

AN ANALYSIS OF THE STATES' RESPONSES TO *REPUBLICAN PARTY OF MINNESOTA V. WHITE*

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We examine the state supreme courts' implementation of the U.S. Supreme Court's controversial decision in Republican Party of Minnesota v. White (2002), which invalidated a restriction on judicial campaign speech. We find that the lower courts' responses to the decision varied, and place them in the following categories: 1) noncompliance; 2) slow compliance; 3) compliance; 4) expansion; 5) limited expansion; and 6) unresponsive. We then analyze the states' actions in light of their courts' ideology, citizens' ideology, level of interest-group activity, political culture, and system of judicial selection. We find that some states' reactions to White seem to be influenced by institutional norms and political culture and values relating to the proper roles for judicial office-seekers but not by partisan ideology or interest-group pressures. We speculate that these factors are significant because the manner in which White is implemented may affect fundamentally the functioning of the judiciary and the public's perception of it; thus, the state high courts may be more likely to respond to the decision reflecting the state's political values and norms.

This article examines the implementation of the U.S. Supreme Court's controversial decision in *Republican Party of Minnesota v. White* (2002), which invalidated part of Minnesota's judicial conduct code regulating judicial campaign speech. Although most states maintained, or changed, their codes consistent with the *White* decision, there is some interesting variation in how the states chose to respond to *White*. A few acted aggressively to change their codes beyond what the Court specifically required, and others deleted clauses similar to that struck down in *White*, but some dragged their feet in responding or even seemed to ignore the decision. In seeking to understand why states reacted differently after *White*, we examine the states' actions in light of their courts' ideology, citizens' ideology, level of interest-group activity, political culture, and system of judicial selection.

The question of what is appropriate campaign discourse in judicial contests became less clear after the U.S. Supreme Court, in deciding *White*, extended First Amendment protection to judicial candidates and opened the door for them to speak on the campaign trail about controversial topics. By a 5-4 vote, the Court struck down a provision in Minnesota's code of judicial conduct banning candidates in judicial contests from announcing their views on disputed legal or political topics. The *White* decision effectively nullified the "announce clause" contained in ten states' judicial conduct codes. However, some scholars (e.g., Begaye, 2003) suggest that the Court's ruling reached further by sending a message to states employing judicial elections—that they must allow candidates room to discuss legal and political issues of the day.

That states or other entities may differ in their interpretation of a Supreme Court decision is not surprising, as such interpretation is typically not straightforward (Wasby, 1970). President Andrew Jackson's alleged reaction to a Supreme Court decision, "John Marshall has made his decision, now let him enforce it," aptly bespeaks the political thicket that may lie between a high-court opinion and its implementation. To implement its decision, the Court must rely upon other actors, who are subject to political influences as they make choices and allocate resources (Canon and Johnson, 1999). So great is the latitude of those who implement policies that the resulting policy is often effectively "made" by the implementing population (Lipsky, 1978).

The Court's decision in *White* may have raised more questions than it answered about the First Amendment rights of judicial candidates. In voicing skepticism about the rationale offered for the state judicial conduct code, declining to hold that judicial races are subject to more regulation than other elections, and applying strictly the requirement that state regulations be narrowly tailored to fit the state's compelling interests, the Court created doubt as to whether *any* regulation of judicial campaign speech is constitutionally permissible (Briffault, 2004). We proceed on the assumption that the *White* decision was sufficiently controversial and ambiguous to prevent a uniform response by the lower courts, because state high courts, with ambiguous or controversial directives from their principal, may be only loosely constrained (Canon and Johnson, 1999). Thus, we anticipate that state high-court interpretations of the *White* decision may be affected by judicial ideology and political environment.

