

## **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 1970 to 2004 in the states that elect this position. We construct taxonomy of associate justices who seek the chief justice position, then use regression analysis and post estimation techniques to better understand these choices. Our findings indicate that judicial actors who seek promotion via the ballot box are strategic and motivated by ideological preferences rather than institutional features or raw ambition.*

In 2006, a statewide election was held to select the Chief Justice of the Alabama Supreme Court. The candidates included the Republican incumbent Drayton Nabers, Jr., Democrat Sue Bell Cobb, and Republican Associate Justice Tom Parker, who achieved notoriety as the spokesman and legal advisor for former chief justice Roy Moore.<sup>1</sup> Parker was outspoken about changes he wished to make on the Alabama Supreme Court. 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 also touted his desire to change the leadership of the court, and the election led the court’s justices to choose “sides.”<sup>2</sup> Nabers defeated Parker in the Republican primary but lost the seat to Cobb in November.

The overtly political nature of Parker’s candidacy prompts an interesting question: when and why do judges seek promotion? Prior research suggests that politicians presented with optimal circumstances will run for higher office (Rohde 1979). However, judges’ decisions regarding higher office may be tempered by the institutional design and less overtly political nature of the judicial branch. This question is interesting given the emergence of “new style” judicial elections similar to conventional electoral politics (Bonneau 2005; Schotland 1985). In order to examine this phenomenon we analyze the behavior of elite judicial officers at the state level. Seven states (Alabama, Arkansas, Minnesota, Montana, North Carolina, Ohio, and Texas) hold statewide elections for the office of chief justice.

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<sup>1</sup> See 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.

<sup>2</sup> Nabers defeated Parker by a 61.4-38.6% margin in the Republican primary. Parker remained on the Supreme Court of Alabama as an associate justice.

These elections allow associate justices to express their desires for political ascension via the very public choice to run for higher office.<sup>3</sup> Determining why associate justices run for chief justice can inform our understanding of the career decisions of jurists. Importantly, it allows us to determine whether political strategy, desire for political change, institutional factors, or ambition influence these decisions as suggested by evidence from the other branches of government. We examine the decisions of associate justices to seek the position of chief justice from 1970 to 2004. 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 strategic opportunities and ideological motivations, with little impact by institutional factors or raw political ambition.

### Judicial Careers and Promotion-seeking

When studying the career trajectories of jurists, scholars tend to focus on progressive *promotion* rather than judges' decisions to run for higher offices (but see Streb and Frederick 2009). This research explains why elites elevate judges but rarely examines decisions by judges to seek higher office. The appointment process for federal judges requires that jurists are favored by elites rather than publicly declaring themselves candidates. 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 2002). In terms of promotion from state supreme courts to the federal courts, age and partisan alignment between the nominee, senator, and president are influential (Bratton and Spill 2004). There is limited research on the recruitment of judicial candidates for higher office in the states (but see Langer et al. 2003; Sheldon and Maule 1998).

Although scholarship on judicial promotion and recruitment gives little attention to the role of judges' motivations (but see Jensen and Martinek 2009; Williams 2008), scholarship on judicial elections offers useful insights. Melinda Gann Hall and Chris Bonneau (Bonneau 2003, 2005; Bonneau and Hall 2003; Hall 2001; Hall and Bonneau 2006), separately and together, reveal that challengers in judicial elections are strategic. In other words, judges 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 (Streb and Frederick 2009). Strategic choice also affects exits from the bench (Hall 2001), indicating it is a pervasive force in the career choices of elite jurists.

The scarce attention to judges' 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 limited.<sup>4</sup> Given these limitations, scholars rely on survey results rather than visible actions or public statements to understand judges' professional goals (Jensen and Martinek 2009; Williams 2008). While survey analysis provides useful information, it falls short of the systematic scholarship that examines progressive career goals in the legislative and executive branches. To date, jurists' decisions to seek higher office are virtually unexamined by political scientists.

