

# Judicial Favoritism of Politicians: Evidence from Small Claims Courts

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June 21<sup>st</sup>, 2019

## Abstract

TBU

**Keywords:** judicial politics; judicial bias; political economy of development; law and social science.

**JEL classification:** D73; K42; P48; H83.

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# 1 Introduction

Suppose a case involving a politician is brought before an independent, high-quality court system; judges make their decision uniquely based on case merits. Further, assume a random distribution of lawyer skills and case merits across plaintiffs and defendants. Under these simplifying conditions, we should expect uniform win rates at trial regardless of who is appearing before the court. Powerful litigants, such as politicians, would be equally likely to win a case as other citizens. Surprisingly, however, there are not many studies measuring judicial independence in cases involving politicians in developing countries. This paper is one of the first attempts at measuring judicial independence and predicting court outcomes when politicians are before judges.

There is extensive evidence supporting other discrimination effects. Shayo and Zussman (2011) document a positive in-group bias, or preferential treatment, of 17 to 20 percentage points when the judge and litigants have the same ethnicity. Abrams et al. (2012) find that African American defendants are 18 percentage points more likely to be incarcerated than white defendants. Lu et al. (2015) show that politically connected firms are more likely to have favorable rulings in property rights cases in China. Several additional discrimination cases are reported in Rachlinski and Wistrich (2017), and though there are multiple studies on the political ideology of judges, there are no studies on how supposedly independent judges behave when members of co-equal branches of power are being challenged in court.

In recent years, there has been growing interest in the relationship between judicial decisions and politics in developing countries. Using data on employment claims filed in Venezuela between 2006 and 2017, Sanchez-Martinez (2018) looks at whether defendant employers are more likely to see a favorable outcome when they are affiliated with the United Socialist Party of Venezuela (PSUV), in power since 2007. The author finds that employers who share the same party affiliation as judges are 20 percent more successful at trial. In Lambais and Sigstad (2018), the authors identify a 50 percentage point advantage in the win rate at trial for elected versus non-elected candidates when both are defendants in corruption cases filed after election day has passed in Brazil. This project supplements the recent literature by investigating whether favoritism persists in cases where judges and politicians have less at stake (e.g., small claims cases), testing a theory of power collusion across branches of government.

Besides the theoretical component, this paper makes a series of data analysis contributions to the literature in law and politics. In order to measure the effect of political bias, we scrape and code judicial decisions from the São Paulo State Court System in Brazil for all mayors and city councilors since 2008 in small claims courts (*Special Civil Tribunals*) cases. We then apply the methodology in Abrams et al. (2012) to evaluate whether politicians have the upper hand in small claims cases. To further investigate the direction and magnitude of bias, we employ a regression discontinuity strategy comparing court outcomes across politicians who have barely won and lost a municipal election in the state. Finally, we implement various machine learning classification algorithms to predict court outcomes and identify the most critical factors driving judges' decisions. To our knowledge, this is the first paper proposing such comprehensive analysis of judicial favoritism of

politicians in developing countries.

### **TODO: Results**

### **TODO: How results contribute to the literature**

The remainder of this proposal is as follows. Section 2 presents the institutional environment of Brazil’s State Court Systems. Section 3 summarizes the test dataset used for analysis; the theoretical framework is presented in section 4; section 5 discusses the analytical strategy, and section 6 predicts court outcomes for our sample of politicians. We conclude in section 7.

## **2 Institutional Background**

Brazil’s judiciary system is divided into general and limited jurisdiction courts. Federal and State Courts form the general system and Electoral, Military, and Labor Courts form the limited jurisdiction system. There are up to three instances of judicial review in either system, and the court of last resort is the Federal Supreme Court (STF). It takes up cases under its jurisdiction as set out by the Brazilian Constitution, cases in which there are conflicting norms or jurisprudence issued by lower courts, and cases where there is a direct violation of constitutional norms. To limit the sources of heterogeneity, this paper focuses on cases heard in state court systems. In particular, we focus on the state of São Paulo, the most economically and politically important state in the country.

