

THE PARTY DECIDES IN JUDICIAL ELECTIONS:
INFLUENTIAL COMPONENTS IN TEXAS'
PARTISAN RACES

by

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ABSTRACT

How do endorsements and financial contributions to campaigns affect voter decisions in judicial elections? By nature, as low level and low-interest elections, success in a judicial election may largely rely upon the ability of candidates to arouse voter awareness. In partisan judicial elections, in particular, an interesting dynamic is created in a race that is supposedly comprised of “impartial” candidates. This study investigates the unique nature of partisan judicial elections by identifying partisanship, ideological endorsements, incumbency, and information availability as variables in primary and general elections. The study uses data from the partisan judicial contests that took place in the 2020 primary and general elections in Texas; it selects 50 counties of varying population densities. The results of the study support the theory it develops, that political parties can have a strong influence on the selection of judicial candidates in party primaries, not unlike the presidential races described by *The Party Decides* theory.

Introduction

How do endorsements and financial contributions to campaigns affect voter decisions in judicial elections? Judicial elections are largely ignored; They are “generally about as exciting as a game of checkers played by mail.”¹ They are not highly publicized, nor glamorous, nor do they amass large followings of their proceedings resulting in very low information elections. By nature, success in a judicial election may largely rely upon the ability of the candidate to arouse voter awareness. Without free publicity from large media outlets, monetary resources are crucial for increasing name recognition of the candidate among voters.² Campaign fundraising is undoubtedly crucial in a competitive judicial race. Endorsements from well-known organizations and community leaders can be similarly essential to the success of the campaign, especially acting as a sign of the candidate’s competency to the electorate and likely motivating voter decisions.³

Scholars such as Chris Bonneau have studied judicial campaign financing, specifically in the context of what characteristics make a candidate viable to raise the most funding for sufficient opportunity to succeed in a competitive judicial election. Others have analyzed and theorized what types of endorsements may influence campaigns the most. This study aims to compare campaign endorsements with levels of contributions to explore their relative effects on how voter decisions are made in partisan elections. It also aims to measure the significance of those factors in terms of voter decisions in an election.

¹ William C. Bayne, “Lynchard’s Candidacy, Ads Putting Spice in to [Mississippi] Judicial Race,” *Commercial Appeal*, October 29, 2000, p. DS1.

² R. Schotland (2002). Financing Judicial Elections. In MAGLEBY D. (Ed.), *Financing the 2000 Election* (pp. 213-237). Washington, D.C.: Brookings Institution Press.

³ Salokar, R. (2007). Endorsements in Judicial Campaigns: The Ethics of Messaging. *The Justice System Journal*, 28(3), 342-357.

The research question as it is stated could be applied to the many levels of state judiciaries and could include a plethora of endorsement types. It is most properly applied and limited in this research project to the cases of elections in states that employ partisan elections to select their judiciaries; this type of election provides information from a primary election where numerous candidates in each party's contest will be receiving variable amounts of financing and types of endorsements as well as information from a general election. The scope of endorsements is broad and varied. The ratings provided by judicial candidate evaluation reports from bar associations in various states - a well-known legal entity to the electorate - could serve as a general indicator of the level of endorsement. BAR evaluation ratings range from "lacking qualifications" to "exceptionally qualified" and can be found for both State Supreme Court candidates as well as those running for State Superior Courts. Endorsements from officials such as precinct chairs, interest groups, activists, and party leaders may serve to provide information for county-level candidates.

This study has implications for our understanding of voter decision-making, and the necessity of information shortcuts in very low information elections. In states where judicial candidates cannot directly request funding and in partisan elections, campaign contributions are considered ideological: both when coming from interest groups and/or groups whose contribution to a partisan candidate implies their preferred political leaning. A bar association ranking is considered the unbiased review. It is unknown whether bar association endorsements, more ideological endorsements from either interest groups or political figures, the level of financing raised, or some combination thereof has a greater effect on electoral success. Understanding this allows for the identification of the strongest heuristic(s) for vote choice in a

low-information election. This is knowledge that can be practically applied to the strategies of future campaigns and analyses of their outcomes.

The following section evaluates the previous scholarship on this topic as well as its subtopics and situates the study within relevant discussions to expand upon knowledge of mechanisms influencing judicial partisan elections. Next, I develop the theory and hypotheses that identify the potential key voter cues and mechanisms of voter choice in judicial races. In the third section, I elaborate on the research design guiding this study and the steps taken to create the unique dataset it analyzes. Finally, I discuss the study's findings and validity, which support the theory developed and point to the conclusion that political parties can have a strong influence on the selection of primary judicial candidates. Finally, the implications of these findings and potential ideas for future research are discussed.

Literature Review

The relevant literature surrounding the topic of judicial elections is overwhelmingly focused on the methodology and ethics of judicial politicking. Within this theme, previous work generally falls within three broad categories of study: financial contributions to judicial campaigns, endorsements of judicial candidates, and partisanship in judicial elections. In combination with other studied electoral patterns, this research offers a comprehensive look at the subject as well as inform theory on the mechanisms guiding the outcomes of upcoming judicial elections.

Financial Contributions

Many scholars have approached judicial politicking with a financial lens that tends to examine deeply one of two questions: 1) what is the impact of the level of financing on election outcomes and how to reach high levels of financing? 2) what messaging is produced by financial

contributions? While the first subtopic is clearer cut in its examination, the latter tends to lend itself to the study of ethical and social messaging in judicial campaign contributions.

