

Judicial Favoritism of Politicians: Evidence from Small Claims Courts

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Abstract

While there are many studies investigating judicial favoritism on the basis of race, ethnicity, or political connectedness, there is scant evidence on judicial collusion with other branches of government in development settings. This paper address this gap by looking at pro-politician bias in small claims cases in the state of São Paulo, Brazil. Using an empirical strategy developed by Abrams et al. (2012), a regression discontinuity design, and machine learning techniques, we document a positive pro-politician bias and point to the amount claimed in court, judge tenure, judge pay, and politician vote share as the main factors driving judicial decision-making. To our knowledge, this is the first study providing evidence of power collusion in developing countries.

Keywords: judicial politics; judicial bias; judicial decision-making; political economy of development; law and politics.

JEL classification: D73; K42; P48; H83.

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1 Introduction

Suppose a case involving a politician is brought before a fair judge. The judge will hear both sides and make her decision uniquely based on case merits. Further, assume lawyers are equally skilled and unlikely to influence the judge’s ruling. Under these simplifying conditions, we could reasonably expect a fair trial, one in which political power plays no role in any court decision. But is this a realistic depiction of judicial systems? Besides individual bias, there are institutional constraints that prevent a fair trial. In political regimes with separation of powers, the executive and the legislative have some control over the judiciary, and thus judges are likely factoring this relationship into their decision-making process. In developing countries, where institutional constraints are stronger, the deviations in justice might even be more pronounced. Surprisingly, however, there are not many studies measuring judicial favoritism in cases involving politicians in development settings. This paper fills in the gap by investigating judicial independence when politicians appear before judges in the Brazilian judiciary system.

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. Rachlinski and Wistrich (2017) report several other discrimination situations, and though there are multiple studies on the political ideology of judges, there are very few studies looking into the legal treatment of individual politicians.

In recent years, there has been growing interest in the relationship between judicial decision-making 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 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 this 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 small claims decisions from the São Paulo State Court System in Brazil for all mayor and city council candidates since 2008. We then apply the methodology in Abrams et al. (2012) to evaluate whether politicians have the upper hand in their cases. To further investigate the direction and magnitude of bias, we employ a regression discontinuity (RD) 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.

We find that state court judges rule relatively and significantly more in favor of politicians in small claims cases than not. Applying the methodology in Abrams et al. (2012), we identify less variation in how they rule politician cases when compared to simulated rulings. In other words, this result suggests that court outcomes for politicians are less vulnerable to judge type than everyone else's outcomes; the former consistently see more predictable court outcomes. In the regression discontinuity analysis, we find no difference in rulings for mayor candidates who barely lose or win a municipal election. We identify a positive correlation between vote share and favorable court outcomes, but as we narrow in on smaller vote margins, which suggest more competitive elections, the effect of holding office becomes statistically insignificant at the five percent level. Though this might seem surprising, we believe it is a direct consequence of the design of local governments in Brazil. Since municipal governments are responsible for high salience policy issues, such as health and primary education, mayor candidates enjoy high visibility and might see favorable outcomes even if they do not take up office. **Lastly, we find that (...)**

These results supplement the empirical legal studies literature in multiple ways. First, we document judicial favoritism where there should be none. Small claims cases have limited political consequences, so judges should have lower incentives to benefit politicians in court. Having documented bias in low salience cases, however, we can only conclude that the overall judicial favoritism is widespread. As legal cases increase in importance, judges and politicians would respond accordingly, and we would expect more pro-politician bias. Along these lines, Lambais and Sigstad (2018) report a 50 percentage point increase in the probability of acquittal in corruption cases filed against politicians in Brazil, which could be interpreted as the upper bound of favoritism in high-profile cases. By presenting evidence of critical factors driving judicial decisions, we also provide a benchmark for future analysis of pro-politician bias. The amount claimed in court, judge tenure, judge pay, and politician vote share are the primary candidates for further scientific investigation. These factors are also first-order issues to be brought to the attention of judges as sources of bias, and should significantly help state court systems adjust their rulings going forward.

The remainder of this paper is as follows. Section 2 presents the institutional environment of Brazil's State Court Systems. Section 3 summarizes the 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 juris-

diction 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’s 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 *Juizados 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 1988.¹ 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 wage², and involve issues such as 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 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 removes

¹More evidence of this in Lichand and Soares (2014).

