

Effects of Campaign Advertising in Judicial Elections*

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Abstract

Does some information induce more or less participation in state supreme court elections? To answer this question, I look at the effect of TV ads for judicial candidates on ballot roll-off in state supreme court elections from 2000 to 2014. I find that attack ads and certain types of endorsements induce more participation, while other characteristics have no substantive effects.

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Introduction

Does some information induce more participation in state supreme court elections? Moreover, does some information induce *less* participation in state supreme court elections? Previous research shows that partisan cues and policy-oriented information help prevent ballot roll-off in state supreme court elections, but the degree in which campaigns convey policy information and how people respond to each piece of information has not been fully explored.

When Gregory Wersal ran for Associate Justice of the Minnesota Supreme Court in 1996, he distributed literature as part of his campaign that criticized the past decisions of the Minnesota Supreme Court. The literature chided the Minnesota Supreme Court for “their disregard for the Legislature and a lack of common sense,” “allow[ing] confessed criminals to go free,” and having a “pro-abortion stance.” At the time, Minnesota, and many other states, had a code of judicial ethics. Specific to Wersal, the “announce clause” prohibited candidates from announcing their views on how they would rule if elected. After an ethics complaint was filed against Wersal and later dismissed by the ethics board, judicial reformers began to question the constitutionality of the announce clause.

In addition to running for the same office again in 1998, Wersal also preemptively filed suit in the Federal District Court against Suzanne White, the chairperson of the Minnesota Board of Judicial Standards. Wersal, along with the Republican Party of Minnesota, argued that the announce clause violated his First Amendment rights, limiting his speech and his ability to run an informative campaign. The district court and the U.S. Court of Appeals of the Eighth Circuit both found that the announce clause did not violate the Constitution. Wersal filed a writ of certiorari to the U.S. Supreme Court that was later granted. In a 5-4 decision, the Supreme Court held that announce clauses do violate the First Amendment and are, thus, unconstitutional.

Since the *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002) decision, judicial candidates can be explicit in the information signals they send. For example, they can convey how they would decide if elected (Gibbs and Zamora 2008) or vocalize disagreement with

competitors (Hall 2014; Gann Hall and Bonneau 2013). These recent ads indicate the rise of new-style campaign ads. New-style campaign ads emphasize policy views of the judicial candidates (Hughes 2019; Gibson 2009; Hojnacki and Baum 1992). As the candidate's views are front and center in these types of campaigns, voters are better able to distinguish the candidate's beliefs with ease. The now-ubiquitous new-style campaign is in direct contrast to the traditional campaign that Wersal desperately wanted to topple at the turn of the century. Traditional campaigns focus on judicial legitimacy—the notion that the court is divorced from politics and justices are simply arbiters of the law (Gibson 2009, 2012). The concept of judicial legitimacy continues to resonate with many voters who envision a justice system untarnished by political machinations, ideological allegiances, and most importantly, campaign contributions (Gibson 2009). While the new-style campaign may politicize the court system, it helps increase voter turnout (Gibson 2009; Hall 2014).

Unlike congressional campaigns, judicial campaigns do not suffer from a chasm between Washington and their home states. Judicial candidates campaign to serve the state and, once elected, remain residents of the state and hear cases within the state. There is no need to bridge two homes. But there is a need to reconcile two expectations: one of a justice who follows the law, and one of a justice who will rule in line with the public opinion of co-partisans.

In this paper, I investigate whether policy signaling in judicial elections prevents ballot roll-off. I define policy signaling as listing policies that the candidate would advocate for, associating or contrasting the candidate with an overtly political public figure, promoting an endorsement by a goal-oriented organization, or expressing disagreement with an opponent's policies (i.e., attack ads). Voters are increasingly placing candidates into partisan camps, both in the presence and absence of explicit partisan cues, so I expect to see that mechanism at work in the context of judicial elections. In this paper, I investigate this relationship using an observational study. In my preliminary analysis, I look at over 800 state supreme court campaign television ads from 2000 to 2014 and look at whether policy signaling influenced the

prevention of ballot roll-off in those particular judicial races. I find that policy information does prevent ballot roll-off in state supreme court elections in certain cases.

Ballot Roll-off as a Measure of Mobilization

As dependence on group identity becomes more relevant in an increasingly polarized political landscape, voters have taken to inferring partisanship from a particular policy or candidate to make decisions (Rahn 1993; Downs 1957). Gann Hall and Bonneau (2013) clearly demonstrate that *Minnesota v. White* mobilized voters. They find that in both partisan and nonpartisan races from 2002 and 2006, ballot roll-off decreased in the presence of liberalized speech codes and attack ads. This is unsurprising. For example, voters often use heuristics to make decisions (Rahn 1993). Especially in the context of low-information elections, voters tend to rely on one or two pieces of information on the candidates to form an opinion about them (Schaffner and Streb 2002). In low-information elections, such as judicial elections, people look for the party affiliation of the candidate for most if not all of their information. If party affiliation is absent, voters will look to cues that signal the party affiliation of the candidate (Burnett and Tiede 2015; Bonneau and Cann 2015; Rock and Baum 2010).

