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Political Biases in State Supreme Courts

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Judiciaries

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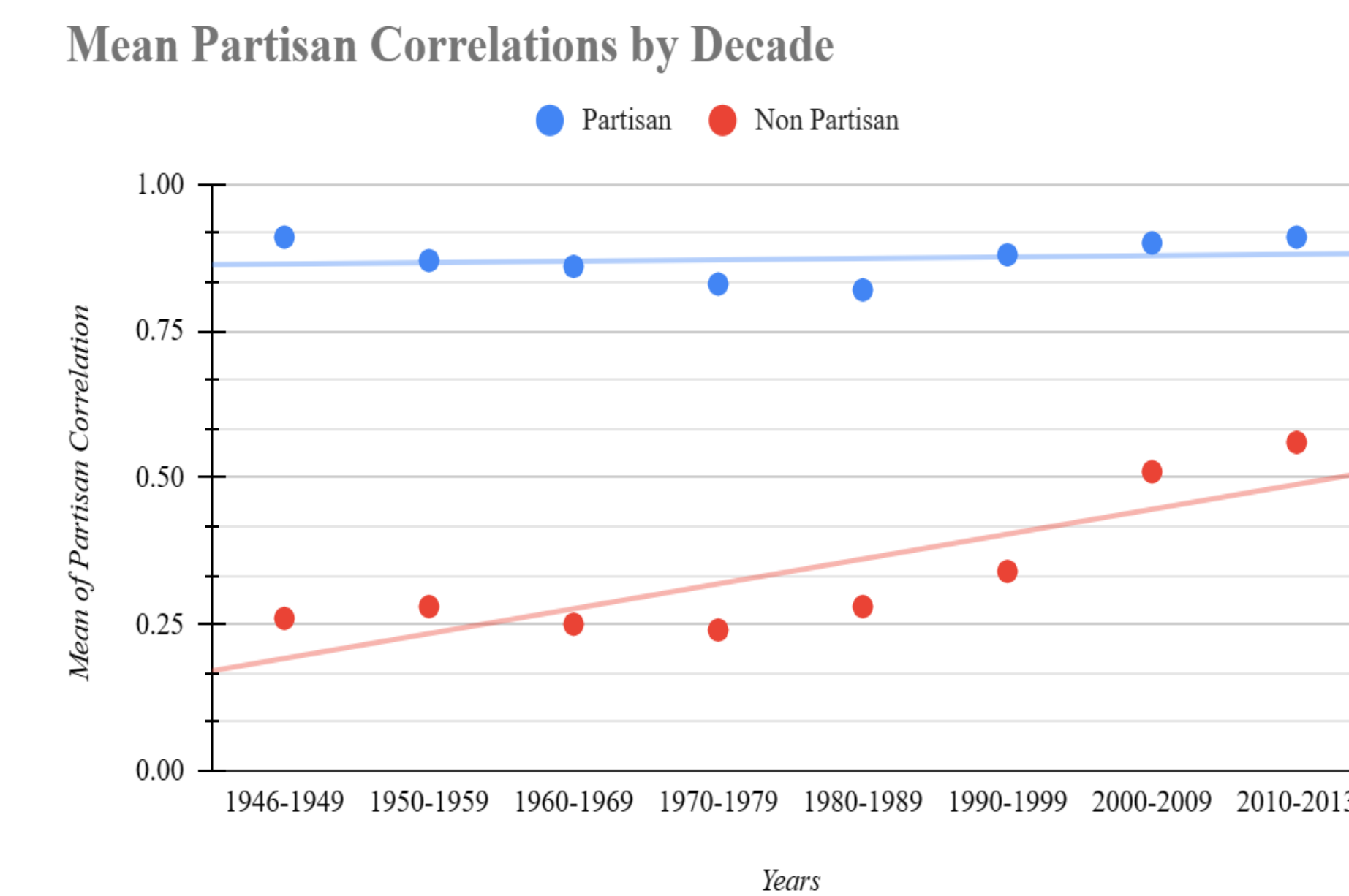
Abstract

The judiciary of the United States makes thousands of decisions a year that directly affect the political landscape of the United States. When judges make decisions, they purportedly make their rulings based on the rule of law presented for a given case. Judges, however, are not without biases and can be prone to make rulings that have been cultivated by their political beliefs. This study focuses on the political decision making of state Supreme Court justices and examines how they make decisions that are potentially politically motivated in cases dealing with criminal rights and economic liberties. My research examines how judges are appointed to the bench in each state and their term limits to determine how these factors could influence a judge to decide more aligned with their political beliefs. I expect to find that judges with more job security will make more politically motivated decisions due to the lack of political accountability afforded to them. This will be significant in potentially leading to a total reevaluation of the nomination process of judges to state Supreme Courts.

