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this translates to a belief that judges will act in accordance with community preferences when confronted with difficult cases. It is important to think about the difficulties in getting at this question. Recall that the two lowest-rated characteristics in Gibson's study of Kentuckians' views of state supreme court candidates were "decide the way the majority wants" and "base decisions on party affiliations." Voters may be reluctant to state a preference for judicial decisions to be based on majority preferences or party characteristics, but may still have in the back of their minds a hope or expectation that this will actually be the case.

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* This paper is an extended analysis of a survey reported in my recent book on judicial selection reform, Judicial Selection in the States: Politics and the Struggle for Reform (2020). Thanks to Lawrence Baum, Charles Gardner Geyh, James Gibson, and Melinda Gann Hall for helpful thoughts in the design of the survey reported below and/or on a draft of this paper. The funding for the survey was provided by the University of Minnesota Law School's Steen Fund.

1 *See, e.g.*, Jed Handelsman Shugerman, The People's Courts: Pursuing Judicial Independence in America (2012); Herbert M. Kritzer, Justices on the Ballot: Continuity and Change in State Supreme Court Elections (2015).

2 Alaska adopted the Missouri Plan when it became a state in 1960, and Missouri had adopted its plan in 1940.

3 The Tennessee legislature had adopted a version of the Missouri Plan for all appellate courts in Tennessee in 1971, but then repealed it for the state supreme court three years later; in 1993 the Tennessee legislature readopted a version of the plan for the state supreme court in 1993. *See* Herbert M. Kritzer, Judicial Selection in the States: Politics and the Struggle for Reform 104–08 (2020) [hereinafter Judicial Selection].

4 There are other states where a governor has by executive order or the legislature has by statute created a nominating/screening body, but the governor is not legally constrained to follow the recommendations of that body.

5 One of these six is South Carolina, where the selection from among the nominees is made through an election in the legislature rather than by gubernatorial appointment.

6 *See* Charles Gardner Geyh, *Why Judicial Elections Stink*, 64 Ohio St. L.J. 43 (2003).

7 Charles Gardner Geyh, Who Is to Judge? The Perennial Debate Over Whether to Elect or Appoint America's Judges 124–154 (2019).

8 *Id.* at 154.

9 *Id.* at 155. *See also* Gregory A. Huber & Sanford C. Gordon, *Accountability and Coercion: Is Justice Blind When It Runs for Office?* 48 Am. J. Pol. Sci. 247 (2004). Gibson suggests that the issue is not the higher sentences as reelection nears but the lower sentences imposed outside the reelection period. James L. Gibson, *Electing Judges: Future Research and the Normative Debate About Judicial Elections*, 96 Judicature 223, 228 (2013).

10 *Id.*

11 This count does not include New Mexico, which adopted a system of initial appointment but with appointees subject to standing in a partisan election at the time of the next general election and sometimes losing that election; due to some anomalies, there are also occasional open-seat elections.

12 Some minor or special (e.g., probate) court judges, assistant judges, and magistrates are appointed in states that elect judges of appellate and major trial courts.

13 Importantly, particularly in states using nonpartisan elections for trial court judges, most incumbents standing for election do not face an opponent. This may lead trial judges to be content with the existing system because once the filing deadline has passed, they need not worry about opposition to their continuing in office. In a system using retention elections, trial judges can face a last-minute campaign opposing their continuing in office when it is too late to raise money and organize a campaign. One result of this possibility, rare as a challenge may be, is that many trial judges may prefer to continue the existing system rather than change to a system using retention elections.

14 Note that there may be a conceptual difference between characteristics evaluated for initial selection versus retention (with the former perhaps more concerned with background and experience, and the latter perhaps more concerned with past judicial decisions).

15 James L. Gibson, Electing Judges: The Surprising Effects of Campaigning on Judicial Legitimacy 93–96 (2012).

16 *Id.* at 92. JaS favored appointment of judges. It ceased operating in 2017. The survey is available at https://www.brennancenter.org/sites/default/files/2001%20National%20Bipartisan%20Survey.pdf, accessed January 19, 2021.

17 At first glance, one might think that "experience as a criminal prosecutor" should fall under professional characteristics. However, I chose "experience as a prosecutor" rather than the more neutral "experience as a criminal lawyer" because I viewed specifying the prosecution side as making this more political. The analysis bears this out.

18 The survey also included a seventh item in each category, "expressed commitment to protecting legal rights" in the professional category and "expressed willingness to be sensitive to community preferences" in the political category. I omitted them from the analysis presented in this paper because in retrospect I realized that they were not really characteristics but campaign pledges.

19 This is also true of Maryland, but in Maryland, there is no court named the "supreme court." Some other states have slightly different labels for their highest courts, but those include the word "supreme"; two examples are the West Virginia Supreme Court of Appeals and the Massachusetts Supreme Judicial Court.

20 The instructions read: "The survey asks you to rate 14 characteristics [*see supra* note 18], both as applied to potential judges of your local trial courts and as applied to judges of your state's highest court (called the state supreme court except in New York where it is called the Court of Appeals)."

21 I was able to exclude potential respondents outside the United States, even those using a virtual private network (VPN) to make it appear they were in the United States.

22 The ideology question in the survey included the options "progressive" and "libertarian"; for purposes of analysis, I combined progressives with liberals and libertarians with conservatives.

