

Judicial Subversion: The Effects of Political Power on Court Outcomes

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Abstract

We study corruption court cases involving candidates in Brazilian local elections. Even though judges and prosecutors are highly independent of local politics, we find that close winners of the election have a substantially lower probability of being convicted than close losers. There are small differences in the quantity and quality of the lawyers representing electoral winners and losers, indicating the effect is likely due to politicians influencing law enforcers by *non-legal* means. We show evidence consistent with this influence working through party networks. Furthermore, even though local politicians have no formal power over judicial careers, we find that judges who rely more on the court administration for their careers are more influenced by the election, and that judges who convict mayors are more likely to be promoted by a seniority criterion than by a merit criterion. Finally, we show evidence suggesting that the lower conviction rate among politicians in power leads to an adverse selection of politicians in electoral offices.

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1 Introduction

There are good reasons to believe that keeping elected politicians accountable to the law is essential for political and economic development. Legal checks on politicians can prevent outright stealing of public funds and ensures the rules governing democratic elections are abided by. Furthermore, it might play an important role in fostering economic growth by creating a predictable investment climate shielded from arbitrary government expropriations.¹ Finally, it can reduce political violence as disputes with the government can be solved by legal means. Yet, such an outcome might be difficult to achieve in practice. Judges and other agents of justice can face strong incentives to not enforce the law in the face of powerful politicians. Elected officials might be able to make their careers terrible, by denying them promotions, removing them from office, or transferring them to disagreeable locations or positions. Sometimes politicians in power might even be allied with dangerous militias or criminal groups. Friendly law enforcers, on the other hand, might be rewarded with easier access to government jobs, contracts, or public services, to themselves or to their friends and family. At last, politicians could starve the budgets of law enforcement institutions should they turn disloyal, or judges might fear that any decision against powerful politicians will not be enforced, as the enforcement of their decisions is typically in the hands of the executive.

In response, most modern societies have imposed an array of rules to make the judicial system more immune to political influence. These include laws that secure the life-time tenure of judges, making them virtually impossible to remove or transfer to a different position for politicians who dislike their rulings, and rules that prohibit judges from most outside jobs, especially jobs in the executive. The power to nominate and promote judges has also been taken from the hands of politicians and given to judicial councils, or the judiciary itself, in a majority of countries (Garoupa and Ginsburg 2008). There are often similar rules protecting the independence of prosecutors. How well do these rules work? Are they sufficient to remove all influence of political power over judicial decisions, or is it still the case, even with all these safeguards, that elected politicians tend to face a more lenient justice? Apart from anecdotal evidence we know very little about this.² There are some studies showing

¹North and Weingast (1989) argued that the separation of legislative and judicial powers from the executive after 1688 Glorious Revolution in England spurred economic growth by creating credible commitment. In particular, "the creation of a politically independent judiciary greatly expanded the government's ability credibly to promise to honor its agreements". See also Acemoglu, Johnson, and Robinson (2005). Consistent with this, (Voigt, Gutmann, and Feld 2015) found that a measure de facto judicial independence based on expert surveys correlate strongly with economic growth. La Porta et al. (2004) also found an association between a measure of de jure judicial independence and measures of economic freedom. However, Glaeser et al. (2004) found no association between the same measure and economic growth. In addition to promoting economic growth, there are also reasons to believe that an impartial judiciary can help reduce inequality (Glaeser, Scheinkman, and Shleifer 2003).

²The fact that de jure judicial independence does not necessarily map on to de facto independence is

that elected politicians or their party are favored by the judiciary when they control the nomination or promotion of judges (Ramseyer and Rasmusen 2001; Sanchez-Martinez 2017; Poblete-Cazenave 2019 and Mehmood 2019). However, as far as the authors are aware, we have no causal evidence showing whether politicians holding electoral offices are favored even in settings where they have no formal control over the judges’ career path. The main contribution of this paper is to provide such evidence.

We study a type of corruption court case called *Ação de Improbidade* involving local politicians in the trial courts of the Brazilian state and federal judiciaries. Brazilian trial courts are ideal for studying this question since almost all the formal ways of ensuring that judges are immune to political influence are in place. They are very difficult to remove, cannot be transferred to other positions against their will, and cannot have other jobs except teaching. Politicians have no direct influence over their careers: They are appointed by a competitive exam administered by the appeals court who also determines promotions. Finally, the judges receive a very high salary placing them among Brazil’s top earners. Similar rules apply to the public prosecutors who are in charge of the prosecution.

Is this enough to prevent politicians in power from influencing judicial outcomes? Answering this question is challenging. Showing that elected politicians tend to win at a higher rate in court than others does not prove political influence, it could just be that they tend to face more frivolous cases, perhaps due to politically motivated litigation. Conversely, no difference in win rates between elected politicians and other litigants does not prove that the judicial system is immune to political influence, it could for instance be that prosecutors are only filing cases against powerful politicians when they have exceptionally strong evidence.³ We solve this empirical challenge by using a close election regression discontinuity design, focusing on corruption cases that are filed before the election.⁴ If close elections are decided at random, marginal electoral winners and losers will on average have similar types of corruption cases pending against them, with no systematic differences in the strength of the evidence or the gravity of the misconduct. Thus, if we find that marginal electoral winners are more likely to be acquitted than marginal losers, we can conclude that this difference is causally due to the election result, and not to the initial strength of the case.

In our main regression we find large effects of political power on judicial outcomes. We estimate that marginal electoral winners are between 2 and 11 percentage points less likely

stressed by Chavez, Ferejohn, and Weingast (2011). Feld and Voigt (2003) and Voigt, Gutmann, and Feld (2015) show that while measures of de facto judicial independence correlate strongly with economic growth, there is no correlation with de jure judicial independence.

³Priest and Klein (1984) is the seminal article discussing this selection problem arising in the empirical analysis of court cases.

⁴A similar regression discontinuity design is used by Sanchez-Martinez (2017), Poblete-Cazenave (2019) and Assumpcao and Trecenti (2020).

to receive any penalty than marginal electoral losers, compared to a baseline conviction rate of 13 percent. There is no effect of the election on corruption cases decided *before* the election, indicating that marginal electoral winners and losers do tend to be involved in corruption cases with similar strength of evidence. The point estimate is larger if a politician is elected mayor, but is also substantial for candidates to the local legislature. While we cannot conclude with certainty, a large part of the effect seem to come from cases involving electoral winners not being decided as opposed to acquittals. The gap in the number of cases decided involving marginal electoral winners and losers appears in the first two years after the election and shows no tendency of closing even after six years, indicating that cases are not just being postponed until after the elected politician is out of office.

In the second part of the paper we seek to understand *why* politicians in power are less likely to be convicted. One possible explanation could be that electoral winners invest more resources into winning the case by legal means, by hiring better lawyers. We provide two pieces of evidence indicating that this is unlikely to be the driver of the result. First, we directly measure the quantity and quality of the lawyers registered on each court case, and find that marginal electoral winners do not substantially increase the number or the quality of lawyers on their case after the election, compared to marginal electoral losers. Our second piece of evidence consider cases where all the formal work of lawyers have been done before the election. While the reduction in sample size does not allow us to conclude with a high degree of certainty, there also seems to be an effect of winning the election on these cases. This result also indicates that part of the effect comes from *judges* being influenced, as opposed to prosecutors or witnesses. As a final argument against lawyers being the main driver of our result we contend that there is no theoretical reason to suspect that marginal electoral winners would be willing to invest more in legal counsel, since marginal losers likely have as much at stake in the court case.

Next we consider whether elected officials use their power to influence law enforcers through the offering of favors and threats. First, we exploit the fact that judicial districts are typically composed of several municipalities, implying that some of the politicians in our sample are tried in a court located in their municipality while others are tried in a neighboring municipality. Interestingly, we find that no evidence of a smaller effect if the politician is tried in a neighboring municipality. Moreover, the effect does not seem to decay with the distance between the municipality and the court. This evidence speaks against elected officials having a lower conviction rate due to localized favors such as the offering of jobs to relatives of the judge or the need for institutional cooperation between the municipality and the court at the local level. Given this result, we proceed to examine whether law enforcers might be influenced via political party networks crossing municipal borders. We do

find evidence consistent with such a mechanism. The effect of becoming elected on court outcomes is larger for politicians who are members of large parties and for members of the state governor’s party. Interestingly, the latter is true also for cases decided in the federal judiciary, indicating that this result cannot be explained solely by the governor’s influence over the state judiciary.

Our next tests of whether favors and threats can explain our result consider the role of repeated interactions in sustaining a collusive relationship between the politician and the judge. Consistent with the prediction that repeated interaction could lead to more cooperation (e.g. Axelrod 1984) we find that electoral winners are favored more in judicial districts with fewer judges. On the other hand, we find that the effect is larger for judges who have spent a short time in the judicial district.

We further consider the possibility that local politicians, even though formally unable to affect the careers of judges, might nevertheless exert such influence through their political connections. This is conceivable since politicians at the state and federal levels appoint some appeals court judges, determine the judiciary budget, and vote on increases in judge salaries, causing a certain politicization of the appeal court in charge of promotions.⁵ We provide two pieces of evidence suggesting that political pressure on judges careers *could* be affecting judicial decisions. First, we argue that judges who have a tendency of moving between judicial districts are more vulnerable to pressure from the court administration, and document that the effect of winning the election on the conviction rate is larger if the judge has had a higher than median tendency to switch between judicial districts in the two years prior to the election. Second, we show that judges who convict mayors in power are more likely to be promoted by the seniority criterion than by the merit criterion in the future. While promotions by seniority are automatic, promotions by merit are in practice decided discretionary by the appeals court.

We end our analysis of the mechanism by discussing four additional possible explanations of our result. First, judges and prosecutors could be reluctant to proceed with cases against political office-holders to not interfere with the functioning of local government. While it could certainly be part of the explanation, if this was the main driver of the result we would expect an increase in the number of decisions involving electoral winners after they leave office, something we do not see. Second, judges might attribute winning an election to politician probity. This might happen if voters tend to vote for less corrupt candidates and the judge is unaware that the election was won with a small margin. We consider this to be unlikely, however, since judges are required to live in the judicial district and often serve

⁵For instance, Zaffalon (2018) documents that the chief justice in the state court of São Paulo tends to annul trial court decisions unfavorable to the state, possibly in exchange for an increase in the judicial budget and judge salaries.

as electoral judges overseeing the local election and must know that the election was closely contested. Third, politicians in power might be better positioned to destroy evidence. This we also find unlikely to drive our result as most of the evidence is collected prior to the election. Finally, we consider spillovers from criminal cases: Criminal cases involving candidates for mayor are discontinuously sent to the appeals court if the politician wins the election and this might affect related Ações de Improbidade. While this could explain parts of our results, it cannot explain why we also find an effect of city council elections.

What are the *consequences* of a lower conviction rate among politicians in power? One adverse effect is that it gives politicians facing corruption charges incentives to run for electoral offices. In the final part of the paper we show evidence suggesting that this might be a real concern. In a panel regression including all politicians who have ever run for the office of mayor in the 2000-2016 elections we find that politicians are 16 percentage points more likely to enter a mayoral race and 6 percentage points more likely to become the next mayor if an Ação de Improbidade is filed against them just before the election, compared to what would otherwise have been predicted by their electoral career.

The question of how to create a judicial system immune to the subversion of the politically powerful has captivated researchers at least since Montesquieu (1748) spawning a large literature across the social sciences.⁶ Yet, the number of studies trying to measure *quantitatively* the degree to which judges act independently from the executive in various institutional settings is limited.⁷ Almost all such studies we have been able to identify take place in settings where politicians have the control over the career paths of law enforcers. The only exception is Assumpcao and Trecenti (2020), also in the Brazilian setting, which finds no evidence of elected politicians being favored in small claims cases. Thus, our main contribution is to demonstrate that politicians in power might receive a favorable treatment by the judicial system even when they have no formal control over the careers of judges or prosecutors. We further see our paper as a contribution to the broader literature on how to prevent political

⁶See Helmke and Rosenbluth (2009) and Hilbink and Ingram (2019) for recent surveys of the political science literature. Seminal studies include Landes and Posner (1975), Ramseyer (1994), Weingast (1997), and Glaeser and Shleifer (2002).

⁷We are aware of the following studies. Ramseyer and Rasmusen (2001) show that Japanese lower court judges who are lenient in cases involving the government tend to be promoted at a higher rate. Helmke (2005) find that Argentinian judges started to rule against the government when it became clear that the ruling party would lose in the coming elections. Sanchez-Martinez (2017) documents that Venezuelan judges are more likely to favor government agencies aligned with the federal government in employment claims. Poblete-Cazenave (2019) shows that candidates to Indian state legislatures aligned with the state ruling party are more likely to be acquitted in criminal cases if they win the election. Mehmood (2019) documents that presidentially appointed judges in Pakistan are more likely to rule in the favor of the government. Assumpcao and Trecenti (2020) find that politicians have a *lower* likelihood of winning in small claims cases, and winning an election does not influence this. Nyhan and Rehavi (2017), Gordon (2009), and Davis and White (2019) find evidence of partisan bias by presidentially appointed chief federal prosecutors in public corruption cases in the United States.

corruption. This literature has mostly focused on when corruption is punished by voters.⁸ However, there are reasons to believe that electoral accountability alone is unable to curb corruption.⁹ For instance, Avis, Ferraz, and Finan (2018) find that while federal audits in Brazil tend to reduce corruption this reduction is likely to be mostly due to an increase in the perceived *non-electoral* costs of engaging in corruption. Our study is adding to a small number of papers shedding light on the legal costs of engaging in corruption, perhaps the most important non-electoral cost.¹⁰ By showing that judges are biased towards elected politicians we also contribute to the large literature on judicial bias, which have tended to focus on ethnic or ideological biases.¹¹ Our paper further adds to the literature on political selection (e.g. Cavalcanti, Daniele, and Galletta 2018; Artiles, Kleine-Rueschkamp, and León-Ciliotta, [forthcoming](#); Fisman, Schulz, and Vig 2019; Dal Bó et al. 2017) by showing that a legal system protecting the powerful might lead to an adverse selection of politicians. Finally, we contribute to the literature on how the structure of the judicial career might influence judicial decisions. While this literature has mostly focused on elected or politically appointed judges (e.g. Berdejó and Yuchtman 2013 and Lim 2013), we show evidence suggesting that career concerns could affect judicial decisions even in settings where judges are selected by competitive public exams.

The rest of the paper is organized as follows. Section 2 describes the legal remedies against corruption in Brazil, the careers of Brazilian judges and prosecutors, and which tools Brazilian local politicians have at their disposal to benefit or harm law enforcers. In Section

⁸The extent to which voters punish political corruption is considered by for instance Ferraz and Finan (2008), Banerjee et al. (2014), Boas, Hidalgo, and Melo (2019). See Ashworth (2012) for a review of this literature. Zamboni and Litschig (2018), Bobonis, Cámara Fuertes, and Schwabe (2016), and Avis, Ferraz, and Finan (2018) consider the causal effect of audits in reducing corruption.

⁹Ferraz and Finan (2008) found large effects of the release of Brazilian federal audits on electoral outcomes. However, even if voters punish corrupt politicians, it is not clear from this evidence whether voters act as a real deterrence on corruption. Also, in other studies voters have been found to be less inclined to punish corruption (e.g. Boas, Hidalgo, and Melo 2019). There are several theoretical reasons why electoral accountability might fail to deter corruption. Voters might fail to coordinate on less corrupt politicians (Myerson 1991), term limited politicians face no reelection incentives (Barro 1973; Ferraz and Finan 2011), and obtaining sufficient campaign finance to win elections might require politicians to engage in corruption. Famously, O'Donnell (1998) argued that "vertical accountability" at election time is not enough to deter executive abuses, and that there is a need for "horizontal accountability" provided by institutions such as legislatures and courts in between elections.

¹⁰There exist studies assessing the causal effect of judicial presence on corruption (Litschig and Zamboni 2019), the correlation between indices of corruption and legal institutions across countries or U.S. states (Cordis 2009; Alt and Lassen 2008; Aaken, Feld, and Voigt 2010), the partisan bias of chief federal prosecutors in public corruption cases in the United States (Nyhan and Rehavi 2017; Gordon 2009; Davis and White 2019), the effect of prosecutorial resources on corruption convictions (Alt and Lassen 2014), and the role of elected judges in reducing corruption (Alt and Lassen 2008). We are not aware of any study that causally assess the effect of elections on corruption convictions.

¹¹Notable studies examining ethnic, racial, or ideological bias in courts include Shayo and Zussman (2011), Alesina and Ferrara (2014), Arnold, Dobbie, and Yang (2018), Abrams, Bertrand, and Mullainathan (2012), and Rehavi and Starr (2014) and Cohen and Yang (2019).

3 we discuss how we constructed a data set of corruption cases involving local politicians. Section 4 presents the empirical strategy we use to estimate the effect of being elected on judicial decisions. In Section 5 we present our main results showing that politicians are more likely to be acquitted of corruption charges if they win the election, while Section 6 seeks to understand why this is the case. In Section 7 we show that politicians have a higher probability of running in a mayoral race and to become the next mayor if an Ação de Improbidade is filed against them. Section 8 concludes.

2 Institutional context

In this section, we first describe the legal remedies against corruption among elected officials in Brazil, with a focus on *Ações de Improbidade*. To understand the ways in which local elections might influence the outcome of an Ação de Improbidade we then describe in detail the judges and the prosecutors who are involved in the cases, and the general organization of the judicial system. Finally, we describe the relevant features of Brazilian government. All rules described in this section are documented in the Appendix A.1.

