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JUDICIAL ACCOUNTABILITY AND ECONOMIC POLICY OUTCOMES:
EVIDENCE FROM EMPLOYMENT DISCRIMINATION CHARGES

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Abstract

How and whether judges should be held accountable is a key issue in the design of a legal system. Thirty-seven of the forty-eight continental states use some method of judicial selection which involves a direct role for citizens in selecting or re-appointing the judiciary. We identify two theoretical reasons why the method used for choosing judges is important – (i) a *selection effect* if the competence or underlying preferences of judges is affected, (ii) an *incentive effect* if the judges who are chosen behave differently because of the method used for their re-appointment. This paper uses data from the U.S. to investigate whether judicial selection methods affect the number of employment discrimination charges filed for the period 1973-2000. Our results show that states that appoint their judges have lower levels of discrimination charges compared to those that use some form of election. The results appear to be driven by states where judges being subject to *re-election* incentives rather than because judges with different preferences/competences are being chosen.

Executive Summary

How and whether judges should be held accountable is a key issue in the design of a legal system. Thirty-seven of the forty-eight continental United states use some method of judicial selection which involves a direct role for citizens in selecting or re-appointing the judiciary.

We identify two theoretical reasons why the method used for choosing judges is important – (i) a *selection effect* if the competence or underlying preferences of judges is affected, (ii) an *incentive effect* if the judges who are chosen behave differently because of the method used for their re-appointment.

The paper uses data from the U.S. to investigate whether judicial selection methods affect the number of employment discrimination charges filed for the period 1973- 2000. Our results show that states that appoint their judges have lower levels of discrimination charges compared to those that use some form of election. The results appear to be driven by states where judges being subject to *re-election* incentives rather than because judges with different preferences/competences are being chosen.

Our results should be viewed in the light of the burgeoning empirical literature on the importance of judicial independence in affecting economic outcomes. La Porta et al (2003) argue persuasively that countries with greater judicial independence are also those with better economic and political outcomes. Traditionally, the main threat to judicial independence comes from the executive branch of government (see Glaeser and Shleifer (2002)). Our results are consistent with the view that appointing judges strengthens the independence of the judiciary as argued, for example, by Posner (1993).

But there are three main (competing) notions of judicial independence at work here -- independence from executive authority in government, from popular opinion and from organized interests such as big-business. Electing judges may create greater independence from government and from the influence of big business. However, it may create less independence from popular opinion. Whether this is welfare improving is moot. Our results are consistent with the view that appointing judges (especially to life terms) protect the property rights of firm owners who might otherwise be expropriated by populist courts. Yet, it may also perpetuate discrimination in labor markets.

I. Introduction

How and whether judges should be held accountable is a key issue in the design of a legal system. It is also one on which the states in the United States have historically adopted different policies. Thirty-seven of the forty-eight continental states use some method of judicial selection which involves a direct role for citizens in selecting or re-appointing the judiciary. But whether such institutional differences affect the way in which laws are implemented and enforced is moot.

There are two main theoretical reasons why the method used for choosing judges can affect outcomes. The first is a *selection effect* if the competence or underlying preferences of judges is affected. The second is an *incentive effect* if the judges who are selected behave differently in the face of the method that is used for their *re-appointment*.

This paper uses U.S. state level data to investigate whether judicial selection methods affect the number of employment discrimination charges filed for the period 1973- 2000. Such charges are an interesting source of evidence since the judiciary has played a key role in policy implementation in this area. Although a charge of discrimination may be resolved at the agency level, the courts are the venues of last resort for an employee or employer. Because both trial and appellate courts interpret statutes, judges are involved in creating policy. Court decisions potentially expand or contract a given statute insofar as any given decision involves a court's application of the statute to a particular set of facts. These statutory interpretations are binding decisions not only on the parties to the agreement but to future litigants.

Even though the vast majority of such claims are settled outside the court, there are strong grounds to expect that the generosity of settlements reached in court will affect the decision to file since collectively the judiciary can change the thrust of policy towards those who perceive discrimination. It is therefore plausible to expect that judicial accountability will have an effect on the decision to file a charge.

Our results show that states that appoint their judges have lower levels of discrimination charges compared to those that use some form of election. This result holds for aggregate discrimination charges and for charges in four sub-categories (race, gender, age and disability). We also instrument for whether a state uses judicial appointments using other similar institutions (whether a state permits popular initiatives and referendums, and whether the state elects its public utility commissioners). Finally, we consider whether the results are driven by incentive or selection effects. Here we find evidence that it is submitting judges to *re-election* which matters rather than the mode of initial appointment.

These results can be interpreted in view of concerns about institutions that guarantee judicial independence (see LaPorta et al (2002)). Our results suggest that re-election incentives may compromise judicial independence by increasing the weight that they attach to the interests of employees. This finding is amplified by our auxiliary observation that states with judges who serve life terms have even fewer discrimination charges filed.

There is an existing body of work supporting the view that appointed judges behave differently compared to elected judges. Suggestively, Bohn and Inman (1996) find that whether a constitutional restriction on deficit finance is effective depends on whether the court that has to enforce the restriction is elected or appointed. Restrictions with appointed courts do not appear effective in their data. Hanssen (2000) tests the idea that appointment leads to greater judicial independence by looking at staffing levels in three budgetary agencies that are subject to judicial review: public utility commissions, insurance commissions and education bureaucracies. He argues that the kind of defensive activity that more independent judiciaries engage in will result in them having more staff. Using cross-sectional data for 1983, he shows that states with elected judges have significantly smaller bureaucracies controlling for a number of other observables. Hanssen (1999) looks at whether states that elect their judges have more or less litigation activity, arguing that this may reflect the degree of uncertainty in the operation of courts. Using data from all 50 states, he tests whether there are significantly more public utility disputes (1978-83), and High Court and Trial Court Filings (1985-94) in states that elect their judges. The main finding, identified from cross-sectional differences, after controlling for a number of economic and demographic variables, is that appointing states have significantly higher rates of judicial activity in public utility disputes and High Court Filings, but not in Trial Court Filings.[1]

Our analysis makes three main advances over previous studies. First, our outcome – employment discrimination charges – is particularly suited to the study of the effects of judicial selection procedures on outcomes. The broad base of the evidence (across five categories of discrimination), the fact that charges can only be brought by one type of party (employees), and the relatively long time-period makes systematic testing a possibility. Second, our method for investigating robustness to endogeneity of judicial appointment regimes is novel. Third, our paper tries to see which of the two principal reasons – selection or incentives is driving the results.

The remainder of the paper is organized as follows. In the next section, we discuss some background facts and the institutional setting. Section III discusses background theoretical considerations which motivate our test. Section IV discusses data and the empirical estimation strategy while section V develops the results. Conclusions and directions for future research are in section VI.

II. Institutional Background

This section provides the background institutional details and information needed to comprehend the econometric evidence presented below.

A. The Role of Courts in Interpreting State Laws

For a matter to be heard by a state court, the state must prohibit the type of alleged discrimination in a statute or in its constitution.[2] If the state prohibits employment

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[1] This is part of a larger body of literature which looks at the impact of cross-state differences in institutions on policy outcomes reviewed in Besley and Case (2003). Besley and Coate (2003) reviews the literature on elected versus appointed regulators and uses panel data on electricity prices across U.S. states to argue that elected states adopt more pro-consumer policies.

[2] A description of these state laws is provided in the next section.

discrimination an individual is potentially covered by state and federal law. The federal law will serve as an umbrella statute for many types of discriminatory behavior if the state statute provides broader coverage than the federal statute. To pursue a claim of discrimination, the individual must first file a charge of discrimination with the state or federal agency responsible for overseeing claims of discrimination. At that point the charge may be resolved by the agency (e.g. through an investigation, mediation, or agency action) or the individual may decide to drop his claim. If the matter is not resolved or dropped, the individual will have the option of bringing a court action in the appropriate state trial court.[3] A trial court is considered to be a court where the judge and/or jury are a "trier of fact." As the trier of fact, the trial court, after hearing the evidence presented by the employee and employer, will decide whether an employer unlawfully discriminated against the employee based on its interpretation of how the facts fit the law upon which the claim of discrimination is based. If the losing party is dissatisfied with the decision of the trial court, that party can only appeal the decision if the party disagrees with the court's interpretation of the law. Thus, the courts that oversee the actions taken by the trial courts are known as appellate courts. These courts can reverse the findings of a trial court only if the trial court erred in its interpretation of the law. Appellate courts do not have the authority to re-try a case and these courts cannot re-interpret the facts of the case.

In some states there is only one level of appellate courts. In other states there are two levels. In the instance where there is only one level of appellate courts, once that court has rendered its decision, there is no further recourse for the parties in the state court system. In the instance where there are two levels of appellate courts, then a decision made at the lowest appellate level can be appealed to the highest appellate court. In most states, the second level of appellate court (often called the state "Supreme Court") has some discretion over the matters which it will agree to hear. Thus, an aggrieved party that failed to win at the first level of appellate court may or may not be able to pursue an appeal at the second level of appellate courts.[4]

The path an aggrieved employee will follow through the court system is illustrated in Figure 1. The first step begins with an employee or a job applicant deciding that he has been discriminated against by an employer. In the case of an employee, this could stem from the employee not getting a promotion or salary raise, being demoted, or being forced to retire or resign. Once the alleged discrimination occurs, the employee (or job applicant) has to decide whether to file a charge of employment discrimination with the federal Equal Employment Opportunities Commission ("EEOC") or relevant state agency within a fixed period. In states for which there is no state law against the particular type of discrimination, the charge must be filed within 180 days of the date on which the alleged discrimination occurred. In states for which there is a state law against the particular type of discrimination, the charge must be filed within 300 days of the date of the alleged discrimination.

Once a charge is filed with one agency (federal or state), to avoid unnecessary duplication of efforts, it is common practice for that agency (e.g. federal) to notify the other

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[3] Alternatively, the individual could bring an action in federal court. In most instances, the state law will apply first with the federal law providing protection when the state law is not applicable.

[4] For a more comprehensive review of state judicial process, see Carp and Stidham (2001). For an overview of the issues concerning judicial selection, see Hall (2001).

agency (e.g. state) of the charge under a work sharing agreement between the two agencies. This way, the employee is protected under both the federal and state laws. The government agency then is required to contact the employer and to seek conciliation between the employee and employer.[5] At the agency level, there are several possible resolutions, three of which are described as follows. First, the agency can dismiss the charge if the employee has failed to provide the necessary information to support his claim of discrimination. Second, the agency can investigate the matter and decide whether to issue a "right to sue" letter. At this point, the agency may encourage the parties, through mediation or some other process, to settle the matter. Third, the agency can decide to bring a lawsuit on behalf of the employee against the employer for the alleged discrimination.

