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Judicial Primary Elections: A Study of Texas High Courts

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Judicial primary elections allow the ability to test the importance of explanatory variables while controlling for party identification. The existence of two courts of last resort in Texas, with different subject matter jurisdictions, also makes it possible to test the role of campaign financing. This article compares primaries for the Texas Supreme Court and the Texas Court of Criminal Appeals by using a variety of statistical tools to have a greater understanding of how the differences in jurisdiction impact election outcomes. New information about the importance of demographic variables, candidate quality, and candidate support in the legal community were also found.

Introduction

State judicial elections have become an increasingly productive topic in recent years for scholars of judicial politics. Much of the research has been focused on general elections for state supreme court justices (Bonneau 2005; Cann and Wilhelm 2011; Cheek and Champagne 2005; Hall 1992; Hall and Bonneau 2009); however, what about primaries? Primary elections allow for the ability to control for the importance of party (since all candidates are members of the same party) and make it possible to see the effects of other explanatory variables more clearly. In Texas, the primary election is more important than the general election because of one-party dominance. Therefore, primaries become the more competitive election since the general election is often seen as a formality. Additionally, Texas is one of only two states (Oklahoma is the other state and uses merit selection) with two courts of last resort – the Texas Supreme Court for civil cases and Texas Court of Criminal Appeals for criminal cases.

On the surface, the selection politics of the two courts appear different because the Texas Supreme Court exemplifies a new era of judicial elections

characterized by extensive campaign financing, increased interest group participation, and more intense media coverage for their campaigns. Interest groups are willing to spend money and compete for victories in areas of civil jurisdiction, such as tort reform. In contrast, the elections for the Texas Court of Criminal Appeals retain elements associated with more traditional judicial elections such as low voter turnout, voter reliance on party identification (if available), and incumbency because of relatively low levels of information available. The same level of interest and competition has not been found in criminal cases on an empirical level (Cheek and Champagne 2005; Monroe and Payne 2012). The differences between the two courts should be considered a matter of degree because judicial elections are still characterized by low levels of information, relative to their legislative or executive counterparts.

Through a controlled comparison of these two courts of last resort, this study will explore two questions. The first is to determine if a pattern of systematic differences exist in the selection politics between the Texas Supreme Court and the Texas Court of Criminal Appeals. The first testable hypothesis is that there are important differences. The second question is to identify the significant variables that explain judicial primary election results in Texas, with the added benefit of controlling for party identification. The factors influencing voter decisions in judicial primaries may have a subsequent influence on the decisions of voters in partisan general elections. The second testable hypothesis is that campaign finance, measures of candidate quality (incumbency and previous judicial or political experience for example), jurisdiction, candidate demographics, and support of the candidate within the legal community (as defined by the results of the bar poll) are the variables that have an impact on election outcomes.

The structure of the Texas court system provides an exclusive opportunity to examine the primary judicial elections based on the differences in jurisdiction among the two courts of last resort. No other state uses the partisan election system and allows for a comparison between two high courts. The Texas Supreme Court is the court of last resort in the state for civil matters affecting monetary interests, while the Court of Criminal Appeals is the court of last resort in the state for criminal matters affecting liberty interests. Both courts have nine members who serve staggered six-year terms (Hall and Bonneau 2009). Differences in funding, interest group participation, and media attention, permit the testing of the effect of factors such as campaign financing, incumbency, demographics, previous experience, jurisdiction, and support of the legal community on the

outcomes of primary elections. The literature review and theoretical model sections will explain why these variables were included in the model and explain their importance to judicial primaries. Primary elections differ from general elections because they can have more than two candidates of the same party for a position and require a majority vote to avoid a runoff election. A variety of statistical tools were developed to study the relationships between the explanatory variables and the primary election results for the Texas Supreme Court and the Texas Court of Criminal Appeals, using data from 1988 until 2008. Descriptive statistics were used to illustrate the apparent differences in selection politics discussed above with measures of association (Gamma/Pearson's R) and tests for statistical significance (Chi-Square and Difference of Means/T-Tests) added to analyze the data.

