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# Attack Advertising, the White Decision, and Voter Participation in State Supreme Court Elections

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Melinda Gann Hall<sup>1</sup> and Chris W. Bonneau<sup>2</sup>

## Abstract

This project evaluates whether televised attack advertising and less restrictive campaign speech codes brought about by *Republican Party of Minnesota v. White* (2002) have had adverse effects on citizen participation in state supreme court elections. The authors' specific focus is on partisan and nonpartisan races from 2002 through 2006. Overall, they find that attack ads and liberalized speech codes actually *mobilize* rather than demobilize the electorate. These findings highlight the striking similarities between supreme court elections and elections to other important offices. These results also raise questions about the validity of normative accounts of the relationship between citizens and the bench.

## Keywords

**[AQ: 1]**

In recent decades, the skyrocketing costs of seeking political office and the negativity that can be a part of aggressive, well-financed campaigns have been a central focus in political science. Particularly relevant is the potentially deleterious effects of attack advertising and the concern that nasty campaigns filled with personal attacks may have the capacity to demobilize citizens, thereby threatening the foundations of representative democracy.

In the context of judicial elections, these concerns have been exacerbated by the U.S. Supreme Court's decision in *Republican Party of Minnesota v. White* (2002). In *White*, the Supreme Court invalidated "announce clauses" in codes of judicial conduct, which prohibited candidates for judgeships in some states from announcing their views on issues. As Caufield (2007, 35) explains, announce clauses and other provisions in codes of judicial conduct "were designed specifically to limit campaign speech in an effort to preserve the unique character of the judicial branch and to promote the impartiality of state court judges." In other words, announce clauses forced candidates to run issue-free campaigns. In this regard, judicial campaigns in some states have been markedly different from legislative and executive campaigns.

Times definitely have changed. *White* not only invalidated announce clauses but also opened the door to subsequent litigation successfully challenging other restrictions on judicial candidates at the same time that some states voluntarily began to revise their codes in response to the

*White* decision (e.g., Caufield 2007; Hasen 2007). While judicial elections in states using partisan elections to staff their benches always have been "political" in tone, those states using nonpartisan elections and restrictive judicial codes now are experiencing open public debate for the first time, including negative messages targeting individual judges and their decisions.

In this article, we rely on the strong theoretical foundations of the judicial politics and American elections literatures and the analytical advantages of comparative state research designs to examine the impact of campaign politics on voter participation in elections to the states' highest courts. Specifically, we assess the effects of televised attack advertising and liberalized speech codes brought about by *White* on citizen mobilization in state supreme court elections from 2002 through 2006. We seek to answer one vitally important question: do attack ads and broader interpretations of *White* reduce the propensity to vote?

In doing so, we test two competing theoretical predictions about the relationship between campaigning and

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<sup>1</sup>Michigan State University, East Lansing, MI, USA

<sup>2</sup>University of Pittsburgh, Pittsburgh, PA, USA

## Corresponding Author:

Melinda Gann Hall, Michigan State University, Department of Political Science, East Lansing, Michigan, MI 48824-1032  
Email: hallme@msu.edu

voting in judicial elections. The first perspective, drawn from normative legal theory and work by Ansolabehere et al. (1994; Ansolabehere and Iyengar 1995) on nonjudicial elections, predicts that electioneering and other campaign activities intensified by *White* will undermine citizens' positive perceptions of courts, leading to a diminution of trust and confidence and consequent voter demobilization. The alternative conceptualization points instead to the vital importance of information and campaign spending in mobilizing citizens to vote and thus predicts a positive (or at worst neutral) effect of aggressive campaign politics on voter participation. This second perspective underlies most of the recent empirical studies of citizen mobilization in state supreme court elections (e.g., Baum and Klein 2007; Bonneau and Hall 2009; M. G. Hall 2007b) and numerous studies challenging the Ansolabehere et al. (1994; Ansolabehere and Iyengar 1995) hypothesis (e.g., Finkel and Geer 1998; Geer 2006; Jackson and Carsey 2007).

The theoretical import of this inquiry is considerable. Whether voters respond negatively to judicial election campaigns has serious implications for understanding sources of judicial legitimacy and the exact nature of linkages between citizens and the bench brought about by democratic processes. In effect, state supreme courts may be much more representative and voters much less dependent on myths of an apolitical judiciary than commonly portrayed in normative accounts.

From a broader perspective, we will be able to ascertain whether theoretical expectations and empirical descriptions of elections to the legislative and executive branches of government are applicable to the judiciary and whether judicial elections may be an important avenue toward general theories of electoral politics. As we discuss below, state supreme courts provide unique insight into the impact of the rules of the game in relatively low-salience elections.

## Negative Advertising in American Elections

In pathbreaking work, Ansolabehere et al. (1994; Ansolabehere and Iyengar 1995) presented a plausible argument, supported by empirical evidence generated largely through experiments, that the negative tone of campaign advertising has adverse consequences for representative government. Specifically, they asserted that negative advertising in political campaigns was the single biggest cause of declining voter turnout in the United States and citizens' cynical views of government. Remarkably, this account is consistent with normative legal theory asserting the dangers of electioneering and other aspects of campaign politics on citizens' positive views of courts.