2.1 The legal remedies against political corruption in Brazil

There are several legal actions available to address corruption among elected officials in Brazil. First, corruption is defined as a crime in the penal code, and there are various other corruption related crimes such as money laundering. In addition, there are three types of civil suits that can be brought against corruption and less serious administrative malfeasance: *Ação Civil de Improbidade Administrativa* ("Ação de Improbidade"), *Ação Civil Pública*, and *Ação Popular*. In this paper we do not consider criminal cases against corruption. Criminal cases against mayoral candidates are sent to the appeals court in the case they win the election (a rule colloquially known as *foro privilegiado*), making it difficult to interpret a close election regression discontinuity estimate for these cases. Among the civil suits, we will focus on Ações de Improbidade for two reasons. First, they are the most serious of the civil suits.¹² Second, the other civil suits can be settled that makes it difficult to interpret regression discontinuity estimates.

Ações de Improbidade can be filed against any act by a public official that either violates administrative principles, causes damage to the treasury, or leads to illicit enrichment of the official. Typical cases involve the hiring of public workers without proper procedure and fraud in government contracting. The suit can only be brought by the public prosecutor

¹²Ação Popular can only reverse political or administrative decisions, and leads to no further penalties for the politician, whereas Ação Civil Pública can only lead to fines and injunctions.

or the entity harmed by the corrupt act. For cases involving local politicians, the latter is typically the municipality. The possible penalties are loss of office, loss of political rights for 3-10 years, reimbursing the treasury, fines up to 100 times the monthly wage, and the prohibition of receiving government contracts for 3-10 years. Loss of political rights is seen as one of the most severe penalties, since it includes not being able to run for electoral office. The judge has a wide discretion in deciding which penalties to apply. One feature of these cases that makes interpreting our results easier is that they cannot be solved by a settlement between the parties. The cases filed by the public prosecutor are typically initiated by someone filing a complaint to the prosecutor. The prosecutor then investigates (*inquérito civil*) and finally chooses whether to file a case depending on the outcome of the investigation. We will only consider cases filed by the public prosecutor in this paper, not those filed by the municipality: The mayor is the legal representative of the municipality, thus if a mayoral candidate who is facing a case filed by the municipality wins the election she will end up becoming both the plaintiff and the defendant, and the case is often dismissed by the judge. Ações de Improbidade involving local politicians are tried in the federal judiciary if the alleged corruption or malfeasance involves funds transferred to the municipality by the federal government.

An example of a typical case in our data is an Ação de Improbidade filed by the public prosecutor against the mayor of the municipality Fartura in the interior of São Paulo. The mayor had awarded a contract to provide fuel to the municipality to a firm owned by the son of the vice-mayor, and it is illegal to contract a firm that is under the influence of a public servant. In the decision the judge agreed the contract was illegal, ruled it void, and imposed a small fine on the vice-mayor. However, the judge acquitted the mayor arguing the misconduct was not done in "bad faith", and did not impose any repayment of funds arguing it was not proven that the contract had lead to a financial loss to the municipality.¹³

2.2 Brazilian trial court judges and prosecutors

Judges and public prosecutors at the trial courts in the state and federal judiciaries are formally very independent of politics. State and federal judges are appointed via a competitive public exam administered by the state appeals courts (*Tribunal de Justiça*) and the federal appeals courts (*Tribunal Regional Federal*), respectively. Similarly, the public prosecutors are appointed via a competitive public exam administered by the state or federal chief pros-

¹³An important feature of Ações de Improbidade is that it is typically not enough to demonstrate that the law was broken, but also that it was broken in "bad faith". This is a very common reason for acquittals. Sentences including the words *não* ("no") and *dolo* ("intentional misconduct") appear in 70% of all acquittals for which we have the legal justification.

ecutor. While judicial corruption is recognized as a problem, the general belief is that trial court judges and prosecutors are not easily corruptible. The main reason cited is that judges and prosecutors earn very high wages: Just their official wage place them among Brazil's top earners, not counting several perquisites such as housing allowances. Judges and prosecutors are insulated from political influence by three constitutional provisions: (1) Their wages cannot be docked, (2) they are tenured after two years and can be fired only after an unappealable judicial decision, and (3) they cannot be transferred to a different judicial district against their will, except by an absolute majority vote of the appeals court or the National Council of Justice (*Conselho Nacional de Justiça*) in the case of the judges or by the respective collegiate council in the case of prosecutors.¹⁴ In addition, judges and prosecutors are prohibited from political activity, working for political parties, and managing private companies (although participation in capital is allowed). Politicians at the federal and state levels have, however, some formal powers over the judiciaries and the public prosecution. We explain this, the career paths of judges and prosecutors, and the organization of the judicial system in the following subsections.

2.2.1 The judiciary

The state judiciary is divided into judicial districts (*comarcas*), which typically cover between one to three municipalities each. The judicial districts are divided in three levels (*entrâncias*), with the most important cities and capitals as the final level. If a district is composed of several municipalities, the court is normally located in the largest municipality. A judicial district might have between one to several hundred judges, depending on its size. In districts with many judges, there are judges specialized in certain areas such as civil and criminal cases. Cases are randomly allocated to judges if there are more than one judge who has jurisdiction. The federal judiciary follows a similar structure but the judicial districts (*subseções*) tend to cover more municipalities than the state judicial districts. The federal judicial districts are aggregated in five regions (*região*) each covering two or more states, with each region having its own appeals court.

State and federal trial judges enter service as substitute judges (*juiz substituto*). The rules governing substitute judges varies between courts. In the federal judiciary, and some state judiciaries, it is common that the substitute judge work side by side with a regular judge, dividing the cases between them.¹⁵ In other state judiciaries, such as in Rio de Janeiro, substitute judges are assigned to an area of contiguous judicial districts (*circumscrição judi-*

¹⁴For substitute judges in the state judiciary this rule is valid for the *circumscrição judiciária*, an area of contiguous judicial districts. For substitute judges in the federal judiciary the rule is valid for the *subseção*.

¹⁵For instance, in most federal courts the regular judges decide cases with an even number and the substitute judge decides cases with an odd number.

ciária) and work in any judicial district where there are vacant positions, the regular judge is absent, or there is need for extra assistance. After a two-year probation, if the judge did not commit any irregularities, she is promoted to a judge with tenure. Moving forward in her career the judge can then be promoted from substitute to a regular judge (*juiz titular*)¹⁶, but could also remain a substitute with tenure. Usually the judge starts in a lower level judicial district and is promoted to the higher levels by the appeals court on criteria that alternate between seniority and merit.¹⁷

The seniority criterion is based on how much time of service the judge has and she can only be rejected by the votes of two thirds of the appeals court. The merit criterion is based on a ballot vote among the appeal court judges. These votes have to be justified based on a series of principles.¹⁸ The appeals court makes a list with the three most voted judges and the final decision is made by the chief appeals judge. The promotion of a judge who appears in the merit list three times in a row or five times in total is mandatory.

The promotion to the appeals court is based on the same alternating criteria of seniority and merit, but in federal courts the president has the final call on who are promoted by merit among the three most voted judges. Another formal influence of politics is that one fifth of the state appeals court judges are nominated by the state governor and one fifth of the federal appeals court judge are nominated by the president. These seats are filled alternately by public prosecutors and lawyers. The organizations representing public prosecutors or lawyers prepare a list of six candidates that is reduced to three by the appeals court. The final decision is with the governor in the state judiciary and with the president in the federal judiciary.

Despite having tenure, movement of judges between courts is highly dynamic (see, for example, Dahis, Schiavon, and Scot 2020): Substitute judges in the state judiciary can be freely

¹⁶The *juiz titular* is required to live in the judicial district she is stationed, except by authorization of the appeals court.

¹⁷This alternation is typically implemented at the *entrância* level. For example, if the last promotion to the final level was by the seniority criterion, the next promotion to the final level must be according to merit criterion. Open positions could be filled either by judges in the same *entrância* (*remoção*) or by judges from the *entrância* below (*promoção*). In the state judiciaries, *remoção* follows the same alternating criteria as *promoção*, and judges from the *entrância* below are only considered for positions filled by the merit criterion if there are no interested judges in the same *entrância*. In the federal judiciary, *remoção* is always by the seniority criterion and judges from the same region (*região*) seeking a position by *remoção* are always prioritized. The alternating criteria of merit and seniority also apply to promotions of substitute judges to regular judges in both the federal and the state judiciaries. See the Appendix A.1 for the references for these rules.

¹⁸The merit votes have to be grounded in five principles: (I) performance, (II) productivity, (III) promptness in the exercise of functions, (IV) technical improvement, and (V) adequacy of conduct to the Code of Ethics of the National Judiciary. For each principle there is a series of conditions. Also, to be considered the judge has to figure in the first fifth part of a seniority list (if there are no judges seeking promotion in the first fifth, the choice goes to the second fifth, and successively).

transferred within a *circumscrição judiciária*; regular judges can substitute for another judge in a different, sometimes higher-level, district; judges can be designated "auxiliary" judge in a higher-level district. These movements between judicial districts represent a potential source of influence of the appeals court.

2.2.2 The public prosecution

The state and federal public prosecution has a parallel structure to the judiciary with sections in each state and federal judicial district. The public prosecution (*Ministério Público*) in Brazil is formally very independent from both the executive and the judiciary, and is often called the fourth branch of government. Public prosecutors also receive tenure after two years of service, and are promoted by the chief prosecutor. They are required to live in the judicial district they are stationed, except by authorization of the chief prosecutor. The state and federal chief prosecutors are appointed by the governor and the president, respectively, for a two year term with the possibility of a one term renewal. In practice, the governor and the president chooses the chief prosecutor from a list of three candidates prepared after a vote among the prosecutors, but the president is not obliged to choose from this list. Prosecutors have wide discretion in deciding which cases to work on. But any decision to drop a case is subject to review by the chief prosecutor.

2.3 Brazilian government

The local government in Brazil is composed of the mayor (*prefeito*) and the city council (*câmara de vereadores*). Mayors are elected via a first past the post electoral system, with the exception of cities with a population greater than 200,000 which have a second round run-off between the two top candidates if none received more than 50% of the votes. The city council is filled by an open list proportional representation system. Each candidate is part of an electoral coalition composed of several parties. The coalitions receive seats in the council according to the vote share received by all candidates within the coalition, and the seats are allocated to the candidates who received most votes.

The responsibilities of the mayor is to administrate the city budget, in areas such as education, health and transport, and to collect municipal taxes. In doing so the mayor has the power to contract firms and hire municipal workers. Many municipal employees are hired via a competitive civil service exam and receive tenure after three years of service, but there are some categories of jobs that gives the mayor much more discretion in deciding who to hire, such as commissioned posts (*cargo em comissão*), positions of trust (*função*

de confiança), and temporary jobs.¹⁹ Mayors often make use of these job categories to circumvent the civil service exam (see Colonnelli, Teso, and Prem 2017; Akhtari, Moreira, and Trucco 2018). In fact, a large share of the corruption cases in our sample are about the misuse of these categories to hire workers who should have been hired via the civil service exam. Finally, the mayor can propose municipal laws. The chief role of the city council is to approve municipal laws. However, city councilors also have the power to hire certain workers, including commissioned posts both for their office staff, such as policy and advisement jobs, and to run the city council in its various departments, such as communications, legal, and IT. In addition, the council members have to write up and vote on the annual budget for the municipality every year that is approved into law (*Lei Orçamentária Anual*). Depending on the power of the council member, he can have some influence on how the budget will be spent, although its execution is delegated to the mayor.

The local level of government is to a large degree replicated at the state and federal levels, with the state and federal legislative branches deciding on the budget with the sanctioning of the governor and the president. The judicial system has formal financial autonomy but one potential source of political influence is the control over the judiciary budget, including judge salaries. In addition to the yearly budgets, the expansion of the judicial system, with the creation of more districts, court houses, and judicial positions, depend on laws passed by the legislative and sanctioned by the executive.

3 Data

In this section we explain how we constructed a data set of Ações de Improbidade involving local politicians, and present summary statistics.

3.1 Judicial data

Our main data sources are the daily official publications of the appeal courts called *Diários de Justiça*. The appeal courts are required by law to publish all judicial decisions in these outlets, including trial court decisions, together with several other minor statements about the case as it proceeds. An extract of a publication in a Diário de Justiça is shown in Figure A.1 in the Appendix. To generate a data set from this source we use regular expressions to select all publications regarding Ações de Improbidade and then extract the unique case

¹⁹The difference between commissioned posts and positions of trust is that commissioned posts can be given to any person that satisfy some rules if any (e.g. some posts may require a higher education diploma), while positions of trust can only be given to people who are already public servants and were hired initially via the civil service exam (*servidor público concursado*).

identifier, the names of litigants, lawyers and judges, the judicial district, and decisions for each publication. We use all the available issues of the *Diários de Justiça* across all state and federal appeal courts, except the state appeal courts of Rio Grande do Sul and Distrito Federal.²⁰ Figure 1 shows the available coverage in time of the *Diário de Justiça* by appeals court. We were not able to consistently identify the judge in the state judiciaries of Paraíba, Rio Grande do Norte, and Piauí. These judiciaries are thus excluded whenever we use judge information in our regressions.

Each case is identified with a unique case number that allows us to track publications regarding the same case over time. This number contains information about which year the case was filed. In the case of a final decision we extract the penalties applied to each defendant. If there is a final decision but it does not indicate that a defendant received any penalty, we consider this defendant as acquitted.²¹ If we are not able to identify any final decision we code the case as not yet decided. Note, however, that being *coded* as not decided does not necessarily mean that the case has not been decided in practice. It could be that we have missed some decisions or that there has been a final decision in the case before our first available date in the *Diário de Justiça*. The latter is not infrequent, as there are publications regarding appeals and sentence execution in a case even after the final decision. We still keep these cases in our sample, since removing them in an automated way is tricky. As the start of the *Diário de Justiça* is predetermined this should not lead to any bias in our estimates, except that we will consistently overstate the number of undecided cases.

Each time there is a publication about a case in the *Diário de Justiça* the names of the lawyers registered on the case are listed, in most states together with their unique registration number with the *Ordem dos Advogados do Brasil* (OAB). We use this information to create a data set with all the lawyers registered on each *Ação de Improbidade* at each publication date. From this data set we calculate *lawyer experience* by the number of previous *Ações de Improbidade* that the lawyer has worked on, and *lawyer success rate* by the share of these cases which has lead to a full acquittal.²² Finally, the *Diário de Justiça* also records promotions of judges. We extract this information for the courts found to consistently record whether the promotion was by the seniority or merit criterion.²³ The number of regular judge positions (*varas*) by judicial district is provided by the Conselho Nacional de Justiça.

²⁰The *Diário de Justiça* of the state court in Rio Grande do Sul does not record the court case type (*classe*), thus we were unable to identify which cases were *Ações de Improbidade*. Distrito Federal is the territory of Brazil's capital and federal government and does not have any municipalities or local elections.

²¹A publication in the *Diários de Justiça* is considered to be a final decision if it contains any of the phrases "julgo procedente", "julgo parcialmente procedente" or "julgo improcedente".

²²A decision is considered a full acquittal if it contains the expression *julgo improcedente*.

²³These courts are TRF2, TRF5, TJAC, TJAL, TJBA, TJCE, TJES, TJGO, TJMA, TJMS, TJMT, TJMG, TJPE, TJSC, TJSP, TJRJ and TJRO. The abbreviations TRF and TJ stand for Tribunal Regional Federal (federal court) and Tribunal de Justiça (state court), respectively.

