Conditions for Competition in Low-Information Judicial Elections

The Case of Intermediate Appellate Court Elections

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Although much work has examined the conditions for competition and incumbent defeat in high-visibility elections, scholars have conducted little research on these conditions for less visible offices. We look at one particular type of low-information election: those to state intermediate appellate courts (IAC). Using a comprehensive data set of all IAC elections involving incumbents from 2000 to 2007, we estimate models of challenger entry and incumbent success once challenged. Our results comport, in some cases, and diverge, in others, with the findings of studies of more visible judicial and legislative offices.

Keywords: law and courts; elections; voting behavior

A critical component of a successful representative democracy is the ability of citizens to hold their elected officials accountable. Citizens must be able to remove elected officials whose actions do not reflect the wishes of the people (Dahl 1956) or who engage in unethical behavior. The potential for accountability is enhanced when elected officials face competitive elections (Griffin 2006; Hall 2007a). As a result, it is important to understand why some incumbents are challenged and others are not. Additionally, democratic scholars need to be aware of the conditions that make competitive elections—or even the possibility of the incumbent’s defeat—likely. There is a substantial body of literature that focuses on these issues for high-profile elections such as for the U.S. Senate or House of Representatives (Abramowitz 1991; Abramowitz and Segal 1992; Jacobson 2004; Krasno 1994). Other research has examined the conditions for competitive elections for mid-level information offices such as the state legislatures or supreme courts (Hogan 2004; Carey, Niemi, and Powell 2000; Hall and Bonneau 2006). However, there is scant existing research that has analyzed comprehensively the conditions for competitive elections in low-information elections. Since the vast majority of elections in which people vote are low-information elections, and these elections raise the greatest number of questions about whether voters can hold elected officials for these offices accountable, it is essential to explore the conditions that lead incumbents in low-information elections to be challenged as well as the conditions that lead to their occasional defeat. Answering these questions is one step forward in evaluating whether elections for these offices can promote accountability.¹

In this article, we examine contestation and competition in state intermediate appellate court (IAC) elections. IAC elections allow us to test systematically the impact of low visibility on conditions for competition because we can compare the determinants of competition and outcomes to semivisible but otherwise similar supreme court elections. We examine all 435 IAC elections held from 2000 through 2007 featuring an incumbent judge, estimating models of challenger entry and incumbent success once challenged.² The results indicate that, similar to elections for higher-profile offices, challengers in these low-information elections do act strategically, entering races when conditions are best suited to beat an incumbent. Once contested, we find that incumbent

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judges who are appointed and have not yet run in an election are most vulnerable to defeat.

We begin by detailing what we can learn from studying IAC elections. From there, we develop our models and spell out our expectations based on the findings of past research on high- and mid-level-information elections. After analyzing the results, we conclude with a discussion of the implications of our findings.

**Why Study Intermediate Appellate Court (IAC) Elections?**

Examining contestation and competition in IACs is advantageous for two reasons. First, because of the low visibility of IAC elections, they allow us to speculate regarding conditions for contestation and competition in other low-information elections, a subject on which little systematic empirical research exists. We must be clear what is meant by a “low-information election.” Scholars have conducted research on contestation and competition for offices whose elections certainly could be considered low information such as supreme court (Hall and Bonneau 2006) or state legislative (Squire 2000; Hogan 2004). Indeed, it would certainly be a stretch to call these “high-information elections” (see Schaffner and Diascro 2007; Hogan 2005). Just as the operational dynamic in U.S. House and Senate elections are not identical (Abramowitz and Segal 1992; Jacobson 2004; Krasno 1994), notable differences also exist between IAC elections and state legislative or supreme court elections. Although media coverage in the latter two is not abundant, it is still likely to be greater than coverage of IAC elections. Moreover, supreme court elections are significantly more expensive than IAC elections (Frederick and Streb, forthcoming-a), making it more probable that voters will be exposed to information about them. While state legislative campaigns are not likely to be more expensive than IAC campaigns, the elections are more noticeable to voters because elected legislatures are more visible than elected IACs; people are more apt to follow the actions of the state legislature than they are IACs. Finally, historically parties seem to have placed greater emphasis on winning supreme court or state legislative seats than they have IAC seats. In short, IAC elections are true low-information, low-visibility affairs, more in line with obscure local and statewide elected offices, such as the insurance commissioner or controller, than the supreme court or state legislature.\(^3\) We do not mean to imply that our findings are generalizable to all low-information elections, but we do think that they provide important insight into understanding the conditions for challenger entry and competition in races that are not prominent in the eyes of most of the public.

Second, IAC elections provide a unique opportunity for comparison to supreme court elections. Although questions regarding whether judicial elections can promote accountability have been central to the study of these elections in the past (e.g., Dubois 1980), more recently, the works of Hall and Bonneau, both together and individually, have been instrumental in our understanding of judicial accountability. Both have studied contestation (Bonneau and Hall 2003; Hall 2001a, 2007a) and success rates of incumbents (Hall 2001a, 2007a, 2008; Hall and Bonneau 2006; Bonneau 2005a, 2007b) and have argued that supreme court elections do promote conditions for accountability. In fact, according to Hall and Bonneau’s findings, contestation and success rates in supreme court elections look remarkably similar to those for other offices such as the U.S. House of Representatives.