In response, a theoretically rich and diverse body of scholarship has emerged to reexamine these fundamental contentions. Though not without contradiction (e.g., Kahn and Kenney 1999), the weight of the evidence generated to date shows that negative ads do not demobilize voters or harm fundamental political attitudes essential for a healthy democracy in presidential elections (e.g., Finkel and Geer 1998; Clinton and Lapinski 2004) or congressional elections (e.g., Jackson and Carsey 2007; Jackson and Sides 2006; Jackson, Mondak, and Huckfeldt 2009; Lau and Pomper 2001). In fact, some evidence supports the contention that negative ads actually mobilize rather than demobilize the electorate (e.g., Finkel and Geer 1998; Geer 2006; Jackson and Carsey 2007; Jackson and Sides 2006; Lau and Pomper 2001). In this regard, Mayer (1996, 441) offers a simple yet compelling argument about the underlying causal mechanism of negativity: "Negative campaigning provides voters with a lot of valuable information that they definitely need to have when deciding how to cast their ballots," and this information empowers the electorate to vote.

In this flurry of scholarly activity, state supreme court elections largely have escaped scientific scrutiny. This is highly problematic, for at least three important reasons. First, state supreme courts are vitally important political institutions that are closely connected to their citizenries through the process of elections.<sup>1</sup> These courts collectively decide many of the most salient and publicly visible issues on the American political agenda, as well as the issues most directly relevant to the lives of American citizens. At the same time, most state supreme court justices are elected and must face voters regularly to retain their seats. Understanding how democratic politics influences the bench is essential for understanding the judicial function in the American states.

Second, negative ads in state supreme court elections may have much more serious consequences than in legislative or executive elections. Because judges lack a formal representative function and may depend on perceptions of impartiality to maintain their legitimacy (e.g., Gibson 2009; Gibson et al. 2011), negative advertising explicitly designed to cast aspersions on judges and their decisions might have an especially chilling effect on the electorate.

Third, the practice of electing judges currently is under attack in several states (i.e., Michigan, Minnesota, and Nevada) and has been denounced universally by the American Bar Association (2003). While complaints about judicial elections have persisted for decades from a number of the nation's leading court advocacy organizations, the primary concern today lies with assertions—largely unverified—about the pernicious effects of hard-fought campaigns, especially attack advertising.

Indeed, judicial elections may represent precisely the conditions under which the demobilizing effects of

negative ads can best be seen. As noted, because of the unique role of the judiciary, judicial candidates may be perceived differently than other candidates when engaging in, or being the focus of, attacks or other forms of political campaigning. Also, judicial elections are less visible than other American elections and are less likely to provide much information to voters. Under these conditions, negativity may serve to alienate voters and discourage their participation, especially since negative messages may constitute much of what voters experience for some races.

Alternatively, in elections not generally perceived as among the most important in American politics, where voters may lack information about the office and the candidates, negative advertising may have neutral or positive consequences. As numerous scholars have argued (Finkel and Geer 1998; Geer 2006; Jackson and Carsey 2007; Mayer 1996), negative advertising improves the quantity and quality of information available to voters while better highlighting the differences between candidates. Even in state supreme courts, campaign negativity may serve as a mobilizing rather than demobilizing agent.

## The Landscape of Judicial Elections

There is little doubt that the practice of electing judges is under attack. For decades, many of the nation's most prominent judicial reform advocates (including influential organizations like the American Bar Association, National Center for State Courts, and American Judicature Society) have campaigned to replace partisan elections for selecting state court judges with nonpartisan elections or the Missouri Plan. After succeeding in eighteen of twenty-five states,<sup>2</sup> the new goal of the American Bar Association (2003) is to end judicial elections altogether, particularly as these elections become increasingly expensive and saturated with television advertising.

At its core, the current case against judicial elections rests with assumptions about the harmful effects of intense, well-financed campaigns, particularly attack ads and politicized speech brought about by *White*. But more fundamental to this position is the underlying belief that judges must remain above the political fray to retain their legitimacy. In short, the principal precept is that judges, courts, and the processes that surround them must be distinct from the political branches to retain an esteemed status. Competitive judicial elections, particularly hard-fought, expensive races with attack advertising, are believed to undermine citizen trust and confidence and thereby manifest harsh consequences, including voter disaffection.<sup>3</sup>

While this general assumption about the inability of the public to view state courts as both political and impartial

remains a highly debatable question, some recent evidence suggests that aggressive campaigning may not have the effects widely presumed. Using a series of experimental vignettes embedded in surveys, Gibson (2009) finds that neither policy talk nor attack ads have adverse effects on the legitimacy of courts in states that elect judges. Gibson et al. (2011) also demonstrate that while some messages can overstep bounds for voters, the net effects of elections on citizen perceptions of legitimacy are positive even with any adverse effects of particularly harsh ads.

Likewise, extant empirical work documents that the electorate in state supreme court elections is stimulated to participate by many of the same factors that mobilize voters in elections to nonjudicial offices. Generally, voter participation improves considerably in response to conditions that increase the salience of the races and enhance the information available to voters (Baum and Klein 2007; M. G. Hall 2007a, 2007b; M. G. Hall and Bonneau 2008; Hojnacki and Baum 1992; Klein and Baum 2001). In short, "voters vote when they have interest, information, and choice" (M. G. Hall 2007b, 1151).

