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Can Politicians Police Themselves? Natural Experimental Evidence from Brazil’s Audit Courts*

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Abstract

To enhance government accountability, reformers have advocated strengthening institutions of “horizontal accountability”, particularly auditing institutions that can punish law-breaking elected officials. Yet these institutions differ in their willingness to punish corrupt politicians, which is often attributed to variation in their degree of independence from the political branches. Taking advantage of a randomized natural experiment embedded in Brazil’s State Audit Courts, we study how variation in the appointment mechanisms for choosing auditors affects political accountability. We show that auditors appointed under few constraints by elected officials punish lawbreaking politicians—particularly co-partisans—at lower rates than bureaucrats insulated from political influence. Additionally, we find that even when executives are heavily constrained in their appointment of auditors by meritocratic and professional requirements, auditors still exhibit a pro-politician bias in decision-making. Our results suggest that removing bias requires a level of insulation from politics rare among institutions of horizontal accountability.

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1 Introduction

Elections are the defining institution of democracy, yet disappointment with electoral competition's capacity to reliably produce the rule of law is widespread (Hayek 1960; Collier 2011; Fukuyama 2011). Similarly, Madisonian solutions, such as the separation of powers between independently elected executives and legislatures, have frequently failed to foster robust oversight of state functions (O'Donnell 1994; Morgenstern and Manzetti 2003). This disappointment has led scholars and policy makers to argue for the creation of institutional arrangements that can compensate for the failures of legislatures to ensure that officials, particularly members of the executive branch, govern within the bounds of the law. Disillusionment with standard institutional solutions has led to increasing attention to the creation and functioning of *unelected* institutional bodies designed to oversee the state and sanction law breaking by the elected branches.

Among the most common non-elected institutional solutions proposed for constraining the state are “auditing agencies” or formally independent bodies tasked with monitoring government compliance with the law and, in many cases, sanctioning noncompliance. Multilateral agencies such as the World Bank and the Inter-American Development Bank argue that these agencies can be “an essential instrument for development, promoting good governance by improving public sector management” (Dye and Stapenhurst 1998, 10). Prominent theoretical analyses of good governance suggest that horizontal accountability necessitates “state agencies that are authorized and willing to oversee, control, redress, and if need be sanction unlawful actions by other state agencies” (O'Donnell 1998, 19). Furthermore, empirical analyses of how the revelation of government corruption affects political accountability (e.g. Ferraz and Finan (2008)) hinge on the credibility of the auditing institutions which produce the information in the first place.

Of course, the degree to which these agencies actually are able and willing to confront elected officials who break the law differs greatly across contexts (Santiso 2009). To explain this variation, scholars have emphasized—among other factors—the importance of institutional design (Diamond 2002; Moreno, Crisp, and Shugart 2003). Of particular importance are the rules governing how the unelected officials charged with monitoring the state are chosen, particularly the degree to which

the process is shielded from political considerations. Yet, in stark contrast to the vast literature on the institutional rules governing legislatures and executives, empirical assessments of the rules structuring audit agencies and related agencies of horizontal accountability are relatively few.¹

In this paper, we study how the rules governing auditor selection affects the outcome of audits and the extent to which these outcomes are politically biased. Specifically, we take advantage of two unique institutional features governing state-level auditing institutions in Brazil that create natural experimental leverage to test the link between selection rules and audit outcomes. First, state-level audit courts are composed of councilors who are selected by one of a variety of possible procedures: (1) appointed by the executive with few restrictions, (2) appointed by the legislature with few restrictions, (3) appointed by the executive where the nominated member must be a career bureaucrat, and (4) professional "substitute" auditors who are not appointed by the electoral branches. In general and as we discuss in detail below, these selection rules create two sets of auditors: professional bureaucrats and professional politicians. Second, annual audits of government agencies and subnational governments are assigned by *random* lottery to each of the councilors. These two institutional features create variation in the types of officials that are tasked with identifying and punishing malfeasance but remove the potential for confounding induced by strategic selection by the auditors of government actions to investigate. Thus, the research design allows for robust causal inferences on the relationship between official-type and decision-making in investigations of government lawbreaking.

Overall, we find that auditors appointed by the political branches with few restrictions are more reluctant to punish local governments than career bureaucrats. While the average difference between bureaucrats and politicians is modest, there is substantial heterogeneity by the partisan affiliation of the mayor under scrutiny: politician auditors are substantially more lenient towards mayors belonging to the party that appointed them than politicians belonging to other parties. Career bureaucrat auditors are heterogeneous as well: we find that even when governors are heavily constrained in their choices by the requirement to appoint career civil servants, appointed bureaucrats

1. Important exceptions include Mello, Pereira, and Figueiredo (2009), Santiso (2009), and Blume and Voigt (2011)

are less likely to punish politicians when compared to unappointed bureaucrats that are not selected by the executive. The answers we obtain have important implications for institutional design, as appointed politicians and appointed bureaucrats—even when granted strong tenure protections—behave quite differently from unappointed bureaucrats when tasked with ferreting out corruption and law breaking. Ensuring consistency of decision-making and the removal of political bias from the application of the law, according to our results, may require a level of insulation from politics rare among institutions of horizontal accountability.

1.1 Auditing Institutions and Horizontal Accountability

Audit institutions such as Brazil’s Audit Courts are quite heterogeneous organizations that vary both on how the information they generate is used and how they are structured (Santiso 2009; Speck 2011). Most generally, audit institutions are unelected public agencies tasked with generating information about state activities that can be used for a variety of purposes by policymakers, bureaucrats, and the broader public. A primary function of this information is to provide actors—such as legislatures, public prosecutors, and voters—an evidentiary basis for punishing lawbreaking (Schedler 1999). Another common use for information generated by audit institutions is to identify inefficiencies and otherwise poor performance in policy implementation, which can be used by policymakers to reform government processes. In some cases, audit institutions can directly sanction lawbreakers, but generally these agencies are dependent on other actors such as public prosecutors, courts, and voters to punish misconduct.

The heterogeneity in auditing agencies’ goals and capacities is reflected in variation in institutional organization. While some audit institutions are organized around a chief auditor, others are headed by a collegial body or panel of councilors, as is the case of Brazil’s Audit Courts (Santiso 2009). Another dimension of variation, which we examine empirically, is the relationship between the audit institution and the political branches.

The degree to which audit institutions or any bureaucracy in a democracy fulfill their intended role is linked to their relationship with the elected branches and the relationship of the elected

branches with each other (Moe 1984, 768-9). Of chief importance is institutional *independence*, i.e. the degree to which the selection and survival in office of the institution's agents is controlled by elected officials (Wood and Waterman 1991). On one extreme of no independence, a chief auditor may be unilaterally appointed by the executive and serves at his or her pleasure. In this case, the chief executive might prefer to select an agent interested in ferreting out deviations of the bureaucracy from the executive's preferred policies, but who also show little interest in the exposure of politically-damaging law breaking by the executive himself or his allies. At the other extreme of high independence, auditors may be given life tenure by a committee of experts with no formal links to elected officials. Auditors picked under such an arrangement are presumably more willing to confront executive law breaking.

Lack of independence does not imply that auditors cannot generate useful information and sanction wrongdoing, but standard delegative models predict that their behavior will be aligned with the preferences of the electoral authorities that control their selection and persistence in office (Calvert, McCubbins, and Weingast 1989). Audit agencies are often beholden to legislative majorities, for example, and thus likely to be biased in favor of officials belonging to the majority party or coalition. Yet even these legislature-beholden audit agencies may be quite willing to expose malfeasance by the executive, particularly during periods of divided government. Of course, executive dominance of the legislature through partisan ties or patronage is not uncommon, so even nominal independence from the executive may be undermined by cross-branch collusion.

