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Justices Denied: The 2010 Iowa Supreme Court Retention Election

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JUSTICES DENIED:
THE 2010 IOWA SUPREME COURT RETENTION ELECTION

A Thesis Submitted
in Partial Fulfillment
of the Requirements for the Designation
University Honors with Distinction

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Justices Denied: A County-Level Analysis of the
2010 Iowa Supreme Court Retention Election

Andrew J. Clopton

Professor C. Scott Peters

University Honors Program Thesis

2 November 2011

States vary widely in their judicial selection systems, with some seeking more judicial accountability and others preferring more independence. Most states, including Iowa, strike a perceived balance between independence and accountability with the implementation of the Missouri (Merit) Plan. With gubernatorial nomination from selected candidates chosen by a committee, judges must only directly face the electorate every few years. Retention elections provide near certainty that a judge will continue to serve. In 2010, the Iowa electorate shattered the norms because all three Supreme Court justices failed to retain their seats. We examine county-level voter characteristic variables and construct a model that successfully identifies partisanship, religious adherence, and public advertisements as the primary drivers for extraordinary vote results and ballot roll-off figures.

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INTRODUCTION

The Iowa Supreme Court made history in Iowa with its unanimous decision in *Varnum v. Brien* (2008), which extended same-sex couples the right to marry under the Iowa Constitution. The ruling brought both praise from gay rights advocates and backlash from social conservative advocates. On the one hand, gay marriage was an east coast phenomenon to many in the heartland. On the other hand, the Iowa Supreme Court has a rich history of being ahead of the curve when it comes to civil rights issues.

Up until three months prior to the coming 2010 retention election, there was no sign of organized resistance to the justices. It appeared as though the gay marriage decision had settled, at least to the point of avoiding backlash at the ballot box. Then, Bob Vander Plaats, a leading social conservative activist, lost to now Governor Terry Branstad in the Republican primary. This freed up Mr. Vander Plaats to organize a fierce resistance to the retention of the three justices. An avalanche of funding flowed into the cause, mostly from out-of-state socially conservative and religious organizations.

Gay rights advocates were caught off guard from this late springboard to action and the justices themselves refused to campaign out of principle. There were late efforts by those to defend the justices, but the pro-retention advocates were dogged by insufficient funding and a disagreement over messaging. Some wanted to defend gay

marriage through the judges, while others simply wanted to defend the judges themselves because of a perceived threat to judicial independence. In the end, the pro-retention advocates were outspent by more than a two-to-one margin (Aspin 2011 230).

Propelled by interest group advertising and heavy grassroots efforts, the electorate shattered the retention norms in 2010 with an apparent admonishment of the Supreme Court's decision. Chief Justice Marsha Ternus and Associate Justices David Baker and Michael Streit lost their seats, gaining only 45.5% of the average vote statewide. They were rare victims in a retention election system that almost always protects judges. Bonneau and Hall (2009) have extensively researched selection systems and found that between 1990 and 2004, "only three of 231 incumbents seeking reelection were defeated in retention elections" (Bonneau and Hall 2009 83).

In this paper, I analyze county-level election results and ballot roll-off in the 2010 Iowa Supreme Court retention election. Given the nature of the election as an apparent referendum on gay marriage, I expect that education level, party affiliation, and religious adherence predict the "yes" vote. I also incorporate television advertising data, predicting that over-the-air advertisements as significant with regards to the retention rate and ballot roll-off levels.

Three judges lost their seats in a single day in Iowa. When judges fail to retain their seats, it is most worthy of our examination. With ballot roll-off and retention

figures at historic levels, we must diligently work to explain the perfect storm of ordinary variables that combined to produce an extraordinary result. The three Iowa justices were not really even close to retention. After reviewing the literature on retention elections, I build a model to explain the election results and ballot roll-off levels.

LITERATURE REVIEW

History of the Missouri Plan

The first ideas for a merit-type selection system came from California in 1914 (Webster 1995). The idea did not formally implant itself until 1940, when Missouri voters approved the Missouri Nonpartisan Court Plan (Stith and Root 2009 712). Many states followed suit, particularly in the plains states. Since that time, the terms 'Missouri Plan' and 'Merit Plan' have been used interchangeably, although there are variations in selection methods and retention processes among states (Segal, Spaeth, and Benesh 2005 149-170).

In the early days of the Merit Plan, research focused on institutional considerations and voter respect for state (and federal) institutions (Dubois 1980; Lehne and Reynolds 1978; National Center for State Courts 1978; Caldeira 1983). Retention elections provide an important gauge for institutional support, but there was little more

to study early on. There are important institutional and political qualifications defined by scholars to assist in research of Iowa's system. It is important to remember that not all merit systems are the same and research for one state may not directly apply to another state. Different states have different systems and Iowa has had a relatively quiet and non-eventful history of retention elections. It is important to analyze Iowa within its own political and institutional contexts, while still acknowledging research performed about other states' judicial institutions and elections (Segal, Spaeth, and Benesh 2005; Baum 2008; Miller and McLeod 10-30, 2009; Miller, Langer, and Willhem 110-124, 2009).

For the most part, retention elections to date are immune from tumult. This is most likely because in retention elections, no opponent is running and a relatively disengaged electorate seems to ignore or passively support a judge when it comes to 'yes' or 'no.' Retention elections, unlike competitive elections, are often low-information, low-turnout affairs (Bonneau and Hall 2009; Hall 2010). Thompson (1988) analyzes the watershed California Supreme Court retention election of 1986. In that case, Thompson finds that three justices were ousted as a result of unpopular decisions and a lack of support among the legal community and others for the justices (Thompson 1988). California was an anomaly, however, and three justices would not be simultaneously ousted until Iowa in 2010.

There are indications that activists seem to be actively opposing justices at a greater level and in 2010, we saw campaigns in Kansas, Illinois, and most notably, Iowa. A study by Aspin, Bax, Hall, and Montoya (2000) finds that over a thirty year period, political trust and the affirmative vote share in retention elections has fallen. This has not necessarily translated to a wave of justices being ousted, but the trend exists nonetheless (Aspin, Bax, Hall, and Montoya 2000). This paper seeks to identify variables that drove voter participation and anti-judicial sentiments to the ballot box in Iowa.