Although the agency may be involved in investigating the alleged discrimination, the actions of the agency are not binding on the parties. Depending on the type of alleged discrimination (age, race, sex, disability, etc), after a certain period has passed, regardless of the actions (or inaction) the agency has taken, the employee may ask the agency for a right to sue letter and move the matter into the judicial system. Only in the case where the agency has decided to initiate a lawsuit on behalf of the employee is the employee prohibited from bringing his own lawsuit.[6]

B. Judicial Selection

Legislation and constitutional requirements regarding the selection of judges have relied, historically, very little on particular characteristics an individual may possess. There are very few qualifications an individual has to meet to be a judge. Moreover, there is no prescribed training program for would-be judges. Most judges have been older white males (Carp and Stidham, 2000, p. 269). The average starting age of a state trial judge is 46 and the average starting age of a state appellate judge is 53. The political party affiliation of a state judge tends to mirror the party that dominates in the judge's state.   Despite the method used to select the judges, a majority of state judges were politically active before assuming the bench.

At the federal level, all judges are appointed and serve for life. At the state level, judges may be appointed, elected, or selected using a combination of appointment and election. In addition, in all but a few states (Massachusetts, New Hampshire, and Rhode Island), judges serve a limited term and must be re-selected to serve additional terms. The methods used to select judges, in general, have followed four historic phases. With the founding of the United States, judges were initially selected through some type of appointment by either the state legislature or the governor. In the 1820s, during the period of Jacksonian Democracy, many states switched their selection scheme to one that involved a partisan election. By 1860, 24 of the 34 states in existence selected their judges under this method.

At the end of the 19th century, during the Progressive Era, many states switched to a non-partisan election of judges. There was a concern that a partisan election led to judges having an

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[5] With respect to age discrimination, the state agency has exclusive jurisdiction over the matter for the first 60 days. After that, however, the matter may be handled by either the state agency or the EEOC.
[6] One of the benefits associated with having the agency initiate a lawsuit on behalf of the employee is that the employee is not responsible for retaining or paying fees of the lawyer that is needed to pursue the lawsuit.

increased involvement in their political party in order to win an election. During this period there was a perception that many judges were corrupt and incompetent. Thus at the time, the role of non-partisan elections was to "take judicial selection out of politics," while still giving voters a say in who should be a judge.

In the early to mid-1900s, there were heated debates over judicial selection with some arguing that what was needed was a combination of appointment and election scheme to select judges. This type of method was first adopted by Missouri in 1940 whereby a judge was first appointed by a governor after he consulted with a nominating commission comprised of lawyers and non-lawyers. For subsequent terms, however, the judge would have to withstand a retention election whereby voters could decide in a yes/no vote whether to keep the judge in office.[7] Thus, while the judge does not have to run against another candidate to retain his office, he is subject to the whims of the voters in terms of whether he will be retained.

Today, there is quite a bit of variation in the selection methods used by states.[8] Most states use the same selection method for trial and appellate court judges.[9] We have grouped the states into three categories: appointed, elected, and hybrid. An appointed state is one that uses only appointment as the means of selecting and retaining judges. The appointment may or may not include the use of a nominating commission and is by the governor or the state legislature. An elected state is one that uses elections to select and retain judges. These elections may be partisan or non-partisan elections. A hybrid state is one that directs the governor to select a judge by appointment but then shortly thereafter (usually within two years of the initial appointment) the judge must be retained through a retention election.

Table 1 reports the distribution of states by the current selection method for the judges serving in the highest level appellate court under these three types of selection methods. Twenty-two states elect their judges, 11 states appoint their judges, and 15 states use the hybrid method of first appointing the judge and then using a retention election for subsequent terms. Interestingly, there is regional variation in judge selection. Most of the states in the eastern region of the U.S. appoint their judges, whereas most of the states in the mid-west and southern regions of the U.S. elect their judges. The states in the western regions of the U.S. either elect or use the hybrid method of judge selection.

Column (4) in Table 1 identifies those states which have changed their judicial selection methods between 1970 and 2000.[10] Although many states have tried to change their selection method over the last 30 years, very few have succeeded. In most states the selection method is dictated by the state's constitution and to change the constitution requires approval by the state

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[7] This method of selection is also referred to as a "merit" selection plan. It is termed merit because the initial appointment is by the governor in consultation with a nominating committee. Throughout the paper, however, we use the term "hybrid" instead of merit. In part this is due to the fact that some states are considered "merit" plan even if the appointment method is used for subsequent terms of a judge because the appointment is done in conjunction with a nominating commission. We have chosen to treat these types of states as "appointed" states.

[8] See Bowers (2002) for a more complete history of judicial selection methods.

[9] As of 2000, the following states use a different selection method for some or all of the trial court judges: Arizona, California, Florida, Indiana, Kansas, Missouri, North Carolina, and South Dakota.

[10] For a more comprehensive description of selection methods and the history of state changes in these methods, see www.ajs.org.

legislature, governor, and the voters. Since 1970, there have been substantial changes in the methodology used to select the judges for the highest court in 18 states. The most prevalent change was from a non-partisan election method to a hybrid method. Wyoming (1972), Arizona (1974), South Dakota (1980), and Florida (1983) enacted this type of change. The next most prevalent change was from a partisan election method to a non-partisan election method. Florida (1972), Louisiana (1974), Massachusetts (1975), Mississippi (1994), and Arkansas (2000) enacted this type of change. Indiana (1970) and Tennessee (1994) switched from a partisan election method to a hybrid method. New York (1977) switched from a partisan election method to an appointment method (with a nominating commission). A handful of states, Maryland (1974), Vermont (1974), Delaware (1977), New York (1977), Wisconsin (1983), South Carolina (1996), added a nominating commission to its existing selection method. Delaware (1977) added a nominating commission to its existing governor appointment. Rhode Island (1994) switched from a method that appointed a judge via legislative election to an appointment by the governor in consultation with a nominating commission. New Mexico added to its partisan election method a retention election for judges seeking additional terms.

C. Employment Discrimination Statutes

Most employees are covered by several federal statutes that prohibit employment discrimination based on such things as race, color, sex, age, national origin, religion, and disability. With the exception of the statute concerning disabilities, the federal statutes were first enacted in the mid- to late 1960s.[11] The statute covering disabilities was first enacted in 1990 and became effective in 1992.[12] The agency responsible for enforcing these laws is the Equal Employment Opportunity Commission ("EEOC"). Prior to 1972, however, the EEOC was considered a "toothless tiger" because it did not possess sufficient enforcement power to pursue violators of the federal statutes. EEOC's authority was expanded in the Equal Employment Opportunity Commission Act of 1972. Initially, the EEOC was not responsible for overseeing charges of age discrimination. This changed in 1980 when authority over the Age Discrimination in Employment Act was given to the EEOC.[13]

In addition to the federal statutes, many states have enacted statutes that are similar to the federal statutes. The state statutes, however, often are more broadly worded and cover more types of employers and/or employees. For example, in some states age discrimination applies to all individuals over the age of 18, whereas the federal statute only covers individuals over the age of 40. In some states, discrimination is prohibited for such things as marital status, sexual orientation, smoking, having a family history of certain diseases, and/or participating in political activities outside of the workplace. Most of the federal statutes require the EEOC to defer

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[11] The significant pieces of federal legislation are: The Equal Pay Act (enacted in 1963; requires equal pay for equal work), Title VII of the Civil Rights Act (enacted in 1964; makes it illegal to discriminate in hiring, discharge, compensation, etc., on the basis of race, color, religion, sex, or national origin), the Age Discrimination in Employment Act (enacted in 1967; makes it illegal to discriminate against individuals over the age of 40 unless age is considered a bona fide occupational qualification).

[12] Enacted in 1990, the Americans with Disabilities Act requires employers to offer reasonable accommodation to disabled employees and bans discrimination against the disabled in wage determination, hiring, and firing.

[13] For a more detailed report on the role played by the EEOC in pursuing charges of discrimination and the federal laws covering, see www.eeoc.gov.

charges it receives to the state agencies so that the agencies can first try to resolve the disputes using state laws, thereby treating the federal law as a "law of last resort."[14]

Although the state statutes reflect federal laws, there is variation when they were first enacted. In some states, the statutes were enacted before the federal laws were enacted, in other states, the statutes were enacted subsequent to the federal laws. A few states still do not have a statute that prohibits employment discrimination in the private sector.

Table 2 reports the years in which prohibition of discrimination was first enacted on the basis of race, sex, age, or disability. This table does not reflect modifications to the statutes that occurred subsequently for such things as: marital status, sexual harassment, sexual orientation, mandatory retirement, and/or mental disability. With respect to prohibitions of race and sex discrimination, states in the southern part of the U.S. tended to be the last states to enact legislation. Alabama, Georgia, and Mississippi still do not have a statute for these types of discrimination. With respect to prohibitions of age discrimination, states in the middle part of the U.S. in addition to some southern states were the last states to enact legislation. With respect to the prohibition of discrimination with respect to disability, there is no clear-cut geographic distribution across the states.

III. Theoretical Considerations

We are interested in understanding the decision to file charges in the state s at date t as a function of the judicial institutions in place in that state. We will use a simple model in which we suppose that the judicial institutions affect the likelihood that a court will favor an employee if a charge is litigated.

Consider an employee i who lives in state s at date t and believes that she has been discriminated against by her employer and is, therefore, entitled to damages under the law. Suppose that these damages depend upon two components:

$$d_{ist} = \mu_{ist} + z_{ist} \qquad\qquad (1)$$

where μ_{ist} is some feature of the case known to the employer and the employee and z_{ist} is a component which depends upon judicial discretion and is uncertain.

While the exact level of z_{ist} is uncertain, we suppose that in expectation it depends upon the judicial institutions in the state labeled as θ_{st}. This includes whether the state elects or appoints its judges, whether there is a hybrid plan, etc. For simplicity suppose that θ_{st} can take on only one of two values: election (e) and appointment (a). Let F(z; θ_{st}) be the cdf for damages. Note that θ_{st} depends on both the incentives of the particular judge involved in the case, but also the body of precedent that has been created by past judgments that are relevant. Thus it makes

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[14] Information regarding the relationship between the EEOC and state agencies and the role of state laws in resolving disputes can be found at www.eeoc.gov.

sense to view it as something which is specific to the state as much as it is relevant to the particular judge in question.

The process of choice can either affect the type of judges that are in office or their incentives once appointed.

Selection: If judges are selected by politicians rather than citizens, this could affect the types of judges who are appointed. This could operate along a competence or an ideological dimension. One view is that the citizens are likely to be poorly informed about the qualities of judges and hence any system involving election will likely lead to a less competent judiciary. The ideological stance of judges based on the method of selection may also differ. The issue bundling theory suggests that running separate elections for different offices can change the pattern of ideological representation by unbundling the issues on which elected representatives decide.[15] Elections in representative democracies determine a multitude of policy outcomes. Not all policy issues are likely to be salient to voters. Distortions away from median outcomes on these issues due to lobbying or preferences of political elites are not corrected by the electoral process. Applied in the current context, this argument suggests that the policy preferences of the judiciary need not coincide with those of the electorate at large for the issues on which they sit in judgment. For example, the influence of big business might lead to more pro-employer sentiments among the judiciary when they are appointed by elected politicians. If judges are elected, there is more scope for popular opinion to influence the political complexion of the judiciary making it less beholden to employer interests. We would expect this effect to encourage a judiciary that is more pro-worker in its outlook.

