Chapter 1

The Study of Judicial Elections

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In a 2004 election, Lloyd Karmeier and Gordon Maag spent a combined total of approximately $10 million. The Democratic and Republican Parties accounted for roughly half of that money, and Political Action Committees donated much of the rest. Candidates, political parties, and interest groups spent more than $5 million on television advertisements alone. The tone of the race was mean spirited, as close to 73 percent of the commercial airings were either attack or contrast ads.[1] The candidates clashed over health care and medical malpractice, and supporters of one questioned the character of the other. Volunteers for one of the candidates were even accused of rummaging through the opponent's trash. All of this was regularly covered in the print media. This was not a race for the U.S. Senate, as the amount of money spent, the tone of the campaign, the issues raised, and the media coverage might imply. It was an election for a seat on the Illinois Supreme Court.

The Illinois Supreme Court race between Karmeier and Maag is not an outlier. According to one study, in 2003–2004, supreme court candidates combined to raise over $46.8 million. Combined candidate spending in ten races broke the $1 million mark, and nine candidates spent more than $1 million by themselves. In the 2000, 2002, and 2004 election cycles, candidates raised $123 million compared with only $73.5 million in the preceding three cycles.[2] The spending didn't stop at the supreme court level; one candidate for a Georgia intermediate appellate court seat raised $3.3 million.[3] Nor was the spending confined only to candidates. While the controversial 527 organizations took a major role in the 2004 presidential election, they weren't silent in judicial elections, either. In West Virginia, one 527 group raised at least $3.6 million to successfully beat an incumbent.[4] The organization, known as "And for the Sake of the Kids," accused

Justice Warren McGraw of being lenient on child molesters and was funded primarily by the chief executive officer of Massey Energy.

Twenty years ago, judicial elections such as the ones in Illinois and West Virginia would have been relatively uncommon. Today, they are ordinary. Judicial elections have changed immensely, perhaps more so than elections for any other office. Once compared to playing a game of checkers by mail,[5] many of today's judicial races are as rough and tumble as any congressional election. As one observer famously remarked, judicial elections are getting "noisier, nastier, and costlier."[6] Candidate spending in judicial elections, both at the supreme court and intermediate appellate levels, has skyrocketed. Interest groups and political parties, recognizing the extreme importance of electing judges who support their views, are becoming more active.

The changes occurring in judicial elections involve more than the massive amounts of money that are flooding campaigns. Judicial elections are governed by rules different from those of other elections, and those rules are coming under attack (see chapter 2). Courts have declared some of the rules that guide judicial elections to be unconstitutional (most notably the announce clause, which prohibited judicial candidates from "announcing his or her view on disputed legal or political issues"),[7] and many more lawsuits challenging other rules remain or are likely on the horizon. The decisions have the potential to dramatically affect the way judicial elections are run by campaign consultants and covered by the media, the kinds of issues that are raised in the races, and the ability of citizens to cast informed votes. All of these occurrences have worried many judicial reformers because, in their eyes, races for judgeships are becoming more and more political. As a result, several states and municipalities are considering judicial election reform (see chapter 11).

Discussion of the judicial selection process isn't restricted to reformers. Because of the increasing contentiousness of the federal judicial selection process, questions about whether judges should be elected or appointed are common in newspapers, magazines, and even blogs. In short, interest in judicial elections among scholars, practitioners, and the media has grown substantially. Yet systematic studies of judicial elections are surprisingly somewhat rare. Certainly, there are an enormous number of law review articles on the judicial selection process, and there are an increasing number of interesting articles on the topic published in academic journals (many by several of the contributors to this book). But with what Deborah Goldberg and her colleagues at the Brennan Center for Justice call the

"New Politics of Judicial Elections"[8] emerging and recent court rulings regarding the rules of judicial elections (and several more pending), a systematic study of judicial elections is needed. The goal of *Running for Judge* is to fill in this void by providing some answers to important questions regarding judicial elections, ranging from the role of interest groups and political parties to the coverage of these elections by the media. The chapters will tie together the current state of the judicial elections literature and offer some new, empirical analyses on a wide spectrum of topics.