THE DECISION'S CONTEXT

There are three types of clauses used by states regulating judicial campaign speech. Forty-four states employ one or more of these clauses; however, the six states—Connecticut, Delaware, Hawaii, Massachusetts, New Jersey, and Virginia—that have no restrictions are omitted from this study. The "announce clause," taken from the 1972 American Bar Association (ABA) *Model Code of Judicial Conduct*, typically states that a candidate for judicial office shall not "announce his or her views on disputed legal or political issues" (*White*, 2002). The "commit clause" and "appear-to-commit clause," derived from the ABA's 1990 Model Code, state that judicial candidates shall not make statements that commit or appear to commit a candidate regarding cases, controversies, or issues within cases that are likely to come before the court. The "pledges-and-promises clause," derived from the ABA's 1990 Model Code, states that judicial candidates shall not make pledges or promises, concerning cases, controversies, or issues that are likely to come before the court, that are inconsistent with the impartial performance of the office.

While the *White* Court was clear in its disapproval of the "announce clause," it specifically declined to address the constitutionality of the "pledges-and-promise clause" of the Minnesota Judicial Code or the ABA Model Code on which most state

codes are based. As a result, scholars and government officials now disagree as to whether the ABA canons then in existence are moored to a compelling interest and written narrowly enough to withstand the Court's application of strict scrutiny to matters impinging on First Amendment rights. (The new Code, adopted by the ABA in 2007, is addressed elsewhere in this issue.)

The timing of the *White* decision likely elevated the political stakes in its implementation because it was announced during a period of political change. Some state judicial races, particularly at the high-court level (Baum, 2001), had become quite prominent and interesting as candidates in a number of states began spending considerable money in judicial contests. For example, the average amount spent in a high-court race increased roughly 65 percent between 1996 and 2000 (Goldberg and Sanchez, 2002), and in 2004, the country saw its most costly state judicial race ever when two Illinois high-court opponents raised a total of approximately \$9.4 million. The bulk of these contributions come from interest groups and political parties attempting to elect jurists sympathetic to their ideology and their issue positions (Institute on Money in State Politics, 2005). Great increases in spending for high-court elections have not occurred in every state (Bonneau, 2005), yet an influx of money has led to races in which many television ads with sharp rhetoric are employed. The *White* decision likely served to raise the level of alarm among critics of such high-profile judicial contests.

A PRINCIPAL-AGENT RELATIONSHIP?

Principal-agency theory has been employed to explain the relationship between lower courts and the U.S. Supreme Court (see, e.g., Songer, Segal, and Cameron, 1994). According to this view, the U.S. Supreme Court is a policy-making principal with a limited docket that seeks to have its policies implemented by state courts of last resort and lower federal courts, which are its agents. Yet the Court as principal is at a disadvantage, as it is unable to monitor closely the actions of lower courts, which are unlikely to fear reversal (Klein and Hume, 2003). Despite this, some studies suggest that lower federal courts and state courts of last resort conform their decisions to U.S. Supreme Court precedents (see, e.g., Benesh, 2002; Benesh and Martinek, 2002), and likely do so because adhering to precedent is a mark of professionalism, which aids in maintaining uniformity and consistency in the law (Benesh and Martinek, 2005).

Thus, as subordinates in the judicial system, lower courts are constrained in interpreting high-court decisions, but they possess some leeway in how they implement them. For example, while federal courts of appeals are fairly responsive "agents" to their Supreme Court "principal" (Songer, Segal, and Cameron, 1994), they also find opportunities not to follow them fully. State high courts in responding to U.S. Supreme Court decisions may be able to exercise even *greater* discretion than lower federal courts, because, despite their subordinate status as to federal constitutional law resulting from the Supremacy Clause, they operate with considerable independence

because the Court infrequently invalidates their decisions. Thus, the principal-agent relationship that exists between the Court and state high courts may be weaker than that between the Court and lower federal courts (Kilwein and Brisbin, 1997).

Supreme Court opinions in which key elements are poorly stated can also produce a variety of interpretations by lower courts. Even a clearly written decision often leaves questions about its applicability, as lower courts are left to their own devices to apply precedent to new circumstances. Moreover, a closely divided Supreme Court decision may constrain the lower courts less than would a unanimous one. Thus, given that the vote in *White* was 5 to 4, that the case addressed only one of the four commonly adopted relevant ABA restrictions on judicial candidate's campaign speech, and that it prompted divergent legal opinions on how it affected the fate of the other two ABA provisions, it seems tailor-made to spawn a variety of state high-court responses.