The question that remains, however, is whether these scholars’ findings hold in lower-court elections, which are generally less visible. As Hall (2007b) notes, there is a major empirical void concerning whether the variables that influence outcomes in supreme court elections operate in a similar fashion in lower-court races. Because of the differences in visibility, perceived importance, and caseload between the two levels of state appellate courts (Baum 2003), as we detail momentarily, there is reason to believe that some of the conditions that lead to contestation or competitive elections at one level may not hold at the other. Certainly, in some instances, we might see similarities between the two appellate court elections, but in other instances, it is possible that the factors that lead to contestation and competition will be different for elections to less prominent courts.

Last, IAC elections are worth studying in and of themselves. Scholars have conducted virtually no research that focuses specifically on IAC elections, which is unfortunate given the importance and influence of IAC judges. Although the state supreme courts are technically “the courts of last resort,” they hear only a limited number of cases. At the appellate level in most states, it is IACs that carry the workload of the state court systems. Moreover, Carp, Stidham, and Manning (2004, 65) write that “generally speaking, the jurisdiction of intermediate appellate courts is mandatory because Americans hold to the view that...
parties in a case are entitled to at least one appeal. In numerous instances, then, these are the courts of last resort for litigants in the state court system.”

Streb, Frederick, and LaFrance (2007) began to address contestation and competition rates at the IAC level. Their results indicate that challengers may be acting strategically when deciding whether to run against a sitting IAC judge. Although the vast majority of IAC judges during the period of their study faced no competition (73.4 percent compared to 16.1 percent and 35.3 percent of House and supreme court incumbents, respectively), those who did were in for a tough fight. The average incumbent IAC judge received only 54.6 percent of the vote, compared to 59.0 percent for supreme court justices and 66.7 percent for House incumbents. Furthermore, slightly less than 30 percent of IAC judges who faced a challenger were defeated (compared to 19.3 percent and 16.5 percent of challenged supreme court justices and House incumbents, respectively). These results raise questions concerning why some IAC judges are challenged, while most are not, and, once challenged, under what conditions might sitting IAC judges be defeated. We now turn to these questions.

**Model Estimation Technique**

The models of IAC elections we formulate are similar to the models used in Hall and Bonneau’s (2006) study of supreme court elections, which allows for a nice comparison between the two similar offices with different levels of visibility. Because of the selection effects that may be at work in determining which incumbents face a challenger, typically, the Heckman selection model has been employed in previous studies of judicial elections to estimate a two-stage process of challenger entry and incumbent success once challenged (Bonneau 2005b; Hall and Bonneau 2006). The weakest incumbents are the most likely to be challenged; thus contested races may not be treated as random events. However, we tested for this possibility in IAC elections over the period of time included in this study, and the Wald test of independent equations was not statistically significant, indicating that there was no selection bias. Therefore we test three separate models. At the contestation stage, a logistic regression model is estimated, in which the dependent variable is a dichotomous indicator of whether the incumbent IAC judge was challenged (coded 1) or not (coded 0). Additionally, two outcome models are formulated. The first is an ordinary least squares model, in which the dependent variable is the percentage of the vote received by the incumbent IAC judge. The second is a logistic regression model, in which the dependent variable is a dichotomous measure of whether the incumbent won (coded 1) or lost (coded 0). Consistent with Hall and Bonneau’s (2006) multistate comparative study, due to the panel structure of the data, each model presented here is estimated using robust standard errors clustered by state.

**Modeling Contestation**

The independent variables in the contestation model include a range of institutional and candidate-specific factors. Table 1 provides a complete listing of these independent variables. In some cases, such as the pool of candidates or length of term, similar findings should occur for both supreme court and IAC elections. However, in other instances, given the low-information setting of IAC races, it is possible that significant differences exist.

**Candidate Characteristics**

If IAC challengers are strategic actors, then the perceived strength of the incumbent should play a major role in the decisions potential candidates make about running against a sitting judge. For example, studies of congressional elections find that potential challengers carefully appraise the characteristics of sitting officeholders and strategically gauge the likelihood of defeating them (Mondak 1995; Stone, Maisel, and Maestas 2004). The same is true for state legislative and supreme court elections (Van Dunk 1997; Hogan 2004; Hall and Bonneau 2006). However, because of the low profile of IAC elections, challengers may not pay attention to the vulnerability of some incumbents the same way they do for other, higher-profile offices. It is possible that candidates for IAC offices might be less strategic since they may not have the political experience to understand the best conditions under which to run.