Much of the work that is published on judicial elections, especially in law reviews is normative in nature. Some recent titles, including "Judicial Elections versus Merit Selection: The Futile Quest for a System of Judicial 'Merit' Selection,"[9] "Had Enough in Ohio? Time to Reform Ohio's Judicial Selection Process,"[10] "The Case for Adopting Appointive Judicial Selection Systems for State Court Judges," and, most bluntly, "Why Judicial Elections Stink"[11] make the point. Certainly there is nothing wrong with people debating the pros and cons of certain judicial selection methods, but our purpose here is different. While the contributors will raise some normative questions, they will let the readers provide their own normative answers. The goal is to describe and explain the current state of judicial elections in a nonnormative way; we leave the pros and cons of our findings as they relate to judicial elections to be debated by others.

Why Study Judicial Elections?

Recently, I started a job at Northern Illinois University. During the new faculty orientation we were asked to introduce ourselves and briefly discuss our research areas of interest. When I said that I was currently studying the politics of judicial elections, many of my new colleagues gave me a quizzical look. My colleagues are not much different from others who ask what I study. "Why would you study judicial elections?" one friend once asked. "Aren't presidential elections more interesting and important?" Some people are not even aware that there are judicial elections to study.

While I certainly understand my friend's puzzlement, the study of judicial elections is enormously important (whether it is more important than studying presidential elections is irrelevant). While a member of Congress is just one of 535, a judge may be one of a few people—and, indeed, may often be the sole person—responsible for a decision. Even in cases where a jury is ultimately responsible for a verdict, the judge has great discretion in

terms of ruling on the procedural aspects of the case, and, in many states it is the judge who is responsible for the sentencing. Also, post-trial motions are quite common. While they are usually denied, the judge still has the potential power to overrule a jury's verdict or to issue a new trial. And, as Paul Brace and Brent Boyea make clear in chapter 10, judges regularly have the power to reverse capital punishment decisions. Simply put, judges have more power and discretion than most office holders have.

Moreover, the issues that state judges must confront are often as important as those before federal judges. Judges have a great deal of power and are deeply involved in dividing up scare resources and deciding what kind of society we will live in. Clearly, state judges may be limited in their rulings by federal court precedent—a state court cannot overturn *Roe v. Wade,* for example—but the issues before state judges are likely to be quite relevant to many people who live in the state. While a state court cannot overturn *Roe,* it can make rulings that would limit or uphold abortion rights under certain circumstances. Perhaps the power of state courts is most apparent with the controversy over the Massachusetts Supreme Court's ruling that same-sex marriage was protected under the state's constitution. The Massachusetts Supreme Court is not elected, but that doesn't mean that a similar ruling couldn't be handed down in a state where judges are elected (or, maybe not because of the judges' fear of backlash, which raises a host of other interesting questions regarding judicial independence). In short, state court judges make important rulings and have significant influence; as a result, it is necessary that we understand the selection process that puts the vast majority of state judges in that position of power.

Studying the judicial selection process—in this case, specifically elections—can allow us to better understand the conditions under which state judges make their rulings and how, if at all, the selection process influences those rulings (a topic that is addressed in chapter 10). While the research in this book is nonnormative, it certainly has normative implications. Should judges be accountable to the public in a manner similar to that of other elected officials? Should they be concerned with public opinion? How important is judicial independence? Is it appropriate for political parties and interest groups to be active in judicial campaigns? Are these actors needed to help the public make sense of these low-information elections?

The study of judicial elections has relevance beyond how they affect what happens on the bench. As someone who studies political behavior, I initially became interested in judicial elections because they raise some in-

triguing questions about campaigns and citizens' vote choices. Much of the voting behavior literature is focused on national or high-profile state elections (e.g., the president, Congress, governor), and understandably so. But elections for these offices actually constitute an extremely small percentage of the total number of offices in which Americans are asked to vote. Many questions emerge regarding contests for so-called down-ballot offices. How are these down-ballot races covered in the media? Can citizens obtain enough information about the candidates to cast "rational" votes? If party identification is removed from the ballot—as it is in many judicial elections—and we know that party identification is a (if not *the*) central influence on voter choice,[12] then how informed are people when they vote in these races? What other cues might they be looking for? Do interest groups and political parties come to wield more influence in these low-information elections? How do candidates for these offices campaign? Judicial elections are one outlet to answer some of these questions about political behavior in low-information elections.

So why have scholars generally focused more on elections for higher-profile offices? Because the offices have higher profiles, there is more interest in these races (nobody flinches when I tell them I study presidential elections). Many citizens are engrossed in the competitive nature of presidential elections, and they may be more apt to see the relevance of elections for Congress or governor. People are more likely to understand the issues discussed in, and the importance of the outcomes of, these elections. They haven't always felt the same way about judicial elections. For example, most people don't get too worked up about tort reform, a subject that is regularly an issue in judicial elections.

