

VOTER INFLUENCING IN STATE TRIAL COURT JUDICIAL ELECTIONS IN LOS ANGELES, SAN FRANCISCO, AND HOUSTON

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Executive Summary

Synopsis:

Because California election law features two different provisions for candidates for superior court judge – one for attorneys in government employ and one for attorneys working for private employers - it is virtually impossible for private-level attorneys to win judicial elections. This is so because voters are demonstrably swayed by longer and “fancier” government titles than the three words allowed for ballot designations for private attorneys. This is a problem of inequality under the law, a democratic deficiency, and results in less professional (and other) diversity on the bench in California.

Purpose of study:

The purpose of the research was to assess the influence of, among other factors, candidate job titles and bar association endorsements on election outcomes in select three large, diverse, metropolitan areas.

Data:

The study retrieved and used data from 453 candidates for superior court (trial) judge in three counties: Los Angeles and San Francisco in California, and Harris County (metropolitan Houston) in Texas.¹ This data included candidates who competed in at least one biennial election between 2010 and 2022. Los Angeles County is one of the largest judicial seats in the nation with a very large dataset. However, other select California counties were also included when data was available. (Results from the 2024 Los Angeles County election cycle are included below, but did not form part of Dr. Dellinger’s 2023 dissertation.)

***Current law in California:*²**

California Election Code §13107 currently requires government attorney candidates to list their official titles and geographical area of service. An example of a ballot designation following this provision is “Senior Deputy County Counsel, County of Los Angeles” (actual 2024 example). In contrast, attorneys in private practice may only use up to three words and no geographical area, e.g. “attorney at law” or “law

¹ Texas does not allow candidates to list their job titles on ballots, but does use a local bar evaluation system.

² California appears to be the only state in the nation that allows for candidates to list their professional titles (“ballot designations”) on ballots.

professor/attorney.” This *per se* inequality under the law leads to demonstrated election effects.

FINDINGS

For background, the below table shows the professional backgrounds of the Los Angeles County judges (appointed *and* elected) whose backgrounds could be readily verified:

Professional backgrounds of LA County judges sitting in 2022:	#s	Approx. percentage
Deputy district attorney (“DDA”) or other criminal law background, not including public defenders	194	40%
Public defenders	44	9%
Other government attorney	27	6%
Judge, commissioners, etc.	96	19%
<i>Subtotal, all government attorneys</i>		74%
Attorney in private practice	120	25%
NGO attorneys	7	1%
Law professors	2	0.4%
Total examined	490	~ 100%

In other words, in 2022, approximately 74% of the sitting judges in Los Angeles County were government attorneys when assuming the bench. Approximately 40% hailed from prosecutorial backgrounds.

Los Angeles County Superior Court Election Winners (raw numbers), 2012-2024 ///

Year	Total # of seats	DDAs	Other gov't atty (incl. judges)	Atty in private practice	Total atty candidates in private practice
2024	10	3///	2///	0///	9
2022	9	4	5	0	9
2020	12	11	1	0	11
2018	11	5	6	0	6
2016	7	3	4	0	7
2014	15	14	1	0	3
2012	6	3	3	0	5
Totals	60	40	20	0	54

In other words, a very significant number of attorneys in private employ run for judge in every election cycle in at least Los Angeles County, but *have no realistic chance of winning*.

Likelihood of candidates winning elections based on titles

The fact that candidates with government backgrounds - very often DDAs - win elections at a much higher rate than attorneys in non-government employ was demonstrated as follows:

- The log odds likelihood³ of Deputy District Attorneys (“DDAs”) winning judicial elections in comparison with private-level attorneys is 1.45. ***In layman’s terms, this means that DDAs have an approx. 81% higher probability of winning elections than attorneys in private practice. This is statistically significant at the 99.9% level;*** a very high rate of certainty.⁴
- The log odds likelihood of sitting judges winning an election over regular attorneys is 2.04. This means that candidates who are judges (e.g. incumbents or candidates such as administrative law judges) have an 88.5% higher probability of winning elections than attorneys in private practice. This is also statistically significant at the 99.9% level.