Our research design enables us to test the empirical relevance of the predictions that arise from delegative models of separation of powers when applied to agencies of horizontal accountability. Randomization of cases to councilors and a dependent variable that is comparable across units gives us an unusually strong opportunity to test our proposed hypotheses. Furthermore, in contrast to the existing empirical literature which has relied on cross-national comparisons (Blume and Voigt 2011) and cross-sectional observational studies (Schelker and Eichenberger 2010) potentially confounded by unmeasured factors, we can compare the behavior of different types of officials in a common institutional setting. These design features allow us to observe the degree

to which politicians on the Audit Court behave similarly to bureaucrats, appointed or unappointed, when judging other politicians and thus assess how much political incentives distort political accountability.²

The answers we obtain have important implications for institutional design, for if politicians behave very differently from bureaucrats when tasked with ferreting out corruption and law breaking, the case for insulation of auditors from the elected branches may be considerably strengthened. If, on the other hand, politicians do not exhibit bias towards other politicians, then this would suggest that concerns over political influence via the appointment process are exaggerated or overcome by other institutional factors.

The paper proceeds as follows. First, we provide institutional background on Brazil's state Audit Courts and the annual auditing process of municipalities' government accounts. In the next section, we provide background information and delineate several testable hypotheses drawing from the judge effects and inter-branch delegation literature. In the subsequent sections, we detail our research design, present basic characteristics of our data, and present our results. Finally, we conclude with a brief discussion of the theoretical implications of our results.

2 Audit Courts in Brazil

Audit institutions in Brazil follow the Audit Court (AC) model, where the court acts as a quasi-judicial authority with an independent budget and staff, but headed by ministers or councilors (*conselheiros*) nominated by the political branches. Both federal and state constitutions mandate that the ACs aid the national and state legislatures in overseeing public sector spending and programs by providing independent and professional assessments of compliance with the law. A chief advantage in studying the Brazil's state ACs is that they are collegiate bodies composed of councilors who are selected under different decision rules that imply varying levels of dependence on

2. It is important to stress that in our design, selection procedures are not exogenously assigned, but rather cases are assigned to different types of officials selected under different procedures. While we can examine the correlation between official-type and decision-making behavior that is unconfounded by characteristics of the cases, we cannot necessarily attribute differences in behavior to differences in selection procedures per se.

the elected branches.³ The legal framework in the 1988 constitution grants the state legislature the authority to nominate four out of seven councilors on the court, as well as mandating that two councilors be professional auditors or public prosecutors. In general, to fill the “bureaucrat” slots on the court, the governor must choose, alternately, a career auditor or a public prosecutor off of a list of three nominees presented by the AC.⁴ In addition to the two bureaucrat appointments, the executive can only choose one councilor unconstrained by technical requirements.⁵ Independence of the councilors is further reinforced by the rule that they cannot be removed by the political branches and remain in office until a mandatory retirement age.

Every appointed councilor has to be vetted through a public hearing and win confirmation in the state legislature. Approval is by simple majority, the same process necessary to elect the president of the assembly. In Brazil, governors typically build multi-party coalitions by appointing party members to key executive positions, effectively building a majority in the local legislature (Abrucio 1998; Santos 2001). Consequently, councilors are normally candidates aligned with the governor and/or with the largest party in the assembly, usually representing the strongest member of the political coalition at the time of appointment. While minority parties can propose candidates for the slots appointed by the legislature, those candidates still need to pass the bar of a simple majority. Minority victories only occur in rare cases of coordination failure between parties in the governing or majority coalition. In addition, since legislative minorities do not have the filibuster option in Brazil, opposition groups have little power in the nomination process.

When the court lacks regular councilors due to absences or retirement, unappointed bureaucrats

3. All councilors must meet general requirements: older than 35 and less than 65 years of age; moral standing and “unblemished” reputation; legal, accounting, economic and financial or public administration knowledge; and more than 10 years of experience in a profession related to auditing. Despite these legal provisions, it is often the case that the importance or meaning of reputation, specialized knowledge and experience is interpreted liberally and thus these restrictions are of little practical importance. We can find instances of former journalists, physicians, and dentist serving in ACs, as well as several councilors with criminal charge or under judicial investigation.

4. Typically, this list (known as the *lista tríplice*) is formed by AC’s councilors following rules of seniority and merit. As a result, high performing and long tenured bureaucrats should be favored in the selection process. However, it is possible that internal politics in some instances play some role in the composition of the list. Furthermore, the timing of appointments is not strictly regulated and governors have been known to delay appointing bureaucrats to the AC. These delays and related controversies have led to appointments being frequently contested in court.

5. Of course, in some instances governors might appoint highly qualified bureaucrats to their “unconstrained” slots, even though are not required to do so. In our analyses below, we focus on the appointment mechanism as opposed to the actual qualifications of the appointees since judgments about professional qualifications are likely to be subjective.

(*Conselheiros-Substitutos or Auditores-Substitutos*) temporarily fill vacancies. Substitute auditors are career bureaucrats hired by a competitive and open selection procedure. Generally, substitutes are auditors who regularly prepare the evidence that form the basis of councilors’ overall judgments. While serving as a substitute, an auditor enjoys the same prerogatives and salary as a regular councilor. A substitute can serve until the member returns or, in case of retirement or death, a new one is appointed. In a few cases, Audit Courts hire auditors directly to serve as a substitute. As are summarized in table 1, these rules thus creates four types of councilors: *executive appointed*, *legislature appointed*, *appointed bureaucrat*, and *unappointed bureaucrat*.

Type	Appointed by	Restrictions	Num. Positions
Executive Appointed	Governor, with legislative approval	Minimal	1
Legislature Appointed	Legislature	Minimal	4
Appointed Bureaucrat	Governor, with legislative approval	Selected from a list of 3 public prosecutors	1
	Governor, with legislative approval	Selected from a list of 3 professional auditors	1
Unappointed Bureaucrat	Not appointed	Only professional auditors	NA

Table 1: Appointment Procedures for State Audit Court Councilors. Unappointed Bureaucrats are substitutes that fill vacancies on the court.

The ACs operate at the federal, state, and local levels. The federal AC (*Tribunal de Contas da União* or TCU) is responsible for investigating federal activities, including federal transfers to subnational governments and the operation of state-owned enterprises (SOEs). All 27 states have an analogous institution, designed to monitor each state government and all 5570 of Brazil’s municipalities. These State Audit Courts (*Tribunal de Contas do Estado* or TCE) all have a similar overall structure, but vary substantially with respect to budget and staff size (Mello, Pereira, and Figueiredo 2009).

The role played by politicians in the appointment of councilors—who will ultimately judge the accounts of other politicians—is a common source of criticism both in the press and in academic circles. A common charge is that councilors are selected through political influence irrespective of technical capacity. The perquisites of office—among them high salaries with tenure—is commonly

treated as a reward for politicians approaching the end of their career, especially state deputies belonging to the legislative majority. According to a report prepared by the NGO Transparency Brazil (Paiva and Sakai 2014), based on an examination of all Audit Courts in the country, 60% of councilors were elected politicians before being appointed to an Audit Court. Another 17% are relatives of politicians and 20% faced or were convicted of criminal charges. Alston et al. 2005 claim that the greatest limitation of the Brazilian Audit Court model is the appointment procedure for selecting councilors. Similar criticisms are made by Santiso (2009) and Speck (2011). Paiva and Sakai (2014) goes as far as to say that Audit Courts are designed not to work, arguing that politicians are appointed to neutralize the oversight role of the institution.⁶

Despite these criticisms, Pereira and Melo (2016) show that the information provided by court audits negatively affect the probability of municipal incumbent re-election when corruption is revealed, indicating that the activities of the courts are not as meaningless as some critics argue. Related research by Mello, Pereira, and Figueiredo (2009) shows that broader institutional factors, particularly volatility and political competition, affect the overall performance of the state courts. Specifically, states with higher levels of programmatic political competition are more likely to have professional auditors appointed to the court, as well as reject the annual accounts of the governor. Our research design allows us to directly tests some of the mechanisms postulated by these authors, but we treat the broader institutional setting as fixed given that our comparisons are within states as opposed to across states.

