

Racial Bias in Criminal Appeals

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Abstract

Existing work indicates that retention through reelection induces larger effects on judicial votes in criminal cases than retention through reappointment. Yet existing work has addressed neither selection effects, nor heterogeneous treatment effects by defendant race, across retention institutions. Leveraging the unique retention institutions governing New York State's intermediate appellate judges, we report the first within-justice estimates of the effects of both reelection and reappointment incentives on judicial votes in criminal appeals. Our findings indicate that impending judicial reappointment induces a 33 - 36% decrease in appellate votes in favor of black defendants, but has no effects on votes in cases involving white or non-Hispanic white defendants. We find no additional effects of impending reelection on appellate justice votes in criminal appeals. Our findings may indicate the need for greater attention devoted both to potential selection effects, and to heterogeneous effects by defendant race, in studies of judicial retention institutions.

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1 Introduction

A growing body of evidence indicates that judicial retention incentives may affect judges’ rulings in criminal cases, potentially violating norms of fairness requiring that like defendants be treated alike (Huber and Gordon, 2004; Gordon and Huber, 2007; Shepherd, 2009*b*; Berdejo and Yuchtman, 2013; Lim, 2013; Iaryczower, Lewis and Shum, 2013; Canes-Wrone, Clark and Kelly, 2014; Lim, Snyder and Stromberg, 2015). This work suggests in particular that retention through reelection induces larger effects on judicial votes in criminal cases than retention through reappointment. An especially troubling recent finding is that trial court judges retained through competitive partisan elections issue more punitive sentences to black defendants, but not to non-black defendants, as elections approach (Park, 2017). This evidence has led some to advocate against the use of elections, particularly competitive partisan elections, for judicial selection and retention (see e.g. Swisher (2010)).

Yet existing work has been constrained to cross-institutional estimates, limiting the ability to draw causal inferences. In New York State, intermediate appellate justices must be elected, and re-elected, in contested partisan elections in order to be eligible for gubernatorial appointment, and reappointment, as Appellate Division justices. Using content extracted from the crawled text corpus of the approximately 38,000 slip opinions in criminal appeals heard by New York State’s intermediate appellate courts between 2003-2017, appellate justice election and appointment data sourced from the New York State Board of Elections and the New York State Judicial Screening Committee, and defendant demographic and crime data crawled from the New York State Department of Corrections’ inmate database, we report the first within-justice estimates of the effects of both reelection and reappointment calendars on judicial votes on criminal appeals.

In sharp contrast to the existing literature on judicial retention, we find that impending reappointment induces fewer pro-defendant votes in criminal appeals, but find no additional effects of impending reelection. We further find that the negative effect of approaching reappointment on pro-defendant votes in criminal appeals appears only in cases involving black defendants, not in cases involving white or non-Hispanic white defendants. Our baseline models include justice, year, and month fixed effects and standard errors clustered on both justice and case; baseline estimates are robust to the inclusion of pre-ruling case and panel covariates, the restriction of samples to exclude dissenting votes, and matching on defendant characteristics across race/ethnicity subsam-

ples. Covariate balance tests on (a) case and panel features, (b) justice-specific caseloads and (c) the probability of case recusal indicate that the distribution of cases remains relatively constant over justices' reappointment and reelection calendars.

Our findings suggest that appellate justices in New York State are approximately 33 - 36% less likely to vote in favor of black defendants in their reappointment years. Years in which appellate justices must be both reappointed and reelected have no additional effect on their votes. We find no reappointment or reelection effects in cases with white or non-Hispanic white defendants. Our findings may indicate the need for greater attention to potential selection effects, and to heterogeneous effects by race of defendant, in studies of judicial retention institutions.

2 Estimating Effects of Judicial Reelection and Reappointment

Some work on judicial retention incentives has focused on estimating the effects of only a single retention institution. Using this approach, studies have found effects of retention incentives on judicial decisionmaking when judges are retained both through reelection (Hall (1995), Huber and Gordon (2004), Berdejo and Yuchtman (2013), Gordon and Huber (2007), Lim (2013)) and through reappointment (Gray (2017), Blake (2018)).

Those studies that have attempted to compare the magnitudes of the effects of reappointment with those of reelection have generally found that reappointment incentives appear to have weaker effects on judicial decisionmaking, relative to reelection incentives. For example, Hanssen (1999) found a higher volume of civil litigation in states with appointed rather than elected supreme court judges, suggesting that appointed judges are more independent from retention agents, induce greater uncertainty over their likely decisions, and hence induce lower settlement rates and higher volumes of litigation. Hanssen (2000) found larger administrative bureaucracies in states with appointed rather than elected supreme court judges, suggesting that appointed judges are more independent from the political influences affecting agency policy development, thereby inducing agencies to hire larger staffs to defend their policies from the threat of judicial review. Tabarrok and Helland (1999) and Helland and Tabarrok (2002) found that trial awards imposed on out-of-state defendants are significantly larger in states with elected appellate judges, relative to states with appointed appellate judges, suggesting greater responsiveness to in-state plaintiffs under the former retention system. Shepherd (2009*b*) found significant responsiveness to reten-

tion agents' preferences when state supreme court judges are retained via reelection, but few to no effects for judges retained via gubernatorial reappointment.¹ Besley and Payne (2013) found a lower volume of anti-discrimination claims filed in states whose appellate judges are retained through reappointment, relative to states wherein appellate judges are retained through reelection, suggesting that judges retained through reappointment are less responsive to voters' preferences for anti-discrimination protections. Iaryczower, Lewis and Shum (2013) found that judicial reelection, but not judicial reappointment, appears to have incentivized fewer pro-defendant rulings in a sample of criminal appeals heard by state supreme courts between 1995 and 1998. In their study of media effects on trial judge sentencing decisions in criminal cases, Lim, Snyder and Stromberg (2015) found no effects of newspaper coverage on the decisions of judges retained through reappointment, noting, "the appointment system renders little or no incentive effect in the first place. Thus, there is little room for media influence to work through the incentive effect."²

The design of judicial retention institutions may also affect the expression of racial bias by judges. Justices retained through elections may be particularly sensitive to the reception of rulings involving nonwhite defendants, perhaps due to asymmetric media coverage of pro-defendant rulings when defendants are nonwhite, voter bias, or both (Entman and Gross, 2008). Although there is as yet little work on this question, using Kansas data on the universe of convicted felons sentenced between 1998 and 2011, Park (2017) finds that incarceration rates rise for black but not white felons during the six months immediately preceding a reelection event, for trial judges retained through contested partisan elections. He finds no comparable effect for trial judges retained through nonpartisan retention elections.

The apparently greater influence of political pressures on the decisions of state judges retained through reelection has led some to advocate reappointment as a preferable retention mechanism (see e.g. Swisher (2010)). However, it is not clear how to compare estimates of judicial responsiveness to retention incentives under different retention institutions, given the selection effects that may be at work. Assume for the sake of argument, for example, that reappointment incentives in fact exert stronger effects on appellate decisions than reelection incentives, and in particular that

¹Using only the subset of cases wherein a government agent was a party to civil litigation, Shepherd (2009a) found that state supreme court judges facing both partisan reelection and reappointment become more likely to vote in favor of the government party as their retention event approaches.

²Canes-Wrone, Clark and Kelly (2014) found however that state supreme court judges retained through both partisan elections and gubernatorial/legislative reappointment appear to be approximately equally responsive to changes in public opinion regarding the death penalty.

reappointed appellate judges are pulled more consistently in the direction of anti-defendant rulings than reelected appellate judges. Trial court judges in the former case may then be less likely to make the marginal pro-defendant ruling, relative to trial court judges in the latter case. Appellate judges in reappointment systems may then see fewer marginal pro-defendant trial court judgments than appellate judges in reelection systems, and consequently may have fewer opportunities to respond to retention incentives by reversing marginal pro-defendant judgments, relative to appellate judges in reelection systems. Somewhat paradoxically, we might then estimate *larger* retention effects in reelection systems, relative to reappointment systems, even if reappointment incentives are in fact stronger than reelection incentives, because of this selection effect. If we were able to estimate the effects of reelection incentives on appellate judge decisions, using the same sample of cases heard by appellate judges who face reappointment incentives, we might more accurately estimate a smaller effect of reelection, relative to reappointment.³

It is also not clear that we should in fact expect reappointment to have weaker incentive effects, relative to reelection. Judicial elections are low information events; voters have few opportunities and perhaps even fewer incentives to become informed about state judges' decisions in cases (Sheldon and Lovrich, 1999; Dubois, 1980). Gubernatorial and legislative offices, by contrast, arguably have both the resources and the incentives to more tightly monitor state judicial decision making (Gray, 2017). Yet to date we lack genuinely comparable estimates of the relative effects of reelection and reappointment incentives on judicial decisionmaking, including possibly heterogeneous effects by race of defendant.

3 Within-Judge Estimates of Reelection and Reappointment

The preponderance of the empirical evidence appears to suggest that retaining judges through reappointment may reduce the negative externalities induced by electoral cycles in judicial decision making when judges are retained by reelection. However, as noted above, it is not clear how much weight we should give to cross-institutional estimates, given possible selection effects.

³Among existing papers, only Tabarrok and Helland (1999) and Helland and Tabarrok (2002) discuss possible selection effects of retention institutions. Helland and Tabarrok (2002) look for selection effects in their sample of civil cases using a set of disputes that includes self-reported settlement data. However, this strategy does not address the possibility that settlement practices may also be affected by selection effects. Hanssen (1999) and Besley and Payne (2013) suggest the presence of selection effects by showing that the numbers of cases brought (Hanssen, 1999) and filed discrimination claims (Besley and Payne, 2013) appear to respond to retention institutions.

New York State provides a unique opportunity to estimate within-judge effects of both reelection and reappointment. Justices on the state’s intermediate appellate courts must be elected and reelected in partisan elections in order to be and remain eligible for the intermediate appellate bench. They are then appointed and potentially reappointed to the intermediate appellate bench by the governor with the involvement of a judicial nominating commission, up until a mandatory retirement age of 70. No other state judicial system of which we are aware provides for both reappointment and reelection incentives in this way (American Judicature Society, 2019).

We leverage the unique institutional context governing the retention of New York State’s intermediate appellate justices to generate within-justice estimates of the effects of both partisan elections and gubernatorial reappointment on the votes of appellate justices in criminal appeals.

Existing work suggests that retention events create incentives for judges to shift towards more punitive rulings as these events approach. Our within-judge empirical strategy will allow us to distinguish the effects of such retention incentives from the votes that judges would cast absent those incentives.

3.1 New York State’s Intermediate Appellate Courts

New York State’s intermediate appellate courts are divided into 4 Appellate Divisions, one in each of the state’s 4 judicial Departments (see Figure 1 in the Online Supporting Materials, p. 1). Each of the divisions has mandatory appellate jurisdiction over the final judgments and orders issued by the trial courts within its department. Justices in the 4 Appellate Divisions are appointed by the Governor from among those elected Supreme Court (trial court) justices nominated to and recommended by the State’s Judicial Screening Committee. Supreme Court justices, in turn, are elected to 14-year terms in partisan elections held in the state’s 13 judicial districts.

The State Constitution provides that the First and Second Departments are each to have 7 Appellate Division justices, and the Third and Fourth Departments to each have 5 appellate justices. Appellate justices appointed to one of these “constitutional” seats serve 5-year terms, or until the completion of their 14-year elected Supreme Court terms. At the conclusion of their terms (or upon being re-elected to a subsequent 14-year Supreme Court term), they may be reappointed to the Appellate Division. In addition to these “constitutional” justices, the Governor also designates a “Presiding Justice” in each Department; presiding justices serve until the completion of their 14-

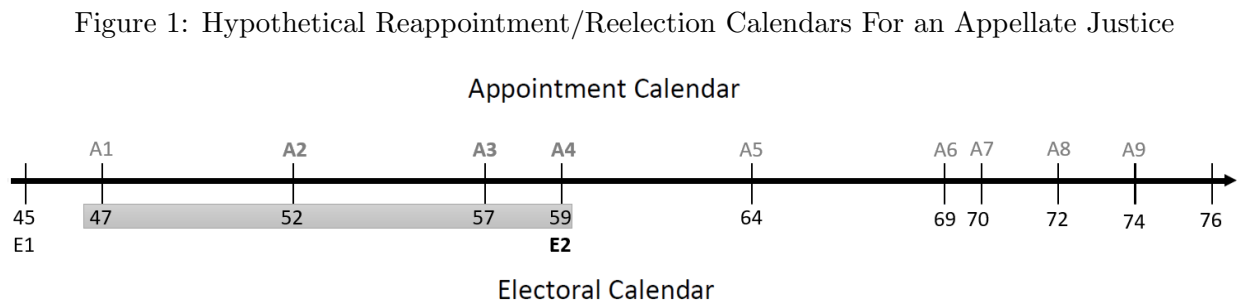
year elected terms, at which time (upon being reelected), they may be reappointed. The Presiding Justice of each Department may also ask the Governor to designate “additional justices” when needed based on the Division’s workload. The qualifications for additional justices are the same as for other Appellate Division justices. These “additional” justices, like presiding justices, serve until the completion of their 14-year elected terms, at which time (upon being reelected), they may be reappointed. For example, at full complement, 22 appellate justices currently sit on the Second Department, 7 on the constitutional bench and 15 as additional appellate justices. Additional appellate justices are promoted to “constitutional” seats as these become available, in order of seniority, at which time they begin to serve 5-year terms, or until the completion of their 14-year elected Supreme Court terms. Upon reaching the constitutional mandatory retirement age of 70, Appellate Division justices may be appointed as “certificated” justices on the appellate bench for a maximum of three 2-year terms.

