The Increasing Correlation of
WISCONSIN SUPREME COURT ELECTIONS WITH PARTISANSHIP
—A Statistical Analysis

BY CHARLES FRANKLIN

Whatever the technically nonpartisan nature of the elections, has the *structure* of voting for the Wisconsin Supreme Court become more partisan over recent decades? The short answer is "Yes." The longer answer—and the evidence—is of interest as well.

The question certainly is timely. Just behind Wisconsin voters is a supreme court election that was widely interpreted as partisan (now-Justice Rebecca Dallet's victory over Judge Michael Screnock in April 2018). And just ahead is an April 2019 court election (for the seat held by Justice Shirley S. Abrahamson for more than 42 years) that already is being seen as shaped strongly by partisanship. That context makes worthwhile an analysis of electoral competition for seats on the court going back to the mid-1970s.

There is a larger context as well. Beyond judicial elections, Wisconsin elections overall have been shaped increasingly by partisan polarization. Over the past 43 years, 1976-2018 inclusive, the years Abrahamson has been on the court, there has been less split-ticket voting and more geographic homogeneity in partisan elections for governor, the U.S. Senate, both houses of the state legislature, and sometimes for local offices.

To be sure, when it comes to elections for seats on the Wisconsin Supreme Court, candidates of various philosophical leanings have won large majorities from time to time. But the degree to which partisanship structures votes for court candidates has increased steadily and substantially.

None of this is to doubt that an argument can be made for the merits of a partisan court. Partisanship is the strongest political orientation of most voters, and it sends strong signals to voters as to the likely positions and philosophies of candidates for office. Given the complexity of the issues facing justices, and the likelihood that voters are not experts in these issues, partisanship provides a useful guide to help voters translate their preferences into a vote choice.

The increasing association by the public of Wisconsin Supreme Court justices with partisan leanings is also in line with the increasingly partisan nature of presidential nominations to the United States Supreme Court and the confirmation processes for those nominations before the United States Senate.

But there is also much negative to be said— against, that is, the increasingly partisan nature of processes for selecting judges at national and state levels. At a minimum, the phenomenon enhances the perception that decisions depend on partisanship rather than an impartial evaluation of the law and facts of individual cases.

In all events, insofar as Wisconsin is concerned, the state constitution has cast its primary lot in the context of judicial selection with nonpartisan elections. The data presented in this article demonstrate that the reality in any given election deviates increasingly from that nonpartisan theory.

The overall picture of Supreme Court elections

Let us first look at the broad picture of elections to the Wisconsin Supreme Court. This analysis focuses on court elections going back 43 years to 1976, when Justice Shirley Abrahamson took her seat by appointment. She subsequently was elected four times to the court. Abrahamson's announcement in May 2018 that she would not seek reelection in April 2019 signals the end of a particularly significant tenure on the state's high court. Supreme court elections include the 32 elections from April 1976 through April 2018. In counting justices who have served, the 25 justices sitting on the bench since Abrahamson joined the court on August 6, 1976, are included.

Justices and judges in Wisconsin are chosen in elections in April. That avoids, at least, the situation in even-numbered years of having nonpartisan court elections on the same day as the major partisan elections in November.

With 10-year terms for justices, Wisconsin provides considerable independence from electoral forces, compared to more-frequent elections. However, most justices of the last 43 years have sought reelection at least once, so the shadow of voter opinion must remain at least somewhat in view.

Twenty-five justices have served on the Wisconsin Supreme Court from 1976 to 2018. Just over half—13, to be specific—arrived to the court by appointment. Democratic governors appointed 4 of them, whereas Republican governors appointed 9—approximately the same as the proportion of years each party has held the governorship (15 years for Democrats, 28 years for Republicans). Such appointees must subsequently stand for election to remain on the court.

During this period, only one sitting incumbent has been defeated: In 2008, Judge Michael Gableman defeated Justice Louis Butler, who had been appointed to the court. Justice Patrick Crooks is the only justice since Chief Justice Horace W. Wilkie, whom Abrahamson replaced in 1976, to die while on the court. All other departures have been by retirement or resignation.