One of the chief means by which ACs oversee state agencies is by annual audits (*prestação de contas*) of federal, state, and local governments. The ACs produce an overall recommendation to accept, accept with reservations, or reject the "accounts" of government entities with respect to compliance with the law. In this proposal, we focus on state ACs' adjudication of municipal accounts, which entails an examination of each municipality's execution of the budget, fiscal man-

6. It is not difficult to find examples of former politicians serving as councilors involved in corruption scandals with charges of influence peddling, money laundering and receiving kickbacks. Robson Marinho, a long serving councilor in the São Paulo Audit Court, for example, was removed from office in 2014 by judicial decision after being convicted for receiving bribes to favor a multinational company with SOE contracts. In a more extreme case, the councilor Luiz Eustáquio Tolêdo was convicted of murdering his wife in 1989, but kept his position in the Alagoas Audit Court. He served a six year sentence where he was allowed to work during the day.

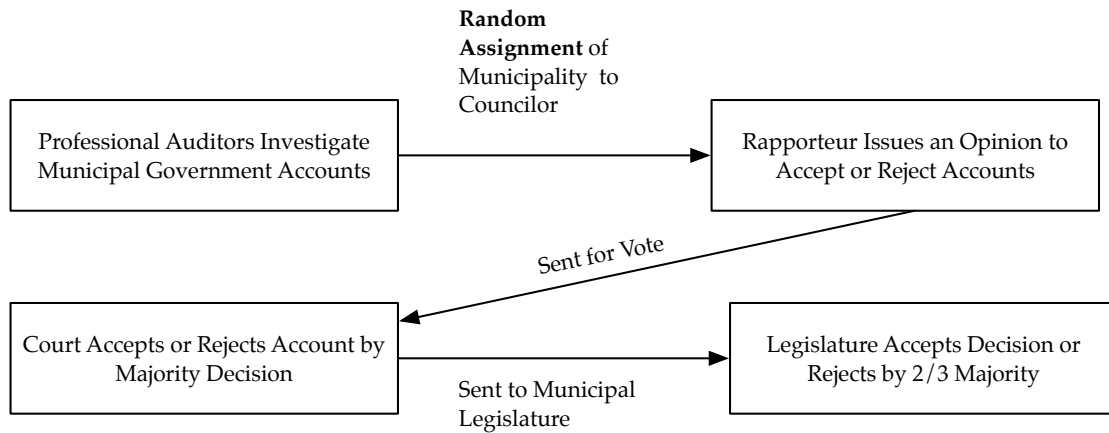


Figure 1: The Municipality Accounts Auditing Process. This figure is a simplified representation of the accounts process and details can vary by state.

agement, legality of contracts, procurement policies, fulfillment of mandated spending requirements, and related matters. This process is carried out in phases, where the first stage is a technical examination of each municipality's accounts by the professional auditing staff and the second stage is a deliberative process involving representatives of the public prosecutor's office and AC councilors. The overall process is illustrated in figure 1. The recommendation of the technical staff and accompanying materials are given to a randomly assigned AC councilor known as the "rapporteur" (*relator*) who adjudicates the case.⁷ Because councilors receive technical assessment and evidence from the AC's permanent staff, the quality of evidence should be the same for all types of councilors. After a defense is presented, the rapporteur generates an opinion for adjudication by the court (or a subset of the court) on whether the municipality's accounts should be rejected, as well as any associated punishments. The court then decides by majority decision whether to uphold the rapporteur's opinion and notifies the municipal legislature about the result (known as *parecer pr vio de contas*). The median time for a court to issue a decision is 2 years, though the process can drag out for many years.⁸

7. The details of the accounts process vary by state. In some states, the rapporteur is randomly assigned before the auditors investigate the municipal accounts. Additionally, the Public Prosecutor advises the rapporteur in arriving at a decision. In some states, the final decision of the court is made by a panel of three councilors (known as a *c mara*) rather than the full court.

8. The length of adjudication is itself subject to political considerations as councilors may seek to delay a final decision until after elections or otherwise slow the process. As we show in the online appendix, political councilors,

The final outcome of the audit process is an overall recommendation of approval, approval with accompanying recommendations for improved compliance with the law (approval with reservations), and rejection. Rejection of accounts, according to Mello, Pereira, and Figueiredo (2009, 1228), is the "most severe sanctions that the [Audit Court] can inflict on a mayor..." The political ramifications of rejection can be severe: at the federal level, for example, the rejection of President Dilma Rousseff's accounts in 2015 was considered grounds for a possible impeachment. In addition to the negative political or electoral effects of the rejection, the court may set a fine, mandate reimbursements for financial losses due to irregularities, and even recommend civil and criminal prosecution. However, because the state ACs are not formally part of the judicial system, enforcement of these rulings are left to the public prosecutors and the courts. Enforcement can be blocked or delayed in the courts due to plaintiffs' extensive right to appeal, the complexity of statutes that govern public expenditures, and the courts' huge backlog of cases. Yet despite inconsistent enforcement in the courts and as we discuss in the conclusion, rejected accounts have become substantially more consequential in recent years due the passage of a law which makes politicians with rejected accounts ineligible to run for elected office for eight years.

3 Hypotheses

Because ACs are quasi-judicial institutions in a civil law legal system, councilor decision-making is ostensibly constrained by legal procedure so as to produce consistent and predictable case outcomes. Yet in practice, whether a municipality's accounts are rejected or accepted can vary widely depending on the councilor assigned as rapporteur. Figure 2 displays the average rejection rate for councilors in our 6 state sample (discussed below). As shown in the figure, some councilors reject the accounts of fewer than 5% of municipalities, yet others reject over 70%. To account for this striking variation, we draw from the judicial politics literature linking judicial identity—encompassing group affiliations such as gender (Boyd, Epstein, and Martin 2010), ethnicity, and political ideology—to decision-making. Councilors are generally elected to their positions on average, issue decisions in *less* time than bureaucrat councilors and there is little evidence of partisan bias.

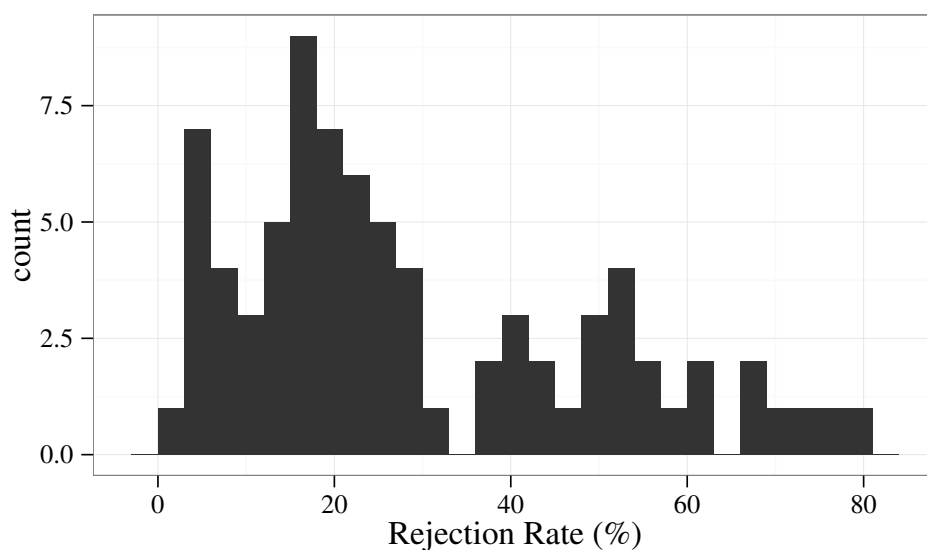


Figure 2: **Variation in Rejection Rates.** Histogram shows the distribution of rejection rates of municipality accounts across 81 councilors in State Audit Courts in 6 states over 10 years. Councilors who adjudicate fewer than 50 cases are omitted.

nicity (Grossman et al. 2015; Alesina and La Ferrara 2014), or party (Pinello 1999)—and case outcomes. Even in highly constrained legal environments, the judge effects literature finds that assignment to judges of distinct group identities can affect case outcomes both in individual-judge and panel settings. These group-based differences in judicial decision-making are typically attributed to ideological differences correlated with group status, such as partisanship and ideology, or through ingroup favoritism, as has been documented by examining differences in case outcomes when accused criminals are assigned to judges of the same or different ethnic group.⁹ For the Brazilian case, Oliveira (2008) provides evidence that the professional background of Supreme Court Justices influence their behavior on constitutional cases.

