

The Need for More Individual-Level Judicial Election Data*

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After the 2000 election cycle, the Brennan Center for Justice and the National Institute on Money in State Politics issued a report on that year's state supreme court elections. According to the report, a "new politics of judicial elections" had materialized in which judicial elections were getting more competitive, negative, and costly (Goldberg, Holman, and Sanchez, 2002). Around the same time, a new wave of judicial elections research emerged beginning largely with the work of Hall (2001). Although scholars had studied judicial elections for decades (e.g., Dubois, 1980), in many ways this new research was more methodologically advanced and employed more systematic data sets.

In Hall's (2001) integral article, she examined contestation and competition in judicial elections using an impressive set of data from 1980 to 1995.¹ Her findings challenged the conventional wisdom that judicial elections are usually uncompetitive. From there, Hall, both by herself and with Bonneau (e.g., Hall, 2001, 2007a; Hall and Bonneau, 2006, 2008; Bonneau and Hall, 2003), examined numerous questions relating to such issues as challenger emergence and political participation in judicial elections. Bonneau (2004; 2005a, b; 2007a, b) also conducted extensive research on campaign spending in judicial races. These studies added a tremendous amount to our understanding of judicial elections at the supreme court level. More recently, Streb and Frederick (e.g., Streb and Frederick, 2009; Frederick and Streb, 2008; Streb, Frederick, and LaFrance, 2009), have replicated several of the works of Hall and Bonneau at the intermediate appellate court (IAC) level to get a better understanding of the ways in which the two appellate court levels' elections are similar or different. One shortcoming of all of these analyses, however, is that both Hall and Bonneau and Streb and Frederick had to rely on aggregate-level election results to analyze the dynamics of judicial elections. Although these aggregate-level data sets were comprehensive, the lack of systematic individual-level data raises as many questions about judicial elections as the aforementioned studies answered. There is simply much we cannot glean by relying on aggregate election returns alone.

Just as studies of other elections, such as those for president or Congress, have been enriched by aggregate and individual-level data, the judicial elections subfield would benefit greatly from more complete individual-level data sets, both of voters and candidates. This is not to imply that no work on judicial elections has used individual-level data or that the studies that have employed individual-level data have some-

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¹ She later updated her data set through the 2000 elections (see Hall, 2007b).

how been flawed or not worthwhile. Indeed, the numerous works by Baum (Baum, 1987, 1989; Baum and Hojnacki, 1992; Hojnacki and Baum, 1992; Klein and Baum, 2001; Baum and Klein, 2007), in particular, that have utilized individual-level data sets on voting in judicial elections have been instrumental to our understanding of those contests. Certainly some recent work using individual-level data has been quite beneficial—for example, Gibson's (2008a, b), Cann and Yates's (2008), and Benesh's (2006) studies of the public's perception of the impartiality of state courts as a result of politicized judicial elections. However, most of the individual-level studies have had to rely on one or two states, and some of the information is quite dated, especially given the “new politics of judicial elections” that exists today.

Let me provide three examples of work where individual-level data, either of voters or candidates, is needed to help scholars better comprehend the dynamics of judicial elections.

Evaluations of Female Judicial Candidates. Recently, Frederick and Streb (2008) examined whether female judicial candidates were at a disadvantage in judicial elections. It is well documented that females are underrepresented in all areas of government at all levels of government, but most of this research does not attribute the cause of this underrepresentation to voter discrimination against female candidates (e.g., Burrell, 1994; Seltzer, Newman, and Leighton, 1997). However, because judges are perceived differently by the public than other officeholders, it is possible that voters do not attribute the qualities that make a good judge to female judicial candidates. For example, Americans perceive male candidates to be stronger than female candidates at handling crime (Huddy and Terkilsen, 1993a, b), obviously an issue that judges regularly encounter. Conversely, people view female candidates as being more empathetic, compassionate, and trustworthy (Burrell, 1994; Huddy and Terkilsen, 1993a, b; King and Matland, 2003; Leeper, 1991; Rosenwater and Dean, 1989), attributes that many would like judges to hold.

