# Elections and Government Accountability: Evidence from the Courts

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What characteristics of electoral systems lead to "high quality" politicians and/or "good performance" by politicians?

- How do partisan elections compare with non-partisan elections?
- How important are primary elections?
- How well do merit-retention systems work?
- How do multi-seat elections compare with single-seat elections?
- Is it always better to have more candidates?
- Is the timing of elections important?

### **Tentative Answers**

- Candidate party affiliation has a huge effect on voting outcomes in partisan elections, and a much smaller effect on voting (sometimes zero) in non-partisan elections and retention elections
- Candidate quality has a relatively small effect on voting outcomes in partisan elections
- Candidate quality has much larger effect on voting outcomes in non-partisan elections, primary elections, and retention elections
- Primary elections eliminate a large percentage (more than 70%) of "low-quality" candidates
- The probability that a "low-quality" candidate wins is decreasing in the number of candidates (holding the number of seats fixed)
- Holding non-partisan primaries at the same time as partisan primaries might not be a good idea, because the composition of the electorate varies depending on the degree of competition for the top offices in each party

- State court judges deal with more than 90% of civil and felony cases in the U.S. every year.
- There is variation in the way that state court judges are selected and retained.

Selection and Retention Rules for the State Trial Courts							
No. of States	Initial Selection	Re-election	Set of States				
9	Partisan Election	Partisan Election	AL, IN, KS, LA, MO NY, TN, TX, WV				
22	Non-partisan Election	Non-partisan Election	AR, AZ, CA, FL, GA, ID IN, KY, MD, MI, MN, MS MT, NV, NC, ND, OH OK, OR SD, WA, WI				
3	Partisan Election	Retention Election	IL, NM, PA				
10	Appointment	Retention Election	AZ, AK, CO, IA, IN, KS, MO, NE, UT, WY				
11	Арроі	CT, DE, HI, ME, MA NH, NJ, RI, SC, VA, VT					

- Data on Judicial Elections from 37 States, 1990-2010 Our data sets contain nearly 46,000 candidate observations for nearly 30,000 races
- Data on Primary and General Elections for Other Offices (precinct and county level for selected states)
- Data on the Amount of Press Coverage of Judges
- Data on Evaluations of Judges by Bar Associations and State Commissions

# Partisan Voting by Election Type

Table 7: Estimates of Partisan Voting Using Precinct Level Data						
State	Area	Election Type	Court Type	Party Determination	N	Avg Corr
IL NC NC PA PA	Cook County State State Philadelphia County Philadelphia County	Partisan Partisan Partisan Partisan Partisan	trial trial appellate trial appellate	on ballot on ballot on ballot on ballot on ballot	8 49 20 11 7	0.91 0.93 0.97 0.88 0.94
	State	Partisan Partisan	trial appellate	on ballot on ballot	61 32	0.99
OH OH	Hamilton County Hamilton County	Nonpartisan Nonpartisan	trial appellate	partisan primary partisan primary	16 19	0.89 0.92
AR CA ID NC NC WA	State San Diego County State State State King County	Nonpartisan Nonpartisan Nonpartisan Nonpartisan Nonpartisan Nonpartisan	trial trial trial trial trial trial	maximum possible maximum possible maximum possible previous election maximum possible maximum possible	27 12 3 151 151 151	0.31 0.45 0.33 0.28 0.55 0.45
AZ AZ AZ CA CA CO IL IL IL	Maricopa County Maricopa County Maricopa County San Diego County San Diego County San Diego County State Cook County Cook County Logan County	Retention, D Retention, R Retention, D Retention, R Retention, D Retention, D Retention, D Retention, R Retention, R	trial trial trial appellate appellate appellate trial trial trial	appointing governor appointing governor registration/groups appointing governor appointing governor appointing governor 1st election 1st election	74 126 30 16 9 14 7 110 18 8	0.17 0.06 0.40 0.53 0.26 0.17 0.37 0.28 -0.23

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One obvious rationale for using party as a voting cue in judicial elections is that party matters for outcomes. Is this the case? (No)

- We use the data from the National Judicial Reporting Program (NJRP), for the period of 1990-2006
- The NJRP data contains detailed case-level information, e.g., nature and number of convictions, offense category, sentence length, and penal code citation
- We analyze the relationship between the county-level share of Democratic judges and sentencing harshness for four different offense categories: (1) violent (18%), (2) property (28%), (3) drug (38%), and (4) other (16%)

