FROM SHAKING HANDS TO BUYING AIR TIME:
TELEVISION ADVERTISING IN THE 2008 STATE SUPREME COURT RACES

<table>
<thead>
<tr>
<th>Amnon Cavari</th>
<th>Matthew Holleque</th>
<th>Jacob Neiheisel</th>
</tr>
</thead>
<tbody>
<tr>
<td><a href="mailto:cavari@wisc.edu">cavari@wisc.edu</a></td>
<td><a href="mailto:holleque@wisc.edu">holleque@wisc.edu</a></td>
<td><a href="mailto:neiheisel@wisc.edu">neiheisel@wisc.edu</a></td>
</tr>
</tbody>
</table>

Department of Political Science
University of Wisconsin-Madison
110 North Hall
1050 Bascom Mall
Madison, WI 53706

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“But judicial elections, which occur in some form in 39 states, are receiving growing attention from those who seek to influence them. In fact, motivated interest groups are pouring money into judicial elections in record amounts. Whether or not they succeed in their attempts to sway the voters, these efforts threaten the integrity of judicial election and compromise public perception of judicial decisions.”

– Sandra Day O’Connor

Introduction

Recent years have seen tremendous growth in the role played by televised campaign advertising in the selection of state supreme court justices. The precipitous surge in the amount of television advertising employed by, and on behalf of, candidates for state supreme court seats has raised concerns about the possible advent of a “grubby new era of multimillion-dollar campaigns for important state judgeships” (Samuels 2008: A22). Most unsettling is the fear that the key players in state supreme court races—the interest groups and other third-parties that pump money into ad campaigns in these contests—may, in essence, be buying justice and tainting the entire judicial selection process. Fueling these concerns are stories from places like Wisconsin, where in 2008 the state’s first African American justice lost his seat on the high court after a particularly nasty race in which his opponent rode to victory atop a wave of negative TV advertising paid for by business interests in the state.

In spite of a public outcry against the apparent undue influence of campaign money in these elections, the move toward media-driven campaigns—complete with hefty television ad buys—shows no signs of abatement. Judicial candidates appear to be joining other candidates for public office in embracing the 30-second spot as a staple campaign tactic, and if anything, the role of TV ads in judicial elections appears to be on the rise. For example, in 2006, 10 of the 13 states in which there was a state supreme court race saw TV advertising, whereas in 2000 only 4 of 18 states received ads from judicial candidates (“The Best Judges Business Can Buy” 2007: 18A).
Scholarly investigations of TV advertising in state supreme court races, however, have largely lagged behind this trend. While an extensive literature exists on the effects of campaign advertising (e.g., Franz et al. 2008; Shaw 2006; Geer 2006), this research has focused almost exclusively on presidential and congressional elections, ignoring lower salience races like those for the state supreme court. And while we now know a great deal about the effects of campaign spending on various facets of state supreme court races (e.g., Hall and Bonneau 2004, 2005, 2007; 2008; Goldberg 2004; Champagne 2001), we still know very little about how judicial candidates deploy those funds and the implications of specific kinds of campaign tactics for the process of judicial selection. Money, after all, is only a means for campaigns and does not, in and of itself, win elections. Furthermore, campaign advertising allows us to investigate not only the amount of campaign activity but also the content of that activity.

In this paper we therefore offer an initial look at the volume, sponsorship, and content of TV advertising in the 2008 state supreme court races—bringing together research on judicial elections and campaign advertising. Using a unique dataset that combines detailed information on the frequency of advertising with extensive content analysis of each unique ad aired in 2008 (as well as information about the candidates themselves), we explore a number of different hypotheses from both the campaign advertising and judicial politics literatures. More specifically, we exploit the same leverage utilized to great effect by Hall and Bonneau (2008) to “capitalize on the significant analytical advantages of comparative state analysis” to examine the extent to which various institutional factors are driving the observed patterns of judicial advertising in 2008.

