2010

Campaigning in Judicial Elections: The Effects of Candidate Status

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CAMPAIGNING IN JUDICIAL ELECTIONS:

THE EFFECTS OF CANDIDATE STATUS

A Thesis

Submitted

in Partial Fulfillment

of the Requirements for the Designation

University Honors

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May 2010

This Study by: Katelyn Bries

Entitled: Campaigning in Judicial Elections: The Effects of Candidate Status

has been approved as meeting the thesis requirement for the Designation

University Honors.

5/3/10
Date — C. Scott Peters, Honors Thesis Advisor, Political Science

5/12/10
Date — Jessica Moore, Director, University Honors Program

Introduction

American elections have always received a great deal of attention from many scholars; however, state judicial elections have been relatively overlooked until recently. It is only in the last decade or so that any sizable body of literature on the topic has begun to develop despite a few notable exceptions (see, for example, Dubois 1980). Overwhelmingly, scholars in this field have found that judicial elections have become increasingly similar to contests for political offices. They are more expensive and contested. Campaigning, media attention, and policy issues are playing more significant roles. While research that has been done this far has increased our understanding of incumbent-challenger elections, open-seat contests have not received the same amount of attention. Nonetheless, we know that the way in which a judge receives his or her position affects behavior on the bench; this fact has led to an intense debate on the value of judicial elections and variation in selection procedures.

In spite of the longevity of judicial elections, debates continue over how judges should receive their positions on state courts. Reformers believe that electing judges decreases their independence and impartiality because it subjects them to the whims of political forces and public opinion. They argue that judges are less likely to be unbiased and impartial in deciding cases when the electorate will have the opportunity to hold them accountable for their decisions. Justice O'Connor went so far as to say, "If the State has a problem with judicial impartiality, it is largely one the State brought upon itself by continuing the practice of popularly electing judges" (*Republican Party of MN v. White* 2002, 793). Additionally, many believe that the process of campaigning is fundamentally opposed to the purpose of the judicial branch, which is (at least theoretically) the nonpolitical branch of government. Those in opposition to elections feel that

judges, who ought to render decisions based upon written laws, should be influenced by neither political forces nor public opinion.

On the other hand, there are those who believe that judges should be accountable to the electorate for their decisions, just like other state officials. This belief is common among voters, who are generally unwilling to give up their part in the selection process (Abbe and Herrnson 2003). Furthermore, judges have substantial policy making powers, and supporters of judicial elections argue that it is contrary to the principles of democracy to place so much power into the hands of unelected officials. Without elections, judges are free to make policy without the chance of being penalized by the electorate (Hanssen 2004). Recently, two of the leading researchers in the field released a book that vigorously defended the practice of popularly electing judges in which they argued that "judicial elections are democracy-enhancing institutions that operate efficaciously and serve to create a valuable nexus between citizens and the bench" (Bonneau and Hall 2009, 2). Ultimately, supporters believe that judicial elections are the best way to ensure accountability and prevent judges from writing their personal opinions into law.

This debate has led to a great deal of variety between the selection processes for judgeships in different states. In some states, judges are appointed and then run in uncontested retention elections; others elect judges in either partisan or nonpartisan elections and then have retention elections; and still others must run in either partisan or nonpartisan elections every term. Today, eight states select their judges in partisan elections and thirteen with nonpartisan elections—in which a judge's political party is not indicated on the ballot (Baum 2008). Judicial elections have been (and will likely continue to be) an enduring part of state politics, but in recent years they have changed a great deal. It has long been recognized that campaigning, media attention, and policy issues are playing increased roles in judicial elections (Hojnacki and Baum

1992). They are becoming increasingly expensive and competitive as they begin to resemble elections for political offices (Abe and Herrnson 2003). These new style judicial contests are marked by the increased discussion of issues and likelihood of mentioning an opponent in addition to a reduced emphasis on traditional themes such as qualifications and personal qualities. It has been demonstrated that the way in which a judge is selected influences their behavior on the bench; as a result, understanding judicial elections is crucial to understanding judicial decision-making (Brace and Hall 1997).

Additionally, a 2002 U.S. Supreme Court decision has called into question one method states have traditionally used to try to protect judicial impartiality in the context of these elections. In *Republican Party of Minnesota v. White*, the Supreme Court struck down Minnesota's announce clause, which prohibited candidates from discussing their views on controversial political issues, as a violation of candidates' free speech rights, further enabling the expansion and politicization of campaigning in judicial elections (*Republican Party of Minnesota v. White* 2002). This case has led to the demise of similar statutes, and some lower courts are even invalidating prohibitions beyond the announce clause as unconstitutional (Peters 2007).