#### Definition of the Sentencing Variable

- Dependent Variable: (Normalized) Harshness of Sentencing
  - We generate *penal code* variable that takes the same value for all crimes in each year that has the same penal code citation for the 1st, 2nd, and 3rd most serious offenses
  - We collect minimum and maximum sentence given for each penal code for each state and year
  - The variable Harshness is defined as

$$Harshness = \frac{Sentence - Min}{Max - Min}$$

• So, *Harshness* is defined relative to other sentences in the same year and with the same penal code citation

#### Party and Sentencing Patterns in Three States

Partisanship and Sentencing					
Dependen Independ	t Variable: Rela ent Variable: S	ative Harshne Share of Dem	ess of Sen ocratic Jud	tence dges	
Offense	Parameter				
Category	Estimate	Std Error	N	$R^2$	
	111	inois			
Violent	0.041	0.043	16900	0.28	
Property	0.002	0.016	31093	0.35	
Drug	0.003	0.021	77094	0.42	
Other	-0.034	0.036	29817	0.31	
	Т	exas			
Violent	.023	.096	24207	0.33	
Property	143	.073	37927	0.40	
Drug	122	.044	51268	0.44	
Other	009	.079	22510	0.44	
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Violent	-0.190	0.358	1026	0.27	
Property	0.070	0.368	1280	0.24	
Drug	0.594	0.188	1399	0.25	
Other	-0.467	0.389	983	0.23	

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When we aggregate across all available states we again find small and mixed results. If anything, courts with a larger percentage of Democratic judges tend to be slightly harsher than other courts.

Also, in other work (Lim, Snyder and Stromberg, 2011) we do not find a robust relationship between the partisanship of voters in a county and the sentencing harshness of judges serving that county.

#### Candidate Quality Data

Summary of Judicial Evaluations Data						
State	Туре	Name of Evaluating Body	Period	Number		
AK	State	Alaska Judicial Council	1996-2010	152		
AZ	State	Arizona Commiss. on Judicial Performance Review	2000-2010	384		
CA	Bar	Los Angeles County Bar Association	1994-2010	314		
CA	Bar	Orange County Bar Association	1998-2010	65		
CA	Bar	San Diego County Bar Association	1994-2010	98		
CA	Bar	San Francisco County Bar Association	1996-2010	21		
CO	State	Colorado Commiss. on Judicial Performance	1996-2010	781		
FL	Bar	Dade County Bar Association	2001-2010	487		
IL	Bar	Illinois State Bar Association	1982-2010	4126		
IL	Bar	Chicago Bar Association	1986-2010	1342		
IL	Bar	Chicago Council of Lawyers	1986-2010	2252		
IL	Bar	Cook County Bar Association	1986-2010	1846		
IL	Bar	Alliance of Bar Assn for Judicial Screening (Cook)	2004-2010	769		
IA	Bar	Iowa State Bar Association	1990-2008	729		
KS	State	Kansas Commission on Judicial Performance	2008-2010	127		
KY	Bar	Louisville Bar Association	2003-2010	98		
MI	Bar	Detroit Metropolitan Bar Association	1992-2010	354		
MN	Bar	State Bar Association (with 2 county Bar Assoc)	1990-2010	184		
MO	Bar	Missouri Bar Association	1996-2006	293		
NE	Bar	Nebraska State Bar Association	2002-2010	694		
NM	State	New Mexico Judicial Perform. Eval. Commiss.	2002-2010	194		
NV	News	Las Vegas Review Journal	2000-2011	408		
NY	Bar	New York City Bar Association	1997-2010	322		
OH	Bar	Judicial Candidates Rating Coal. (Cleveland)	2002-2010	218		
OH	Bar	Columbus Bar Association	1993-2010	624		
PA	Bar	Philadelphia Bar Association	1991-2009	502		
PA	Bar	Allegheny County Bar Association	2001-2009	168		
TX	Bar	Houston Bar Association	1992-2010	1232		
TX	Bar	Dallas Bar Association	1989-2011	1681		
UT	State	Utah Judicial Council	1998-2010	223		
WA	Bar	Seattle-King County Bar Association	1990-2010	379		
WY	Bar	Wyoming State Bar Association	1998-2010	87		

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### Colorado Commission on Judicial Performance