Our paper proceeds in four parts. First, we review some of the extant research on judicial elections and campaign advertising. These two literatures have developed independently of one another, but each have theories relevant to our paper. Second, we discuss the data we use for our analysis. Next, we use the data to test a series of hypotheses in an exploratory analysis. We end by discussing our results and offering some concluding thoughts.
Tainted Justice?

Over the past several years, campaigns for state supreme courts have become increasingly professionalized and well-funded. The days in which one could successfully campaign for a seat on the bench by simply speaking at civic clubs, shaking hands, and getting a few endorsements are long gone. For instance, since the 2000 election cycle, the amount of money spent on these races has skyrocketed, with much of it being allocated for buying television air time for campaign advertisements. As Figure 1 illustrates, the use of campaign advertising in judicial elections has grown substantially over the past few years, more than doubling since 2000.

We approach this phenomenon from two distinct perspectives. First, we examine the role of campaign advertising in state supreme court elections from the perspective of the judicial politics literature. Many critics of judicial elections argue that the vast sums of money being spent in state supreme court campaigns, and the attack ads that often accompany such spending, adulterate the entire judicial selection process. According to one observer, “these races have been infected with
high-priced campaigning and misleading television commercials and questionnaires” (Mauro 2009). The concern is that as state supreme court candidates become increasingly reliant on financial contributors to fund their campaigns, justices may lose their ability to be truly impartial and above the fray when it comes to making rulings. It also calls into question the role that interest groups and other third parties may play in influencing the outcome of the judicial selection process. Costly judicial campaigns may then feed “the cynical belief that courts—just like legislatures, governors and mayors—can be lobbied and manipulated through well-placed donations” (Mauro 2009).

Furthermore, as the U.S. Supreme Court is currently considering, there are also possible due process issues involved when justices fail to recuse themselves from cases involving parties who have contributed to their campaigns.

As a result, the judicial selection process has been a matter of ongoing empirical and normative debate in many states. There are five different selection methods or combinations of two or more of those methods currently practiced in the American states—partisan election, non-partisan election, merit selection, gubernatorial appointment, and legislative appointment. Most states select their judges through one of the first three forms of election (Hall 2001, 315), and as Justice O’Connor notes, a majority of states use some form of judicial election to select their judges and justices. A great deal of scholarship investigates how the method of selection affects the types of people who get selected (Bratton and Spill 2002; Lovrich, Sheldon and Wasman 1988) and how the selection method affects their behavior once on the bench (Hall and Bonneau 2006; Epstein, Knight and Shvetsova 2002; Sheldon and Maule 1997; Pinello 1995). Other research finds that judicial elections are governed by many of the same factors that drive other elections, such as the quality of challengers, the level of competition, the presence of an incumbent, the amount of campaign spending, ideological preferences, and partisan affiliation (Hall and Bonneau 2006; Champagne 2001; Squire and Smith 1988; Glick and Emmert 1987; Dubois 1979, 1980). Yet, what
is missing from this literature is an examination of the nature and content of the advertising campaign in judicial elections.

Understanding campaign advertising in judicial elections is incredibly important due to the nature of most state supreme court elections. In any election, the level of information available to the voters in such elections is crucial. Most voters often rely on information they receive through casual attention to politics; hence voters usually cast their votes based on easy shortcuts such as partisan cues or incumbency (Popkin 1994). Although this applies to all electoral races it is especially vital in low information, low salience, and low turnout elections like judicial elections. Only a few citizens possess well-developed views of legal issues, and if low voter turnout is any indicator, much of the public lacks any interest in judicial elections (Dubois 1979; Franklin 2002).

The task before voters becomes even more difficult when candidates avoid drawing distinctions based on substantive issues. For example, the American Bar Association's (ABA) Canon of Judicial Ethics advises candidates to refrain from discussing “issues likely to come before the court,” but this restriction can be interpreted so broadly as to foreclose candidates from discussing anything useful for voters. Furthermore, in non-partisan judicial elections, voters do not even have a partisan heuristic with which to anchor their decisions. All of this leads to a situation where campaign advertising could be particularly important. As Charles Franklin explains:

Voters who are more uncertain about their true preferences between judicial candidates are therefore much more likely to respond to spurious elements of the campaign. This results in electoral outcomes that are less constrained by substance and more driven by television ads or campaign gaffes (2002, 154).