Elite-led group identification plays a pivotal role in shaping public opinion (Nelson and Kinder 1996). Elites are politically sophisticated, in the sense that they know exactly where they stand on issues, even when they sometimes change their opinions (Campbell et al. 1980; J. R. Zaller 1992). The public, however, does not have the same confidence and look to elites for cues. This results in a public with inconsistent and sometimes contradictory policy views, even if they identify with a broader political group (Kinder and Kalmoe 2017; Converse 1964). People often subscribe to the idea of “what goes with what,” where there is an association of supporting one issue and an entirely unrelated issue (Converse 1964; Lane 1962; J. Zaller 2012).

While there is no evidence that the politicization of judicial elections pose an actual threat to the integrity of the justice system (Gibson 2009, 2012; Woodson 2017), some judicial reformers argue that judicial elections have only encouraged judicial candidates to act more like politicians during their campaigns (Geyh 2011; Dubois 2014). Yet, there is no doubt that judicial candidates with clear political leanings attract more voters (Schaffner and Streb 2002; Hall 2014). Low-information in nature, judicial elections can exacerbate the effects of partisan cues. People know less about the candidates and rely on what they remember (McDermott 1997, 1998; Schaffner and Streb 2002). If partisan cues are as influential as election scholars claim, I should observe strong attitudes for how voters feel towards candidates in judicial elections as well. For instance, voters are less likely to seek information about judicial candidates, thus causing ballot roll-off (Hall 2007). As such, judicial candidates must find avenues to expose voters to their campaigns using cues that appeal to the group identification of the voter in a manner that is clear in the kind of public official that they will become.

One method is to provide *new-style* information signals in their campaign materials that make their stance known, rather than *traditional* cues that are typically character testimonials. New-style messages provide explicit information signals that tell voters exactly where the candidates lie on the political spectrum. Looking at print campaign ads from 2020, judicial candidates did not shy away from making their partisan views known. For example, Judge Bert Richardson, who was running for a position on the Texas Court of Criminal Appeals, called himself “a conservative-minded jurist.” This is an example of a new-style ad that tells voters exactly how the candidate plans to vote on issues once elected. In contrast, Ed Fallon, who was running for a position on the Wisconsin Supreme Court, noted that the “Obama White House asked Ed to speak out about the obstruction of Merrick Garland’s nomination.” Here, the candidate merely suggests his partisan ties without providing information on how he would vote, but makes his partisanship clear. While many of these messages are not issue-specific, they certainly provide clear information signals that

align with partisanship on the national level, thus making them distinct ads of the *new-style* campaign genre.

Themes in Campaign Advertising

Given the unavoidable prevalence of TV ads, this study examines messages as well as visuals, which is an often overlooked component of campaign advertising research (Schill 2012). Beyond partisan cues, images serve as a powerful mechanism for information recall. In general, people tend to trust visuals more than what they read (Wilson and Eckel 2006). And, in addition, people tend to remember visuals more readily than they remember texts (Schill 2012). When people encounter difficulties in understanding what they read, they rely on the visuals for clarifications. In other words, visuals have a much stronger effect in information processing.

In judicial campaign advertising, both positive and negative ads contain judicial symbols. Ads use imagery of the robe, the gavel, and courtrooms to demonstrate candidates as justices. Historically, these symbols connote judicial authority. Prominent studies about judicial symbols, however, are in the U.S. Supreme Court literature. In an experiment, Gibson, Lodge, and Woodson (2014) find that people with little to no knowledge of the U.S. Supreme Court are more supportive of the Court as an institution after they are exposed to judicial symbols, and judicial symbols can even temper disappointment in the Court's decisions. Gibson, Lodge, and Woodson (2014) also find that judicial symbols activate pre-existing notions of the Court. For example, if a person did not support the Court, seeing judicial symbols would only increase their resistance to the Court's decision, but if a person did support the Court, seeing judicial symbols will help them accept the decision. Moreover, judicial symbols strengthen Court legitimacy overall (Gibson 2015; Gibson and Nelson 2016).

While previous research examined judicial symbols as generally positive reinforcements of judicial legitimacy, attack ads tell a different story. Many attack ads use judicial symbols

to evoke a misuse of power. Especially when it comes to crafting an ad for a sitting justice, many attack ads show the attacked justice in their black robes, with voice-overs and text on the screen detailing the justice's transgressions on the bench. There is a lack of research in how negative framing of judicial symbols impact potential voters.

