study. In general, we expect challengers to run when incumbents are electorally vulnerable, supreme court seats are attractive, the political and institutional context promotes competition, and a sizable candidate pool exists.

*Electoral Vulnerability:* Both the legislative and judicial selection literatures have found that one of the key determinants of contestation is the vulnerability of the incumbent (Hall and Bonneau 2006). Candidates who win by narrow margins are more likely to be challenged in their next elections. Thus, we predict that candidates winning with less than 60% of the vote (*Competitive Seat*) will be more likely draw challengers than their more electorally popular counterparts. The 60% cutoff is the standard measure used by “most leading students of marginality in congressional elections” (Weber, Tucker, and Brace 1991, 31) as well as state legislative elections (e.g., Jewell 1982).

Another important indicator of vulnerability has to do with the incumbency advantage, with incumbents being less likely to be challenged than their novice counterparts. Generally, candidates already occupying their positions enjoy an extraordinary advantage over nonincumbent candidates. In state supreme court elections, these novices are present either because they are candidates for open seats or because they are incumbents who obtained their seats by being appointed to fill vacancies. Other things being equal, because of the powerful force of incumbency and the electoral support obtained from running successful election campaigns, we expect that justices who have previously won election (*Elected Incumbent*) will be less likely to be challenged than justices appointed but not yet elected, or candidates for open seats.

*Attractiveness of Seat:* The attractiveness of the seat also should affect the likelihood of contestation. Studies of both the United States House of Representatives (Clarke, Feigert, Sheldon, and Stewart 1999; Groseclose and Krehbiel 1994; Hall and van Houweling 1995; Hibbing 1982) and the federal courts (Spriggs and Wahlbeck 1995; Squire 1988) have documented that financial incentives affect retirements. It is reasonable, then, to expect salary considerations to affect the likelihood of a contested race, with seats that are more desirable (higher paying) more likely to be contested. Thus, we hypothesize that higher salaries (*Salary*) increase the likelihood that supreme court elections will be contested.

Along the same lines, the length of the term of office (*Term*) should influence the willingness of challengers to enter supreme court contests (Bonneau and Hall 2003; Hall and Bonneau 2006). Longer terms of office provide more job security to officeholders

while reducing the incentives to be mindful of constituency preferences. Thus, we expect contested elections to be more prevalent in states with longer terms of office.

*Political and Institutional Context:* There is little doubt that the context of an election matters a great deal (e.g., Hall 2001a; Hall 2001b; Hall 2006). Of particular importance is a state's partisan climate. In general, states characterized by higher levels of partisan competition (e.g., Dubois 1980; Hall 2001a; Leyden and Borrelli 1995) have more competitive elections. Therefore, we include a measure of partisan competition, defined as whether the legislative and executive branches are controlled by the same political party at the time of each election (*Unified Government*).

One of the fundamental differences between state supreme court elections and elections for many other statewide offices is that not all court elections are partisan. That is, in some states, supreme court candidates' partisan affiliations are not listed on the ballot. Overall, studies have demonstrated that challengers are more common in partisan elections than in nonpartisan elections (e.g., Bonneau 2004; Dubois 1980; Hall 2001a). Thus, we include a variable that indicates whether or not the candidates' political party affiliations were listed on the ballot (*Partisan*), and expect that there will be a greater likelihood of contestation in partisan elections than in nonpartisan races.

Another key institutional difference is that some state supreme court races are held statewide while others occur in districts. We expect electoral competition to vary between district-based and statewide constituencies, and that this relationship will be conditioned by election system. Election studies have established that smaller constituencies are less competitive (e.g., Hibbing and Brandes 1983). Thus, we expect

challengers to run less frequently in districts than in statewide races. However, Hall (2001a) has demonstrated that this effect is reversed in states using nonpartisan ballots. Therefore, we include an interaction term (*Partisan x District*) to distinguish the effects of district-based elections in partisan election states from district-based elections in nonpartisan states (*District*).

