

# ACCOUNTABILITY AND JUDICIAL PERFORMANCE: EVIDENCE FROM CASE DISPOSITIONS\*

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*Does accountability affect judicial performance? Unraveling the link between accountability and performance is difficult when it comes to courts, in part because the norm against political interference with the judiciary makes it difficult to experiment with measures designed to increase accountability. In this article, I examine the connection between accountability and judicial performance using court delay data from Kansas, where seventeen judicial districts use noncompetitive retention elections while fourteen employ partisan elections. The results suggest that courts with judges who enjoy less independence dispose certain types of cases more quickly. The findings have implications for our understanding of judicial independence, judicial elections, court delay, and trial court decision making.*

Does accountability affect judicial performance? Unraveling the link between accountability and performance is central to developing our understanding of relationships within a hierarchy. The link has been thoroughly explored in a number of settings, including the theory of the firm (Miller, 1992), bureaucratic politics (Brehm and Gates, 1999), and international organizations (Hawkins et al., 2006). Yet we know little about the connection between accountability and performance when it comes to courts. One reason for this is that maintaining an independent judiciary requires sacrificing some degree of accountability. The norm against political interference with the judiciary makes it difficult to experiment with measures designed to increase judicial accountability. Moreover, difficulties measuring judicial performance complicate the task of exploring the link between accountability and judicial performance empirically.

In this article, I contribute to the open question of whether accountability affects judicial performance by examining whether variation in the level of judicial independence afforded to state trial judges is associated with case disposition times. The theoretical argument builds on the notion that judges who face competitive elections have an incentive to produce a work product that helps ensure reelection. To capture differences in judicial independence, I exploit a quasi-natural experiment in Kansas, where seventeen judicial districts use noncompetitive retention elections while fourteen employ partisan elections (see also Crynes, 1995; Gordon and Huber, 2007). The results suggest that courts with judges who enjoy less independence dispose certain types of cases more quickly.

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Although the electoral connection between state judges and voters is well established (e.g., Brace and Boyea, 2008; Helland and Tabarrok, 2002; Shepherd, 2009), most of this research focuses on case outcomes rather than performance in the areas of judicial process and administration. Moreover, this research focuses almost exclusively on state supreme courts. This project contributes to the literature on the effects of judicial elections while also informing our understanding of trial court decision making. The results also speak directly to the literature on accountability and judicial performance (Cann, 2007; Choi, Gulati, and Posner, 2010) and enhance our understanding of court delay.

## MEASURING JUDICIAL PERFORMANCE

Judicial performance is a difficult to concept to measure. One approach, which has become popular with state judicial commissions, is to conceptualize performance as a combination of characteristics such as legal ability, integrity, communication skills, judicial temperament, attentiveness, and prompt case dispositions.<sup>1</sup> Judicial commissions then measure performance by asking members of the legal community to rate judges across the relevant criteria. Unfortunately, these surveys are typically only conducted in states where judges face retention elections. This lack of institutional variation makes it difficult to use these data to examine the link between performance and accountability.

Scholars have also developed ways to measure judicial performance using survey data. Berkowitz and Clay (2006), for example, find evidence that judicial independence is associated with court quality using survey data from corporate attorneys on the handling of tort and contract litigation. As the authors recognize, however, their measure of performance is perhaps a better indication of a state court system's pro-business orientation. Using a nationwide survey, Cann (2007) shows that judges in states that use appointment or merit systems as selection mechanisms rate the performance of their state courts higher than elected judges rate their courts.

Other scholars use objective criteria to examine judicial performance (see generally, Choi, Gulati, and Posner, 2011). Two popular approaches to measuring performance include the use of citations (see, e.g., Baker, 2008; Landes, Lessig, and Solimine, 1998) and published opinions (see, e.g., Taha, 2004; Ramseyer, 2010). Although little work has been devoted to examining the relationship between accountability and judicial performance using objective criteria, Choi, Gulati, and Posner (2010) employ objective measures to examine the link between retention systems and judicial quality. As a measure of productivity, they count the number of opinions written by a judge in a given year; to capture opinion quality, they count the number of out-of-state citations to a judge's opinion; and to measure independence, the authors score "the tendency of judges to write opinions that disagree with co-partisans when the pool of judges provides opportunities to do so" (Choi, Gulati, and Posner, 2010:300). Using

<sup>1</sup> The National Center for State Courts maintains links to each state's judicial performance commission (<http://www.ncsc.org/>).

these measures, the authors find that appointed judges write higher-quality opinions than elected judges, although elected judges are more productive. There was no perceptible difference in independence across retention systems.