Policy information is far more difficult to identify precisely through visuals. Scholars have considered explicit mentions of partisanship in ads ([Neiheisel and Niebler 2013](#)), but have not explored what more passive mentions of policy implications could mean for voters. The problem is that whether an image symbolizes any policy or partisan implications is much more difficult to categorize. Nevertheless, there are some common symbols that demonstrate policy or partisan loyalties. For example, including an American flag in a campaign ad often benefits Republican candidates ([Kalmoe and Gross 2016](#)). In addition to the American flag, some ads include bald eagles and the Constitution to evoke patriotism.

In general, ads convey policy most clearly through endorsements ([Champagne 2001](#)). The most obvious ads are the ones where they feature prominent Democratic or Republican politicians—typically legislators—endorsing the candidates. Specific policy views, however, are more subtle. Ads focusing on crime control show the judicial candidate talking to police officers, and sometimes even explicitly mentions an endorsement by the police. Ads focusing on civil justice issues may show stacks of bills, usually in a negative light, to either poison opinions about the candidate's opposition or provide visual commentary that money does not influence the candidate and is thus not corrupt. Religious symbols, such as a church, a cross, and a Bible, are common for conservative candidates. Including one's family in an ad have both new-style and traditional implications. On one hand, family imagery can demonstrate devotion to family values; on the other hand, family imagery can humanize the candidate. In addition, showing rural farms or hunting activities may blur the lines of new-style and traditional campaigning. Thus, it is difficult to separate policy from personality.

Affective Polarization as a Causal Mechanism

As devotion to one side of the political spectrum becomes more pronounced among American voters, vitriol towards the other side was natural if not inevitable. Affective polarization is the phenomenon that Americans feel great animosity towards members of the other party (Iyengar et al. 2019). Aided by contemporary media coverage, Americans have come to view members of the opposing party less positively (Levendusky and Malhotra 2016). With the rise of partisan media coverage online and on cable news, people perceive the country as less moderate and more polarized. In fact, affective polarization not only affect people who have stronger ideological leanings, but also influence those who are more politically knowledgeable (Rogowski and Sutherland 2016).

There is some evidence that points to affective polarization being integral in opinion formation. Nicholson (2012) finds that when Democrats look at an in-party candidate endorsement by Barack Obama, they are not persuaded. Republicans, however, when shown an endorsement by Obama, are polarized. And when Republicans and Democrats look at an endorsement by John McCain about the very same policy issue, they are not persuaded. Moreover, these results hold when Republicans and Democrats look at an endorsement by George W. Bush. In sum, in-party leader cues are not persuasive, but out-party leader cues can fuel polarization and motivate people to disagree with the out-party leader. Further, Nicholson (2011) finds that group beneficiary cues are more likely to dominate elite cues, but elite cues are important if they provide new information about an ideologically disparate endorsement or feature a disliked out-group. Taken together, these studies show that people tend to follow an opinion leader, whether in the form of a political group or individual, but the opinion leader's persuasive power is limited. More specifically, the opinion leader is unable to strengthen attitudes of fellow co-partisans. People react strongly to an issue knows their political opposition's view, then taking the exact opposite stance.

The prevalence of affective polarization in contemporary politics has led to the rise of attack ads in judicial elections. Candidate committees and PACs both fund attack ads.

Attack ads often accuse justices for being soft on crime or sympathetic to criminals in their judicial record. These ads accuse justices of being “too liberal” or “too conservative” to be fair and impartial, aligning their jurisprudence to the partisanship of national issues and politicians. Similar to ads that positively associate candidates to policy positions they support, attack ads negatively associate candidates to policy they support to make sure voters vote against these candidates or consider the alternative.

Descriptive Statistics

I provide descriptive statistics and discuss the limits of the data analysis and potential directions for exploration.

In Figure 1, I show that the average roll-off for each year ranges from 0.12 to 0.19. The year 2000 had the highest roll-off rate, which is unsurprising, since it was a presidential election year. More voters showed up for the presidential election, and more voters are more likely to ignore down ballot elections. Non-presidential years, such as 2002, 2006, 2010, and 2014, generally have *less* ballot roll-off. This could be that voters who participate in elections in non-presidential election years are more interested and better informed about politics on the national, state, and local levels. The year, 2004, appears to be an anomaly.

Further, I show that the dataset contains ballot roll-off rates for most years, except for 2011, 2013, and 2015. The reason is that there are some states, such as Wisconsin and Pennsylvania, that hold elections with only a state supreme court election listed on the ballot. As such, there is no such thing as ballot roll-off in those instances. In the future, I plan to look at these lone judicial elections in a separate analysis. I plan to look at primary turnout rather than general election turnout, as primary voters are probably the most in line with people who would vote in judicial-only elections.

