WHAT'S THE PUBLIC GOT TO DO WITH IT? THE IMPACT OF PUBLIC OPINION ON JUDICIAL DECISIONS: AN EMPIRICAL ANALYSIS OF ABORTION CASE OUTCOMES

by
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DEDICATION

To my husband, my rock, and without whom this would not exist.

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To my dad for teaching me to persevere.

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To Justice Ruth Bader Ginsburg, I dissent.

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DEDICATION

To all lifelong students, may we continue to learn.

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this was one of the best pieces of advice and a major reason this dissertation is now complete.

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Thank you for always being frank and loving me even when I would mess up. Savannah and Charlie thank you for pushing me, celebrating each small victory, and making sure that I am constantly fed. I will never forget driving home from my oral defense to three huge silver balloons in my front yard A.B.D. Andrea, bean, thank you for always being willing to listen and chat through the challenges that have presented themselves throughout this crazy dramatic process. Julie, I cannot thank you enough for holding my hand and taking so many hours to edit this massive beast. Thank you to the members and directors of the Chancel Choir, Credo, and St. Cecilia Choir for providing me with a musical outlet and supporting me through this entire process.

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ABSTRACT

This dissertation contains three papers regarding the relationship between public opinion and state high court judge case decisions. The primary focus is to determine how public opinion influences these decisions when judges are elected. The first paper examines this question broadly looking at all abortion case decisions by elected judges from 1980-2018. The results show that as public opinion becomes more liberal within the state, so too do judicial decisions. Furthermore, the judge's individual preferences are conditionally mildly significant when interacted with public opinion. The second paper focuses on the timing of the election cycle particularly cases which are heard within two years of that judge's reelection and includes all competitive judicial elections from 1980-2018. While public opinion continues to be highly significant to judge decisions on abortion cases, when the case was heard was not significant. The third paper examines the relationship between judicial election systems comparing nonpartisan and partisan elected judges from 1980-2018. Holding with my theory, I did not find a significant difference between the behavior of partisan and nonpartisan judges in their deference to the public in cases on abortion. I find strong support across all three papers for my primary hypothesis: elected judges are significantly and positively deferential to public opinion on abortion in abortion cases. This research fills a gap in the literature by providing an important contribution to understanding the link between judicial behavior and the electorate.

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Chapter 1: Introduction

In 2013, Republican Texas State Senator Glenn Hegar sponsored Senate Bill 5, a measure banning abortions after 20 weeks of pregnancy, requiring abortion clinics to meet the same standards as hospital-style surgical centers, and mandating that doctors performing abortions have admitting privileges at a nearby hospital. Opponents of the legislation charged that this law would close all but five of the forty-two abortion clinics in the state of Texas due to the renovations and equipment upgrades necessary for compliance with this law, and in the process, create an undue burden on women seeking an abortion. Democrats fought hard against this bill with Democratic State Senator Wendy Davis leading the charge with an eleven-hour filibuster.

The abortion restrictions eventually passed in a special session in the House via House Bill No. 2. With a unified Republican Texas government, the passage of legislation, which aimed to place restrictions on abortions, seemed unsurprising. Almost immediately after its enactment, a group of abortion providers filed a suit in the US District Court for the Western District of Texas seeking an injunction to prevent enforcement of the admitting-privileges provision and also the surgical-center provision of the law. The District court ruled in favor of the plaintiffs, issuing the injunction. Likewise, when the case was brought before the United States Court of Appeals for the 5th Circuit, the Court stayed the injunction. Finally, on June 27, 2016, the Supreme Court of the United States [SCOTUS] ruled that the Texas abortion restrictions were unconstitutional in a 5-3 decision, striking down the majority of the law.

This example highlights the central role that the courts have played on the issue of abortion. This is notable given the surge of abortion laws passed in the states over

the past couple of decades, with more restrictive abortion policies enacted in 2011-13 than in the previous decade (Boonstra and Nash 2014; Kreitzer 2015). As more restrictive abortion bills have been enacted across the states, we have witnessed a sharp increase in the number of legal challenges brought not only in federal courts but also in the state courts. In 2020, several states passed so-called fetal heartbeat bills banning abortions once a fetal heartbeat can be detected, which can occur as early as six-weeks in a pregnancy, and legal challenges have ensued. That abortion laws remain a highly controversial area facing considerable litigation has added to the contentiousness surrounding recent Supreme Court confirmation hearings, such as those surrounding Judge Amy Coney Barrett.

How do state judges rule in these cases involving abortion, and to what extent do their rulings follow public opinion on abortion? I argue that the effect of public opinion on judges' decisions on cases involving abortion is conditional on the method by which the members of the judicial panel are selected. Specifically, I hypothesize that elected judges will pay significant attention to the will of the public on the subject of abortion in order to avoid punishment at the polls during the next election.

Expanding on the role of elections in case outcomes, I am interested to see if timing plays a role. I argue that the electorate pays closer attention during campaign seasons to judicial decisions, and thus the judge is more deferential to the electorate during that time. Additionally, as campaign ads are running, there is heightened focus on salient cases. Therefore, I reason that elected judges will be even more deferential to public opinion on abortion when a case is heard within two years of an election.

Furthermore, while this is a partisan issue, I believe abortion is salient enough to the public that regardless of whether an election is partisan or non-partisan a judge

will rule more closely to public opinion based on being elected. Indeed, one in four Americans agree that abortion is a key voting issue (Brenan 2020). I argue that the effect of public opinion on judicial decisions is not significantly different between partisan and nonpartisan elections

While not all scholars agree that voters in nonpartisan elections easily and successfully obtain partisan cues, there is evidence that this is the case. Most recently, Bonneau and Cann (2015) found judicial election voters to be able to distinguish partisanship equally well in both partisan and nonpartisan elections. Voters distinguishing partisanship equally well regardless of party labels on the ballot implies that they are able to hold the judiciary accountable whenever there is an election regardless of whether that election is partisan or nonpartisan.

I will study abortion cases in U.S. state supreme courts from 1980, through 2018 and examine the extent to which state public opinion on abortion influences the rate of progressive case outcomes, conditional on the type of judicial selection method employed by the state. Using the Hall and Windett 2013 dataset, "New Data on State Supreme Court Cases," I select only those civil cases centered around abortion to determine the influence of public opinion on case outcomes. In order to assess the influence of public opinion on judicial decisions, I restrict the case selection to cases on abortion. Baum (2003) found abortion to be a highly salient campaign issue for judges. This would indicate that judges themselves deem abortion to be a highly salient topic to their constituency. Further, abortion is a topic upon which there is major partisan divide. "Partisan voters can reasonably guess that the Democratic candidate is more prochoice than the Republican candidate," (Calderone, Canes-Wrone, and Clark 2009). Adams

(1997) links this evolution of the parties to the position of President Ronald Reagan and other elites in the 1980s.

I use Multiple Regression Post-Stratification [MrP] methods to estimate state-level public opinion on abortion from aggregate poll data from the American National Election Survey [ANES], General Social Survey [GSS] and the Decennial Census Survey. By regressing the initial poll data with state level demographic factors including gross domestic product per capita, religiosity, partisanship, percent married, gender, and education along with poll questions dealing with abortion, I was able to get an accurate measure of public opinion on abortion at the individual state level over time.

Studying state courts exclusively provides variation on my key independent variable, selection methods, which makes states courts the perfect face to explore for this study. This study will also add to our understanding of the conditions under which public opinion can shape judicial behavior on a highly salient issue (abortion). Previous studies have primarily focused on case issues at the Supreme Court of the United States level (Calderon, Canes-Wrone, and Clark 2009; Hinkle 2015). However, a few studies have focused on abortion case outcomes at the state high court level, including Pacheco (2014) and Lax and Phillips (2013). Taking a similar approach to previous studies by Lax and Phillips (2013) and Pacheco (2014) on Multiple Regression Poststratification (MrP) to determine the public opinion within the state level from national level aggregate polls, using this method I am able to estimate public opinion within the state overtime and then use that measure as my key independent variable to study the effect of the public on individual judge decisions in those abortion cases.

A Little Less Conversation A Little More Background Please

The role of the judiciary in the U.S. political system has been the subject of great debate. One of the prominent arguments surrounding the creation of the Supreme Court of the United States was how independent and insulated it should be from public will. Fundamental to this debate is the question of how best to balance the tensions between majority rule and individual rights, which has been a recurrent theme in the U.S over the years.

However, there is contrary scholarship which argues that the link between appointed judges and legislators is so strong, judicial review can still be considered pro-majoritarian (Ashworth 2012, Friedman 1993, Lain 2012). Scholarly research has shown the bench to promote the political agenda of those in the legislature (Keck 2007, Lemieux and Watkins 2009). These scholars argue it is political coalitions that influence judicial decisions in which the majority plays the role every election cycle regardless of selection method. In essence, if one player in the coalition is elected, the majority has an influence on the decisions made by the entire coalition. This argument claims that public opinion should influence judicial decisions despite the selection method of the judge.

Legal precedent and the constitution under which it is institutionalized bind a judge (Friedman 2006; Knight and Epstein 1996; Kritzer and Richards 2005). Federal statutes, United States Supreme Court decisions, and the federal constitution determine binding precedent (Friedman 2006). Friedman (1993) accounts for this in his model by including substance majoritarianism. Studying countermajoritarian dilemma through process and substance majoritarianism allow for a "more concrete analytical

framework—particularly with respect to the relationship between public opinion and lawmaking," (Kastellec 2016).

Some scholars argue that public opinion and policy directly relate to each other. For example, if public opinion moves in a pro-choice direction, the traditional expectation is for policy to move in a pro-choice direction at an almost equal pace. Waldron (2006, page 1346) argues that this is the foundation for the failure of political legitimacy. By overriding legislation enacted by the direct representatives of the majority, the majority's will be thwarted (Waldron 2006). There is substantial literature regarding the Supreme Court of the United States and whether it follows majority will (Dahl 1957, Mishler and Sheehan 1993, Epstein and Martin 2010). These scholars find the SCOTUS to follow public opinion at a slower rate on average. These studies only consider these shifts of public opinion at the aggregate level to predict judicial votes (McGuire and Stimson 2004; Giles, Blackstone, and Vining 2008; Casillas, Enns, and Wohlforth 2011). This leaves doubt as to whether public opinion shifts on individual policies have an effect on judicial decisions. Leaving the main question of the countermajoritarian dilemma unanswered. Marshall (1989) narrows his study to issue-level public opinion and Supreme Court decisions; however, his focus is not on judicial review and its relationship to the countermajoritarian dilemma. These studies are also only studying the highest court in the land, SCOTUS. This leaves much to be studied at the lower federal courts and state courts. This study focuses on State Supreme Court judges studying six different State Supreme Courts and their respective judges. This allows for an in-depth analysis of judicial selection method and the countermajoritarian dilemma.

Where are We Going? How Will We Get There?

This dissertation continues as follows. Chapter 2 reviews the current literature on state courts and provides the theoretical framework on which this dissertation sits. This chapter delves into the relationship between the judicial selection method and the countermajoritarian dilemma. Concurrently, it sets up the three basic models for judicial behavior: the legal model, which argues that judge decisions are only influenced by the law and precedent itself; the attitudinal model, in which judges, while beholden to the law, also rule along their own preferences; and lastly, the rational choice model, which states judges are aware of external circumstances and are rational actors, and thus they rule with their best interest in mind within the bounds of the law.

Chapter 3 focuses on the history of abortion in the United States particularly in the courts and the politicization by the Republican and Democratic Parties. It starts out with a brief overview behind the reasoning for choosing abortion cases over different case topics for this dissertation. Then moves into a historical overview of the development of abortion in the United States. This historical overview establishes why abortion is a keen case topic for the study of judicial behavior and its relation to public opinion. The impact of *Roe v. Wade* and the subsequent state legislation that ended up challenged in the courts as a result is discussed, followed by the evolution of public opinion overtime.

Chapter 4 is the first empirical essay, which asks the overarching question of whether public opinion on abortion influences abortion case outcomes at the individual judge level. This chapter looks at all abortion case decisions at the judge level by elected judges to determine if public opinion on abortion within that state influenced those judge

decisions. Furthermore, the attitudinal model is tested using scaled ideal points for each judge to determine the influence of each judge's preferences on their decisions.

Chapter 5 builds on the findings from chapter 4, to study the effects of the election cycle. Should judges defer to the public based on potential threats of reprisal at the polls, it would stand to reason that judges would be more deferential the nearer the election. As established in Caldarone, Canes-Wrone, and Clark (2009), I use two years as the cut-point to indicate whether a case is heard close to an election. Testing the rational choice model, I theorize that judges who hear an abortion case within two years of an election will be more deferential to public opinion due to fear of election outcomes.

Chapter 6 looks in depth at the different styles of elections by separating out nonpartisan and partisan elections to determine if a partisan label has an impact either directly or conditionally with public opinion on judicial decisions. I argue partisan labels do not make a substantial difference in how judges act as judicial campaigns can easily signal conservative or liberal stances.

Wrapping up in Chapter 7, I discuss my findings and future avenues for judicial scholars. Throughout this dissertation, I use an updated dataset which, I combined and expanded from Windett and Hall (2014) and Caldarone, Canes-Wrone, and Clark (2009) which includes 2848 abortion cases heard at the State High Court level by elected judges. This includes 18 total states, which includes 8 partisan states and 13 nonpartisan states (3 states switched from partisan elections to nonpartisan elections). I also use Multiple Regression Post Stratification in order to get an accurate measure for public opinion on abortion over time and across the states. Furthermore, I utilize Windett, Harden, and Hall's (2014) new measure the scaled ideal point, which allows for a

dynamic measure for judicial preferences overtime. To my knowledge, there has not been another study which combines these questions with this methodology to this extent and specifically looking at elected judge decisions on abortion cases and public opinion on abortion. Previous studies have looked into public opinion of abortion, judicial preferences influence on case outcomes, federal courts, the United States Supreme Court or judicial institutions such as elections. These studies did not consider the impact of public opinion on abortion on case outcomes themselves nor the impact of the timing of elections on case outcomes for state high court judges, in this study, I consider both. In doing so, I was able to shed some insight into how the relationship between the electorate and judges' function at the state high court level. I argue that elected judges are deferential to public opinion on topics salient to the public such as abortion. This dissertation contributes knowledge on judicial behavior particularly in the context of the attitudinal and rational choice models as applied to state courts.

Chapter 2: State Courts Literature Review and Theoretical Framework

In studying the impact of public opinion on judicial decision-making, many scholars have focused exclusively on the federal judiciary, particularly the U.S. Supreme Court. Given the lifetime appointment and the high-profile nature of the cases considered by the Supreme Court, it is understandable that scholarship might gravitate towards this institution. However, there are also notable limitations presented by focusing on the highest court in the land, whose members are appointed for a lifetime term or "good behavior," and have discretion over the cases considered. Fully understanding the effect of public opinion on court decisions and whether the relationship is conditional on judicial selection necessitates cases in which there is variation in the methods by which judges are selected so we can assess counterfactuals. What changes when judges are popularly elected versus appointed by politicians, or arrive at their seat on the bench through some hybrid system?

State high courts provide a unique opportunity to assess the role of public opinion on judicial decision-making and the extent to which this relationship depends on judicial selection methods. The vast array of selection methods in the U.S. state judges enables us to explore this question in a manner that is unavailable to us if we restrict our analysis to the federal system where all judges are appointed.

State courts vary in judicial selection methods. Some state high courts are appointed in similar fashion as SCOTUS through gubernatorial nomination and state senate confirmation process, while others are elected through popular elections. Croley (1995) argued that this might lead to a majoritarian dilemma, in the case of elected judiciaries. Pozen (2008) argued similarly that judges who are directly accountable to

the public face potential reprisal in the following election cycle making elected judges overly responsive to public whims. As the selection method for state high court judges vary, it is a prime comparison to be examined to determine the validity of countermajoritarianism on the bench.

Table 2.1: Selection Systems for State Supreme Courts, 2016[1]

State	Partisan Elections	Non-Partisan Elections	Retention Election (Missouri Plan)	Appointment
Alabama	X			
Alaska			X	
Arizona			X	
Arkansas		X		
California			X	
Colorado			X	
Connecticut				X
Delaware				X
Florida			X	
Georgia		X		
Hawaii				X
Idaho		X		
Illinois	X			
Indiana			X	
Iowa			X	
Kansas			X	
Kentucky		X		
Louisiana	X			
Maine				X
Maryland			X	
Massachusetts				X
Michigan[b]		X		
Minnesota		X		
Mississippi		X		
Missouri			X	
Montana[c]		X		
Nebraska			X	

[1] Ballotopedia https://ballotpedia.org/Assisted_appointment_(judicial_selection)

State	Partisan Elections	Non-Partisan Elections	Retention Election (Missouri Plan)	Appointment
Nevada		X		
New Hampshire				X
New Jersey				X
New Mexico[a]	X			
New York				X
North Carolina[d]		X		
North Dakota		X		
Ohio[b]		X		
Oklahoma			X	
Oregon		X		
Pennsylvania[a]	X			
Rhode Island				X
South Carolina				X
South Dakota			X	
Tennessee[e]			X	
Texas	X			
Utah			X	
Vermont				X
Virginia				X
Washington		X		
West Virginia		X		
Wisconsin		X		
Wyoming			x	

Source: American Judicature Society, Judicial Selection in the States, see www.judicialselection.us.

[a]Justices initially are selected in partisan elections but run in retention elections for subsequent terms (but only for uncontested seats in New Mexico)
[b]Partisan affiliations are not listed on general election ballots, but partisan methods (party conventions, partisan primaries) are used to nominate candidates.
[c]Retention elections are used if the incumbent is unopposed.

[d]Justices are allowed to seek reelection in retention elections if preferred (but litigation is pending on this issue)
[e]Nominating commissions are not part of this plan. Justices are appointed by the governor and confirmed by the state legislature but then face retention elections for regular terms.

There are four main categories of judicial selection methods: partisan elections, nonpartisan elections, Missouri Plan, and appointment. Table 2.1 depicts which states utilize which types of selection method. Partisan elections are where the judge is selected via popular election and able to provide a party label. Nonpartisan elections are when the judge is selected via popular election, but they are not able to provide a partisan label. I question whether this is a true distinction as there are many cues available to distinguish a candidate's placement on party lines without using party labels such as conservative and liberal. Furthermore, the two major political parties here in the United States have divided strongly on the issue of abortion so much so that pro-life has become synonymous with Republican and pro-choice synonymous with Democrat. There is not consensus among scholars as to the effect of partisan vs. nonpartisan elections. Squire and Smith (1988) found that in the California nonpartisan state Supreme Court, elections were "easily turned into partisan contests in the minds of voters," (168). Other scholars found that nonpartisan elections depress voter turnout and increase voting for the incumbent (Schaffner, Streb, and Wright 2001). Still, Bonneau and Cann (2013) agree that voters are able to bring in party cues to judicial elections successfully. Thus, I do not expect to find a significant difference between these particular types of selection methods. The assisted selection method, also known as Missouri Plan or merit selection, is when a judge is nominated by the governor and confirmed by the senate is often followed by a retention election. This is the method of which we are most familiar due

to the fact that SCOTUS is selected this way, although without a retention election. A hybrid of this selection method typically involves a judicial council, usually consisting of the state's Bar Association or other individuals highly esteemed in the judicial world, creating a list from which the governor must choose his nomination. In legislative election systems the legislature popularly elects judges. The major distinction between these selection methods is the role of the public. The Missouri Plan and the hybrids involve popularly elected officials selecting judges; they do not involve the public directly. This decreases the opportunity for the public to hold judges accountable, and thus decreases the likelihood that the judge will be influenced by public opinion. Therefore, judges should not feel as beholden to the public when selected via these methods verses when they are selected via popular election. I hypothesize that judges who are popularly elected will follow public opinion more than judges selected via other methods.

Lastly, Brace, Hall, and Langer (1999) found that policy debates surrounding abortion almost always involve state-level politics and state courts. The majority of legislation dealing with abortion is at the state level. While we have seen major cases come before SCOTUS, such as *Roe v. Wade* and *Planned Parenthood v. Casey*, the majority of policy remains at the state level, which is another reason for studying this issue at the state level. This will be further discussed in the section below on why study abortion.

Appointed, Partisan Elections, and Nonpartisan Elections: Do They Differ and Do They Matter?