The use of objective criteria represents an important advancement in understanding the determinants of judicial performance. Nonetheless, the existing measures of performance suffer from important limitations. As an initial matter, there is debate about whether these measures are valid indicators of performance (see, e.g., Brudney, 2005; Bybee and Miles, 2005; Solum, 2005). Moreover, many of the existing performance measures focus on case outcomes. Although these measures may be well suited for examining performance on appellate courts, they are more limited when applied to trial court decision making. With respect to trial courts, aspects of case management and judicial administration may be more important performance indicators than case outcomes.<sup>2</sup>

In this article, I focus on one aspect of judicial performance at the trial-court level: case disposition time. Disposition time is a widely recognized, objective indicator of judicial performance.<sup>3</sup> The right to a “speedy” trial is one of the core constitutional protections afforded to criminal defendants. The protection itself, however, serves both individual and collective interests. As an individual liberty, swift judicial proceedings guard against prolonged incarceration and lessen the chance of delay impairing the accused’s ability to mount an effective defense. The public maintains an interest in minimizing delay due to the high costs of judicial proceedings. Furthermore, swift judicial proceedings protect against the erosion of evidence, limit the accused’s opportunity to negotiate reduced sentences, lower the risk that defendants released on bail will commit additional crimes, and promote confidence in the courts. Although there is no corresponding constitutional protection against undue delay in civil cases, many of the justifications for minimizing delay in these cases are quite similar (see Heise, 2000).

## ACCOUNTABILITY AND COURT DELAY

Court delay has long been regarded as an important problem among lawyers, judges, community leaders, and the public (Grossman et al., 1981; Zeisel, Kalven, and Buchholz, 1959). The problem is reflected in the array of measures created by federal and state authorities to curb excessive delay. Congress, for example, passed the Civil Justice Reform Act in 1990, which required each U.S. District Court to develop a plan to reduce costs and delay in conjunction with an advisory group. States have also experimented with a variety of procedures to reduce delay, including enhancing the use of technology, supporting mediation efforts, and altering procedural rules governing pretrial motions and discovery (see, e.g., Trotter and Cooper 1981).

<sup>2</sup> For a review of case management processes, see Resnik (1982).

<sup>3</sup> As previously noted, judicial commissions include case disposition time as an indicator of performance. A typical example is Arizona, which includes “prompt rulings” among its performance standards.

Substantial effort has been devoted to explaining the causes (e.g., Church, 1981; Levin, 1975; Neubauer and Ryan, 1982) and consequences (e.g., Chemin, 2012; Connolly and Smith, 1983; Kessler, 1996) of court delay. Moreover, scholars have examined diverse aspects of the delay problem, including the effect of delay on the incentive to settle (Priest, 1989), the influence of case-level factors on delay in civil cases (Heise, 2000), the processing time of capital appeals in the states (Cauthen and Latzer, 2008), and the time to disposition in federal circuit courts of appeal (Lindquist, 2007; see also Szmer, Christensen, and Wemlinger, 2009). I contribute to the literature on delay by emphasizing the importance of judicial independence.

Judicial retention systems in the states afford judges different levels of independence, influencing the degree of accountability to which they are held. Judges that face partisan elections, for example, often endure a significant amount of political pressure and are routinely voted out of office, whereas judges who face retention elections are relatively secure (Hall, 2001). As the level of electoral accountability increases, judges are more likely to decide cases in a way that pleases voters to secure reelection (Brace and Hall, 1997; Gordon and Huber, 2007; Helland and Tabarrok, 2002; Huber and Gordon, 2004; Langer, 2002; Shepherd, 2009). For example, Brace and Boyea (2008) find evidence that state supreme court justices who face elections are more likely to uphold death sentences as public support for the death penalty increases; the authors find no relationship, however, between support for the death penalty and judges' willingness to uphold death sentences when they do not face elections.

