ONLINE CAMPAIGNING IN 2006
STATE SUPREME COURT ELECTIONS

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I. INTRODUCTION

Since the U.S. Supreme Court’s decision in Republican Party of
Minnesota v. White struck down Minnesota’s “announce clause,” which
prevented judicial candidates from discussing potential disputed issues,
many observers, commentators, and scholars have feared that overtly
political campaigns for state judicial office will become the norm.1 Indeed,
there is no lack of anecdotal evidence that we are in the midst of such a
transformation. As the Justice at Stake campaign has demonstrated,
judicial campaigns are becoming more expensive and increasingly reliant
on television advertising—including negative attack ads.2 It remains

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  1996; Ph.D., University of Kentucky, 1998. Special thanks to Holly Ross, who provided
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  literature on candidate use of websites.
2. DEBORAH GOLDBERG ET AL., JUSTICE AT STAKE CAMPAIGN, THE NEW
unclear, however, to what extent this change can be attributed to changes in state codes of judicial conduct.

This Article examines this question by looking at a low-cost form of campaign communication: candidate-sponsored websites. As the internet has become more important to American life, campaign websites have become a standard political tool. The Pew Internet & American Life Project reports that in the 2004 election year, nearly 30% of the general public and over 50% of all internet users went online during the campaign to obtain election information. Concomitantly, political campaigns have moved toward maintaining an online presence, sponsoring websites that are regularly updated. This Article examines the prevalence of state supreme court candidates’ use of such websites during the 2006 campaign. After a brief review of White and its effects in Part II, Part III outlines how websites are being used in political campaigns today. Part IV then describes state supreme court candidates’ use of the internet in the most recent election and investigates whether any issue-based campaigning can be linked to changes in state canons of ethics post-White. This Article concludes that while online campaigning is becoming standard in high-level judicial races, few 2006 state supreme court candidates actually used their websites to discuss issues, positions, or engage in debate with their opponents over issues of political or legal controversy. Online, at least, state supreme court races in 2006 continued with the traditional focus on biography and qualifications. While the White decision and the nature of online campaigning would seem to provide candidates freedom to use websites to discuss their positions on issues, there is as of yet no apparent connection between candidates’ discussion of issues on their websites and the changes to judicial canons on the state level.

II. White, Canons of Ethics, and Issue-Based Campaigning

With its decision in White, the U.S. Supreme Court put an end to states’ use of the announce clause, a provision in nine state canons of judicial conduct that specified that candidates for judicial office should not announce their views on matters of legal or political debate. The Court ruled that the announce clause interfered with candidates’ free speech rights, which are vital in the context of an election. Although the decision applied only to one broadly-worded clause and left open the ability of states to make other rules that would constitutionally protect judicial impartiality in the context of an
election, 4 Professor Rachel Caufield points out, and subsequent courts have shown, that the “Court’s reasoning could easily be adopted to strike down the narrower language or other provisions used by other states.”  

The fears of those concerned with White’s impact are best summarized by Deborah Goldberg and her co-authors, who note that “many judges and court-watchers expressed fears that the decision would increase the expense of, and special interest influence over, judicial elections, as campaign funds became the quid pro quo for candidates’ ‘announcements’ of their views on the pet concerns of interest groups.” 5 Traditionally, judicial elections have not been as salient to voters as elections for other offices. One of the earliest studies of judicial elections demonstrated that because voter knowledge about the candidates is often very low, any available informational cues, like party affiliation, become even more important. 7 Other research over the past fifty years has found that voters can seldom name or recognize judicial candidates and possess very little knowledge about incumbent judges. 8 More recently, however, state supreme court elections have resulted in much higher spending, suggesting that the races might become more salient to voters than in the past. Despite this trend, a recent survey shows that voters are frustrated by the lack of available information in judicial elections, and that this lack of information contributes to low turnout. 9 Even among those who do go to

4. White, 536 U.S. at 783 (“[W]e neither assert nor imply that the First Amendment requires campaigns for judicial office to sound the same as those for legislative office.”).


