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May it please the twitterverse: The use of Twitter by state high court judges

Todd A. Curry  and Michael P. Fix 

ABSTRACT

This article examines the extent to which Twitter has been adopted by judges on state supreme courts, and how these judges use the platform. While social media usage by other politicians has been examined in a variety of contexts, judges have been universally ignored. We find that elected judges are more likely to use Twitter, primarily to engage with the public. Additionally, while they do not engage with the public like traditional politicians, they increase Twitter use overall and tweet more election-related rhetoric in election years. This work extends the audiences literature in judicial politics to extra-judicial behavior of judges.

KEYWORDS

Twitter; judges; state supreme courts; judicial elections

During his time on the Texas Supreme Court, Justice Don Willet was perhaps the most well-known judge not on the U.S. Supreme Court. Dubbed the Twitter Laureate of Texas by the Texas House of Representatives, Judge Willet amassed over 100k followers on the social media platform. When he was active, he posted multiple times a day on topics ranging from the Constitution, the musical *Hamilton*, or tributes to his various family members. However, on September 28, 2017, the tweets stopped. The radio silence coincided with Judge Willet's nomination to the Fifth Circuit Court of Appeals by President Trump. Judge Willet himself had not changed, but his constituency had. United States Senators are not the voters of Texas.

This paper seeks to examine the extent to which Twitter has been adopted by judges on state supreme courts, and if so, how these judges primarily use the platform. While social media usage by other politicians has been examined in a variety of contexts ranging from United States Congressional elections (Vaccari & Nielsen, 2013), German Federal elections (Stier, Bleier, Lietz, & Strohmaier, 2018), the Catalan Parliament (Bravo & Esteve Del Valle, 2017), and the Japanese Parliament (Kobayashi & Ichifuji, 2015), judges have been universally ignored (but see Browning, 2014 & Singh, 2016 for normative treatments). This is not shocking as the method by which most judges are chosen internationally mirrors the United States federal system in prioritizing judicial

independence, either giving their judges life tenure, or limiting them to one non-renewable term. Judges serving on the courts of last resort across the various states are markedly different. We find that variations in Twitter adoption and usage are dependent upon how judges are retained. Social media usage specifically is linked to whether or not judges need to cater to a specific audience in order to be re-elected (Baum, 2006; Romano & Curry, 2019).

Across the 52 state courts of last resort, 40 of them subject their judges to some type of public retention process. Of the remaining twelve courts, only three give their justices life tenure, with the remaining nine placing reappointment in the hands of the governor or legislature. Thus, the vast majority of judges on state courts of last resort are either explicitly accountable to the electorate, or to individuals standing for the electorate and acting in their proxy. Put more simply, these judges are representatives. Like other representatives, we should expect judges to use the tools available to connect with their electorates. Twitter and other social media platforms have proven to be a cheap and effective format for politicians to engage the public directly, we see no reason why this should be different for state high court judges, especially those who must stand of reelection periodically. That said, we expect judges that do adopt twitter will use it in some systematically different ways than other representatives.

In this article, we examine a novel dataset of all tweets by state high court judges since the birth of the platform. We find that justices that are elected representatives are much more likely to use Twitter, primarily as a means to engage with the public. Yet, consistent with our predictions, they do not engage with the public as traditional politicians. Justices that use Twitter are much more likely to engage in self-personalization activity than policy-based campaigning activity. Given the non-salient nature of judicial elections combined with the normative expectation that judges be above politics, this allows them indirectly to advance their electoral goals by providing a mechanism for building name recognition without engaging in the more distasteful aspects of overtly political Twitter use. However, while we do not see any evidence of the use of the type of policy-based or political charged rhetoric we would expect from traditional politicians, we do see that state high court judges do use more election-related language in years they face the voters. Additionally, we find further support for this proposition based on who is using Twitter. If judges had no electoral goals for using the platform, we would expect that the judges who did so would largely be a random draw from the pool of all state high court judges; however, in practice it is almost solely judges in states that use some type of election for selecting/retaining judges that use the platform and those judges tend to utilize it more in election years than in non-election years.

Various authors over the years have focused on how judges, especially those who sit on state supreme courts, engage in a variety of representative behaviors. Namely, Baum (2006) draws attention to the idea that judges cater much of their behavior to engaging with, and seeking approval from, audiences they deem important for their career advancement or audiences they desire to be accepted by. Looking exclusively at state supreme court judges, scholars have found that judges are primarily interested in the audience that is responsible for their retention, especially when they decide cases or write opinions (Brace & Boyea, 2008; Langer, 2002; Romano & Curry, 2019). This work demonstrates that these audience effects found by previous scholars are not limited to traditional types of judicial behavior, but extend

to many other interactions with audiences, including social media adoption and usage.

Twitter use among politicians

Those who have examined Twitter use by traditional politicians and political candidates have noted that these individuals engage in different types of behaviors. First, there are traditional campaign behaviors: policy pronouncements, announcement of endorsements, explanations of votes, etc. In this vein, Twitter serves as an additional tool for behavior that would exist without the social media platform. Twitter just makes the audience for this information larger, the act of spreading it cheaper, and the speed of the contact faster. Moreover, Twitter allows politicians to access their constituents in an unfiltered fashion and speak directly to them. Second, this access allows politicians to court a personal connection by not tweeting about traditional political content, but by personalizing themselves. These tweets will strongly display the individual not as just a politician or candidate, but as a person with context to inspire feelings of familiarity.

The first examinations of Twitter in the United States looked at congressional elections and representative behavior in both the House and Senate. Predicting early adoption and use of Twitter in Congress proved partially idiosyncratic. Electoral vulnerability seemed to have virtually no effect on early adoption and use, while being a member of the minority party did (Lassen & Brown, 2011). Senators, those in House leadership, and members with a larger constituency were likely to adopt and use Twitter by 2010 (Lassen & Brown, 2011). However, within just six years, social media adoption by members of Congress was nearly total. All 100 Senators and nearly every member of the House of Representatives had a Twitter account by 2016 (Straus & Glassman, 2016).