Similarly, judges who face competitive elections have an incentive to clear their dockets faster than their colleagues who enjoy more independence. According to Posner (1993), the judiciary attracts (and retains) lawyers who place a lower premium on income than their counterparts in private practice, which translates into a preference for leisure over work, all else equal.<sup>4</sup> Absent the accountability and performance demands induced by competitive elections, then, judges who face retention elections may consume more leisure than those who face partisan contests.<sup>5</sup> Judges can increase their leisure consumption by allowing court queues to grow (Posner, 1993; see also Geyh, 1993; Helland and Klick, 2007). This is not to say that queues will grow indefinitely. Congested dockets may lead to the creation of new judgeships, which reduces judicial prestige, and judges will be constrained to some extent by social sanctions from their peers (Helland and Klick, 2007; Posner, 1993; see also Baum, 2006). The argument is simply that judges can be expected to work harder to clear their dockets as electoral accountability increases.

<sup>4</sup> Posner (1993) defines "leisure" to include all of a judge's activities aside from judging, including "loafing on the job" (31:n.17). Alternatively, there is a literature in public administration highlighting the effect of "public service motivation" in pushing workers toward the public sector (see generally, Perry and Wise 1990). There is evidence, for example, that this motivation influences lawyers' choices to work in the public sector (Wright and Christensen, 2010). Moreover, government employees may work harder than their counterparts in the private sector (Frank and Lewis, 2004).

<sup>5</sup> Similarly, Posner (1993) assumes that elected judges work harder on average due to the increased accountability.

Aside from having the incentive to work harder, judges facing competitive elections may be more likely to manipulate performance signals that can be easily interpreted by the electorate. Accordingly, judges facing competitive elections may focus on clearing their queues because they know that delay may become an issue during a subsequent reelection campaign. On this view, faster clearance rates may not indicate that judges are working harder. For example, judges can manipulate case management processes or grant fewer motions for continuance in criminal cases.

Regardless of the mechanism, the implication is that judges who face competitive elections will clear their dockets faster than their counterparts with more independence. This hypothesis is buttressed by evidence that delay is often a salient issue in judicial elections. As already noted, state judicial commissions include prompt case dispositions among the factors considered when determining whether a judge should be retained. Furthermore, judges who do not manage their dockets effectively invite harsh public criticism. One campaign mailer, for example, described an incumbent trial judge as “inefficient and ineffective,” adding: “Our Taxpayers Deserve Better—A judge who controls a courtroom, makes rulings without months of delay and puts in a full day’s work just like the rest of us” (Jenkins, 2008). Georgia, meanwhile, enacted legislation that requires elected judges to oversee capital cases after an unelected senior judge granted numerous delays and allowed costs to mount in a high-profile trial. Legislators argued that elected judges would be more fiscally accountable, which in part means ensuring swift disposition times (Rankin, 2008). In Kansas, which is the focus of this study, court delay is a salient issue (Gruver, 2010). Moreover, judges facing partisan elections in Kansas routinely make appeals to the electorate regarding their ability to curb delay. During a reelection campaign, for example, Kansas trial court judge Kate Lynch touted her attention to “streamlined court proceedings” and her practice of “avoid[ing] excessive court delays.”<sup>6</sup>

## DATA AND MEASUREMENT

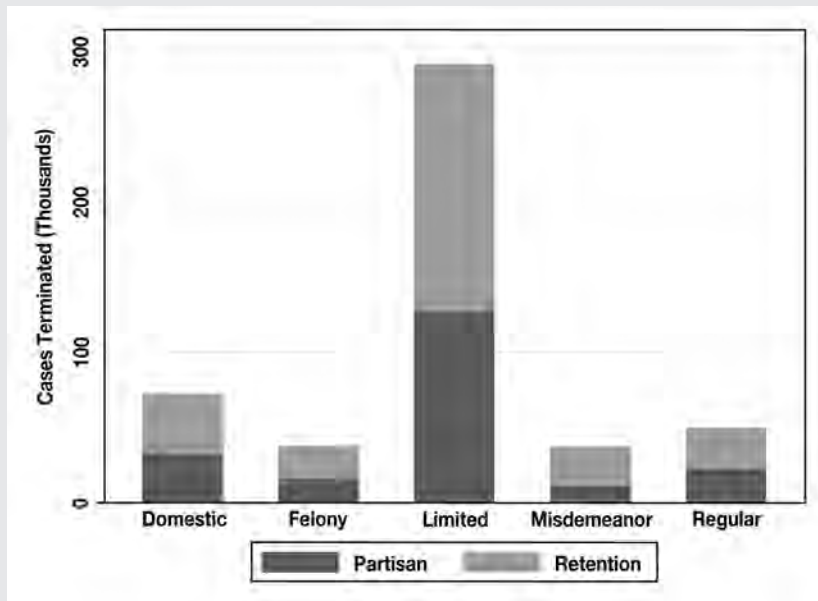
Testing the accountability-and-delay hypothesis requires data on case disposition times from courts with judges who enjoy different levels of accountability. One option would be to collect data on disposition times from states that vary in the level of independence afforded to judges. Unfortunately, comparable disposition data are not widely available. Even if these data were available, however, it would be difficult to account for heterogeneity across states in the design of institutions and legal cultures (cf., Gordon and Huber, 2007). This is particularly problematic when considering the determinants of court delay due to the perceived importance of local legal culture, which is difficult to quantify (Church, 1978; Steelman, 1997).