In Figure 2, I find that ballot roll-off ranges from 4 to 27 percent. Tennessee, a state with retention elections, has the lowest amount of ballot roll-off. Ohio, a state with hybrid

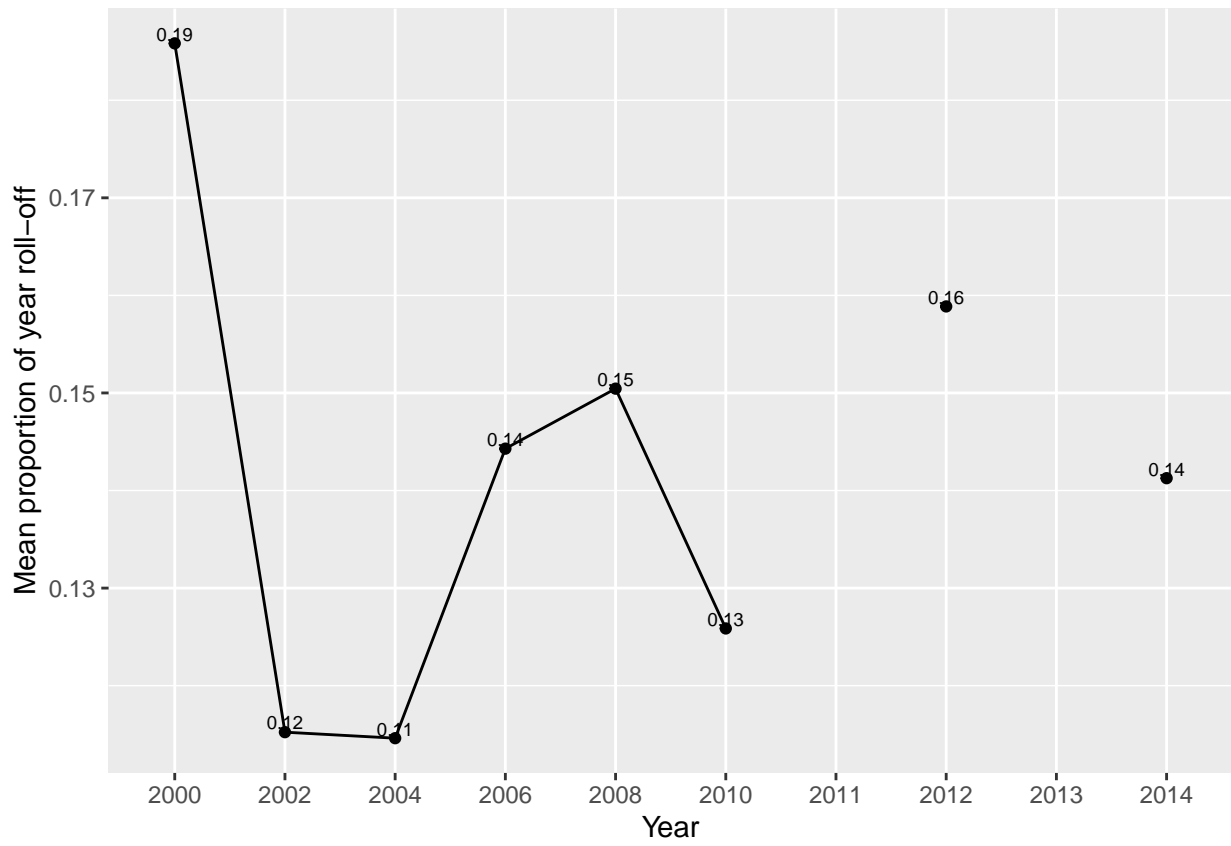


Figure 1: Ballot roll-off per state per year.

elections, has the highest amount of ballot roll-off.