Chris Bonneau's study, *Campaign Fundraising in State Supreme Court Elections*, is a key piece contributing to knowledge of the ability of candidates to raise money and its effect on election outcomes. Findings suggest that candidates who by their characteristics had a greater probability of success - namely incumbency and electoral history - than their opponents were better able to raise higher levels of money, taking into account the electoral context of the state and the court, as well as the institutional makeup of the election.⁴ Specifically, the characteristics improved success in fundraising and elections by increasing the candidate's perceivable electoral viability. Qualifications such as previous experience rather than traits such as gender and race were the primary considerations of contributors.

Other examinations of campaign financing, while primarily concerned with ethics and social messaging, do not find results inconsistent with Bonneau's empirical examination. While these studies don't directly relate to the focus of this study, they provide an interesting ethical discussion. Walsh's analysis of 30 state prohibitions of campaign fund solicitation by active judges and judicial candidates emphasizes the ethical concerns of fundraising. Rothman provides a similar study that considers the empirical amounts that warrant actions such as disqualification to resolve ethical concerns.⁵ However, that a judicial candidate may thank a contributor does not undermine the assertion made in the *Williams-Yulee v. Florida Bar* majority opinion, "And a

⁴ Bonneau, C. (2007). Campaign Fundraising in State Supreme Court Elections. *Social Science Quarterly*, 88(1), 68-85.

⁵ Rothman, R. (2009). Opening Statement: Judicial Campaign Contributions: How Much is Too Much? *Litigation*, 35(2), 1-46. Retrieved March 21, 2020, from www.jstor.org/stable/41553289

state's decision to elect its judiciary does not compel it to treat judicial candidates like campaigners for political office. A state may assure its people that judges will apply the law without fear or favor -- and without having personally asked anyone for money.”⁶ The contribution is irrelevant beyond electoral success, i.e., to the judges’ application of the law, but may act as a significant indicator of the contributor’s believed viability of candidates, being that the funds are unsolicited and voluntarily given to sought out candidates with adequate qualifications. In addition, this implies that the Supreme Court has effectively recognized judicial candidates as significantly different than other types of political candidates, who are allowed to solicit funds. In the state of Texas, limits have been placed on the total dollar amount of these voluntary contributions, an effective upper limit to the extent that fundraising can serve as a predictor of a candidate’s success, assuming that without such a limit the possibility exists that judicial candidates would receive and accept far more contributions.

Localism is provided as another explanation for the aptness of a potential contributor; Key’s described phenomenon is used to explain the concept of “friends and neighbors” politics – that local candidates win by greater margins in their local regions due to pre-existing connections and name recognition – but as argued by Thielemann, can be applied to the realm of court election contributions.⁷ Findings supported the existence of the localism effect in campaign financing, being more apt to support if the candidate is well recognized and connected.

⁶ Walsh, M. (2015). A Pragmatic Turn: Judges may not seek campaign cash, but they may express their gratitude. *ABA Journal*, 101(7), 19-21. Retrieved March 21, 2020, from www.jstor.org/stable/24806553

⁷ Thielemann, G. (1993). Local Advantage in Campaign Financing: Friends, Neighbors, and Their Money in Texas Supreme Court Elections. *The Journal of Politics*, 55(2), 472-478. Retrieved March 21, 2020, from www.jstor.org/stable/2132276

Endorsements

The nature of judicial elections, being low information and candidates' near-identical promises of fairness and justice, necessitates differentiating factors between candidates to signal any advantage in electoral viability to the electorate. Previous scholarship regarding financing tends to view qualifications and name recognition as fulfilling this exact purpose, while other scholarship finds that endorsements may act in this way. Salokar argues that the signaling provided by judicial candidates' endorsements can influence a candidate's perceivable salience and fairness.⁸ A revision of endorsement processes was sparked following the US Supreme Court decision made in *Republican Party of Minnesota v. White* (2002; the decision, that under certain circumstances, regulations of judicial campaign speech violated protections of the First Amendment, moved the substance of endorsement interviews towards personal beliefs, especially on controversial political issues. Salokar ties this change to the public's increasing recognition of the importance of state courts as well as judicial campaigning increasing similarity to campaigns of other elective offices.⁹ Endorsements then, depending on the source, are relevant indicators of not only the endorser's approval of qualification but can also be indicative of the candidate's personal beliefs and perhaps political leaning. In this way, they may act as information shortcuts to the electorate in non-partisan elections and may differentiate between candidates of the same party in partisan elections. Additionally, knowledge of a candidate's political preferences increases their similarity to candidates of other types.

⁸ Salokar, R. (2007). Endorsements in Judicial Campaigns: The Ethics of Messaging. *The Justice System Journal*, 28(3), 342-357. Retrieved March 21, 2020, from www.jstor.org/stable/27977358

⁹ *Ibid.* 345.