According to the state’s constitution, each Appellate Division case is decided by a panel of at least 4 and at most 5 justices; the concurrence of 3 justices is necessary for a ruling. Per the state’s constitution, appellate panels may reverse, affirm, or modify trial court judgments or orders.

3.2 Design

The nature of the retention process for New York State’s intermediate appellate justices implies that, during at least some of the years during which they sit on the appellate bench, some appellate justices may face both reappointment and reelection events in order to remain on that bench.

For example, Figure 1 illustrates a sequence of elections and appointments for one such hypothetical appellate justice.



This justice is elected to the Supreme Court at age 45 (E1). She is then appointed to a 5-year “constitutional” seat on the Appellate Division two years later, at age 47 (A1). 5 years later, she faces a reappointment event, and is reappointed at age 52 (A2). 5 years after this reappointment, she faces a second reappointment event, and is reappointed at age 57 (A3). After A3, she has only 2 years remaining on her 14-year electoral term, at which point (at age 59), she faces reelection (E2). Because she must be reappointed after every reelection, this is also a third reappointment year (A4). After her reelection at age 59, her next election would occur at age 73, after mandatory retirement, so she no longer faces a reelection event, and is no longer on an electoral calendar. She still faces two more reappointment events, however, at ages 64 and 69 (A5 and A6), before she reaches the mandatory retirement age of 70. At age 70, she can then be appointed to a maximum of three 2-year post-retirement terms, implying that she faces three more reappointment events (A7, A8, and A9). After A9, she then can serve two years on the appellate bench without facing either reelection or reappointment.

In order to estimate comparable within-justice effects of both reelection and reappointment, we focus our attention on the votes of justices who are still on both reelection and reappointment calendars. In the case of the hypothetical justice portrayed in Figure 1, we would focus on her votes in cases empaneled during the 12 years between her first appointment to the appellate bench (A1) and the date of her reelection (E2); these years are shaded in Figure 1.

The nature of New York State’s Appellate Division retention rules prohibit us from estimating an independent effect of an approaching reelection event, in the absence of a simultaneously approaching reappointment event. Because Appellate Division justices must be reappointed following a successful reelection, no matter the length of their original term or the proportion of their term completed at the time of reelection, every reelection event is also a reappointment event.

By contrast, as in the case of the hypothetical justice depicted in Figure 1, reappointment events can occur in the absence of simultaneous reelection events. We can thus estimate the effects both of approaching reappointment events, and of approaching reelection events, conditional on the presence of approaching reappointment events. In the case of our hypothetical justice, across the 12 years of votes we would include in our sample, we would estimate the effects of the approaching reappointment events A2, A3, and A4, and the marginal effects of the approaching reelection event E2, conditional on the presence of the simultaneously approaching reappointment event A4.

4 Data

4.1 New York State Appellate Division Slip Opinions, 2003-2017

Slip opinions from the Appellate Division’s rulings are available in portable document format for individual download on the websites of each of the four departments. We crawled the text of the 145,265 slip opinions issued between November 2003 and August 2017, inclusive. We then converted the pdf documents into a flat file database, and used a series of regular expression text extractions to identify critical case features.

We first identified whether the “People of the State of New York” were identified as a party to the case, indicating a criminal appeal. There are 37,920 criminal appeals in the sample, or 26% of all slip opinions. For each criminal appeal, we identified the appealing party (prosecution or defense) by extracting whether “Appellant” or “Respondent” followed the phrase, “The People of the State of New York.” The date of the appellate court ruling, case number, appellate department, and defendant name were also extracted from the case heading.

An Appellate Division appeal must be heard by a panel of no less than four and no more than five appellate justices. When the justices vote together in a case, their names are all located next to one another in the text of a slip opinion (e.g., “Ritter, J.P., Florio, Carni and Leventhal, JJ., concur.”). We leveraged this spatial adjacency to extract appellate justice names in cases with no dissents. There are 134 unique appellate justices in our sample of criminal cases, who cast 171,689 votes.

In most Appellate Division opinions in criminal cases, the first two sentences in the opinion summarize several key pieces of information about the ruling being appealed and the appellate ruling, using the following structure: “Judgment, [County Name] County...convicting defendant, after a [jury trial/nonjury trial/plea of guilty], of [top charge, second charge, and n charges]. Judgment is [affirmed/modified/reversed]. Using this common structure, we extracted the name of the county in which the trial court was located; whether the trial court judgment was the result of a jury trial, a nonjury trial, or a plea of guilty; the list of conviction charges; and whether the lower court ruling was affirmed, modified, or reversed by the appellate panel.

We separate conviction charges and identify those first and second charges that are Class A or Class B felonies, the most serious felonies under New York’s Penal Code. In some cases, defendants

are appealing their risk assessments under New York’s Sex Offender Registration Act. We search for the phrase “pursuant to the Sex Offender Registration Act” to identify these cases.

We are interested in whether a defendant receives any relief from the appellate court, and therefore define a ruling as a reversal if either of the words “reversed” or “modified” appear in the opinion. Rarely, there are dissents. We identified dissents by performing a regular expression extraction on the word “dissent.” We then read each of these cases individually to determine the number and identity of dissenting justices.

We convert some of these case features into fixed effects in the analyses to follow, including fixed effects for appellate justices, years, and calendar months. Table 1 reports on those case features that lend themselves to descriptive statistics.

Table 1: Criminal Appeals to NYS Appellate Division, 2003-2017
N = 37,920

	Mean	SD	Min	Max
Prosecutor Appeals	0.016	0.13	0	1
“Reversed”	0.08	0.27	0	1
“Modified”	0.07	0.26	0	1
Ruling Reversed	0.14	0.35	0	1
“Dissent”	0.013	0.11	0	1
Number Justices	4.58	0.50	1	5
Class A Felony	0.12	0.33	0	1
Class B Felony	0.34	0.47	0	1
Sex Offender	0.12	0.33	0	1
Guilty Plea	0.55	0.50	0	1
Jury Trial	0.40	0.49	1	5
Nonjury Trial	0.05	0.22	1	5

In approximately 1.6% of cases, the prosecution is appealing the lower court’s ruling. In the remaining cases, the defendant is the appellant. Approximately 14% of our cases are reversals, using our definition of a reversal (trial court ruling is “reversed” or “modified”). Prosecutors are significantly more likely to win a reversal on appeal than defendants (58.6% vs. 13.6%; $p = .00$). We would expect prosecutors to be more strategic in their appeals, relative to defendants; the asymmetry in reversal rates, conditional on the identity of the appealing party, provides some support for the construct validity of these extractions.

There are dissents in 1.3% of the criminal appeals in our sample. Dissents are more likely to occur in cases resulting in reversals, with dissenting justices present in 5.5% of reversals but only in 0.1% of not reversals ($p = .00$). Because reversals are significantly less likely to occur than not reversals, and for that reason alone are presumably more likely to be more controversial rulings, this asymmetry in dissent rates is again suggestive of the validity of these extractions.

There are on average 4.6 justices per case. Among those cases for which we could extract charges, approximately 12% of cases involve appeals of Class A felonies; 34% of cases involve appeals of Class B felonies; 12% of cases involve appeals of sex offender risk assessments. Among those cases for which we could extract trial court disposition information, 55% of appeals originate from cases resolved by pleas; 40% originate from cases resolved through jury trials; 5% of appeals originate from cases resolved by bench trials.

4.2 Appellate Justice Election and Appointment Data

Data for Supreme Court judicial elections were obtained in portable document format from the New York State Board of Elections for 1999-2017, inclusive, and then extracted into structured data. We have election data on 126 elections for 104 of the 134 appellate justices in our sample. Table 2 reports on these elections, as well as on comparable data for the sample of partisan judicial elections in Kansas used in Park (2017).

Table 2: Appellate Justices in NYS Supreme Court Elections, 1999-2017

	Mean	SD	Min	Max	KS '96-'10
All Elections (N = 126)					
Contested	0.79	0.41	0	1	
Proportion Dem Support	0.54	0.43	0	1	
Incumbent Reelection (N = 44)					
Proportion Contested	0.77	0.42	0	1	0.07
Proportion Won	0.77	0.42	0	1	
Proportion Dem Support	0.46	0.44	0	1	
Contested Incumbent Reelection (N = 34)					
Proportion Won	0.71	0.46	0	1	0.67
Proportion Dem Support	0.42	0.44	0	1	

Supreme Court elections in New York State, held within the judicial districts depicted in Figure 2, are multi-seat elections; the number of seats available in any given election varies across districts and over time within each district, depending on the number of Supreme Court justices assigned by the state’s legislature to that district. Overall, 79% of the 126 elections in the sample were contested, meaning that there were more Supreme Court candidates on the ballot than seats in that judicial district election.⁴

As noted previously, Supreme Court elections in New York State are partisan. However, candidates can be endorsed by multiple parties; votes are tallied separately by party. We measure each appellate justice’s partisan support in a given election by computing the proportion of major party votes the justice received from the Democratic party. On average the justices in our sample for whom we have election data receive 54% of their major party votes from the Democratic party. In 36.5% of these elections the justice runs only as a Republican, with no Democratic party cross-endorsement; in 28.6% of these elections the justice runs only as a Democrat.

There are 44 instances of a sitting appellate division justice in our sample seeking reelection during the time period for which we have judicial election data. 77% of these races were contested. The overall incumbent reelection rate in these contests was 77%, and the average incumbent proportion of Democratic support was 46%. In the 34 contested races in which an incumbent Appellate Division justice ran for reelection, the incumbent reelection rate was 71%, and the average incumbent proportion of Democratic support was 42%.

We can compare these election data with those from the sample of Kansas partisan judicial elections used in Park (2017), who found that incarceration rates rose for black but not white felons during the six months immediately preceding a sitting justice’s partisan reelection event. Notably, the partisan elections contested by sitting Appellate Division justices in New York between 2003 and 2017 appear to be significantly more competitive than the partisan elections contested by sitting trial justices in the Kansas sample. The proportion of partisan elections that are contested in the Kansas data is only 7%, relative to 77% in the NYS data. Among those elections that are contested, incumbent reelection rates are similar (67% in Kansas; 71% in NYS) (Park, 2017). The competitiveness of Appellate Division reelection events in New York State suggests that we should expect to find electoral effects on appellate votes at least as large if not larger than those found in

⁴The number of seats available in any given election was identified from the number of winning candidates in that election, as reported in the New York State election records.

Kansas.

Data for Appellate Division appointments between 1999-2019 were sourced from the office of the New York State Judicial Screening Committees. As noted previously, appointment terms can vary in length from 2-14 years, depending on the kind of appointment, the date of a justice’s next reelection event (if any), and the year in which a justice will turn 70 years old. In our sample, 83,453 or 48.6% of the 171,689 judicial votes in criminal appeals take place during year/months when an appellate justice needs to secure both reelection and reappointment in order to remain on the appellate bench.

We define a pro-defendant vote as a vote to reverse when the defendant has appealed (non-dissenting or dissenting), and a vote to not reverse when the prosecution has appealed (non-dissenting or dissenting). Our estimation strategy will attempt to identify both the impact of an approaching reappointment event on an appellate justice’s pro-defendant votes, and the additional impact of an approaching reelection event on those votes, conditional on an approaching reappointment event.