WHY JUDICIAL CONDUCT CODE VARIATION IS IMPORTANT

As studies of compliance with the U.S. Supreme Court typically examine how Court precedent is applied in lower-court cases, such studies focus on the direct application of the law to parties. The phenomenon we are examining here, measuring the variation in state judicial conduct codes, certainly does not have the same "where the rubber meets the road" quality. However, we believe the study is one worthy of attention, given that it could indicate how those states handle complaint cases arising under the judicial conduct codes. For example, states that fail to strike down an "announce clause" may be exhibiting hostility or indifference to the holding in *White* and may intend to suppress judicial campaign speech allowed under *White*. On the other hand, states that take immediate steps to nullify their statutes may be showing agreement with that precedent and signaling an intention to allow greater campaign speech.

State legislatures serve as an instructive analogy. It is well-known that a number of states still have unconstitutional abortion, flag-protection, Jim Crow (Chin et al., 2006), school-prayer, sodomy, and other laws "on the books," because of resistance from voters and legislators in those states. Moreover, some states even continue to enforce such laws (see, e.g., Associated Press, 2007). Yet, even if an unconstitutional law is not enforced by a state, it may still have meaning and impact as a symbolic expression of discontent with Supreme Court policy. A state high court's refusal to strike down its "announce clause" may be a strong statement of a legal norm, which judicial candidates may be unwilling to violate (Salokar, 2005). Thus, we assert that actions to delete or not delete a judicial conduct code may be significant in conveying state support for, or opposition to, the measure.

STATES' POST-*WHITE* RESPONSES

State judicial conduct codes are typically based upon the ABA's *Code of Judicial Conduct*, and a few are adapted from the ABA's former *Canons of Judicial Ethics*. The

code of judicial conduct in each state is adopted by the state's highest court, except for New York where it is adopted by the chief judge of the courts with the approval of the court of appeals. Some courts appoint commissions that advise them, ask for public comment, or both, but the final decision is the court's (Gray, 2007). For example, the Supreme Court of Montana created such a commission in 2003, chaired by a supreme court justice, to serve as an advisory panel to examine the state's canons of judicial ethics (State Bar of Montana, 2006).

In exploring the differing ways states reacted to *White*, we focus on a number of key elements. They are judicial ideology, state-citizen ideology, interest-group concentration, political culture, and method of judicial selection. We examine each in turn. **Judicial Ideology.** The influence of attitudes on judicial behavior is well documented. While much of the work involves the study of the U.S. Supreme Court (e.g., Segal and Spaeth, 1993), an increasing body of research demonstrates the impact of policy preferences and attitudes upon state court decision making (e.g., Emmert and Traut, 1994; Fleming, Holian, and Mezey, 1998). Simply put, in making decisions, state court judges strive to attain their policy preferences. Thus, the ideology of state high courts is likely influential in their fashioning of judicial conduct codes.

Indeed, Wersal, the petitioner in *White*, was a conservative Republican judicial candidate who criticized liberal court decisions on abortion, crime, and welfare; vowed to be a strict constructionist; and chastised the Minnesota high court as judicial activists before he prompted a complaint for violating the state's ethical canon (Lithwick, 2002). We thus expect that state courts that contain more justices who are conservative may be more likely to enact an expansive interpretation of *White* and to favor unfettered campaign speech as giving conservative judicial candidates an advantage.¹

Interest-Group Concentration. The number of interest groups involved in sponsorship of litigation and amicus-curiae participation has increased considerably in recent years at both the state and federal levels (Songer and Kuersten, 1995). The growing importance of the state supreme courts as policy makers has caused a greater number and wider array of interest groups to turn their attention to the state courts to accomplish their policy goals (Epstein, 1991). Interest groups also increasingly participate aggressively in some state judicial contests, contributing large amounts of money and independently spending significant sums for commercials on behalf of judicial candidates (Goldberg and Sanchez, 2002; Schotland, 2001).