Incentives: Electing judges can also make a difference because it encourages them to reach judgments that appeal to voters at large -- appointed judges who are up for re-appointment need only please politicians, creating an insulating layer between judges and the public. Popular election may therefore encourage judges to pander to popular opinion. This idea is developed formally in Maskin and Tirole (2002). Suppose that there are two kinds of judges: those whose views are congruent with the public at large and those who are not. Suppose also that there are components of the decision to be made in court that are not observed by the voters at large. In particular, there could be some conditions for which it is reasonable to deny the compensation claim. We suppose, however, that voters attach more weight to the economic conditions being conducive to compensation being paid. Voters prefer judges who share their preference and make a decision on whether to retain judges based on observing their judgments. Pandering occurs when judges are inclined to ignore their private information and go with the opinion of voters, thereby awarding compensation when none is warranted.[16]

Whether because of selection or incentive effects, both of these arguments lead us to expect that damages awarded will be higher in systems that elect their judges, i.e., $F(z; a) > F(z; e)$ for all z. We now explore the implications of this assumption.

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[15] This line of argument is developed in Besley and Coate (2000, 2003).

[16] Of course the unbundling argument is also important in affecting incentives since judges running for re-election should be judge solely on their performance as judges and not as part of the general competence of the government in power.

Suppose that the employer is better informed about the circumstances of the discrimination case. In fact, we take an extreme version of this and suppose that he is fully informed. We now consider a pre-trial procedure in which the employee makes a (take-it-or-leave-it) offer, denoted by y to the employer.[17] The employer then accepts or rejects. If he rejects, then the case goes to trial, while if he accepts, then the case is settled out of court. The employer will accept the offer if his payoff from litigating exceeds the value of the negotiated settlement on offer. Suppose that the employee faces costs of c for going to court while the employer faces costs of C. Thus, the employer will accept an offer of y if and only if $y < (z + C)$.

To determine the optimal pre-trial offer, note that the payoff to the employee from offering y is:

$$y(1 - F(y - C : \theta_{st})) + \int_0^{y-C} (z - c) F(z : \theta_{st}) \qquad (2)$$

At an interior solution, the value of y that maximizes this is characterized by:

$$1 - F(y^* - C : \theta_{st}) - (C + c) f(y^* - C : \theta_{st}) = 0 \qquad (3)$$

From this, it is immediate that y is decreasing function of $(C + c)$. There is no clear-cut prediction about the effect of judicial institutions on the decision to settle -- this depends on how the hazard function for damages changes with θ_{st}. In the special case where $z_{st} = \theta_{st} + e_{st}$, then it is straightforward to check that the probability that a case is litigated does not depend on θ_{st}. Thus, we would not expect the judicial institutions to affect the rate of litigation in this case.

Plugging in the optimal offer, let

$$V(c, C, \theta_{st}) = \mu_{ist} + y^*(1 - F(y^* - C : \theta_{st})) + \int_0^{y^*-C} (z - c) F(z : \theta_{st}) \qquad (4)$$

be the expected payoff from filing a charge. Whether a charge is worth filing now depends on whether this exceeds the cost of filing. Thus, if the cost to employee i in state s at time t is k_{ist}, then individual i will file if and only:

$$y^*(1 - F(y^* - C : \theta_{st})) + \int_0^{y^*-C} (z - c) F(z : \theta_{st}) > k_{ist} - \mu_{ist} \qquad (5)$$

It is now easy to see that electing judges will lead to more charges being filed (other things being equal) as it increases the left hand side of this inequality. Thus, even though there is no clear-cut prediction on the probability that a case is litigated or settled, there is an unambiguous prediction in terms of the decision to file. It is this observation that motivates our empirical test.

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[17] This asymmetric information model follows Bebchuk (1984). The basic thrust of our argument would also hold in the well-known model of Priest and Klein (1997) where potential litigants are symmetrically informed, but uncertain about the outcome from litigating.

IV. Data

The empirical analysis studies the effect of the judicial selection method on the number of charges of employment discrimination brought in a state (to either a state or federal agency). Studying the selection issue using employment discrimination charges is ideal for several reasons. First, initiating a charge is one-sided. Only an employee (or potential employee) may file a charge. Thus, our analysis is not confounded by the possibility of an employer (the other party with different interests) bringing a charge. Second, given the existence of the federal statutes prohibiting the key types of employment discrimination (race, sex, age, disability), the role played by the state statutes are likely to minimized.[18] As such, our analysis is able to concentrate on the role played by the method used to select judges and is not as confounded by the intricacies of the state statutes as might exist with another type of court action.

We obtained under the Freedom of Information Act data on all employment charges filed with the Equal Employment Opportunity Commission ("EEOC") since 1970; the charges concerning claims of age discrimination start in 1980.[19] The EEOC receives approximately 80,000 charges on alleged employment discrimination practices by private employers per year.[20] Approximately 39 percent of all charges are given priority investigative and settlement efforts due to the early recognition that discrimination has likely occurred. Approximately 57 percent of all charges require further investigation to determine if a violation has occurred. The remaining charges are dropped due to jurisdictional limitations or unsupported claims of discrimination.

Of total EEOC charges in 2001, 36 percent involved claims of race-based discrimination, 31 percent involved claims of sex-based discrimination, 20 percent involved claims of age-based discrimination, and 20 percent involved claims of disability-based discrimination.[21] Across these different categories, approximately 18 to 26 percent of the charges were closed without further action because of reasons related to the employee not following up on the charge, there not being any statutory jurisdiction for the claim, or because the employee withdrew the charge (which may or may not include private settlements between the employee and employer reached early in the charge process). For approximately 55 to 63 percent of the charges, the EEOC failed to find a reasonable cause to support the claim of discrimination. If the EEOC fails to find a reasonable

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[18] As revealed by Collins (2001), with respect to race, 98 percent of non-southern blacks were already covered by the state laws well before the adoption of the federal law. As such, in many instances the existence of the state laws well before our analysis also limits the impact of the laws on our analysis. Collins (2001) as well as Neumark and Stock (2001), however, do find modest impacts of these laws on the employment of blacks and women.

[19] EEOC's role with respect to age discrimination has changed over time. Initially, the Department of Labor maintained administrative responsibility for investigating claims pertaining to age discrimination. In 1979, the EEOC was given this responsibility. Given the state agencies and the EEOC communicate with each other concerning the filing of charges, the data we have from the EEOC reflect the pool of employees who are concerned enough about an employment practice to bring it to the attention of the government agency. Thus, we do not have data on alleged acts of discrimination that are not brought to the attention of a state or federal agency. Given that approximately 20 percent of all charges filed with the EEOC are closed because of reasons related to the employee not following up on the charge, there not being any statutory jurisdiction for the claim, or because the employee withdrew the charge, we think this is not a serious concern.

[20] Information on the charge and litigation statistics can be found at www.eeoc.gov.

[21] For any given charge, one may claim several types of employment discrimination. While we do not study them, there can also be claims of discrimination based on religion or national origin as well as claims of discrimination based on the Equal Pay Act.

cause, however, this does not preclude the employee from bringing a private court action. The remaining charges are settled quickly, go through some sort of conciliation process, and/or have a finding by the EEOC that there is a reasonable cause to support the alleged discrimination.

In rare cases, the EEOC files a lawsuit on behalf of an employee. In 2001, for example, only 32 age discrimination lawsuits (less than 10%) were initiated directly by the EEOC.[22] The majority of lawsuits initiated by the EEOC are filed for claims concerning race or sex-based discrimination. However, even in these cases, it is still a small number relative to the charges brought.[23]

The data from the EEOC contains much information on each charge filed. Each record identifies the office in which the charge was filed, the basis for the alleged discrimination, characteristics of the employee, characteristics of the employer, and information on the actions taken by the EEOC (or related state agency) on the charge. Two datasets were provided to us. The first dataset covers the early years (up to 1988). The second dataset covers the period from 1988 to 2001. The first dataset provides information on the first three actions taken in the case. The second dataset provides information on the first five actions taken in the case.

To construct the data set that we use, we identified those charges that involved a claim of age discrimination, race discrimination because the employee was black, sex discrimination because the employee was female, and/or discrimination based on one's disability. We excluded those charge records for which the record was closed because it was a duplicate record. We then summed the number of charges filed per year in each state over the sample period.

We will study five categories of charges: (1) all charges (1973-2000), (2) charges with a claim of race discrimination by a black individual (1973-2000), (3) charges with a claim of sex discrimination by a female (1973-2000), (4) charges with a claim of age discrimination (1980-2000), and (5) charges with a claim of disability discrimination (1993-2000).

Table 3 reports the summary statistics of the EEOC charge data. In the first four rows, we report the overall mean number of charges per year per state, the standard deviation, the mean number of charges per 100,000 population, and the number of observations, respectively. In column (1), we report the summary statistics across all states. In columns (2) to (4), we report the summary statistics based on the method of judicial selection. Overall, 2274 charges or 43 charges per 100,000 population are filed per year per state. Across the three selection methods, the lowest number of charges are filed in states in which the judges are appointed. On average, there are 1444 charges or 32 charges per 100,000 population filed in these states. There is

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[22] In general, EEOC initiated lawsuits represent big actions. For example, in 2000, the EEOC settled a class action suit for $300,000 of an age bias lawsuit against Enterprise Rent-A-Car in Texas. The lawsuit alleged that the company refused to hire individuals 40 years of age or older for management trainee positions. Also in 2000, EEOC agreed to an $8 million settlement of an age discrimination case against AlliedSignal of Arizona on behalf of 48 charging parties and approximately 300 class members. The lawsuit alleged that the company violated the Age Discrimination in Employment Act (ADEA) when it laid off older workers at its Tempe and Phoenix facilities in 1993 and 1994.

[23] Presumably, a state agency could also pursue a lawsuit on behalf of the employee. Whether the state agencies possess this ability, however, is determined at the state level. Information on the role the state agency plays beyond possessing powers similar to the EEOC to investigate charges, however, is difficult to obtain for all of the states.

minimal difference in the number of charges filed in the elect and hybrid states. On average, there are between 2469 and 2599 charges per year filed in these two types of selection states.

Rows (7) to (30) of Table 3 report the summary statistics for the four specific claims of discrimination that we are studying. Note that for any given charge, an individual may assert more than one type of discrimination. For example, a black woman may assert a claim of discrimination based on race and sex. With the exception of a claim of discrimination based on one's disability, the fewest charges are filed in states in which the judges are appointed. For claims of discrimination based on one's disability, the average number of charges is lowest in the appointed states if we do not adjust for the population size. After adjusting for the population of a state, however, there is little difference across the three types of states.

