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Succession, Opportunism, and Rebellion on State Supreme Courts: Decisions to Run for Chief Justice

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ABSTRACT

We examine decisions to seek promotion on state courts of last resort, focusing on the conditions when an associate justice will run for the position of chief justice. We analyze data including all chief justice elections from 1990 to 2014 in the states that elect this position. We construct a taxonomy of associate justices who seek the chief justice position, then use regression analysis and postestimation techniques to better understand these choices. Our findings indicate that judicial actors who seek electoral promotion are strategic and motivated by ideological preferences rather than institutional features or raw ambition.

KEYWORDS

State supreme courts; chief justice; judicial elections

Introduction

In 2006, a statewide election was held to select the Chief Justice of the Alabama Supreme Court. In the Republican primary before the general election, Incumbent Drayton Nabers, Jr. was challenged by a member of his own court, Associate Justice Tom Parker. Widely regarded as a staunch social conservative, Parker had achieved notoriety as the spokesman and legal advisor for former chief justice Roy Moore.¹ He was outspoken about changes he wished to make on the Alabama Supreme Court in contrast to Nabers's leadership of the institution. Specifically, he hoped to "lead in defending the U.S. Constitution" by advocating that the court ignore liberal decisions of the U.S. Supreme Court (White 2006). Parker openly touted his desire to change the direction of the court. Ultimately, and probably somewhat uncomfortably, the election led the court's sitting justices to choose sides.² Nabers defeated Parker in the Republican primary but lost the seat to Democrat Sue Bell Cobb in the general election.

Parker's challenge to his own chief justice gave an overtly political flavor to his candidacy. It also demonstrated his belief that a change in court leadership could influence the ideological direction or administrative priorities of Alabama's justice system. While Parker wielded substantial influence by virtue of being an associate justice on the state's highest court, he recognized that a promotion would give him even greater authority. His candidacy prompts an interesting question: under what circumstances will judges seek higher judicial office, specifically the chief justiceship? Prior research suggests that politicians presented with optimal circumstances will run for higher office (Fox and Lawless 2005; Rohde 1979; Schlesinger 1966). However, *judges'* decisions regarding emergence as candidates for higher office may be tempered by the institutional design and

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¹See Clark (2005) for more information about Roy Moore's removal from the Alabama Supreme Court and the legal battles about the Ten Commandments monument he installed in the state judicial building.

²Nabers defeated Parker by a 61.4–38.6 percent margin in the Republican primary. Parker remained on the Supreme Court of Alabama as an associate justice.

less overtly political nature of the judicial branch. Given the emergence of “new style” judicial elections similar to conventional elections (Bonneau 2005; Schotland 1998), we consider whether candidates for chief justice emerge in predictable ways similar to candidates for other elected offices. Taking cues from studies of legislators and judges, we examine the roles of ideology, strategic calculation, and other factors as state supreme court justices consider running for higher judicial office.

In order to examine this phenomenon, we analyze the behavior of associate justices on state supreme courts. Seven states (Alabama, Arkansas, Minnesota, Montana, North Carolina, Ohio, and Texas) hold statewide elections for the office of chief justice. These elections allow associate justices to express their goals for political ascension with the overt choice to enter elections for higher office.³ Determining why associate justices run for chief justice can inform our understanding of the career decisions of jurists.

We examine the decisions of associate justices to seek the position of chief justice from 1990 to 2014. We develop a theoretical framework to explain candidate emergence and present a taxonomy of associate justices that seek promotion. Our findings indicate that the decisions of associate justices to run for chief justice are motivated by factors similar to other politicians: strategic opportunities, ideological motivations, and the interaction of both.

Judicial Careers and Promotion-seeking

When studying the career trajectories of jurists, scholars tend to focus on progressive promotion facilitated outwardly by politicians rather than judges’ decisions to run for higher offices. This research explains why elites elevate judges to higher courts but rarely examines decisions by judges to seek higher office. The Constitution requires that federal judges are nominated by the president and confirmed by the U.S. Senate. Promotion within this framework, whether from a state judiciary to the federal bench or a lower federal court to a higher federal court, requires that a judge be chosen for promotion by the president and receive Senate approval. Partisanship, ideology, judicial experience, gender, race, and senatorial courtesy influence nominations to the federal bench (Abraham 1999; Cameron, Cover, and Segal 1990; Giles, Hettinger, and Peppers 2001). State supreme courts’ justices are selected for the federal courts due to their ages and partisan alignment between judges, senators, and presidents (Bratton and Spill 2004).

There is limited research on the recruitment of judicial candidates for higher office in state courts. Sheldon and Maule (1998) two-stage model of judicial recruitment designates the “initiation” of a candidacy for the bench as the first stage. In their analysis, judicial candidates can be either self-initiators or other-initiators depending on whether personal forces or external actors prompted them to declare themselves as judicial candidates. Their research also demonstrates that a state’s selection procedures and electoral competitiveness affect decisions to seek office and behavior on the bench. Langer et al. (2003) examined the selection of states’ chief justices in the 18 states where they are chosen by the courts’ associate justices. They argue that the impact of personal and institutional goals on chief justice selection varies in these states depending on the rules and norms of the relevant courts. When chief justices control opinion assignment, the associate justices will choose a justice near the court’s median. When the chief justice lacks this power, a chief justice more similar ideologically to other (non-judicial) political elites will be chosen. Interestingly, Langer et al. state outright that “we do not think our findings can be generalized to the seven states where the public elects the chief justice” (2003, 671) due to the unique conditions associated with popular elections (e.g., citizen participation and awareness, the

³The other methods of chief justice selection include chosen from the sitting members on the court by the court (18 states); gubernatorial or legislative appointment (15 states); independent judicial commission (one state); and random or rotation (nine states). See Langer et al. (2003) for further discussion of chief justice selection systems.

candidate pool, fundraising) rather than intracourt selection. Importantly, we examine this set of state high court judges outside the scope of their study.