When the decision is made by a single judge, it is obvious that judge identity such as partisanship or ethnicity can influence the ultimate outcome of the case. However, even in panel settings

9. Judicial decision-making in these types of situations has been modeled as a process of Bayesian updating after receiving a private, noisy, signal about the true state of the world, such as the guilt or innocence of an accused criminal (Iaryczower and Shum 2012; Alesina and La Ferrara 2014). Group-based bias in these models is parameterized as a weight placed on the costs of mistakenly convicting an innocent criminal versus mistakenly exonerating a guilty criminal. Under this framework, judge effects emerge due to group-based differences in the weight placed on each type of mistake.

where a majority of judges must concur with a decision as is the case with ACs, the panel effects literature establishes two important reasons why the initial decision-writer (i.e. the rapporteur) can powerfully affect case outcomes. First, the rapporteur has a first mover advantage due to the time and effort required to challenge, overturn, and rewrite the initial decision. Given the large work loads of the ACs, dissenting majorities are unlikely to pay these costs unless the adverse outcome is consequential. Second, there is extensive evidence that courts tend to operate under a norm of consensus or “dissent aversion” when making routine decisions because judges seek to preserve collegiality by not challenging their colleagues’ decisions (Fischman 2013; Oliveira 2012). In addition to maintaining collegiality, this phenomenon also reflects a norm of reciprocity, where judges decline to disagree with their colleagues, so as to avoid challenges to their own decisions in the future (Posner 2010, 31). Due to these two mechanisms, dissenters would likely only be willing to bear the costs of challenging the rapporteur in important cases, such as the adjudication of the accounts of the governor or mayors of major cities (we test this proposition below).

The primacy of the rapporteur in AC deliberations is evident in data on disagreements between court majorities and the rapporteur. We collected data on full court versus rapporteur decisions in four states¹⁰ and found extremely low rates of disagreement: less than 2% in Maranhão, less than 1% in Pernambuco, 3% in Rio Grande do Sul, and less than 9% in Rio de Janeiro. These data indicate that by far the most important factor in determining court decisions is the recommendation of the rapporteur, which is consistent with empirical evidence on panel decision-making in other settings. Lack of disagreement is not dispositive, however, because agreement might simply reflect the decisions of strategic rapporteurs who always recommend decisions that align with the majority. If being overturned is highly costly for the rapporteur and majorities can easily bear the costs of overturning the initial recommendation, then high rates of agreement would reflect the power of the majority to shape decision-making.¹¹ This scenario is most likely in states with little political competition as most political councilors would be affiliated with a single party or group and can

10. Unfortunately, we were unable to obtain similar data from Bahia and Minas Gerais.

11. This possibility seems relatively unlikely given the large within-state variation in average rejection rates by councilor which indicates little conformity within ACs.

more easily coordinate (Mello, Pereira, and Figueiredo 2009). As such, we examine heterogeneity by a measure of the partisan diversity among political councilors to assess whether bureaucrat councilors are more distinct in their decision-making in politically competitive states.

The chief distinction between our study and the judge effects literature is that instead of group identity such as ethnicity or gender, we focus on the institutional mechanism used to appoint the councilors. In line with standard models of delegation (e.g. Calvert, McCubbins, and Weingast (1989)), we hypothesize that distinct institutional procedures will be associated with councilor biases that comport with the political or career incentives of those with influence over the appointment. These associations arise because the governor or legislature will nominate councilors with biases that further their goals, under the constraint that the nominees must win consent from a majority of the legislature.

The bias in decision-making could reflect strategic considerations by the councilors themselves. Although many politicians on the court are appointed at the end of their political careers, some return to electoral politics after their stint on the AC. For example, Weitz-Shapiro, Hinthorn, and Moraes (2015) finds that retirements from the ACs tend to occur in election years, suggesting that a return to electoral politics is not rare. In addition, politicians on the court have been known to protect family members involved in politics¹², as well as political allies. Because bureaucrat councilors generally are not involved in electoral politics, these considerations should not affect their decision-making.

The differences in decision-making between bureaucrat and political councilors could also arise due to variation in training and socialization. Bureaucrat councilors, for example, are more educated on average than non-bureaucrat councilors, which could lead them to evaluate technical evidence differently from their more political counterparts.¹³ Bureaucrats appointed to the court will typically have served in the institution for many years and they will be more motivated by professional prestige and a desire to cultivate a reputation for technical expertise. Politicians with

12. For example, the President of the Maranhão Audit Court faced accusations that he used his position to pressure mayors to support his son's 2014 run for a seat in the state legislature.

13. Relying on data on education from published CVs, for example, we found that bureaucrat councilors are substantially more likely to have more than one undergraduate degree than other types of councilors.

experience of governing, on the other hand, may be more sympathetic to the challenges faced by mayors in complying with complex bureaucratic regulations. Furthermore, former politicians on the court are more likely to be friends or acquaintances of the mayors they adjudicate, particularly co-partisans. These past relationships can consciously or unconsciously bias former politicians when assessing evidence of law breaking. From the point of view of models of delegation, the precise origin of individual councilors' bias is less relevant than whether or not the bias furthers the goals of those making the appointments.

What are the goals of governors and legislative leaders? With respect to adjudicating the accounts of municipalities, governors and legislators will wish to shield allied mayors from scrutiny and thus will not want their accounts to suffer rejection unless evidence of law breaking is pronounced. As is well established in the literature on Brazilian politics, mayors are important political actors who act as vote brokers and political operatives for gubernatorial and, in particular, legislative candidates (Mainwaring 1999, 151; Bezerra 1999; Novaes 2014). Candidates to state and national office invest considerable resources in cultivating mayors, as mayors have the extensive—often clientelistic—relationships with voters that are relied upon for votes on election day. Given the importance of currying favor with local politicians for the political careers of state-level politicians, the legislature and governor will, when unconstrained, likely nominate councilors who require a high standard of proof in order to reject the accounts of a mayor.¹⁴ In contrast, bureaucrat councilors should be more interested in technical proficiency and status within the institution, which makes them less likely to be sympathetic to the political interests of mayors. This yields our first hypothesis:

Hypothesis 1 *Municipal accounts adjudicated by governor or legislature appointed councilors will be rejected at lower rates than when adjudicated by bureaucrat councilors.*

While we expect political councilors to be more favorable towards local governments than

14. This assumption is a simplification, as politicians may have other goals such as increasing the quality of public services by combating corruption. Governors, who are less dependent on the votes delivered by individual mayors than legislators, may be especially interested in punishing particularly corrupt local officials in order to encourage economic development. The extent to which this is true would reduce the chances of confirming our hypothesis.

bureaucrat councilors, not all mayors will be treated equally. Although party attachments are more fluid in Brazil than some other established democracies, substantial evidence indicates that cross-level partisan ties are important for a range of outcomes including elections (Avelino, Biderman, and Barone 2012) and government transfers (Brollo and Nannicini 2012).¹⁵ As a result, we expect governors and legislatures to appoint officials who are sensitive to the interest of local co-partisans. State-level politicians will seek to forestall the negative electoral and financial consequences of account rejection for co-partisan officials by appointing councilors with biases that further their partisan aims. While this bias is likely to be strategic or conscious, it need not be, as councilors may be unconsciously or implicitly biased towards co-partisans. Whatever the precise reason, governor appointed councilors should be more reluctant to reject the yearly accounts of municipalities governed by mayors belonging to the party of the governor that appointed him than non-co-partisan mayors. A similar logic should pertain to legislature appointed councilors, who should be particularly sensitive to the interests of the largest party of the state legislature.