Particularly relevant as agents of mobilization in state supreme court races are partisan elections, close contests, and big spending (Baum and Klein 2007; M. G. Hall 2007a, 2007b; M. G. Hall and Bonneau 2008). Indeed, hard-fought, expensive campaigns substantially improve voting in state supreme court elections.

While important and intriguing, these studies of state supreme court elections have a critical limitation: none has yet to incorporate any specific variables related to campaign messages, including attack advertising or television advertising saturation. Thus, given the predictions about the consequences of negative advertising and the *White* decision, it is essential to reexamine voter participation in fully specified models that take into account the exact nature of the campaigns.

## Specifying Models of Voter Participation in State Supreme Court Elections

Our primary goal is to examine the effects of negative advertising and changes in campaigns brought about by *Republican Party of Minnesota v. White* (2002) on voter participation in state supreme court elections. More broadly, we examine the effects of campaigns in the context of models that also take into account other important factors known to influence citizen participation. Our basic strategy is to capitalize on the analytical advantages of comparative state analysis to examine institutional and other contextual forces influencing the propensity to vote as well as race-specific factors like television advertising

and the speech rights available to candidates. In doing so, we ground our analysis solidly in the strong theoretical foundations of the American elections literature.

In measuring citizen participation, we follow the well-established practice in judicial politics scholarship (e.g., Bonneau and Hall 2009; Dubois 1980; M. G. Hall 2007b; M. G. Hall and Bonneau 2008) and in studies of other less visible political offices (e.g., Schaffner, Streb, and Wright 2001; Wattenberg, McAllister, and Salvanto 2000) of examining ballot roll-off rather than voter turnout. Ballot roll-off is defined as the percentage of voters casting votes for the major office on the ballot who do *not* vote in each supreme court race. "Major office" is "the presidential, gubernatorial, or U.S. senatorial contest which attracted the most voters in each election" (Dubois 1980, 66). Thus, higher values of ballot roll-off indicate lower levels of participation.

A brief word is necessary about why ballot roll-off is the focus of this inquiry rather than voter turnout. As M. G. Hall (2007b) has carefully argued, the key advantage is analytical: roll-off provides an efficient and practical means to address the complicated specification issues that arise when modeling a process affected by elections not being evaluated and not easily included. Studies of elections to supreme courts (e.g., Dubois 1980; W. K. Hall and Aspin 1987), the House of Representatives (e.g., Wattenberg, McAllister, and Salvanto 2000), and state houses (e.g., Bullock and Dunn 1996; Nichols and Strizek 1995; Vanderleeuw and Engstrom 1987) have demonstrated that turnout rarely is determined by less visible races when a presidential, senatorial, or gubernatorial contest is on the ballot. Thus, generating parsimonious models of lower-ballot races while controlling for the variety of factors affecting the electoral climate in general, and turnout for the most salient races in particular, is daunting. Examining roll-off, while not a perfect solution, alleviates these problems by treating turnout for the most important offices as a baseline and then gauging interest in other elections relative to the top draw on the ballot. In this manner, our basic research question can be formulated more precisely as asking why many citizens who actually go to the polls for the most visible races choose not to participate in elections to the state high court bench.<sup>4</sup>

Even with the use of ballot roll-off as a statistical convention to measure citizen participation, our theoretical expectations are consistent with those for voter turnout. In short, we expect the same conditions that stimulate voting in the first place also to motivate citizens to complete their ballots, as studies already have established (e.g., M. G. Hall 2007b; Schaffner, Streb, and Wright 2001; Wattenberg, McAllister, and Salvanto 2000).

With respect to the actual races, we examine sixty-seven supreme court elections from 2002 through 2006 in

the states using partisan and nonpartisan elections to staff their high court benches. We begin our analysis in 2002 because television advertising in state supreme court elections was virtually nonexistent before 2002 (e.g., Goldberg, Holman, and Sanchez 2001; Goldberg et al. 2005). We end in 2006 only because of data availability.

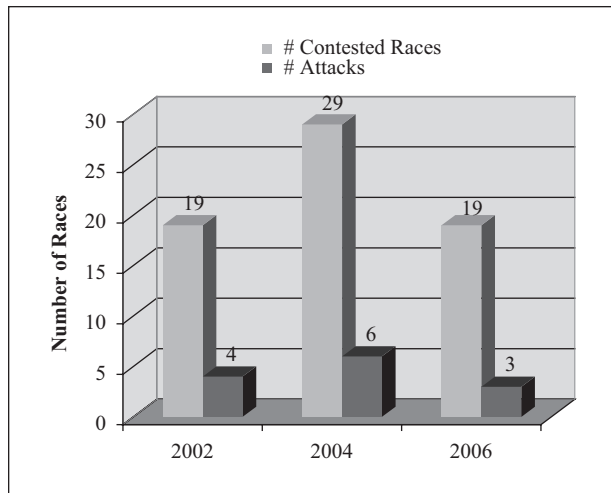
We restrict our investigation to contested races only, for one important reason. Our primary focus is on the impact of campaign spending and television advertising on the propensity to vote. However, in uncontested races, the states do not consistently report spending data or the amounts are so small that they would distort any empirical analysis by giving disproportionate weight to the uncontested cases. The same is true of political advertising; television ads generally do not air if races are uncontested. Thus, we exclude the uncontested races to avoid this obvious threat to valid inference.<sup>5</sup>

We also capitalize on an important data source on television advertisements generated by the Campaign Media Analysis Group (CMAG) and presented in various reports of the Brennan Center for Justice and the Justice at Stake Campaign.<sup>6</sup> CMAG, a commercial firm, collects every advertisement aired in state supreme court elections in the nation's seventy-five largest media markets, which cover 80 percent of the nation's population. These ads are coded for tone as "promotion of one candidate," "attack on the opponent," or "contrasting two or more candidates." The CMAG data are the only source of their kind for judicial elections across the states.