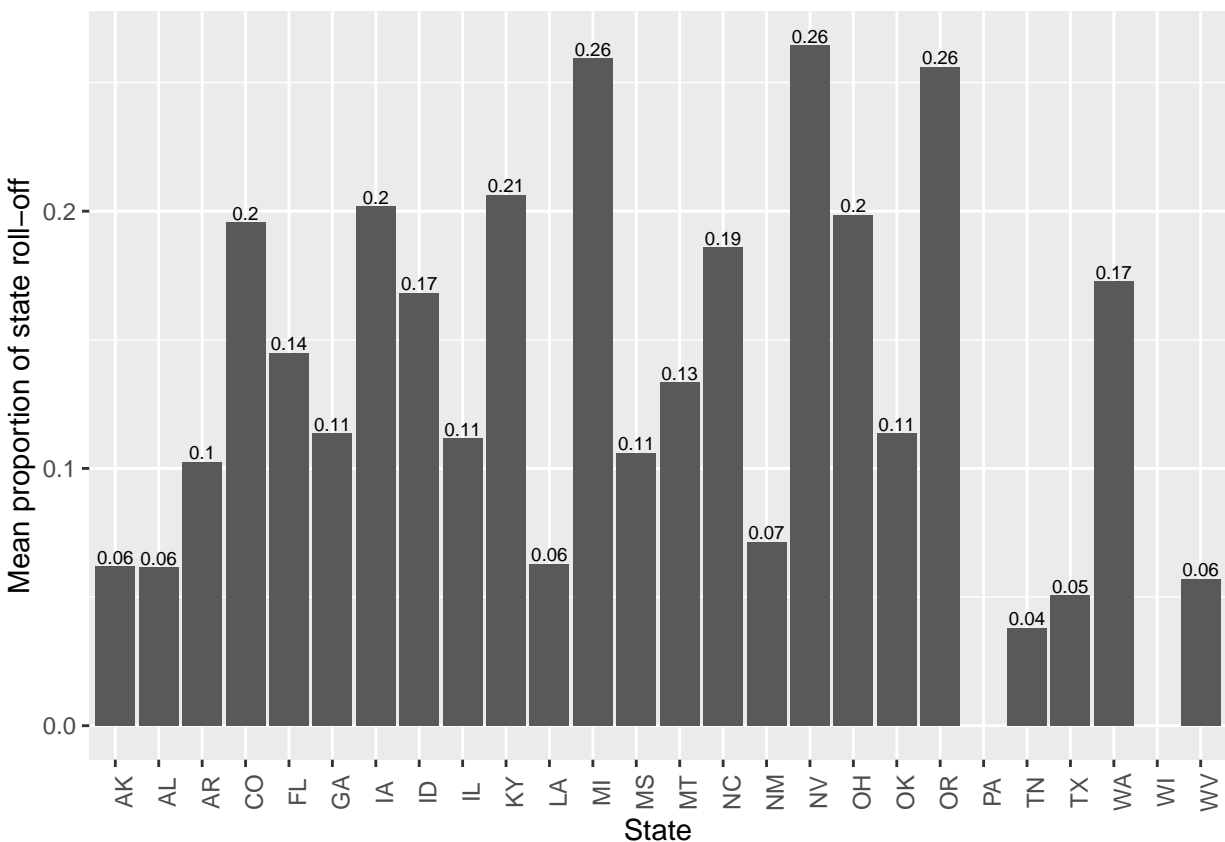


Figure 2: Ballot roll-off per state per year.

In Figure 3, I consider whether state selection method influence ballot roll-off in the years in my dataset. Hybrid elections in Michigan and Ohio have the highest ballot roll-offs. In hybrid elections, parties nominate state supreme court candidates through party primaries, but in general elections, they run as nonpartisan candidates. Surprisingly, hybrid elections would have *more* roll-off than nonpartisan elections because hybrid candidates have a party affiliation via the nominating primary.

On the other hand, one would expect that partisan elections have *less* ballot roll-off than elections in retention elections. If straight-ticket voting and partisan cues are as strong as scholars believe, voters should be more inclined to vote in certain types of races. For example, they might prefer races where candidates have a party affiliation and less inclined to mark “yes” or “no” on a ballot for a government-appointed justice without a partisan affiliation on

the ballot. What could be happening, however, is that voters are more comfortable choosing between “yes” or “no” options rather than choosing between two candidates.

