

Cooperation on State Supreme Courts

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Introduction

Judicial elections have attracted a great deal more attention in recent years as they have become more costly, controversial and salient to the public and the media. The growth in candidate fundraising, independent expenditures and television advertising has alarmed critics of judicial elections, who have found a champion in retired Justice Sandra Day O'Connor.¹ Judicial reformers typically argue that electing judges threatens judicial independence by making judges dependent on the whims of voters to remain on the bench. Judicial candidates are also forced to raise funds for reelection, exposing elected judges to charges of bias from litigants and potentially a perception of corruption. Scholars have been more skeptical of these concerns (e.g., Bonneau and Hall 2009; Gibson 2008, 2009) and the public continues to express support for the direct election of judges despite increasingly prominent opposition to judicial elections.²

Amid the heated arguments on all sides, there are two unresolved questions that are at the heart of this debate: (1) whether electing judges changes the way that state courts function and (2) whether judicial elections change how citizens view the courts. Researchers have explored the first question by examining a number of topics including how elections alter the composition of state court benches, the qualifications of those selected, or the content of the decisions that elected judges make. Studies related to the second question have generally been focused on the effects of campaign spending and television advertising. All of these studies of state courts are similar in that they are primarily concerned with either the input (i.e. who is elected and how) or the output (i.e. the decisions) of these institutions.

¹ Since her retirement, Justice O'Connor has frequently spoken out in support of merit plans for the election of state judges (see e.g., Barnes 2010; O'Connor 2010; Schwartz 2009).

² See, for example, recent polls by Rasmussen Reports in April 2011 (http://www.rasmussenreports.com/index.php/public_content/politics/general_politics/april_2011/65_say_most_judges_should_be_elected_political_class_disagrees) and the Elon University Poll in November 2009 (<http://www.elon.edu/e-web/elonpoll/112009.xhtml>).

There is, however, a third relevant aspect to these questions: the process. Regardless of the individuals serving or the content of the decisions they are producing, the communication and cooperation among justices is a vital part of the process as it affects the daily work of the court; yet we know remarkably little about the process on state courts of last resort. Moreover, understanding the process is undoubtedly necessary to answer either of the central questions of the judicial selection debate. Regarding the public, we know that Americans care about the processes institutions follow as well as the policies they produce (Hibbing and Theiss-Morse 2002). In relation to courts, a belief in the fairness of judicial procedures is a meaningful component of public support for lower courts (Benesh 2006; Tyler 1990). This is especially important due to the assumption that increased perceptions of support and legitimacy can compel other political actors to comply with the court's decisions.

Perhaps the strongest argument for caring about the process is that the way justices interact with each other and their individual motivations during the opinion-writing stage is particularly relevant to the decision the court ultimately makes in a case. Unlike legislators, judges are not merely voting "yes" or "no" when deciding a case; the court's output is a decision, written by one justice but often substantially shaped by some or all of the author's colleagues. The reasoning for a decision is at least as important as the instant result, so the process through which it is reached is essential to our understanding of judicial behavior (see e.g., Maltzman, Spriggs, and Wahlbeck 2000).

Even if elected and appointed justices bring similar qualifications to the bench and vote in a similar fashion on certain types of cases, the processes by which they produce their decisions may be substantially different. If the fears of judicial reformers prove true, the individual motivations of justices would lead to several observable differences in behavior between elected and appointed courts. Where appointed justices might seek consensus, unconcerned with standing out from their colleagues, elected justices may be motivated by individual electoral concerns and more willingly

write separately. In addition, the periodic reactivation of partisan and ideological differences by reelection campaigns may make divisions among justices more durable over time.

In this paper, we focus on the process in part to determine whether the fears of judicial reformers have been misplaced. Specifically, we examine the incidence of non-unanimous opinions as well as the number of separate opinions written to ascertain whether there are meaningful differences between the levels of cooperation in elected and appointed courts that manifest in the opinion-writing process. We consider the opinions produced in education cases decided by state supreme courts in all fifty states during the period 1995-2005 without regard to the content of the decision or the substantive outcome of the case. Our findings that elected courts are less likely to produce unanimous decisions and more likely to produce higher numbers of separate written opinions than appointed courts suggest that elections have a negative influence on cooperation during the opinion-writing process on state supreme courts.