In supreme court elections, two variables in particular carry tremendous weight in assessing the strength of the incumbent officeholder. First, judges who won by a narrow margin in their previous election ought to be more likely to be challenged than incumbents who achieved a substantial victory in their most recent campaign. In line with past studies of legislative elections (Weber, Tucker, and Brace 1991) and state supreme court elections (Hall and
Bonneau 2006), the threshold for determining electoral security is whether the incumbent won with less than 60 percent of the vote in the last election, coded 1 if yes and 0 otherwise (competitive seat). Second, a judge may be vulnerable if he or she came to the position through appointment, something that, unlike for many other elected offices, is not uncommon. Having yet to face the voters in an election, the newly appointed judge may not perform as well as incumbents who previously won their position at the ballot box. Indeed, scholars have documented this relationship in earlier research involving supreme court races (Bonneau 2005a, 2007b; Hall 2001a; Hall and Bonneau 2006). To capture this effect, the model includes a dichotomous measure of whether the incumbent was appointed to the position and was running for election for the first time, coded 1 if yes and 0 otherwise (new appointee).

One candidate characteristic not accounted for in models of supreme court contestation is whether the gender of the incumbent judge determines if he or she has opposition. Research on the role of gender in U.S. House elections has established that because they are perceived by potential candidates as more vulnerable, female incumbents are consistently more likely to face an opponent than are their male counterparts (Lawless and Pearson 2008; Palmer and Simon 2006). Therefore the model includes a variable indicating whether the incumbent officeholder was female to control for the effects of gender (female).

### Pool of Candidates

For judges to draw opposition, there has to be a supply of potential candidates who could actually run against them; therefore the size of the state’s legal community ought to be positively related to whether an IAC judge runs against an opponent (Hall and Bonneau 2006; Bonneau and Hall 2003). The variable estimating the size of the candidate pool is the number of lawyers in each state at the time of election divided by the number of IAC seats in the state.

### Political and Institutional Context

Several political and institutional variables may shape contestation in IAC races. One of great relevance is whether the jurisdiction’s political environment is generally competitive (Erikson and Wright 2005; Squire 2000; Hogan 2004). In congressional races, parties are more likely to recruit candidates in jurisdictions that are politically competitive (Herrnson 1988; Mann and Ornstein 1981). At the supreme court level, Hall and Bonneau (2006) find

<table>
<thead>
<tr>
<th>Variable</th>
<th>Variable Description</th>
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<tbody>
<tr>
<td><strong>Dependent variable</strong></td>
<td>Contested 1 if a challenger entered the intermediate court race, 0 if otherwise</td>
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<tr>
<td><strong>Predictor variables</strong></td>
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<tr>
<td><strong>Incumbent characteristics</strong></td>
<td></td>
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<tr>
<td>Competitive seat</td>
<td>1 if the incumbent IAC judge previously won with less than 60 percent of the vote in the last election, 0 if otherwise</td>
</tr>
<tr>
<td>New appointee</td>
<td>1 if the incumbent IAC judge was appointed and was seeking election for the first time, 0 if otherwise</td>
</tr>
<tr>
<td>Female</td>
<td>1 if the IAC judge was a female, 0 if otherwise</td>
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<tr>
<td><strong>Candidate pool</strong></td>
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<tr>
<td>Lawyers/seats</td>
<td>Number of lawyers in each state at the time of election divided by the number of IAC seats in the state</td>
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<tr>
<td><strong>Political and institutional context</strong></td>
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<tr>
<td>Electoral Competition</td>
<td>Percentage of the two-party presidential vote for the winning candidate in the most recent election</td>
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<tr>
<td>Partisan</td>
<td>1 if the election was partisan, 0 if otherwise</td>
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<tr>
<td>District</td>
<td>1 if the IAC judge was elected in a district, 0 if otherwise</td>
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<td><strong>Attractiveness of seat</strong></td>
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<tr>
<td>Term length (years)</td>
<td>Length of the term of office for state IAC</td>
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<tr>
<td>Salary</td>
<td>IAC base salary/state per capita disposable income</td>
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<td><strong>Temporal effects</strong></td>
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that races are more likely to be contested in states with divided government. However, both seats in Congress and on the supreme court are high-profile, prestigious offices. It is not clear that a competitive electoral environment will have the same effect at the IAC level because parties may not put as much emphasis on recruiting candidates for these less visible positions.

Hall and Bonneau (2006) employ a dichotomous measure of whether the election took place in a state where the executive and legislative branches were controlled by the same political party. One obstacle to using this measurement in IAC races is that roughly 80 percent of elections in this study were conducted in districts; thus a state-level measure of political competition is not appropriate in this context. Whether state government is controlled by one party is not commensurate with district-level competition in individual races (Barrilleaux, Holbrook, and Langer 2002). In various studies of congressional elections, the two-party presidential vote in the district is often selected as a measure of electoral competition (e.g., Jacobson 2004; Erikson and Wright 2005). Therefore we adopt the two-party presidential vote of the winning candidate in the most recent election as the indicator of district- and state-level competition (electoral competition).