The story of early adoption of Twitter is inconsistent across countries and institutions. Examination of early adoption by United Kingdom MPs found that in 2010 only one in

ten MPs utilized Twitter. Here the most likely to be early adopters were women and those below the age of 60 (Jackson & Lilleker, 2011). In Australia, Twitter adoption by politicians appeared to be more uniform across demographic variables with no statistical differences across age, gender, or level of government (Grant, Moon, & Grant, 2010). In Norway and Sweden, slightly less than 60% of the members of each parliament had adopted Twitter by 2013 and age was a significant factor in both countries (Larsson and Kalsnes 2014).

The adoption of Twitter is systematically different from regular Twitter use. Adopting is as simple as making an account, while actively using the platform requires an extended time commitment. Examination of Twitter use by politicians generally focus on elections cycles, communication strategies, and usage. Research concerning the electoral effects of Twitter usage by candidates is largely mixed depending upon the specific research question addressed, how the data was collected, and when the study took place (Jungherr, 2016). While social media appears to exert little impact on electoral outcomes, candidates behave as though Twitter is influential and important (Kreiss, Lawrence, & McGregor, 2018). Furthermore, most politicians use Twitter as a means to broadcast information and links (though those that do systematically engage with users receive more approval from constituents, see Lee & Shin, 2012; Lyons & Veenstra, 2016; Tromble, 2018). It is not a tool many use to engage with the public as much as one to reach the public in a different format. To many politicians, Twitter is the direct mailing for the 21st century.

Beyond traditional campaign activities, Evans, Cordova, and Sipole (2014) find that many members of the House engage in what they call a “personal” Twitter style. Tweets that exhibit a personal style focus on individual (nonpolicy) statements, photos (generally of family), and non-campaign related comments. The purpose of these engagements is to represent the candidate as an individual beyond the politics of the campaign.

This movement in campaigns has been called “self-personalization.” This self-personalization, while not explicitly campaign related is generally used for electoral benefit. Examining gubernatorial candidates, McGregor, Lawrence, and Cardona

(2017) found that self-personalization strategies were certainly not uniform across candidacies, with some candidates only engaging in traditional policy related campaign activities. For example, male candidates were more likely to use personalization in their campaigns, while women were more likely to invoke personal narratives in close elections, though those narratives prioritized gendered stereotypes that portrayed female candidates in a caregiver role (McGregor et al., 2017). Similar findings were uncovered in examining the Senatorial elections in 2012 (Meeks, 2016).

As the social media activity of judges has never been subjected to any type of systematic scrutiny, the question for us is whether judges will behave like other representatives in the United States. We claim that while judges exist within similar institutional contexts as other representatives, there exists formal and informal institutions which will condition their social media activity differently than other elected officials. Thus, while we expect judges to use Twitter in some ways that mirror other elected officials, we also expect their behavior to diverge in other important respects.

Why judges may be different

Despite the much-maligned claim that judges are just politicians in robes, with regards to communication, judges are notably different. Judges are faced with a different reality than legislators and executives for three key reasons. First, even though judicial decision-making is influenced by the policy preferences of the judge, they are still expected to behave as if they exist in an apolitical world. This normative belief that judges should stay out of the political fray stifles their ability to engage in any overtly political activity even in the course of election campaigns. Second, the electorate generally has less knowledge about who their judges are, and functionally, what a judge does, especially in comparison to members of the legislature and executive (Klein & Baum, 2001). Third, while other representatives do not need to justify every decision they make, judges, especially on courts of last resort, are expected to publicly disseminate their reasoning. Nearly every decision comes along with a written justification, explaining precisely why the court ruled the way it did. Other

representatives in either the legislative or executive offices certainly are differently situated. Thus, we have reason to believe that judges will not use Twitter in the same way as other representatives.

While self-personalization activity on Twitter is not systematic across all other governmental officials, we have reason to believe that judges will be much more likely to use this tactic in lieu of traditional campaign activity. Salamone, Yoesle, and Ridout (2017) examine how judicial television campaign advertisements differ from other races, specifically those for governor, the U.S. House of Representatives, and the U.S. Senate. They find that while state supreme court advertisements may go negative, they lag significantly behind each of the other races, especially in candidate sponsored ads, which make up the majority of their data. The likelihood of a negative advertisement in a judicial race is conditioned on the same predictors as races for other offices, however a significant gap between judicial elections and other elections still exist. The authors claim that this because of the norms that exist surrounding judges, namely that they should appear above the fray of politics. Most political advertisements in judicial campaigns are discussions of qualifications, family, or a valence level listing of supported policies. This leads us to believe that judges will use the platform of Twitter differently from other politicians as well. Specifically, we argue that the three key differences between judges and more traditional representatives are mirrored by three primary reasons we expect will drive judges will engage in more self-personalization activity on Twitter than other representatives: a lack of policy-based campaigning, a lack of name recognition, and the educational role involved with the judicial office.

This self-personalization activity is quite reminiscent of the “Homestyle” described by Fenno (2002). Certainly, these judges want to increase their name recognition among their constituency, but that is not enough. They want their constituents to identify with them: that they have common interests, worries, and fears. These judges will remind their constituents of their families and their personal lives. Twitter homestyle for judges will likely be a magnified version of themselves.

While judges in the electoral context are expected to be policy and ideological representatives of their constituency, there exist a few

impediments to overt ideological and policy based campaigning. Despite the U.S. Supreme Court decision in *Republican Party of Minnesota v. White*,¹ many state bar associations still maintain a rule against policy pronouncements when campaigning. Even in states where such rules have been done away with, there exists an informal prohibition on explicit policy campaigning.² This is not to say campaigning does not take place, but merely that the general focus is something other than specific policy. Attack advertisements maybe quite exacting, but they normally are not policy pronouncements. They generally criticize very specific decisions which let a criminal go or take the form of broad claims concerning a judge being soft on crime (Hall, 2014). As judges are constrained by these formal and informal institutions when campaigning, this should affect how they use Twitter as a platform for communication. When compared with traditional politicians, these constraints likely will reduce the amount of overt campaign activity that judges will engage in. While judges may link to endorsements or articles about themselves via Twitter, they will be constrained in what they can say themselves. This leaves open few options, outside of developing an online persona and attempting to increase name recognition.

