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GENDER AND POLITICAL INCENTIVES: EXAMINING THE APPLICANT POOL

UNDER MERIT SELECTION

by

Logan M. Loftis

A thesis submitted in partial fulfillment
of the requirements for the degree

of

MASTER OF SCIENCE

in

Political Science

Approved:

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UTAH STATE UNIVERSITY
Logan, Utah

2021

ABSTRACT

Gender and Political Incentives: Examining the Applicant Pool Under Merit Selection

by

Logan M. Loftis, Master of Science

Utah State University, 2021

Major Professor: Dr. Greg Goelzhauser
Department: Political Science

Are women less likely to apply to judgeships? Despite the meaningful progress that has been made to diversify the bench, women have still yet to reach parity with men. Given the effect descriptive representation has on judicial outcomes, those who pursue judicial office have substantial implications for political representation. This thesis examines whether women are disproportionately underrepresented at the application stage under merit selection.

There are three emphasized dynamics at the epicenter of debate over merit selection: qualifications, politics, and diversity. Supporters argue that by removing politics and instead highlighting qualifications, judicial diversification will be more likely to increase under merit selection. However, outcomes of judicial diversification across selection systems have empirically mixed results.

To parse the initial determinants of the applicant pool under merit selection, I draw on extant models of nascent ambition and bias to help determine whether women express different levels of ambition under merit selection. Using original data from New

Mexico obtained through a public records request, I employ logistic regression to capture the relationship between attorney gender and the likelihood of submitting a judicial application under merit selection. The results suggest women appear to be less likely to apply to judgeships compared to men. This thesis has meaningful implications for discussions surrounding the literature with respect to the gender gap in political ambition.

(50 pages)

PUBLIC ABSTRACT

Gender and Political Incentives: Examining the Applicant Pool

Under Merit Selection

Logan M. Loftis

Merit selection is a judicial selection system for when a state's constitution or statute directs an independent nominating commission to evaluate applicants as a precursor to gubernatorial appointment. The initial process to fill a judicial vacancy under merit selection has three steps: application, nomination, and appointment. Proponents of the selection system insist that by de-emphasizing politics and highlighting qualifications, judicial diversification will be more likely to increase under merit selection. Yet, there is not a clear consensus as to whether merit selection systematically engenders a more diverse bench.

In this thesis, I explore whether women are less likely to apply to judgeships under merit selection. The results suggest women appear to be less likely to apply to judgeships compared to men. I demonstrate this by using data obtained through a public records request from New Mexico that consists of information on each applicant per judicial vacancy from 1998 through 2021. These results have important implications for judicial diversity under merit selection and political ambition more generally.

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I would first like to thank my advisor Dr. Greg Goelzhauser, who provided me with the opportunity to do research on this important project as an undergraduate student. Without this experience, I probably would not have thought twice about writing a thesis on merit selection. His expertise, patience, and generous support throughout this entire process resulted in the best version of this thesis. My committee members, Drs. Anna Pechenkina and Josh Ryan, deserve special thanks for teaching me the skills necessary to complete this project. I am particularly grateful for Dr. Anna Pechenkina for believing in me from the beginning. I truly do not know where I would be without her mentorship for the last three years.

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Logan M. Loftis

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INTRODUCTION

Are women less likely to apply to judgeships? Under the assumptions that the impetus of democracy "is to represent the substantive interests of the represented" (Mansbridge, 1999, p. 630), and that public support for political institutions is a fundamental tenet of democratic legitimacy (Cann and Yates, 2006; Tanenhaus and Murphy, 1981), who decides to pursue political positions has substantial implications for political representation. Moreover, descriptive representation of historically underrepresented groups in political institutions amplifies perceptions of legitimacy (Scherer and Curry, 2010), trust (Gay, 2002), and individuals' political interest and engagement (e.g., Campbell and Wolbrect, 2006; Reingold and Harrell, 2010; Wolak, 2015). Additionally—despite meaningful progress that has been made to diversify the bench—women have yet to reach parity with men (Fricke and Onwuachi-Willig, 2012). Fricke and Onwuachi-Willig (2012) argue that "reaching even [the current] level of gender diversity on the bench has been painfully slow" (p. 1532), and that diversifying the judiciary "is essential to moving forward and strengthening this country's democracy" (p. 1531).

This thesis examines whether women are disproportionately underrepresented at the application stage under merit selection. Merit selection is a unique judicial selection mechanism where prospective judges submit an application to a nominating commission—usually comprised of judges, attorneys, and the general public—when a judicial vacancy emerges. Subsequently, the nominating commission sorts through the applications, designates a short list of candidates to the governor, then the governor

appoints one of the nominees from the list. It is important to differentiate "merit selection" from the "merit (or Missouri) plan," as the former refers to commission-aided appointments to select judges, while the latter combines merit selection with subsequent retention elections (Goelzhauser, 2018a). This thesis is interested in developing a theory about commission-aided appointments but not the accompanying retention stage.

To develop a theory of the initial determinants of application decisions under merit selection, I draw from extant theories of nascent ambition explaining why historically underrepresented groups express lower levels of ambition relative to men. I also incorporate theories on how implicit and explicit bias in the legal profession may disincentivize women to pursue judicial office. Using original data obtained through a public records request from New Mexico, the results are mixed across model specifications but suggest women are less likely to apply than men.

This thesis proceeds in four parts. First, I provide an overview of merit selection and introduce the three key dimensions at the center of arguments concerning this institutional design choice: qualifications, politics, and diversity. Second, I draw from theories of nascent ambition and bias to explain why we might observe differences in political ambition between men and women. Additionally, the second section develops a theory of gender and ambition specifically under merit selection. The third section describes the data obtained from New Mexico and reports empirical results. I conclude by discussing implications and directions for future research.

MERIT SELECTION

There are two ways in which state judicial institutions are categorized: selection

and retention (Goelzhauser, 2018a). To distinguish the two, Goelzhauser refers to

"selection institutions as the mechanisms responsible for seating judges to an initial term,

while retention institutions keep judges on the bench" (p. 175). Often, state judicial

selection and retention institutions are conflated, which can make sense in the judicial

elections context but sometimes leads to confusion when discussing "merit" systems.

Accordingly, I distinguish "merit selection" from the "Missouri plan" or "merit plan," as

the former refers to the use of a nominating commission prior to gubernatorial

appointment to select judges, while the latter combines merit selection with subsequent

retention elections.