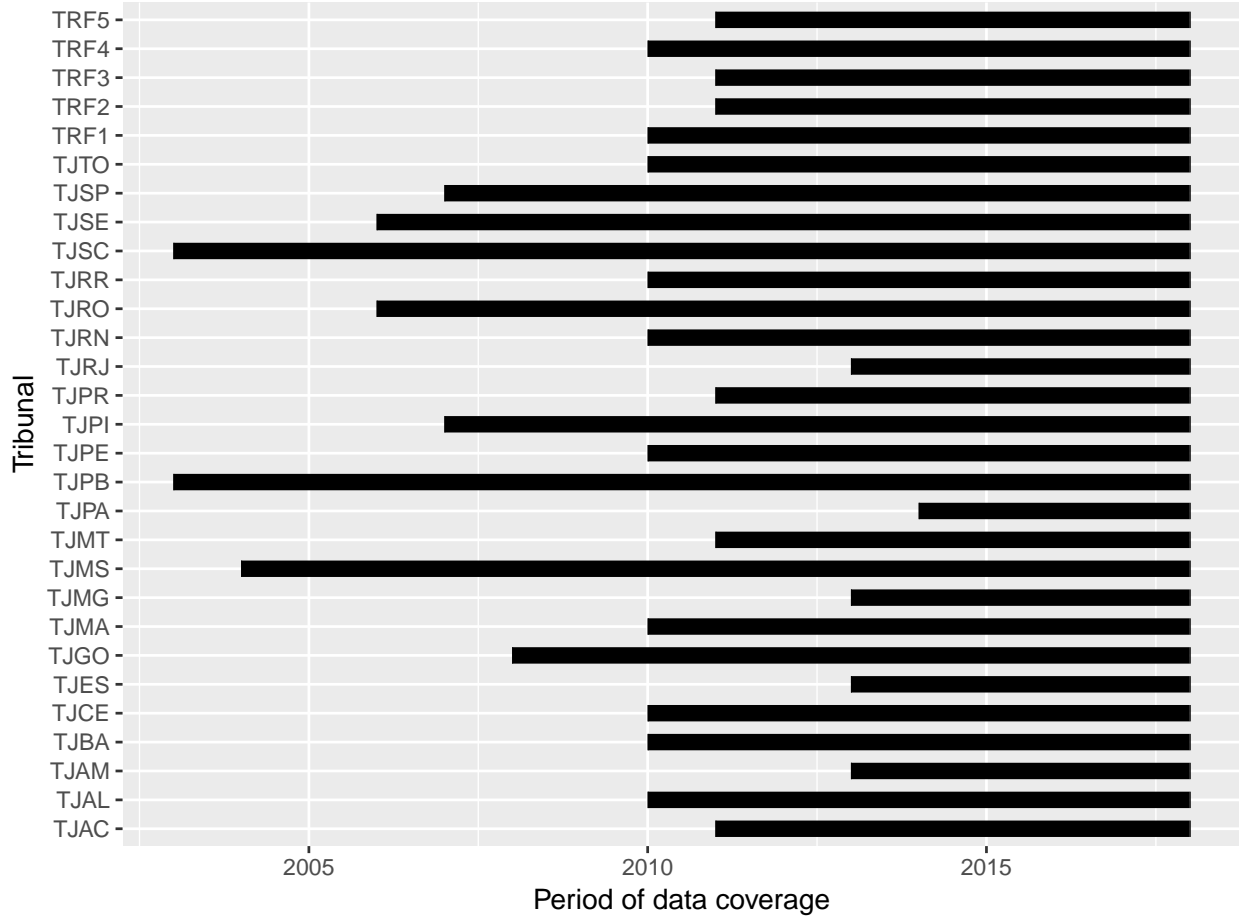


Figure 1: Coverage over time of the judicial data by appeal court. The differences in coverage is due to how far back the Diários de Justiça are available at the court websites. The abbreviations TRF and TJ stand for Tribunal Regional Federal (federal court) and Tribunal de Justiça (state court), respectively.

3.2 Electoral data and matching

We use election results and candidate characteristics from the electoral authorities (Tribunal Superior Eleitoral) and construct a data set of candidates for mayor and city council in the 2004 to 2016 elections.²⁴ In mayoral races we only keep the candidates who either won the election or received the second number of votes. For candidates for city council we calculate their win margin as follows. Let V_i denote the votes received by the candidate, V the total number of votes cast, and n the number of seats in the council. In the case the candidate did not receive a seat the win margin is calculated as

²⁴Data for the municipalities of each candidate such as population, GDP, and geographic coordinates are all from the Brazilian Institute of Geography and Statistics (IBGE).

$$WM_i = \frac{V_i - \bar{V}_i}{V/n}$$

where \bar{V}_i is the votes received by the candidate with the fewest votes among the members of i 's electoral coalition who won a seat. For candidates who won a seat the win margin is calculated as

$$WM_i = \frac{V_i - \underline{V}_i}{V/n}$$

where \underline{V}_i is the votes received by the candidate with the most votes among the members of i 's electoral coalition who did not win a seat. We divide by V/n since this is the number of votes behind each seat in the council. To keep our sample balanced we include the same number of "close losers" from each coalition as the number of seats allocated to the coalition. We match court cases to politicians on perfect name matching, ignoring accents. We only match within states. Thus, if a defendant in a case in the state court of Paraná has the same name as a candidate in the state of Goiás it is not considered a match. To avoid false matches we use an algorithm to exclude common names, described in the Appendix A.2.

Our main estimation sample consists of all cases that are *pending at the time of the election*: Cases we know from the case number to have been filed in a year before the election year or there is a publication in the Diário de Justiça regarding the case before the election, and we have not been able to identify a final decision before the election. We only consider cases with the public prosecutor among the plaintiffs.

3.3 Summary statistics

Summary statistics for our main estimation sample of all identified Ações de Improbidade involving candidates in the 2004 to 2016 local elections pending at the time of the election are presented in Table 1. There are 7,444 court cases. Over half involve candidates to mayor, 48% involve previous mayors, and 20% involve incumbent mayors running for re-election. The politician is observed to receive any penalty in 15% of the cases, while in 73% of the cases we have not been able to identify any final decision. Note that due to the discussion in Section 3.1 the true number of undecided cases is lower. The cases have a long duration, with the average time between filing and final decision being almost seven years for cases that have received a final decision.

Table 1: Summary statistics

Statistic	Mean	St. Dev.	N
Candidate for mayor	0.57	0.50	7,444
Incumbent mayor	0.20	0.40	7,444
Incumbent city councillor	0.19	0.39	7,444
Ex mayor	0.48	0.50	7,444
Politician convicted	0.13	0.33	7,444
Politician acquitted	0.15	0.35	7,444
Court case not yet decided	0.73	0.45	7,444
Federal court	0.43	0.49	7,444
2016 election	0.49	0.50	7,444
2012 election	0.31	0.46	7,444
Years between filing and decision	6.97	3.49	2,041
Years between filing and election	4.24	2.98	7,434
Years between election and decision	3.23	3.00	2,041
Municipality population (1000)	77.77	371.58	7,441
Court located in municipality	0.30	0.46	7,444
Number of judges in district	4.16	9.17	7,441
Number of lawyers	3.91	4.12	4,822
Average lawyer experience	9.25	12.42	4,822

Notes: Ações de Improbidade involving candidates for mayor and city council pending at the time of the election. *Politician convicted* is a dummy for whether the politician is recorded to have received any penalty, whereas *Politician acquitted* indicates that the case is decided but we were not able to identify any penalty applied to the politician. The experience of a lawyer is defined as the number of other Ações de Improbidade she has worked on prior to the election.

4 Empirical strategy

We want to estimate the effect of political power on judicial decisions. If politicians in power are shown to be more likely to win in court than opposition politicians this does not prove that decisions are affected by the political power of the litigant, since elected politicians and politicians out of office are likely to be involved in very different types of cases. The ideal experiment would be to randomly allocate elected offices to politicians and look at the effect on judicial decisions on *already filed* cases. We exploit close elections to simulate this experiment. In particular, we look at corruption cases that are filed before the election and not yet decided at the time of the election, comparing politicians who marginally won the election with politicians who marginally lost the election. The idea is that the winner of a very close election is as good as randomly determined. Thus, winning and losing politicians should on average be involved in similar cases before the election, and any systematic difference in judicial decisions has to be due to the outcome of the election. Formally, we use the bias-corrected estimator proposed by Calonico, Cattaneo, and Titiunik (2014) with local linear regression for the estimate and local quadratic regression for the bias-correction as our main specification. The specification for the local linear regression is

$$y_{ic} = \alpha + \beta E_i + \gamma WM_i + \delta E_i WM_i + \varepsilon_{ic} \quad (1)$$

where i is a politician and c is a corruption case filed before and decided after the election. The variable WM_i is the electoral win margin of the politician²⁵, and E_i is a dummy for whether the politician got elected. The outcome y_{ic} varies, but in the baseline model it is a dummy for whether the politician was convicted in the corruption case. To avoid researcher discretion in the choice of control variables, we tie our hands by using no control variables. As a placebo check we run the above regression for cases decided before the election. If close elections are indeed randomly decided, we should not see any effect of the election on these cases. We also report the main results using conventional local linear specifications for different bandwidths, including the Imbens and Kalyanaraman (2012) optimal bandwidth. We cluster standard errors at the municipality by election year level.

²⁵The win margin in a mayoral race is defined as the difference in the votes received by the elected mayor and the candidate receiving the second-most number of votes, divided by the total votes cast. The win margin in city council elections is defined in Section 3.

5 Main results: Are winners of close elections less likely to be convicted?

Table 2 shows the results of the estimation of equation 1 with a wide range of pre-election covariates as outcome variables. If close elections are indeed randomly determined we should not detect any systematic differences between marginal winners and marginal losers on these variables. The first two rows consider all candidates in the 2012 and 2016 local elections and show that marginal winners do not have a significantly lower probability than marginal losers of being involved in an Ação de Improbidade at the time of the election or to have been involved in an Ação de Improbidade in the past. The next two rows show that this conclusion is robust to restricting the sample to mayoral candidates. Thus, there is no evidence that less corrupt politicians are able to systematically win in close races. This can also be seen visually in the regression discontinuity histogram in Figure A.3 in the Appendix. The remainder of Table 2 considers the balance within the estimation sample: All Ações de Improbidade involving candidates for mayor and city council pending at the time of the election. Consistent with the outcome of close elections being randomly determined, the estimated difference between marginal winners and marginal losers is not statistically significant at the 5 percent level for any of the variables.

The result of estimating equation 1 with outcome variable whether the politician is convicted is presented in Column 1 of Table 3. The point estimate indicates that marginal electoral winners are 6.4 percentage points less likely than marginal electoral losers to receive any penalty. This is a sizable effect, given that the estimated conviction rate among marginal losers is 15 percent. The coefficient is statistically significant at the one percent level. Figure 2 shows a clear downwards jump in the probability of conviction when the number of votes passes the threshold necessary to win the election.

Results using the Calonico, Cattaneo, and Titiunik (2014) and the Imbens and Kalyanaraman (2012) optimal bandwidths as well as local linear regression discontinuity specifications for different bandwidth sizes are presented in Figure 3. The optimal bandwidth selectors choose bandwidths of 17 and 19 percentage points, but the effect is statistically significant at the 5% level for any bandwidth larger than 5 percentage points. The result of the placebo test is presented in Column 3. Reassuringly, there is no effect of winning the election on cases decided *before* the election. The absence of a discontinuity in the conviction rate for cases decided before the election can be visually inspected in the Appendix Figure A.2. In the Appendix Table A.3 we show that the result is robust to excluding cases with no pre-election publication in the Diário de Justiça and to including politicians with common names.

There could be two reasons for why a politician has not received a conviction: The

Table 2: Balance on pre-election variables

Variable	Difference	p-value	Mean	N
Ação de Improbidade pending	0.000	0.61	0.006	591654
Past Ação de Improbidade	0.000	0.82	0.001	591654
Ação de Improbidade pending (mayoral candidates)	-0.002	0.69	0.032	53642
Past Ação de Improbidade (mayoral candidates)	0.002	0.45	0.006	53642
Candidate for mayor	0.057	0.39	0.571	7444
Incumbent mayor	0.049	0.26	0.204	7444
Incumbent city councillor	-0.022	0.75	0.193	7444
Ex mayor	0.032	0.62	0.476	7444
Federal court	-0.083	0.16	0.428	7444
2016 election	-0.072	0.25	0.490	7444
2012 election	0.018	0.73	0.314	7444
Years between filing and election	-0.547	0.08	4.239	7434
Municipality population (1000)	-33.708	0.11	77.771	7441
Court located in municipality	0.096	0.17	0.301	7444
Number of judges in district	0.027	0.96	4.163	7441
Number of lawyers	-0.508	0.26	3.905	4822
Average lawyer experience	-1.780	0.16	9.248	4822
Female	-0.008	0.75	0.071	7444
Age/100	0.004	0.73	0.580	5236
Member of the governor's party	0.034	0.40	0.152	7444
Member of the governor's coalition	0.042	0.55	0.315	7444
Member of the president's party	0.055	0.14	0.123	7444
Member of the president's coalition	0.008	0.85	0.199	7444
Member of a large party	0.028	0.63	0.419	7444

Notes: Regression discontinuity coefficients showing the estimated difference between marginal winning and marginal losing candidates for various pre-election covariates. Ação de Improbidade pending is a dummy for whether there is at least one Ação de Improbidade involving the candidate filed before the election and no identified final decision at the time of the election. Past Ação de Improbidade is a dummy indicating whether we have identified an Ação de Improbidade with a final decision before the election involving the candidate. The first two rows include all candidates in the 2012 and 2016 elections. The next two rows include all mayoral candidates in the 2012 and 2016 elections. The remaining rows consider the balance within our main estimation sample: All Ações de Improbidade involving candidates for mayor or city council pending at the time of the election. Estimated using the bias-corrected estimator proposed by Calonico, Cattaneo, and Titiunik (2014) with a local linear regression for the estimate and local quadratic regression for the bias-correction. The running variable is the electoral win margin. No control variables. Standard errors clustered at the municipality times election level.

Table 3: Main regression discontinuity results

	Politician convicted (1)	Placebo (2)	Court case decided (3)	Politician acquitted (4)
Elected (se)	-0.064*** (0.024)	-0.0036 (0.015)	-0.051 (0.036)	0.017 (0.027)
N	7444	8478	7444	7444
Bandwidth	0.17	0.19	0.15	0.15
Mean Marg. Loser	0.15	0.049	0.27	0.16

Notes: Regression discontinuity estimates using the bias-corrected estimator proposed by Calonico, Cattaneo, and Titiunik (2014) with a local linear regression for the estimate and local quadratic regression for the bias-correction. The running variable is the electoral win margin. No control variables. Ações de Improbidade involving candidates for mayor pending at the time of the election. Mean Marg. Loser shows the estimated mean of the outcome variable for the marginal loser, using the local linear fit. Standard errors clustered at the municipality times election level. $*p \leq 0.1$; $**p \leq 0.05$; $***p \leq 0.01$.

politician was acquitted, or the court case has not been decided as of June 2019. In Columns 3 and 4 in Table 3 we consider these two outcomes. The point estimates suggest that the main reason for a lower conviction rate among marginal winners is that their cases are less likely to have been decided. We estimate that cases involving marginal winners have 5.1 percentage points lower likelihood of being decided, compared to 1.7 percentage points higher likelihood of ending in an acquittal. However, none of the estimates are statistically significant at conventional levels. Thus, we are unable to conclude with a high degree of certainty whether the effect is mostly driven by fewer decisions or by more acquittals.

Nevertheless, given that the point estimates suggest that a large part of the effect seems to come from fewer cases involving marginal winners being decided, it is natural to ask whether this is due to their cases being postponed only for a short period or if the cases are left on the docket indefinitely. Since our data set ends in mid-2019 there is a limit to how well we can answer this question. Still, if we confine ourselves to cases filed before the 2012 election we can follow cases for six years after the election. If cases are postponed only for a short period we would expect the gap between the number cases decided involving marginal winners and losers to close over time, whereas if they are permanently left on the docket we should see no such tendency.

Formally, we estimate Equation 1 with the outcome variable being whether the case has been decided within x years after the election where x varies from 0 to 6 years. The results are presented in Figure 4 (a). The y-axis measures the share of cases pending at the time

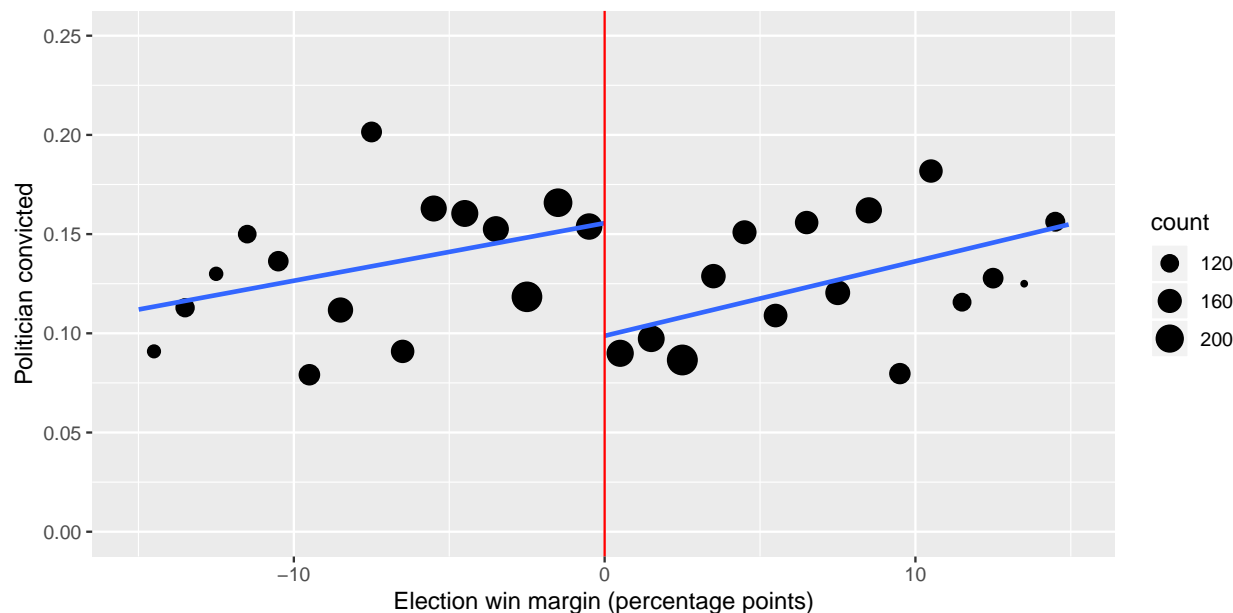


Figure 2: Regression discontinuity plot. Ações de Improbidade involving candidates for mayor or city council pending at the time of the election. A politician is considered convicted if he or she is recorded to have received any penalty in the Diários de Justiça.