In a departure from Bonneau and Hall (2003; Hall and Bonneau 2006), we include one additional variable that takes into account the changing nature of constitutional law governing judicial elections. As we have mentioned, while many judicial elections in the past appeared to be low-key events (e.g., Champagne and Thielemann 1991; Dubois 1979, 1984; Schotland 1985), recent increases in both contestation and campaign spending have raised the profile of judicial elections (Hall 2001a; Bonneau 2004). One factor alleged to be contributing to this trend is the United States Supreme Court's decision in *Republican Party of Minnesota v. White*, announced in June 2002. In this landmark case, the Court effectively eliminated the "announce" restrictions preventing candidates from expressing their views on political issues likely to come before their courts. This change purportedly leaves incumbent judges open to the same sorts of policy-based and politically motivated attacks as their legislative and executive counterparts and thus radically may have altered the nature of these contests.

If *White* has heightened the politics and competitiveness of judicial elections, as some have suggested (e.g., Geyh 2003), then one effect we should notice is that more races should be contested after *White* than before (*Post-White*). Thus, we include a variable to test for this effect in our model.

*Candidate Pool:* Finally, for challengers to emerge, there must be a pool of candidates from which to draw. For judges, this pool consists of licensed attorneys. More attorneys should translate into larger numbers of challengers. Thus, we include the number of attorneys in each state at the time of each election (*Lawyers*).

For convenience, Table 3 describes all of the variables in the selection model, as well as their measurement.

(Table 3 Goes About Here)

### **Stage Two: Ballot Roll-Off in State Supreme Court Elections**

As mentioned above, we measure ballot roll-off (*Roll-Off*) as the percentage of voters who did *not* vote in the state supreme court race but who *did* vote for the highest office on the ballot. In specifying this model, we rely on the literature on judicial elections and court reform, as well as previous work focused particularly on voter participation in judicial elections, to identify the factors that should encourage or inhibit citizen participation.

*Campaign Spending:* One of the primary determinants of ballot roll-off should be campaign spending. Simply put, the more money candidates spend, the more information they can provide to the voters; and the more information the voters have, the more likely they are to participate. Thus, we expect that higher amounts of total campaign spending by all candidates in the race (*Total Spending*) will lead to lower amounts of ballot roll-off. Given the critical importance of this variable to our analysis, however, we also estimate the models using an alternative measure of spending that adjusts expenditures by



the voting age population of the state (*Per Capita Spending*). Thus, we can have greater confidence that our results are robust with regard to measurement.

*State and Electoral Context:* It also is important to distinguish between open seat elections and incumbent-challenger contests. Open seat races have been found to be more expensive (Bonneau 2005b) and more competitive (Bonneau 2004). Given this, we also expect open seat races (*Open Seat*) to have less roll-off, on average, than incumbent-challenger contests.

Presidential elections are another important general contextual factor affecting the propensity to vote. Studies have established that turnout (e.g., Dubois 1980; Hill and Leighley 1993; Patterson and Caldeira 1983) and ballot roll-off (e.g., Dubois 1980; Hall 1999, 2006; Nichols and Strizek 1995) are higher in presidential election years than in midterm elections. In essence, highly visible presidential elections motivate large proportions of the electorate to vote, but a significant number of these voters have no information about, or interest in, other races on the ballot, including judicial elections. Therefore, we expect significant differences in ballot roll-off between presidential election years (*Presidential Election*) and midterm election years.

The final state contextual factor that should influence roll-off is education level. Scholars have found a relationship between education and turnout (Jackson 1995; Kim, Petrocik, and Enokson 1975; Lovrich and Sheldon 1983; Patterson and Caldeira 1983) as well as roll-off (Milton 1983; Hall 1999, 2006). In general, educated people should have a greater capacity to receive and process the information provided by candidates and make informed choices in elections. Thus, we hypothesize that higher education levels (*Education Level*) will produce lower levels of ballot roll-off.

*Institutional Arrangements:* Concerning ballot type, that institutions affect the behavior of the American electorate has been demonstrated time and again, and voter participation is no exception. Other things being equal, voters participate in elections when they have readily accessible information. Of the sources of possible information about candidates, there is perhaps no more useful cue than the partisan affiliations of the candidates. Thus, voters should participate in higher numbers in states using partisan ballots (*Partisan*) to select their high court justices compared to nonpartisan ballots (Dubois 1979; Hall 1999).