6. Goldberg et al., supra note 2, at 28.

7. Philip L. Dubois, From Ballot to Bench: Judicial Elections and the Quest for Accountability 7 (1980) (“Where party labels are provided, voters select their judges according to the party they happen to favor.”).


9. David B. Rottman, The White Decision in the Court of Opinion: Views of Judges and the General Public, 39 CT. REV. 16, 20–21 (2002); see also Dubois, supra note 7, at 36 (stating that low voter turnout indicates a lack of knowledge about judicial offices); David B. Rottman & Roy A. Schotland, What Makes Judicial Elections
the polls, many fail to vote for judicial candidates. Though the possible upside of such a change is higher levels of voter participation, the possible downside is expressed by Justice Stevens, whose dissent in White expresses a fear that “the judicial reputation for impartiality and openmindedness is compromised by electioneering that emphasizes the candidate’s personal predilections rather than his qualifications for judicial office.”

The Supreme Court only struck down the announce clause in White, but the possible ramifications of the decision are much broader because subsequent courts have expanded the ruling to apply to other canons. Though state canons vary, they are generally based on versions of the American Bar Association’s (ABA) Model Code of Conduct. In 1972, for example, the ABA’s Model Code advised judges to avoid “mak[ing] pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office.” In 1990, the ABA again revised its Model Code, retaining the “pledges and promises clause,” and adding language advising candidates not to make “statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court.” Today, forty states have some form of the pledges and promises clause, while thirty-one states have some form of the commit or appear to commit clauses. Additionally, nearly every state currently includes some language to limit the political activities of judges and judicial candidates, while eleven states limit their partisan political activities. Another common restriction—limitations on judicial candidates’ ability to solicit funds—is utilized by thirty-two states.
While the recentness of the White decision makes it difficult to determine its effects, one can speculate by examining the influence of the canons in the past—have they traditionally had the effect of keeping judicial candidates from addressing political issues in ways comparable to candidates for political office? Although little work has been done in this area, current research suggests the canons have had a relatively limited effect on the cost and competitiveness of state supreme court campaigns.\textsuperscript{17} Comparing the costs of campaigns across states with different canons, there is strong evidence that restrictions on partisan political activities have resulted in lower-cost elections, and some evidence that other canons have had similar effects. This suggests these canons may have had the effect of making vigorous campaigning difficult.\textsuperscript{18} This may indicate that White will result in more costly elections. On the other hand, there is “little evidence [that] canons of ethics hav[e] an independent effect on the competitiveness of state supreme court elections.”\textsuperscript{19} Assuming that less competitive elections are indicative of at least one weak campaign, this suggests that the canons have little impact on candidates’ abilities to mount energetic campaigns.

To begin to appreciate the current effects of White, one must also pay careful attention to how lower courts have applied the ruling in challenges to other canons.\textsuperscript{20} In addition to state legislatures rewriting or commenting on White, many courts have heard cases challenging the disputed canons.\textsuperscript{21} Several lower courts have interpreted the White decision to render prohibitions other than the announce clause unconstitutional. For example, the U.S. Court of Appeals for the Eleventh Circuit struck down restrictions on solicitation, negligently engaging in falsehoods, and deceptive or misleading campaigning.\textsuperscript{22} Additionally, lawsuits have been filed by pro-life groups in seven states challenging the pledges and promises and commit clauses,\textsuperscript{23} and federal courts in several jurisdictions have held these or other


\textsuperscript{18} Id. at 10 (“[I]t is entirely possible that strong ethics restrictions on campaign messages serve to deaden campaigns, thereby reducing competition and protecting incumbents.”).

\textsuperscript{19} Id. at 3.