4.3 Media Coverage of Appellate Division Justices

In order for either reelection or reappointment incentives to exist, judges presumably need to believe that their votes in cases have an audience beyond the parties in these cases. In order to explore the credibility of this assumption for the appellate justices in our sample, we conducted a Lexis Nexis search for news articles referencing the 134 New York State Appellate Division justices in our sample.⁵ The search returned 6492 articles. We then identified those articles in this set whose subjects were classified by Lexis Nexis as including the strings "CRIME", "SENTENC", "JUVENILE", "PRISON", "JAIL", "SUBSTANCE", "CRIMI", "HOMICIDE", "ILLEGAL", "LARCENY", "THEFT", "ARREST", "ROB", "MISCONDUCT", "ABUSE", "VICTIM", "LAW ENFORCEMENT", "JURY", or "PAROLE". There are 2727 such articles, or on average approximately 20 articles per appellate justice referring to the justice by name and appearing to refer to the justice’s votes in criminal cases. Of these, 325 articles (11.9%) also mentioned a governor by name.⁶

⁵We used all four possible combinations of the terms: JUSTICE NAME + APPEAL/APPELLATE + JUSTICE/JUDGE; we then filtered those results for articles published in New York State.

⁶For example, a New York Post article from July 9, 2012 observed that Appellate Justice Dianne Renwick, "one of the judges who tossed the stop-and-frisk conviction of a 14-year-old boy found with a gun in Harlem...was appointed

From the set of 2727 articles classified as referring to subjects associated with appellate justice votes in criminal cases, we read a random sample of 60 articles and identified whether the article reported on a pro-defendant or an anti-defendant vote. 88% of the sampled articles were about pro-defendant appellate votes, indicating strongly asymmetric media interest in pro-defendant rulings.

Many of these articles editorialized negatively on the justices' pro-defendant votes. For example, in a series of articles about a 3-2 appellate ruling in which a juvenile gun conviction was "mindlessly overturned by an appeals court", the New York Post identified by name only those justices in the majority who "conspired" to void the defendant's sentence of 18 months probation.⁷ After a similar "stunning" 3-2 decision by a different appellate panel, the Post declared, "There they go again—letting another young gun go free! For the second time in a week, a Manhattan appeals court has overturned the conviction of a teen found packing heat in a crime-ridden neighborhood after a stop-and-frisk."⁸ Following up with an article entitled, "The Court of Lawlessness," the paper lambasted "the dangerous dimwits who sit on a Manhattan appeals court," asking, "Are they nuts?"⁹

5 Analysis

To evaluate the impact of reappointment and re-election incentives on votes in criminal appeals, we estimate the following baseline equation:

$$Y_{icpym} = \beta \text{Reappt } Y_{r_{iym}} + \varphi \text{Reappt } Y_{r-1_{iym}} + \gamma \text{Reappt/Reelect } Y_{r_{iym}} + \alpha \text{Reappt/Reelect } Y_{r-1_{iy}} + \mu_i + \tau_{y,m} + X_c + Z_p + \varepsilon_{it} \quad (1)$$

where Y_{icpym} is an appellate justice i 's vote in a case c heard by appellate panel p in year y and calendar month m , with the vote coded 1 if the vote is pro-defendant, and 0 if the vote is not pro-defendant. $\text{Reappt } Y_{r_{iym}}$ is coded 1 if the vote occurs in the last twelve months of the justice's appointment term, and 0 otherwise; $\text{Reappt } Y_{r-1_{iym}}$ is coded 1 if the vote occurs in the next to

by former Gov. David Paterson to the Appellate Division in 2008." <https://nypost.com/2012/07/09/bx-da-jails-frisked-gun-thugs-and-judge-wife-lets-em-go-free/>.

⁷<https://nypost.com/2012/06/28/why-was-darryl-free/>.

⁸<https://nypost.com/2012/07/04/judges-free-another-kid-caught-with-gun-in-stop-and-frisk/>.

⁹<https://nypost.com/2012/07/09/the-court-of-lawlessness/>.

last twelve months of the justice’s appointment term, and 0 otherwise; $\text{Reappt/Reelect Yr}_{iym}$ is coded 1 if the vote occurs in the twelve months of the justice’s election term, and 0 otherwise; $\text{Reappt/Reelect Yr} - 1_{iym}$ is coded 1 if the vote occurs in the next to last twelve months of the justice’s election term, and 0 otherwise; μ_i is a set of justice fixed effects; $\tau_{y,m}$ are sets of year and calendar month fixed effects; X_c is a vector of case-specific covariates, including whether the state is the appellant in the case (1, otherwise 0); whether at least one of the top two charges can be identified as a class A felony (1, otherwise 0); whether at least one of the top two charges can be identified as a class B felony (1, otherwise 0); whether the case involved a risk assessment pursuant to the Sex Offender Registry Act (1, otherwise 0); and whether the disposition in the case could be identified as resulting from a plea of guilty (1, otherwise 0), a jury trial (1, otherwise 0), or a bench trial (1, otherwise 0). Z_p is a vector of panel covariates, including the average Democratic major party voteshare received by the other justices on the panel; the proportion of other justices on the panel in the last year of their current appointment term; and the proportion of other justices on the panel in the last year of their current election term (Fischman, 2013). We estimate Equation 1 in OLS using a linear probability model with standard errors clustered on both justice and case (Fischman, 2013).

We also estimate Equation 1 with all included covariates after dropping dissenting votes from the sample. Independently of their induced preferences over pro-defendant rulings, justices approaching reappointment/re-election may be less likely to cast dissenting votes, from concern about drawing unwanted attention to their votes. Since most appeals are by defendants, and most appeals are affirmed, dissent aversion alone could be driving any observed decreases in pro-defendant votes as justices near reappointment/re-election. Eliminating dissenting votes from the sample removes this possible confounder.

Our estimation strategy requires that the samples of cases heard by an appellate justice remain relatively similar across her electoral and appointment calendars. There are at least three mechanisms through which this assumption could be violated, all involving efforts by appellate justices approaching re-election/reappointment to avoid cases in which they might be induced to vote in favor of criminal defendants. First, appellate justices approaching re-election/reappointment could seek to be assigned criminal cases less likely to result in pro-defendant rulings. Second, appellate justices approaching re-election/reappointment could seek to be assigned a greater proportion of civil

cases, relative to criminal cases. Third, appellate justices approaching reelection/reappointment could selectively recuse themselves from criminal cases likely to result in pro-defendant rulings, and/or criminal cases more generally. Before proceeding to our main analyses, we investigate these mechanisms.

5.1 Appellate Division Case/Panel Assignment

The practice rules of the Appellate Division are codified in statewide regulation (22 NYCRR Part 1250), as well as in rules and practices specific to each of the four departments. We contacted each department to inquire about its rules for assigning justices and cases to appellate panels. We found that the key elements in justice and case assignment are common across the four departments.

Several months in advance, the calendar clerk of a department will assign a judicial bench to each calendar day in a term, a period comprising typically no more than 15 days per month. A single bench of four or five justices will sit for an entire calendar day. The procedural rules determining the composition of these benches are not public. However, sitting clerks and deputy clerks reported to us that they consider a number of factors in composing the benches. Most important are capacity constraints, including the number of justices needed per week, the number of justices available on any given day, and the spacing out of bench assignments so that the justices have sufficient time to prepare for cases. The clerks reported that factors such as legal experience or seniority play no role in the bench assignment process, although each bench is presided over by a senior justice, who is generally, but not always, a member of the constitutional bench.

Cases are assigned to calendar days when the calendar clerk of a court receives all the requisite documents for a case. Cases are generally assigned to the next available calendar opening, in the order in which files are completed. By the time that cases are assigned to calendar days, the benches have typically already been composed. The clerks in the departments reported to us that the only way in which bench composition affects case calendaring is through standing recusals. For example, if a justice always recuses himself from cases involving a particular law firm with which he is or has been connected in some way, a case in which that law firm appears will not be calendared to be heard by a bench of which that justice is a member. Once assigned to a bench, justices cannot recuse themselves from that bench, although they can recuse themselves from specific cases on the

grounds that they will be unable to remain impartial in a case.¹⁰

Appellate Division calendaring and recusal procedures would appear to make it unlikely that justices approaching reelection/reappointment are able either to influence their case assignments, or to selectively recuse themselves from cases without public declarations of partiality. We can nonetheless examine the empirical evidence for strategic case assignment/recusal. First, as justices approach reappointment and/or reelection, if clerks strategically assign these justices criminal cases with lower ex ante likelihoods of pro-defendant rulings, and/or if these justices selectively recuse themselves from criminal cases with higher ex ante likelihoods of pro-defendant rulings, then presumably we would see differences in observable case characteristics, as a function of reelection and/or reappointment calendars. Table 1 in the Online Supporting Materials (p. 1) reports the results of differences in means tests for case covariates for the sample of 83,453 votes cast by appellate justices on both reappointment and reelection calendars. There are no differences in observed case features across these calendars.

We can also look at the judges’ assigned caseloads as a function of their reappointment and reelection calendars. Justices approaching reappointment/re-election might seek to shift their caseloads in the direction of hearing a greater proportion of civil cases, as a strategy to avoid the possibility of pro-defendant rulings in criminal cases. We might expect this mechanism to be more pronounced for judges with higher ex ante propensities to vote in favor of criminal defendants.

In order to explore this mechanism, we sourced assigned bench/case calendars from the First and Second Divisions for the period spanning January 2013 to the present.¹¹ The calendars include the benches assigned to 18,673 cases, or 108,363 potential justice-case votes. Of these cases, 6,334 were criminal cases, and 12,339 were civil cases. For each justice on the assigned calendars who still needed to secure both reappointment and reelection, we calculated the share of each justice’s total assigned monthly caseload comprising criminal cases. Using our slip opinion data, we also classified the First and Second Division justices in the calendar data into terciles of the average likelihood of

¹⁰Judiciary Law Section 14 provides that a judge in New York State must recuse himself from a case in four instances: (1) when the judge is a party in the matter; (2) when she has been attorney or counsel in the matter; (3) when she is “interested” in the matter; or (4) when she is related by consanguinity or affinity within the sixth degree to a party before her. Judicial “interest” in a case has been further defined as “an interest as a party or in a pecuniary or property right from which he might profit or lose” (In re Estate of Sherburne, 476 N.Y.S.2d 419, 421 (Sur. Ct. 1984)). A judge may also recuse herself on her own discretion, “within the personal conscience of the court”, when she feels that her impartiality may be compromised in the matter before her (People v. Moreno, 516 N.E.2d 200, 201 (N.Y. 1987)).

¹¹Other divisions do not currently report bench/case calendars from previous years.

pro-defendant votes during periods when a justice was not facing a reappointment or reelection event within the next two years. If Appellate Division justices approaching reappointment/reelection strategically avoid criminal cases, we would expect to see decreasing shares of criminal cases heard per month, particularly for justices in the upper tercile of the baseline propensity to vote for criminal defendants.

Table 2 in the Online Supporting Materials (p. 2) suggests, however, that this is not the case. There is no evidence that First and Second Division justices approaching reappointment/reelection are assigned to hear smaller proportions of criminal cases, either overall or within the upper tercile of pro-defendant justices.

We also explore the possibility of strategic recusals. To identify possible appellate justice recusals from assigned cases, we merged the First and Second Division slip opinion data with the calendar data. 4,641 cases or 21,032 potential justice-vote observations were exactly matched; 8,725 of these potential justice-vote observations occur when a justice is on both reappointment and reelection calendars. We define a recusal as the absence of a justice vote in a criminal case to which the justice has been assigned, finding 82 recusals (or 1%) in the sample of 8,725 potential justice-vote observations for justices on both reappointment and reelection calendars. Table 3 in the Online Supporting Materials (p. 2) reports the variation in recusals across these calendars, finding no evidence of a systematic relationship between a justice’s reappointment/reelection calendar and her likelihood of recusal.