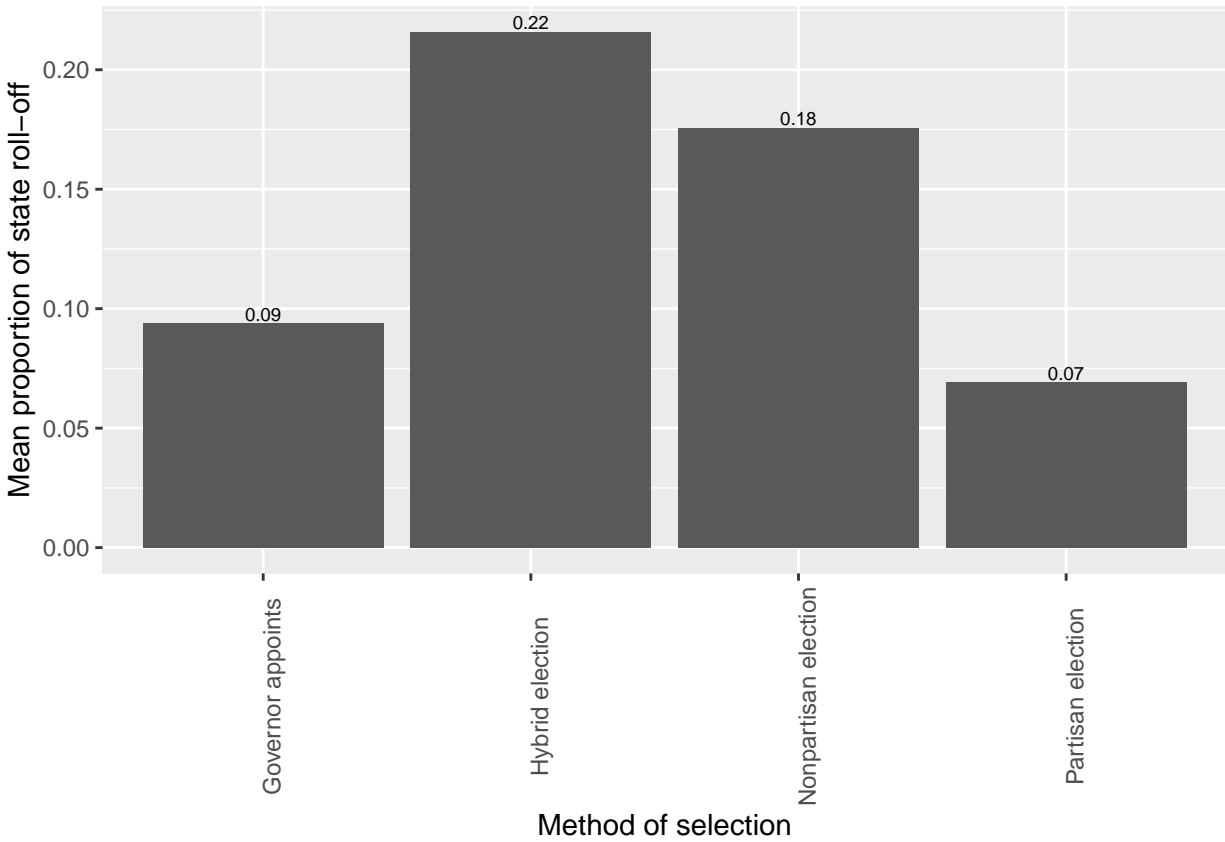


Figure 3: Ballot roll-off per selection method.

Figure 4 shows the mean number of ad characteristics featured per year. Policy references in ads are high, ranging from about 50% to 75% of ads per year. Attack ads are consistently around 25% of the ads, with a peak in 2011 at 50%. Policy visuals have gradually gone up over the years, hitting its peak in 2014 at nearly 90%. Judicial symbols seem to be sporadically included in some years, but not others. Bipartisanship, endorsements, and patriotic visuals appear to be not as heavily featured in ads as other characteristics.