\textsuperscript{20} Perhaps the first attempt to do this was by Professor Caufield. See Caufield, supra note 5, at 639–42. For up-to-date summaries, see Cynthia Gray, Ctr. for Judicial Ethics, Developments Following Republican Party of Minnesota v. White, http://www.ajs.org/ethics/pdfs/DevelopmentsafterWhite.pdf.

\textsuperscript{21} See Gray, supra note 20.

\textsuperscript{22} Weaver v. Bonner, 309 F.3d 1312, 1319–20 (11th Cir. 2002).

\textsuperscript{23} See generally Gray, supra note 20.
clauses unconstitutional under White’s logic. Such broad interpretations of White could have ramifications for the future of judicial elections as courts effectively rewrite the codes of ethics, state by state, and circuit by circuit.

States that held elections in 2004 have now been classified according to their state’s interpretations of White. Professor Caufield has created rough but useful categories based on whether the state is utilizing a broad or narrow interpretation of the decision in White. A broad interpretation is one in which White is interpreted to invalidate canons beyond the announce clause; narrow interpretations are those that have construed the decision as applicable only to the announce clause at issue in White. Professor Caufield found that judicial candidates in 2004, the first election cycle after White, were more likely to run “contrast ads” in states broadly interpreting White than in states with more narrow interpretations; however, these contrast ads tended to focus on the traditional judicial campaign themes of competence, experience, and biographical information rather than on more politically-themed issues.

The strongest evidence of increased issue-based campaigning comes from the fact that candidates in broad-interpretation states were more likely to run ads dealing with crime or “family values” than those in narrow-interpretation states. One would expect that these would be popular themes for candidates who wish to run issue-based campaigns.

III. ONLINE CAMPAIGNING AND DISCUSSION OF ISSUES

As judicial campaigns have become both more political and expensive, it is reasonable to expect judicial candidates to incorporate into their campaigns the tools and technologies that have proven successful for candidates in other campaigns. As Justice at Stake reports, this has been happening with television advertising over the past several years. In fact, in 2006, 92% of states with supreme court elections saw at least some


26. Id.

27. Id.

28. Id.

29. GOLDBERG ET AL., supra note 2, at 1.
television advertising, a number that has risen from 22% in 2000 and has continued to rise every election cycle this century. Even though the internet is among the newest tools available to political campaigns, it has quickly become universal. Herrnson reports that in 2002, 88% of all candidates for the U.S. House sponsored their own websites, and 62% considered internet websites or e-mail important in communicating with voters. According to the Pew Research Center, in 2004, 75 million people (61% of all internet users) used the internet to research candidates or campaign issues. Of these, 40% said that the internet was either “very important” or “somewhat important” in helping them decide how to vote. Even when online sources are not the primary informational source consulted by voters, these resources can still be important in influencing decisions. In particular, statistical analysis of data from a 2000 Pew Center survey found that internet users who actively seek out information online are more likely to judge the information as valuable in helping them make up their minds. Professors Tolbert and McNeal found that—even after controlling for known influences on voter turnout such as age, education, and income—the use of the internet increased the likelihood of voting between 1996 and 2000. Once other known influences on voting behavior were held constant, they estimated that those who had internet access were 7% more likely to vote than those who did not in 1996 and 1998, and 12.5% more likely to vote in 2000.

While candidate websites are not the most visited websites for election news and information—in 2004, five million internet users reported that when searching for political news and information, they most

33. Id. at 234 tbl.8-3.
34. RAINIE ET AL., supra note 3, at i.
35. Id. at 10.
38. Id.
often turned to candidate websites over other online sources—some evidence suggests they can affect an election.\textsuperscript{39} One of the earliest investigations into the effects of internet campaigning on elections found that congressional candidates could pick up an average of 9300 votes by sponsoring a website.\textsuperscript{40} However, as the author notes, this finding might be a statistical artifact reflecting the fact that only the best, most professional campaigns had websites at that time.\textsuperscript{41} More recently, Professors Gibson and McAllister used a more robust statistical model to investigate the effects of candidate websites in the 2004 Australian election.\textsuperscript{42} Their results indicated that candidates with websites increased their first-preference vote by four percentage points, which is a similar increase to that of a candidate doubling the amount of time spent on party activities.\textsuperscript{43}