A large part of the countermajoritarian dilemma is related to the challenges of democracy. There is literature which suggests that not only elections but partisan elections in particular are "critical for democratic accountability" (Calderone, Canes-Wrone, and Clark, 560). Powell (1982) argues that for a healthy democracy to exist there must be clear partisan labels established and available to the public. He argues that voters use party labels as cues when they vote. This idea is heavily prevalent in mass behavior literature. Converse (1962) shows that even when voters are highly informed, they will typically vote based on a candidate's partisanship. While scholarship seems to side with partisan elections as being democratically beneficial, twenty-one states maintain a nonpartisan election in some form for their judiciary (Berkson and Caufield [1980] 2004). The argument for nonpartisan elections has been based on "elevating competence over politics" (Calderon, Canes-Wrone, and Clark 2009). Particular to judicial elections, proponents of nonpartisan elections claim the institution grants a level of independence not available with partisan labels (Atchison, Lipert, and Russell 1999; Sheldon and Maule 1997). The argument against nonpartisan elections is that they decrease accountability. In studying the Nebraska legislature, Rogers (1989) found that partisan labels allow voters to hold their elected representatives to party standards through partisan label cues. Debow et al (2003) reiterates Rogers' argument claiming voters are not as readily able to make informed decisions in non-partisan elections. Worse, scholars have found that without partisan labels to aid in accountability, voters simply vote for the incumbent (e.g. Dubois 1979a; Schaffner, Streb, and Wright 2001, Ferejohn 1977, Ansolabehere et al 2006). Bonneau

and Hall (2003) find nonpartisan elections are also less likely to be contested leading to another area with a lack of accountability and problem for democracy. It can be assumed that democracy only works if voter turnout is substantial, but, with nonpartisan elections, there is typically lower turnout for elections (Dubois 1979b, Epstein, Knight, and Shvetsova 2002). However, Calderone, Canes-Wrone and Clark (2006) did not find an increase in local issue responsiveness when a state judiciary switched from nonpartisan to partisan elections. They argue this was due to the fact that party agendas are set on the national stage rather than the local state level.

How does the style of election impact judges' decisions? "Judges who face future elections may depart from their preferred positions with an eye to electoral opponents and voters, judges whose tenure depends on reappointment may temper their positions with that prospect in mind" (Baum, Gray, and Klein, 2017, page 197). This argument begs the question: Do partisan labels help judges avoid public backlash in the polls for unpopular case decisions?

Studies of Judicial Elections in State High Courts

When it comes to judicial elections, the primary question asked is how those elections impact judicial decisions and case outcomes. According to Baum et al 2017, the prospect of facing voters in the future may influence justice's votes and opinions by leading them to take positions they perceive as popular, and in particular, to avoid taking positions that electoral opponents could use to attack them in a campaign. Scholars have found this to be particularly true in cases of capital punishment (Hall 1992, 1995; Canes-Wrone, Clark and Kelly 2014), in which sentencing behavior shifts closer to an election at the trial judge level (Huber and Gordon 2004; Gordon and Huber 2007), as well as

socially salient issues such as abortion (Caldarone, Canes-Wrone, and Clark 2009). Furthermore, campaign contributions have been under the microscope, as is evident in the U.S. Supreme Court's decision in *Caperton v. A.T. Massey Coal Co*. (2009). During *Caperton v. A.T. Massey Coal Co*. (2009), the Court requires justices to recuse themselves in any case concerning a particular coal company due to the large campaign contributions by said coal company. Several scholars have studied the impact of judicial campaign contributions but have yet to come to firm conclusions. In addition, there is a lack of literature on campaign advertisement (Baum, Gray and Klein 2017; Cann 2002, 2007; Cann Bonneau, and Boyea 2012; Kritzer 2015, 79-84).

Judicial selection methods have long been debated. Often the debate centers around judicial independence and judicial accountability with elections seen as promoting accountability while independence thrives under appointment. Further, the variations of election styles might also impact each of these. The central node of this debate: Whether or not selection method impacts judicial decisions is the core research question asked herein.

Much research has been done on whether the mechanism that is most impactful for judicial decisions is the initial selection method or the retention method, most of which has found retention to be the key element (Alozie 1988, 1990, 1996; Bratton and Spill 2002; Canon 1972; Cook 1984; Dubois 1983; Dudley 1997; Emmert and Glick 1988; Esterling and Andersen 1999; Flango and Ducat 1979; Glick and Emmert 1987; Graham 1990; Hurwitz and Lanier 2003; Jacob 1964; Tokars 1986). The logic behind these studies points to the work of Joseph Schlesinger (1966) whose research centered on political ambition. Schlesinger argued there are three desires for officials in office:

1. Progressive ambition: a desire to advance up the political hierarchy

2. Static ambition: a desire to retain the current position

3. Discrete ambition: a desire to hold the current office only until the end of the current term

These ambitions are tied to the judge's audience (Baum 2006). Essentially the argument centers on the idea that the official's desire falls into one of the three above categories which drives their decision-making process. For the purpose of this study, static ambition is most relevant which asserts that the official, or in this case judge desires to retain his or her current position. This spurs the following hypothesis:

H1: The effect of public opinion on abortion will significantly influence judicial decisions on abortion cases.

In the following section, I describe the various types of selection methods.

Imagine All the Methods: Judicial Selection Styles

When examining the various selection methods there are four main categories:

1. Partisan election
2. Nonpartisan election
3. Retention election also known as the Missouri Plan
4. Appointment (gubernatorial or legislative)

Note: These categories are an oversimplification of the many detailed versions of judicial selection institutions across the fifty states (Kritzer 2015). However, for the purpose of research, these institutions must be grouped to enable a comparative study.

While it is important to understand the variety of selection methods, this study focuses on partisan elections and nonpartisan elections.

Partisan elections are when an election ballot employs the use of party identifiers. This allows for the voter to identify beyond the judge to the nominee of the party and in theory the party ideology aligns. *Nonpartisan elections* are when a judge is elected without party identification.

Retention election/Missouri Plan involves a committee to select the nominee and appointment by the governor followed by a retention election by the public. This election only includes a yes/no vote for the appointee for continuation in office. There are not contested elections in states which employ the *Missouri Plan*.

Appointment refers to gubernatorial or legislative selection. In reality, the vast majority of judges are appointed in some fashion even if the state is an election selection method state due to off-cycle needs to fill the position. Typically, this is via the governor; however, in Illinois the justices are the ones to appoint midterm vacancies. This mechanism can vary across the constraints on the governor. For example, in some states, the governor must choose his/her appointee from a vetted list given to him/her by a committee, or the legislature. Further, the appointee may have to go through an approval process with the legislature or a consulting committee. Lastly, the governor may appoint someone for a partial term who then has to survive a retention election, such as in California. In only two states, Virginia and South Carolina, the legislature selects all or some judges.

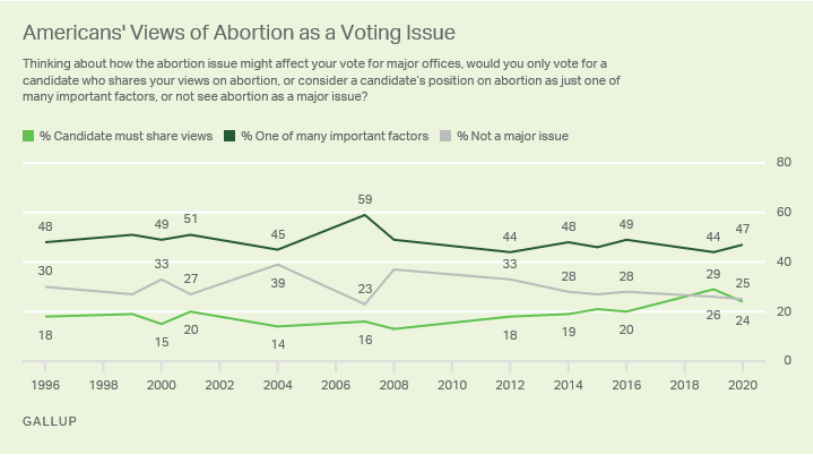
This study focuses on state high courts, but it is important to note that some states vary in selection method across the level of court, be it trial, appellate, or high court. The impact of the electorate at large is one of the largest effects seen by elections

on supreme court policy yet there has not been a large amount of study on this area due to the immense amount of data, which has not been systematically collected until recently. Data is still a large issue and highly limiting; however, through the use of text analysis, two datasets have emerged which allow for a study of abortion cases and judicial preferences over time (Caldarone, Canes-Wrone, and Clark 2009; Windett, Hardin, and Hall 2016).

Taking Care of Business: Studies on Judicial Elections and Public Opinion

There are few topics which vehemently divide the public, subjects that divide dinner tables and friendships. Topics on which individuals will solely base their vote. The death penalty and abortion are two of these topics. These two subjects are salient enough that regardless of the candidate's background or party, indeed, these subjects are so salient that Baum (2003) finds that a judge's record on the death penalty and/or abortion will determine if the individual will vote in favor or against. This study focuses on one of these: abortion policy. Figure 2.1 shows that abortion is a topic which will determine how a significant portion of the electorate will cast their vote.

Figure 2.1 One in Four Americans Considers Abortion a Key Voting Issue



https://news.gallup.com/poll/313316/one-four-americans-consider-abortion-key-voting-issue.aspx

By examining public opinion over time and elected judicial voting record, we can determine with reasonable certainty whether elected judges are deferential to the public. I argue that elected judges will be significantly more deferential to public opinion, while selected judges will be slower to adopt public opinion shifts overtime. I argue that this is due to the selection method, or what I term election effect. When one's job is dependent upon public approval then he or she is more likely to adapt to the public whim.

There is a wealth of scholarship on judicial behavior, including the influence public opinion has on judges. In a democratic society, courts are to be responsive to public opinion (Franklin and Kosaki 1989). Bickle (1962) argues that courts do not have much choice in whether they follow public opinion, as they have no way to enforce a decision adverse to the majority. Alexander Hamilton addressed this very fact in his

paper Federalist *no. 78*. Hamilton pronounces the judiciary as the "weakest branch" due to their inability to enforce their decisions.

This study applies the aforementioned theory to abortion policy and state high court judges. State high courts are those courts of last resort within each state, meaning the highest level a case can be heard within the state structure. Some states have two bodies which are courts of last resort such as Texas which has the Supreme Court of Texas and the Criminal Court of Appeals, each has different jurisdictions. Beyond the state high court, the only option for further appeal is to file the case within the federal system. In this study, I focus on state courts judges because there is variation on my key independent variable, judicial selection method. The selection methods of these state high court judges vary from appointment to election. Within these broad categories of *appointed* and *elected*, there are other forms of variation as well. There are nonpartisan and partisan elections for state high judges. There are some states that utilize the Missouri Plan in which the governor nominates, and the senate confirms the judicial appointments. There are still other states in which a judicial council recommends a list of potential judges that the governor must nominate from, again with the confirmation of the senate. In Chapter 4, I will focus on the broad impact of judicial elections while controlling for the various methods. This chapter will compare states that have elected judges to the most similar states where judges are selected. In Chapter 5, I look at the timing of elections to determine if the election cycle itself has an impact on judicial decisions, particularly when viewed through the lens of public opinion. Lastly, in Chapter 6, I will look at two states in depth comparing the effects of partisan verses nonpartisan elections.

In the study of the countermajoritarian dilemma and the judicial branch, the vast majority of scholars have analyzed the federal judiciary. This makes sense as each and every federal judge is appointed for life tenure. This should exacerbate the effects of the countermajoritarian dilemma. State courts, on the other hand, vary in selection method. Some state Supreme Court judges are appointed in similar fashion as SCOTUS through gubernatorial nomination and state senate confirmation process, while others are elected through popular elections. Croley (1995) argued that this might lead to a majoritarian dilemma, in the case of elected judiciaries. Pozen (2008) reasoned similarly that judges who are directly accountable to the public face potential reprisal in the following election cycle, making elected judges overly responsive to public whims. This study builds upon this supposition.

Chapter 3: Let's Do the Time Warp… Abortion in the United States and the Courts

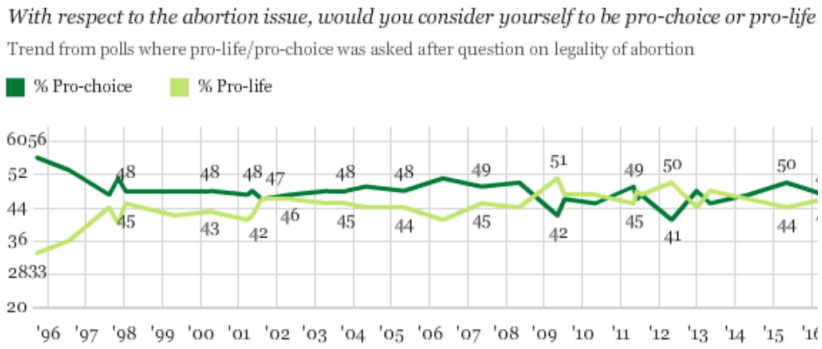
A few years ago, while I sat at Kirby Ice House in Houston for a post-choir rehearsal drink with eight friends from a variety of walks of life, the issue of elections came up. The primary topic of conversation was who to vote for and why in the upcoming local election. One of the key components of this conversation was whether the candidates in question were pro-life or pro-choice. This in turn morphed into a divisive debate on abortion itself. Each of my friends passionately and intelligently relayed their stances. A female school teacher said, "It is my body and I should have the choice." A male computer engineer said, "I don't feel as though it [abortion] is that black and white." A Chick-Fil-A regional manager responded, "Right, but at the base shouldn't abortion be an option, especially in cases of trauma and danger to the mother?" These American adults from all different career paths, sexualities, genders, and ages each have an opinion on abortion. They have each thought about the legal issues of abortion and whether or not they can support a candidate who leans either direction.

The issue of abortion has shown a large shift in public support over the years. Abortion is a salient issue not only in politics but also in society. It is also an issue that is highly divisive and has been claimed by the political parties. Democrats are seen as being "pro-choice" while Republicans are "pro-life." Nancy Keenan stated, "I am proud to say that the Democratic Party believes that women have the right to choose a safe, legal abortion with dignity and privacy."[2] Meanwhile, Marco Rubio said, "I am proud

[2]http://www.brainyquote.com/quotes/quotes/n/nancykeena449138.html?src=t_pro-choice

of the fact that the Republican Party is the pro-life party on the issue of life."[3] This strong division between the parties allows for a direct comparison in the importance of party affiliation between partisan and nonpartisan judicial elections.

Figure 3.1 Gallup Poll: Pro-choice or Pro-life[4]



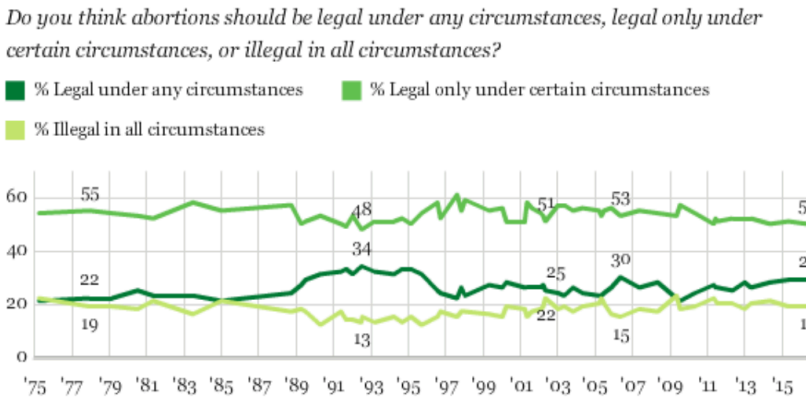
Further, people have strong opinions on abortion. It is a highly salient issue and one that is followed by the public. The electorate also understands this issue whereas; with many taxation laws the nuances are often lost in the legal jargon leading to a lot of confusion. This can make it difficult to distinguish true preferences in public opinion. As such we would not expect the court to rule along public opinion when the public does not have a strong opinion or a very clear one. This is not a hindrance with abortion; rather people are highly divided and pay close attention to the progress of abortion policy in the United States. In addition, the Democratic and Republican parties have

[3] http://www.brainyquote.com/search_results.html?q=pro-life+republican
[4] http://www.gallup.com/poll/1576/abortion.aspx

continued to divide and campaign along social and religious norms (Claggett and Shafer 2010, Layman 2001). In particular, these parties have taken firm stances on the pro-life, pro-choice debate with the Democrats heralding pro-choice and the Republicans upholding pro-life (Carmines et al 2010). Indeed, according to Gallup, only 3%-6% of people said they did not understand what the terms pro-life and pro-choice meant. Knowing that one major partisan divide is along the pro-life/pro-choice debate, this is also a cue for the public in nonpartisan elections. Thus, I expect to see similar results across both partisan and nonpartisan elections in terms of the effect public opinion on abortion has on judicial decisions on abortion cases.

Abortion in the most general sense has not shown much fluctuation over time. It is important to note that "Legal only under certain circumstances" has always had the highest response. This middle ground on the issue of abortion is seen when the issue is broken down into issue areas.

Figure 3.2: Gallup Poll Legalization of Abortion Under Any Circumstances[5]



Rachael Hinkle (2015), found significant differences between subtopics of abortion. Her study broke down abortion into five distinct categories looking at federal courts and state policy diffusion: partial birth, public funding, parental notification, post viability, and waiting period. She also found that a state with a Republican-controlled government and pro-life public opinion was more likely to pass legislation restricting abortion. This seems intuitive, as elected officials are to represent their constituency and in theory would face punishment in the polls if they fall short. Does this apply to the judges though?

[5] http://www.gallup.com/poll/1576/abortion.aspx

The Evolution of Abortion in the United States 19th Century through *Roe v. Wade* 1973

The "Born Alive" rule meant that the law applied in cases in which babies were "born alive." This was the initial code by which the United States functioned following English Common Law. According to this law, if an infant were to be "born alive" then and only then is it subject to the potential charge of homicide. Due to this practice, abortions were largely overlooked throughout the founding of America up until the mid-nineteenth century. At this time, states adopted a religious understanding that a fetus became a life when "ensoulment" occurred. Ensoulment was known to typically occurred at the "quickening" stage of pregnancy otherwise known as when the woman began to feel fetal movement (typically at 18 weeks). This followed Pope Gregory XIV's declaration in 1591 that only fetuses ensouled were to not be aborted. Further, Pope Innocent XI issued a ruling that "no abortion is homicide" which most states upheld. In 1812, Commonwealth v. Bangs, the Massachusetts Supreme Court, ruled that abortion before quickening was indeed not subject to homicidal charges. In 1821, the Connecticut legislature first criminalized abortions only after quickening. Further, eight of the 26 states at the time declared abortions illegal but again only after quickening.[6]

Late-nineteenth century, abortion legislation becomes more prolific and restrictive. This coincides with the implementation of official medical schools. Prior to this period, most reproductive issues were handled internally between the women within the family. With the origination and spread of medical schools, doctors self-

[6] Connecticut (1821), Ohio (1834), Indiana (1835), Missouri (1835), Arkansas (1837), Mississippi (1839), Alabama (1840), Maine (1840) (Rose 2007).

proclaimed to be the "moral and superior professional" to the common midwife. Luker (1984) describes the spread of degreed doctors opposing abortion as increasing their moral credibility due to the increased questioning of abortion practices at this time. Indeed, the newly founded in 1847, American Medical Association (AMA) proclaimed to be anti-abortion and began lobbying against abortions at the state level pushing legislators to pursue abortion banning legislation. In 1869, Pope Pius IX declared that any individual pursuing an abortion would be excommunicated from the church.

Race also played a role in the abortion debate due to the decrease in reproduction of white-middle-class-women in comparison to immigrant women. So-called "social-engineers" of the late nineteenth century claimed that due to the increased education of middle-class-white women, they were choosing when and how often to reproduce, whereas the increasingly significant number of immigrants who were primarily Roman Catholic, would "overrun" the white population (Mohr, 1978; Rose 2007). Furthermore, women's magazines began to market abortion as a means to control fertility pushing abortion further into the public eye. For examples see Figure 3.4 below.

Figure 3.4 Abortion in the Newspapers

DOCTOR BELL

DOCTOR BELL devotes his personal attention (daily until 8 P. M.) to the removal of private diseases in every stage. All suffering under protracted cases, aggravated or unsuccessfully treated by inexperienced or pretended practitioners; those laboring under the destructive effects of mercury or quack nostrums, and all who suspect the remains of disease lurking in the system, may consult Dr. B. always with a guarantee of cure.—☞ Persons contemplating marriage, who have been the subjects of delicate diseases, may consult Dr. Bell with honorable confidence. Post paid letters, describing the case of persons at a distance, have his prompt attention. Dr. B.'s treatment never exposes to suspicion, and is well known to be safe and permanent.

☞ Private offices 4 COURTLANDT STREET, two doors from Broadway. d4 1m*

COVERT'S BALM OF LIFE.—We invite the particular

30 YEARS of experience in the scientific practice of curing one disease, has enabled DR. LAUREL, 103½ Canal st, to eradicate even the most obstinate cases in half the time ever known. Terms moderate. Reference of the most desperate cases will be given. At home until 9 o'clock P. M. d8 1m*

Lispenard street.

TO THE LADIES.

MADAME COSTELLO, Female Physician, still continues to treat with astonishing success all diseases peculiar to females.