While campaigns for judicial elections in general have received more attention, relatively little research has been done regarding the differences in campaigning for open-seat and incumbent-challenger elections. Because they are the most common type of judicial election, incumbent-challenger races have been the focus of most research conducted thus far. Yet, open-seat competitions are important as well. With the incumbent advantage absent in these elections, factors that would otherwise play only a minor role in determining who will be elected have the potential to be much more exaggerated than they do in incumbent-challenger races; consequently, it will be easier to examine the more subtle forces that are shaping judicial

elections (Bond, Fleisher and Talbert 1997; Bonneau 2006). To date, researchers who have examined open-seat elections have focused on how features such as contestation, competition, candidate quality, the role of institutions, and the amount of money that candidates raise and spend affect these elections in comparison to incumbent-challenger elections. It is still unknown whether candidates in incumbent-challenger races have campaign strategies that are significantly different from candidates in open-seat elections, and the purpose of this paper is to fill the research gap regarding the differences between campaigning for open-seat and incumbent-challenger state supreme court elections. I expect that the strategies and tones of campaigns for open-seat elections will be quite distinct from those for incumbent-challenger races, particularly regarding candidates' likelihood of discussing their views on issues in addition to the prevalence of traditional (versus new-style) themes in websites and TV advertisements. This paper seeks to discover whether candidate type influences campaign style, and it is anticipated that this is the case.

Literature Review: The Changing Nature of Judicial Elections

Judicial elections play a prominent role in the American government system. Because judicial independence and accountability vary depending on the selection method, which has been demonstrated to influence judges' behavior, we know that inquiry into this area is important. Among other things, research thus far has demonstrated that when deciding to run and developing campaign plans, judicial candidates make strategic decisions. Individual characteristics (such as the ability to raise money and campaigning techniques) and institutional arrangements (such as the type of election and size of the constituency) will then influence the competitiveness and ultimately the outcomes of these elections. Modern means of

communication, particularly websites and TV advertising, are also becoming more prominent features of judicial elections; furthermore, the discussion of once taboo political issues is on the rise. Today, candidates are spending more money and engaging in campaigns that increasingly resemble political branch contests.

Competitiveness of Open Seats

A variety of factors determine who will be elected. As discussed, open-seat races are distinct from incumbent-challenger races because of the absence of one of the most determinant factors: incumbent advantage. Generally speaking, the outcomes of judicial races are influenced by individual factors (such as the candidates' ability to raise money and campaign) as well as the institutional context of the race (for example, whether it is a partisan or nonpartisan election). Although there are still fundamental differences between judicial elections and those for political offices, they are becoming increasingly comparable.

Regarding open-seat elections specifically, research has demonstrated that, in legislative elections, candidates for open House seats lack the fundraising advantages of incumbents and employ fundraising strategies similar to those of challengers; however, they are generally more successful than challengers as they tend to receive more attention from groups such as political parties and PACs. It was also demonstrated that these candidates spent the most time fundraising (Herrnson 2008). Considering that judicial elections are becoming increasingly expensive and contested, and, in terms of campaign spending, winners outspend losers—regardless of the election type—it is not unreasonable to assume that similar trends would be present in judicial elections (Bonneau 2004).

In judicial elections (as in others), the amount of money that a candidate spends is one of the primary deciding factors of whether or not they will be elected. Judicial reformists have watched the soaring costs of judicial campaigns with alarm, and today these races have the potential to be very expensive. In 2006, a total of 137 judicial candidates (in both contestable and retention elections) spent a total of $34,430,437; for that election cycle, the median amount raised by candidates for state high court positions (if they raised any money at all) was $243,910, which is up from a median amount of $202,991 in the 2000 election cycle (Sample, Jones, and Weiss 2007). Such trends have resulted in increasingly expensive and political elections.

It is known that losing candidates in open-seat judicial elections could have increased their percentage of the vote simply by spending more money. In fact, losing candidates reduce the winner's vote share by .01 percent for every 1 percent by which they increase their spending (Bonneau 2006). The same, however, does not hold true for the winning candidate. This suggests that at some point the winning candidate has already spent the amount of money necessary for maximum name recognition and public support, and their vote share will no longer increase along with their budget. Considering that open-seat races tend to attract quality challengers, it is surprising that the level of candidate experience does not seem to significantly influence the outcome of the election—a significant difference from incumbent-challenger races. However, most candidates either had prior experience or they faced opponents who also lacked such experience (Bonneau 2006). Therefore, it would be prudent not to underestimate the potential effect that a candidate's experience could have on the outcome of an election.