Examining Voter Behavior in Retention Elections

Fishbein and Coombs (1974) seek to explain voting behavior with the attitudinal model: "A psychological theory which suggests that a person's attitude toward any object is a function of his beliefs about the object and the evaluative aspects of those beliefs is presented" (Fishbein and Coombs 1974 95). This provides the basis for later analysis applied to merit election voters. This research is relevant in trying to determine if voters are primarily motivated by their beliefs on gay marriage and view a vote against a justice as a referendum where gay marriage is an important issue.

Some of the earliest research on voting behavior in a merit retention election comes from Griffin and Horan (1982). They look at multiple voter characteristics in Wyoming to find correlation with voting results in the merit retention elections. They

do note that the majority of voters had relatively little information on the judges they were voting for, but concluded that “information or lack of it, was unrelated to the voters’ decision to retain or reject a judge standing for merit retention” (Griffin and Horan 1982). Another important empirical acknowledgement is that we must rely on aggregate data for voting results and characteristics to draw conclusions (Griffin and Horan 1982).

More recently, most of the academic research has focused on whether election systems influence judicial decisions, cause conflicts of interest, and the like (see Caldeira 1983; Hall and Bonneau 2009; Spiller and Vanden Bergh 2003). While normative analysis of a system is important, it is perhaps more insightful to analyze results and provide positive reason for those results. Other scholarly research focuses on whether voters view courts in different systems with differing levels of favor (Miller, Langer, and Wilhelm 2009). Cann and Yates (2009) examine voter diffuse support for state courts; and focusing on institutional legitimacy in the eyes of the public by examining multiple variables and running separate regressions based upon different assumptions is examined (Cann and Yates 2009). Many variables are found to be significant such as church attendance, Chamber of Commerce membership, and education (Cann and Yates 2009). These variables need to be considered when analyzing data at the county level. In particular, education and church attendance need to be accounted for in the retention voting behavior model. One of the reasons education and church attendance

are important in the context of Iowa is because of the *Varnum* decision and support or lack of support for gay marriage.

In a study of recent Defense of Marriage referenda across the states, Bayliss Camp notes that “given a particular configuration of circumstances—namely where a salient electoral issue cross-cuts already existing party cleavages—ballot referenda can become tools by which political parties “poach” members of an opposing coalition.” Camp goes on to utilize county level data and “finds that DOMA ballot referenda mobilize a broad base of support from conservative Protestants to African Americans and Hispanics” (Camp 2008 713). It is probable that gay marriage was the “referenda” on the ballot and names of three justices happened to represent that very issue. It would stand to reason that religious affiliation is significant when it comes to a unanimous social issue such as gay marriage.

There has been little research specifically into the area of voting behavior factors in actual retention elections. This is understandable because as previously mentioned, judges are retained over 98% of the time, leaving few instances in which to study (Hall 2001). Still, Hall (2010) suggests factors that may be relevant, and builds upon already available literature with what independent variables to include when running a regression on electoral performance of state Supreme Court incumbents. She finds that attack ads indeed have “deleterious effects on incumbents...in nonpartisan elections” (Hall 2010). Her model provides a methodological basis for what independent variables

should be considered when doing an analysis of the Iowa retention election. Hall finds that “attack airings,” “partisanship,” and controversial “court decision interpretation” are significant (Hall 2010 28). These are helpful with relation to Iowa because attack ads were run, partisanship is easily measurable and likely always significant in democratic elections, and the *Varnum* decision was indeed controversial.

Advertisements and Monies in Retention Elections

Baum (1987) examines the 1984 Ohio Supreme Court election and surveys voters according to “categories created for voters’ reasons for Supreme Court votes” (Baum 1987 367). Baum (1987) identifies “media,” which entails “references to information obtained from media as a basis for decision, including news and advertising.” Baum also identifies party affiliation as an important factor, “even though the ballot did not disclose the candidates’ party affiliations.” The Republican candidates benefitted from advertising advantages and Republican voters responded to that media, despite party being omitted from beside a candidate’s name (Baum 1987 369). This research suggests that while judicial elections are often low information affairs, advertising may be effective in spreading information. Establishing a link to party affiliation and successful advertising is important when analyzing what happened in Iowa.

Bonneau and Hall provide important research with the role of advertisements in state Supreme Court elections (Hall 2001; Hall and Bonneau 2009; Hall 2010). Bonneau

and Hall (2009) note that “increased spending in elections to state supreme courts has the effect of substantially enhancing citizen participation in these races” (Bonneau and Hall 2009 46). Advertisements require extensive monies, and there is no doubt that the anti-retention crowd enjoyed a large funding advantage (Schulte 2010). Another very important resource is found through Justice at Stake: an organization that is a clearinghouse for information and data related to election campaign spending. They have published numerous reports detailing the alleged increase in politicization of the judicial branch, the role of money, and the potential effects of *Citizens United v Federal Election Commission*, 130 S.Ct. 876 (2010) (Justice at Stake/Kantar Media 2010).

Aspin (2010) finds that those opposed to retention raised money in excess of \$991,000 while committees such as Fair Courts for Us, who organized relatively late in the campaign season to defend the judges, only managed \$424,000 (Aspin 2011 230). Anti-retention advocates used this advantage primarily on television and radio ads. Aspin also provides insight into why a similar anti-retention campaign in Illinois was unsuccessful: Illinois Supreme Court Justice Thomas Kilbride raised and spent over \$2.7 million, “blanketing the district with positive television commercials” (Aspin 2011 230). In Iowa, the justices refused to campaign out of principle, and only made a few public appearances towards the end of the race (Curriden 2011). Money is not only important with the retention rate, but also can be used to galvanize voters that normally would ignore a retention election altogether. Interestingly, however, Hall (2010) finds

that “promote ads simply do not influence the vote shares of incumbents in state supreme courts in any statistically meaningful way” (Hall 2010). This suggests that more pro-retention ads would not have necessarily led to a different outcome.