Suppression, irregularity, obstruction &c., by whatever cause produced, can be removed by Madame C. in a very short time.

Madame C's medical establishment having undergone thorough repairs and alterations for the better accommodation of her numerous patients, she is now prepared to receive ladies on the point of confinement, or those who wish to be treated for obstruction of their monthly period.

Madame C. can is consulted at her residence, No. 34 Lispenard street, at all times and with the strictest regard to secrecy All communications and letters must be post paid. d6 1m

TO THE TRAVELLING COMMUNITY.

TO MARRIED LADIES.

MADAME RESTELL'S PREVENTIVE POWDERS.

These invaluable Powders have been universally adopted in Europe, but France in particular, for upwards of thirty years, as well as by thousands in this country, as being the only mild, safe and efficacious remedy for married ladies whose health forbids a too rapid increase of family.

Madame Restell, as is well known, was for thirthy years Female Physician in the two principal Female Hospitals in Europe—those of Vienna and Paris—where favored by her great experience and opportunities, she attained that celebrity in those great discoveries in medical science so specially adapted to the female frame for which her medicines now stand unrivalled, as well in this country as in Europe. Her acquaintance with the physiology and anatomy of the female frame, enabled her—by tracing the decline and ill health of married females, scarce in the meridian of life, and the consequent rapid and often apparently inexplicable causes which consign many a fond mother to a premature grave—to their true source—to arrive at a knowledge of the primary causes of female infirmities—especially of married females—which, indeed, led to the discovery of her celebrated "Preventive Powders." Their adoption has been the means of preserving not only the health, but even the life of many an affectionate wife and fond mother.

The advertiser feeling the importance of this subject, and estimating the vast benefits resulting to thousands by their adoption, would most respectfully arouse the attention of the married, by all that they hold near and dear, to its consideration. Is it not wise and virtuous to prevent evils to which we are subject, by simple and healthy means within our control? Every dispassionate, virtuous, and enlightened mind will unhesitatingly answer in the affirmative. This is all that Madame Restell recommends or ever recommended. Price $5 dollars a package, accompanied with full and particular directions. They can be forwarded by mail to any part of the United States. All letters must be post paid, and addressed to MADAME RESTELL, Female Physician. Principal office, 148 Greenwich street, New York. Office hours from 9 A. M. to 9 o'clk P. M. Boston office No. 7 Essex st. d7 1m d&w*

MACHINE BLANKETS AND LAPPINGS for sale by PERSSE & BROOKS, 61 Liberty st.

TO THE LADIES.—MRS BIRD very respectfully informs the ladies of New York and females generally, that she continues to give advice and prepare her popular and efficacious medicines for the various diseases peculiar to females. Mrs. B. is happy to announce that her treatment has given the fullest satisfaction to the very numerous patients who have relied upon her professional abilities. Mrs B. has felt herself warranted in undertaking the very responsible office of a Female Physician, from long experience and practice in the most celebrated hospitals of Europe, from the instruction and advice of eminent medical gentlemen, and from a scientific knowledge of the beautiful structure of the human frame, an ignorance of which must render the unblushing pretensions and deceiving panaceas of mercenary adventurers totally useless, if not highly injurious. Single and married ladies may rely with confidence on her skill and maternal solicitude as a female physician. However distressing may be their complaints, her medical acquirements will be found adequate to the exigency of the case. In short, she grounds this notice to the ladies on the successful results of a thorough medical education, and a just reliance on "appointed means" of imparting health, vigor, and consequently happiness to all who may honor her with their confidence.

Residence of Mrs. Bird 83 Duane st, where she is prepared to accommodate ladies on the point of confinement, and to administer medicine for all diseases to which her sex is liable. n24 2m*

MRS. BIRD, Female Physician, where can be obtained Dr. Vandenburgh's female renovating pills, Germany, an effectual remedy for suppression, irregularities and all cases where nature has stopped from any cause whatever. Sold only at Mrs. Bird's, 83 Duane st, Broadway. n24 3

PORTUGUESE FEMALE PILL.

INVENTED AND PREPARED BY M. DE BOURDELOUE, M. D. LISBON, PORTUGAL.

THEY are the wonder and admiration of the world. A account of being the only preparation ever discovered that has always proved certain in producing the monthly turns. So certain are in their effects, that the use of syringes &c should be known, otherwise they must not be used. They are always mild and safe. Full directions accompany each box, with the seal of the posted stamp. Price $5—half boxes $3. Sold by appointment at 294 Grand, cor. Allen st. They can be sent by mail. Address Dr. P. Melvan, box 24, N. n27 1m*

FEMALE MONTHLY PILLS.

PREPARED BY MADAME COSTELLO, No. 34 Lispenard street.

These Pills are acknowledged by the first physicians in the United States as the very best medicine that ladies laboring under a suppression of their natural illness can take, and they very seldom fail to relieve when taken according to the directions. These who call for them will be supplied with her circular, containing ample directions, and all the precautions necessary to be observed in their use. Advice gratis. Office 34 Lispenard street. n6 1m*

MADAME RESTELL,

FEMALE PHYSICIAN, Office and residence 148 Greenwich street, where she can be consulted with the strictest confidence on all complaints incident to the female frame.

Madame Restell's mode of treatment in all cases of irregularity or suppression of those functions of nature upon which the health of every female depends, is such as to require but a few days to effect perfect cure. Ladies desiring proper medical attendance during confinement or other indisposition, will be accommodated during such time with private and respectable board. "Preventive Powders" for married ladies whose delicate or precarious health forbids a too rapid increase of family, will be sent by mail to any part of the United States. Price $5 a package. All letters (post paid) addressed to 'box 868, N. Y. city,' will be received.

Boston Office No. 7 Essex st. d7 1m*

Mid-1800s ads covertly advertising abortifacients and abortions. Courtesy of librarycompany.org[7]

In 1873, the United States Congress passed the Comstock Act which made the transfer of "obscenity" illegal through the post office this pertained to marketing materials which related to abortion. Schroedel (2000) argued the professional doctors were attempting

[7] http://www.civilwarmed.org/birth-control/

to usurp midwives in the abortion trade. Up until the early twentieth century, both degreed doctors and midwives performed abortions. At this time, state legislatures initiated "midwife bans" which criminalized abortions performed by anyone other than degreed physicians. In practice this did little to affect the rate at which abortions were perform and by whom they were performed. For example, entrepreneur Ruth Barnett of Portland, Oregon maintained a well to do business for over forty years with the help of the local police who are said to have claimed it was necessary for "public health" (Mohr, 1973; Solinger, 1994).

Moving into the middle of the twentieth century, anti-abortion legislation became more stringent. Women who sought abortions were now the targets of legislation, not just abortion providers. This is the beginning of the stereotypical back-alley abortions depicted in the popular film Dirty Dancing, most individuals picture when they think of illegal abortions. Prior to this, most illegal abortions performed were actually in fairly safe conditions with few complications. However, with the new stricter and consistently regulated legislation against both provider and abortion seeker, abortions went underground and "back alley" (Mohr, 1973).

The 1960's prompted a fight to legalize abortion once more after a dramatic increase in female deaths due to botched abortions (Solinger 1994). Shockingly, this was initiated by the AMA (Rose 2007). According to Rose (2007), this complete flip was due to two cases: Sherry Finkbine and the rubella outbreak of the late 1950s and 1960s.

Sherry Finkbine was a well-known children's television program host, Romper Room, in Arizona. She found herself pregnant with her fifth child who after ingesting thalidomide bought from overseas by her husband to curb her morning sickness, was

left with severe impairments. She sought out a legal abortion through her hospital's Therapeutic Abortion Review Board who granted her wish, however, once the media gained knowledge of the Board's decision, they published the story and due to public outcry, the Board revoked their initial ruling. Finkbine ended up seeking an abortion in Sweden and was met by a multitude of press when she landed back in the United States. Figure 3.5 shows one of many articles published about Finkbine across the United States.

Figure 3.5 Mrs. Finkbine Undergoes Abortion in Sweden

Mrs. Finkbine Undergoes Abortion in Sweden: Surgeon Asserts Unborn ...
New York Times (1923-Current file);

Mrs. Finkbine Undergoes Abortion in Swede

Special to The New York Times.

STOCKHOLM, Sweden, Aug. 18—Mrs. Robert Finkbine of Phoenix, Ariz., who received permission here yesterday for a legal abortion, was operated upon successfully this morning.

The 30-year-old mother of four healthy children was informed after the operation that the fetus was deformed, as she had feared.

Her fears arose four weeks ago when she learned that she had inadvertently taken the drug thalidomide, which is blamed for the birth of thousands of deformed infants in Europe and Canada.

The abortion panel of the Royal Swedish Medical Board granted Mrs. Finkbine's request for today's operation to safeguard her "mental health."

"We felt we were doing the right thing all along for Sherri's mental health," her husband told reporters in a hospital corridor.

"Now we know we were right for the baby as well. The last thing we wanted to do was to bring a deformed youngster into the world if it could be prevented," Mr. Finkbing said.

Surgeon Asserts Unborn Child Was Deformed—Mother of 4 Took Thalidomide

The couple had made several unsuccessful attempts to obtain a legal abortion in Arizona, where the law allows such operations only if the expectant mother's life is in peril. They flew here Aug. 5 because of Sweden's more liberal abortion law.

Mr. Finkbine said his wife entered the Royal Caroline Hospital at 7 p. m. yesterday. The operation was begun at 8:30 o'clock this morning. It lasted about forty-five minutes.

Mr. Finkbine said that he and his wife had been told that the operation was "a complete success" and that there were no complications. Mrs. Finkbine was in about the thirteenth week of her pregnancy.

It is expected that Mrs. Finkbine will remain in the hospital for six to eight days. She and her husband will probably leave Sweden a day or two later.

He said that he had to
back home by the end of t
month for the football pract
that will begin at the hi
school where he teaches histo
Mr. Finkbine, who is 31, is
line coach.

He estimated that the
penses of the trip to Swed
would amount to $4,000. He s
that he expected to meet th
through a first-person story
the case that has been sold
several European newspapers

"I don't particularly like
ing this," he said, "but it
better than trying to pay de
for several years on a hi
school teacher's salary."

The Finkbine Case had
beginning in London last ye
Chaperoning sixty-four hi
school students on a Europe
tour, Mr. Finkbine obtai
some thalidomide and carr
the leftover pills home.

Mrs. Finkbine, a hostess o
television program for childr
took thirty-six of the sedat
pills in the early stages of
pregnancy. Neither she nor
husband was aware until f
weeks ago that the pills c
tained thalidomide.

Many doctors argued hospital review boards, further watered down their authority by making the decision in place of the doctors themselves. Women also did not respond kindly to Mrs. Finkbine's situation arguing that hospital review boards could not fully understand their situation and further, their decisions were being made willy-nilly and lastly, they believed they should have control over their own bodies and be able to rely on their own judgement rather than that of a panel made up of strangers.

The rubella outbreak of the 1950s and 1960s in San Francisco influenced doctors to promote the legalization of abortions due to the number of fetal deformities rubella causes. California led the charge in adopting legislation legalizing abortion. The biggest lobbyist for this legislative change was in fact the California Medical Association. In 1967, Governor Ronald Reagan signed into law the California Therapeutic Abortion Act. This law allowed doctors to perform abortions at any point in which the woman's physical or mental health was threatened (Rose 2007).

In 1969, the National Abortion Repeal Action League (NARAL) was founded with the mission to repeal all abortion legislation and return abortion policy to the English Common Law era of the early nineteenth century. Abortion was decriminalized in 1970 in Alaska, Hawaii, and New York.

With the push for women's liberation in the 1970s abortion was added to the plethora of women's rights throughout the states. The argument centered on women's rights to education and professional goals. With this surge in the linkage to women's rights, the conversation surrounding abortion turned to judicial channels. Roe v. Wade was the first landmark decision handed down by the United States Supreme Court on January 22, 1973. This ruling broadened the scope of Griswold v. Connecticut (1965) to include the right to privacy and overturned nearly all active state abortion legislation at the time. Reed (1996) distinguishes the rapid rise in anti-abortion rhetoric particularly as a major theme in the evangelical right from other social movements in terms of the speed and ferocity in which it integrated into party politics. Pope Paul VI's "Humanae Vitae" released in 1968 condemned abortion practices in any respect with the exception of when absolutely necessary to save the mother's life. He furthered this agenda when in 1972 he negated the 1679 church's declaration of life at quickening and

therefore abortion at any stage was now considered homicide by the Roman Catholic Church. In addition, he recognized all fetuses as individuals with inalienable rights. (Luker, 1984). The reentrance to the abortion debate by the Roman Catholic Church also mean an influx of funds adding fuel to the pro-choice lobby (Paige, 1983).

Prior to Roe v. Wade, evangelicals had primarily focused their protests at the local level. Post Roe v. Wade, evangelicals entered the national headlines. In particular, the National Committee of Catholic Bishops began a national campaign (Byrnes 2014; Byrnes and Segers 2019). This prompted many pro-life organizations to form in the late 1970s throughout the 1980s heating up the debate amongst the electorate. For example: Focus on the Family (1977), Moral Majority (1979), Concerned Women for America (1979), Family Research Council (1988), Operation Rescue (1988) and Christian Coalition (1989) (Rose 2007).

But We Walked Away With a Split Decision: A Timeline of Abortion in the Courts and Political Parties

1917 People v. Sanger challenged legislation in New York which banned the sale of contraceptives. The New York Supreme Court held the previous lower court conviction of Sanger however, it changed the interpretation of the law to now be broad enough to decriminalize the prescribing of contraceptives by doctors when medically necessary.

1936 United States v. One Package of Japanese Pessaries the United States Court of Appeals upheld the right for physicians to provide contraceptives overturning the Comstock Law.

1965 Griswold v. Connecticut one of the landmark decisions leading up to Roe v. Wade challenged a Connecticut law outlawing contraceptives for married couples.

This case was one of the first and certainly notable for the holding on privacy. The Court ruled that married couples had the right to privacy encompassing contraceptives and thus the law was unconstitutional.

1973 Roe v. Wade challenged a law in the state of Texas on the grounds of the constitutional right to privacy. This is the landmark decision on abortion throughout the history of this issue. Roe v. Wade challenged based on the woman's right to privacy when making her decision on abortion. There were still limitations to abortions across the United States as SCOTUS ruled that the state has invested interest in the life of the fetus after the first trimester and thus may limit or ban abortions in the second and third trimesters through legislation should the legislature feel so compelled with the exception of when the woman's life or health is in danger.

1973 Doe v. Bolton in the same year as the landmark Roe v. Wade decision, Doe v. Bolton challenged a law in Georgia which made all abortions illegal with the exception of life endangerment, rape, incest, and fetus deformations. Furthermore, the law limited abortion accessibility by demanding all abortions be performed in a hospital with a minimum approval by two doctors and a full review committee. Likewise, abortions within the state lines of Georgia would only be accessible to Georgia state residents. The Court found the law unconstitutional on the grounds of the Privileges and Immunities Clause regarding the residency requirement and in direct conflict of Roe v. Wade regarding a woman's right to choose based on her right to privacy.

1975 Connecticut v. Menillo challenged whether a non-physician should be able to perform abortions. SCOTUS ruled that the decision of whether to allow only degreed physicians be legally able to perform abortions or open it up to midwifes etc.

1976 Planned Parenthood of Central Missouri v. Danforth questioned a Missouri law that demanded minors to have parental consent for an abortion, married women to have consent of their husbands for an abortion, a woman to give written informed consent to obtain an abortion, required record keeping and reporting by abortion providers, and limited the ways and timing in which an abortion could be performed. SCOTUS found both parental consent and husband consent to be unconstitutional as it gave veto power to a non-state entity which is a power not even granted to the state. However, the informed written consent required of women seeking an abortion was found constitutional. In addition, record keeping, and reporting was also found constitutional. Timing of abortion was not ruled upon, and method was deemed to be beholden to that of the physician not the state.

1976 Ballotti v. Baird (Bellotti I) once again brought the parental consent for a minor to obtain an abortion to the forefront of the abortion debate. The Massachusetts law in question, did allow for a judge to make exceptions when "good cause was shown." The Court remanded the decision to the Massachusetts state courts for interpretive meaning of "good cause" but said it could potentially be constitutional.

1977 Maher v. Roe challenged funding issues of abortion. Namely whether state funds should and could be used for both medically necessary and elective abortions. The Court ruled coinciding with the law that the state need not fund abortions.

1977 Poelker v. Doe called into question whether state funded hospitals, namely one in St. Louis, Missouri in this case, could refuse to offer abortions. The Court ruled that the state was within its rights to refuse abortions at publicly funded institutions citing Maher v. Roe.

1979 Colautti v. Franklin a Pennsylvanian law required a doctor to give the same care he would a full-grown adult should the fetus be viable or potentially viable when performing an abortion. This law was overturned due to the vague nature of "viable and may be viable" in the language. Further, in its current state, the law criminalized physicians when there was no intent to break the law.

1979 Ballotti v. Baird (Bellotti II) round two for the Bellotti v. Baird law consideration. This comes after the Massachusetts courts defined several aspects of the law including detailing that a minor must first have attempted to obtain parental consent for an abortion prior to going to the court, once a minor files for a parental consent waiver the parents must be informed of said waiver, and lastly, the judge may dismiss the minor's case if they feel it is in the best interest of the minor. This law was found to be unconstitutional and SCOTUS wrote in the opinion that all minors must have the right to directly approach the court prior to consulting their parents. In addition, the hearing before the judge must be classified and dealt swiftly. And should an abortion be in the best interest of the minor they should be granted and kept confidential.

1980 Harris v. McRae challenged the ban on federal Medicaid funds for abortions which were medically necessary set forth in the Hyde Amendment. The only exception to the Hyde amendment was when a woman's life was endangered, then and only then would Medicaid funds be allowed to be used. The government won as the court provided the government was not responsible to provide the Medicaid funds necessary for an abortion unless the woman's life was endangered.

1980 Williams v. Zbaraz specifically challenged the Illinois version of the Hyde Amendment and was similarly upheld on the same grounds as in Harris v. McRae.

1981 H. L. v. Matheson challenged the grounds of a Utah law which made it necessary for a physician to notify the parents or legal guardian of an unemancipated minor prior to performing an abortion on said minor. Once again, the court found in favor of the government granting that unless the minor had previously shown reason to make parental notification inappropriate that minor as an unemancipated individual had not shown maturation to make an informed decision alone.

1983 City of Akron v. Akron Center for Reproductive Health is one of the cases pointed at by most abortion judicial scholars. It challenged an Ohio law which put a number of limiting requirements on women seeking an abortion namely: a woman must wait 24 hour between the initial appointment seeking an abortion and the actual abortion, minors under the age of fifteen must have parental consent unless otherwise granted by the court, all abortions in the second and third trimester must be performed at hospitals not clinics, the physician must fully inform the woman in order to gain informed consent prior to the procedure, this informed consent included descriptive terms of the fetus's anatomy, risks and potential complications of the procedure, and the following statement must be verbally delivered to the woman prior to the abortion "the unborn child is a human life from the moment of conception," the fetal remains must be humanely disposed of. The court found all aspects of this law to be unconstitutional. The waiting period was deemed of no value or interest to the state in terms of protecting the woman's health nor in ensuring the woman was fully informed. The part of the law dealing with how minors were to have either parental or judicial consent was in violation of Bellotti II (1979). The hospital rule post first trimester was found to not enhance a woman's health but actually impede access to abortions due to cost inflation. As a dilation and evacuation abortion mid second trimester is easily accomplished in an

outpatient facility with rare if ever complications a hospital was deemed unnecessary and an impediment. Likewise, the extensive counseling requirement for informed consent was also deemed an unnecessary impediment to a woman seeking an abortion. Lastly, the requirement that a physician verbally state, "the unborn child is a human life from the moment of conception," invaded the physician's judgement and was meant to dissuade a woman from having an abortion.[8]

1983 Planned Parenthood of Kansas City, Missouri v. Ashcroft, the Missouri legislature passed a law which required once more all second and third trimester abortions to take place in hospitals and no longer outpatient clinics, minors under the age of eighteen would have to have consent either parental or judicial to acquire an abortion, two physicians would have to be present when an abortion of a viable fetus was to be performed, and a pathologist must report on every abortion. Similarly, to previous cases particularly citing City of Akron v. Akron Center for Reproductive Health (1983), the court ruled that a hospital was not necessary for an abortion rather an out-patient clinic is more than capable and should be able to perform abortions. Citing Bellotti II (1979), the Court once again ruled that the requirement for parental consent for minors was constitutional because the judicial bypass alternative contained did abide by the standards set forth in Bellotti II. The ruling also concluded that the requirement of two doctors "served the state's interest in protecting potential life after viability." Lastly, as a pathology report is not terribly expensive it would not place an undue burden on the woman seeking an abortion and would potentially inform her of any health concerns leaving it constitutional.