Low name recognition already plagues most statewide elections, but judges are particularly susceptible (Baum, 1987, 2003; Kam & Zechmeister, 2013). Judges do not engage in credit claiming, hold press conferences, or give interviews to media, which are the bread and butter of political communication for other elected officials. Since judges are constrained from engaging in traditional electoral activity, this further exacerbates their already low name recognition. Most state supreme court justices hold statewide office, and thus represent a larger geographic area than most elected offices within the state except members of the states executive branch and U.S. Senators.³ Low name recognition is something that is vital for judges to overcome, because it leads to high levels of ballot roll-off by voters (Klein & Baum, 2001) which can cause an individual to lose an election. Self-personalization strategies on Twitter may mitigate low name recognition in a highly cost-effective fashion.

Lastly, while the motivation may not be solely what they claim, many judges argue that the

judiciary, and appellate judges specifically, have a duty to educate the public and portray themselves as more than just elitists in robes. The general version of this claim goes that as public servants, who are accountable to the people, judges should also remain accessible to the people. Yet, other judges go farther, adopting the view of Chief Judge Dillard of the Georgia Court of Appeals who asserts that “judges have a duty to educate those we serve about the important role the judiciary plays in their daily lives” (2017, p. 11). Experimental research bears this out as individuals who engage with elected officials on social media experience greater feelings of intimacy towards the official, though these feelings can be mitigated by ideological congruence and gender (Lee & Oh, 2012; McGregor, 2018).

While Judge Dillard was speaking specifically in favor of the use of Twitter to engage the public, examples of public outreach are common and predate the platform’s existence. By at least 1993, the Wisconsin Supreme Court was engaging in public outreach in the form of speaking engagements and holding oral arguments around the state (Abrahamson, 1996). Following the 2010 Iowa retention elections (which saw three judges removed from office), the Supreme Court went on a road trip and heard oral arguments around the state, a practice which is still ongoing.⁴ In a more traditional fashion, some judges regularly write for local newspapers.⁵ Indeed, Justice Caleb Stegall of Kansas stated as much when he tweeted, “I concur with my colleague from Georgia. I will never match @JudgeDillard’s (or @Judge_Leben’s) twitter output, but I pursue the same goals via modest social media use, speaking engagements, a local newspaper column, teaching at @kulawschool, and other ways of publicly engaging.”⁶

All of these offer two distinct, yet interrelated, benefits. First, when judges educate the public about the criminal justice system specifically and what judges do generally, the public is more likely to view the judiciary as legitimate (Caldeira & Gibson, 1992, 1995; Gibson, 2012; Gibson, Caldeira, & Baird, 1998). This is an institution wide benefit. Second, engaging in public outreach, including the use of Twitter, increases name recognition, which increases the likelihood of electoral victory, an individual benefit. While identifying the motivation

around these actions suffer from observational equivalence, the expected behavior is the same.

While this provides ample reason to expect that state high court judges will use Twitter in more of a self-personalization manner than an overtly political one, we do expect the desire to win elections will have some additional direct influence on how state high court judges use Twitter. First, it seems that even those judges who are most engaged with Twitter do so out of a desire to stay connected with their constituency. Thus, even the most mundane of tweets serves a role in helping to increase their name recognition among voters. Conversely, judges who are not retained by elections should be less likely to engage in Twitter use. While elected judges can reap electoral and educational benefits from Twitter use, judges whose retention takes the form of reappointment would only receive the institutional benefit that comes from public engagement. Since social media use is an individual activity, it is likely that appointed judges will forgo tweeting, and instead undertake the more traditional forms of public engagement articulated by Justice Stegall. Moreover, appointed state court judges may avoid Twitter for the same reason that Judge Willett likely stopped tweeting after his nomination to the Fifth Circuit Court of Appeals – to avoid giving the politicians in charge of their appointment something else to scrutinize.

H₁: The adoption (and use) of a public Twitter account is more likely by judges who are retained by the public as opposed to a co-equal branch of government (the governor or legislature).

Not all forms of public retention are equal however. Three methods of public retention are used to retain judges on state high courts: partisan elections, non-partisan elections, and retention elections. While partisan elections and non-partisan elections both include challengers, whom may contest the incumbent, retention elections public confidence votes which have no challenger. This institutional feature significantly reduces the need to campaign, and many judges in retention elections states do not even spend money (Bonneau, 2005; Bonneau & Hall, 2009). This has caused some researchers to group the retention system with traditional appointment methods

when considering strategic behavior (Curry & Hurwitz, 2016), however, Twitter is an exceedingly cheap method to talk directly to their constituency. While judges retained by retention elections should not join and use Twitter at the same rates as their colleagues in states with contested elections, they may still find it to hold value for them.

H₂: Among those judges retained by the electorate, judges whom face contested elections (partisan or non-partisan) should be more likely to adopt (and use) the medium.

Similarly, since Twitter usage is most valuable for those judges who face public elections, its utility should increase significantly in election years. While there is value in maintaining a constant connection with one's constituency as Judge Dillard and Louis (2017) notes, that value is magnified in years when that name recognition has the potential to directly translate into votes. The low-cost nature of Twitter as the modern-day direct mailing might lead some judges to create a Twitter account for use only for their re-election. Moreover, even for those judges who are active on Twitter all the time, we would expect to see an increase in their usage of the platform in years when they face a reelection.

H₃: Judges who adopt Twitter should use it more in years in which they face retention.

Finally, while we do not expect judges to tweet 140⁷ character summaries of their policy agenda as candidates for other elected offices might, it is likely that judges may engage in more subtle forms of campaigning via Twitter. Topics such as encouraging their followers to vote for them or to donate to their campaign, highlighting endorsements they have received, and general references to the upcoming election are all things we might expect judges facing reelection to tweet about in a manner similar to other politicians. While we expect such election-related rhetoric to constitute a small fraction of the total tweets from state high court judges, we anticipate this type of overt political usage of the platform will peak in elections year.

H₄: Judges will be more likely to engage in election-related rhetoric years where they are facing an election.