There is also a more practical reason why scholars are less likely to examine judicial elections (or, for that matter, other down-ballot contests as well). Data collection makes presidential, congressional, and even gubernatorial elections much easier to study. Every two years the Inter-University Consortium for Political and Social Research (ICPSR), housed at the University of Michigan, conducts the American National Election Study (ANES), a comprehensive pre/post survey that asks respondents a plethora of questions about presidential and congressional elections. Exit polls—conducted as voters leave the voting booth—are usually available to provide scholars with information on how people voted and why they voted that way. A variety of polling and news organizations conduct preelection polls that give researchers even more data to analyze. Usually, none of these sources of data asks questions about judicial elections.

The complexity of the state court systems makes judicial election research more difficult, too. If you are studying trial court elections, for instance, there are thousands of seats to be filled (although many of these seats are uncontested) and information about these races is sporadically available; the data that are available are contained in several places. Furthermore, as Brian Schaffner and Jennifer Segal Diascro discuss in chapter 7, media coverage of judicial elections is not frequent, especially when compared with races for the Senate and governor and, especially, for the presidency. All of these things can make studying judicial elections difficult and frustrating.

Judicial Selection in the States

Before we get into the more substantive chapters of this volume, it is important to illustrate the judicial selection process in the states, as well as the reasons that judicial elections came about. These are the subjects of the next two sections.

Judicial selection of federal judges is straightforward. The Constitution clearly states that the president is to nominate all federal judicial candidates who then must be confirmed by the Senate. Although it is easy to explain the federal judicial selection process, judicial selection in the states is much more complex because of federalism. There are nearly as many different rules for selecting judges as there are states. Each state determines how their judges will be initially selected, the length of the judges' terms, and whether they will be reappointed or reelected, which leads to many different variations.

There are two broad types of judicial selection methods: appointment and election. Some states, such as New Jersey and Maine, follow the federal model of judicial selection. The governor independently chooses a judicial candidate, who is then subject to legislative confirmation. However, unlike the federal model in which judges serve for life, judges in New Jersey and Maine each serve seven-year terms and then must be reappointed in the same manner as they were first appointed. Virginia continues to use the plan adopted by many of the states after the ratification of the Constitution. Its judges are appointed (and reappointed) by the state legislature. Finally, in some states, such as Hawaii, New Hampshire, and Rhode Island, a nominating committee—often comprising state lawyers and judges—presents a list of potential nominees to the governor from which

to choose. South Carolina is slightly different. The state's Judicial Merit Selection Committee—comprised of six members of the General Assembly and four people chosen by the state legislature from the general public—provides a list of three candidates to the state legislature, not the governor.

In the vast majority of states, however, at least some of the judges face some sort of election. Thirty-nine states use some form of election to select or retain some or all of their judges. Almost 90 percent of all state judges must face voters to retain their seats on the bench.[13] There are three types of judicial elections: partisan, nonpartisan, and retention elections. Some states, including Alabama, Illinois, Pennsylvania, and Texas, elect their judges in partisan elections. In theory, then, these elections are no different from elections for president and for Congress. A political party nominates candidates, who then run under the party's name. Because judges are supposed to be above politics, partisan judicial elections are quite controversial (see chapter 6). As a result, many states hold nonpartisan judicial elections, in which no political party is listed next to the candidates' names. These elections are similar to all of the elections for local office, for instance, in California and Texas. In 2004, North Carolina became the most recent state to switch from partisan to nonpartisan elections. Michigan and Ohio use a strange combination of partisan and nonpartisan elections for seats on their state supreme courts. In both states candidates are nominated by political parties (by a party convention in Michigan and a party primary in Ohio), but the candidates' party affiliations are not listed on the general election ballot.

Partisan and nonpartisan elections are regularly used in elections for other offices, but there is one election that is unique to the selection of judges: retention elections. In retention elections, judges are appointed to the bench (usually by the governor, in some cases with a merit commission, in some cases without) for a set term. After a judge's term is completed, the public then votes whether to retain the judge. The judge does not run against an opponent; voters simply vote "Yes" to keep him or her on the bench or "No" to remove the judge. As I discuss momentarily, retention elections were a solution offered by the American Judicature Society as an attempt to generate a compromise between judicial independence and judicial accountability. Retention elections are also getting more expensive and nastier, which raises questions about how independent even judges selected under this method can be.