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1 This rule was not adopted by all states, including, for example Michigan, which continuously sees large amounts of money in their judicial races.
In other words, with little information on which to base their choice and no easy heuristics to guide them, voters in judicial elections are in desperate need of information, which campaign advertising can potentially provide to them.

Many critics, though, point to the presence of TV advertising in these races, and in particular negative advertising, as contributing greatly to the public’s distrust of the system and to perceptions that even judges are not above using the dirty tricks that permeate other campaigns. Hall and Bonneau (2008), however, argue that the increased spending in judicial elections can, contrary to conventional wisdom, have positive consequences. They write:

By stimulating mass participation and giving voters greater ownership in the outcomes of these races, expensive campaigns strengthen the critical linkage between citizens and the bench and enhance the quality of democracy. In fact, this heightened electoral connection might be a powerful antidote to some of the negative consequences of spirited and costly judicial elections, thereby complicating the conventional wisdom that money and judges should not mix (Hall and Bonneau 2008: 458).

A similar case could be made for the role of campaign ads in judicial elections. Campaign ads represent one of the best avenues for candidates to communicate directly with the public, allowing candidates to inform the public on their policy positions and personal characteristics in an easily digestible and clear manner. The messages in campaign ads are carefully tested and designed to deliver a clear message to potential supporters, and unlike with the news media, individuals have a more difficult time opting out of exposure to this political information. All of this suggests that campaign advertising could be the information supplement necessary to give voters enough information on which to base their vote choice. As Franz et al. put it, “Ultimately, if the political diet of most Americans is lacking in crucial information, campaign ads may represent the multivitamins of American politics” (2008, 16).
Still, the prevalence of campaign advertising may also have some negative consequences. First, while campaign ads have informational content, this information might be of inferior value to voters. Campaign advertisements are not public service announcements. While campaigns may have an incentive to provide the public with information, they also have an incentive (perhaps a stronger one) to bias that information in their favor (Johnson 2001). Furthermore, it is unclear whether the informational content of ads contains clear statements about what a candidate will actually do if elected or only vague statements on policy issues (West 2005, 45). Finally, Simon (2002) argues that campaigns have little incentive to engage in dialogue on the same issue, choosing to talk past each other instead of to each other. This leaves voters without the kind of information needed to make a direct comparison between the two candidates.

Second, extensive campaign advertising may create an opportunity for outside parties to distort the process and have an undue influence over the outcome. As Franklin (2002) notes, there is a major informational asymmetry between voters and interest groups when it comes to judicial elections. While many citizens may remain “rationally ignorant” about the actions of state supreme court justices, interest groups may not. “This informational asymmetry allows groups to select candidates for support or opposition based on the groups’ preferences and the judge’s rulings. Thus the ability to promote interest representation for groups is much higher than it is for ordinary citizens” (2002, 153). As an extension of this view, interest groups may be better placed to use things such as campaign advertising to advance their preferences in the electoral arena. This could be especially disconcerting in judicial elections, when judges often make rulings on issues that involve the same parties that contributed money to them.

**Hypotheses**

From these two literatures which have, until now, developed in parallel with each other, we are able to draw a number of testable predictions regarding the role of televised political advertising
in judicial elections. Distilled from existing work on state supreme court elections and political advertising, these hypotheses represent an earnest attempt to begin to bridge the divide that has separated these areas of inquiry to this point. For now, many of the more critical hypotheses remain untested, and our analysis is primarily an exploratory endeavor, but we offer some initial lessons on the nature of campaign advertising in judicial elections.

Starting with institutional factors, such as whether judicial elections in a state are partisan or not, we hypothesize that campaign advertising should differ across partisan and non-partisan elections. Specifically, we expect to see more party sponsored ads in states where contests for the state supreme court are overtly partisan in nature. Our reasons behind this conjecture are fairly straightforward: given that voters are likely to remain rationally ignorant about candidates’ positions on most issues, parties will be more involved in low-salience races where partisan heuristics are likely to have more of an impact (see also Bonneau 2007; Dubois 1979; Hall and Bonneau 2008). We also expect that there should be fewer campaign ads in retention elections than in other types of judicial elections. This seems fairly intuitive, given that regular judicial elections are contests between two candidates, while retention elections are simply votes on whether or not to retain a particular justice. The adversarial nature of campaigns, therefore, should lead to more advertising.