5.2 Main Effects

Table 3 reports estimates for the calendar variables of interest from Equation 1, using only those justice votes that occur when a justice is still on both reappointment and reelection calendars; Table 4 in the Online Supporting Materials (p. 3) reports all point estimates. Model 1 reports estimates from the baseline model with justice, year, and month fixed effects. Model 2 includes an indicator for whether the prosecutor is appealing the trial court’s ruling. Model 3 includes indicators for A and B class felonies for the top two charges in the case, and an indicator for whether the defendant is challenging a sex offender risk designation. Model 4 includes indicators for whether the disposition in the trial court could be identified as a guilty plea, a jury trial, or a bench trial. Model 5 includes panel variables for the average Democratic voteshare of the other

justices on the panel; the proportion of other justices on the panel in the last year of their current appointment term; and the proportion of other justices on the panel in the last year of their current election term. Model 6 excludes dissenting votes from the sample in order to assess whether dissent aversion is driving patterns in observed outcomes.¹²

Table 3: Pro-Defendant Appellate Justice Votes
Justices on Both Reappointment and Reelection Calendars

	M1	M2	M3	M4	M5	M6
Reappt Yr	-0.019*** (0.006)	-0.018*** (0.006)	-0.018*** (0.006)	-0.018*** (0.006)	-0.019*** (0.006)	-0.019*** (0.006)
Reappt Yr - 1	-0.016** (0.007)	-0.016** (0.007)	-0.016** (0.007)	-0.016** (0.007)	-0.016** (0.007)	-0.016** (0.007)
Reappt/Reelect Yr	0.009 (0.007)	0.007 (0.008)	0.007 (0.008)	0.006 (0.008)	0.008 (0.008)	0.008 (0.008)
Reappt/Reelect Yr - 1	0.008 (0.007)	0.008 (0.007)	0.007 (0.007)	0.006 (0.007)	0.007 (0.007)	0.007 (0.007)
N	83453	83453	83453	83453	83453	83138
Justice FE	Yes	Yes	Yes	Yes	Yes	Yes
Year, Month FE	Yes	Yes	Yes	Yes	Yes	Yes
SE Clustered Justice/Case	Yes	Yes	Yes	Yes	Yes	Yes
Prosecutor Appeals	No	Yes	Yes	Yes	Yes	Yes
Felony Class/Sex Offender	No	No	Yes	Yes	Yes	Yes
Plea/Jury/Bench	No	No	No	Yes	Yes	Yes
Panel Covs	No	No	No	No	Yes	Yes
No Dissenting Votes	No	No	No	No	No	Yes

* p<.10, p<.05, *** p<.01.

Consistently, across all models, we see decreases in the probability that an appellate justice votes in favor of a criminal defendant in the last two years of an appointment term, relative to other years in her appointment term. In the next to last year of an appointment term, justices are approximately 1.5 percentage point less likely to vote in favor of criminal defendants, relative to votes cast in other years; in the last year of an appointment term, justices are approximately 2 percentage points less likely to vote in favor of criminal defendants, relative to votes cast in other years. Given that the baseline probability that a justice votes in favor of a criminal defendant in non-reappointment years is 14%, these estimates suggest approximately an 11% reduction in pro-defendant votes in the second to last year of an appointment term, and approximately a 14%

¹²All models are estimated using reghdfe in Stata 15.1 with two way clustering on justice and case.

reduction in pro-defendant votes in the last year of an appointment term.

In sharp contrast to the existing literature, we see no additional effects when the last or second to last years of an appointment term occur simultaneously with the last or second to last years of an election term. Coefficients on the electoral calendar indicators are consistently positive but not significant at conventional levels. Finally, dissent aversion does not appear to be driving our reappointment findings; point estimates are relatively unchanged after removing dissenting votes from the sample.

Table 5 in the Online Supporting Materials (p. 4) replicates the baseline model but using quarters to reappointment/re-election instead of years to reappointment/re-election. Across models, the reappointment effect appears most consistently approximately 4-6 months prior to the end of a justice's appointment term. There are no marginal re-election effects in any quarter in any model.

The absence of any election effects, from what appear to be relatively competitive partisan judicial elections, is surprising. It is possible that election effects exist, but only for subsets of cases that are particularly relevant for an appellate justice's re-election. For example, presumably a justice up for re-election cares more about his votes in cases originating in his home district. Table 6 in the Online Supporting Materials (p. 5) replicates Table 3, but estimates heterogeneous election effects conditional on whether a case originates in a justice's own judicial district. There are still no election effects, including no marginal effects conditional on a case originating in a justice's home district. There continue to be negative and significant appointment effects on pro-defendant votes in the last and next to last years of an appellate justice's appointment term.

It is also possible that election effects exist, but are working in different directions for different justices. Justices more dependent on Democratic electoral support might be induced to cast more pro-defendant votes as an election approaches; justices more dependent on Republican electoral support might be induced to cast fewer pro-defendant votes. These effects might offset each other in the full sample. Appointment effects might also be heterogeneous by justice partisanship. Table 7 in the Online Supporting Materials (p. 6) replicates Table 3 for the last years of a justice's reappointment and re-election terms, but estimates heterogeneous appointment and election effects conditional on a justice's average Democratic major party voteshare, for those justices for whom we have election data. There continue to be no election effects, including heterogeneous effects conditional on justice partisanship. There is also no evidence of heterogeneity in appointment effects,

conditional on justice partisanship. Baseline appointment effects remain negative, significant, and of magnitudes similar to those observed earlier.

Although we don't observe appointment effects that are heterogeneous by justice partisanship, it is possible that appointment effects are heterogeneous by party of the sitting governor. There is one change in the party of the sitting governor over our sample period, in November of 2006, when Democrat Eliot Spitzer won the gubernatorial election to succeed Republican George Pataki. Table 8 in the Online Supporting Materials (p. 7) replicates Table 3, but estimates heterogeneous appointment and election effects conditional on whether the sitting governor is a Democrat (1) or Republican (0). There continue to be no election effects for justices, whether the sitting governor is a Democrat or a Republican. There is also no evidence of heterogeneity in appointment effects, conditional on party of the sitting governor. Baseline appointment effects remain negative, significant, and of magnitudes similar to those observed earlier.

5.3 Heterogenous Effects by Race/Ethnicity of Defendant

On July 31, 2018, the Staten Island Advance published an article about a 3-1 ruling from New York State's Second Appellate Division. The ruling, in response to an appeal of a felony weapons conviction, affirmed the conviction and the sentence of 5 years of incarceration. The article did not identify the three appellate justices who voted to affirm the conviction. It identified by name only the appellate justice who voted to reverse the conviction, quoting extensively from her dissent. Accompanying the article was the mugshot of the African American defendant in the case.¹³

More generally, our search for articles about rulings by New York's appellate justices revealed that approximately 18% of articles about the justices' rulings in criminal cases included photos or video footage of defendants, allowing readers to identify defendant race. We also know that Appellate Division justices have access to information on defendant race, even though defendants typically do not appear in court before the justices. Appellate Division rules of practice require appellants to submit complete copies of all submissions made to trial courts; in criminal cases these submissions will generally include arrest and criminal history reports, both of which identify defendant race.

The question is whether Appellate Division justices respond differently to appeals in cases in-

¹³https://www.silive.com/news/2018/07/appellate-court_upholds_new_br.html.

volving nonwhite defendants, as a retention event approaches. Existing work suggests both that media outlets may disproportionately report on pro-defendant rulings, and disproportionately report critically on those rulings, when the defendant is nonwhite; and that readers may respond more negatively to news reports of pro-defendant rulings in cases with nonwhite defendants (Entman and Gross, 2008). Either or both of these mechanisms could induce fewer pro-defendant appellate votes in cases involving nonwhite defendants, as a retention event approaches. Cases involving white defendants, by contrast, could largely escape this dynamic.

The slip opinions which provide our primary source of data on appellate justice rulings do not contain information about defendant race. To source information on defendant race for at least a subset of cases, we scraped inmate data from the New York State Department of Corrections and Community Supervision website.¹⁴ The data scraped include 195,174 inmate records (129,165 unique individuals) in html format. We extracted structured data from these html records, including inmate name, date of birth, sex, intake date, race/ethnicity, and conviction charges.¹⁵

We linked these data to the slip opinions using probabilistic matching techniques on defendant first and last name, sex, and date of conviction/intake.¹⁶ First, defendant sex was imputed from the defendant names in the slip opinions.¹⁷ We pre-processed the data by blocking on sex and last name (using k-means blocking on last name). We then matched the slip opinion data and the individual-level inmate data on first name, last name and date of conviction/intake. We defined a successful match as one whose mean posterior probability exceeded 0.75. Finally, we post-processed the data so that all inmate intake dates occurred after the respective conviction dates. When a slip opinion was still matched to multiple inmate records, we selected matches with the smallest (positive) difference between intake and conviction dates. The mean posterior probability of matches in the final matched sample is 0.95.

We were able to match inmate records to 16,565 of the 37,920 criminal appeals in our slip opinion data. These 16,565 cases are associated with 75,286 judicial votes, 36,383 of which occur when an appellate justice is on both reappointment and reelection calendars.

¹⁴<http://nysdoccslookup.doccs.ny.gov>. The site permits a user to search for an inmate or former inmate of a New York State correctional facility by first and last name, or abbreviations of first and last names.

¹⁵The NYS DOC records do not include offenders aged 16-18 at time of offense; those defendants whose convictions have been reversed; and certain categories of defendants convicted of nonviolent crimes that do not fall under the Sex Offender Registration Act, whose records are sealed five years after all correctional supervision has ended, unless the defendant returns to prison.

¹⁶Implemented with *fastLink* in R.

¹⁷Implemented with the *gender* package in Python.

The sample of slip opinions matched to DOC records is systematically different from the unmatched sample of opinions, as reported in Table 9 in the Online Supporting Materials (p. 8). Appeals from matched cases, all involving defendants who were incarcerated post-conviction in a New York State correctional facility and whose records remain unsealed, are less likely to have been appealed by the prosecution, more likely to involve more serious (Class A and B) felonies, less likely to involve sex offender risk assessment, less likely to have been resolved by guilty plea or bench trial, and more likely to have been resolved by jury trial, relative to appeals from unmatched cases.

Although the sample of votes matched to DOC records is, overall, systematically different from the sample of unmatched votes, it remains relatively balanced on covariates across appellate justice reappointment and reelection calendars. Table 10 in the Online Supporting Materials (p. 8) reports covariate balance on the sample of 36,383 appellate votes in cases matched to DOC inmate records, for justices on both reappointment and reelection calendars, across those calendars.¹⁸ As in the full sample of justice votes, there are few differences in covariate means across appellate justice reappointment and reelection calendars in the sample of justice votes matched to DOC records. Justices in reappointment-only years see slightly more cases involving Class B Felonies than in other years, but we observe no other differences in the distributions of offenses across reappointment/reelection calendars, or in any other case/defendant covariates.

Table 3 in the Online Supporting Materials (p. 2) reports variation in the probability of recusals within the subsamples of DOC-matched cases involving white, non-Hispanic white, and black defendants, for cases occurring when appellate justices are on both reappointment and reelection calendars. There is no variation in recusal rates within any of these subsamples, as a function of justices' reappointment and reelection calendars. The overall covariate balance across reappointment and reelection calendars in the opinion data matched to the DOC data suggests that any observed reappointment effects are not due to variation in case composition across justices' appointment and election calendars.

Tables 11 - 14 in the Online Supporting Materials (pp. 9 - 12) report the full sets of point estimates for Equation 1, using the samples of appellate votes matched to NYS DOC inmate records, for the full sample and for the subsamples of white, non-Hispanic white, and black defendants, for

¹⁸Inmate race/ethnicity on DOC records is self-reported. We coded white defendants as those defendants who identify as white, Hispanic, or white/Hispanic; white non-Hispanic defendants as those who identify only as white; and black defendants as those who identify as black or black/Hispanic.

those votes occurring when appellate justices are on both reappointment and reelection calendars. In these models we replace the case-level offense covariates extracted from the opinion texts with indicators for the felony class of the first offense recorded by the New York State Department of Corrections (with A1 felonies as the omitted category). We also include defendant age and sex as case covariates. We continue to include all other covariates from our main effect models, and to cluster errors on both justice and case.

In the full sample we see reappointment effects only in reappointment years, ranging from 2.6 - 2.8 percentage point reductions in the proportion of pro-defendant votes; we see no effects in years immediately preceding reappointment years. The baseline probability of a pro-defendant vote during non-reappointment years, while an appellate justice is still on both reappointment and reelection calendars, is 0.12 in the sample of cases matched to DOC records. The reappointment effect thus implies a 22 - 23 % reduction in the likelihood that a defendant sees a pro-defendant vote from an appellate justice in a reappointment year, relative to the baseline likelihood of pro-defendant votes in non-reappointment years. We see no marginal effects in either reelection years, or in the years immediately preceding reelection years.

