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The Effects of Judicial Mechanisms on State Supreme Court Decisions in Certain Criminal Appeals

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Abstract

This project builds on existing work in social science to better understand the effects of judicial selection mechanisms on the voting behavior of judges in the states' highest courts. Specifically, this paper answers the following question: Does the judicial selection mechanism in state supreme courts affect the punitiveness of the judges in criminal matters? This work posits that the variance in electoral pressure experienced by judges across selection methods results in a separate set of incentive structures for judges in elective systems compared to those of judges in appointment systems. Judges in elective systems should vote more punitively than judges in appointment systems, in line with public perceptions of crime. The effect should be particularly prominent when comparing judges in nonpartisan elective systems with judges in partisan elective systems. These hypotheses were tested using two separate multivariable regression models on a selection of criminal appeals cases from the State Supreme Court Data Project, where allegations of trial error were caused by discretionary decisions by the trial judge. The results of the first model were inconclusive, while the results in the second model showed partisan judges vote more punitively than non-partisan judges. The findings of the first model suggest that state supreme court judges are unaffected by selection mechanism when considering criminal appeals based on trial error. The second model shows that this examination may have failed to account for cross-state variables that potentially biased the results. Additionally, the focus on criminal appeals based on discretionary trial judge decisions may have not been the best arena in which to explore the hypotheses.

1. Introduction

The best method of judicial selection has been a prominent topic of debate amongst politicians and legal scholars throughout American history, beginning in the years leading up to the ratification of the United States Constitution. Judges are generally expected to be independent, neutral arbiters of the law, resolving disputes between parties and interpreting governing statutes in cases that appear before them. The discourse has principally revolved around the injection of democratic values in the judiciary. To what extent should judges be held democratically accountable for their decisions? Does increasing democratic accountability in the judiciary mar a judge's ability to be a politically independent actor, beholden only to enacted legislation and the constitutions he or she swore to serve? Alexander Hamilton was amongst the first to articulate the importance of an entirely independent judiciary in the role of American politics. He argued that the practice of life tenure for federal judges was paramount to preserving judicial independence. Referring to the potential thwarting of individual rights by elected officials, he wrote in *Federalist No. 78*:

> This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion

> dangerous innovations in the government, and serious oppressions of the minor party in the community.[1]

In essence, Hamilton argued that judges should not be accountable to the people because the judiciary is partly responsible for protecting individual rights from the popular will. Further, he envisioned that judges would serve the role of correcting popular governmental devices that have the potential to infringe upon those rights.

One of Hamilton's staunchest political adversaries, Thomas Jefferson, held a contrary view. Throughout his life, he consistently wrote criticisms on the selection of federal judges, and consequently, their role in the federal government. He believed judges should be accountable to the people, and succinctly argued as such in a 1820 letter to diplomat William Charles Jarvis: "[W]hen the legislative or executive functionaries act unconstitutionally, they are responsible to the people in their elective capacity. the exemption of the judges from that is quite dangerous enough. [2]" Jefferson argued that any empowered party should derive their power from the people, resolving claims that the common people are incompetent to make such decisions by stressing the need for education. "I know no safe depository of the ultimate powers of the society, but the people themselves: and if we think them not enlightened enough to exercise their controul with a wholsome discretion, the remedy is, not to take it from them, but to inform their discretion by education.[3]"

While Hamilton and Jefferson were commenting on the federal judiciary, the central arguments are equally applicable to state courts. The maxims of judicial independence and democratic accountability are as present in state judiciaries as the federal court system. The debate has had a profound influence on state judicial selection policy throughout history. Jed Handelsman Shugerman reported in his extensive historiographical examination on the rise of judicial elections that every state in the newly minted union used appointment systems to select judges for fifty years after the Constitution was ratified. The practice of imposing popular elections on major state judgeships began during President Andrew Jackson's administration: "In 1832, Mississippi became the first state to elect its supreme court judges, in an attempt to weaken them.[4]" Prior to Mississippi, only two states (Georgia and Indiana) experimented with elections for minor judges.[5] Despite the fact that the phenomenon was scantly practiced during Alexis de Tocqueville's tour of the United States, he criticized and predicted profoundly negative effects from the elective method of judicial selection and general trend toward weakening the judiciary. In his seminal work, *On Democracy in America*, he writes:

> I am aware that a secret tendency to diminish the judicial power exists in the United States... By some [sic] other constitutions, the members of the tribunals are elected, and they are even subjected to frequent re-elections. I venture to predict that these innovations will sooner or later be attended with fatal consequences, and that it will be found out at some future period that the attack which is made upon the judicial power has affected the democratic republic itself (De Tocqueville 1835, 975-976)[6].

The history of judicial elections will be described in the next section, but it is important to emphasize that the practice of judicial elections did not become widespread until the mid-19th century. "By 1860, out of thirty-one states in the Union, eighteen states elected all their judges, and five more elected some of their judges.[7]" Judicial elections were initially partisan affairs, which according to Matthew Streb, lead to a perception amongst the American Bar Association (ABA) and American Judicature Society (AJS) that reform was necessary to further reduce politicization of the bench. By the turn of the 20th century, nonpartisan elections became increasingly popular amongst the states. "By 1927, twelve states employed this method of judicial selection.[8]" The American legal elite, however, remained unconvinced that nonpartisan elections would sufficiently remove the political element from state courts. About twenty years later, the AJS proposed a mechanism that served as a compromise between the appointed and elected models: it was intended to mitigate the political effects of selecting judges by "merit" and preserved the people's role in choosing judges via retention elections. The mechanism would eventually be adopted by the majority of states, and acquire the moniker, the "Missouri Plan," after the first state that adopted it in 1940.[9]

Despite extensive commentary from two of the most prominent founding fathers over two and a half centuries ago, ill omens from the prescient observer Alexis de Tocqueville, and a historical cross-state record replete with experimentation in the realm of judicial selection, the debate continues. The United States is almost exclusive amongst modern governments in the practice of electing judges.[10] According to the National Center for State Courts, twenty-three of the fifty states currently use *Jeffersonianesque* selection policies, requiring judicial candidates seeking a full term to earn their seats on the highest state appellate courts by winning popular elections.[11] Of the states that use elections, seven hold partisan elections, where each judicial candidate's party affiliation is published on the ballot. The remaining sixteen hold nonpartisan elections, withholding party affiliation from voters on the ballot. The other twenty-seven states use merit-based nomination and appointment methods, involving some combination of nominating conventions, the gubernatorial selection, or selection by the state legislature.