Furthermore, following the Supreme Court ruling in the matter of Republican Party of Minnesota v. White , 536 U.S. 765 (2002), judicial candidates are allowed to present their views on disputed legal and political issues. Unable to present a simple party heuristic, we expect advertising in non-partisan races to be more prone to issue ads that would offer the electorate an easy ideological linkage between the candidates and their policy beliefs. Political ads in partisan races, in contrast, will emphasize personal differences between the candidates (Vavrek 2001).

A number of other hypotheses stem from the literature on political advertising, where scholars looking at the patterns of televised advertising in other types of races have long noted that competitiveness is the strongest predictor of both the quantity and tone of the ads aired in a
particular electoral contest (see Franz et al. 2008). As such, we expect to see both the volume and
tone of campaign advertising in state supreme court races to be driven by competitiveness, with
both the number of ads and their negativity increasing with competitiveness.

We should also see a variety of ad sponsors in state supreme court races. Interest groups
and political parties should be responsible for a good proportion of the advertising in these
contests, as each attempts to influence the political process. In recent presidential and congressional
elections, parties and interest groups have played a major role in shaping the information
environment, and we expect this to also be true for judicial elections. Additionally, we expect to see
differences in tone across sponsors. Studies of political advertising have often found that ads
sponsored by the candidates themselves are often quite positive and focused on promoting their
own virtues. By contrast, party ads are frequently negative. As Goldstein and colleagues write,
“Parties are left with the task of softening up the opposition, while candidates can pretend to float
above the fray” (2001: 98). There may be other reasons for this division of labor between parties
(and frequently interest groups) and candidates, as candidates may fear a possible backlash from
voters if they go negative (West 2005). We therefore hypothesize that candidates should air more
positive ads, while political parties and groups should air more negative ads.

Lastly, and perhaps most obviously, we believe that the volume of campaign advertising
should increase as the election approaches. This makes intuitive sense and is also the case for other
types of elections.

The Data

In 2008 the Wisconsin Advertising Project (WiscAds), in conjunction with the Brennan
Center for Justice, collected data on the content of state supreme court candidates’ political
advertising, as well as frequency information on when and where each ad aired. The tracking data
were provided by TNS Media Intelligence/Campaign Media Analysis Group (CMAG) which, when
merged with detailed content analyses of each unique advertisement (or “creative”) conducted by undergraduates at the University of Wisconsin-Madison, provide the most complete picture of the nature and contours of political advertising in judicial races to date (for more information on the project see Franz et al. 2008). Not every judicial candidate aired television ads, however, and so our final dataset includes 37 candidates running in 20 independent races spread in 13 different states.

Trained coders were asked to view each creative from the 2008 election and code for over seventy different items. Although the code sheet is extensive, a few items deserve particular attention. First, coders were asked to evaluate the tone of each ad, classifying them into one of three categories. Attack ads are advertisements that only talk about the opposing candidate, contrast ads are ads that talk about both candidates, and promote ads only talk about the supporting candidate. In general, we consider attack and contrast ads to be negative, in that they both contain negative content. Coders were also asked to evaluate the sponsorship of each ad, coding an ad as a candidate ad, party ad, or interest group ad. Finally, each ad was coded for its issue content, with each ad being able to mention up to 56 distinct issues.