While scholarship on judicial promotion and recruitment gives attention to the role of judges' motivations, including ambition, this research is limited in scope. The scarce attention to judicial career goals is explained partially by the difficulty of observing them. Judges rarely announce their desires to be promoted (Schauer 2000) and tend to serve longer terms than their counterparts in the legislative and executive branches. In addition, the number of higher appellate judgeships for state judges to pursue is quite modest.⁴ Given these limitations, scholars rely on survey results rather than visible actions or public statements to understand professional goals among lawyers and judges (Jensen and Martinek 2009; Williams 2008).

Studies of nascent ambition examining who emerges as judicial candidates are rare and usually focus on a small number of states (Sheldon and Maule 1997; Williams 2008). For example, Williams (2008) asked Texas attorneys about their ambition for judicial office and found that women were more likely than male lawyers to aspire for a judgeship. Very little existing literature examines static and progressive ambition among judges who have already reached a state bench. Jensen and Martinek (2009) surveyed New York trial court judges and concluded that female and nonwhite judges have more ambition for promotion than their male or white counterparts. While such survey analysis provides useful information, it falls short of the systematic scholarship that examines progressive career goals in the legislative and executive branches.⁵

Scholarship on judicial elections also offers useful insights regarding judges' career trajectories. Research by Melinda Gann Hall and Chris Bonneau (Bonneau and Hall 2003, 2005; Bonneau and Hall 2003; Hall 2001; Hall and Bonneau 2006) reveals that challengers in judicial elections are strategic. Judicial challengers consider the political environment, their own experience, and economic conditions like other political candidates. Perceived electoral vulnerability also influences the electoral decisions of judicial candidates for intermediate appellate court seats (Streb and Frederick 2009), suggesting that strategic considerations are influential among a broader set of judges and potential judges when they make decisions about their career paths.

Hall and Bonneau have rigorously examined when quality challengers will emerge in judicial elections. Similar to their research, our study examines the conditions under which individuals (here, associate justices) decide to run for judicial office (here, the chief justice position). A distinction between their research and ours is that we explore when a sitting justice opts to run for leadership of the institution on which they already occupy a position. Rather than determining when candidates emerge from outside the high court, the choice we examine involves intracourt politics. Judges choose to either retain their current positions, challenge their colleagues, or pursue the power to lead their courts when the chief justice position is (or will be) vacant. Another significant difference is that Hall and Bonneau show why challengers emerge to oppose judicial incumbents, while we evaluate the emergence of associate justices as candidates *whether or not they challenge an incumbent*. Our research question is focused on candidate emergence for promotion rather than opposing incumbents per se. If the incumbent opposition research by Hall and Bonneau helps us understand judicial elections and candidate quality, our focus on candidate emergence will help explain judicial careerism.

⁴The number of seats on state courts of last resort ranges from 5 to 9.

⁵Scholars have also examined discrete ambition at state high courts, primarily with the goals of explaining judicial turnover and accountability. Hall (2001) argued that judges' exits are strategic, and they step down when they believe they are vulnerable to electoral defeat. Curry and Hurwitz (2016) further analyzed the relationship between judicial selection systems and the risk of state high court departures. They found that justices in partisan systems were most likely to quit relative to judges chosen by other selection methods. They explain this dynamic is due to partisan selection systems' tendencies to result in more contentious campaigns and draw more qualified challengers. More recently, Hughes (2019) studied the role of economic incentives in state high court judges' decisions to step down. He found that their exits are driven primarily by their pension vesting status, work-related factors (including salary), and age and benefits rather than electoral vulnerability.

Table 1. Institutional powers of the chief justice, by state.

State Court	Order of Discussion	Order of Vote	Method of Assignment
Alabama	Reporting Justice, then open	Reverse Seniority	Rotation
Arkansas	Reporting Justice, back-up, seniority	Same as discussion	Rotation
Minnesota	Reporting Justice, seniority, CJ last	Same as discussion	Rotation
Montana	No formal order	Same as discussion	From CJ, by rotation*
North Carolina	No formal order	Reverse Seniority	Rotation
Ohio	Seniority, CJ first*	Same as discussion*	Random
Texas (Civil)	Authoring justice, then rotation	Same as discussion	Random
Texas (Criminal)	Presiding judge, reverse seniority	Same as discussion	Rotation

Note: *Denotes pronounced role of chief justice in procedure. Information regarding chief justices' duties is derived from Hughes, Wilhelm, and Vining (2015).

The Decision to Run for Chief Justice

There are numerous incentives to run for chief justice. The chief justice is influential within a state's legal and political system due to the powers, duties, and responsibilities associated with the job and is seen as influential by other political elites. Both formal and informal mechanisms establish the leadership roles of chief justices. In many states they have formal powers allowing them to set the agenda for discussion and build consensus within their courts (Hall and Windett 2016; Hughes, Wilhelm, and Vining 2015). These include the power to speak or vote at opportune moments during private sessions of the court and assign opinions to particular authors. Regardless of their formal intracourt powers, chief justices also serve as the key administrative leaders and primary representatives for their state judiciaries (Wilhelm et al. [forthcoming](#)).