We expect states with a high level of interest-group activity to be more likely to widen the boundaries of acceptable judicial campaign discourse. Interest groups prefer to know where judicial candidates stand on issues of importance to them (see Salokar, in this issue), and in states where they enjoy a significant presence, they may have the clout to influence liberalizing judicial conduct codes. To measure the degree

¹ We use the Brace-Hall Party Adjusted Judge Ideology Scores (PAJID) to measure the liberalism of justices sitting on the state high court. Values range from a high of 103.12 in Rhode Island, to a low of 25.03 in Arizona.

to which groups influence policy making in each state, we use the measure created by Thomas and Hrebener (2004) using 2002 data. States are categorized by whether interest-group impact is dominant, dominant/complementary, complementary, complementary/subordinate, and subordinate; no states, however, are classified as “subordinate.”

Political Culture. Social scientists have long recognized the important role of political culture in politics. The manner in which the public thinks about its government and the way in which the state government functions have been shown to explain variations in state policy effectively (Bowman and Kearney, 1999). According to Daniel Elazar (1984), three major types of political culture, each with unique characteristics, are present in the United States. Politics in an individualistic political culture is an open marketplace in which people participate because of private motivations. In a moralistic political culture, politics is more of an attempt to improve the conditions in society. In a traditionalistic political culture, politics operates to secure the existing order, its participation limited to social elites.

Political culture may affect how state high courts implement *White*. Critics of the decision assert that allowing judicial candidates to engage in unrestricted political speech, such as making specific promises, is anathema to good government. Thus, we anticipate that states featuring moralistic political cultures may be averse to an expansive interpretation of *White*.

Method of Judicial Selection. A convincing argument has been made that state high-court jurists are influenced by structural factors in their environment (see, e.g., Brace and Hall, 1990). Although all the various methods of judicial selection tend to produce judges with similar background characteristics (Glick and Emmert, 1987), strong relationships have been found between the type of selection system and state judges' decisions on the merits (see, e.g., Gryski, Main, and Dixon, 1987). We presume the method for selection for a state high court influences the court's decision to implement *White*; in particular, we expect high courts chosen through the Missouri Plan or “merit selection” would be unlikely to implement *White* expansively. Missouri Plan systems were adopted to try to increase the independence of the courts (Baum, 2001); thus, courts whose members are selected through this process would seem unlikely to change the ethics code to allow candidates to make pledges, promises, or commitments to positions.

State-Citizen Ideology. Courts tend to be responsive to the public regardless of the judicial selection mechanism under which they operate. To maintain the institutional support critical to its authoritative position in society, Supreme Court justices cannot afford to ignore the attitudes of the public lest they jeopardize their legitimacy (Caldeira, 1990). State court jurists, most of whom do not enjoy lifetime appointment, are more politically vulnerable than their U.S. Supreme Court brethren. They too must concern themselves with institutional support, but most also face the challenges of retention or reelection. Although state judicial seats tend to be fairly safe, the prospect of losing office is a reality. State court judges are cognizant of the hazards of making unpopular decisions and may refrain from doing so (Emmert and Traut, 1994).

We believe that decisions concerning judicial campaign conduct, although not highly salient, are sufficiently important to warrant the public's consideration; thus, we posit that the ideology of the public will be influential on the decisions of the state courts in this area. Although some have used Elazar's (1984) state-political-culture typology as a surrogate for citizen ideology (see, e.g., Grogan 1994), we believe that the two measures are conceptually distinct. Whereas state political culture describes how citizens view the role of government and politics, citizen ideology measures the liberalism/conservatism of the states' citizens. Thus, citizen ideology measures, indirectly, citizens' policy preferences, rather than their views of the roles of government and politics. Our measure of the public's ideology is the percentage of the public in a state who identify themselves as liberal (see Wright, 2006). We anticipate that the greater the percentage of self-identified liberals in a state, the less likely a state high court will interpret *White* broadly.²

CATEGORIZING STATES

In the analysis that follows, we place states into six categories according to how they treated their judicial conduct code after *White*: 1) noncompliance; 2) slow compliance; 3) compliance; 4) expansion; 5) limited expansion; and 6) unresponsive.