Despite the method by which they are selected, judges in state supreme courts (SSCs) must each serve the essential functions required of a "court of last resort." Plaintiffs and defendants challenge lower court decisions by appealing to intermediate appellate courts, and thereafter to SSCs. The highest state courts often have the final say in matters of law. First, state supreme court judges (SSCJs) must correct errors of law appealed in criminal matters in criminal matters Secondly, SSCJ's must resolve matters of law appealed in civil disputes. Third, they must check the power of their respective state's legislative and executive branches by deciding challenges to the legality of actions of these other two branches. The way a judge is selected may affect how they make decisions on all three fronts.

Elected judges that must concern themselves with re-election have the potential to let public opinion affect their decisions in all three cases. Elected judges in states with a severely anti-crime culture may consider public opinion when reviewing lower court criminal decisions. Despite reservations that a convict was sentenced to a harsher penalty than state law allows, an elected judge may abandon her understanding of the criminal code and affirm such a criminal sentence out of fear of being labeled "weak on crime." Elected judges may be more likely to review jury awards in tort cases based on the interests of campaign donors or perceived public opinion, making decisions based on these biases. Finally, elected supreme court judges may be more likely to consider the ebb and flow of partisan politics when reviewing the behavior of the other two branches. Being publicly criticized by a popular partisan politician could be detrimental to a judicial candidate during an election. Additionally, the variance in the elective methods of judges could have an effect. Judges in nonpartisan elective systems may behave differently than those in partisan elected systems, potentially exacerbating the erosion of judicial independence.

These scenarios are troubling when considered in the scope of the traditional role of the judiciary, and propose a number of important puzzles. Do elected judges decide cases differently than their appointed counterparts? To what extent does a judge consider public opinion when issuing decisions and opinions, especially if they depend on winning the majority of votes in a contest? Was Hamilton correct when he asserted that judges accountable to the people would infringe on individual rights? Are judicial elections "dangerous innovations" with "fatal consequences" for democracy, as de Tocqueville predicted? Was Jefferson's insistence that judicial power should come from the people misguided, or do judges behave the same regardless of the source of their power?

These philosophical questions are complex and multifaceted, and can hardly be definitively answered in their entirety. To speak to them in part, however, this examination intends to explore the effects of judicial selection on SSCJ voting behavior in criminal appeals. In particular, it will ask the following question: Does judicial selection mechanism in state supreme courts affect the punitiveness of the judges in criminal matters? This examination will review the extant historical and social science literature on the effects of judicial selection and postulate a theory on the differences between elected and appointed judges. After controlling for outside variables, this paper advances a test of hypotheses with two multivariate regression models. It concludes with a discussion of the results, policy implications, and suggestions for future studies.

2. Review of the Extant Literature

With the multi-faceted degree of variation in judicial selection among the states, it is little surprise the topic has been of considerable interest in social science. Two major questions remain the pillars of examination on the phenomenon: Why do certain states elect judges, and perhaps more importantly, to what extent does selection method influence judicial behavior? Historians have presented theories on the former, while an extensive body of work in political science has been published on the latter. This section will review the prevailing theories from both disciplines.

3. Judicial Selection: A Brief History

Shugerman theorizes that judicial elections rose to prominence in the mid-19th century in an effort to bolster political independence. He argues that the political actors responsible for the conventions that would later amend state constitutions to institute judicial elections had a more encompassing notion of judicial independence, and aimed to remove the political aspect out of the appointment process. "However, in the eighteenth and nineteenth centuries [judicial independence] had more diverse meanings: independence from the Crown, independence from elected branches of government, and independence from party patronage machines and special interests, as well as independence from public opinion.[12]" Riding a wave of public distrust in state legislatures resulting from economic crises in the decades leading up to the American Civil War, the ultimate goal of the reformers was to empower judges to use the practice of judicial review to limit "…legislative excess by making judges independent and more

powerful.[13]" Judicial elections solved another perceived problem of the time, involving the practicality of removing judges. Reformers were also concerned that the process of impeaching judges was in the hands of the legislatures, further reducing judicial independence from those legislatures. Elections proved an easier way to remove errant judges, with the legitimacy of popular approval. Shugerman reports the logic of the reformers, as follows: "They had a three-step theory as to how judicial elections would produce more judicial review: (1) elections would free judges from legislatures; (2) elections would embolden judges by providing them with legitimacy; and (3) elections would threaten judges who did not defend popular constitutional rights against legislative encroachments.[14]"

By looking at cases decided in "established" states during the lead-up and aftermath of the rise of judicial elections, Shugerman finds that these new constitutional innovations caused the intended result, with "…a sharp increase in judicial review by elected judges in the 1850s.[15]" Shugerman's analysis concludes with insights on the effects of judicial elections realized after the experiment produced results, in light of the reformers goals. "True, elections made judges less dependent upon the governor and the legislature, but many reformers in the antebellum period intended to make judges more accountable to the public. In practice, many elected judges became beholden to party machines and special interests.[16]" In other words, over time, the newly devised elective method eventually lead to the same, familiar institutional problems perceived before the fateful wave of constitutional conventions. At onset, judicial elections were partisan affairs that quickly became corrupted by the very same "party machines" the reformers intended to constrain. Despite the failures of this "experiment," the widespread adoption of judicial elections became a foundation for the modern practices of judicial selection. After all, as noted before, seven states still rely on partisan elections for choosing their highest judges.

By the turn of the 20th century, many legal scholars ramped up their criticism of the partisan elected model. According to Matthew Streb, the ABA and AJS pushed for reform, which lead to the development of nonpartisan elections. These elections were "…perceived as a way to clean up corruption and cronyism in the judicial selection process while still keeping judges accountable to the people.[17]" Twelve states adopted nonpartisan elections by 1927, but legal scholars were not completely satisfied with the reforms. Critics argued these elections were insufficient because they removed the "cheapest voting cue" (in the form of partisan labels) from candidates in the eye of the average voter, and the fact that nothing stopped parties from involving themselves in the elections.[18] Sixteen states still currently use nonpartisan elections to select their supreme court judges.