Election type should also influence whether a race is contested. Partisan judicial elections tend to produce fewer elections in which incumbents run unopposed (Bonneau 2004, 2005b; Bonneau and Hall 2003; Hall 2001a, 2007a, 2008; Peters 2007). Political parties are more likely to recruit candidates in partisan elections than in nonpartisan contests (Streb 2007), which may make those races more likely to be contested. We expect a similar finding in the case of IAC elections. The selection model, then, incorporates a variable coded 1 for IAC elections in states with partisan elections and coded 0 if the election is nonpartisan (partisan).6

As noted, some IAC judges run statewide, while others run in districts. The effects of district-wide elections on contestation are unclear, especially for such low-profile offices. Because smaller constituencies lead to less competitive races (e.g., Lee and Openheimer 1999), it is possible that district-wide elections will be less contested than statewide contests. However, because larger districts may require candidates to spend more money to be competitive, challengers may be hesitant to run. Indeed, Hogan (2004) finds this to be the case in state legislative races. We expect that because it is more difficult for candidates to raise money in less visible elections, contestation will be lower in statewide IAC elections than in district-wide contests. A variable indicating whether the election occurred in a district is incorporated into the contestation model (district).7

**Attractiveness of IAC Seat**

The attractiveness of the IAC seat may potentially play a role in encouraging members of the legal community to launch a campaign against an incumbent. One metric for determining the value of a particular office is how long a person can serve before facing the voters again. For instance, many politicians view serving in the U.S. Senate as a more attractive proposition than serving in the U.S. House due in part to the six-year term senators enjoy. Races for courts with longer terms should also generate greater interest among possible challengers. The logic of this decision calculus hinges on the fact that if the candidate gets on the bench, the number of times he or she would need to get reelected to continue his or her career would be limited with a longer term of office. However, empirical support for this hypothesis at the supreme court level is mixed. Bonneau and Hall’s (2003) analysis of challenger entry in supreme court races from 1988 to 1995 confirmed the term-length attractiveness hypothesis. In contrast, Hall and Bonneau’s (2006) study of these elections from 1990 to 2000 failed to uncover any significant relationship between term length and the likelihood of an incumbent facing a challenger. In spite of these contradictory findings, the model predicting challenger entry includes the length of term for the seat up for election in each race (term length).

Furthermore, state courts with more attractive pay and benefits could induce more challengers to pursue a race against an incumbent. Indeed, judicial salaries can vary quite dramatically, depending on the state (Hall 2008). Some studies uncover no empirical support that compensation is related to the probability of a challenger emerging in state legislative or supreme court races (Hogan 2004; Hall and Bonneau 2006; but see Bonneau 2005b; Squire 2000). However, it is still theoretically reasonable to expect that salary might have some influence on whether IAC races are contested, especially because, similar to other low-profile offices, IAC seats may not be considered as prestigious as other high-profile offices given the paucity of media coverage that comes with the position. Thus a variable taking the base salary for the IAC seat divided by the state’s per capita disposal
income in the year of the election is entered into the contestation model (salary). Finally, to capture any temporal effects, a battery of dummy variables is introduced in the model as well.7

### Outcome Models: Incumbent Vote Shares and Victories

The incumbent’s vote share is the dependent variable in the first outcome model, which is consistent with Hall and Bonneau’s (2006) model for supreme court elections. Yet, because incumbents in IAC races were more likely to be defeated once they faced a challenger than were incumbent supreme court justices in the period covered by this study, we need to understand what factors predict an incumbent’s probability of victory. Bonneau’s (2005a) model of which supreme court incumbents lose reveals that the factors significantly predicting incumbent vote shares differ from those variables that significantly predict incumbent defeats. Again, the independent variables in the outcome models are similar to Hall and Bonneau’s (2006) study. A complete listing of these independent variables can be found in Table 2.

### Candidate Characteristics

As was previously noted, one distinct feature of judicial elections compared to elections for other offices is the greater frequency with which judges attain their office through the process of appointment versus election. Incumbent judges who have not previously been elected have less time to acquire name recognition, resulting in a more vulnerable electoral position than judges with a previous electoral victory (Baum 2003). Newly appointed incumbents are not simply more likely to be challenged, they also receive a lower percentage of the vote (Bonneau 2007b; Hall and Bonneau 2006) and are more likely to suffer defeat (Baum 1983; Bonneau 2005a) than are incumbent judges elected to the bench. Since similar patterns should also materialize at the IAC level (assuming candidates are acting strategically), we include a variable indicating whether the incumbent was newly appointed (new appointee). In fact, given that appointed incumbent IAC judges are even less visible than their supreme court counterparts, we expect the variable to have stronger effects at the IAC level.

Considering the low-information nature of IAC elections, another characteristic of incumbent judges that could be pivotal in explaining electoral success is the gender of the candidate. Voters may reach for cues like gender in the absence of other information about the candidate. In elections for most offices, female candidates perform at the same level as male candidates, all else being equal (Burrell 1994; Seltzer, Newman, and Leighton 1997). Previous studies of

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<tr>
<th>Variable Descriptions for Models Predicting Incumbent Vote Shares and Victories in IAC Elections</th>
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<td><strong>Dependent variables</strong></td>
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<td>Model 1</td>
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<td>New appointee</td>
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<td>Quality challenger</td>
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<td>Spending difference</td>
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<td>Spending difference × new appointee</td>
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<td><strong>Issues</strong></td>
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gender in judicial elections have come to mixed conclusions (Dubois 1984; Hall 2001a). Williams (2007) finds that female representation on state appellate courts is higher in states with partisan election systems compared to states that use merit selection. In addition, Frederick and Streb (forthcoming-b) uncover evidence that female judicial candidates may actually perform better than male candidates under certain circumstances. This edge may be credited to the tendency of voters to perceive female officeholders as more honest and trustworthy (Burrell 1994), particularly important attributes for judges. As such, we include a dummy variable in the model indicating whether the incumbent was female (female).

