

# Judicial Retention Elections in Cook County

## What Determines the Retention Outcomes of Trial Judges?

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### ABSTRACT

In Cook County, judges are elected through partisan primary and general elections and are subject to voters’ scrutiny in retention elections at the end of their terms. This paper examines three different attributes of judges – length of tenure, gender, and quality of bar evaluations – and their relationships with the judges’ affirmative percentage votes received in retention elections. We find statistically significant relationships between each attribute and a judge’s retention vote percentage, but only the effects of bar evaluations are substantial: judges who are typically rated “qualified” earn on average 10.6% more of the vote than those who are typically rated “unqualified”.

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## I. Introduction

On November 6, 2018, Matthew Coghlan, a criminal court trial judge in Cook County received only 52.4% affirmative votes for his third judicial retention election, 7.6% less than the 60% threshold required for him to remain on the bench. It was the first time in 28 years that a judge has been voted off from the Cook County Circuit Court through retention election voting.<sup>1</sup> After a series of media articles surrounding his past controversy as a prosecutor and an anti-retention campaign, Coghlan's lost retention race broke the existing perception and reality of a safe and unchallenged judicial career after election into the Cook County courts. What happened to Coghlan, one can imagine, could also happen to other controversial judges in the future.

Given the continuously successful retention races, one may wonder what actually influenced the outcomes of these judicial retention races as well as whether the judicial retention system is actually doing the job it is expected to do. To address the first of those questions, this paper considers three independent variables that describe a judge – tenure, gender, and bar evaluations -- and examines their relationships with the judge's affirmative retention vote percentage. We find statistically significant relationships between each attribute and a judge's retention vote percentage, but only the effects of bar evaluations are substantial: judges who are typically rated “qualified” earn on average 10.6% more of the vote than those who are typically rated “unqualified”. The effects of gender and tenure are minor: male judges receive 1.55 points fewer than female judges, and each year of tenure decreases a judge's retention vote share by an average of 0.12%.

## II. Historical Background

The history of the Illinois judicial system can be divided into two periods - before and after the 1962 “judicial article,” an amendment to the Illinois state constitution that took effect in 1964. Prior to the article, Cook County's judiciary operated under the “Municipal Court of Chicago” (MCC). The 1962 amendment fundamentally changed the structure of this system in several important ways, most notably in the inauguration of the state's judicial retention system.

The Municipal Court of Chicago is very different from the Illinois judiciary's modern retention structure. Skogan (1975) presents a narrative of a court structure heavily encumbered with corruption and riddled with inefficiencies. Created in 1905, the MCC replaced the Justice of the Peace system, which utilized police magistrates and Justices of the Peace, not attorneys by trade, who dispensed “justice” for a fee, were often corrupt, and favored litigants. The MCC, however, kept the same fee system, and it comprised 205 Courts and 398 judges put into office by some 120 government units,<sup>2</sup> resulting in “peculiar and arbitrary”<sup>3</sup> jurisdiction. This disparate and fractured nature produced highly independent judges and very uncoordinated, inconsistent judicial procedures, making systemic reform all but impossible within the framework established by Illinois's 1870 constitution.

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<sup>1</sup> Ballesteros (2018)

<sup>2</sup> Lewpasky (1932)

<sup>3</sup> *Ibid.*

Of even more concern than this structural confusion, however, was the MCC's inability to cope with growing caseloads borne of technological changes and population growth in Cook County. Between 1929 and 1956 the MCC's caseload more than tripled with no change in its number of staff. Structural inadequacy combined with the mounting volume of cases to let corruption run rife within the system. Attorneys, public and private, sought to get their case called by judges who occupied powerful patronage positions. Additionally, Chicago's political parties exerted influence through their ability to appoint loyal party members to jobs in state government. Judges, until a ruling by the Illinois Supreme Court in 1960, were immune from prosecution for actions performed on the bench.

In 1958, growing need for reform manifested in a state referendum that failed due to 100,000 voters writing "yes" on the ballot instead of a cross,<sup>4</sup> an error originating from a campaign led by the Illinois Bar Association. The 1962 constitutional amendment was more successful, succeeding in a vote by the state legislature and afterward by the people that made fundamental changes to the system, which took effect in 1964.