In response to criticism of nonpartisan elections, the AJS endorsed a new, appointment-based scheme involving the nomination of qualified candidates by a nonpartisan nominating commission (traditionally made up of legal professionals and public servants appointed by the state legislature) when a judicial vacancy occurs. The proposed selection system called for the commission to publish a list of qualified candidates that are presented to a state's governor, who is responsible for appointing one of the candidates to fill the judicial vacancy. After a period of time (most often from three to twelve years after serving), the judge is subject to a noncompetitive popular retention election to keep her seat.[19] During the retention election, the judge has no challenger, but must receive a certain threshold (normally between 55 and 70 percent) of the vote to retain office. In 1940, Missouri was the first state to approve this system, with voters passing this selection scheme by ballot initiative. Subsequently, the merit-based selection mechanism was colloquialized as the "Missouri Plan." Both Shugerman's and Strebs's analyses are consistent with the view published by the Missouri Bar Association concerning the purpose of The Missouri Plan. "Prior to the adoption of the Missouri Non-Partisan Court Plan, judicial selection in Missouri was controlled by political machines and party bosses who sought to unseat judges who issued unfavorable rulings. Judicial positions were so tenuous under machine politics that from 1918 to 1941 only two Supreme Court Justices were successful in their bids for re-election.[20]" Similar appointment-based systems have since been adopted in most states, though the particular procedures vary subtly from state to state. Proponents of the Missouri Plan argue that the number of parties involved in the process from nomination to appointment sufficiently removes politics from state courts, all the while retaining the right of voters to play a role in selecting judges.

In sum, virtually all state judges were appointed for the first fifty years of post-Constitution American history. After minor experimentation with judicial elections in certain localities, opportunistic reformers took advantage of the political fragmentation leading up to the American Civil War by calling for constitutional conventions across many states to begin instituting popular elections of judges. As partisan elections, judicial contests quickly became consumed by the party machines the reformers attempted to keep out of judicial politics. States adopted nonpartisan elections in response, and later developed merit-based appointment systems with retention elections. Since state judicial selection mechanisms tend to be hardcoded in state constitutions, selection rules are not easily changed. As a result, some states practice partisan elections, some nonpartisan elections, but most use merit-based systems. Streb reports that the American public "strongly supports having an electoral component to judicial selection, but they are also clear that parties should play no part in the process.[21]" As a result, the Missouri Plan is likely the closest any state can achieve a purely appointment-based system.

4. Modern Examinations on the Effects of Judicial Selection

The effects of judicial selection on judge voting behavior have been examined from a number of different perspectives, chiefly comparing the records of elected and appointed judges. The differences between judges elected in partisan and nonpartisan environments have garnered significantly more attention in recent years. Scholars have tested their theories on cases ranging from salient social issues to issues of criminal justice, with mixed results.

Among the most compelling studies that attempted to find a link between judicial selection method and attention to public opinion focus on capital punishment cases. Capital punishment is an issue that has two unique effects. First, capital punishment has historically been quite popular amongst the public. Secondly, all capital punishment cases are automatically appealed to the states' highest courts. Canes-Wrone, Clark, and Kelly theorized that nonpartisan elected judges are particularly incentivized to allow public opinion to influence their vote for several reasons. Mirroring the ABA criticism of nonpartisan elections in the 1920's, the authors chiefly cite the lack of partisan identifiers as a vulnerability of judges on nonpartisan ballots. Voters in nonpartisan elective systems compensate for the lack of identifiers by using information obtained through other means (such as attack ads, or other anti-candidate messaging). The authors further predicted that the "new-style" judicial campaign that developed with the rise of independent expenditures would aggravate this effect (called the post-Bird effect), and that voters will not be aware of the facts of the case.[22] The researchers examined death penalty cases from 1980 to 2006, breaking up SSCJs in four different selection scenarios. They used statewide capital punishment survey data to measure the metric of public opinion. They found evidence that supported their hypotheses. Judges in nonpartisan elected systems appeared to be most influenced by public opinion (35 to 45 percent more likely to vote with public opinion), and all judges except those selected by commission-retention (Missouri Plan states) were significantly influenced by public opinion after the "new-style" judicial campaign had been firmly established.[23]

Another important capital punishment study examined SSCJ behavior in relation to judicial terms and mandatory retirement. Hall cited another historic trend in state politics surrounding judicial selection that began in the 1960s, when many state legislatures imposed mandatory retirement ages on SSCJs. She theorized that SSCJs' votes were less likely to be influenced by public opinion in voting behavior when facing "electoral censure," and more likely to be influenced by public opinion with ambitions to serve another term.[24] She further argued that electoral threat would play a significant role, and categorized SSCJs in three ways: unsafe seat, competitive court, and unified government.[25] The former two metrics were determined based on electoral vote share in the previous election for elected judges, with the latter indicating the scenario where the SSCJ's party controlled both the state legislature and executive branches. Using one model where public opinion was assumed to be pro-capital punishment and the other was based on state-level survey data, she tested her hypotheses on all death penalty cases between 1995 and 1998.[26] She found evidence to support her hypotheses, with her first model (assuming public opinion) supporting findings from previous research that SSCJ's facing nonpartisan elections are significantly more likely to vote in line with public opinion than SSCJs facing partisan or retention elections.[27]

In the scope of other salient social issues, scholars have also found evidence that selection method effects SSCJ voting behavior. Calderone, Canes-Wrone, and Clark examined abortion cases decided by state courts of last resort. Similar to other research published by some of the authors of this study, they theorize that SSCJ's in nonpartisan elective systems are more likely to vote with public opinion in abortion cases because of the lack of partisan identifiers, the "new-style" judicial campaign "educating" voters, voters will not be aware of the facts of the case, and the fact that partisan labels help voters identify the more liberal candidate.[28] Using state-level survey data over the time span to measure public opinion,, they tested their hypothesis on a dataset of abortion cases decided by state supreme courts between 1980 and 2006. Controlling for cultural factors by using "the behavior of governors…" on abortion issues as a comparison, they found evidence that nonpartisan judges are more likely to vote based on public opinion.[29] These three studies all suggest that nonpartisan elected judges are the most likely among SSCJs to vote strategically in line with public opinion on salient issues.