[8] In 1992 Planned Parenthood v. Casey, the court overruled several of these findings

1986 Babbitt v. Planned Parenthood of Central and Northern Arizona, the Federal Court of Appeals for the Ninth Circuit negated an Arizona law which made grants of state funds for family planning to organizations which also provided abortions illegal. In the opinion, the court stated the law would be legal if it could establish that the only way to prevent state funds from aiding abortions is by not funding these organizations. The Supreme Court affirmed the ruling without offering an opinion and as the state could not provide such evidence the law was stricken.

1986 Thornburgh v. American College of Obstetricians and Gynecologists, Pennsylvania Section, this case challenged the law passed by Pennsylvania legislature entitled the Abortion Control Act in 1982. This law required women be given an information packet provided by the state which included materials describing the fetus, physicians must use the technique which would likely case the fetus to survive unless it would "significantly" cause greater risk to the woman's health in in abortions where the fetus was viable outside of the womb. Two physicians would have to be in the room when an abortion was performed on a viable fetus. One parent's consent or judicial consent was sufficient for a minor to obtain an abortion. Abortion servicers would have to provide detailed records on any abortion that would be available via public record. The information packet was struck down as it inhibited a physician's discretion and it was designed to dissuade a woman from obtaining an abortion. The limitations on physicians to use the technique which would most likely enable a fetus to survive was struck down due to the increased risk for the woman's health for that of the fetus's survival. The two-physician rule was stricken because it did not leave room for exceptions during emergencies. The reporting rule was ruled unconstitutional because it could lead to the woman's name being disclosed which is a violation of her right to

privacy. Lastly, the question on parental consent was remanded to a lower court for further deliberation.[9]

1989 Webster v. Reproductive Health Services challenged legislation passed in Missouri in 1986 which asserted that life begins at conception, public funds were not to be used for counseling women who were seeking an abortion for any means other than life-saving measures, public facilities were not to perform abortions unless absolutely necessary to save a woman's life, and physicians prior to performing an abortion after twenty weeks would have to perform tests to determine the survivability of the fetus outside of the womb. The Court ruled 5-4 that as the assertion that life begins at conception would not impact the availability and accessibility of contraceptives nor abortion that it could stand. However, if such language was used in the future to try and restrict these protected practices this could be challenged once more. None of the justices were willing to address the issue of public funds within this case. They ruled the state could use funds to promote an agenda that is pro-life in such places as public hospitals. Viability tests were also upheld as they were considered to not require "imprudent or careless" tests.

1990 Ohio v. Akron Center for Reproductive Health challenged an Ohio law from 1985 which insisted on parental notification for all minors seeking an abortion more than twenty-four hours prior to the procedure. The law did allow for judicial bypass, however, the Sixth Circuit Court of Appeals ruled there were several aspects including the twenty-four-hour timeline as burdensome to the minor and thus unconstitutional. The Supreme Court overruled the Sixth Circuit Court of Appeals and

[9] Once more, Planned Parenthood v. Casey (1992), the court overruled several of these findings

held that the parental notification of one parent with allowances for judicial bypass met the standards of the constitution. This included direct informing of at least one parent by the physician and a wait time of up to three weeks for a judicial bypass for the minor.

1991 Rust v. Sullivan/State of New York v. Sullivan called into question federal regulations from 1988 which eliminated counseling and abortion referrals and made any public programs unable to advocate for abortion which received Title X funding under the Federal Public Health Service Act of 1970. Recalling the idea that public funds could be prohibited from being used in facilities or programming "where abortion is a method of family planning," The Supreme Court upheld the regulations and in the opinion wrote specifically that the regulations did not violate the First Amendment of the Constitution because the government does not have an obligation to pay for abortions nor publicity for abortions and in addition the lack of funding for such things did not impede any individual's rights.

1992 Planned Parenthood of Southeastern Pennsylvania v. Casey in 1989 Pennsylvania legislature passed the Abortion Control Act which while allowing for emergency exceptions required a twenty-four hour waiting period, state-mandated information packets to be given to each woman seeking an abortion which detailed information about abortions and fetal development, married women to inform their husband of seeking out an abortion, minors must have one on-sight parental consent or judicial waiver, every physician or facility which offers abortion to submit an annual report detailing the abortion performed that year which should include specific names of patients. In this ruling, while the Supreme Court upheld Roe v. Wade, it also created a new standard of review which opened the door for restrictions on abortion before the fetus is able to survive outside of the womb as long as an undue burden was not placed

on the woman. An undue burden was further defined in the opinion as being when the purpose of effect of a legislation present a "significant obstacle" to the woman seeking an abortion. In this particular ruling, the only aspect of the Abortion Control Act which was held as an undue burden ended up being the husband consent required by a married woman seeking an abortion.[10]

1993 Cray v. Alexandria Women's Health Clinics an injunction was placed against Operation Rescue's anti-abortion demonstration which spurred this case. Operation Rescue was promoting the blockade of multiple clinics in Washington D.C. and an injunction citing an 1871 civil rights statute was handed down which made private conspiracy to violate constitutional rights illegal. Operation Rescue challenged the statues claiming no constitutional rights were violated. The Supreme Court ruled in favor of Operation Rescue saying that the activist's actions did not impede the civil rights statute because the statute specifically accounts for actions motivated by "class-based discriminatory animus against women" and their protests were specific to abortion not women.

1994 National Organization for Women v. Scheidler a suit against anti-abortion agencies was brought forth by the National Organization for Women citing the federal Racketeer Influenced and Corrupt Organizations Act of 1970 for unlawful blockades and harassment of reproductive health clinics. The National Organization for Women argued that these actions were a national conspiracy to limit access to safe abortion services for women by attempting to drive these clinics out of business. The U.S. Court

[10] It is important to note that in so ruling in Planned Parenthood of Southeastern Pennsylvania v. Casey (1992), the Court overturned parts of City of Akron v. Akron Center for Reproductive Health and Thornburgh v. American College of Obstetricians and Gynecologists

of Appeals for the Seventh Circuit ruled that this case could not proceed as the Racketeer Influenced and Corrupt Organizations Act of 1970 only applied to activities seeking to gain economically. The Supreme Court overruled the Court of Appeals and mandated that the Racketeer Act could apply more broadly than economic gains.

1994 Madsen v. Women's Health Center an injunction was placed against an anti-abortion protest group which the group argued was against their First Amendment rights. The injunction made it to where the protest group was not allowed within thirty-six feet of the Melbourne, Florida clinic property, they were not allowed to make noise nor use visual displays which could be heard or seen within the clinic, and they were not allowed to approach any patients or personnel. The Supreme Court ruled the buffer zone did not infringe on the group's First Amendment rights nor did the noise ban, however, the Court did make an allowance for visuals that could be seen inside the clinic.

1997 Schenck v. Pro-Choice Network of Western New York was another case which challenged an injunction based on First Amendment rights. In this case, an injunction was ordered which prohibited protesting activities in a fixed buffer zone within fifteen feet of a clinic's entrances including driveways and parking lot entrances as well as facility doors, a floating buffer zone around any person or vehicle of fifteen feet entering or leaving the clinic, cease and desist provisions which made it to where only two counselors could approach potential patients along the sidewalk outside of the buffer zone but they must leave the potential patient or staffer alone if requested. The Supreme Court found in favor of the injunction stating that the government has invested interest in public safety and a woman's ability to access pregnancy counseling. While the fixed buffer zone was upheld the floating buffer, zone was found to be

unconstitutional because it caused undue burden to the freedom of speech which went beyond the government's interest in public peace.

1997 Mazurek v. Armstrong argued against a Montana law which stated only physicians and not physician assistants could perform an abortion. The U.S. Supreme Court upheld the law reiterating that there was no undue burden placed on women seeking an abortion by limiting abortion providers to physicians.[11]

2000 Hill v. Colorado was a case challenging a Colorado statute which forbade an individual to approach anyone within one hundred feet of a healthcare clinic with the express purpose of providing that person with a leaflet or engage in protest without express consent. The Court narrowly ruled that the statute did not disregard the First Amendment as it did not impact the content of speech but rather left ample opportunities to communicate within the statute in place.

2000 Stenberg v. Carhart challenged an abortion ban in Nebraska. As the ban did not allow for any exceptions not even when the woman's life was in danger, the Court found the ban unconstitutional. The Court further stated that the ban placed an undue burden on a woman seeking an abortion because it eliminated the Dilation and Evacuation procedure which is the most common form of second trimester abortions.

2006 Ayotte v. Planned Parenthood of New England is a case where the ACLU sought an injunction against a newly enacted Parental Notification Law passed in New Hampshire. This law required that anytime a minor sought an abortion, the parents must be notified prior to that procedure. Exceptions being if the minor's life were at risk, by court order ensuring the minor is mature and has given informed consent, or if for some

[11] This law was later overturned by the Montana Supreme Court in Armstrong v. Montana

reason parental notification were not in the best interest of the child as deemed by the court. Further requirements of the law included the court hearing be anonymous and take place off-record with a ruling made within seven days, the minor must wait forty-eight hours between consent and the abortion itself, any physician performing abortions in violation of this law were subject to misdemeanor charges as well as potential civil charges from the parents. The New Hampshire law was repealed a year later which halted any further proceedings.

2007 Gonzales v. Carhart challenged a federal ban on partial-birth abortions enacted by Congress in 2003. The Court ruled that as abortions are available earlier in the pregnancy term, a ban on partial-birth abortions was not an undue burden and thus the law was constitutional. This is one of the first limits on abortion practices allowed by the Court since Roe v. Wade.

2016 Whole Women's Health v. Hellerstedt initiated in Texas at the Whole Women's Health Clinic, this case also had bearing in Minnesota as both legislatures passed laws which regulated clinics providing abortions to pass the same health and safety standards as other surgical centers which performed outpatient procedures. In addition, physicians performing said abortions were required to have hospital privileges. The Supreme Court reversed the law and cited that the law caused an undue burden to the right to abortion.

State Legislation Post Roe v. Wade

In reference to American federalism, Justice Louis D. Brandeis stated, "It is one of the happy incidents that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of

the country" (New State Ice Co. v. Liebmann, 285 U.S. 262 (1932) (Brandeis, J. dis. op.). Once Roe v. Wade was decided in 1972, state legislation on abortion increased dramatically. Challenges to that legislation through the court system then ensued. Due to the supremacy clause in the United States Constitution, states are not able to enact legislation in direct conflict of Roe v. Wade, however, states are still free to enact new abortion laws outside of the direct ruling in Roe v. Wade. Table 3.2 shows the breakdown of abortion laws by state prior to Roe v. Wade.

Table 3.2 Abortion Allowance Laws by State Prior to Roe v. Wade

For any reason (4 states)	To protect the woman's physical and mental health (13 states)	To preserve the woman's life and in cases of rape (1 state)	Only to preserve the woman's life (29 states)	Prohibited all abortions (3 states)
Alaska	Arkansas	Mississippi	Alabama	Louisiana
District of Columbia	California		Arizona	New Hampshire
Hawaii	Colorado		Connecticut	Pennsylvania
New York	Delaware		Idaho	
Washington	Florida		Illinois	
	Georgia		Indiana	
	Kansas		Iowa	
	Maryland		Kentucky	
	New Mexico		Maine	
	North Carolina		Massachusetts	
	Oregon		Michigan	
	South Carolina		Minnesota	
	Virginia		Missouri	
			Montana	
			Nebraska	
			Nevada	
			New Jersey	

For any reason (4 states)	To protect the woman's physical and mental health (13 states)	To preserve the woman's life and in cases of rape (1 state)	Only to preserve the woman's life (29 states)	Prohibited all abortions (3 states)
			North Dakota	
			Ohio	
			Oklahoma	
			Rhode Island	
			South Dakota	
			Tennessee	
			Texas	
			Utah	
			Vermont	
			West Virginia	
			Wisconsin	
			Wyoming	

Table 3.1 page 75 Abortion and American Politics Craig and O'Brien

The year after Roe v. Wade, more than 260 bills were introduced across state legislatures with 39 enacted (Blake 1977). Along with the surge of [state level] abortion legislation came a wave of challenges in the courts (Ruben 1982). As the "Burger Court's ruling fell far short of making 'abortion available on demand' in every state, and it met with open resistance in various part of the county," making state courts a perfect vignette in which to study case outcomes and public opinion on abortion (Craig and O'Brien 1993).

State laws were enacted requiring parental consent for minors, informed consent by husbands for married women, outlawing abortion advertisement, decreasing or banning state funding for public clinics and hospitals which performed abortions which were not medically necessary to save the woman's life. According to O'Brien and Craig (1993) for the most part, states fell into five categories:

1. Healthcare: States required clinics to report the number of abortions performed on their premises, in addition abortions could only be performed by licensed physicians.
2. Advertisement: States maintained their bans on abortion advertisement.
3. Viability: States required doctors to try to save the life of an aborted fetus
4. Consent: States required spousal consent, woman's informed consent, and parental consent for minors.
5. Funding: States denied public funding for clinics and hospitals performing abortions.

For the 16 years post Roe v. Wade, "38 states adopted new health regulations governing abortions. Most required abortions to be performed by licensed physicians and in licensed clinics or hospitals. All but five of those [38] states required performers of abortions to report them to public health authorities as did five additional states" (O'Brien and Craig 1993, 80). By limiting availability of abortions, these 38 states were toeing the line of Roe v. Wade. An additional 6 states pushed back at Roe v. Wade more directly, by passing legislation prohibiting abortions unless performed in order to save a woman's life, in cases of rape and/or incest, and fetus abnormality. This shows that while Roe v. Wade was decided at the highest level of court, much debate and

turmoil happening within state government. Table 3.3 shows the change in state legislature on abortion by 1989.

Table 3.3 New Abortion Restrictions by State by 1989

No Restrictions (16 States)	**Parental Notification required for Minors (12 States)**	**Parental consent required for minors (14 States)**	**Spousal notification required (in addition to laws for minors) (8 States)**
Connecticut	Arkansas	Alaska	Colorado
District of Columbia	California	Alabama	Florida
Iowa	Georgia	Arizona	Kentucky
Hawaii	Idaho	Indiana	Montana
Kansas	Maine	Louisiana	South Carolina
Michigan	Maryland	Mississippi	South Dakota
New Hampshire	Minnesota	Missouri	Utah
New Jersey	Nebraska	New Mexico	Washington
New Mexico	Nevada	North Dakota	
New York	Ohio	Pennsylvania	
North Carolina	West Virginia	Tennessee	
Oklahoma		Wyoming	
Oregon			
Texas			
Vermont			
Virginia			
Wisconsin			

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These controversial laws show the dissent amongst the states. In addition, the makeup of the United States Supreme Court would change with the addition of Sandra Day O'Connor in 1981. This change seems to have been a possible fuel for added challenges to Roe v. Wade. The first full test of the Supreme Court's new makeup in terms of abortion came with Akron v. Akron Center for Reproductive Health. The resulting majority opinion concluded that states could require informed consent, but they could not mandate what informed consent was in detail as that would adversely interfere in the patient-doctor relationship. O'Connor dissented along with Justices Rehnquist, and White. The dissenters argued that Akron's requirements for informed consent were not in direct conflict with Roe v. Wade and privacy. Rather just because the restrictive informed consent might be "unduly burdensome" as the majority opinion states, that does not interfere with the ruling on privacy provided by Roe v. Wade.

Even more controversial than spousal consent was parental consent legislation. Pro-life groups jumped on this topic as a way to curb the impact of Roe v. Wade and limit accessibility of abortions. Further, legislators were apt to vote for this as they could then appease the electorate on both sides of the debate by claiming they were not for "abortion on demand" but were still against denying a woman's right to choose an abortion. Such was the case in Massachusetts where just two years post Roe v. Wade the legislature overturned a governor veto to pass a statute "to protect unborn children and maternal health within present constitutional limitations." By doing so, unmarried minors were required to get the consent of both parents prior to having an abortion. Should the minor be unable to achieve both signatures, they could appear before a judge and obtain a court order. Immediately after this legislation was enacted it was challenged in court by both doctors and four pregnant girls. They cited the Fourteenth

Amendment's guarantee of due process and equal protection claiming this new legislation allowed for a parental veto. As the initial suit was heard in federal court, by the time it made its way to the United States Supreme Court in Bellotti v. Baird, the Court ruled the lower court should have abstained from a decision until the initial suit could be heard in state court.

CHAPTER 4: Under Pressure: The Effects of Public Opinion on Abortion on Abortion Case Judicial Decisions

Does public opinion impact the judicial decision-making and outcomes of state high courts? That is the primary question examined in this dissertation, through the aid of a variety of analytical lenses. In this chapter I will address the subject broadly to create a foundation from which we may better be able to understand the nuances of this issue. I intend to analyze whether salient public opinion regarding abortion significantly impacts judicial decisions on abortion cases over time.

Consider this: what is a politician's main goal? I would argue that the primary directive of a politician is to be reelected, thus ensuring their continued presence—much like it has been argued that animals' main concern is to reproduce, and thus ensure the propagation of their species. If this is indeed the case, then how should that goal be accomplished? Presumably by ensuring a measure of approval from those responsible the judge should maintain their seat. By that token, judges ought to be deferential to the public's opinion when the possibility of public reprisal, would be such that their subsequent measure of approval would not meet the minimum required to maintain that seat in the next election cycle.

Let us likewise consider the goal and acknowledged omnipresent sword of Damocles haunting every politician seeking or currently in office; that is, to get elected and/or reelected. Schlesinger (1966) defined political ambition as the three distinct goals a political actor might have: progressive, static, or discrete. Progressive ambition indicates a desire within the actor in question to move up to a higher office, static describes a desire to maintain a current office and retain again it in any subsequent elections, and discrete may be applied to those whose only desire is to finish out their

current term fulfilling the duties of their office. In cases where a politician has only a discrete ambition it is conceivable that, because they do not intend to seek reelection, public opinion—the route to public approval—would not impact their decision making. A judge not seeking reelection or reappointment is unlikely to alter their behavior based on the whims of their audience. Similarly, to Schlesinger's (2012) progressive argument that political actors modify their behavior based on their political ambition, Black and Owens (2016), as well as Budziak (2013), found that Court of Appeals judges changed their behavior when they discovered they were up for consideration for appointment to the United States Supreme Court. However, for the purposes of studying the decision-making habits of state high court judges, the most pertinent of Schlesinger's three ambition theories of concern to us is static, as it is likely the most pervasive form of ambition applicable for this study of judicial institutions and judicial behavior.

Assuming that judges desire reelection, we would expect that public opinion would be an important influence over judicial decision-making. This, then, is the brief but poignant argument on which this study is based. Indeed Baum, Gray, and Klein (2017) state that the "prospect of facing voters in the future may influence justices' votes and opinion by leading them to take positions that they perceive as popular and, in particular, to avoid taking positions that the electoral opponents could use to attack them in a campaign" (195). For instance, an incredibly detailed ruling on the anemone (a plant like sea creature found often on coral reefs) that no one had ever heard of, nor considered prior however deep and important it's impact on environmental policy, would not represent high value political fodder for a commercial to ramp up the public at the polls.

Whether this accountability to the public is good or bad has been the subject of considerable debate and reveals the tensions between two important concepts: accountability and independence of the courts. Hall (1994) and Shugarman (2012) argue exactly this point: that judicial elections lead to accountability but decrease independence, while appointments increase independence but decrease accountability. That is the tradeoff between accountability and independence. While most judges at the high court level come to their initial post via appointment, due to a vacancy on the court, they typically face an initial retention election and continue to do so every election cycle after, so long as they continue to seek the office (Atkins and Glick 1974; Nagel 1973; Baum 2006). Extensive scholarship has found that the role of retention elections, or second terms on elections are in fact the primary factor which should be of interest to scholars, as the initial election is not seen to bear a large impact on their decisions (Alozie 1988, 1990, 1996; Bratton and Spill 2002; Canon 1971; Cook 1984; Dubois 1983; Dudley 1997; Emmert and Glick 1988; Esterling and Andersen 1999; Flango and Ducat 1979; Glick and Emmert 1987; Graham 1990; Hurwitz and Lanier 2003; Jacob 1964; Kritzer 2016; Tokars 1986).

What About Us? Public Opinion's Influence on Elected Judges

The only way to win an election and retain an elected seat is to garner public support via votes at the polls; thus, in judicial elections, the public has everything to do with it. This is where the electoral effect comes into play; you may remember this term coined in an earlier chapter, in which I affectionately define it as the effect of the public opinion on a political actor when that actor is required to garner enough votes in an election to maintain their office. In essence, when a judge's job is beholden to the

electorate, it is likely that her behavior will be influenced by the desire to maintain their office.