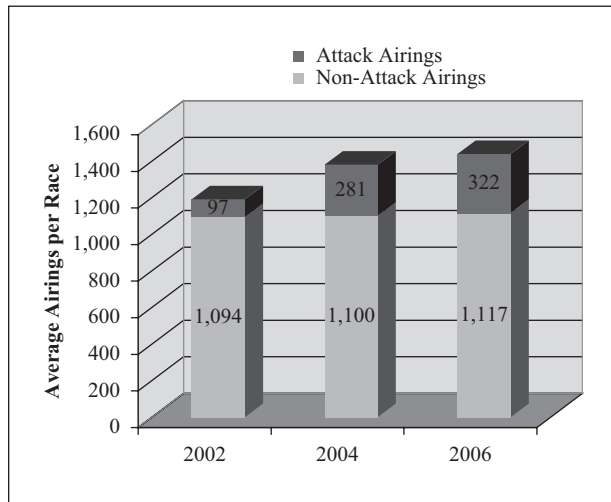
Before proceeding to the multivariate analysis, it is instructive to consider the exact nature of televised attack advertising in state supreme court elections from 2002 through 2006. Figure 1 compares the number of contested races to the number of races in which attack ads actually aired for each election cycle. As Figure 1 illustrates, campaign attacks are not the norm in supreme court races. Only thirteen of sixty-seven contested elections, or 19.4 percent, resulted in attacks. Moreover, the proportion of races with attacks actually declined (about 5 percent) in 2006 from the previous two election cycles.<sup>7</sup>

Figure 2, which shows the average number of airings per race for each election cycle, tells a somewhat different story. The average number of attack airings has increased over time, with a significant transformation between 2002 and 2004. This trend toward negativity is consistent with trends in other American elections (e.g., Geer 2006).

Thinking about ballot roll-off, from 2002 through 2004 roll-off ranged considerably, from -3.4 percent to 28.9 percent across elections and from 3.9 percent (West Virginia) to 23.4 percent (Minnesota) across states (averaged).<sup>8</sup> Moreover, partisan elections ( $n = 35$ ) averaged 9.7 percent, with a range of 0.6 percent to 28.9 percent. Nonpartisan elections ( $n = 32$ ) averaged 15.2 percent, with a range of -3.4 percent to 27.3 percent. Thus, while



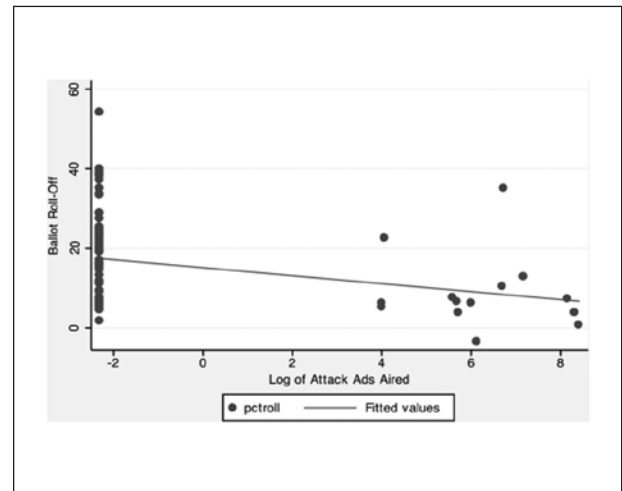
**Figure 1.** Attack campaigns in state supreme court elections



**Figure 2.** Attack airings in state supreme court elections

it is clear that sizeable proportions of the electorate do not vote in some supreme court elections even after having already gone to the polls for other races, significant variation across elections, states, and election systems suggests that much is at play in stimulating voters and that various features of campaigns, including negative advertising, have at least the possibility of being mobilizing or demobilizing agents.

Indeed, an initial look at descriptive statistics suggests that attack advertising actually mobilizes voters in state supreme court elections. Figure 3, which plots the bivariate relationship between negative advertising and ballot roll-off, shows that while many races do not involve negative ads, there is a discernable negative relationship



**Figure 3.** The relationship between ballot roll-off and attack advertising

between negativity and ballot roll-off: the nastier the campaign, the less ballot roll-off.

As we describe in greater detail below, we expect ballot roll-off in state supreme court elections to be affected by campaign messages and other race-specific features, the overall state electoral context, and institutional arrangements defining the races. For convenience, all of our variables and their measurements are reported in Table 1. In this regard, it is important to emphasize that the unit of analysis is the *seat* rather than the state. This means that advertising for any given race, regardless of the type of constituency, includes ads specific to that race only.

### State Supreme Court Campaigns and Other Race-Specific Features

First and foremost, we expect campaigns to influence citizen participation in state supreme court elections. Specifically we expect attack ads, other television advertising, and campaign spending to have considerable influence over whether voters participate in supreme court elections. We also expect two other race-specific factors—close contests and open seats—to affect the propensity to vote.