Though this trend towards the probing of political beliefs in our potential judiciary is recognized, the importance of unbiased ratings is not discounted. Schotland finds that because of the limitations placed on judges and candidates in meeting parties – because of norms and legal limits on *ex parte* contracts – the reviews from well-known state bar associations are a valid and significant endorsement source for providing unbiased and consistent evaluations of judicial candidates’ qualifications.¹⁰

Partisanship

Scholarship on partisanship, in the context of judicial elections, tends to encompass both studies of financial contributions and endorsements, included as a consideration of the study at the least, and often complicating it. Sixteen different states employ partisan election for their selection of judges, with six of those states electing *all* judges (all levels) by partisan election.¹¹ Partisanship introduces an interesting dynamic that affects how the electorate may receive the signals produced by financing and different endorsements. Kang and Shepard argue that in partisan elections, parties influence judicial decision-making. In one way, they selectively recruit candidates and provide monetary and endorsement support to candidates who they believe are most committed to their ideological platform. Secondly, it is this critical support that introduces a biasing effect on their court behavior once a judge is elected. As put by Justice Sandra Day O’Connor in 2010, “Partisan judicial elections are specifically designed to infuse politics into the

¹⁰ Schotland, R. (2002). Financing Judicial Elections. In MAGLEBY D. (Ed.), Financing the 2000 Election (pp. 213-237). Washington, D.C.: Brookings Institution Press. Retrieved March 21, 2020, from www.jstor.org/stable/10.7864/j.ctv80cbx2.13

¹¹ Kang, M., & Shepherd, J. (2015). Partisanship in State Supreme Courts: The Empirical Relationship between Party Campaign Contributions and Judicial Decision Making. *The Journal of Legal Studies*, 44(S1), S161-S185. From <https://www.jstor.org/stable/10.1086/682690>

law.”¹² In favor of partisan judicial elections, this “design” mentioned by O’Connor is not denied but defended as a reason to host judicial selection in this way; “[the argument that] judges should be non-partisan... is either naïve or disingenuous. Scholars have shown for decades that liberal and conservative judges decide cases differently... the easiest way to convey this crucial piece of information about potential judges – political ideology as it might affect judicial decision making – is through publicizing the party affiliations of the candidates.”¹³ While the ethics of the infusion of politics and the courts are heavily debated, what is relevant to this study is the notion of selective candidate recruitment by parties.

A well-known theory, the Party Decides Theory, developed by Cohen et. al argues that the invisible primary is the primary means by which party members create an informational system to select an acceptable presidential nominee. The party decides by way of endorsements and contributions who is widely acceptable much before an election. Between candidates, elite party members will differ in their candidate preference but will coordinate for party unification and the best chances for electoral success.¹⁴ Endorsements and contributions, indicators of party preference and coordination, then are indicators of primary success. Though this is a theory on presidential nominees, it has also been applied to Congressional primaries and lower-level campaigns with results that attest to the general importance of party endorsements; Dominguez finds that even when funds and candidate quality are controlled for, a primary candidate’s share

¹² *Ibid.*

¹³ Bonneau, C. (2018). The Case for Partisan Judicial Elections. The Federalist Society of Law and Public Policy Studies. Retrieved April 3, 2020.

¹⁴ Cohen, M. (2008). The Party Decides: Presidential nominations before and after reform. Chicago: University of Chicago Press.

of party endorsements is significant to their share of votes.¹⁵ The theory may similarly apply to judicial campaigns and could be consistent with Bonneau's theories; party selection in terms of funding is, in addition to the ideological alignment of the "impartial" judicial candidate, also concerned with the candidate's characteristic predisposition for success.

Other scholarship, such as that of Canes-Wrone, provides key information that helps inform partisanship's effect on election day by specifically looking at retention elections. Across all types of elections – partisan, non-partisan, and retention – interest groups conduct expensive advertisements of judge's decisions to support their broad political policy agendas. This information could become the most impactful to a voter's choice in a retention election, being that there are no partisan labels on the ballot to act as information shortcuts in a low information judicial election. In partisan elections, Canes-Wrone argues that a candidate's party label has such a strong influence on a voter that the label may overwhelm advertised information.¹⁶ Shotland similarly agrees, that low voter awareness and ballot length (leading to voter drop-off), bolster the importance of name recognition for judicial candidates. Where new judges are being elected, there are no previous judicial decisions for interest groups to advertise and influence the electorate.

Theory Development

In states that select their judiciary through purely partisan means, party labels may, as Canes-Wrone posits, overwhelm other information presented to voters. In states such as Texas

¹⁵ Dominguez, C. (2011). Does the Party Matter? Endorsements in Congressional Primaries. *Political Research Quarterly*, 64(3), 534-544. Retrieved April 20, 2020, from www.jstor.org/stable/23056373

¹⁶ Canes-Wrone, B., Clark, T., & Park, J. (2012). Judicial Independence and Retention Elections. *Journal of Law, Economics, & Organization*, 28(2), 211-234. Retrieved March 21, 2020, from www.jstor.org/stable/41499493

(prior to the 2020 general election), straight-ticket ballots allow voters to select all candidates of a party with a single mark. In primary elections taking place before the general election, many candidates of the same party are contested. In some states there are more judges on the ballot than there are legislators;¹⁷ how do voters differentiate between these candidates when party label cannot be the main source of information? Political parties, because of the relationship between party contributions and judicial favoring of litigants of the contributing party, are incentivized to elect judges that align ideologically with platform agendas. Jeff Segal's attitudinal model of judicial decision making suggests that even in the absence of campaign contributions, parties have additional incentives to elect judges of their same party; his theory holds that the judiciary decides disputes "in light of the facts of the case vis-vis the ideological attitudes and values of justices."¹⁸ If this is true, then judges can be expected to favor their preferred ideology, for which their party affiliation is a signal, and political parties who wish to further their agendas through decisions should aim to promote the election of judges who share that same label.

