

- Whittington, Keith. 2000. "Once More Unto the Breach: Post-Behavioralist Approaches to Judicial Politics." *Law and Social Inquiry* 25: 600–34.
- Williams, Margaret S. 2008. "Ambition, Gender, and the Judiciary." *Political Research Quarterly* 61: 68–78.

Women Candidates and Judicial Elections: Telling an Untold Story

Traci V. Reid, North Carolina State University

doi:10.1017/S1743923X10000267

Although most states select their judges via merit selection or an appointive process, a number of states choose their trial and appellate judges on the basis of contested elections. Currently, approximately one-half of all state judges reach their state court benches by winning partisan or nonpartisan races. In the 21 states that elect their judges, women with judicial aspirations must be as competitive as men in these elections.¹ Specifically, they must finance increasingly expensive judicial campaigns, garner widespread support from influential political elites, and, most importantly, convince voters that they are as capable as men. Do aspiring women judges experience similar barriers or challenges as women running for legislative or executive office?

The story of the women who compete in judicial elections remains largely untold in the scholarly literature. Gender politics and judicial politics are the two subfields of political science that one would expect to take the lead in exploring the impact of gender in judicial campaigns and elections. Yet neither has addressed this issue extensively. Although numerous empirical studies have examined the intricacies of judicial campaigns and judicial elections (Bonneau 2005a, 2005b, 2006, 2007; Bonneau and Hall 2003; Champagne and Cheek 1996; Dubois 1980; Hall 1992, 2001; Hall and Bonneau 2006), few have asked whether men and women compete on an equal basis in their pursuit of elective state judgeships (Reid 2004). Even important efforts to examine judicial diversity have focused on women who already sit on state courts, rather than on women who compete in state court races (Aloize 1996; Bratton and Spill 2002; Hurwitz and Lanier 2003; Williams 2007). Similarly,

1. State court selection information cited in this essay can be found at the American Judicature Society Website: <http://www.ajs.org/js/JudicialSelectionCharts.pdf>.

research on women and elections has explored the impact of gender in electing members to Congress, state legislatures, and executive offices (e.g., Berch 1996,2004; Burrell 1985, 1994, 1998, 2006; Falk and Kenski 2006; Fox and Oxley 2003; Herrick 1996; Herrnson and Lucas 2006; Jalalzai 2006; Koch 2000; McDermott 1998; Melich 2005; Palmer and Simon 2006; Sanbonmatsu 2002a, 2006b), but, oddly, has failed to examine how or if gender also affects judicial elections.

Women in Judicial Elections: Does Gender Matter?

Although certain regression models have been instrumental for understanding the intricacies of state court elections, they also might have had the unintended consequence of stifling research on women who compete in those races. The regression findings have suggested that women face little or no discrimination and that gender has a minimal effect in the judicial electoral process. These regression models draw upon a substantial number of independent variables that are designed to identify those factors that correlate in a statistically significant way with such dependent variables as candidates' vote percentage or candidates' reported contribution or spending totals. In these models, gender or "being a woman" is often included as one of several other independent variables. Its relevance in affecting candidates' money or votes is noted only if it is more significant than other included independent variables, such as citizen ideology, incumbency, partisanship, electoral competition, and election system. When being a woman fails to correlate significantly with the dependent variable, the reported finding is that it has little or no bearing on electoral outcomes, and, thus, gender becomes an unimportant factor in state court races (Bonneau 2007; Hall 2001).²

This regression model may fail to reveal the realities confronting women judicial candidates and intimate that women face no disadvantages in judicial races. Examining gender as one among several independent variables may downplay important differences experienced by men and women when they vie for state judgeships. Indeed, Richard Fox and Jennifer Lawless (2004) recommended a new approach in assessing the

2. *Gender* is a complex term that covers more than whether the candidate is a man or a woman. It can be a dynamic concept that reflects the social processes, etc., in which individuals and institutions function. In my own research, I explore whether and to what extent a candidate's sex affects judicial campaigns and election outcomes. For an interesting discussion of how the use of "gender" and "sex" can influence how we assess women in the judiciary, see Kenney 2008.

effects of gender in the electoral process. They argued that “end-stage assessments (money and votes) may show that men and women performed similarly, but not highlight gender differences within the electoral environment” (2004, 265, 275). Rather than revealing whether gender, as Barbara Burrell noted, “emerge[d] as a significant explanatory factor . . . regarding who gets elected” (2006, 359), it is equally important to compare how men and women participate at all stages and in all aspects of the electoral process.