Similarly, some elections take place statewide, while others occur in districts. We expect that there will be less roll-off in district elections (*District*) than in statewide elections (Beechen 1974; Hall and Aspin 1987). The smaller the constituency, the higher the likelihood that a voter has been contacted by a candidate or a candidate's campaign, and this should lead to more voters participating in the election (Gerber and Green 2000). However, Hall (1999, 2001a) documented an important difference between district elections in partisan states and those in nonpartisan states. Thus, we also include an interaction term (*Partisan x District*) to capture these effects.

*Temporal Variables:* To control for any temporal effects in the model, we include dummy variables based on when the election occurred: *Period 1* covers elections from 1990-1992 (which we omit to prevent perfect collinearity among the variables), *Period 2* is 1994-1996, *Period 3* is 1998-2000, and *Period 4* is 2002-2004.<sup>3</sup>

For convenience, Table 4 summarizes the variables used in our model of ballot roll-off as well as their measurement.

(Table 4 About Here)

*Estimation Technique:* As mentioned above, we use a Heckman two-stage procedure to estimate our model. Additionally, we use robust variance estimators clustered on state, which are robust to assumptions about within-group (i.e., state) correlation.

## Results

The results of estimating our two-stage model of ballot roll-off in state supreme court elections are shown in Tables 5 and 6. Table 5 contains the results using total spending in dollars as our measure of campaign expenditures, while Table 6 presents the results using our per capita spending measure. To begin, please note that in both tables the results for the Wald test of independent equations is significant, confirming that there are systematic differences between contested and uncontested elections and thus that a two-stage procedure is appropriate.

(Tables 5 and 6 About Here)

Looking more closely at Table 5, the results in stage one of our model almost precisely echo those of Hall and Bonneau (2006). Those candidates who won by narrow margins are more likely to be challenged in their next election. Also as hypothesized, elected incumbents are less likely to be challenged than other candidates, showing that the incumbency advantage does accrue to judicial incumbents.<sup>4</sup> The pool of available candidates (lawyers) also increases the likelihood of competition, although the effects of that variable are substantively small.

While neither larger salaries nor larger terms of office affect the likelihood of a challenge (consistent with Hall and Bonneau 2006), the institutional variables are highly

significant. Challengers are less likely in states with partisan homogeneity (*Unified Government*) and also in district-based partisan elections. On the other hand, partisan statewide elections and nonpartisan district elections are more likely to see electoral competition. Finally, the *White* variable is not statistically significant, indicating that races are not more likely to be contested after the *White* decision. Contrary to the rhetoric of some, it appears that this decision did not have the dramatic impact purported, at least from the perspective of the propensity of challengers to take on incumbents.<sup>5</sup>

Turning now to the second stage of our model examining ballot roll-off in contested elections, most of our results confirm our predictions about these races. Most importantly from the perspective of this paper, campaign spending exerts a statistically significant impact on the willingness of voters to participate in supreme court elections once these voters are already at the polls. As Table 5 illustrates, the higher the amount of total campaign spending, the lower the amount of ballot roll-off. In fact, a 1% increase in total spending by the candidates yields a 1.7% decrease in ballot roll-off. Thus, contrary to critics of judicial elections who claim that competitive and expensive campaigns may turn off voters, the empirical evidence suggests otherwise.

In terms of electoral factors, open seat races are not statistically important in motivating citizens to participate in contested supreme court elections. As Table 5 indicates, there are similar levels of roll-off in open seat races as in incumbent-challenger races when both of these types of elections include challengers. Thus, the effects of open seats are largely in their ability to attract challengers in the first place.

However, as expected and consistent with the dominant finding in the literature, ballot roll-off is somewhat higher in presidential election years than otherwise, by almost

5%. Presidential elections encourage more “casual” voters to participate, and these people are not likely to vote for more “insignificant” races, such as state supreme court.

Also important is the average education of the electorate. Generally, better educated electorates participate more (although this coefficient falls just outside conventional levels of significance). This further strengthens our findings regarding campaign spending: when voters feel informed, they participate.

Looking at institutional factors, there is less roll-off in partisan statewide races and nonpartisan district races relative to our baseline category of nonpartisan statewide races. However, partisan district races have *higher* amounts of roll-off. Clearly, institutions can either encourage or discourage participation in these elections, an important finding for those seeking to improve voting in judicial elections. This can be done simply by modifying the rules under which the elections take place.