Institutional rules give many chief justices authority over opinion assignment and control of vote or discussion order (Hall 1989; Hughes, Wilhelm, and Vining 2015). This internal control makes the chief justice a consequential figure in judicial outcomes (Hall and Windett 2016). They can steer discussion with their colleagues and influence the authorship and content of judicial rulings. Chief justices' administrative leadership extends to both their high courts and the judicial branch in their states. Most chief justices chair the judicial council, a policy-making body that advises the state legislature on budgetary issues, new judgeships, performance standards, case management, procedural issues, and judicial salaries. Chief justices approve administrative plans for the lower courts, and most have the authority to temporarily assign state judges to positions where they are needed. For example, Chief Justice Eric Magnuson of the Minnesota Supreme Court explained that he is "the head of a 3,000-person judicial branch led by a single policy-making body, the Judicial Council, which I chair." He expounded that "[t]he duties of the chief justice go far beyond deciding cases; they encompass significant administrative responsibilities touching the whole range of Court functioning" (Magnuson 2008).

Associate justices observe the benefits of being chief justice and the additional powers of the office. These powers give chief justices the ability to steer their courts (and the state judiciary) in both a broader institutional context and individual cases. The formal powers of the chief justices of the states in our analysis are summarized in [Table 1](#). Notably, there is not much variation between the states in our analysis in this context. The chief justice in Ohio has a more pronounced role in vote and discussion order, while the chief justice in Montana has the same in opinion assignment. Still, there is more to the position than these formal powers, including the prestige of the chief justiceship itself, and we expect it is a desirable office in all of the states where it is an elected position—even for judges who already serve on the courts of last resort.

Beyond increased responsibility within the state judiciary, the chief justice also has an important role in state politics. As the primary representative for the judiciary in relations with the other branches of government, most chief justices deliver a state of the judiciary address at regular intervals (Wilhelm et al. [forthcoming](#)). The chief may also be charged with submitting the judicial branch's budget to the legislature. These extrajudicial activities make the chief justice visible and influential in the state political environment.

Informal mechanisms that empower the chief justice include the prestige and platform associated with the office. A chief justice may assert her authority and entrepreneurial leadership to influence colleagues and other members of the state's judicial branch. A chief justice may also steer the state's judicial council to achieve institutional or personal goals.⁶ In addition, chief justices can develop their own strategies for interbranch cooperation to achieve judicial improvements and similar reforms. Finally, the chief justiceship may come with reduced caseload responsibilities and increased compensation.

Seeking Higher Office: Opportunity and Motivation

Because there is a more pronounced role for the chief justice in a state's judicial and political affairs, an associate justice may desire this position as a pathway to greater influence. We argue that decisions to seek the chief justiceship are primarily a product of strategic opportunities, political preferences, and their interaction.⁷ The key opportunity for any officeholder, including an associate justice, to run for promotion is the occurrence of an open seat (Gaddie and Bullock 2000; Jacobson 1989). Political preferences are most likely to encourage associate justices to run if they are distant ideologically from their current or former chief justice. The interaction of these factors is likely to be the primary influence on justices deciding to seek or not seek the chief justice position.

Open Seats as Strategic Opportunities

Although most literature on judges and the electoral connection focuses on judicial decision-making (e.g., Brace and Boyea 2008; Cann and Wilhelm 2011; Hall 1987), judges and their challengers also behave strategically when making decisions about their careers, including when to enter elections (Bonneau 2005, 2006; Streb and Frederick 2009). The strategic politician makes a rational calculation whether to enter a race (Jacobson 1987, 1989; Jacobson and Kernell 1983) and will seek "the best opportunity available that provides the greatest balance of benefits to costs in the light of the probability of success" (Abramson, Aldrich, and Rohde 1987, 4).

Open seats provide strategic opportunities for individuals seeking seats on state courts of last resort (Bonneau 2006). The lack of an incumbent removes the primary obstacle facing office-seekers and eliminates the possibility of creating discord on the court if an associate justice loses her bid to unseat an incumbent chief justice.

Ideological Distance as Motivation to Emerge

Given the powers and significance of the chief justiceship, we argue that motivation to seek the office is political in nature. Associate justices who become chief justice enhance their abilities to implement their political, policy, or legal goals and therefore either maintain the status quo or act as agents of change. A change agent is "as any individual seeking to reconfigure an organization's roles, responsibilities, structures, outputs, processes, systems, technology, or other resources" (Buchanan and Badham 1999, 610). The role of change agents as catalysts for change is widely recognized in public administration and organizational development literature (Kanter 1983; Case, Vandenberg, and Merideth 1990; Fernandez and Rainey 2006), but it receives little attention

⁶See Nixon (2003) for an example of this behavior by the Chief Justice of the United States in his capacity as Chairman of the Judicial Conference.

⁷Similar to research on the emergence of legislative and executive candidates (Abramson, Aldrich, and Rohde 1987; Rohde 1979), we restrict our analysis to states' associate justices. Obviously, the pool of potential candidates for an office does not come solely from one type of lower office. While restricting analysis to associate justices limits our understanding of who runs for the office of chief justice, it allows examination of how likely candidates decide whether to emerge as candidates.

		Open Seat	
		Yes	No
Ideological Distance	Near	Natural successor	Insurgent
	Far	Opportunist	Divergent

Figure 1. Taxonomy of associates seeking the chief justiceship.

in studies of judicial institutions. However, Barrow, Gary, and Gryski (1996, 5) identify structural and political change agents as instrumental in the development of the federal judiciary, and Tobin (1999) identifies “change agent” as one of six “generic components” of the administrative role of chief judges/justices.

As discussed earlier, the institutional powers afforded chief justices make them capable of influencing the policy directions of courts (Danelski 1989; Ostberg, Wetstein, and Ducat 2004). For example, the powers of states’ chief justices influence agenda-setting and voting within their courts (Brace and Hall 1990; Hall and Windett 2016). This may influence intra-court consensus, conflict, and court policymaking (Langer, Wilhelm, and Sanchez 2009; Langer et al. 2003).