Merit selection is a judicial selection system for when a state's constitution or

statute directs a nominating commission to evaluate applicants as a precursor to

gubernatorial appointment (Goelzhauser, 2018a).[1] The initial process to fill a judicial

vacancy under merit selection has three steps: application, nomination, and appointment.

First, when a judicial vacancy arises the commission solicits applications from

prospective candidates.[2] Goldschmidt (1994) writes, "applications typically delve deeply

into the background of the applicant, inquiring about one's personal, educational, and

professional history and experiences" (p. 26). To be formally considered by the

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[1] National Center for State Courts provides information on each selection system for each state (http://www.judicialselection.us/judicial_selection/methods/selection_of_judges.cfm?state=).
[2] The applicant pool can consist of 1) nonofficeholders applying for the first time and 2) judges who are seeking promotion within the courts (e.g., a district court judge vying to fill a vacancy in the court of appeals or supreme court).

nominating commission, prospective judges need only to complete and submit an application. This institutional design is unique relative to other judicial selection institutions. Under judicial elections, for instance, interested candidates must run for office and may need to first obtain party support. Second, the nominating commission evaluates the pool of applicants and recommends a short list of nominees to the governor. Last, the governor appoints one of the nominees from the commission's list to fill the vacancy.

Arguments for and against merit selection comprise of three dimensions: qualifications, politics, and diversity. First, proponents insist merit selection generates judges with higher qualifications. Empirical studies, however, suggest there is little to no difference in qualification levels across judicial selection mechanisms (e.g., Emmert and Glick, 1988; Goelzhauser, 2016; Savchak, 2015). Moreover, there is little to no evidence that merit selected judges perform better than judges selected in other ways. Owens et al. state "neither the use of nominating commissions nor retention elections—two major features touted by judicial reformers—lead to greater forward-looking behavior and insulation" (Owens et al., 2015, p. 212).

Second, supporters of commission-based selection mechanisms laud merit selection for removing politics from the judicial selection process (see McLeod, 2012). Despite anecdotal justifications that claim otherwise, some argue ideological considerations are merely shifted from the public realm to nominating commissions operating behind closed doors (Bopp, 2013). Furthermore, the partisan makeup of the bench has significant implications on salient political matters. For instance, the role of the courts in determining state and federal policy has expanded because of legislative

gridlock (Bonica and Sen, 2017). The ideology of judges also strongly impacts judicial

decision making (e.g., Bonica and Sen, 2017; Epstein et al., 2003; Segal and Spaeth,

2002). As a result, selecting judges with congruent ideal points is preferable for political

elites. Research shows, for example, that governors favor copartisans in appointment

decisions under merit selection (Goelzhauser, 2018b, p. 171). With that said, executives

face institutional constraints under merit selection such that commissions can limit

governors who pursue politically motivated appointments by constructing the list of

eligible nominees. There is also evidence that suggests that the probability of cross-party

appointment increases when a judicial nomination commission is utilized (McLeod,

2012, p. 271).

The third primary argument made by merit selection proponents is that by de-

emphasizing politics and instead highlighting qualifications, judicial diversification will

be more likely to increase. Although merit selection is most prominent at the state-level,

it has also been experimented with at the federal-level. In 1977, President Jimmy Carter

established the U.S. Circuit Court Judge Nominating Commission.[3] Carter's two goals

with respect to this executive order were to "select judges based on professional merit

and rectify the historic exclusion of women and minority judges by actively seeking out

those candidates from the bench" (Arrington, 2019, p. 1). As a result, Carter's presidency

saw record-breaking levels of diversity at the time (Babcock, 1980). Additionally, Carter

issued an executive order in 1978 that established the "standards and guidelines" for

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[3] Records of the 1977 executive order can be found here:
(https://www.presidency.ucsb.edu/documents/executive-order-11972-united-states-circuit-judge-nominating-commission), and the 1978 order here:
(https://www.presidency.ucsb.edu/documents/executive-order-12097-merit-selection-united-states-district-judges).

district court judges, which indicates that "the President shall nominate as district judge…whose character, experience, ability, and commitment to equal justice under law qualifies that person to serve in the federal judiciary."

Due to President Carter's emphasis on merit selection and the judicial diversification of the federal bench that followed, proponents expressed that merit selection's focus on qualifications would allow for more diversity on the bench. For example, Clark (2002, p. 1132) writes, "Carter's groundbreaking appointment of women judges was motivated by his commitment to women's equality as a human right and was achieved through substantial reliance on merit selection." Additionally, interest groups such as the League of Women Voters lobbied various state legislatures to adopt merit selection (Harrison et al., 2007).

Yet, there is no consensus as to whether merit selection systematically engenders a more diverse bench. Bratton and Spill (2002, p. 514), for instance, illustrate that appointment mechanisms of judicial selection increase the chances of women being appointed to a vacancy on an otherwise all-male court—although the chances decrease once the court has any degree of gender diversity.[4] Goelzhauser (2016) finds that women are more likely to be seated on state supreme courts under merit selection than unilateral appointment, while there is no difference between merit selection and election or unilateral and election. Others have found that selection systems have little to no effect on judicial diversity (Hurwitz and Lanier, 2003; Myers, 2013). Hurwitz and Lanier (2003) write, "judicial diversity appears to be based on a combination of factors

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[4] It is important to note that the authors do not distinguish between appointment mechanisms (unilateral elite appointment and merit selection) in their analysis.

contingent on time, the level of the court, and the type of political minority involved" (p. 346).

THEORY

Why do individuals initially seek judicial office? Understanding who applies to be a judge is important for myriad reasons. Descriptive representation of underrepresented groups in political institutions has significant implications for perceptions of institutional legitimacy and democracy as a whole (e.g., Campbell and Wolbrect, 2006; Gay, 2002; Reingold and Harrell, 2010). Also, discourse surrounding diversity under merit selection rests considerably on subjective positions that stem from President Carter's use of merit selection (Clark, 2002; Krivosha, 1987). Empirically, the results are mixed with respect to whether merit selection produces more diversity on the bench relative to other selection mechanisms (Goelzhauser, 2016; Hurwitz and Lanier, 2003).

This section develops a theory exploring whether women express different levels of judicial ambition due to systemic barriers when seeking judgeships under merit selection. In doing so, I first examine the theoretical development of nascent ambition and why it catalyzed the ways we think about gender and political ambition. Furthermore, to explain why we might observe differences in nascent ambition between men and women, this section parses the empirically observed "gender gap" in political ambition as well as the potential barriers women may face in pursuing political office due to implicit and explicit bias. However, much of the literature on the gender gap focuses on the legislative context rather than the judiciary. In response, I argue that further exploration

of the gender gap within the judicial context is conducive to empirically examining

whether merit selection's institutional design generates more diversity on the bench.