of election that have been decided x years ahead, where x is indicated on the x-axis. The dotted and the solid lines show the estimated shares of the cases involving, respectively, marginal winners and losers that has been decided within a given number of years after the election, using the local linear fit. The regression discontinuity effect is the difference between the two lines. The estimates indicate that there are almost no cases decided involving marginal winners in the first year after taking office. The slope of the solid line is steeper than the dotted line up until two years after the election, indicating that there are also more decisions involving marginal losers in the second year after the election. From the third year and onward the two lines run in parallel, suggesting that the number of decisions involving marginal winners and losers are roughly equal. Interestingly, there are not more cases decided involving marginal winners than losers in the two years after the mandate of the marginal winner is over, indicating that judges are not just postponing cases until the politician is out of office. Instead, there seem to be a permanent gap in the number of cases decided, with no sign of closing even six years after the election.²⁶ The difference in decided cases between

²⁶There could be several explanations for why cases involving marginal winners are not decided even after the politician is out of office. One reason could be that the public, the media, or the prosecution has lost attention with the case. Also, after four years it is likely that both the judge and the prosecutor on the case have been replaced. Ações de Improbidade are among the most complex cases a trial judge decides and it could be very time consuming to get familiar with an old case-brief with hundreds or even thousands of pages. Since judges are measured by their productivity in terms of the number of cases decided by the Nacional Council of Justice (*Conselho Nacional da Justiça*), there are strong incentives to focus on easier cases. Some

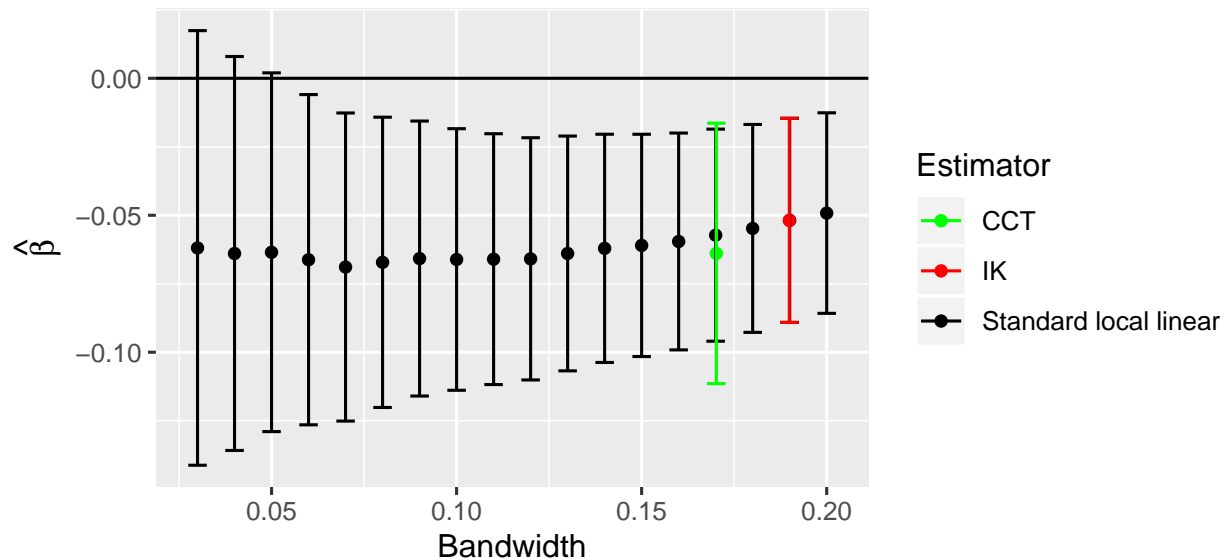


Figure 3: Regression discontinuity estimates for different bandwidths. The outcome variable is whether the politician is convicted. ‘IK’ uses the Imbens and Kalyanaraman (2012) optimal bandwidth. ‘CCT’ uses the bias-corrected estimator proposed by Calonico, Cattaneo, and Titiunik (2014) with a local linear regression for the estimate and local quadratic regression for the bias-correction. The running variable is the electoral win margin. No control variables. Ações de Improbidade involving candidates for mayor or city council pending at the time of the election. 95% confidence intervals. Standard errors clustered at the municipality by election year level.

marginal winners and losers is statistically significant at the 5% level starting from the first year after the election.²⁷

Figure 4 (b) shows the results of the estimation of Equation 1 with outcome variable whether the politician was convicted x years after the election where x varies from 0 to 6. We see the same pattern for convictions as in cases decided. There seems to be more convictions involving marginal losers than winners in the two first years after the election, and no significant difference thereafter. The difference in conviction rates shows no tendency to diminish even six years after the election.

In Table 4 we decompose our main result by electoral office and the various types of penalties. Panel A considers mayoral candidates and Panel B considers candidates for city council. We detect statistically significant effects across all the penalties in mayoral elections,

cases could thus be indefinitely postponed. It is not uncommon for cases to stay for several years on the docket without any publication in the Diário de Justiça, and we have identified many cases filed in the 1990s that still has no final decision.

²⁷This conclusion about statistical significance differ from what we concluded in Table 3 due to the exclusion of the 2016 election.

Table 4: Penalties imposed

	Politician convicted (1)	Loss of political rights (2)	Prohibited from contracts (3)	Pay back funds (4)	Fine (5)	Loss of office (6)	Acquitted (7)
A: Mayor							
Elected (se)	-0.1*** (0.036)	-0.089** (0.035)	-0.076*** (0.027)	-0.074*** (0.023)	-0.09*** (0.032)	-0.056* (0.030)	0.039 (0.037)
N	4247	4247	4247	4247	4247	4247	4247
Bandwidth	0.12	0.13	0.15	0.18	0.12	0.13	0.13
Mean Marg. Loser	0.17	0.13	0.11	0.11	0.15	0.083	0.16
B: City council							
Elected (se)	-0.044 (0.043)	-0.074** (0.030)	-0.063** (0.030)	-0.064** (0.027)	-0.04 (0.037)	-0.04** (0.019)	-0.0094 (0.040)
N	3197	3197	3197	3197	3197	3197	3197
Bandwidth	0.115	0.113	0.114	0.099	0.124	0.088	0.144
Mean Marg. Loser	0.14	0.09	0.089	0.088	0.11	0.041	0.16

Notes: *Politician convicted* is an indicator for whether the politician received any penalty. The outcome variables in columns (2)-(6) are dummy variables indicated whether the politician received the respective penalties. *Acquitted* is an indicator for there having been a final decision with no penalty applied to the politician. Regression discontinuity estimates using the bias-corrected estimator proposed by Calonico, Cattaneo, and Titiunik (2014) with a local linear regression for the estimate and local quadratic regression for the bias-correction. The running variable is the electoral win margin. No control variables. Ações de Improbidade involving candidates for mayor pending at the time of the election. Mean Marg. Loser shows the estimated mean of the outcome variable for the marginal loser, using the local linear fit. Standard errors clustered at the municipality times election level. * $p \leq 0.1$; ** $p \leq 0.05$; *** $p \leq 0.01$.

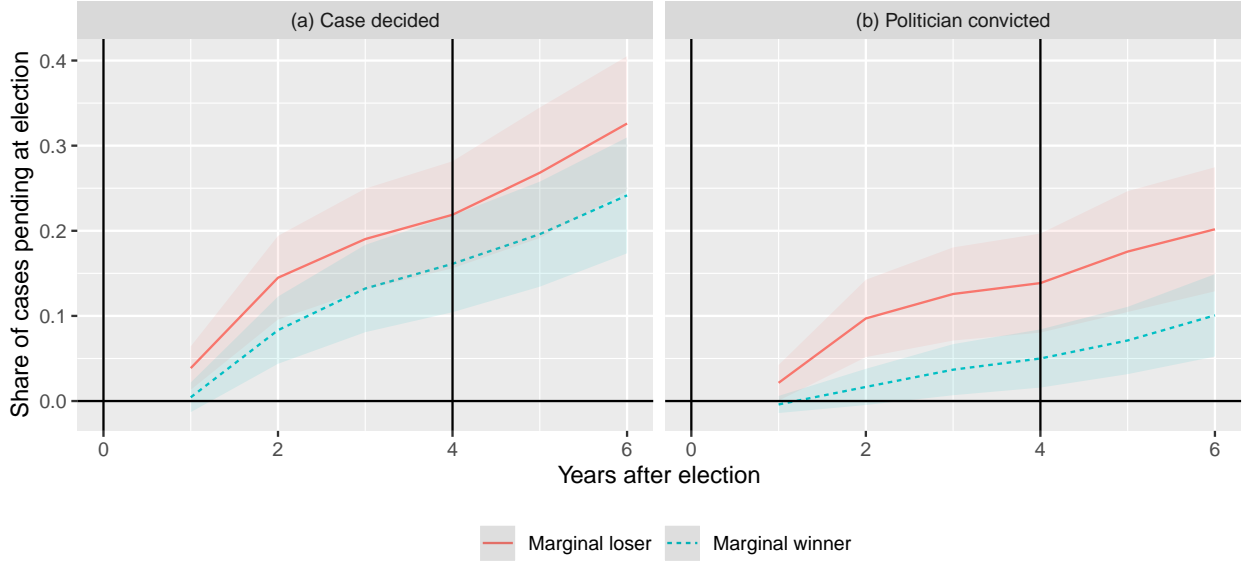


Figure 4: The timing of the effect. Panel (a) is the estimated share of Ações de Improbidade pending at the time of the election that have been decided by years since the election. Panel (b) is the estimated shares of Ações de Improbidade pending at the time of the election in which the politician has been convicted. Excluding the 2016 election. Estimated using the bias-corrected estimator proposed by Calonico, Cattaneo, and Titiunik (2014) with a local linear regression for the estimate and local quadratic regression for the bias-correction. The outcome variables are whether the case is decided in Panel (a) and whether the politician is convicted in Panel (b) within x years of the election. The estimates for marginal winners and losers are obtained using the local linear fit. 95% confidence intervals. The running variable is the electoral win margin. No control variables. Ações de Improbidade involving candidates for mayor or city council. Standard errors clustered at the municipality by election year level.

and all except the imposition of fines and for receiving any penalty ("politician convicted") in city council elections. Interestingly, the city council election is estimated to have almost as large effect as the mayoral election.

In Table 5 we present some basic heterogeneous effects, where we split the sample into sub-samples and estimate Equation 1 separately on each sub-sample. We estimate p -values of the difference in effects between sub-samples under the assumption that the sub-samples are independently drawn. The first two rows show that there is a statistically significant effect at the 10% level in both the federal and the state judiciaries. The point estimate is higher in the federal judiciary, but the difference in effects is not statistically significant. The remaining rows show that there is a statistically significant effect at the 10% level when the municipality of the politician is large (population above median), small (population below median), rich (GDP per capita above median) and poor (GDP per capita below median).

Table 5: Heterogeneous effects

		Coef.	(se)	N	Band- width	Mean Marg. Loser	p-value of Difference
Federal judiciary	Yes	−0.080*	(0.042)	3186	0.13	0.21	0.61
	No	−0.053*	(0.030)	4258	0.15	0.11	
Municipality population less than median (19,000)	Yes	−0.076**	(0.036)	3719	0.13	0.15	0.86
	No	−0.067*	(0.040)	3718	0.15	0.16	
GDP per capita above median (\$R 11,000)	Yes	−0.078**	(0.034)	3721	0.13	0.13	0.95
	No	−0.074*	(0.039)	3721	0.14	0.18	

Notes: Regression discontinuity estimates for different subsamples. p -value of Difference is the p -value of the difference in estimated effects between the two subsamples, assuming that the two subsamples are independently drawn. Coefficients estimated using the bias-corrected estimator proposed by Calonico, Cattaneo, and Titiunik (2014) with a local linear regression for the estimate and local quadratic regression for the bias-correction. The running variable is the electoral win margin. No control variables. Ações de Improbidade involving candidates for mayor pending at the time of the election. Mean Marg. Loser shows the estimated mean of the outcome variable for the marginal loser, using the local linear fit. Standard errors clustered at the municipality times election level. * $p \leq 0.1$; ** $p \leq 0.05$; *** $p \leq 0.01$.

Furthermore, we cannot reject the null hypothesis that the effect is equal across these groups of municipalities.

6 Mechanisms: Why are politicians in power convicted at a lower rate?

There could be many reasons why politicians are less likely to be convicted of corruption if they win the election. Politicians in power might be represented by lawyers who are more able to convince the judge of acquitting or better at employing procrastinating procedures to postpone decisions. Alternatively, electoral winners could use their power or connections to unduly influence the judge, prosecutor, witnesses, or judicial staff. There could also be purely psychological or behavioral reasons for law enforcers to be more lenient on elected officials. Politicians in power are also likely in a better position to destroy evidence. Furthermore, judges might shy away from politically sensitive cases to avoid media attention. Finally, in our setting there might be spillovers from criminal cases, which discontinuously are sent to the appeals court due to the rule of "foro privilegiado" when a candidate for mayor wins the election. In the following sections we discuss these mechanisms in turn.

6.1 Lawyers: Do electoral winners have better legal counsel?

Electoral winners might be convicted at a lower rate due to presenting better legal arguments in court or to a more skillful use of legal procedures. There are at least three reasons to believe that electoral winners have better lawyers: They could have more to lose if they are convicted, as they might be forced to step down from their office; they might be less liquidity constrained due to their official salary or other new sources of income; and they might be able to use the lawyers of the municipality to receive legal advice. The latter is illegal since Ações de Improbidade are considered as private lawsuits of the politician, however we know anecdotally that it might happen.

The most direct test of whether our result is driven by elected politician having better lawyers is to measure whether marginal electoral winners tend to register more or better lawyers on their cases after the election, at a higher rate than marginal losers. This is possible to check since the lawyers on a case are listed in each publication in the Diários de Justiça. On average, each case in our sample has 5 publications, with 70% of the publications being after the election. Thus, counting the *number* of lawyers and whether there are new lawyers added to the case at each date is straight forward. As proxies for the quality of each lawyer we use *lawyer experience* defined as the number of other Ações de Improbidade that the lawyer has worked on prior to the election, and *lawyer success rate* defined as the share of these cases in which there was a full acquittal, conditional on there having been a final decision in the case prior to the election.²² We calculate the average number and quality of lawyers in Diário de Justiça publications about each case after and before the election, respectively, and define the *post-election increase* as the difference between these two numbers. To test whether marginal electoral winners tend to hire better lawyers after the election compared to marginal losers we estimate Equation 1 with the outcome being the post-election increase in average lawyer quantity or quality.

The results are presented in Table 6. The point estimates indicate that marginal winners on average increase the number of lawyers by 0.5 after the election compared to 0.9 for marginal losers. The difference is not statistically significant. On the other hand, the lawyers working for marginal winners have experience from on average 0.5 more cases more after the election, whereas the same number for marginal losers is -0.8. This difference is statistically significant at the 10% level. However, compared to the average lawyer experience of 9 cases in our sample, this difference is small and unlikely to affect the conviction rate substantially. Finally, there is essentially no difference between marginal winners and losers in the case of average lawyer success. In sum, it does not seem to be the case that marginal winners increase the quantity or quality of the lawyers who *formally* work on their case after the election substantially more than marginal losers.

Table 6: The effect of winning the election on the quantity and quality of lawyers

	Post-election increase in:		
	Number of lawyers (1)	Average lawyer experience (2)	Average lawyer success (3)
Elected (se)	-0.34 (0.286)	1.3* (0.673)	-0.0077 (0.018)
N	2225	2225	1405
Bandwidth	0.14	0.15	0.13
Mean Marg. Loser	0.86	-0.8	-0.002

Notes: Regression discontinuity estimates where the outcome variable is the difference between the average of the respective variables across all publications made in the Diário de Justiça after the election and the same average before the election. Only cases where we have publications in the Diário de Justiça both before and after the election. The experience of a lawyer is defined as the number of other Ações de Improbidade she has worked on prior to the election. Her past success is the share of these cases which has lead to a full acquittal, conditional on the case having been decided before the election. Coefficients estimated using the bias-corrected estimator proposed by Calonico, Cattaneo, and Titiunik (2014) with a local linear regression for the estimate and local quadratic regression for the bias-correction. The running variable is the electoral win margin. No control variables. Ações de Improbidade involving candidates for mayor pending at the time of the election. Standard errors clustered at the judicial district level. $*p \leq 0.1$; $**p \leq 0.05$; $***p \leq 0.01$.

While it is tempting to rule out the lawyer hypothesis completely after this evidence, there might still be changes to the quality of legal counsel that just looking at the lawyers formally registered on the cases does not detect. First, it could be that electoral winners receives informal help from lawyers not registered on the case. This is particularly an issue if elected politicians receive help from municipal lawyers. Second, electoral winners could pay existing lawyers to work longer hours. Thus, we do an additional test of whether our result is driven by lawyers. The test exploits the fact that the time between the last opportunity for lawyers to act in a case and the decision can often be substantial. Whereas by law the judge is supposed to hand down a decision within 30 days after the lawyers have made their final allegations (*alegações finais*) and the judicial staff has made the case ready for decisions (*autos conclusos para sentença*), this rule is often not possible to follow in practice due to overcrowded dockets. In our sample it often take several years between the final allegations of the lawyers and the judge’s decision, and it is not infrequent that the final allegations were made by the lawyers *before* the election. If electoral winners having better lawyers is the reason for their lower conviction rate we should expect there to be no effect on such cases. To test this we split our sample according to whether the final allegations of the lawyers have been made before the election and estimate Equation 1 on each sub-sample.²⁸ While the relatively small sample size (N=361) does not allow us to make very strong conclusions the result, presented in Panel A of Table 7, suggests that there is also an effect of winning the election on cases ready for decision before the election.²⁹ In addition to suggesting that lawyers cannot be the only reason for marginal winners being convicted at a lower rate, this result also indicates that part of the effect comes from the judge being influenced, as opposed to prosecutors and witnesses.