Other studies have looked at the effect of selection on judicial voting when analyzing criminal justice decisions. Gordon and Huber took advantage of the unique way in which Kansas selects trial court judges to test selection effects on judicial behavior. Kansas selects trial judges on a district-level basis, with "14 judicial districts employ [sic] partisan competitive elections to select judges, while 17 employ gubernatorial appointment and noncompetitive retention elections.[30]" They theorize that the threat of challengers in elected districts cause judges in those districts to impose harsher criminal sentences when compared with judges in appointed districts. They argue that their dataset is less flawed than others in examining the effects of selection because the judges featured in the set operate under the same legal system, with an even split of selection method amongst the most urban districts. They focused their study on felony cases, finding support for their hypotheses. "35% of sentences handed down in the competitive districts

include prison terms, compared with 27% in the retention jurisdictions.[31]" They also found support for the hypothesis that judges would become more punitive as their election looms closer. "We find that the presence of a potential challenger increases the expected nonzero sentence by about 2.5 to 3.7 months, which represents a 7.8% to 11.6% increase over the median nonzero prison sentence in a retention district (32 months).[32]"

Bonneau and Rice examined the effect of SSCJ race on criminal appeals, in the scope of representation. They argue that the number of racial minorities serving on SSCs cannot be descriptively representative because the proportion of SSCJ racial minorities does not equate to the general population. They theorize that black SSCJs are more likely to be substantively representative, with an increased likelihood of voting to overturn convictions and sentencing decisions from lower courts, based on the history of racial injustice in America.[33] They further argue that the effect of race will be more pronounced in SSCJ decisions where the state lacks an intermediate appellate court, since SSCJ's will hear more criminal appeals as the only appellate court. They analyzed all non-unanimous criminal appeals decided by SSCJ's between 1995 and 1998, isolating courts in states without intermediate appellate courts in a separate model. They found that in the general model, race does not have a significant impact on SSCJ decisions in criminal appeals. They further found that, generally, SSCJs in states lacking an intermediate appellate court, have a high reversal rate: "…almost one-third of the votes are to overturn a conviction in state with- out an intermediate appellate court.[34]" Similarly, they found that racial minority judges vote 47.1% more likely to overturn a conviction or sentence without the presence of an intermediate appellate court. Most remarkable are the author's findings concerning elected judges: "Nor is there any evidence that judges who are elected behave differently than those who are not.[35]"

5. Theory

The logical foundation of the argument builds on the extant literature. The theory addresses the differing incentives SSCJs have in making important criminal decisions and how the procedure by which they are selected may inform or influence those decisions. SSCJs enjoy a number of institutional responsibilities and characteristics unshared by other judges, making them an ideal testing ground to measure selection effects. Arguably, the most important duty imposed on a SSCJ is ensuring that those charged with a crime received a fair and impartial trial. SSCs are expected to find and correct reversible trial errors in trial and appellate courts, ordering new trials and providing relief to defendants whose trials were jeopardized by the legal system. As the state level "court of last resort," a SSC decision is often the final, binding decision in a given case, especially criminal cases, as the federal structure of the government defers most criminal justice matters to the states. As such, this study will focus on criminal appeals.

Examining judicial behavior from the perspective of the states' highest courts is advantageous for two reasons. First, serving as a state supreme court justice "represent[s] the highest rung on the career ladder for most judges.[36]" As a result, SSCJ's are theoretically among the least incentivized office holders to decide cases based on public opinion: a given SSCJ cannot reasonably expect to hold higher office. Secondly, while docket control varies amongst state court systems, SSCs are often able to choose the cases they review. Consequently, " having discretionary jurisdiction allows some SSCs to choose to hear cases that are 'tough' or more ambiguous in terms of the proper outcome.[37]" These two institutional factors should set the threshold for differences between SSCJ selection mechanisms lower in criminal cases, because SSCJs have fewer incentives than lower court judges to vote with public opinion, and will hear only the most contentious criminal appeals. By sitting on the top bench, these judges should be the most insulated from the theoretical factors of interest. Potential selection effects should be minimized. Focusing on high courts is thus the most stringent test for the advanced theory. If results are found at the level of the highest courts they would be highly likely hold in lower courts.

This theory rests on two major assumptions. First, SSCJs are rational actors whose primary incentive is to remain in office. A judge will thus make decisions in effort to maximize the likelihood that she will retain her seat. Judicial selection plays a major role in altering incentives to change judge level voting behavior to align with public opinion.[38] Subsequently, this pressure varies widely across judges, depending on selection mechanism. The second assumption is that the public generally prefers judges that are "tougher" on crime. Crime has always been a salient issue. Despite the fact that violent crime rates have plummeted since the 80's and 90's, as reported by the Brennan Center for Justice, Americans still perceive crime to be a significant social problem.[39] Gallup has released the results of an annual crime poll to since the 1980's, to gauge public attitude on crime. When asked to compare perceptions of current crime levels, and crime rates relative over time, a majority of the respondents perceived crime to be a rising problem. Additionally, a significant number of the respondents reported a degree of dissatisfaction toward the government's handling of crime, with well over half reporting that they are concerned about crime to some degree.[40] American perceptions of crime are also well covered in the media. The "new-style" judicial campaign defined in past research also plays a

role.[41] The Brennan Center released a report on special interest groups attacking judges facing re-election. The report found that judicial voting record in criminal cases are often used against judicial candidates.[42] The public's apprehension towards crime has permeated the American political conscious, which has likely influenced judicial behavior in the form of making more punitive decisions against criminals.

Based on these assumptions, examining criminal appeals at the SSC level should yield the following observations: first, SSCJs in elective systems derive their power from the electorate, and will be more likely to vote strategically against criminal defendants to appeal to public attitudes on crime. They are incentivized to minimize perceptions of being "soft on crime." In addition to the public electoral connection, an incumbent judge seeking re-election is aware that his or her judicial record may be used against them in political advertising.[43] Anti-crime groups may finance independent campaigns to defeat the incumbent for a SSCJ that votes more punitively. In other words, the built-in increased accountability of popular elections will decrease the likelihood that a judge will vote in favor of relief for an accused criminal. While SSCJs in merit-based systems are not immune to public accountability, because they are often subject to retention elections, the effect of public opinion on retention elections is tremendously mitigated. SSCJs appear alone on the ballot in retention elections, giving the voter a simple "yes" or "no" choice at the voting booth. While the threshold of votes a retention candidate must receive is high (55 to 70 percent, on average), the lack of an opposition candidate gives the incumbent an advantage, significantly increasing the likelihood of retention. Merit-based judges are aware of these advantages, allowing them to vote based on other criteria such as the case facts or their own ideology. These factors culminate into the following hypothesis:

> H1: Elected judges should be more punitive, and thus less likely to vote in favor of convicted criminals, than their appointed counterparts.