Percentage increase in number of votes based on titles:

DDAs receive 18.64 percentage point more votes than private attorneys, which is statistically significant at the 99.9% level. Judges receive 26.32 percentage point more votes than private attorneys. This is also statistically significant at the 99.9% level. The title “public defender” results in a candidate receiving 12.15 percentage points more votes than private attorneys. This is statistically significant at the 95% level. In other words, government ballot designations were demonstrated to lead to a significantly better chance of earning more votes than non-government ballot designations.

Bar association evaluations:

In addition to the skewed results produced by allowing for two different sets of laws for judicial candidates, the candidate evaluations performed by local bar associations also effect election results. Voters do not understand what bar associations are. They confuse them with the state bars. It is thus exceedingly important for bar associations to very carefully avoid implicit or explicit bias in their evaluation proceedings. However, the below numbers indicate that at least the Los Angeles County Bar Association (“LACBA”) remains heavily biased against private attorneys running for office and heavily in favor of trial attorneys such as DDAs.

³ “Log odds” is a statistical concept that signifies how likely it is that one factor (a “variable” such as, here, job titles) influences the outcome of another factor (here, election wins). A log odd of 0 means a 50/50% chance of a prediction being true (thus, no good predictor). The further away from 0, the more likely it is that the factor makes a difference.

⁴ Statistical results typically feature statistical significance levels of 90% certainty, 95% certainty, or – in rarer cases – 99.9% certainty. Scientists typically do not state that something is 100% certain as outlier cases could come about. (For example, while the very vast majority of tigers are striped, it could theoretically be that one day, a non-striped tiger is born. This is important in the judicial election context where anecdotal evidence such as “I know an attorney who once beat a judge or prosecutor because [example irrelevant].” Outlier results are typically either removed from datasets before calculations are made or taken into account by not stating that something is 100% certain to happen.

In times when few cases go to actual trial, when mediation/arbitration is favored both statewide and nationally, when relatively few attorneys of untraditional background become trial attorneys, and when law students are increasingly taught to attempt out-of-court solutions to legal issues for myriad reasons, this is a stark concern.

Los Angeles County Bar Candidate "Evaluations" in numbers and percentages, 2012-2022

LACBA	2024	2022	2020	2018	2016	2014	2012	Total #	Total %
Exceptionally Well Qualified	0	2	0	1	0	1	2	6	4.0%
Well Qualified	11	13	6	6	8	7	3	43	28.7%
Qualified	9	11	13	16	11	11	5	67	44.7%
Not Qualified	6	9	4	4	4	7	6	34	22.7%
Total evaluated	26	35	23	27	23	26	16	150	100.0%

Over the ten years examined, LACBA found *no less than approx. 23% of candidates "not qualified."* In contrast, the similar figure for the San Francisco Bar Association was 4.5%. The next table shows that LACBA is extremely skeptical of private attorneys running for office. *In turn, this adds to the existing privilege enjoyed by established government attorneys.*

Year ⁵	# of private attorney candidates	No. of private attorney candidates "evaluated" not qualified	Percentage of private attorney candidates "evaluated" not qualified	Percentage of "not qualified" candidates who were private attorneys
2020	11	4	36%	100%
2022	9	6	67%	67%
2024	9	3	33%	50%

Conclusion:

Calls abound for greater diversity, including professional diversity, on the bench in California. The California State Legislature and the Governor of California have also legislated for and expressed a strong interest in, respectively, furthering professional diversity on the bench. However, current election law and, in at least Los Angeles County, bar association evaluations of candidates for elected office have an effect that runs counter to that. Private attorneys have virtually no chance of winning an election when running against a government attorney.⁶

⁵ The three most recent years chosen for time and space reasons only. More data is available in the complete dissertation.

⁶ While some government attorneys, typically prosecutors, run unopposed with famous last names or for other reasons, the ten years' worth of research upon which this study was based showed that private-level attorneys were always opposed by at least one, and very often more, government attorney candidates.