There are also theoretical reasons to doubt that lawyers play a big role in explaining the effect. Perhaps the main reason to suspect that electoral winners are willing to invest more in legal counsel is that they risk having to give up their office if they lose the case.³⁰ However, by closer inspection it is not clear that marginal winners really have more at stake than marginal losers. First, even if the judge invokes the penalty of loss of office or the loss of political rights, the politician can continue in office as long as there are possibilities to appeal the decision. With myriads of ways of appealing and a relatively slow legal system it is highly unlikely that the possibilities of appealing run out before the mandate of the politician is

²⁸We consider the final allegations to have been made if there has been a publication regarding the case including the words *alegações finais*, *razões finais*, *derradeiras alegações*, *memoriais finais*, or *manifestações finais* in the Diário de Justiça before the election.

²⁹The effect has a p-value of 0.11 and thus not statistically significant at conventional levels.

³⁰Another potential reason for marginal winners to have better lawyers is liquidity constraints. However, as shown in Table A.4 in the Appendix, the estimated effects are in fact larger for less liquidity constrained politicians, as measured in terms of their educational attainments and the size of their political campaigns.

over.³¹ Second, since there is an incumbency *disadvantage* among mayoral candidates in Brazil (Klašnja and Titunik 2017)³² the marginal loser has a higher chance of becoming elected in the next election, and thus might even have *more* at stake in terms of a future political career than the marginal electoral winner.³³ In sum, while we cannot rule out the possibility that lawyers are part of the story, they seem unlikely to be a major reason for why marginal electoral winners are convicted at a lower rate.

6.2 Favors and threats: Are law enforcers influenced by non-legal means?

Another explanation for why elected politicians are convicted at a lower rate could be that they use their power to influence law enforcers through various types of favors and threats. For instance, an elected politician can make it difficult for someone who witnesses against him to obtain a job in the municipality or to receive municipal contracts. Judges and prosecutors themselves are prohibited from receiving government jobs or contracts, but there are no rules preventing a mayor from offering positions in the municipality to their relatives or friends, maybe with the implicit message that they will continue in the jobs as long as the law enforcers acts friendly towards the mayor.³⁴ Also, both the prosecutor and the judge is required to live in the judicial district (though some are granted an exemption) and rely on municipal services such as water, electricity, and health care. Furthermore, courts in smaller judicial districts might receive help from municipal lawyers, and it happens that the municipality donates land to the court. There could also be social benefits from siding with an elected politician such as being invited to dinner parties with the city elite, and politicians in power might be allied with dangerous criminal groups. Finally, being in power might give the politician access to political networks through which favors or threats can be channeled. Thus, while local politicians cannot formally influence the careers of judges or prosecutors,

³¹The Brazilian legal system is composed of four instances, the trial courts, the appeal courts, the superior court, and the supreme court, and allows for many ways to appeal both interlocutory and final decisions at each level. By matching our data with the *Cadastro Nacional de Condenações Cíveis por Ato de Improbidade Administrativa e Inelegibilidade*, which keeps track of convictions in Ações de Improbidade for which all possibilities of appeals has been exhausted, we were not able to find any electoral winner in our data who has had to step down during the term due to an Ação de Improbidade.

³²This result is also replicated using only the politicians in our sample.

³³The loss of political rights in an Ação de Improbidade can have serious consequences for the *future* political career of a politician. This was especially true after the passing of the Clean Record Act (*Lei da Ficha Limpa*) in 2010, which stipulates that if such a sentence has been confirmed by the appeals court the politician is barred from running for any electoral office for the next eight years, even when possibilities for appeals have not been exhausted.

³⁴For instance, a judge who held on to a corruption case involving local politicians for one and a half year without any decision was found to have two brothers and a cousin in *cargos comissionados* in the municipality (Borges 2008).

Table 7: Heterogeneous effects: Testing mechanisms

		Coef.	(se)	N	Band- width	Mean Marg. Loser	p-value of Difference
A: Lawyers							
Case ready for decision	Yes	-0.219	(0.138)	361	0.17	0.29	0.24
before election	No	-0.055**	(0.024)	7083	0.18	0.15	
B: The location of the court							
The court is located in	Yes	-0.054	(0.037)	3423	0.14	0.12	0.60
the municipality	No	-0.080**	(0.034)	4021	0.17	0.18	
Distance between municipality	Yes	-0.094**	(0.039)	3717	0.14	0.20	0.44
and court above median (13 km)	No	-0.055*	(0.033)	3718	0.14	0.11	
C: Political networks							
Politician is member of	Yes	-0.144***	(0.038)	4066	0.11	0.18	0.02
a large party	No	-0.024	(0.036)	3884	0.14	0.12	
Politician member of	Yes	-0.203***	(0.069)	1129	0.12	0.23	0.05
the governor's party	No	-0.056*	(0.029)	6315	0.14	0.14	
Politician in the governor's	Yes	-0.254**	(0.125)	410	0.10	0.31	0.15
party (federal judiciary)	No	-0.064	(0.044)	2776	0.15	0.20	
Politician member of	Yes	-0.171**	(0.072)	1101	0.16	0.22	0.13
a past governor's party	No	-0.054*	(0.028)	6343	0.14	0.14	
D: Repeated interaction							
More than median (two)	Yes	0.001	(0.040)	2988	0.15	0.11	0.01
judges in district	No	-0.131***	(0.036)	4453	0.11	0.18	
Judge worked less than median	Yes	-0.131**	(0.055)	1206	0.13	0.18	0.04
(1164) days in district	No	0.004	(0.037)	1200	0.14	0.04	
E: Judicial careers							
Judge has above median	Yes	-0.155***	(0.048)	1726	0.11	0.19	0.08
(0.29) career instability	No	-0.042	(0.042)	1726	0.18	0.12	

Notes: Regression discontinuity estimates for different subsamples. p -value of Difference is the p -value of the difference in estimated effects between the two subsamples, assuming that the two subsamples are independently drawn. A case is considered ready for decision before the election if there has been a publication regarding the case including the words *alegações finais*, *razões finais*, *derradeiras alegações*, *memoriais finais*, or *manifestações finais* in the Diário de Justiça before the election. The distance between the municipality and the court is calculated as the distance between the city of the municipal headquarter and the city where the court is located. A political party is considered a large party if it has more than median number of candidates in the 2004-2016 local elections. The number of judges is calculated as the number of regular judge positions (*varas*) in the judicial district, excluding substitute judges. The *career instability* of a judge is the probability that the judge is working in different judicial districts in two randomly chosen days in the two years before the election. Coefficients estimated using the bias-corrected estimator proposed by Calonico, Cattaneo, and Titiunik (2014) with a local linear regression for the estimate and local quadratic regression for the bias-correction. The running variable is the electoral win margin. No control variables. Ações de Improbidade involving candidates for mayor pending at the time of the election. Mean Marg. Loser shows the estimated mean of the outcome variable for the marginal loser, using the local linear fit. Standard errors clustered at the municipality times election level. * $p \leq 0.1$; ** $p \leq 0.05$; *** $p \leq 0.01$.

they might be able to do so informally through their network. In this section we present some evidence that speak to this type of mechanism.³⁵

6.2.1 The distance between the municipality and the court

Some of the favors and threats listed above, such as the offering of municipal jobs to relatives of judges, are likely more effective if the distance between the court and the municipality is small. Thus, if these types of "localized" favors and threats are driving the result we would expect the effect of winning the election on court outcomes to decline with the distance between the municipality and the court. In this section we test this prediction by exploiting the fact that Brazilian judicial districts are often composed of several municipalities with the court normally seated in the largest municipality. This means that some of the politicians in our sample are tried in a court located in their municipality, while others are tried in a neighboring municipality. Usually, judges and prosecutors live in the municipality where the court is located, because this gives a shorter commute and it is typically the largest of the municipalities composing the judicial district. Consequently, the chances for a politician to influence judicial outcomes by for instance offering easier access to public services or municipal jobs to law enforcers, their friends and families, is likely much larger if the court is located in the municipality where the politician holds power.

Panel B of Table 7 shows the result from estimating Equation 1 on the sub-samples of cases where the court is located in the municipality of the politician and in a neighboring municipality, respectively. Interestingly, the effect is statistically significant at the 5% level even for cases tried in a neighboring municipality. The point estimate is in fact larger, though we cannot reject the null hypothesis that the effect is the same as for cases tried in the municipality of the politician. In the last two rows of Panel B we also document that the effect does not seem to decay with the distance between the court and the municipality. There is a statistically significant effect even for municipalities located further than median (13 km) away from the court, with a larger point estimate than municipalities closer than median. With these results we can conclude that the offering jobs or municipal services to friends and relatives of law enforcers are unlikely to be the main driver of the effect. The results also provide evidence against the effect being driven by the need for cooperation between the court and the municipality, such as municipal lawyers assisting in the court.

³⁵ A final reason could be that elected politicians are bribing judges or prosecutors at a higher rate, using cash rather than their power over public resources. Although judicial corruption do occur in Brazil it is not clear why marginal winners would be willing to offer higher bribes than marginal losers due to the argument put forward in Section 6.1.

6.2.2 Party networks

Given that the effect of winning an election on court outcomes does not seem to decay with the distance between the municipality and the court, one candidate explanation is that law enforcers are influenced via political networks that cross municipal borders. An example of such a mechanism is that state judges could be reluctant to convict a mayor from the same party as the state governor since the governor wields some power over the state judiciary. We test for this type of mechanism in Panel C of Table 7. In the first two rows we proxy the size of a politician’s network by the size of his or her political party as measured by the number of candidates the party fielded in the 2004-2016 local elections, and estimate the effect of winning the election for members of larger and smaller than median parties, respectively. The result is striking. For members of large parties winning a close election is estimated to decrease the probability of conviction by 14 percentage points, whereas the same number is only 2 percentage points for members of small parties. The p -value of the difference is 0.02. In rows 3-4 we consider members of the party of the governor. Strikingly, winning a close election is estimated to reduce the chances of conviction by 20 percentage points for members of the governor’s party, compared to 6 percentage points for other politicians.³⁶ This difference is statistically significant at the 5 percent level. In rows 5-6 we show that this also applies to members of a *past* governor’s party ($p = 0.03$). To avoid this to be driven by the party of the current governor we only included past-governors from a different party. To test if the differential effect for members of the governor’s party is driven by the governor’s control over the state judiciary we consider only cases decided by federal judges in the last two rows of Panel C. Interestingly, there also seem to be a larger effect for members of the governor’s party in the federal judiciary ($p = 0.15$). Thus, the governor’s control over the state judiciary is probably not the only reason why the effect is larger for members of the governor’s party. In the Appendix Table A.6 we show all results for members of the governor’s party, the governor’s coalition, the president’s party, and the president’s coalition, separately for the state and the federal judiciaries. Consistent with the clout of the president over the federal judiciary we find that the effect is larger for members of the president’s coalition for cases decided in the federal judiciary ($p = 0.00$). However, there are not enough cases involving co-partisans of the president to conclude whether this is also the case for members of the president’s *party*.

Note that these results do not allow us to conclude that larger parties or the governor’s party are favored by the judicial system. To estimate this in the case of the governor’s party

³⁶This result mirrors the finding of Poblete-Cazenave 2019 that members of the governor’s party in India are more likely to get their criminal cases disposed of if they win a seat in the state legislature, while the opposite is true for politicians unaligned with the governor.

we apply the regression discontinuity design to governor elections in the Appendix Table A.7. While the relatively few close governor elections demand a large bandwidth, we estimate that party members of marginal winners in governor elections are 9 percentage points less likely to be convicted compared to party members of marginally losing governor candidates. This effect is statistically significant at the 10% level.

While there could be other explanations for these patterns, the evidence presented in this section is consistent with winners of local elections being favored by the judicial system via their political networks. Exactly how these networks are used is very difficult to assess. However, in Section 6.2.4 we consider one possible channel, local politicians using their connections to influence the careers of judges.

6.2.3 The role of repeated interaction

A politician who promises a judge a favor in exchange for an acquittal faces a commitment problem: After being acquitted the politician has no reason to fulfill the promise. While a formal contract between the politician and the judge is obviously not legally enforceable, one way to solve this commitment problem is through repeated interactions.³⁷ If the politician expects to encounter the same judge again he might want to fulfill the promise to make sure the judge remains friendly in the future. Thus, if electoral winners are favored in court due to threats or favors we might expect the effect to be larger when there is scope for repeated interaction between the politician and the judge. In our setting there are two variables that are key to determine the amount of interaction between a politician and a judge: The number of judges in the judicial district, and the time the judge spends in the judicial district. The number of judges in a district is important since cases are randomly allocated to judges, and more judges makes it less likely that a politician interacts several times with the same judge. The number of judges in a district varies to a great extent in our sample. In 40% of the cases there is a single judge, while in 27% of the cases there are 5 or more judges. The largest judicial district (the city of São Paulo) has 247 judges.

In the first two rows of Panel D in Table 7 we split our sample by the median number of judges and separately estimate the effect of winning the election on the conviction rate.³⁸ The result is consistent with repeated interactions being important. In judicial districts with more than two judges we estimate that winning the election *increases* the conviction rate by 0.1 percentage points, while in judicial districts with one or two judges it is estimated to

³⁷Another way could be for the judge to hold on to the case forever instead of acquitting the politician. Thus, the fact that our main result seem to be driven mostly be cases involving electoral winners being postponed could be explained by this commitment problem.

³⁸The number of judges is calculated as the number of regular judge positions (*varas*), excluding substitute judges.

decrease the conviction rate by 13 percentage points. The p -value of the difference in the effects is 0.01. Testing whether the effect is larger when the judge spends a longer time in the judicial district is more challenging. Both the identity of the judge and how long the judge stays in the district might be influenced by the election. We address this by considering the *pre-election judge*, the judge in the last publication in the Diário de Justiça regarding the case before the election, and consider the time this judge has spent in the judicial district up until the election. In the last two rows of Panel D we split our sample on the median (1164 days in judicial district) and estimate Equation 1 on each sub-sample. To avoid censoring we exclude cases decided shorter than 1200 days after the start of the Diário de Justiça. Surprisingly, we here reach the opposite conclusion. If the judge has spent a short time in the judicial district, and thus with less opportunities for repeated interactions with the politician, the estimated effect of winning the election on conviction is -13 percentage points compared to 0 percentage points otherwise. The p -value of this difference is 0.04. Thus, the evidence on the role of repeated interaction is mixed. What drives these seemingly contradictory conclusions we can only speculate. Nonetheless, one reason for judges with a short time in the district to be more influenced is that they might be more dependent on the court administration for their careers as discussed in the next section.

6.2.4 Judicial careers

As described in Section 2.2, trial judges in Brazil are formally highly independent.³⁹ However, one could still imagine informal ways in which politicians could use their power to affect the career or working conditions of a judge. Politicians at the state and federal levels decide about the salaries of judges, the budget of the judiciary, and appoint some appeal court judges. This means that the court administration, headed by the chief justice of the appeals court, to a certain degree is politicized.⁵ The court administration could again exert pressure on trial court judges in various ways. First, while judges are protected by the Constitution against being removed or transferred against their will, substitute judges who do not belong to any particular judicial district do not have protection against involuntary transfers. Second, the court administration decides on issues such as vacations, dispensation to travel abroad for conferences, and exemptions to the rule of living in the judicial district. Finally, although supposedly guided by objective criteria, promotions and transfers by the criteria of merit are in practice discretionary decided by the appeals court. Thus, even though trial judges are formally very independent, there are still ways in which political influence might creep in via the court administration. While local politicians have no power over the salaries of judges

³⁹Many of the points in this section also apply to prosecutors. However, since we lack data on the careers of the prosecutors we focus on the judges.

or judicial budgets, and do not play a role in appointing judges, they might be connected to politicians who do have such powers. In this section we show two types of evidence consistent with the view that judges favor politicians in power due to career concerns. First, we show that judges with a tendency to switch between judicial districts are more influenced by the election. Second, we show that, conditioning on a large set of covariates, judges who convict elected mayors are more likely to be promoted by the criteria of seniority as opposed to the criteria of merit.

As discussed in Section 2.2.1 there is a lot of movement of judges between judicial districts, and the court administration play an important role in determining these movements. Thus, judges who, for various reasons, tend to switch between judicial districts might worry that their decisions in politically sensitive cases could influence their careers. On the other hand, regular judges who have worked in the same judicial district over several years likely have fewer such concerns. Thus, as a proxy for a judge’s reliance on the court administration for her career we use the probability that the judge is found working in different districts in two randomly drawn days in the two years before the election. We call this the judge’s *career instability*. Estimating whether judges with a higher career instability are more influenced is not straight forward. First, we only know the identity of the judge when there is a publication in the Diário de Justiça. Second, the election might influence which judge is on the case. To address these concerns we focus on the *pre-election judge*, the judge on the case in the last publication in the Diário de Justiça before the election. One drawback is that the judge deciding the case might be different from the pre-election judge, causing measurement errors. In fact, the judge deciding the case is the same as the pre-election judge in only 43% of the cases in our sample where we have a final decision and a pre-election publication in the Diário de Justiça. This concern is, however, partly alleviated by the fact that when the judge deciding the case and the pre-election judge differ their career instability are nevertheless positively correlated (Pearson correlation of 0.3).