Hypothesis 2 *Municipal accounts will be rejected at lower rates when the mayor belongs to the same party that selected the assigned governor or legislature appointed councilor.*

In addition to partisan ties, the literature on Brazilian politics emphasizes the importance of multi-party electoral and governing coalitions in shaping executive-legislative relations. As such, councilors may be loyal to the constituent parties of the governor's coalition or the majority coalition in the state assembly, in addition to the specific party of the governor or the largest party in the legislature. Thus, we might expect legislature and governor-appointed councilors to less frequently reject the accounts of mayors belonging to a party in the coalition that appointed the councilor.¹⁶ In the case of governor-appointed councilors, the coalition of the governor should be most relevant,

15. In some states, however, parties are quite weak and party switching is common. As a consequence, party labels may be relatively uninformative in these contexts, thus making it less likely to find evidence of partisan bias. In the online appendix, we provide state-specific estimates of partisan bias.

16. A problem with studying state-level *governing* coalitions is that they tend to change dynamically over time and thus identifying precisely which parties are part of the governing coalition at any particular point in time can be error prone. Furthermore, collecting data on the precise composition of the governing coalition, particularly coalitions in operation decades ago when some of the councilors were appointed, is quite challenging. Due to these constraints, we focus on the governor's *electoral* coalition, which should be correlated with the governing coalition and for which data is more easily available.

while legislature-appointed councilors will be responsive to the majority coalition within the state assembly.

Hypothesis 3 *Municipal accounts will be rejected at lower rates when the mayor's party belongs to the coalition that selected the assigned appointed councilor.*

While the legal requirements for the two bureaucrat positions should substantially diminish the capacity of the legislature and executive to appoint councilors heavily biased towards their interests, it is still the case that the political branches have some discretion in which senior auditor or public prosecutor they appoint. Career bureaucrats are generally more interested in enhancing their prestige within their profession and organization and thus less attune to the interests of professional politicians, but there is likely some variation among career auditors or prosecutors in their propensity to punish mayors. As such, it is plausible that the governor and legislature would seek to appoint the most lenient of the potential bureaucrat councilors.¹⁷ As explained above, however, a large proportion of cases in Brazilian states are adjudicated by unappointed bureaucrats (substitute councilors) who are members of the technical staff of the auditing institution and are not appointed by the political branches. As such, it is plausible that non-appointed bureaucrat councilors are, on average, even less sensitive to the interests of political actors than the appointed bureaucrat councilors selected by the governor. Under a similar logic, appointed bureaucrats should be more sympathetic to mayors who are co-partisans of the governor that appointed them than with mayors from other parties.

Hypothesis 4a *Municipal accounts adjudicated by appointed bureaucrat councilors will be rejected at lower rates than when adjudicated by unappointed bureaucrat councilors (substitute councilors).*

Hypothesis 4b *Municipal accounts will be rejected at lower rates when the mayor belongs to the same party that selected the assigned appointed bureaucrat councilor.*

17. It is also possible that auditors or prosecutors could make an agreement with the governor to favor his political allies in exchange for a permanent position on the court, though we lack evidence on any such arrangements.

In addition to our main hypotheses listed above, basic assumptions about the strategic logic of governors and legislatures also generate predictions about treatment effect heterogeneity. In particular, we expect political considerations to be especially important for the adjudication of the accounts of municipalities where the mayor is an important political actor in state politics. While political importance can depend on a variety of factors, a good proxy is the size of the municipality, as mayors of larger municipalities can influence more voters and thus can be important allies for governors and legislators. As a result, we expect that the contrasts outlined in hypotheses 1, 2, and 3 to increase in magnitude with the size of the municipality.

A similar logic applies to heterogeneity by year in the electoral calendar. Because of delays in adjudication, only audits that occur in the first or second year of a mayoral term are likely to be released in time to influence local elections, which occur every four years. As a result, audits of the first or second year are substantially more politically sensitive than audits in the third and fourth year. Because of this timing issue, we expect governor or legislature appointed councilors to be reluctant to reject the accounts of mayors in the first or second year of office, especially with respect to co-partisans or coalition partners.¹⁸

4 Research Design and Data

The common institutional rule across Brazil's Audit Courts that the annual audits of government accounts are assigned by random lottery to councilors forms the basis of our empirical strategy. To take advantage of lottery, we collected ten years (2000-2009) of municipal audit and councilor data from six Brazilian states: Bahia, Maranhão, Minas Gerais, Pernambuco, Rio de Janeiro, and Rio Grande do Sul.¹⁹ These states are among the largest states in Brazil, containing about 40%

18. Because of term limits that only allow two consecutive terms, timing effects should be especially pronounced in first terms. That said, audits could still be politically relevant in second terms as incumbents may seek to elect a co-partisan successor.

19. These particular states were chosen out of a combination of considerations; specifically data availability, size of the state, and regional diversity. Size of the state was important because statistical power to detect treatment effects depends on the number of municipalities, which are generally more numerous in populous states. Audit data was collected via web scraping of the ACs' public databases of cases. For Pernambuco, we were unable to obtain the original randomization for years before 2003. As a result, instrumental variable estimates drop these years.

of the country's population and 41% of its municipalities, and are heterogeneous with respect to economic and political characteristics. Maranhão, for example, has a GDP per capita of about \$3,500 USD, while Rio Grande do Sul's is almost three times higher at about \$11,000 USD. Politically, the states in our sample are also quite diverse: Maranhão is well known for its oligarchic politics (Cabral da Costa 2006), while electoral politics in Minas Gerais and Rio Grande do Sul are highly competitive and structured around a stable left-right ideological divide (Lima Junior 1997; Santos 2001; Nunes 2013). Given this economic and political diversity, our findings are likely to be broadly applicable to Audit Courts throughout much of Brazil.

To classify councilors we consulted a variety of sources, including news accounts and legislative debates. Preliminary information were obtained through Audit Courts' and state legislatures' websites, consulting official documentation available online. To double check the data, we made formal requests to state Audit Courts using their library system (when available) and Brazil's Freedom of Information Law, as well as sources from newspapers and magazines, official gazettes, interviews with the councilors themselves, and cross-referenced party affiliation data with records from Brazil's National Electoral Tribunal. Specifically, for each councilor, we collected information on year of appointment, branch of government that nominated him or her, prior party affiliation (when former politicians), governor's party at time of appointment, largest party in the state assembly when appointed, electoral coalition of governor when appointed, and if the councilor is a substitute, a bureaucrat or politician.

Our dataset contains over 22,000 cases which encompasses over 2,000 municipalities (see table 2). Because a new randomization occurs every year, the unit of analysis is municipality-year. The average rate of rejection of municipal government accounts by the ACs is about 25%, but this overall average masks considerable state by state variation. In Rio Grande do Sul, the rejection rate is only about 8%, while in Maranhão the rejection rate exceeds 60%. Data on treatment status is missing in a relatively small percentage of cases.