What makes judicial selection in the states even more complex is the variations that are used *within* several states. For example, California holds

retention elections for its supreme court and courts of appeals justices after they serve twelve-year terms. Alternatively, candidates for superior court must run in nonpartisan elections and are elected to six-year terms. In Arizona, all judges are nominated by the governor through a nominating committee, unless the county's population is under 250,000. In that case, superior court judges are then chosen through nonpartisan elections. California's and Arizona's judicial selection processes are simplistic compared to Indiana's. In Indiana, supreme court and appellate court justices are appointed by the governor through a nominating commission and must be retained every ten years. At the circuit court level, judicial candidates generally run in partisan elections, unless the seat's jurisdiction is in Vanderburgh County, in which case the election is nonpartisan. Superior court seats are also generally decided in partisan elections, but Allen and Vanderburgh Counties hold nonpartisan elections and Lake and St. Joseph Counties appoint through a nominating commission.

History of Judicial Elections

The complex nature of the states' judicial selection processes raises the question, why do we have judicial elections in the first place? After all, Alexander Hamilton was quite clear that if a judge were forced to run for reelection, judicial independence—and hence the judiciary itself—would be threatened. As with many aspects of government at the time, Hamilton's and the founders' beliefs about the importance of judicial independence were developed largely because of their experiences with England and colonial government. Founders like Hamilton strongly favored judicial independence because of the conflict they saw in England between judges and the king. They also believed judicial independence was needed based on the colonial experience where governors often appointed friends to the bench no matter the person's qualifications.[14] As a result, the founders settled on a selection system in which federal judges would be appointed by the president with a senatorial check on the president's appointment power. To keep federal judges free from political influence, they would serve life-time terms (although the judges would have the possibility of being impeached under extraordinary circumstances).

The thirteen original states also adopted an appointment system for their judges. In 1780, seven states selected their judges by the legislature and five states had the governor appoint judges who would then be ap-

proved by a special council appointed by the legislatures to serve as a check on the governor. Delaware followed the model eventually adopted in the Constitution: the governor would appoint followed by legislative confirmation.[15] No state elected judges. All the states that entered into the Union after the original thirteen until 1830 followed the appointment method as well.[16]

However, the idea of an elected judiciary was not foreign at this time. Montesquieu, for example, supported the selection of judges by the people.[17] In the Declaration of Independence, Jefferson accused King George of having "made Judges dependent on his Will alone, for the Tenure of their Offices, and the Amount and Payment of their salaries." As a result, the idea of judicial accountability began to emerge as well. In the early 1800s, Vermont, Indiana, and Georgia became the first states to allow localities the option to elect trial court judges. It wasn't until 1832, however, when Mississippi became the first state to amend its constitution to require that all state judges be elected. New York followed suit in 1846, with apparently little debate over the subject.[18] Rapidly, states began to follow the leads of Mississippi and New York. According to Evan Haynes, "In the year 1850 alone, seven states changed to popular election of judges; and, thereafter, year by year until the Civil War, others followed."[19] By the time of the Civil War, twenty-four of thirty-four states had an elected judiciary.[20] In fact, every state that entered the Union between 1846 until Alaska's admission in 1959 allowed for the election of some—if not all—all its judges.[21]

Scholars have put forth several reasons behind the surge in state-elected judiciaries, including concern over an independent judiciary after the Supreme Court's controversial ruling in *Marbury v. Madison,*[22] resistance to English common law,[23] imitation by the states,[24] the fact that impeachment was difficult to enact,[25] the belief that judges at the local level should be responsive to their communities,[26] and the legal profession's belief that the judiciary needed more independence from the state legislatures.[27] Perhaps more than anything, the rise of Jacksonian democracy gave more power to the people and raised questions about the accountability of judges. Not electing state judges was considered to be undemocratic, and the Jacksonian era was dominated by beliefs in expanded suffrage and popular control of elected officials.