Panel E in Table 7 shows the effect of winning the election on convictions for cases where the pre-election judge has a higher and lower than median career instability, respectively. Judges with a high career instability seem to be affected more. Winning the election is estimated to cause a reduction of 16 percentage points in the conviction rate if the pre-election judge has a higher than median career instability, compared to 4 percentage points otherwise. The p -value of this difference is 0.08. In the Appendix Table A.4 we also show that judges early in their careers seem to be more influenced, however the left censoring of the data makes it impossible to conclude this with any reasonable certainty.

What about the future career of the judge? To assess whether convicting an elected politician has career consequences for a judge we select the sample of all final decisions

Table 8: The judge's future career

	<i>Dependent variable:</i>					
	Promoted by seniority			Promoted by merit		
	(1)	(2)	(3)	(4)	(5)	(6)
Panel A: Candidates for Mayor						
Politician convicted	−0.023 (0.033)	−0.021 (0.032)	−0.039 (0.033)	0.034 (0.031)	0.048 (0.030)	0.038 (0.031)
Elected	−0.017 (0.024)	−0.015 (0.025)	−0.016 (0.028)	−0.009 (0.022)	−0.003 (0.022)	−0.002 (0.026)
Politician convicted x Elected	0.111** (0.048)	0.119** (0.048)	0.103** (0.047)	−0.028 (0.043)	−0.030 (0.042)	−0.043 (0.042)
Mean Dep. Var.	0.16	0.16	0.16	0.12	0.12	0.12
Observations	1,124	1,122	1,122	1,124	1,122	1,122
Panel B: Candidates for City Council						
Politician convicted	−0.052 (0.054)	−0.040 (0.056)	−0.054 (0.056)	0.022 (0.049)	0.049 (0.051)	0.009 (0.049)
Elected	0.024 (0.044)	0.024 (0.044)	−0.0002 (0.061)	0.031 (0.034)	0.031 (0.034)	0.016 (0.051)
Politician convicted x Elected	−0.034 (0.068)	−0.031 (0.069)	−0.041 (0.067)	0.051 (0.068)	0.042 (0.066)	0.079 (0.063)
Mean Dep. Var.	0.13	0.13	0.13	0.11	0.11	0.11
Judge career controls		✓	✓		✓	✓
State fixed effects			✓			✓
Other controls			✓			✓
Observations	404	403	403	404	403	403

Notes: Ações de Improbidade involving candidates for mayor and city council decided within four years after the election. Only keeping cases where we know the identity of the judge, the judge is observed at least one year prior to the election, and the court has the criteria of promotion consistently recorded in the Diário de Justiça. Promoted by seniority (merit) is an indicator for whether the judge is promoted by the seniority (merit) criterion at any point after the decision. All regressions control for a cubic polynomial in the number of days between the decision and the last date of the Diário de Justiça. Other controls are the number of days between the election and the decision, the win margin of the politician interacted with whether the politician became elected, and the log of the population and GDP per capita of the municipality. Judge career controls are log population size of the municipality hosting the court, the average log population size of the municipalities the judge has worked in the past one and two years, and quadratic polynomials in the number of days the judge has previously worked in the judicial district and overall as a judge. Standard errors clustered at the politician level. $*p \leq 0.1$; $**p \leq 0.05$; $***p \leq 0.01$.

involving candidates for mayor and city council that were decided after the election but prior to the next election. We exclude cases decided later to make sure that electoral winners are in office at the time of the decision. We then run the following regression

$$Y_{j(i)} = \alpha_j + \mu_t + \beta Elected_i + \gamma Convicted_i + \delta Elected_i \times Convicted_i + \eta X'_i + \varepsilon_{ijt}$$

where $Y_{j(i)}$ is a future career outcome of judge j deciding case involving politician i , α_j and μ_t are judge and election year fixed effects, $Elected_i$ and $Convicted_i$ are dummies for whether politician i is elected and convicted, respectively, and X'_i are control variables. We control for a cubic polynomial in the number of days between the decision and the last date of the Diário de Justiça, the number of days between the election and the decision, the win margin of the politician interacted with whether the politician became elected, the log of the population and GDP per capita of the municipality, the log population size of the municipality hosting the court, the average log population size of the municipalities the judge has worked in the past one and two years, and quadratic polynomials in the number of days the judge has previously worked in the judicial district and overall as a judge.

In Table 8 we consider as outcomes dummies for whether the judge is recorded in the Diário de Justiça to be, in at least one occasion, promoted by the seniority and merit criterion, respectively.⁴⁰ Panel A considers mayoral candidates while Panel B considers candidates for city council. In the case of mayoral candidates, the results reveal an interesting pattern. The point estimates indicate that judges who convict losing mayoral candidates are more likely to be promoted by merit and less likely to be promoted by seniority, while judges who convict mayors are less likely to be promoted by merit and more likely to be promoted by seniority. Only the last coefficient, however, is statistically significant. One potential explanation for this result is that judges who have convicted a mayor strategically seek to be promoted via the criteria of seniority to avoid opposition to their candidacy from the court administration. In the Appendix Table A.8 we investigate whether judges who convict elected politicians tend to work in smaller judicial districts in the future. We find no evidence of this. However, overall, the evidence presented in this section suggests that even though trial judges are formally independent from local politics we cannot rule out that career concerns is part of the explanation for why judges tend to be less inclined to convict politicians in power.

⁴⁰We consider both promotions from one entrância to the next (promoção) and within entrâncias (remoção), as long as the criterion for promotion is stated in the Diário de Justiça.

6.3 Other mechanisms

6.3.1 Psychological mechanisms

Law enforcers could also be more lenient on electoral winners without expecting anything in return. For instance, it could be argued that moving forward with a case involving an elected politician could impede the functioning of local government and that it would be better for society to wait until the mandate of the politician is over. Consistent with this mechanism we do find evidence suggesting that cases involving electoral winners are postponed. However, given that we do not see any sign of an increase in the number of decisions involving marginal winners after the end of the mandate (Figure 4) we doubt that this is the main driver of the result. Another example of such a mechanism is that judges could wrongly attribute who wins in a close election as a signal of probity. This could happen if for instance electoral winners are less likely to be corrupt than electoral losers and the judge is not aware that the election was closely contested. We do not have a good way of testing this mechanism. However, it seems unlikely that the judge, who is required to reside in the judicial district and often would serve as an electoral judge overseeing the local election, does not know that an election was decided with a small win margin.

6.3.2 Destruction of evidence

A non-negligible share of the evidence used to convict in an Ação de Improbidade is in the form of documents. To the extent that such documents are in the hands of the municipality, an elected politician might be in a good position to destroy evidence. This could make it more difficult to convict politicians in power. However, there are two reasons to believe that this cannot be the main driver of our result. Most importantly, the majority of evidence is collected during the investigations prior to the filing of the case (*inquérito civil*), which happens before the election. Also, in Section 6.1 we found that there seem to be an effect also for cases ready for decision at the time of the election. There is no production of evidence after the case is ready for decision, except under very special circumstances.⁴¹

6.3.3 Media attention

Since a substantial share of the lower conviction rate among politicians in power seems to stem from cases being postponed, our result might be explained by judges not wanting to decide politically sensitive cases due to the media attention that such decisions might

⁴¹The judge could ask for the further production of evidence even when the case is ready for decision (*converter o julgamento em diligência*), if there are strong reasons to believe that this will influence the decision. For cases in our sample, this happens rarely.

generate. Judges might simply not want attention around their work. However, if this was the mechanism driving our result we would expect to also see postponement of cases where the politician is acquitted, since acquitting an elected politician of corruption charges also have the potential to generate substantial press attention. Also, in the Appendix Table A.5 we find no clear relationship between local media presence and the effect of winning the election on court outcomes.

6.3.4 Spillovers from criminal cases

Mayors in Brazil have special privileges when it comes to criminal court cases called *foro especial por prerrogativa de função*, colloquially known as /"foro privilegiado"/. Instead of being tried in the trial courts criminal cases involving mayors go directly to the appeals court. The acts a politician is accused of in an Ação de Improbidade are often criminal acts, which means that there might be a criminal case investigating some of the same facts running in parallel. If a mayoral candidate wins the election any criminal case in the trial court is sent to the appeals court. This could affect the Ação de Improbidade for two reasons. First, it can make it harder for the prosecutor in the Ação de Improbidade to collaborate with the prosecutor in the criminal case. Second, if the politician is acquitted in the related criminal case based on a ruling over a fact, the judge in the Ação de Improbidade is required by law to take this into account. These inter-linkages between criminal cases and Ações de Improbidade might explain parts of our result. However, it cannot explain the full magnitude of the effect. First, we have collected criminal cases involving candidates for mayor and city council in the state of São Paulo, and there are four times as many Ações de Improbidade as there are criminal cases. Thus, even if each criminal case is related to an Ação de Improbidade this channel alone seems unlikely to be able to generate a large effect. Also, it cannot explain the effect for city councilors who, with some exceptions, have no special privileges.⁴²

7 Incentives for corrupt politicians to run for election

We have documented that electoral winners are less likely to be convicted of corruption than electoral losers. This could lead to an adverse selection of politicians in electoral offices, as politicians who are facing corruption charges might seek electoral office to escape punishment. In this section we look for evidence consistent with such an effect. We first identify all politicians who ran for the office of mayor in the 2000, 2004, 2008, 2012 or the 2016 local

⁴²According to Cavalcante Filho and Lima (2017) city councilors have "foro privilegiado" in the states of Piauí, Roraima, Rio de Janeiro, and Bahia. There is still a statistically significant effect for city councilors after excluding these states.

elections. For each politician and election year we create a dummy variable indicating whether the public prosecution filed an Ação de Improbidade involving the politicians within the four years leading up to the election. We do not have a source of random variation in whether a corruption case is filed, so we cannot provide a causal estimate of being implicated in an Ação de Improbidade on future electoral outcomes. However, we do our best to control for differences in the probability of running in future elections due to observable variables. Specifically, we estimate the following regression

$$y_{it} = \alpha_i + \beta F_{it} + \gamma F_{it} * T_{it} + \mu_t + \eta X'_{it} + \varepsilon_{it}$$

where i is a politician and t an election year. The outcome variable y_{it} is whether the politician runs in or wins the upcoming mayoral election, and F_{it} is an indicator for whether there has been an Ação de Improbidade involving the politician filed since the last election. We add an interaction of F_{it} with the time between the election and the filing, T_{it} , to see if there is any differential effect depending on whether the case is filed closer to the election. We control for politician fixed effects, election year dummies, and the politician's prior political career X_{it} . As measures of a politician's past career we use dummies for whether the politician ran in and won all previous elections back to 2000, as well as the win margins.

The results are presented in Table 9. Column 2 shows that politicians are estimated to be 16 percentage points more likely to run for the office of mayor after being implicated in an Ação de Improbidade right before the election, than what would otherwise be predicted by their past career. The estimate is statistically significant at the one percent level. The negative coefficient on 'Years between election and filing' indicate that this effect is smaller if the case is filed a long time before the election. In particular, if the case is filed two years before the election the estimates indicate no effect. Column 4 shows that politicians are 6 percentage points more likely to become the next mayor after having an Ação de Improbidade filed against them.⁴³ This coefficient is also statistically significant at the one percent level. Similarly, this effect is highest if the case is filed just before the election, and there is no effect for cases filed three years before the election. Since we do not have a source of exogenous variation in whether a politician is implicated in an Ação de Improbidade, these results could be driven by omitted variables correlated with becoming a defendant in an Ação de Improbidade.⁴⁴ One such omitted variable that is likely to explain part of the result is the

⁴³Note that this result does not tell us much about the extent to which corrupt politicians are punished electorally as documented in Ferraz and Finan (2008). The higher chance of electing a mayor involved in an Ação de Improbidade could be attributed to the increased number of such candidates as opposed to voter preferences.

⁴⁴The result could also be explained by reverse causation if prosecutors are more likely to file cases against politicians they believe have a high chance of running for office or becoming elected.

Table 9: The filing of corruption cases and future elections

	<i>Dependent variable:</i>			
	Running in next mayoral election		Elected mayor in next election	
	(1)	(2)	(3)	(4)
Civil corruption case filed	0.101*** (0.013)	0.155*** (0.015)	0.064*** (0.009)	0.057*** (0.009)
Years between election and filing	-0.049*** (0.005)	-0.039*** (0.006)	-0.022*** (0.004)	-0.022*** (0.004)
Mean Dep. Var.	0.3	0.3	0.11	0.11
Politician FE		✓		✓
Election year FE		✓		✓
Electoral controls		✓		✓
Observations	245,470	245,470	245,470	245,470
R ²	0.0004	0.129	0.0002	0.159

Notes: All candidates for mayor in the 2000, 2004, 2008, 2012, and 2016 elections. Balanced panel, including also years the politician did not run. ‘Civil corruption case filed’ is a dummy for whether a civil corruption case involving the candidate was filed within four years before the election. ‘Years between election and filing’ is the average across all cases filed within those four years, and zero if no cases were filed. Electoral controls are whether the candidate ran, became elected, and the win margin for all of the previous elections back to 2000. Robust standard errors. $*p \leq 0.1$; $**p \leq 0.05$; $***p \leq 0.01$.

fact that elected mayors receive "foro privilegiado" in criminal cases. Many times there is a criminal case running in parallel to the Ação de Improbidade, and becoming mayor means that the criminal case is sent to the appeals court, where it is widely believed that the chances of conviction is lower.⁴⁵ However, if this is what is driving the result, the estimates still demonstrate that a judicial system favoring politicians in power attracts individuals facing corruption charges to electoral offices.

8 Conclusions

In this paper we documented that a large set of formal guarantees of judicial independence are insufficient to prevent politicians in power from being convicted of corruption at a lower rate. This type of judicial subversion can mute incentives against engaging in corruption among powerful politicians and adversely affect the pool of candidates running for electoral offices. What could be effective policies to tackle this problem? While this paper was not designed to estimate policy effects, our results nevertheless give us some indications of what might help curtail political influence over judicial outcomes. First, note that our results do not imply that formal independence is ineffective, just that the measures taken in Brazil are not sufficient. In particular, we have identified one limitation to the formal independence of judges that could make them susceptible to political pressure, namely a high propensity to move between judicial districts combined with a discretionary court administration. Reducing this discretion by for instance increasing the usage of seniority criteria and limiting the number of substitute judges could reduce political influence. We leave it for future research to investigate the effectiveness of such policies.⁴⁶ Another policy that should be investigated further is whether more judges in a judicial district makes them *de facto* more independent.⁴⁷ Finally, given that the postponement of cases is likely an important explanation of the lower conviction rate among electoral winners, policies that reduce the discretion of judges to determine when to decide cases could be contemplated.⁴⁸

⁴⁵A famous example illustrating this point is the accusation that ex-president Luiz Inácio Lula da Silva was nominated to the office of ministro-chefe da Casa Civil in 2016 to move his criminal cases from the hands of judge Sérgio Moro to the Supreme Court.

⁴⁶A first pass would be to exploit the fact that cases are randomly allocated to judges to test whether it is really the case that judges relying more on their court administration are more likely to rule in favor of powerful politicians.

⁴⁷Increasing the size of judicial districts could also have the additional benefit of eliminating the need for large movements of judges between districts. The benefits, of course, have to be traded off against the costs of increasing the distance between court users and the court.

⁴⁸The new Brazilian Code of Civil Procedure of 2015 contained one such provision. The initial draft of the legislation said that judges shall decide cases in the order in which cases are made ready for decision. However, in the final version the word "preferentially" was included.

9 References

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A Appendix

3) AÇÃO CIVIL PÚBLICA POR ATO DE IMPROBIDADE ADMINISTRATIVA

Processo nº 2801-91.2011 .8.10.0051 (2552/2011) – Themis PG

Requerente: MINISTÉRIO PÚBLICO ESTADUAL

Requerido: LENOILSON PASSOS DA SILVA

Advogado: EZEQUIEL PINHEIRO GOMES (OAB/MA 4566)

SENTENÇA

I – RELATÓRIO

O MINISTÉRIO PÚBLICO ESTADUAL, por sua representante legal, 1ª Promotoria de Justiça da Comarca de Pedreiras, no uso de suas atribuições constitucionais e legais, ajuizou a presente **AÇÃO CIVIL PÚBLICA POR ATOS DE IMPROBIDADE ADMINISTRATIVA** contra **LENOILSON DOS PASSOS DA SILVA**, qualificados nos autos.

Alega, em suma, que o Município de Pedreiras/MA, realizou em janeiro de 2000 (ainda na gestão do ex-Prefeito Edmilson Gonçalves Alencar Filho, cujo mandato foi encerrado em 31.12.2000, não tendo sido proposta a ação em seu desfavor, diante da configuração da prescrição) a contratação irregular do servidor **Ednaldo de Sousa Pinto**, para a função de Gari, permanecendo

⋮

II - FUNDAMENTAÇÃO

A) DO JULGAMENTO ANTECIPADO DA LIDE

Há a possibilidade, *in casu*, do julgamento antecipado da lide, com fulcro no art. 330, Inciso I, do CPC, vez que a questão de mérito é de direito e de fato, porém não existe a necessidade de produzir provas orais em audiência.