While none of the temporal variables is significant, particularly noteworthy is the result for *Period 4*. Recall that this period represents the post-*White* period. All things being equal, it does not appear that the *White* case has had much of an effect on either contestation or voter participation in state supreme court elections. While it is much too early to draw any definitive conclusions, early evidence suggests that *White* may not have had the impact expected or widely believed to have occurred.

Table 6 presents the results of estimating our two-stage model of ballot roll-off using per capita spending instead of total spending. As Table 6 illustrates, the differences produced by changing the spending measure are negligible with respect to any substantive conclusions we would reach from the analysis. Whether measured as the total level of spending or with respect to dollars spent per voter, campaign spending increases

voter participation significantly, other things considered. In fact, the remarkable stability of our results across different measures of spending speaks strongly to the robustness of our analysis and the strength of our inferences.

### **Conclusions**

This study documents that increased spending in elections to state supreme courts has the effect of substantially enhancing citizen participation in these races. Whether measured as the overall spending in each election or in per capita terms, the fact remains that more expensive campaigns serve to encourage participation in elections for the state high court bench once those voters already have gone to the polls to cast ballots for other important elections. In short, money means voters in supreme court elections.

The implications of these findings for linkages between citizens and the bench, and for democratic pressures on state supreme courts, are significant. Of course, we cannot speak directly to the issue of whether citizen participation enhances positive short-term and long-term perceptions of courts, or whether the positive effects of aggressive spending in judicial campaigns can outweigh all negative consequences of contested elections and heated campaigns. Nonetheless, it seems reasonable at least to postulate that by involving greater proportions of voters in the electoral process – perhaps the most powerful legitimacy conferring institution in democracy – expensive campaigns provide voters with a greater sense of ownership in the outcomes of these races, thereby enhancing judicial legitimacy rather than negating it. In fact, conventional wisdom about the deleterious effects of money in judicial elections may be overdrawn.

From a different perspective, this study clearly confirms that decisions of challengers to enter supreme court elections, and decisions of voters to participate in these races once they already are mobilized for other contests, are quite predictable and are determined precisely by those factors governing elections for non-judicial offices. In fact, our results have considerable import for understanding elections that are not the top draws on the ballot. Among other things, we have additional evidence from this analysis that nonpartisan elections discourage voting and that expensive campaigning promotes voting. Indeed, systematic comparative analysis of state supreme court elections may serve as an excellent device for assessing the importance of institutional and other contextual forces on less visible elections in the United States.

Obviously much remains to be learned about the politics of supreme court elections, including the determination of the broad range of impacts that such forces as enhanced competition and the flow of money in campaigns might have on the willingness of citizens to engage in these races and on the long-term and short-term perceptions of court legitimacy held by the mass public. However, the results of this paper reveal that systematic explanation is possible and worthwhile. At a minimum, conventional wisdom should be challenged and explored.

## Endnotes

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<sup>1</sup> Twenty-three states use partisan or nonpartisan elections to select judges. However, Tennessee holds elections in August (and switched to retention elections after 1990), Idaho and Wisconsin in April, and Pennsylvania (with a few exceptions) in odd-numbered years. Thus, because there are no presidential, senatorial, or gubernatorial elections from which to gauge supreme court participation, no cases are included from Idaho, Pennsylvania, Tennessee, or Wisconsin. Moreover, Michigan, Pennsylvania, and West Virginia hold multi-member elections for some seats, depending on vacancies and term rotations. Any elections reported for these states are single-member only. Finally, North Dakota has no reporting requirements on campaign spending and thus is excluded.

<sup>3</sup> Note that Period 4 covers the same time period as Post-*White* in the first stage of our selection model. Thus, we will be able to ascertain the influence of the *White* case on ballot roll-off as well as contestation. We hypothesize that these “new style” (Hojnacki and Baum 1992) campaigns should be better able to capture voters’ attention, thus providing them information and increasing their willingness to vote in judicial elections.

<sup>4</sup> The incumbency advantage also accrues to appointed incumbents but not nearly to the same degree as elected incumbents (Bonneau 2005a).