The reform of 1964 affected a variety of changes. First were the administrative reforms; these created an integrated county court and branch courts in the suburbs, raised the number of judges equipped to handle cases, and increased judge pay and other privileges in an attempt to attract better candidates. Of more importance to us and Albert J. Klumpp,<sup>5</sup> writing in 2005, were the judicial electoral reforms. In short, where before judges were nominated at party conventions and elected in partisan primaries term after term, after 1962 they only ran in partisan primaries and, following election, ran for retention in terms depending on their position in the state judiciary. This general description of the judicial system, however, does not include several aspects unique to Illinois.

As described by Skogan, the judicial article represents a "modified Missouri plan"<sup>6</sup> of judicial selection. Conceived of in 1914 by Albert Kales, a professor at Northwestern University, as a compromise between two sides torn over whether to more emphasize judicial accountability or independence in the process, the retention system or "Missouri Plan" consisted of a nominating commission of judges, appointment to the bench by governor from a list put forward by the commission, and retention elections after the expiration of a judge's terms. This system provided "an appropriate measure of public accountability while helping to reduce the influence of political machines over the composition of the judiciary,"<sup>7</sup> i.e. striking a balance between accountability and independence. Thus, the thrust of the hypothetical system was to address issues of corruption and judicial merit contemporary to Kales' writings.

Illinois' current retention system does not exactly reflect this conception, thus the term "modified Missouri Plan."<sup>8</sup> Instead of a nominating commission or gubernatorial appointment, Cook County utilizes a system divided into Circuit and sub-Circuit courts filled with Circuit and Associate judges. Unlike Associate judges, who serve four-year terms and are appointed to their seats by the Circuit judges, Circuit judges individually run for their party's nomination for a seat, and upon election, serve six-year terms after which they run for retention. They are retained if at least 60% (higher than

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<sup>4</sup> Skogan (1975)

<sup>5</sup> Klumpp (2005)

<sup>6</sup> Skogan (1975)

<sup>7</sup> Klumpp (2005)

<sup>8</sup> Skogan (1975)

the typical 50%) of voters mark “yes” on their ballot, which just displays the judge’s name and an option of “yes” or “no.” During retention elections, several endorsement organizations, such as major local bar groups, release assessments of judges’ qualifications for their office, which, among other factors studied here, could be potential factors influencing the retention affirmative margins.

Now understanding the state of the Illinois judiciary, it becomes productive to highlight a couple of events that have disrupted it since 1964.

Perhaps the most famous example is Operation Greylord, a sting operation launched by the FBI investigating corruption in Cook County judiciary involving the only known instance of surveillance of a courtroom in American history. Resulting in the indictment of 92 officials, including “17 judges, 48 lawyers, eight policemen, 10 deputy sheriffs, eight court officials, and one state legislator,”<sup>9</sup> it certainly had a profound impact electorally. Made public in 1983, Operation Greylord increased voter participation in the two following retention elections across the board. Its effects with regard to the number of judges retained, as one article argues, were more limited because of decisions made by major newspapers to only print their positive judge assessments in an attempt to shield judges they viewed positively from feared broad-based backlash by voters.<sup>10</sup>

Even more significant than the fallout of Operation Greylord was the retention election of 1990. In it, an unprecedented seven judges lost retention.<sup>11</sup> As described by John Flynn Rooney at the time, this “sen[t] shock waves running throughout the local judicial system.”<sup>12</sup> As to why voters chose not retain so many judges, one article explains it through a combination of major newspaper and bar group evaluations unanimously giving negative ratings to six of the seven judges who lost retention, which lowered their particular approval numbers, and broad-based voter backlash to incumbents at all levels, exacerbated by the non-profit organization Throw the Hypocritical Rascals Out’s multi-million dollar media campaign to motivate voters to view incumbent officials skeptically.<sup>13</sup>

Since 1990, however, not a single judge has lost retention. This of course means many judges rated as not recommended by endorsement organizations have won retention, but one judge widely considered unqualified for his seat broke the 28-year streak of judges winning retention. That judge was Matthew Coghlan. Facing mounting public opposition because of his previous work as a prosecutor on a case associated with disgraced former Chicago police officer Reynaldo Guevara, he lost retention with a mere 52% “yes” vote. This may have occurred in part because the Democratic Party of Cook County typically endorses all judges, but, with Coghlan, it decided not to do so, a “seismic shift in the party’s tradition of supporting all candidates for retention.”<sup>14</sup> This case thus presents hope for efforts to improve the Illinois judiciary, lending importance and relevance to research of the sort conducted by this paper.