Ballot Roll-Off Numbers in Retention Elections

Aspin and Hall (1987) examine retention election roll-off figures from 1964-1984 and identify district size and number of counties as significant in a judicial district. They note that in “presidential and nonpresidential elections there is a clear surge and decline in voter turnout, but there is no corresponding surge and decline in roll-off. However, close retention elections have less roll-off than nonclose elections” (Hall and Aspin 1987 415). This lays the groundwork for an empirical study of roll-off on a more intricate county level.

Bonneau and Hall (2009) provide a measure for citizenship participation model for studying ballot roll-off. Ballot roll-off is defined as the percentage of those who vote for the top ticket race, but do not vote in the Supreme Court election. Bonneau and Hall (2009) note that ballot roll-off is more effective than voter turnout in analyzing “down-ticket” races and establish this as the way to gauge citizen participation. They find that retention elections “overall are not effective agents of voter mobilization” (Bonneau and Hall 2009).

Hall (2010) identifies variables such as spending, attack ads, education, partisanship, district, and the impact of *Republican Party of Minnesota v. White* (2002) in partisan and nonpartisan elections from 2002 to 2006. Hall (2010) finds that “attack ads in supreme court campaigns significantly *decrease* ballot roll-off.” They also find significance with total spending, education, partisanship, and district. This study is invaluable when analyzing both the retention rate and ballot roll-off. There are certain, expected variables that demonstrate significance, but rarely do they combine to oust a justice in a retention election setting.

Aspin notes that from 2008-2010, most states saw very little difference in ballot roll-off and that this is true over time from 1964-2010. Generally, a certain segment of the electorate will not vote in retention elections unless given a reason. He notes that the primary reason for a reduction in ballot roll-off is the existence of an opposition campaign, of which Iowa had a significant campaign (Aspin 2011 221).

While the literature does not provide a robust examination or foundation for retention election voting behavior at the county level, enough exists to hypothesize significant factors for the vote result and ballot roll-off levels.

HYPOTHESIS, DATA, AND METHODS

I expect that the *Varnum v. O'Brien* (2010) decision extending homosexual couples the right to marry drove voter participation up and will be evidenced by voter characteristic variables indicating relative county population, education, religious adherence, and partisanship.

Specifically, we should expect the retention rate across justices to be driven by partisan and ideological factors that would explain an extraordinary outcome in which the null hypothesis, retention, is turned on its head. We would also expect that evangelicals and Republicans were particularly motivated by advertisements that blanketed the airwaves and turned out at much greater levels, resulting in lower ballot roll-off.

Dependent Variables

I analyze three dependent variables: combined retention rate, ballot roll-off, and change in ballot roll-off (2002-2010).

Since Iowa has 99 counties, it provides an excellent number of observations for our models. The Iowa Secretary of State provides vote data at the county level to construct our dependent variables. For the sake of succinct analysis, I combine the average vote rate across the three former Supreme Court justices into our dependent

variable. I seek to determine what independent variables explain the retention rate with 99 county observations. I also use the same independent variables to explain the ballot roll-off and change in ballot roll-off at the county level.

Ballot roll-off is calculated as the percentage of individuals who vote for the gubernatorial race, but do not turn the ballot over to vote for judicial retention. I construct the roll-off dependent variable by subtracting the difference between the number of gubernatorial votes and the number of Supreme Court retention votes. I then take that difference and divide it by the number of gubernatorial votes to create a percentage.

I construct the change in roll-off by calculating the difference in roll-off percentage from 2010 and 2002 (the last similar election that had non-presidential, gubernatorial, and Supreme Court retention attributes). The change in roll-off more accurately captures significance in the counties who were at the mean roll-off level, but which changed drastically from a similar election.

Independent Variables

Using existing literature as a basis for my model, I analyze the following independent variables: county population, median age, partisanship, religious adherence, and over-the-air ads.

The United States Census Bureau provides invaluable information at the county level with regards to age, population and education (U.S. Census 2011). The Association of Religion Data Archives offers religious adherent information on the county level (ARDA 2010). The Iowa Secretary of State provides data on the number of active registered Republicans (Iowa Secretary of State 2010).

Population density is a good indicator of the relative make-up of the voter base. Counties that are more sparsely populated typically show more support for conservative causes, and may show a greater energy level at the ballot box. I use county population as a variable to demonstrate this strength (U.S. Census 2011).

Since the Census is prohibited by law from obtaining religious data at the local level, the Association of Religion Data Archives is an invaluable source to determine adherents at the county level (ARDA 2010). Using the religious data, I calculate an evangelical adherent variable as a percentage of county population. The proportion of county population that identifies as evangelical should indicate the relative strength of social conservatives who are more likely to oppose gay marriage and negatively correlate to the retention rate. Social conservatives likely are more energized than in typical years where a big social issue is prevalent in an election, reducing ballot roll-off from any given previous election.

I determine educational attainment at the county level by taking the percentage of county population who hold a Bachelor's degree or higher (U.S. Census 2011). Since more educated voters tend to favor more liberal causes, we should expect the educational attainment percentage to positively correlate to the retention rate across justices. Normally we should expect educational attainment to indicate lower ballot roll-off numbers, but the change in ballot roll-off should be relatively consistent on a year-to-year basis.

I determine the percentage of registered Republicans compared to the total number of registered voters per county (Iowa Secretary of State 2010). We should expect more conservative, Republican voters to energize against retention if the retention election is a referendum on gay marriage. This should mean that the percentage of Republican adherents is negatively correlated to the retention rate and the change in ballot roll-off would be comparatively greater.

Finally, Justice at Stake, with collaboration with Kantar Media, compiles and produces the report which includes all of the over-the-air advertisement data (Justice at Stake/Kantar Media 2010). Only anti-retention advocates ran over-the-air advertisements. Thus, we should expect the number of advertisements to decrease ballot roll-off and negatively correlate with the 'yes' vote in counties where ads were run.

The data and methods, while imperfect, are still sufficient for robust analysis.

The goal of research is not to demonstrate a perfect story, but rather to contribute important empirical evidence to the field for consideration and further study.