Additionally, following Bonneau (2007), we also collected data on a number of different aspects of each candidate, including whether he or she was an incumbent, had prior judicial experience, had previously been appointed to the court, had been challenged in a primary, and whether there had been a prior close state supreme court race (decided by 55 percent of the vote or less). Adding to Bonneau’s (2007) list of candidate characteristics, we also were able to determine whether candidates had held another elected office (such as that of district attorney) and a measure of competitiveness determined by how close the race was. While decidedly post-hoc, we believe that this operationalization of competitiveness best captures the true nature of competition in the 2008 races.
Results: What, When, and Where

We begin by looking at how the method of selection affects the volume, tone, and sponsorship of campaign advertising. In 2008 there were 29 contested elections, and 20 retention elections. No ads aired in any of the retention elections, but 20 of the 29 contested elections saw advertising. While this might be expected, given the relative certainty of the election outcome in a retention election, it is still worth noting that retention elections were advertising free. If policymakers are concerned about the impact of campaign advertising in judicial elections, then moving to a system of retention elections may greatly reduce that influence. At this point, we can only speculate as to what would happen as a result of such a policy change, but the data suggest that doing so would reduce the amount of campaign advertising in state supreme court elections.

![Figure 2: Judicial Advertising by Election Type (per race)](image)

Our data include seven partisan races – where the party of the judicial candidate is listed on the ballot – and thirteen nonpartisan races. We find less of a difference between partisan and nonpartisan judicial elections than initially anticipated. Figure 2 compares the average number of ads aired in partisan and non-partisan races in 2008. There is a modest difference between the two, with
slightly more airings in partisan elections, but the partisan nature of the election appears to make little difference in terms of the average amount of advertising.

We also expected to see more party ads in partisan races and more interest groups ads in non-partisan races. As Figure 3 demonstrates, there were more interest group ads in non-partisan elections than partisan ones, as a proportion of total airings, but shockingly there were actually fewer party-sponsored ads in partisan races as compared to non-partisan ones. In other words, political parties played a bigger role, in terms of campaign advertising, in non-partisan elections than in partisan elections. Most of these ads were aired in Michigan and Ohio, which are technically non-partisan races, but in both instances parties were heavily involved in the campaign.

This finding runs counter to our expectations, but may indicate that political parties recognize the role that partisan heuristics play in most voters’ decision making process and look to turn non-partisan races into partisan ones by increasing the volume of ads connecting judicial candidates with a party label. Dubois (1979) points out that voters may receive party cues in both
partisan and non-partisan elections. Even though the party label cannot appear next to its favored candidates on the ballot, there is little to prevent the parties from signaling these connections outside of the voting booth. The key point, however, at least from a policy perspective, is that even a shift toward non-partisan elections may not totally remove party influence from judicial elections. Having been woven into the fabric of American democracy long ago, party influence in elections perhaps must be taken as a given today, even in what are ostensibly nonpartisan contests.

Finally, the method of selection seems to have only a modest relationship with the tone of the race. We hypothesized that the lack of partisan cues in non-partisan elections clears the field for a more aggressive and “nasty” campaign that would turn to negative advertising. This is marginally supported by our data, where partisan elections saw slightly more contrast and promote ads but fewer attack ads than non-partisan elections. That said, the difference in attack ads between the two methods is greater than the difference in contrast ads.

![FIGURE 4: Ad Tone by Type of Election](image)

Part of this is driven by the fact that Wisconsin, a non-partisan election, saw a tremendous number of attack ads. Nonetheless, when the Wisconsin ads were excluded, ads in non-partisan
races still had nearly two percentage points more negative ads than ads in partisan contests. Such a
difference is not statistically significant, yet it signals that ads aired in partisan elections, at least in
2008, tended to be less negative. We find that 78 percent of all attack ads were aired in non-partisan
races. At a minimum we can speculate that non-partisan races are more prone to negative advertising
and allow for races such as the Wisconsin race to develop into a nasty one. If the tone of the
campaign advertising is any indicator of the negative aspects of a judicial public campaign, this fact
should be carefully considered.