²There 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

additional sources of heterogeneity from high-profile cases, such as corruption cases in Lambais and Sigstad (2018) or violent crimes in Lim et al. (2015). Small claims cases do not attract as much media attention as corruption or violent crime, for instance. In fact, the use of small claims courts is an approach first introduced by Shayo and Zussman (2011) that takes 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 serving on each SCT. These distribution rules reduce the sources of external variability of outcomes and prevent that cases are differently assigned to systematically more lenient (or harsher) judges in the state system.³

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 was 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. Table 1 contains the descriptive statistics of this sample of candidates in the state.

Though the targeted case duration is three months, we can see that cases will last on average 361 days to conclude (12 months), and the average amount claimed by plaintiffs is R\$11,830 (~\$3,000). In 64.5 percent of the cases, judges rule in favor of politicians. Sixty-one percent of judges are male and have held their position for over ten years. Their income is R\$35,110 per month, 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 to the Electoral Court 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

³Yet, 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.

(70.3 percent), respectively.

4 Theory

Suppose there are three representative agents in Brazil, one for each branch of government: the executive, the legislative, and the judiciary. Though these agents are independent, they interact with one another over time. The executive agent serves on one or two four-year mandates (pending reelection at the end of the first term). They control the majority of government budgets, and have the discretion to set wages and resources allocated to the other branches. The legislative agent serves on a four-year mandate,⁴ which is renewable as many times as they are reelected; they have no term limit. They are responsible for passing law and determining budget levels but not its composition. In other words, they approve the amount of money available for other branches of government but do not have a say on how to spend the money. The judiciary agent serves on life-long mandates and yields power in restrictive but steady ways. They have limited control over resources as they only oversee budgets in the courts at which they serve, but resolve disputes between the other two branches of government and other economic agents (individuals, companies, etc). In this simplified model, the judiciary pleases or upsets the executive and legislative by settling their disputes.

We are interested in the behavior of the judiciary with respect to other branches of government. Power collusion could exist if the judiciary were using sentences to please the executive and legislative as a means of buying out those who make the calls on judiciary resources. Under this hypothesis, the representative judiciary agent derives utility in each period t according to equation (1), which describes the benefit f as a function of k observable characteristics $\sum_{x=1}^k x_k$, such as their time in post, their wages, their working conditions, and unobservable characteristics ε , such as reputation and their happiness in serving justice; costs c are a function of m_t working conditions, executive and legislative utilities u_e^t and u_l^t ; δ_t are exogenous, stochastic shocks that impact judicial work. These per-period utilities are computed in perpetuity in accordance with a judge's mandate:

$$u_j^t = \frac{1}{r} \times \sum_{t=1}^t \left[f\left(\sum_{x=1}^k x_k, \varepsilon_t\right) - c\left(\sum_{m=1}^k m_t, u_e^t(p), u_l^t(p), \delta_t\right) \right] \quad (1)$$

Since the executive and the legislative agents have primary responsibility for government budget, we can expect the judiciary to strategically maximize future net benefit by pleasing other agents. If the executive and the legislative agents are less likely to lose court cases, their utility increases. This incentive, however, is not uniformly distributed across all types of judicial cases. Because electoral, political, and even legal costs are higher in high salience cases, such as corruption, politicians are more likely to expect and respond to favoritism in such cases than in low salience cases. This makes small claims cases, which are one example of relatively less important court cases, an ideal object of judicial independence research. Any sign of favoritism in these cases is likely to carry over to

⁴Senators serve for eight years but this does not change the theoretical predictions in this section.

high profile cases, and indicate a widespread deviation of justice. In addition, small claims cases are more homogeneous, and suffer less from unobservable factors which could drive court outcomes. In the majority of cases, litigants do not need an attorney to file a claim, defendants pay a small monetary compensation if they lose in court, and the duration of cases is shorter than in other courts in the state system. In other words, we are testing whether $\partial u_j^t / \partial u_{e,l}^t = 0$.

5 Empirical Strategy

We analyze judicial favoritism in three steps. First, we test whether the distribution of politician-favorable outcomes resembles a random distribution of court outcomes. Any deviation would indicate judges do vary how they try cases having politicians as litigants. Next, we estimate the direction of the effect using LASSO regressions. Third, we investigate the causal effect of being elected to office on court outcomes using a regression discontinuity design.