One of the most heavily documented empirical relationships in the field of campaigns and elections is that the quality of the challenger faced by the incumbent acts as a major determinant of his or her electoral fate (Abramowitz 1988, 1991; Bonneau 2007b; Carson, Engstrom, and Roberts 2007; Hall and Bonneau 2006; Jacobson 1989, 2004; Krasno 1994; Krasno and Green 1988; Van Dunk 1997). Though there are many perspectives about what constitutes challenger quality, the most commonly utilized measure is whether the challenger has had any elective office experience (Jacobson 1989; Van Dunk 1997). Because every officeholder may not lack the requisite legal training to serve on the bench, only challengers who have ever held a judgeship are coded as being quality challengers (coded 1 if yes and 0 if no; quality challenger). Of the 120 incumbents facing an opponent in this study, 36.7 percent faced a challenger with prior judicial experience, slightly less than what previous studies of supreme court races found (Bonneau 2005a; Bonneau and Hall 2003; Hall and Bonneau 2006).

Because of the low profile of IAC campaigns, here is a case where we might find a stark contrast between IAC elections and other more visible elections. It is possible that the quality of an IAC challenger will have minimal influence over an incumbent’s vote share or whether he or she wins. For quality to matter, voters must be informed. In other words, they must know that a challenger is a quality challenger. But the lack of visibility of IAC races makes this information hard to come by. Indeed, a long line of research has questioned the public’s ability to cast informed votes in judicial elections, especially at lower levels (Lovrich and Sheldon 1983; Dubois 1984; Baum 2003).

Another empirically verified aspect of the election process is that campaign spending has a major bearing on candidate success. Though scholars disagree about the effects of incumbent spending, with some researchers contending that it can improve incumbent vote shares (Gerber 1998; Green and Krasno 1988) and others sharply questioning this relationship (Abramowitz 1991; Jacobson 1990), the bulk of scholarly analysis suggests that challenger spending carries more weight in shaping the outcome of contested elections (see Jacobson 2004).

Hall and Bonneau (2006) posit that the optimal means by which to operationalize campaign spending effects is to estimate challenger spending relative to incumbent spending. More specifically, they take the logged difference between spending by incumbents and challengers. They find that as this spending disparity expands, so does the percentage of the vote received by the incumbent. Because of their low-information nature, the effects of challenger spending should be even greater in IAC contests. Challengers are virtually unknown in IAC races, and one of the few ways to get known is to spend money. The spending variable in the outcome models in this study replicates Hall and Bonneau’s approach (spending difference).

One modification to the model outlined by Hall and Bonneau (2006) is the differential impact of spending for appointed incumbents. Bonneau (2005a) demonstrates that appointed incumbents have more to gain by outspending their challengers than do elected incumbents. This finding likely has to do with the fact that appointed judges have been on the bench for less time and do not have the same name recognition as elected incumbents. We expect to find the same in IAC races. To properly estimate any spending effects in IAC elections, the outcome models also consist of an interactive term for appointive status and the incumbent–challenger spending difference (spending difference × new appointee).

**Issue-Specific Characteristics**

A long line of research indicates that voters have the capacity to make retrospective evaluations when voting in high-profile elections (Fiorina 1978; Kinder, Adams, and Gronke 1989; Lanoue 1994). Normally, voters assess the condition of the economy and reward incumbents if the economy is performing well and punish them if it is not. The question is, can voters make retrospective evaluations in low-information elections? Although the economy is not likely to be a retrospective issue in judicial elections, crime is, because it is one policy area where judges are perceived to have substantial influence. Indeed, Hall’s
(2001a) analysis of state supreme court races from 1980 to 1995 verified that the state’s lagged murder rate was negatively related to the incumbent’s electoral performance (but see Hall and Bonneau 2006). For voters to be able to engage in retrospective voting, however, they have to know whom to reward and whom to blame. Since IAC incumbents are less visible than supreme court incumbents, voters may not be able to engage in retrospective voting in the lower appellate court contests. To test whether this hypothesis is true, the state’s murder rate lagged one year is entered into the outcome models (murder rate).

**Institutional Context**

Another deviation from Hall and Bonneau’s (2006) model is that they exclude a variable for district versus statewide elections in their outcome stage. However, other studies of judicial elections have estimated the impact of district elections on incumbent success (Hall 2001a; Bonneau 2007b). This variable merits inclusion in the model because several scholars provide empirical support for the proposition that the vote shares of incumbents decline as the magnitude of the constituency expands (Abramowitz 1988; Abramowitz and Segal 1992; Hibbing and Brandes 1983; Lee and Oppenheimer 1999; Hogan 2004). To control for this relationship, we include a dummy variable for whether the IAC election occurred in a district (district).