Electing Judges

Judicial elections, which were once wrongly thought uncompetitive and unworthy of serious study (see e.g., Dubois 1980), are now the subject of a great deal of attention from scholars, reformers and the media. Since this surge in interest is driven in large part by the rising costs of campaigns and presence of television advertising, it is not surprising that most public discussion is focused on the dynamics of the elections themselves. The U.S. Supreme Court has also drawn attention to these races with decisions regarding the influence of campaign money on elected justices and campaign finance more generally.³

³ In the last decade the Court decided two notable cases that explicitly involved judicial elections: *Republican Party of Minnesota v. White* 536 U.S. 765 (2002), which deals with restrictions on the campaign speech of judicial candidates and *Caperton v. A.T. Massey Coal Co.*, 556 U.S. ____ (2009), which concerns the recusal of an elected judge or justice from a case involving a major independent campaign supporter. Judicial elections are also frequently mentioned in connection to the landmark campaign finance decision *Citizens United v. Federal Election Commission*, 558 U.S. ____ (2010) due to an expected increase in independent spending in races for seats on states supreme courts, although the effects of the decision on state campaigns remains unclear.

It is clear that judicial candidates are raising and spending more money on their campaigns than ever before (see e.g., Sample et al. 2010), though scholarly research has revealed a more nuanced picture of the influence of this campaign money. In many ways, judicial elections resemble legislative elections in terms of the factors that influence candidate fundraising and spending. Incumbents tend to spend more than their challengers and open seats attract more campaign money than races involving an incumbent (Bonneau 2004, 2005b). The effects of campaign expenditures are also expected based on the legislative literature, as challenger spending is expected to be more effective than incumbent spending (Bonneau 2007). Scholars have also found “democratic incentives” to the trend of expensive campaigns as increased spending tends to increase the percentage of voters choosing to vote in judicial elections as measured by ballot roll-off (Hall 2007; Bonneau and Hall 2009).

The evidence demonstrating the similarities between judicial and legislative elections has intensified the normative debate between judicial reformers and supporters of judicial elections. Critics of judicial elections view courts and legislatures as fundamentally different institutions and are alarmed by the growing resemblance between the two. These critics believe the increasing costs and incidence of negative campaigning to be unseemly for the courts and a threat to judicial independence and the public’s faith in the courts as legitimate, unbiased institutions (see e.g., Geyh 2003; Sample et al. 2010). Proponents of judicial elections view the same evidence as proof that elections are effective mechanisms for voters to assert policy preferences over a policy-making institution. Further, increased participation in these elections should only enhance voters’ views of state judges because elections confer legitimacy to political institutions and individual policy actors (Bonneau and Hall 2009, 129; Gibson 2008; Gibson et al. 2011).

This debate rests on a fundamental assumption, however: that judicial elections change the way state courts function. This is the fear underlying many of the arguments of judicial reformers

and is a topic that can be approached in several ways. In thinking about any institution or organization, there are three ways in which such changes may manifest: 1) the input, or the personnel who are making decisions; 2) the output, or the content of the decisions themselves; and 3) the process, or the way that personnel interact and make decisions on a daily basis.

The Input: Successful Candidates

Perhaps the most direct way to change the decision-making process of any institution or organization is by changing the decision-makers. The composition of a court is an important aspect of decision-making as appellate judges in both state and federal courts have been shown to follow their ideological goals, to some extent, in making decisions (e.g., Hettinger, Lindquist, and Martinek 2006; Langer 2002; Segal and Spaeth 2002). Moreover, changing the membership of a collegial court like a state court of last resort may alter the dynamic between other justices. Critics of judicial elections historically have feared that elections would result in less-qualified or less-capable judges reaching the bench as compared to appointed courts. This would be due, in part, to an ill-informed electorate making random decisions and also to self-selection by potential candidates who decide not to leave their private careers for a risky run for office (Sheldon and Maule 1997, 70)

While there is no subjective measure of capability to assess across states, there is no direct evidence that elections systematically result in less-qualified judges attaining seats on the bench. Indeed, researchers have countered reformers' fears with evidence that outcomes in judicial races are predictable and are shaped by the same factors that influence the outcomes of races for legislative and executive offices (Bonneau 2005a, 2006). In addition, "quality" challengers, or candidates with judicial experience, tend to be more successful than candidates without experience as a judge (Bonneau and Hall 2009; Hall and Bonneau 2006). The strategic emergence of "quality" challengers is also used as evidence that potential candidates are not turning away from seeking election, as some opponents of judicial elections feared (Bonneau and Hall 2003). Elections may change courts by

bringing new voices to the bench, but there is no evidence that the individuals elected are fundamentally different than judges who reach the bench by appointment (Glick and Emmert 1986).