A different methodology produces less rosy findings. When I run regression analyses on men and women candidates separately, different variables are statistically significant, suggesting that gender does affect judicial candidates’ ability to raise money and win votes. The results suggest that different forces within the electoral environment affect the campaigns of men and women and, in particular, that women must overcome specific challenges (e.g., Lawless 2009). In other words, men have advantages that women do not have, and women encounter difficulties that men do not face. For example, their status as incumbents helps men in funding their campaigns, whereas women incumbents receive no similar benefit. Incumbency correlates in a statistically significant way with men’s campaign contributions. In contrast, it has no statistically significant effect on the contributions reported by women. Also, campaign spending (beyond a certain level) has less impact on women’s vote shares than on men’s.³

3. The author constructed a data set that included the 221 men and 85 women who competed in the general elections for state supreme court held between 1996 and 2006. The 306 candidates ran in the 21 states that use partisan or nonpartisan elections for judicial selection. I gathered campaign finance data reported by each candidate, vote percentages achieved by the candidates, and background information about candidates. The campaign finance data were acquired from the contribution data set created by the Institute for Money and State Politics, a nonprofit organization that examines the role of money in state politics, available at <http://www.followthemoney.org> as well as from state election boards. Election results for the candidates were also obtained from state boards of election. Biographical information was gathered from state supreme court websites as well as from newspaper articles.

The author ran two separate regressions: one involving male candidates only and one involving female candidates only. Different independent variables correlated in statistically significant ways with campaign contributions reported by men and women. For men, incumbency, opponent’s spending, and running in a partisan elections were the most significant variables ($p < .001$); for women, only opponent’s spending was similarly significant. Incumbency was statistically insignificant for women. Also, different independent variables significantly correlated with the dependent variable of vote percentage achieved by men and women. For men, several variables were very significant in influencing the votes they received: spending (candidate and opponent), incumbency, nonpartisan ballot, and judicial experience ($p < .001$). For women, the most significant variable was incumbency ($p < .001$), with spending ($p < .05$) and violent crime rate ($p < .005$) only minimally significant. A regression that included all 306 candidates was conducted. The independent variables included “being a female candidate.” The emerging results were that numerous independent variables correlated significantly with the dependent variables of campaign contributions or vote

These findings also support shifting our focus from using aggregate analysis exclusively to one that combines aggregate results with comparative case studies or individualized analysis (Williams 2007). Additionally, comparing how men and women participate at different stages of the electoral process is revealing. For example, although female incumbents and male incumbents keep their seats on state supreme courts at a similar rate, women judges are more likely to face challenges to their retention than are their male counterparts. The overall retention rate for judicial incumbents facing reelection between 1998 and 2006 masks the fact that women had to work harder in the judicial electoral system than did men⁴ (Lawless and Pearson 2008).

In addition, the gender politics literature complements and contributes to efforts to explore how women fare in state court elections. Researchers on women and elections have examined women candidates, political actors within the electoral system, and voters in order to explain the continuing underrepresentation of women in Congress and state legislatures. Their findings are useful for exploring whether women's ascension to the bench is more difficult than men's because they face different and harsher electoral challenges than do men. Two examples are illustrative.

Like the research on women and elections, the study of women judicial candidates also asks whether the women who seek elective judgeships have been strong or weak candidates. The focus on women who participate in these elections highlights important differences between women judicial candidates and their counterparts who run for legislative or executive office. Women in congressional races tend to be very strong (quality) candidates with impressive backgrounds and professional experiences. Arguably, their distinguished credentials may offset voters' skepticism about their competence to perform the responsibilities of elected office (Huddy and Carey 2009; Lawless 2009). The result is that women have to be better than men in order to achieve similar electoral outcomes. For women who aspire to be judges, state eligibility requirements might extend a certain amount of credibility to them. States mandate that

percentage, but "being a female" had no statistical significance with either dependent variable.