If the Party Decides theory can be more widely applied to the world of judicial campaigns as well as presidential nominations, it would be expected that the most viable candidates of the same party, i.e., those with excellent qualifications, who also best align with long-standing party policy goals, would receive the most critical financial support and highly ranked endorsements, increasing their name recognition and the likelihood of success in contested elections. There can be tension between the two criteria (electability and ideology) that

¹⁷ Schotland, R.

¹⁸ Segal, J., and Spaeth, H. (2002). *The Supreme Court and the Attitudinal Model Revisited*. New York, NY: Cambridge University Press.

may confuse primary voters; there is no clear preference indicated for a candidate with high electability who doesn't strongly align with party policy goals versus a candidate who is a strong ideological match but lacks strong qualifications for electability. Additionally, endorsements generally may prove more significant than financial support because of upper limits placed on the amount of financial contributions that a candidate is eligible to receive in certain states. The recognition of candidates by elected officials and organizations as preferred by their party through endorsements and contributions is effectively useless if the information cannot be easily disseminated to the average voter in the electorate; for this reason, it should be expected that whether or not a candidate utilizes an independent, accessible platform website will influence their vote share. If it holds that a voter's approach is indeed influenced by endorsements and contributions, it would be expected that in partisan judicial elections:

- A. The more endorsements a judicial candidate receives, the more likely they are to win in contested elections.
- B. The greater the amount of funding a judicial candidate receives, the more likely they are to win in contested elections.
- C. Due to the effects of partisanship in general elections, both endorsements and contributions are more likely to be statistically significant to a judicial candidate's success in the primary election than the general election.
- D. Candidates with websites are more likely to win in a contested judicial election than candidates without.

Better endorsements may be considered to be more widely known as well as coming from more highly ranked endorsers. Thus, these "better" endorsements (more widely known endorsers) would increase name recognition and familiarize individuals that would not otherwise be influenced by such a localism effect. Because of the large number of candidates that will appear on primary ballots, it can be expected that endorsements and contributions will be more

significant to a candidate's success than in a general election, where many voters vote "down the ticket" according to their political party or select their candidates with a straight-ticket ballot. If this holds, volume will contribute most significantly to financing and ranking for endorsements.

Research Design

In order to test the relative effects of both endorsements and financial contributions, the study will appropriately examine the 2020 election cycle in the state of Texas. Being a state where the entirety of its judiciary is selected by partisan election, there is extensive data to be found for judicial elections at both the state and county levels, for both the primary and general election; there exist 7 high court elections – 4 civil appellate courts and 3 criminal appellate courts – as well as lower-level elections occurring in Texas' 254 different counties. To compare the effects of endorsements and contributions between primary and general elections, the data was collected in two phases: first, leading up to and including the primary election that occurred in March 2020 and second, leading up to and including the general election in November of the same year.

The measured effect is, in its basic form, a simple dichotomous variable: one wins the election or does not. In order to provide a more in-depth analysis of the extent to which endorsements and fundraising may advantage the candidate over an opponent, the variable was measured to include the percentage of votes received. The independent variables that are expected to affect these outcomes include endorsement ranking, volume of endorsements, amount of financing, and partisanship (in the general election). Partisanship becomes an important discerning variable in the general election when voters are then offered candidates from both parties. In order to isolate these independent effects, the effect of incumbency will need to be controlled and accounted for. A case with an incumbent in a non-contested election

does not allow for the appropriate measure of the independent variables as no opponent is competing for party endorsements and funding. However, incumbents in contested elections are known to be predisposed with an advantage among voters; this advantage is presupposed to be less for incumbent judges than incumbents of other elected offices because of institutional differences, but still present.¹⁹ For example, judges cannot mail pamphlets advertising their decisions in court. Judges may have been appointed to a vacancy rather than elected to their position. Even so, such cases provide an interesting opportunity to study a correlation between incumbency as an indicator of electoral viability and the number of highly ranked party endorsements and funding that is received, being a candidate with a history of electoral success.

Data was collected from a random selection sample of 50 different counties in Texas with contested primary elections in order to provide information from a variety of populations in both rural and urban areas. Counties were categorized as either metro urban, micro-urban, suburban cluster, or rural, as determined by the population definitions set by the US Health Resources and Services Administration. The numerical distribution of each category of cases in the sample is proportional to the total number of types present in Texas as a whole. Data was collected for all contests for higher court seats, and for district justice positions, to represent contests of the lower, more local levels. The variety of election levels, across varied and numerous types of counties assists in ensuring that effects are internally reliable across items. Recall one of the hypotheses: Both endorsements and contributions are more likely to be predictors of a judicial candidate's success in the primary election than the general election. The significance of the

¹⁹ Bonneau, C., & Cann, D. (2015). Does One Good Term Deserve Another?: Incumbency And Vote Choice. In *Voters' Verdicts: Citizens, Campaigns, and Institutions in State Supreme Court Elections* (pp. 69-84). University of Virginia Press. Retrieved April 21, 2020, from www.jstor.org/stable/j.ctt15hvzft.8

independent variables on the election outcome is most strongly supported if the statistical significance is found to be reliable and consistent across the many cases.