ANALYSIS

Even a cursory examination of the 2010 retention election results reveals a highly engaged electorate whose support of justices was closely connected to partisanship. In particular, heavy Republican counties appeared galvanized against the justices. Republican strongholds are primarily in the rural areas, and in particular, the western half of the state. Figure 1 indicates the relative Republican strength by county, with darker shades representing stronger Republican presence. The Democratic strongholds predictably reside in more urban areas, which are concentrated in eastern and central Iowa. Both parties have weight in a pivotal swing state with divided government: Democrats currently hold the state senate and three of the five congressional districts; and Republicans currently hold the state house, governor's office, and two congressional districts. Yet in this specific retention election, energized Republican locales had record low support for retention rates of Supreme Court justices.

Figure 2 demonstrates the relative vote share, with darker shades indicating anti-retention strength. Only nine out of 99 counties voted to retain the justices: Black

Hawk, Clinton, Jefferson, Johnson, Linn, Muscatine, Polk, Story, and Winneshiek (see Figure 1). The vote share margins, however, varied wildly across the state.

As one would expect, rural areas outside of traditional liberal, Democratic strongholds showed much more anti-retention strength. The anti-retention strength is particularly strong in northwest Iowa, where strong Republican counties voted overwhelmingly against retention. In Sioux County, for example, 73.49% of voters identify as Republican (only 8.84% as Democrat with the balance as 'no party') and only 15.21% of voters voted to retain the justices. Other noteworthy counties include Lyon (62.57% Republican; 23.77% retention rate), O'Brien (54.05% Republican; 24.62% retention rate), and Osceola (57.80% Republican; 24.62% retention rate). The opposite end of the county spectrum includes Johnson (20.02% Republican; 68.51% retention rate) and Story (28.72% Republican; 55.60% retention rate).

In addition, we should note that the justices performed relatively poorly even in traditional Democratic strongholds. The justices were hardly supported in the heavily Democratic counties of Black Hawk (51.8%), Clinton (51.03%), Muscatine (52.91%), Polk (51.59%), and Scott (50.32%). Even some heavily Democratic counties voted not to retain the justices: Cerro Gordo (49.43%), Dubuque (47.68%), and Lee (45.23%). There is no question that partisanship played an important role, but is insufficient as a sole

measure for the retention rate. The percentage of evangelical adherents per county is also worthy of examination.

By most measures, the majority of Republican voters in Iowa self-identify as socially conservative evangelicals. Figure 3 shows the strength of evangelical adherents with darker shades representing a stronger evangelical presence. Certainly evangelical counties are more likely to be Republican, but there are strong evangelical pockets in other parts of the state, including Decatur County (24.58%) in the South, Hardin County (20.06%) in the center of the state, and Iowa County (20.90%) in the East. The highest evangelical concentrations are also found in western Iowa with Crawford County claiming the crown at 38.24%. Interestingly, however, Crawford County has more evangelical adherents than Republican adherents (33.41%).

As a state, average ballot roll-off across justices was at a historic low of 13.19%. The previous similar Iowa election which included gubernatorial, non-presidential, and Supreme Court retention elections, occurred in 2002, when ballot roll-off was at 38.73%. The 2010 election marked a decrease in roll-off of 25.54 percentage points. This is a remarkable swing, and there was relatively more energy (and thus, a higher change in roll-off) among those counties with relatively high percentages of Republicans and Evangelicals. Nineteen counties had roll-off values below 10%.

Surprisingly, strong evangelical counties did not necessarily have lower ballot roll-off compared to other counties, but they did see a much greater reduction in ballot roll-off from 2002 than other counties. Figure 4 shows the retention election roll-off figure from 2010, with darker shades indicating more roll-off. Figure 5 shows the retention election roll-off difference factor from 2002 and 2010, with darker shades indicating greater reductions in ballot roll-off. The more conservative rural counties show similar 2010 ballot roll-off figures to the rest of the state, but the reduction in roll-off from 2002 to 2010 is much greater among those more conservative rural counties. In northwest Sac County, roll-off declined by 81.86% (94.24% roll-off in 2002; 12.38% in 2010). That figure is extraordinary by any measure. Other counties had similar results such as Sioux County (-61.73%), Ida County (-50.87%), and Crawford County (-48.90%). No counties had increases in roll-off and the lowest change was registered in Louisa and Pottawattamie Counties at -11.82% and -13.11% respectively. Interestingly, the counties with lower roll-off reductions were found in states that had no ad airings.

Figure 6 shows the counties where anti-retention ads played. There were no over-the-air pro-retention ads so we analyzed only anti-retention ads. When compared to the map of roll-off change from 2002, a pattern begins to emerge. The counties with the lowest roll-off changes were generally focused in extreme southern, northern, and eastern parts of the state. In the west central and east central parts of the state where ad airings occurred, roll-off appears more impacted in 2010 when compared to 2002. Ad

airings occurred in 69 of the 99 counties in Iowa, with the number of ads ranging from 192 to 227. If the justices would have responded with ads of their own, the election results may have played out differently. Relatively late and weak support on behalf of the justices had little apparent impact.

Explaining the Retention Rate

Table 2 reports results of the OLS regression using the average percent of the 'yes' vote as the dependent variable. Overall, the retention rate model performs quite well, with an r-squared value of 0.754. My model hypothesizes that socially conservative voters, motivated by outcry to the *Varnum* decision, were driven by an organized anti-retention campaign which blanketed the airwaves with advertisements. The percentage of Republican adherents, percentage of evangelical adherents, and number of ad airings were all negatively correlated to the average 'yes' vote at the 1% significance level. Educational attainment, measured by the percentage of county population possessing at least a Bachelor's degree, indicates a positive relationship with the average 'yes' vote at the 1% significance level. County population positively correlated to the average 'yes' vote at the 5% significance level.

For every 10 percentage point increase in Republican adherents, the justices lost an average of 4 percent of the 'yes' vote. This result is supported by theory and evident in Figure 1. Counties with higher percentages of Republican adherents are more likely

to possess socially conservative voters who oppose gay marriage and perceived judicial activism. Republicans alone, however, were not responsible for the extraordinary outcome. Registered Republicans make-up a relatively small segment of the electorate in Iowa.