Similar findings emerged when separate regressions were conducted on the 184 men and 59 women who competed in the 1998 to 2004 general elections for state supreme courts

4. The author created a data set of 171 incumbents (48 women and 123 men) who were facing reelection between 1998 and 2006. The data set included the 20 states that use partisan or nonpartisan elections to retain their sitting judges. Pennsylvania is not included because only open seats are filled by using contested partisan races. Approximately 12% of men and women lost their seats, but women were more likely to face challengers. Seventy-five percent of women were challenged, while only about 67% of men had their reelections contested.

judges meet specific educational standards and professional experiences. Unlike the simple age and residency requirements to become a legislator, judicial candidates must meet professional standards, which could suggest to voters that men and women are equally competent to serve as state judges.

Voters, however, are not treating men and women candidates with similar credentials the same. Women who ran in the state supreme court elections between 1996 and 2006 were clearly “quality” candidates. In the judicial politics research, judicial experience (or serving as a trial or appellate judge) is used as an indicator of candidate quality.⁵ A higher percentage of the women who ran in these races had served or were currently serving as state judges than had male candidates.⁶ What is most interesting about these elections is that having trial or appellate court experiences helped men in convincing voters to support them. In contrast, women received no similar electoral boost.⁷

A closer comparison of the men and women who ran for open state supreme court seats during this 10-year period further reveals additional gender differences. Less than 60% of the men had judicial experience, while 83% of the women were either current state court judges or had been a trial or appellate court judge. Women raised substantially more money than men, and men, as a group, spent about 70% less on their campaigns than did their female counterparts. Yet only 1.4% separated their mean shares of the vote. Even having stronger credentials and more money, women were unable to parlay electoral assets into sizable electoral gains. If these races are characteristic of judicial elections, like

5. Although electoral experience is often presented as an important asset for assessing candidate quality in legislative races, judicial experience (trial or appellate court experience) is an indicator of candidate quality in judicial contests.

6. The author collected background data on all of the candidates who ran in the 1996 to 2006 general elections for state supreme court. Approximately 40% of the men had never served as a judge, whereas in contrast, less than 22% of women lacked any judicial experience (gender differences, significant at $p < .005$). A comparison of the professional backgrounds of male and female challengers showed that almost 53% of male challengers had judicial experience and over 62% of women were currently serving or had served on their state’s appellate or trial court.

7. The author used the data set of all supreme court candidates who competed in the 1996 to 2006 general elections. (See note 3.) Three multiple regressions were conducted: one involving male candidates only, one involving female candidates only, and one involving all candidates. Candidate’s percentage of the vote was the dependent variable for all regressions. Judicial experience was highly significant for men’s vote ($p \leq .001$), but had no significant impact for women’s vote percentages. In the regression that included all candidates, the author added an interactive variable of gender (being female) \times judicial experience as an independent variable in order to assess whether women with judicial experience would produce a statistically significant correlation with the dependent variable of candidate percentage of the vote. It did not. Women who served as, or were serving as, intermediate appellate or trial judges did not have an advantage in attracting votes to support their candidacy for state supreme court, whereas having similar professional experiences did benefit men.

the counterparts running for Congress, women who compete for elective judgeships must be better candidates than men in order to achieve similar electoral results (Reid 2004).

Furthermore, the role of political parties in the electoral process highlights not only gender differences between men and women in judicial elections but also differences between judicial elections and other elections. An emerging consensus among gender politics scholars is that women accrue electoral benefits by affiliating or associating with state political parties (Dolan 2004; Palmer and Simon 2006; Sanbonmatsu 2002b; 2006a). For voters, party seems to be a stronger voting cue than gender. However, the role of political parties in judicial elections is more varied than it is in legislative or executive elections.⁸ Among states that elect judges, 15 out of 21 use nonpartisan elections where, at a minimum, the party affiliation of candidates is removed from the ballot.⁹ Given that state court races tend to be low-information races, voters will likely be unaware of the party affiliation of judicial candidates and, thus, might be inclined to draw upon sex stereotypes or gender generalizations as the basis for selecting between judicial candidates (Green 2003; Koch 2000; McDermott 1997, 1998; Sanbonmatsu 2002a). Absent the party cue on nonpartisan ballots, women who compete in nonpartisan judicial races may have to contend with voters applying gender-specific decision rules that might not be applied to men in nonpartisan contests.¹⁰