Second, this effect should be more evident amongst judges subject to nonpartisan elections. Judicial elections are generally low-information affairs. This effect is particularly pronounced when voters are blind to a judge's partisan identity on nonpartisan ballots. Nonpartisan judges cannot reliably depend on his or her party's base voters for support. Voters do not want to spend their vote wantonly, and will try to find information on the candidates.[44] As a result, when a party label is not readily available, voters are more likely to look either directly at a given judicial candidate's record, or rely on campaign messaging to gather information. In this low-information environment, many voters will be forced to choose based on name recognition alone, which will make campaign messaging even more powerful. Overseeing criminal trials is among the most well-known roles of the state judiciaries. Judges serve a vital function in the criminal justice system, and voters are aware of this. Given the general public's attitude on crime, judges that appear "soft" on criminal defendants are particularly vulnerable to attacks from opponents and their allies. Even the most informed voters may not understand the case facts and technicalities surrounding a judicial decision,[45] making the "end result" decision ever the more important. These combined factors make nonpartisan elected judges particularly vulnerable to losing their seats if they vote against public opinion. As such, a given nonpartisan elected judge is especially incentivized to vote punitively. In other words:

> H2: Nonpartisan elected judges should be more punitive, and thus less likely to vote in favor of convicted criminals, than their partisan elected counterparts.

6. Scope and Research Design

Among the most effective ways to measure the effects of judicial selection is to examine individual judge voting behavior in the scope of specific institutions. As previously mentioned, this strategy has been adopted by many political science scholars who study judicial behavior from a variety of contexts. In keeping with this tradition, this study will examine SSC criminal appeals decisions, with an attempt to isolate the effects of selection mechanism.

The State Supreme Court Data Project is a dataset that was developed by the Political Science Department at Rice University.[46] The dataset contains an exhaustive list of cases and judicial votes decided by SSCs. The dataset includes decisions by SSCs in every state, and includes both civil and criminal cases. Over 9,000 criminal decisions decided by SSCs are documented in the dataset, with over 55,000 individual justice level votes. Though the dataset is admittedly dated, there are two major advantages to using it for the purpose of this study. First, the criminal appeals heard by SSCs are limited to a three year time span between 1995 and 1998. Focusing on cases decided during such a narrow span of time mitigates the potential effect of evolving cultural and political factors that could influence SSCJ decision-making in criminal appeals. Further, the Brennan Center data on violent crime shows that violent crime was

at its thirty year highest in the mid 1990's.[47] If SSCJs are influenced by public perceptions of crime, this phenomenon would have been most evident around the time period captured by the dataset. Additionally, the narrow time frame contained in the dataset minimizes a number of other endogenous factors that are difficult to control, such as turnover of the justices sitting on the highest criminal courts, and changes in each state's criminal code.

Second, the dataset categorizes each decision based on the issues brought in front of the court per case. In criminal cases, these classifications range from evidenced-based errors to sentencing proportionality. This metric allows for sorting the cases to narrow the dataset, to capture appeals with specific classification of trial error allegations.

Despite the extensive number of careful examinations of judicial behavior, few studies have explored judicial selection from the perspective of cases alleging trial error, especially at the SSC level. Using the same data source, Bonneau and Rice looked at criminal appeals in the highest state courts, but primarily from the scope of individual judge race, with inconclusive results on the elected variable.[48] They included *all* available non-unanimous criminal appeals in their study, which may have contributed to the inconclusive results on their elected variable. While criminal appeals heard by the highest state criminal courts will generally be more contentious than cases heard by other courts, analyzing such a large sample of cases increases the probability that non-controversial cases were captured. Focusing on criminal appeals alleging trial error that was likely caused by a discretionary decision made by the presiding judge will provide a unique perspective on judicial decision-making. Focusing on such cases should have a two-fold effect. As previously mentioned, one of the most pivotal functions of SSCs is to correct errors committed by lower courts. SSCJ's are, thus, duty-bound to scrutinize and reverse errors, particularly in criminal cases, to protect the rights of accused citizens within their jurisdictions. This maxim directly competes with public perception of criminals getting "off the hook" based on technicalities. Reporting on a 1990 study about criminal appeals conducted by the National Center of State Courts, ABA reporter Paul Marcotte quoted one of the researchers conducting the study regarding this public perception: "The public believes that a lot of prisoners are walking out of prisons on technicalities. It's not true."[49] While the researchers found that this public perception was not based in fact, the quote reinforces an important element of public attitude on crime. Elected SSCJs have the unique task of consolidating their "final arbiter" duty with their re-election efforts.

As such, the dataset in this examination includes only cases where the criminal defendant alleged trial error on at least one of the following grounds: jury instruction, discovery, or material evidence. Since issues of jury instruction, discovery, and material evidence are often decided at the discretion of the trial judge, these cases have more room for error than others. In most jurisdictions, trial judges alone frame the ultimate questions a jury is charged with answering. The variation in language used for jury instruction is endless, with an extremely potent potential for error. Further, trial judges must often resolve discovery and material evidence disputes on a discretionary basis. As a result, all three types of issues should be particularly contentious and lead to a higher reversal rate than more clear-cut cases.

This study will quantitatively attempt to measure the effect of judicial selection on a judge's willingness to provide relief to a convicted criminal appellant, alleging trial error that potentially compromised the adequacy of his. The hypotheses will be tested with two multivariate regression models. The first model will include all judge votes in the dataset: those cast by judges in appointment based systems in comparison with judges in elective systems. The results should show a positive effect on judges that are selected in states that require popular elections. With an anticipated finding of a positive effect among judges that are elected by nonpartisan ballot, the second model will exclusively include judges in partisan and nonpartisan elective systems.

6.1 Coding and Variables

The unit of analysis in this examination is the individual SSC judge-level vote in criminal appeals. Barring an abstention or recusal, each SSC justice must cast a vote in favor or opposition of the majority opinion. Either the judge votes that the criminal's grievances about the alleged trial error had enough merit to classify the error as "reversible," or the judge rules the error was "harmless," and consequently had no effect on the case's outcome. In other words, each SSCJ voted either in favor or against the original criminal defendant. The dependent variable in this examination is the judge's "punitiveness," operationalized in the form of vote disposition. In both models, a judicial vote will be considered punitive if the judge voted against the defendant. Each judicial vote will be coded with a dummy variable: 0 if the SSCJ voted in favor of the criminal defendant and 1 if the SSCJ voted against the defendant.