The incumbency advantage in court races is primarily though the luxury of being reelected without an opponent. Of the 23 elections featuring a sitting justice since 1976, 9 were uncontested. Most justices who served more than one term enjoyed an
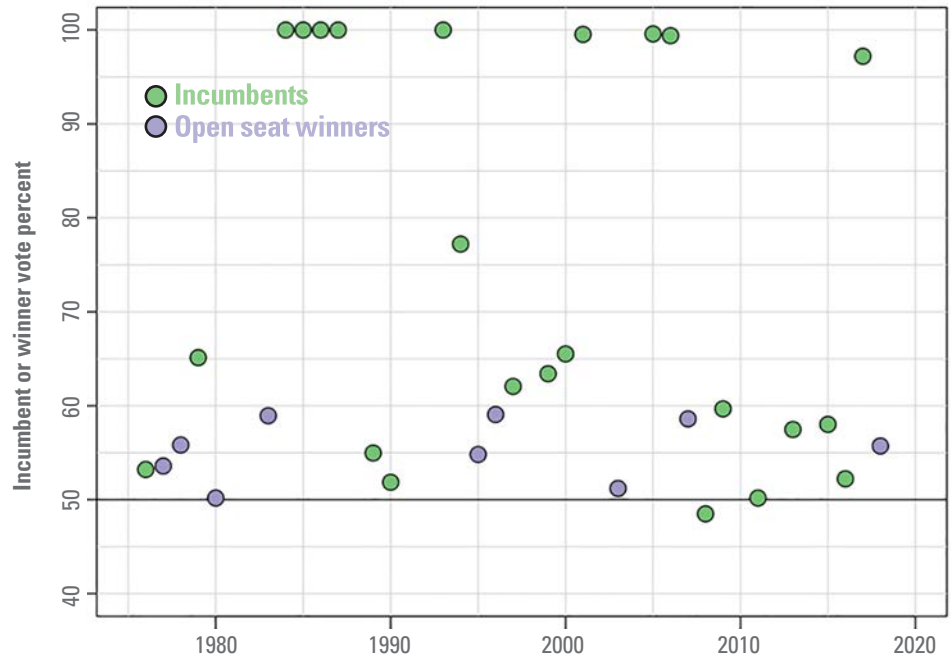

FIGURE 1: **Wisconsin Supreme Court Election Results, 1976–2018**

election without an opponent. Of those appearing on the ballot more than once, only Abrahamson, Donald Steinmetz, and Patience Roggensack have been challenged in each election.

When an incumbent does face a challenger, incumbents garner only slightly larger percentages of the vote than do winners in open-seat elections. The average vote for an incumbent in a contested race is 58.5 percent, while the average for an open-seat winner is 55.3 percent. In other words, in this time period there has been (on average) only a modest 3.2 percentage point incumbency advantage. Surprisingly, incumbents defending a seat they received by gubernatorial appointment average 60.6 percent of the vote, while incumbents defending a seat from their own previous election average 56.5 percent.

Open-seat contests are seldom landslides. In open-seat elections, four of nine winners prevailed with less than 55 percent of the vote, while five of nine won with 55 to 59 percent. No open-seat race saw a candidate reach 60 percent.

Six of 23 incumbents received less than 55 percent of the vote, including one loss (with 48.5 percent), while 3 of 23 won 55 to 59 percent and 5 of 23 won with 60 to 80 percent. Nine of 23 won in uncontested races.

While incumbents since 1976 have won 22 of 23 elections and faced no opposition in 9 of these races, their electoral strength does not come in running up

Figure 1 reflects vote percentage for the incumbent or winner in supreme court elections since 1976. Races involving an incumbent are in green, while open-seat elections are in purple. The only incumbent defeat is in 2008.

the score against challengers so much as it comes from either warding off any challenges or winning by moderate but consistent margins.

There have been three "second acts" for candidates who lost races for the court. Louis Ceci lost in 1980 but was appointed in 1982 and was elected in 1984. Patrick Crooks lost in 1995 but won the next year and was reelected in 2006. Louis Butler lost in 2000, was appointed in 2004, but was defeated in his 2008 election bid. Ceci and Crooks both served with justices who defeated them in their first attempts (Donald Steinmetz and Ann Walsh Bradley, respectively). Butler was appointed to replace the person who had first defeated him, Diane Sykes, when she was appointed to the U.S. Court of Appeals for the Seventh Circuit.