Partisanship on the ballot provides a vital informational cue for voters in judicial elections (Klein and Baum 2001). Partisan elections not only attract more challengers than do nonpartisan elections, but they also reduce the margin by which incumbents win (Bonneau 2007b; Dubois 1980; Hall 2001a, 2007a; Hall and Bonneau 2006; Schaffner, Streb, and Wright 2001) and increase the probability that they will be defeated (Bonneau 2005a). In-low information elections, voters may use whatever information is available on the ballot. If the party identification of a candidate is listed, a person may simply vote based on partisanship, which could hurt incumbents if they do not affiliate with the same party as the voter. It is possible that the effect of partisanship in the lower-profile IAC elections may be greater than in the more visible supreme court elections because voters will more likely have to rely on the partisan cue to participate. Again, a dummy variable coded 1 for incumbents running in partisan elections and 0 otherwise is included in the outcome models (partisan). Finally, we control for the various election cycles.

**Contestation Model Results**

Table 3 contains the results of the model predicting contestation in IAC elections involving incumbents. It reveals that several variables are significant predictors of contestation, many of which are also significant in Hall and Bonneau’s (2006) supreme court contestation model. Newly appointed judges and incumbents who received less than 60 percent of the vote in the previous election are more likely to face a challenger ($p < .001$). Holding all the other variables in the models at their appropriate means and modes, the difference in the likelihood of facing an opponent between a newly appointed and a previously elected incumbent is about 27 percentage points.\textsuperscript{10} The difference in the predicted probability for the average incumbent who won with more than 60 percent of the vote in the last election and the average incumbent who did not is approximately 16 percentage points. On the basis of these results, it appears that even in a low-information environment, challengers are acting strategically in deciding which incumbents to run against. This may explain Streb, Frederick, and LaFrance’s (2007) finding that although few IAC judges are challenged, those who are often lose. As for the other individual characteristic variable, consistent with earlier research on U.S. House elections, female incumbent IAC judges are more likely to face opposition, but the coefficient for this variable is not statistically significant.

Some of the institutional and political contextual variables are significant predictors of contestation as well. First, as in supreme court elections, there is a higher probability that incumbent judges in states with partisan elections will be opposed ($p < .10$). This finding is not surprising because parties are more active in recruiting candidates in jurisdictions using partisan judicial elections (Streb 2007). Even for less visible offices like IACs, parties still see the benefit of contesting elections. Second, district elections reduce the probability that the incumbent will face a challenger ($p < .10$). Apparently, raising enough money to contest a statewide election is not enough to drive away challengers, perhaps because, as Bonneau (2007a) illustrates, per capita, supreme court elections held in districts are more expensive than those held statewide.

Another statistically significant relationship uncovered is between the size of the potential candidate pool and contestation ($p < .05$), although the coefficient is in the opposite direction as hypothesized (and what is found in supreme court elections).
According to the results, the greater the lawyer pool to IAC seat ratio, the less likely races are to be contested. It is unclear to us exactly why this is the case, but the findings could be related to the prestige of the office. IAC seats are not as prominent as supreme court seats, which may make them less attractive to the legal community. However, we should not place too much emphasis on this result because the number of lawyers is a statewide measure and IAC elections are often held in districts, meaning the measure may not be a valid estimator of the candidate pool at the district level.

Finally, there is mixed support for the attractiveness hypothesis in IAC elections. The term length variable has no significant impact on contestation in IAC elections, while salary is positively associated with contestation (p < .05). It appears that the prominence of a supreme court seat alone is enough to encourage candidates to run; financial considerations seem to be of greater importance for the less prestigious position. Overall, however, candidate and institutional factors carry the greatest weight regarding whether an IAC judge is challenged.

**Outcome Model Results**

As with the contestation model, the results of the outcome models in some ways differ, and in other ways are the same as Hall and Bonneau’s (2006) findings (see Table 4). Consistent with supreme court elections, newly appointed IAC judges fare worse than judges who have been elected previously. All else equal, new appointees receive 6.4 percentage points less support than other incumbent judges (p < .05), almost double the penalty appointed supreme court justices receive (Hall and Bonneau 2006). Additionally, new appointees are less likely to win than judges previously elected to the bench (p < .001). Holding all other variables at their appropriate means or modes, newly appointed incumbents are approximately 30 percentage points less likely to win than elected incumbents. While the incumbency advantage is less for appointed incumbents in supreme court races than elected incumbents, the effect is greater at the IAC level, possibly because appointed IAC incumbents are even less visible than appointed supreme court justices.

Although appointed incumbents struggle at the ballot box, female candidates appear to benefit from their sex. Controlling for the other variables in the model, female judges fare about 2.6 percent better than their male IAC colleagues (p < .10) and are significantly more likely to emerge victorious (p < .05). Again, holding the other variables at their appropriate means and modes, the predicted probability of victory for female IAC incumbents is roughly 13 percent higher than for their male counterparts.