The Output: Decision-making on Elected Courts

An institution may experience change even without a change in personnel, if external influences lead to a change in the decisions made. One of the strongest arguments on both sides of the judicial reform debate is that elections force judges to consider the views of the public when making decisions. This is perceived by critics of judicial elections as a grave threat to judicial independence, particularly if elected judges are responsive to campaign supporters (e.g., Geyh 2003). Supporters of judicial elections argue that it is an advantage, in that elections force judges, like other policy actors, to be accountable to the people. (see e.g., Bonneau and Hall 2009; Dubois 1980; Sheldon and Maule 1997).

Putting aside the normative debate, it is clear that elections do have an influence on the decisions that individual judges and justices make in certain circumstances. Elected trial court judges tend to sentence more harshly when they are approaching reelection and more harshly on average than their counterparts that are appointed (Gordon and Huber 2007; Huber and Gordon 2004). Research regarding death penalty appeals also reveals the influence of public opinion on justices as they approach reelection (Brace and Boyea 2008). Justices may not purposely seek to follow public opinion, but the influence of elections may be indirect. This is highlighted by interviews with justices (Hall 1987; Wold and Culver 1986, 351) and substantiated in more systematic analyses (Hall 1987, 1992). Based on the literature, elections clearly have the potential to change the output of state courts by compelling elected judges and justices to consider the views of the public in deciding how to vote in a particular case; the reaction to this conclusion depends highly on one's position in the normative debate regarding elections, of course.

The Process: Opinion-writing and Cooperation

For many institutions, the ends are more important than the means, but the same cannot be said of courts because the outcome of a case is not limited to a simple vote; the reasoning of judicial opinions is often just as important as the outcome in a given case. Therefore, the process justices engage in to produce this opinion is vital to the decision-making process. Studies of the opinion-writing process at the U.S. Supreme Court have revealed a complex bargaining process in which communication among justices is essential to crafting an opinion that can earn the support of a majority (Maltzman, Spriggs, and Wahlbeck 2000). Further, this process is defined on U.S. Courts of Appeals by the context of the three-judge panels and the individual considerations of ideology, institutional rules and interpersonal relationships. Judges on the Courts of Appeals rarely write separately, but choose to do so to highlight their ideological disagreement with strict consideration of their institutional context and individual role (Hettinger, Lindquist, and Martinek 2004, 2006).

Without the luxury of the records available for the U.S. Supreme Court, examining the collegial opinion-writing process on state courts of last resort is considerably more difficult. Nonetheless, we have learned a great deal about influences on individual justices during this stage of the process through the foundational studies of Brace and Hall (1990, 1993; Hall and Brace 1989, 1992; Hall 1992). Regarding consensus, the electoral incentive felt by many justices on state supreme courts appears to create the norm of universalism that leads to unanimous decisions (Brace and Hall 1990). Under appointment systems, justices are less likely to dissent. At the same time, justices who must be reelected can use the dissent to signal to the public their disagreement with the majority. An examination of death penalty cases reveals that institutional arrangements, including the method of selection, may “inhibit or promote the expression of personal preferences in decisions and lead to greater consensus or dissent” (Hall and Brace 1992, 152).

Taken together, it is clear that judicial elections have the potential to alter individual justices' decision-making environment as well as the output of state courts of last resort. It is less clear how elections affect the cooperation among justices on opinions. In the analyses presented here, we build on these foundational studies of individual judicial dissent to begin to better understand the broader dynamics at work during the opinion-writing process.

Cooperation on a Collegial Court

To understand the opinion-writing process on state courts of last resort, we must consider not only the individual behavior of specific justices, but the collective behavior of the court as a whole. This is necessary because justices do not make decisions in isolation; a court's output, the opinion, is fundamentally shaped by the cooperation among justices (or lack thereof). Levels of cooperation should generally be high on state courts of last resort due to professional norms and institutional rules that encourage consensus. Nevertheless, divisions may develop that inhibit cooperation over time and these may be reinforced by certain institutional features, like elections, that encourage individual opinion behavior and discourage broader cooperation among the justices.