Due to a lower sample size and missing data, we opt to utilize a series of bivariate correlations and tests of statistical significance. Ideally, we would want to utilize a multivariate logistic regression model to provide a more robust test of statistical significance, but the data were not available for some indicators leading to modeling problems. Some variables to include in the model did not have the information accessible — especially for the Texas Court of Criminal Appeals and for both courts in general during the late 1980s and early 1990s. Background information was challenging to find for some candidates, even those running in more recent elections (especially losing candidates). For example, it was not always possible to know how many years of previous judicial experience each candidate had, but it was possible to know exactly which candidates simply had judicial experience. Due to these concerns, lower powered tests were used. The goal of this study is to provide a starting place for additional analysis until more data becomes available.

Literature Review

Although states use various methods to select judges to serve in the court system, including appointment and merit systems, 87% of all state judges are elected to their term on the bench (Schotland 2003). Despite the prevalence of the election system for judicial selection, a debate exists concerning the possibility that elections reduce the quality of judges because they tend to make decisions to please their constituencies (Brace and Boyea 2007; Champagne 2003). In addition, judicial elections create the possibility for long-term inconsistency in judicial decisions because of change in the political party dominating the bench in a state (Czarnezki 2005). The increase

in campaign financing and the need for candidates to cultivate support from interest groups could also reduce impartiality when a matter before the bench involves campaign contributors (Champagne and Cheek 2002; Shefter 1994; Vogel 1994). In an investigation of post-election judicial behavior, Hall (1992) determined that elected judges tend to make decisions intended to please constituencies within the discretionary latitude granted by the law. A related study showed that elected appellate judges in states with a death penalty are more likely to adopt the political ideology of the majority in cases involving capital punishment (Brace and Hall 1997). Further research on electoral accountability of judges continued to use the highly salient issue of the death penalty to further show evidence of the importance of public opinion and the election process for judicial behavior. Brace and Boyea (2008) found that public opinion influenced judicial behavior indirectly (who won elections) and directly (how cases were decided) in ways that could not be seen in states that did not elect judges. Canes-Wrone, Clark, and Kelly (2014) found similar results that public pressure to uphold death sentences occurred much more often in states with elected judges and the greatest pressure was found in states with nonpartisan ballots, especially after interest groups achieved success in targeting judges for particularly unpopular decisions. Cann and Wilhelm (2011) also found evidence that the connection between state supreme court justices and the voters is heavily dependent on which method is used to retain the judges and the amount of visibility (media coverage or public attention) the case has. Judges also appear to use dissenting opinions to adopt positions that can influence constituencies as Dubois (1982) found that elected appellate judges use dissents in situations not affecting the outcome of the case to express views intended to influence the voting public. These findings appear to support Wynn's (2003) argument that judicial elections, without appropriate constraints, can undermine judicial independence by forcing judges to respond to the majority public opinion as a condition for reelection to the bench.

In contrast to research suggesting that significant systematic flaws exist with judicial elections, others have found no differences in judicial quality or decisions based on the method of selection. Glick (1978) concluded that appointed and elected judges had similar judicial quality. Alozie (1990) determined that no differences exist between the election and appointment systems in the percentages of minorities sitting on the bench in the states. Hall and Bonneau (2006; 2009) determined that judicial quality is related to experience on the bench or in the legal profession and incumbency status rather than the method used for judicial selection.

The public has traditionally had little interest in judicial elections. Geyh (2003) developed the “axiom of 80” concerning judicial elections, which contends that 80% of voters do not vote in judicial elections, cannot name the judicial candidates, and consider campaign contributions to judges as a means to sway the future decisions of judges. Subsequent research appears to have confirmed the axiom. Ballot roll-off in state supreme court elections between 1980 and 2000 remained high at 25% (Hall 2007). The average roll-off in state appellate court elections between 2000 and 2007 was 30%, which was much higher than the ballot roll-off for elected offices outside the judiciary (Streb, Frederick, and LaFrance 2009). According to Gibson (2008), the public’s perception of the legitimacy of the judicial election system depends on their view of the impartiality of the courts. In later work, Gibson (2012) provides evidence that voters understand that campaign promises or negative advertising do not inherently take away a judge’s ability to make impartial decisions (implying little or no change in their perception of legitimacy) and want candidates to reveal their positions on important issues so that voters can make informed decisions.