<sup>5</sup> It may be too soon to see such an effect in only two election cycles since *White*. However, this result, along with other studies (Bonneau 2004; Bonneau and Hall 2003; Hall 2001a) that document a rise in contestation in these races in the mid-1990’s (well before *White*), leads us to be fairly confident that *White* has not had a significant effect on contestation in supreme court elections.



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**Table 1**  
**Average Spending In State Supreme Court Elections, 1990 – 2004,**  
**By Year**

<b>Year</b>	<b>Total Spending</b>	<b>Total Spending Per Capita</b>
1990	\$ 372,461	\$ 133.95
1992	\$ 519,138	\$ 199.83
1994	\$ 868,026	\$ 174.75
1996	\$ 493,128	\$ 291.84
1998	\$ 830,880	\$ 249.65
2000	\$ 807,765	\$ 363.31
2002	\$ 901,343	\$ 345.66
2004	\$1,042,628	\$3,347.68
<b>Average</b>	<b>\$ 725,975</b>	<b>\$ 714.33</b>

**Table 2**

**Average Spending in State Supreme Court Elections, 1990 – 2004,  
by State (number of elections in parentheses)**

<b>State</b>	<b>Total Spending</b>	<b>Total Spending Per Capita</b>
Alabama	\$1,450,673 (21)	\$ 446.96
Arkansas	\$ 218,397 (8)	\$ 116.50
Georgia	\$ 205,925 (5)	\$ 40.18
Illinois	\$1,371,590 (11)	\$8,789.31
Kentucky	\$ 326,084 (7)	\$ 741.59
Louisiana	\$1,484,329 (2)	\$2,049.31
Michigan	\$1,506,847 (6)	\$ 206.51
Minnesota	\$ 108,185 (10)	\$ 31.42
Mississippi	\$ 620,274 (15)	\$ 902.28
Montana	\$ 359,974 (6)	\$ 565.05
Nevada	\$ 593,816 (11)	\$ 475.32
New Mexico	\$ 273,398 (2)	\$ 212.15
North Carolina	\$ 387,307 (14)	\$ 67.86
Ohio	\$1,193,205 (20)	\$ 143.45
Oregon	\$ 445,270 (2)	\$ 178.03
Texas	\$ 645,778 (53)	\$ 48.69
Washington	\$ 215,214 (16)	\$ 51.91
West Virginia	\$1,284,413 (2)	\$ 920.73

**Table 3**

**Variable Descriptions for A Model of Challengers in State Supreme Court Elections**

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Variable	Variable Description
<i>Dependent Variable</i>	
Contested	= 1 if a challenger entered the supreme court race 0 otherwise
<i>Electoral Vulnerability</i>	
Competitive Seat	= 1 if the incumbent supreme court justice won previously by a margin less than 60% 0 otherwise
Elected Incumbent	= 1 if the election involves an incumbent who has previously won election 0 otherwise
<i>Attractiveness of Seat</i>	
Salary	= supreme court base salary / state per capita disposable income, in dollars
Term	= length of the term of office for state supreme court, in years
<i>Political and Institutional Context</i>	
Unified Government	= 1 if the legislative and executive branches of state government are controlled by the same political party 0 otherwise
Partisan	= 1 if the election is a partisan election 0 otherwise
District	= 1 if the seat represents a district rather than the state 0 otherwise
Post-White	= 1 if the election occurred after the <i>White</i> decision in 2002 0 otherwise
<i>Candidate Pool</i>	
Lawyers	= number of lawyers in each state at the time of each election

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**Table 4**  
**Variable Descriptions for A Model of Ballot Roll-off in  
State Supreme Court Elections**

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Variable	Variable Description
<hr/>	
<i>Dependent Variable</i>	
Ballot Roll-off	= percentage of ballot roll-off in the election
<i>Campaign Spending</i>	
Total Spending	= natural log of the total amount of campaign spending in the election by all candidates
Per Capita Spending	= natural log of the total amount of campaign spending in the election by all candidates divided by voting age population (1000s)
<i>State and Electoral Context</i>	
Open Seat	= 1 if the election is for an open seat 0 otherwise
Presidential Election	= 1 if the election occurs in a presidential election year 0 otherwise
Education Level	= percentage of the state population 25 years of age or older with a high school diploma
<i>Institutional Arrangements</i>	
Partisan	= 1 if the election is a partisan election 0 otherwise
District	= 1 if the election occurs in a district 0 otherwise
<i>Temporal Variables</i>	
Period 2	= 1 if the election was held from 1994-1996 0 otherwise
Period 3	= 1 if the election was held from 1998-2000 0 otherwise
Period 4	= 1 if the election was held from 2002-2004 0 otherwise