Previous scholarship has examined the influence of potential judicial candidates’ political consonance with the state-level elites on the decision to run (Bonneau 2005, 2006). While the state’s tendency to elect elites from a particular party may influence aspiring judges (Bonneau 2005, cf. Bonneau 2006), we argue that states’ high court judges considering a run for chief justice are motivated particularly by intracourt dynamics. They have already crossed the threshold of incumbency and secured the advantages associated with it. We argue that the individuals most likely to be motivated to change the direction of a state high court are those who are distant ideologically from the incumbent or outgoing chief justice. An associate justice ideologically different from the chief justice can change the direction of the high court by replacing the chief justice. Because they possess specialized knowledge about their institutions, associate justices may perceive themselves as uniquely suited to changing the direction of the judiciary. On the other hand, an ideologically close associate justice may be motivated to run if she prefers to keep the chief justiceship in the grasp of her ideological camp. This concern is most vital when the chief justice position is open. For this reason we expect an interactive relationship between open seats and ideological distance. The possible combinations of open seats and ideological differences allow us to construct a taxonomy of associate justices seeking the chief justice position.

Taxonomy

In order to develop and present our expectations for the open seat–ideological distance relationship more explicitly, we construct a taxonomy of promotion-seeking justices based on two key criteria identified by our theory: the presence of open seats (i.e., opportunities) and ideological distance between the associate justice and the chief justice they would replace (i.e., motivation). Each category is defined by the interaction of these two factors. We refer to these categories as (1) natural successors, (2) opportunists, (3) divergents, and (4) insurgents. Our categories are shown in Figure 1.

Natural Successors

When the chief justiceship is an open seat due to the departure or pending departure of the former chief, this provides associate justices an opportunity to seek promotion regardless of their

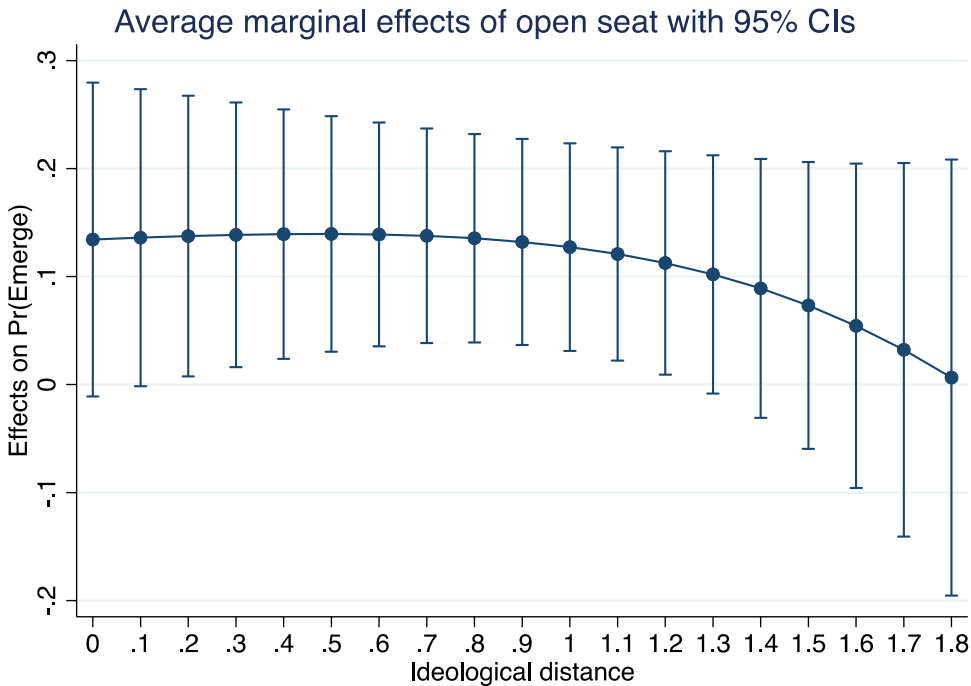


Figure 2. Marginal effects of open seat on emergence relative to ideological distance. *Note:* Bands indicate 95 percent confidence intervals.

ideological concordance with the former chief justice. The first category, which we refer to as “natural successors,” includes associate justices who seek the chief justiceship when an individual of similar ideology formerly occupied the seat. This is a signal that the state’s voters are amenable to selecting a particular type of ideology for the position. The natural successor is a similar “type” and presumably will continue operating the court like her predecessor. In addition, running for the chief justiceship in these conditions helps to assure it does not pass into the control of one’s political rivals.

Opportunists

“Opportunists” are justices distant ideologically from the former/outgoing chief justice who run for the open seat. These individuals act strategically by seeking the seat when it is open rather than challenging an ideologically distant chief justice. These justices avoid instigating intracourt discord and take advantage of the opportunity to change the direction of the state high court’s leadership without defeating an incumbent. Given the powerful electoral impact of incumbency, a politically motivated justice is likely to recognize the valuable electoral opportunity associated with an open seat and pursue it.

The office of chief justice may also be occupied, with an associate justice choosing to challenge the incumbent. The impact of ideological differences on this choice is intuitive—politically discordant judges are more likely to challenge their leader than politically concordant justices. Unseating an incumbent is difficult, and efforts to do so are typically motivated by ideological differences. An incumbent’s rivals have more incentives to replace her than her ideological allies. However, it is also possible for an ideologically similar associate justice to challenge the chief justice. Whether due to personal ambition, differing priorities, or stylistic preferences, even ideologically similar justices can challenge their leaders. We expect these instances to be rare and potentially idiosyncratic, but worthy of investigation nonetheless.