The distribution and number of councilor types can be found in the bottom panel of table 2. We obtained biographical data on 93 different councilors and categorized them into five distinct

Variable	<i>Full Sample</i>	<i>Bahia</i>	<i>Maranhão</i>	<i>Minas Gerais</i>	<i>Pernambuco</i>	<i>Rio de Janeiro</i>	<i>Rio Grande do Sul</i>
# of Municipalities	2,257	417	217	853	183	91	496
# of Cases	22,542	4,170	2,170	8,530	1,830	910	4,932
% of Cases Rejected	24.9	26	66.3	20.5	45.3	14.1	8.3
% with Missing Treatment Data	0.8	0.4	3.7	0.4	0.3	0.5	1.1
# of Councilors	93	12	11	18	23	9	20
# Governor Appointed	20	5	3	4	3	2	3
# Legislature Appointed	37	4	4	7	9	6	7
# Appointed Bureaucrat	13	1	1	4	2	1	4
# Unappointed Bureaucrat	23	2	3	3	9	0	6

Table 2: **Descriptive Statistics.** This table shows descriptive statistics on municipal audits (top panel) and councilor characteristics (bottom panel) for six states for the years 2000-2009.

types. The most numerous type is “legislature appointed”, representing 40% of all councilors. Each councilor adjudicated an average of 231 cases. The substitute councilors, which we call “unappointed bureaucrat”, are relatively numerous but 6 out of the 23 substitutes observed in our sample adjudicated fewer than 25 cases. Note that substitutes were more active in the states of Maranhão, Minas Gerais, Pernambuco, and Rio Grande do Sul, so inferences involving this type of councilor are largely confined to these states.

To evaluate whether rejection rates are affected by partisan considerations, we created a binary variable that measures mayor-councilor partisan ties. In the case of municipalities assigned to governor appointed councilors, this variable measures whether the mayor’s party belongs to the party of the governor that appointed the rapporteur adjudicating the municipality’s accounts. In the case of legislature appointed councilors, this variable indicates that the mayor belongs to the largest party of the legislature at the time of the councilor’s appointment. Among mayors assigned to appointed councilors (non-substitutes), we find a rate of mayor and councilor “co-partisanship” of 16%. For coding coalitions, we classified a mayor as sharing a coalition with the councilor if the mayor belonged to a party that was part of governing electoral coalition at the time of the councilor’s appointment.²⁰ Data for coding party of mayors were obtained from the Supreme

20. For governor-appointed councilors, we classify mayors as being aligned with a councilor if the mayor belongs to

Electoral Court (*Tribunal Superior Eleitoral*).

4.1 Specification and Inference

We treat the natural experiment created by randomization of audits to councilors as a block randomized design. A separate randomization occurs in each state in each year and consequently each state-year pairing constitutes an experimental block. In three states—Pernambuco, Maranhão, Rio Grande do Sul—the assignment lottery is restricted to prevent the same councilor from adjudicating the accounts of any given municipality two years in a row. To account for this restricted randomization procedure, we further stratify municipalities in these states by the identity of the rapporteur in the previous year, which ensures that within each block, treatment assignment probabilities are equal. Controlling for these strata ensures that comparisons could not be confounded by cross-state or time-varying confounders. Randomization ensures that—in expectation—municipal-level differences cannot account for differences in rejection rates across councilors.

As is common in field and natural experiments, there is a degree of non-compliance with random assignment in three of our states where the rapporteur initially assigned to a given municipality does not adjudicate the case. In Maranhão, we observe a small degree of noncompliance due to vacation and retirement. In Pernambuco and Rio Grande do Sul, noncompliance is substantially larger as the initial randomization allocates cases only to appointed councilors, but in practice many cases are redistributed to substitute councilors. In Pernambuco and Maranhão, the second distribution of cases occurs via random lottery, while in Rio Grande do Sul they are distributed to substitutes in order of seniority. Although the majority of redistribution to substitutes occurs due to vacation and retirements, strategic allocation to substitutes is also possible, which would possibly introduce bias. Fortunately, we observe the outcome of the initial randomization before the redistribution to substitutes, thus allowing us to still take advantage of the lottery as an

a party that was formally party of the gubernatorial electoral coalition of the governor in power when the councilor was appointed. We use second round coalition, unless no second round occurred. For legislature-appointed councilors, we classify mayors as being aligned with a councilor if the mayor belongs to a party that was formally part of the electoral coalition of the largest party in the legislature when the councilor was appointed.

instrument. To adjust for this non-compliance, we instrument²¹ the endogenous treatment variable with assignment-to-treatment status as represented by this first stage equation:

$$T_i = \alpha_0 + \pi Z_i + \sum_{k=1}^{K-1} \mu_k B_{ki} + \epsilon_i \quad (1)$$

where T_i is a dummy variable for treatment status (e.g. municipality’s rapporteur is a bureaucrat councilor) that varies at the municipality level, α_0 is an intercept, π is the effect of the instrument on treatment status, Z_i is an assignment-to-treatment indicator (e.g. municipality is randomly assigned to bureaucrat councilor), B_{ki} is a block dummy for the k th block, μ_k is the block effect, and ϵ_i is the disturbance term. The first stage is quite strong across all of our specifications with F-statistics on the excluded instrument well over thresholds recommended in the literature.²²

Our second stage estimating equation is as follows:

$$Y_i = \beta_0 + \tau T_i + \sum_{k=1}^{K-1} \gamma_k B_{ki} + u_i \quad (2)$$

where Y_i is dummy variable for whether the accounts of the municipality are rejected, β_0 is an intercept, τ is the treatment effect, T_i is a treatment indicator, B_{ki} is block fixed effect for the k th block, γ_k is the block effect, and u_i is the disturbance term. As is well known, two stage least squares identifies effects among “compliers”, i.e. municipalities who follow the treatment assignment.²³ In addition to this basic specification, in the appendix we also present covariate adjusted results, which we estimate by including a vector of pre-treatment variables. Standard errors are heteroscedasticity-consistent and clustered on the unit of randomization.²⁴

21. Intent to treat estimates are reported in the appendix.

22. With respect to the *monotonicity* assumption necessary to identify average causal effects among compliers, there is no reason to believe that assignment to a particular type of councilor would induce a municipality to be endogenously assigned to the opposite treatment status. This is especially the case in Pernambuco and Maranhão where municipalities are re-randomized when cases are re-assigned.

23. As pointed out by Angrist (1998), two stage least squares with block fixed effects is not a consistent estimator for the complier average treatment effect, but rather is consistent for a precision weighted complier average treatment effect. In the appendix, we also show results when employing a consistent estimator of the complier average treatment. See Lin (2013) for a discussion of consistent estimation of experimental treatment effects with covariate adjustment.

24. The unit of randomization in four of the six states is the municipality-year, as a distinct randomization occurred each year. In Rio de Janeiro (see *Deliberação 221*, January 30, 2001) and Pernambuco (for example, see *Portaria 438/2008*), however, municipalities were assigned to groups and these fixed groups are randomized to councilors each

Because we perform several hypothesis tests with different sub-samples and treatment variables, conventional p -values risk producing false positives due to multiple testing. To account for this possibility, we report for our main hypotheses—in addition to conventional confidence intervals, p -values that account for multiple testing using the Westfall and Young (1993) bootstrap method. This method controls for the family-wise error rate (the probability that one or more true null hypotheses are rejected), but is less conservative than Bonferroni-like tests because the resampling procedure accounts for the dependence between p -values across individual tests. In addition to our main results, we also report treatment effect heterogeneity by municipality characteristics, but we treat these as exploratory analyses and thus do not adjust these p -values for multiple testing.

For analyses of partisan bias, it is important to account for the fact that the probability of assignment to treatment varies by party. For mayors belonging to minor parties that never successfully elected a governor or achieved a plurality in the legislature, for example, the probability of having a partisan tie to the councilor adjudicating their accounts is 0. Under the same logic, mayors will have a probability of assignment to treatment that is a function of the number of AC councilors serving that year appointed by governors or legislatures controlled by his or her party. To account for this issue, we include a full set of block by party fixed effects when estimating co-partisanship effects, which ensures that comparisons are made within party-strata and any effects are not confounded by cross-party differences.²⁵

An implication of random assignment is that pre-treatment municipality characteristics should not be systematically correlated with the type of councilor assigned to adjudicate the accounts of the municipality. To show that this is the case, in the appendix we examine two contrasts: (1) whether a municipality is assigned to a political councilor (appointed without technical requirements) or a bureaucrat councilor and (2) whether the municipality is assigned to a councilor who

year. The composition of these groups is rather haphazard suggesting that the correlation in outcomes within groups should be rather low and thus only minimally affect precision. Nevertheless, for these states we cluster our standard errors on group-year to account for the process of randomization. As a robustness check presented in the appendix, we also show results where standard errors are clustered on municipality without regard to group or year.