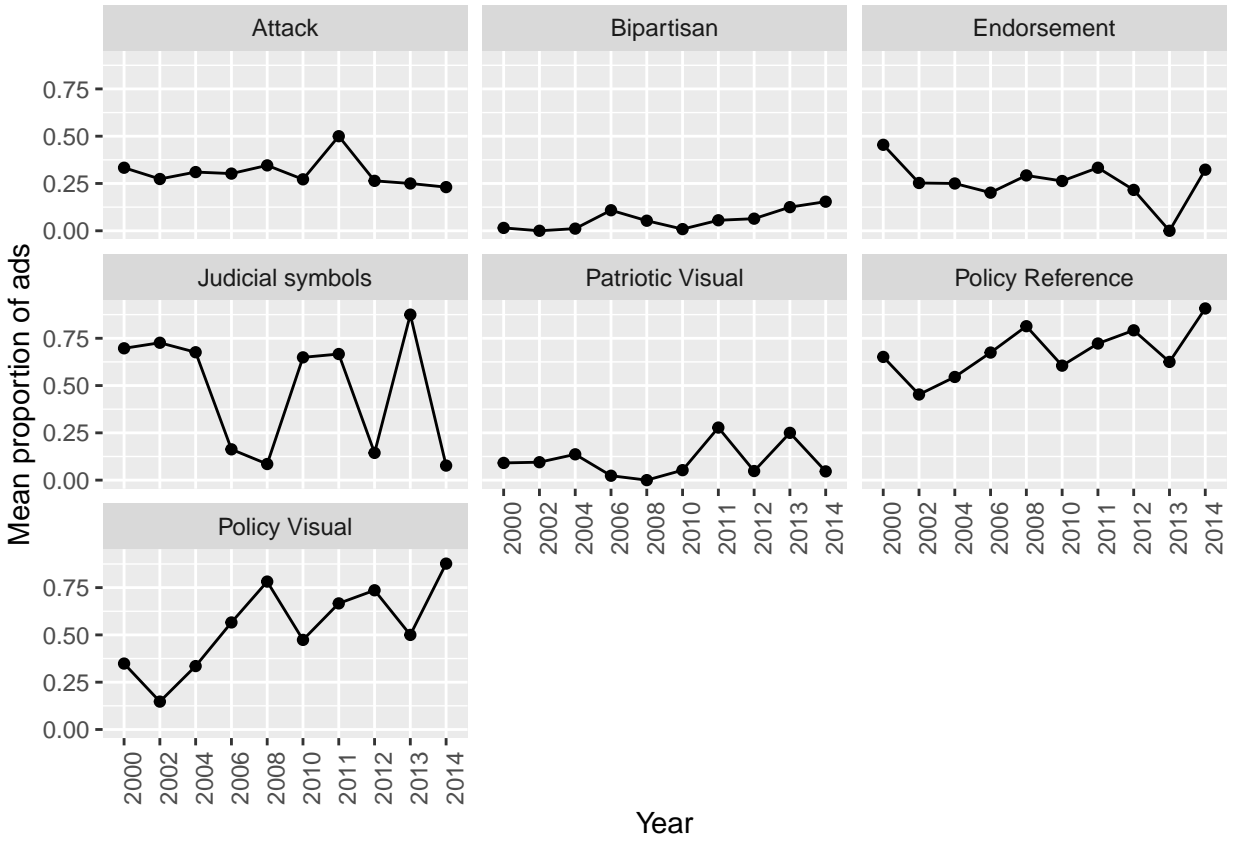


Figure 4: Ballot roll-off per selection method.

Data and Measures

My dataset consists of storyboards from the Brennan Center for Justice and ballot roll-off data from various sources (Hall 2007; Hughes 2020; Kritzer 2016). I extract the text from the storyboards into individual text files for analysis. Two undergraduate research assistants and I looked at each frame of the storyboards and coded for specific characteristics in the ad. These characteristics are specific to each of the candidates, including the year of the election, the state the candidate is running in, whether it attacks a candidate, whether it advocates for a candidate, who paid for the ad, who spoke in the ad, whether there is a policy image, whether there is a judicial symbol, whether there is a patriotism symbol, whether it mentions bipartisanship, and whether it features an endorsement from a politician, newspaper, group, or law firm. I include an interaction term between attack ads and judicial symbols because I am also interested in attack ads that leverage judicial symbols to portray a justice misusing judicial power.

To conduct text analysis on the ads, I use the LexiCoder Policy Agenda dictionary to identify the number of policy-related words *spoken* in each ad. I also include the *types* of policies: economics, civil rights, healthcare, agriculture, forestry, labor, immigration, education, environment, energy, fisheries, transportation, crime, social welfare, housing, finance, defense, science and technology, foreign trade, international affairs, government operations, land and water management, culture, local government, intergovernmental issues, constitutionality, native people, and religion. Since most ads are approximately 30 seconds long and only provide a few pieces of policy information, I only examine whether an ad has spoken policy content.

Since many judicial terms would overlap with terms relating to criminal policy, I would be unable to create a dictionary akin to judicial symbols. Thus, I calculate the proportion of “non-policy” words per ad. I define non-policy words as any word not in the LexiCoder Policy Agenda dictionary.

I then take the ballot roll-off for each state and year and merge it with the file containing

both text and visual information about each ad. In this preliminary analysis, I average out the ballot roll-off for all judicial races in the state during that year, but I plan to do a more exact analysis in the future by matching the candidate with their exact race. Furthermore, I control for the characteristics of the state, including its judicial selection method, the level of electoral competition, the number of justices on the court, whether there is an intermediate appellate court, and whether the court has district elections. The reference level of term length is 10 years, and the reference level for method of selection is retention elections. I also control for the state's culture around the *announce clause*, with 0 being the most lenient (never had an announce clause) and 5 being the strictest (had an announce clause and removed it) (Eakins and Swenson 2007).

Method and Results

I estimate a linear mixed-effects model between the effect of different campaign symbols and themes on ballot roll-off, which includes policy visuals, policy references, endorsements. I control for various state characteristics and include year and state random effects.

Table 1 shows the results for the HLM. The Akaike Information Criterion (AIC) is slightly lower for Model 2, which indicates better fit. The two models reflect similar estimates, however, demonstrating that the main effects result in similar estimates even when I consider controls.

Ads with attack content, policy visuals, and law firm endorsements have a statistically significant *negative* relationship with ballot roll-off, meaning that these characteristics prevent ballot roll-off. Newspaper endorsements, policy preferences in the ad narration, bipartisan messages, and the interaction between attack ads and judicial symbols also prevent ballot roll-off, though these effects are not statistically insignificant. Other characters, such as judicial symbols, politician endorsements, group endorsements, and patriotic visuals increase ballot roll-off, but these effects are also not statistically insignificant.