Our next major finding concerns the relationship between the tone and volume of campaign
advertising and the competitiveness of the race. The data tell us that, as anticipated, both the tone
and volume of campaign ads in state supreme court elections are driven by the competitiveness of
the race. Figure 5 compares the average tone and volume of advertising between competitive and
non-competitive elections. As is true in presidential and congressional elections, competitive
elections are much more negative than non-competitive elections, and we find virtually no negative
advertising in non-competitive elections on average. Not only are competitive elections generally
more negative, but they also see more airings on average, so voters in competitive elections are
seeing more ads and more of that advertising is negative.
This finding makes intuitive sense and is consistent with extant research (Franz et al. 2008)—we expect that when a race is competitive candidates should go after each other more. That said, this finding raises questions about how to address concerns over the amount of advertising in judicial elections. There does not appear to be anything inherent about any given state that makes advertising in judicial elections particularly bad. In other words, what happened in Wisconsin or Michigan could happen in any state, given a sufficiently competitive race. We also note that three or four campaigns seem to be driving much of the negativity we see in 2008. Figure 6 displays the volume of campaign advertising broken out by tone for each state. Here we see that for most races the majority of campaign advertising was positive with 13 of the 20 races receiving only positive ads. Michigan and Wisconsin, however, saw the bulk of the attack and contrast advertising, with a non-trivial amount in Alabama as well.
It is dangerous, therefore, to aggregate across races, because while campaign advertising was not a factor in most races, it was featured prominently in three of them. There is ample anecdotal evidence that judicial elections are problematic, but these instances appear to be localized rather than indicative of a systemic problem. While the 2008 elections in Wisconsin, Michigan, and Alabama may certainly be troubling, it is important to remember that the judicial elections in most of the other states were far less contentious affairs.
The relationship between campaign advertising and competitiveness also has implications for the role of interest groups and political parties in judicial elections. Because advertising tone is driven by competitiveness, candidates, parties, and interest groups may behave differently depending on the campaign environment. Figures 7 and 8 compare the mean tone of advertising by sponsor for both competitive and non-competitive elections. For competitive races, we see that most of the negativity is coming from party and group advertising, especially in terms of attack advertising. All of the party advertising in competitive races was negatives as was a majority of the group advertising. Groups and parties combined were responsible for virtually all of the attack advertising in competitive races, while candidates tended to rely on contrast ads.

For non-competitive races, however, we see that candidates, political parties, and groups all tend to be overwhelmingly positive on average. Across all sponsors, the majority of ads were positive, and in fact group and party advertising was more positive than advertising by candidates, as a proportion of ads aired. Again, this reinforces the finding that competitiveness drives tone of
campaign advertising, but it also raises a question about the involvement of political parties and groups in the judicial selection process. In competitive elections, groups played a major part, but in non-competitive races their role was greatly reduced.

Although we do not see clear evidence of a national problem in state supreme court elections, there are several cases that are worrying and deserve note. We are especially concerned with the role interest groups play in competitive elections. Figure 10 reports the volume of campaign advertising for each of the 2008 state Supreme Court races by sponsor. We see that most races received fewer than 4,000 airings, although two (Alabama and Wisconsin) received more than 10,000 airings. In general, candidates sponsor most of the advertising in state Supreme Court election campaigns, although parties and groups do make substantial contributions in some cases. Wisconsin is an incredibly stark example, where interest groups sponsored the vast majority of advertising, dwarfing the contributions made by candidates or groups. Political parties also made a
contribution to the volume of campaign advertising, most noticeably in Michigan.

We find that, while interest groups may not be especially important in most races, they can drastically change the dynamics of the campaign in some cases (see Figure 10). For example, in Wisconsin, candidate Michael Gableman only aired a little over 350 campaign ads during the entire campaign, but there were over 6,000 ads aired on his behalf by interest groups. In Alabama, Deborah Bell Paseur out-advertised Greg Shaw by more than 3,000 airings, but interest groups aired an additional 2,200 on behalf of Shaw. In Michigan, Diane Hathaway aired over one thousand fewer ads than her opponent Clifford Taylor, but the Democratic Party of Michigan purchased aired time for an extra 2,500 ads for Hathaway. While these are only a select set of cases, they underscore the point that the activity of parties and interest groups can dramatically change the dynamics of a state supreme court campaign. We cannot say with certainty that the outcomes of these elections would be any different had only candidate ads been allowed, but we are fairly confident that the nature of the campaign was shaped in large part by these outside actors.
Our next finding relates to the issue content of the campaigns (see Table 1). On average, the most talked about issue by judicial candidates was crime. In 45 percent of the races that mentioned issues in their campaign advertising, the most talked about issue was crime. However, there were also a host of other issues mentioned, including government ethics, positions on a class of cases, sentencing, and position on a specific case. Interestingly, issues such as jobs and other child/family issues were also very popular topics. We found no evidence that social issues like abortion, same sex marriage, or euthanasia were the focus of these campaigns, perhaps because these are more issues for the federal courts. The prevalence of crime as an issue continued as we compared incumbents with non-incumbents, sponsorship, and competitive with non-competitive races. One possible implication is that the interest groups who advertise in judicial elections are not necessarily doing so to advance their issues.