I overcome these limitations by exploiting a quasi-natural experiment in Kansas.<sup>7</sup> There are thirty-one judicial districts in Kansas, and each of the state’s 105 counties

<sup>6</sup> See <http://www.judgekate.com> (last visited October 10, 2011).

<sup>7</sup> Crynes (1995) also exploited this natural experiment to examine the relationship between independence and disposition times, but looked at data from only four districts and did not attempt any multivariate analyses. Gordon and Huber (2007) exploited the design to examine the effect of independence on sentencing behavior.

Figure 1  
Cases Terminated



belongs to a district. Partisan elections are the constitutional default method of judicial selection and retention. However, voters in judicial districts can replace the default system with retention elections. As of 2005, fourteen districts (comprising 52 counties) used partisan elections, and seventeen districts (comprising 53 counties) employed noncompetitive retention elections.<sup>8</sup> Given that judges facing partisan elections are at greater risk of being removed from office than their counterparts facing retention elections (Hall, 2001), Kansas is an ideal setting for examining the effect of varying levels of accountability on court delay.

**Dependent Variables.** Although there are a variety of ways to measure court delay (e.g., Grossman et al., 1981; Heise, 2000; Steelman, 1997), as of 2005 Kansas provided county-level data on the median disposition time of a case in days (see also Church, 1978; Goerd, 1991).<sup>9</sup> These data were provided for two classes of criminal cases (felonies and misdemeanors) and three classes of civil cases (regular action, limited action, and domestic relations). Regular- and limited-action civil cases primarily involve issues concerning contracts, torts, and property. Limited-action cases involve claims of less than \$10,000. Domestic relations cases involve issues such as disputes over marital status, protection from abuse, and protection from stalking. Figure 1

<sup>8</sup> For more on the history of judicial elections in Kansas, see Sanders (1995:576-82). For more on district votes to change election systems in Kansas, see Gordon and Huber (2007:111-12).

<sup>9</sup> With these data, the clock begins running with the initial filing and ends with a final disposition. Kansas does not provide district-level data.

**Table 1**  
Descriptive Statistics

	Partisan Elections				Retention Elections			
	Mean	S.D.	Min.	Max.	Mean	S.D.	Min.	Max.
ln (Caseload)	5.9	0.9	3.6	8.4	6.4	0.8	4.0	8.0
Urbanization	7.4	2.1	1.0	9.0	5.9	2.6	1.0	9.0
Conservatism	75.8	5.6	62.0	85.0	69.0	7.9	52.0	84.0
% Diploma	17.1	5.1	7.3	36.3	15.0	4.4	5.1	32.6
Income	84.2	10.3	66.4	114.5	91.5	15.9	66.3	156.2
% Black	1.9	3.9	0.1	26.5	2.1	3.1	0.1	17.9
Crime Index	22.3	18.4	0.1	93.5	27.6	14.1	2.1	70.4

displays a stacked bar graph, broken down by retention mechanism, of the number of cases (in thousands) terminated by case type in Kansas district courts from 2004-05.

