Is more information always better? Party cues and candidate quality in U.S. judicial elections

Claire S.H. Lim [a,*], James M. Snyder Jr. [b,c,1]

[a] Department of Economics, Cornell University, United States
[b] Department of Government, Harvard University, United States
[c] NBER, United States

ARTICLE INFO

ABSTRACT

We investigate the influence of electoral rules on voting behavior and the quality of judges, using newly collected data on judicial elections and ratings from 39 U.S. states. We find that in partisan elections, where candidates' party affiliations are listed on the ballot, party drives voting behavior and candidate quality has little effect on outcomes. In nonpartisan elections, where party affiliation is not on the ballot, party has a much smaller influence on voting behavior and candidate quality has a substantial effect on outcomes. If the primary task of public officials is not to represent voters' ideology and their decisions have little variability across parties, then we need to seriously consider the potential cost of partisan competition. To the extent that partisan voting behavior crowds out the influence of candidate quality on voting outcomes, the desirability of the partisan election system should be carefully assessed.

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1. Introduction

How can citizens select good government officials and hold them accountable for their behavior? This has long been an important question in economics (for example, Barro, 1973; Ferejohn, 1986). Recently, interest has been growing in how the optimality of selection and retention systems for public officials depends on the nature of the tasks they perform (for example, Alesina and Tabellini, 2007). This paper studies electoral systems used in the selection and retention of public officials who perform essentially bureaucratic tasks: U.S. state trial court judges.[2]

Unlike most countries, a large number of U.S. states employ direct local elections to select public officials who perform bureaucratic tasks, such as trial court judges, prosecutors, regulators, and school district superintendents. Many important issues surrounding these elections are not clearly understood. How do voters behave in such elections? Are voters largely uninformed, as argued by Downs (1957)? If they are, does the paucity of voter information in elections lead to poor quality of elected public officials?

This paper empirically analyzes the institutional design of these electoral processes, with a focus on voters' partisan voting behavior and the influence of candidate quality on voting outcomes. The U.S. state court system is an ideal context in which to study the functioning of these electoral processes for several reasons. First, there is rich variation in the rules by which state court judges are selected and retained. Specifically, three systems are predominant: in partisan elections, candidates compete with party affiliation on the ballot; in nonpartisan elections, candidates compete without party affiliation on the ballot; and in retention elections, incumbents run for reelection without challengers, and voters cast a yes-or-no vote. (See Table 1 and Section 2.1 for details.) Second, in many states, one or more bar associations routinely evaluate the "quality" of judges and judicial candidates and publish these evaluations. In a few states, a state commission compiles and publishes

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* Corresponding author at: 404 Uris Hall, Ithaca, NY 14850, United States. Tel.: +1 607 255 3995.
   E-mail addresses: clairelim@cornell.edu (C.S.H. Lim), jsnyder@gov.harvard.edu (J.M. Snyder).
   [1] 1737 Cambridge St., Cambridge, MA 02138, United States.

   [2] Although state *supreme* court judges have some "policy-making" function, they constitute only about 3.5% of our election data. Most judges in our data are state trial court judges, in charge of routine tasks such as running court trials smoothly, rather than broad policy making.

Table 1
Selection and retention rules for the state trial courts.
Source: Lim et al. (2015).

No. of states	Initial selection	Re-election	Set of states
9	Partisan election	Partisan election	AL, IN, KS, LA, MO NY[a], TN, TX, WV
22	Nonpartisan election	Nonpartisan election	AR, AZ, CA, FL, GA ID, IN, KY, MD, MI MN, MS, MT, NV NC, ND, OH, OK OR, SD, WA, WI
3	Partisan election	Retention election[b]	IL, NM, PA
10	Appointment	Retention election	AZ, AK, CO, IA, IN, KS, MO, NE, UT, WY
11	Appointment	Re-appointment or Life-tenure	CT, DE, HI, ME MA NH, NJ, RI, SC, VA, VT

Note 1: The classification is based on the selection and retention rule for the state trial courts of general jurisdiction. Most of the states have the same selection rule for all levels of the state court.
Note 2: The selection systems can be divided into five groups. There are four states (Arizona, Indiana, Kansas, and Missouri) that have a within-state variation of two different systems (partisan or nonpartisan election and appointment-retention election) at the district level. These states are included in both categories. For more details, see the website on judicial selection systems by the American Judicature Society (http://www.judicialselection.us/). In New Mexico, judges are first appointed by the governor, then they must run in a partisan election, and subsequent elections are retention elections. In Maryland, circuit judges appointed by the governor must run in the next major election cross-filed in the Democratic and Republican primaries without party labels. If there are different winners for each primary, they will face off in the general election.
Note 3: We classify a state as having nonpartisan elections if party labels do not appear on the general election ballot. In Arizona (in some counties), Maryland, and Ohio, nominations are partisan but the general election ballot is nonpartisan.