The independent variable is the method of judicial selection adopted by each judge's state. Each state has adopted one of three general methods of choosing SSCJs. The first classification is appointment system, which covers scenarios where the governor, state legislature, or both make the final decision regarding the selection of judges. Only two states use appointment based systems entirely different from the "Missouri Plan," combining them with states that use merit based systems will not significantly bias the results. The incentive structures (which are the crux of the

theory) amongst the various appointment systems are virtually indistinguishable because the public is far removed from the selection process. Virginia and South Carolina appoint SSCJ's with a vote in their respective legislative chambers, but the incentive structure of the judges is largely the same as other appointed systems due to the lack of contested, popular elections. State selection mechanism will be coded based on data aggregated by the National Center for State Courts.[50] Two states that currently use nonpartisan elections to select their SSCJs used partisan elections in the timeframe captured by the State Supreme Court Data Project: North Carolina and Arkansas. As such, these states are coded as partisan elective states. In the first analysis, (herein referred to as the "Full Model") the independent variable is a dichotomous indicator for elected judges versus appointed judges. SSCJs in elective systems are coded with a 1, while appointed judges are coded with a 0. For the second analysis, only judges in states with elective systems are examined. The independent variable is selection type with two classifications: partisan elections and nonpartisan elections. SSCJs in partisan elective systems are coded with a 0, while judges in nonpartisan elective systems coded 1. The number of observations in the full dataset is 2,966. The number of observations in the elective only dataset is 1,884.

In addition to comparing judge behavior amongst judges at the same professional level, researchers examining judicial behavior have a tradition of using similar control variables. Most researchers categorize these control variables in two classes: judge-level factors and legal factors. The most important judge level factor is partisan ideology, which is controlled for in nearly all cited modern analyses of judicial behavior. The State Supreme Court Dataset includes a party-adjusted surrogate judge ideology measure (PAJID) developed by Brace, Langer, and Hall. They captured judge ideology by "using elite ideologies for appointed judges and citizen ideologies for elected judges.[51]" As a result, this measure not only controls ideology for individual SSCJs, but also for the parties responsible for placing each judge in their seats. *Judge Ideology* will measure each judge's ideology, ranging from 0 (most liberal) to 100 (most conservative). The range of PAJID scores for the Full Model is 1.25 to 96.62. The range of PAJID scores for the elective system only model is 2.89 to 73.2. Table 1 shows the descriptive statistics of the number of cases in the dataset, along with counts and frequencies of the independent, dependent, and control variables.

Table 1 – This table shows the counts and frequencies on each variable in the data set. The split amongst Partisan, Nonpartisan, and Appointed votes was roughly even. All 2,971 observations in the dataset were included in the Full Model, while 1,884 observations were utilized in the Elected Only Model

Table 1 - Descriptive Statistics and Frequency Table

Distribution of Selection Type (IV)	Count	Frequency
PartisanVotes	930	31.30%
NonpartisanVotes	954	32.11%
AppointedVotes	1087	36.58%
Full Model (DV)	**Count**	**Frequency**
Votes for Accused	1272	42.87%
Votes Against Accused	1694	57.09%
Full Model (CVs)		
Represented by Public Def?	999	33.67%
Accused of Violent Crime?	979	33.00%
Mean of Judge Ideology Score	40.02698247	-
Mean of Cited Issues	3.829399865	-
Elected Model (DV)	**Count**	**Frequency**
Votes for Accused	798	42.33%
Votes Against Accused	1086	57.61%
Elected Model (CVs)		
Represented by Public Def?	411	21.80%
Accused of Violent Crime?	411	21.80%
Mean of Judge Ideology Score	37.54164013	-

The most common legal factors controlled for in past research on judicial behavior are the nature of the crime, number of issues raised on appeal, and whether the appellee was represented by a public defender.[52] These metrics are available in the State Supreme Court Data Project. The dataset categorizes each defendant with the crimes he or she was convicted of at trial. The dataset contains several distinct variables for convictions, ranging from murder to minor traffic offenses. Both Hall and co-authors Bonneau and Rice found evidence that SSC justices were less willing to reverse lower court decisions in cases where defendants were convicted of violent crimes. Defendants are coded for each variable, to account for scenarios where a defendant was convicted of multiple crimes at trial. For the purposes of this study, criminal appellees are coded based on conviction of a violent crime (murder, rape/sexual assault, manslaughter, or aggravated assault). The cases are assigned a dummy variable of 1 if the appellant is convicted of a violent crime, and 0 if not. The number of legal issues raised on appeal is documented in the dataset, and will be reflected in this study. This variable is controlled to ensure that cases with mathematical advantages do not bias the data. The higher the number of issues raised by a defendant or his legal team, the higher the likelihood that the SSCJs will find merit on at least one of the issues raised. The presence of a public defender will be another control variable, as is customary when examining criminal cases. Public defenders are often overworked, with extraordinarily high caseloads. This reality could potentially lead to a weaker defense for criminal defendants who used appointed counsel. The *Public Defender* variable is coded with a dummy variable as well, 1 if the appellant was represented by a public defender and 0 if she had other legal counsel. In sum, I expect to see a negative coefficient if the appellant was convicted of a violent crime, or was represented by a public defender. I expect to see a positive coefficient for every issue cited on appeal.

7. Results

Table 2 displays the results of the multiple regression comparing elected and appointed judges, to test the first hypothesis. The y-intercept, displayed in the first row shows the probability a judge in the dataset made a harsh decision assuming the values of independent variables are 0. As expected, this metric (at 56.2%) is roughly equivalent to the mean of judge vote reported in the descriptive statistics. The coefficient on each independent variable represents the estimated change in punitiveness for a one-unit change in the independent variable.

Table 2: While the independent variable of interest was correctly signed, the null hypothesis of no difference between elected and appointed judges could not be rejected. The effect was indistinguishable from zero. The control variables were also correctly signed.