**Independent Variables.** The primary explanatory variable is an indicator variable scored 1 for counties that use partisan judicial elections and 0 for those that employ retention elections. I account for work demands by including a variable that scores the natural log of the total number of case filings per judge. Since delay is thought to be a problem that disproportionately plagues urban courts, I capture urbanization with the USDA's urban continuum measure, a nine-point scale that accounts for several factors that distinguish urban and rural environments. Although limiting the analysis to Kansas courts minimizes variation due to local legal culture, I include several variables that help account for demographic differences across counties: county ideology, the percentage of residents twenty-five and over with a high-school diploma, the percentage of residents who are black, and county income as a percentage of the state's median household income.<sup>10</sup> In the models explaining disposition times in criminal cases, I also include a county-level crime-index control.<sup>11</sup> Table 1 displays descriptive statistics for the independent variables broken down by selection mechanism.

## ESTIMATION AND RESULTS

To test the accountability-and-delay hypothesis, I estimate a series of OLS regressions. Data for each of the dependent variables were available from 2004 and 2005 for each of Kansas's 105 counties. Standard errors are clustered by judicial district. Table 2

<sup>10</sup> I capture county ideology with Republican presidential vote share in 2004. I also fit models using returns from the 2002 and 2006 gubernatorial contests and results from a 2005 state vote on whether to pass a constitutional ban on gay marriage. The results are similar regardless of the measure. Models fit with alternative measures of education (percentage of residents with a bachelor's degree) and income (natural log of total income) also yield similar results. Unless otherwise noted, data come from Census estimates.

<sup>11</sup> County-level crime data comes from the *Crime in the U.S.* report published by the FBI. In addition to a crime index, I fit models using violent and property crime indices. The results are similar. All measures are rates per 100,000 in population. Due to missing data, I also fit models excluding the crime-index control.

**Table 2**  
**The Effect of Partisan Elections on Disposition Times in Criminal Cases**

	Felonies				Misdemeanors			
	Est.	S.E.	Est.	S.E.	Est.	S.E.	Est.	S.E.
Partisan Elections	-3.13	6.82	-2.53	7.09	-16.62***	5.84	-17.21***	5.93
ln(Caseload)	-7.02	5.24	-8.32	5.88	-2.18	3.70	-3.32	4.40
Urbanization	-0.57	2.74	-0.68	2.73	0.19	1.84	0.29	1.68
Conservatism	-1.18	0.96	-1.00	0.98	-1.14*	0.62	-1.10*	0.63
% Diploma	1.12	0.87	0.71	0.81	1.91**	0.58	-1.84**	0.62
Income	-0.28	0.40	-0.30	0.40	0.49**	0.23	0.49**	0.22
% Black	-1.35	0.82	-1.57*	0.88	-0.82	0.76	-0.93	0.81
Crime Index			0.14	0.27			0.08	0.22
Constant	233.30	80.77	234.89	79.62	63.18	41.26	66.37	41.25
N	210		205		210		205	

\*\*\*  $p < .01$ , \*\*  $p < .05$ , \*  $p < .10$  (two-tailed). Standard errors clustered by judicial district.

displays the results from models estimating the effect of partisan elections on disposition times in criminal cases. The median disposition time for misdemeanor cases is about seventeen days shorter in courts where judges face partisan retention elections. However, variation in retention systems is not associated with differences in disposition times in felony cases.

Table 3 displays the results from models assessing the determinants of delay in civil cases. As with criminal cases, the results are mixed. The median disposition time for limited-action civil cases is about seven days shorter in courts where trial judges face partisan retention elections. This result is especially noteworthy given that limited-action cases make up about 70 percent of the state's civil case filings during the sample period. Retention mechanisms are not associated with disposition times in regular-action or domestic relations cases. Although partisan elections are associated with faster disposition times in only two of the five categories of cases, these two categories comprised about 67 percent of the cases disposed of by trial courts in Kansas during the sample period.

None of the control variables are consistent determinants of delay in Kansas's trial courts. However, this is not surprising given that one of the benefits of the research design is that it minimizes the influence of standard sources of variation in levels of delay, such as local legal culture. One seemingly puzzling result is that case-load pressures—measured as the natural log of case filings per judge—are, for the most part, not associated with disposition times. This result, however, is not unprecedented