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<sup>9</sup> Federal Bureau of Investigation (No Date)

<sup>10</sup> Klumpp (2005)

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> Cohen (2018)

### III. Literature Review

As Klumpp (2005) shows, past researches on judicial selection, especially the retention system, have been scant.<sup>15</sup> Some of the few existing researches, on the other hand, do examine what variables have affected the outcome of election results in retention system, which pertains to the topic of this paper.

Aspin (1998) looks at the relation between campaign expenditure and affirmative vote percentages in Illinois from 1980 to 1992. Campaigning, though a widespread phenomenon in Illinois, does not increase either voter roll-off or affirmative votes.<sup>16</sup> Oslon (2001) examines the results of three retention elections from 1996 to 2000 in one district in Utah to show that bar evaluations have little effect in upsetting judges rated unqualified since the judges' retention margins are not proportional to their ratings. Rather, Oslon shows that oppositional campaign have much larger influence on reducing the votes of these judges toward the retention threshold.<sup>17</sup>

Similar conclusions about the effects of judicial evaluation are reached by Jenkins (1977) and Stookey and Watson (1980). The influence of bar recommendation on the outcome of retention election, as Jenkins shows, is far from substantial in informing voters' votes of judges.<sup>18</sup> Stookey and Watson also concludes that judicial evaluation and media attention can greatly influence voters if combined but not if only one of the two is present.<sup>19</sup> In another article, it is also observed that factors leading to the defeat of the trial judges usually include a combination of - instead of singular presence of - negative bar ratings, unfavorable news coverage, anti-retention campaign activities.<sup>20</sup>

Another factor, as David and Baum (2001) shows, that has substantial influence over voters on the ballot is identified as party affiliation.<sup>21</sup> Although the study concerns judicial election at the state Supreme Court level, it is still an informative piece to be included in this section. Researchers conducted phone surveys before and after State Supreme Court races in 1998 in Ohio, providing different information about candidates. It was discovered that candidates' incumbency status and city of residence had little impact on voters' decisions, while party affiliations decrease voter abstention and have substantial impact on voter choice.

Aside from the more scattered and singular researches on the retention election results from the above articles, Klumpp (2005) presents a comprehensive look at the retention election in Illinois. In his dissertation, Klumpp examines the effect of a list of crucial variables on the affirmative retention percentages. Through examining the retention data from 1982 to 2002, Klumpp shows that in accordance with the widespread political lore, having an Irish last name and/or being a female judge do have beneficial, though small values for judges. Moreover, Klumpp found a highly negative correlation between a negative judicial recommendation and affirmative retention votes. For all three

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<sup>15</sup> Klumpp (2005)

<sup>16</sup> Aspin (1998)

<sup>17</sup> Oslon (2001)

<sup>18</sup> Jenkins (1977)

<sup>19</sup> Stookey and Watson (1980)

<sup>20</sup> Carbon (1980)

<sup>21</sup> David and Baum (2001)

variables above, though no significant or consistent pattern when looking at each single elections, correlation appears in a regression analysis of the combined data of all the years.<sup>22</sup>

Klumpp also compares results from midterm election years with presidential years. Klumpp differentiates between peripheral and core voters, with the former being politically less informed and sophisticated and voting in presidential but not in midterm elections, and with the latter having deeper political interest and voting in midterm elections also. Although there is a difference of 4.9% between peripheral and core voters in approval rates, aggregate approval rates in president and midterm elections are not very far from each other. Also voters vote according to bar recommendation more in midterm than in presidential years.<sup>23</sup>

An examination of Cook County suburbs yields the result that education level is strongly related to base approval rate, which Klumpp defines as the average affirmative retention percentages of judges receiving positive recommendation from all four major judicial evaluations<sup>24</sup>. For every 10% increase of a township with individuals aged above 25 and with four or more years of college, the base approval rate increases by 1.9 percentage points. Moreover, for every 10-point increase in a township's non-white population percentage, base approval rate increases by 1.3 points.