Table 2	**Appointed vs. Elected Model (Full Regression)**				
	Coefficients	*Standard Error*	*P-value*	*Lower 95%*	*Upper 95%*
Intercept	0.561850197	0.029726909	2.59328E-75	0.503562691	0.620137702
Elected	0.00235291	0.020048063	0.906579997	-0.036956645	0.041662465
Public Defender	-0.000617999	0.000882497	0.48380426	-0.002348369	0.00111237
Ideology	-0.001831763	0.000441551	3.44124E-05	-0.002697542	-0.000965984
Violent Crime?	0.020778367	0.020404342	0.308604086	-0.019229769	0.060786502
# Issues on Appeal	0.019606241	0.003644889	8.06912E-08	0.012459468	0.026753014

When a judge is in an elected system, he or she is .24% more likely to vote against the accused criminal. Judges were .06% less likely to vote harshly against the accused if they were represented by a public defender. For each increased unit of partisan score (in other words, the more liberal the judge), he or she was .18% less likely to vote harshly. If the accused was convicted of a violent crime, the judges were 2.0% more likely to vote harshly. Finally, the judges in the set were 1.9% more likely to vote harshly for each separate issue cited on appeal.

This finding ultimately does not allow the rejection of the first null hypothesis of no effect. The *Elected* coefficient in the full regression model was signed correctly, but failed to reach statistical significance. The model predicted that elected judges were more likely to vote punitively by less than a quarter of a percentage point. In other words, the model suggests that voting behavior in the selected criminal appeals between elected and appointed judges is

statistically indistinguishable from zero. The 95% confidence interval includes zero, indicating that the null cannot be rejected.

The results for the elected model were even more unexpected. Table 3 displays the regression results of the model comparing only elected judges on electoral rules: partisan and non-partisan. The y-intercept in the second model was 62.1%, roughly reflecting the mean of the judicial votes in the elected dataset. The coefficient on the independent variable of interest reflects the change in likelihood a judge in a non-partisan elected system voted harshly against the accused. Judges in non-partisan elected systems were 4.9% less likely to vote harshly than their partisan labeled counterparts. The judges in this model were .024% more likely to vote harshly if the accused was represented by a public defender. For each increased unit of liberal partisanship, judges were 3.33% less likely to vote harshly. The judges were 7.2% more likely to vote harshly if the accused was convicted of a violent crime, while they were 2.35% more likely to vote harshly for each issue cited on appeal.

Table 3: The independent variable was signed incorrectly and showed statistical significance contrary to the expectations of the theory. The results suggest that non-partisan elected SSCJ's in the dataset were less punitive than their elected counterparts. The control variables were all signed properly.

Table 3	**Elected Only Model**				
	Coefficients	*Standard Error*	*P-value*	*Lower 95%*	*Upper 95%*
Intercept	0.621104064	0.03569637	5.52165E-63	0.551095344	0.691112783
Non-Partisan	-0.049593051	0.022609597	0.02839708	-0.093935626	-0.005250476
Public Defender	0.000249912	0.001060203	0.81367526	-0.001829388	0.002329211
Ideology	-0.0032647	0.000722022	6.52036E-06	-0.004680751	-0.00184865
Violent Crime?	0.072237998	0.027508629	0.008709347	0.018287305	0.126188691
# Issues on Appeal	0.02293953	0.004627282	7.78464E-07	0.013864375	0.032014684

These results ultimately contradict the second independent variable hypothesis. Judges in non-partisan elected systems were 4.9% less likely to vote punitively than their counterparts in nonpartisan elected systems, with a p-value of .028. Since the p-value is below the .05 standard for significance at the 95% confidence level, the *Non-Partisan* coefficient is statistically significant. In other words, the independent variable coefficient is signed in the opposite of the expected direction, and showed an unexpected result: partisan-elected judges were *more* punitive in the model.

In sum, partisan labeled SSCJs were more punitive than non-partisan SSCJs in the model. The findings suggest that the second independent variable hypothesis must be rejected. There are a few potential flaws in the model and dataset that could explain these unexpected findings, and they will be discussed in greater detail in the next section.

The control variables performed as predicted in both regression equations. In both models, all four control variables were correctly signed. The *Public Defender* variables were not statistically significant in either model, while the p-values and confidence intervals suggest *Judge Ideology* and *Number of Issues* were statistically significant in both models. The *Violent Crime* variable failed to reach statistical significance in the first model, with the p-values and confidence interval suggesting the variable was significant in the second model. The fact that a given defendant was represented by a public defender made no sizeable difference in judicial voting behavior. The fact that a defendant was accused of a violent crime was not a significant determinant of punitveness in the Full Model, but achieved statistical significance in the model comparing the two types of elected SSCJs. Non-partisan judges were more likely to vote against the accused than partisan judges in such cases. The number of issues raised on appeal decreased the likelihood that a judge would vote harshly, given the range in the dataset. Unsurprisingly, judicial ideology played a significant role in judicial decision-making. Given the wide range of ideology scores present in the dataset, for each increased unit of "liberalism" in the Full Model, the judge was 17 points less likely to vote for the defendant. The likelihood that the most liberal judge voted against the accused was 35%, while the most conservative judge was 52% more likely. Ideology played a smaller role in predicting votes in the elective model. The most liberal judge was 24% likely to vote against the accused, while the most conservative just was 47% more likely.

8. Discussion and Explanation of the Results

Essentially, the regression results suggest that there is no significant difference in voting behavior when comparing appointed and elected judges in the examined criminal appeals. As such, the null-hypothesis of no-effect could not be rejected. When comparing judges in partisan and non-partisan electoral environments, the findings *contradicted* the second hypothesis: non-partisan judges were less likely to vote punitively than their partisan counterparts. There are three reasons to explain the inability of the findings to support the proposed theory. First, the assumptions of the theory may have been overgeneralized. Second, the nature of the cases chosen to execute this examination may have not been ideal to measure selection-mechanism biases, and finally, fears about the elective model marring judicial independence may be unfounded in criminal matters.

The research design may have failed to account for the varied culture amongst states, especially regarding attitudes toward crime. One of the primary assumptions guiding this project was that the American public is generally "punitive," favoring justice against the convicted in the criminal justice system. This assumption may have been too simplistic. Public opinion on political and social issues varies greatly across states on cultural and ideological grounds. Criminal justice is a complex and multidimensional social issue. Public opinion on the balance between "fairness" and "justice" in the criminal justice system may vary across states in a way similar to contested political issues, such as abortion and labor rights. If this is the case, we should not necessarily expect to see all responsive judges acting in a punitive fashion. It is entirely possible that elected judges *do* feel pressured to respond to public opinion toward criminal justice, and that the response action varies by state. This examination may have failed to capture this electoral pressure in the first model because the findings from liberal states "washed-out" the findings from the conservative states, and vice-versa.