Institutions also influence the outcomes of open-seat elections. Partisan elections (in which a candidate's political party affiliation is listed on the ballot) are generally less competitive than nonpartisan elections for open-seats; however, the difference is slight (Bonneau

2004). The effects of a partisan versus a nonpartisan contest on judicial elections draw attention to one of the most striking differences between open-seat and incumbent-challenger races, as incumbent-challenger contests were less competitive in states with nonpartisan elections (Hall 2001, Bonneau 2004). Also, elections that are held by district tend to be more competitive than those that are statewide, perhaps because candidates are able to more efficiently use the resources that they have available to them (Bonneau 2006). Ultimately, open-seat contests, like incumbent-challenger races, are decided primarily on the basis of individual and institutional factors; however, the extent to which the factors within these categories influence the race varies by election type. Understanding what influences the outcomes of an election contributes to an understanding of candidates' behavior during the course of a campaign as they seek to gain any possible advantage over their opponents.

Incumbent Advantage and the Strategic Opportunities of Open Seats

Various studies have demonstrated that candidates are strategic in their decisions to run for state court positions. As in other elections, incumbents have a significant advantage over challengers. Because incumbent advantage is such an important factor in legislative incumbent-challenger races, open-seat elections are fundamentally different. For example, open-seat House elections were more competitive (that is, the winner had a smaller margin of the vote) than incumbent-challenger contests. Also, for open-seat elections, the partisanship of the district and the skills and resources of the candidates were more influential on the elections' outcomes (Herrnson 2008). The same effect was not present in incumbent-challenger races where incumbent advantage was present. Similar trends have been found in judicial incumbent-challenger elections.

Research on judicial elections has found a significant advantage for incumbents. While this too is changing, one factor that used to separate judicial elections from political office elections was the amount of information available to voters (Peters 2008). To the extent that information is lacking, incumbents have the advantage of increased name recognition. Still today, incumbents outspend challengers—although the gap between incumbent and challenger spending varies by state (Hall and Bonneau 2006). Not all incumbents will have the same advantages, however, as electoral experience also matters. As a result, incumbents with previous successful elections have an added advantage and tend to perform just over 3 percentage points better than those incumbents who are challenged without electoral experience—for example, incumbents who were appointed to their positions (Hall and Bonneau 2006). Even incumbents running against quality challengers (defined as those with prior experience) won an average of 52.2 percent of the vote, and those facing challengers without experience won with a significantly more substantial average of 59.7 percent (Hall and Bonneau 2006). All of these factors contribute to incumbents' significant advantage over challengers.

Potential challengers are aware of the obstacles that they will face when trying to unseat an incumbent. They too act strategically and are more likely to arise when an incumbent is perceived as being vulnerable (see, e.g., Bonneau and Hall 2009). For example, in states with high crime rates, incumbents generally receive a lower percentage of the vote (Hall 2001). As is demonstrated by the aforementioned numbers, while challenger quality alone is not sufficient to overcome incumbent advantage, voters also act strategically and seem to respond to challengers with previous experience at the polls (Hall and Bonneau 2006). However, even though challenger and incumbent traits matter, the most strategic opportunity for a candidate to earn a state supreme court position is in an election without an incumbent.

Consequently, open-seat elections are very attractive to newcomers because they represent a potential candidate's best chance to earn a desired seat (Bond, Fleisher, and Talbert 1997; Boneau2006). Because state supreme court justices serve terms of six to twelve years and rarely give up their positions, open-seats races are a relatively rare opportunity for potential candidates (Bonneau 2006). As a result, these races are more likely to be contested than those in which an incumbent is present and potential candidates will sometimes wait for an open-seat election so that they do not have to face incumbent advantage. Between 1990 and 2000, 86 percent of the partisan open-seat races and 91.6 percent of the nonpartisan open-seat races were contested (Bonneau 2006); however, only 57.8 percent on the nonpartisan races in which an incumbent was running and 81.2 percent of the partisan races involved a challenger (Hall and Bonneau 2006). Open-seat races also tend to attract more quality challengers because of the increased opportunity for success (Bonneau and Hall 2003). Only 47.6 percent of candidates challenging incumbents had prior experience, versus 61.85 percent of candidates in open-seat elections (Bonneau 2006). The absence of incumbent advantage in open-seat races increases their appeal to newcomers, particularly those with prior experience, and makes them quite different from incumbent-challenger races.

Campaigning in Open-Seat Elections

Campaigning in judicial elections is a reflection of strategic candidate choices and is constantly becoming more important to judicial candidates. However, it should be noted that in spite of the fact that judicial campaigns and elections are becoming increasingly similar to those of the political branches of government, many potential judges are taking care to ensure that they remain neutral on controversial topics. *Republican Party of Minnesota v. White* (2002) was not

an abrupt turning point regarding public speaking on political issues. Many states still require or recommend various canons of ethics which attempt to preserve the impartiality of the justice system. For example, during the 2004 elections in Florida, judicial candidates could not declare their party affiliations, they were discouraged from espousing their views on political issues, and candidates attending partisan events were restricted from discussing topics outside of their candidacy, legal issues, or the judicial system (Salokar 2005). For the most part, it was noted that judicial campaigning in the Florida 2004 elections was much the same as before the *White* decision was handed down. Nonetheless, the *White* decision is still quite recent, and it is not yet possible to see what far reaching effects it will have. If candidates believe that they will gain a strategic advantage by politicizing their campaigns, then there is little doubt that they will do so; already, there is evidence which indicates that this transformation has begun.

