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Proponent Testimony on Senate Bill 80 Ohio Senate Local Government & Elections Committee 16 March 2021

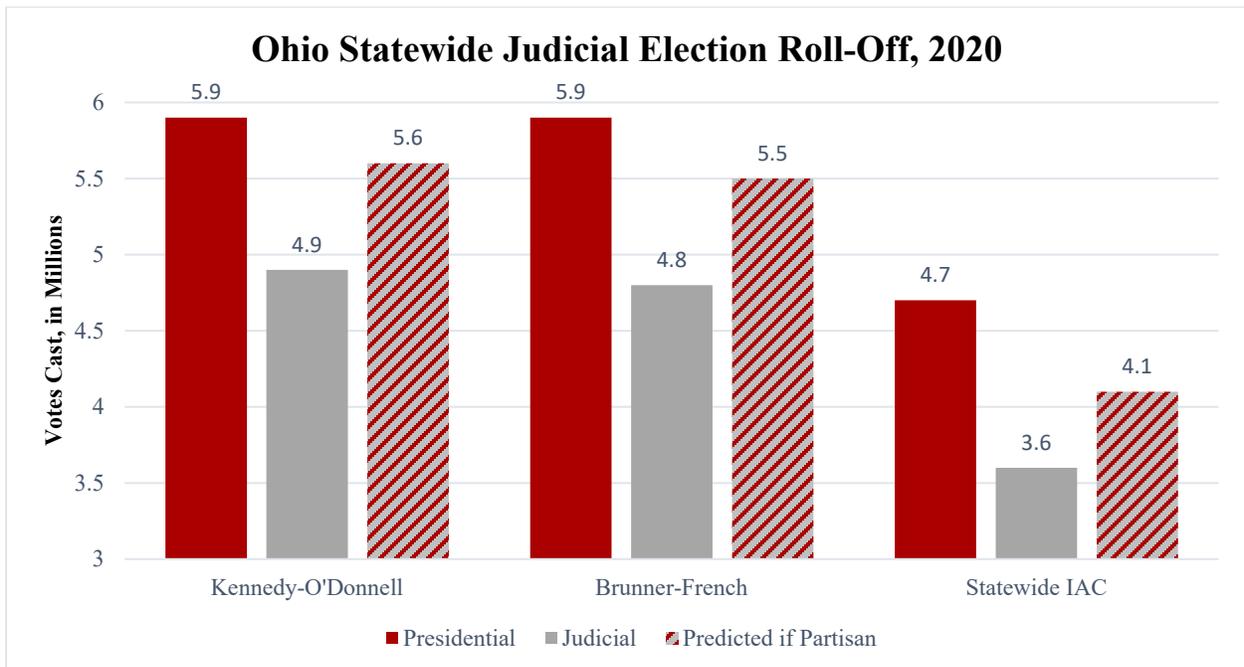
Chairwoman Gavrone, Vice Chair O'Brien, Ranking Member Maharath, thank you for the opportunity to testify before the Local Government and Elections Committee in support of SB80.

My name is Dr. Travis Taylor. I hold a Ph.D. in political science from the University of Kentucky, and my research is in the area of judicial elections. As an expert in state judicial elections, I am encouraging you to support partisan elections for Ohio's appellate judges.