Lastly, Klumpp concludes in the dissertation that the influence of Cook County Democratic party is rather small in suburbs. Each 10% increase in Democratic vote for president or governor - a measure for partisanship - corresponds with a 0.8% increase in base approval rates. This correlation, though highly significant, is too small to conclude on the party's impact. In Chicago, however, Klumpp found a negative correlation between partisanship and the spread between base approval rate and the approval rate of the judge(s) receiving the most negative recommendations from the four major evaluations. This could mean that Democratic voters listen to party instructions rather than judicial evaluations. Base approval rate, however, does not show correlation with partisanship.<sup>25</sup>

## IV. Data Collection

Since there is no single comprehensive database for trial judges that encompasses their biographical information, bar evaluations, retention results, and sentencing patterns across election years, we have compiled a dataset that for includes each judge's gender, tenure (the amount of time the judge stayed on the bench), bar evaluation, and for those presiding over the criminal court, the percentage of guilty verdicts issued to racial minority defendants. Due to the limit of time and the scope of this study, we have compiled a list of trial judges who were elected in 1994, 1996, 1998, or 2000, and who stayed in the trial court for at least three retention elections. We have excluded the retention outcomes of year 2000 due to the use of butterfly ballot in that year, which resulted in irregular voting patterns and turnouts. The effect of the redesign of the ballot sheet eclipsed other potential factors that could influence the votes.<sup>26</sup>

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<sup>22</sup> Klumpp (2005)

<sup>23</sup> *Ibid.*

<sup>24</sup> Evaluations are from Chicago Tribune, Chicago Sun-Times, the Chicago Bar Association, and the Chicago Council of Lawyers.

<sup>25</sup> *Ibid.*

<sup>26</sup> Klumpp (2005)

We first acquired a list of candidates participating in the general judicial elections from Chicago Bar Association evaluation for the general election year. Then we confirmed whether the candidate had won the judgeship by checking if s/he appears on later bar evaluation booklets for retention races or by searching for the candidate’s information on Illinois State Board of Elections website. The retention results including the affirmative vote percentages for the judges also come from the “Vote Totals” on the Illinois State Board of Election website.

For each judge, we then gathered the evaluations in each retention year given by Chicago Bar Association (CBA), Chicago Council of Lawyers (CCL), and Illinois State Bar Association (ISBA). The past ISBA evaluation, dating back to 1998, was acquired by contacting the bar group. Past judicial recommendations for the other two bar groups were acquired from each group’s respective website. In the CBA’s case, the webpage listing past judicial recommendations before 2016 and the 2016 judicial recommendation were accessed through the Wayback Machine.

In addition to simply recording the bar evaluations as they are, we further created a rubric for transferring the ratings into scores for regression purpose.

CBA	CCL	ISBA
Highly qualified = 4/3 Qualified = 1 Not Recommended <sup>27</sup> = 0	Highly qualified = 1.45 Well qualified = 4/3 Qualified = 1 Not qualified <sup>28</sup> = 0	Yes = 1 No = 0

Given the evaluation standards of CBA and CCL, the difference between “qualified”, “well qualified”, and “highly qualified” does not seem very large. Since CCL says in its judicial recommendations that excellence in all the categories examined yields a “highly qualified” and excellence in most of the categories yields a “well qualified”,<sup>29</sup> a CCL “well qualified” is made to be equivalent to a CBA “highly qualified” which needs 80% of approving votes from the CBA evaluation panel members.<sup>30</sup> We also consider a combination of two “highly qualified” ratings and a “not recommended” rating to be more controversial than three “qualified” ratings, so the score of the former combination is set to be lower than the score of the latter combination (which means that a CCL “highly qualified” is less than 1.5). Lastly, because CBA gives a “highly qualified” rating to those receiving 80% of approving votes from the evaluation panel and a “qualified” rating to those receiving 60% of approving votes,<sup>31</sup> the score ratio between the two ratings is set to 3:4. A CCL “highly qualified” is assumed to be equivalent of receive 90% approving votes from the CBA evaluation panel members, so the ratio between CCL “well qualified” and “highly qualified” as 8:9. However, according to this ratio, a CCL “highly qualified” would be worth 1.5, so the score is adjusted to 1.45.