For every 10 percentage point increase in evangelical adherents, the justices lost an average of two percent of the 'yes' vote. This outcome is also supported by theory and evident visually in Figure 3. Evangelical adherents are not absolutely unified, but there is a strong contingent that opposes gay marriage and likely voted as such against retention. There is also some evidence to suggest that anti-retention advocates utilized conservative pastors and churches to "get the message out."

For every 100 anti-retention ad airings, the justices lost an average of 1.5 percent of the 'yes' vote. Counties that had ad airings are depicted in Figure 6. It would stand to reason that additional ad airs were effective in raising negative opinions held by Iowans of the justices. In addition, pro-retention advocates did not run any over-the-air advertisements, leaving the airwaves with no rebuttal (Justice at Stake/Kantar Media 2010).

For every 10 percentage point increase in highly educated voters (Bachelor's degree or higher), the justices gained an average of 5.95 percent of the 'yes' vote. The highly educated pockets of the state primarily surround colleges and/or universities

where more social liberals are concentrated. Finally, for every 1,000 additional county residents, the justices gained an average of two percent of the 'yes' vote. This also stands to reason because liberal voters are generally more concentrated in urban areas.

Partisanship and religion are very significant and those factors are influential with mobilization in a retention election. More mobilization should mean less roll-off, and Iowa saw record low ballot roll-off and incredible reductions in ballot roll-off in more socially conservative areas.

Explaining Ballot Roll-Off and Change in Ballot Roll-Off

The 2010 Iowa electorate was activated by partisan and cultural factors against an already 'suspect' judiciary who ruled in favor of gay marriage. The 2010 retention election was clearly different, but just how different from any given previous retention election? How well do the same independent variables factor from a baseline comparable retention election?

Model 2 reports results of the OLS regression using ballot roll-off as the dependent variable. We would expect that the same factors that drove the vote result were also responsible for lower ballot roll-off, but this is not exactly the case. The only significant factor in the simple ballot roll-off model was the over-the-air ad airings. This certainly makes sense, as we correctly expect anti-retention advertisements to promote turnout against the judges. Yet, no other factor was statistically significant, raising

other important questions. Apparently, those heavy social conservative counties did not vote at a higher rate than any other county. In order to capture other possible significance, we need to build a more precise model.

In 2002, Justices Streit and Ternus faced retention. They were retained overwhelmingly with an average of 73.8 percent in favor of retention. In this election, there was no gay marriage decision and no organized movement against the justices. Since these two justices also faced retention in 2010, we can gain even more insight because we are comparing similar elections with the same candidates.

We need to compare roll-off from 2002, the last similar election (non-presidential, gubernatorial, Supreme Court retention), to 2010. When I do so, both ad airs and evangelical adherents registered as significant. These results are displayed in Model 3.

Running more ad airs should still drive up voter participation and the model supports this hypothesis. For every 100 additional ad airs, there was a 3.67% decrease in roll-off from 2002.

For every 10% increase in evangelical adherents, there was a 5.6% decrease in roll-off from 2002. Since there was a prominent opposition that likely utilized congregational contacts, it stands to reason that those counties that had higher percentage of evangelicals were also more motivated compared to the last similar cycle.

Calculating roll-off is important, but in this case calculating the difference in roll-off from the last similar election provides more insight. It was not that the counties with more evangelical adherents had lower roll-off compared to other counties in this cycle per se, but those heavier evangelical counties did flip the ballot over to vote in the Supreme Court retention election in vastly greater numbers.

CONCLUSION

In conclusion, the 2010 Iowa Supreme Court retention election produced extraordinary results. Socially conservative voters participated and voted against the three justices on a grand scale. They did not have lower roll-off from other segments per se, but were much more mobilized than in 2002. While there were pockets of support for the justices, the electorate sent a strong message against retention. Because partisan, religious, and cultural factors combined to oust the justices, we must conclude that the *Varnum v. Brien* (2010) decision weighed heavily in the retention decision.

Republicans and Evangelicals alone, however, were not solely responsible for the outcome. A fair number of independents, Democrats, and non-evangelicals likely voted not to retain the judges as only nine of 99 counties voted to retain and many traditional liberal strongholds voted not to retain.

Pro-retention advocates spent too little and were not organized enough to mount a successful defense on behalf of the judges, who refused to campaign. A well-organized opposition who blanketed the airwaves in important areas, combined with religious leaders driving voter engagement and organizing against retention, was clearly the difference in this election.

The fact that the three justices did not defend their seats and had relatively weak support from outside organizations (compared to the anti-retention advocates) probably did not help. But even if the election was more balanced, it would be hard to argue that the justices could have saved their seats under any circumstance. As generations change, gay marriage will likely become commonplace nationwide, but the Iowa electorate showed its hesitance and resistance to that change.

The merit selection system that provides protection for incumbents over 98% of the time is sometimes inadequate to quell an outlier. The Iowa result shows that a retention election can indeed have high participation and eliminate sitting justices. Is Iowa evidence for a trend, a catalyst for a trend, or simply an anomaly? Further comparative and summary research needs to examine other recent retention elections.

Perhaps the broader and bigger question is over judicial accountability and independence. A trade-off exists and in 2010, citizen accountability won over judicial independence. Will this result have a chilling effect on future decisions by Iowa courts

and others over divisive social issues? To what degree should popular opinion influence state judiciaries? To some, this election is frightening; and to others, this election is heartening. To all, this election is worthy of examination.

With the advent of additional judicial campaigning and more competitive elections, will Iowa encourage additional groups to target justices in a retention setting? More justices who participated in the *Varnum* decision will soon face retention. Will future targeted justices in a retention system look at the Iowa result and believe they have to campaign to defend themselves? What does the Iowa result mean for citizen support for judicial institutions? Time and research will answer these puzzles. The perfect storm in Iowa denied three justices, igniting debate and provoking questions. Hopefully, this thesis offers a few more pieces to the puzzle.

TABLE 1
VARIABLES & MEASUREMENT

DEPENDENT VARIABLES:

RETENTION RATE: The affirmative retention vote for the three justices derived from the sum of each justice's affirmative vote divided by the sum of each justice's total vote at the county level (2010, Iowa Secretary of State).

ROLL-OFF: The percentage of voters who voted for the governor's race but did not vote in the Supreme Court retention election.