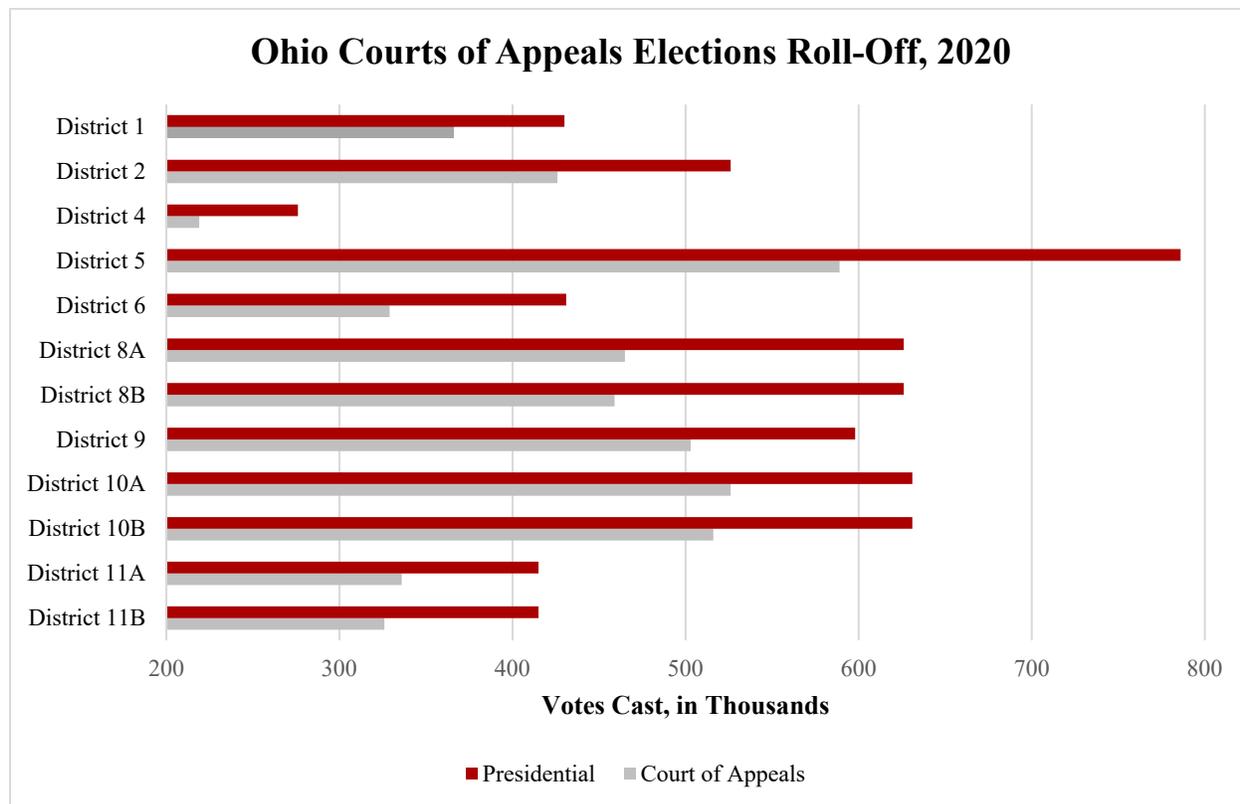
I see three major problems with Ohio's current system of judicial selection. Two problems are informed by the empirical research in judicial elections, and one is just common sense.

The first major deficiency of non-partisan ballots is roll-off. Voters participate at significantly lower levels on ballot items that do not have a party ID listed for the candidates. As a result, non-partisan elections are decided by fewer voters than partisan races. Elected officials are supposed to represent an entire community, so roll-off is detrimental to democracy when the entire community is not given the opportunity to have a meaningful say in selecting the official.

I conducted an independent analysis of the 2020 election data and the roll-off numbers are both staggering and unsurprising. Last year in Ohio, roughly one million fewer voters cast ballots for the supreme court races than voted in the presidential contest. Roll-off in the Kennedy-O'Donnell race was 16% and in the Brunner-French race, roll-off was 18%.



Roll-off in the Courts of Appeals races was even worse. Statewide, roll-off from the presidential vote in districts that had a Court of Appeals race was 20%. And in some districts, roll-off was even higher. The two 8th district races in Cuyahoga County had roll-off of 26 and 27%. These numbers are staggering.



But the roll-off statistics are also unsurprising because they reflect what research has told us for decades. One of the earliest studies investigating roll-off in state court elections in 1979 found that non-partisan roll-off was more than 15 points higher than partisan roll-off.¹

A 2016 study found that roll-off was about 13 percent higher in non-partisan elections for state supreme courts than in partisan ones. In appeals court races, the study reported that non-partisan roll-off was between 10 and 17 points higher than in partisan elections.²

Ohio’s 2020 numbers line up well with the results of these studies, so let’s consider what could have been. If our supreme court elections last year had been partisan rather than non-partisan, we could have expected between 756,000 and 778,000 additional votes on the supreme court races. If the Courts of Appeals races had been partisan elections, an additional 480,000 votes, at a minimum, would have been expected statewide. That’s three-quarters of a million more Ohioans who would have had a say in selecting two supreme court justices and nearly a half-million Ohioans who would have voted in the

¹ Dubois, Philip L. 1979. “Voter Turnout in State Judicial Elections: An Analysis of the Tail on the Electoral Kite.” *Journal of Politics* 41(3): 865–87.

² Kritzer, Herbert M. 2016. “Roll-Off in State Court Elections.” *Journal of Law & Courts* 4(2): 409–36.

Courts of Appeals races, simply by having the candidate's party ID available to them on the ballot. Such a small institutional change can truly lead to huge democratic benefits.