In order to maintain the face validity of the study, uncontested cases were not included as their data is not linked to the study's intended focus: endorsement and financing advantages in partisan contests. The data needed to determine the dependent variable values were easily collected from the state electoral databases: the specific candidates of a contest, the dichotomous election outcome, as well as the specific percentage of votes received by each candidate. Candidate websites, bar association rankings for appellate court candidates, state electoral databases, and county sample ballots were used to collect information pertaining to the independent variables, including endorsements (number and type) and financing.

It is important to note that in order to maintain the feasibility of the study under its proposed timeline and to preserve the causal mechanisms at work, candidate websites are the sole source of information for endorsement data (with one exception, as will be discussed in the following pages). Candidate websites are the most direct reflection of the information that a *candidate* wishes to portray to an informed voter actively seeking information about them. A candidate wishing to signal their competency and electoral viability will display meaningful endorsements that they have gained in a visible way that is easily disseminated to the average voter. Social media pages such as Facebook and Instagram are also used by candidates in addition to their personal sites. Due to their primarily visual layout, these platforms are not ideal for communicating such information in a convenient way to the electorate as a whole; social media is useful to maintain support among pre-existing supporters who know to find these pages and stay updated with them throughout the campaign. They do not provide a summary of

information, as an endorsement page of a site would, for the average voter looking for convenient and comprehensive information at a point in time.

Admittedly, some endorsements will not be counted when gathering data in this way. However, it is unlikely that a competitive candidate would *not* explicitly list their credible and meaningful endorsements on their website for their platform. The purpose of the study is to examine the causal process of endorsements as a signal of information that may impact the electorate. If these are not communicated effectively, they are not a signal.

Candidate websites were the primary source of endorsement data collected. However, because the study begins after the primary election has already taken place, some candidates, having lost their contest, will have removed their sites. This rarely occurred, but an exception was made to collect endorsement data from media/news websites, who in aiming to assist voters, present condensed, comparative endorsement lists for primary candidates. These lists are a summation of information that is compiled from multiple sources and are not guaranteed to be accurate nor identical to the endorsements that would have been solely listed on a candidate's site. However, because these lists had access to previously available candidate pages, it would be a greater error not to include the information they provide than to omit it completely.

Endorsements were codified according to their type, and thus ranked in terms of party significance using a point system; those coming from elected officials are ranked according to their political level to represent the estimated scope of the electorate's knowledge of them. The Governor, state senators, and Agricultural and Land Commissioners, etc., will be necessarily ranked above precinct chairs of a local area. *See Figure 1*. Interest groups fall at various levels within this ranking system, above precinct chairs, according to their perceived level of influence in an election. Only elected officials are included. Endorsements coming from non-elected

persons such as “prominent community members” or “family and friends” will be ignored. While this is not a perfect measure, they do not act as immediate signals of party affiliation and the perceived strength of their influence in a particular voter community is incalculable.

Figure 1. *The Endorsement Point Scale*

Most Valued	50	Governor
	30	State Commissioner
	25	U.S. Senator
	15	Large Interest Group or PAC
	10	US Representatives
	8	TX State Representative, TX State Senator
	5	Statewide/District/County Judge
	4	Municipal Judge, Lawyer/Bar Association, Mayor
	3	Small/local Interest Group, Party Club, Newspaper,
	2	All local level elected officials (except a judge or mayor), ISD officials, SREC
Least Valued	1	Precinct Chairs

Former officeholders will be counted as half of the current office holder's equivalent value. This half value has been assigned to neither overestimate nor underestimate the weight of a particular endorsement. Even if it is known how long a particular individual has been out of an office, one cannot account for this lapse in time and its effect on the weight of their endorsement in the eyes of the electorate. Because of this, half points are assigned to avoid overestimating and assigning too much weight to a former officeholder as well as to sufficiently differentiate them from current officeholders. There is an important assumption that a candidate and their campaign team are competent and competitively driven; if a former officeholder's endorsement is included on their page, it is assumed to be because said candidate believes that the former officeholder's endorsement is impactful enough to be included on their campaign site. No less than half the value of a current officeholder is assigned then, in order to avoid underestimating the value of the endorsement and the efforts taken to display and promote it to voters.

Such a point system as described above accounts for both the "weight" of any one endorsement as well as their summation. Ranking endorsements this way allows for not only the measure of endorsement volume to be examined as an effect on electoral success but also for an examination of the correlation strength of any one type of endorsement on an outcome.

In this way, this study was a hybrid of a large empirical study and a small case study; large electoral patterns were studied across a sample, but within that random sample there was not always a clear primary candidate determined in a contest as expected. When a primary runoff occurred within the sample, the specific case was chosen in order to explain the phenomenon, determine its causal factors, and identify its relationship to holistic patterns found in the large sample. Such opportunity for a more detailed analysis of candidate success was available in Texas' runoff primary elections for candidates of contested elections who did not receive more

than fifty percent of the vote. To test each hypothesis, a regression was done to measure the relative effects of the independent variables on a candidate's success in an election. A comparison is made between the results of the primary election (phase one) and the results of the general election (phase 2) in order to better understand the significance of endorsements and financing on electoral success. As predicted by Hypothesis C, these factors were expected to be more significant to the dependent variable in the primary election (where partisanship is not a differentiating factor between candidates) than in the general election where partisanship may take precedence over the effects of endorsements and advertising. In addition to partial effects of both endorsements and financial contributions, the study also examines the share of votes in relation to the volume of highly ranked party endorsements to apply the argument posited by Dominguez and in support of a more widespread application of the Party Decides theory to various types of primary candidates extending beyond the presidential.