Gender and Nascent Ambition

As Windett succinctly puts it, "Without political ambition individuals would

never become involved in public service nor seek public office" (2014, p. 288). Various

scholars have expanded on political ambition and two conventional models have emerged

to sort the types of political ambition. First, nascent, or expressive, ambition explains

why non-officeholders pursue office for the first time. The second model, progressive

ambition, refers to why officeholders seek to advance to higher positions. I will be

building primarily from the theoretical tenets of nascent ambition moving forward given

that the scope of this thesis examines why non-officeholders initially pursue judgeships.[5]

Nascent ambition elucidates the initial determinants in the candidate emergence

process and has generated a vast literature concerning the "gender gap" in political

ambition. Fox and Lawless argue "that interest in seeking elective office will be

motivated not only by individual-level strategic considerations, but also attitudinal

dispositions, personal experiences, and demographic characteristics that fall outside the

realm of the political opportunity structures" (2005, p. 644). Empirically, the researchers

find that while historically marginalized groups are advancing in the professions that

previously excluded them, they are substantially less likely to have ever considered

pursuing political office (Fox and Lawless, 2005).

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[5] While progressive ambition is not within the scope of this study, see Goelzhauser (2019), who empirically examines both progressive and expressive ambition separately.

Several systematic explanations link gender and political ambition, which are generally classified into two categories: supply-side and demand-side mechanisms. The supply-side mechanism describes the relationship between gender and political ambition that can be explained as a result of socialization patterns (Holman and Schneider, 2018). Women, for example, tend to be more concerned with qualifications and are less likely to see themselves as qualified (e.g., Carroll, 1994; Fox and Lawless, 2004; Jensen and Martinek, 2009). Women also tend to be more averse to competition (Preece and Stoddard, 2015), conflict (Schneider et al., 2016), and running in elections (Kanthak and Woon, 2015), which manifests as lower levels of ambition. The demand-side emphasizes the impact of external influences on women's interest in running for office. As such, women are less likely to be recruited to run for office by family, friends, or political elites than their equally qualified and connected male counterparts (e.g., Crowder-Meyer, 2013; Holman and Schneider, 2018; Fox and Lawless, 2010). This mechanism also considers that women have been historically excluded from office, and thus men accrue an incumbency advantage and are more likely to retain office than women (Jensen and Martinek, 2009).

Implicit and Explicit Bias

Experience with implicit and explicit bias may help determine whether women pursue judicial office given that they have extensively endured obstacles in the legal profession. Conscious awareness is the key difference between implicit and explicit bias, as implicit biases are automated reactions and associations that emerge and are often subconscious (Daumeyer et. al, 2019). Gill (2014) demonstrates that judges who are

women or people of color are more likely to receive worse scores from legal actors in judicial performance evaluations. The causal mechanism could be that because the practice of law has long been understood as stereotypically male, women who practice law suffer penalties for failing to fulfill the masculine stereotypes associated with the job (Gill, 2014, p. 306). Moreover, Sen (2014) finds that relative to white men, federal judicial nominees who are women and people of color are more likely to receive lower American Bar Association ratings regardless of educational attainment, legal experience, and partisanship. Both Gill and Sen posit that the way in which these evaluations are conducted leave ample space for implicit bias to impact beliefs. The evaluation anonymity and criteria subjectivity inherent in bar ratings and judicial performance evaluations are likely to increase implicit bias (Gill, 2014, p. 307; Sen, 2014, p. 61).

Most empirical literature examining bias in the legal profession focus on implicit bias. However, there exist copious anecdotes from women that provide a glimpse into explicit bias in the legal community. In interviews with women and people of color who are lawyers, Dunlop and Gassman-Pines (2021) find that those on the receiving end of explicit bias feel as if they cannot respond nor report due to the fear of retaliation and termination. One of the interviewees said, "I wish I had been braver in moments of calling people out on their bullshit. I was scared. I was worried about the consequences" (p. 141). Likewise, Richard H. Miller II was removed from a family court in New York in late 2020 after the New York State Commission on Judicial Conduct concluded he consistently made sexist remarks to the court's clerk and filed complaints against the court's women staff when he learned they openly lamented his behavior and comments (Weiss, 2020).

Gender and Ambition Under Merit Selection

A well-developed literature on nascent ambition finds that women are less likely to pursue political office due to supply-side and demand-side explanations: the former refers to internal influences such as socialization, while the latter emphasizes outside factors such as men's incumbency advantage. Additionally, experience with implicit and explicit bias may disincentivize judicial ambition. Given these explanations, we might observe that women express different levels of judicial ambition under merit selection. With that said, extant literature examining the political ambition of women primarily focuses on legislative office. There are three circumstances when it becomes unclear whether the existing literature can be applied to the judiciary. First, anecdotes that claim merit selection enhances diversity may actually incentivize more women to pursue judgeships. Second, there are substantial institutional differences among the judiciary and legislature. Third, empirical research specifically examining gender's effect on judicial ambition suggests otherwise and that women may be more likely to pursue judgeships.

Supporters of merit selection argue that because merit selection emphasizes qualifications over politics and personal connections, it may engender more diversity. As noted previously, one of President Carter's goals in office was to seek out candidates who were historically underrepresented to fill judicial vacancies (Arrington, 2019). Subsequently, Carter's presidency saw record-breaking levels of diversity at the time (Babcock, 1980). As a result, many have linked merit selection's emphasis on qualifications to allow for more judicial diversification. Although the empirical evidence is inconclusive regarding whether historically underrepresented groups have an advantage on being nominated to the bench in state courts (Goelzhauser, 2011, 2016),

normative anecdotes surrounding merit selection could incentivize women to pursue judgeships. Therefore, prevailing theory on the gender gap within the legislative context could potentially be rendered incongruous within the judicial context.

Applying the persisting literature concerning gender and ambition to the judiciary is also difficult due to the institutional differences among courts and legislatures. Jensen and Martinek write, "The pursuit of political ends and the expression of political preferences differ in meaningful ways depending on the venue" (2009, p. 379). Furthermore, merit selection in particular is unique due to the low-cost process to pursue a judgeship, as lawyers simply need to complete an application to be considered rather than publicly run for office or be concerned about potential unilateral appointment by political elites. Given the rudimentary differences among political institutions, further analysis is justified within the context of the judiciary.