Table 3 reveals that most of the charges involve a claim of racial discrimination. Most of these charges are from the states with a higher proportion of blacks in the population. The charges come primarily from the mid-atlantic, mid-western and southern regions of the United States. If we divide the states into two groups, one with an above median proportion of blacks in the population and one with a below median proportion of blacks in the population, the distribution of charges across the three types of judicial selection states is somewhat similar. For both groups, the fewest number of charges are filed in states in which the judges are appointed. In the states with an above median proportion of blacks, the highest number of charges are filed in the elected states. In the states with a below median proportion of blacks, the highest number of charges are filed in the hybrid states.

If the employee does not gain a favorable settlement, he must decide whether to pursue a lawsuit against the employer in either state or federal court.[24] States vary in the statutes that govern discrimination. Thus, we created a series of indicator variables that capture differences in state laws. We use three dummy variables denoting whether the state statute covers race discrimination, age discrimination, and disability discrimination, respectively.[25] We also generate indicator variables that identify three types of change in the state statutes. We have one variable that equals one if there was a change (in the past three years) in the state statute, making it easier for an employee to initiate a charge of discrimination. This would include, for example, extending the period in which an employee may file a charge and allowing for certain types of damages awarded to an employee. We also use a dummy variable which equals one if the state eliminates mandatory retirement for most employees in the private sector. This is a change in the statute that directly affects older workers, but also affects other types of workers because it expands the workforce by giving workers the right to work beyond the expected retirement age. Finally, we created a dummy variable which equals one if the state statute is broad enough to protect employees for such things as being a smoker, participating in legal activities outside of work, and having certain genetic characteristics. Potentially, as employment discrimination laws are amended to protect more employees, the effectiveness of the laws are weakened.

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[24] If there is a state statute prohibiting age discrimination, the employee must decide whether to pursue his rights in state court or federal court. In most instances, the state statute is broader than the federal statute and so the employee is likely to pursue an action in state court. The employee and the employer, however, under limited circumstances may pursue the action in federal court. The federal court may apply state or federal law, depending on the nature of its jurisdiction over the lawsuit.

[25] We do not have a dummy variable for gender discrimination because during the sample period, since if a state has a statute prohibiting race discrimination it usually also prohibits sex discrimination.

The state level economic, and demographic measures reflect time-varying measures that could affect the conditions under which an employee may decide to pursue a charge of employment discrimination. For the economic measures we use the real per capita income (base year 1996), the unemployment rate and data on the structure of employment, specifically the proportion of employment in the service sector, financial sector and manufacturing.[26] For the demographic measures we use state population, the percentage of the state population between ages of 45 and 59, 60 and 64, and 65 and older, and the percentage of the state population that is black.[27] Table 4 reports the summary statistics for these measures.

V. Method

Our basic results are generated by the following specification:

$$C_{st} = \lambda_{rt} + \beta A_{st} + X_{st}\theta + S_{st}\pi + \varepsilon_{st} \qquad (6)$$

where C is the total number of charges filed by individuals located in state s in year t per 1,000 population, λ is a set of region-year dummy variables, A is an indicator variable equal to one if the state appoints its judges to the highest level of appellate courts, X is a set of exogenous state level economic, and demographic measures, S is a set of measures identifying the types of state laws that prohibit employment discrimination, and ε is the residual. We allow the residuals to be clustered at the state level.

Since we have region specific year dummies, identification must come either from states that switch their method of appointment during our time period or from within region variation. In the case of appointment, this boils down to cross-sectional variation within two regions – the mid-Atlantic region and the southern region (regions 2 and 5 in Table 1).

We report results first for total charges filed (Table 5). We then consider the disaggregated charges for age (Table 6), race (Table 7), gender (Table 8) and disability (Table 9). For each set of charges we report five different specifications. In column (1), we consider a specification which controls only for state level economic and demographic variables. In column (2) we add controls for the discrimination statutes. Column (3) tests the robustness of the main findings by adding three other potentially relevant measures of judicial institutions – whether the state has only one level of appellate courts, the pay of judges, and whether the judges are granted life terms. Column (4) repeats the results only for the two regions that have within region variation for whether the state appoints it judges.[28] This is important as these regions are the ones from where most of the identification is coming.

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[26] These data come from the CPS.

[27] Note that for the year 2000, we do not have population estimates for the population between the ages of 45 and 59, 60 and 64, and the population that is black. As such, we use the 1999 values for 2000.

[28] We include the judicial culture measure of whether there is no second level of appellate court but exclude the other judicial culture measures. We exclude the measure on the life term for the judge as only New Jersey gives their judges a life term in regions 2 and 5. We exclude the measure on judge's salaries given it is not statistically significant in the specification reported in column (3).

Column (5) considers an instrumental variable approach for the mid-Atlantic and southern states. This tries to deal with the concern that the choice of judicial institutions can be correlated with the error due to such as things omitted "judicial culture". In this context, we need an instrument which is correlated with the choice of judicial selection, but which we expect to have no direct bearing on the decision to file charges. To this end, we suggest as the instrument features of the political institutions within the state such as whether the state elects its public utility commissioners and/or institutions of direct democracy. The extent of democracy characterized this ways turns out to be negatively correlated with the probability that a state appoints its judges. Since there is no good reason to think that this variable is directly related to judicial culture, we regard this as a promising IV strategy.[29]

VI. Results

Column (1) of Table 5 shows that there is negative and significant relationship between appointing judges and total charges per capita filed. The effect is sizeable. It is slightly more than a one-standard deviation difference and is equal to sixty percent of the mean charges filed across the whole sample. Of the other regressors included only the percentage of black population is significant at a p-value of less than .01, suggesting that more charges are filed in states with larger black populations. In addition, there are more charges filed in states with a higher proportion of employees in the service and financial sectors. The economic and demographic controls are highly significant (F-test = 11.13, p-value =0.000). Column (2) adds in the statute controls. A change in the procedure in the past two years is negatively correlated with filing charges as is the presence of another group statute. After controlling for statutes, there is some evidence of an effect of unemployment on filing charges suggesting that workers are more likely to do so when it is more difficult to become re-employed. There is also evidence that there are fewer charges filed in the more populated states.

In column (3), we check robustness by including three other measures of judicial institutions – whether the state has only one level of appellate courts, whether judges serve a life term, and judges salaries. There is a negative and significant effect of not having a second layer of appellate courts. This is also a negative and significant effect of life terms, suggesting that such judges are less likely to find in favor of discrimination.[30] The size of the effect of appointing judges declines but the significance of the effect remains unaltered. In column (4), we focus solely on the two regions that have within region variation. The result once again holds up and stays similar in sign and significance. Finally, column (5) reports two stage least squares results which instruments the appointment variable using whether the state appoints or elects its public utility commissioners and rules for direct legislation. The result remains negative and significant.

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[29] In addition to exploring the results for only regions 2 and 5, we also excluded the three states for which there is no state statute prohibiting discrimination based on race. The results when we exclude these states are similar to the results reported in the tables.

[30] Only four states appoint their judges for life: Massachusetts (Region 1), New Hampshire (Region 1), Rhode Island (Region 1), and New Jersey (Region 2). In New Jersey, a judge is initially appointed to a term of 7 year; upon reappointment the judge is then given a term of life.

In Table 6, we repeat the previous set of specifications for race discrimination charges. The pattern of results is very similar with a robust negative and significant effect of appointing judges on charges filed. The effect here is larger than one standard deviation and is equal to the mean number of charges across states. The results once again hold up across all specification including the IV specification in column (5). There is relatively little evidence of the importance of statutes in affecting the rate of filing.

In Table 7, we look at gender discrimination charges. Again, the correlation with appointing judges is negative and significant. The effect is approximately one standard deviation in the left-hand side variable and less than half the mean over the whole sample. The results are again robust to the specifications used with the life term measure for judges also proving important (Column (3)).

In Table 8, we look at age discrimination charges. The coefficient is around 2/3rds of one standard deviation in the left hand side variable and around one-half the mean number of charges filed. The pattern of significance in the other variables seen in Table 5 is broadly repeated. Of note once again is negative and significant effect of a life-time appointment for judges in column (3). In column (5), we should also note that the results do not hold once we instrument for appointment.

Finally, in Table 9, we look at disability discrimination. The results here are uniformly weaker, although the much shorter period on which they are based should be taken into consideration. For all of the specifications except for column (3), the results suggest that appointing states have fewer charges filed, on the order of one standard deviation and less than one-third the mean number of charges filed. This result does not hold up when the judicial culture terms are included.[31]

Overall, the results provide a consistent patter of evidence in favor of the proposition that states with appointed judges have smaller numbers of charges being filed. This is consistent with our theoretical priors that judges who face some kind of popular accountability are more likely to be pro-employee in the decisions that they reach. The results in columns (4) and (5) that look at the within region variation in columns (4) and (5) are particularly interesting and compelling given the source of variation and the fact that these are two relatively homogeneous groups of states in terms of culture and history.

VII. Selection versus Incentives

We now consider whether the data can discriminate between the selection and incentive effects of variations in judicial accountability. To this end, we make use of the fact that in the

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[31] One reason the results are not as strong for the claims of discrimination based on disability may be due to that fact that the disability legislation expects employers to make "reasonable accommodations" in addition to simply prohibiting discrimination based on one's disability. As such, given that most employment discrimination claims are based on an existing employee being fired or demoted (as opposed to a potential employee not being hired), if the employers are not making the reasonable accommodation in the first place to hire the potential employee, the pool of employees who can allege that they have been unfairly treated because of their disability is very different from the pool of employees that may exist for other types of potential discriminatory practices. See Jolls and Prescott (2002) for a description of the issues pertaining to disability legislation.

hybrid selection regime, judges are initially appointed, but subsequently held to account in retention elections. If selection is at work, then we would expect those judges who are appointed initially by politicians to be different from those who are elected. If incentive effects are at work, then we expect the results to show that it is judges who must be re-elected who are different (regardless of whether they were initially appointed or elected).[32]

To look at this, we create a dummy variable which is equal to one in all states that initially appoint their judges, whether or not they are subject to re-election.[33] Effectively, this amalgamates the hybrid and appointing regimes. Table 10 reveals that this variable is not significant for any of the charges that we considered. This militates against the view that the selection of judges by politicians in appointment regimes reflects systematically different preferences.

We now add in a variable that identifies those states that use a retention election for the subsequent terms held by the judge. The indicator variable on initial appointment is now negative and significant while that on the hybrid regime is positive and significant, more than offsetting the effect of appointment.[34] Thus judges who are re-elected by the citizens behave much as judges who are elected in the first place whereas judges who are only ever elected are behind the results. This finding is consistent with the incentive effect being important, but not with the view that selection is important.