Methods

For the data, I have used Kritzer's methodology of partisan correlation that utilizes a .0-1.0 scale. A result of .0 serves as a judge or candidate with nearly zero partisan correlation while a candidate or judge with a 1.0 is incredibly intertwined with politics and will have their politics play a significant role in their judgements. The data associated with this scale will be both quantitative, with how a candidate scores on the scale, and qualitative, with years and the election types of each state, working in tandem. This scale will help answer the questions I have posed with the different types of variables that can impact politically motivated decision making. The scale will serve as a major problem solver to my posed questions about election type, the rising importance and influence of election, and if candidates are being challenged. I have analyzed the data in a way that makes it clear that direct elections, primarily partisan, cause the most significant amount of politically motivated candidates to reach the bench.

Results



Analysis

For nonpartisan elections, there is a major increase from 1990-1999 to 2000-2010, as well as a minor increase from 2000-2010 to 2010-2013. The major increase for the former can be attributed to the 2002 decision in *Republican Party of Minnesota v. White* where the Supreme Court ruled that candidates could make free speech policy statements during campaigns. Even though some campaigns are nonpartisan, elections are inherently political in nature and drive competition. Candidates want to appeal to as many voters as possible and separate themselves from the field. If this means making political statements, since they are now approved to do, they can do so. This decision could be the key reason for the spike in the nonpartisan elections and the small increase in the partisan elections.

- Partisan Election Correlation: .88 (1990-1999) – .9 (2000-2010)

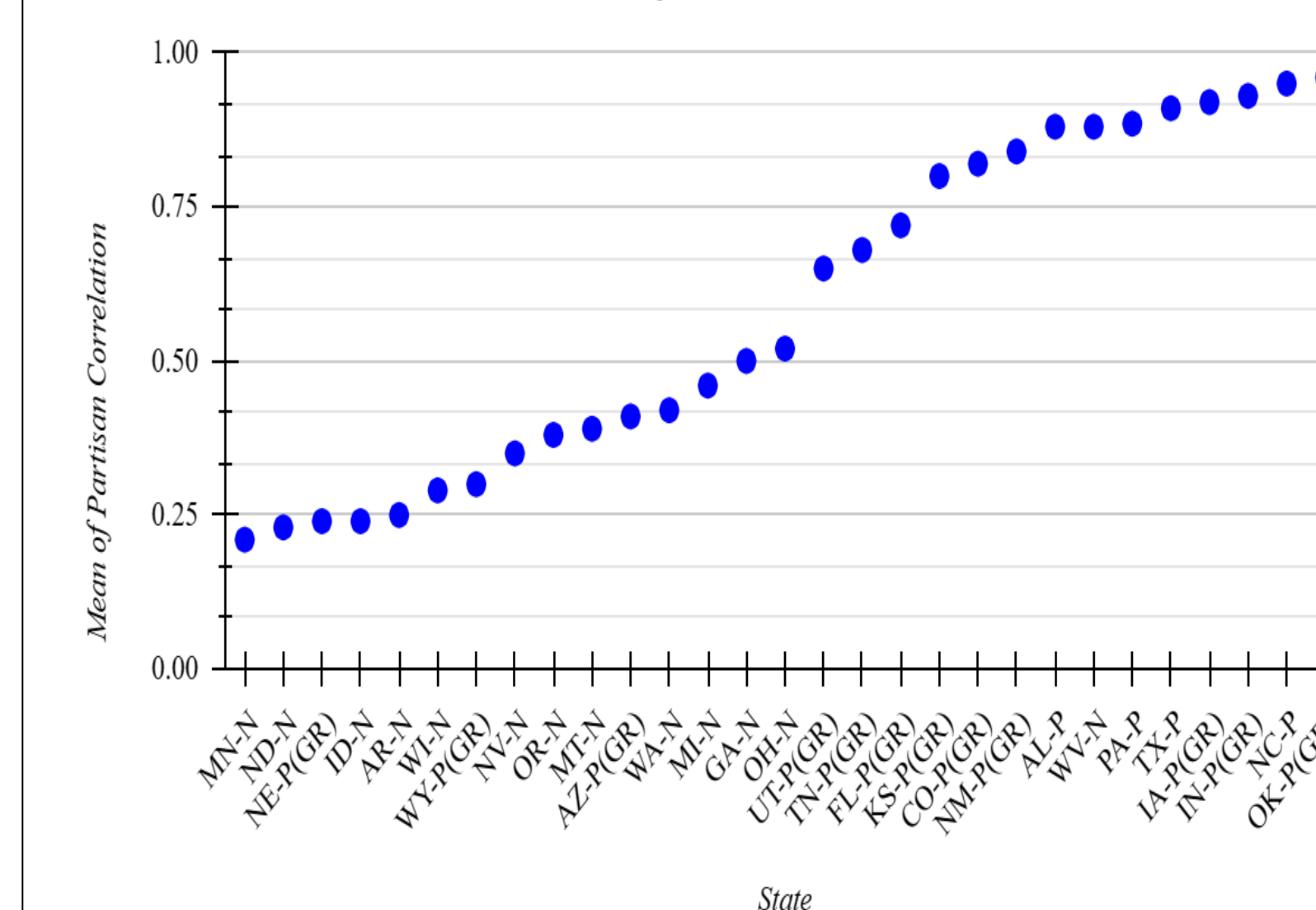
- Nonpartisan Election Correlation: .34 (1990-1999) - .51 (2000-2010)