The geography of the vote

Judicial elections are often cast as conflicts between liberal and conservative judicial philosophies, with the balance of the court shifting over time. While these divisions are significant, the electorate has been willing to deliver large majorities to different sides of the philosophical divide in different races, while others have been more closely decided. Annette Ziegler in 2007, Abrahamson in 2009, Roggensack in 2013, and Ann Walsh Bradley in 2015 each won with 57 percent or more of the

vote, and swept a large majority of counties. While incumbency is a factor in these races, Ziegler ran in an open-seat race.

When supreme court races have been decided by narrow margins, a more geographically divided map emerges, one that resembles recent partisan elections. In the close races of 2008, 2011, and 2016, a common pattern is evident, with Milwaukee County, Dane County, and much of the southwestern counties favoring the more liberal candidate, while the eastern half of the state shades conservative, with some pastels typical in the northwestern counties. Only the most recent election of 2018 finds blue counties in the Fox River Valley area while generally following partisan contours.

This pattern shows that the state may be politically divided geographically but some candidates and elections produce widespread majorities, while the most competitive races revert to familiar geographic divisions. As polarized as partisan voting patterns may be, strong judicial candidates can achieve widespread victories even in areas that are not their philosophical homes.

Increasingly partisan elections

While supreme court candidates of both more-liberal and more-conservative philosophical leanings—the terms are crude but useful—have won large majorities from
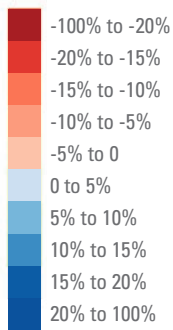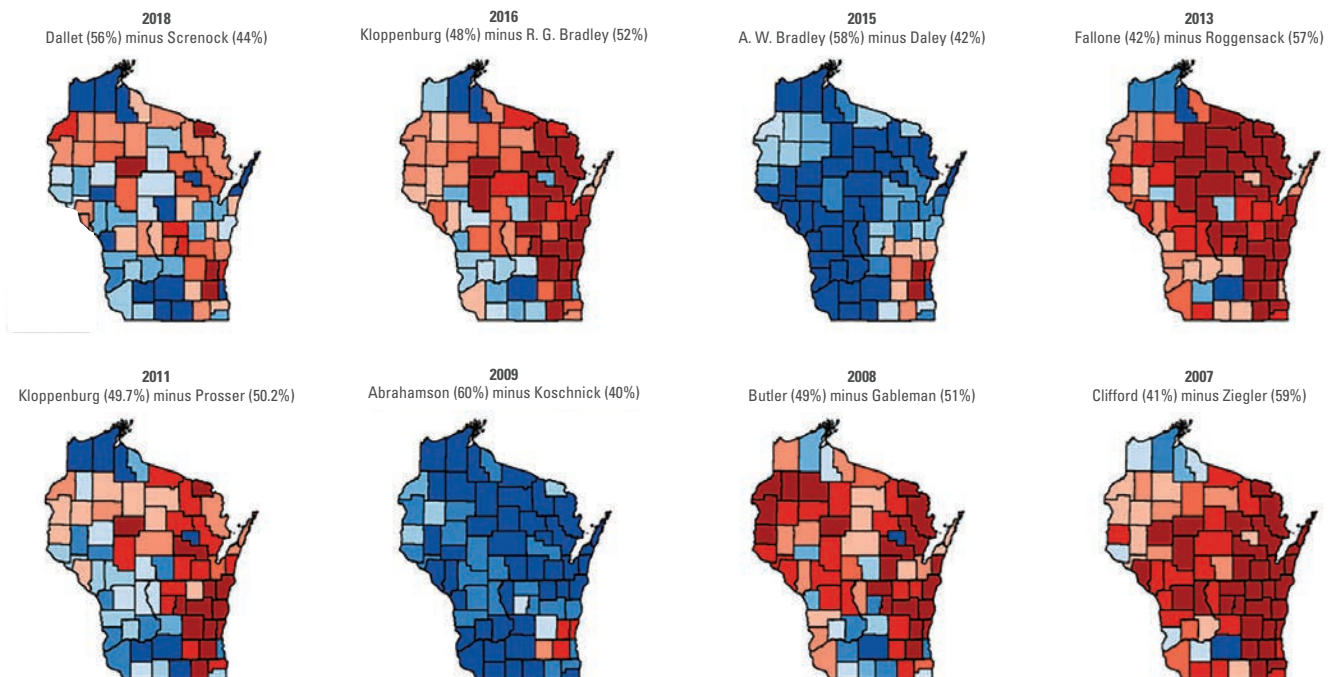
Legend	
■	-100% to -20%
■	-20% to -15%
■	-15% to -10%
■	-10% to -5%
■	-5% to 0
■	0 to 5%
■	5% to 10%
■	10% to 15%
■	15% to 20%
■	20% to 100%