There is much scholarship indicating that the success of a democratic society hinges on its ability to make the political actors beholden to the public they are sworn to serve (Franklin and Kosaki 1989). Indeed, as the weakest branch (i.e. without the direct ability to enforce their rulings), Bickle (1962) argues that judges are not actually able to dissent from public opinion. This little paradox has the potential to lead to a majoritarian dilemma as described by Croley (1995), who argues that elected judiciaries are subject to majority whim—which can cause a lack of care for minority rights. Similarly, Pozen (2008) wrote that directly elected judges are subject to punishment by the public, by way of losing the vote necessary for reelection—and thus their seat—if they do not bow to public opinion.

However, consider whether the modern American public is informed enough or attentive enough to judicial decisions to punish judges at the polls? Schaffner and Diascro (2007) argue that judicial elections are very low-information elections with a high incumbency advantage, so perhaps this implied threat of reprisal has no real teeth? While, because of its obscurity, case law or the voting record of a low-level judge, such as a local municipal judge, may not be of interest to the public, Baum (2003) found that abortion is a highly salient topic across all areas of the public consciousness. This, in addition to the growth of judicial campaigns, would lend itself to the argument that the public can, and would both provide and follow through on the implied threat of reprisal on such a salient issue. Given the general low salience of judicial elections even at the state supreme court level, I argue that if judges do heed public opinion, that it will be

on a highly salient issue like abortion. Therefore, I have chosen to study the effects of public opinion on state supreme court justices' rulings on abortion cases.

How might the public's views on abortion shape judicial decision-making? Caldarone, Canes-Wrone, and Clark (2009) demonstrated that state high court judges' positions on abortion cases were affected by the public's opinion on abortion at the time of the case. Further, as Brace, Hall, and Langer (1999) observed, most abortion policy debates occur at the state level, with state level actors typically involving the courts. In fact, quite often courts serve as the arbiters of abortion policy at the state level (Caldarone, Canes-Wrone, Clark 2009). Additionally, abortion is an intensely polarizing topic on which both major political parties, Republicans and Democrats, have staked a claim and vehemently disagree. The Republican Party is supportive of a pro-life stance—which is considered regressive as it applies to abortion policy. Meanwhile the Democratic Party has taken up the pro-choice movement, which is considered progressive on abortion policy. I define a regressive stance on abortion policy as those policies that inhibit access to abortions while a progressive stance pushes to make abortions more accessible. Examples of such regressive stances would include requiring hospital grade lighting for abortion clinics which in Texas shutdown the vast majority of clinics until challenges in the courts and requiring a minor to have parental consent to obtain an abortion. Voters can assume within reason that a Republican candidate is more pro-life (regressive) towards abortion while a Democratic candidate leans more pro-choice (progressive) towards abortion policy (Caldarone, Canes-Wrone, Clark 2009). Adams (1997) claims this hardline division in the parties began with former United States President Ronald Reagan, as well as other political elites of that era, and has only intensified to this day. In either case, since the early 1980's the line

in the sand has been drawn and both parties have camped atop their chosen hilltop. As this divisive line has been drawn it is low cost for both campaigns to inform the public of a candidate's stance on abortion and a low cost for the electorate to absorb. Thus, as the public's attitudes on abortions become more liberal, I expect the state's high court rulings on abortion to be more progressive or granting greater access to abortion. Thus, I present my first hypothesis:

H1: As the public's attitudes on abortions become more liberal (conservative), the state supreme courts' rulings on abortions will become more progressive (regressive).

Along these lines, scholars have long debated the influences which drive judicial decisions. Three primary models have arisen with the latter two being the most commonly accepted by scholars. The Legal Model which argues the law is the influencing factor and there is one correct answer that legalists are to find (Markovits 1998, Greenawalt 1992). The Attitudinal Model asserts that judges are influences by their preferences (Segal and Spaeth 2002). And the Rational Choice Model which contends that judges are rational actors who make strategic decisions (Epstein and Knight 1998). In order to study the effects of individual judge preferences, I utilize the scaled ideal point measure set forth by Windett and Hall (2014). This dynamic measure allows for changing judicial preferences over time. Previous scholarship has been limited by either insufficient measures such as judicial political party affiliation or measures limited by time such as Brace, Langer, and Hall's (2000), Party Adjusted Surrogate Judicial Ideology Measure which while an excellent and flexible measure, is

only available for a few years. The Rational Choice Model includes an element of strategy. It would seem plausible that as rational elected actors, judges would be strategic in their ruling in order maintain their seat. Indeed, Windett and Hall (2014, p. 439) surmised, "This variation in dissent rates may be an indication that something beyond judicial interpretation is driving these differences; judicial decision making in these states may be influenced by reelection concerns." As the electorate is ultimately the determining factor in whether a judge is reelected, a certain level of appeasement is to be expected. This study uses public opinion as a key independent variable in order to determine the amount of deference judges employ. As both strategy and preference may play a role in judicial decision making, I interact these terms to better understand if there is a conditional relationship between the two forces. When judicial preferences and the public opinion align, I expect to see greater returns which is shown in my second hypothesis:

H2: The influence of judicial preferences on judicial decisions is conditional on public opinion of abortion in abortion cases.

It Ain't What You Do, It's the Way You Do It: Methodology

This study builds and expands upon the dataset first produced by Caldarone, Canes-Wrone, and Clark (2009) which codes all cases on abortion from 1980 to 2006 for states in which there was a contested judicial high court election during that time. I expand this dataset from 1980 to 2018 and add cases which were not originally included in the Nexis search. I maintain 1980 as the start-point for the data using the same theoretical framework as the original authors since the division amongst the political parties cited

by Adams (1997) began during this time and thus by beginning in 1980 I am examining one similar era where pro-life and pro-choice are easily identifiable by the electorate at the polls. This dataset is limited to contested election states only and does not include retention elections in which a judge maintains their office if they simply reach a minimum percentage of the public vote without an opponent on the ballot. This ensures that retention elections are not combined with the nonpartisan elections in the results. Further, these are state-wide elections excluding any elections, which district are based due to the lack of public opinion data available and the lack of comparability between a statewide electorate and a local one. Table 3.1 shows the states and years for which a contested election for a state high court seat was held.

Table 4.1 States with Contested Elections 1980-2018

State name	Years with contested elections
Alabama	1980-2018
Arkansas	1980-2018
Georgia	1980-2018
Idaho	1980-2018
Michigan	1980-2018
Minnesota	1980-2018
Montana	1980-2018
North Carolina	1980-2018
North Dakota	1980-2018
Nevada	1980-2018
New Mexico	1980-2018
Ohio	1980-2018
Oregon	1980-2018
Tennessee	1980-1993, 2008-2014
Texas	1980-2018
Utah	1980-1985
Washington	1980-2018
Wisconsin	1980-2018
West Virginia	1980-2018

*Ballotpedia

Calderone, Canes-Wrone, and Clark's (2009) original dataset utilized LexisNexis and Westlaw searches for cases which encompassed the design or implementation of abortion policy as the primary feature. They searched all cases in Westlaw for abortion and abortion-related cases in the Westlaw category of trespass. In addition, they searched LexisNexis for the general term "abortion" and excluded criminal code cases due to the overwhelming volume when conflated with homicide. Lastly, they searched for the key terms, "wrongful death" and "fetus." The researchers found an initial total of 2543 cases. I expand this search to include criminal cases by limiting the search parameters to "atleast2abort." This enabled me to find and code cases which are highly relevant to abortion policy particular across states with two courts of last resort such as Texas which distinguishes between civil and criminal law proceedings respectively. I also expand the search parameter beyond the initial year set of 1980-2006 to 1980-2018 and add several search terms based on research conducted by Pacheco (2014) to include "unborn," "parental consent," and "spousal consent," which yielded an additional 305 judicial decisions. Table 3.2 shows the comparison between the original dataset produced by Calderone, Canes-Wrone, and Clark (2009) and the additions made by me.

Table 4.2 Comparing Datasets

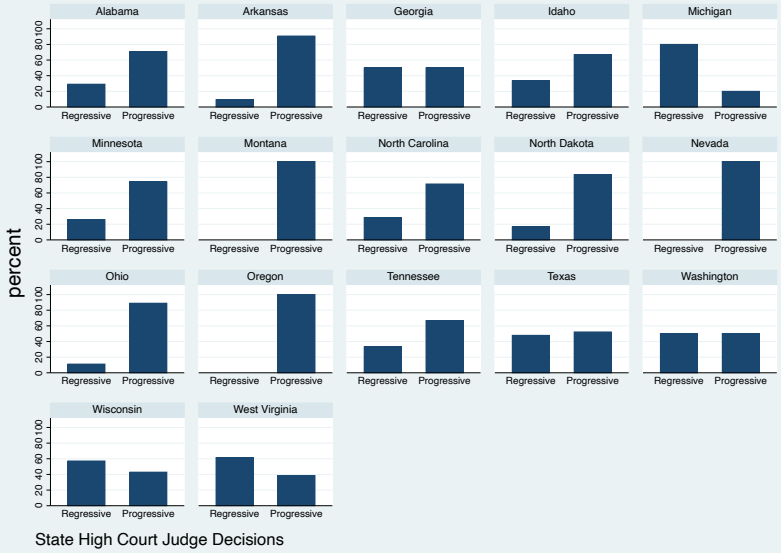
Dataset	**Number of Total Judicial Decisions**
Calderone, Canes-Wrone, and Clark (2009)	2543
Expanded Dataset	2848
Total difference: 305 (12%)	

The expanded search parameters and additional years increased the number of judicial decisions by 305 decisions (12%). An example of this is Anonymous, 720 So. 2d 497 heard in the Supreme Court of Alabama. This case provides an example in which the terms "unborn," and "termination" are used in place of "fetus" and "abortion."

I hand coded the case outcomes for whether the court made a regressive decision towards abortion policy or a progressive decision in which abortion rights are expanded towards abortion policy[12]. Overall, 34% of decisions in my dataset contained regressive court decisions and 66% of the decisions in my dataset were progressive decisions. Figure 4.1 shows the percentage distribution of regressive and progressive decisions across the states.

[12] I also ran the model using an index allowing for variance on remanded to a lower court, mixed decisions (i.e. agreed with the substantive aspects on the abortion policy but disagree on the implementation for example: a judge may agree that abortions should only be allowed to occur in a hospital setting but also argue in their decision that x number of facilities should be present per square mile), vacate the case, vacate and remand, reverse, reverse and remand, the results held across all models.

Figure 4.1 Distribution of High Court Judges' Decisions on Abortion Cases



In Figure 4.1 it is interesting to view the trends over the last forty years of judicial decisions in percentage regressive and progressive on abortion policy. Several states are fairly similar on the outcomes: Georgia, Texas, and Washington. Meanwhile, there are other states which show a large proportion of progressive decisions: Alabama, Arkansas, Idaho, Minnesota, North Carolina, North Dakota, Ohio, and Tennessee. With these states being typically prone to lean republican, it is surprising to see such a progressive leaning in abortion case outcomes. Not surprising, both Wisconsin and West Virginia with a higher percentage of regressive judicial decisions over progressive decisions. To give some insight into the coding here is an example. Ex parte Anonymous, 808 So. 2d 1025, which took place in Alabama in 2001. In summary, a

minor sought an abortion without parental consent the Supreme Court overturned the lower court finding and granted the abortion. Each judge decision that ruled in favor of the plaintiff was coded as progressive while each decision in favor of the lower court was coded as regressive. What is also interesting in Alabama from Figure 4.1 is that the expectation is for the majority of decisions to be regressive due to the state's typical Republican nature, however, the opposite is true in the case of judicial decisions on abortion. What I found while reading through these cases, is that many of these cases deal with minors in similar situations as the case mentioned above or women seeking an abortion without spousal consent, rather than general abortion policy which could account for the swing towards progressive decisions exemplified above. Similarly, other states seem to follow this trend as well.

Over time, scholars have proposed a variety of ways to measure public opinion at the state-level for instance: polls, newspaper articles, media traction. Indeed, Calderone, Canes-Wrone, and Clark (2009) utilize New York Times articles and regress affirmative responses for the General Social Survey upon CBS-New York Times surveys. This disaggregation was popularized with Erikson, Wright, and McIver (1993) and has previously dominated the literature. This technique "pools large numbers of national surveys and then disaggregates the data so as to calculate opinion percentages by state" (Kastellec, Lax, and Phillips 2016, p. 1).

To account for these limitations, additional measurement techniques have taken center-stage since this original study: namely Multilevel Regression Post-Stratification (MrP) which vastly outperforms disaggregation by yielding more robust and accurate measures across small and medium samples (Lax and Phillips 2009). This technique provides unbiased and reliable measures of public opinion at the state-level from

national level polls. While this method was originally studied in the 1960s by Pool, Abelson, and Popkin (1965), Park, Gellman, and Bafumi (2006) brought it back to the forefront of public opinion studies. Kastellec, Lax, and Phillips (2016), utilize MrP to measure public opinion at the state level. Similar to disaggregation, MrP uses national survey data, however, instead of simply regressing this on another measure,

> MrP begins by using multilevel regression to model individual survey responses as a function of demographic and geographic predictors partially pooling respondents across states to an extent determined by the data. Finally, it utilizes poststratification, in which the estimates for each demographic-geographic respondent type are weighted (post stratified) by the percentages of each type in the actual state populations
>
> - Kastellec, Lax, and Phillips 2016 p. 1

While this study uses data from both the General Social Survey and American National Election Survey, Lax and Phillips (2009) demonstrate that MrP can produce unbiased and reliable state-level public opinion estimates with just one national survey source as well (see Lax and Phillips (2009), Figures 1, 2, and 5). One of the greatest assets to MrP over traditional disaggregation is the ability to handle temporal shifts accurately which is highly valuable when studying public opinion overtime (Pacheco 2011).

In order to utilize MrP, I gather repetitive surveys from both GSS and ANES on abortion as set out by Pacheco (2014). I use and update the measures within Pacheco (2014) from 1980-2011 to 1980-2018 for the full thirty-year spectrum. Using the same benchmarks as Pacheco (2014), I use the General Social Survey and National Election

Survey which consistently gathered responses using the same question on abortion which the proportion of those is who favored legalization of abortion in any circumstance verses those who did not during this time period. Table 3.3 shows the descriptive values for abortion: mean, variance, standard deviation, and percentage variance explained at the state and year level. This measure is a continuous variable with a range of 0-1 [0=pro-life/regressive, 1=pro-choice/progressive]. On average, support for pro-choice is approximately 40% across the states as a whole with a standard deviation of 0.09. This shows that the large majority of state pro-choice public opinion on abortion falls between 30%-50%. On average public opinion remains fairly stable over time with a standard deviation of just 0.06.

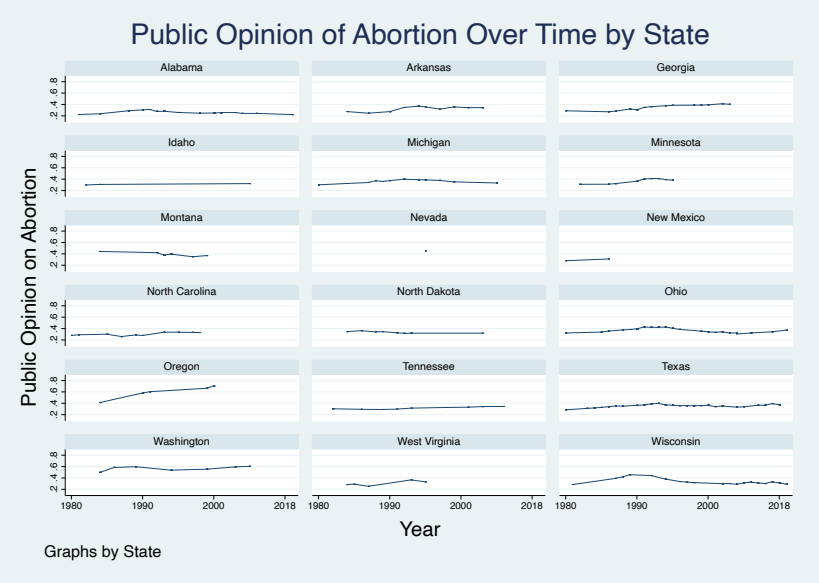
Table 4.3 Descriptive Information for State Public Opinion of Abortion Across States and Years

Public Opinion on Abortion 1980-2018	Mean	Variance	Standard Deviation	% of Variance Explained	Average interitem correlation in changes in public opinion
Overall	0.41	0.01	0.1		0.01
Across States		0.01	0.09	73%	
Across Time		0.002	0.06	26%	

Figure 4.2 shows the breakdown of state public opinion of abortion over time. As would be expected, public opinion on abortion is fairly stable across the majority of states. Oregon, however, stands out as having a very high increase in progressive public

opinion across the nearly forty-year span. Idaho is also an interesting state to view as it is along with Oregon trends consistently progressive while the other states with contested judicial elections fluctuate in both directions. This could be due to changes in the political, economic, or social climate within those states.

Figure 4.2 Public Opinion of Abortion Trends Across States 1980-2018



I use Windett and Hall's (2014) scaled ideal points measure for judge ideology[13] to see the impact of public opinion on the case decision controlling for the judge's preferences. Table 4.4 shows the descriptive statistics of several variables including

[13] I ran the models using common space scores, and unscaled ideology points as well and the results hold. See appendix.

Windett and Hall's (2014) scaled ideal points measure for judges deciding on abortion cases.

Table 4.4 Descriptive Statistics

Variable	Observations	Mean	Standard Deviation	Minimum	Maximum
Windett and Hall (2014) Scaled Ideal Point	2092	0.047	1.53	-4.79	5.73
Case Decision by Judge	2092	0.56	0.49	0	1

I use Case Decision for my dependent variable. It is coded as 0=pro-life/regressive 1=pro-choice/progressive. On average, judges' decisions are 56% progressive. The standard deviation is also quite small indicating that the majority of decisions are centered around this 56% mark. Similarly, across all judges, there is a centering around the "middle" for their preferences as indicated by the mean of 0.47 in the judicial scaled ideal point measure. With higher values equating to more liberal preferences and lower values equating to more conservative preferences (Windett and Hall 2014) which is the key independent variable along with public opinion of abortion by state. In order to account for change over time, I run a times series model with fixed effects. This helps to account for any heterogeneity unaccounted for in the model and allows for a study of public opinion on judicial decisions over time.

Tell Me How Truth Became So Elusive: Results

Table 4.5 presents the results of my two models. In the first model, I include the key independent variables: public opinion and the judges' ideal point. In the second model, I also include an interaction term: public opinion x ideal point to examine whether the effect of public opinion on judicial decisions is conditional on judges' ideal points. I expected to find that public opinion does indeed have a positive effect on judicial decisions in abortion cases. Furthermore, I anticipated that this effect would be conditional based on that judge's own preferences

I find support for both of my hypotheses. Public opinion on abortion has a strong and measurable impact on judicial decisions on abortion cases with 99% confidence. The positive coefficient indicates that as state-level public opinion about abortion becomes more liberal, state supreme court decision outcomes tend to become more progressive. This result is consistent with some previous studies in judicial politics (Ashworth 2012; Cassillas, Enns, and Wohlfarth 2011; Epstein and Martin 2010; Giles and Vining 2008)) which show that judges do in fact respond to public opinion. Importantly, in the first model, while public opinion was highly statistically significant, the judges' ideal point was not statistically significant. According to the literature supporting the attitudinal model, the judges' ideal point should be highly significant however, I find that to not be the case. This is inconsistent with the attitudinal model literature which contends that judicial decisions function as an outcome of that judge's beliefs and political ideologies (Segal and Spaeth 2002). These findings also contradict the legal model which argues that judges are simply mechanics applying the law. I find that in addition to the law and legal precedent, the opinion of the public plays an important role in judicial decision making in abortion cases. This is likely due to the

differences in state courts and SCOTUS for whom the original attitudinal model was applied. In SCOTUS justices are appointed for life and are thus able to vote along their personal preferences without fear of reprisal from the public. For state court judges who are elected, the threat of reprisal at the polls is very real thus the attitudinal model is difficult to apply at the state court level due to these differences. This lends credence to the rational choice model as set forth by Epstein and Knight (1998) in which the scholars argue, judges act rationally in order to achieve their goals. While Epstein and Knight (1998) centered upon the United States Supreme Court who have very different goals than elected judges, the rational choice model is quite applicable. Rather than attempting to appease the executive branch or other actors, the judges in this study must appease the public in order to be reelected. In the second model, I examine whether there is a conditional effect (hypothesis 2). The results indicate strong support for Hypothesis 2. Public opinion on abortion remains a strong influence on judicial decisions on abortion cases. However, we also see that there is a conditional effect as well. The effect of public opinion on judicial outcomes is conditional on the judges' ideal points. We also find, contrary to the first model, that the judges' ideal point is a strong influence over decisions on abortion. Judge's own belief systems and background also impact their judicial decisions as expected.