Our primary concern is with attack advertising. As we have discussed, the advocacy literature and the dominant thrust of political science research predict opposite effects for these controversial messages. Given the evidence generated to date and the compelling theoretical story linking negative advertising to improved information in campaigns (e.g., Geer 2006; Jackson, Mondak, and Huckfeldt 2009), we predict that attack ads in state supreme court elections will decrease ballot roll-off, other things being equal, particularly given the low-information nature of these races.

**Table 1.** Variable Descriptions for Campaign Models of Ballot Roll-Off in State Supreme Court Elections

Variable	Description
Dependent variable	
Ballot roll-off	Percentage of ballot roll-off in the election
Independent variables	
Campaign and other race-specific features	
Attack ads	1 if attack ads aired in the race, 0 otherwise
Attack airings	Number of attack airings in the race, as a natural log
Advertising	Number of all airings in the race – number of attack airings in the race, as a natural log
Per capita spending	Total amount of campaign spending in the election in 2002 dollars by all candidates / voting age population of the state (or district), as a natural log
Competitive race	1 if the seat was won by 60 percent of the vote or less, 0 otherwise
Open seat	1 if the race was for an open seat, 0 otherwise
State electoral context	
White interpretation	1 if the state interprets <i>White</i> broadly (Caufield 2007), 0 otherwise
Competitive court	1 if an election in the previous election cycle in the state was won by 60 percent of the vote or less, 0 otherwise
Institutional arrangements	
Partisan	1 if the election is a partisan election, 0 otherwise
District	1 if the election occurred in a district-based constituency 0 otherwise
Temporal controls	
2004, 2006	1 if the election occurred in the year specified, 0 otherwise

In our analysis, we use two separate measures of attack advertising. Theoretically, we wish to test whether the mere presence of attack ads affects voter participation, as well as the extent to which saturation matters. Empirically, we must address concerns about collinearity between television advertising and campaign spending. Quite obviously, increased advertising translates into higher campaign costs so that these two variables are correlated and confound multivariate analysis when used together.

Thus, we first measure attack ads (*attack ads*) as present or absent in each race within a model that also includes campaign spending. Then, we follow the usual practice (e.g., Jackson and Carsey 2007; Jackson, Mondak, and Huckfeldt 2009) of measuring attack advertising as the natural logarithm of the total number of attack ads airings in each race (*attack airings*). We do this because we expect a diminishing marginal impact on roll-off at higher levels of airings. To avoid threats to valid inference, we omit campaign spending in models that use the attack airings measure (e.g., Jackson and Carsey 2007).

We follow the same strategy with overall television exposure (*advertising*). Theoretically, we wish to take into account the exposure to television advertising that occurs in each race for messages that do not rise to the level of attacks. To this end, we count the total airings of all ads in each race and then subtract attack airings. We then calculate the natural log of this variable.

Generally, we expect television advertising to improve information dissemination to the electorate and to generate more exciting electoral climates. However, it may be that largely positive messages in promote ads and much less critical messages in contrast ads will not have the same impact as outright attacks. Thus, we expect less roll-off in races that have extensive media activity than in races that do not, but we also expect reduced effectiveness relative to attack ads. Indeed, Finkel and Geer (1998) suggest that positive messages may not illustrate well any differences between candidates, are less likely to mention specific issues, and may not arouse much of an emotional response or generate much interest with voters.

In addition to the specific tone and saturation of campaign messages, we include in our models the two leading indicators of campaign stimuli and intensity: campaign expenditures and highly contested seats. Indeed, well-financed campaigns and narrowly decided races already have been shown to exert a critical impact on citizen participation in state supreme court elections (M. G. Hall 2007b; M. G. Hall and Bonneau 2008).

To measure campaign costs, we use total per capita spending by all candidates in each race (*per capita spending*), recalculated into 2002 constant dollars to control for inflation. As with the airings measures, we utilize the log of per capita spending because we expect diminishing marginal returns as spending increases. Overall,

campaign spending is an excellent indicator of overall campaign activity (e.g., Lau and Pomper 2001; Jackson and Carsey 2007) and includes many activities beyond television advertising. Thus, campaign spending should substantially attenuate voter defection. Simply put, the more money candidates spend, the more information they can provide to voters, and the more information voters have, the more likely they are to participate.

In addition to campaign spending, we wish to identify competitive races from the perspective of narrow victories. To do so, we follow the example of M. G. Hall (2007b; M. G. Hall and Bonneau 2008) and include a dummy variable (*competitive race*) to identify seats narrowly won with 60 percent of the vote or less, the standard observed by “most leading students of marginality in congressional elections” (Weber, Tucker, and Brace 1991, 31), state supreme court elections (e.g., Bonneau and Hall 2003, 2009; M. G. Hall 2001a, 2001b), and trial court elections (W. K. Hall and Aspin 1987). This variable is coded as dichotomous rather than continuous because of an anticipated threshold effect rather than a linear association. Theoretically, the effect of the change in electoral margin from 55 percent to 70 percent, for example, should differ from a 70 percent to 85 percent shift.