FIGURE 2: **Wisconsin Supreme Court Vote Margins, 2007–2018**

2018
Dallet (56%) minus Screnock (44%)

2016
Kloppenburg (48%) minus R. G. Bradley (52%)

2015
A. W. Bradley (58%) minus Daley (42%)

2013
Fallone (42%) minus Roggensack (57%)

2011
Kloppenburg (49.7%) minus Prosser (50.2%)

2009
Abrahamson (60%) minus Koschnick (40%)

2008
Butler (49%) minus Gableman (51%)

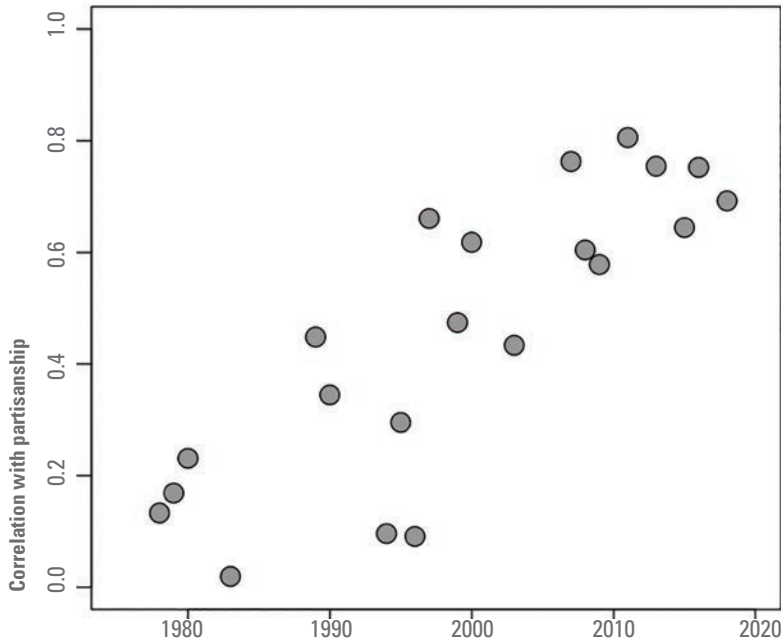**2007**
Clifford (41%) minus Ziegler (59%)

FIGURE 3: **Partisan Structure of Supreme Court Vote, 1978–2018**

share of the county vote and Democratic-aligned candidates with the Democratic share. This means all correlations will be positive, indicating the strength of partisan structuring of the vote for all court candidates.

Figure 3 shows how partisanship has increasingly structured the vote for the supreme court over the past 43 years. In the 1970s and 1980s, there was a minimal correlation with partisanship, below .20 in three of the four elections. In the 1990s, the correlations generally increased, though with a wide range of values across elections. Here is a striking fact: Since 2000, no election has seen a partisan correlation below .40—and, since 2010, the correlation has been above .60 in every election.

Consider the partisan structure of the vote for two elections at the beginning and at the end of this period. In 1978, John L. Coffey won an open seat on the court with 56 percent of the vote. The structure of his vote is shown in Figure 4. Coffey's vote had a small correlation with county partisanship, just .13, a common pattern for the 1970s and 1980s. While Coffey performed well in the most Republican counties, he also did well in Democratic counties. Likewise, he trailed in some Republican and in some Democratic counties.

time to time, the degree to which partisanship actually structures votes for candidates has increased steadily and substantially since 1976.

To measure how partisanship structures votes for supreme court candidates, we first calculate the average Republican share of the two-party vote for governor for each county from 1974 through 2014. While there has been variation in county votes across elections, this measures the long-term partisan leanings of each county.