- Case Management: (1a) Promptly issuing a decision on the case after trial. (1b) Maintaining appropriate control over proceedings. (1c) Promptly ruling on pre-trial motions. (1d) Setting reasonable schedules for cases.
- Application and Knowledge of Law: (2a) Being able to identify and analyze relevant facts. (2b) Basing decisions on evidence and arguments. (2c) Willing to reconsider error in fact or law. (2d) Issuing consistent sentences when the circumstances are similar.
- Communications: (3a) Making sure all participants understand the proceedings. (3b) Providing written communications that are clear, thorough and well reasoned.
- Demeanor: (4a) Giving proceedings a sense of dignity. (4b) Treating parties with respect. (4c) Conducting his/her courtroom in a neutral manner. (4d) Consistently applying laws and rules.
- Diligence: (5a) Using good judgment in application of relevant law and rules. (5b) Doing the necessary homework and being prepared for his/her cases. (5c) Being willing to handle cases on the docket even when they are complicated and time consuming.

### Candidate Quality Analysis (1)

Effect of Score on Election Outcomes								
State	Win Percentage				Vote Pe	rcentage		
	Mean	Coef	S.D.	# Obs	Mean	Coef	S.D.	# Obs
		Pa	artisan Ge	neral Electi	ons			
Illinois	57.8	7.9	(4.7)	[258]	52.5	2.0	(0.9)	[257]
Texas	47.8	9.2	(5.7)	[226]	46.2	2.0	(0.6)	[226]
		Pa	artisan Pri	mary Electi	ons			
Illinois	53.8	32.0	(4.7)	[182]	50.1	9.1	(1.2)	[181]
Texas	48.1	24.1	(6.3)	[104]	50.2	9.9	(2.0)	[103]
			Non-Partis	an Election	าร			
California	37.2	36.4	(6.0)	[113]	48.2	11.9	(1.8)	[113]
Washington	50.0	42.3	(10.3)	[60]	49.7	16.2	(2.7)	[60]
Wisconsin	48.6	34.1	(11.3)	[37]	50.9	11.8	(3.0)	[37]
Ohio	59.1	28.7	(9.8)	[66]	52.9	6.4	(2.1)	[66]
			Retentio	n Elections				
Arizona	100.0	0.0	(0.0)	[332]	72.5	14.8	(3.4)	[331]
Colorado	98.5	65.8	(6.1)	[333]	71.9	20.2	(2.8)	[605]
Illinois	98.9	22.4	(1.2)	[1412]	77.0	10.6	(0.6)	[1412]
lowa	99.9	14.3	(1.4)	[675]	75.7	10.7	(1.5)	[675]
Kansas	100.0	0.0	(0.0)	[111]	71.7	0.6	(2.9)	[111]
Missouri	100.0	0.0	(0.0)	[243]	68.4	5.8	(1.4)	[242]
Nebraska	99.5	10.0	(2.1)	[222]	72.1	9.6	(1.4)	[222]
New Mexico	96.6	57.1	(4.8)	[117]	74.1	24.4	(1.9)	[117]
Utah	99.0	28.6	(3.3)	[200]	80.3	15.0	(1.8)	[200]
Wyoming	100.0	0.0	(0.0)	[71]	77.8	11.3	(1.8)	[71]

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# Candidate Quality Analysis (2)

% of Winners By Recommended/Not-Recommended Status							
State	Score = 0		Score = 1		% of Winners with Score = 1		
	Mean	# Obs	Mean	# Obs	Mean	# Obs	
Partisan Primary Elections							
Illinois Texas Ohio	30.4 49.2 81.2	[441] [195] [16]	61.2 80.0 90.5	[1384] [519] [116]	86.3 81.2 89.0	[981] [511] [118]	
	Pa	artisan Ge	eneral Ele	ections			
Illinois Texas	44.4 43.2	[135] [88]	77.2 59.8	[846] [398]	91.6 86.2	[713] [276]	
Ohio	26.7	[30]	71.0	[217]	95.1	[162]	
Non-Partisan Elections (Primary and General)							
California Minnesota Washington Wisconsin	24.6 9.5 22.5 37.0	[114] [42] [40] [27]	56.6 71.8 59.4 64.9	[339] [78] [197] [74]	87.3 93.3 92.9 82.8	[220] [60] [126] [58]	

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# Candidate Quality Analysis (3)

Chamber of Commerce Judge Competence Ranking						
System	Mean	Std Dev	# Obs			
Retention Appointed Non-Partisan Partisan	15.4 19.3 27.5 38.6	10.4 15.4 12.7 11.3	9 11 21 9			

Types of Judicial Misconduct (from Goldschmidt, Olson and Ekman)						
System	%Criminal	%Serious	% Multiple			
Retention	12.2	23.0	43.2			
Non-Partisan	10.9	24.2	41.2			
Partisan	18.6	32.1	54.2			

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It is possible that judicial evaluations exhibit an ideological or partisan bias. Bar associations might be liberal relative to the overall population, so we might worry that evaluations are correlated with judges' ideologies or party affiliations. Even if they are not, voters might believe they are, and use them accordingly.