Table 4 reports the point estimates only for the effects of a justice's reappointment year, for each of the estimation samples. Table 4 reveals that the reappointment effect observed in the full sample appears only in cases involving black defendants. In cases involving black defendants, and only in these cases, Appellate Division justices are 3.3 - 3.5 percentage points less likely to vote in favor of defendants in reappointment years, relative to non-reappointment years. The baseline probability of a pro-defendant vote in cases involving black defendants during non-reappointment years, while an appellate justice is still on both reappointment and reelection calendars, is 0.12. The appointment effect in these cases thus implies a 28 - 29 % reduction in the likelihood that a black defendant gets a pro-defendant vote from an appellate justice in a reappointment year, relative to the baseline likelihood of such votes in non-reappointment years. We see no reappointment effects in cases involving white or non-Hispanic white defendants.

Appellate cases with black defendants are however different on a number of dimensions, relative to appellate cases with nonblack defendants. As reported in Tables 15 and 16 in the Online Supporting Materials (pp. 13 - 14), appeals from convictions involving black defendants involve more serious felonies, defendants who are younger and more likely to be male, and convictions

Table 4: Pro-Defendant Appellate Justice Votes
Justices on Both Reappointment and Reelection Calendars
Defendants Matched to DOC Data
Effect of Reappointment Year

	M1	M2	M3	M4	M5	M6
All (N = 36,382)	-0.027** (0.013)	-0.026* (0.014)	-0.026* (0.014)	-0.028** (0.013)	-0.028** (0.013)	-0.027** (0.013)
All White Defendants (N = 14,080)	-0.009 (0.017)	-0.007 (0.018)	-0.007 (0.017)	-0.009 (0.017)	-0.011 (0.017)	-0.009 (0.017)
Non-Hispanic White Defendants (N = 8291)	-0.014 (0.031)	-0.011 (0.030)	-0.012 (0.029)	-0.013 (0.028)	-0.015 (0.028)	-0.012 (0.027)
Black Defendants (N = 21,031)	-0.035** (0.017)	-0.034* (0.018)	-0.033* (0.018)	-0.034* (0.017)	-0.034* (0.018)	-0.033* (0.017)
Justice FE	Yes	Yes	Yes	Yes	Yes	Yes
Year, Month FE	Yes	Yes	Yes	Yes	Yes	Yes
SE Clustered Justice/Case	Yes	Yes	Yes	Yes	Yes	Yes
Prosecutor Appeals	No	Yes	Yes	Yes	Yes	Yes
Felony Class/Sex Offender	No	No	Yes	Yes	Yes	Yes
Plea/Jury/Bench	No	No	No	Yes	Yes	Yes
Panel Covs	No	No	No	No	Yes	Yes
Excludes Dissenting Justices	No	No	No	No	No	Yes

* p<.10, p<.05, *** p<.01.

that were less likely to have resulted from guilty pleas and more likely to have resulted from jury trials, relative to appeals from convictions involving white or non-Hispanic white defendants. These differences in case characteristics may be driving the variation in reappointment effects across cases subsetting by race/ethnicity. For example, cases resolved through guilty pleas (comprising a larger share of cases involving white defendants) may be less likely to be marginal cases, resulting in less variation in pro-defendant rulings across justices' reappointment cycles. By matching cases with black defendants to cases with white defendants on pre-ruling case and defendant covariates, we can potentially reduce the impact of these covariates on reappointment effects.

We match appeals with black defendants to those with white and non-Hispanic white defendants using coarsened exact matching on all pre-ruling case and defendant covariates (Iacus, King and Porro, 2012; King and Nielsen, 2019).¹⁹ As reported in Tables 15 and 16 in the Online Supporting Materials (pp. 13 - 14), after matching there are no longer any differences in the distributions of these covariates across these samples of cases.

Tables 17 and 18 in the Online Supporting Materials (pp. 15 - 16) report the full sets of point estimates from Equation 1, using the sample of appeals with black defendants and the weights derived from matching on pre-ruling covariates. Table 5 reports the point estimates for the effect of reappointment year only. After matching to the distributions of pre-ruling covariates observed in the samples of appeals involving white and non-Hispanic white defendants, we continue to see reappointment effects in cases involving black defendants, ranging from 3.8 - 4.3 percentage point decreases in pro-defendant votes. The point estimates using CEM weights indicate that, relative to a baseline rate of prodefendant votes of .12, appellate justices are 33 - 36% less likely to vote in favor of black defendants in their reappointment years.

6 Discussion

A large body of work has found that retention through reelection appears to induce larger effects on judicial votes than retention through reappointment. In criminal cases, reelection incentives appear to induce anti-defendant rulings in criminal cases, particularly in cases involving black defendants (Park, 2017). This work has led many to advocate against the use of elections, particularly

¹⁹We implement the coarsened exact matching using the cem package in Stata 15.1 and the default binning algorithm.

Table 5: Pro-Defendant Appellate Justice Votes
Justices on Both Reappointment and Reelection Calendars
Black Defendants Matched to White and Non-Hispanic White Defendants
Effect of Reappointment Year

	M1	M2	M3	M4	M5	M6
All Black Defendants (N = 21,031)	-0.035** (0.017)	-0.034* (0.018)	-0.033* (0.018)	-0.034* (0.017)	-0.034* (0.018)	-0.033* (0.017)
Black Dfndts Matched to All White Dfndts (N = 20,715)	-0.040** (0.016)	-0.039** (0.016)	-0.038** (0.016)	-0.040*** (0.015)	-0.040** (0.015)	-0.039*** (0.015)
Black Dfndts Matched to Non-Hispanic White Dfndts (N = 20,555)	-0.039** (0.018)	-0.039** (0.018)	-0.040** (0.018)	-0.043** (0.018)	-0.043** (0.017)	-0.042** (0.017)
Justice FE	Yes	Yes	Yes	Yes	Yes	Yes
Year, Month FE	Yes	Yes	Yes	Yes	Yes	Yes
SE Justice/Case	Yes	Yes	Yes	Yes	Yes	Yes
Prosecutor Appeals	No	Yes	Yes	Yes	Yes	Yes
Felony Class/Sex Offndr	No	No	Yes	Yes	Yes	Yes
Plea/Jury/Bench	No	No	No	Yes	Yes	Yes
Panel Covs	No	No	No	No	Yes	Yes
No Dissenting Justices	No	No	No	No	No	Yes

* p<.10, p<.05, *** p<.01.

competitive partisan elections, for judicial retention.

Yet existing work has been constrained to cross-institutional estimates. Selection effects across institutions may undermine the ability to accurately estimate the causal effects of retention institutions on judicial decisions.

In New York State, intermediate appellate justices must be elected, and re-elected, in contested partisan elections in order to be eligible for gubernatorial appointment, and reappointment, as Appellate Division justices. This unique institutional design enables us to estimate the relative effects of both reappointment and reelection on appellate justice decisions, using the same sample of cases. Using content extracted from the crawled text corpus of the approximately 38,000 slip opinions in criminal appeals heard by New York State’s intermediate appellate courts between 2003-2017, appellate justice election and appointment data sourced from the New York State Board of Elections and the New York State Judicial Screening Committee, and defendant demographic and crime data crawled from the New York State Department of Corrections’ inmate database, we report the first within-justice estimates of the effects of both reelection and reappointment calendars on judicial votes on criminal appeals.

In sharp contrast to the existing literature on judicial retention, we find that impending reappointment induces fewer pro-defendant votes in criminal appeals, but find no additional effects of impending reelection. We further find that the negative effect of approaching reappointment on pro-defendant votes in criminal appeals appears only in cases involving black defendants. After matching on pre-ruling covariates, our findings suggest that appellate justices in New York State are approximately 33 - 36% less likely to vote in favor of black defendants in their reappointment years. Years in which appellate justices must be both reappointed and reelected have no additional effect on their votes. We see no reappointment or reelection effects in cases involving white or non-Hispanic white defendants. Our findings may indicate the need for greater attention devoted both to potential selection effects in studies of judicial retention institutions, and to heterogeneous effects by race of defendant.

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7 Appendix

Figure 2: New York State Appellate Divisions

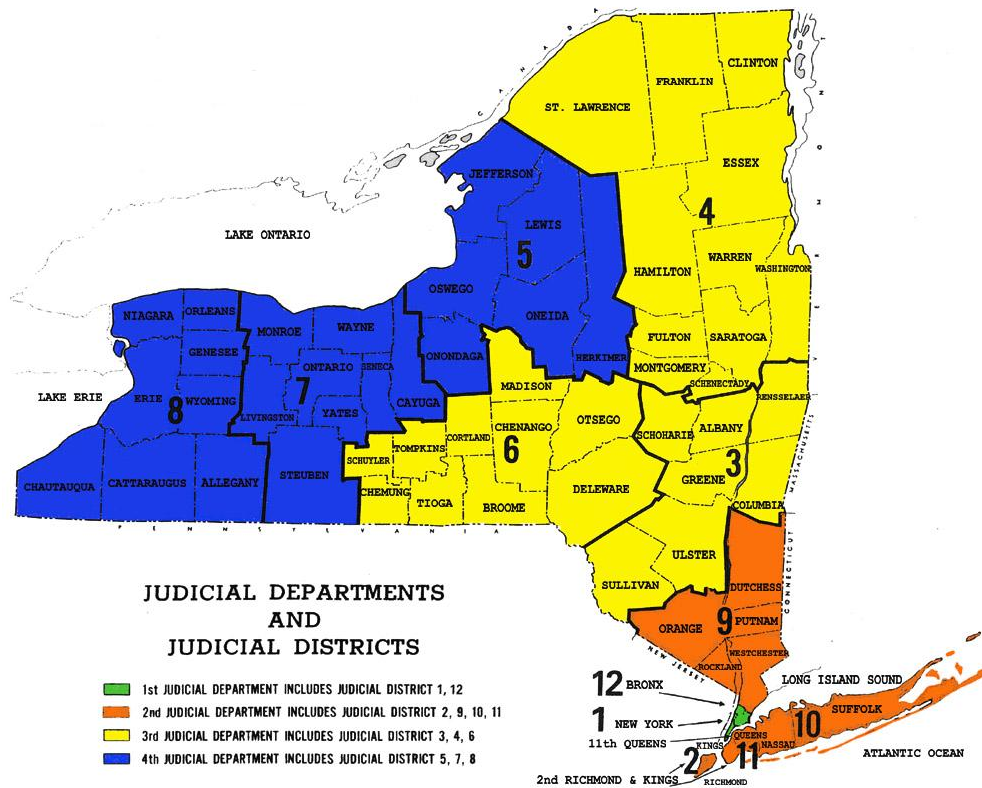


Table 6: Covariate Balance
Justices on Both Reappointment and Reelection Calendars
N = 83,453

	Baseline	Reappt Only Yr	Reappt/ Reelection Yr
Prosecutor Appeals	0.017	0.015	0.019
Class A Felony	0.14	0.13	0.13
Class B Felony	0.38	0.39	0.38
Sex Offender	0.12	0.13	0.13
Guilty Plea	0.56	0.57	0.58
Jury Trial	0.39	0.39	0.38
Bench Trial	0.05	0.04	0.05
N	73,880	1,693	7,880

** p<.05, *** p<.01; differences in means tests between baseline and reappointment-only justice votes, and between reappointment-only and reappointment/reelection justice votes.

Table 7: First And Second Appellate Division Monthly Caseloads, 2013-2019
Justices on Both Reappointment and Reelection Calendars
Avg Share of Monthly Assigned Caseload Comprising Criminal Cases

	Baseline	Reappt Only Yr	Reappt/ Reelection Yr
All Justice-Months (N = 705)	0.26	0.26	0.29
Upper Tercile Pro-Defendant Justice-Months (N = 398)	0.26	0.28	0.30

** p<.05, *** p<.01; differences in means tests between baseline and reappointment-only justice-months, and between reappointment-only and reappointment/reelection justice-months.