Noncompliance. We place the two states—Colorado and Montana—that have not deleted their “announce clause” from their codes of judicial conduct as of this writing (June 2007) in the category of “noncompliance,” as *White* was clear in its proclamation that the “announce clause” is unconstitutional.

Slow Compliance. Two states—Missouri and Iowa—that waited to delete their “announce clause” until 2006 are placed in the category of “slow compliance.” In contrast to Missouri and Iowa, Pennsylvania and Texas deleted their “announce clauses” in 2002, and Arizona, Maryland, Minnesota, and New Mexico did so in 2004. Evidence of “foot-dragging” rather than an outright willingness to comply with the U.S. Supreme Court is the Missouri Supreme Court's 5-4 opinion in 2002 that limits circumstances under which the “announce clause” would not be enforced against candidates (*In Re: Enforcement of Rule 2.03, Canon 5.B.(1)(c)* (2002)). As the Missouri Supreme Court opinion provided no guarantee that the announce clause would not be enforced, the rule's maintenance “on the books” for four years after *White* likely served as a warning that announcing one's political views as a judicial candidate was a risky endeavor.

Compliance. The five states that deleted their “announce clauses” in a timely fashion are deemed “compliant,” as they abided by the letter of the law set out in *White*.

Limited Expansion. The nine states that deleted just their “appear-to-commit clause,” or just this clause and the “announce clause,” we deem as engaging in “limited expansion.” Why do we include the deletion of the “appear-to-commit clause” in our definition of “limited expansion,” rather than simply “expansion,” given that the

² The Berry et al. (1998) measures of citizen ideology did not produce different findings.

provision (not in Minnesota's former code) was not nullified in *White*? We believe this clause is vague and overly broad so as to create a chilling effect on speech that *White* seeks to protect. Indeed, the American Bar Association recognized in 1993 that the "appear-to-commit clause" cannot survive strict scrutiny, and deleted it from the Model Rules (Simmons, 2003). Thus, the deletion of this clause is a quite modest step beyond *White*'s dictates and deserves different treatment than the bolder actions of "expansive" states.

Expansion. Finally, we categorize three states—Georgia, Kentucky, and North Carolina—that invalidated their "pledges-and-promises clause" as applying *White* "expansively" as we believe this interpretation of *White* to be broad and beyond its precise holding.

Unresponsive. We label the twenty-three states that did not have the "announce clause" and chose not to alter their judicial conduct codes after *White* as "unresponsive."

FINDINGS

Most states' actions in amending their judicial speech codes in response to *White* fit within the "unresponsive" category (see Table 1); why change the code if not required to do so? Among states directly affected by *White*, those with "announce clauses," most chose to comply rather quickly. This accords with the literature concluding that the Supreme Court and state high courts have a principal-agent relationship. Some state courts embraced this role so avidly that they chose to interpret *White* as directing a revision of provisions beyond the "announce clause"; of those that selected this course, however, most chose an expansive interpretation of *White* that would have a quite limited effect on widening the topics judicial candidates can address. (By this, we mean that eliminating the proscription on "appearing to commit" to an issue likely to come before the court but retaining the proscription on "committing" to this issue does not give the candidate a great deal of additional breathing room.) Some interesting patterns emerge among the few states that did the unexpected, that is, although required to act by virtue of their position as agents of the Supreme Court to change their codes, they either did not do so or did so extremely slowly, and a few states that were not required to act nonetheless used *White* as an opportunity to loosen restrictions on campaign speech considerably.