Of course, such divisions are to be expected in most political organizations and institutions due to the nature of politics. We expect, for example, that legislators will exhibit party-line voting because there are internal rules and institutional features that reinforce partisan affiliation once a candidate is elected. A newly-elected legislator will vote for someone of their party for the leadership, will be assigned to committees by their party leadership and will participate in strategic meetings regarding both governing and electioneering. To gain more power or influence over policy in the future by attaining leadership positions, legislators typically must display party loyalty. In essence, a legislator's party affiliation is central to their work every day of their term, whether or not this influences their voting decisions.

Such features are absent from state courts, however; a newly-elected or newly-appointed justice may join the court as a nominee of the Democratic party or an appointee of a Republican governor, but this partisan affiliation is not formally reinforced in the daily work of the court. All justices' votes are equal, regardless of party, and sitting justices are often discouraged, if not prohibited, from associating with party leaders and organizations.⁴ Judges may still vote and follow local and national electoral politics, but their partisan attachment in their work should fade over time without any formal links to or interactions with political parties.

We argue that elections serve as an informal influence to continually activate and reinforce partisan attachments that would otherwise become less important in the daily work of justices after some period of service on the bench. These influences should be strongest in states using partisan elections to select their justices because the links to political parties are formalized and are reactivated whenever a justice seeks reelection. Compared to a court where justices face only retention elections or no elections whatsoever, elected courts should be characterized by lower levels of cooperation among justices in their day-to-day work. As a result, the behavior of elected justices at the opinion-writing stage will differ from their appointed counterparts in other states. Elected justices will be more likely to engage in individual opinion behavior, writing separate opinions to take public positions on issues that may be relevant to reelection (similar to legislators; see Mayhew 1974). If justices write separate opinions more frequently, unanimous decisions should also be less frequent on elected courts as compared to appointed courts.

Measurement, Data and Methods

Our goal in this paper to examine whether elections have any observable effect on the opinion-writing process on state courts of last resort. While all courts are political institutions, we

⁴ Restrictions on partisan involvement and identification may be found in judicial codes of conduct in nearly all of the states holding partisan or nonpartisan elections for seats on the state court of last resort (Ross 2011).

argue that political and partisan divisions are reinforced by elections and influence the opinion-writing process by encouraging individual opinion behavior and discouraging cooperation among justices. Of course it is difficult to assess a concept like cooperation without internal memos or notes of conferences and communication between justices (see Maltzman, Spriggs, and Wahlbeck 2000). Nonetheless, we can consider two proxy indicators of cooperation and individual motivations in the opinion-writing process.

Evaluating Cooperation

Many or even most decisions of state supreme courts are unanimous, so non-unanimity is an interesting outcome of the opinion-writing process precisely because of its rarity. At the justice-level we know that some justices dissent in certain cases as a signal to those who would vote for them in the next election (see e.g., Brace and Hall 1993; Hall and Brace 1989, 1992). At the court-level, however, high rates of non-unanimous decisions might suggest more durable divisions among justices and a lack of cooperation across ideological or partisan lines. Beyond non-unanimity, another sign of these durable divisions would be the continual or predictable production of multiple written opinions per case.

The decision to write separately is an important one, particularly when we consider the typical workload of a justice on a state court of last resort. The individual decision to write a separate opinion may be a result of electoral strategy (see e.g., Brace and Hall 1993; Hall and Brace 1989, 1992). If the decisions of a particular court are characterized by a large number of separate opinions, however, this may indicate deeper disagreements among justices that are not accommodated through the opinion-writing process. About one-third of the cases analyzed in this paper include two or more formal written opinions (and as many as six or seven in a few cases) indicating that there are meaningful disagreements in a large number of cases despite the norms of unanimity on state courts of last resort.

If elections are having the expected effect of activating and reinforcing partisan and ideological divisions among justices, we should observe less unanimous decisions and more separate opinions per case on elected rather than appointed courts. Further, the effects of elections should be strongest in states with partisan elections, due to the formal links between justices and political parties, and somewhat weaker in states using nonpartisan elections. Without this influence of recurring contestable elections, however, courts where justices face only retention elections after initial appointments should more closely resemble appointed courts than elected courts in the levels of unanimity and separate opinion writing.

Data and Methodology

The data we use here is a random sample of approximately 75% of education cases heard by state supreme courts between 1995 and 2005.⁵ The data include 1,117 cases from all fifty states and the observations are at the case level. Each case was coded for the opinion writing behavior of each individual justice, including their decision to write or join the majority opinion, write or join a concurring opinion or write or join a dissenting opinion. If all of the justices agree on the final outcome, meaning there are no dissenting votes, the decision is coded as unanimous for our first dependent variable. We also take a simple count of the number of separate written opinions in a case, which includes the majority opinion and both dissents and concurrences, for our second dependent variable.