Table 4.5: Times Series Analysis of Public Opinion on Abortion and Judicial Decisions on Abortion Cases

VARIABLES	Nonpartisan	Partisan
Public Opinion	7.002	16.23***
	(4.410)	(4.979)
Scaled Ideal Point	-0.131	0.108
	(0.242)	(0.347)
Constant	-1.575	-4.166**
	(1.412)	(1.979)
Chibar2(01)	104.98	120.86
Prob>=Chibar2	0.000***	0.000***
Observations	477	291
Number of States	6	12

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Interestingly, Judges seem to adhere to public opinion on abortion when ruling on abortion cases over time. In particular we see a positive direction in the outcome of public opinion meaning that when as public opinion within a state becomes more progressive so too are abortion case outcomes likely to be progressive.

These models take into account the scaled judicial ideal points measure created by Windett Harden, and Hall (2015), which it is interesting to note are significantly impactful on a judicial decision when interacted with public opinion. This is shown in the second model where I interacted public opinion on abortion with the scaled ideal point measure. It is worthwhile to note the directionality remains constant in a positive direction. Meaning, that the more liberal a judge's background, voting record, ideology, and party identification, the more likely that judge is to vote progressively.

Also, of note is the interaction between public opinion on abortion, and the scaled ideal point of the judge. The significance and directionality hold adding to the

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causal argument that judge decisions on abortion cases are indeed positively impacted by public opinion. Not only are they impacted but public opinion may be more influential on a judicial decision than a judge's own original preferences validating my hypothesis. Meaning, that as public opinion and a judge's preference are progressive, the case outcome is most likely going to be progressive as well.

Conclusion

In this paper, I argue that public opinion will have a strong effect on judicial decisions over the issue of abortion. Using an updated dataset that consists of 18 states and 2092 judge level decisions, I find strong support for my hypotheses. This is in support of the Rational Choice Model which states actors will act in their best interest towards pursuing their goals. It is a logical assumption that elected judges would seek to retain their seat and thus be deferential towards the electorate on salient topics to that electorate of which abortion has been shown to be one. The results show just this. Alternatively, the Attitudinal Model which insists actors would pursue their own preferences does not hold, at least in such salient cases as abortion. This is seen by the lack of significance of the judicial ideal point on its own. However, when interacted with Public Opinion, we can be 90% confident in a positive relationship between public opinion and judicial preferences on abortion case outcomes. This makes intuitive sense as when a judge's preference aligns with public opinion, those preferences will significantly influence their decisions but only when aligned. This is because it is not costly to rule along one's preferences when those preferences do not go against the majority.

There are multiple questions that arise from these findings. Where does the countermajoritarian dilemma fit into judicial decisions? One argument is that the

judiciary exists to partially protect the rights of minorities, and yet we see judges deciding deferentially towards the majority to maintain power. Could this potentially be affected by the timing of the case? The next chapter will look into this question by taking into account the election cycle. This chapter will look in depth into the impact of time and will see if there is a greater impact of public opinion when an election is upcoming within two years of the case being heard. Furthermore, is there more to learn regarding the impact of judicial preferences? The following chapter will study more closely the Attitudinal Model and judicial election institutional differences between partisan judges and non-partisan judges to determine how much and what impact political party leanings has on case outcomes in the wake of public opinion.

Chapter 5: Timing is Everything: The Effects of Election Cycles on State High Court Judicial Decisions on Abortion Cases

Time is everything; five minutes can make the difference between victory and defeat.

-Horatio Nelson

Do election cycles cause judges to behave differently when an election is upcoming versus a non-election year? There is evidence to support that judicial elections have grown more competitive overtime particularly since the 1990s (Kang and Shepherd 2011, 2015; Shepherd and Kang 2014). What effect has increase in competition for judicial seats created? This study looks at case outcomes on abortion dependent upon whether there is a competitive election within two years of the case being heard along with public opinion within that state to determine what if any impact the public at the polls has on judicial decision making.

When judicial elections are discussed, the conversation inevitably turned into one of legitimacy for the court. Some judicial reform interest groups have claimed that judicial elections are problematic. Indeed Greytek et al. (2015, pg. 1) states that judicial elections, "threaten… the promise of equal justice for all." This argument stems from the majoritarian dilemma. Indeed, it would seem that the attack campaigns have been on the rise particularly for special interest groups including abortion policy groups (Trimble 2008). The major question when dealing with legitimacy and confidence in the judicial institution itself is that of impartiality. Do elections and the threat of reprisal at the polls influence case outcomes? Former United States Supreme Court Justice,

Sandra Day O'Connor has spoken out against judicial elections consistently and Justice Sonia Sotomayor has joined her chorus adding that in particular partisan elections in Alabama have, "cast… a cloud of illegitimacy over the criminal justice system" in her opinion on Woodward v. Alabama.

As courts lack the power to enforce their rulings, perceived legitimacy is of the utmost importance. Without the public upholding courts as legitimate political institutions, courts risk their decisions not being upheld (Gibson and Nelson 2015). Elections may also enhance their legitimacy by allowing the electorate to hold the judiciary accountable (Gibson 2012). For example, Bolivia implemented judicial elections to try and enhance their court's legitimacy, though they were met with limited success (Driscoll and Nelson 2015). Elections allow for the judicial selection process to occur in the public arena and thus accountability may take place by tying the judiciary directly to the public (Nelson 2017). Brooks and Geer (2007) address the concern by some pro-judicial reformers that negative campaigns may be detrimental to the judiciary, they find that in actuality these negative campaigns help to inform voters which may be a benefit overall. This is particularly likely to occur in cases surrounding salient topics such as abortion.

There is an abundant array of scholarship devoted to judicial legitimacy and the consequences of the public. This chapter focuses on the impact judicial elections have on case outcomes. I argue that judges are more deferential to the public when they are nearing an election because they are fearful of reprisal at the polls which could be enhanced by negative campaigns. I study abortion cases and case outcomes specifically as abortion is a highly salient topic for the public and one with many interest groups

invested which may use these negative campaign strategies in election cycles to promote a candidate more favorable to their position.

This chapter will first discuss judicial legitimacy and the two sides of the scholarship therein followed by a framework of the literature of judicial independence, third a detailed section on the methodology used to study the question at hand, and finally wrap up in the conclusion containing future research ideas.

Legitimacy who?

Legitimacy is what allows a political institution to make decisions and have those decisions upheld without fear of reprisal, removal, and with guaranteed compliance.

> "A psychological property of an authority, institution, or social arrangement that leads those connected to it to believe that it is appropriate, proper, and just. Because of legitimacy, people feel that they ought to defer to decisions and rules, following them voluntarily out of obligation rather than out of fear of punishment or anticipation or reward (Tyler 2006, 375).

Legitimacy is also known as institutional loyalty or diffuse support (Gibson and Caldeira 1992). When a political institution is considered generally to be legitimate that institution does not fear being overturned or dismantled but rather exists in a safety net. In addition, in the case of a court, the judge does not fear that their ruling will not be carried out. For example, many Latin American courts struggled for legitimacy throughout the 1980s and during that time it was not uncommon to have a judge lose

their position when a ruling was unfavorable in many cases towards the government in which the judge may lose more than just their position.

The types of legitimacy are well documented and not contentious within the scholarship (Cann and Yates 2008, Gibson 2008a, 2008b, 2009, Gibson and Nelson 2014; Tyler 2006). At what point do judges become illegitimate if they rule in order to maintain their elected seat by appeasing the public? There is quite a bit of literature alluding to judges' deference to the public. For example, Brace and Boyea (2004) find that elected judges are more likely to cater to the public than their appointed counterparts. Langer (2002) finds elected judges are more likely to overturn state statutes than appointed judges. Additionally, Brace and Hall (1997) demonstrate that elected judges are more likely to uphold death penalty decision. This study also finds that the longer the judicial term length the greater the effect that the individual judge's personal leanings will play out in their decisions. As timing is often considered to be everything, I ask whether there is a greater impact by public opinion on judicial decisions when the case is heard within two years of the judge's next election. From this I developed the following hypothesis:

> ***H1: State high court judges will be more deferential to public opinion when they are up for election within two years of the case being heard than when their election is further out.***

For a judge to be deferential to the public out of fear of reprisal at the polls, the public would need to be informed, but how does the public gain this information? In recent decades, interest groups have taken up the rally call therein and started to produce

campaign material detailing judge's voting records and policy stances (Baum 2003, Bratton and Spill 2002, Gibson 2008, Langer et al. 2003, Schotland 2003). Previously, judicial campaigns had avoided these particularly divisive topics and focused on the merit of the judge individually. In addition to interest groups, the mass media have increased their coverage of judicial elections and judicial candidates (Iyengar 2002, McFadden 1990). Much of the media coverage on judicial elections has focused on salient and divisive topics such as abortion and the death penalty (Geer 2006). Typically, these ads have been negatively focused and attacking in style. Hojnacki and Baum (1992) entitled this a "new judicial campaign strategy" which is focused primarily on issue-based voting at the polls by the public. Their study focused on the Ohio State Supreme Court elections in 1986 and 1988 and centered on labor campaign issues and how those issues affected voter's choice in candidate at the polls. This new campaign strategy including the judicial voting records in antagonistic campaign ads has been noted by judges (Hall 1987). Indeed, Louisiana Supreme Court justices, when interviewed, stated they feared reprisal at the polls for any decisions adverse to the majority of the public's will (Hall 1987). Such salient issues in judicial political campaigns are: abortion, criminal justice, eminent domain, tax policy, and business regulation (Baum 2003; Thevenot 2006). Thus, I arrive at my second conditional hypothesis:

> ***H2: The impact of public opinion of abortion on abortion case outcomes will be conditional on whether that judge is up for election within two years of hearing the case.***

Windett and Hall (2013) describe the selection method for judges as "becoming increasingly salient in contemporary political and policy debates. These courts have made numerous decisions that have attracted praise and hostility from federal courts, national politicians, and voters. Consequently, the membership, selection mechanisms, and organization of state supreme courts have become topics of increasing interest and controversy across the nation, as politicians, legal experts and voters debate the proper role and design of these influential institutions (p. 428)." As is evident, there is a necessity to understand the development and impact of these selection mechanism and the long-term effects they have on policy. This next section will detail the data collection and methodology practices herein to study both hypotheses presented earlier.

Miss. Independent… Miss. Self-sufficient: The Role of Judicial Independence

The question and importance of judicial independence is not one that is new. Rather, it dates back to Montesquieu in the mid eighteenth century when he posited that in maintaining judges as separate entities, independent of external influence, they are better able to "follow the letter of the law" when judging individuals. Elections are a direct challenge to judicial independence as the external influence of the public on whether a judge may maintain their livelihood is in question each election cycle. Indeed, scholars have long lamented elections in the case of judges for this very reason (Bryce 1888, Pound 1906, de Tocqueville 1831, Rottman and Schotland 2001). Indeed, Brace and Boyea (2008) state, "Justice O'Connor's observation summarizes the widely held belief that has taken on the status of truism: judicial elections influence judicial decision making (p. 360). There is much more pervasive literature considering legislatures deference to the public over that of the judiciary which is still ripe for study. Mass-elite

linkages is a common phrase used for this idea (Arnold 1990, Jones 1994, Zaller 1992). These mass-elite linkages have shown that while the legislature may be deferential to the public, they are not beholden to that public. Essentially mass-elite linkages place the actions by the elite in this case judges as the dependent variable with the electorate as the exogenous independent variable (Hurley and Hill 2003). While this simplified version has merit, scholarship has evolved to include more complexities such as the issues at hand. Similarly, to legislation, a court case is incredibly complex with many case facts and the legal factors to be considered. I include case facts as controls in order to compensate for this.

There are many parallels to draw between the legislature and the judiciary when considering mass-elite linkages. The impact of elections on decision-making being the primary aspect. The judiciary has a higher turnover rate than the legislature making it possible to conclude that the threat of reprisal is even greater for the judiciary than the legislature (Brace and Boyea 2008, Hall 2001). But do these political actors, judges, consider the public at the ballot box when making their decisions? Huber and Gordon (2004) show that when sentencing was harsher the closer to an election the case was so that the judge would be seen as "tough on crime." It stands to reason then that judges do consider the threat of public reprisal at the polls as a meaningful threat.

Further, certain areas of concern are considered "hot-button" topics for the public and have had increasing scrutiny and increased contestation in recent decades (Baum 2003, Hall 1987). The key assumption is that the topic is salient and easy for the public to comprehend. Brace and Boyea (2008) utilize death penalty cases in order to fit these criteria. I use abortion cases. Similarly, to the death penalty, abortion is a highly salient issue which makes it an excellent measure for deference of judges towards

the public. This also pulls in the Rational Choice Model literature which states, actors make rational choices in order to maintain power which in this case would equate to judges retaining their seats through an election by appeasing the electorate.

When President Bill Clinton entered office in 1996, he attempted to bridge the increasingly polarized gap on abortion by stating during his campaign that "abortion should be safe, legal, and rare." (Barringer 1992). Extreme pro-lifers' goal has been consistent in their search to end all abortions regardless of the circumstances surrounding the desire for said abortion. Conversely, extreme pro-choicers have combatted the rarity model by seeking to prevent the need for abortions through increased access to contraceptives, reproductive education, and poverty (Rose, 1993).

The United States Supreme Court decision Webster v. Reproductive Health Services, 492 U.S. 490 which upheld a Missouri law restricted the use of state funds and facilities in performing abortions and limited doctors performing abortions. Immediately following the decision, polling organizations went to measure the reaction of the public. Gallup found 55% of the electorate polled did not agree with the Court's decision to uphold the Missouri law (Gallup, July 1989). Gallup summed up the poll with this statement, "Americans remain deeply divided in their attitudes toward the abortion issue."

Elmo Roper and George H. Gallup introduced their "scientific polling measures" in the 1930's (O'Brien and Craig 1993). Prior to this, elected officials had little in the way of measurable public opinion outside of op-eds in the media. Quickly, polling methods became adopted throughout the nation and the world and have no indication of relinquishing their hold on measuring public opinion. Further nuance has been added to polling methods to include Multiple Regression Post-Stratification which this study

relies upon to break down public opinion on abortion at the aggregate level to the U.S. state level. Abortion has been continuously measured since prior to Roe v. Wade in the American National Election Survey. This easily accessed information is readily available for campaigns and interest groups who have utilized these to engage the public at the polls. This highly salient topic provides the perfect backdrop for studying mass-elite linkages in view of the judiciary and the public.

ABC 123: Data and Methodology

Building on the past literature, I study abortion cases and see if there is a difference in how judges' rule when a case on abortion is heard before the court within two years of an election in which they have a contested race verses other years without an election. I use two years as the cut point for the effect of elections as Kuklinski (1978) suggests this is the appropriate limit in his research on legislative responsiveness. I only utilize contested elections as there is less threat of reprisal from the public when a seat is uncontested (Caldarone, Canes-Wrone, Clark 2009). I utilize the definition by Caldarone, Canes-Wrone, and Clark (2009) for contested election in which they define a contested election as any election in which an opposing candidate is on the ballot. This precludes retention elections and those without an opponent. Thus, if I had included all elections the non-contested elections could potentially skew the results. In particular, by not including the uncontested, elections, I eliminate the influence of retention elections (Caldarone, Canes-Wrone, Clark 2009). Table 5.1 one can see the layout for which states and years are included as having a state high court contested election.

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Table 5.1 States with Contested High Court Elections 1980-2018

State name	Years with contested elections
Alabama	1980-2018
Arkansas	1980-2018
Georgia	1980-2018
Idaho	1980-2018
Michigan	1980-2018
Minnesota	1980-2018
Montana	1980-2018
North Carolina	1980-2018
North Dakota	1980-2018
Nevada	1980-2018
New Mexico	1980-2018
Ohio	1980-2018
Oregon	1980-2018
Tennessee	1980-1993, 2008-2014
Texas	1980-2018
Utah	1980-1985
Washington	1980-2018
Wisconsin	1980-2018
West Virginia	1980-2018

I combine and expand datasets from by Caldarone, Canes-Wrone, and Clark (2009) and Windett and Hall (2013). Using the cases identified by Caldarone, Canes-Wrone, and Clark (2009), I hand code individual judge case outcomes to be either regressive or progressive and utilize this measure as my dependent variable. Progressive (y=1) is coded as such when a case decision is a more liberal outcome on abortion, progressing abortion policy further. For example, if a judge decision was that a minor should be granted the right to an abortion without parental consent this would be coded as progressive. Whereas, if a judge disagreed and voted to not grant the minor an abortion sans parental consent, this judicial decision would be regressive. It is important to note, that this variable is at the judge decision level. Often the court does not agree so the same case will have multiple judicial decisions. In the case of an undivided court all of the judicial decisions would be labelled either progressive or regressive depending upon the case outcome or when a court of 9 judges is split it could be 4 progressive 5 regressive. This ensures that the judge level is studied and not the court panel effect. Further, I expand this dataset from 1980-2006 to include 1980-2018 as well as expand the search terms to include "unborn," "fetus," and "parental consent." This expanded the number of case judicial decisions by 305.

Table 5.2 Expanded Observations for Judicial Decisions on Abortion Cases

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Dataset	Number of Total Judicial Decisions
Calderone, Canes-Wrone, and Clark (2009)	2543
Expanded Dataset	2848
Total Increase: 305 (12%)	

As can be seen in the Table 5.2 above, by increasing the search parameters, I was able to define 12% more cases in which abortion was a major aspect of the decisions as laid out in the written opinions. For example, Thibeault v. Larson, 666 A.2d 112 heard in the Supreme Judicial Court of Main in 1995, in which the question was held whether the doctor was negligent by performing an abortion on a minor without providing an amniocentesis which would have concluded the fetus did not have genetic defects, which the father argued would have prevented his daughter from obtaining the termination. Terms such as "termination," "fetus," "unborn," "pregnancy," are all included, however, abortion is not which caused it to be missed in the original dataset search parameters set forth by Calderone, Canes-Wrone, and Clark (2009).

In order to controlling for judge specific effects, I utilize the scaled ideal point measure presented by Windett, Harden, and Hall (2015). This measure provides a dynamic measure of judge ideology over a large amount of time in a common space enabling a cross state analysis. This measure combines CFscores and item response estimates for judicial voting behavior. While previous scholarship has utilized both CFscores (Bonica and Woodruff 2014) and the Party-Adjusted Judge Ideology [PAJID]

(Brace, Langer, and Hall 2000), this measure has been shown to be superior when studying judicial decision-making across time due to its dynamic nature (Windett, Harden, and Hall 2015).[14] This measure uses the same approach as the well-known Martin and Quinn (2002) measure for ideal points for the United States Supreme Court. This measure derives similar indicators from the PAJID scores which offers political context to the environment in which the judge joined the high bench, party affiliation adjustment as well as the Segal Cover ideology score model then a model is estimated for each court year yielding the scaled ideal point measure used in this study.

Prior to Windett, Harden, and Hall (2015), the measure produced for the State Supreme Court Data Project was the premiere database for state supreme courts. The only issue with this database is that it is limited in time and covers only four-years, 1995-1998. This is due to the enormity of the task of collecting this data prior to textual analysis methods. Using the Python programming language, Windett and Hall (2013) were able to expand and reliably collect judge level decisions across a much larger timespan, allowing for the times-series-cross-sectional analysis needed for a study such as this.

To assess state-level public opinion on abortion, I use the methods presented by Kastellec, Lax, and Phillips (2016) in their study entitled Multilevel Regression and Post Stratification (MrP) in order to disaggregate the American National Election Survey and the General Social Survey questions on abortion to measure public opinion at the state level similarly to Pacheco (2014). Following Pacheco's example, the consistent questions in the previously mentioned surveys which asked whether the respondent

[14] I ran the models interchanging Bonica and Woodruff (2014) CFscore measure for anticipated judicial behavior and the results held.

supported abortion under any circumstances. It is important to note that while this study is focused on the decision level, there are state level effects at play. These were primarily accounted for in the MrP models from which the public opinion of abortion measure is derived in which by using United States Census, ANES, and GSS I controlled for state demographics such as political ideology, percent married, percent female, religiosity, education, race and ethnicity, and gross domestic product per capita. Figure 5.1 shows the trends of abortion by state over time for those years in which the state had a contested election.