Also consistent with the claim that incentives effects are paramount, we tested whether judges in appointing states appear to have significantly different ideologies compared to those in electing states. While we did find some weak evidence that judges are actually more liberal in appointing states, this does not hold up to conditioning on state level economic and demographic characteristics.

VIII: Concluding Comments

This paper argues that there is a significant association between the method of judicial selection used within a state and the propensity to file discrimination charges. States where judges are appointed see fewer charges for race, age and gender discrimination being brought. This suggests that courts tend to favor workers in such states. It is most plausible to think of this effect stemming from the collective precedents set by judicial intervention in interpreting statutes rather than the incentives of each judge. The results that we find are robust to a wide variety of estimation methods and choices of controls.

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[32] It is important to note that in states in which judges are elected, if a judge leaves office prior to the expiration of his term, usually the governor will appoint a successor to fill the vacancy until the next election. Given this, the argument that the difference in the filing of charges due based on appoint/elect as a function of the selection effect is weakened if the judge who is appointed to fill the vacancy is also the judge that wins the subsequent election.

[33] In states that use election as their initial (and retention) method of selection, the governor often will appoint a judge before the first election if the retiring judge steps down prior to the election.

[34] The reason why judges who face a retention election encourage more charges to be filed is not clear. It is consistent with the idea that there is some kind of selection effect at work which yields a difference between judges who are initially elected and those who face only a retention election. The exact mechanism at work here, however, is not entirely clear.

We discussed two main theoretical channels via which electing judges can change the propensity to file a discrimination charge. The first is via the way in which judicial accountability affects the preferences or competences of judges (the selection effect). The second considers how the incentives of judges are affected by re-election concerns. Our results suggest that, in the case of judges in the U.S., the latter effect is more important.

Our results should be viewed in the light of the burgeoning empirical literature on the importance of judicial independence in affecting economic outcomes. La Porta et al (2003) argue persuasively that countries with greater judicial independence are also those with better economic and political outcomes. Traditionally, the main threat to judicial independence comes from the executive branch of government (see Glaeser and Shleifer (2002)). Our results are consistent with the view that appointing judges strengthens the independence of the judiciary as argued, for example, by Posner (1993).

But there are three main (competing) notions of judicial independence at work here -- independence from executive authority in government, from popular opinion and from organized interests such as big-business. Electing judges may create greater independence from government and from the influence of big business. However, it may create less independence from popular opinion. Whether this is welfare improving is moot. Our results are consistent with the view that appointing judges (especially to life terms) protect the property rights of firm owners who might otherwise be expropriated by populist courts. Yet, it may also perpetuate discrimination in labor markets.

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Figure 1: Case Resolution Process

Appellate Court Interpretation of Statute (there may be more than one level of appellate court)

By Employee, Employer, or Agency

Settle ← Trial Court Decision → No Appeal

By Employee or Agency

Settle ← Agency Action → No Lawsuit

Settle ← File Charge → No Action

By Employee Only

Alleged Discrimination → Do Nothing
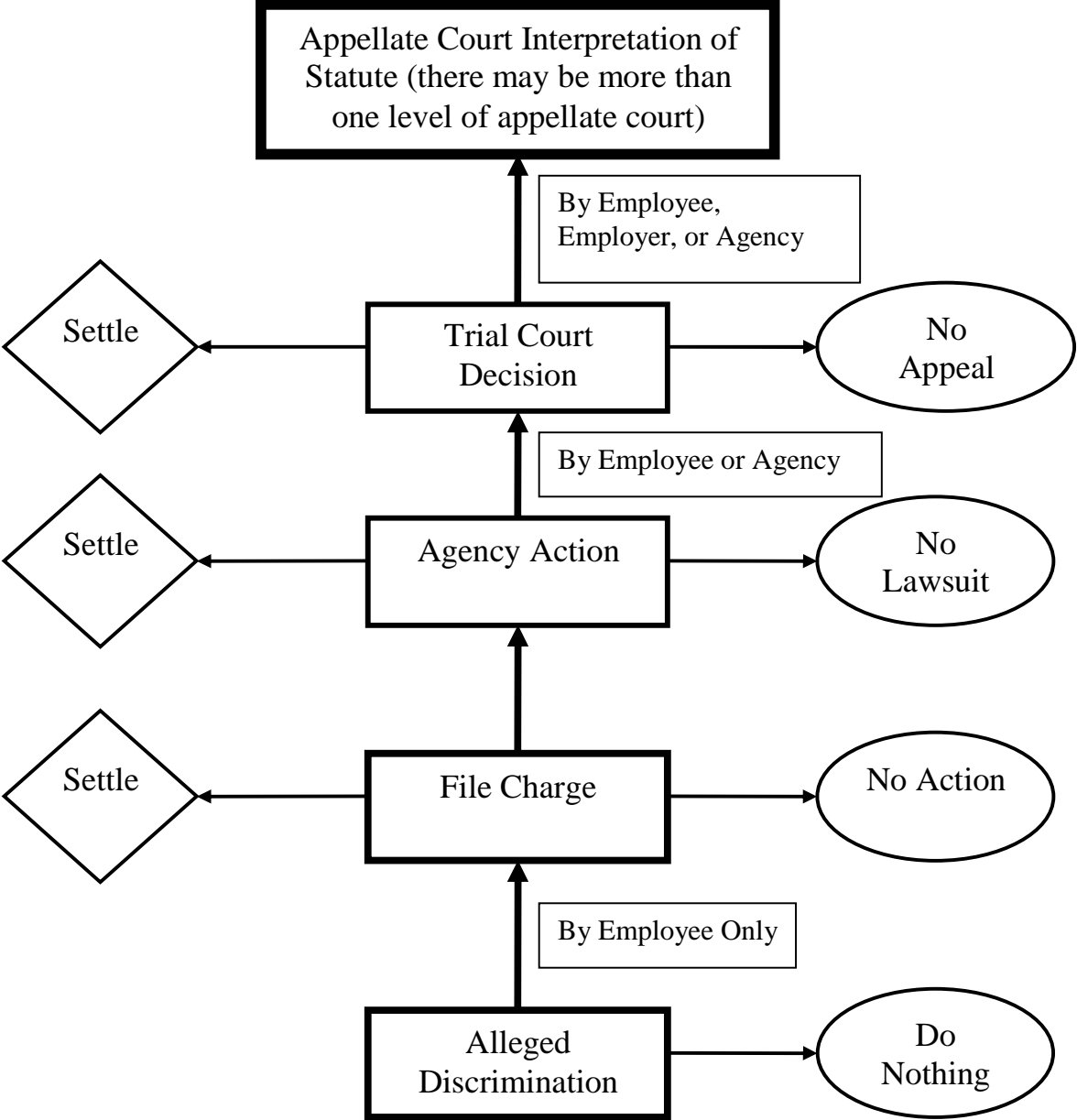
Table 1: Current State Judicial Selection Methods (as of 2000)

State	Appoint	Elect	Hybrid	Notes (changes since 1970)
Region 1				
Connecticut	Gov w/Nominating Commission			
Maine	Governor Only			
Massachusetts	Governor w/Nominating Commission			Nominating Commission is by Executive Order
New Hampshire	Governor Only w/Executive Council			Executive Council by Exeutive Order
Rhode Island	Governor w/Nominating Commission			In 1994 method changed from appointment via legislative election
Vermont	Governor w/Nominating Commission			In 1974 switched from legislative appointment method
Region 2				
Delaware	Governor w/Nominating Commission			In 1977 method was changed from Governor only appointment by Executive Order
Maryland			Yes	In 1974 method was changed from initial appointment by governor only to one requiring a nominating commission by Executive Order
New Jersey	Governor Only			
New York	Governor w/Nominating Commission			In 1977 method was changed from Partisan Election
Pennsylvania		Partisan Election w/Retention Election for Subsequent Terms		
Region 3				
Illinois		Partisan Election w/Retention Election for Subsequent Terms		
Indiana			Yes	In 1970 method was changed from partisan election
Michigan		Non-Partisan Election (could be considered Partisan)		Does not list party affiliations on the balit but candidates are nominated at party conventions and run with party endorsements
Ohio		Non-Partisan Election (could be considered Partisan)		Does not list party affiliations on the balit but candidates must run in partisan primary elections and run with party endorsements
Wisconsin		Non-Partisan Election		
Region 4				
Iowa			Yes	
Kansas			Yes	
Minnesota		Non-Partisan Election		
Missouri			Yes	
Nebraska			Yes	
North Dakota		Non-Partisan Election		
South Dakota			Yes	In 1980 method was changed from non-partisan election
Region 5				
Alabama		Partisan Election		
Arkansas		Non-Partisan Election		In 2000 method was changed from partisan election
Florida			Yes	In 1972 method was changed from partisan to non-partisan election; In 1976 method was changed from non-partisan election to present
Georgia		Non-Partisan Election		In 1983 method was changed from partisan election
Kentucky		Non-Partisan Election		
Louisiana		Non-Partisan Election (could be considered Partisan)		In 1974 method was changed from partisan election; currently party affiliations on ballot but candidates do not solicit party contributions and primaries open to all candidates

Mississippi		Non-Partisan Election		In 1994 method was changed from partisan election
North Carolina		Partisan Election		
South Carolina	Legislature w/Nominating Commission			In 1996 method added nominating commission
Tennessee			Yes	In 1994, method was changed from partisan election
Virginia	Legislature			
West Virginia		Partisan Election		
Region 6				
Arizona			Yes	In 1974 method was changed from non-partisan election
New Mexico		Partisan Election w/Retention Election for Subsequent Terms		In 1988 method was changed from partisan election
Oklahoma			Yes	
Texas		Partisan Election		
Region 7				
Colorado			Yes	
Idaho		Non-Partisan Election		
Montana		Non-Partisan Election		
Utah			Yes	
Wyoming			Yes	In 1972 method was changed from non-partisan election
Region 8				
California			Governor Appointment w/Retention Election	
Nevada		Non-Partisan Election		
Oregon		Non-Partisan Election		
Washington		Non-Partisan Election		

Note: The information collected for this data came from public documents from **cite**. This document was published in 1970, 1974, 1980, 1987, 1993, and 1998. Information for 2000 is found in the American Judicature Society's *Judicial Selection in the States: Appellate and General Jurisdiction Courts* (1986, updated December 2000). These sources were used to identify changes in judicial selection methods and then the website, http://www.ajs.org/js/select.htm, and state law library websites were used to identify the specific years the methods were changed.

