# Are Judges Like Umpires?
# Political Affiliation and Corporate Prosecutions

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# Motivation

- Outcomes of corporate criminal prosecutions can be quite important
  - Ex. #1 – *Hudson River v. US* in 1909
  - Ex. #2 – Arthur Andersen in 2002
- And sentencing fines, which increased 9-fold in recent years, can shift firms' priorities

**Question** = Does political affiliation of appointing president influence case outcomes?

# Idea is widely discussed, but…

- Judges [e.g., Chief Justice Roberts] push back
  - *"[Judges] don't work as Democrats or Republicans"* – 2016
  - *"[W]e do not have Obama judges or Trump judges…"* – 2018
- And current discussion ignores potential impact on corporate prosecutions, which could matter
  - E.g., if expected punishment for violating environmental regulations goes up, firms might adjust their investments

# Finding = Affiliation seems to matter

- **If case assigned to a Democrat judge…**
  - 138% <u>larger</u> fine for labor or environmental crimes
  - 90% <u>smaller</u> fine for immigration crimes
  - But, <u>no</u> association with decisions of guilt or in cases where judge doesn't directly approve fine
- **Evidence of partisanship and career motives**
  - E.g., larger differences when (1) political polarization is higher, (2) in months prior to national elections, and (3) when vacancy on appellate court

# Data on corporate prosecutions

- **Corporate Prosecutions Registry**
  - Includes list of prosecutions from 2000 to 2018, resulting in a total of 3,372 cases
  - For each case, provides the following:
    - Company name and docket number
    - Crime code (i.e., type of crime)
    - Outcome (e.g., plea, trial conviction, acquittal, etc.) and amount of monetary damages (if any)

# Types of prosecution outcomes

- **Six possible prosecution outcomes**
  - Acquittal (0.39%)
  - Trial conviction (0.43%)
  - Plea deal (79.1%)
  - DP/NP agreement (15.47%)
  - Declination (0.69%)
  - Dismissal (3.89%)

Firm pleads guilty; **punishment set by judge**

Gov't drops case in exchange for firm meeting certain conditions; **judge has no direct say**

- **Avg. fine** = $20mm.; **std. dev.** = $103mm.

# Types of crimes

- **24 possible crime types; e.g.,**
  - Fraud – General (18.32%)
  - Environmental (15.78%)
  - False statements (4.54%)
  - Immigration (4.47%)
  - Money laundering (2.50%)
  - OSHA / Workplace Safety / Mine Safety (0.86%)

2nd most common crime

9th most common crime

20th most common crime

# Data on judge names & affiliations

- Extract judge name from official case dockets *[available at www.pacer.gov]* using Python
- Identify political party of appointing president using biographies on US Courts' website

# Identification strategy

- Exploit random assignment of federal judges to cases originating in their jurisdiction
  - 94 US District Court jurisdictions; 700+ judges
  - Evidence supports randomization *[see paper]*
- Estimate a diff-in-diffs-type regression
  - **Diff #1** – Democrat *vs.* Republican judge
  - **Diff #2** – Partisan tilt of underlying crime

I.e., does crime involve political issue where Democrats and Republicans exhibit sharply different views?

# Define partisan tilt ***[DemTilt]*** as **=**

| | |
|---|---|
| **1** | if crime involved violating environment or labor regulations |
| **0** | if crime has no clear association to partisan issue *[e.g., fraud, money laundering, etc.]* |
| **-1** | if crime involved immigration violations and hiring illegal workers |

# Our main specification

$$Y_{ijklt} = \beta Democrat_j \times DemTilt_k + \alpha_j + \gamma_k + \delta_t + \varepsilon_{ijklt}$$

- $Y_{ijklt}$ = outcome for case *i* assigned to judge *j* involving crime type *k* in jurisdiction *l* and year *t*
- $Democrat_j$= indicator that judge was nominated by Democrat president
- $DemTilt_k$ = political tilt of crime type *k*
- Judge, crime, and year fixed effects

**$\beta$ captures average change in case outcome for one-unit increase in *DemTilt* of crime when the judge is a *Democrat***

# No shift in proportion of outcomes

Point estimates all economically small at < 1.6 percentage points

| | *Plea* | *NP/DP* | *Dismissal* | *Declination* | *Conviction* | *Acquittal* |
|---|---|---|---|---|---|---|
| *Democrat×DemTilt* | -0.016 | 0.00 | 0.00 | 0.012 | -0.001 | 0.004 |
| | [0.035] | [0.028] | [0.013] | [0.011] | [0.010] | [0.004] |
| Obs. | 2,560 | 2,560 | 2,560 | 2,560 | 2,560 | 2,560 |
| R-squared | 0.377 | 0.361 | 0.268 | 0.11 | 0.058 | 0.173 |
| Judge FE | Y | Y | Y | Y | Y | Y |
| Year FE | Y | Y | Y | Y | Y | Y |
| Crime FE | Y | Y | Y | Y | Y | Y |