### The Decision to Run for Chief Justice

On April 7, 2015, Wisconsin voters passed an amendment that changed the state's method of selection for chief justice. As a result, associate justices will select the chief justice rather than allowing the most senior justice to serve in the position. Although this change in institutional rules seems straightforward, the political back story suggests otherwise. In fact, "outside" interests were involved in lobbying efforts for the change, spending more money on the referendum than the coinciding state Supreme Court election. Further, motivations for the rule change were characterized primarily as an attempt to oust the sitting, left-leaning chief justice by conservative majorities in Wisconsin's state government.<sup>5</sup>

<sup>3</sup> The 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 (1 state); and random or rotation (9 states). See Langer, et al. (2003) for further discussion of chief justice selection systems.

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

<sup>5</sup> See Patrick Marley's "Voters back Amendment on Chief Justice Selection" (April 7, 2015) for more legal and political observations about the Wisconsin chief justice affair.

Intracourt animosity towards Chief Justice Shirley Abrahamson was no secret, as journalistic headlines revealed that the vitriol among justices even led to physical violence (Stephens, Spivak, and Marley 2011). Abrahamson responded by filing a federal lawsuit challenging the amendment. The events in Wisconsin suggest that political elites including state Supreme Court justice consider the chief justice to be an important position. This is understandable given the powers, duties, and responsibilities associated with the job. These make it attractive to an associate justice and provide motivation for judges to run for the position where possible. Chief justices in many states can set the agenda for discussion and build consensus within their courts (Hughes, Wilhelm, and Vining 2016). They also serve as the leading representative for the state judiciary (Wilhelm, et al. 2015). These internal and external political roles are the result of both formal and informal mechanisms.

Institutional rules give many chief justices authority over opinion assignment and control of vote or discussion order (Hall 1989; Hughes, Wilhelm, and Vining 2016). This internal control makes the chief justice a consequential figure in terms of judicial outcomes (Danelski 1989; Epstein and Shvestova 2002). Chief justices are also the administrative leaders of both their high courts and the entire 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 additional powers provide chief justices with the ability to steer their court (and the state judiciary) in a particular direction via their numerous administrative and extrajudicial powers. The formal powers for the chief justices of the states in our analysis are summarized in Table 1.<sup>6</sup> Given the powers and prestige of the chief justice ship, we expect it is a desirable office in all of the states where it is an elected position—even for elites who already serve on the courts of last resort.

The chief justice also has an important role in state politics. As the primary representative for the judicial branch in relations with the other branches of government, most chief justices deliver a state of the judiciary address at regular intervals (Wilhelm, et al. 2015). 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 bully pulpit 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.<sup>7</sup> In addition, chief justices can develop their own strategies for inter branch cooperation to achieve judicial improvements and similar reforms. Finally, the chief justice ship may come with reduced caseload responsibilities and increased compensation.

### **Seeking Higher Office: Opportunity and Motivation**

As there is a more pronounced role for the chief justice in a state’s judicial and political affairs, an associate justice may consider ascending to this position as a pathway to greater influence.

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<sup>6</sup>Overall, there is little variation between the states in our analysis in terms of the role of the chief justice. Notably, 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.

<sup>7</sup> See 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.

We argue that decisions to seek the chief justice ship are primarily a product of strategic opportunities, political preferences, and their interaction.<sup>8</sup> The key opportunity for any officeholder, including an associate justice, to run for promotion is the occurrence of an open seat (Jacobson 1989; Gaddie and Bullock 2000). Political preferences are most likely to encourage associate justice 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 stay put or 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). 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 2005). The lack of an incumbent removes the primary obstacle faced by office-seekers and eliminates the possibility of creating discord on the court if an associate justice loses her bid to unseat the 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 the 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 receives little attention in studies of judicial institutions. However, Barrow, Zuk, 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 direction 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). This may have a substantial influence on intra-court consensus, conflict, and court policymaking (Langer, Wilhelm, and Sanchez 2009; Langer et al. 2003).

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 unlike the chief justice can adjust the direction of the high court and state judiciary by replacing more conservative/liberal chief justice. Because they possess specialized knowledge about their institutions, associate justices will perceive themselves as uniquely suited to changing the judiciary. On the other hand, an ideologically close associate justice may be motivated to run if she prefers to keep the chief justice ship 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 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.