Table 2: First Year of Enactment of State Legislation on Employment Discrimination Applicable to Private Employers

State	Race	Sex	Age	Disability
Region 1				
Connecticut	1973	1973	1973	1973
Maine	1971	1973	1971	1974
Massachusetts	1972	1972	1972	1972
New Hampshire	1971	1971	1971	1975
Rhode Island	1971	1971	1971	1973
Vermont	1971	1971	1981	1974
Region 2				
Delaware	1971	1971	1971	1988
Maryland	1970	1970	1970	1974
New Jersey	1970	1970	1970	1972
New York	1971	1971	1971	1974
Pennsylvania	Before 1970	Before 1970	Before 1970	No Statute
Region 3				
Illinois	1971	1971	1971	1975
Indiana	1971	1971	1971	1975
Michigan	1972	1972	1972	1976
Ohio	1973	1973	1978	1976
Wisconsin	1974	1974	1974	1976
Region 4				
Iowa	1970	1970	1972	1970
Kansas	1970	1970	1983	1974
Minnesota	Before 1970	Before 1970	1977	1973
Missouri	1978	1978	1986	1978
Nebraska	1972	1972	1972	1973
North Dakota	1979	1979	1979	1983
South Dakota	1972	1972	No Statute	1986
Region 5				
Alabama	No Statute	No Statute	1997	No Statute
Arkansas	1993	1993	No Statute	1993
Florida	1977	1977	1977	1974
Georgia	No Statute	No Statute	1971	1981
Kentucky	1972	1972	1972	1976
Louisiana	1983	1983	1978	1980
Mississippi	No Statute	No Statute	No Statute	1974
North Carolina	1977	1977	1977	1977
South Carolina	1979	1979	1979	1983
Tennessee	1978	1978	1980	1987
Virginia	1987	1987	1995	1975
West Virginia	1971	1971	1971	1981
Region 6				
Arizona	1974	1974	1980	1985
New Mexico	Before 1970	Before 1970	Before 1970	1973
Oklahoma	1973	1973	1985	1981
Texas	1983	1983	1983	1975
Region 7				
Colorado	Before 1970	Before 1970	Before 1970	1975
Idaho	Before 1970	Before 1970	Before 1970	No Statute
Montana	1971	1971	1974	1974
Utah	1975	1975	1975	1979
Wyoming	1979	1979	1984	1985
Region 8				
California	1970	1970	1970	1973
Nevada	1973	1973	1973	1973
Oregon	Before 1970	Before 1970	Before 1970	1973
Washington	1971	1971	1971	1973

Note: Some states had statutes that were more policy statements than enforceable legislation. The years provided in this table reflect statutes that were enacted with the intent of providing individuals with enforceable rights. Information on the state statutes was gathered from several sources: first, to the best we could, we traced the legislation using copies of the current and past statutes. Second, we relied on the U.S. Bureau of Labor Statistics, *Monthly Labor Review* (all years).

Table 3: Summary Statistics for Discrimination Charges Filed

	All States	Elected Judge States	Hybrid Judge States	Appointed Judge States
Total Charges				
Mean	2274.4	2468.7	2599.4	1444.4
S.D.	(2609.9)	(2598.4)	(2997.1)	(1825.8)
Mean/100,000 Population	42.5	43.7	48.8	32.2
S.D.	(21.5)	(21.5)	(21.4)	(17.5)
# of Observations	1344	656	384	304
Charges based on Black				
Mean	832.6	1010.1	845.8	433.0
S.D.	(925.8)	(1014.9)	(895.6)	(574.4)
Mean/100,000 Population	14.3	16.5	15.0	8.7
S.D.	(10.8)	(11.6)	(10.1)	(7.6)
# of Observations	1344	656	384	304
Charges based on Female				
Mean	587.3	613.2	716.7	367.8
S.D.	(669.9)	(617.0)	(843.6)	(442.3)
Mean/100,000 Population	11.8	11.6	14.0	9.4
S.D.	(5.3)	(5.2)	(5.2)	(4.5)
# of Observations	1344	656	384	304
Charges based on Age				
Mean	513.3	550.4	570.2	362.7
S.D.	(572.1)	(586.5)	(623.2)	(432.0)
Mean/100,000 Population	9.6	9.5	11.2	7.8
S.D.	(5.4)	(5.0)	(6.3)	(3.8)
# of Observations	1008	478	299	231
Charges based on Disability				
Mean	638.4	661.7	741.2	453.4
S.D.	(619.3)	(601.3)	(723.9)	(444.9)
Mean/100,000 Population	12.1	11.3	14.1	11.1
S.D.	(4.4)	(3.7)	(4.9)	(4.3)
# of Observations	384	178	118	88

Note: These are the average number of employment discrimination charges filed per state, per year. Charge data are from the Equal Employment Opportunity Commission. For any given charge there may be more than one type of discrimination claim alleged.

Table 4: Summary Statistics for State Level Economic and Demographic Measures

Measure	Mean	S.D.
% Employed in Service Sector	24.87	5.32
% Employed in Financial Sector	7.02	1.46
% Employed in Durable Manufacturing Sector	8.62	4.07
% Employed in Non-Durable Manufacturing Sector	6.31	3.37
Real Per Capita Income (Per 1000, 1996 Base Year)	132.33	24.42
Unemployment Rate (*100)	6.11	2.11
State Population	5006296	5240564
% of Population 45_59 (*100)	15.29	1.55
% of Population 60_64 (*100)	4.23	0.46
% of Population 65 + (*100)	11.94	1.97
% of Population Black (*100)	10.78	9.12

Note: These statistics are based on per state, per year measures for the sample period.

Table 5: Analysis of Total Charges of Employment Discrimination

Dependent Variable: Total Charges Per Capita	(1)	(2)	(3)	(4)	(5)
=1 if Appointed	**-26.509**	**-25.492**	**-19.619**	**-23.669**	**-25.796**
	(3.505)	(3.155)	(3.062)	(3.938)	(4.126)
Real Per Capita Income (per $1000)	0.175	0.138	0.471	**1.507**	**1.558**
	(0.417)	(0.392)	(0.387)	(0.470)	(0.461)
Real Per Capita Income Squared	-1.152E-04	2.167E-04	-7.840E-04	*-0.003*	*-0.003*
	(0.001)	(0.001)	(0.001)	(0.001)	(0.001)
Unemployment Rate	1.453	*1.731*	**2.115**	0.648	0.709
	(0.889)	(0.731)	(0.681)	(0.634)	(0.591)
% of Employed in Service Sector	*0.892*	**1.042**	*0.946*	1.433	1.276
	(0.406)	(0.388)	(0.369)	(1.208)	(1.095)
% of Employed in Financial Sector	*3.144*	*2.555*	1.439	0.158	0.194
	(1.232)	(1.148)	(1.139)	(0.710)	(0.780)
% of Employed in Durable Manufacturing Sector	0.357	0.307	0.228	**1.696**	**1.635**
	(0.566)	(0.485)	(0.392)	(0.551)	(0.492)
% of Employed in Non-Durable Manufacturing Sector	*0.972*	*0.891*	0.732	*0.659*	*0.752*
	(0.576)	(0.503)	(0.485)	(0.333)	(0.377)
State Population (per million)	*-1.364*	**-1.449**	**-2.119**	-5.702	-5.785
	(0.709)	(0.688)	(0.819)	(0.820)	(0.761)
State Population Squared	0.020	0.027	*0.053*	**0.207**	**0.216**
	(0.024)	(0.022)	(0.026)	(0.040)	(0.035)
% of Population between 45 and 59	*4.069*	*3.971*	2.671	2.003	1.890
	(2.186)	(2.032)	(1.843)	(1.565)	(1.587)
% of Population between 60 and 64	-5.943	-5.565	-3.689	*-8.114*	-7.369
	(7.220)	(6.904)	(6.609)	(4.265)	(4.430)
% of Population 65 and Older	1.616	-0.799	-0.449	*1.369*	1.149
	(1.791)	(1.574)	(1.612)	(0.720)	(0.920)
% of Population Black	**1.009**	**0.914**	**0.863**	**1.084**	**1.077**
	(0.196)	(0.191)	(0.204)	(0.090)	(0.086)
=1 if race statute		-5.639	*-7.243*	-3.926	-3.545
		(4.429)	(4.021)	(3.317)	(3.103)
=1 if age statute		3.653	4.564	0.634	-0.312
		(4.253)	(3.549)	(2.250)	(2.606)
=1 if disability statute		1.752	3.594	-1.473	-1.209
		(2.402)	(2.759)	(2.021)	(2.044)
=1 if no mandatory retirement		*-4.913*	**-6.445**	0.469	1.108
		(2.931)	(2.638)	(2.917)	(3.258)
=1 if procedural change in last 3 years		**-6.134**	**-5.715**	-1.184	-1.048
		(1.964)	(1.776)	(1.537)	(1.615)
=1 if broad state statute		*-5.444*	**-4.794**	**-9.327**	**-9.604**
		(2.359)	(2.076)	(2.658)	(2.563)
No Second Level Appellate Court			**-10.395**	*-3.682*	-3.192
			(3.463)	(1.757)	(2.023)
Judge's Real Salary			-0.111		
			(0.101)		
Judge Serves for Life			**-8.827**		
			(3.301)		
region== 5.0000				*8.161*	*8.518*
				(2.829)	(3.210)
Fixed effects	Region*Year	Region*Year	Region*Year	Region, Year	Region, Year
Instrument Variables Specification	No	No	No	No	Yes
Observations	1344	1344	1344	476	476
R-squared	0.6806	0.6415	0.729	0.8178	0.7965

Note: Standard errors in parentheses ; standard errors computed using cluster command, clustering on state identifier. Coefficients in bold are statistically significant at a p-value of <0.01. Coefficients in bold and italicized are statistically significant at a p-value of <0.05. Coefficients italicized are statistically significant at a p-value of <0.10. The p-value on the over-identification test for the IV specification is 0.108.