However, the creation of judicial elections introduced a whole new set of problems. The first judicial elections established were partisan and dominated by the machine politics of the time, which led to cronyism and

corruption. In fact, as Steven P. Croley notes, "By the early twentieth century, elective judiciaries were increasingly viewed as plagued by incompetence and corruption."[28] Roscoe Pound concurred, arguing in 1906 in an often-cited speech before the American Bar Association that "putting courts into politics, and compelling judges to become politicians, in many jurisdictions has almost destroyed the traditional respect for the bench."[29] These problems led to a new round of judicial selection reform pushed by groups including the Progressives, the American Bar Association, and the American Judicature Society. One particularly popular reform was nonpartisan elections in which the candidates' party affiliations would not be listed on the ballot. This Progressive reform was designed to cripple the powerful city machines' control over the nomination process and remove divisive national partisan interests from state and local elections. In the process, Progressives believed, government would become less corrupt. Since judges are supposed to be "above politics," this reform was particularly popular regarding judicial selection. Nonpartisan judicial elections were perceived as a way to clean up corruption and cronyism in the judicial selection process while still keeping judges accountable to the people. Judicial candidates first ran in nonpartisan elections in Cook County, Illinois, in 1873. By 1927, twelve states employed this method of judicial selection.[30]

Yet, nonpartisan judicial elections did not quell the concerns of the critics. Judges still had to campaign for office (both to be elected and reelected), meaning that politics would still likely play a part. Also, not everyone was convinced that parties completely removed themselves from involvement in judicial elections.[31] Furthermore, some began to question the ability of citizens to cast informed ballots in nonpartisan judicial elections. Political science research has noted the difficulty that citizens have in making educated evaluations when their cheapest voting cue is not available.[32] If this is the case, then the quality of justices could suffer. While twelve states elected judges in nonpartisan elections by 1927, three states had already tried nonpartisan elections but switched back to partisan elections as a result of these reasons.[33]

Because of concerns over partisan and nonpartisan judicial elections, the American Judicature Society pushed for another judicial selection reform that they believed captured the positive effects of all selection systems: retention elections. Again, the idea behind retention elections was to combine judicial independence (judges would not have to run against an opponent) with judicial accountability (they would still face the possibility

of being removed from office if they had ruled against the wishes of the people). While California first adopted a merit plan in 1934, in 1940 Missouri became the first state to adopt the more familiar option today; hence, retention elections are also called the "Missouri Plan."[34] Merit selection with retention elections is the most common judicial selection method today. Even it has encountered criticism, however, as the role of money becomes larger and the tone of these elections becomes nastier. In 2005, for example, citizen groups targeted Pennsylvania Supreme Court justices Russell Nigro and Sandra Schultz Newman after the state legislature voted to enact pay raises for the legislature and judges. Neither judge had anything to do with the vote, but since no one in the legislature was up for reelection in 2005, groups such as Clean Sweep and Democracy Rising turned their attention to ousting Nigro and Newman in their retention elections. While Newman was barely retained, Nigro was not as lucky. In 2006, a Nebraska man targeted two state supreme court justices, Kenneth Stephan and Michael McCormack, because of what he saw as the "tendency [of justices] to rely on personal philosophies in reaching legal decisions." Stephan and McCormack were not challenged because of any decisions they had personally made, but simply because they were the only justices up for retention in 2006.[35] If retention elections continue to follow in the footsteps of their partisan and nonpartisan counterparts, it is possible that they will lose favor as the preferred method of judicial selection as well.

Overview of the Book

Running for Judge examines many different facets of judicial elections from the rules that guide these elections to the campaigns conducted by judicial candidates and from the news coverage of these campaigns to the effects that running for election has on the judge once on the bench. In chapter 2, Richard Hasen provides an overview of the current canons by which judicial candidates must abide and an analysis of the Supreme Court decision in *Republican Party of Minnesota v. White,* a case that explicitly declared one canon—the announce clause—to be unconstitutional. Hasen argues that, given the Court's ruling in *White,* many of the remaining canons may no longer pass constitutional muster.

Chapters 3–7 examine judicial campaigns from a variety of perspectives. In chapter 3, Rachel Caufield assesses how the tone of judicial cam-

paigns has differed since *White.* While only one electoral cycle has passed since *White* at the time of Caufield's writing, she finds that, to some extent, campaign tone has changed since *White.* For example, while negative advertising didn't necessarily increase in 2004, the number of contrast ads in states with "broad" interpretations of *White* did rise.

Chapters 4 and 5 examine the increasing role that money is having in judicial elections. In chapter 4, Chris Bonneau illustrates that judicial campaigns are becoming more expensive across the board, but especially when those elections are partisan and no incumbent is running. In chapter 5, Deborah Goldberg notes the increasing role of interest groups in judicial campaigns. This role hasn't been limited to campaign donations and running campaign commercials but has extended to grassroots activities as well.