Diz o art. 330 do CPC:

“Art. 330 do CPC. O juiz conhecerá diretamente do pedido, proferindo sentença:

⋮

III - DISPOSITIVO

Pelo exposto, **JULGO PROCEDENTE O PEDIDO, condenando o requerido, ex-Prefeito Municipal de Pedreiras, LENOILSON PASSOS DA SILVA a:**

1) Pagar a **multa civil de 05 (cinco) vezes** o valor da remuneração percebida pelo réu em 2008, quando era Prefeito do Município de Pedreiras, acrescida de correção monetária, pelo INPC, e juros moratórios de 1,0% ao mês, contados de hoje até a data do efetivo pagamento. O valor da multa reverterá em favor do erário municipal;

2) **Ficar proibido de contratar** com o Poder Público **ou receber benefícios ou incentivos fiscais ou creditícios**, direta ou indiretamente, ainda que por intermédio de pessoa jurídica da qual seja sócio majoritário, pelo prazo de **03 (TRÊS) anos**;

3) **SUSPENSÃO DOS DIREITOS POLÍTICOS** pelo prazo de **05 (CINCO) ANOS**;

Figure A.1: Example of a Diário de Justiça publication from the Maranhão state court. A final decision in an Ação de Improbidade. Three dots indicate omitted content.

A.1 Institutional rules

This section presents the laws that ground the rules presented in section 2. First, Table A.1 presents the rules and their respective laws that guide the careers of judges and prosecutors. Second, Table A.2 presents the laws that guide the organization of the judicial system, that is, the laws that create and regulate the judicial districts and give provision for court houses and number of judges. These laws were also used to match municipalities to their judicial districts in the construction of the database as described in section 3.

A.2 Excluding common names

The algorithm we use to exclude common names is as follows: Each token in a name is assigned a log likelihood based on the rate with which this token appears in the names of all

Table A.1: Judicial organization laws

Description	Law
State Judicial Organization	
Acre (AC)	Complementary Law 221/2010 and 341/2017
Alagoas (AL)	Law 6564/2005
Amapá (AP)	Decree 069/1991
Amazonas (AM)	Complementary Law 17/1997
Bahia (BA)	Law n. 10845/2007
Ceará (CE)	Law n. 16387/2017
Espírito Santo (ES)	Complementary Laws n. 234/2002 and n. 788/2014
Goiás (GO)	Law n. 9129/1981 and n. 20254/2018
Maranhão (MA)	Complementary Law n. 14/1991
Mato Grosso (MT)	Law n. 4964/1985 and Complementary Law n. 490/2013
Mato Grosso do Sul (MS)	Laws n. 16511/1994 and n. 4904/2016
Minas Gerais (MG)	Complementary Law n. 59/2001
Pará (PA)	Law n. 5008/1981
Paraíba (PB)	Complementary Law n. 96/2010
Paraná (PR)	Law n. 14277/2003
Pernambuco (PE)	Complementary Laws n. 100/2007 and n. 366/2017
Piauí (PI)	Complementary Law n. 3716/1979
Rio de Janeiro (RJ)	Law n. 6956/2015
Rio Grande do Norte (RN)	Complementary Law n. 165/1999
Rio Grande do Sul (RS)	Law n. 7356/1980
Rondônia (RO)	Complementary Law n. 94/1993
Roraima (RR)	Complementary Law n. 221/2014
Santa Catarina (SC)	Law n. 5624/1979, C. Law n. 233/2002, and Res. 08/07 TJ 2007
São Paulo (SP)	Complementary Laws n. 3/1969 and n. 1274/2015
Sergipe (SE)	Complementary Laws n. 88/2003 and n. 301/2018
Tocantins (TO)	Complementary Law n. 10/1996
Federal Judicial Organization	Law 5010/1966
Judiciary has financial autonomy	Federal Constitution Art. 99

Notes: The only practical difference between a "law" and a "complementary law" is that the law is approved with a simple majority of the legislative vote, while the complementary law is only approved with an absolute majority vote.

Table A.2: Judicial rules

Rule description	Law
Ação civil de improbidade administrativa	Law 8429/92
Judges are appointed via public exam	FC Art. 93-I (CA 45/2004)
Prosecutors are appointed via public exam	FC Art. 127 §2 (CA 19/1998)
Judges cannot have wages docked (irredutibilidade)	FC Art. 95-III (CA 19/1998)
Judges cannot be removed from the district (inamovibilidade)	FC Art. 95-II and 93-VIII (CA 103/2019)
Judges have tenure (vitaliciedade)	FC Art. 95-I
Substitute judges can only be moved within circunscrição	Supreme Court MS 27958
Titular judges are required to live in the comarca/subseção	FC Art. 93
Prosecutors cannot have wages docked (irredutibilidade)	FC Art. 128 §5-I-c (CA 19/1998)
Prosecutors cannot be removed from courts (inamovibilidade)	FC Art. 128 §5-I-b (CA 45/2004)
Prosecutors have tenure (vitaliciedade)	FC Art. 128 §5-I-a
Prosecutors are independent from all branches of government	FC Art. 127 §1-§2 (CA 19/1998)
Prosecutors are required to live in the judicial district	FC Art. Art. 129 §2 (CA 45/2004)
Judges are prohibited from political activity	FC Art. 95 §1-III
Judges are prohibited from management	LOMAN Art. 36
Prosecutors are prohibited from political activity	FC Art. 128 §5 II-e (CA 45/2004)
Prosecutors are prohibited from management	FC Art. 128 §5 II-c
Promotion of judges alternately by merit and by seniority	FC Art. 93-II-III (CA 45/2004) and 107-II
State judiciary remoção follows promotion criterion	FC Art. VIIIA (CA 45/2004)
Federal judiciary remoção follows seniority criteria	CJF Res. 248/2013 Art. 29 §3
Federal judiciary sequence of career movements	CJF Res. 248/2013 Art. 26
State judiciary sequence of career movements	LOMAN Art. 81
Merit promotion based on list with three judges	LOMAN Art. 80
Voting rules on the merit criteria	FC Art. 93-II-c (CA 45/04); CNJ Res. 106/10
President chooses federal appeals court judge by merit	LOMAN Art. 5
One fifth of the appeals court filled by lawyers and prosecutors	FC Art. 94 and Art. 107-I

Notes: FC stands for Federal Constitution, CA for Constitutional Amendment, and LOMAN for Lei Orgânica da Magistratura Nacional (Complementary Law 35/1979), CNJ for Conselho Nacional de Justiça, and CJF for Conselho de Justiça Federal.

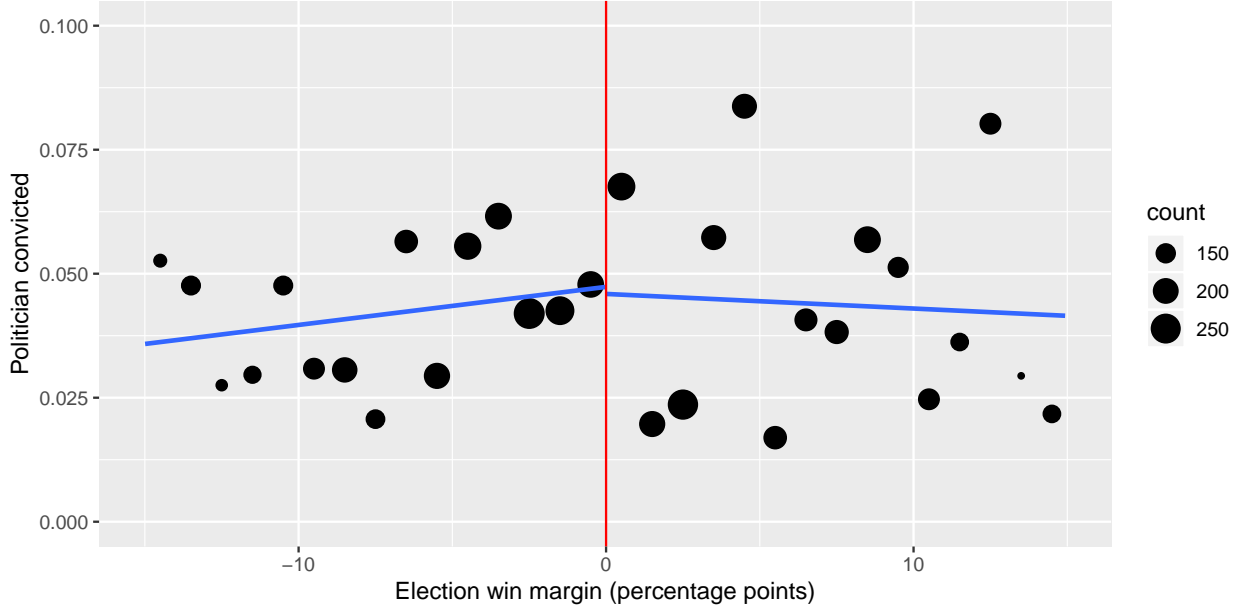


Figure A.2: Placebo regression discontinuity plot. Ações de Improbidade involving candidates for mayor or city council decided before the election.

litigants involved in a court case in the state of São Paulo between 2012 and 2017. A politician name is excluded if the sum of the log likelihood of all tokens in the name is less than -25 in the case of mayoral candidates and -30 in the case of candidates for city council. We exclude more city council candidates since they have a higher risk of being falsely matched to a court case due to their lower prior probability of being involved in an Ação de Improbidade. A log likelihood of -30 corresponds to names such as "Jefferson Carvalho Sales", "Eliaana Aparecida dos Santos", and "Terezinha de Jesus Costa".

A.3 Robustness of main result

It is not infrequent that we are aware of an Ação de Improbidade that was filed before the election only from publications in the Diário de Justiça made after the election. If the election affects whether there are post-election publications regarding a case, this could induce bias. Thus, in this section we show that the result is robust to including only cases that has a publication in the Diários de Justiça before the election. To avoid any possibility for the election to influence our sample we make sure that all the information we use to select our sample is taken from Diário de Justiça publications *before* the election. This means that we also consider only pre-election publications when matching candidates and defendants, and when determining whether the public prosecutor is recorded as a plaintiff

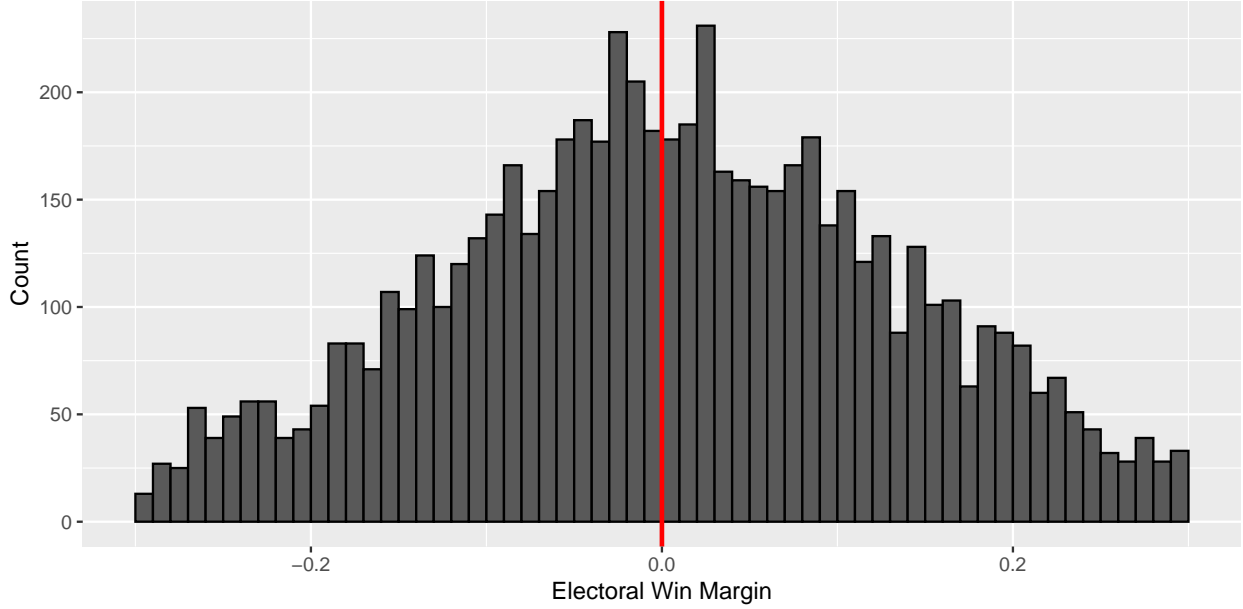


Figure A.3: Regression discontinuity histogram. Ações de Improbidade involving candidates for mayor or city council pending at the time of the election.

and the case is classified as an Ação de Improbidade.⁴⁹ Column (1) of Table A.3 shows the result from running our main regression discontinuity specification on this sample. The estimated coefficient is still statistically significant at the 1% level. As a further robustness check we show in Column (2) that our main result is still statistically significant at the 5% level when including politicians with common names. The estimated coefficient is slightly smaller, most likely due to false matches.

A.4 More heterogeneous effects

For the sake of completeness we provide additional result on heterogeneous effects in Tables A.4 to A.6. All the variables that are not self-explanatory are defined in the table notes. We give details on data sources and interpretations for some of the results below.

A.4.1 Do electoral winners have better lawyers due to liquidity constraints?

Even if marginal winners and marginal losers have the same *willingness* to pay for a good lawyer due to the argument in Section 6.1, it could be the case that the *ability* to pay is larger for the marginal winners. That is, marginal winners might be less liquidity constrained. The

⁴⁹In some instances the type of the court case (*classe*) might change from one publication to another from for instance an Ação Civil Pública to an Ação de Improbidade. By making sure that the case is recorded as an Ação de Improbidade before the election we avoid concerns that the classification of a court case might be endogenous to the election result.

Table A.3: Robustness of main result

	Dependent variable: Politician convicted	
	Only pre- election cases (1)	Keeping common names (2)
Elected (se)	-0.093*** (0.034)	-0.054** (0.023)
N	3561	8675
Bandwidth	0.12	0.14
Mean Marg. Loser	0.14	0.14

Notes: The first column shows the main regression discontinuity result restricting the sample to cases which has a pre-election publication in the Diário de Justiça including the name of the politician as defendant and categorized as Ação de Improbidade. The second column shows the main regression discontinuity result including politicians with common names. Regression discontinuity estimates using the bias-corrected estimator proposed by Calonico, Cattaneo, and Titiunik (2014) with a local linear regression for the estimate and local quadratic regression for the bias-correction. The running variable is the electoral win margin. No control variables. Ações de Improbidade involving candidates for mayor pending at the time of the election. Mean Marg. Loser shows the estimated mean of the outcome variable for the marginal loser, using the local linear fit. Standard errors clustered at the municipality times election level. $*p \leq 0.1$; $**p \leq 0.05$; $***p \leq 0.01$.

Table A.4: Heterogeneous effects: More variables

		Coef.	(se)	N	Band- width	Mean Marg. Loser	p-value of Difference
Politician has higher education	Yes	−0.107***	(0.039)	3316	0.12	0.17	0.26
	No	−0.048	(0.035)	4128	0.16	0.15	
Politician has a larger than median campaign	Yes	−0.093**	(0.038)	4474	0.12	0.16	0.34
	No	−0.048*	(0.028)	4792	0.13	0.11	
Incumbent mayor (mayoral candidates only)	Yes	−0.026	(0.046)	1516	0.13	0.08	0.25
	No	−0.090***	(0.030)	2731	0.14	0.12	
Higher than median share of employees in public sector	Yes	−0.076*	(0.039)	3720	0.14	0.16	0.95
	No	−0.073**	(0.036)	3719	0.13	0.15	
Politician older than 54 years	Yes	−0.084*	(0.044)	2581	0.14	0.15	0.55
	No	−0.047	(0.043)	2655	0.16	0.16	
Filed less than median (1219) days before the election	Yes	−0.070	(0.043)	3537	0.16	0.17	0.71
	No	−0.092**	(0.039)	3151	0.12	0.15	
Judge has less than two years experience	Yes	−0.181*	(0.098)	390	0.14	0.21	0.38
	No	−0.091***	(0.034)	3297	0.13	0.15	
Local elite: Politician surname matches local street name	Yes	−0.199*	(0.114)	405	0.13	0.22	0.26
	No	−0.066**	(0.027)	6944	0.14	0.15	

Notes: Regression discontinuity estimates for different subsamples. p -value of Difference is the p -value of the difference in estimated effects between the two subsamples, assuming that the two subsamples are independently drawn. To avoid censoring we exclude cases decided shorter than 1200 days before the start of the Diário de Justiça when determining whether a judge has less than two years of experience. A politician name is considered to match a local street name if all the surnames of the politician appear in the name of the street. Coefficients estimated using the bias-corrected estimator proposed by Calonico, Cattaneo, and Titiunik (2014) with a local linear regression for the estimate and local quadratic regression for the bias-correction. The running variable is the electoral win margin. No control variables. Ações de Improbidade involving candidates for mayor pending at the time of the election. Mean Marg. Loser shows the estimated mean of the outcome variable for the marginal loser, using the local linear fit. Standard errors clustered at the municipality times election level. * $p \leq 0.1$; ** $p \leq 0.05$; *** $p \leq 0.01$.