Table 8: First And Second Division Recusals, 2013-2017
Justices on Both Reappointment and Reelection Calendars
DV = Absence of Vote in Assigned Case (0/1)

	All Dfndts	All White Dfndnts	Non-Hispanic White Dfndnts	Black Dfndnts
Reappt Yr	0.043 (0.022)	-0.041 (0.033)	0.008 (0.021)	0.007 (0.009)
Reappt Yr - 1	0.012 (0.010)	-0.013 (0.024)	0.018 (0.024)	0.012 (0.015)
Reappt/Reelect Yr	-0.046 (0.024)	0.030 (0.034)	-0.038 (0.042)	-0.019 (0.023)
Reappt/Reelect Yr - 1	-0.018 (0.011)	0.009 (0.017)	-0.020 (0.026)	-0.019 (0.021)
N	8725	1070	239	1685
Justice FE	Yes	Yes	Yes	Yes
Year, Month FE	Yes	Yes	Yes	Yes
SE Clustered on Justice/Case	Yes	Yes	Yes	Yes

** p<.05, *** p<.01.

Table 9: Pro-Defendant Appellate Justice Votes
Justices on Both Reappointment and Reelection Calendars

	M1	M2	M3	M4	M5	M6
Reappt Yr	-0.019*** (0.006)	-0.018*** (0.006)	-0.018*** (0.006)	-0.018*** (0.006)	-0.019*** (0.006)	-0.019*** (0.006)
Reappt Yr - 1	-0.016** (0.007)	-0.016** (0.007)	-0.016** (0.007)	-0.016** (0.007)	-0.016** (0.007)	-0.016** (0.007)
Reappt/Reelect Yr	0.009 (0.007)	0.007 (0.008)	0.007 (0.008)	0.006 (0.008)	0.008 (0.008)	0.008 (0.008)
Reappt/Reelect Yr - 1	0.008 (0.007)	0.008 (0.007)	0.007 (0.007)	0.006 (0.007)	0.007 (0.007)	0.007 (0.007)
Pros Appeals		0.271*** (0.029)	0.276*** (0.028)	0.295*** (0.030)	0.295*** (0.030)	0.293*** (0.030)
A Felony			0.021** (0.010)	-0.009 (0.010)	-0.009 (0.010)	-0.009 (0.010)
B Felony			0.028*** (0.010)	0.022** (0.009)	0.022** (0.009)	0.023*** (0.009)
Sex Offender Registry			0.007 (0.011)	0.030*** (0.011)	0.030*** (0.011)	0.029*** (0.011)
Guilty Plea				0.004 (0.013)	0.003 (0.013)	0.003 (0.013)
Jury Trial				0.107*** (0.011)	0.106*** (0.011)	0.105*** (0.011)
Bench Trial				0.061*** (0.017)	0.060*** (0.017)	0.060*** (0.017)
Avg Dem VS Panel					0.025 (0.013)	0.026** (0.013)
% Reappt Yr Panel					-0.004 (0.015)	-0.004 (0.015)
% Reappt/Reelect Yr Panel					-0.009 (0.024)	-0.009 (0.024)
Constant	0.110*** (0.016)	0.105*** (0.016)	0.098*** (0.017)	0.069*** (0.018)	0.073*** (0.018)	0.072*** (0.018)
N	83453	83453	83453	83453	83453	83138
Justice FE	Yes	Yes	Yes	Yes	Yes	Yes
Year, Month FE	Yes	Yes	Yes	Yes	Yes	Yes
SE Clustered Justice/Case	Yes	Yes	Yes	Yes	Yes	Yes
Excludes Dissenting Justices	No	No	No	No	No	Yes

** p<.05, *** p<.01.

Table 10: Pro-Defendant Appellate Justice Votes
Justices on Both Reappointment and Reelection Calendars
Quarters to Reappointment/Reelection

	M1	M2	M3	M4	M5	M6
Reappt Quarter	-0.002 (0.009)	-0.003 (0.010)	-0.003 (0.010)	0.001 (0.010)	-0.001 (0.010)	-0.000 (0.010)
Reappt Quarter - 1	-0.039** (0.018)	-0.037** (0.017)	-0.038** (0.017)	-0.039** (0.016)	-0.040** (0.015)	-0.040** (0.016)
Reappt Quarter - 2	-0.020 (0.011)	-0.019 (0.010)	-0.019 (0.010)	-0.021 (0.011)	-0.022** (0.010)	-0.022** (0.010)
Reappt Quarter - 3	-0.016** (0.007)	-0.014 (0.007)	-0.013** (0.007)	-0.013 (0.007)	-0.014 (0.007)	-0.014 (0.007)
Reappt Quarter - 4	-0.004 (0.010)	-0.003 (0.010)	-0.003 (0.010)	-0.001 (0.010)	-0.002 (0.010)	-0.001 (0.010)
Reappt Quarter - 5	-0.014 (0.014)	-0.013 (0.015)	-0.012 (0.015)	-0.011 (0.015)	-0.012 (0.014)	-0.012 (0.015)
Reappt Quarter - 6	-0.012 (0.013)	-0.014 (0.013)	-0.015 (0.013)	-0.014 (0.013)	-0.015 (0.014)	-0.015 (0.013)
Reappt Quarter - 7	-0.017 (0.014)	-0.018 (0.014)	-0.018 (0.014)	-0.019 (0.013)	-0.020 (0.013)	-0.020 (0.013)
Relect Quarter	0.006 (0.012)	0.008 (0.013)	0.007 (0.013)	0.003 (0.014)	0.006 (0.013)	0.006 (0.013)
Relect Quarter - 1	0.014 (0.018)	0.013 (0.017)	0.013 (0.017)	0.014 (0.016)	0.015 (0.016)	0.016 (0.016)
Relect Quarter - 2	0.006 (0.012)	0.003 (0.012)	0.003 (0.012)	0.006 (0.013)	0.008 (0.012)	0.008 (0.012)
Relect Quarter - 3	0.013 (0.011)	0.010 (0.010)	0.010 (0.010)	0.007 (0.011)	0.009 (0.011)	0.009 (0.011)
Relect Quarter - 4	0.006 (0.014)	0.004 (0.014)	0.003 (0.014)	-0.001 (0.014)	0.001 (0.014)	0.001 (0.014)
Relect Quarter - 5	0.006 (0.014)	0.007 (0.015)	0.006 (0.015)	0.005 (0.015)	0.006 (0.015)	0.007 (0.015)
Relect Quarter - 6	0.007 (0.015)	0.006 (0.015)	0.005 (0.015)	0.005 (0.015)	0.006 (0.015)	0.006 (0.015)
Relect Quarter - 7	0.013 (0.014)	0.015 (0.014)	0.014 (0.014)	0.011 (0.014)	0.013 (0.014)	0.014 (0.014)
N	83453	83453	83453	83453	83453	83138
Justice FE	Yes	Yes	Yes	Yes	Yes	Yes
Year, Month FE	Yes	Yes	Yes	Yes	Yes	Yes
SE Clustered Justice/Case	Yes	Yes	Yes	Yes	Yes	Yes
Prosecutor Appeals	No	Yes	Yes	Yes	Yes	Yes
Felony Class/Sex Offender	No	No	Yes	Yes	Yes	Yes
Plea/Jury/Bench	No	No	No	Yes	Yes	Yes
Panel Covs	No	No	No	No	Yes	Yes
Excludes Dissenting Justices	No	No	No	No	No	Yes

** p<.05, *** p<.01.

Table 11: Pro-Defendant Appellate Justice Votes
Justices on Both Reappointment and Reelection Calendars
Interacting Reelection Calendar with Case From Justice's Home Judicial District

	M1	M2	M3	M4	M5	M6
Reappt Yr	-0.019*** (0.006)	-0.018*** (0.006)	-0.018*** (0.006)	-0.018*** (0.006)	-0.019*** (0.006)	-0.019*** (0.006)
Reappt Yr - 1	-0.016** (0.007)	-0.016** (0.007)	-0.016** (0.007)	-0.016** (0.007)	-0.017** (0.007)	-0.016** (0.007)
Reappt/Reelect Yr	0.009 (0.008)	0.007 (0.008)	0.006 (0.008)	0.006 (0.008)	0.008 (0.008)	0.009 (0.008)
Reappt/Reelect Yr - 1	0.007 (0.007)	0.006 (0.007)	0.006 (0.007)	0.005 (0.007)	0.007 (0.007)	0.007 (0.007)
Home District	0.000 (0.005)	0.000 (0.005)	0.000 (0.005)	0.001 (0.005)	0.001 (0.005)	0.001 (0.005)
Home District X	-0.000 (0.010)	0.001 (0.010)	0.001 (0.010)	-0.002 (0.010)	-0.001 (0.010)	-0.001 (0.010)
Reappt/Reelect Yr	0.004 (0.009)	0.005 (0.009)	0.005 (0.009)	0.001 (0.008)	0.001 (0.008)	0.000 (0.008)
Home District X						
Reappt/Reelect Yr - 1						
Pros Appeals		0.271*** (0.029)	0.276*** (0.028)	0.295*** (0.030)	0.295*** (0.030)	0.293*** (0.030)
A Felony			0.021** (0.010)	-0.009 (0.010)	-0.009 (0.010)	-0.009 (0.010)
B Felony			0.028*** (0.010)	0.022** (0.009)	0.022** (0.009)	0.023*** (0.009)
Sex Offender Registry			0.007 (0.011)	0.030*** (0.011)	0.030*** (0.011)	0.029*** (0.011)
Guilty Plea				0.004 (0.013)	0.003 (0.013)	0.003 (0.013)
Jury Trial				0.107*** (0.012)	0.106*** (0.011)	0.105*** (0.011)
Bench Trial				0.061*** (0.017)	0.060*** (0.017)	0.060*** (0.017)
Avg Dem VS Panel					0.025 (0.013)	0.026** (0.013)
% Reappt Yr Panel					-0.004 (0.015)	-0.004 (0.015)
% Reelect Yr Panel					-0.009 (0.024)	-0.009 (0.024)
Constant	0.110*** (0.016)	0.105*** (0.016)	0.098*** (0.017)	0.069*** (0.018)	0.073*** (0.018)	0.072*** (0.018)
N	83453	83453	83453	83453	83453	83138
Justice FE	Yes	Yes	Yes	Yes	Yes	Yes
Year, Month FE	Yes	Yes	Yes	Yes	Yes	Yes
SE Clustered Justice/Case	Yes	Yes	Yes	Yes	Yes	Yes
Excludes Dissenting Justices	No	No	No	No	No	Yes

** p<.05, *** p<.01.

Table 12: Pro-Defendant Appellate Justice Votes
Justices on Both Reappointment and Reelection Calendars
Interacting Reappointment/Reelection Year with Justice's Average Democratic Voteshare

	M1	M2	M3	M4	M5	M6
Reappt Yr	-0.018*** (0.004)	-0.017*** (0.004)	-0.018*** (0.004)	-0.018*** (0.004)	-0.018*** (0.004)	-0.017*** (0.004)
Reappt/Reelect Yr	0.006 (0.007)	0.005 (0.008)	0.005 (0.008)	0.005 (0.008)	0.006 (0.008)	0.005 (0.008)
Justice Dem VS X Reappt Yr	0.012 (0.008)	0.013 (0.008)	0.015 (0.008)	0.016 (0.009)	0.015 (0.009)	0.012 (0.008)
Justice Dem VS X Reappt/Reelect Yr	0.001 (0.012)	0.001 (0.013)	-0.000 (0.013)	-0.002 (0.014)	-0.000 (0.014)	0.001 (0.013)
Pros Appeals		0.271*** (0.029)	0.276*** (0.028)	0.296*** (0.031)	0.296*** (0.030)	0.294*** (0.031)
A Felony			0.021** (0.010)	-0.010 (0.010)	-0.010 (0.010)	-0.010 (0.010)
B Felony			0.029*** (0.011)	0.022** (0.009)	0.022** (0.009)	0.022** (0.009)
Sex Offender Registry			0.006 (0.010)	0.030*** (0.011)	0.030** (0.011)	0.029** (0.011)
Guilty Plea				0.007 (0.013)	0.006 (0.013)	0.005 (0.013)
Jury Trial				0.110*** (0.012)	0.109*** (0.011)	0.108*** (0.011)
Bench Trial				0.060*** (0.017)	0.060*** (0.017)	0.060*** (0.017)
Avg Dem VS Panel					0.025 (0.013)	0.026** (0.013)
% Reappt Yr Panel					0.001 (0.015)	0.001 (0.015)
% Reappt/Reelect Yr Panel					-0.012 (0.024)	-0.012 (0.024)
Constant	0.113*** (0.017)	0.108*** (0.017)	0.100*** (0.018)	0.068*** (0.019)	0.072*** (0.019)	0.071*** (0.019)
N	80328	80328	80328	80328	80328	80017
Justice FE	Yes	Yes	Yes	Yes	Yes	Yes
Year, Month FE	Yes	Yes	Yes	Yes	Yes	Yes
SE Clustered Justice/Case	Yes	Yes	Yes	Yes	Yes	Yes
Excludes Dissenting Justices	No	No	No	No	No	Yes