In contrast to other higher-profile offices, quality challengers have no significant effect on the closeness of the race or whether an incumbent loses. One potential explanation for this result is the crudity of the measure employed in this model. It is plausible to argue that a more complex measure of candidate quality may have revealed a significant relationship between candidate quality and electoral competition. For example, name recognition may be a better indicator of quality than whether a person is a trial court judge, especially in a low-information election. When one of us was a graduate student in Bloomington, Indiana, we were inundated with television, newspaper, and billboard ads for a local personal injury attorney. Had the attorney chosen to run in an IAC election (something that actually could not happen in Indiana because appellate court judges are appointed), he would likely have been a more formidable opponent than a sitting trial court judge based on name recognition alone.

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However, this measure of challenger quality borders on law, as it has worked for congressional races (Jacobson 1989; Abramowitz 1988, 1991; Carson, Engstrom, and Roberts 2007), state legislative races
lack of a significant relationship here may have nothing to do with measurement error, but with the fact that voters simply do not have enough information about candidates in IAC elections to differentiate between types of challengers. Without individual-level data, we cannot know for sure, but given the low visibility of most IAC races, this explanation is certainly plausible.

Additionally, unlike supreme court elections, the difference between incumbent and challenger spending in IAC races is not a significant predictor of the incumbent’s vote share or whether an incumbent wins. The coefficient for this variable in both models is unexpectedly in the negative direction, although it does not approach statistical significance. Incumbent judges who increase the difference in spending with their challengers do not seem to gain very much from doing so. However, when the interactive effects of the spending difference and appointment status are accounted for, this relationship is fundamentally altered in the vote shares model. The positive coefficient for the appointed incumbent/spending difference interaction term indicates that all else being equal, appointed judges derive greater relative benefits from outspending their challengers than do elected incumbents ($p < .05$). This finding corroborates Bonneau’s (2005a) hypothesis that the nature of the relationship between campaign spending and incumbent success in judicial elections is highly dependent on appointee status. The more established incumbents do not appear to receive the same degree of benefit from expanding this ratio. This result could be related to the fact that appointed judges are more vulnerable than previously elected judges, so they get more bang for their buck. Similarly, it could be that appointed judges are less known than previously elected judges, so more campaign spending is needed to boost name recognition, especially in the low-information context under which most IAC elections are conducted.

Partisan IAC races may produce more challengers in IAC elections, but they do not increase the likelihood that incumbents lose. However, incumbents running in partisan elections do perform about 6.2 percent worse, according to the model predicting vote shares. Although the size of this effect is not trivial, the coefficient is only significant at the more generous .10 level. This result extends modest support for the idea that the partisan ballot inspires greater competition in low-information judicial elections.

Furthermore, there is no statistically significant relationship between the state’s murder rate and the incumbent’s vote share. Yet incumbents running in states with a higher murder rate are significantly less likely to win ($p < .05$). With the other variables set at their appropriate means and modes, the probability of victory for an incumbent in a state with a lagged...
murder rate at the 25th percentile is 7 percentage points more likely to escape defeat than an incumbent in a state with a lagged murder rate at the 75th percentile. Consistent with earlier studies of state supreme court elections (Hall 2001a; but see Bonneau 2005a), this finding indicates that voters in low-information judicial elections are imposing accountability on incumbent judges for higher murder rates. Contrary to our hypothesis, even when voters possess minimal information about individual judicial candidates, if crime rates are generally higher in a jurisdiction, then they may hold incumbent judges responsible. This result suggests that salient issues in low-information judicial elections can play a decisive role in their outcomes.

Finally, the coefficients for the election period variables are all insignificant. Because of the large number of variables presented here, Table 5 provides a comparison of which variables were statistically significant in both our analysis of IAC elections and Hall and Bonneau’s (2006) and Bonneau’s (2005a) analyses of state supreme court elections. It encapsulates the key differences and similarities between the low-information nature of IAC races and the more high-profile context of supreme court contests.

### Conclusion

Altogether, these results show that low-information judicial elections, specifically those for the intermediate court of appeals, are not a replica of what takes place in more high-profile supreme court elections when it comes to contestation and competition. An alternative set of dynamics are at work in this low-information environment that, in some cases, square with what goes on in high- or mid-level-information elections, but in other ways, deviate rather noticeably.

In low-information judicial elections, the quality of the incumbent is a more influential variable than is the quality of the challenger. The results of the contestation model do indicate that, as with elections for...
the U.S. House, state legislature, or supreme court, challengers in IAC elections are acting strategically instead of randomly; they are more likely to challenge judges who are vulnerable, either because the judges have not yet run in an election or ran previously and won by a small margin. Moreover, that strategic behavior appears to pay off. Those judges who are initially appointed to the bench but have yet to run in an election (the same judges who are most likely to face an opponent) are significantly more likely to win fewer voters and, more important, to lose the election than those judges who have won a previous election. In other words, the incumbency advantage does not appear to apply to appointed judges the same way it does to elected incumbents, particularly in the low-information setting of most IAC elections.