Although only a scintilla of literature on judicial ambition exists (Goelzhauser, 2019; Jensen and Martinek, 2009; Williams, 2008), empirical evidence suggests that women may actually exhibit higher or no difference in levels of both nascent and progressive ambition for judicial office relative to men. With respect to nascent ambition, Williams (2008) uses survey evidence from Texas, which employs partisan elections, and finds women are more likely than men to express ambition for the judiciary. Accordingly, the author claims that women may perceive themselves as more qualified to serve in the judiciary as opposed to other political offices due to the clear set of eligibility guidelines to serve in judicial office (Williams, 2008). Furthermore, women may feel more inclined to serve in the judiciary because of the stable hours and pay, which is particularly attractive to women with young children. By contrast, Goelzhauser's (2019) empirical

study utilizes observational data based on revealed preferences from Alaska, which implements merit selection, and finds that women are not more or less likely than men to apply for a judgeship.

As for progressive ambition, Jensen and Martinek (2009) use survey data from 103 trial court judges from New York, which utilizes merit selection, to parse the determinants that are likely to influence judges' ambition. The authors find that judges of color and women are more likely to seek judicial promotion than their male counterparts. Jensen and Martinek write, "perhaps those who have traditionally been underrepresented in government are particularly drawn to the judiciary for its role as the fundamental arbiter of justice and thus have a greater fervor to move up" (p. 389). Goelzhauser (2019) uses observational data on revealed preferences from Alaska to examine when judges seek promotion under merit selection, finding that women and people of color are not more or less likely to seek promotion within the courts.

Invoking the theoretical underpinnings of the extant literature on nascent ambition is necessary to shed light on whether the gender gap in ambition manifests in the judiciary. With that said, there are several reasons why it is difficult to apply the existing literature here. The normative perceptions of merit selection's effect on enhancing diversity may incentivize women to be more likely to pursue judicial office. Moreover, merit selection's unique institutional design of selection differs from legislative elections. Also, the empirical findings examining gender and ambition specifically in the judiciary presents conflicting evidence to the prevailing theory on nascent ambition.

To summarize the theoretical argument presented here, theories of nascent ambition have identified an empirical trend that women are less likely to express political

ambition relative to men. Moreover, experience with implicit and explicit bias in the legal

profession depicts the substantial disincentives facing women in pursuit of judicial office.

Thus, to empirically parse the initial determinants of the applicant pool under merit

selection, I draw on established models of nascent ambition and bias to help determine

whether women express different levels of ambition under merit selection.

H_1: Women will be less likely to apply for judgeships under merit selection.

EMPIRICAL ANALYSIS

To test my hypothesis, I use original data from New Mexico, which provides a list

of the names of each applicant by vacancy from 1998 through 2021. It is important to

highlight the data limitations that may explain the lack of literature examining nascent

ambition and merit selection. Particularly, there is a paucity of information regarding who

applies to fill a vacancy from the states that employ merit selection. New Mexico, in

addition to Alaska and Nebraska (Goelzhauser, 2018b; 2019), are the only states that

have provided necessary data in this field of study. This section first introduces the

impetus for judicial reform in New Mexico. Then, I will present the unique data obtained

through a public records request from New Mexico and explain how the key explanatory

variable and controls were operationalized. The final section summarizes the results that

model the likelihood of any given lawyer applying for a judgeship during the sample

period.

Judicial Selection in New Mexico

In 1988, voters in New Mexico authorized an amendment to the state's Constitution that transformed the ways in which judges are selected to a unique hybrid system of judicial selection (Romero, 2000). Accordingly, judges in New Mexico can first be seated under either merit selection or a partisan election since it is required that an open seat first gets filled through merit selection but then the appointee has to face a partisan election. When challengers win the partisan elections, they bypass merit selection. If appointees win the partisan elections, then they are only subject to retention elections for subsequent terms. The 1988 amendment was the culmination of nearly fifty years of attempts to reform the judicial selection system in New Mexico, as each attempt of reform failed until a breakthrough in 1951, when the New Mexico legislature introduced and subsequently passed an approved draft from the State Bar outlining a merit selection system in the state. After the passage of the plan, voters were given the opportunity to decide whether to adopt a merit selection plan in their state. Although key political elites, the State Bar, civil and professional organizations, and the state's primary newspapers advocated for the transfer to merit selection, the measure only garnered support from 37.1 percent of the electorate and failed (Dubois, 1998).

The catalyst for judicial reform in 1988 initially came from the state's Second Judicial District Court judges, who called for a nomination-appointment-retention system similar to the Missouri plan (Romero, 2000). Organizations, including the League of Women's voters, coalesced with the Second District judges in calls for judicial reform

and in 1988 submitted a merit selection proposal to the legislature (Romero, 2000).[6]

Reformers highlighted the benefits of removing the influence of politics from the judicial

selection system, arguing that merit selection would produce a more qualified and diverse

bench (Esterling and Anderson, 1999). Others, namely three of the state's five Supreme

Court judges at the time, called the measure "elitist" given the State Bar's involvement

and argued that the nominating system was antithetical to democracy. "They saw the

nominating commission and retention elections as taking power away from the

electorate," claims Romero (2000, p. 183). The reformers prevailed, as the state

legislature passed the proposal that implemented the current hybrid system of judicial

selection in New Mexico. The hybrid system of selecting judges applies to the Supreme

Court of New Mexico, the New Mexico Court of Appeals, each of the thirteen state

district courts, and the Bernalillo County Metropolitan Court.

As noted previously, the initial process to fill a judicial vacancy under merit

selection in New Mexico has three steps: application, nomination, and appointment. First,

attorneys complete and submit an application to the nominating commission. The

application is roughly five pages long for those seeking initial nomination and ten pages

for current or former judges seeking promotion within the courts.[7] In addition to filling

out the 44 application questions regarding prior education, employment, and experience,

applicants are required to submit two letters of recommendation, list eight references, and

enclose one writing sample such as a legal memorandum, opinion, brief, or publication.

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[6] See under the "State Personnel" section on their website, the League of Women Voters of New Mexico still has a favorable position on merit selection (https://www.lwvnm.org/positions.html).
[7] The University of New Mexico School of Law website, (https://lawschool.unm.edu/judsel/application.html) provides detailed information, documentation, and required application material with respect to the selection process.