One early examination of web-based campaigning described the basic elements of candidate websites—a description that remains generally accurate today.\textsuperscript{44} Describing the websites of candidates for the U.S. Senate, Professor Klotz noted that

\begin{quote}
[a]ll candidate web sites were structured similarly. The main home page typically included a photo of the candidate and a menu screen which almost always provided links to a biography, issues section, and contact information. Typically, these sections constituted the entire site, although some candidates supplied press releases, newsfiles, calendars, or links to external files.\textsuperscript{45}
\end{quote}

This is the template that candidates largely continue to follow, though it is now much more common for candidates to supply press releases and, especially, solicit campaign contributions online.\textsuperscript{46} Insofar as issues are concerned, Professors Xenos and Foot’s examination of 2002 U.S. House

\begin{thebibliography}{99}
\bibitem{39} RAINIE ET AL., supra note 3, Pt. II, at 6.
\bibitem{41} Id. at 490, 498.
\bibitem{43} Id. at 14.
\bibitem{45} Id. (endnote omitted).
\end{thebibliography}
candidates’ websites generally found that online campaigning is more likely to focus on position statements than on direct discussion of their opponent. As some have concluded, “campaign discourse on the web is of higher quality because claims are more specific and the rhetoric is less negative.” Furthermore, candidates might be able to use the unique features of the web—especially its interactivity—to engage voters and increase their interest level in the campaign.

Such features of the internet could appeal to judicial candidates who face elections where voters are relatively disengaged. Moreover, the tendency of candidates to discuss issues more prominently and in more detail suggests that if judicial candidates are going to launch issue-based campaigns, they would benefit from the opportunity to express their views to potential voters online. It is worth examining the extent to which judicial candidates are using this tool, how they are using it, and whether it is being used in ways that increase the political nature of these races.

IV. ONLINE CAMPAIGNING FOR STATE SUPREME COURTS IN 2006

A. Methodology

With a research assistant, I identified all candidates running in the November 2006 election by consulting state election officials’ websites. We identified seventy-six such candidates in the forty-six contestable state supreme court races held. To identify official campaign websites, we first


49. Id. at 27.


51. See Dubois, supra note 7, at 7.

52. Incumbents ran in thirty-seven of these races, and only three lost. In
consulted online filings with election officials in the states. I also conducted multiple Google searches to try to identify the websites of all candidates on the November ballot. Of the seventy-six candidates tracked we were able to find official campaign websites for forty-eight candidates, 63.15\% of the pool.\textsuperscript{53} I archived these websites the weekend of November 4–5, 2006, saving all websites to a local drive.\textsuperscript{54}

Below, I further examine the use of websites by state supreme court candidates, specifically the prevalence of issue-based campaigning and the effect that canons of ethics and the interpretation of \textit{White} have on the content of candidate websites. I gathered data on state canons of ethics from the Brennan Center for Justice website, which provides a chart summarizing the provisions of each state’s judicial canons.\textsuperscript{55} In this study, I examined the effects of several different ethical restrictions: the announce clause, the pledges and promises clause, the commit or appear to commit clauses, restrictions on partisan political activities, and restrictions on candidate solicitation of campaign funds.\textsuperscript{56}

Following the guidelines laid down by Professor Caufield,\textsuperscript{57} I categorized states’ interpretation of \textit{White} as either broad or narrow. Of the fourteen states Caufield reviewed, three—Georgia, Michigan, and twenty of these elections, incumbents were unopposed by any major candidate. (Libertarian candidates ran token opposition campaigns against candidates in Texas and Michigan). There were nine open-seat races.