CHANGE IN ROLL-OFF: The difference in roll-off from 2002 to 2010. The year 2002 is used because that was the last similar election (non-presidential, gubernatorial, and Supreme Court retention).

INDEPENDENT VARIABLES:

REPUBLICAN ADHERENTS: The percentage of Republican adherents in each county out of active registered voters (2010, Iowa Secretary of State).

EVANGELICAL ADHERENTS: The number of active adult adherents per county who attend an evangelical church (Evangelical, Non-denominational, Baptist, etc.) divided by county population left as a percentage (2010, Iowa Religious Congregations and Membership Study).

MEDIAN AGE: The median age of residents in each county (2008, U.S. Census Estimate).

EDUCATIONAL ATTAINMENT: Percentage of population over 25 holding at least a Bachelor's Degree (2005-2009, American Community Survey, US Census).

AD AIRS: Number of public television (over-the-air) ad airings in each county by media market (2010, Justice at Stake/Kantar Media).

COUNTY POPULATION: Number of inhabitants per county (2010, Iowa Secretary of State).

TABLE 2

DETERMINANTS OF 2010 IOWA SUPREME COURT RETENTION VOTE

OLS, n=99
 Dependent variable: Retention Rate
 Heteroskedasticity-robust standard errors, variant HC1

	<i>Coefficient</i>	<i>Std. Error</i>	<i>p-value</i>	
Constant	0.51887	0.07573	<0.00001	***
Republican Adherents	-0.406381	0.0470802	<0.00001	***
Median Age	-0.00026495	0.00158308	0.86745	
Educational Attainment	0.511766	0.0765996	<0.00001	***
Ad Airings	-0.000155322	4.31764e-05	0.00052	***
County Population	1.96039e-07	1.00678e-07	0.05456	*
Mean dependent var	0.389452	S.D. dependent var	0.077674	
Sum squared resid	0.145330	S.E. of regression	0.039745	
R-squared	0.754204	Adjusted R-squared	0.738173	
F(6, 92)	58.53083	P-value(F)	2.79e-29	

TABLE 3

DETERMINANTS OF 2010 IOWA SUPREME COURT BALLOT ROLL-OFF

OLS, n=99
Dependent variable: Ballot Roll-Off

	<i>Coefficient</i>	<i>Std. Error</i>	<i>p-value</i>	
Constant	0.141927	0.0488159	0.00457	***
County Population	-9.8617e-09	4.99328e-08	0.84387	
Republican Adherents	-0.040784	0.045415	0.37151	
Median Age	0.00070827	0.000969532	0.46692	
Educational Attainment	0.064365	0.0717095	0.37175	
Ad Airings	-0.00020017	3.64331e-05	<0.00001	***
Evangelical Adherents	-0.0523309	0.0635188	0.41215	
Mean dependent var	0.131693	S.D. dependent var	0.036290	
Sum squared resid	0.086974	S.E. of regression	0.030747	
R-squared	0.326107	Adjusted R-squared	0.282158	
F(6, 92)	6.052547	P-value(F)	0.000023	

TABLE 4

DETERMINANTS OF CHANGE IN IOWA SUPREME COURT BALLOT ROLL-OFF
(2002-2010)

OLS, n=99

Dependent variable: Change in Ballot Roll-Off

	<i>Coefficient</i>	<i>Std. Error</i>	<i>p-value</i>	
Constant	0.124919	0.208473	0.55050	
County Population	-7.17593e-08	8.91349e-08	0.42286	
Republican Adherents	-0.13018	0.136875	0.34405	
Median Age	-0.00457669	0.00438412	0.29926	
Educational Attainment	-0.126367	0.171255	0.46246	
Ad Airings	-0.00036513	7.33157e-05	<0.00001	***
Evangelical Adherents	-0.563926	0.209765	0.00852	***
Mean dependent var	-0.264666	S.D. dependent var	0.108156	
Sum squared resid	0.784119	S.E. of regression	0.092320	
R-squared	0.316007	Adjusted R-squared	0.271399	
F(6, 92)	5.946867	P-value(F)	0.000028	