We check whether the evaluations from bar associations and state commissions appear to signal the ideological positions of candidates rather than quality, but find no consistent evidence for this.

First, the correlation between evaluations and party affiliation of judges is tiny. For example, overall:

79.5% of Democrats have *Score* = 1

80.5% of Republicans have *Score* = 1

Second, the correlation between judicial evaluations and the normal vote across precincts (or counties) is also small – i.e., it is not that case that judges with higher evaluations receive a substantially larger share of votes in Democratic precincts than in Republican precincts.

# Judicial Evaluations and Partisanship

Table: Partisan Differences in Judicial Evaluations								
	Average Score							
State	Evaluating Body	Dem	Rep	Diff	P-val			
AZ	Arizona Commiss. on Judicial Performance Review	1.00	0.99	0.01	0.19			
CO	Colorado Commiss. on Judicial Performance	0.99	0.99	0.00	0.77			
IL	Average Across All Associations	0.85	0.84	0.01	0.64			
IA	Iowa State Bar Association	1.00	0.99	0.01	0.49			
KS	Kansas Commission on Judicial Performance	0.96	0.95	0.01	0.75			
MO	Missouri Bar Association	0.96	0.99	-0.03	0.18			
NE	Nebraska State Bar Association	0.98	0.99	-0.02	0.13			
NM	New Mexico Judicial Performance Eval. Commiss.	0.98	1.00	-0.02	0.41			
NY	New York City Bar Association	0.94	0.54	0.41	0.00			
ОН	Average Across All Associations	0.83	0.93	-0.09	0.00			
ТΧ	Average Across All Associations	(233)	(312)	-0.03	0.20			
WY	Wyoming State Bar Association	(545) 0.93 (54)	(687) 0.90 (29)	0.03	0.65			

# Turnout

• Roll-off in judicial elections:

Average Turnout (relative to the top of the ticket)					
Partisan contested (race has both Dem and Rep)	93.9%				
Partisan uncontested (race is missing Dem or Rep)	65.8%				
Non-partisan, held in November	70.1%				
Non-partisan, not held in November (WI only)	37.5%				
Retention	71.8 %				

 Using a measure of "congruence" between judicial districts and newspaper markets to proxy for the amount of press coverage about judges (Lim, Snyder, and Strömberg (2010) show this measure is highly correlated with actual coverage in a sample of newspapers), we find that congruence is positively related to turnout in non-partisan elections, but not in partisan elections

These results are consistent with the hypothesis that judicial races – especially non-partisan races – are low-information races. They also suggest that the media is one important channel for providing what little information voters do have.

- Candidate party affiliation has a large effect on voting outcomes in partisan elections, but usually not in non-partisan elections and retention elections
- Candidate quality has a relatively small effect on voting outcomes in partisan elections
- Candidate quality has much larger effect on voting outcomes in non-partisan elections, primary elections, and retention elections
- Primary elections eliminate a large percentage (more than 70%) of "low-quality" candidates
- The probability that a "low-quality" candidate wins is decreasing in the number of candidates (holding the number of seats fixed)

A variety of different models predict that when polarization is high candidate quality and performance will have less impact on voting outcomes: Ashworth and Bueno de Mesquita (2008), Padro i Miquel (2007), and Besley et al. (2005). Banerjee and Pande (2007) yields similar kinds of predictions in multi-party environment.

Others have studied judicial elections, but almost all of this work focuses on the appellate court level See Dubois (1980), Squire and Smith (1988), Klein and Baum (2001), and Bonneau and Hall (2009).

- Comparison of multi-seat vs. single-seat contests
- Analysis of whether variation in composition of the primary electorate affects outcomes in non-partisan primaries (e.g., hot race at top of ticket in one party, but not in other)
- Asymmetries in importance of quality in primaries of strong vs. weak parties (more information in primaries of stronger party)
- Interaction of newspaper market congruence and quality
- Is quality higher in more competitive areas, especially when elections are partisan?
- Is quality higher in districts with more population (larger pool)?
- Is quality higher when judges are paid relatively more?
- Are higher quality judges promoted more often or more quickly than lower quality judges?