Political speech is perhaps the most defining aspect of the new-style judicial campaigns that have reformists worried. Inclusion of political issues (such as policy preferences, ideology, etc.) in judicial campaigns is a significant change from the themes that have traditionally dominated the judiciary (such as biography, experience, and qualifications). With the *White* decision, the potential for candidates to discuss issues is growing. In its aftermath, there has been a slight but noticeable increase in candidates speaking about issues during a campaign (Sample, Jones, and Weiss 2007). Additionally, Peters (2008) demonstrated that the winners of judicial elections were more likely to utilize commercials, public forums, or debates, which suggests that candidates who are willing to speak publicly during a campaign will have an electoral advantage. However, candidates who made their views on controversial political issues the most important features of their campaign lost more often than they won (Sample, Jones, and Weiss 2007).

These trends suggest that political speech will continue to increase in importance with future election cycles.

Campaigns include much more than just political speech. As with other election aspects, more is known regarding campaigning by candidate type for political elections than judicial elections. Incumbent advantage (or the lack thereof) plays an important role even in candidates' campaigning strategies. In legislative elections, it has been demonstrated that incumbents generally have more professionalized campaigns that can rely upon strategies that were successful in the past and tend to receive increased media attention (Herrnson 2008). For open-seat candidates, campaigning was more important than it was for either incumbents or challengers because there was no voter-loyalty to an incumbent (Herrnson 2008). Furthermore, open-seat candidates spent a greater percentage of their campaigning time on political activities in comparison to incumbents and challengers (Arbour 2006).

Additionally, it is known that in legislative elections, the focus of a campaign varies by candidate type. Because they are significantly more well-known, incumbents can ignore their opponents more easily in their campaigns, and they focus their campaigns on this advantage by highlighting their successes in office (Herrnson 2008). Peters (2008) confirmed a similar trend for judicial candidates in state high court elections when he found that incumbents were more likely to emphasize their image, experience, and opponents' lack of experience. Challengers, on the other hand, utilized issues to try to unseat incumbents (Peters 2008). It is likely that issue stances are more important to challengers because their incumbent opponents' beliefs would be generally more well-known.

Recently, the body of research on judicial campaigns has grown. We know that they are still rather unprofessional when compared to those for political offices and that candidates for

state high courts in 2006 tended to depend primarily upon themselves or volunteers for campaigning instead of on paid staffs (Peters 2008). As in other elections, judicial candidates utilize a variety of techniques to communicate with potential voters. For example, in 2006, 86.7 percent of the state supreme court candidates used websites, 60 percent used radio ads, and about half ran ads on broadcast and cable television in addition to utilizing the more traditional and low cost forms of campaigning—such as yard signs, newspaper ads, etc. (Peters 2008).

Additionally, interest groups are playing an increased role in judicial elections. In 2006, 71 percent of judicial candidates reported that interest groups tried to influence them and their campaigns (Peters 2008). One technique that interest groups try to use is questionnaires, which seek to determine candidates' viewpoints on specific issues and the results of which are often published. Responses to such questionnaires could lead to significant support or opposition for a judicial candidate (Sample, Jones, and Weiss 2007). Candidates in open-seat contests and challengers tend to view these as more beneficial than do incumbents, probably because, as newcomers, their beliefs are less well known than those of incumbents (Peters 2008). The potential for interest group support thus further increases the electoral appeal of discussing issues.

In recent years, the roles of websites and television ads have become an increasingly prominent feature of judicial election campaigns. Candidates are relying more and more on the web as an efficient and cost-effective means of carrying out a variety of tasks. In 2006, most websites sponsored by state supreme court candidate were utilized to enable communication between campaigns and voters, collect contributions, recruit volunteers, provide access to campaign literature or commercials, and advertise endorsements (Peters 2007). Discussion of issues by candidates was rare on these websites; however, because a website is only one aspect

of a campaign, this should not be taken as a sign that issue discussion was unusual in the 2006 elections as a whole.