To test the success of female judicial candidates, the election results for more than 300 male and female candidates in contested, non-retention elections for state intermediate appellate courts (IACs) from 2000 to 2006 were examined. After controlling for a variety of variables that influence candidate success, the findings showed that female candidates were significantly more likely to achieve success than male candidates. For example, female candidates saw their vote shares increase by roughly 3.5 percent compared to male candidates. Perhaps more important, the predicted probabilities of winning for female incumbents, challengers, and those running in open seats were all substantially greater than their male counterparts.

The results appear straightforward. Female judicial candidates are not disadvantaged. They actually outperform male candidates. However, without individual-level data we cannot answer why this is so for female judicial candidates. Is it because voters view female candidates to hold the qualities mentioned above and these are qualities that they want in their judges or is it something else entirely? Interviewing

people regarding the qualities they look for in judges and asking people why they voted for a female judicial candidate would likely provide the answer.²

Who Participates in Judicial Elections? Hall (2007a) recently published an article examining the extent of ballot roll-off in supreme court elections, and Streb, Frederick, and LaFrance (2009) replicated her work at the intermediate appellate level. The findings of the two studies were quite similar: roll-off was substantial with roughly 25 percent roll-off at the supreme court level and 30 percent roll-off in IAC contests. For both supreme court and IAC elections, a variety of institutional, election-specific, and state or district contextual factors influenced the extent of roll-off. For example, roll-off in nonpartisan elections was significantly higher than roll-off in partisan contests.

Although both studies provide insight into the factors that lead more or less people to cast ballots in judicial elections, because of the use of aggregate-level data neither can say much about specifically who is participating in those elections. Significant research on participation in other elections indicates that some people are more likely to participate than others (e.g., Wolfinger and Rosenstone, 1980; Verba, Scholzman, and Brady, 1995; Leighley and Nagler, 1992a, b; Leighley and Vedlitz, 1999; Shields and Goidel, 1997; Wattenberg, 2008), and that these disparities influence the kinds of policies that are passed (Hill and Leighley, 1992). If patterns of participation affect judges' rulings the way that they influence policy, then obviously the question of who participates in judicial elections is enormously important.

The only variable in both the Hall study and Streb, Frederick, and LaFrance analysis that is related to the demographics of judicial election voters is the state or district level of education. Hall (2007) finds that the greater the percentage of a jurisdiction that has a bachelor's degree, the lower the roll-off. However, Streb, Frederick, and LaFrance do not find a significant relationship between education levels and roll-off. The competing findings could be related to a measurement problem. As Nichols and Strizek (1995) argue, the individual relationship between education and voting may be masked when data are aggregated. Individual-level data would allow for a better test of the effects of education on roll-off.

Even if the measurement of the education variable is not a problem, there are still numerous demographics that these studies cannot address. Are partisans more likely to participate than nonpartisans? Does income or occupation matter? Is there a racial, ethnic, or gender gap in participation? Furthermore, we know little about how attitudes influence participation. For example, are ideologues more likely to vote than moderates? Do people who have positive views of the courts cast their ballots at greater rates than people who hold neutral or negative views? Does political knowledge matter? These questions merely scratch the surface of what variables may constitute crucial individual-level determinants of participation in judicial elections.

² Although studies find that people are not capable of explaining the reasons for their vote in a judicial election (Johnson, Schaefer, and McKnight, 1978; Baum, 1989; Lovrich and Sheldon, 1983), because gender may be a cue that voters employ (McDermott, 1997, 1998) they might explain what information the gender cue had provided.

A recent study by Baum and Klein (2007) sheds some light on the answers to these questions. They analyze surveys of voters in Ohio state supreme court elections in 1998 (what they consider a low-visibility year for judicial elections in the state) and 2002 (considered high-visibility elections). Five variables are included in their model of participation: strength of partisanship, strength of ideological leanings, income, education, and political knowledge. They find that the partisanship, ideology, and income variables have little effect on a person's decision to vote in the contests. On the other hand, political knowledge and education did matter, especially in the low-visibility contests.