Examining Twitter use by state high court judges

In order to examine the Twitter usage of state high court judges, we created an original data set that captures who is using Twitter, the frequency of that use, and what they are tweeting about. Our data collect efforts start by locating the universe of state high court judges with active, public Twitter accounts as of July 2017.⁸ We then augmented a public python code⁹ to allow us to scour users accounts including their tweets, media (pictures and videos), what posts they “like,” who they follow, and who follows them. Because of the limits of Twitter's public API, this allowed us to grab the previous 3200 tweets, first 50,000 users following and followers, and the latest 15,000 likes. While this does not encompass all of the tweets of superusers like Judge Don Willet (who at this time has 25.9K tweets), it does cover the overwhelming number of justices we examine.¹⁰

Prior to examining the content of tweets made by state high court judges, it is important to first understand who is tweeting. Unsurprisingly, despite the growth of Twitter use among state high court judges, these officials do not use this platform at the rate of other public officials. Of the 342 judges sitting on the 52 state high courts in July 2017, only 46 (4.13%) have public Twitter accounts that have sent at least one tweet. To put this in context of other public officials, as of 2012, 49 governors had Twitter accounts, and today all 50 do. In 2016, all 100 U.S. Senators had accounts, and nearly every member of the U.S. House of Representatives did as well. Though, as Figure 1 shows, there has been a constant upward trend in the number of state high court judges on Twitter much like with other elected officials. Since the first set of judges joined the platform in 2009,¹¹ between three and eight additional judges have created accounts each year through 2016, with one more – Justice Caleb Stegall (@JusticeCStegall) of the Kansas Supreme Court – joining in the first half of 2017.

Interestingly, all of the judges with active Twitter accounts serve on 19 state high courts,

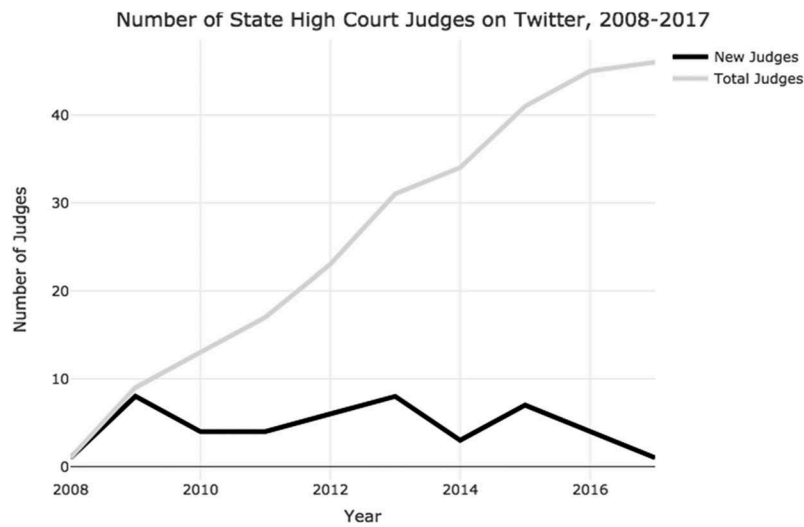


Figure 1. Number of state high court judges on Twitter, 2008–2017.

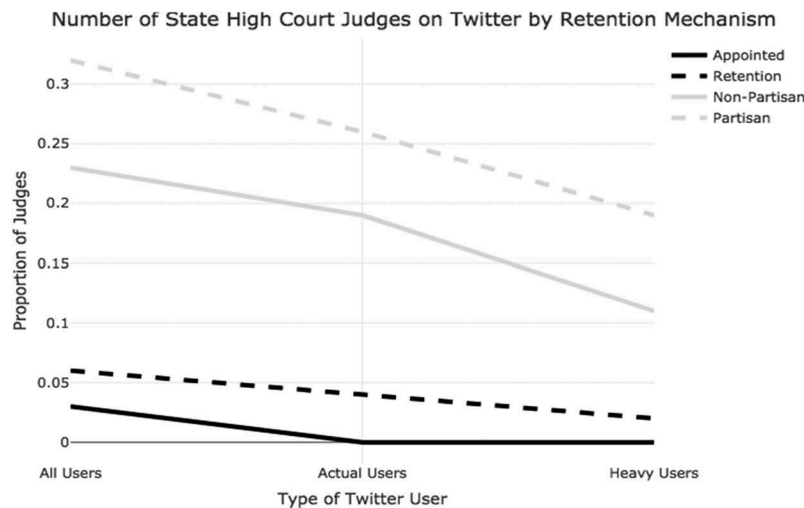


Figure 2. Number of state high court judges on Twitter by retention mechanism.

leaving 33 courts where no sitting judges have active, public Twitter accounts. Even if we consider the 12 additional judges who have Twitter accounts that are either private or that have never sent a tweet, only six more courts are represented. The courts with tweeting judges are overwhelmingly in states that retain their judges through partisan or non-partisan elections. As Figure 2 illustrates, no judge from a state that uses executive or legislative appointment reappointment has an active and public account.¹² Similarly, less than 5% of all state high court judges with active, public Twitter accounts are from states that utilize retention elections, and only Justice Caleb Stegall (@JusticeCStegall) of the Kansas Supreme Court

is a heavy Twitter user (one who has sent at least 100 tweets).¹³ Conversely, among all state high court justices with Twitter accounts, 30% are active, public users or heavy users from states with non-partisan elections and 45% are active, public users or heavy users from states with partisan elections. While this descriptive data does not provide a formal hypothesis test in the traditional sense, it does show some rather strong preliminary support for our first two hypotheses.

In addition to the sparsity of state high court judges on Twitter when compared to other elected officials, the degree to which these judges use the platform also lags behind their more traditional political counterparts. While the mean number of

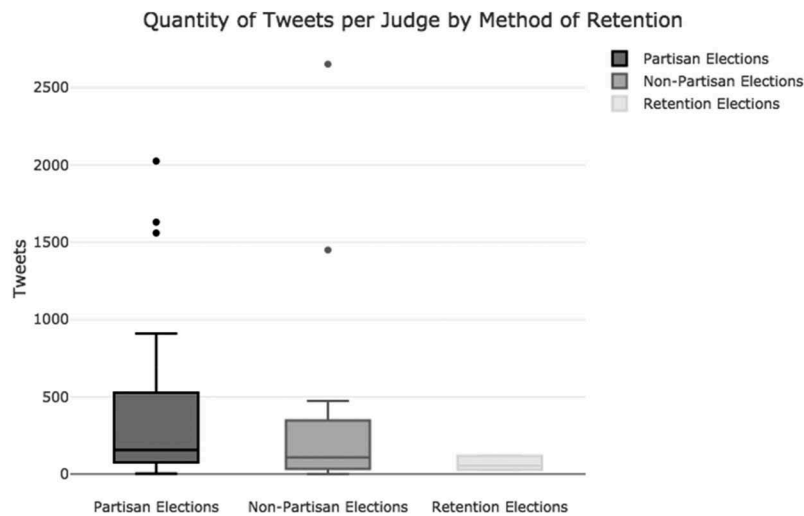


Figure 3. Quantity of Tweets per judge by method of retention.

tweets sent by each judge with an active, public account over the life of their account is 1245.5, this is driven by a handful of outliers that are extremely heavy users. In comparison, the median number of tweets from these accounts is only 119.5. Reflecting the overall breakdown of Twitter users by the method of retention used in each state, Figure 3 shows that the median number of tweets is highest for judges in partisan election states, while those in non-partisan election states still outpace their colleagues in retention election states in terms of lifetime usage of the platform.