<sup>27</sup> Including a “not recommended” issued for the candidates not showing up for retention evaluation

<sup>28</sup> Including a “not qualified” issued for the candidates not showing up for retention evaluation

<sup>29</sup> The Chicago Council of Lawyers (2011). [https://chicagocouncil.org/wp-content/uploads/2011\\_judicial\\_directory.pdf](https://chicagocouncil.org/wp-content/uploads/2011_judicial_directory.pdf)

<sup>30</sup> The Chicago Bar Association (2016).

<https://web.archive.org/web/20170630123243/https://www.chicagobar.org/eDownloads/General2016Green.pdf>

<sup>31</sup> *Ibid.*

For information about the the gender of the judges and their tenures, we look at the short biographical description of judges on the CBA and CCL judicial evaluations. The gender of the judge is determined by the pronoun used in the section describing that judge. In terms of tenure, some judges who were associate judges or were appointed to the bench before they were elected have positive values for their tenures when they first became a trial judge. Those without previous experiences or without any mention of their previous experiences are presumed to have zero years of tenure when they are elected.

## V. Data Analysis

To examine how a judge’s gender, bar evaluations, and length of tenure are related to his or her retention vote percentage, we supposed a linear model of the form:

$$\text{Retention \%} = \beta_1 \text{Male} + \beta_2 \text{Evals} + \beta_3 \text{Tenure} + \beta_4 + \epsilon$$

where “Male” takes a value of 1 if the judge is male and 2 if she is female, “Evals” refers to a judge’s total bar evaluation score as calculated in Section IV, and Tenure refers to the number of years the judge has been in office. The results of the multivariate regression outlined above, as well as univariate regressions onto each of the three variables, are displayed in Table 1.

Table 1: Regression Results

	<i>Dependent variable:</i>			
	Retention Vote %			
	(1)	(2)	(3)	(4)
Male	-1.546*** (0.470)	-1.304** (0.605)		
Bar Evals	3.542*** (0.377)		3.590*** (0.398)	
Tenure	-0.120*** (0.038)			-0.176*** (0.047)
Constant	68.697*** (1.294)	76.993*** (0.473)	65.872*** (1.169)	78.741*** (0.741)
Observations	151	152	151	152
R <sup>2</sup>	0.442	0.030	0.353	0.085
Adjusted R <sup>2</sup>	0.431	0.024	0.349	0.079
Residual Std. Error	2.786	3.636	2.979	3.533
F Statistic	38.802***	4.645**	81.428***	13.870***

Note:

\*p<0.1; \*\*p<0.05; \*\*\*p<0.01

Each of the three variables in our model showed a statistically significant relationship with retention vote percentage. The effect of a higher bar evaluation score proved substantial; a coefficient of 3.542 means that each 1-point increase on our bar evaluation scale defined in Section IV is associated with a 3.542-point increase in a judge’s retention vote percentage. That means that a judge moving from

“Not recommended” (CBA), “Not qualified” (CCL), and “No” (ISBA) to “Qualified” (CBA and CCL) and “Yes” (ISBA) would see an average increase in retention vote percentage of 10.63 points.

The effect of gender, while still statistically significant, was less substantial. After controlling for the other independent variables, male judges had on average a 1.546% lower retention vote percentage than female judges. Tenure length appears also relatively inconsequential; a year more of tenure is associated with a 0.12-point *decrease* in retention vote percentage, meaning that an extra 12 years (two terms) on the bench only decreases a judge’s vote percentage by 1.44 points.

Coefficients were similar between the multivariate and univariate models, suggesting that the relationships between each independent variable and the dependent variable are independent of each other.

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