More work on participation similar to Baum and Klein's is needed. They are limited to one state, and patterns of participation may not be the same across all states. The fact that Ohio holds nonpartisan judicial elections may explain why the partisan and ideology variables were insignificant; had they studied a state that holds partisan elections, the results regarding those variables might well be different. Baum and Klein also did not include several variables (e.g., age, race/ethnicity, gender) that may affect participation. Finally, all of the studies mentioned here examine participation in elections held during the November general election. Patterns of participation may not be the same in judicial elections held at off-peak times.

Why Do Judicial Candidates Run for Office? The first two examples highlight the need for additional individual-level data of voters. The judicial elections literature would benefit from more surveys of both potential and actual judicial candidates as well. We need a better understanding of why people chose to run or not run for judge. For instance, both Hall and Bonneau's (2006) article and the Streb and Frederick's (2009) study indicate that judicial challengers are strategic actors. Challengers run for judicial office when the probability of victory is greatest. However, do these candidates know that they are acting strategically? Is it the candidate who is able to determine the best time for him or her to run, or do political parties make this calculation? If the latter makes such a decision, is the process the same for both partisan and nonpartisan elections?

Fortunately, we are beginning to see more scholars studying judicial candidates. Most notably, Abbe and Herrnson (2002) conducted a survey of 261 judicial candidates who ran for office in 1996 and 1998, almost all of whom were running for a trial-court seat. More recently, Peters (2008) extended this analysis by surveying 31 state supreme court candidates in 2006. These studies provided insight into how candidates are conducting their campaigns (see Streb, 2007, for a view from the political-party side), but neither gets at what motivated candidates to run.

Williams (2008) has conducted the best analysis into the minds of judicial candidates. She surveyed a sample of attorneys in Texas regarding their desire to run for a district or appellate court. Her primary interest is measuring the ambition of female judicial candidates, and she builds a model predicting whether an attorney ran for judge. Her results provide understanding into the thought processes of potential judicial candidates. For example, she finds that those individuals who were encouraged to

run for judge were more likely to do so. Additionally, those attorneys who were dissatisfied with their current firm were more likely to throw their hats into the ring. What her results cannot tell us, however (and, in fairness to Williams, this was not her intent), is whether candidates were making strategic calculations when deciding to run. In other words, were they deciding to run when their probability of victory was greatest?

CONCLUSION

These examples are simply a few of the numerous questions that could be answered with more, and better, individual-level data. Unfortunately, the cost and logistics of conducting a multistate survey, especially of voters, can be quite daunting. Unlike congressional and presidential elections scholars, judicial elections scholars do not benefit from either the in-depth biannual data provided by the National Election Study (NES) or the numerous exit polls conducted for high-profile elections. Hopefully, scholars of judicial elections will continue to pursue funding that will allow us to move beyond speculation for the reasons behind the results of many aggregate-level studies.

On a positive note, there is much to be energized about regarding the future of judicial elections research. Although the excitement of judicial elections was once compared to playing a game of checkers by mail (Bayne, 2000), the “new politics of judicial elections” seems to have prompted a heightened interest in judicial elections among not only scholars, but reform groups, the media, and practitioners, as well. And, certainly, we know significantly more about judicial elections today than we did just a decade ago.

However, there is still much to learn. While in graduate school, I spoke to my mentor about a possible research project. I have forgotten what my great idea was at the time, but I remember my mentor’s response to the project. “Matt,” he said, “you can either spend your time tweaking a few coefficients or you can study important questions that we don’t know the answers to.” Compared to the exhaustive literature covering elections for the presidency and Congress, we know little about judicial elections and numerous questions remain. More individual-level data are crucial if scholars are to supply answers for those questions. **jsj**

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