The partisan component of supreme court elections is measured by the correlation, abbreviated as "r" in the figures below, of the winning candidate's vote in each county with the long-term partisanship of that county. Correlations can range from zero, indicating no relationship, to 1.0, indicating a perfect relationship. A judicial candidate whose vote rises as the county's average Republican vote rises will have a positive correlation, the size depending on how strong the partisan component of the vote is. A candidate aligned with Democratic partisans will have a negative correlation with the Republican partisanship measure but an equal positive correlation with the Democratic share. In this analysis, we correlate Republican-aligned candidates with the Republican

As suggested in Figure 4 (and subsequent figures), the correlation (r) between county partisan voting and the vote for nonpartisan supreme court candidates increased substantially from the 1970s to the 2010s.
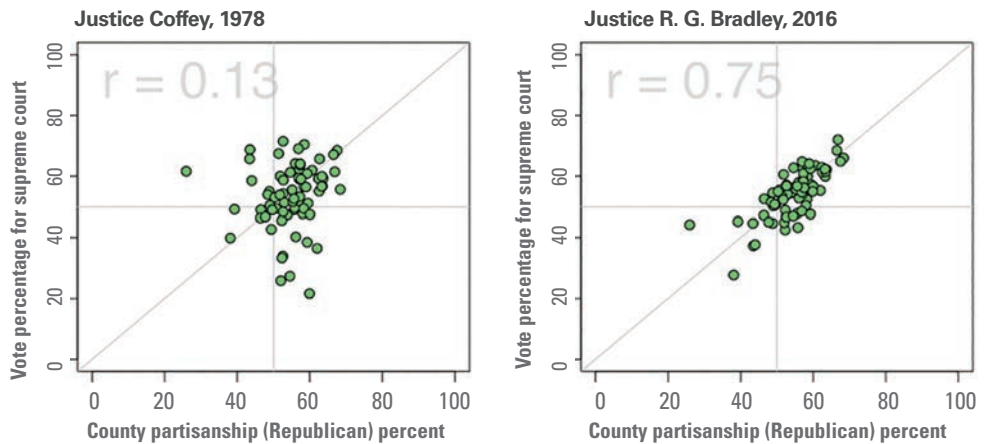

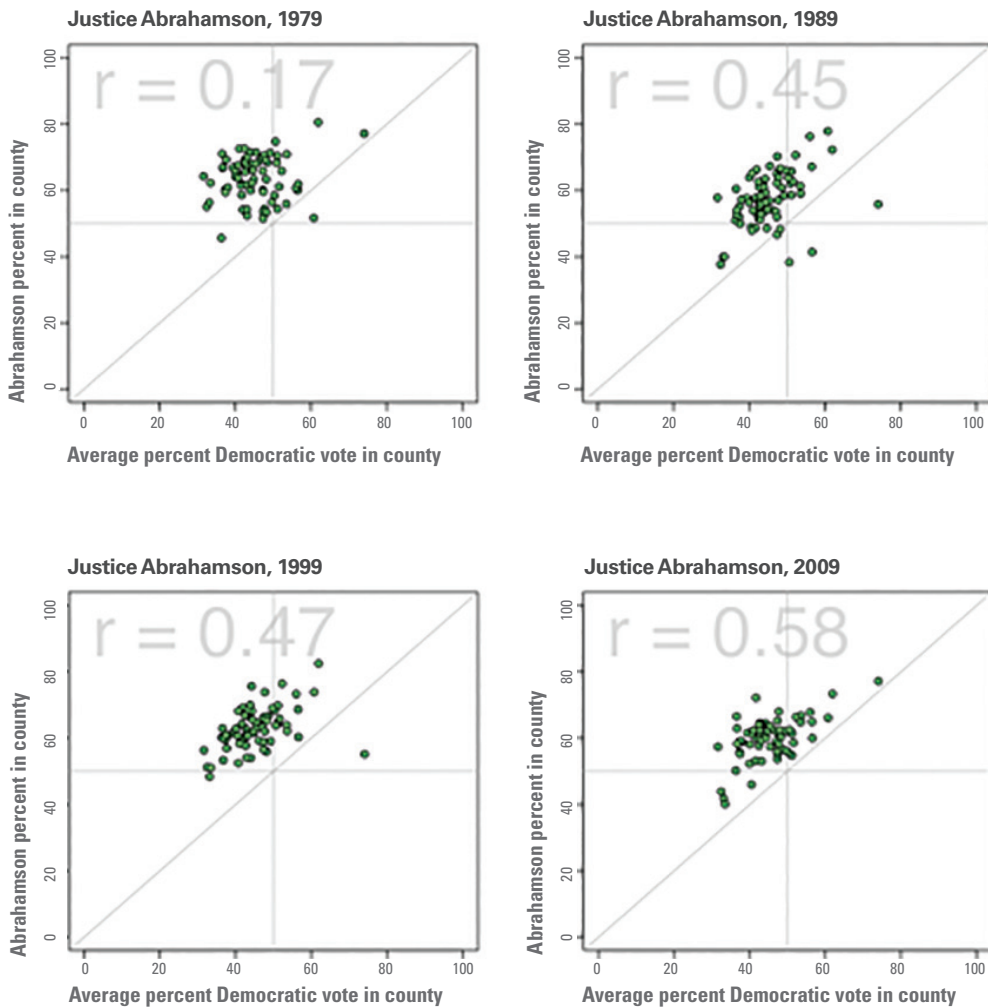FIGURE 4: **The Partisan Structure of the Vote in Two Elections**