Table 6: Analysis of Race-Based Discrimination Charges (Black Only)

Dependent Variable: Total Race Charges Per Capita	(1)	(2)	(3)	(4)	(5)
=1 if Appointed	**-15.231**	**-14.796**	**-12.989**	**-14.498**	**-20.295**
	(2.321)	(1.862)	(1.934)	(2.359)	(3.875)
Real Per Capita Income (per $1000)	*0.329*	0.257	*0.347*	***0.728***	**0.867**
	(0.189)	(0.181)	(0.188)	(0.320)	(0.279)
Real Per Capita Income Squared	-0.001	-0.001	*-0.001*	-0.001	*-0.002*
	(0.001)	(0.000)	(0.000)	(0.001)	(0.001)
Unemployment Rate	0.609	***0.750***	**0.856**	0.473	*0.637*
	(0.403)	(0.349)	(0.346)	(0.349)	(0.338)
% of Employed in Service Sector	0.234	***0.308***	**0.261**	0.691	0.264
	(0.167)	(0.140)	(0.125)	(0.758)	(0.777)
% of Employed in Financial Sector	0.771	0.638	0.328	0.161	0.260
	(0.550)	(0.540)	(0.584)	(0.356)	(0.446)
% of Employed in Durable Manufacturing Sector	***0.561***	***0.502***	**0.458**	**1.161**	***0.995***
	(0.253)	(0.212)	(0.182)	(0.406)	(0.364)
% of Employed in Non-Durable Manufacturing Sector	0.404	0.389	0.326	0.198	0.454
	(0.336)	(0.284)	(0.292)	(0.231)	(0.309)
State Population (per million)	-0.780	-0.724	***-0.964***	**-3.886**	**-4.112**
	(0.474)	(0.417)	(0.478)	(0.549)	(0.433)
State Population Squared	0.017	0.018	***0.027***	**0.135**	**0.157**
	(0.014)	(0.012)	(0.014)	(0.023)	(0.020)
% of Population between 45 and 59	**2.680**	**2.799**	**2.448**	1.219	0.913
	(0.900)	(0.820)	(0.832)	(0.838)	(1.134)
% of Population between 60 and 64	***-7.320***	***-7.021***	***-6.412***	*-4.625*	-2.594
	(3.217)	(2.894)	(2.777)	(2.614)	(2.780)
% of Population 65 and Older	0.597	0.472	0.557	0.502	-0.098
	(0.592)	(0.534)	(0.535)	(0.372)	(0.551)
% of Population Black	**0.883**	**0.793**	**0.775**	**0.771**	**0.752**
	(0.080)	(0.075)	(0.072)	(0.067)	(0.070)
=1 if race statute		-2.941	-3.427	*-3.556*	-2.518
		(2.185)	(2.093)	(1.890)	(1.790)
=1 if age statute		0.341	0.552	0.250	-2.328
		(1.792)	(1.614)	(1.448)	(1.747)
=1 if disability statute		0.557	1.139	-1.020	-0.300
		(1.183)	(1.200)	(1.211)	(1.367)
=1 if no mandatory retirement		**-2.935**	**-3.384**	0.933	2.674
		(1.074)	(1.009)	(1.504)	(1.916)
=1 if procedural change in last 3 years		*-1.296*	*-1.156*	-0.627	-0.256
		(0.667)	(0.645)	(0.834)	(0.979)
=1 if broad state statute		**-2.969**	**-2.781**	*-3.461*	-4.216
		(0.939)	(0.894)	(1.877)	(1.711)
No Second Level Appellate Court			***-3.541***	**-4.597**	-3.260
			(1.410)	(1.460)	(1.720)
Judge's Real Salary			-0.029		
			(0.049)		
Judge Serves for Life			-2.309		
			(1.611)		
region== 5.0000				*4.824*	*5.795*
				(1.846)	(2.317)
Fixed effects	Region*Year	Region*Year	Region*Year	Region, Year	Region, Year
Instrument Variables Specification	No	No	No	No	Yes
Observations	1344	1344	1344	476	476
R-squared	0.7699	0.7969	0.8061	0.7804	0.7644

See notes to Table 5. The p-value on the over-identification test for the IV specification is 0.017.

Table 7: Analysis of Sex-Based Discrimination Charges (Female Only)

Dependent Variable: Total Gender Charges Per Capita	(1)	(2)	(3)	(4)	(5)
=1 if Appointed	**-5.460**	**-5.119**	**-3.517**	**-5.423**	**-5.109**
	(1.009)	(0.925)	(0.777)	(0.920)	(1.155)
Real Per Capita Income (per $1000)	0.054	0.042	*0.157*	**0.436**	**0.428**
	(0.122)	(0.112)	(0.095)	(0.118)	(0.118)
Real Per Capita Income Squared	-0.000	-0.000	-0.000	***-0.001***	***-0.001***
	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)
Unemployment Rate	0.194	0.251	***0.372***	0.031	0.022
	(0.218)	(0.175)	(0.164)	(0.167)	(0.166)
% of Employed in Service Sector	0.110	0.142	***0.176***	0.047	0.071
	(0.102)	(0.097)	(0.086)	(0.340)	(0.333)
% of Employed in Financial Sector	0.703	*0.552*	0.064	-0.277	-0.282
	(0.321)	(0.301)	(0.296)	(0.215)	(0.210)
% of Employed in Durable Manufacturing Sector	-0.017	-0.033	0.013	*0.248*	*0.257*
	(0.175)	(0.160)	(0.113)	(0.125)	(0.133)
% of Employed in Non-Durable Manufacturing Sector	0.161	0.123	0.116	0.055	0.041
	(0.150)	(0.141)	(0.120)	(0.123)	(0.132)
State Population (per million)	***-0.476***	**-0.500**	**-0.634**	**-1.494**	**-1.482**
	(0.194)	(0.182)	(0.196)	(0.213)	(0.203)
State Population Squared	0.010	*0.012*	***0.017***	**0.064**	**0.063**
	(0.007)	(0.006)	(0.007)	(0.012)	(0.011)
% of Population between 45 and 59	*1.119*	1.107	0.589	0.378	0.395
	(0.600)	(0.570)	(0.528)	(0.475)	(0.486)
% of Population between 60 and 64	0.594	0.686	1.180	0.682	0.572
	(2.186)	(2.119)	(2.026)	(1.171)	(1.341)
% of Population 65 and Older	-0.440	-0.437	-0.251	-0.007	0.026
	(0.478)	(0.449)	(0.454)	(0.185)	(0.254)
% of Population Black	**0.162**	**0.143**	**0.135**	**0.213**	**0.214**
	(0.051)	(0.050)	(0.051)	(0.025)	(0.027)
=1 if race statute		-1.432	***-1.966***	-0.848	-0.905
		(1.080)	(0.969)	(0.881)	(0.884)
=1 if age statute		1.251	*1.733*	0.858	0.998
		(1.033)	(0.809)	(0.722)	(0.900)
=1 if disability statute		0.089	0.678	-0.768	-0.807
		(0.741)	(0.785)	(0.645)	(0.665)
=1 if no mandatory retirement		-1.159	***-1.664***	0.180	0.086
		(0.710)	(0.657)	(0.898)	(0.925)
=1 if procedural change in last 3 years		**-1.880**	-1.778	-0.584	-0.604
		(0.655)	(0.618)	(0.678)	(0.698)
=1 if broad state statute		**-1.873**	-1.611	-3.521	-3.480
		(0.701)	(0.590)	(0.622)	(0.684)
No Second Level Appellate Court			*-1.735*	-0.278	-0.350
			(0.834)	(0.468)	(0.588)
Judge's Real Salary			-0.007		
			(0.031)		
Judge Serves for Life			**-4.077**		
			(0.950)		
region== 5.0000				*2.277*	*2.224*
				(0.864)	(0.785)
Fixed effects	Region*Year	Region*Year	Region*Year	Region, Year	Region, Year
Instrument Variables Specification	No	No	No	No	Yes
Observations	1344	1344	1344	476	476
R-squared	0.5635	0.6009	0.6273	0.7758	0.7756

See Notes to Table 5. The p-value on the over-identification test for the IV specification is 0.311.

Table 8: Analysis of Age-Based Discrimination

Dependent Variable: Total Age Charges Per Capita	(1)	(2)	(3)	(4)	(5)
=1 if Appointed	-4.667	**-4.353**	-2.975	-3.178	-0.383
	(1.135)	(1.098)	(0.951)	(0.472)	(1.619)
Real Per Capita Income (per $1000)	-0.054	-0.066	0.073	**0.342**	*0.297*
	(0.150)	(0.140)	(0.132)	(0.104)	(0.125)
Real Per Capita Income Squared	0.000	0.000	0.000	**-0.001**	*-0.001*
	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)
Unemployment Rate	0.266	0.308	*0.510*	*0.462*	0.400
	(0.277)	(0.238)	(0.231)	(0.195)	(0.254)
% of Employed in Service Sector	0.382	**0.387**	0.393	*-0.451*	-0.271
	(0.125)	(0.108)	(0.115)	(0.215)	(0.281)
% of Employed in Financial Sector	0.510	0.340	-0.085	*-0.512*	*-0.593*
	(0.350)	(0.336)	(0.348)	(0.215)	(0.208)
% of Employed in Durable Manufacturing Sector	0.048	0.030	0.004	*-0.284*	-0.151
	(0.159)	(0.149)	(0.152)	(0.110)	(0.172)
% of Employed in Non-Durable Manufacturing Sector	0.424	**0.408**	0.416	0.080	-0.108
	(0.160)	(0.142)	(0.132)	(0.119)	(0.134)
State Population (per million)	-0.028	-0.024	-0.181	0.060	0.173
	(0.175)	(0.161)	(0.173)	(0.239)	(0.273)
State Population Squared	-0.004	-0.004	0.001	0.006	-0.006
	(0.006)	(0.005)	(0.006)	(0.011)	(0.013)
% of Population between 45 and 59	0.202	0.063	-0.515	**2.113**	2.291
	(0.538)	(0.530)	(0.531)	(0.540)	(0.619)
% of Population between 60 and 64	2.597	2.899	*3.351*	*-3.237*	**-4.357**
	(1.709)	(1.778)	(1.651)	(1.119)	(1.233)
% of Population 65 and Older	-0.770	*-0.758*	-0.566	*0.726*	1.067
	(0.374)	(0.377)	(0.364)	(0.250)	(0.315)
% of Population Black	0.017	0.003	-0.012	*0.106*	*0.128*
	(0.056)	(0.057)	(0.058)	(0.037)	(0.046)
=1 if race statute		-1.112	-1.785	0.288	-0.243
		(1.332)	(1.200)	(0.441)	(0.696)
=1 if age statute		1.106	1.235	-0.128	1.490
		(1.179)	(0.921)	(0.758)	(1.155)
=1 if disability statute		0.637	1.430	-0.246	-0.649
		(1.241)	(1.317)	(0.491)	(0.713)
=1 if no mandatory retirement		-0.603	-1.022	0.090	-0.860
		(0.745)	(0.672)	(0.765)	(0.914)
=1 if procedural change in last 3 years		*-1.182*	-0.902	-0.210	-0.564
		(0.659)	(0.589)	(0.413)	(0.542)
=1 if broad state statute		*-1.108*	-0.906	**-2.381**	-2.099
		(0.616)	(0.569)	(0.356)	(0.572)
No Second Level Appellate Court			*-2.186*	0.016	-0.301
			(1.067)	(0.824)	(0.890)
Judge's Real Salary			-0.030		
			(0.053)		
Judge Serves for Life			**-3.397**		
			(0.929)		
region== 5.0000				*-2.126*	-2.379
				(0.797)	(0.832)
Fixed effects	Region*Year	Region*Year	Region*Year	Region, Year	Region, Year
Instrument Variables Specification	No	No	No	No	Yes
Observations	1008	1008	1008	357	357
R-squared	0.5002	0.5135	0.5378	0.7583	0.7314

See Notes to Table 5. The p-value on the over-identification test for the IV specification is 0.002.