**Table 3**  
**The Effect of Partisan Elections on Disposition Times in Civil Cases**

	Regular Action		Limited Action		Domestic	
	Est.	S.E.	Est.	S.E.	Est.	S.E.
Partisan Elections	0.54	6.44	-6.88*	3.42	7.87	5.69
ln(Caseload)	-6.61	4.66	-4.08*	2.34	1.23	3.33
Urbanization	3.54***	1.16	-2.44**	0.91	1.12	1.24
Conservatism	-0.68	0.54	0.08	0.26	0.15	0.42
% Diploma	-0.09	0.57	0.01	0.26	0.22	0.34
Income	0.37*	0.21	-0.03	0.13	0.11	0.13
% Black	-0.33	0.65	0.05	0.25	-0.52	0.54
Constant	123.84	51.61	86.42	29.06	30.41	29.51
N	210		210		210	

\*\*\*  $p < .01$ , \*\*  $p < .05$ , \*  $p < .10$  (two-tailed). Standard errors clustered by judicial district.

in the literature (e.g., Church, 1978; Goerd, 1981).<sup>12</sup> Future work would benefit from further exploring how caseload pressures affect disposition times. In addition to the standard expectation that increased caseload pressures will result in slower dispositions, it is possible that these pressures may lead to quicker dispositions (as indicated here in the model on limited-action cases) as judges work to clear court queues to avoid signaling that they are managing their dockets inefficiently.<sup>13</sup>

## CONCLUSION

Whether accountability affects judicial performance remains an open question. Nonetheless, the results presented here offer some evidence that judicial performance is influenced by differences in the degree of accountability to which judges are held. Although tentative, these results have implications for our understanding of how different levels of independence influence judicial behavior in the states. Much of the literature drawing a connection between judicial independence and behavior focuses on whether state supreme court judges issue constrained decisions in response to varying levels of electoral pressure (e.g., Brace and Boyea, 2008; Caldarone, Canes-Wrone, and

<sup>12</sup> Cases pending per judge has been shown to be a positive predictor of slower disposition times (Goerd, 1981; see also Church, 1978). However, these data were not available.

<sup>13</sup> Consistent with the theory presented here, these effects may be conditioned by the level of independence enjoyed by a court's judges, with those facing competitive elections clearing cases more quickly as caseload pressures increase. To test for this possibility, I included an interaction term between the measure of caseload pressure and the retention mechanism; the results were not statistically distinguishable from zero.

Clark, 2009; Langer, 2002). By drawing attention to how differences in the level of independence afforded to judges can influence decision making in trials courts, this project highlights the fields of judicial process and administration as potentially fruitful avenues for future research. This may be particularly true when it comes to analyzing the effects of judicial elections at different levels of the judicial hierarchy. To the extent that the debate over judicial elections turns on empirical inquiries into the consequences of those elections (see Bonneau and Hall, 2009), it is important to develop a more complete understanding of how the level of independence afforded to judges occupying different positions in the judicial hierarchy shapes various aspects of judicial behavior.

The results also add to the considerable literature on court delay by highlighting the relationship between judicial independence and case disposition times. Moreover, as a measure of judicial performance, disposition time offers a promising vehicle for testing other theories of judicial behavior. However, it is important to reiterate that faster disposition times may not mean better performance. At the trial court level, for example, one could imagine judges who are pressured to dispose of cases quickly being more likely to grant motions to dismiss or less likely to grant motions for continuance. Indeed, the pressure to dispose cases quickly may help explain Choi, Gulati, and Posner's (2010) finding that appointed judges tend to write higher-quality opinions than elected judges. Future research would benefit from exploring the trade-off between faster disposition times and other aspects of judicial process and administration. Further advancements in this area will likely require a longer time series of cross-sectional data. New data will also help scholars answer questions that cannot be addressed here, such as whether the impact from switching election systems occurs immediately or comes about more slowly with turnover on the bench.

Last, this project informs an ongoing debate over the design of judicial institutions in an effort to strike a balance between independence and accountability (see O'Connor, 2009). Aside from the central discussion concerning selection and retention mechanisms, politicians and interest groups are experimenting with new ways to increase accountability. For example, some commissions now publicize results from surveys on judicial performance to better inform voters in judicial elections. There have also been a variety of proposals at the federal level to enhance judicial performance by increasing accountability (Kourlis and Singer, 2009). The results presented here suggest that measures designed to increase accountability may affect judicial behavior. For reformers who are uncomfortable with the trade-off between independence and accountability created by competitive judicial elections, there may be viable alternatives for designing institutions that induce better performance. **jsj**

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