A state's response to *White* and how the state's justices are selected appear to be related (see Table 2). A state that is noncompliant or slow to comply is more likely to have a state high court composed of justices selected by merit selection than any other method. This confirms our intuition that states with the Missouri Plan of judicial selection are more likely to disagree with *White* and avoid (or delay) its implementation. These judges, selected by a procedure whose reason for existence is to "remove politics" from the judicial process, view campaigning on issues to win a judicial appointment or election as anathema to the judicial role. In contrast, all state courts that expanded upon *White* beyond deleting an "appear-to-commit clause" are composed of elected judges. An elected judge is more likely to view campaigning as a

Table 1
State Responses to *White* Concerning Code of Judicial Conduct Restrictions on Campaign Speech (as of June 2007)

How Categorized	Action/Inaction	States
Noncompliance	Maintain announce clause	CO, MT
Slow Compliance	Delete announce clause more than two years after <i>White</i>	IA, MO
Compliance	Delete announce clause within two years after <i>White</i>	AZ, MN, TX, MD, PA
Limited Expansion	Delete appear-to-commit clause	CA, FL, ND, NV, NY, OK, SD, WI
	Delete announce clause and appear-to-commit clause	NM
Expansion	Delete pledges-and-promises clause	KY, NC
	Delete pledges-and-promises clause and appear-to-commit clause	GA
Unresponsive	Maintain appear-to-commit clause, commit clause or pledges-and-promises clause	AL, AK, AR, ID, IL, IN, KS, LA, ME, MI, MS, NE, NH, OH, OR, RI, SC, TN, UT, VT, WA, WV, WY

Table 2
State's Use of Merit Selection for High Court Justices by Categories of Reaction to *White*

	Merit Selection Used	Other Method Used	
		Election	Other
Noncompliance	CO	MT	
Slow Compliance	MO, IA		
Compliance	AZ, MD	MN, PA, TX	
Limited Expansion	FL, NM, NY, OK, SD	NV, ND, WI	CA
Expansion		GA, KY, NC	
Unresponsive	AK, IN, KS, NE, RI, TN, UT, VT, WY	AL, AR, ID, IL, LA, MI, MS, OH, OR, WA, WV	ME, NH, SC
Total Number of States	19	21	4

Table 3
Type of Political Culture in State by Categories of Reaction to *White*

	Moralist	Individualist	Traditionalist
Noncompliance	CO, MT		
Slow Compliance	IA	MO	
Compliance	MN	MD, PA	AZ, TX
Limited Expansion	CA, ND, SD, WI	NV, NY	FL, NM, OK
Expansion			GA, KY, NC
Unresponsive	ID, KS, ME, MI, NH, OR, UT, VT, WA,	AK, IL, IN, NE, OH, RI, WY	AL, AR, LA, MS, SC, TN, WV
Total Number of States	17	12	15

fact of life. We wish to avoid more-than-modest claims about the relationship between selection method and reaction to *White*, however, as two merit-selection state high courts did act quickly to delete the “announce clause,” and several other merit-system courts chose to delete “appear-to-commit clauses,” a move arguably not required by *White*.

A state’s post-*White* response and a state’s political culture also appear related (see Table 3). Noncompliant or slow-to-comply states are more likely to have a “moralist” culture, whereas all states expanding upon *White* are “traditionalist.” This result is intuitive as well, as states with a political culture purportedly favoring a “good and just society” should be disinclined to allow judges to speak out on the issues of the day in fear of the prospect of political evils entering the realm of judging. Moralists are receptive to the argument advanced by the dissenting opinions in *White*, that government has a compelling interest to reinforce the integrity and legitimacy of the judicial branch by penalizing judicial candidates who announce their views on disputed legal issues. In contrast, state high courts steeped in “traditionalist” culture appear not to view *White* as a threat to the judiciary. Again, we do not want to overstate the impact of culture, as one court in a moralist state complied with *White* quickly, and four others took the step deleting the “appear-to-commit clause.”