Television Advertising

TV advertisements are also increasing in frequency and importance in judicial elections across the board. Here too, more is known about elections for political office. In a comprehensive study of television ads for presidential campaigns, it was established that they helped candidates to reach a large number of people while exercising complete control over the delivered message, unlike with media coverage (Kaid and Johnston 2001). TV ads provide candidates with the opportunity to clarify their stances on issues and generate enthusiasm among voters. When discussing issues, candidates can focus on specific policy preferences and proposals or general issue concerns. With image, candidates could choose to bolster their personal qualities, background, qualifications, etc.—campaign elements that are associated with traditional judicial campaigns (Kaid and Johnston 2001). The ads in the presidential campaign study focused on issues over image—66 percent of the ads were dominated by issue discussion (Kaid and Johnston 2001). A similar trend was found in a study of the 1998 midterm election television ads, in which only 30 percent were primarily image based (Vavreck 2001). While these ads tended to emphasize issues, most of them—87 percent—at least mentioned both image and issues (Vavreck 2001).

For the presidential commercials, most contained both general issue discussion and discussion of the candidates' personal abilities; many also included vague policy preferences, appeals to specific groups of voters, partisanship appeals, and/or specific policy preferences (Kaid and Johnston 2001). With regard to image, candidates tried to portray themselves as

aggressive, competent, successful, and active (Kaid and Johnston 2001). In terms of the overall tone of the midterm ads, 64 percent were promotional, 20 percent contrasted the candidate with their opponent, and only 16 percent were direct attack ads (Vavreck 2001). Ultimately, political candidates were very strategic with their use of TV advertising. They appealed to ideology and partisanship only insofar as they believe it would benefit them and often tried to avoid being associated with whichever party was least popular in their district (Vavreck 2001). This trend was particularly prominent in open primaries and may compare well to open-seat judicial elections.

The significance of TV advertising in judicial elections is increasing. Judicial candidates can rely on ads in ways similar to political candidates regarding the promotion of both policy positions and image. Today, candidates "almost invariably rely on the airwaves to boost—or bash—contenders for judicial office" (Sample, Jones, and Weiss 2007, 1). In 2006, 91 percent of states with contested supreme court elections featured television advertising; this number is up from less than 25 percent in 2000 (Sample, Jones, and Weiss 2007). The use of negative advertising in commercials is also on the rise and such ads are increasingly sponsored by the candidates themselves as opposed to interest groups. In 2000, nearly 62 percent of all negative ads were paid for by interest groups (Goldberg, Holman, and Sanchez 2001); whereas in 2006, candidates sponsored 60 percent of the negative ads (Sample, Jones, and Weiss 2007). Television advertising is undoubtedly important. In 2004, 29 of the 34 races in which TV ads were present were won by the candidates with the most on-air support (Sample, Jones, and Weiss 2007). In 2006, at least two-thirds of winning candidates ran television ads versus one-fourth of losing candidates (Peters 2008). While it appears that commercials had less of an effect on the 2006 election cycle than they did in 2004, they were still valuable to candidates and any decline may

be due to the overall increase in the use of television ads as opposed to the decreased importance of this campaign strategy. These general developments regarding campaigns and electoral success are evident in both open-seat and incumbent-challenger races.

Expectations

In light of the research done thus far on both judicial and legislative elections, it is possible to make predictions regarding the campaigning strategies of the three different types of candidates. In legislative elections, it has been demonstrated that open-seat candidates have more electoral success when they run on strong issue-based campaigns, which tend to inspire voter turnout and attract undecided voters (Herrnson 2008). In judicial incumbent-challenger elections, it is known that incumbents and challengers will have very different focuses in their campaign messages. Challengers try to beat incumbents by emphasizing issues. Incumbents, on the other hand, will focus on their image and experience on the bench (Peters 2008). Because open-seat judicial candidates generally have similar levels of experience and none have incumbent advantage, it is anticipated that their messages throughout the campaign will be more akin to those of challengers than incumbents. Specifically, it is expected that open-seat candidates' campaigns will be more issue-based than the campaigns of incumbents or challengers and that they will emphasize new-style judicial campaign elements over traditional campaigning methods.

The extent to and ways in which websites and commercials are used also offer good points of comparison. While websites are low-cost endeavors, commercials tend to be very expensive. It is true that judicial elections do not generally cost as much as legislative elections, but most judicial candidates today find television advertisements worth the expense. In

legislative elections, candidates feel that the electoral benefits of commercials make them worth their production cost (Herrnson 2008). Additionally, it is important to note that non-incumbent legislative candidates were the most likely to create websites for their campaigns (Herrnson et. al. 2007) and to value TV ads as either essential or very important to their campaigns (Herrnson 2008). This same trend is expected to be present in judicial elections and reflected in candidates' likelihoods of sponsoring commercials or websites.