Baum (1987) found that voters in partisan judicial elections tend to vote based on party affiliation because of uncertainty about the qualifications of judges. These findings were subsequently corroborated, with ballot information (especially party affiliation), serving as the main cue for voters when they did not have sufficient information about candidates from other sources (Klein and Baum 2001). Burnett and Tiede (2015) provide evidence of voters taking advantage of the party label because survey respondents were more likely to choose the candidate that most closely matched their own party affiliation (and policy interests) when compared to respondents who did not have that information available on the ballot. They are also able to provide evidence that partisanship can limit the importance of other variables, such as gender. Bonneau and Cann (2015) showed that there is little difference in voting behavior when comparing partisan to nonpartisan elections because campaigns provide cues to voters even when the ballot does not. Voters can still make informed decisions by voting for the candidate that is most closely aligned with their own partisan views. The effect of these campaigns on the voters often depends on the level of visibility for the candidates or elections. Rock and Baum (2010) found that party affiliation had its greatest impact in higher visibility elections, as one would expect. The degree of partisanship can also vary depending on party because the study found that there was a greater effect among Republicans.

Recent research on the merit selection process by Goelzhauser (2018) shows that partisanship is relevant at both stages of what is ideally a nonpartisan selection process that is supposed to be centered solely on judicial qualifications. Partisanship permeates every political process and this literature is being noted here because of the indirect effects of partisanship on other variables, such as campaign finance or incumbency. This study of primary elections removes party identification from the explanatory model to allow for the ability to focus on those secondary variables and find their level of significance.

In primary elections, since all candidates are from the same party, the literature on nonpartisan elections is valuable (Baum 2003). Other factors can provide information to voters about the qualifications of a candidate. Thielemann (1993) found in an investigation of elections for the Texas Supreme Court that candidates with strong ties and reputations to the community had an advantage over candidates not widely known to the public. This community familiarity factor, known as the “friends and neighbors effect” should also be present in primary elections. Other factors such as incumbency status or previous judicial and political experience can provide voters in primaries with information about the qualifications of the candidate (Hall 2001; Hall and Bonneau 2009), race (Kam 2007), gender (Streb and Frederick 2009), and state bar poll information (Hanssen 2004) can also function as informational cues to voters in low information elections – which judicial elections tend to be.

The general trend in judicial elections is toward increased spending by judicial candidates and special interest groups, with dramatic increases evident between 1990 and 2000 (Bonneau 2005). While the largest amount of financing is focused on elections for the state’s court of last resort, lower court elections are also characterized by escalation in campaign spending. Champagne (2001) noted that the total campaign spending in a Pennsylvania county court election in 1995 was \$1,000,000, with the same candidates spending \$600,000 in the primary election alone two years later. The amount of campaign spending at the country court level was also higher than the total spending by candidates for all the seats on the Pennsylvania Superior Court that year. Streb (2007) noted that the combined campaign expenditures for candidates running for state supreme court positions in the United States in 2003 and 2004 was \$46.8 million, with nine candidates spending more than \$1 million. The amounts spent on campaigns in Texas are among the highest in the nation (Champagne 2003; Schotland 2001). A relationship also exists between judicial decisions and campaign

contributions, with judges making conservative rulings in prominent cases in the months before elections, which is presumed to be a strategy to avoid alienating contributors (McCall and McCall 2007).

According to Rottman and Schotland (2005), much of the campaign spending is used for negative campaign advertising attacking rival candidates and, in some cases, the prior decisions of the court. In addition, much of the spending is funded by interest groups that can provide support to candidates in both primary and general elections. The interest groups are not constrained by the canons of judicial ethics requiring judges to avoid the appearance of impropriety in their campaigns and fund-raising practices (Abbe and Herrnsen 2002). A positive correlation has also been found between spending on judicial campaigns and citizen participation rates in state supreme court elections regardless of whether the balloting was partisan or non-partisan so clearly campaign spending can increase voter turnout (Hall and Bonneau 2008).