Findings

In discussing the results of the study, it is most amenable to the reader to begin with an assessment of the results of each phase of the election and its data in isolation, beginning with the primary election. Then, a comparison is made to compare the two election subsets and posit greater conclusions to be drawn from the results. For each election (primary and general) three model scenarios were created to capture the data and analyze it, due to a less than expected amount of available information on financial contributions for the low-level, local judicial races. For the first model, it is assumed that in addition to where a candidate's funding is explicitly reported as "0," a lack of reported information (i.e., missing information), indicates a non-positive level of financial contribution and is thus counted as "0" in the dataset. The second

model regards cases with missing funding as “NA.” The third model excludes funding altogether to focus on the effects of other variables without the effects of the incomplete funding variable.

Primary Election

Recall Hypothesis B, which posits that the more funding received by a judicial candidate, the more likely they are to win in a contested election. A statistical analysis of the dataset found that funding was marginally significant to a candidate’s share of the vote (being able to reject the null hypothesis 90% of the time). Each additional dollar of funding yielded a 0.00006147% increase in the vote share. While an ostensibly irrelevant increase, candidates with some of the largest amounts of financial backing in the study could enjoy nearly a 10% increase in their vote share. Admittedly, of the three model scenarios, funding showed up with marginal significance only in the model which assumes that missing funding data points are zero dollars. This is expected as the other models either omit funding altogether or omit enough data points where the significance cannot be determined with any degree of certainty. Though it may cause slight inaccuracies in the analysis, it is likely that the most local candidates with no campaign fundraising data available had zero or negligible amounts of financing.

Table 1. Primary Election OLS Model where all missing funding amounts are set equal to zero.

Voting Cue	Coefficient	P-Value
Incumbency***	.03	.00
Endorsement point total*	.000888	.06
Partisanship	.00	.96
Website	.00	.93
Funding*	.000000615	.10
N = 97		
*significant at p<0.1		
**significant at p<0.05		
***significant at p<0.001		

As expected, the significance of funding in elections is supported. This finding agrees with earlier studies mentioned, specifically Thielemann's theory on fundraising and localism and Chris Bonneau's *Campaign Fundraising in State Supreme Court Elections*; the two suggest that fundraising is a reflection of a candidate's perceived electoral viability. The positive relationship between fundraising and vote share supports the idea of successful candidate selection by party contributors. It was also theorized that between primary candidates of the same party, endorsements are another important indicator of party support and electoral viability to the electorate. The relationship between a candidate's endorsement point total and their vote percent registered as statistically significant in all models' scenarios of the dataset, with nearly 94% certainty. For each endorsement point gained by a candidate, there was a 0.08 percent increase in vote share. Candidates with large endorsement counts around 250 points could see a 20% increase in vote share; this finding suggests that where funding is equal between candidates and/or a cap on funding is reached, campaign efforts to secure and advertise endorsements are not wasted. This significance means that endorsements may indeed provide a competitive edge to a partisan candidate in a primary election and assist them in increasing their vote share to win an election.

In addition, we can be incredibly confident in the significance of incumbency to a candidate's success in an election. A logistic analysis of the dataset showed that a standard non-incumbent's chance of winning was around 16%. *See Table 2*. The profile characteristics of this standard non-incumbent included no endorsements, no website, no funding, and Democrat partisanship. The odds of winning an election increased to nearly 52% if the given candidate was an incumbent. This result lends itself to our general understanding of incumbency in elections as a whole as well as the theorized mechanism guiding a primary voter's decision in judicial

elections; incumbency is a signal of judicial viability. In the primary election, candidates of the same party may increase their legitimacy and viability in the eyes of the electorate by presenting their endorsements as discussed above; similarly, the incumbency advantage, a recognized phenomenon in other political races, appears to act as a significant and powerful signal to the electorate. This is likely because of the localism effect, general name recognition, as well as the experience of the voter with the judge over the course of their term leading up to reelection.

Table 2. Primary Election Logit Prediction Model (where all missing funding amounts are set equal to zero).

Voting Cue	Predicted Probability of Winning, <i>ceteris paribus</i>
Non-incumbent	0.16
Incumbent	0.52

When split into partisan subsets, the significance of the relationship between incumbency and vote share disappeared for Democrat candidates, while it remained for Republicans. Furthermore, the relationship between endorsements and voter success became less sure for Republicans and surer for Democrats. This may indicate that each party may lend itself to a particular campaign strategy. However, more likely, this is because instances of incumbency were simply more common in the sample for Republicans than for Democrats. This could cause incumbency for Republicans to appear as significant in the analysis whereas a relationship between Democrat candidate's success and incumbency appeared with less certainty.