There are 319 judicial districts in the state, and each district has one or more courthouses. These courthouses host at least one judge with either a broad mandate, meaning that they can rule on any issue within the state court system attribution, or a narrow mandate, which means they only oversee certain types of cases within the system, e.g., commercial or family law. Within the state system, there are specialized small claims courts called *Juízados Especiais Cíveis* (Special Civil Tribunals, in free translation, and SCTs henceforth). SCTs replaced the primary small claims courts across Brazil upon the passage of the most recent Brazilian Constitution in 1988.<sup>1</sup> Their goal is to simplify and increase access to justice across states by removing many procedural requirements present in other litigation instruments. SCTs are the primary judicial body for small complexity cases, defined as cases in which claims do not exceed 40 times the minimum wage<sup>2</sup> involving lease breach, consumer rights, debt executions, torts, and others. There is no need for hiring an attorney if claims are under 20 times the minimum wage. SCTs are only open to individual or small company plaintiffs.

An example helps illustrate a typical SCT case. Suppose your mobile phone service provider has been overbilling you for international phone calls that were never made. You, unfortunately, could not resolve this issue with the company’s customer service and now want to take legal action and receive financial compensation for the wrongful charges. You walk up to an SCT office, speak to a courthouse clerk, and file your claim along with any supporting documentation. The clerk

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<sup>1</sup>More evidence of this in Lichand and Soares (2014).

<sup>2</sup>There are no state minimum wages in Brazil, so this is the federal, nationwide minimum wage at R\$ 954.00 in 2018. This is equivalent to \$10,500 in current dollars using the 2019 exchange rate average

then provides a court date for a conciliation hearing. At the hearing, you and the phone company will try to reach an agreement; if that fails, the judge sets trial for either later that same day or in the following days. At trial, the judge issues a sentence which can be appealed within ten days; on appeal, a three-judge panel then issues the final ruling. This entire process might take less than three months, representing a substantial improvement when compared to cases in the regular judicial process at state courts, which take up to 38 months on average to conclude (CNJ, 2018).

SCT’s structure dramatically reduces the number of dimensions driving judicial decisions. According to the São Paulo State Court website, there are less than 15 types of cases that can be brought before SCTs. It is then easier for judges and lawyers, when hired by the litigants, to specialize and reduce any skill discrepancy that could substantially alter a case outcome. The sentence is also standard across cases: the losing side will pay the claim amount to the winning side, which is capped at 40x the minimum wage. The standard and relatively low salience punishment to litigant removes an additional source of heterogeneity from high-profile cases, such as corruption cases in Lambais and Sigstad (2018) or violent crimes in Lim et al. (2015). In fact, the use of small claims court is an approach first introduced by Shayo and Zussman (2011), that take advantage of the relative homogeneity of small claims cases in Israel to isolate the effect of ethnicity on court outcomes. Lastly, judges have no control over which SCT cases they take. In single-judge benches, all cases are presented before the same judge; in multiple-judge benches, the cases are randomly distributed to judges assigned to each SCT. These distribution rules are again dimension-reducing and prevent that cases are differently distributed to systematically more lenient (or harsher) judges at the state system.<sup>3</sup>

### 3 Data

We construct a case-level dataset (5,262 observations) with information from two sources. First, we collect SCT case and judge level information from the São Paulo State Court (TJ-SP). The court publishes all judicial decisions on their website, and the information available is the case duration, type (breach of contract, debt execution, and others above), the court where it has been filed, ruling judge, the amount claimed, litigants and their lawyers (if hired), and sentences. Second, we use the information on candidates running for municipal office in the state of São Paulo in 2008, 2012, and 2016 from the Brazilian Electoral Court (TSE). TSE has jurisdiction over the entire electoral process in Brazil, from registering candidates, ruling over breach of electoral law, and overseeing the voting process on election day, to counting votes and authorizing that elected politicians take up office. It collects individual-level data on politicians and publishes everything online. We use TSE electoral results, candidate information, and electoral district data for every elected candidate in the state of São Paulo in the municipal elections of 2008, 2012, and 2016 elections. Table 1 contains a sample of the variables for the universe of elected candidates in the state.