Relatively little research has been conducted that focuses specifically on primary elections for judicial seats. Primaries have been identified as informational cues as to the party affiliation of candidates in nonpartisan general elections, with the campaigning of the candidate during the primary functionally informing the electorate of the candidate's party affiliation and ideology (Baum 2003). Evidence also suggests that high interest-group participation in a primary can also function as a significant influence on voters in primary elections who characteristically are more concerned with internal party politics and the ability of the candidate to win the general election (Champagne 2001). The state bar functions as an interest group with its pre-election polls concerning the perspectives of the members of the bar toward the quality of the candidates (Hanssen 2004). Minority status of a primary candidate may also have an influence on the outcome of primary elections in similar ways as Kam (2007) or Streb and Frederick (2009) found. The composition of the Texas judiciary in 2000 consisted of only 15% self-identified members of minority groups (Champagne 2003). Diversity has improved in the Texas courts since then because 20% of Texas judges were members of a minority group and 30% were female in 2009 (Reddick, Nelson, and Caulfield 2009). While the effect of factors such as judicial experience and incumbency have been investigated in the judicial general elections (Hall and Bonneau 2006; 2009), these factors have not been carefully examined to determine their effect on primaries and help to explain the importance of this article.

Methodology and Design

This study compares two courts of last resort that exist within the same state of Texas. This approximates Mill's method of difference because the one factor that is different between the two courts is the types of cases they address. If there are differences between the variables that influence elections outcomes between the two courts, then it would be due to the difference in the subject matter jurisdictions of the two courts. This allows us to control for other factors. This study employs a unique dataset of primary elections returns from 1988–2008 in which biographical data, campaign finance data, and political institution data are combined. This time period was selected because it provides an era of relatively high competition between the two major parties since 1988 marks the end of Democratic dominance in Texas judicial elections. Since 2008, an increase in one party Republican dominance has led to fewer contested elections, even in the Republican primary. One hundred and fifty-eight elections are included, with 158 unique candidates. Table 1 shows the specific independent variables used in the model.

Table 1: Summary Statistics for Judicial Primary Election Data (1988 - 2008)

<i>Variables of Interest</i>	N	Mean	Std. Dev.	Min	Max
Election Result (1,0)	158	0.481	0.501	0	1
Gender (1,0)	158	0.804	0.398	0	1
African American (1,0)	158	0.025	0.158	0	1
Hispanic (1,0)	158	0.038	0.192	0	1
Incumbent (1,0)	158	0.146	0.354	0	1
Jurisdiction (1,0)	158	0.633	0.484	0	1
Judicial Experience (1,0)	158	0.500	0.502	0	1
Legislative/Exec Experience (1,0)	158	0.361	0.482	0	1
State Bar Poll Percentage	158	22.3	17.6	3	76
State Bar Poll (1,0)	158	0.367	0.484	0	1
Campaign Contributions (\$10,000's)	158	13.7	31.8	0	205
Campaign Contributions (1,0)	158	0.367	0.484	0	1
Campaign Expenditures (\$10,000's)	158	12.6	30.1	0	253
Campaign Expenditures (1,0)	158	0.367	0.484	0	1

Independent variables include African American, Hispanic, Incumbent, Judicial Experience, and Legislative/Executive Experience, where the traditional 1=Yes and 0=No is used. Gender is coded 0=Female and 1=Male, and Jurisdiction is coded 0=Civil and 1=Criminal. State Bar Poll Percentage, Campaign Contributions (\$10,000s), and Campaign Expenditures (\$10,000s) are ratio level variables. Dummy variables for State Bar Poll, Campaign

Contributions, and Campaign Expenditures, where one (1) indicates higher overall values than opponents, were created for cross-tabulation analyses as well to see if the advantage helped lead to an election victory. The dependent variable is the outcome of the election, which is coded 0=Loss and 1=Win.

This study improves on the previous models by Cheek and Champagne (2005) by including factors related to incumbency, experience, race, gender, and performance in the state bar poll in addition to political party and campaign financing. The other important addition to the Cheek and Champagne (2005) study is the inclusion of the Court of Criminal Appeals candidate data.

The campaign finance data were taken from the National Institute on Money in State Politics and the Texas Ethics Commission. Contributions and expenditures are both measured in this study and though they are correlated, influence different parts of the candidacy process. Contributions can serve the purpose of intimidating potential challengers. In addition, contributions are not inherently equivalent to expenditures because the candidate may use personal funds for campaign finance, which is common in low-cost campaigns for the Texas Court of Criminal Appeals elections. Candidates may also receive contributions substantially in excess of their expenditures, with the candidate able to conserve the excess contributions for campaigns in future election cycles. Expenditures are often presumed to be more effective in explaining the outcome of elections because the direct impact of a campaign financing advantage can be seen through how much money is being spent (advertising, etc.), but including contributions is also worthwhile for the reasons stated above. Independently testing their influence is important and this study tries to accomplish this.