Figure 5.1 MrP Public Opinion of Abortion by State

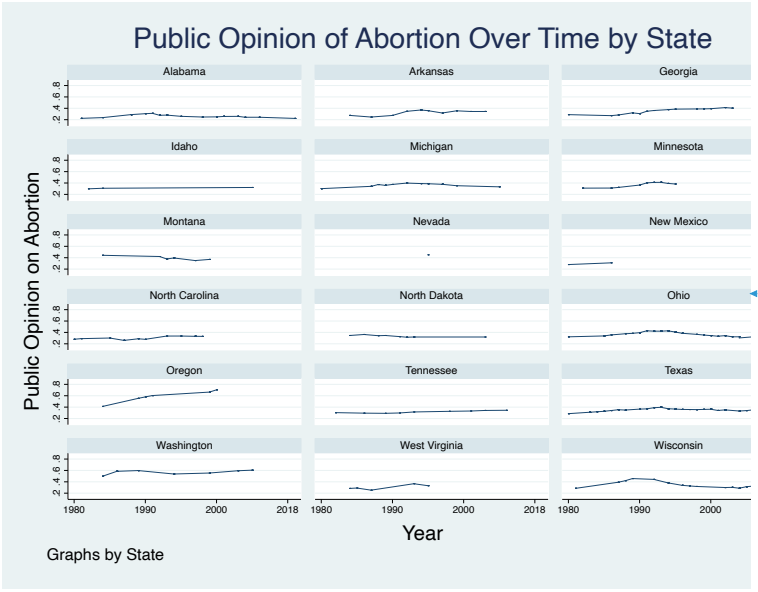

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Figure 5.1 shows the trends of public opinion on abortion by state for years in which a contested election was held at the state high court level and a case on abortion was decided. Nevada only had one year in which it matched all of the criteria which is evident lack of observations accounted for in the graphs. Most states are rather static on public opinion of abortion which matches what previous findings (Pacheco 2014). However, some states such as Oregon, see a significant increase in progressive opinion on abortion from 1980 to 2018. Others tend to fluctuate within a fairly small margin, i.e. Arkansas, Texas, Washington.

Finally, in order to study the conditional effect of election cycles on judicial decisions, I coded for whether a contested election was within two years of a case decision or not. I used a dummy variable signifying (0=no contested election; 1=contested election within two years). I tested my theory in two interactions. I first interacted public opinion on abortion with the election cycle measure to find out if public opinion had a different effect or even a different magnitude of effect when an election was coming up in the near future. Second, I interacted the election cycle with the judge scaled ideal point. I tested this to see if perhaps a judge's leaning would negate the impact of an upcoming judicial election. The following sections shows the results of these models.

Gimme Some Truth: Results

Surprisingly, and not to bury the lead, I did not find support for either of my hypotheses. There is no evidence that election cycles have any significant bearing on judicial decisions in cases of abortion. I theorized that the closer to an election, the more heightened the threat of punishment at the polls would be should the judge not rule in

agreeance with the public in matters pertaining to abortion. However, it would seem that there is no lack to the reach of the public. Rather, I find that the judiciary is significantly deferential to public opinion on abortion regardless of the timing in the election cycle. This could be due to some courts having the power to select their docket, or it could be due to the subject area such as the judge already having firm views on abortion or even judges viewing the law as firm and established on abortion and it not being a subject with much fluctuation to be seen. Abortion as mentioned at the beginning and throughout this dissertation and is an incredibly salient topic. So much so that it would easily trigger a campaign ad regardless of how far removed from the election a judge's voting record was. Table 5.3 details my findings.

Table 5.3 Times Series Analysis of Public Opinion's Effect Conditional on Election Cycle

VARIABLES	Model 1	Model 2	Model 3	Model 4
Public Opinion	11.41***	12.39***	11.52***	11.98***
	(3.160)	(3.503)	(3.179)	(3.514)
Scaled Ideal Point	-0.0687	-2.052	-0.111	-1.714
	(0.201)	(1.379)	(0.232)	(1.431)
P.O. X Scaled Ideal Point		5.531		5.189
		(4.019)		(4.119)
Election Cycle	-0.0381	-0.257	-0.0738	-0.192
	(0.189)	(0.241)	(0.212)	(0.247)
P.O. X Election Cycle			0.118	-0.611
			(0.322)	(0.420)
Constant	-2.872**	-3.300**	-2.899**	-3.164**
	(1.178)	(1.295)	(1.181)	(1.301)
Chibar2 (01)	116.19	74.88	116.01	76.23
Prob>Chibar2	0.000***	0.000***	0.000***	0.000***
Observations	758	758	758	758
Number of States	18	18	18	18

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Model 1 tests Hypothesis 1 which focuses on the direct effects of public opinion on individual judge decisions on abortion cases.

H1: State high court judges will be more deferential to public opinion when they are up for election within two years of the case being heard than when their election is further out.

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Model 2 chibar2(01) = 74.88 Prob >= chibar2 = 0.000¶
Model 3 chibar2(01) = 116.01 Prob >= chibar2 = 0.000¶
Model 4 chibar2(01) = 76.23 Prob >= chibar2 = 0.000
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I hypothesized that the election cycle i.e. a case heard within two years of an election would have a direct effect on judicial decisions. I thought that an upcoming election would cause a judge to be even more deferential to the public opinion in their state than public opinion on its own. However, there is no significant direct effect between the election cycle and case decisions. There is however still a very strong and significant influence of public opinion on those case outcomes. With a 99% confidence interval in the same positive direction the results of the previous chapter continue to hold. The greater the progressive public opinion within the state, the more likely a progressive judicial decision is to occur regardless of the judge's own ideology and background as is indicated by the lack of significance of the scaled ideal point.

Second, I test the interaction of public opinion and the scaled ideal point of the judge. I estimate model 2 interacting these two variables to see if there were certain types of judges who might be more effected by the election cycle. Once more the only aspect effecting judicial decisions is the public themselves. What did surprise me here is that the magnitude of the influence of public opinion grew. While the election cycle may not directly affect judicial decisions, the conditional effects of the election cycle may make the influence of public opinion a bit greater.

Model 3 tests the conditional effect of an election cycle and judicial ideology on judicial decisions by interacting the election cycle with the scaled ideal point. I evaluate whether more conservative (liberal) judges would rule more conservatively (liberally) when up for an election. In essence, would an election cycle exaggerate the judge's own beliefs and history when an election was looming. Contrary to the attitudinal model, neither factor was statistically significant but rather once more public opinion took center stage as being the significant factor in influencing judicial decisions. This

is likely due to the election mechanism itself. When the attitudinal model was first written about by Segal and Spaeth (2002), they wrote about SCOTUS. SCOTUS and the federal court system are unique in how judges are selected (appointed) and their terms (lifetime or "good behavior"). Supreme Court justices do not have to worry about ensuring a majority vote to maintain their seat at the next election thus they are able to vote along their personal preferences without cost. Contrarily, for state high court judges that are elected ruling against public opinion can be very costly and end up with them losing an election.

Deleted: State high courts are very different particularly in that SCOTUS is appointed for life

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Lastly, model 4 is a validity test including both interactions mentioned above.[15] The results hold with public opinion being the only significant variable positively effecting judicial decisions. As the state-level public opinion moves in a more progressive direction, so too do judicial decisions which tend to trend and become more progressive. This is noteworthy as case decisions affect overall policy outcomes at large particularly when a case is challenging specific legislation such as House Bill 2 in Texas which required clinics offering abortions to have the same equipment as those in surgical centers. This legislation caused nearly all of the 40 clinics performing abortions to close until this legislation was challenged up to the SCOTUS and was eventually overturned.

In the End

In this paper, I argue that the timing of the election cycle would have a strong and significant effect on judicial decisions on cases focused on abortion. Using an updated

[15] I also ran a marginal effects model and the results hold at each confidence level.

dataset consisting of eighteen states and 2,848 decisions, I found little to no support for my hypotheses. While I found null results regarding my key independent variable, the election cycle, I did find strong evidence that regardless of timing, state-level public opinion has a substantial effect on judicial decisions on abortion.

This holds with the current literature on the Rational Choice Model, where judges act in their best interest in order to maintain power through maintaining their elected positions. It also pushes back on the Attitudinal Model which declares that judges act according to their preferences. If preferences were the determining factor in judicial decisions, the models would have found the scaled ideal point significant, however, no significance to this measure was indicated. This is likely due to the fact that SCOTUS (for whom the attitudinal model was initially applied) is very different from state judges. Lifetime appointment as in the case of SCOTUS allows the judge to rule along personal preferences without threat of losing their seat at the next election as state high court judges face.

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These null results for the timing of elections could be due to a multitude of things. For instance, some courts have the power to control their docket, thus, judges may shy away from salient topics like abortion as much as they are able. This would not apply to time sensitive cases such as a minor seeking an abortion without parental consent as aptly, but it would apply in the grand scheme of things particularly when legislation is challenged. It may also be that campaigns have greater reach than the two-year election cycle measure used. This would fall in with what Greytek et al (2015) and Trimble (2008) suggest particularly in their findings concerning interest group mania when it comes to judicial campaigns. Lastly, the impact of the political climate, particularly the executive and legislative branch party makeup would be of considerable

interest particularly in the framework of judicial independence. Judicial independence and legitimacy are important factor to democracy (Brace and Hall 2005), as is the role of the electorate. Each of the factors mentioned above are potentially impactful in this overarching theme.

Future scholarship would benefit from further investigation into judicial campaigns, and other judicial institutional factors. While much scholarship exists in terms of the Attitudinal Model, my findings did not support much in the way of this. I was very surprised to not find the scaled ideal point measure created by Windett, Harden, and Hall (2015) to play a significant role in judicial decisions as this literature would suggest but instead to find that the public has everything to do with it as is compatible with the Rational Choice Model.

This study is consistent with the Rational Choice Model and shows that we should continue to explore the impacts of elections on political actors particularly in terms of judicial independence. As is apparent, the electorate has a strong impact on judicial outcomes. This means that the judiciary is not a stand-alone entity above the fray of the everyday individual but rather beholden to the electorate.

Chapter 6: It's a Party and I'll Vote if I want to: The Role of Partisan Labels in Judicial Elections and the Link to Abortion Case Outcomes

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"Let me now take a more comprehensive view and warn you in the most solemn manner against the baneful effects of the spirit of party generally."

-George Washington, George Washington's Farewell Address

"And I see the danger in either case will arise principally from the conduct and views of two very unprincipled parties in the United States – two fires, between which the honest and substantial people have long found themselves situated."

-Richard Henry Lee, The Essential Federalist and Anti-Federalist Papers

What is the value of partisan labels in elections? Party labels provide a significant cue in American democracy from which even highly informed voters base their vote (Converse 1962). Partisan lines have come to encompass divisive ideals upon which many Americans wish to be represented. Downs (1957) claims voters are able to identify with a particular political party based on their personal preferences. Thus, when at the polls a voter is able to vote their preferences by selecting the party and thus the politician most closely aligned with their views. Thus, partisan labels available in partisan elections decrease the cost of information gathering for the voter for without these partisan labels, the voter must extrapolate from information gathered through the campaign where the candidate lies on certain significant policy areas. Building on the cost of information, Powell (1982) claims that clear partisan labels are essential for democracy.

Does this mean that all elections should be partisan? Is there a benefit to nonpartisan elections? "Advocates claim that these [non-partisan] elections help to elevate "competence" over "politics" (Caldarone, Canes-Wrone, and Clark 2009, 560). Additionally, non-partisan elections promote "statesmen" rather than politicians (Bridges 1997; Epstein, Knight, and Shvetsova 2002). Lastly, non-partisan elections promote independence over politics (Atchison, Liebert, and Russell 1999; Epstein, Knight, and Shvetsova 2002, Sheldon and Maule 1997).

This chapter examines the effect of public opinion on judicial decisions across partisan and non-partisan judicial systems. What is the effect of partisan verses non-partisan elections on judicial behavior? Are judges who have party labels less independent than those who are in non-partisan systems? Or do campaigns do a good enough job at informing the public that there really is no difference between partisan and non-partisan judicial elections in terms of judicial behavior? Are judicial campaigns able to successfully use rhetoric to inform the voter of a judge's conservativism when a party label is not included on the ballot so much so that judges are equally deferential to the public regardless of whether they have the party label next to their name or not? Bonneau and Cann (2015) showed that conservative/liberal values was able to successfully be distinguished in both partisan and non-partisan elections for the candidate through either party labels or in the case of non-partisan elections, campaign rhetoric. Converse (1962) also shows that when a voter is informed, they usually vote along party lines.

This study seeks to evaluate the impact of party labels on judicial decisions conditional on public opinion. This chapter begins with an examination of the current

literature and explanation of the theory behind this study followed by the research methods. Then the results will be shown followed by a discussion section.

Partisan vs. Non-Partisan Judges: Do They Differ?

Partisan elections occur when an election ballot states the party affiliation of each candidate. Non-partisan elections are when party affiliations are not identified for the candidate. Partisan verses Non-partisan elections are thus very different experiences for the voter. In partisan elections, the general stances of the candidate are clearly laid out via a party label, in non-partisan elections, the public must gather the general stance of the candidates prior to arriving at the voting booth.

What is the impact of party labels? Do partisan judges rule differently than non-partisan judges? What role does the general public play in judicial decision-making, and does that role have a varying impact depending on the selection method of the judge? What does democracy have to say about partisan and nonpartisan elections?

Calderone, Canes-Wrone, and Clark (2009) find partisan elections to be essential to democratic accountability as it is an easy evaluation tool at the polls for the public. Yet, a large portion of the states do not utilize partisan elections but rather use some form of non-partisan selection (Berkson and Caufield, 2004). In theory, non-partisan elections promote "competence over politics" (Calderon, Canes-Wrone, and Clark 2009). However, this assumes voters have information that will help them make accurate voting decisions. Furthermore, the argument for judicial independence comes into play here. Party labels confine judges therein and limit their independence whereas non-partisan elections do not behold a judge to a particular party line increasing their independence (Atchison, Lipert, and Russell 1999; Sheldon and Maule 1997). In order

to maintain party support and thus funding in future elections, a judge in a partisan election system must appease their party decreasing their independence. Furthermore, with a party label comes an expectation the judge will rule along party lines. Such is the center of debate whenever a seat comes open on the Supreme Court of the United States. A Nebraska study by Rogers in 1989 discovered that the public was able to hold their elected officials accountable based on cues by party labels. Without partisan labels, the public is less likely to make informed decisions at the election booth (Debow et al 2003). A significant amount of scholarship has found that without party labels, the electorate votes primarily for the incumbent regardless of their own actual leanings (e.g. Dubois 1979a; Schaffner, Streb, and Wright 2001, Ferejohn 1977, Ansolabehere et al 2006). Another struggle for nonpartisan elections is that they are less likely to be contested than judicial partisan elections (Bonneau and Hall 2003). However, are there cues used in judicial campaigns which might overcome this lack of information due to the nonpartisan nature of some judicial selection methods?

I argue that certain topics such as the death penalty and abortion are two topics which fall onto strict party platform lines and are decent indicators for Republican verses Democratic Parties. For example, it is reasonable to assume that if a candidate says they are pro-life that that candidate is highly likely to prescribe to the Republican Party. Vice versa, if an opposition campaign add is released close to the election claiming an opposing candidate is pro-choice, it is reasonable to assume that the voter will assign a Democrat label to that opposing candidate thus overcoming the nonpartisan election concerns. Thus, I believe the public is able to distinguish the conservative/liberal stance of a judge with or without partisan labels so in theory judges should not behave differently whether they are in a partisan or non-partisan election.

Rather, they should act rationally and seek reelection by appeasing the public regardless of the existence of a partisan label. In order to test this theory, I developed the following hypothesis:

> ***H1: The effect of public opinion of abortion on judicial decisions on abortion cases will not significantly vary between nonpartisan and partisan election methods.***

Several states have also switched election types over the years. Surprisingly all three states have changed from partisan to non-partisan elections with no states moving in the reverse. Starting with Georgia, who changed over 1982-1983. Arkansas switched between 2000-2001. And lastly, North Caroline between 2003-2004. Texas is on its second committee to discuss changing over from partisan to non-partisan judicial elections in the last five years. Mainly this is due to the most recent election in which straight ticket voting accounted for a large percentage of judicial elections and we saw nearly a full turnover in the courts here in Harris County in particular. This is argued to be problematic, as now the bench especially in the lower circuits is filled with inexperienced judges. Currently, there are not enough cases to look at before and after effects within these states but once there are this will be a perfect scenario for an experiment. This drive to change election systems is one more indicator that we need to understand the effects of party labels particularly on judicial behavior. Is the effect of public's approval on judicial decisions conditional on the election system? It would seem that when a judge is elected with party labels, they should be more beholden to the party than the public in order to ensure they are the party's pick in the next election

particularly in systems. Thus, I expect to see a significant but conditional relationship between public opinion of abortion within that state and judicial case decisions conditional on the electoral system. Meaning when a judge is elected in a non-partisan election, I expect public opinion to have an effect, however, in a partisan election, I do not expect to see a significant effect on judicial decisions in abortion cases.

H2: The influence of public opinion on judicial decisions on abortion cases is conditional on electoral system.

Another aspect to consider is whether the impact of judicial preferences on judge decisions is conditional on whether that judge is elected in a partisan or non-partisan election. According to the Attitudinal Model, judge preferences should impact their decisions (Segal and Spaeth 2002). I expect that judge preferences will be more impactful for non-partisan judges as the judge would not be beholden to a political party for campaign funds and endorsements to retain their seat in future elections.

H3: The influence of judge preferences on abortion case outcomes is only significant in non-partisan elected judges.

In the following sections, I will lay out the methodology used to study the hypotheses above, present the results, and wrap up with a conclusion section including future studies.

Operator, Information: Methodology

Using past literature as a foundation, I look at abortion case outcomes at the state high court level and compare and contrast partisan and non-partisan elected judges to determine whether the level of public support for abortion within that state effect those judicial decisions. I combine and expand upon two datasets: Caldarone, Canes-Wrone and Clark (2009) and Windett and Hall (2013).

Caldarone, Canes-Wrone, and Clark (2009) showcase state high court cases from 1980-2006 for which abortion was the primary case fact and the judicial elections were contested. Windett and Hall (2013) reach more broadly to cover all cases at the state high court level within the more restricted timeframe from 1995 to 2010. Windett and Hall (2013) also introduce a dynamic measure for judicial ideology which allows for change overtime by utilizing CFscores and item response estimates for judicial voting behavior. Previously, we were limited by either excellent case coverage but few years with Party-Adjusted Judge Ideology [PAJID] (Brace, Langer, and Hall 2000) or the measure was limited due to its static nature CFscores (Bonica and Woodruff 2014). While these measures are excellent the Windett, Harden, and Hall measure has shown to be the better measure due to its ability to be both dynamic and cover many years (Windett, Harden, and Hall 2015).[16] This measure utilizes similar techniques to Martin and Quinn's (2002) measure for ideal points in the United States Supreme Court. It pulls from indicators developed with PAJID scores and includes other factors such as party affiliation if known through campaigns or ballot identifiers and then the item

[16] I also ran the models interchanging the Bonica and Woodruff (2014) CFscore measure for anticipated judicial behavior and the results were consistent.

response model is estimated for each court year the judge is in office yielding the scaled ideal point measure used in this study.

By combining and expanding these datasets to include year's 1980-2018, I am able expand my number of cases and to then code individual judge case outcomes to be either progressive or regressive and use this as my dependent variable. Furthermore, I expanded the search parameters from those used in Caldarone, Canes-Wrone, and Clark (2009) to include alternative search terms including "parental consent," "unborn," and "fetus." This increased the number of case judicial decisions by 305. Table 6.1 below, shows that by increasing the search parameters and years, I was able to increase the amount of judicial abortion case decisions by 12%.

Table 6.1 Updated and Expanded Dataset

Dataset	**Number of Total Judicial Decisions**
Calderone, Canes-Wrone, and Clark (2009)	2543
Expanded Dataset	2848
Total Increase: 305 (12%)	

Progressive cases (y=1) are coded when a case decision is liberal. For instance, when a judge overturns legislation which creates a barrier to easily accessed abortions for instance in Texas, legislation was passed which stated that abortions could only be done in hospital settings. This legislation closed many clinics offering abortion services.

The judges on the panel who decided against this legislation would have that decision coded as progressive. The judges who ruled in favor of the legislation would be coded as regressive (y=0). By coding each individual judicial decision, I am able to study the individual effect rather than the effect of the judicial panel which all fifty states utilize at the state high court level. Further, while the size of the panel varies across states, the level of this study is the individual judge, so I need not control for that factor. When a judge is up for election, they are not facing a panel election, but an individual one.

In order to examine the influence of public opinion on abortion at the state level, I use Multilevel Regression and Post Stratification [MrP] first presented by Lax and Phillips (2009). Using this modeling technique, I was able to reliably disaggregate the American National Election Survey [ANES] and the General Social Survey [GSS] polls on abortion to distinguish public opinion on abortion at the state level. Pacheco (2014) did a similar study using the consistent questions from the ANES and GSS which focused on whether the respondent supported abortion under any circumstances. While this measure is limited do to the availability of data, such as questions on spousal or parental consent for abortions have not been asked consistently over a long enough period, it is still a good measure for an overall feeling thermometer of abortion within a state (Pacheco 2014).

While this study is interested at the judge decision level, there are state level effects that need to be accounted for such as state demographics (Brace et al 2004). I use United States Census data combined with ANES and GSS data to ensure these state demographics are controlled for: political ideology, percent married, percent female, religiosity, education, race and ethnicity, and gross domestic product per capita. Figure

6.1 shows the trends for abortion by state overtime for partisan states in which a contested election was held.