** p<.05, *** p<.01.

Table 13: Pro-Defendant Appellate Justice Votes
Justices on Both Reappointment and Reelection Calendars
Interacting Reappointment with Party of Appointing Governor

	M1	M2	M3	M4	M5	M6
Reappt Yr	-0.019*** (0.006)	-0.018*** (0.006)	-0.018*** (0.006)	-0.018*** (0.007)	-0.019*** (0.006)	-0.019*** (0.006)
Reappt Yr - 1	-0.017** (0.007)	-0.018** (0.007)	-0.017** (0.007)	-0.017** (0.007)	-0.017** (0.007)	-0.017** (0.007)
Reappt/Reelect Yr	0.008 (0.007)	0.006 (0.008)	0.006 (0.008)	0.005 (0.008)	0.007 (0.008)	0.008 (0.008)
Reappt/Reelect Yr - 1	0.007 (0.007)	0.007 (0.007)	0.006 (0.007)	0.005 (0.007)	0.006 (0.007)	0.007 (0.007)
Dem Gov X	0.004 (0.011)	0.005 (0.011)	0.004 (0.011)	0.003 (0.012)	0.003 (0.012)	0.003 (0.012)
Reappt Yr						
Dem Gov X	0.009 (0.011)	0.011 (0.011)	0.011 (0.011)	0.008 (0.013)	0.008 (0.012)	0.009 (0.012)
Reappt Yr -1						
Pros Appeals		0.271*** (0.029)	0.276*** (0.028)	0.296*** (0.030)	0.295*** (0.030)	0.293*** (0.030)
A Felony			0.021** (0.010)	-0.008 (0.010)	-0.009 (0.010)	-0.009 (0.010)
B Felony			0.028*** (0.010)	0.022** (0.009)	0.022** (0.009)	0.023*** (0.009)
Sex Offender Registry			0.007 (0.011)	0.030*** (0.011)	0.030*** (0.011)	0.029*** (0.011)
Guilty Plea				0.004 (0.013)	0.003 (0.013)	0.003 (0.013)
Jury Trial				0.107*** (0.011)	0.106*** (0.011)	0.105*** (0.011)
Bench Trial				0.061*** (0.017)	0.060*** (0.017)	0.060*** (0.017)
Avg Dem VS Panel					0.025 (0.013)	0.026** (0.013)
% Reappt Yr Panel					-0.004 (0.015)	-0.004 (0.015)
% Reappt/Reelect Yr Panel					-0.009 (0.024)	-0.009 (0.024)
Constant	0.109*** (0.016)	0.104*** (0.016)	0.097*** (0.017)	0.068*** (0.018)	0.072*** (0.018)	0.071*** (0.018)
N	83453	83453	83453	83453	83453	83138
Justice FE	Yes	Yes	Yes	Yes	Yes	Yes
Year, Month FE	Yes	Yes	Yes	Yes	Yes	Yes
SE Clustered Justice/Case	Yes	Yes	Yes	Yes	Yes	Yes
Excludes Dissenting Justices	No	No	No	No	No	Yes

** p<.05, *** p<.01.

Table 14: Covariate Balance, 2003-2017
Justices on Reappointment and Reelection Calendars
Cases Unmatched and Matched to DOC Inmate Records
N = 83,453

	Unmatched	Matched
Prosecutor Appeals	0.024	0.008***
Class A Felony	0.11	0.16***
Class B Felony	0.35	0.42***
Sex Offender	0.19	0.04***
Guilty Plea	0.58	0.55***
Jury Trial	0.37	0.41***
Bench Trial	0.06	0.04***
N	47,070	36,383

** p<.05, *** p<.01; differences in means tests.

Table 15: Covariate Balance, 2003-2017
Justices on Reappointment and Reelection Calendars
Cases Matched to DOC Inmate Records N = 36,383

	Baseline	Reappt Only Yr	Reappt/ Reelection Yr
Prosecutor Appeals	0.008	0.008	0.008
Class A Felony	0.12	0.11	0.12
Class B Felony	0.31	0.35**	0.32
Class C Felony	0.22	0.21	0.21
Class D Felony	0.25	0.25	0.26
Class E Felony	0.10	0.09	0.10
Dfndt Age	36.33	36.57	36.48
Dfndt Male	0.96	0.96	0.96
Dfndt White All	0.39	0.37	0.39
Dfndt White Non-Hispanic	0.23	0.23	0.22
Dfndt Black	0.58	0.59	0.58
Guilty Plea	0.55	0.57	0.55
Jury Trial	0.41	0.39	0.41
Bench Trial	0.04	0.03	0.04
N	32,187	764	3,452

** p<.05, *** p<.01; differences in means tests between baseline and reappointment-only justice votes, and between reappointment-only and reappointment/reelection justice votes.

Table 16: Pro-Defendant Appellate Justice Votes
Justices on Both Reappointment and Reelection Calendars
Subsample of Cases Matched to DOC Data

	M1	M2	M3	M4	M5	M6
Reappt Yr	-0.027** (0.013)	-0.026* (0.014)	-0.026* (0.014)	-0.028** (0.013)	-0.028** (0.013)	-0.027** (0.013)
Reappt Yr - 1	-0.022* (0.013)	-0.021 (0.013)	-0.021 (0.013)	-0.022* (0.013)	-0.022* (0.013)	-0.022* (0.013)
Reappt/Reelect Yr	0.014 (0.014)	0.014 (0.014)	0.014 (0.014)	0.014 (0.014)	0.016 (0.014)	0.015 (0.013)
Reappt/Reelect Yr - 1	0.014 (0.012)	0.013 (0.012)	0.013 (0.012)	0.012 (0.012)	0.013 (0.012)	0.014 (0.012)
Pros Appeals		0.290*** (0.055)	0.290*** (0.055)	0.310*** (0.055)	0.311*** (0.055)	0.308*** (0.055)
Dfndt Age			0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)
Dfndt Male			0.017 (0.013)	0.014 (0.012)	0.014 (0.012)	0.014 (0.013)
A2 Felony			0.038* (0.023)	0.057** (0.024)	0.056** (0.024)	0.055** (0.024)
B Felony			0.009 (0.010)	0.019* (0.010)	0.018* (0.010)	0.018* (0.010)
C Felony			0.008 (0.011)	0.019 (0.011)	0.019 (0.011)	0.019 (0.011)
D Felony			0.003 (0.012)	0.019 (0.012)	0.018 (0.012)	0.019 (0.012)
E Felony			-0.001 (0.013)	0.018 (0.013)	0.017 (0.013)	0.016 (0.013)
Guilty Plea				0.003 (0.015)	0.002 (0.014)	0.002 (0.014)
Jury Trial				0.095*** (0.014)	0.093*** (0.014)	0.093*** (0.014)
Bench Trial				0.059*** (0.022)	0.058*** (0.022)	0.059*** (0.022)
Avg Dem VS Panel					0.027* (0.016)	0.029* (0.016)
% Reappt Yr Panel					-0.001 (0.023)	-0.000 (0.023)
% Reappt/Reelect Yr Panel					0.011 (0.037)	0.010 (0.037)
Constant	0.085*** (0.020)	0.085*** (0.020)	0.048* (0.026)	0.011 (0.027)	0.014 (0.027)	0.013 (0.027)
N	36382	36382	36354	36354	36354	36237
Justice FE	Yes	Yes	Yes	Yes	Yes	Yes
Year, Month FE	Yes	Yes	Yes	Yes	Yes	Yes
SE Clustered Justice/Case	Yes	Yes	Yes	Yes	Yes	Yes
Excludes Dissenting Justices	No	No	No	No	No	Yes

* p<.10, ** p<.05, *** p<.01.

Table 17: Pro-Defendant Appellate Justice Votes
Justices on Both Reappointment and Reelection Calendars
All White Defendants

	M1	M2	M3	M4	M5	M6
Reappt Yr	-0.009 (0.017)	-0.007 (0.018)	-0.007 (0.017)	-0.009 (0.017)	-0.011 (0.017)	-0.009 (0.017)
Reappt Yr - 1	-0.029** (0.014)	-0.030** (0.014)	-0.029** (0.014)	-0.031** (0.014)	-0.032** (0.014)	-0.032** (0.014)
Reappt/Reelect Yr	0.000 (0.019)	-0.001 (0.019)	-0.001 (0.019)	-0.002 (0.019)	0.001 (0.019)	-0.001 (0.019)
Reappt/Reelect Yr - 1	0.028** (0.014)	0.028** (0.014)	0.027* (0.014)	0.025* (0.014)	0.028** (0.014)	0.028** (0.014)
Pros Appeals		0.304*** (0.079)	0.307*** (0.080)	0.324*** (0.078)	0.325*** (0.077)	0.326*** (0.077)
Dfndt Age			0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)
Dfndt Male			0.021 (0.019)	0.017 (0.019)	0.017 (0.019)	0.017 (0.019)
A2 Felony			0.000 (0.032)	0.018 (0.031)	0.019 (0.031)	0.013 (0.032)
B Felony			0.010 (0.018)	0.023 (0.018)	0.024 (0.018)	0.022 (0.018)
C Felony			-0.008 (0.018)	0.007 (0.018)	0.007 (0.018)	0.006 (0.018)
D Felony			-0.012 (0.019)	0.007 (0.019)	0.008 (0.019)	0.006 (0.019)
E Felony			-0.002 (0.021)	0.021 (0.021)	0.022 (0.020)	0.020 (0.021)
Guilty Plea				0.003 (0.018)	0.002 (0.018)	0.002 (0.018)
Jury Trial				0.100*** (0.019)	0.098*** (0.019)	0.097*** (0.019)
Bench Trial				0.067** (0.032)	0.065** (0.032)	0.068** (0.032)
Avg Dem VS Panel					0.039 (0.024)	0.042* (0.024)
% Reappt Yr Panel					-0.011 (0.035)	-0.008 (0.034)
% Reappt/Reelect Yr Panel					0.001 (0.060)	-0.001 (0.060)
Constant	0.098*** (0.035)	0.100*** (0.035)	0.067 (0.042)	0.030 (0.043)	0.035 (0.044)	0.036 (0.044)
N	14080	14080	14068	14068	14068	14019
Justice FE	Yes	Yes	Yes	Yes	Yes	Yes
Year, Month FE	Yes	Yes	Yes	Yes	Yes	Yes
SE Clustered Justice/Case	Yes	Yes	Yes	Yes	Yes	Yes
Excludes Dissenting Justices	No	No	No	No	No	Yes

* p<.10, ** p<.05, *** p<.01.

Table 18: Pro-Defendant Appellate Justice Votes
Justices on Both Reappointment and Reelection Calendars
Non-Hispanic White Defendants

	M1	M2	M3	M4	M5	M6
Reappt Yr	-0.014 (0.031)	-0.011 (0.030)	-0.012 (0.029)	-0.013 (0.028)	-0.015 (0.028)	-0.012 (0.027)
Reappt Yr - 1	-0.035** (0.014)	-0.035** (0.013)	-0.033** (0.014)	-0.035*** (0.013)	-0.037** (0.014)	-0.036** (0.014)
Reappt/Reelect Yr	-0.004 (0.035)	-0.006 (0.034)	-0.005 (0.034)	-0.006 (0.033)	-0.003 (0.033)	-0.005 (0.033)
Reappt/Reelect Yr - 1	0.014 (0.018)	0.014 (0.017)	0.013 (0.016)	0.012 (0.017)	0.015 (0.017)	0.015 (0.017)
Pros Appeals		0.254** (0.103)	0.257** (0.103)	0.268*** (0.101)	0.271*** (0.101)	0.271*** (0.101)
Dfndt Age			0.001 (0.001)	0.000 (0.001)	0.000 (0.001)	0.000 (0.001)
Dfndt Male			0.013 (0.022)	0.007 (0.022)	0.006 (0.022)	0.007 (0.022)
A2 Felony			0.074 (0.063)	0.091 (0.062)	0.091 (0.062)	0.079 (0.063)
B Felony			0.033 (0.029)	0.050* (0.029)	0.051* (0.029)	0.049 (0.030)
C Felony			0.001 (0.030)	0.021 (0.030)	0.023 (0.030)	0.021 (0.030)
D Felony			-0.004 (0.028)	0.021 (0.029)	0.021 (0.029)	0.019 (0.029)
E Felony			0.011 (0.030)	0.040 (0.031)	0.041 (0.031)	0.038 (0.031)
Guilty Plea				-0.021 (0.022)	-0.021 (0.022)	-0.021 (0.022)
Jury Trial				0.081*** (0.025)	0.080*** (0.025)	0.080*** (0.025)
Bench Trial				0.031 (0.040)	0.030 (0.041)	0.033 (0.041)
Avg Dem VS Panel					0.037 (0.033)	0.040 (0.033)
% Reappt Yr Panel					0.034 (0.051)	0.038 (0.051)
% Reappt/Reelect Yr Panel					-0.029 (0.091)	-0.033 (0.090)
Constant	0.082* (0.049)	0.083* (0.049)	0.036 (0.059)	0.028 (0.061)	0.032 (0.062)	0.033 (0.062)
N	8291	8291	8279	8279	8279	8242
Justice FE	Yes	Yes	Yes	Yes	Yes	Yes
Year, Month FE	Yes	Yes	Yes	Yes	Yes	Yes
SE Clustered Justice/Case	Yes	Yes	Yes	Yes	Yes	Yes
Excludes Dissenting Justices	No	No	No	No	No	Yes

* p<.10, ** p<.05, *** p<.01.