As a result of this and the expected content of campaign messages for open-seat elections, it is anticipated that not only will open-seat judicial candidates be more likely to sponsor both websites and commercials, but they will be more likely to use them to espouse their views on political issues. Incumbents, on the other hand, are expected to utilize their incumbent advantage by running campaigns that are more traditional in nature. Additionally, I expect that they will be less likely to value political speech, relying less on newer forms of advertising such as websites and television advertisements. Ultimately, I expect the recent trends of new-style judicial campaigns that alarm judicial reformists to be exaggerated in open-seat elections due to the presence of multiple unknown candidates in very close competitions.

Data and Methods

In order to examine campaigning by candidate type, I will analyze data on judicial candidates' websites and TV advertisements collected for previous studies. The data on television ads was collected and coded by the Justice at Stake Campaign, a nonpartisan organization that monitors judicial elections. Justice at Stake began collecting TV ads in 2000, but because that portion of the dataset is incomplete, I only utilized ads from the 2002, 2004, and 2006 elections. The full 2002-2006 data set includes 389 ads that were aired a total of 98,817

times. Of these, 291 (or 74.81 percent of) ads were sponsored by candidates; these were the ads that I utilized for analysis. The coding on the ads indicates the issues that they raised, including both traditional judicial issues (for example, experience, biography, etc.) and more political issues. The coding also reflects that ads can raise multiple issues. Beginning in 2002, Justice at Stake also began coding the overall tone of the commercial. Ads were placed into one of three categories: promotion, contrast, or attack (Peters 2009). The unit of analysis for the Justice at Stake Campaign was the ad; however, C. Scott Peters adjusted the unit of analysis to the candidate for a previous study. Because my interest was campaigning by candidate type, this was the dataset that I analyzed. It contained valuable and comprehensive information that was pertinent to my research questions.

With the modified Justice at Stake dataset, I used SPSS (a social science statistics software program) to run independent sample t-tests to compare incumbents to challengers, incumbents to open-seat candidates, and challengers to open-seat candidates. Specifically, I compared the candidates' likelihood of running advertisements; the percentage of ads that were promotional, contrast, and attack; and the percentage of ads that contained traditional themes and those that were exclusively traditional to look for statistically significant differences by candidate type.

Data on whether or not candidates utilized websites, the ways in which they used the internet, and the extent to which they favored political speech was taken from a survey conducted by C. Scott Peters for the contested 2006 state supreme court elections. The survey was sent to the 73 candidates who appeared on the ballot (in states with both partisan and nonpartisan elections). A total of 31 responses were received from candidates representing 13 different states and 24 distinct races (Peters 2008). Among other things, survey responses

indicate candidate type, whether or not a candidate used the internet to sponsor their own website, and candidates' views on discussing political opinions.

Here too I utilized SPSS and independent sample t-tests to determine whether or not significant differences existed between the three types of candidates for these variables. The survey inquired about the ways in which candidates used the internet and websites. Candidates could indicate whether they used the internet to reach out to undecided voters, communicate with supporters, recruit or organize volunteers, and/or raise money.

Findings

I will first examine the television advertisements. While most differences were not statistically significant, several trends did emerge. Eighty-one candidates (35 incumbents, 17 challengers, and 30 open-seat candidates) ran ads. The most noteworthy difference between candidate campaigning by type was their likelihood of running advertisements. Open-seat candidates were by far the most likely to sponsor ads (more than twice as likely as challengers), and the differences between open-seat candidates and both incumbents and challengers were statistically significant regarding ad sponsorship. For open-seat candidates and incumbents, the Levene statistic for homogeneity of variance was not significant; the difference between the two means was significant at a level of $p < .05$ ($p = .037$) with a test statistic of $t = -2.106$ and 109.619 degrees of freedom. For open-seat candidates and challengers, the Levene statistic for homogeneity of variance was significant, but even after the t-statistic was adjusted for unequal variances, open-seat candidates were still significantly more likely to run ads at a significance level of $p = .003$ with 106.882 degrees of freedom and $t = -3.076$. While open-seat candidates were the most likely to sponsor ads, incumbents tended to run the most ads. Finally, challenger

candidates were not only the least likely to sponsor ads, but also tended to run the fewest ads. Table 1 includes general information regarding candidates' likelihoods of running ads and the number of ads that were run.

Table 1
Candidate TV Advertising in State Supreme Court Elections, 2002-2006

Candidate Type	Incumbent	Challenger	Open-Seat
N	95	64	55
% Ran Ads	36.8	26.6	54.5
Mean Ads Run	897.11	616.35	869.60
Max Ads Run	5,977	3,252	3,599
Minimum Ads Run	16	11	36

Open-seat candidates were more similar to incumbents than challengers regarding the percentage of sponsored ads that were both promotional and attack. Contrast ads were sponsored primarily by open-seat candidates, who were also (unexpectedly) the least likely to run attack advertisements—challengers were the most likely to sponsor attack ads. In fact, challengers were nearly significantly more likely than open-seat candidates to run attack ads; when accounting for unequal variances, $p = .105$. While this result was not anticipated, it seems probable that challengers would be more likely to attack because they have a clear opponent: the incumbent. Open-seat elections, on the other hand, have higher rates of contestation; therefore, I would suggest that it is more effective for candidates in such races to use contrast ads to distinguish themselves from their opponent(s). Table 2 contains more extensive information regarding the breakdown of ads by tone.