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2 Two races, one in Montana and one in Texas, did not mention any issues in their campaign advertising.
Table 1: Top Issues by Race

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<tr>
<th>Overall</th>
<th>Top Issue</th>
<th>Second Issue</th>
<th>Third Issue</th>
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<td>AL</td>
<td>Crime</td>
<td>Ethics</td>
<td>Position on class of cases</td>
</tr>
<tr>
<td>ID</td>
<td>Sentencing</td>
<td>Ethics</td>
<td>Education</td>
</tr>
<tr>
<td>KY</td>
<td>Equal Rights</td>
<td>Position on specific case</td>
<td>Sentencing</td>
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<td>Crime</td>
<td>Ethics</td>
<td>Trial Lawyers</td>
</tr>
<tr>
<td>LA2</td>
<td>Ethics</td>
<td>Other family issue</td>
<td>Greedy Lawyers</td>
</tr>
<tr>
<td>MI</td>
<td>Crime</td>
<td>Other child issue</td>
<td>Sentencing</td>
</tr>
<tr>
<td>MS1</td>
<td>Crime</td>
<td>Other child issue</td>
<td>Other family issue</td>
</tr>
<tr>
<td>MS2</td>
<td>Crime</td>
<td>Position of class of cases</td>
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<td>MS3</td>
<td>Family Values</td>
<td>Other family issue</td>
<td></td>
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<td>MT</td>
<td>Crime</td>
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<td>NC</td>
<td>Crime</td>
<td>Other family issue</td>
<td></td>
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<tr>
<td>NV1</td>
<td>Crime</td>
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<td>Ethics</td>
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<td>WV</td>
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We also expect that because non-partisan elections lack an ideological cue, ads in such races will emphasize moral issues rather than traditional judicial issues such as experience, education, professional training, fairness, character and temperament. Partisan races indeed overwhelmingly (84 percent) centered on traditional judicial and some emphasis on criminal justice (9 percent). By contrast, ads in nonpartisan races had less emphasis on traditional judicial issues (67 percent) in exchange for more discussion of criminal justice (21 percent) and judicial decisions (4 percent). While moral issues were not emphasized in either type of race, it seems safe to say that ads aired in non-partisan races focused less on the qualities of the candidates and more on the issues at stake. The difference, however, is minimal and is driven by only few very heavily advertised races.

Finally, we look at the timing of advertising in specific state supreme court election campaigns. The top panel of Figure 11 shows the daily advertising by the two candidates in Wisconsin, while the bottom panel shows the difference between the two candidates.
In this competitive, non-partisan election both sides were able to get their message out using television advertising on most days leading up to the election. It is also worth noting that the candidates only started advertising 40 days before Election Day, unlike in presidential or congressional campaigns, where advertising seems to be happening earlier and earlier (Franz et al. 2008). The 2008 state supreme court election in Wisconsin, therefore, saw a fairly short advertising campaign, with candidates hitting the airwaves a little over a month before the campaign, and the bulk of the ads coming in the final week of the campaign.