It is interesting to note that women who compete in partisan judicial races may not be able to count on party leaders to support their campaigns fully. Over a 10-year period between 1996 and 2006, women competing in partisan supreme court races received less money for their general election campaigns from party leaders and party organizations than did their male counterparts. On average, 11% of women's total

8. Some nonpartisan election states restrict the involvement of political parties in judicial races and restrict how candidates interact with or collaborate with political parties. In *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), the U.S. Supreme Court ruled that the First Amendment prohibited states from limiting certain speech rights of judicial candidates. The impact of *White* could extend to state laws that limit party involvement in judicial elections. However, several state courts have argued that state canons of judicial ethics remain unaffected by the *White* decision (Reed 2002). In *re Dunleavy*, 838 A. 2d 338 (2003), In *re Kinsey*, 842 So.2d 77 (2003), and In *re Watson*, 794 NE 2d 1 (2003) are representative of these state court decisions.

9. Nonpartisan ballots in some states may also designate "incumbency" or candidates' titles (Justice, Judge).

10. Women running in nonpartisan judicial elections may not always be harmed if voters factor "gender" into their voting decisions. Voters' use of gender stereotypes may benefit women running for some offices and work against women competing for other offices (e.g., McDermott 1997; Sanbonmatsu 2002a).

contributions came from party coffers, while party contributions to men amounted to approximately 22% of their total receipts. Party leaders, at least in these races, tended to favor male candidates over female candidates.

The prevailing research on judicial elections, women and elections, and campaigns and elections complicates questions about the impact of gender in judicial elections. Numerous studies have explored the mechanics and politics of judicial elections, while others have asked and tried to answer why women are underrepresented in legislative chambers at the state and national levels. These efforts demonstrate that tracking won/lost records does not present a complete picture of how women compete for elective state judgeships. Indeed, many facets of the electoral process affect women and men differently and, therefore, need further investigation. The media may treat women judicial candidates differently than men, as they do legislative candidates, and implicit gender appeals such as “soft on crime” may be at work. We need additional scholarship in this area because women judicial candidates do not function in a gender-neutral electoral environment. Just like the women who seek seats in the U.S. Congress and in state legislatures, women with judicial aspirations also recognize that just being a woman affects their quest to become state court judges.

Final Comments

Methodological challenges frustrate efforts to explore how women fare in judicial elections. The small number of state court elections occurring every election cycle and the small number of women who participate in these races (Jensen and Martinek 2008; Williams 2008) make the study of women judicial candidates difficult. Furthermore, institutional differences that distinguish state judiciaries and legal communities also create problems for researchers. Unlike congressional elections, which are relatively uniform, state courts are marked by the many differences that separate them. We need a variety of research approaches (empirical studies, case studies, etc.) to assess how competitive women are in partisan elections and nonpartisan elections, in the election of trial judges and appellate judges, and in statewide or district races.

Despite these challenges, it is important to build upon the existing research on women in judicial elections. As women comprise an increasing percentage of law students and attorneys, judgeships should be as accessible to women as they have always been to men. A judiciary

that reflects the diversity of American society strengthens public acceptance of judicial decisions, as well as offering the possibility of enriching the quality of those decisions.