	Model 1	Model 2
(Intercept)	0.144*** (0.017)	0.096 (0.073)
Attack ad	-0.015*** (0.004)	-0.015*** (0.004)
Judicial symbols	0.000 (0.004)	0.000 (0.004)
Policy visual	-0.005 (0.005)	-0.005 (0.005)
Group endorsement	0.007 (0.006)	0.007 (0.006)
Politician endorsement	0.005 (0.005)	0.005 (0.005)
Newspaper endorsement	-0.001 (0.004)	-0.001 (0.004)
Law firm or lawyer endorsement	-0.048*** (0.014)	-0.047*** (0.014)
Policy in narration	-0.001 (0.005)	-0.001 (0.005)
Patriotic visual	0.001 (0.006)	0.001 (0.006)
Bipartisan	0.001 (0.006)	0.001 (0.006)
Attack ad*Judicial symbols	-0.001 (0.006)	-0.001 (0.006)
White Response		0.022 (0.014)
Term: 12 years		-0.080 (0.096)
Term: 6 years		0.027 (0.060)
Term: 8 years		0.034 (0.051)
Number of justices		-0.007 (0.010)
Hybrid election		0.156* (0.069)
Nonpartisan election		0.070 (0.050)
Partisan election		0.090 (0.053)
No intermediate appellate court		-0.114 (0.103)
District elections		-0.024 (0.058)
AIC	-2924.748	-2865.002
BIC	-2854.330	-2747.638
Log Likelihood	1477.374	1457.501
Num. obs.	808	808
Num. groups: State	24	24
Num. groups: Year	8	8
Var: State (Intercept)	0.005	0.005
Var: Year (Intercept)	0.000	0.000
Var: Residual	0.001	0.001

*** $p < 0.001$; ** $p < 0.01$; * $p < 0.05$

Table 1: Effect of ad characteristics on ballot roll-off.

Attack ads decrease ballot roll-off by 1.4%. In judicial elections with approximately 2 million votes, 1.4% could be the difference of 28,000 people—enough to win or lose a supreme court race. This is in line with the results from ?? where they look at ads from 2002 to 2006. The dataset I use includes the year 2000 as well as 2007 to 2014, effectively updating previous research.

Law firm endorsement had a comparatively large effect on ballot roll-off. Only five ads had an endorsement by a lawyer or law firm, with four of the ads being for the Ohio Supreme Court race in 2000, and one ad for the West Virginia Supreme Court race in 2010. The ads in these races appear to have a profound effect on roll-off at 4.7%.

In 2000, 4,795,989 people voted in the Ohio Supreme Court race.¹ In the Ohio race, this meant that on average, 225,411 did not roll off. This was a close race between Tim Black and Deborah Cook. The winner, Deborah Cook, won by only 145,586 votes.

In West Virginia in 2010, 471,291 voted in the election for the Supreme Court of Appeals. The race between Thomas E. McHugh and John Yoder was a close one. McHugh won by 1.7%, which translates to only 7,953 votes. Considering the effect of the law firm endorsement, the 22,150 voters that did not roll-off certainly made a difference.

Control variables such as the state's *White* response, term length, number of justices on the court, nonpartisan or partisan selection methods, the presence of intermediate appellate courts, and whether the state elects their justices by district do not have a statistically significant effect. Hybrid elections, however, increase roll-off. I suspect that this is a result of voters getting mixed messages about where the justices stand on certain issues because campaigning as a partisan for the primary then campaigning as a nonpartisan for the general election may put some justices in the position to message inconsistently.

¹<https://www.ohiosos.gov/elections/election-results-and-data/2000-elections-results/ohio-supreme-court---term-beginning-january-1-2001-november-7-2000/>

Discussion

These preliminary results indicate that both contextual factors and policy information in TV ads influence ballot roll-off. I find that policy information increases ballot roll-off, but attack ads decreases ballot roll-off. This analysis is a work in progress, however.

First, I need to conduct a full inter-rater reliability test on the coding of the ads. The current dataset contains ads coded by me and two undergraduate research assistants *once*. I have not reviewed the coding beyond random spot checks.

Second, I will need to code the rest of the dataset. I will include ads from 2016 to 2021 in the final dataset.

Third, I plan to tie each ad to the related race. I am currently calculating ballot roll-off as the *mean* roll-off for *all* judicial elections. Since I have information about the ad and its associated race and am able to obtain information about race-level ballot roll-off information, I plan to merge this and obtain a more precise insight into the ad and ballot roll-off.

Fourth, I plan to add an experimental component to this study. While the observational data can provide useful information on the relationship between policy information and ballot roll-off, it is difficult to establish a causal claim. With a survey experiment simulating ballot roll-off, I would be able to demonstrate that policy information in voter guides can help prevent ballot roll-off in low-information elections, such as judicial elections. I plan to field the experiment using the upcoming Georgia primary elections as a case study.

Evaluating the relationship between available policy information and ballot roll-off is important for further understanding of the democratic process. Local- and state-level elections are imperative to shaping communities, yet voters know little about them and rarely vote in them. An obvious problem is the lack of media coverage. A second concern is the lack of information, which can be provided by state and local organizations. As such, this study wants to identify the causal mechanisms that may encourage voting in elections that can impact citizens the most.

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