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<sup>3</sup>Yet, for robustness purposes, I replicate the process in Abrams et al. (2012) producing random distributions of court outcomes to serve as a check on the quality of the case assignment system implemented by the state of São Paulo.

Though the targeted case duration is three months, we can see that cases will last on average 361 days to conclude, and the average amount claimed by plaintiffs is R\$11,830 ( $\sim$ \$3,000). Sixty-one percent of judges are male and have held their position for over ten years. Their income is R\$35,110, or \$9,000, on average. The average age of candidates involved in SCT cases in the state is 44 years old, 90.1 percent are male, and 24.6 percent have previous political experience, measured as an indicator variable for candidates who have been reelected or have declared their occupation in the TSE form as politician of any kind (city councilor, mayor, governor, member of Congress, senator, president). We have also collected categorical variables for educational attainment and marital status for all elected officials, but they are omitted from the table. The most frequent educational level and marital status are a four-year college degree or equivalent (41.2 percent) and married (70.3 percent), respectively.

## **4 Theory**

### **4.1 Application to Special Civil Tribunals (SCT) of São Paulo**

## **5 Empirical Strategy**

### **5.1 Are Cases Assigned at Random?**

### **5.2 Heterogeneous Convictions Across Judges**

### **5.3 Testing Causality of Holding Office on Court Outcomes: RD**

## **6 Prediction of Court Outcomes**

## **7 Conclusion**

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## Tables and Figures

Table 1: Descriptive Statistics

	N	Mean	St. Dev.	Min	Max
<i>Case Level</i>					
Case Duration (in days)	5,262	361	433	1	5,416
Amount Claimed (in R\$)	5,262	11,830	10,671	35	40,000
<i>Judge Level</i>					
Male	518	.610	.488	0	1
Tenure (in days)	518	4,378	2,882	13	12,987
Wage (in R\$)	518	35,110	10,772	13,156	145,616
<i>Candidate Level</i>					
Age	2,969	44	10.3	18	78
Male	2,969	.901	.298	0	1
Political Experience	2,969	.246	.430	0	1
Elected to Office	2,969	.486	.500	0	1
Campaign Expenditures (in R\$)	2,969	54,963	621,757	11	29,958,454