5.1 Are Cases Assigned at Random?

To reasonably compare court outcomes across judges, our first concern is establishing that judges cannot select into cases. This is guaranteed by the design of the state court system in general and SCTs in particular. Plaintiffs can file small claims lawsuits where the wrongful act has happened or where they (or the defendant) live. In addition, judges do not choose whether to hear the case. Plaintiffs walk up to the court, speak to clerks and are instructed on how to proceed. State judges come in only when the case has been opened and cannot choose which case to hear. Second, in districts where there are more than one judge trying cases, the allocation of lawsuits by judge is random; the distribution of cases across judges happens immediately after the case has been included in the caseload management system. Together, these two legal features indicate limited, if any, control of case allocation across judges. Still, we provide an empirical test of case assignment.

We follow the strategy in Abrams et al. (2012), who analyze racial bias in felony cases sentencing across judges in Cook County, IL. They suggest that random assignment can be tested regressing a case characteristic (e.g., age) on multiple control variables, as below:

$$\text{Age}_{ijc} = \alpha + \sum_{k=1}^k \beta x_{kijc} + \sum_{n=1}^n \Gamma D_n + \sum_{c=1}^c \lambda_c + \varepsilon_{ijc} \quad (2)$$

Where Age_{ijc} is the politician age, x_k are k control variables, D_n is a matrix of n judge fixed-effects, λ_c is a matrix of court fixed-effects, and subscripts i, j, c are indexing plaintiff i , judge j , and court c . Under random assignment, the F -test on the joint distribution of judge fixed-effects should fail to reject the null (i.e. fixed-effects are equal). However, such direct F -test regression leads to the overrejection of the null for the same reasons as Abrams et al. (2012). Since the number of judges per SCT court is relatively small, the F -test does not meet its asymptotic properties and suffers from finite-sample bias (the judge variability within courts is small), over-rejecting the null effect of judge fixed-effects.

The solution to the overrejection problem is the construction of simulated datasets where the assignment of cases is indeed random, and the subsequent comparison of statistical moments in the empirical distribution versus the simulated moments provides an unbiased test of favoritism. The process is as follows. First, the researcher should group the actual (empirical) sample into the randomization units, which are the many SCTs in this case. Within these units, the researcher creates simulated observations, for each judge, from random draws (with replacement) of each of the variables in the empirical sample unit. Suppose there are 20 observed cases heard by four judges (five cases each) in a given SCT in the state of São Paulo. Each case has a set of observed characteristics, e.g. plaintiff gender, whether plaintiff was a politician at the time the case was heard, claim amount, etc. The researcher then creates 20 simulated cases, five per judge (keeping the same proportion as in the original data), where each case characteristic is randomly drawn from the sample of 20 observed cases in the empirical dataset. Once this process is replicated for all randomization units (SCTs), a simulated dataset of the same size as the empirical dataset has been created. This process is then repeated so that there are 1,000 simulated datasets.

Armed with these datasets, we compare the statistical moments in the actual and simulated datasets without fearing overrejection. Similarly to Abrams et al. (2012), we compute means of politician ages for all cases tried by any judge and compute the 25-75 interquartile range (IQR) for the entire distribution of judges. We report the results in figure 1. The empirical IQR is 7.73, which corresponds to a p -value of .065 in the simulated distribution. Due to the small number of judges in the dataset (518) and the average case by judge (10.15), the p -value of empirical distribution is close to overrejection at 5 percent level. However, when taken together with the design of case assignment in SCTs in São Paulo, we can confidently say that there is little evidence of case selection.

5.2 Heterogeneous Convictions Across Judges

To measure judicial favoritism, we carry out a similar process. We produce the same simulated datasets and IQRs, but instead of looking at the distribution of a case covariate, we make random draws of the outcome of interest, i.e., whether the case has been ruled in favor of the politician. We present the results in figure 2.

We plot the simulated interquartile range across all politicians in gray. The average distance between harsher judges (25 percentile of favorable outcomes) and more lenient judges (75 percentile of pro-politician rulings) is .502. In other words, this is the average IQR across all 1,000 simulated distributions. The empirical IQR is .342, which means that the distance between the harsher and more lenient judges is statistically different, and smaller, than the random distribution ($p = .0001$) of IQRs. There is less variation in court outcomes in the empirical data when compared to the simulated data, which means that the distribution of pro-politician outcomes is not random. Though this result signals judicial favoritism, we are not yet sure of the direction of such bias. The variability of court outcomes is small but could be pro or against politicians. To test this, we use a regression discontinuity strategy in the following sentence.

5.3 Does Holding Office Matter for Judges?

The ideal experiment to answer the question on the causal effect of being a politician on court outcomes would be to randomly assign politicians as litigants in a SCT case. We would be able to compare how non-politicians fare against politicians, and pin down the exact judicial favoritism. For ethical reasons, however, this is an unrealistic experiment – the approach adopted in this paper is its best approximation yet.