Our main independent variable of interest is the method of selection and retention for the justices. We code this in three different ways: 1) as a dichotomous indicator of whether justices ever face reelection, including retention elections; 2) as an ordinal variable in which the four methods of selection are ranked based on our theoretical expectations from most likely to experience non-

⁵ There is no reason to believe that the policy area of the case has any bearing on the results, though we intend to expand this analysis to test our theoretical expectations across multiple policy areas.

cooperative behavior to the least likely (partisan elections, nonpartisan elections, only retention elections, appointments); and 3) as dummy variables for each method of selection and retention.⁶ We test our models with each of these indicators because the method of selection is our main independent variable of interest and we want to be certain our results are not an artifact of any particular coding scheme.

The other independent variables we use include those indicators that might otherwise affect whether the decision is unanimous or the number of opinions written. Following the literature on judicial decision-making, justice ideology should have an influence on opinion behavior. Therefore we include a measure of ideological diversity with the expectation that more ideologically-diverse courts will produce fewer unanimous decisions and more separate opinions than less-diverse courts. Ideological diversity is measured as the standard deviation of the PAJID scores of the justices (Brace, Langer, and Hall 2000).

We also expect that opinion behavior will be different in cases that are considered more “important” by justices, political actors or other observers. Constitutional cases are one such example, so we include an indicator of whether a constitutional issue is considered in a case, expecting less unanimity and more individual opinion behavior in these cases. Similarly, we include a count of the number of briefs filed *amicus curiae*; since amicus briefs are often a signal to the court of a case’s importance (Caldeira and Wright 1988), we expect that justices are more likely to write separately in these cases resulting, decreasing the likelihood of a unanimous decision. We also include an indicator for whether the government is a party to the case, expecting that the attention

⁶ To classify the methods of selection we consulted the Book of the States. For those states that have a system that could be classified as merit or gubernatorial/legislative appointment, our decision rule was the use of a retention election system. Those states that had any appointment process (with or without a judicial nomination commission) and held retention elections were coded as merit/retention. Those states with an appointment process that included either reappointment or a life term were coded as appointment. We tested our models with an additional indicator for lifetime appointment, but found no significant results due to its colinearity with the appointment indicator.

from other branches of government will make a unanimous decision more likely and decrease the number of separate opinions.

Finally, we account for the time consuming nature of writing a separate opinion with a rough indicator of the court's workload. The presence of an intermediate appellate court limits the court's mandatory jurisdiction and typically reduces the court's workload. Without this institutional feature, justices will not have as much time to write separately. Accordingly, we expect that courts of last resort in states without an intermediate appellate court will produce more unanimous decisions and fewer separate opinions. We also include an indicator for the size of the court to control for the fact that the number of opinions that may possibly be written in a case is related to the number of justices on the bench.

We evaluate our expectations with three different iterations of two basic models. In Table 1, the dependent variable is coded as 1 if the decision is unanimous, meaning there are no dissenting votes, and 0 otherwise. We use logistic regression techniques where our independent variables are as described above: method of selection, ideological diversity of the court, whether or not a constitutional issue was considered, whether or not the government was a party to the case, the number of amicus briefs for the case, whether the state has an intermediate appellate court, and the number of justices on the court. The method of selection in Model 1 is a simple indicator of 1 if there is any type of election process (partisan, nonpartisan or retention) or 0 if justices never appear on the ballot. In Model 2 we instead include an ordinal coding of the methods of selection based on our expectations, from least to most cooperative: states with partisan elections are coded 1, nonpartisan elections are coded 2, only retention elections are coded 3 and no elections whatsoever are coded 4. Model 3 contains separate dichotomous indicators for each method of selection, with non-election states as the omitted category. The same independent variables are included in our second set of statistical models shown in Table 2, though the dependent variable in these models is a

count of the number of separate opinions (both dissents and concurrences) written by the justices on the court. This is a count variable ranging from 0 to 7. As the dependent variable is a count (and not over-dispersed), we use a Poisson regression model to assess our expectations about separate opinion writing.⁷