Table 19: Pro-Defendant Appellate Justice Votes
Justices on Both Reappointment and Reelection Calendars
Black Defendants

	M1	M2	M3	M4	M5	M6
Reappt Yr	-0.035** (0.017)	-0.034* (0.018)	-0.033* (0.018)	-0.034* (0.017)	-0.034* (0.018)	-0.033* (0.017)
Reappt Yr - 1	-0.010 (0.021)	-0.009 (0.021)	-0.009 (0.022)	-0.010 (0.021)	-0.010 (0.021)	-0.010 (0.021)
Reappt/Reelect Yr	0.021 (0.017)	0.020 (0.018)	0.019 (0.018)	0.020 (0.018)	0.021 (0.017)	0.020 (0.017)
Reappt/Reelect Yr - 1	0.003 (0.022)	0.001 (0.021)	0.001 (0.021)	-0.000 (0.021)	0.000 (0.021)	0.002 (0.021)
Pros Appeals		0.290*** (0.069)	0.290*** (0.069)	0.312*** (0.069)	0.313*** (0.069)	0.307*** (0.069)
Dfndt Age			0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)
Dfndt Male			0.007 (0.019)	0.004 (0.019)	0.004 (0.019)	0.005 (0.019)
A2 Felony			0.078** (0.035)	0.096*** (0.036)	0.095*** (0.036)	0.097*** (0.036)
B Felony			0.008 (0.012)	0.016 (0.012)	0.015 (0.012)	0.016 (0.012)
C Felony			0.021 (0.014)	0.030** (0.014)	0.030** (0.013)	0.029** (0.013)
D Felony			0.012 (0.014)	0.026* (0.014)	0.025* (0.014)	0.027* (0.014)
E Felony			-0.000 (0.017)	0.014 (0.017)	0.013 (0.016)	0.012 (0.016)
Guilty Plea				0.004 (0.016)	0.003 (0.016)	0.003 (0.016)
Jury Trial				0.090*** (0.015)	0.089*** (0.015)	0.089*** (0.015)
Bench Trial				0.055* (0.028)	0.054* (0.028)	0.053* (0.028)
Avg Dem VS Panel					0.019 (0.022)	0.021 (0.022)
% Reappt Yr Panel					0.000 (0.031)	0.000 (0.031)
% Reappt/Reelect Yr Panel					0.016 (0.050)	0.015 (0.050)
Constant	0.083*** (0.029)	0.082*** (0.029)	0.052 (0.037)	0.015 (0.038)	0.017 (0.037)	0.016 (0.038)
N	21031	21031	21016	21016	21016	20949
Justice FE	Yes	Yes	Yes	Yes	Yes	Yes
Year, Month FE	Yes	Yes	Yes	Yes	Yes	Yes
SE Clustered Justice/Case	Yes	Yes	Yes	Yes	Yes	Yes
Excludes Dissenting Justices	No	No	No	No	No	Yes

* p<.10, ** p<.05, *** p<.01.

Table 20: Pre- and Post-Matching Covariate Balance
Justices on Reappointment and Reelection Calendars
Cases Matched to DOC Inmate Records
Coarsened Exact Matching on All Pre-Ruling Case Covariates

	Unmatched		Matched	
	All White Dfndts	Black Dfndts	All White Dfndts	Black Dfndts
Prosecutor Appeals	0.008	0.008	.004	.004
Class A Felony	0.11	0.13***	0.11	0.11
Class B Felony	0.28	0.33***	0.28	0.28
Class C Felony	0.20	0.23***	0.20	0.20
Class D Felony	0.28	0.23***	0.28	0.28
Class E Felony	0.13	0.07***	0.13	0.13
Dfndt Age	37.72	35.45***	37.38	37.37
Dfndt Male	0.94	0.97***	0.95	0.95
Guilty Plea	0.40	0.31***	0.40	0.40
Jury Trial	0.20	0.29***	0.20	0.20
Bench Trial	0.03	0.02**	0.02	0.02
N	14,080	21,032	13,757	20,716

** p<.05, *** p<.01. OLS regressions using CEM weights for matched samples.

Table 21: Pre- and Post-Matching Covariate Balance
Justices on Reappointment and Reelection Calendars
Cases Matched to DOC Inmate Records
Coarsened Exact Matching on All Pre-Ruling Case Covariates

	Unmatched		Matched	
	Non-Hispanic White Dfndts	Black Dfndts	Non-Hispanic White Dfndts	Black Dfndts
Prosecutor Appeals	0.008	0.008	.005	.005
Class A Felony	0.08	0.13***	0.08	0.08
Class B Felony	0.24	0.33***	0.24	0.24
Class C Felony	0.20	0.23***	0.20	0.20
Class D Felony	0.32	0.23***	0.33	0.33
Class E Felony	0.16	0.07***	0.16	0.16
Dfndt Age	38.98	35.45***	38.60	38.55
Dfndt Male	0.92	0.97***	0.94	0.94
Guilty Plea	0.49	0.31***	0.50	0.50
Jury Trial	0.20	0.29***	0.20	0.20
Bench Trial	0.02	0.02	0.02	0.02
N	8,291	21,032	8,074	20,556

** p<.05, *** p<.01. OLS regressions using CEM weights for matched samples.

Table 22: Pro-Defendant Appellate Justice Votes
Justices on Both Reappointment and Reelection Calendars
Black Defendants Matched to All White Defendants

	M1	M2	M3	M4	M5	M6
Reappt Yr	-0.040** (0.016)	-0.039** (0.016)	-0.038** (0.016)	-0.040*** (0.015)	-0.040** (0.015)	-0.039*** (0.015)
Reappt Yr - 1	-0.021 (0.014)	-0.022 (0.014)	-0.021 (0.014)	-0.023* (0.014)	-0.023* (0.014)	-0.024 (0.014)
Reappt/Reelect Yr	0.026 (0.017)	0.026 (0.017)	0.024 (0.017)	0.027 (0.016)	0.027 (0.016)	0.027* (0.016)
Reappt/Reelect Yr - 1	0.023 (0.015)	0.024 (0.015)	0.023 (0.015)	0.025 (0.015)	0.025 (0.015)	0.027* (0.016)
Pros Appeals		0.196** (0.094)	0.194** (0.094)	0.221** (0.095)	0.222** (0.095)	0.217** (0.096)
Dfndt Age			-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)
Dfndt Male			-0.004 (0.028)	-0.009 (0.028)	-0.009 (0.028)	-0.008 (0.028)
A2 Felony			0.096** (0.044)	0.111** (0.044)	0.111** (0.044)	0.112** (0.044)
B Felony			0.006 (0.013)	0.014 (0.012)	0.014 (0.012)	0.015 (0.012)
C Felony			0.021 (0.015)	0.032** (0.015)	0.032** (0.015)	0.031** (0.015)
D Felony			0.016 (0.015)	0.029* (0.015)	0.028* (0.015)	0.030** (0.015)
E Felony			-0.011 (0.018)	0.006 (0.017)	0.005 (0.017)	0.003 (0.017)
Guilty Plea				0.011 (0.018)	0.011 (0.018)	0.011 (0.018)
Jury Trial				0.095*** (0.017)	0.095*** (0.017)	0.094*** (0.017)
Bench Trial				0.054* (0.032)	0.054* (0.031)	0.053* (0.031)
Avg Dem VS Panel					0.004 (0.022)	0.006 (0.022)
% Reappt Yr Panel					-0.019 (0.034)	-0.019 (0.034)
% Reappt/Reelect Yr Panel					0.049 (0.055)	0.050 (0.055)
Constant	0.116*** (0.039)	0.113*** (0.038)	0.107** (0.047)	0.081* (0.047)	0.082* (0.047)	0.081* (0.048)
N	20715	20715	20715	20715	20715	20648
Justice FE	Yes	Yes	Yes	Yes	Yes	Yes
Year, Month FE	Yes	Yes	Yes	Yes	Yes	Yes
SE Clustered Justice/Case	Yes	Yes	Yes	Yes	Yes	Yes
Excludes Dissenting Justices	No	No	No	No	No	Yes

* p<.10, ** p<.05, *** p<.01. All models implemented using weights derived from Coarsened Exact Matching on all pre-ruling case/defendant covariates.

Table 23: Pro-Defendant Appellate Justice Votes
Justices on Both Reappointment and Reelection Calendars
Black Defendants Matched to Non-Hispanic White Defendants

	M1	M2	M3	M4	M5	M6
Reappt Yr	-0.039** (0.018)	-0.039** (0.018)	-0.040** (0.018)	-0.043** (0.018)	-0.043** (0.017)	-0.042** (0.017)
Reappt Yr - 1	-0.021 (0.018)	-0.021 (0.018)	-0.023 (0.018)	-0.026 (0.017)	-0.026 (0.017)	-0.028 (0.018)
Reappt/Reelect Yr	0.015 (0.019)	0.015 (0.019)	0.014 (0.020)	0.018 (0.020)	0.017 (0.019)	0.018 (0.020)
Reappt/Reelect Yr - 1	0.017 (0.018)	0.017 (0.017)	0.017 (0.018)	0.019 (0.018)	0.020 (0.018)	0.022 (0.018)
Pros Appeals		0.154 (0.105)	0.150 (0.105)	0.173 (0.107)	0.176 (0.107)	0.173 (0.107)
Dfndt Age			-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)
Dfndt Male			0.009 (0.028)	0.000 (0.028)	-0.000 (0.028)	0.001 (0.028)
A2 Felony			0.136** (0.063)	0.149** (0.060)	0.150** (0.060)	0.151** (0.060)
B Felony			-0.001 (0.016)	0.009 (0.015)	0.010 (0.015)	0.010 (0.015)
C Felony			0.014 (0.019)	0.028 (0.019)	0.028 (0.019)	0.027 (0.019)
D Felony			0.008 (0.018)	0.025 (0.017)	0.025 (0.017)	0.026 (0.017)
E Felony			-0.024 (0.019)	-0.001 (0.018)	-0.001 (0.018)	-0.002 (0.018)
Guilty Plea				0.011 (0.020)	0.012 (0.020)	0.012 (0.020)
Jury Trial				0.104*** (0.020)	0.104*** (0.020)	0.105*** (0.020)
Bench Trial				0.071* (0.042)	0.071* (0.042)	0.072* (0.042)
Avg Dem VS Panel					-0.010 (0.025)	-0.009 (0.025)
% Reappt Yr Panel					-0.052 (0.037)	-0.052 (0.037)
% Reappt/Reelect Yr Panel					0.032 (0.063)	0.033 (0.063)
Constant	0.086** (0.037)	0.086** (0.037)	0.080 (0.050)	0.053 (0.051)	0.055 (0.051)	0.054 (0.051)
N	20555	20555	20555	20555	20555	20489
Justice FE	Yes	Yes	Yes	Yes	Yes	Yes
Year, Month FE	Yes	Yes	Yes	Yes	Yes	Yes
SE Clustered Justice/Case	Yes	Yes	Yes	Yes	Yes	Yes
Excludes Dissenting Justices	No	No	No	No	No	Yes

* p<.10, ** p<.05, *** p<.01. All models implemented using weights derived from Coarsened Exact Matching on all pre-ruling case/defendant covariates.