We start off by narrowing in on mayor candidates since 2008 in the state of São Paulo. They face each other off in majoritarian elections and the candidate who reaches 50 percent plus one of the votes is elected to office. This allows us to compute the vote share of each mayor candidate and compare to the 50 percent mark: politicians elected to office with narrow margins approximate random sorting to office when compared to politicians who barely lost their election. The running variable for a regression discontinuity design is vote margin, and the treatment condition is being elected. In more formal terms, we estimate the following equation:

$$y = \alpha + \gamma_1(x - c) + \gamma_2(x - c)^2 + \rho_1(x \geq c) + \rho_2(x - c)(x \geq c) + \varepsilon \quad (3)$$

Where y is whether the elected politician has received a favorable SCT ruling; $(x - c)$ is the vote share centered at 50 percent; $(x \geq c)$ is the treatment indicator variable, i.e. whether the candidate has been elected; the interaction $(x - c)(x \geq c)$ summarizes differential trends on both sides of the vote share threshold. Using the bandwidth selection model from Calonico et al. (2015), ρ_1 represents the causal effect of election on SCT outcome. Though not implemented in this version yet, we plan on including covariates and using robust standard errors in every estimation of equation 3.

Figure 3 plots equation 3. Though there is a positive correlation between vote share and receiving a favorable ruling in SCT cases, there is no causal relationship between election and favorable outcomes in court. Mayor candidates who barely lost or won an election seem to perform equally well in court. Figure 4 presents a more detailed picture of the relationship between politicians and judges. We re-estimate equation 3 using different bandwidth sizes (as suggested by Lee and Lemieux, 2010, and others), reported on the x -axis. The Calonico et al. (2015) optimal bandwidth is 8.4 percentage points (in blue). The y -axis displays the point estimates for ρ_1 in each regression equation. The results confirm the positive and significant relationship between vote share and favorable court outcomes for larger bandwidths around 50 percent vote margin (40 to 20 percentage points vote margin coefficients are significant at the 5 percent level). As we narrow in on smaller margins, we lose statistical power and the election coefficient becomes insignificant. Despite the larger causal effect at the smallest margin (1 percentage point), the small sample size prevents us from making stronger inference claims about the relationship between holding office and seeing a favorable result in court.

In sum, there is evidence of a positive and significant relationship between vote margin and SCT outcome, but we cannot recover the unbiased, causal effect of holding office on court outcomes. One

straightforward hypothesis is that judicial favoritism comes from running for office instead of holding office, in particular when it comes to mayor candidates. Since municipal governments are in charge of health and education policies, mayor candidates are well-known local figures. They run for office multiple times, and could be perceived as politically important even when they are not in office. This visibility would explain why local politicians have better odds in SCT cases.

6 Prediction of Court Outcomes

7 Conclusion

This paper investigates whether there is differential treatment of politicians in small claims courts in the state of São Paulo, Brazil. To our knowledge, it is the first paper to produce clear evidence on judicial bias in favor of politicians even in relatively low importance settings. Previous studies in the literature measure similar effects, such as how the political ideology of judges and the salience of cases might bias judicial decision-making. This project supplements these previous initiatives by investigating a more nuanced yet undetected judicial favoritism. Having documented bias in small claims courts, we can only expect more deviation in high profile cases, such as corruption or electoral crimes.

Besides the evidence of judicial favoritism of politicians, this project also makes predictions of court outcomes and pinpoints the most important factors driving judicial bias. Though I only focus on a small set of cases, those filed in São Paulo’s special civil tribunals (SCTs), the predictions should serve as a benchmark for the deviations in other judiciary systems. The majority of studies in the political economy literature posit that an independent judiciary is crucial for checking the power of the executive and the legislative, and for supporting economic development (Baland et al., 2010, and many others).

Future projects should adopt new strategies to identify the causal effect of holding office on court outcomes. We find a positive correlation for mayor candidates, but we are unable to partial out unobservable bias, such as a politician’s ability, or the experience they have with state court systems. Projects identifying the causal effect or widening the scope to also include the effect for city council candidates are substantial contributions to the literature.