Moreover, each candidate must meet the qualifications enumerated in the New Mexico

Constitution.[8]

      Second, the respective nominating commission interviews applicants and votes on

two issues: whether the candidate is qualified and if so whether the candidate should be

recommended to the governor. Judicial nominating commissions, which exist for each

judicial district, include the chief justice of the Supreme Court, the chief judge of the

Court of Appeals, and the chief judge of the district court where the vacancy exists.[9]

Additionally, the state's governor, speaker of the House, and president pro tempore of the

Senate appoint both an attorney and a non-attorney to the commission. Moreover, the

commission must have an equal number of Democrats and Republicans. Thus, the State

Bar president, in consultation with the judges, appoints attorneys to the commission to

ensure partisan parity.[10] After winnowing the pool of applicants for any given vacancy,

the commission forwards a short list of at least two nominees to the governor within 30

days of the announced vacancy. Last, the governor may make one request per vacancy to

the commission for additional names. If the majority of the commission agree more

candidates are qualified, the commission forwards those names to the governor.

Subsequently, the governor must appoint one of the nominees recommended by the

nominating commission.

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[8] Each court (the Supreme Court, Court of Appeals, each district court, and the Metropolitan Court) have qualifications enumerated in the state's constitution (https://lawschool.unm.edu/judsel/qualifications.html).
[9] Similar to district courts, the chief judge of the Metropolitan Court sits on the commission as well if it is specifically to fill a vacancy for the Metropolitan Court. Each chief can appoint a designee to fill their spot on the commission.
[10] The American Judicature Society provides an overview of how merit selection operates in each state (http://www.judicialselection.us/uploads/Documents/Judicial_Merit_Charts_0FC20225EC6C2.pdf). The most recent overview (2011) does not provide specific data for the terms of service for New Mexico's commissioners.

Data

Information was gathered on active members of the State Bar of New Mexico as of 2020 from the State Bar's website.[11] Each attorney's name, firm, bar status, county, city, website, email, and gender identity were copied and pasted into a spreadsheet. In aggregate, there were 5,242 active attorneys in my dataset. The dataset's level of analysis is at the attorney-level. Through a public records request, New Mexico provided data that consists of information on each applicant per vacancy spanning from January of 1998 through February of 2021. There were 230 vacancies and a total of 1,845 applications during the sample period. Figure 1 plots the number of candidates that applied to each of New Mexico's courts from 1998 through 2021.

Figure 1

Number of Applications by Court from 1998-2021

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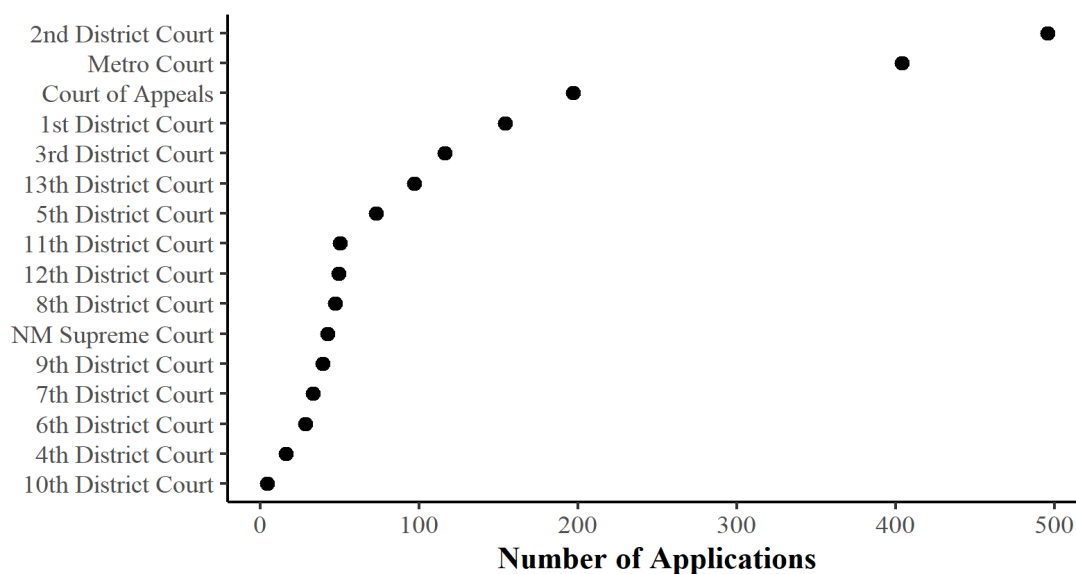
[11] The State Bar of New Mexico membership search website (https://www.sbnm.org/For-Public/I-Need-a-Lawyer/Online-Bar-Directory).

Measurement

The dependent variable is scored 1 if a lawyer in the dataset has ever applied to a judgeship and 0 otherwise. There were 587 lawyers in my dataset that applied to be a judge at least once during the sample period. The primary independent variable captures gender and is coded 1 for women and 0 otherwise. This was informed by the pronouns each attorney selected to display on their profile on the bar's website. There was no indication on public platforms that specified other genders that may be present.[12] Figure 2 displays the percent of applicants who are men and women: 63 percent and 37 percent, respectively.

Figure 2

Percent of Applicants by Gender

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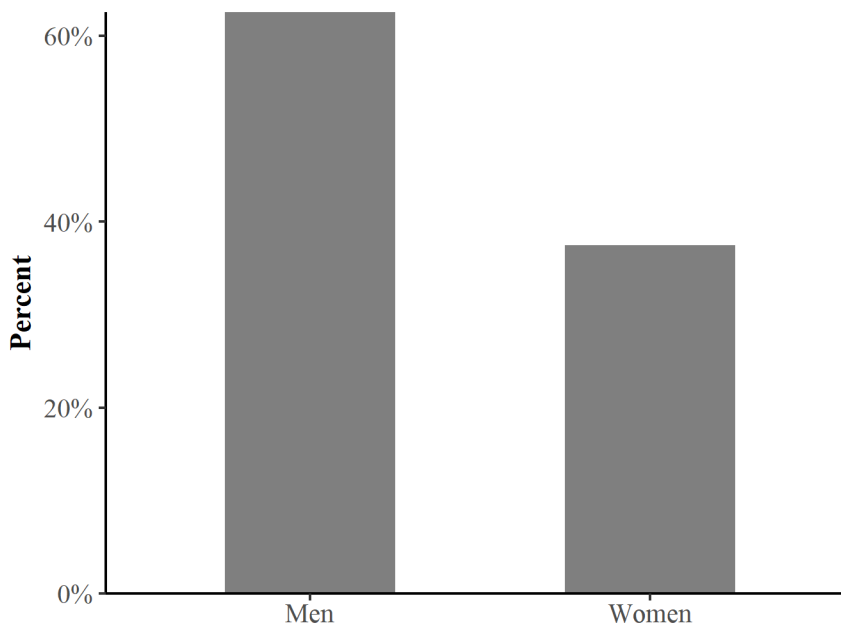
[12] Information on attorneys' race or ethnicity was not publicly available as well.