Nevertheless, briefly comparing two states, the slow-to-comply Missouri and the expansive North Carolina, is illuminating. Missouri high-court justices are, of course, appointed by a nominating commission using merit selection. An appointed justice serves for one year, and then faces a retention election to sit for a twelve-year term. Joseph C. Blanton, Jr., a leader in the state bar association, explains that “Missouri has purposefully established a system which eliminates partisan activities from the appellate judicial selection process to the maximum extent possible” (Vitale, 2005). Blanton also takes the position, which he set forth in an amicus brief for the Missouri Bar Association in the *White* litigation before the Eighth Circuit on remand, that *White*’s holding is only applicable to states (like Minnesota) that elect *all* of their judges. A view like this creates a semi-legitimate cover for noncompliance with *White*, thus illustrating the leeway that state high courts sometimes have to not be responsive “agents” to their Supreme Court “principal.” While the Missouri Supreme Court has recently amended the state’s ethics rules to delete the “announce clause,” it did so nearly four years after *White*. Missouri is not typical of the other noncompliant or slow-to-comply states characterized by “moralist” political cultures; but Missouri’s “individualistic” political culture conceivably supported a state high-court flouting of the U.S. Supreme Court.

Like the other states expanding upon *White*, North Carolina has a “traditionalist” political culture that may counsel obedience to the U.S. Supreme Court unless the Court issues an opinion posing a threat to the social elite. Unlike the Missouri justices, the North Carolina high court took a “fairly aggressive” approach to *White* in 2003; the court deleted a “pledges-and-promises clause” and allowed candidates “to commit to controversial substantive positions” (Nichol, 2004:3). The critical differ-

ence from Missouri? At the time, North Carolina justices were selected in partisan elections. In reaction to this drastic rule change and to concerns that judicial elections were dominated by special-interest money, the legislature adopted nonpartisan elections for appellate judges (Nichol, 2004).

Our other expectations are not borne out by the data.³ Although one might expect conservative state justices and those operating in conservative or Republican communities to be more sympathetic to loosening campaign speech restrictions after *White*, perhaps it is not a burning issue for incumbent judges who have benefited from the status quo. Negative attitudes toward judicial candidates announcing views on disputed issues, much less making commitments or pledges, may be prevalent in the public and legal community in some states and, thus, serve to dampen the enthusiasm some state courts may have for looser regulations. These findings can also be explained by the somewhat peculiar nature of the *White* decision. Although the decision tends to help conservative candidates in light of the salient issues of the day, the ideological nature of the decision could be construed as “liberal,” given that it is supportive of free speech. Nor is there a relationship between a state’s response to *White* and the degree of interest-group activity or party control of government. Perhaps this is an issue where interest-group and party politics are overshadowed by the states’ political culture and institutional norms, as well as by a concern for maintaining institutional legitimacy.

CONCLUSION

In exercising their discretion to interpret and implement the vague mandates of the Supreme Court set forth in *White*, state high courts have taken different routes. Although this study’s classification of post-*White* reactions categorizes most states as “unresponsive,” a few patterns emerge that may be significant. The states that were noncompliant or slow to comply and expansive in applying *White* appear to be influenced by institutional norms and political culture and values relating to the proper roles for judicial office seekers but not by partisan ideology or interest-group pressures.

Intuitively, these findings make sense. The manner in which such regulations are implemented can affect the decision making and independence of judges and, consequently, the overall functioning of the judiciary. The regulation of judicial speech also can affect the degree to which the public is informed about the judiciary, and how the public perceives the courts. With these important considerations at stake, it seems plausible that state high courts would tend to make such fundamental decisions influenced by state political norms, values, and traditions.

Thus, the relative autonomy that state supreme courts enjoy in implementing decisions of the U.S. Supreme Court may be tempered considerably by their institutional contexts. Although ideology and partisanship certainly matter in much of state high-court decision making, their influences may depend upon the issues at stake.

³ Results are available from the authors upon request.

Additional research that examines the relationship between ideology and institutional context, and distinguishes the types of cases and circumstances in which contextual factors are influential, may be a useful path to advance our knowledge of high-court implementation. **jsj**

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