# **But** big shift in monetary penalty

**Dep. Var = *Ln(Fine)***

188% increase in avg. fine when *DemTilt* increases by one unit <u>and</u> have Democrat judge

| | | |
|---|---|---|
| *Democrat×DemTilt* | 1.060*** | 1.047*** |
| | [0.313] | [0.303] |
| *Public Firm* | | 2.269*** |
| | | [0.503] |
| *Criminal History* | | -0.024 |
| | | [0.230] |
| Obs. | 1,404 | 1,404 |
| R-squared | 0.538 | 0.572 |
| Judge FE | Y | Y |
| Case Year FE | Y | Y |
| Crime Type FE | Y | Y |

# Driven by **both** types of crimes

**Dep. Var = *Ln(Fine)***

| | | |
|---|---|---|
| *Democrat×Labor&Environmental* | 0.859*** | 0.866*** |
| | [0.297] | [0.291] |
| *Democrat×Immigration* | -2.495** | -2.340** |
| | [1.050] | [1.059] |
| *Public Firm* | | 2.263*** |
| | | [0.505] |
| *Criminal History* | | -0.025 |
| | | [0.231] |
| Obs. | 1,404 | 1,404 |
| R-squared | 0.539 | 0.572 |
| Judge FE | Y | Y |
| Case Year FE | Y | Y |
| Crime Type FE | Y | Y |

**Labor & environmental** fines are 137% larger when assigned to Democrat judge

**Immigration** fines are 90% smaller when assigned to Democrat judge

# Larger when more partisanship

- If findings driven by <u>partisanship</u>, might expect amplification during time periods of greater political polarization

# Periods of high polarization

- **Dep. Var = *Ln(Fine)***

| | Partisan Diff. in President Appr. Rating | |
|---|---|---|
| | Low | High |
| Democrat * DemocratTilt | -0.278 | 1.298** |
| | [0.548] | [0.486] |
| Public Firm | 2.586*** | 2.297*** |
| | [0.698] | [0.423] |
| Firm With Criminal History | -0.242 | 0.03 |
| | [0.308] | [0.373] |
| Observations | 668 | 784 |
| R-squared | 0.628 | 0.568 |
| Judge FE | Y | Y |
| Case Year FE | Y | Y |
| Crime Type FE | Y | Y |

# Larger prior to elections

**Dep. Var = Ln(Fine)**

| | |
|---|---|
| *Democrat×DemTilt×Election* | 1.918** |
| | [0.832] |
| *Democrat×DemTilt* | 1.090*** |
| | [0.305] |
| *DemTilt×Election* | 0.274 |
| | [0.344] |
| *Democrat×Election* | -0.429 |
| | [0.290] |
| | |
| Obs. | 1,365 |
| R-squared | 0.603 |
| Judge FE | Y |
| Case Year-Month FE | Y |
| Crime Type FE | Y |
| Firm-level controls | Y |

Indicator for July, Aug., Sept., and Oct. in year with Congressional election

Avg. penalty is 483% larger in months prior to an election if assigned to a Democrat

**Within-judge estimates indicate findings are <u>not</u> driven by fixed ideological differences**

# Larger during high-court vacancies

**Dep. Var = Ln(Fine)**

| | |
|---|---|
| *Vacancy* | -0.035 |
| | [0.484] |
| *Democrat* | -0.136 |
| | [0.113] |
| *Democrat x Vacancy* | -0.385 |
| | [0.644] |
| *DemocratTilt x Vacancy* | -0.332 |
| | [0.551] |
| *Democrat x DemocratTilt* | 0.490*** |
| | [0.169] |
| *Democrat x DemocratTilt x Vacancy* | 1.373* |
| | [0.769] |
| Observations | 1,880 |
| R-squared | 0.541 |
| Jurisdiction FE | Y |
| Year-Month FE | Y |
| Crime Type FE | Y |

Fines are 293% higher during vacancy periods

# Additional findings & robustness

- **Results are robust to:**
  - Controlling for interactions of *DemTilt* and other judge characteristics (age, experience, etc.)
  - Dropping the largest 5% of fines each year
  - Dropping jurisdictions with greater than 75% judges from the same party
  - Our results become stronger when we exclude NP/ DP cases

# Concluding remarks

- Findings suggest novel channel by which partisanship might influence economic behavior

**Many potential implications for firms…**

- E.g., shifts in expected penalties [e.g., surge in 'Trump' judges] might shift companies' priorities

**E.g., our estimates suggest Trump's 2016 election will result in average immigration fine being 31% higher by end of 2020 than if Clinton had won**