Divergents

We categorize associate justices who run for chief justice as “divergent” if they do so when distant ideologically from an incumbent chief justice who is running for reelection. These justices challenge the sitting chief justice despite the difficulty of defeating incumbents and potential harmful effects on court collegiality. Justices in this category are likely to want meaningful change on the state’s high court. An example from North Carolina is instructive. The Republican governor of the state, Jim Martin, picked his own recent Republican appointee, Associate Justice Rhoda Billings, to be chief justice when Chief Justice Joseph Branch resigned in 1986 (Fleer 1994, 142). This action violated the state’s norm that the senior associate justice is promoted in the event of a vacancy. It also permitted Martin to avoid promoting Associate Justice James Exum, Jr., a Democrat, instead of a fellow Republican. In response, Exum resigned his seat in September 1986 and challenged Billings for the chief justice position. Exum defeated Billings two months later and reestablished Democratic control of the chief justice position (Fleer 1994, 143). In the years that followed, Exum worked with North Carolina’s legislature to initiate reforms to the state’s judicial selection methods.

Insurgents

We refer to the fourth category of electoral candidates, defined by an occupied chief justiceship and ideological concordance with the chief justice, as “insurgents.” Individuals in this category challenge chief justices despite sharing their basic ideological predispositions. Insurgents should be rare given the tendency in electoral politics not to challenge incumbents of similar ideology. A prominent example of this behavior is Alabama justice Tom Parker’s challenge to fellow Republican Drayton Nabers, Jr., discussed above. Parker declared that he wanted the court to resist actions of the United States Supreme Court that he believed were offensive to the federal Constitution, Alabama law, and Christian values (White 2006). He believed that Nabers was unwilling to steer the court in an acceptable direction. Parker also criticized openly his colleagues and recruited Republicans who shared his social conservatism to challenge several of them in primary elections. Parker and his allies were unsuccessful, and their efforts led to substantial intracourt discord.

Our theory and taxonomy of associate justices who run for chief justice suggest several interesting relationships between opportunities and motivations related to open seats and ideological differences. We discuss the influence of open seats, ideological distance, and other potential causal factors in the next section.

Hypotheses and Expectations

Our theory regarding the impact of opportunities and motivation on decisions to run for chief justice motivates three basic hypotheses:

- H1: Associate justices are more likely to run for chief justice when the incumbent is not seeking reelection.
- H2: The greater the ideological distance between an associate justice and the chief justice, the more likely an associate justice will run for chief justice.
- H3: The effects of open seats and ideological distance are interactive; decisions to run for chief justice are more sensitive to associate justice–chief justice ideological distance when the seat is occupied.

Other Considerations

Judges, like other politicians, may also have progressive ambition that affects decisions to seek promotion. Ambitious politicians are more comfortable taking risks than others (Rohde 1979)

and have their career goals influenced by political and ideological interest at earlier stages of their lives and professional careers (Fox and Lawless 2005). If emergence decisions are motivated by ambition, justices will seek the chief justiceship even if the risks are great and the likelihood of winning is limited. To estimate the influence of ambition on associate justices' emergence in elections for chief justice we assess (1) their acceptance of political risk-taking and (2) previous experience in major political offices. Our first measure of ambition follows the logic of Rohde (1979) in assuming that risk-acceptant political actors are more willing to challenge incumbents to obtain office. Politicians with a history of risk-taking behavior in their professional advancement have shown greater comfort with taking chances despite the impact of costs (e.g., time, energy, resources, reputation) that otherwise stifle ambition. We follow Rohde's study of legislators by identifying risk-acceptant associate justices as those who earned their seat initially by defeating an incumbent. For the second measure of ambition, we acquired the previous political experience of associate justices from Greg Goelzhauser's (2016) historical analysis of judicial selection systems. Goelzhauser indicated that a state court justice held a major political office if the justice had served in the state legislature or Congress prior to becoming a justice or had held a major state executive office position (e.g., governor, lieutenant governor, attorney general, secretary of state). Interestingly, Goelzhauser found that approximately 20 percent of justices had major political office experience. We anticipate that justices who earned their seats by defeating incumbents or who held major political positions earlier in their careers are more likely to be ambitious and therefore inclined to pursue the chief justiceship.⁸

If associate justices are strategic politicians, emergence for higher office is influenced by calculated decisions. Given that judges perceived as electorally vulnerable are more likely to attract challengers (Bonneau and Hall 2003), we control for two aspects of chief justices' perceived job security. First, a strategic associate justice will consider whether an elected or appointed judge occupies the chief justiceship. The public did not select appointed chief justices for their positions, and they have limited tenures in office. Bonneau and Hall (2003, 340) explain the electoral vulnerability of appointed state court judges:

Unlike most legislative incumbents, a sizeable proportion of justices in elective systems initially receive their positions through ad interim appointments by Governors, to fill the unexpired terms of justices leaving office before the completion of their terms. These new appointees have never participated in elections to the state high court and may, or may not, have served in the lower courts.

Along with our primary hypotheses, we control for the possibility that associate justices are more likely to pursue the chief justiceship if the incumbent is newly appointed.

Associate justices may also calculate the relative "safety" of the incumbent's seat via the margin of victory from the incumbent's last election. The notion of marginal versus safe judicial seats is studied extensively (Bonneau and Hall 2003; Hall 2011). Vulnerable incumbents see an increase in the number and quality of their challengers. We control for the possibility that associate justices are more likely to challenge chief justices in unsafe seats.

It is also likely that strategic justices consider whether they are up for reelection themselves. When an associate justice is up for reelection at the same time as the higher office to which she aspires, she must choose between seeking reelection as an incumbent or pursuing the new position. Officeholders in the middle of a term avoid this decision and can keep their current seats if they lose an election for chief justice. Because associate justices who are up for reelection the year of a chief justice election face higher potential costs, we expect they are less likely to emerge as candidates for chief justice in that same year.

⁸Notably, no state in our data applies a "resign-to-run law" to high court judges. Texas does apply this requirement to many local judges. The other four states with these laws are Arizona, Florida, Georgia, and Hawaii (see http://ballotpedia.org/Resign-to-run_law).