Studying primary elections allows us to control for the party identification variable and remove it from the statistical analysis, but it should be noted that it is likely to have an interactive effect with other key variables. Party identification is expected to influence campaign financing because the amount of funds raised and spent by each candidate is at least partially contingent on the degree of support for each party in an election for example. Incumbency and state bar polling advantages have similar interactive effects with the other variables as well. Further detail will be provided at the appropriate juncture in the analysis section. The information was gathered from the Texas Secretary of State's website and their catalog of election returns.

The best measure available for interest group participation in Texas was using the state bar poll, which is a measure of the level of support a candidate enjoys within the legal community and is tabulated in a nonpartisan fashion. Since not all groups are involved in the same way and with the same level of impact as the state bar – the bar poll was chosen as the best measure for interest group activity for this study. The results of the poll can be found in the *Texas Bar Journal*. According to the website for the state bar, the poll is published in February of each election year before that year’s primary election so that it can be a nonpartisan exercise and is not considered an endorsement from the publication. The State Bar of Texas uses third party vendors to administer the poll through both paper and online ballots. Response rates are not always available, but it was 14.4% (11,784 out of 81,668) in 2008, 13.6% (12,248 out of 90,334) in 2012, and 13% (12,294 out of 94,783) in 2014. The level of participation is not very high in terms of percentage, but it is not considered out of the ordinary for survey results. The positive side is there are still plenty of data points for the results to be worthwhile.

Results

The first step in this exploratory analysis is to examine the bivariate correlations between the above independent variables and whether a candidate won. Cross tabulations were used to explore descriptive trends, while basic measures of association and tests of statistical significance were used to assess impact. For the categorical data, gamma was used to determine the strength of the relationship and a chi-square test was used to determine statistical significance. Gamma is also a proportional reduction in error statistic, which indicates how much a variable helps reduce errors in “predicting” distributions of the dependent variable, in this case whether a candidate won the primary election. As this study is exploratory in nature, we do not make a priori assumptions about what differences should exist between the two types of courts. Descriptively, the two courts are different. Table 2 highlights some of the unique characteristics of the elections for each court.

The level of competition was greater for the Texas Court of Criminal Appeals with 100 races, compared to the Texas Supreme Court with 58 races. There was no discernible difference for race, ethnicity, or incumbency. It is interesting to note how many women were candidates (31) and that most (64%) ran for the Texas Court of Criminal Appeals. The biggest difference that stands out is the amount of money spent on the judicial races. The

Table 2: Summary Statistics From Each Court (1988 – 2008)

	<i>Texas Supreme Court Primary Elections</i>	<i>Texas Court of Criminal Appeals Primary Elections</i>
Total Races	Total: 36 Rep, 22 Dem	Total: 72 Rep, 28 Dem
Women Candidates	11 Women (6 Rep, 5 Dem)	20 Women (17 Rep, 3 Dem)
African American	2 African American (both Rep)	2 African American (both Dem)
Hispanic/Latino	6 Hispanic (2 Rep, 4 Dem)	0 Hispanics
Incumbents	11 incumbents (7 Rep, 4 Dem)	12 incumbents (7 Rep, 5 Dem)
State Bar Percentage	Avg. State Bar Poll %: 27.8 (Rep Avg. 27.9, Dem Avg. 28.2)	Avg. State Bar Poll %: 19.1 (Rep Avg. 17.0, Dem Avg. 24.5)
Contributions	Avg. Contributions: \$344,094 (Rep Avg. \$305,705, Dem Avg. \$406,911)	Avg. Contributions: \$16,549 (Rep Avg. \$12,169, Dem Avg. \$27,813)
Expenditures	Avg. Expenditures: \$304,119 (Rep Avg. \$236,347, Dem Avg. \$415,021)	Avg. Expenditures: \$22,797 (Rep Avg. \$20,615, Dem Avg. \$28,409)

average contributions for the Texas Supreme Court candidates were \$344,094, while the average contributions for the Texas Court of Criminal Appeals candidates were \$16,549. Expenditures were also very high with \$304,119 for the Texas Supreme Court and \$22,615 for the Texas Court of Criminal Appeals.