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<sup>8</sup>Similar to research on the emergence of legislative and executive candidates (Abramson, Aldrich, and Rohde 1987; Rohde 1979), we restrict our analysis to a specific type of officeholder--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 a certain type of official limits our understanding of who runs for an office, it allows examination of how likely candidates decide whether to emerge as candidates.

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.

**Figure1. Taxonomy of associates seeking the chief justice ship.**

Ideological Distance	Open Seat	
	<u>Yes</u>	<u>No</u>
<u>Near</u>	Natural successors	Insurgents
<u>Far</u>	Opportunists	Divergents

*Natural successors.* When the chief justice ship 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 ideological concordance with the former chief justice. The first category, which we refer to as “natural successors,” includes associate justices who seek the chief justice ship 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 individual. The natural successor is a similar “type” and presumably will continue operating the court like her predecessor. In addition, running for the chief justice ship in these conditions helps to assure it does not pass into the control of one’s political rivals.

*Opportunists.* Our second category comprised of “opportunists” includes 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, and thus an associate justice may chose to challenge the current leader. 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 that an ideologically similar associate justice can 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 to the state’s high court and/or its judicial system. 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 the bee 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 be promoted in the event of a vacancy. However, 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 justice ship 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 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 his court to resist aggressively 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, supported by pro-business groups while Parker allied with social conservatives, 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 at the ballot box and their efforts led to substantial intracourt discord.

Our taxonomy of associate justices who run for chief justice suggests several interesting relationships between opportunities and motivations related to open seats and ideological differences. However, the existing literature on political elites’ career choices suggests that other causal factors may also influence this decision. We discuss these 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: Ceteris paribus, the ideological distance separating an associate justice and the chief justice is directly related to the likelihood she 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.* If associate justices are strategic politicians, emergence for higher office is influenced by calculated decisions. An alternative consideration is that a strategic associate justice will consider whether an elected or appointed judge occupies the chief justice ship. Appointed chief justices may be perceived as vulnerable because the public did not select them for the position and they have limited tenure in the job. Bonneau and Hall (2003, p. 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 pursue the chief justice ship if the incumbent is newly appointed. It is also possible that strategic justices consider whether they are up for reelection. If an individual 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 as a challenger. Officeholders in the middle of a term avoid this decision. Accordingly, associate justices who are up for reelection the year of a chief justice election are less likely to emerge as candidates for chief justice in that same year.

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 vs. 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.

Judicial officers, like other politicians, may also have progressive ambition that affects decisions to seek promotion. Ambitious politicians are more comfortable with taking risks than others (Rohde 1979). If emergence decisions are motivated by raw ambition, justices will seek the chief justice ship even if the costs incurred are high, the risks are great, and the likelihood of winning is not guaranteed. To estimate the influence of ambition on associate justices’ emergence in elections for chief justice we assess their aversion to political risk taking. We follow Rohde (1979) by assuming that risk takers are more willing to challenge incumbents to obtain office.

Risk taking behavior provides a proxy for ambition, as increased comfort with taking risks allows for raw ambition to endure the costs that usually stifle ambition when behaving strategically. We anticipate that justices who earned their seats by defeating incumbents are more likely to be ambitious and therefore more likely to pursue the chief justice ship.

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, competitiveness, time, and energy required of candidates in partisan races may influence potential candidates.<sup>9</sup> Justices' duration 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 justice ship 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 both the duration of tenure and imminent forced retirement but do not offer directional hypotheses.<sup>10</sup> The operationalization of our variables is explained in Table 2.