A justice's institutional context includes the type of judicial elections in the state. Partisan elections are more expensive and competitive than nonpartisan elections (Hall 2001; Hall and Bonneau 2006). The cost, time, and energy required of candidates in partisan races may influence the career decisions of potential candidates.⁹ Justices' durations of tenure may also influence decisions to emerge as chief justice candidates. Those at the end of their careers have different considerations than junior or mid-career justices, whether their seniority leads them to wind down their careers or pursue the chief justiceship as a capstone. In addition, the behavior of justices facing forced retirement during their next term may differ from their colleagues due to their necessarily limited tenure or less concern about acrimony in the court. For these reasons, we control for both the duration of tenure and imminent forced retirement but do not offer directional hypotheses.¹⁰ The operationalization of our variables is explained in Table 2.

Data and Methods

We use logistic regression to analyze the factors that influence decisions to emerge as a candidate for chief justice. The data we analyze include 187 justice-years from Alabama, Arkansas, Minnesota, Montana, North Carolina, Ohio, and Texas from 1990 to 2014. Our data set contains elections for both the Supreme Court of Texas and the Texas Court of Criminal Appeals. We began our data collection using Langer's Natural Court Database (Langer and Wilhelm 2005) and state supreme courts' websites to identify the members of state high courts. We acquired additional career and biographical information about state supreme court judges from *The American Bench*, state supreme court websites, and direct contacts with court staff. We acquired judicial election outcomes from secretary of state websites as well as contacts with state election officials. Information on pension eligibility was determined using overviews of judicial retirement laws provided by Meyer (1999).

Twenty-nine chief justice elections are included in our analysis. We include only elections since 1990 in order to use CFscores for high court judges developed by Bonica and Woodruff (2015). Their data set excludes numerous justices from the pre-1990 period but is nearly comprehensive for recent decades (Bonica and Woodruff 2015, 478). This period coincides with the rise of politicized judicial elections which Schotland (1998, 150) famously described as "nastier, noisier, and costlier" than earlier in American history.

Each observation represents an associate justice who served during an election year when the position of chief justice was up for election. The dependent variable indicates whether (1) or not (0) each associate justice emerged as a candidate for the chief justice position when it was up for election. We do not include incumbent chief justices in our data because we are interested in the electoral behavior of associate justices seeking higher office. Ten observations resulted in a positive outcome. Our standard errors are clustered by state to capture potential state-level effects.¹¹

⁹Other institutional characteristics that we considered (but found no significant support for) were the size and workload of the state supreme court. The size of the state's high court determines the number of associate justices who occupy the pool of highly qualified candidates for the chief justice. We also considered the level of electoral competition in state elections overall but found no support that it affects the likelihood of emergence.

¹⁰We also considered that an associate justice who will reach pension eligibility during the next term might consider the salary increase of the chief justice position and decide to run. The higher salary will ultimately lead to a higher pension, as they are tied to the salary earned during the final year(s) of service. Importantly, justices at any stage of their career may consider or be motivated by the salary differential between an associate and chief, which can range from \$1,000–\$15,000 in the states we examine. We included a measure of the chief–associate salary differential to control for this possibility, as well as a control for pension eligibility. Neither variable achieved statistical significance.

¹¹We also investigated alternative modeling techniques to estimate our results. Penalized maximum likelihood estimation did not permit us to use clustered standard errors but reproduced the statistically significant effects of open seats and ideological distance identified by our logit model (but not their interaction). A multilevel logistic regression model with states nested within election years produced similar coefficients to the logit model while increasing our standard errors. Open seats and ideological distance remain statistically significant. Note, however, that the effects of interaction terms in a logistical

Table 2. Description of dependent and independent variables.

Variable		Description	Mean (SD)
Emerge	=	1 if associate justice emerges to run for chief justice in given year, 0 otherwise	0.05 (0.23)
CJ Open Seat	=	1 if no incumbent chief justice seeking reelection, 0 otherwise	0.24 (0.43)
Justice–Chief Justice ideological distance	=	Absolute ideological distance between justice and chief justice prior to election, measured in Bonica CFscores (min = 0.002, max = 1.80)	0.55 (0.56)
Open Seat*Ideological Distance	=	Open seat variable multiplied by ideological distance variable	0.19 (0.43)
AJ Risk Taker	=	1 if associate justice initially earned seat by defeating incumbent, 0 otherwise	0.08 (0.27)
AJ Previous Political Experience	=	1 if associate justice formerly served in state legislature, Congress, or state executive branch, 0 otherwise	0.16 (0.37)
CJ Vulnerable	=	1 if incumbent CJ received less than 60 percent of the vote in the previous election, 0 otherwise	0.59 (0.49)
CJ Newly Appointed	=	1 if CJ is recently appointed (not elected), 0 otherwise	0.36 (0.48)
AJ Facing Reelection	=	1 if associate justice up for election in given year, 0 otherwise	0.23 (0.42)
AJ Forced Retirement Next Term	=	1 if associate justice reaches mandatory retirement age during next term, 0 otherwise	0.17 (0.37)
AJ Tenure (log)	=	Log of duration of tenure in years served (minimum = 1, maximum = 31)	1.60 (0.91)
Partisan Elections	=	1 if state in which associate justice serves has partisan supreme court elections, 0 otherwise	0.58 (0.49)

Note: $N = 187$.

In addition to logit coefficients, we display the changes in predicted probabilities associated with our significant independent variables.

Results and Discussion

The results of our regression model are in Table 3. The model estimates support our expectations regarding the powerful roles of strategic opportunities (i.e., open seats) and political motivation (i.e., chief justice–associate justice ideological distance). Both are statistically significant, and their interaction is as well. These results are consistent with our theoretical framework. We also find that risk-acceptant justices were more likely to emerge as candidates for chief justice. The remaining control variables, though derived from studies of judicial elections, fail to have a significant impact on decisions to seek promotion to chief justice when controlling for other factors. That being said, these findings require further examination.