This information is conveyed to the average, educated primary voter via a candidate's website. Websites appear to be a strong indicator of a candidate's chances of winning, as hypothesized in Hypothesis D. Logistical analysis revealed that in the sample, a standard profile candidate's chance of winning the contest was about 16% if they did not have an easily

accessible candidate campaign website for primary voters to view. *See Table 3.* Those that did create and utilize this informational tool were expected to win nearly 54% of the time. This is a large difference that supports the notion that websites are an incredibly important source of information to the electorate during an election; a difference that, in this case, increased a candidate's chances of winning by 38%. As such significant sources of electoral information, website contents must have some effect on their audience. This result supports this study's assumption that a competent, competitive candidate will and *should* demonstrate their viability by placing valuable information such as endorsements and excluding extraneous points on their sites. Little can be said about the effect of visual social media accounts and Facebook pages, which were commonly used amongst candidates in this study, due to their exclusion in the dataset. The assumption is maintained that these types of platforms are support strengtheners rather than a means to provide comprehensive information to increase vote share among unfamiliar, but potential voters; this is due to the fact that their form requires "following" of their updates and they have a primarily visual nature that doesn't allow for a way to view bulk information in the aggregate.

Table 3. Primary Election Logit Prediction Model where all missing funding amounts are set equal to zero.

Voting Cue	Predicted Probability of Winning, <i>ceteris paribus</i>
Missing website	0.16
Website available	0.35

Few candidates received, or else did not list, endorsements from unbiased state bar associations. Rather candidates chose to advertise their approval from associations whose characteristics generally appeal to a particular political leaning. Common endorsements from the

point level for Lawyer/Bar Associations came from groups with populations that are commonly associated with the Democratic party, for example, the Houston Association of Women's Attorneys, The Hispanic Bar Association of Austin, and The Austin Black Lawyers Association. In this way, there may be support for a theory that "non-ideological endorsements carry weight in the eyes of the electorate; if the bar/lawyer association endorsements are considered to be important indicators of judicial viability by the public (as they are determined by groups of professionals in the field). Although they appear to retain some amount of political bias, they may still act as a more informative signal to primary voters of a single party than an endorsement from perhaps a small party club. Voters may identify Bar/Lawyer Association endorsements as not only a signal of ideological party alignment, but also their competency in the legal field. This would be an important differentiation between candidates of the same party in a primary contest.

General Election

The results of analyzing the partisan judicial competitions of the general election yielded results that align with the general theory developed at the beginning of the study as well as broader electoral theories. In the general election, incumbency was the only variable to yield significance in the analysis. Where endorsements, websites, and funding were significant in the primary election, they lacked significance in the general election. *See Table 4.* The data indicates a 251% increase in vote percentage where the candidate is an incumbent for the judicial seat. *Table 5* confirms the strength of this incumbency advantage.

Table 4. General Election Logit Model where all missing funding amounts are set equal to zero.

Voting Cue	Coefficient	P-Value
Incumbency**	2.52	<.01
Endorsement point total	.00	.29
Partisanship	.30	.71
Website	-.09	.92
Funding	.00	.39
N = 70		
*significant at p<0.1		
**significant at p<0.05		
***significant at p<0.001		

Table 5. Incumbency Advantage in the General Election

Voting Cue	Predicted Probability of Winning, <i>ceteris paribus</i>
Non-incumbent	0.27
Incumbent	0.83

Table 6. Website Advantage in the General Election

Voting Cue	Predicted Probability of Winning, <i>ceteris paribus</i>
Missing website	0.27
Website available	0.26

The data analysis revealed that in the general election contests, the standard non-incumbent candidate's chance of winning was 27.4% (profile characteristics including no endorsements, no website, no funding, and democratic partisanship) while an incumbent's chances of winning reelection are 82.9%. This result seemingly conflicts with Hypotheses A, B, and D, and confirms Hypothesis C. In developing a theory around the mechanisms of partisan

judicial elections it was theorized that endorsements, funding, and website existence are positively correlated with the likelihood of winning contested judicial elections, regardless of if it is the primary or general election. The lack of significance found in the general election does not necessarily deny or falsify this notion; rather it is more likely that the greatly reduced number of competitions innate to the general election contributed to the inability to find the correlations with degrees of certainty. What is more important to note about these results is their support of Hypothesis C; both endorsements and contributions are more likely to be statistically significant to a judicial candidate's success in the primary election than in the general election. In the primary election, judicial candidates have the task of communicating their electoral viability in a partisan context to win a contest for the same seat against candidates of the *same* party. In the general election, there is not competition within, but rather *between* parties; the informational signals have changed. Endorsements and funding may still benefit a candidate in the general election, but it is reasonable to assume that partisanship and incumbency have an overwhelming effect. It matters not to the dedicated Republican voter if the Democrat candidate for district attorney has a lengthy endorsement page of ideologically left organizations and elected officials; partisanship will be the main informational shortcut guiding general election voters according to their party alignment. The viability of a candidate as it is made evident by endorsements or funding from an opposite party may become irrelevant.

The insignificance of websites similarly supports this hypothesis and theory. *See Table 6.* In the general election, website availability decreased a standard profile candidate's predicted chances of winning by 0.6%, a non-significant amount; websites did not have the effect of increasing a candidate's chances of winning their contest, *ceteris paribus*, by 38% as it did in the primary election. When the average voter goes to search for a website address to learn more

about numerous candidates within a political party for a judicial seat, a website serves as a key, comprehensive source of information (with their experiences, platform, endorsements, etc.) which may influence their vote. The insignificance of websites in the general election bolsters the hypothesis that incumbency and partisanship cues on the ballot overwhelm informational cues for viability and general judicial competence, not unlike how they have been shown to do in Congressional and Presidential races.