As some judges have been on Twitter for a longer period than others, comparing the total number of tweets over the life of their accounts might be misleading, thus examining the yearly number of tweets sent by most of the active, public Twitter users is also beneficial.¹⁴ Overall, the mean number of tweets per year from active, public users is 63.74. However, as with the examination of lifetime Twitter usage, this is heavily influenced by a handful of highly active outliers. Out of 198 judge-years in which a tweet could have been sent from an active, public account, zero tweets were sent in 66 of them (33.3%), and the median number of tweets per judge, per year is only 7.5 ($\mu = 63.74$). Figure 4 shows that the number of tweets sent each year varies greatly based on whether the judge faced an election in that year. Across all methods of retention, judges tweet substantially more in election years than in non-election years. The median number of tweets in

election years is 57.05 ($\mu = 134.04$), while in non-election years it is only 2 ($\mu = 42.47$).

This election year versus non-election year difference is magnified even further when broken down by method of retention as highlighted in Figure 5. As the figure shows, the median number of tweets is higher in election years than non-election years across all three retention systems, but the difference is magnified in partisan election states. The median number of tweets in partisan election states per judge per year is 75.5 in election years ($\mu = 162.55$, $N = 22$ judge-years) compared to just 50.5 in non-partisan election states ($\mu = 118.6$, $N = 20$) and 40 in retention election states ($\mu = 54.5$, $N = 4$). Conversely, the median number of tweets in non-election years is a miniscule 10 in partisan election states ($\mu = 66.95$, $N = 74$), 1 in non-partisan election states ($\mu = 21.93$, $N = 68$), and 0 in retention election states ($\mu = 1$, $N = 10$). The 13 judges who have only used twitter during years in which they faced an election exemplify this trend of increased tweeting during election years. Of the judges that only used their Twitter account during the year that they were up for election or reelection five did so for a partisan election for their current office, five did so for a nonpartisan election for their current office, two did so for a retention election for their current office, and one during an unsuccessful election for a another office prior to being appointed to his current position. Similarly, 17 judges who continue to use Twitter even in non-election years, amplify their usage in years when they face an election. Of these 17, eight

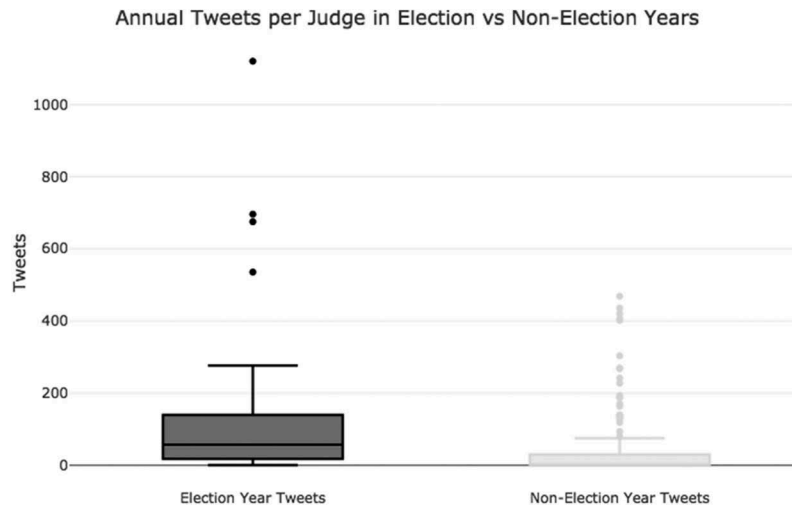


Figure 4. Annual Tweets per judge in election vs non-election years.

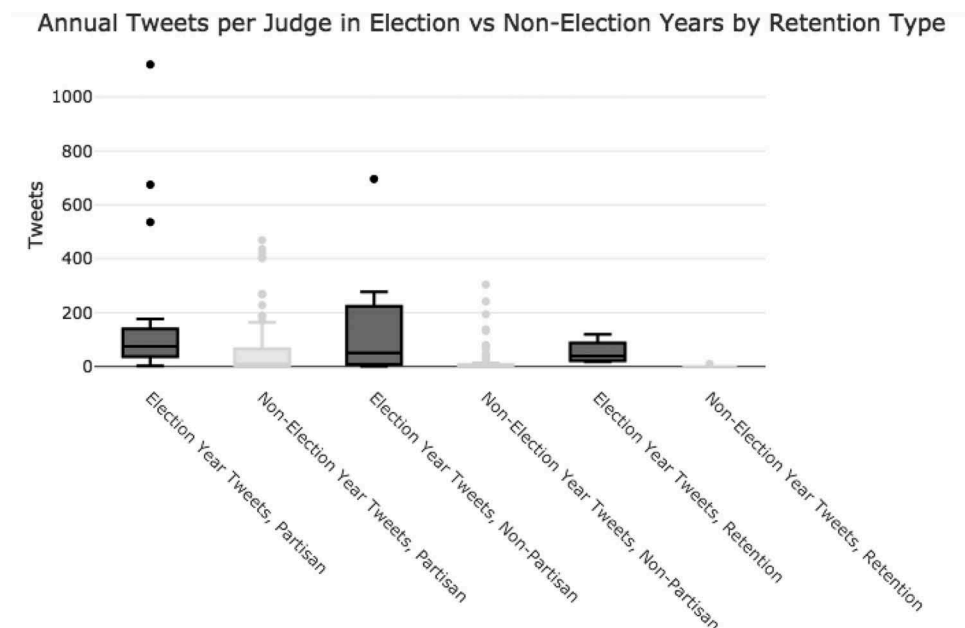


Figure 5. Annual Tweets per judge in election vs non-election years by retention type.

were in states with partisan elections, eight were in states with nonpartisan elections, and one was in a state with retention elections.