Seven of the 29 elections in our analysis do not have an incumbent chief justice and are identified in the data as *Open Seat* elections. Because *Open Seat* is a component of our *Open Seat***Ideological Distance* interaction term, we cannot interpret the effect of the regression coefficient in a straightforward manner. The coefficient reported indicates that *Open Seat* is significant and positive when *Ideological Distance* is zero. This is consistent with the natural successor type of associate justice. All else being equal, the predicted probability of an ideologically similar associate justice running for chief justice increases from 0.02 to 0.12 if there is no incumbent in the

regression model must be interpreted relative to the other term in the interaction (Norton, Wang, and Ai 2004). A likelihood-ratio test comparing the output of the multilevel model to our logit model confirms that the former does not improve the model fit or substantively change the results with $\chi^2(0) = 0.00$.

Table 3. Logistic regression model results for associate justice emergence as candidate for chief justice, 1990–2014.

Variable	Coefficient (Robust SE)	Z	Change in Predicted Probability (min. → max. value)
CJ Open Seat	3.62 (1.26)	2.88	0.02 → 0.12
AJ–CJ Ideological Distance	2.26 (0.90)	2.50	0.01 → 0.18
CJ Open Seat*AJ–CJ Ideological Distance	–1.99 (0.94)	–2.12	0.02 → 0.19
<i>Control variables</i>			
AJ Risk Taker	1.78 (0.48)	3.71	0.02 → 0.08
AJ Previous Political Experience	0.51 (0.99)	0.52	n.s.
CJ Newly Appointed	–0.39 (0.87)	–0.45	n.s.
CJ Vulnerable	0.77 (0.44)	1.74	n.s.
AJ Facing Reelection	–0.87 (1.31)	–0.66	n.s.
Partisan Elections	–0.06 (0.55)	0.11	n.s.
AJ Tenure (log)	–0.25 (0.49)	–0.51	n.s.
AJ Forced Retirement Next Term	0.10 (0.93)	0.11	n.s.
Constant	–5.65 (1.85)	–3.06	–

Notes: $N = 187$. Robust standard errors clustered by state. Predicted probabilities for CJ Open Seat*AJ–CJ Ideological Distance calculated with closed seat at minimum value and open seat at maximum value.

Table 4. Predicted probability of associate justice emergence as candidate for chief justice position, 1990 to 2014.

Associate Justice–Chief Justice ideological distance	Open seat	Closed seat
Mean – 1 standard deviation (0)	0.12	0.01
Mean (0.55)	0.12	0.02
Mean + 1 standard deviation (1.11)	0.14	0.05
Maximum (1.80)	0.20	0.19

Note: Predicted probabilities calculated with continuous variables at mean values and binary variables at modal values using CLARIFY for Stata (King, Tomz, and Wittenberg 2000).

race. This is not surprising, as 5 of 7 chief justice elections with open seats resulted in at least one associate justice emerging as candidate.

All else being equal, justices are more likely to run as the ideological distance increases between the associate justice and incumbent chief justice. We must, however, interpret the impact of ideological distance via *Open Seat* because both are included in the interaction term. When the chief justiceship is occupied and there is no open seat (22 of the 29 races), ideological distance is statistically significant and positive. Under those conditions, a shift from ideological congruence with the chief justice to an ideological distance one standard deviation above the mean increases the predicted probability of emergence from 0.01 to 0.05. This supports the notion that a divergent justice is more likely (and insurgent rebels unlikely) to emerge as a candidate for chief justice if they are far removed ideologically from the court's leader. Notably, however, they are far more likely to retain their current seats.

Our interaction term for *AJ–CJ Ideological Distance* and *Open Seat* is significant and negative. This indicates that the effect of one component term is dependent on the other. However, this relationship requires further examination because the interaction coefficient cannot be interpreted directly (Norton, Wang, and Ai 2004). We examine more closely the possible combinations of open/occupied seats and ideological distance consistent with our taxonomy outlined above. We calculate predicted probabilities when the chief justiceship is open or occupied and associate justices are ideologically similar or distant from the relevant chief justice. These are displayed in Table 4.

The predicted probabilities of emerging given open or occupied seats and varying degrees of ideological agreement with the chief justice are consistent with the expected pattern. Both types of candidates associated with open seats, natural successors and opportunists, are about equally likely to emerge as candidates for chief justice until the relevant ideological distance approaches the maximum value in our data. More specifically, the predicted probability that an ideologically similar associate justice will emerge when the chief justice seat is empty is 0.12, and it increases

Table 5. State supreme court justices running for chief justice, 1990–2014.

Name	Year	State	Open seat	Ideological Distance (+/- mean)	AJ Taxonomy Category	Won CJ Election
Oscar Mauzy	1990	TX	No	+	Divergent	No
Terry Trieweiler	1992	MT	No	+	Divergent	No
Karla Gray	2000	MT	Yes	-	Natural successor	Yes
I. Beverly Lake	2000	NC	No	+	Divergent	Yes
Harold See	2000	AL	Yes	-	Natural successor	No
Terry Trieweiler	2000	MT	Yes	+	Opportunist	No
Jim Hannah	2004	AR	Yes	+	Opportunist	No
Tom Parker	2006	AL	No	-	Insurgent	No
Maureen O'Connor	2010	OH	No	+	Divergent	Yes
Mark Martin	2014	NC	Yes	+	Opportunist	Yes

Note: For “ideological distance” column, + indicates above mean and - indicates below mean. Justice Mark Martin of North Carolina announced his candidacy for chief justice in February 2014 with the incumbent, Sarah Parker, facing mandatory retirement in August 2014. Martin was appointed to the chief justiceship by Governor Pat McCrory after Parker’s retirement and won a full term in the November 2014 election.

to 0.14 at one standard deviation above the mean ideological distance. This indicates that open seats are similarly attractive to associate justices both like and unlike the previous chief justice. The predicted probability for associate justices to emerge who are most ideologically distant from the sitting chief justice is 0.20. In cases of stark ideological disagreement between associate justices and sitting chief justices, open seats offer motivation to emerge as a candidate to change the direction of the court.