Table 2
Tone of Candidate Sponsored Ads in State Supreme Court Elections, 2002-2006

Candidate Type	Incumbent	Challenger	Open-Seat
% Promotional	89.89	81.28	85.68
% Contrast	4.86	7.46	11.52
% Attack	5.25	11.26	2.80

Regarding the inclusion of traditional ads, open-seat candidates again were more akin to incumbents than challengers by both measures (inclusion of any traditional ads and sponsorship of exclusively traditional ads). The differences here were more statistically significant than those for overall ad tone. At a 90% significance level, challengers were less likely to run ads that contained exclusively traditional themes than either open-seat candidates ($t = 1.972$, $df = 41.424$, and $p = .055$) or incumbents ($t = -1.689$, $df = 37.832$, and $p = .100$) when variances were not assumed to be equal. At a 95% confidence level, incumbents' and challengers' likelihoods of running ads containing traditional themes were also significantly different. With Levene's test for equality of variances not statistically significant, $t = -2.258$, $df = 50$, and $p = .028$. Open-seat candidates were the most likely to sponsor ads that were exclusively traditional in nature and nearly as likely as incumbents to run advertisements that contained at least some traditional themes. Finally, challengers were the least likely to sponsor traditional advertisements. Table 3 reports the full results on traditional advertising by candidate type.

Table 3
Traditional Themes in State Supreme Court Candidate Sponsored Ads, 2002-2006

Candidate Type	Incumbent	Challenger	Open-Seat
% Traditional	61.27	35.18	57.29
% Only Traditional	37.76	19.75	44.78

Regarding internet usage and the survey results, no statistically significant differences emerged. Of the 31 candidates who responded to the survey, 14 were incumbents, 10 were challengers, and 7 were running for open seats. The majority of candidates used websites for their campaigns and no significant difference existed by candidate type. Interestingly, for both incumbents and open-seat candidates, 86 percent of candidates sponsored websites—compared to 70 percent of challengers. Additionally, there were no significant differences regarding views on political speech. When asked whether or not candidates should be able to give their positions on political issues, 28.57 percent of incumbents, 45.45 percent of challengers, and 57.14 percent of open-seat candidates indicated "yes". Based solely upon these percentages, it appears that candidates follow the expected pattern with open-seat candidates being more likely to value political speech (which is associated with new-style judicial campaigns), but low sample sizes and high standard deviations prevented meaningful comparison. Table 4 summarizes these results.

Table 4
State Supreme Court Candidate Survey Responses, 2006

Candidate Type	Incumbent	Challenger	Open-Seat
N	14	10	7
Sponsored Website	.86	.70	.86
Favor Political Speech	.2857	.4545	.5714

Additionally, it was not possible to tell if different types of candidates used the internet in different ways. Table 2 summarizes the survey results regarding internet usage by candidate type, but no statistically significant differences were found. Open-seat candidates appear to be more likely than other types of candidates to use the internet to communicate with their supporters; however, with only 7 responses from open-seat candidates, it is not certain that this is

a general trend. Ultimately, it is still unknown if the different candidate types utilize the internet in different ways, but it does not seem to be the case.

Table 5
Judicial Candidate Internet Usage by Candidate Type, 2006

Candidate Type	Incumbent	Challenger	Open-Seat
Reach out to undecided voters	.07	.20	.14
Communicate with supporters	.43	.40	.71
Recruit or organize volunteers	.50	.30	.43
Raise Money	.43	.40	.29

Cell values indicate the percent of candidates that used the internet to do the tasks listed on the left.

Discussion

It is important to note this study's limitations. First, in many cases, numbers that appear to be significantly different were not significantly different due to low sample sizes and high standard deviations. While the survey had a good response rate, the relatively low numbers of judicial candidates make researching judicial elections challenging—in this situation, only seven open-seat candidates responded. The same was true for the television advertisements, where only seventeen challengers ran ads. It is very difficult to find statistically significant differences or make generalizations when working with such small sample sizes. Additionally, this study did not include an analysis of the 2008 election cycle; the Justice at Stake campaign has yet to release the data on television advertising from that year. It is possible that the differences identified here would be more exaggerated in the most recent election cycle. Finally, the decision in *White* that many believe will fuel a rise in new-style judicial campaigns was only handed down in 2002. As a result, only two of the analyzed election cycles (2004 and 2006) could have

been substantially affected by the decision. As *White*'s ramifications continue to unfold, it is still unknown how it will ultimately impact judicial elections.