To get a sense of the topical content of these tweets and whether the content of tweets varied in election and non-election years, we applied a structural topic model to our data. Structural topic models are a form of automated text analysis that can discover topics in a set of documents based on words frequencies (Roberts et al. 2014; Roberts, Stewart, & Tingley, 2014). For our purposes a structural topic model offers a superior choice as it can estimate relationships

between topics and covariates (Roberts et al., 2014) and is especially well suited for short document such as open response questions (Roberts et al. 2014; Tvinnereim & Kjersti, 2015) and tweets (Mishler, Crabb, Paletz, Hefright, & Golonka, 2015). Specifically, we estimate a structural topic model with seven topics. The choice of seven topics is supported by examining a series of fit statistics for alternative models with differing numbers of topics (Roberts et al., 2014) and by manually examining the topics estimated by those alternative models for distinctiveness and internal coherence (Tvinnereim & Kjersti, 2015). We included three covariates in our

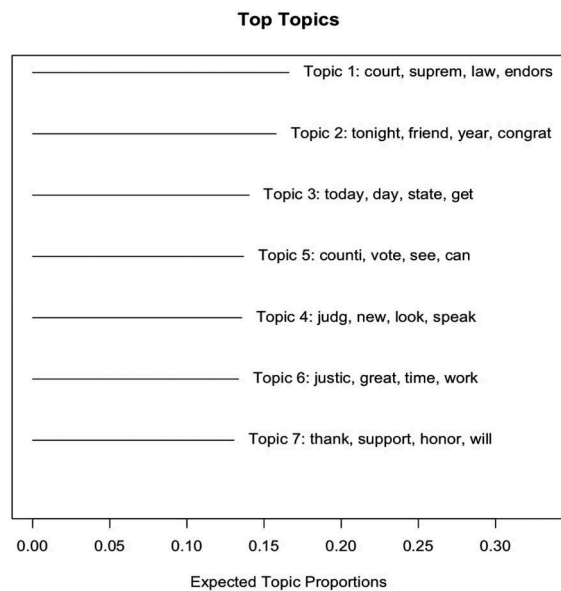


Figure 6. Estimated Topic Proportions.

structural topic model: whether the tweet was sent in an election year, whether the judge sending the tweet was in a partisan election state, and whether the judge sending the tweet was in a nonpartisan election state.¹⁵

Figure 6 show a breakdown of the four most common words in each topic and the expected topic proportions. While the intuitive fit of the most common words into cohesive topic is clearer for some topics than others, all seem to fit together logically. For example, Topic 1, the most prevalent topic, contains words such as “court,” “supreme,” and “law.” This indicates that this topic primarily represents general discussion of the tweeting judge’s court, other courts, or law-related issues more broadly. Similarly, Topic 7 is dominated by words such as “thank,” “support,” and “honor.” All of these words group into a logical category of acknowledgment, recognition, or appreciation. This group would include many tweets involving election-related activity.

While this topical breakdown is interesting in and of itself, of greater interest is whether the content of tweets varies based on whether the tweet occurred in an election year, consistent with our fourth hypothesis. To answer this, we estimated a regression model predicting the proportion of each document related to a given topic based on whether the tweet was sent in an election year and the type of retention system

used in the state.¹⁶ For six of our seven topics, whether the text was sent in an election year is a statistically significant predictor of the proportion of a given tweet likely to fall into a given topic.¹⁷ Additionally, within each topic, the most common terms vary in meaningful ways between election and base years. The graphical displays of topical perspectives by election year versus base (nonelection) year presented in Figure 7 illustrates how significantly the content of judge tweets changes in election years. For each of the highlighted topics, terms associated with election-related rhetoric stand out as being common in election year tweets but not in base year tweets providing additional evidence in support of our fourth hypothesis.¹⁸

Looking first at the upper left hand quadrant of Figure 7, we see that for Topic 1 the neutral term “court” is the dominate overall word in terms of frequency and is used in both base and election years due to its overall size (the representation of word frequency within a topic) and placement near the center of the x-axis (the representation of how often it appears in election year tweets versus base year tweets). However, looking to the election year side of the spectrum, we see that the word “endorse” appears with relatively high frequency and almost exclusively in election years. While there are other reasons why the word endorse might appear in a tweet, the one of the most common usages is likely to be announcing endorsements of their election/reelection campaigns. Similar patterns are revealed for the other topics in Figure 7. In each, a term with a clear election-related context stands out as being both high frequency and nearly exclusive to election years. For Topic 4, “campaign” stands out as one of the more common words in the topic with its use almost exclusively in election year tweets. At the bottom of the figure, we see “vote” in Topic 5 and “support” and “thank” in Topic 7 standing out words with high total frequency in the topic and that almost exclusively appear in election year tweets. Moreover, in Topic 7 we see that all terms that are relatively neutral in their balance between base and election years or those that appear almost exclusively in base years all appear with relatively minor overall frequency in the topic.