FIGURE 1

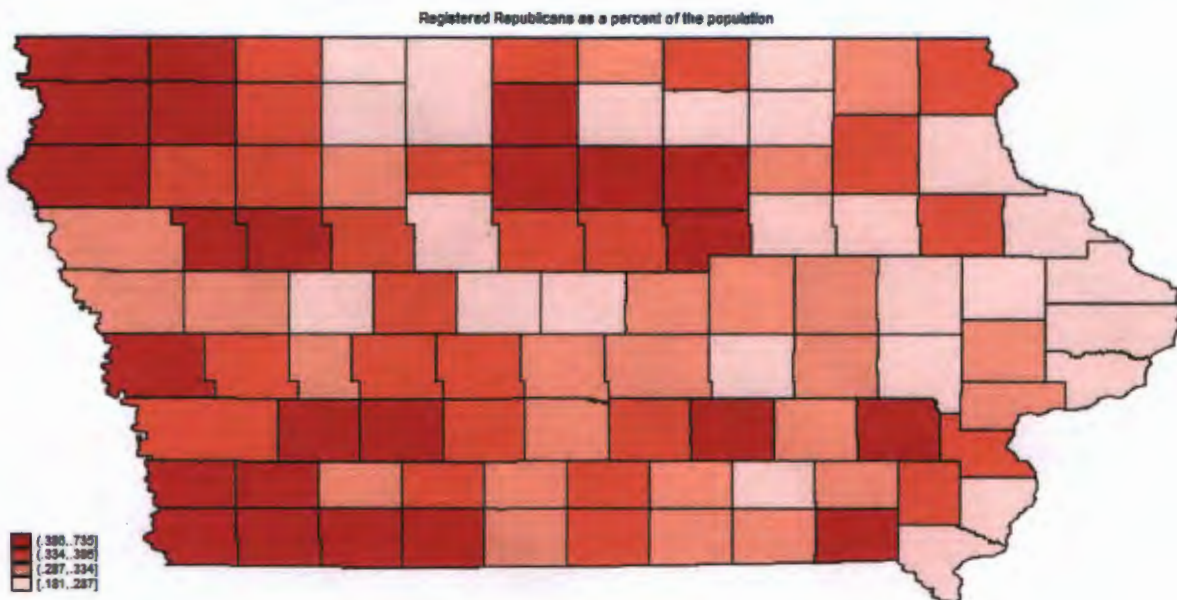


FIGURE 2

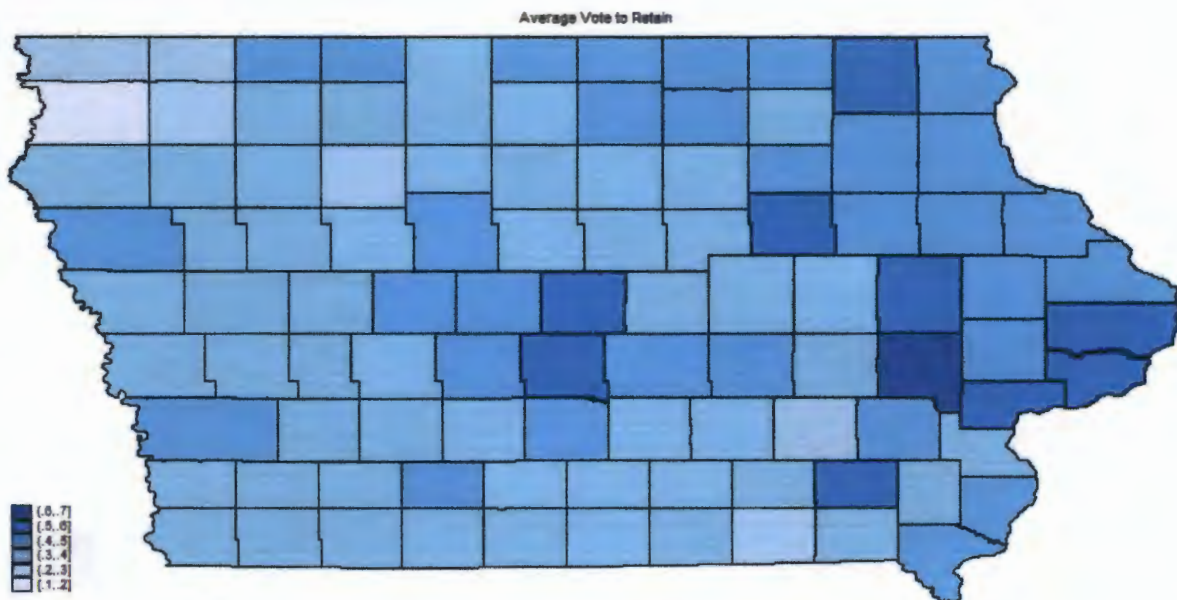


FIGURE 3

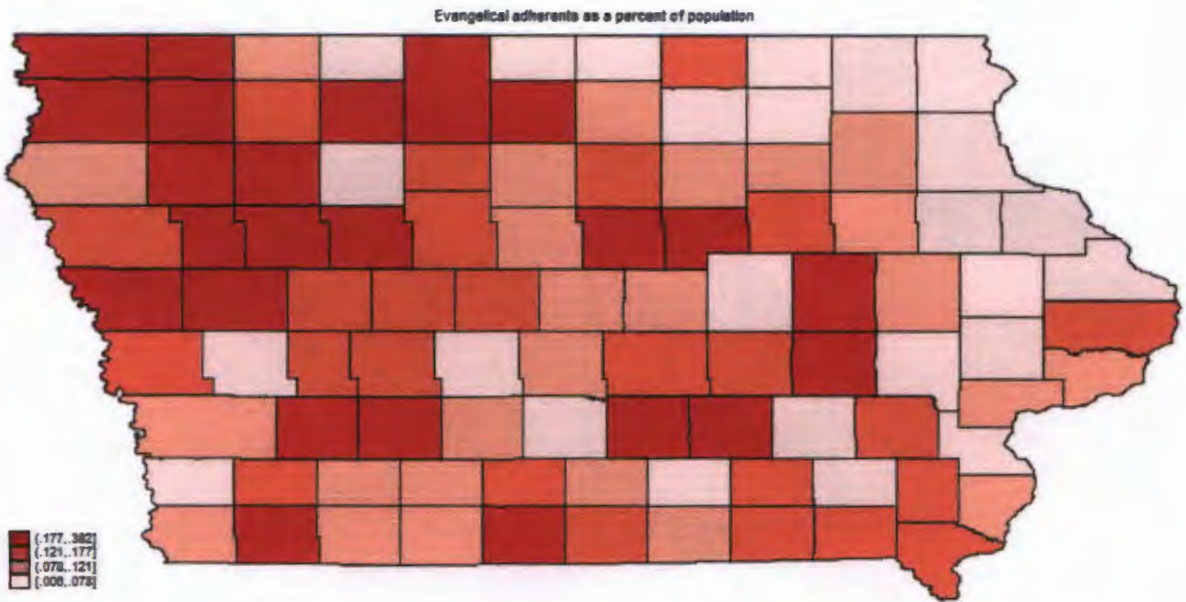


FIGURE 4