[a] In New York, candidates are nominated by party conventions rather than primaries.
[b] In Illinois a judge must receive a "yes" vote of 60% to be retained, and in New Mexico (after 1994) a judge must receive a "yes" vote of 57%.

evaluations. Newspapers often print stories about these evaluations, as well. Third, the nature of judges' tasks and their judicial discretion are fairly uniform across states, which makes cross-state comparison of their electoral systems and their behavior viable.

We focus on the comparison between partisan elections and nonpartisan elections. More specifically, we study how the electoral system affects the degree to which voters base their votes on candidates' party affiliation, and whether these appear to increase or decrease the degree to which higher quality or better performing candidates receive more votes and win more elections.[3]

Why should these features of the electoral systems matter? On the one hand, given the relatively strong party attachments of most U.S. voters, when voters know that candidates' party affiliations are listed on the ballot they may not search for other information that is more difficult to find and remember. Information about candidate quality or performance is likely to fall into the "relatively difficult to find and remember" category. Moreover, party polarization in the U.S. has been relatively high for at least the past two decades, and a variety of different models predict that when polarization is high, candidate quality and performance will have less impact on voting outcomes. (See, for example, Ashworth and Bueno de Mesquita (2008), Padro i Miquel (2007), and Besley et al. (2005). Banerjee and Pande (2007) yield similar kinds of predictions in a multi-party environment.) In addition, many voters choose to abstain in nonpartisan elections. It is possible that those who vote in nonpartisan elections have more information of the "relatively difficult to find and remember" variety than those who do not. On the other hand,

partisan competition may also cause an opposite effect. When there is strong inter-party competition, political parties may have strong incentives to recruit, support, and disseminate information about high-quality candidates, leading to a better quality of elected public officials. (Besley et al. (2010) demonstrate a positive consequence of strong inter-party competition, showing that it leads to pro-growth economic policies such as lower tax rates, higher capital spending, and increased use of right-to-work laws.)

We use two newly collected data sets, one on election results and one on judicial evaluations. The election data covers state court judges in 39 U.S. states over the period 1990–2010. The judicial evaluation data covers 24 states, and its time frame varies across states and localities.

Our findings are summarized as follows. First, we find that voting is highly partisan in partisan judicial elections – that is, there is a strong correlation between the Democratic "normal vote" and the Democratic vote share for judges – but not in nonpartisan elections.[4] This partisan voting behavior cannot be attributed to clear differences between Democratic and Republican judges in their sentencing decisions, since such differences, if any, are small and not consistent. We also investigate whether partisan voting behavior in the partisan election system is due mainly to the electoral process itself or whether it is largely attributable to underlying voter preferences using the American National Election Studies (ANES) data. We find no evidence that our results are driven by underlying voter preferences.

Second, we find that the quality of judicial candidates has relatively little effect on their vote share or probability of winning in partisan general elections. By contrast, the quality of judicial candidates has a substantial effect on their vote share as well as probability of winning in nonpartisan elections and in partisan primary elections.

Note that candidate quality matters to some degree even in the partisan election system, because *primary elections* help eliminate low-quality candidates. However, partisan *general elections* do not do much to eliminate weak candidates, except in areas where the distribution of voters across parties is relatively balanced. Therefore, when one party is favored in an area, competition in the favored party's primary is key to preventing low-quality candidates from winning office. In addition, we do *not* find that partisan elections are significantly more competitive than nonpartisan elections in terms of the number of candidates and victory margins.

Finally, patterns of turnout are consistent with our core findings. About 83% of the voters who cast a vote for the highest office on the ballot also vote on judicial candidates in partisan elections. By contrast, in nonpartisan only 76% of those who cast a vote for the highest office also vote on judicial candidates. In partisan elections, some voters vote even when they do not have information on candidate quality, relying instead on party cues. In nonpartisan elections, only those who have some information on the judicial candidates vote. Therefore, the turnout rate is lower. We also find that the amount of media coverage, which is an additional source of voter information, affects turnout only in nonpartisan elections.

These results have an important implication. The desirability of electing local public officials through partisan competition critically depends on the nature of the officials' tasks, the ideological variability of decisions made by public officials from different parties, and the heterogeneity of voter preferences. If the primary task of public officials is not to represent voters' ideology and their decisions have little variability across parties, then we need to seriously consider the potential cost of partisan competition. To the extent that partisan voting behavior crowds out the influence of candidate

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[3] We also compare competitive elections vs. retention elections. The pattern of results for retention elections is broadly similar to that for nonpartisan elections. We discuss the main differences below.

[4] See Dubois (1980) for an early analysis, and Squire and Smith (1988) and Klein and Baum (2001) for experimental evidence. All of these studies, like almost all existing work, focus exclusively on high court judges.