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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
Pro-Politician Ruling	5,262	.645	.478	0	1
<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

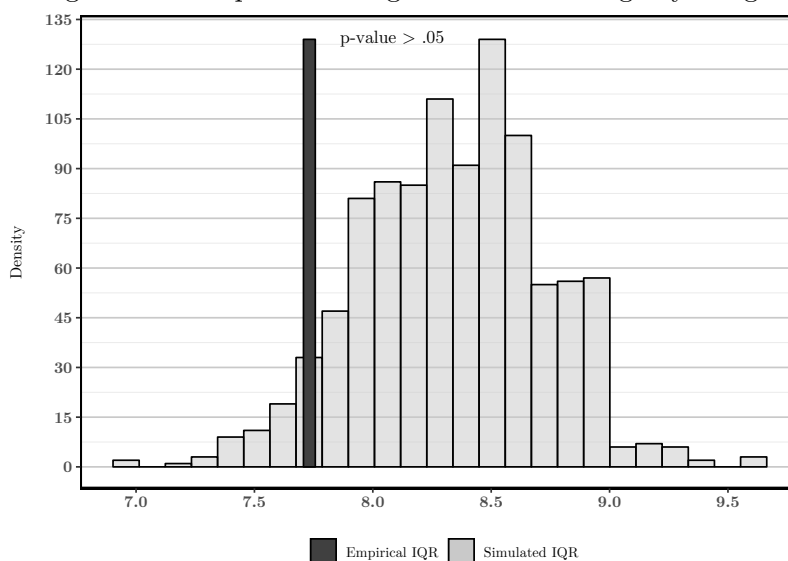


Figure 2: Interquartile Range of Favorable Ruling by Judge

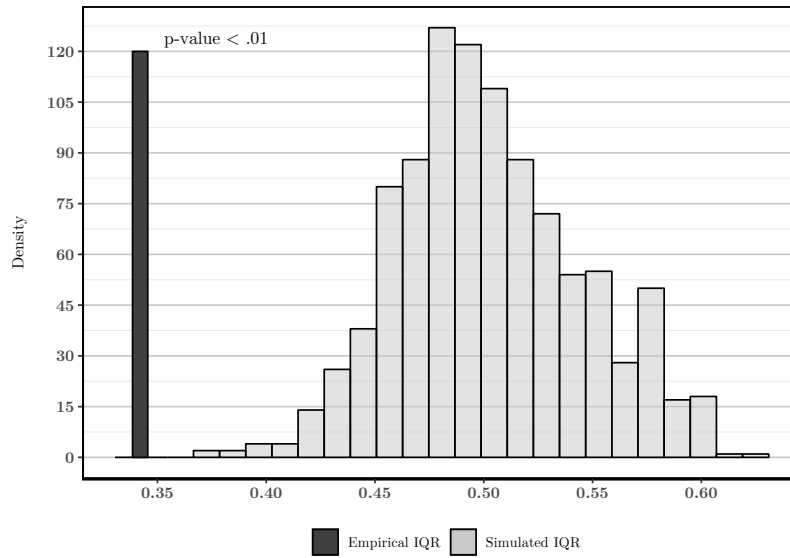


Figure 3: The Causal Effect of Election on Court Outcomes

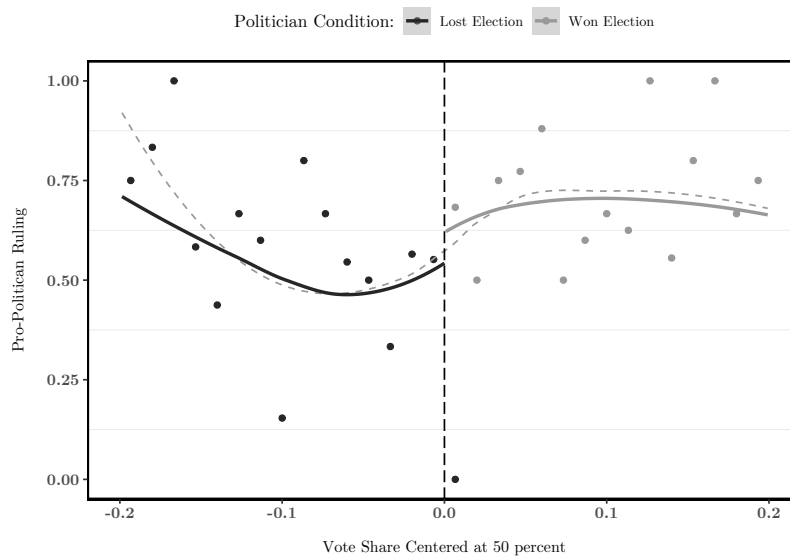


Figure 4: Election Point Estimates (and their 95% CIs)
on Court Outcomes