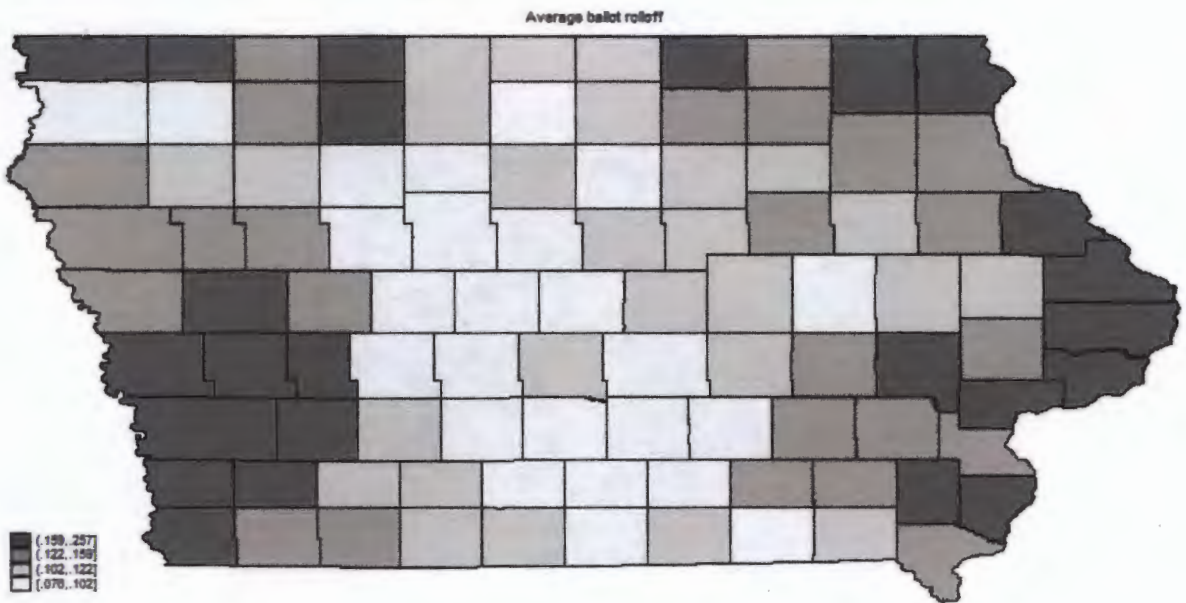


FIGURE 5

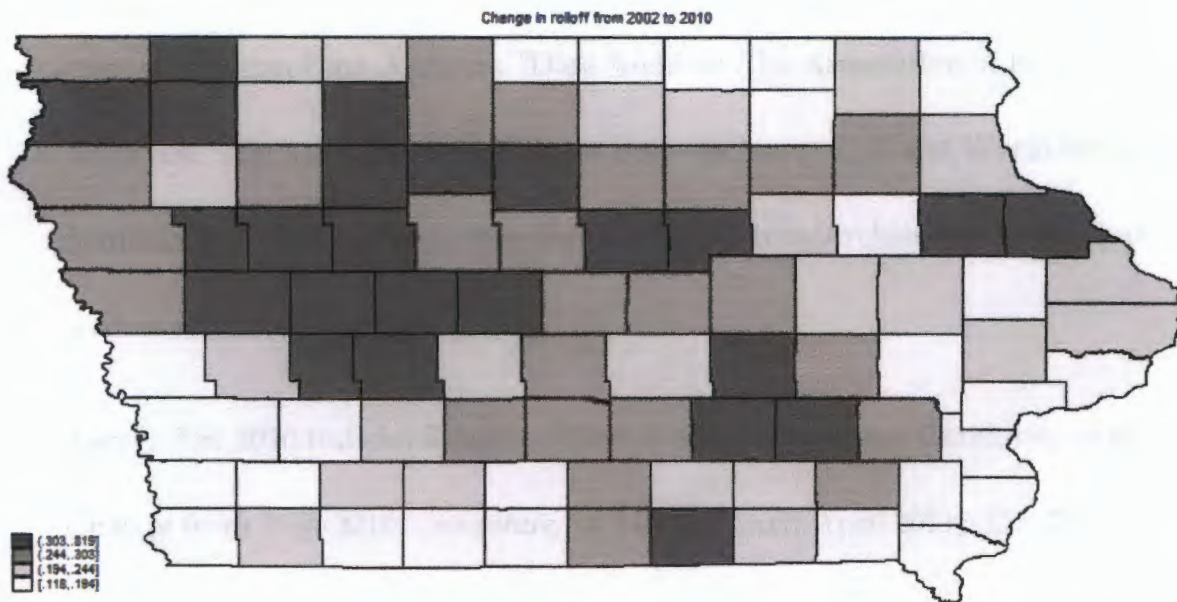
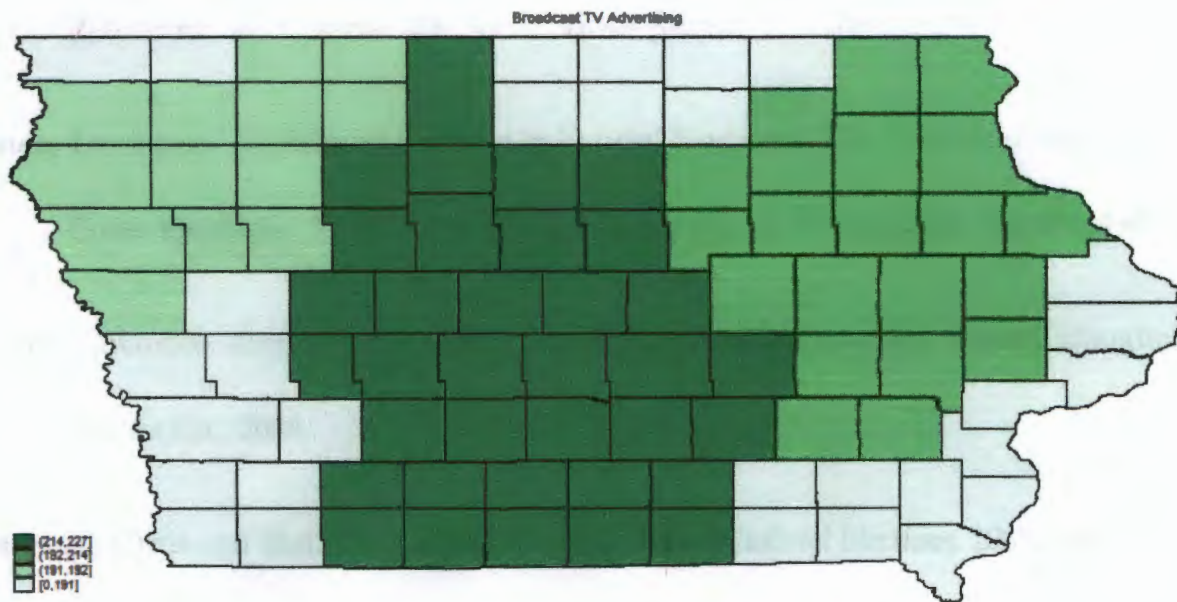


FIGURE 6



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