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**Table 5**

**Ballot Roll-off in State Supreme Court Elections, 1990-2004**

*Stage 1: Challengers in State Supreme Court Elections, 1990-2004*

	Coefficient	Robust Std. Error	Z	P> z
Competitive Seat	0.595	0.176	3.38	0.001
Elected Incumbent	-0.742	0.153	-4.85	0.000
Salary	0.109	0.226	0.48	0.628
Term	0.008	0.105	0.08	0.628
Unified Government	-0.534	0.167	-3.19	0.001
Partisan District	0.763	0.352	2.17	0.030
Partisan x District	-2.535	0.539	-4.71	0.000
Post-White Lawyers	0.132	0.216	0.61	0.543
Constant	-0.378	1.467	-0.26	0.796

Dependent variable: contested

*Stage 2: Ballot Roll-off in State Supreme Court Elections, 1990-2004*

	Coefficient	Robust Std. Error	Z	P> z
Total Spending	-1.723	0.449	-3.84	0.000
Open Seat	-0.179	0.968	-0.19	0.853
Presidential Election	4.939	0.762	6.48	0.000
Education Level	-0.583	0.299	-1.95	0.051
Partisan District	-15.810	2.583	-6.12	0.000
Partisan x District	-9.694	4.520	-2.14	0.032
Period 2	14.338	4.358	3.29	0.001
Period 3	2.359	1.571	1.50	0.133
Period 4	3.696	2.096	1.76	0.078
Constant	1.266	2.071	0.61	0.541
	74.769	23.482	3.18	0.001

Dependent variable: percentage of ballot roll-off

Mean of dependent variable = 14.16

Number of observations = 260; Censored = 69, Uncensored = 191

Log likelihood = -761.928

Test of independent equations:  $\chi^2(1) = 11.56$ ; Prob >  $\chi^2 = 0.001$

**Table 6**

**Ballot Roll-off in State Supreme Court Elections, 1990-2004**

*Stage 1: Challengers in State Supreme Court Elections, 1990-2004*

	Coefficient	Robust Std. Error	Z	P> z
Competitive Seat	0.567	0.152	3.73	0.000
Elected Incumbent	-0.724	0.143	-5.06	0.000
Salary	0.138	0.218	0.63	0.528
Term	0.003	0.099	0.03	0.976
Unified Government	-0.528	0.162	-3.26	0.001
Partisan	0.698	0.344	2.03	0.042
District	1.111	0.495	2.24	0.025
Partisan x District	-2.590	0.539	-4.80	0.000
Post-White	0.116	0.213	0.54	0.587
Lawyers	0.000	0.000	3.61	0.000
Constant	-0.553	1.415	-0.39	0.696

Dependent variable: contested

*Stage 2: Ballot Roll-off in State Supreme Court Elections, 1990-2004*

	Coefficient	Robust Std. Error	Z	P> z
Per Capita Spending	-1.746	0.548	-3.19	0.001
Open Seat	-0.676	0.994	-0.68	0.496
Presidential Election	4.727	0.776	6.09	0.000
Education Level	-0.588	0.303	-1.94	0.052
Partisan	-15.138	2.638	-5.74	0.000
District	-13.161	4.114	-3.20	0.001
Partisan x District	15.353	3.911	3.93	0.000
Period 2	2.586	1.586	1.63	0.103
Period 3	3.735	2.076	1.80	0.072
Period 4	1.227	2.211	0.56	0.579
Constant	90.434	22.526	4.01	0.000

Dependent variable: percentage of ballot roll-off

Mean of dependent variable = 14.16

Number of observations = 260; Censored = 69, Uncensored = 191

Log likelihood = -765.163

Test of independent equations:  $\chi^2(1) = 27.70$ ; Prob >  $\chi^2 = 0.000$