REFERENCES

- Aloize, Nicholas O. 1996. "Selection Methods and the Recruitment of Women to the State Courts of Last Resort." *Social Science Quarterly* 77: 110–26.
- American Judicature Society. <http://www.ajs.org/js/JudicialSelectionCharts.pdf>
- Berch, Neil. 1996. "The 'Year of the Woman' in Context: A Test of Six Explanations." *American Politics Quarterly* 24: 169–93.
- . 2004. "Women Incumbents, Elite Bias, and Voter Response in the 1996 and 1998 U.S. House Elections." *Women and Politics* 26: 21–33.
- Bonneau, Chris W. 2005a. "What Price Justice(s)? Understanding Campaign Spending in State Supreme Court Elections." *State Politics and Policy Quarterly* 5: 107–25.
- . 2005b. "Electoral Verdicts: Incumbent Defeats in State Supreme Court Elections." *American Politics Research* 33: 818–41.
- . 2006. "Vacancies on the Bench: Open-Seat Elections for State Supreme Courts." *Justice System Journal* 27: 489–99.
- . 2007. "Campaign Fundraising in State Supreme Court Elections." *Social Science Quarterly* 86: 68–85.
- Bonneau, Chris W., and Melinda Gann Hall. 2003. "Predicting Challengers in State Supreme Court Elections: Context and the Politics of Institutional Design." *Political Research Quarterly* 56: 337–49.
- Bratton, Kathleen A., and Rorie L. Spill. 2002. "Existing Diversity and Judicial Selection: The Role of the Appointment Method in State Supreme Courts." *Social Science Quarterly* 83: 504–18.
- Burrell, Barbara. 1985. "Women's and Men's Campaigns for the U.S. House of Representatives, 1972–82." *American Politics Quarterly* 13: 251–72.
- . 1994. *A Woman's Place Is in the House*. Ann Arbor: University of Michigan Press.
- . 1998. "Campaign Finance: Women's Experience in the Modern Era." In *Women and Elective Office*, ed. Sue Thomas and Clyde Wilcox. New York: Oxford University Press.
- . 2006. "Looking for Gender in Women's Campaigns for National Office in 2004 and Beyond: In What Ways Is Gender Still a Factor?" *Politics & Gender* 2 (September): 354–62.
- Champagne, Anthony, and Kyle Cheek. 1996. "PACs and Judicial Politics in Texas." *Judicature* 80: 26–27.
- Dolan, Kathleen A. 2004. *Voting for Women: How the Public Evaluates Women Candidates*. Cambridge: Westview, MA.
- Dubois, Philip L. 1980. *From Ballot to Bench: Judicial Elections and the Quest for Accountability*. Austin: University of Texas Press.
- Falk, Erika, and Ken Kenski. 2006. "Issue Solvency and Gender Stereotypes: Support for Women as Presidents in Times of War and Terrorism." *Social Science Quarterly* 87: 1–18.
- Fox, Richard, and Jennifer L. Lawless. 2004. "Entering the Arena? Gender and the Decision to Run for Office." *American Journal of Political Science* 48: 264–80.
- Fox, Richard, and Zoe Oxley. 2003. "Gender Stereotyping in State Executive Elections: Candidate Selection and Success." *Journal of Politics* 65: 833–50.