Variable		Description	Mean (Std. Dev.)
Emerge	=	1 if associate justices emerges to run for chief justice in given year, 0 otherwise	.06 (.24)
CJ Open Seat	=	1 if no incumbent chief justice seeking reelection, 0 otherwise	.25 (.43)
Justice-Chief Justice ideological distance	=	Absolute ideological distance between justice and chief justice prior to election, measured in Bonica CFscores (min= 0, max= 1.8)	.53 (.55)
Open Seat*Ideological Distance	=	Open seat variable multiplied by ideological distance variable	.20 (.43)
CJ Newly Appointed	=	1 if CJ is recently appointed (not elected), 0 otherwise	.34 (.47)
AJ Facing Reelection	=	1 if associate justice up for election in given year, 0 otherwise	.23 (.42)
CJ Vulnerable	=	1 if CJ received less than 60 percent of the vote in the previous election, 0 otherwise	.57 (.50)
AJ Risk Taker	=	1 if associate justice initially earned seat by defeating incumbent, 0 otherwise	.08 (.27)
AJ Forced Retirement Next Term	=	1 if associate justice reaches mandatory retirement age during next term, 0 otherwise	.16 (.37)
AJ Tenure	=	Duration of tenure in years served (min.=1,max =31)	7.1 (5.6)
Partisan Elections	=	1 if state in which associate justice serves has partisan supreme court elections, 0 otherwise	.60 (.49)

<sup>9</sup> Another institutional characteristic that we considered (but found no significant support for) was the size of the court, as this determines the number of associate justices who occupy the pool of highly qualified candidates for the chief justice. Another factor may be the level of electoral competition in state elections overall. Again, we find no support that it affects the likelihood of emergence.

<sup>10</sup> We 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 \$1000-\$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.

## Data and Methods

We use logistic regression to analyze the factors that influence decisions to emerge as a candidate for chief justice.<sup>11</sup> The data we analyze include 193 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 omit elections after 2014 from the analysis due to data availability issues. In total, 30 chief justice elections are included in our analysis.

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. Eleven observations (through 2014) resulted in a positive outcome.

Robust standard errors are clustered by state to control for cross-sectional correlation. Judicial elections have changed over time (Bonneau and Hall 2009; Hanssen 2004; Schotland 1985) and elections are unique due to national and local conditions. 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. A preliminary review suggests that they 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. The remaining control variables, though derived from studies of other types of judicial elections, fail to have a significant impact on decisions to seek intrajudicial promotion when controlling for other factors. That being said, these findings require further examination.

Variable	Coefficient (Robust S.E.)	Z	Change in Predicted Probability (min. → max. value)
CJ Open Seat	3.84 (1.78)	2.15	.01 → .30
AJ-CJ Ideological Distance	2.57 (1.05)	2.45	.01 → .38
CJ Open Seat*AJ-CJ Ideological Distance	-2.52 (1.37)	-1.84	.01 → .36
<i>Control variables</i>			
CJ Newly Appointed	.69 (1.35)	.51	n.s.
AJ Facing Reelection	-.24 (.89)	-.27	n.s.
CJ Vulnerable	.39 (1.6)	.24	n.s.
AJ Risk Taker	1.02 (1.12)	.91	n.s.
Partisan Elections	-11.95 (3450)	-.00	n.s.
AJ Tenure (logged)	-.00 (.06)	-.05	n.s.
AJ Forced Retirement Next Term	.20 (1.13)	.18	n.s.
Constant	-7.64 (2.42)	-3.16	--

Notes: N = 193. Robust standard errors clustered by state.

Six of the 30 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.

<sup>11</sup>We also ran our model using rare events logistic regression because positive outcomes are somewhat rare relative to the number of observations (approximately one for every 17.5 justice-years in the data). The results were not substantively different.

All else being equal, the predicted probability of an ideologically similar associate justice running for chief justice increases from .01 to .30 if there is no incumbent in the race. This is not surprising, as all six 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 justice ship is occupied and there is no open seat (24 of the 30 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 .01 to .11. At the maximum ideological distance in the data the predicted probability of running for chief justice increases to .38 even while the chief justice ship is occupied. This is strong support for the notion that a divergent is likely (and insurgent rebels unlikely) to emerge as a candidate for chief justice if they are far removed ideologically from the court’s leader.

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/occupied and associate justices are ideologically similar or distant from the relevant chief justice. These are displayed in Table 4.