Conclusion

The purpose of this study has been to explore the question, *how do endorsements and financial contributions to campaigns affect voter decisions in judicial elections?* This study finds that parties may indeed have selective power of partisan judicial candidates in primary elections. Endorsements, website use, and funding were variables that were significant only in the primary election when they could be used as informational tools by the electorate to select between candidates of the same party. In the general election, this significance disappeared; it is theorized partisanship overwhelmed these other signals of electoral viability. As a branch of this broader exploration, this study attempts to focus on the similarities and differences between partisan judicial elections and other types of contests for political offices by applying broader electoral theories such as *The Party Decides Theory*, the localism effect, and the incumbency advantage. Outside of the realm of subjective discussions of court legitimacy and partisanship elections, it is valuable to understand the mechanisms of these unique races. Being low information and awareness elections, it is important to understand the extent to which key campaign mechanisms serve to improve a candidate's probability of success; this must be established in order to compare and contrast judicial elections with other types of elections in the United States. This study serves to apply a common electoral theory developed for the most well-known election in

the United States, that of the president, to perhaps the least well-known election type. With this application, the magnitude of a political party's selective power can be better determined. These findings of this study contribute to current knowledge regarding the electorate, its electoral patterns, and the selective power of parties in different types of partisan elections. Previous scholarship has theorized how partisan assistance, whether in the form of endorsements or funding, may affect the selection of judges as well as their performance in court after being selected, but it has failed to provide empirical analyses for such theories to subsist on.

With impartiality in office presumed, within a party, judicial candidates are limited in their ability to differentiate themselves in a contest outside of their personal background, endorsements, and level of funding. By measuring the volume and weight of candidates' endorsements, this study has provided a way to measure the potential effects of endorsements on election race results. It posits that the results reflect a political party's ability to effectively select a judicial candidate to be elected in the primary (by increasing their probability of success) to then compete in the general election. Practically, this result of the study will allow for increased predictive power for the outcomes of partisan judicial elections, for both lower and high court levels. With knowledge of the effects of endorsements and funding in primary and general elections, the conclusions do not overgeneralize patterns for the different election types. In developing an effective campaign strategy, this is a key distinction. Candidates - including their campaign staff - with a strong desire for success, should utilize their resources effectively: seeking certain types of endorsements over others, and catering their efforts to the specific stage of the election (primary, run-off, general).

The implications of this study include a more comprehensive understanding of the world of partisan judicial elections and the mechanisms that guide low-level elections overall. Name

recognition and endorsements have previously been identified as positive contributors to electoral success; this study provides a framework to attempt to measure the weight of an individual's or organization's endorsement of a partisan judicial candidate. By no means is this study a perfect representation of all elections of this kind; necessarily, it must be mentioned that the election's proceedings during an unprecedented world pandemic will have had an influence, however unknown, on the results of the study. Additionally, because the study is focused on a limited number of judicial races in Texas, a singular state that utilizes a partisan process to select its judiciary, it may not perfectly represent partisan judicial races in other states and areas of the nation. Future research may examine the validity and application of these results in these other locations. An interesting continuation of this study would be to conduct similar studies over time rather than limiting the basis of its conclusions to a singular election cycle. Just as broader theories such as those of *The Party Decides* have examined the electoral patterns over multiple presidential elections, it would aid this examination to compare the significance of the endorsement and funding of judicial candidates by their parties over multiple election cycles. The results of this study suggest that despite being extremely low-level elections in terms of interest, publicity, and voter information, they are not separate from typical political mechanisms. The results support established theories like that of Canes-Wrone, who argues that a candidate's party label has such a strong influence on a voter that the label may overwhelm advertised information.²⁰ In the primary election, partisanship was irrelevant; indicators of party support – contributions and endorsements – and other information could influence the electorate

²⁰ Canes-Wrone, B., Clark, T., & Park, J. (2012). Judicial Independence and Retention Elections. *Journal of Law, Economics, & Organization*, 28(2), 211-234. Retrieved March 21, 2020, from www.jstor.org/stable/41499493

without the overwhelming effect of party labels. In the general election, these informational cues, and the informational mode of delivery (the candidate's website) became insignificant and overwhelmed by partisanship.

Arguably, a thorough understanding of this subject is justified by the desire to ensure the fulfillment of the judiciary's intended purpose. When partisanship is involved in judicial selection, it becomes the point of each voter to select a candidate that aligns with their political ideology and who will decide on cases accordingly.²¹ This study argues that political parties can affect the selection of primary candidates; thus, it also becomes the point of political parties to work to select and promote viable candidates who, if elected, can further their interests through judicial review. The focus may be on the relative importance of the mechanisms determining the selection of a candidate and their effect on the electorate, but implicit in this examination, and deserving of attention, is an outcome – the election of a judge – that inevitably affects the application and interpretation of the legislation and precedents governing our society.

²¹ Bonneau, C. (2018). The Case for Partisan Judicial Elections. The Federalist Society of Law and Public Policy Studies. Retrieved April 3, 2020.

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