Our final race-specific variable is open seats (*open seat*). Generally, open seats are more likely to attract challengers and be highly competitive (M. G. Hall 2001a; M. G. Hall and Bonneau 2008), *ceteris paribus*. However, with the effects of contestation and competition controlled, we expect open seats to increase voter defection, simply because voters will know less about these candidates and will not benefit from name recognition and other cues present with incumbents. We identify open seats with a variable indicating whether the seat is open (coded 1) or otherwise held by an incumbent (coded 0).

### State Electoral Context

In addition to the campaigns themselves, we expect the state electoral context to affect the propensity to vote in supreme court elections. In this regard, our focus is on the U.S. Supreme Court’s decision in *Republican Party of Minnesota v. White* (2002), which “significantly altered the landscape of judicial elections” (Caufield 2007, 39) by nullifying announce clauses. Also in response to *White*, a significant number of states have revised their codes, in some cases to shore up the remaining restrictions and in other cases to eliminate proscriptions on speech and conduct (Caufield 2007).

To estimate how these new rules influence the extent to which citizens participate in state supreme court races, we rely on Caufield’s (2007) analysis of codes of judicial conduct in the aftermath of *White*. Specifically, we generate a variable (*White interpretation*) to distinguish

between states broadly interpreting *White* (coded 1) and states retaining other proscriptions on speech (coded 0). This measure is sensitive to the timing of each change so that states will vary over time on this dimension. We predict that states interpreting *White* broadly will experience lower ballot roll-off in state supreme court elections, other things being equal.

A second state contextual factor that should influence ballot roll-off is each state’s history of competition with supreme court seats. As M. G. Hall (2001a, 2007b) has documented, the states vary considerably in the extent to which competition is usual in supreme court elections. Overall, states with typically competitive supreme court races tend to experience lower levels of ballot roll-off. Thus, to take this important dimension into account, we include a variable (*competitive court*) coded 1 for states in which an election was won by 60 percent or less in the previous election cycle, 0 otherwise.

### Institutional Arrangements

Research on state supreme court elections consistently has shown that institutional arrangements are crucial determinants of citizen participation in the judicial selection process. Most important among these are ballot type and constituency. Other things being equal, voters participate in elections when they have readily accessible information. Of the possible sources of information about candidates, there is perhaps no more useful cue than partisan affiliations. Thus, voters should participate in higher numbers in states using partisan ballots (*partisan*) to select their high court justices relative to nonpartisan ballots (Dubois 1979; M. G. Hall 2007a, 2007b; M. G. Hall and Bonneau 2008).

Similarly, while supreme courts in most states are elected statewide, some states instead use districts, dividing the state into distinct electoral constituencies for the purpose of electing members of the highest court. Generally, studies have detected greater ballot roll-off in district-based elections (*district*) than in statewide elections (M. G. Hall 2007b; W. K. Hall and Aspin 1987; M. G. Hall and Bonneau 2008). While the dynamics of this process are not clear, it appears that minority parties in smaller constituencies have less incentive to promote candidates if their membership is concentrated geographically and outside the district. Thus, we include a variable that takes this interesting pattern into account.

### Temporal Controls

Finally, we add dummy variables for the year in which each election took place to control for any temporal effects in the models (2004, 2006). We exclude the 2002 election cycle as the baseline category.



**Table 2.** Campaign Models of Ballot Roll-Off in State Supreme Court Elections

Variable	Model 1	Model 2	Model 3
Attack ads (dummy)		-2.520* (1.143)	
Attack ads (continuous)			-0.493** (0.135)
Advertising			-0.059 (0.233)
Per capita spending	-1.497** (0.497)	-1.188* (0.495)	
Competition	-10.270* (4.163)	-10.531* (4.050)	-11.140** (3.007)
Open seat	2.153 (1.320)	1.846 (1.190)	1.105 (1.217)
White interpretation	-11.347** (2.546)	-11.442** (2.664)	-9.326** (3.152)
Prior close race	-3.252* (1.412)	-3.716* (1.468)	-1.645 (1.943)
Partisan	-8.386** (1.725)	-7.972** (1.778)	-5.793* (2.495)
District	5.157* (1.977)	4.761* (2.114)	1.477 (2.893)
2004	4.466* (1.537)	4.255** (1.278)	3.483** (1.139)
2006	4.566** (1.497)	4.272** (1.311)	4.042* (1.399)
Constant	30.837** (2.188)	30.635** (2.428)	22.363** (2.733)
N	62	62	67
F	566.49	1290.62	19.86
Prob > F	.000	.000	.000
R <sup>2</sup>	.751	.762	.683
Root MSE	4.442	4.388	5.020

Statistics reported are ordinary least squares coefficients with robust standard errors in parentheses.

\* $p < .05$ . \*\* $p < .01$ .

### Estimation Technique

Because our dependent variable is continuous, we use ordinary least squares regression to estimate the models. Also, we use robust variance estimators clustered on state, which are robust to assumptions about within-group (i.e., state) correlation.

### Results

In specifying our campaign-based models of supreme court election roll-off, we follow a three-step process. First, we estimate a baseline model that includes all of our variables of interest except attack advertising and television exposure. Second, we add a dummy variable measuring the impact of the presence of attack ads. Third, we exclude campaign spending but introduce attack airings and television advertising exposure. Most basically, we follow this practice (e.g., Jackson and Carsey 2007) to address concerns about collinearity while documenting the remarkable stability of the results across specifications. In fact, all three models speak strongly to the powerful force of partisanship and competition in enhancing voting in state supreme court elections.