Dependent Variable: Total Disability Charges Per Capita	(1)	(2)	(3)	(4)	(5)
=1 if Appointed	**-4.714**	**-4.350**	-1.928	**-2.006**	**-5.006**
	(1.661)	(1.827)	(1.250)	(0.907)	(2.198)
Real Per Capita Income (per $1000)	0.053	-0.042	**0.500**	-0.122	-0.059
	(0.278)	(0.303)	(0.211)	(0.190)	(0.278)
Real Per Capita Income Squared	-0.000	0.000	**-0.001**	0.000	0.000
	(0.001)	(0.001)	(0.001)	(0.001)	(0.001)
Unemployment Rate	0.191	0.324	**0.863**	0.052	-0.046
	(0.585)	(0.630)	(0.423)	(0.263)	(0.306)
% of Employed in Service Sector	0.209	0.223	-0.057	-0.033	-0.711
	(0.209)	(0.222)	(0.170)	(0.592)	(0.904)
% of Employed in Financial Sector	*0.787*	0.492	0.008	0.520	0.653
	(0.451)	(0.497)	(0.459)	(0.442)	(0.548)
% of Employed in Durable Manufacturing Sector	-0.070	-0.035	**-0.496**	0.285	-0.050
	(0.363)	(0.384)	(0.242)	(0.202)	(0.312)
% of Employed in Non-Durable Manufacturing Sector	**0.940**	*0.864*	0.566	0.009	0.182
	(0.462)	(0.476)	(0.325)	(0.507)	(0.503)
State Population (per million)	-0.122	-0.087	**-0.717**	-0.533	-0.030
	(0.308)	(0.332)	(0.220)	(0.757)	(0.994)
State Population Squared	0.000	-0.000	**0.019**	0.026	0.019
	(0.009)	(0.009)	(0.007)	(0.028)	(0.034)
% of Population between 45 and 59	1.430	0.999	0.282	1.040	0.769
	(0.851)	(0.958)	(0.664)	(0.922)	(0.945)
% of Population between 60 and 64	-1.354	0.598	2.555	-5.878	-6.910
	(3.363)	(4.322)	(3.169)	(3.921)	(4.136)
% of Population 65 and Older	0.330	0.061	0.288	0.836	0.768
	(0.475)	(0.534)	(0.396)	(0.551)	(0.581)
% of Population Black	0.030	0.016	**-0.167**	0.018	0.024
	(0.067)	(0.080)	(0.069)	(0.053)	(0.069)
=1 if race statute		0.138	**-3.378**	**1.511**	*1.919*
		(2.212)	(1.672)	(0.686)	(0.942)
=1 if age statute		1.820	0.632	1.339	-2.535
		(2.786)	(1.371)	(1.504)	(3.499)
=1 if disability statute		1.024	**4.933**	-0.507	0.342
		(2.474)	(2.472)	(0.943)	(1.404)
=1 if no mandatory retirement		-1.706	*-2.289*	-1.425	2.326
		(1.816)	(1.209)	(1.310)	(3.436)
=1 if procedural change in last 3 years		0.906	**1.914**	0.763	*1.022*
		(1.099)	(0.701)	(0.556)	(0.494)
=1 if broad state statute		-1.387	**-1.591**	**-3.048**	**-3.141**
		(1.117)	(0.783)	(1.148)	(1.239)
No Second Level Appellate Court			**-9.298**	-1.400	2.294
			(1.611)	(1.783)	(3.391)
Judge's Real Salary			0.014		
			(0.066)		
Judge Serves for Life			**-5.055**		
			(1.784)		
region== 5.0000				-1.353	-1.662
				(2.309)	(2.473)
Fixed effects	Region*Year	Region*Year	Region*Year	Region, Year	Region, Year
Instrument Variables Specification	No	No	No	No	Yes
Observations	384	384	384	136	136
R-squared	0.4081	0.4327	0.6459	0.7329	0.7053

See Notes to Table 5. The p-value on the over-identification test for the IV specification is 0.000.

Table 10: Analysis of Selection v. Incentive Effects of Judicial Appointment

Dependent Variable	Total (1)	Total (2)	Race (5)	Race (6)	Gender (7)	Gender (8)	Age (3)	Age (4)	Disability (9)	Disability (10)
Judge Initially Appointed	1.793	-17.624	-0.354	-12.175	0.998	-2.937	1.382	-2.135	0.709	-1.507
	(3.455)	(3.156)	(1.844)	(2.163)	(0.808)	(0.746)	(0.812)	(0.816)	(0.879)	(1.163)
=1 if Retention Election Used		24.822		15.111		5.030		4.524		3.102
		(3.655)		(1.718)		(0.928)		(1.135)		(1.305)
Real Per Capita Income (per $1000)	0.442	0.223	0.379	0.246	0.130	0.085	0.063	-0.011	0.515	0.381
	(0.420)	(0.359)	(0.234)	(0.196)	(0.101)	(0.094)	(0.138)	(0.130)	(0.209)	(0.193)
Real Per Capita Income Squared	-0.001	-0.000	-0.001	-0.001	-0.000	-0.000	0.000	0.000	-0.001	-0.001
	(0.001)	(0.001)	(0.001)	(0.001)	(0.000)	(0.000)	(0.000)	(0.000)	(0.001)	(0.001)
Unemployment Rate	2.313	2.438	0.912	0.988	0.440	0.466	0.668	0.637	1.029	0.995
	(0.678)	(0.618)	(0.364)	(0.332)	(0.173)	(0.162)	(0.215)	(0.194)	(0.434)	(0.411)
% of Employed in Service Sector	1.111	0.955	0.360	0.264	0.210	0.178	0.434	0.411	-0.022	-0.000
	(0.376)	(0.320)	(0.144)	(0.118)	(0.083)	(0.070)	(0.108)	(0.097)	(0.174)	(0.167)
% of Employed in Financial Sector	-0.104	1.409	-0.605	0.316	-0.251	0.055	-0.406	-0.080	-0.236	0.022
	(1.317)	(1.217)	(0.645)	(0.605)	(0.316)	(0.304)	(0.378)	(0.355)	(0.478)	(0.464)
% of Employed in Durable Manufacturing Sector	0.600	0.103	0.710	0.407	0.077	-0.024	0.063	-0.038	-0.448	-0.544
	(0.412)	(0.333)	(0.192)	(0.162)	(0.108)	(0.089)	(0.151)	(0.142)	(0.241)	(0.215)
% of Employed in Non-Durable Manufacturing Sector	-0.094	0.865	-0.203	0.381	-0.039	0.155	0.312	0.511	0.541	0.773
	(0.606)	(0.446)	(0.408)	(0.285)	(0.134)	(0.104)	(0.124)	(0.120)	(0.294)	(0.315)
State Population (per million)	-1.766	-1.496	-0.874	-0.710	-0.508	-0.453	-0.024	0.032	-0.636	-0.539
	(0.985)	(0.936)	(0.550)	(0.503)	(0.226)	(0.217)	(0.221)	(0.216)	(0.250)	(0.260)
State Population Squared	0.043	0.028	0.026	0.017	0.012	0.009	-0.004	-0.007	0.016	0.012
	(0.032)	(0.030)	(0.017)	(0.015)	(0.008)	(0.008)	(0.007)	(0.007)	(0.008)	(0.008)
% of Population between 45 and 59	1.954	2.480	2.050	2.370	0.427	0.534	-0.697	-0.474	-0.041	0.418
	(2.061)	(1.747)	(1.044)	(0.760)	(0.555)	(0.524)	(0.534)	(0.500)	(0.717)	(0.641)
% of Population between 60 and 64	-4.019	-1.002	-7.153	-5.316	1.350	1.962	3.299	3.681	2.835	1.801
	(7.585)	(6.251)	(3.926)	(2.668)	(2.126)	(1.934)	(1.698)	(1.650)	(3.291)	(3.055)
% of Population 65 and Older	0.400	-1.331	1.251	0.197	-0.157	-0.507	-0.480	-0.786	0.312	0.243
	(1.708)	(1.500)	(0.743)	(0.530)	(0.460)	(0.435)	(0.379)	(0.385)	(0.403)	(0.382)
% of Population Black	0.904	0.759	0.821	0.732	0.134	0.104	-0.018	-0.046	-0.182	-0.176
	(0.251)	(0.191)	(0.129)	(0.064)	(0.058)	(0.050)	(0.055)	(0.052)	(0.064)	(0.065)
=1 if race statute	-10.732	-9.365	-5.125	-4.293	-2.860	-2.583	-2.992	-2.639	-4.215	-3.476
	(4.033)	(3.607)	(2.340)	(1.968)	(1.028)	(0.890)	(1.311)	(1.245)	(1.678)	(1.588)
=1 if age statute	9.554	4.847	3.534	0.668	2.769	1.815	2.288	1.349	0.983	0.226
	(3.281)	(3.485)	(1.777)	(1.659)	(0.661)	(0.763)	(0.761)	(0.926)	(1.238)	(1.315)
=1 if disability statute	1.667	2.340	0.218	0.627	0.177	0.313	0.714	0.790	4.417	3.906
	(3.053)	(2.357)	(1.447)	(1.157)	(0.774)	(0.642)	(1.252)	(1.066)	(2.522)	(2.281)
=1 if no mandatory retirement	-8.624	-5.136	-4.974	-2.850	-1.990	-1.283	-1.215	-0.569	-2.543	-1.915
	(2.503)	(2.176)	(1.177)	(0.875)	(0.564)	(0.551)	(0.592)	(0.610)	(1.034)	(1.106)
=1 if procedural change in last 3 years	-5.048	-5.283	-0.837	-0.980	-1.605	-1.652	-0.704	-0.580	1.944	2.147
	(1.746)	(1.736)	(0.693)	(0.603)	(0.595)	(0.600)	(0.529)	(0.515)	(0.760)	(0.684)
=1 if broad state statute	-3.503	-3.952	-2.164	-2.437	-1.275	-1.366	-0.610	-0.604	-1.610	-1.383
	(2.348)	(1.981)	(1.014)	(0.867)	(0.641)	(0.586)	(0.601)	(0.541)	(0.802)	(0.798)
No Second Level Appellate Court	-13.497	-9.010	-5.708	-2.976	-2.242	-1.333	-2.323	-1.698	-9.184	-8.385
	(3.796)	(3.553)	(1.871)	(1.415)	(0.862)	(0.822)	(1.035)	(0.994)	(1.562)	(1.691)
Judge's Real Salary	-0.159	-0.109	-0.059	-0.028	-0.017	-0.006	-0.055	-0.033	-0.024	-0.007
	(0.104)	(0.098)	(0.051)	(0.050)	(0.029)	(0.030)	(0.052)	(0.052)	(0.065)	(0.063)
Judge Serves for Life	-14.060	-8.117	-5.637	-2.019	-5.074	-3.870	-4.318	-3.209	-5.770	-4.925
	(4.397)	(3.108)	(2.009)	(1.462)	(1.204)	(0.855)	(1.134)	(1.008)	(1.900)	(1.759)
Observations	1344	1344	1344	1344	1344	1344	1008	1008	384	384
R-squared	0.70	0.74	0.7572	0.8131	0.6164	0.6421	0.53	0.55	0.6419	0.6544

All regressions include Region*Year effects. See Notes to Table 5.