23 Another bias in MTurk samples that I did not try to adjust for is that the level of political knowledge of MTurk respondents tends to be higher than in other panel-based samples. However, at least in terms of basic knowledge (presidential succession, vote needed to override a veto, presidential term limit, length of U.S. Senate term, number of senators per state, and length of U.S. House term), that gap is "not large": 71.3 percent correct for MTurk samples versus 63.5 percent for the ANES 2008-09 Panel Study. Adam J. Berinsky, et al., *Evaluating Online Labor Markets for Experimental Research: Amazon.com's Mechanical Turk*, 20 Pol. Analysis 351, 359 (2012). It is possible that there is a greater gap for more obscure items of political knowledge. *See* Taylor C. Boas, et al., *Recruiting Large Online Samples in the United States and India: Facebook, Mechanical Turk, and Qualtrics*, Pol. Sci. Rsch. & Methods 1, 11 (2018).

24 The strongest single correlation with age was -.176 with "experience running for and/or holding political office" for state supreme court justices; for education, the highest correlation was -.127 with "deep legal knowledge," also for state supreme court justices. However, one remaining problem with education was that there was only one respondent with less than a high school education.

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25 The results of the factor analysis can be found in the online appendix located at http://judicature.duke.edu.

26 Factor analysis produces estimates of how each item correlates with the underlying dimensions, with each dimension having high correlations with a subset of the items; the correlations are thus used to identify groups.

27 To "test" whether there was a difference, I used the sign test. *See* Sidney Siegel, Nonparametric Statistics for the Behavioral Sciences 68–75 (1956). The advantage of this test is that it does not require the assumption of interval measurement or normality that is required for the matched-pairs t-test. I also did a matched-pairs t-test. I put "test" in quotes because the nonrandom nature of the MTurk sample means that the tests do not technically apply.

28 This was done by cross tabulating the four-category ratings with a two-category party variable that combined those who said they were independents but leaned toward a party with those identifying with a party; "pure" independents were omitted.

29 Technically, the scales are factor scores which are weighted sums of the responses.

30 The ideology question on the survey included the options "libertarian" and "progressive"; for purposes of analysis, I collapsed the former with "conservative" and the latter with "liberal."

31 The p-values are the result of one of two statistical tests: a two-sample difference of means (averages) t-test or a oneway analysis of variance (ANOVA). A probability of .05 or less is typically taken as indicating "statistically significant" differences.

32 Legislative election, used in Virginia and South Carolina, was treated as a form of appointment.

33 Partisanship is a recasting of party identification into a three-point scale of Independent (1), Independent leaning Democrat or Republican (2), and Democrat or Republican (3).

34 *See* online appendix, *supra* note 25.

35 There are two states, Arkansas (*see* Ark. Const. amend. 29) and Louisiana (*see* La. Const. art. V, § 22 [adopted 1974]), where appointees to fill an interim vacancy are not permitted to run in the subsequent election to fill that position.

36 Kritzer, Judicial Selection, *supra* note 3, at 35–36.

37 *Id.* at 120–21.

38 Michael DeBow, et al., *The Case for Partisan Judicial Elections*, 33 U. Tol. L. Rev. 393 (2002).

39 Deborah O'Malley, *A Defense of the Elected Judiciary*, 57 Legal Memorandum 1 (2010), http://thf_media.s3.amazonaws.com/2010/pdf/lm0057.pdf.

40 Brian T. Fitzpatrick, *The Ideological Consequences of Selection: A Nationwide Study of the Methods of Selecting Judges*, 70 Vand. L. Rev. 1729 (2017). *See also* Adam Bonica & Maya Sen, *The Politics of Selecting the Bench from the Bar: The Legal Profession and Partisan Incentives to Introduce Ideology into Judicial Selection*, 60 J.L. & Econ. 559 (2017). There is good evidence that the legal profession as a whole is more on the liberal side of the political spectrum than is the general public. *See* Adam Bonica, et al., *The Political Ideologies of American Lawyers*, 8 J. Leg. Analysis 277 (2016); *see also* Adam Bonica & Maya Sen, The Judicial Tug of War: How Lawyers, Politicians, and Ideological Incentives Shape the American Judiciary 124–28 (2021).

41 Stephen J. Ware, *The Missouri Plan in National Perspective*, 74 Mo. L. Rev. 751, 758–66 (2009).

42 Kritzer, Judicial Selection, *supra* note 3, at 117–122.

43 *Id.* at 328. As of 2020, Republicans in Kansas have been unsuccessful in their efforts to end the role of the nominating commission for selecting state supreme court justices (id. at 325–334). There have been unsuccessful (as of 2020) efforts in Missouri to reduce the role of lawyers on the nominating commission (id. at 320–322) and Oklahoma to end the use of nominating commissions for appellate court (*id.* at 338–343).

44 Amy Kold Noyes, *Can't Get Elected Dogcatcher? Try Running in Duxbury, Vt.*, NPR Weekend Edition Saturday (March 24, 2018), https://www.npr.org/2018/03/24/595755604/cant-get-elected-dogcatcher-try-running-in-duxbury-vt; Dough Ireland, *Danville Animal Control Officer Race Heats Up*, North Andover (Massachusetts) Eagle Tribune (Feb. 5, 2013), http://www.eagletribune.com/latestnews/x1525010958/Danville-animal-control-officer-race-heats-up.

45 *See* Steven E. Schier, *The Minnesota Ballot Is a Joke in Canada*, Minneapolis Star Trib., Dec. 22, 2002, 4A.

46 For a recent analysis of this issue, *see* Greg Goelzhauser, Choosing State Supreme Court Justices: Merit Selection and the Consequences of Institutional Reform 71–83 (2016).

47 *See* Kritzer, *supra* note 1, at 255–260, for a description of how such a system might work.

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