FIGURE 5: **Partisan Correlation over Time for Abrahamson**

four times and Steinmetz, A. W. Bradley, and Roggensack twice each. The correlation of partisan votes with judicial votes increased for each of these justices from earlier to later elections.

Justice Abrahamson has the longest series of contested reelection campaigns, having been challenged each time. The partisan structure of the vote in her four elections is shown in Figure 5.

In her first election after being appointed to the court in 1976, Abrahamson was elected with a vote that had little partisan component, a correlation of just .17 in 1979. A decade later, in 1989, this correlation nearly tripled, to .45. It was a nearly identical .47 in 1999. In her last election, in 2009, the correlation rose again, to .58.

Steinmetz is the only justice of the four repeat players to change the partisan makeup of his support. As seen in Figure 6, in 1980, he did better in more Democratic counties and worse in more-Republican ones, with a correlation of -.23. His 1990 vote reversed this relationship, with a positive correlation of +.34, doing better in Republican counties than in Democratic ones. These are modest correlations by current standards, but are an interesting change in partisan structure, one not seen for any other justice.

Justice A. W. Bradley has had two contested elections separated by an uncontested one. In the 20 years between her first and second contested election, the correlation of her vote with the partisan vote doubled from .30 in 1995 to .64 in 2015, as shown in Figure 7.

Now-Chief Justice Patience Roggensack faced contested elections in 2003, well into the partisan evolution of court elections, and again in 2013. Her vote correlated with the partisan vote at .43 in 2003. The correlation was nearly double that just 10 years later, in 2013, at .75. Figure 8 reflects these correlations.

As partisan as recent elections have been, it is worth noting that they are still less partisan than are overtly partisan gubernatorial elections: There the partisan correlation has ranged from .72 to .94, with an average of .85. The court has not quite reached

Contrast the structure of the vote for Justice Rebecca G. Bradley in 2016, as shown in Figure 4. The partisan correlation is a large .75, with Bradley doing better in Republican-leaning counties and worse in Democratic ones. This pattern has been typical of supreme court elections since 2010, with correlations ranging from .60 to .80 in the five most recent elections.

The increase in partisan voting is not simply because justices are now partisan when in the past justices were nonpartisan. We can see this by looking at the partisan voting structure for those justices who have run in more than one election.

Surprisingly, of the 25 justices who have held a seat on the court, only four have faced more than one contested election campaign since 1976: Abrahamson

this level of partisanship, although with correlations in the last five court elections of between .64 and .81 (and an average of .73), the gap is narrowing. For comparison, in the first five elections covered here in our time period (beginning in 1976), the average partisan correlation was .20.

The fact that the partisan correlation has gone up in races involving the same winning candidate over time supports the statement that partisanship has become a bigger factor in state supreme court races and suggests that the increased impact of partisanship is here to stay for the foreseeable future.