Several control variables were employed as a result of the other key dimensions highlighted in merit selection debates: qualifications and politics. Since merit selection ostensibly generates a more qualified bench, more qualified attorneys should be more likely to apply because they are likely to be more confident in their chance of success. To measure qualifications, I collected data on the year each active lawyer was admitted to the State Bar of New Mexico from Martindale-Hubbell.[13] To fill in missing information for those who did not have Martindale-Hubbell, I searched online each lawyer individually by name to leverage more information.[14] I first constructed a variable that separated attorneys into two separate cohorts to account for years of experience. I scored 1= from 1980 through 1999 and 0 otherwise and 1= prior to 1980 and 0 otherwise, with the most recent cohort, 2000 through present, as the excluded baseline variable.

I then accounted for law school quality and also obtained attorney's law school information from Martindale-Hubbell or searched each attorney by name online. Based on *US News* rankings, I coded 1= law schools that rank higher than 100; 2= schools ranked 76-100; 3= schools ranked 51-75; 4= schools ranked 26-50; 5= schools ranked 15-25; 6= schools ranked 1-14 given that law school quality is a key consideration in the judicial selection process (cf. Sen, 2014).[15] I also included a variable scored 1 if an active attorney graduated from the state's local law school, the University of New Mexico (UNM) School of Law, and 0 otherwise. This measurement accounts for applicant

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[13] Martindale-Hubbell is a repository that consists of attorneys' law school background, year they passed the bar in any given state, firm information, and ratings (https://www.martindale.com/).

[14] Notably, Justia was a reliable source in providing attorneys' bar years (https://www.justia.com/).

[15] I used the current 2021 rankings produced by US News at the institution's website (https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings).

networks, given commissioners or the governor may value attendance of in-state

institutions (Goelzhauser, 2019, p. 115).

I also included measures to account for practice diversity. If merit selection

attracts more qualified judges, attorneys with distinct employment experiences should be

more likely to apply.[16] Individual firm websites and LinkedIn were among the most

useful websites in leveraging information of past employment experience. I coded 1 if an

attorney only had private sector experience and 0 otherwise and 1 for those that only

served in public service and 0 otherwise. Attorneys with both public and private

experience are the omitted baseline.

As for politics, political ideology should have no impact on whether one applies

to be a judge to be in accordance with intended goals of merit selection. I employed a

proxy variable contingent on FEC donations (cf. Bonica, 2014).[17] I resorted to FEC

donations to measure partisanship under the assumption that contributors generally

disseminate donations in accordance with their ideology (Bonica, 2014). I searched each

lawyer's name, occupation, or state from my dataset into the FEC's search engine to

obtain information on attorney's political party donations. Then, I constructed two

variables to capture partisanship. I scored 1= donated to Republicans if a lawyer donated

to mostly Republican PACs, campaigns, or candidates and 1= donated nothing if

attorneys did not donate or it was unclear if they donated. Attorneys who donated to

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[16] The nominating commission in New Mexico evaluates candidates based on criteria provided from the American Judicature Society's handbook
(http://www.judicialselection.us/uploads/documents/JNC_HandbkCh5_1185464391875.pdf)
[17] FEC donations were used as proxy given that voter records from New Mexico are not public and are costly. Given the difference in party donations between Democrats and Republicans, it is evident that voter files will be needed for future research.

Democrats is the omitted baseline. Table 1 reports summary statistics of the key

independent variable and controls.

Table 1

Descriptive Statistics

Variable	M	SD	Min	Max
Gender (woman =1)	.42	.49	0	1
Cohort (prior to 1980)	.11	.32	0	1
Cohort (1980 - 1999)	.41	.49	0	1
Only private sector	.57	.5	0	1
Only public service	.13	.34	0	1
Law school ranking	2.51	1.42	1	6
Local law school	.48	.5	0	1
Donated to Republicans	.07	.25	0	1
Donated nothing	.51	.5	0	1

Analysis

I employed logistic regression given the dependent variable is dichotomous. Table 2 presents results that model the likelihood of any given lawyer applying for a judgeship during the sample period. There are five models shown in Table 2; the first four are separated into conceptual categories: gender only, gender with qualification controls, gender with experience controls, and gender with political controls. Model 5 displays the coefficients when each variable is controlled for from the data set.

Table 2

Initial Determinants of the Applicant Pool Under Merit Selection

|	1	2	3	4	5
Intercept	−1.99***	−2.3***	−1.4***	−1.96***	−1.7***
	(.06)	(.14)	(.08)	(.08)	(.17)
Gender (woman = 1)	−.19**	−.09	−.3**	−.17*	−.16
	(.09)	(.1)	(.09)	(.09)	(.1)
Cohort (prior to 1980)		.37*			.77***
		(.17)			(.18)
Cohort (1980-1999)		1.02***			1.17***
		(.1)			(.11)
Law school ranking		−0.09*			−0.11**
		(.04)			(.04)
Local law school		.05			.05
		(.1)			(.1)
Only private sector			−1.1***		−1.29***
			(.1)		(.11)
Only public service			.008		.11
			(.12)		(.14)
Donated to Republicans				.23	.22
				(.17)	(.18)
Donated nothing				−0.16	−0.04
				(.1)	(.1)

Note. Models fit with logistic regression. Standard errors are in (parentheses). Dependent variable = 1 if lawyer has ever applied to fill a judicial vacancy and 0 otherwise. N=4275.

* $p < .10$. ** $p < .05$. *** $p < .01$. (two-tailed).

Turning to the key explanatory variable first, gender is negative and statistically distinguishable from zero across all specifications except Models 2 and 5. Figure 3 visualizes the difference between men and women based on Model 1. Accordingly, the predicted probability of applying to a judgeship decreases from .12 [.13, .11] to .1 [.12, .09] for women.[18] It is important to be tentative when substantively interpreting these results given that the result is no longer significant with full controls. Still, these results illuminate the importance in addressing judicial ambition separate from legislative context.