- Green, Joanne Connor. 2003. "The Times . . . Are They A-Changing? An Examination of the Impact of the Value of Campaign Resources for Women and Men Candidates for the US House of Representatives." *Women and Politics* 25: 1–29.
- Hall Melinda Gann. 1992. "Electoral Politics and Strategic Voting in State Supreme Courts." *Journal of Politics* 54: 427–46.
- . 2001. "State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform." *American Political Science Review* 95: 315–30.
- Hall Melinda Gann, and Chris W. Bonneau. 2006. "Does Quality Matter? Challengers in State Supreme Court Elections" *American Journal of Political Science* 50: 20–33.
- Herrick, Rebekah. 1996. "Is There a Gender Gap in the Value of Campaign Resources?" *American Politics Quarterly* 24: 68–80.
- Hermson, Paul, and Jennifer Lucas. 2006. "The Fairer Sex? Gender and Negative Campaigning in United States Elections." *American Politics Research* 34: 69–94.
- Huddy, Leonie, and Tony E. Carey Jr. 2009. "Group Politics Redux: Race and Gender in the 2008 Democratic Presidential Primaries." *Politics & Gender* 5 (March): 81–96.
- Hurwitz, Mark S., and Drew Noble Lanier. 2003. "Explaining Judicial Diversity: The Differential Ability of Women and Minorities to Attain Seat on State Supreme and Appellate Court." *State Politics and Policy Quarterly* 3: 329–52.
- In re Dunleavy*. 2003. 838 A. 2d 338.
- In re Kinsey*. 2003. 842 So.2d 77.
- In re Watson*. 2003. 794 NE 2d 1.
- Institute for Money and State Politics. <http://www.followthemoney.org>.
- Jalalzi, Farida. 2006. "Women Candidates and the Media: 1992–2000 Elections." *Politics and Policy* 34: 606–33.
- Jensen, Jennifer M., and Wendy L. Martinek. 2008. "The Effects of Race and Gender on the Judicial Ambitions of State Trial Court Judges." *Political Research Quarterly* 62: 379–92.
- Kenney, Sally J. 2008. "Thinking About Gender and Judging." *International Journal of the Legal Profession* 15: 87–110.
- Koch, Jeffrey W. 2000. "Do Citizens Apply Gender Stereotypes to Infer Candidates' Ideological Orientations?" *Journal of Politics*. 62: 920–36.
- Lawless, Jennifer L., 2009. "Sexism and Gender Bias in Election 2008: A More Complex Path for Women in Politics." *Politics & Gender* 5 (March): 70–80.
- Lawless, Jennifer L., and Kathryn Pearson. 2008. "The Primary Reason for Women's Underrepresentation? Reevaluating the Conventional Wisdom." *Journal of Politics* 70: 67–82.
- McDermott, Monika. 1997. "Voting Cues in Low-Information Elections: Candidate Gender as a Social Information Variable in Contemporary United States Elections." *American Journal of Political Science* 41: 270–83.
- . 1998. "Race and Gender Cue in Low Information Elections." *Political Research Quarterly* 51: 895–918.
- Melich, Tanya. 2005. "From the Trenches: Attacking First-Time Women Candidates for Congress." *Journal of Women, Politics and Policy* 27: 85–107.
- Palmer, Barbara, and Dennis M. Simon. 2006. *Breaking the Political Glass Ceiling: Women and Congressional Elections*. New York: Routledge.
- Reed, Barbara R. 2002. *After White: Trends in Judicial Election Law*. Williamsburg, VA: National Center for State Courts, National Ad Hoc Committee and Committee on Judicial Election Law.
- Reid, Traci V. 2004. "Assessing the Impact of a Candidate's Sex in Judicial Campaigns and Elections in North Carolina." *Justice System Journal* 25: 183–207.
- Republican Party of Minnesota v. White*. 2002. 536 US 765.

- Sanbonmatsu, Kira. 2002a. "Gender Stereotypes and Vote Choice" *American Journal of Political Science* 46: 20–34.
- . 2002b. "Political Parties and the Recruitment of Women to State Legislatures." *Journal of Politics* 64: 791–809.
- . 2006a. *Where Women Run: Gender and Party in the American States*. Ann Arbor: University of Michigan Press.
- . 2006b. "State Elections: Where Do Women Run? Where Do Women Win?" In *Gender and Elections: Shaping the Future of American Politics*, ed. Susan J. Carroll and Richard L. New York: Cambridge University Press.
- Williams, Margaret. 2007. "Women's Representation on State Trial and Appellate Courts." *Social Science Quarterly* 88: 1192–204.
- . 2008. "Ambition, Gender, and the Judiciary." *Political Research Quarterly* 61: 68–78.

Increasing the Gender Diversity of High Courts: A Comparative View

Valerie Hoekstra, Arizona State University

doi:10.1017/S1743923X10000243

The appointment of Sonia Sotomayor and the nomination of Elena Kagan to the United States Supreme Court provides a timely opportunity for scholars, policymakers, and members of the legal community to consider why there are so few women on the world's highest courts. Although singular moments draw our attention to the importance of women on high courts, sadly, this attention is rarely sustained over long periods. While much was made of Ronald Reagan's historic nomination of Sandra Day O'Connor to serve as the first female justice of the U.S. Supreme Court, more than a decade and four nomination opportunities passed by before Ruth Bader Ginsburg was appointed. On this point, Paula Monopoli aptly observes: "[T]he assumption that progress would steadily continue until gender parity was achieved has proven to be wrong" (2007, 43). Unfortunately, this same observation could be said of virtually all other high courts across the globe.

In this essay, I examine recent efforts to increase gender diversity on high courts. In particular, I examine whether gender quotas for judicial seats would be advantageous for increasing women's presence on high courts. In recent years, countries as diverse as India, Ecuador, England, and South Africa, as well as the International Criminal Court (ICC) have discussed or even adopted gender quotas for judicial positions, with mixed success. While it is too soon and the sample is too small to draw