But this does not mean that the outcome of supreme court elections is easy to predict or that partisans of one side or other are sure to win. Large statewide majorities for both more-liberal and more-conservative justices have emerged in recent elections, and close elections have demonstrated the competitive potential as well. The specific candidates and the specific dynamics of each election still matter. ■

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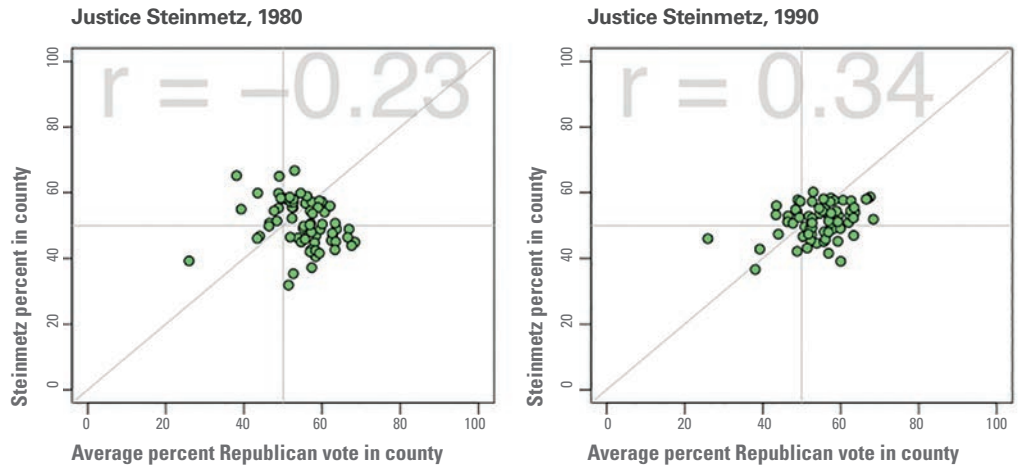
Justice Steinmetz, 1980

r = −0.23

Steinmetz percent in county

Average percent Republican vote in county

Justice Steinmetz, 1990

r = 0.34

Steinmetz percent in county

Average percent Republican vote in county

FIGURE 6: **Partisan Correlation over Time for Steinmetz**

Justice A. W. Bradley, 1995

r = 0.30

A. W. Bradley percent in county

Average percent Democratic vote in county

Justice A. W. Bradley, 2015

r = 0.64

A. W. Bradley percent in county

Average percent Democratic vote in county

FIGURE 7: **Partisan Correlation over Time for A. W. Bradley**

Justice Roggensack, 2003

r = 0.43

Roggensack percent in county

Average percent Democratic vote in county

Justice Roggensack, 2013

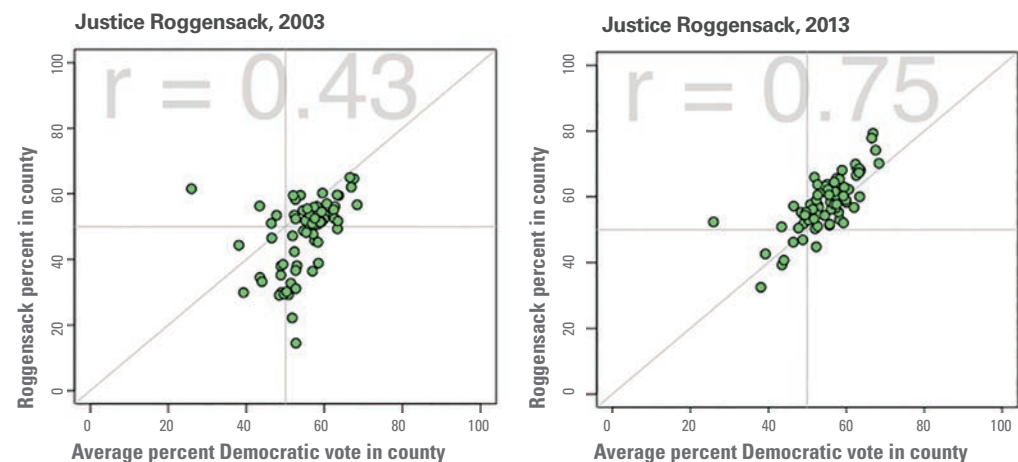r = 0.75

Roggensack percent in county

Average percent Democratic vote in county

FIGURE 8: **Partisan Correlation over Time for Roggensack**