The second increase (2000-2010/2010-2013) could be attributed to the 2010 ruling of *Citizens United v. FEC*. This empowered corporations to make major donations in judicial and other elections. While it was not as large a spike as seen with the previous sets of elections, it is an increase with a major event happening that is tied to judicial elections. Also, with the data ending in 2013, there could have been an even bigger increase in partisan correlation based on how the trend was heading.

- Partisan Election Correlation: .9 (2000-2010) - .91 (2010-2013)

- Nonpartisan Election Correlation: .51 (2000-2010) - .56 (2010-2013)

Mean Partisan Correlations by State



Key:

N = Nonpartisan election

P = Partisan election

P(GR) Appointment by Governor with Retention election

Points of Discussion

Observers see the increased competition for seats (more candidates running) as negative because judicial candidates are forced to do things that are not befitting of judges, like running a campaign more aligned with politics to stand out as a candidate.

Any promises made by a potential judge on the campaign trail can become a political trap that prevents the administration of the law divorced from political or personal self interest. A candidate promising one thing and making a ruling in accordance with that promise can be made for the purpose of keeping voter support and consistency and not following the correct rule of law that is present in this individual case.

There is a major worry that with these new types of political judicial campaigns, the court system has become little more than a typical political institution to be sneered at and mistrusted. While attack ads and campaign contributions generally do not have as major of an effect on judicial decision making as people believe, the presence of them in judicial elections only further casts doubt on the potential corruption of potential justices.

Even with states that do not run partisan elections, the sheer volume of new advertising with corporate and political support being offered, even hybrid and nonpartisan elections have resulted in winning candidates that have higher levels of partisan correlation than before.

Study Conclusions and Ideas for New Research

State Supreme Courts are unique because no state is the same in how they appoint judges to the bench. This makes each state unique in how they approach the highest court in their state judiciary. Because of this lack of uniformity, there needs to be considerable attention on these election types and how they lend to political decision making. With the observations present in the data, it is obvious that even nonpartisan elections have become exposed to the political theater due to the nature of elections and the accepted involvement of corporate financing to campaigns and the freedom for candidates to make political statements during the campaign cycle. In the American political system, our judges are supposed to be the clearest minded and divorced from any line of political thinking. This study has concluded that our state Supreme Court justices are affiliated with politics and making politically minded decisions at an unprecedented volume.

One idea I would have for further research is to see if this issue has seeped into the court systems of other countries, such as the court system in England. With our world becoming more interconnected and politically divisive, it would be interesting to see if politically minded judges are becoming more of a global norm or if this trend is limited to the American judicial system. Another possible idea I have for further study is to examine the lowest court levels with the American District Courts and to see if they also have run afoul of politically minded justices. This would be very time consuming given how many District Courts there are across the nation, but it would be beneficial. Our District Courts have no appeal power and will deal with the highest volume of cases over a given year. This means that they have the most opportunity to lay down political rulings or political precedent and be the garden that has fostered political decisions and politically minded justices into our judicial system.