Results

Unanimous Decisions

The results of the unanimity models are included in Table 1. Looking across the three models, all three ways we code the method of selection and retention lead us to the same conclusion: elections affect the levels of unanimity or cooperation on state supreme courts. Model 1, containing the dichotomous indicator of elections, indicates that the decisions of a court are significantly less likely to be unanimous when justices must face the voters at some point in their careers than when justices never appear on the ballot. Model 2 suggests that our ordering of the methods of selection has some validity, since the likelihood of unanimity increases as we move from systems that we argue reinforce partisan and ideological divisions (partisan and nonpartisan elections) to those that do not (only retention elections or no elections whatsoever). The results of Model 3 confirm this, as cases from courts with partisan, nonpartisan and even retention elections are significantly less likely to be unanimous than those on courts where justices never face the voters.

There is clearly a relationship between the methods of selection and retention and unanimity on state supreme courts, though several of our other independent variables are also important to this story. All of our indicators of the importance of a case are significant across all three models: Cases

⁷ We tested the data for over-dispersion to see if a negative binomial regression model would be more appropriate. The variable for the number of separate written opinions is not over-dispersed, as indicated by a variance that is not more than ten times the mean. In addition, we conducted a goodness of fit test, which showed that Poisson was the appropriate model. We also tested the model using negative binomial regression and the results were the same.

in which the court considers a constitutional question are significantly less likely to result in a unanimous decision. As the number of amicus briefs filed in a case increases, indicating interest from outside parties, it is also less likely that we will observe a unanimous decision. The same can be said of cases which other political actors may pay more attention to, as the court is significantly less likely to produce a unanimous decision in cases in which the government is a party. As expected, decisions are also less likely to be unanimous as the number of justices on the court increases.

Separate Opinions

The results from the first set of models suggest that the method of selection and retention for state supreme court justices may be influencing cooperation in the opinion-writing process based on the likelihood of cases being resolved without any dissenting votes; the second set of models will provide further insight into the relationship between selection system and cooperation by testing our expectations regarding the writing of separate opinions.

The results of the models of separate opinion writing are included in Table 2. This table includes three models as well, differentiated by the same three indicators of the methods of selection and retention as presented in Table 1. Again, we find clear evidence for our main expectations, no matter how we code the method of selection and retention. Cases in states where justices face some type of election are likely to have significantly more dissenting or concurring opinions filed than those states without any elections for justice, as shown in Model 1. Once again, our ordering of the different selection mechanisms based on the expected levels of cooperation appears to have some validity, based on the results of Model 2, since fewer separate opinions expected in cases as we move toward more-cooperative environments. Isolating the methods of selection in Model 3 furthers this conclusion, as we see significantly more separate opinions in cases decided by justices who face partisan or nonpartisan elections than in states where justices never run in any type of election.

Interestingly, there is no statistically significant difference in the number of separate opinions written between courts in which appointed justices must run for retention and states where there are no elections for justice whatsoever, which is our excluded category in Model 3.

Many of the other independent variables included in the second set of models are also consistently significant across the three models. Again, all of the variables indicating the importance of a case have a statistically significant effect on the number of separate opinions expected in a case. As the number of amicus briefs increases, which is a signal that multiple parties outside of the case have an interest in the result, the number of separate opinions expected also increases. When the case is important to other political actors, however, the number of separate opinions is significantly lower. This is true when the likely audience is other state actors (i.e., when the government is a party to the case) and when the likely audience is other judges (i.e., when the court considers a constitutional issue). We know from the first set of models that these cases are less likely to be unanimous, but these results suggest that justices are not necessarily encouraged to write their own separate opinion even when there is disagreement among justices. In addition to these results, we also find evidence to confirm our expectations for two other independent variables: when justices have more control over their docket and therefore more time to devote to opinion-writing due to the presence of an intermediate appellate court, there are significantly more separate opinions written. Unsurprisingly, the number of separate opinions also increases as the size of the court increases.

Conclusion

The debate over judicial elections among reformers and scholars alike has been centered on the dynamics of the elections themselves and the influence of campaign money, as well as occasional studies of the influence of elections in the votes of justices on specific types of cases. While these studies have given us a solid understanding of how elections may affect the input and the output of

state supreme courts, our goal in this paper has been to consider the process in between, when justices must cooperate to produce reasoned legal opinions. We know from the foundational work on dissent in state courts that individual dissent is to be expected from elected justices for electoral purposes; we build on this understanding by considering cooperation and consensus at the court-level.