These various results are presented in Table 2. Immediately apparent is the excellent performance of the models overall. Using basic features of the campaigns, the state electoral context, and institutional arrangements, we can explain 68 percent to 76 percent of the variation in

ballot roll-off. Also, these results are highly consistent with theoretical expectations and previous studies of elections to legislative, executive, and judicial offices. Most importantly, the results present a striking challenge to the notion that rough-and-tumble supreme court campaigns have deleterious effects on citizen participation.

Consider first our base model, reported as model 1 in Table 2. This model essentially replicates previous state supreme court election studies while adding the crucial dimension of the *White* decision. As the results clearly indicate, campaign spending, narrowly decided races, broad interpretations of *White*, experience with competitive elections, and partisan ballots significantly reduce ballot roll-off.

Indeed, the impact of *White* is both statistically significant and substantively powerful. States providing more liberal speech rights to supreme court candidates have 11 percent less ballot roll-off, other things considered. In fact, simply by combining less restrictive codes of conduct with partisan elections, states could reduce ballot roll-off by up to 19 percent, a finding that contradicts the contention that less restrictive speech codes and partisan elections have harmful consequences for state judiciaries, at least from the singular perspective of the propensity to vote.

Alternatively, and as hypothesized, district elections increase ballot roll-off, by about 5 percent. Similarly, open seat races show directional support for increasing ballot roll-off, but the coefficient is not statistically significant.

Finally, looking at the temporal variables in model 1, the coefficients for 2004 and 2006 are statistically significant and positive, indicating that ballot roll-off in these years was substantially higher than in 2002, the baseline category. In 2004, ballot roll-off was 4.5 percent higher, and in 2006 was 4.6 percent higher. Of course, 2004 coincides with a presidential election, and we know that presidential elections produce higher roll-off than midterm elections (M. G. Hall 2007b; M. G. Hall and Bonneau 2008). However, we cannot say with any certainty what the temporal variables represent substantively.

Model 2 adds an important dimension to our basic set of expectations by including the presence of attack ads as a determinant of ballot roll-off. As a comparison of models 1 and 2 indicates, the inclusion of *attack ads* does not change any of the substantive conclusions from model 1 but adds crucial information about the actual conduct of campaigns. Overall, the presence of attack ads in a supreme court election campaign *reduces* ballot roll-off, by about 2.5 percent. Moreover, this effect is present even with campaign spending controlled.<sup>9</sup>

In Table 2, model 3 presents an alternative view of negative advertising by considering the saturation of attack ads and also advertising exposure beyond attack ads. As mentioned, to avoid collinearity we must remove campaign spending from this specification, which somewhat reduces the explanatory power of the model given the importance of spending and the fact that spending in a campaign includes much more than television advertising. Even so, model 3 tells essentially the same story as models 1 and 2 while providing a much more precise understanding of campaigning.

As model 3 documents, increases in the airings of attack ads can have a substantively powerful impact on ballot roll-off in supreme court elections. A 10 percent increase in negative airings decreases roll-off by almost 5 percent. Thus, the impact of attack ads consists not merely in their presence but also in the extent to which these messages are aired.

Also thinking back to campaign expenditures, money in campaigns is critical for attracting voters, but it also matters *on what* the money is spent. Overall, attack ads provide considerable electoral bang for the buck, while media saturation in the form of promote and contrast ads is not very effective. Although the coefficient for *advertising* is in the theoretically predicted direction, the effect is not statistically significant.<sup>10</sup>

In sum, the results in our three campaign models of ballot roll-off do not support the contention that expensive, hard-fought campaigns replete with negative advertising and open public debate have harmful effects on citizen participation in these contests.

## Conclusion

In contrast to the concerns being raised about changes in the campaign context for judicial elections but consistent with much of the political science scholarship on legislative and executive elections, we find that attack advertising has a positive effect on citizen participation in state supreme court elections. This is true even after we control for campaign spending and other potentially confounding explanations. Simply put, attack ads are a *mobilizing* force in state supreme court elections.

Similar observations can be offered about the impact of *Republican Party of Minnesota v. White* (2002). Codes of conduct that allow judicial candidates freer speech rights *increase* the propensity to vote in state supreme court elections in a powerful way. This makes perfect sense given extant theories of voter mobilization. These campaigns engage and inform voters better than more tightly constrained campaigns.

We caution that our results are based on three election cycles only and that during this period negative advertising was the exception rather than the rule. Future work is essential to determine if the findings in this study will continue to be robust. It may be the case that television attacks will have deleterious effects on the electorate when used more frequently and more aggressively. However, given strong theoretical reasons to expect otherwise and the remarkable similarity between state supreme court elections and other major nonjudicial elections, we do not predict that this will be the case.

We also emphasize that our results are restricted to state supreme court elections, and specifically to contested races occurring contemporaneously with presidential, senatorial, or gubernatorial elections. We do not know what the effects of negative advertising might be in state supreme court elections held outside the regular national election cycle, or what the effects of attack advertising might be in elections to other courts. Indeed, Streb and Frederick (2009) have called our attention to some important differences between state intermediate appellate court elections and state supreme court elections with regard to challenger emergence and incumbent success.