Figure 3

Predicted Probability of Applying
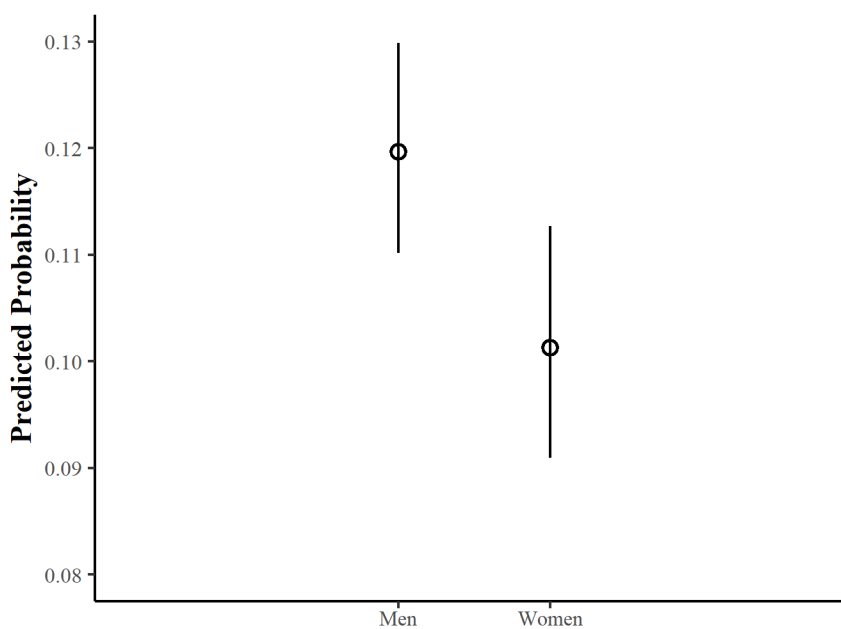
Note: Error bars show 95% confidence intervals.

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[18] Brackets indicate 95% confidence intervals. The predicted probability was calculated by holding all other continuous variables at their mean and dichotomous variables at their mode and are based on Model 5 to account for all controls (see exception for Figure 3).

With respect to measures of qualifications, I excluded the most recent cohort (2000 through present) for comparison. As such, the estimated coefficient for both cohort variables is positive and statistically significant relative to the most recent cohort in Models 2 and 5. The predicted probability of applying to be a judge increases from .04 [.03, .05] for those who passed the bar between 2000 through present to .11 [.09, .12] for those who passed the bar from 1980 through 1999. Furthermore, the predicted probability of applying also increases from .04 [.02, .05] for the most recent cohort to .07 [.05, .1] for the cohort that has been practicing law prior through 1980.

Turning to the law school variables, law school ranking is negatively associated with applying. As such, the predicted probability decreases from .09 [0.06, 0.11] if a lawyer attended a law school ranked above 100 to .05 [0.03, 0.07] if an attorney graduated from a law school ranked 1 to 14. Attending the University of New Mexico School of Law was not a significant predictor of who applies under merit selection. Potential modifying effects between the gender and qualifications variables are explored in the Appendix.

With respect to experience, I used the variable indicating that lawyers with both private and public experience as the baseline variable. Attorneys who only have private sector experience is negatively associated with applying, while having only public service experience is not associated with significant changes in the probability of applying. Substantively, the predicted probability of application decreases from .12 [.1, .15] for lawyers with experience in both public and private sectors to .04 [.03, .05] for those who only have a private sector background. It is suggested that highly qualified lawyers in the

private sector may be incentivized to remain in private practice rather than public service given private law positions pay more (Goelzhauser, 2019).

Last, Table 2 reports that neither FEC donation measures relative to the omitted baseline, Democratic donations, is associated with observable differences in the predicted probability of applying to be a judge. Nonetheless, it is important to be circumspect discerning the substantive implications of this result. Campaign donations serve as an alternative proxy for partisanship; therefore, obtaining voter files from states that employ merit selection in addition to campaign donations will be central in empirical research to come.

CONCLUSION

This thesis examines gender and political ambition under merit selection. Although merit selection is a commonly used judicial selection institution throughout the states, the initial application stage is little understood due to the lack of available data regarding who applies for consideration. To empirically parse the initial determinants of the applicant pool under merit selection, I draw on established models of nascent ambition (see e.g., Fulton et al., 2006; Fox and Lawless, 2005; Fox and Lawless, 2011; Schneider et al., 2016; Verba et al., 1997) and bias (Gill, 2014; Sen, 2014) to help determine whether women express different levels of ambition under merit selection.

To address the gender gap in political ambition as a whole, previous scholars suggest that "demand factors will be necessary to overcome the suppressed interest and confidence that women have in political careers" (Holman and Schneider, 2018, p. 275). Nonetheless, finding these solutions are difficult. For instance, Bos (2015) finds that

women candidates can be disadvantaged if state political party organizations have

affirmative action policies. Furthermore, even when women are encouraged to run for

office by political elites, they are more hesitant to do so due to skepticism about the

amount of party support they will receive (Butler and Preece, 2016). Regardless, finding

solutions to address the underrepresentation of women a priority in future research and

policy given the importance of descriptive representation on institutional legitimacy and

democracy.

Using information obtained through a public records request from New Mexico,

the results presented here indicate women appear to be less likely to apply to judgeships,

although it is important to be prudent in substantively interpreting this difference.

Consistent with proponents' arguments that merit selection emphasizes qualifications,

attorneys with more experience in the legal profession appear to be more likely to apply.

However, law school quality is negatively associated with applying. As for the political

dynamics under merit selection, the political variables utilized in this study showed no

effect on whether ideological barriers influence judicial ambition.

It is important to close addressing two limitations in this thesis: data

generalizability and the lack of information about intersectionality. With respect to

external generalizability, the results presented in this thesis are based on evidence from

one state. Alaska (Goelzhauser, 2019), Nebraska (Goelzhauser, 2018b), and now New

Mexico are the only states that have provided relevant information on the applicant,

commission, and gubernatorial stages under merit selection. While the lack of data

availability is a valid concern for external generalizability purposes, empirically

analyzing merit selection's key institutional features such as the applicant stage is

conducive to our understanding of who pursues public office and to the broader debate on judicial selection, even if only one state provides the sufficient data. Moreover, these concerns can be best addressed with more public access to state's records.