Cross tabulations and difference of means tests are included in the appendices to this report. Tests of statistical significance and measures of association are featured in Table 3 below.

Demographic Variables

Race and Ethnicity were not statistically significant and that was expected because there were so few candidates who were African American or Hispanic. Gender was also not a statistically significant factor in determining the electoral success of a candidate in a race for either court, which was somewhat unexpected. Several female candidates won elections, especially on the Republican side, but not enough to be considered significant.

Table 3: Measures of Association (Gamma / Pearson's r) and Tests of Significance (Chi²) / T Tests

	<i>Texas Supreme Court</i>	<i>Texas Court of Criminal Appeals</i>
Gender	Gamma = 0.154 Chi ² = 0.214	Gamma = -1.000 Chi ² = 0.161
African American	Gamma = 1.000 Chi ² = 1.933	Gamma = 1.000 Chi ² = 2.396
Hispanic	Gamma = -0.039 Chi ² = 0.008	No Hispanic Candidates
Incumbent	Gamma = 0.862 Chi ² = 8.347**	Gamma = 1.000 Chi ² = 16.008***
Judicial Experience	Gamma = 0.800 Chi ² = 11.183***	Gamma = 0.695 Chi ² = 15.486***
Legislative/Exec. Exp.	Gamma = 0.783 Chi ² = 4.757*	Gamma = 0.037 Chi ² = 0.034
State Bar Poll %	r = 0.567 t = -5.144***	r = 0.336 t = -3.532***
Campaign Contributions	r = 0.517 t = -4.517***	r = 0.281 t = -2.895**
Campaign Expenditures	r = 0.457 t = -3.842***	r = 0.301 t = -3.128**

Note: * = P < 0.05 ** = P < 0.01 *** = P < 0.001

Candidate Quality (Previous Experience, Incumbency, and Campaign Financing)

Candidate quality is frequently a variable of interest in studies of elections. This study examines incumbency status, previous experience as a judge, previous experience in the legislative or executive branch, and campaign expenditures/contributions as measures of candidate quality. In the case of both the Texas Supreme Court and the Texas Court of Criminal Appeals, incumbency was an important variable. The chi-square statistics are significant ($p < 0.01$ Supreme Court and $p < 0.001$ Court of Appeals), meaning that incumbency produces a meaningful impact in the election outcomes. Around 33% of the candidates who won primaries for the Supreme Court were incumbents and 26% of the winning primary candidates for the Court of Criminal Appeals were incumbents. The gamma statistic for the Texas Supreme Court was lower than the Court of Criminal Appeals. Incumbency reduced the error in prediction by 100% in Court of Criminal Appeals (all incumbents won) and by 86% in the Supreme Court (all but one incumbent won). It should also be noted that there were not as

many incumbents as one would expect (23) because several either chose to not run for reelection (which is common in judicial elections as they either return to lucrative positions in private practice or are appointed as federal judges) or ran for higher office. The best example is John Cornyn – a member of the Texas Supreme Court during the time period and is now a U.S. Senator.

Experience matters in winning judicial elections. Around 59% of the candidates who won primary elections for the Texas Court of Criminal Appeals had previously been a judge, whereas 90% of the primary winning candidates for the Texas Supreme Court had previous judicial experience. The chi-square tests revealed that the impact of judicial experience was statistically significant ($p < 0.001$) in both court's primary election outcomes. The gamma scores revealed that judicial experience can reduce error in predictions of electoral success by 69.5% in the Court of Criminal Appeals and 80% in the Texas Supreme Court. The variable measuring previous legislative or executive branch experience only had a statistically significant impact in the case of the Texas Supreme Court ($p < 0.05$). Around 23% of the candidates who won primary election for the Texas Supreme Court had previous experience as a legislator or in the executive branch. The gamma score of 0.78 indicates a strong relationship and that knowing a candidate's background in this area reduces the error in our predictions of candidate success by 78%. There is some question about why legislative or executive branch experience matters for the Texas Supreme Court and not the Court of Criminal Appeals. Previous connections from the executive branch or the legislative branch may prove helpful in running for the Supreme Court. Since those races are more expensive, candidates may need access to those networks to get ahead in the polls. This was one of the more surprising results because candidates for the Texas Court of Criminal Appeals were expected to be the ones likely to have past legislative or, more likely, executive experience as district attorneys or criminal prosecutors.