The impact of ideological distance on the probability of challenging an incumbent is also significant. The predicted probability of emergence remains under 5 percent until the ideological distance exceeds one standard deviation above the mean. This confirms that insurgent candidates should be rare. However, ideologically distant associate justices, or divergents, are more common as potential challengers for an incumbent. At the maximum level of ideological distance, the probability reaches 0.19, which is slightly lower than the predicted probability when the seat is open (0.20). Ideological distance as a motivation to run for the position of chief justice is more apparent when the position is occupied than when it is not. This suggests that if associate justices are going to challenge sitting chief justices, it is likely the result of significant political and ideological differences.

We investigate the joint effects of open seats and ideological distance graphically in order to explore their substantive influence. We display the average marginal effects of open seat over the range of ideological distance in our data in Figure 2. The marginal effects displayed indicate that the impact of open seats is significant, with the confidence intervals excluding zero, at values well below the mean ideological distance (0.54) and sustaining a relatively consistent influence until reaching one standard deviation beyond the mean (1.11). However, the impact of open seats fails to achieve statistical significance when ideological distance exceeds this threshold. These results provide a more nuanced view of which justices are influenced by these factors.

The relationship between emergence as a candidate and ambition is restricted to one of our two measures of that concept—whether an associate justice is risk acceptant in career decisions. This variable, which captures whether the associate justice previously unseated an incumbent, is significant at $p < 0.001$. These judges have shown a propensity for risky career moves in challenging circumstances and continue to act on their progressive ambition. Our companion indicator of ambition, previous experience in a major political office, does not reach statistical significance.

The remaining control variables in our empirical model have no significant influence on associate justices’ decisions to emerge as candidates for chief justice. The impact of a vulnerable chief justice is signed positively and reaches conventional levels of statistical significance for our small n ($p = 0.08$). We find no evidence that an appointed chief justice or an associate justice facing reelection alters her decision making, all else equal. Partisan elections, forced retirement, and

judicial tenure also fail to have a significant impact on the decision to emerge. With the exception of progressive ambition, the assortment of control variables we test do not support justices' choices to run for chief justice. The choice is largely dependent on strategic concerns and political predispositions.

A closer look at the emerging justices in our data demonstrates the intuition behind the empirical findings, particularly as they relate to the impact of ideological distance. A list of all associate justices who emerged as chief justice candidates from 1990 to 2014 is presented in [Table 5](#). In the open-seat elections, three of five associate justices who emerged were opportunists (ideologically distant). Four of the five associate justices who ran against a sitting chief justice were divergent (ideologically distant). We identify only one (ideologically similar) insurgent who challenged a chief justice with similar political leanings—the aforementioned Tom Parker of Alabama in 2006. It is little wonder that Parker's unusual candidacy resulted in strong reactions among his colleagues and other political elites.

Conclusions

This article is the first systematic study of why justices on state high courts pursue the position of chief justice. We determine that decisions by associate justices to seek the chief justiceship are the result of strategic opportunities, political motivation, and progressive ambition. Jurists are most influenced by the presence of open seats, but this impact is more pronounced in associate justices who are ideologically distant from the sitting chief justice.

The diminished role of institutional features in the decision to seek the chief justiceship is notable. Studies of state courts often highlight the differences between partisan and nonpartisan elections, as we do here, but we find no significant distinction between their effects on judges' choices to seek promotion. Overall, 6.4 percent of associate justices in nonpartisan election states and 4.5 percent of associate justices in partisan selection states ran for chief justice. In either case justices are much more likely to stay where they are than seek the court's leadership role.

We believe that our findings have important implications for understanding the electoral behavior of state supreme court justices and other jurists. Studies of judicial promotion explain which judges are chosen for elevation. Our results, however, provide insight about which judges *seek* higher office. This is an important addition to recent research on challenger emergence in state judicial elections. Associate justices in the states are, first and foremost, strategic and practical given their tendency to run for chief justice when the office is vacant. This is an important finding given the incumbent-centered nature of prior research. Judges are also sensitive to their desires to either change the court or carry on the legacy of the former chief justice.

Several important questions follow from our findings. First, once candidates decide to run for higher office, is the decision a good one? Four of the ten associate justices that emerged as chief justice candidates were successful. This includes two of five who challenged an incumbent—a rather high rate of success compared to legislative challengers. Second, does the success of justices vary by typology, and what does that say about voters? Given the ideological distinctions influencing emergence, subsequent success could indicate voters use ideology as a voting cue in addition to name recognition and/or incumbency cues. Third, although judicial ambition was not our central focus, we find evidence that it is worthy of more exploration. The role of ambition in judges' efforts to be nominated, appointed, or promoted to higher courts is difficult to observe. However, it may have more effect on judges than previously acknowledged outside Sheldon and Maule's (1997) discussion of "self-initiators" or limited survey research (Jensen and Martinek 2009). Fourth, do procedures for choosing a chief justice afford judges different opportunities to steer the court? In states holding elections for their chief justice, jurists wait for an appropriate time to emerge. Whether associate justices in states with different selection systems for chief justices alter their behavior to appeal to the elevating authority (whether their peers or the public) is

ripe for future research. These questions have important implications for the interaction of jurists on collegial courts as well as judicial independence.

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