25. Because units that have a 0 or 1 probability of assignment to treatment are effectively dropped from the sample when estimating partisan bias, inferences under this design, are not necessarily applicable to all municipalities in the 6 states we study. Out of the 2257 municipalities in our sample, 1887 municipalities have a positive probability of a party match in at least one year.

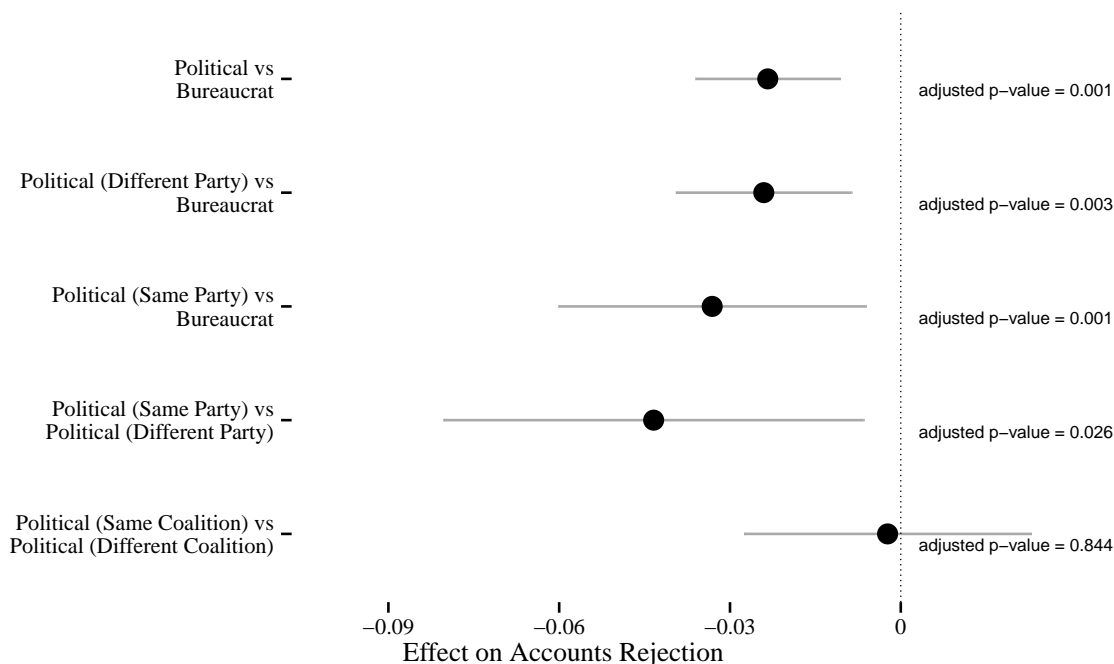


Figure 3: **Political Councilors vs Bureaucrat Councilors.** Point estimates and 95% confidence intervals are from a regression with block (first row) or block by party (second row) fixed effects. Confidence intervals based on standard errors clustered on unit of randomization, which varies by state. Mean of dependent variable in the full sample is 0.25. *P*-values that adjust for multiple testing using the Westfall and Young step-down method are reported in the right margin.

shares a partisan tie with the mayor. On a range of covariates, including lagged values of the outcome variable, lagged values of the treatment variables, and political and socio-economic characteristics, covariate balance is consistent with random assignment.

5 Results

Recall that our first hypothesis posited that bureaucrat councilors would be comparatively more willing to punish mayors than political councilors appointed under less restrictive procedures. To evaluate this hypothesis, we compare the average probability of rejection of municipalities assigned to political councilors (governor appointed or legislature appointed) to those assigned to bureaucrat councilors, be they appointed or unappointed. Estimates of the causal effect of assignment to a political councilor as the rapporteur for the municipality's accounts can be found in the first row

of Figure 3, along with multiple testing adjusted p -values. This estimate supports hypothesis 1, as we find that being assigned to a political councilor decreases the probability of rejection by about 0.023, which amounts to about 9% of the average rejection rate in the sample (0.25). While supportive of the hypothesis, the point estimate is rather small and suggestive of only modest differences in bias between the two types of councilors.

Hypothesis 2 predicts that political councilors will be biased towards mayors with whom they share partisan ties. To test hypothesis 2, we separate the sample of mayors assigned to political councilors by whether or not the rapporteur of the municipality's accounts was appointed by a governor or legislature of the same party as the mayor. According to hypothesis 2, the contrast in rejection rates between political councilors and bureaucrat councilors should be greatest when the mayor and the political councilor share a partisan tie. As evidenced by the coefficients in the second and third rows of Figure 3, our estimates are consistent with this expectation. In row 2, we compare municipalities assigned to governor or legislature appointed councilors appointed by a party *other* than the mayor's party to those assigned to career civil servants. This estimate represents a statistically significant increase in the probability of rejection by about 0.024. Even without a shared partisan affiliation, politician councilors punish mayors at greater frequencies than their bureaucrat counterparts, though the difference remains rather modest.

When the treatment group is mayors assigned to councilors *with* a partisan tie (row 3 in Figure 3), the coefficient increases substantially to a statistically significant 0.033. The magnitude of this effect is more politically meaningful than previous estimates given that it represents about 13% of the average rejection rate in the full sample. Assignment to a councilor with a shared partisan affiliation imparts a distinct advantage to mayors, on average.²⁶

Next, we directly compare rejection rates among mayors assigned to political councilors with whom they share a partisan background to assignment to political councilors without a partisan link. In other words, this comparison holds councilor type constant by dropping cases adjudicated

26. In the online appendix, we show how this effect varies by party. We find that parties sometimes identified as more traditional and clientelistic (PMDB and the PFL/DEM) drive this result, while more councilors appointed by more programmatic parties (PT and PSDB) show no partisan bias.

by bureaucrat councilors and examining only those municipalities assigned to governor or legislature appointed councilors. As shown in row 4 of Figure 3, partisan ties matter substantially. When being adjudicated by a non-bureaucrat councilor, being assigned a rapporteur that was appointed by a co-partisan governor or legislature reduces the probability of rejection by 0.04 when compared to those with accounts adjudicated by councilors appointed by another parties. The estimate for assignment to a councilor who shares an electoral coalition in row 5, however, is small and insignificant. This null result indicates that partisan interests are more potent and enduring than shared interests among coalitional partners, likely owing to the ideological heterogeneity and short-term duration that characterizes most winning electoral coalitions.²⁷

Overall, hypothesis 2 is supported by our data.²⁸ In fact, partisan bias is substantially larger than politician-bureaucrat differences, indicating that differences in partisan interests, on average, are more substantively important for the outcome of decisions than differences in professional background.

5.1 Heterogeneity by Municipality and Court Characteristics

As discussed in section 3, the existing literature would suggest that the differences between politicians and bureaucrats would be especially pronounced in politically sensitive government accounts, especially if councilors acted strategically when adjudicating cases. In an exploratory fashion, we check whether the political-bureaucrat difference, as well as partisan bias, is larger when councilors adjudicate the accounts of larger municipalities and or when adjudicating accounts that could af-

27. This null result may also be due to measurement error, as electoral coalition may be a poor proxy for governing coalitions.