Overall, our results suggest that we should think more critically about the assumptions underlying efforts to replace democratic processes for selecting and retaining state court judges with appointment schemes. In the case of advertising, there is no connection between attack messages and the electorate's decision not to participate in supreme court elections. If negative advertising causes cynicism and alienates voters, there are no behavioral manifestations in the form of an unwillingness to vote in the nastiest and most expensive races. The same is true of states with liberal speech codes for judicial candidates.

These findings are entirely consistent with previous studies of voter mobilization in state supreme court elections linking information (including partisanship), competition, and campaign spending to reduced ballot roll-off (e.g., Bonneau and Hall 2009; M. G. Hall 2007b; M. G. Hall and Bonneau 2008).

We also should revise our perceptions of state supreme court elections as being unique. These findings about the determinants of citizen participation in state supreme court elections, especially the mobilizing effects of negative advertising and liberalized campaign speech, add to an impressive and burgeoning body of empirical evidence showing that many of the same institutional, political, and contextual factors that explain behavior in legislative and executive elections also explain supreme court elections. Similarities include the strategies of challengers to take on incumbents (Bonneau and Hall 2003; M. G. Hall and Bonneau 2006, 2008), strategic retirements by the electorally vulnerable (M. G. Hall 2001b), the preferences of voters for quality challengers and the ability to vote retrospectively on issues (e.g., Baum and Klein 2007; M. G. Hall 2001a; M. G. Hall and Bonneau 2006), and the actual costs of campaigns (Bonneau 2007).

In this way, studies of state supreme courts can inform studies of legislative and executive institutions. From this study, for example, we have ascertained that in a context characterized by normative expectations of apolitical behavior by candidates, nonrepresentative functions for the office holders, and typically low-information campaigns, negative advertising still does not have the impact posited by Ansolabehere et al. (1994; Ansolabehere and Iyengar 1995). This finding reinforces earlier findings in studies of nonjudicial elections while demonstrating that criticism and money can serve as important democratic incentives across executive, legislative, and judicial elections.

In fact, where electoral politics is concerned, elected state supreme courts may be much more representative than widely perceived, and voters in these elections may be more sophisticated than normative accounts suggest. If citizens are drawn to the polls by competitive, hard-fought exchanges between candidates, these same citizens may not need to view judges as above the political fray to view them as impartial or legitimate. Indeed, much more work is needed to understand the complex linkage between citizens and the bench, particularly in states where electing judges historically has been the practice.

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### Notes

1. Currently, fifteen states use nonpartisan elections to staff their high courts, sixteen use retention elections, and seven use partisan elections. In these various elections, seven states use district constituencies. The remaining twelve states staff their supreme courts through gubernatorial (ten states) or legislative (two states) appointment.
2. Since 1960, eighteen states have abandoned partisan elections for selecting their highest courts (Council of State Governments 1960–2006 **[AQ: 4]**). The most recent changes were approved by Arkansas in 2000 and North Carolina in 2002, effective 2002 and 2004.
3. M. G. Hall (2011) makes this point well and offers a comprehensive discussion of this premise underlying current judicial reform efforts.
4. As a robustness check, we estimated all models reported herein using two separate measures of the number of top-ballot races. First, we include a nonweighted measure ranging from 1 to 3 that sums the number of presidential, gubernatorial, and senatorial elections on the ballot. Alternatively, we weight the measure for election salience by assigning 3 for presidential, 2 for gubernatorial, and 1 for senatorial races, a variable that ranges from 1 to 6. The inclusion of these controls does not change our substantive conclusions.
5. Of the ninety-three contested elections from 2002 through 2006, we omit six multimember races, three outside the national election cycle, and seventeen that did not coincide with a presidential, gubernatorial, or senatorial election. In total, we examine sixty-seven of ninety-three races, or 72 percent. In the multivariate models with spending, we lose five cases to missing data. Even so, the elections we examine represent the universe of cases in which there are campaigns and where roll-off can be measured.
6. We accepted the Brennan Center's coding of these ads without revision. Advertising data for 2002 are from Goldberg, Sanchez, and Brandenburg (2003). Data for 2004 are from Goldberg et al. (2005). Data for 2006 are reported on the Brennan Center for Justice (<http://www.BrennanCenter.org>) web page, last visited June 19, 2007.
7. The thirteen elections with attack ads took place in eight states (Alabama, Georgia, Illinois, Kentucky, Mississippi, Nevada, Ohio, and West Virginia). Six of these elections were nonpartisan, and seven were partisan. More broadly,

- television advertising was used in thirty-seven of sixty-seven elections (55 percent).
8. One election had negative roll-off, with more judicial votes than for governor.
  9. We ran a bivariate *t*-test to ensure that this result is not a statistical artifact. Average roll-off in races with no negative ads is 17.5 percent but is only 8.9 percent in races with negative ads. This relationship is statistically significant ( $p < .01$ ).
  10. As a robustness check, we generated two models that include spending and airings together in the same model, as well as our two alternative variables measuring top-ballot races. When spending is included with airings, both variables drop somewhat in statistical significance, which normally occurs in the presence of some collinearity. However, both variables remain within reasonable bounds. Indeed, even with spending, the attack airings variable is significant at the .063 and .070 levels.

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