Figure 1: Interquartile Range of Candidate Age by Judge

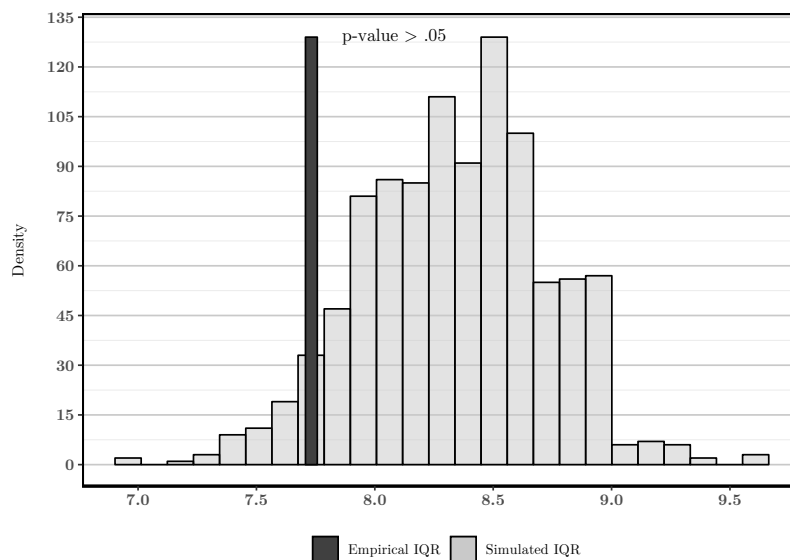


Figure 2: Interquartile Range of Favorable Ruling by Judge

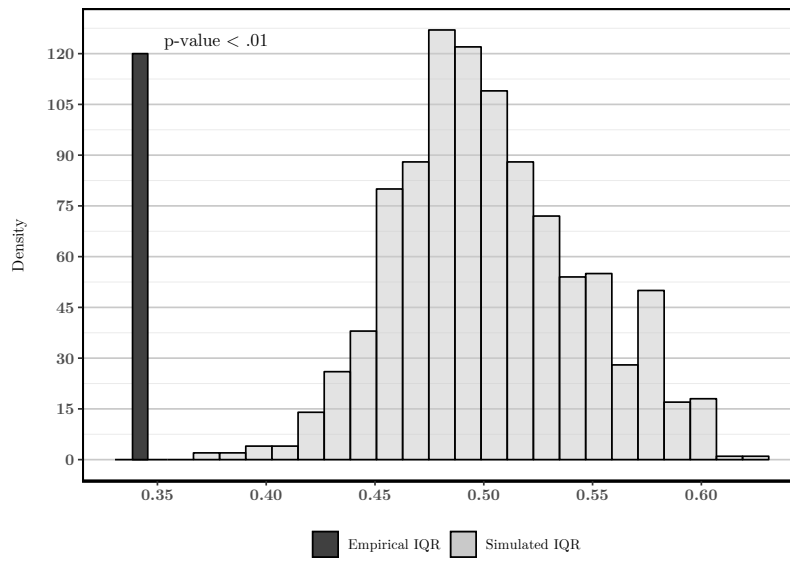


Figure 3: RD Point Estimates and 95% CIs

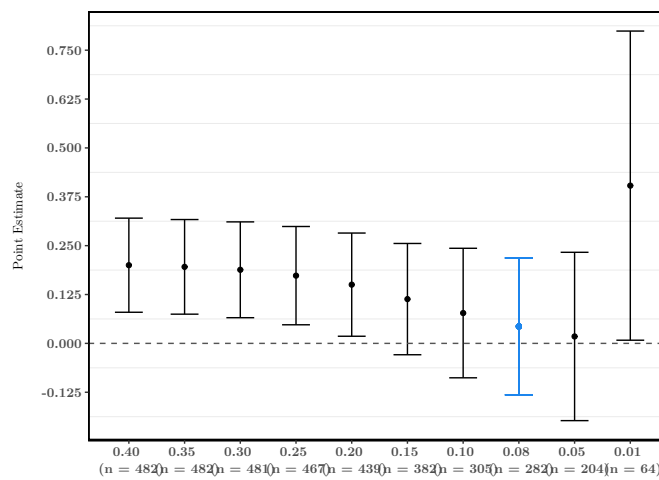




Figure 4: Mean Candidate Age by Judge

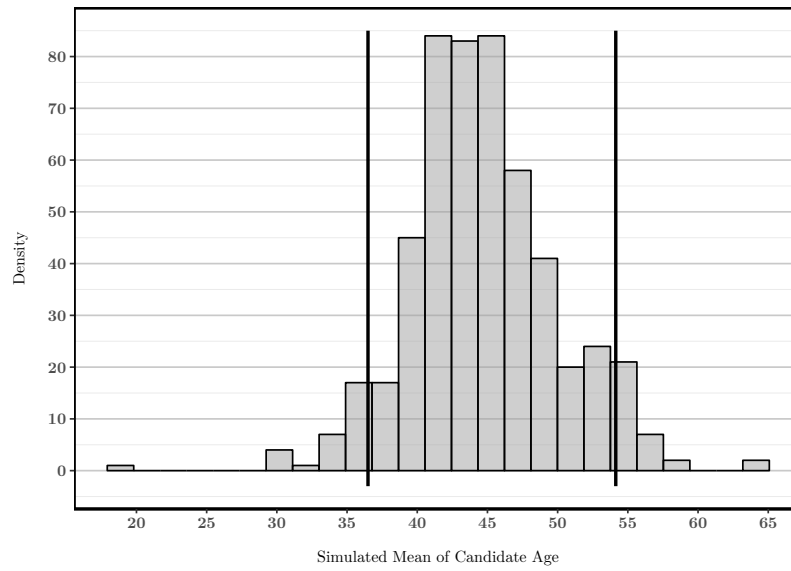


Figure 5: Mean Favorable Ruling by Judge