\textsuperscript{53} I excluded from this analysis the web pages posted by the Libertarian Party of Texas for four of its candidates on the November ballot. These pages, which included only contact information for the campaigns, were not true candidate websites of the level of the others examined here—as they were not sponsored by the candidate’s campaign and did not have their own URL. Consequently, these websites do not represent a choice by candidates to actively use the web as part of their electoral campaigns. As a result, these candidates are included in this dataset as not having websites. By contrast, Michigan Libertarian candidate Kerry Morgan utilized an extensive site as part of his campaign, and that site is included in this analysis.

\textsuperscript{54} There were errors downloading two candidates’ websites. These websites are included in the part of the analysis below that describes overall findings about those candidates who have websites, but are excluded in subsequent analysis detailing the contents of the websites. Again, all candidate web pages examined in this study are available from the author.

\textsuperscript{55} \textit{Brennan CTR. FOR JUSTICE, supra} note 14.

\textsuperscript{56} I accepted the classification provided by the American Judicature Society, which makes no distinction among different levels of restrictions on partisan political activity or solicitation, so the analysis here merely compares states with some form of these restrictions to those without any such restrictions.

\textsuperscript{57} Caufield, \textit{supra} note 25, at 42–48.
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Online Campaigning in State Supreme Court Elections  

Oregon—fell into the “broad interpretation” category. After Caufield's study, but prior to the 2006 election, several key court decisions resulted in other states adopting a broad interpretation of White. In October 2006, a United States district judge declared Kentucky’s ban on personal solicitation of funds unconstitutional, as well as its rule forbidding judicial candidates from announcing their political affiliations. This followed a 2004 federal court decision that likened the pledges and promises and commit clauses to the announce clause. Similarly, in North Dakota, the federal district court declared there was no real difference between the announce clause struck down in White and North Dakota’s pledges and promises and commit clauses. When White returned on remand to the Eighth Circuit, a panel struck down the prohibition of solicitation as well as the prohibition on judges identifying with or seeking endorsements of political organizations. This decision directly affected Minnesota’s canons, and following this decision, the South Dakota Supreme Court also announced that it would change its canons to comply with the decision. As a result, of the states with contestable elections in 2006, seven were governed by a broad interpretation of White and ten were governed by a narrow interpretation.

B. Candidate Utilization of Websites

As noted above, of the seventy-six candidates on the November ballot, forty-eight had websites. Of the twenty-eight candidates without websites, seventeen were incumbents, and of these all but two were unopposed in their races. Nearly all the challengers used websites to communicate with voters; among challengers facing incumbents, only eight of the twenty-four failed to use websites, and five of these candidates ran as Libertarians in Texas. Similarly, only three of fourteen candidates running in open-seat races failed to establish a web presence.

58. See id.
59. See infra notes 61–63 and accompanying text.
64. Gray, supra note 20, at 18–19.
65. See infra tbl.1. Note that this only includes states with contestable elections in 2006. There have been similar decisions in other states.
There is no solid evidence that candidates are either more or less likely to have websites in partisan rather than in nonpartisan election states—60.6% of candidates in partisan elections had websites, while 65.1% of candidates in nonpartisan elections had websites. Similarly, there is little evidence of any connection between the presence of a website and the particular ethical canons under which the candidate was operating, since under each canon, candidates were roughly equally as likely to have websites as they were not to have them. There is evidence, however, that a state’s interpretation of *White* affects the probability of having a website, but in an unexpected way. Of candidates operating under broad interpretations, half had websites, while 70% of those in narrow-interpretation states had websites. As a result, candidate websites were more common when the interpretation of *White* was stricter.

C. Information Provided on Candidate Websites

One scholar has categorized campaign websites as serving two basic functions: (1) facilitating communication between the party and the public, and (2) informing the public about the candidate or party and its positions. Websites fulfill the communication function by providing contact information for the campaign, soliciting campaign contributions, listing volunteer opportunities, or signing up voters for candidate listservs or discussion lists. The information function of websites is seen in their inclusion of biographical information about the candidate, position statements, philosophy or guiding principles, endorsements, voter education information (such as information about the supreme court or about where or how to vote), copies or links to writings by the candidate, and campaign commercials or literature.