Over the course of the campaign, however, we observe very interesting and complex dynamics regarding the ebb and flow of political communication. In the first part of the campaign, up until about 25 days before the election, both sides are very evenly matched in their advertising, though the total volume is fairly low. From about 25 days before the election until about 9 days before the election, Gableman had a distinct advantage over Butler in terms of campaign advertising, and both sides are airing slightly more ads. Finally, in the last week of the campaign, Butler came back with an ad advantage in 4 of the 7 final days. These dynamics may provide and
another opportunity to study the effects of two-sided flows of information on voter preferences. The low level of information present in most state supreme court elections may make the dynamics of information flows more important. Unfortunately, such a task would require individual level survey data not currently available.

Finally, we see the same picture for a non-competitive race in Ohio. Here we see that O’Connor clearly won the air war, with almost no advertising by Russo, consistent what we have learned about competitiveness. Also due to competitiveness, we see that there is a long stretch of the campaign where neither side is airing ads. Finally, this represents a clear case of one-sided flows of information (Zaller 1992).

In terms of the timing of advertising, these campaigns appear to behave much like other types of campaigns. As we see in other types of elections, the volume of advertising grows as the election approaches, at least for these competitive elections. While both candidates are hitting the
airwaves, we still see that the ad war is not completely balanced, with one candidate able to gain an advantage in both Wisconsin and Alabama. While these dynamics are consistent with existing research, they also point to possible leverage that could be exploited in subsequent studies.

**Discussion and Conclusion**

We began this paper with a discussion of some of the key critiques that have been leveled against how state supreme court elections are conducted, paying specific attention to criticisms rooted in the belief that judicial campaigns are now permeated by attack advertising and the undue influence of interest groups and other outside actors. Here we have taken a second look at such claims, standing some on their heads, and suggesting that we might reevaluate some of the conventional wisdom surrounding state supreme court elections and what they tell us about the comparative benefits of the different methods of judicial selection in the United States. Already some studies of judicial elections have shown that certain elements of these critiques are unsupported by the evidence. Hall and Bonneau (2008), for instance, find contrary to the notion that expensive campaigns are turning voters off to the process, that campaign spending actually boosts turnout in state supreme court races. Our findings, we believe, present a compelling argument for continuing with this basic enterprise.

We also evaluate several hypotheses distilled from the literature on campaign advertising in presidential and congressional races as applied to state supreme court elections, most of which find a great deal of support in the data. Consistent with other work on political advertising, many characteristics of television advertising are driven by competitiveness; more competitive races see more advertising and are more negative in tone. Perhaps most interesting, though, is the one hypothesis that is not borne out by the data. Nonpartisan races, it seems, on average see more advertising from parties than partisan races. Although somewhat counterintuitive, this finding makes sense when one considers that parties undoubtedly understand the powerful role that partisan
heuristics play in low-salience elections. Lacking these information shortcuts some voters may, in essence, be tossing a coin when they pull the lever for a judicial candidate in a nonpartisan race. In an attempt to prevent this from happening, and direct loyal partisans toward a particular candidate, parties likely step in to provide such information.

Inevitably, our study also ran into a number of limitations. Chief among them is the endogenous nature of the relationship between political advertising and competitiveness. Our measure of competitiveness is wholly determined by the outcome of the race, which is in and of itself at least partially a function of the number and tone of the airings going into the contest. Bonneau’s (2007) measure of competitiveness, however, while exogenously determined, fails to get at the contemporaneous dynamics at work in each particular race. What is needed, then, is an a priori and contemporaneous measurement of the competitiveness of judicial races. Not only is this a problem for our study, but one that will continue to plague research in this area.

We also lack the ability to say much about some of the more interesting, indeed, perhaps the most interesting questions in the study of state supreme court elections. Without individual-level data we are unable to examine the effect of political advertising on voters’ decisions and levels of information about these races. Earlier we alluded to the ways in which political advertising can serve as vital information supplements for voters, particularly in low-salience elections. Further research should pair information on advertising with survey data in an effort to get closer to characterizing the kinds of messages that voters actually receive in judicial campaigns. To this point scholars have used measures of campaign spending as a proxy for political advertising and other forms of candidate communication. And while our study represents a first cut at televised political advertising in state supreme court races, students of judicial elections would do well to take some of the lessons learned here to heart.
REFERENCES