In the data presented in this article, money contributed and spent were important factors in winning. As these variables were continuous and interval/ratio data, difference of means tests was conducted to determine if winners or losers had different average contribution or expenditures rates. There were statistically significant differences between the average amount of money raised and the average amount of money spent by primary candidates who won and those who did not. Regardless of court, the effect was statistically significant, but primary candidates for the Texas Supreme Court raised more money and spent far more money than primary

candidates for the Court of Criminal Appeals. To measure the effect size of the interval/ratio data, a Pearson's correlation was conducted. The r score for the Texas Supreme Court was 0.517 and the r score for the Texas Court of Criminal Appeals was 0.281, meaning that a relationship is present but moderate to weak. The correlations for expenditures were a little lower for the Supreme Court and slightly higher for the Court of Appeals. The r score for the Texas Supreme Court was 0.457 and the r score for the Court of Criminal Appeals was 0.301. According to t -test statistics, campaign contributions and expenditures were statistically significant for the Supreme Court and Court of Appeals ($p < 0.001$ and $p < 0.01$ respectively). Money was important for both courts, but the magnitude of the money spent favored the Supreme Court. Campaign financing clearly had a decisive role as the candidates who raised and spent more money relative to their given opponents won 23 out of the 30 applicable primary elections to the Texas Supreme Court.

Interest Group Activity and Support from the Legal Community

The variable measuring interest group activity and community involvement was the state bar poll percentage. In both the Supreme Court and the Court of Criminal Appeals, primary winning candidates had a higher average vote than losing candidates and these differences were statistically significant according to the t -test ($p < 0.001$ for both courts). In terms of correlations, the r score for the Supreme Court was 0.567 and the r score for the Court of Criminal Appeals was 0.336, meaning that interest group activity was more closely related to winning in the Supreme Court.

The cross tabulations also show just how reliable the state bar poll served as a predictor of election outcomes – the candidate with a better showing won 24 of the 30 elections (80%). The candidate's vote percentage in the state bar polls shows a certain level of support within the state bar. The most direct impact of the bar poll on a campaign is that the results are publicized frequently so that it has the effect of adding legitimacy to the candidate in terms of newspaper endorsements and other advertisements. These endorsements and ads can only strengthen the candidate's chances of winning the election because they often lead to increased campaign financing.

It is difficult to determine what might lead to a candidate's popularity within the state bar and legal community. Many factors may influence performance in the state bar poll – incumbency, campaign financing, and

even party identification. Party identification influences the poll indirectly. The results are officially nonpartisan, but at least some members of the bar are still highly involved in political activities. The argument can be made that the bar poll provides further evidence of the importance of party support because segments of the state bar are well-known for supporting one major party over the other in Texas (plaintiffs' lawyers are heavily Democratic while civil defense lawyers favor Republicans), so even though the poll is nonpartisan in nature, the results often have a partisan quality to them. The problem is that the data collected is unable to support that argument and there is no data readily available that can. The only definitive conclusion is that candidates that do well in this nonpartisan poll of the legal community also have a higher likelihood of winning elections, due in part to the fact that the legal community generally serves as one of the most active special interest group in judicial politics. Performing well likely also has the effect of increasing campaign contributions.

Conclusion and Discussion

This study makes it possible to see patterns in judicial elections and the most important conclusions that can be drawn are which variables are statistically significant versus which variables are not significant. Minority candidates were relatively successful in winning primary elections and the number of minority candidates has increased over time so there are positive signs for increasing diversity on the two Texas high courts, even though none of the demographic variables were significant in this study. Incumbency was statistically significant for both courts and that result was the least surprising because the incumbency advantage is found in all types of elections. Both campaign finance variables are significant and show just how important money is. Significance for the Texas Supreme Court was expected since so much money is involved. It is somewhat surprising; however, that campaign finance was significant for the Texas Court of Criminal Appeals, but the implication is the advantage still exists even on a small scale. Judicial Experience is significant for both courts, so candidates are highly qualified, and it serves candidates well to serve on lower courts prior to running for either the Texas Supreme Court or Texas Court of Criminal Appeals. Experience in the legislative and executive branches is also significant for Texas Supreme Court candidates. As mentioned earlier, the variable was included because the possibility existed that political experience would benefit candidates for the Texas Court of Criminal Appeals but that was not true here. The state bar poll was also significant for both courts and certainly deserves attention in future studies because it is

