

TO: Ohio State Senate Local Government and Elections Committee
FROM: Chris W. Bonneau
DATE: March 22, 2021
RE: SB 80

Chairwoman Gavarone, Vice Chairwoman O'Brien, Ranking Member Maharath:

My name is Chris Bonneau and I am Professor of Political Science at the University of Pittsburgh. I received my PhD in political science from Michigan State University in 2002 and have taught at Pitt since that time. I am an expert in state judicial selection, specifically judicial elections. I have written two books on that topic and edited another. Additionally, I have written 15 peer-reviewed journal articles, 8 book chapters, spoken to bar associations and gatherings of legislators, and testified as an expert witness on the topic of judicial elections. The testimony I am about to give is based on my research, the research of other scholars, and conclusions I have drawn from that research; my opinions do not reflect the opinions of my employer.

I come before you today to provide testimony and evidence in support of SB 80. As you know, the State of Ohio has a system unlike any others in the United States. In Ohio, candidates for the bench run in partisan primaries, but when it comes to the general election, these party labels are stripped from the ballot. Only one other state is similar; in Michigan, judges are nominated in partisan conventions and then run in nonpartisan elections.

Before I discuss data, I want to briefly discuss the importance of partisan identification of candidates on the ballot. Again, the most important distinguishing feature of partisan judicial elections is that they provide important information to the voters. Namely, they provide voters the political party affiliation of the candidates. Some argue that this is the biggest defect of these elections; judges should be nonpartisan and it simply does not matter whether the candidate is a Democrat or Republican. Sentiments like this are either naïve or disingenuous. Scholars have shown for decades that liberal judges and conservative judges decide cases differently. Legislators know this too. Why did Merrick Garland not get a hearing for a U.S. Supreme Court vacancy? Why did 42 Senators vote against confirming Justice Alito? Why did 31 Senators vote against confirming Justice Sotomayor? All three of these individuals were distinguished jurists who were highly qualified for the Court. If qualifications and fairness were all that was important, all three would have been confirmed unanimously. But, ideology matters. It shapes how judges see the law. The cases decided by appellate courts are difficult cases; reasonable people can see the law and facts differently. The easiest way to convey this crucial piece of information is through the party affiliation of the candidates. In general, Democratic judges interpret the law more liberally than Republican judges. Judges know this. Legislators know this. Lawyers know this. *Voters* know this. So why should the voters not know this when they are casting their ballots? Indeed, this is the single most important fact for voters to know. Why should they be deprived of meaningful information?

This is important because what voters want out of judges varies. For years, scholars and political and legal elites believed the public simply wanted judges who would be fair and impartial. While these characteristics are desirable, work by Jim Gibson demonstrates

that voters want more than this. Using a Justice at Stake National Survey, on a 10-point scale (with 10 meaning it is the “single most important responsibility of courts and judges,” Gibson reports that “Making impartial decisions” averages 7.58, behind more “subjective” items such as “Ensuring fairness under law” (7.85 average), protecting individual rights (7.69 average), and others. Indeed, “providing equal justice for rich and poor” had an average of 7.22. Focusing on voters in Kentucky, 72.9% of the respondents felt it was very important for a judge to “protect people without power,” a higher percentage than those who felt it was very important for a judge to “strictly follow the law” (71.8%). Additionally, 43.7% of the respondents felt it was very important for a judge to “give my ideology a voice.” The bottom line from all this is that voters do not simply expect judges to strictly follow the law when they decide cases; rather, voters expect judges to weigh multiple competing factors and use their judgment to render a “fair” or “just” verdict.

One of the key components to any political system is transparency; in a democracy we should prefer more transparent systems to less transparent systems absent compelling reasons for secrecy. For sure, too much transparency can be a bad thing. For example, we want advisers to be able to speak freely to the President and we do not want the government to release troop locations. But, when it comes to selecting judges, there is no compelling reason not to prefer transparency in how judges ascend to the bench and keep their jobs.

On the measure of transparency, elections are superior to other methods of judicial selection. Voters are directly involved in both the selection of candidates to run in the general election as well as in who ultimately ascends to the bench. The provision of the party affiliation of the candidates on the ballot is an added measure of transparency, as it tells voters important and relevant information about the candidates running for office, as discussed extensively above.

During my oral testimony, I will present data from a variety of sources. Here, I want to provide you with some of the most important findings:

- From 1990-2004, Bonneau and Hall (2009) show that average ballot roll-off in state with partisan elections averaged 11.1% compared to 21.8% in states with nonpartisan elections. Thus, there is significantly lower levels of voter participation in states without partisan identification on the ballot.
- Looking at the 2012 elections, Bonneau and Cann (2015) find similar patterns. Quasi-partisan states like Michigan and Ohio fall in between partisan and nonpartisan in terms of roll-off.
- Matt Streb and his colleagues examined ballot roll-off in intermediate appellate court elections from 1999-2014. They find that roll-off in contested partisan elections is always below 10%. However, in contested nonpartisan elections, roll-off never drops below 20%. Thus, the same findings regarding voter participation scholars have found in state supreme court elections also hold true in intermediate appellate court elections.
- Nonpartisan elections are unsuccessful at removing partisan considerations from the choice made by voters. The only thing it does is increase the number of “errors” voters make in selecting candidates. Moreover, it decreases voter participation in elections. So, with nonpartisan elections, states are paying the costs of having them without reaping the benefits.

- Looking at elections over the past decade, ballot roll-off in Ohio has ranged from about 14% to almost 27%. Consistent with other states, roll-off tends to be higher in presidential election years, since those elections involve a lot more “casual” voters—voters who vote for President and nothing else. From the standpoint of voter participation, these numbers are concerning, and they suggest the absence of partisan affiliation on the ballot serves to decrease voter participation by making it more difficult for voters to select the candidate closest to their ideology. This results in some people just skipping the races.
- Several studies focusing on Ohio by Larry Baum and colleagues find that party identification has a strong effect on vote choice, particularly in highly visible campaigns.
- Looking at the amounts of campaign spending, the nature of Ohio state supreme court elections is more similar to partisan elections than nonpartisan elections. While many are concerned with the amount of campaign spending in judicial elections, data suggest that moving to fully partisan elections is not likely to fundamentally affect this dynamic.

To conclude, the data point quite clearly to the conclusion that adding party affiliation to the ballots will increase voter participation in these elections as well as increase voters’ ability to select candidates who are more reflective of the voters’ views. If we are going to have elections for judges (which is a whole separate debate not at issue here), we should want to make it as easy as possible for voters to participate in them and participate meaningfully. Having the party affiliation of the candidates on the ballot is the best way to do this.

For Further Reading:

Bonneau, Chris W. and Damon M. Cann. 2015. *Voters' Verdicts: Citizens, Campaigns, and Institutions in State Supreme Courts*. Charlottesville: University of Virginia Press.

Bonneau, Chris W. and Melinda Gann Hall. 2009. *In Defense of Judicial Elections*. New York: Routledge.

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Gibson, James L. 2012. *Electing Judges: The Surprising Effects of Campaigning on Judicial Legitimacy*. Chicago: University of Chicago Press.

Klein, David and Lawrence Baum. 2001. "Ballot Information and Voting Decisions in Judicial Elections." *Political Research Quarterly* 54: 709-728.

Rock, Emily and Lawrence Baum. 2010. "The Impact of High-Visibility Contests for U.S. State Court Judgeships: Partisan Voting in Nonpartisan Elections." *State Politics and Policy Quarterly* 10: 368-396.