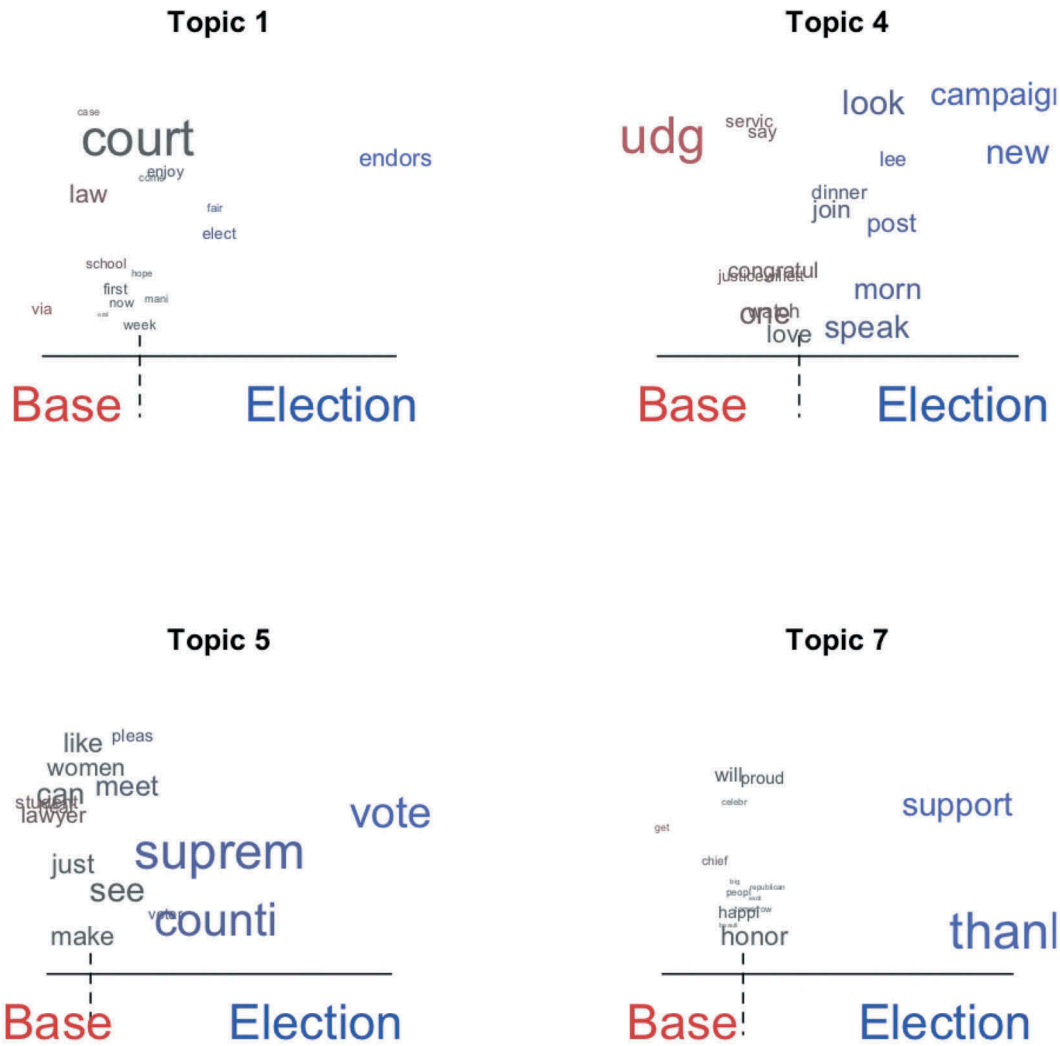


Figure 7. Topical Perspectives by Election vs Nonelection Year.

This is consistent with our discussion above regarding the generally associate of Topic 7 with more election-related content.

Discussion

While Twitter use among politicians has been well examined, the use of the social media platform by judges has been significantly neglected by political scientists. It is still exceedingly rare for a federal judge to use Twitter. However, state supreme court justices, just like they do in a variety of other behaviors, act differently regarding social media usage, largely because of the institutional variations that exist within their methods of selection and retention.

First, the choice of whether to use the platform appears to be, in part, dependent upon how these

justices are retained. Justices that are retained by contested elections are much more likely to use Twitter than justices who are retained by retention elections. Yet, justices who are retained by retention elections are still more likely to use Twitter than justices who are appointed. Recall the two intertwined motivations for the use of social media. All justices, regardless of how they are retained, should have an interest in public engagement to increase the legitimacy of the judiciary. However, only judges that are retained through an electoral mechanism gain the benefit of increased name recognition and the expected electoral advantage that comes with it. Functionally, we feel appointed judges, because they cannot receive the individual benefit which comes with increased name recognition, decline to put in individual effort to gain institutional benefit. Moreover,

these judges also risk giving the elites in charge of their reappointment an additional thing to scrutinize making it even less likely this collective action problem will be overcome. This is not to say appointed judges do not participate in public engagement activities, but they are less likely to do so when the cost of the engagement is paid solely by the individual, and not by the institution.

Given our observations, it appears as though overt political behavior is not the goal behind state high court judges' Twitter use. Yet, while the content of tweets is rarely political, the subtext of the behavior often is. For nearly three-fourths of the judges with active, public Twitter accounts, we observe a significant increase in their use of the platform during election years potentially to gain increased name recognition that can lead to added votes when they face re-election. Additionally, we see meaningful changes in the content of tweets sent during election years. Even in election years, we do not see the explicitly political content we would expect from other elected officials, but we do see a significant shift to using more election-related rhetoric in their tweets. Words like "endorse," "campaign," "vote," and "support" very rarely appear in nonelection year tweets, yet these words appear with increased frequency in the tweets of judges facing election that year.

How justices use Twitter in the absence of traditional policy based pronouncements and campaigning will require a more systematic content analysis, and while that is beyond the purposes of this paper, we can provide some insight from having spent some significant time with the data. While the policy-based campaigning of traditional elected officials generally takes quite similar forms,¹⁹ the self-personalization aspect of Twitter use is, not shockingly, highly personalized. From looking through these accounts it becomes obvious that individual's passions off the bench become their self-personalized content. Judge Willet of Texas loves the musical *Hamilton* and Chick-fil-A. Justice Barbara Jackson of North Carolina focuses on *Game of Thrones* and college basketball. Justice Jeff Brown of Texas maintains a novelty account for his car called @CamryOffJustice (which has survived through two different Camrys, one blue and one white). And former Justice Jess Dickinson of Mississippi plays the hammered dulcimer. A lot.

The goal of these justices is not to gain electoral success through *Hamilton* fans, sports fans, or the hammered dulcimer constituency, at least not directly. The goal of this activity is to personalize the justice in question as someone the voter can identify with and understand. The average constituent cannot remember the name of one of their state supreme court justices,²⁰ but if one of their justices drives a beat-up Camry, plays "Liberty" on the dulcimer, or memes about not throwing away their shot, that justice may just be memorable and worthy of a vote.