Although challengers in IAC elections appear to be sophisticated, it is not apparent from our findings that voters in these elections are as well. One would generally think that if citizens are voting intelligently, then the best-quality challengers who enter races against more vulnerable incumbents would receive a greater share of the vote. Unlike in higher-profile elections, our findings indicate that this is not the case in IAC races. The lack of significant results could be attributed to the crudity of our challenger measure, or it could be that, unlike in elections where information about challengers is more readily available, voters in IAC elections are not considering the strengths and weaknesses of the candidates. We cannot say for sure here, but future work must assess the relationship between challenger quality and voting further.

Conversely, in spite of the low-information nature of contests for IAC races, voters appear to be holding judges accountable when it comes to a salient issue like crime. As a state’s murder rate escalates, incumbent judges are significantly more likely to lose their jobs. One can certainly question whether it is rational for voters to hold judges responsible for crime rates since judges have little control over the rates. Still, this finding reinforces why judges who face competitive elections are likely to alter their behavior as a result (Brace and Boyea 2007, 2008; Brace, Hall, and Langer 1999, 2001; Hall 1987, 1992, 1995) and are more likely to retire from the bench, rather than face the electorate (Hall 2001b). At the IAC level, they appear to be subject to electoral sanction in the same way as supreme court justices.

Our findings have implications beyond judicial accountability, but for other low-information elected offices as well. Most nonpartisan elections occur in low-information environments (Schaffner, Streb, and Wright 2001). Previous research on nonpartisan elections finds that voter roll-off is greater (Schaffner, Streb, and Wright 2001; Dubois 1980; Hall 2007b; Hall and Bonneau 2008); voters rely on less reliable cues than partisanship, or simply guess when deciding for whom to vote (Schaffner and Streb 2002; Squire and Smith 1988); and representation can be undermined (Schaffner, Streb, and Wright 2007) in nonpartisan elections. Whether one wants contested judicial elections is debatable given the unique nature of the office, but if nonpartisan elections are less contested for other low-information offices, then the potential to hold elected officials for those offices accountable may be threatened.

Finally, the results add to the growing literature on the pros and cons of judicial elections. We do not wish to engage in this controversy here, but the findings do indicate that the potential for judicial accountability does exist. Although our results shed light on the conditions for competition in low-information judicial elections, much more work remains. Vulnerable incumbents in low-information judicial elections can expect a vigorous campaign that may ultimately result in their defeat; future works need to examine why these incumbent judges are vulnerable in the first place.

Notes

1. We do not mean to imply that accountability is guaranteed simply because an incumbent is challenged or runs in a competitive election. Whether elected officials running in low-information elections are held accountable is beyond the scope of this article. Nevertheless, understanding the conditions that lead to competitive elections can inform us about the potential for low-information elections to hold elected officials accountable.

2. Seventeen states held nonretention elections involving an incumbent IAC judge between the years 2000 and 2007. However, Georgia and Idaho featured no races in which an incumbent faced a challenger. In states with partisan ballots, we estimate incumbent performance in the general election. In states with nonpartisan primaries, if the incumbent faced only one challenger in the primary, we treated this as the general election campaign. In nonpartisan elections that required a runoff, the runoff was treated as the general election.

3. Yet one must be cautious when drawing conclusions about other offices based on a study of IAC elections. Unlike other elected officials, judges do not have constituents. Moreover, the candidate pool for IAC elections is significantly less than the pool for other down-ballot statewide offices or elections at the local level. Not just anyone can run for judge. States have various requirements to run, but all mandate that candidates have a legal degree. Candidates for other offices may have an age or residency requirement, but that is usually all. And while officials for other low-information offices are occasionally first appointed to their position (because of retirement, resignation, or death) before...
facing an election, a far greater percentage of judges is initially appointed.

4. Information on any of the data collection in this article is available from the authors.

5. Though judicial candidates in Michigan are nominated at a party convention, and judicial candidates in Ohio are selected in a party primary, both are coded as being nonpartisan since the candidates’ party affiliations are not listed on the ballot in the general election.

6. Hall and Bonneau (2006) include an interaction term for partisan elections occurring in districts. This was not possible in the model tested here since all statewide partisan IAC races were contested over the period, causing STATA to drop this variable from the model.


8. The ratio of incumbent to challenger spending was utilized in the model for both reasons of parsimony and to make a direct comparison to the findings of Hall and Bonneau (2006) and Bonneau (2005a). We estimated separate models, including incumbent spending (log) and challenger spending (log). The results indicated that challenger spending significantly ($p < .05$) reduced the incumbent’s vote share, but not his or her probability of victory. Incumbent spending had no significant impact in either model specification. This finding is in accord with Jacobson’s (1990) model of campaign spending effects in U.S. House races, emphasizing the relative importance of challenger spending compared to expenditures by the incumbent.

9. Seven of the candidates in contested races either did not file a report or reported spending no money. In these cases, it was assumed that they spent at least one thousand dollars to avoid losing any cases for the analysis.

10. All predicted probabilities were calculated using CLARIFY software (Tomz, Wittenberg, and King 2003).

11. Although Bonneau (2005a) finds that his measure of challenger quality in supreme court elections has no significant impact on whether incumbents actually lose.

References


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