In spite of these limitations, this study was still important—as is suggested by the fact that statistically significant results did emerge in some situations. The analysis shed light on the different ways in which candidates campaign for judicial office and confirmed the significance of incumbent advantage as one of (if not the) most important factors in determining how candidates' campaign and who will be elected. It is likely that trends revealed in this study could be confirmed in the future with larger sample sizes and more up-to-date data.

Conclusions

Even without statistically significant differences, trends did emerge. All candidates (regardless of candidate type) were very likely to sponsor websites, though the percentage of challengers who did so was surprisingly low. Thirty percent of challenging candidates did not sponsor a website, which is an efficient and cost-effective means of carrying out a variety of tasks. Candidates were expected to rely heavily on websites because they are easy for potential voters to access but inexpensive for candidates to create and maintain. It was expected that incumbents would be the least likely to sponsor a website, but this does not appear to be the case, likely because incumbents also run strategic campaigns. If they feel that sponsoring a website will be advantageous for them in the polls, then it should not be surprising that they do so. Candidates' extensive reliance on websites reduces the differences by candidate type regarding their use. Candidates did, however, follow the expected patterns regarding whether or not they believed judicial candidates should be able to state their views on political issues. As discussed, incumbent candidates emphasized image and experience in campaigning, and only 28 percent of

judicial incumbents surveyed felt that judicial candidates should be able to utilize political speech. In this way, they followed the expected patterns by aligning more with traditional judicial election campaign styles than did challengers or open-seat candidates.

Findings for the television ads were both more statistically significant and interesting. As expected, open-seat candidates were the most likely to sponsor TV ads; over half did so compared to only about one-third of incumbents and roughly one-fourth of challengers. Challengers were not only the least likely to run ads but also generally ran the fewest ads. This is somewhat surprising given that legislative candidates who were not incumbents were the most likely to value television advertisements. Perhaps this can be explained by money issues, as challengers would not have the access to resources that their incumbent opponents would have.

While all candidate types focused predominantly on promotion, incumbents were the most likely to do so; they also had the most ads containing traditional themes. This confirms the trend in campaign focus for incumbents found in other studies on both political and judicial elections. On the other hand, while both types of ads were relatively rare, open-seat candidates were the most likely to utilize contrast ads and challengers were the predominant sponsors of attack ads. It is probable that open-seat candidates did not rely on attack ads as much as expected because their elections were more likely to be contested by multiple candidates (reducing the need to attack any single opponent) and they did not face incumbent advantage. Challengers, on the other hand, have a clear opponent with a significant advantage by virtue of their incumbency. Consequently, open-seat candidates' decision to contrast is strategic because it allows them to differentiate themselves from their opponents without resorting to the more controversial attack ads.

Traditional themes are still important in judicial campaigns, especially for open-seat candidates and incumbents. Their ads are still heavily focused on traditional themes—over 50 percent contained traditional themes and more than one third were coded as only traditional. Challengers, however, seem to align more with new-style judicial campaign trends with only 19.75 percent of their ads being exclusively traditional and only about one third featuring any traditional material. It appears that challengers are trying to overcome their opponents' incumbent advantage by relying on more political campaign techniques and advertising issues and less on the themes that are traditionally associated with judicial campaigns.

Ultimately, incumbents and open-seat candidates may be more similar to each other than expected because neither group has to face incumbent advantage, which is arguably the most significant factor in determining the outcomes of judicial elections. As a result, incumbents and open-seat candidates can focus more on promoting themselves and traditional advertisements and rely less on issue advertising than challengers. For open-seat candidates, it was unexpectedly found that contrast ads were more common than attack ads, and most of their advertisements contained traditional themes. In this way, the importance of incumbent advantage was confirmed, though not as anticipated. Instead of differentiating incumbents from other candidates by giving them an advantage, incumbent advantage made challengers distinct because they were the only type of candidate that had to face this obstacle.

Challengers, not open-seat candidates, appear to align the most with new-style judicial campaigns and the trends identified with their television advertisements ought to be more concerning to reformists than those of open-seat candidates. For judicial elections' opponents, this may be all the more alarming because incumbent-challenger races are more common than open-seat elections. It is important to remember that, for the most part, these conclusions are not

based upon statistically significant differences and open-seat candidates do not appear to have considerably different campaign strategies or tones. However, judicial elections have been changing a great deal recently as they are becoming increasingly expensive, contested, and political. In light of this, I would propose that the trends identified in this study will continue to grow in the coming years and that (with larger sample sizes) statistically significant differences would emerge.

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