This potential overgeneralization could also explain the unexpected findings of the second, elected-only model. Of the 21 states in the second model, only nine states practiced partisan elections during the time captured by the dataset: Alabama, Arkansas, Illinois, Louisiana, New Mexico, North Carolina, Pennsylvania, Texas, and West Virginia. All but three of these states are located in the arguably culturally conservative south, and are thus more likely to have conservative criminal justice legal environments than more progressive states. As such, the judges in these states may have been bound by precedent that set higher standards for reversible error than states with moderate or progressive legal environments. If this is the case, individual judge ideology is not a sufficient control variable.

The results of the second model could potentially show that the partisan judges were responding to the electoral pressure expected of nonpartisan judges. Partisan labels may provide a signal for voters and mitigate the uncertainty low information nonpartisan environment, but that signal may not make judges as resistant to electoral pressure as expected. This scenario is unlikely given the findings in the first model, showing no significant difference between appointed and all elected judges in the dataset. In other words, the political and social environments in the states may have been a significant determinant for the unexpected results, especially in the second model. To account for this potential error in the future, researchers would be advised to take into account important state variation in public opinion and perception of crime.

Another potential flaw of this study may have come from the cases chosen. As mentioned in earlier sections of this paper, this study focused on specific criminal appeals decided by the states' highest courts. In each case, either the original defendant or an agent of the state appealed a lower court decision based on at least one allegation of trial error. This examination focused on cases where either side alleged trial error based on at least one the following issues: evidence, discovery, or jury instruction. The research design rested on the assumption that discovery and evidence motions, as well as jury instructions, are largely decided at the discretion of the presiding trial judge. Since personal discretion plays a major factor in these decisions, they are therefore more prone to reversible error than other allegations of trial error. While nothing in the findings suggest that this assumption is incorrect, it is entirely possible that the nature of these cases mitigated the effect of selection on the votes. Since the judges in the dataset were ultimately charged with deciding on the narrow scope of the lower courts' discretionary decisions, external factors (including electoral pressure) could have potentially played a smaller role.

For the purposes of clarification a hypothetical example may be appropriate: *State v. Angeklagte*. Mr. Angeklagte was charged with armed robbery, arraigned, and indicted by a grand jury. State trial court judge, The Honorable Judge Dussel, was assigned the case on his docket. Despite repeated objections from Mr. Angeklagte's attorneys, Judge Dussel allowed prosecutors five continuances to release evidence against Mr. Angeklagte during the discovery phase. The prosecutors sufficiently argued the need for the continuances per Judge Dussel's discretion, and the trial was ultimately delayed. After months passed, the trial finally began. Unfortunately for Mr. Angeklagte and his lawyers, key witnesses whose testimony may have exonerated Mr. Angeklagte have become unavailable to testify at trial. As

a result, the jury convited Mr. Angeklagte, and his attorneys appealed on the legality of the discovery continuances. The appeal made it to the state supreme court, where the judges are charged with considering the sole issue of the legality of Judge Dussel's discretionary decision on the continuances. Some judges may be forced to vote in favor in Mr. Angeklagte's retrial because of the stark due process concerns of the case. The discovery continuances had a clear effect on the defendants' right to a "speedy trial." As such, the SSCJs hearing the appeal may have had little room to consider the unpopularity of the decision. This study attempted to mitigate these potential effects by choosing only non-unanimous decisions, but the potentially controversial nature of these cases may have "watered-down" the effects of judicial selection on judicial decisions. Focusing examination of judicial voting behavior in criminal appeals on a set of cases with more ambiguous issues may yield different results.

Another facet of the second explanation concerns the visibility of the examined cases. Many of the studies referenced in this paper found significant effects of selection mechanism on voting behavior.[53] These studies all examined the effects on death penalty and abortion cases, exclusively. The prominence and divisiveness of these issues in the general public could make these cases more visible to voters with media coverage. SSCJs know these cases are salient and more likely to garner press attention, and are thus more pressured to vote along the lines of public opinion to keep their seats. Criminal appeals may be heard more frequently by state supreme courts than cases on salient social issues. These criminal cases may be more likely to escape public and press scrutiny. These factors may lead individual justices to feel less pressure to consult public opinion in criminal cases.

The final possibility reiterates the main points of the other explanations, which is that the findings facially reflect reality: judicial selection plays a limited role in discretion-based criminal appeals at the supreme court level. Given the fact that only a small fraction of the criminal cases that go through the state criminal courts are appeals to SSCs, the effects of selection method may be better tested on lower courts. Further studies should look for inventive ways to compare the voting behavior of equivalent intermediate appellate courts across states in discretion-based appeals. Such a research design could potentially provide a better understanding of the effects of selection on judicial behavior in the criminal justice realm.

To summarize, the unexpected and inconclusive findings calculated during this study could be explained by shortcomings in the research design. Three distinct possibilities may explain the inconsistencies between the hypotheses and the results: the differences in criminal justice legal environments between states, the non-contentious nature of the cases included in the dataset, and the possibility that judicial selection may not be a major determinant in criminal cases heard by state supreme courts given other variables. Further studies examining the effects of selection on judicial decision-making in criminal appeals should carefully consider the scope of the research design.

9. Conclusion

This project built on existing work in social science to better understand the effects of judicial selection mechanism on the voting behavior of judges in the states' highest courts. Specifically, I intended to answer the following question: Does judicial selection mechanism in state supreme criminal courts affect the punitiveness of the judges in criminal matters? I theorized that variance in selection mechanism between judges in appointed and elective systems would result in a separate set of incentive structures for both classifications. I expected judges in elective systems to vote more punitively than judges in appointment systems, in line with public perceptions of crime. I also expected the effect to be particularly prominent when comparing judges in nonpartisan elective systems with judges in partisan elective systems. I tested these hypotheses using a selection of criminal appeals cases from the State Supreme Court Data Project, where allegations of trial error were caused by discretionary decisions by the trial judge. I used two separate multivariable regression models, after controlling for outside variables. The results were inconclusive in the first model, with the findings suggesting that SSCJs are unaffected by selection mechanism when considering criminal appeals based on trial error. The results in the second model suggested partisan elected judges in the dataset were more punitive than nonpartisan elected judges, but this finding likely illustrates the flaws in the research design given the results of the first model.

Amongst the many shortcomings of the study was the failure to account for cross-state variables that may have biased the results. The variation in criminal codes and public anti-crime attitudes should be controlled in future studies. Additionally, the categories of cases selected for the examination may have been too narrow to expose difference in SSCJ voting behavior.

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