From this perspective, candidates for state supreme courts in 2006 used their websites frequently for communication and information purposes. Table 2 summarizes the percentage of all websites that included these various elements. As one might expect, nearly every website included basic campaign contact information. Over 70% of websites solicited campaign contributions, and 65% of websites included pages to encourage involvement with the campaign—such as volunteering to pass out literature. Candidates frequently take advantage of the web to make their press releases and campaign material available to a general audience, or to highlight their coverage in the press. Two-thirds of all candidate

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websites had a page devoted to either press coverage or press releases, and 41% of all websites included downloadable campaign literature or radio and television commercials. Many candidates also used their websites to highlight endorsements. The most common type of endorsement highlighted on these websites were those by interest groups with clear political agendas. Nearly two-thirds of websites included such endorsements. Less common were endorsements by good government groups, bar associations, etc. Just over half of the websites included such endorsements. Endorsements by newspapers were even less frequent, with only twenty-one websites featuring such endorsements. Overall, nearly 80% of all candidate websites include at least one of these types of endorsements.

Candidates are more willing to let their endorsements and associations speak for their beliefs rather than explicate themselves. Only nine candidates’ websites included a specific page devoted to discussion of issues in the campaign, and only a few others included brief statements related to issues on their welcome pages or in their biographies. More common was a statement about the candidate’s judicial philosophy: seventeen websites included such a statement. Candidates in nonpartisan systems were much more likely to include discussion of issues than were their counterparts in partisan electoral systems. Only three of the thirty-three candidates in partisan races (9.09%) included statements explaining their positions on issues on their websites, whereas ten of the forty-three candidates in nonpartisan races (23.3%) included such statements. When comparing electoral systems, I found no discernible difference in the likelihood of including statements of judicial philosophy.

There is also very little evidence that the choice to discuss either issues or judicial philosophy is in any way affected by either the state’s canons of ethics or the state’s interpretation of White. The percentage of websites discussing issues as compared to those that do not is virtually identical within each of the canons of ethics examined. It does appear, however, that limitations on solicitation correlate with less discussion of issues. In races run under restrictions on candidate solicitation of funds, only 9% of websites discussed issues at all, compared to 49.2% of websites discussing issues when no such restriction was in place.

I also examined the length of statements made on websites to test whether ethical restrictions constrained the candidates’ ability to expand or specify their policy positions, or gave them particular incentive to spend more time on statements of judicial philosophy than specific issues. There is no clear trend suggesting the canons of ethics have the effect of encouraging particular types of online campaigning over others, and none
of the differences are statistically significant, which means that I cannot rule out that what differences exist are due to chance. Similarly, though it appears a more in-depth discussion of issues and of judicial philosophy is allowed under broad interpretations of White than under narrow ones, these differences are not statistically significant.

By far the most common issue addressed was judicial administration. Nine candidates included at least a brief statement on judicial administration, ranging from thirty-six words at the low end, to 1618 words by Chief Justice Nabers of Alabama. Additionally, four candidates included statements about the judicial selection or the campaign finance system in their state. Crime was the second most often addressed issue with seven different mentions. Gun control was the most commonly discussed issue relating to criminal law and, whether in support or in opposition, three candidates’ websites mentioned this issue. But in general, such lightning rod issues were rarely mentioned on campaign websites in 2006. Although many interest groups in prior election cycles were driven by tort reform or medical malpractice issues, only two candidates with websites in 2006 mentioned such issues. Another major issue among interest groups involved in state supreme court elections of late has been “moral issues”—especially gay rights and abortion. However, candidate websites rarely mentioned these issues in 2006. Abortion was only mentioned twice, and there was no mention of same-sex marriage or any other gay rights issue. There were only three other mentions of general moral issues, such as an overall decline in morals or religious values. Along these lines, only two candidates mentioned church-state separation issues.