In chapter 6, I turn to the question of partisan involvement in judicial campaigns. While many reformers want to limit the involvement of parties in judicial campaigns to keep judicial candidates "above politics," the evidence indicates that parties do have a role in judicial campaigns. While that role is much greater in partisan judicial elections, it is hardly absent from nonpartisan elections.

The focus of chapter 7 turns away from the candidates' campaigns to the news coverage of those campaigns. Brian Schaffner and Jennifer Segal Diascro find that news coverage of state supreme court races is lacking, both in terms of quality and quantity, when compared with coverage of Senate elections. However, coverage is not constant across elections. Partisan races, competitive races, and those races covered by independently owned newspapers all receive more news coverage than those races that are nonpartisan, uncompetitive, or covered by chain newspapers. Nevertheless, most judicial races fail to receive substantial coverage from the print media.

Chapter 8 analyzes judicial elections from a voter's perspective. Lawrence Baum and David Klein compare voting in high-visibility and low-visibility judicial elections. They find that, while voter participation was greater in the high-visibility election, the determinants of vote choice changed little between elections.

Chapters 9 and 10 move away from analyzing different aspects of judicial elections to examining the *effects* of those elections. In Chapter 9, Melinda Gann Hall addresses whether judicial elections have the capacity to fulfill their goal of holding state supreme court justices accountable. She finds that judicial elections are increasingly contested and competitive,

and that incumbents are more susceptible to defeat. As a result, Hall argues, judicial elections can promote accountability and thus fulfill their essential function.

In chapter 10, Paul Brace and Brent Boyea look at whether judicial elections influence a judge's decision, specifically regarding the reversal of capital punishment cases. Brace and Boyea find that the prospect of an upcoming election, among other things, is a significant factor on a judge's vote.

Finally, in chapter 11, Brian Frederick and I discuss some of the recent judicial selection reform efforts and comment on the future of judicial elections and judicial elections research.

NOTES

1. Percentage calculated by author from the Brennan Center's report on television advertising for the 2004 judicial elections. Brennan Center for Justice, "Buying Time 2004."
2. Goldberg et al., *New Politics of Judicial Elections 2004.*
3. Rankin, "Bernes Wins Judicial Election."
4. Goldberg et al., *New Politics of Judicial Elections 2004.*
5. Bayne, "Lynchard's Candidacy."
6. Woodbury, "Is Texas Justice for Sale?"
7. Coyle, "It Won't Be Long."
8. Goldberg et al., *New Politics of Judicial Elections 2004.*
9. Dimino, "Judicial Elections versus Merit Selection."
10. Link, "Had Enough in Ohio?"
11. Dimino, "Judicial Elections versus Merit Selection"; Link, "Had Enough in Ohio?"; Behrens and Silverman, "Case for Adopting"; Geyh, "Why Judicial Elections Stink."
12. Campbell et al., *American Voter*; Brody and Page, "Assessment of Policy Voting"; Jackson, "Issues, Party Choices, and Presidential Votes"; Markus and Converse, "Dynamic Simultaneous Equation Model."
13. Schotland, "Should Judges Be More Like Politicians?" The percentages are slightly lower for initial selection as many justices are appointed and then, after their term is over, must face reelection or retention.
14. Sheldon and Maule, *Choosing Justice.*
15. Price, "Selection of State Court Justices."
16. Sheldon and Maule, *Choosing Justice.*
17. Johnson, "Judicial Campaign Speech."
18. Berkson, "Judicial Selection in the United States."

19. Haynes, *Selection and Tenure of Judges,* p. 100.
20. Berkson, "Judicial Selection in the United States."
21. Croley, "Majoritarian Difficulty"; Berkson, "Judicial Selection in the United States."
22. Croley, "Majoritarian Difficulty."
23. Ibid.
24. Sheldon and Maule, *Choosing Justice.*
25. Ibid.
26. Zaccari, "Judicial Elections."
27. Sheldon and Maule, *Choosing Justice.*
28. Croley, "Majoritarian Difficulty," p. 722.
29. Pound, "Causes of Popular Disaffection," p. 45.
30. Sheldon and Maule, *Choosing Justice*; Epstein et al., "Selecting Selection Systems."
31. Epstein et al., "Selecting Selection Systems."
32. Schaffner et al., "Teams without Uniforms"; Schaffner and Streb, "Partisan Heuristic"; Squire and Smith, "Effect of Partisan Information."
33. Cheek and Champagne, "Political Party Affiliation."
34. Epstein et al., "Selecting Selection Systems."
35. Mabin, "North Platte Man Seeks Judges' Ouster."