We argue that elections periodically activate and reinforce partisan and ideological divisions between justices that would otherwise fade over time on courts where justices do not face reelection or retention campaigns. These divisions inhibit cooperation in the opinion-writing process, decreasing the likelihood of a unanimous decision and increasing the number of written opinions the court will produce. Our results suggest this may be the case. Across all models tested, the substantive conclusions regarding elections and cooperation are the same: cases decided by courts with elected justices are more likely to have a divided result with multiple written opinions.

The results presented in this paper cannot tell the full story of how elections influence the daily interactions of justices or the cooperation during the opinion-writing process, but they do provide preliminary answers to some meaningful aspects of this topic. This discussion also redirects the focus from the conduct of elections and the related normative debates, to the less-direct ways in which elections may influence courts by affecting the daily interactions between justices as they craft their decisions. Moving forward, it is important to continue exploring the dynamics of cooperation on state supreme court precisely because the process requires collaboration among justices. If justices in states with elections are less likely to join the opinions of colleagues that are not affiliated with the same party than appointed justices, this indicates a fundamental difference in the communication and cooperation amongst justices. Should this be the case, this would suggest that the effects of judicial elections are even more pervasive than previously thought. Such results would be the first evidence that judicial elections may not only affect who serves and the immediate result

of cases, but may also shape the everyday work of justices as they craft the legal reasoning that will serve as precedent for future courts.

Table 1: Unanimity on State Supreme Courts Logistic Regression

Variable	Model 1: MOS as Election/Appt. Odds Ratio (Standard Error)	Model 2: MOS as Ordinal Odds Ratio (Standard Error)	Model 3: MOS as Dummies Odds Ratio (Standard Error)
Justices Must Face Election	0.566*** (0.092)	---	---
Methods of Selection (ordered by expected level of cooperation)	---	1.487*** (0.109)	---
Partisan Election	---	---	0.294*** (0.066)
Non Partisan Election	---	---	0.505*** (0.107)
Merit with Retention	---	---	0.645** (0.135)
Ideological Diversity of the Justices	1.019 (0.012)	1.004 (0.013)	1.004 (0.012)
Court Considers Constitutional Issue	0.195*** (0.039)	0.191*** (0.039)	0.190*** (0.039)
Government is Party to the Case	0.743* (0.131)	0.722* (0.128)	0.727* (0.130)
Number of Amicus Briefs	0.940* (0.036)	0.936* (0.036)	0.937* (0.036)
Intermediate Appellate Court	1.341* (0.245)	1.301 (0.238)	1.303 (0.244)
Number of Justices on the Court	0.788*** (0.050)	0.786*** (0.049)	0.778*** (0.050)
N=1117 *** p < 0.001; ** p < 0.05; *p < 0.10	Goodness of Fit: Prob > chi2 = 0.00 Percent Correctly Classified= 70.19%	Goodness of Fit: Prob > chi2 = 0.00 Percent Correctly Classified= 68.93%	Goodness of Fit: Prob > chi2 = 0.00 Percent Correctly Classified= 69.20%

Table 2: Predicting Disagreement: Number of Separate Written Opinions: Poisson Regression

Variable	Model 1: MOS as Election/ Appt. Coefficient (Standard Error)	Model 2: MOS as Ordinal Coefficient (Standard Error)	Model 3: MOS as Dummies Coefficient (Standard Error)
Justices Must Face Election	0.187*** (0.065)	---	---
Method of Selections (ordered by expected level of cooperation)	---	-0.060** (0.029)	---
Partisan Election	---	---	0.199** (0.089)
Non Partisan Election	---	---	0.235*** (0.082)
Merit with Retention	---	---	0.112 (0.082)
Ideological Diversity of the Justices	0.001 (0.005)	0.001 (0.005)	0.000 (0.005)
Court Considers Constitutional Issue	-0.213** (0.085)	-0.212** (0.085)	-0.218** (0.085)
Government is Party to the Case	-0.208** (0.075)	-0.210** (0.077)	-0.201*** (0.084)
Number of Amicus Briefs	0.079*** (0.009)	0.079*** (0.009)	0.080*** (0.008)
Intermediate Appellate Court	0.169** (0.076)	0.161** (0.076)	0.150** (0.077)
Number of Justices on the Court	0.069*** (0.025)	0.075*** (0.024)	0.073*** (0.024)
N=1117 *** p < 0.001; ** p < 0.05; *p < 0.10			

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