Why is this the case?

Because party identification is the most important heuristic in American politics. Party ID isn't just belonging to a club. Party labels are a way for Americans to think about the complex world of politics and policy in a simple and efficient way. In the voting booth, knowing the candidates' party affiliation gives voters the chance to select candidates who share their own policy preferences. When voters don't have that label readily available, they simply don't vote.

A second defect of non-partisan elections deals with how judges behave. Studies, including my own research, show that non-partisan elections create an environment where judges are more responsive to public opinion than partisan judges.³

Non-partisan judges are more responsive to public opinion because they have to be. Knowing voters can't rely on the judge's party ID, the judge has to have something to show voters to win re-election.

Non-partisan elections lead judges to be more cognizant, even if unintentionally, of political ramifications. Partisan elections do not make judicial elections more political. Partisan elections make judicial elections less political.⁴

I could go on all day about the research. I could tell you that partisan elections produce judges who are just as competent,⁵ just as qualified,⁶ and are just as professional⁷ as judges selected in other selection schemes.

³ Caldarone, Richard P., Brandice Canes-Wrone, and Tom S. Clark. 2009. "Partisan Labels and Democratic Accountability: An Analysis of State Supreme Court Abortion Decisions." *The Journal of Politics* 71 (2):560–73.;

Canes-Wrone, Brandice, Tom S. Clark, and Jason P. Kelly. 2014. "Judicial Selection and Death Penalty Decisions." *American Political Science Review* 108 (1):23–39.;

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⁴ See, also, Hall, Melinda Gann. 2001. "State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform." *American Political Science Review* 95 (2):315–30.

⁵ Glick, Henry R., and Craig F. Emmert. 1987. "Selection Systems and Judicial Characteristics: The Recruitment of State Supreme Court Judges." *Judicature* 70 (4):229–35.

⁶ Goelzhauser, Greg. 2016. *Choosing State Supreme Court Justices: Merit Selection and the Consequences of Institutional Reform*. Philadelphia: Temple University Press.

⁷ Goelzhauser, Greg, and Damon M. Cann. 2014. "Judicial Independence and Opinion Clarity on State Supreme Courts." *State Politics & Policy Quarterly* 14 (2):123–41.

Finally, Ohio’s judicial elections are not really non-partisan. Legal historian Jed Shugerman wrote in 2012, 100 years after Ohio adopted the current system of judicial selection, that “Ohio’s superficial ballot changes failed to make the judiciary any less partisan.”⁸ In fact, he called the change from partisan to non-partisan elections “more a façade than a real solution.”⁹

First, media coverage of Ohio’s judicial elections frequently includes discussion of party affiliations, and voters take some cues from that media coverage.¹⁰

Second, Ohio’s judges are selected in a partisan primary. It would take a voter a quick online search to figure out which candidates are affiliated with which party. But the truth is, they don’t even need to.

When I sat in my home-office in Cincinnati last fall, filling out my absentee ballot, so I could work the polls on Election Day at a precinct other than my own, I had to make some of the same choices my fellow Ohioans had to make, including choosing who would fill a dozen or so judicial offices.

Next to me as I completed my ballot was a stack of no fewer than a half dozen mail pieces from the Republican Party, from the Democratic Party, and from special interest groups that are closely aligned with one party or the other, such as Planned Parenthood. And each of those pieces of mail told me which judicial candidates I should vote for.

But what matters is not a news report, a Google search, or piece of direct mail. What really matters is ballot design. That’s where voters look for clues, and that’s where they should find them.

Make no mistake, these are already partisan elections. It’s time we stop pretending they’re not.

I summarize with this. Partisan elections are good for voters. Partisan elections are good for democracy and representation. And partisan elections are good for reducing political behavior on the bench. Ohio’s judges—according to the best scientific data available—should be elected in partisan contests.

As an expert in judicial elections and a citizen of Ohio, I ask you to vote aye on SB80, giving the voters the information they need to cast an informed ballot for our state’s judicial candidates and improving our democratic participation, and send the bill to the full House.

⁸ Shugerman, Jed. 2012. *The People’s Courts*. Cambridge, MA: Harvard University Press, 170.

⁹ Ibid, 160.

¹⁰ Rock, Emily, and Laurence Baum. 2010. "The Impact of High Visibility Contests for U.S. State Court Judgeships: Partisan Voting in Nonpartisan Elections." *State Politics & Policy Quarterly* 10 (4):368–96.