one of the most interesting results of this study. The significance of the bar poll was somewhat surprising because it has also not been studied extensively in the scholarly literature. The lawyers of this state have been one of the most active special interest groups in judicial elections in terms of campaign financing and educating the public about the candidates they support so it was a natural decision to attempt to measure their influence on elections for the two courts of last resort. The bar poll is not a perfect measure since it only provides the input of one interest group, but it still provides valuable information because the legal community has a vested interest in influencing judicial elections. One fact is clear – the results of the bar poll are a reliable indicator in determining election outcomes.

Broad generalizations must be met with a word of caution because this study only encompasses 20 years from only one state. More study is required but this is an important start. The argument can easily be made that it would be very practical to combine these two courts into one high court that handles both civil and criminal jurisdictions without adding too much money or interest group activity into the election process. There is simply not enough money or interest in the Court of Criminal Appeals (for either the public or the legal community) to believe that the election process would be greatly affected. Of course, this is far from a new idea but research projects like this one do provide some degree of empirical evidence for the state of Texas to consider it.

Appendix 1: Cross Tabulations

	<i>Texas Supreme Court</i>		<i>Texas Court of Criminal Appeals</i>	
	<i>Lose</i>	<i>Win</i>	<i>Lose</i>	<i>Win</i>
Gender				
<i>Male Candidate</i>	79% (22)	83% (25)	81% (44)	78% (36)
<i>Female Candidate</i>	21% (6)	17% (5)	19% (10)	22% (10)
Incumbency				
<i>Challenger</i>	96% (27)	67% (20)	100% (54)	74% (34)
<i>Incumbent</i>	4% (1)	33% (10)	0% (0)	26% (12)
African American				
<i>Other Candidates</i>	100% (28)	93% (28)	100% (54)	96% (44)
<i>African American</i>	0% (0)	7% (2)	0% (0)	4% (2)
Hispanic				
<i>Other Candidates</i>	89% (25)	90% (27)	100% (54)	100% (46)
<i>Hispanic / Latino</i>	11% (3)	10% (3)	0% (0)	0% (0)
Judicial Exp.				
<i>No Judicial Exp.</i>	50% (14)	10% (3)	80% (43)	41% (19)
<i>Prev. Judicial Exp.</i>	50% (14)	90% (27)	20% (11)	59% (27)
Pol. Experience				
<i>No Legis or Exec.</i>	96% (27)	77% (23)	52% (28)	50% (23)
<i>Legis or Exec.</i>	4% (1)	23% (7)	48% (28)	50% (23)

Appendix 2: Difference of Means Tests (t-test)

	<i>Texas Supreme Court</i>		<i>Texas Court of Criminal Appeals</i>	
	<i>Mean</i>	<i>SE</i>	<i>Mean</i>	<i>SE</i>
State Bar %				
<i>Lose</i>	15.000	2.326	14.954	1.247
<i>Win</i>	39.767	4.112	24.011	2.363
<i>Diff</i>	-24.767	4.815	-9.057	2.564
<i>t-Test</i>	-5.144*** (DF = 56)		-3.532*** (DF = 98)	
Contr. (\$10,000's)				
<i>Lose</i>	10.188	32.823	1.066	0.205
<i>Win</i>	57.016	95.313	2.346	0.414
<i>Diff</i>	-46.827	10.368	-1.279	0.442
<i>t-Test</i>	-4.517*** (DF = 56)		-2.895** (DF = 98)	
Expend.(\$10,000's)				
<i>Lose</i>	96.635	29.820	1.417	0.205
<i>Win</i>	49.777	96.890	3.293	0.604
<i>Diff</i>	-40.114	10.439	-1.876	0.599
<i>t-Test</i>	-3.842*** (DF = 56)		-3.128** (DF = 98)	

Note: * = P < 0.05 ** = P < 0.01 *** = P < 0.001

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