Second, it is critical to address the lack of intersectionality in extant literature, as studies examining political ambition mainly extrapolates on women's experiences as a whole and disregards an intersectional approach (Holman and Schneider, 2018). Evidence suggests that controlling for race has substantial implications on political ambition, such that women of color have very different motivations for pursuing office from one another (e.g., Brown, 2014; Farris and Holman, 2014; Holman and Schneider, 2018). For instance, church mobilization is an important political motivator for Latinas, while linked fate—which implies an individual's fate is tied to one's racial group—and party contact matter more for Black women (Brown, 2014). Likewise, the gender gap examined in this thesis only controls for two genders: men and women, thus not accounting for other gender identities that may be present. With that said, there are clear limitations with the lack of available data, such as my own, that restrict our ability to address questions in a fully intersectional way. Studies, for example, may have small sample sizes of historically underrepresented groups. To illuminate the effect intersecting and nuanced identity characteristics have on political pursuit, future researchers must advance and adapt research techniques to better capture the complexity of reality.

To close, this thesis is a preliminary analysis with one observation per attorney highlighting whether women are more or less likely to apply for judgeships. Future work should consider the impact of an attorney's experience beyond the cohort variable presented here. One way to approach this would be to model the application decision as a

repeated events duration model as opposed to a logistic regression, having one

observation for each attorney for each vacancy that an attorney was eligible to apply for

(e.g., Goelzhauser, 2019). Accounting for time would allow for including time-dependent

control variables. Furthermore, more available information from states that employ merit

selection will be required for further systematic research. As noted above, systematically

parsing merit selection's institutional design and performance in the future is dependent

on whether states are willing to record and disseminate this key data.

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APPENDIX

Qualifications and diversity are the two most important facets of the merit selection debate. To examine potential modifying effects between the variables capturing qualifications and diversity, Table A1 includes interaction terms. For simplicity in modeling the interaction with gender, I include a single categorical measure of experience rather than a dummy. I coded 8= the cohort prior to 1959; 7= 1960-1969; 6= 1970-1979; 5= 1980-1989; 4= 1990-1999; 3= 2000-2009; 2= 2010-2019; 1= 2020 through present. There are four models shown in Table A1: no interactions, gender interacted only with cohort, gender interacted only with law school ranking, and gender interacted with both qualification control variables.

Turning to the interaction effects, Figure A1 shows the modified effect of gender on applying based on cohort. There is a positive slope for both men and women, indicating that older cohorts are more likely to apply on average. The positive effect for men is greater than the positive effect for women, as older male lawyers are more likely to apply than comparably older female lawyers. For instance, the predicted probability of applying for male attorneys who passed the bar from 1970 through 1979 decreases from .31 [.19, .24] to .19 [.15, .17] for women of the same cohort.[19]

Figure A2 shows the effect of gender on applying based on law school ranking. There is a negative slope for both men and women, indicating that attorneys who attend higher ranking law schools are less likely to apply on average. The predicted probability

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[19] Brackets indicate 95% confidence intervals. The predicted probability was calculated by holding all other continuous variables at their mean and dichotomous variables at their mode and are based on Model 4 to account for all controls.

of applying for men who attended law school ranked higher than 100 increases from .13

[.11, .13] to .15 [.12, .15] for women who also attended schools ranked higher than 100.

Then, the negative effect is not distinguishable from zero for law schools ranked 76-100,

as the predicted probability of applying for both men and women is .12 [.11, .14]. After

that, the negative effect for women is greater than the negative effect for men, indicating

that women who attend higher ranked law schools are, on average, less likely to apply

than men. The predicted probability of applying for men who attended a top 14 law

school decreases from .1 [.07, .12] to .06 [.04, .1] for women who also attended a top 14

law school.

Table A1

Modifying Effects Based on Qualification Variables

	1	2	3	4
Intercept	−2.5***	−2.27***	−2.56***	−2.33***
	(.22)	(.24)	(.23)	(.24)
Gender (woman = 1)	−.09	−.84***	.12	−.64*
	(.1)	(.34)	(.21)	(.37)
Cohort	.37***	.32***	.37***	.31***
	(.04)	(.05)	(.04)	(.05)
Gender × cohort		.2***		.21**
		(.08)		(.08)
Law school ranking	−.13***	−.12***	−.1**	−.09*
	(.04)	(.04)	(.04)	(.04)
Gender × law school ranking			−.09	−.11
			(.08)	(.08)
Local law school	.03	.03	.03	.03
	(.1)	(.1)	(.1)	(.1)
Only private sector	−1.35***	−1.35***	−1.35***	−1.35***
	(.11)	(.11)	(.11)	(.1)
Only public service	.17	.16	.17	.16
	(.14)	(.14)	(.14)	(.14)
Donated to Republicans	.23	.25	.23	.25
	(.18)	(.18)	(.18)	(.18)
Donated nothing	.01	.01	.01	.02
	(.1)	(.1)	(.1)	(.08)

Note. Models fit with logistic regression. Standard errors are in (parentheses). Dependent

variable = 1 if lawyer has ever applied to fill a judicial vacancy and 0 otherwise.

* $p < .10$. ** $p < .05$. *** $p < .01$. (two-tailed).

Figure A1

Predicted Levels of Applying Based on Cohort
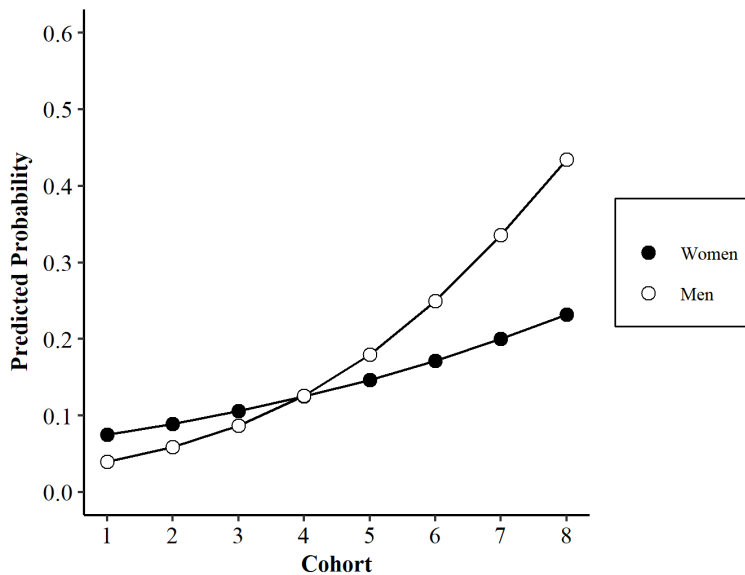
Figure A2

Predicted Levels of Applying Based on Law School Ranking