Figure 6.1 MrP Public Opinion of Abortion by State for States with Partisan Judicial Elections

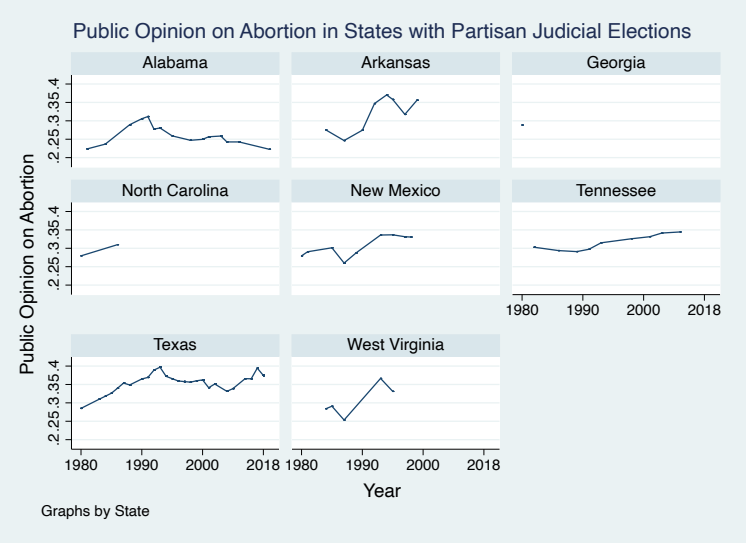

Figure 6.1 shows there is largely stable trends for public opinion of abortion with most states staying with a 10% shift from 1980-2018. This would insinuate that politicians would be well aware of the electorate unwavering opinion.

Figure 6.2 MrP Public Opinion of Abortion by State for States with Non-Partisan Judicial Elections

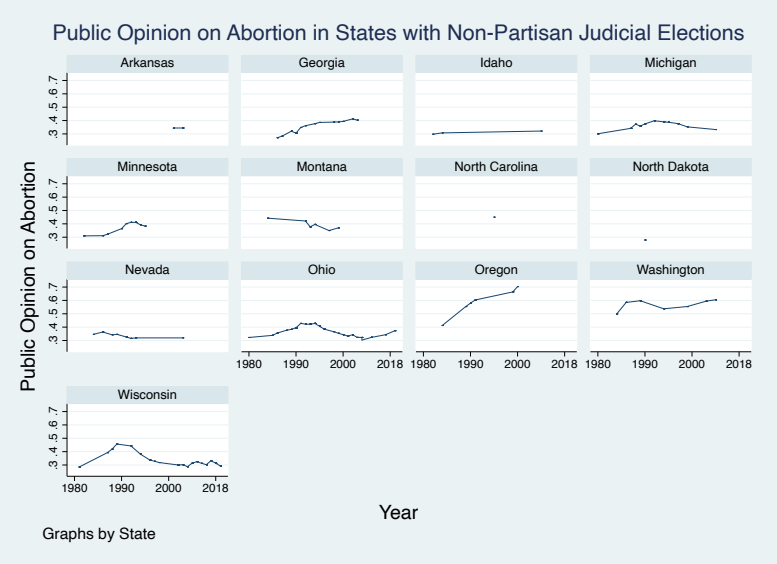

Figure 6.2 shows the trend of public opinion of abortion across the states for years in which that state had a contested judicial election. Similarly, most of these states' public opinion of abortion are fairly stable overtime with the exception of Oregon which shows a sharp increase crossing the 50% margin line. What is also noteworthy across both partisan and non-partisan states is the low level for support for abortion. It is necessary to keep in mind that this is derived from poll questions asking the respondent if they support abortion under any circumstances which could be driving the conservative response.

Lastly, I code for the type of election system a state uses (1=partisan; 0=nonpartisan) to determine the conditional effect of these institutional rules on judicial

decision making. I also test my theory with two interactions. Firstly, I interact public opinion with the election system to determine if public opinion has a greater effect of nonpartisan judges than partisan judges. Secondly, I interact the scaled judicial ideology point with the election system. The following section reveals the results of the models.

Sweet Honesty: What the Models Say

Once more, the only significant factor in judicial decisions I discovered was public opinion. Partisan or non-partisan it doesn't seem to have a significantly different impact on the way judicial case outcomes. The key influencer is the electorate.

Table 6.2 shows the output of three models. The first shows the effects when public opinion of abortion and the election type (partisan or non-partisan) are accounted for. The following models include various interactions. Keep in mind that these models do not include retention elections but rather only elections in which there is an opponent. This is a key distinction because of the impact of campaigns. When there is not an opponent, you must only campaign for yourself and why the electorate should keep you, verses with an opponent you move into the defensive as well as offensively look for flaws in your opponent. Ruling against the vast majority of the public's opinion within two years of an election on such a salient an issue point as abortion would certainly seem risky regardless of whether those election rules include a partisan label or not (Brenan 2020). Model 1 confirms my initial hypothesis.

> ***H1: The effect of public opinion of abortion on judicial decisions on abortion cases will not significantly vary between nonpartisan and partisan election methods.***

Public opinion of abortion has a significantly positive effect on judicial decisions for abortion cases. This shows that when public opinion on abortion is more liberal the outcome of the case is more likely to be more progressive when that judge is up for election within two years of the decision. There is however, no significantly different effect between partisan elected judges and non-partisan elected judges. This is consistent with previous scholarship which shows signals are able to be given which inform the public of a judge's alignment with our traditional two-party system, i.e. conservative=republican liberal=democrat.

TABLE 6.2 Times Series Analysis of Public Opinion on Abortion and State High Court Judge Selection Methods

VARIABLES	Model 1	Model 2	Model 3
Public Opinion of Abortion	11.27***	11.34***	11.30***
	(3.211)	(3.199)	(3.213)
Partisan	0.669	0.695	0.686
	(0.783)	(0.783)	(0.786)
P.O. X Partisan		1.924	
		(3.248)	
Scaled Ideal Point	-0.00689	-0.639	-0.0420
	(0.199)	(1.087)	(0.251)
Partisan X Scaled Ideal Point			0.0944
			(0.408)
Constant	-3.242***	-3.267***	-3.262***
	(1.229)	(1.225)	(1.233)
Chibar2(01)	115.44	70.78	114.82
Prob ≥ Chibar(2)	0.000***	0.000***	0.000***
Observations	768	768	768
Number of States	18	18	18

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

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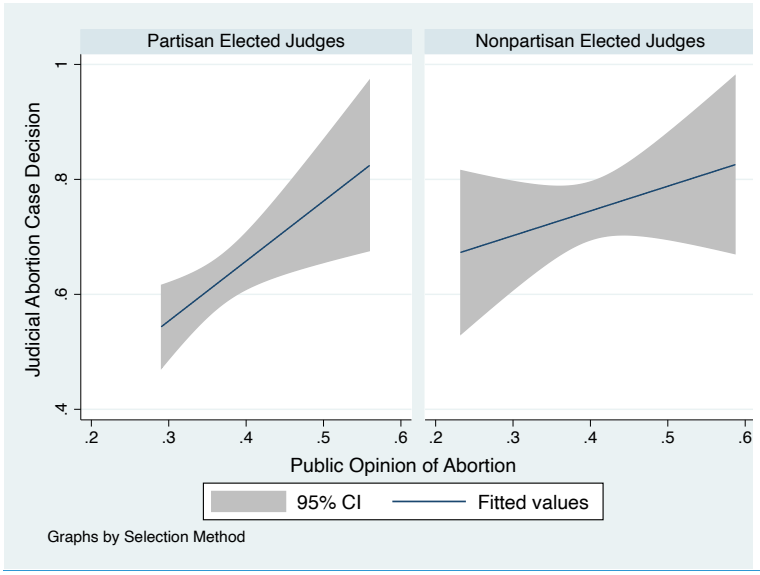
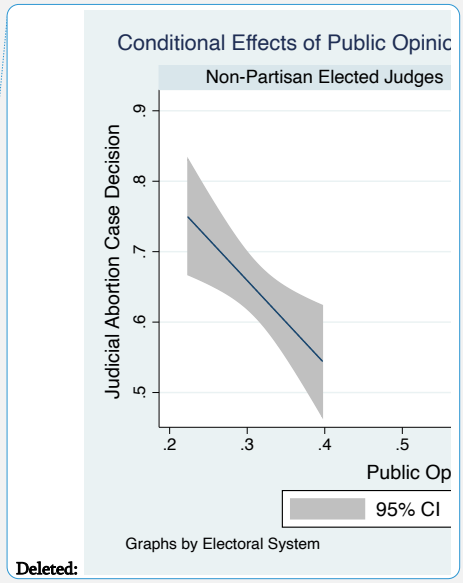
Model 1 chibar2(01) = 115.44 Prob >= chibar2 = 0.000¶
Model 2 chibar2(01) = 70.78 Prob >= chibar2 = 0.000¶
Model 3 chibar2(01) = 114.82 Prob >= chibar2 = 0.000¶ [4]

Table 6.2 model 2 shows the effects when public opinion on abortion is interacted with the election type. Again, the results hold in terms of a significant and positive effect on judicial decisions on abortion cases, however, contrary to H2, there is not a conditional relationship between public opinion and electoral system. I had initially expected to see public opinion significantly effect judicial abortion case decisions conditional on the judge being elected in a non-partisan electoral system

however, I found null results in this regard. Figure 6.3 below shows the predicted probabilities for Model 2.

FIGURE 6.3 Predicted Probabilities of Public Opinion on Elected Judges by Electoral System





As you can see from Figure 6.3 the confidence intervals overlap indicating there is no statistically significant difference between partisan and non-partisan elected judges and their decisions confirming my hypothesis. It is interesting to note that overall the partisan judges are more positive which in this case means more likely to rule more liberally but again, this is not to a significant degree. Also, these confidence intervals are quite large so as the amount of case decisions increases overtime, these should shrink

and give us a better indication of whether there really is no distinct difference. Table 6.3 shows these results broken out into nonpartisan and partisan elections.

Table 6.3 The Interaction of Public Opinion and Judicial Ideal Points

VARIABLES	Nonpartisan	Partisan
Public Opinion	7.002	16.23***
	(4.410)	(4.979)
Scaled Ideal Point	-0.131	0.108
	(0.242)	(0.347)
Constant	-1.575	-4.166**
	(1.412)	(1.979)
Chibar2(01)	104.98	120.86
Prob>=Chibar2	0.000***	0.000***
Observations	477	291
Number of States	6	12

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Here you can see that judges who are elected in partisan elections are significantly likely to decide cases in a manner that aligns with public opinion. Meaning as public opinion in their state moves more progressively, it is likely the judge will decide more progressively. Another interesting aspect to note is the sign change between the scaled ideal point. It is negative for nonpartisan elected judges and positive for partisan elected judges. While not significant this directionality shift is striking. For partisan elections, it makes intuitive sense that as as the judge's personal preferences become more progressive they are likely to rule more progressively conditional with the temperature of the public (i.e. progressive). However, when a judge is elected in a non-partisan election, the story is the opposite and is more difficult to understand. Judges

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that are elected in non-partisan elections have a negative sign for their scaled ideal point measure. This means that as a judge's individual preferences become more progressive they are less likely to rule progressively conditional with public opinion. Again, this is not significant so it is difficult to make an inference here, however, it must also be noted. My suspicion is that this has to do with dissent behavior which is often costly but sometimes noteworthy as well. Additionally, as a judge who is elected with nonpartisan elections, they may not be as deferential to the electorate on such a party driven topic as abortion. Further investigation into these findings is certainly warranted.

Table 6.2 shows that public opinion of abortion within the state continues to be positive and significant creating strong support for my initial hypothesis once more. However, the interaction between election style effects and the scaled ideal point of the judge makes no significant difference which contradicts my third hypothesis. It would seem that judges are consistently aware and influenced by public opinion on abortion within their state when deciding cases on abortion. However, we must keep in mind that these findings are muddled by the results of the interactions shown in Table 6.3.

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Conclusion

The public viewpoint is a powerful force that we all have to deal with in our everyday lives. It makes sense that politicians for whom their job depends on that public, would be swayed within reason by their opinion. This is more than wanting to be liked on the playground, it is being able to maintain their seat at the popular table in the lunchroom. This study has several implications of note, the primary being the consistent findings that the public does indeed significantly impact judicial decisions on abortion cases.

Further, taking into account the literature surrounding the attitudinal model, there were no significant influences by the scaled ideal point which is the opposite of what would be expected based on this literature. The scaled ideal point is the measure of political ideology for the judge and is dynamic in nature so with this study looking at elections overtime, I was surprised to not see any significance even when interacted with the various election types. One drawback to this study is the limited amount of data in terms of case facts which could certainly be influencing these preliminary findings. It is difficult to code case facts across the states as each state has different laws, procedures, and verbiage in place (Brace and Hall 1997). While a basic set of case facts was included within these models, there could be outside case facts influencing these findings and further exploration into these should be considered.

One such limitation is the lack of coding for a variety of time cut points for robustness checks. Currently the data is only coded for two years, but it would be beneficial to see what the results are at a variety of cut points such as one year, six months, and three months, one month out from an election. This would help to understand whether there is a sweet spot for when judges pay closer attention to the public or not. It would also be of note to see whether cases are brought before the court strategically based on timing or whether the docket is set strategically to avoid reprisal for an unpopular case at the polls.

This study opens many doors for future exploration. There is quite a debate especially in the state of Texas on whether or not we should allow straight ticket voting for judicial elections. Indeed, there is a task-force in place to delve further into this issue. As such election types are being looked at outside of academia. This study does

not look into straight ticket voting specifically but in looking at what impacts the judicial decision-making process, this would be an avenue that would be interesting to develop.

Lastly, what's the public got to do with it? Well is seems the public consistently has everything to do with judicial decisions. There are other factors to dig further into, but one thing to note is that the public is making an impact more-so than party labels or election rules.

Chapter 7: So… What's the Public Got to Do with It?

Conclusion and Future Work

This dissertation set out to understand the influence of the electorate on judicial decisions. When thinking about the long-standing questions of democracy and judicial independence, it is important to understand this relationship particularly when considering the countermajoritarian dilemma. Judicial behavior is also a strong point in the literature and yet there is still much left to be discovered. I argue that judges are rational actors who are deferential to the public when in order to maintain their office, they must win an election. In order to win said election they must appease the public. I also argue that judges' have preferences which are likely to influence their decisions in addition to appeasing the public falling in line with the attitudinal model literature. The results herein have consistently and strongly supported the rational choice model. Very little support was found for the attitudinal model. Judicial scaled ideal points were only mildly significant (90% confidence) when interacted with public opinion on abortion cases. This is likely due to the difference between state courts and SCOTUS. The vast majority of the attitudinal model literature centers on SCOTUS who's justices are very different than judges at the state high court level. For one, SCOTUS is appointed for life. This is a key element as they will never fear dismissal from their seat from the public whereas elected state high court judges must gain enough support in each election to maintain their position. Thus voting along their preferences as a state high court judge is dangerous when their preference goes against the majority whereas it is not costly for a justice.

Using an updated dataset with 18 states and 2092 judge level decisions, I found strong support for my hypothesis that public opinion on abortion significantly influences

judge decisions in abortion cases. It is rational that judges would be interested in appeasing the electorate in order to maintain their seat on the bench. This supports the scholarship on the rational choice model first presented by Epstein and Knight (1998).

My first essay focused on the broad question of how does public opinion on abortion effect elected judge decisions in cases of abortion? The results were very strongly positive, meaning as public opinion becomes more liberal (i.e. pro-choice), judicial decisions are likely to also trend progressively. This result is consistent with previous studies of judicial politics which show that judges do respond to public opinion (Carruba, Clifford, et al 2008; Garoupa, Nuno, Veronica, Grembi, 2011; Gelly and Spiller 1992; Giles, Hettinger, and 2001; Murphy 1964; Peppers Schaffner and Diascro 2007; Segal 1997; Streb 2007). Additionally, I found a conditional effect between public opinion and judicial preferences. When these two factors are interacted, there is mild support (90% confidence intervals) that judicial preferences have a positive impact in judicial decisions on abortion cases. These findings suggest that judicial preferences do play a role in judicial decisions but are conditional effects on public opinion.

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The second essay within this dissertation focused on the importance of timing. The main research question addressed therein was whether or not judges behave differently when a case is heard closer to their upcoming election verses further removed from the election cycle. I argue that the closer the election, the greater the need to appease the electorate impacting judge case decisions. Using an expanded dataset, I mark cases which were decided within two years of a judge's election to determine if there is an effect to the election cycle. However, I found null results when it came to the timing. Public opinion continues to have a strong positive effect on judicial case outcomes regardless of the timing of the election. This could be due to judicial

campaigns changing as Trimble (2008) suggests in his essay on judicial attack campaign which he claims have been on the rise particularly in abortion related interest groups since 1980. Furthermore, as the majority of courts have the power to set their own docket, it could be that judges are selective in which cases they hear closer to the election. If judges set less divisive dockets closer to the election, there would not be a large impact. This again supports the rational choice model over the other major judicial behavior models as judges would then be behaving deferentially in the docket selection process rather than in the decision-making process. Future research centered on docket selection at the state level is needed to better understand the impact judicial selection methods makes and at which stages those impacts are most felt. Certainly, along these lines, scholarship advancements are necessary in the study of the political climate in which these decisions are made as well particularly in terms of a unified or divided government.

In my final essay within this dissertation, I look to the selection method differences between partisan and nonpartisan elections. I argue campaigns are able to signal loudly to voters which side of the aisle, Republican or Democrat, candidates preferences align and thus there should not be a distinctive difference between these two selection methods. This question of which style selection method lends to more judicial independence and democracy is one currently being discussed outside of academia and in the courts and legislatures themselves. Texas has a formal committee on which sit former Texas Supreme Court Justices, Texas Bar Associates, and legislators who have been challenged to determine exactly which election style is best for the state. Currently, Texas has a partisan electoral system, however, there have been two times in recent history when the bench was cleared out of incumbents in local districts due

mainly to straight ticket partisan voting. I find support for my hypothesis that both partisan and nonpartisan judges are significantly deferential to public opinion on abortion when ruling on abortion. There is no significant difference in terms of how judges behave towards the public based on their election style. Rather, elected judges in general are deferential towards the electorate.

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To Infinity and Beyond: Future Areas of Exploration

So, what's the public got to do with it? Basically, everything. Elected state high court judges are deferential to the public. This has been the theme throughout this dissertation, and I have found strong support to this effect. But there is still a lot to understand and many nuances to delve into and empirically study. What is certain is that there is a link between the electorate and judicial decision-making.

This study only considers one area of law, abortion. The next stage would be to study the impact of public opinion in other areas. There are other salient topics to the public: taxation, LGBTQ+ rights, immigration, etc. Does the public's temperature in these areas also influence judicial decisions? Are all judges influenced by the public or only those at the high court level? Zorn and Bowie (2010) suggest there are differences in the behavior of judges depending on the level of court in which they serve. The district court judges tend to not follow party lines while the higher court judges appellate and supreme tend to split along party lines. Furthermore, judge elections are typically lower information level elections and voter information is incredibly low at the district level so district judges might not consider the public as they may not be worried about reprisal at the polls. This would require a substantial addition to the data, which has previously been nearly untenable due to the enormity of the task, however, with the new

Python text scrubbing abilities presented by Windett and Hall (2014), this task becomes a bit more manageable opening up many new avenues of study for judicial scholars. In particular, I would be interested to see the effects of docket selection within state courts especially in a concurrent study in the timing of elections. It would be interesting to test this theory from the opposing angle to see if there truly is a threat of public reprisal at the polls. These findings could in turn impact judges to increase in deference to the public or to ignore the public all together.

Additionally, when considering the timing of elections, it could also be that the public is having an impact in not only the case outcomes but in the docket selection itself. Only two of the states within this study have mandatory review due to the absence of an appellate court so it is difficult to determine the differences between mandatory and discretionary review herein, however, when looking at the percentage of abortion cases heard close to an election verses for states with both mandatory and discretionary review the findings were similar. With so little data to compare it is still difficult to make any real inference.

Furthermore, state ideology and judge ideal points are significantly correlated at -0.2899. This could signal, similarly to the argument presented by Miller and Stokes (1963) that the public selects judges who align with their values so that would account for the lack in significance with the judge ideal point when looking at future case outcomes. i.e. conservative states select conservative judges, thus causing the judge's ideal points to match up with public opinion.

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What's the public got to do with it is a core attribute of democracy. Understanding how democracy interacts with judicial independence is the end goal to this study. This study can be used as a vehicle to increase our breadth of knowledge of

judicial behavior concerning the public and as a tool for judges to determine their best maneuver when in office.

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