Notes

1. 536 U.S. 765 (2002).
2. Hall (2014) documents the rise and effect of negative campaign advertisements in judicial elections, the majority are not strictly policy based, beyond "weak on crime."
3. Only the states of Illinois and Louisiana elect their judges within districts.
4. <http://iowapublicradio.org/post/should-iowa-ditch-judicial-retention-elections#stream/>.
5. See Justice Caleb Stegall who writes "Notes from Mud Creek" in his hometown newspaper.
6. <https://twitter.com/JusticeCStegall/status/991805811813945344>.
7. When the data was collected for this study, Twitter had yet to expand the length of tweets to 280 characters.
8. At least five additional state high court judges have private Twitter accounts: Justice Tommy Bryan (@JudgeTommyBryan) of the Supreme Court of Alabama, Justice Keith Blackwell (@JudgeBlackwell) of the Supreme Court of Georgia, Justice John Cannon Few (@jcfew) of the Supreme Court of South Carolina, Judge Mary Lou Keel (@MaryLouKeel) of the Texas Court of Criminal Appeals, and Justice Paul Green (@PaulWGreen2) of the Supreme Court of Texas. However, it is worth noting that since our initial data collection, Justice Few has made his account public and began actively tweeting. Additionally, several judges have public accounts that have not sent any tweets: Justices Robert Brutinel (@rbrutinel) and Clint Bolick (@JusticeBolick) of the Arizona Supreme Court, Justice Leigh Saufley (@lsaufley) of the Maine Supreme Judicial Court, Justice Brian Zahra (@LogicLawLiberty) of the Michigan Supreme Court, Justice Lidia Stiglich (@lidia_stiglich) of the Supreme Court of Nevada, and Justice Barbara Vigil (@JudgeVigil) of the Supreme Court of New Mexico.
9. www.tweeepy.org.

10. Due to limitation in our ability to collect all tweets from the most extreme outliers in terms of Twitter usage, our data on annual Twitter activity and tweet content excludes Justice Bridget Mary McCormack (@BridgetMaryMc) of the Michigan Supreme Court, Justice Barbara Jackson (@JudgeJackson) of the Supreme Court of North Carolina, and Justices Jeff Brown (@judgejeffbrown) and Don Willet (@JusticeWillet) of the Supreme Court of Texas.
11. While Justice R. Patrick DeWine (@patdewine) of the Supreme Court of Ohio has the oldest Twitter account of any state high court judge serving in July 2017 as he joined Twitter in 2008, he was not a state high court judge when he did so having been first elected to the Supreme Court of Ohio in 2016.
12. Subsequent to our data collection, one judge from a state with appointed state high court judges became an active Twitter user.
13. While sending 100 tweets over the life of one's account is not necessarily heavy use in comparison to many Twitter users, a more stringent definition of "heavy user" such as sending an average of 100 tweets per year or 1000 tweets over the life of the account would include only a handful of state high court judges. Compared to the 29 defined as heavy users under the current definition, only 11 would be using the definition of 100 tweets per year and only 8 using the definition of 1000 lifetime tweets.
14. As noted above, we are unable to gather all data on the individual tweets of Justices McCormack (Michigan), Jackson (North Carolina), and Brown and Willet (Texas). Thus, these four judges are excluded from all data presented in Figures 4–7.
15. Our structural topic model was estimated using the stm package for R (Roberts et al., 2014).
16. Full results and discussion of the regression model provided in the appendix.
17. All seven topics are significant if we use the weaker threshold of $p < 0.1$ for determining statistical significance.
18. We only display 4 topics because of length concerns. They were chosen specifically because they allowed the easiest visual interpretation.
19. Minus some obvious elected officials whose "style" is not typical in any sense of the word.
20. Summary of a nationally representative sample, available here: http://www.justiceatstake.org/media/cms/PollingsummaryFINAL_9EDA3EB3BEA78.pdf.

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Appendix

Table A1 presents the detailed estimates from the regression model predicting the proportion of each document related to a given topic based on a set of election related covariates. Specifically, we model the proportion of each tweet in our dataset (the unit of analysis) as a function of whether the tweet was sent in an election year (1) or base year (0), whether the judge who sent the tweet was on a court in a state that uses nonpartisan elections to retain their high court judges (1) or not (0), and whether the judge who sent

from a state using nonpartisan or partisan elections. This effect is especially strong for Topics 1 and 7 where there is a change of -0.033 and 0.036 , respectively, in the predicted proportion of a given tweet likely to be categorized into those topics. This is consistent with our theoretical expectations as Topic 1 is dominated by neutral terms like “court” and “law,” while Topic 7 is dominated by terms of acknowledgment such as “thank” and “support.” The 3.3% predicted decrease for this neutral category and 3.6% predicted increase in the acknowledgment category illustrates how the content of tweets change systematically in election years. While this is clearly not a shift towards overt political or policy based language, it does signify an increased use of terms that are often election related.

While the election year variable has the most pronounced effect, it is also worth noting that the nonpartisan and partisan election variables also exert strong effects for some topics. Our model predicts that tweets from judges in partisan election states are expected to have about 2.5% less of their content about Topic 1 and 3.8% more in Topic 7 than judges in states with retention elections (the baseline category). This, not surprisingly, mirrors the effect of the election year variable. For judges in nonpartisan election states, our model predicts, a bit surprisingly, that 2.9% more of the content of the content of their tweets will be related to Topic 1 as compared to judges in retention election states. Additionally, whether the judge was in a state with nonparti-

Table A1. Influence of election variables on topic classification.

	Topic 1	Topic 2	Topic 3	Topic 4	Topic 5	Topic 6	Topic 7
Election Year	−0.033* (0.003)	−0.004 (0.003)	−0.004* (0.001)	−0.012* (0.001)	0.013* (0.001)	0.006* (0.001)	0.036* (0.001)
Nonpartisan Elections	0.029* (0.008)	−0.046* (0.010)	−0.007 (0.006)	−0.003 (0.004)	0.013* (0.004)	0.005 (0.004)	0.010* (0.004)
Partisan Elections	−0.025* (0.008)	0.014 (0.010)	0.005 (0.006)	−0.006 (0.004)	0.014* (0.004)	−0.011* (0.004)	0.038* (0.004)
Intercept	0.186* (0.008)	0.178* (0.010)	0.144* (0.006)	0.140 (0.004)	0.130* (0.004)	0.133* (0.004)	0.089* (0.004)

the tweet was on a court in a state that uses partisan elections to retain their high court judges (1) or not (0).

As noted in the body of the article, whether the tweet was sent in an election year is a statistically significant predictor of the proportion of the tweet classified into a given topic for six of the seven topics in our model. The effect of this variable is also substantively stronger for most topics than whether the judge is

san elections has a large substantive impact on the predicted proportion of the tweet content in Topic 2. Tweets from judges in nonpartisan election states will have about 4.6% less content in Topic 2 than judges in retention election states. However, while interesting, we hesitate to make any strong inferences about this given the lack of a clear intuitive meaning we can associate with the terms in Topic 2.