In addition to being short on discussion of issues, candidate websites were largely devoid of any direct engagement of opposing candidates. Only eight websites included any direct mention of opponents. Outright negative campaigning was even less common, with only four candidates including content that specifically attacked opponents or compared opponents to themselves. Judge Sue Bell Cobb, running for chief justice in Alabama, titled one page on her website “Why Her and Not Him,” and on that page trumpeted her commitment to civil and ethical political campaigns, and questioned the incumbent’s (Drayton Nabers) lack of judicial experience before his appointment to the court in 2004. Elsewhere on her site (on her “Issues” page), she criticized Nabers for these issues again. More pointedly, Mike Wiggins, who was running for the Georgia Supreme Court, asked on one page, “Is [incumbent] Justice Carol Hunstein an Activist?”67 The page highlighted quotes from other justices critical of

67. Mike Wiggins, Mike Wiggins for Ga. Supreme Court,
Hunstein’s positions or decisions and linked to another page which accused her decisions of “raising questions about the independence of the Court,” partly by aligning so closely with trial “lawyers who have benefited from activist decisions of the Court.” 68 Certainly the most negative comments directed at an opponent in any race in 2006 came from Rachel Lea Hunter, who was challenging Justice Mark Martin in North Carolina. Referring repeatedly to the Republican establishment in the state as the “GOP-Mafia,” Hunter’s extensive site accused her opponent of being corrupt (mentioning “unexplained transfers of wealth to friends/family”), called him “elitist,” accusing him of “rent[ing] fancy cars for himself,” 69 and compared him to Joseph Goebbels because of his “big lie” about her campaign. 70

Hunter’s site was also openly ideological in a way that few were. The homepage declared the candidate’s opposition to the Iraq War, and included a link to critical (even hostile) email she had received titled “Neocon Hate Mail Dept.” In addition to Hunter, six other candidates’ websites contained at least one overtly ideological reference. Mike Wiggins’s Issues page, for example, flatly declared, in a discussion about economic policy, that “Mike is a conservative.” 71 The site for Rusty Duke, who ran for chief justice in North Carolina, carried a banner on every page that read “Judge Rusty Duke is a conservative who has gained a reputation as a tough, no-nonsense trial court judge by performing his duties with fairness, impartiality and integrity.” Justice Susan Owens, in her run for reelection in Washington, raised ideology in a different way—by reminding her supporters that her candidacy is opposed by a powerful conservative political action committee: “The Constitutional Law PAC’s backers include well-known Republicans, pro-property rights special interests, and other conservative organizations.”

As with the websites’ discussion of issues, there is little evidence that suggests that the likelihood of direct mention of opponents or negative campaigning online is associated with the state’s partisanship, canons of ethics, or interpretation of White.

V. CONCLUSIONS & IMPLICATIONS

In 2006, roughly two-thirds of candidates for state supreme courts used websites as part of their campaign communications. Many of those candidates who did not sponsor websites were incumbents who did not face any competition in the general election. Conversely, nearly all challengers and open-seat candidates who depended most upon quickly gaining traction with an unfamiliar public, used websites. Nearly all candidates with websites used them to facilitate communication with the campaign, solicit contributions, offer volunteer opportunities, and provide contact information. These websites commonly communicated with voters by providing campaign literature or media commercials. In short, high-level judicial candidates used the same tools that have become standard in other high-level political races.

At first blush, this might provide yet another piece of evidence supporting other recent observations of the increased politicization of judicial elections. What was largely absent from these websites, however, was serious discussion of issues. With few exceptions, state supreme court candidates in 2006 did not use the web to provide detailed statements about their viewpoints on legal or political issues and they did not go into much detail about their judicial philosophy. Despite much speculation about the White decision fuelling more noisy, negative, issue-based contests, campaign websites in 2006 remained focused on traditional judicial campaign themes: biographical information and competence. And while there were a few examples of ideological or partisan campaign rhetoric that one would not have traditionally seen in judicial campaigns, there is little to suggest that such rhetoric is connected to the interpretation of White or to ethics canons themselves.