Table A.5: Heterogeneous effects: Local media presence

		Coef.	(se)	N	Band- width	Mean Marg. Loser	p-value of Difference
Municipality has FM radio in 2014	Yes	-0.054	(0.036)	4240	0.15	0.16	0.36
	No	-0.104***	(0.040)	3202	0.11	0.14	
Municipality has a newspaper in 2014	Yes	-0.108**	(0.045)	3176	0.12	0.17	0.29
	No	-0.048	(0.034)	4266	0.14	0.14	
Municipality has AM radio in 2014	Yes	-0.038	(0.042)	2482	0.16	0.13	0.33
	No	-0.090***	(0.032)	4960	0.14	0.17	
Municipality has a community radio in 2014	Yes	-0.074**	(0.032)	5089	0.14	0.15	0.88
	No	-0.065	(0.048)	2353	0.12	0.16	
Municipality has an internet provider in 2014	Yes	-0.104***	(0.032)	5500	0.12	0.17	0.03
	No	0.027	(0.052)	1942	0.12	0.09	

Notes: Regression discontinuity estimates for different subsamples. p -value of Difference is the p -value of the difference in estimated effects between the two subsamples, assuming that the two subsamples are independently drawn. Coefficients estimated using the bias-corrected estimator proposed by Calonico, Cattaneo, and Titiunik (2014) with a local linear regression for the estimate and local quadratic regression for the bias-correction. The running variable is the electoral win margin. No control variables. Ações de Improbidade involving candidates for mayor pending at the time of the election. Mean Marg. Loser shows the estimated mean of the outcome variable for the marginal loser, using the local linear fit. Standard errors clustered at the municipality times election level. $*p \leq 0.1$; $**p \leq 0.05$; $***p \leq 0.01$.

Table A.6: Heterogeneous effects: The parties of the governor and the president

		Coef.	(se)	N	Band- width	Mean Marg. Loser	p-value of Difference
A: State courts							
Politician member of the governor's party	Yes	−0.171**	(0.079)	719	0.12	0.17	0.12
	No	−0.038	(0.033)	3539	0.15	0.10	
Politician member of the governor's coalition	Yes	−0.061	(0.042)	1410	0.12	0.07	0.83
	No	−0.049	(0.039)	2848	0.15	0.13	
Politician member of a past governor's party	Yes	−0.163**	(0.077)	681	0.12	0.17	0.14
	No	−0.040	(0.032)	3577	0.15	0.10	
Politician member of the president's party	Yes	−0.064	(0.077)	496	0.17	0.13	0.88
	No	−0.051	(0.032)	3762	0.15	0.10	
Politician member of the president's coalition	Yes	−0.081	(0.069)	842	0.12	0.15	0.65
	No	−0.046	(0.033)	3416	0.16	0.10	
B: Federal courts							
Politician member of the governor's party	Yes	−0.254**	(0.125)	410	0.10	0.31	0.15
	No	−0.064	(0.044)	2776	0.15	0.20	
Politician member of the governor's coalition	Yes	−0.095	(0.083)	935	0.10	0.20	0.94
	No	−0.088*	(0.051)	2251	0.15	0.21	
Politician member of a past governor's party	Yes	−0.203*	(0.122)	420	0.16	0.28	0.24
	No	−0.052	(0.043)	2766	0.15	0.19	
Politician member of the president's party	Yes	−0.132	(0.102)	419	0.14	0.20	0.45
	No	−0.049	(0.039)	2767	0.22	0.20	
Politician member of the president's coalition	Yes	−0.364***	(0.105)	643	0.10	0.41	0.00
	No	−0.029	(0.045)	2543	0.16	0.18	

Notes: Regression discontinuity estimates for different subsamples. p -value of Difference is the p -value of the difference in estimated effects between the two subsamples, assuming that the two subsamples are independently drawn. Politician member of a past governor's party indicates whether the politician is from the party of any past governor since 1998, excluding the party of the current governor. Coefficients estimated using the bias-corrected estimator proposed by Calonico, Cattaneo, and Titiunik (2014) with a local linear regression for the estimate and local quadratic regression for the bias-correction. The running variable is the electoral win margin. No control variables. Ações de Improbidade involving candidates for mayor pending at the time of the election. Mean Marg. Loser shows the estimated mean of the outcome variable for the marginal loser, using the local linear fit. Standard errors clustered at the municipality times election level. * $p \leq 0.1$; ** $p \leq 0.05$; *** $p \leq 0.01$.

official salary and other income that might derive from holding electoral office could make electoral winners more able to pay for lawyers. In order to test whether liquidity constraints could explain the result we investigate in this section whether there are heterogeneous effects depending on whether politicians are likely to be liquidity constrained based on pre-election covariates. The two characteristics we look at are whether the politician has higher education, and whether the campaign expenses of the politician is larger than the median campaign. The results, presented in the first four rows of Table A.4, show no evidence of there being a larger effect for more liquidity constrained politicians. The point estimates are in fact larger for both politicians with higher education and politicians with large campaigns. Thus, elected politicians having better lawyers due to liquidity constraints is unlikely to be the main driver behind the result.

A.4.2 Local elites and political dynasties

The literature has shown that belonging to a political dynasty can be very important for a politician’s career (e.g. Dal Bó, Dal Bó, and Snyder 2009). As a proxy for whether the politician belongs to a local elite family we look for any street names that matches the politician’s family name in the municipality she is running for office. Many streets in Brazil are named after members of traditional local families, either because they are important to the history of the municipality or because as politicians some deal ensured that they got a street named after them. Thus, looking if any streets in a municipality has the same family name as the politician is a good proxy if she belongs to a local dynasty. We use the *Cadastro Nacional de Endereços para Fins Estatísticos* from IBGE, a database with the name of all street addresses in Brazil that is used to sample the census. We consider a politician as a member of a local elite family if all the surnames of the politician appear in the name of a local street. The results are presented in the last two line of Table A.4, consistent with political dynasties having more power there is a large and significant effect at the 10% level if the politician matches a local street name, however we cannot reject the hypothesis that this effect is equal to the effect of the politician that does not have a street named after his family.

A.4.3 Media

Table A.5 shows the results for local media presence. The existence of FM, AM and community radio, newspaper, and internet provider in all Brazilian municipalities in 2014 is capture by the *Pesquisa de Informações Básicas Municipais* (MUNIC) from IBGE. The existence of news media with local content is considered important to disseminate news about po-

litical corruption (Ferraz and Finan 2008) and is determinant in judicial sentencing (Lim, Snyder, and Strömberg 2015). In addition, politicians in Brazil are formally prohibited to own radio or TV companies while in office. The second and sixth lines of Table A.5 shows evidence consistent with the literature: If a municipality did not have a FM or AM radio marginal winners are less likely to be convicted and the effect is significant at the 1% level. The remaining lines demonstrate the effects for newspapers, community radio, and internet provider. Municipalities that have these services show, on the contrary, a significant effect on reducing the likelihood of conviction. It could be that since politicians have more control over their narrative in these mediums (because they are only barred from owning only radio and TV), they could impose their side of the story about the law suit or try to suppress the story entirely. However, in all of the cases, except for the municipality having internet provider, the difference between groups is insignificant.

A.5 Close governor elections

In order to obtain an estimate of the extent to which politicians from the same party or electoral coalition as the state governor are treated more lenient by the judicial system we apply our empirical design to governor elections in this section. In particular for each candidate in a governor election we select all Ações de Improbidade involving politicians who has previously been a candidate in a local election for the same party or from a party in coalition with the candidate. If a candidate has been member of the party of more than one governor candidate, we keep the most recent affiliation. As in our main specification, we only consider Ações de Improbidade pending at the time of the governor election: Those which were filed before the election and we have not identified any final decision prior to the election. The result is presented in Table A.7. In Column (1) we consider members of the same party as the governor candidate, while Column (2) considers members of the electoral coalition. We estimate that members of the party of a governor candidate are 9 percentage points less likely to be convicted in Ações de Improbidade filed before the election if the candidate wins the election with a small margin. This effect is statistically significant at the 10% level. The regression discontinuity plot can be seen in Figure A.4. Figure A.5 shows local linear regression discontinuity estimates for bandwidths between 5 and 30 percentage points. The local linear estimates are statistically significant at the 5% level for bandwidths of 13 percentage points and above. However, as the bandwidth decreases the standard errors increase and the estimate tends toward zero. This tendency is a concern and might indicate that there is no jump at the discontinuity. It could also be due to there being very few governor elections decided with a small win margin. Without more data it is thus difficult to conclude with certainty whether members of the governor’s party are indeed treated more

Table A.7: Governor election regression discontinuity results

	Dependent variable: Politician convicted	
	(1)	(2)
	Politicians from the candidate's party	Politicians from the candidate's coalition
Governor candidate elected (se)	-0.091* (0.049)	-0.035 (0.043)
N	12452	37138
Bandwidth	0.20	0.22
Mean Marg. Loser	0.15	0.092

Notes: Ações de Improbidade involving politicians from the same party or coalition as a governor candidate pending at the time of the governor election. Regression discontinuity estimates using the bias-corrected estimator proposed by Calonico, Cattaneo, and Titiunik (2014) with a local linear regression for the estimate and local quadratic regression for the bias-correction. The running variable is the share of votes obtained in the election by the candidate for governor. No control variables. Mean Marg. Loser shows the estimated mean of the outcome variable for the marginal loser, using the local linear fit. Standard errors clustered at the state times election year level. $*p \leq 0.1$; $**p \leq 0.05$; $***p \leq 0.01$.

lenient by the judicial system. We find no statistically significant effect for members of the candidate's coalition in Column (2).

A.6 More on judicial careers

In Table A.8 we run the same regressions as in Section 6.2.4 except with the outcome variables being the average of the log population in the municipality where the judge who decides the case is working across respectively 2 and 6 years after the decision, or until the last date of the Diário de Justiça. Anecdotally, larger municipalities are more attractive as they provide more amenities and a more stimulating work environment. Thus, the size of the municipality might be a good proxy for the career outcome of a judge. We find no evidence that judges who convict elected politicians tend to work in smaller municipalities in the future.

Table A.8: Judicial careers: Average future size of judicial district

	<i>Dependent variable:</i>					
	Mean log population years 0-2			Mean log population years 0-6		
	(1)	(2)	(3)	(4)	(5)	(6)
Panel A: Candidates for Mayor						
Politician convicted	0.329*** (0.098)	0.007 (0.031)	0.002 (0.031)	0.313*** (0.096)	-0.006 (0.034)	-0.011 (0.035)
Elected	-0.052 (0.082)	-0.012 (0.026)	-0.039 (0.031)	-0.048 (0.081)	-0.006 (0.029)	-0.052 (0.035)
Politician convicted x Elected	0.002 (0.137)	0.021 (0.045)	0.031 (0.045)	-0.036 (0.136)	-0.016 (0.049)	-0.010 (0.048)
Mean Dep. Var.	11.44	11.44	11.44	11.5	11.5	11.5
Observations	1,718	1,718	1,718	1,719	1,719	1,719
Panel B: Candidates for City Council						
Politician convicted	0.190 (0.139)	0.074* (0.043)	0.069 (0.043)	0.140 (0.139)	0.037 (0.052)	0.030 (0.052)
Elected	0.019 (0.102)	-0.027 (0.031)	-0.022 (0.039)	-0.029 (0.100)	-0.059 (0.038)	-0.030 (0.048)
Politician convicted x Elected	-0.241 (0.182)	-0.059 (0.057)	-0.037 (0.059)	-0.162 (0.180)	0.002 (0.068)	0.034 (0.071)
Mean Dep. Var.	11.65	11.65	11.65	11.7	11.7	11.7
Judge career controls		✓	✓		✓	✓
State fixed effects			✓			✓
Other controls			✓			✓
Observations	1,069	1,059	1,059	1,070	1,059	1,059

Notes: The outcome variable is the average of the log population in the municipality where the judge deciding the case is working in across respectively the next 2 and 6 years, or until the last date of the Diário de Justiça. Ações de Improbidade involving candidates for mayor and city council decided within four years after the election. Only keeping cases where we know the identity of the judge and the judge is observed at least one year prior to the election. All regressions control for a cubic polynomial in the number of days between the decision and the last date of the Diário de Justiça. Other controls are the number of days between the election and the decision, the win margin of the politician interacted with whether the politician became elected, and the log of the population and GDP per capita of the municipality. Judge career controls are log population size of the municipality hosting the court, the average log population size of the municipalities the judge has worked in the past one and two years, and quadratic polynomials in the number of days the judge has previously worked in the judicial district and overall as a judge. Standard errors clustered at the politician level. * $p \leq 0.1$; ** $p \leq 0.05$; *** $p \leq 0.01$.

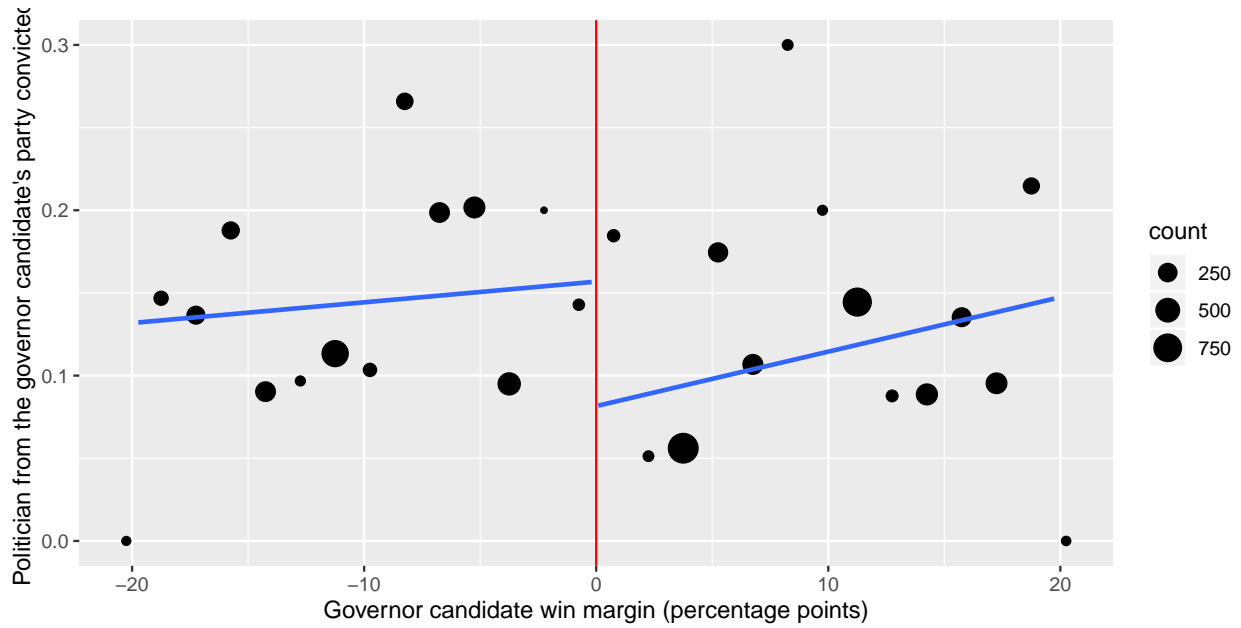


Figure A.4: Governor elections regression discontinuity plot. Ações de Improbidade involving politicians from the same party as a governor candidate pending at the time of the governor election.

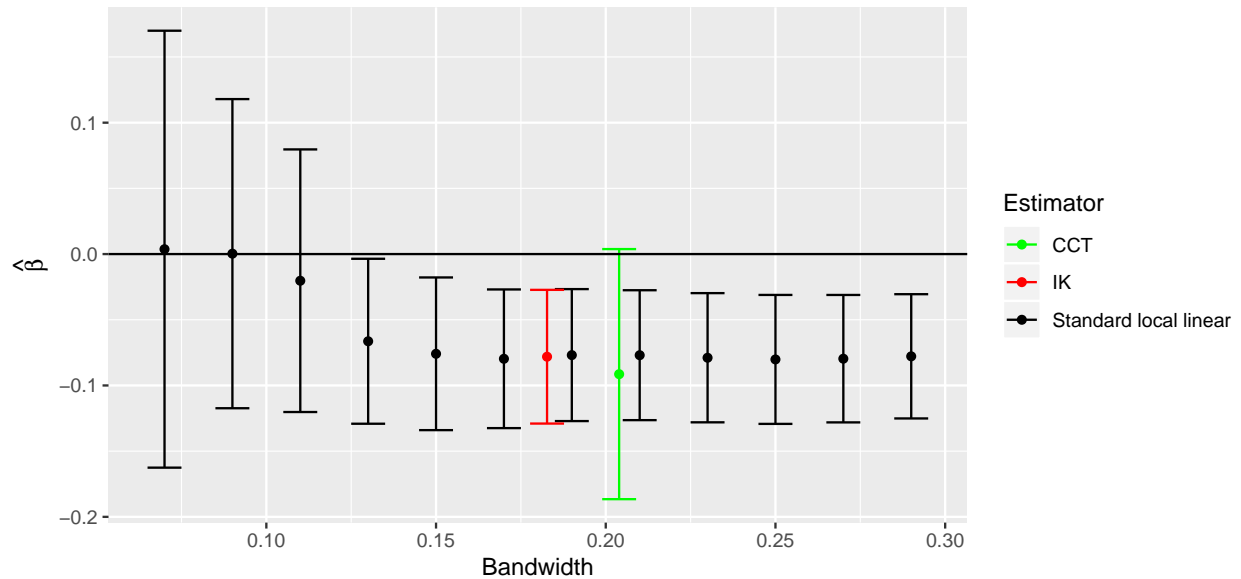


Figure A.5: Governor elections regression discontinuity estimates for different bandwidths. Ações de Improbidade involving politicians from the same party as a governor candidate pending at the time of the governor election. The local linear specifications uses a triangular kernel. ‘IK’ uses the Imbens and Kalyanaraman (2012) optimal bandwidth. ‘CCT’ uses the bias-corrected estimator proposed by Calonico, Cattaneo, and Titiunik (2014) with a local linear regression for the estimate and local quadratic regression for the bias-correction. 95% confidence intervals. Standard errors clustered at the state times election year level.