**Table 4. Predicted probability of associate justice emergence**

Associate Justice-Chief Justice Ideological distance	Open seat	
	Yes	No
0	.30	.01
Mean -1 StdDev	.30	.01
Mean	.31	.03
Mean +1 Std. Dev	.32	.11
Max	.36	.38

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).

The predicted probabilities of emerging given open/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 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 .30, and increases to .32 at one standard deviation above the mean ideological distance. This indicates that open seats dampen the motivational role of ideological differences because they are attractive to associate justices both like and unlike the former/outgoing chief justice. Of course, the predicted probability for associate justices to emerge who are most ideologically distant from the sitting chief justice is .36. Thus, in cases of true ideological disagreement between associate justices and sitting chief justices, open seats offer motivation to emerge as a candidate for direction change on the court.

A similar observation can be made regarding the impact of ideological distance on the probability of challenging an incumbent. The predicted probability of emergence remains under 3 percent until the ideological distance exceeds one standard deviation above the mean. This indicates that the insurgent is a rarity. However, ideologically distant associate justices, or divergents, are much more common as potential challengers for an incumbent. Once the ideological distance increases to one standard deviation from the mean, the probability of emergence reaches approximately .11. At the maximum level of ideological distance, the probability reaches .38, which is a greater than the predicted probability when the seat is open (.36). This finding is interesting because it suggest that divergents are as common, and possibly a bit *more* common, than opportunists.

In other words, 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 differences.

Name	Year	State	Open seat	Ideological Distance (+/- mean)	AJ Taxonomy Category	Won Election for Chief Justice
Oscar Mauzy	1990	TX	No	+	Divergent	No
Terry Trieweler	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 Trieweler	2000	MT	Yes	+	Opportunist	No
Jim Hannah	2004	AR	Yes	+	Opportunist	No
Tom Parker	2006	AL	No	-	Insurgent	No
Sarah Parker	2006	NC	Yes	+	Opportunist	Yes
Maureen O'Connor	2010	OH	No	+	Divergent	Yes
Mark Martin	2014	NC	Yes	+	Opportunist	Yes

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 became chief justice candidates from 1990 to 2014 is presented in Table 5. In the open-seat elections, four of six associate justices who emerged were opportunists (ideologically distant). Further, four of the five associate justices who ran against a sitting chief justice were divergent (ideologically distant). We identify only one insurgent (ideologically similar) 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.

With regard to our control variables, we find that electoral costs do not influence the pursuit of the chief justice position. Whether a justice is up for reelection has no statistically significant impact on the likelihood of seeking leadership of the court. Partisan elections, forced retirement, judicial tenure fail to have a significant impact on the decision to emerge. The assortment of control variables we test are not effective with regard to justices' choices to run for intrainstitutional promotion. Instead, the choice is dependent on strategic concerns and political predispositions.

## Conclusions

This paper is the first systematic study examining why justices of state high courts pursue higher office. By examining the behavior of state Supreme Court justices over more than three decades, we have determined that decisions by associate justices to seek intrainstitutional promotion are the result of strategic opportunities and political motivation. Jurists are most influenced by the presence of open seats, but this impact is most pronounced in associate justices who are ideologically distant from the sitting chief justice.

Among our interesting findings is the dampened role of institutional features and ambition in the decision to seek the chief justice ship. Compared to legislators seeking higher office, jurists are less inclined to run for elevation as a result of raw ambition (measured as risk taking behavior). Political scientists identify many ways in which judges act like ordinary politicians in their electoral behavior, to the extent that some conclude there are no unique differences between the two (Hall 2011). While we agree there are many similarities, our findings indicate that in some ways judges are different than other elected officials.

We believe that our findings have important implications for understanding the ambition and 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.

It is apparent that 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. They are also sensitive to their desire 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? Five of the eleven associate justices that emerged as chief justice candidates were successful. This includes two of five who challenged an incumbent at 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 driving emergence, subsequent success could indicate voters use ideology as a voting cue in addition to name recognition and/or incumbency cues. Third, 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 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 also 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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