Given the advantages of online campaigning, it would be surprising if future judicial candidates failed to use the web to communicate with voters. The web appeals to more educated voters, who are more likely to vote in low-turnout elections, such as judicial elections.72 Candidates in nonpartisan elections where the lack of party cues increases information costs were more likely to have issue statements on their websites than were candidates in partisan elections. Though this discrepancy may be an aberration, further examination will be necessary to determine whether partisan candidates and nonpartisan candidates use substantially different

72. See Tolbert & McNeal, supra note 37, at 180 (explaining that individuals with more income and higher educational attainment are more likely to have internet access and more likely to vote).
communications strategies in their campaigns. The web also allows judicial candidates who want to adhere to traditional forms of judicial campaigning—yet feel pressured by competition to discuss issues or judicial philosophies—to do so in more detail and with more specificity than would be possible in broadcast media or pamphlets. Consistent with this, candidates in 2006 who were operating under narrow interpretations of *White* used websites more often than their counterparts in states with broader interpretations, raising the possibility that using the web is favored where ethical canons make issue campaigning more difficult. Websites also provide another avenue for fundraising, one that puts some distance between candidates and donors and that would presumably run little risk of running afoul of ethical restrictions.

The overall findings show that in 2006, issue-based campaigning was rare on candidates’ websites. But the web remains only one part of a successful campaign communication strategy, so one should not infer from these results that such campaigning was rare last fall. Despite some evidence and the widespread concern that judicial campaigns are becoming more rancorous and overtly political, relatively little is known about how the campaigns themselves are organized or what strategic choices candidates make over the course of their campaigns. Future research must seek to explain the strategic choices these candidates make, including explaining whether such choices are influenced or constrained by the judicial canons of ethics, *White*, or other electoral rules.
Table 1
Interpretation of *Republican Party of Minnesota v. White* in States with 2006 Supreme Court Elections

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<th>States with Broad Interpretations of <em>White</em></th>
<th>States with Narrow Interpretations of <em>White</em></th>
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<td>Georgia</td>
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</tbody>
</table>

This chart is developed from information provided in the Caufield and Gray studies referenced in the Article’s text. *See* Caufield, *supra* note 25, at 42–48; Cynthia GRAY, *supra* note 20.
Table 2

The Contents of 2006 State Supreme Court Candidate Websites

<table>
<thead>
<tr>
<th>Feature</th>
<th>% of websites with feature present</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Communication Function</strong></td>
<td></td>
</tr>
<tr>
<td>Contact information</td>
<td>90</td>
</tr>
<tr>
<td>Donate money</td>
<td>72</td>
</tr>
<tr>
<td>Recruit campaign help/volunteers</td>
<td>65.3</td>
</tr>
<tr>
<td><strong>Information Function</strong></td>
<td></td>
</tr>
<tr>
<td>Links to/copies of media coverage</td>
<td>66.7</td>
</tr>
<tr>
<td>Downloadable campaign</td>
<td>41.3</td>
</tr>
<tr>
<td>Literature/commercials</td>
<td></td>
</tr>
<tr>
<td>Political interest group endorsement</td>
<td>63.3</td>
</tr>
<tr>
<td>Nonpartisan/Good-government group endorsement</td>
<td>53.1</td>
</tr>
<tr>
<td>Party endorsement</td>
<td>28.6</td>
</tr>
<tr>
<td>Voter information (registration, etc.)</td>
<td>21.3</td>
</tr>
<tr>
<td>Separate page of/links to statements on issue positions</td>
<td>18.8</td>
</tr>
<tr>
<td>Candidate-authored opinions or writings</td>
<td>18.4</td>
</tr>
<tr>
<td>Information about the court</td>
<td>14.6</td>
</tr>
</tbody>
</table>