28. One might question why estimate in row 4 is not equal to the difference between the estimates in rows 2 and 3 (i.e. the difference-in-differences). In a block randomized experiment where all units have a positive probability of receiving each treatment condition, this would indeed be the case. In our case, however, within some party-block strata, there is a 0 probability of being assigned to either the bureaucrat or one of the partisan alignment treatments. This issue arises mostly because of the alternation rule used in some states, which mandates that municipalities not be assigned to the same rapporteur two years in a row. As a consequence, the sample of municipalities which contribute to treatment effect estimates differs somewhat across rows 2, 3, and 4. In row 4, the effective sample is compromised of units in strata where units have a positive probability of the "Political (Same Party)" or "Political (Different Party)" treatments, which is not exactly equivalent to the sample that contributes to the estimates in rows 2 and 3.

	<i>Dependent variable:</i>				
	Accounts Rejected				
	(1)	(2)	(3)	(4)	(5)
Political	-0.038*** (0.009)	-0.014 (0.010)	-0.005 (0.007)		
Political x Large Muni	0.030** (0.012)				
Political x Early Period		-0.018 (0.013)			
Political x Diverse			-0.080*** (0.016)		
Political (Same Party)				-0.048** (0.020)	-0.045 (0.030)
Political (Same Party) x Large Muni				0.007 (0.022)	
Political (Same Party) x Early Period					0.002 (0.039)
Block Fixed Effects	X	X	X		
Party x Block Fixed Effects				X	X
Observations	20,786	21,045	21,045	12,718	12,923

Note:

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

Table 3: Heterogeneity by municipality and court characteristics. In specifications with the "Political (Same Party)" variable, sample is restricted to accounts assigned to political councilors. "Large Muni" is a dummy variable indicating that the municipality has a population larger than the median municipality in its state. "Early Period" is a dummy variable indicating that the accounts being adjudicated are for one of the first two years of a mayor's term. "Diverse" is a dummy variable indicating that the accounts were adjudicated in a court with above-the-median political diversity, as measured by the partisan backgrounds of political councilors. Main effects are omitted or perfectly collinear with block fixed effects.

fect local election outcomes (see Table 3).²⁹ Larger municipalities, as classified by whether they are larger than the median municipality in the state, are more politically important and thus one could expect larger treatment effects. We find the opposite: the difference between political and bureaucrat councilors disappears when adjudicating the accounts of larger municipalities (column

29. In the appendix, we also present state-specific and party-specific treatment effect estimates.

1).³⁰ For partisan bias, there is no difference by size of municipality (column 4). Similarly, we expect that political councilors would be more lenient when adjudicating the accounts from the first two years of a mayor's term because these audit results would be more likely to be published in time to affect the next election. Against expectations, we find no heterogeneity for the politician-bureaucrat contrast (column 2), nor for partisan bias (column 5). These results provide suggestive evidence that politician councilors may not be particularly strategic and that differences between politician and bureaucrat members of the court are more likely due to differences in socialization or taste-based biases. That said, our measures of political sensitivity are only rough proxies, so these results should be interpreted with caution.

Next we test the hypothesis that the composition of the court itself may play an important role in moderating the distinction between bureaucrat and politician councilors. As argued by Mello, Pereira, and Figueiredo (2009), bureaucrat councilors will be less likely to punish governments when they operate in a politically monolithic court out fear of reprisals from allied councilors. In a more politically diverse setting, coordination among politician councilors will be less likely and bureaucrat councilors will have a freer hand to implement their preferred outcome. To test this, we classified each state-year as whether it was above or below the median in the diversity of partisan backgrounds of the politician councilors.³¹ As shown in column 3 of Table 3, we find strong support for this hypothesis. In less diverse courts, bureaucrat councilors punish mayors at the same rate political councilors, while in more diverse courts, bureaucrat councilors are much more likely to reject accounts. In fact, in more politically diverse courts, the effect of assignment to a bureaucrat councilor is an 0.08 increase in the probability of an accounts rejection, which is four times the magnitude of our full sample estimate.

30. A post-hoc explanation for this unexpected finding might be that decisions on accounts for larger municipalities receive more scrutiny and consequently councilors feel more constrained when adjudicating these accounts. We have no direct evidence on this point, however.

31. We operationalize political diversity by computing the proportion of political councilors who belong to the largest party represented on the court in each year, where partisanship is measured by the party of the governor or legislature that appointed them.

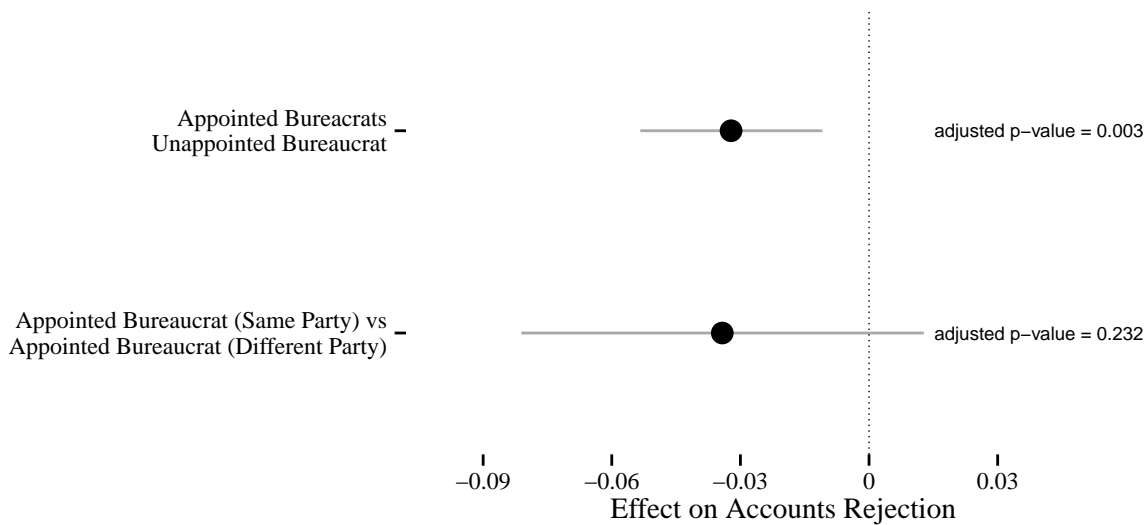


Figure 4: **Unappointed vs Appointed Bureaucrat Councilors.** Point estimates and 95% confidence intervals are from a regression with block (first row) or block by party (second row) fixed effects. Confidence intervals based on standard errors clustered on unit of randomization, which varies by state. Mean of dependent variable in the full sample is 0.25. Specification used in the second row was not pre-specified. For pre-specified comparisons, P -values that adjust for multiple testing using the Westfall and Young step-down method are reported in the right margin.

5.2 Do Appointed Bureaucrats Differ from Unappointed Bureaucrats?

Up until this point, we have found consistently negative, albeit mostly modest, effects of assignment to political as opposed to bureaucrat councilors. Grouping together appointed and unappointed (substitute) bureaucrats into a single category, however, may mask substantial differences between the two types of councilors. Because appointed bureaucrats are selected by the governor and approved by the legislature, appointed councilors—even if they are professional civil servants—may be chosen precisely because they tend to be favorable to politicians, particularly co-partisans of the governors. If so, the difference in rejection rates between appointed and *unappointed* councilors should be negative. Before discussing results, it is important to note that our inferences about unappointed bureaucrat councilors have more limited external validity than previous estimates. In Rio de Janeiro, Pernambuco, and Rio Grande do Sul, the substitutes councilors are not eligible to be assigned cases in the initial randomization. As a result, for these states we have no instrument for assignment of unappointed bureaucrats and consequently these states do

not contribute to our estimates.

As evidenced by the top row of Figure 4, we find that assignment to bureaucrats appointed by the governor lowers the probability of rejection by a statistically significant 0.034. To make a direct comparison with the results from Figure 3, assignment to a political councilor as opposed to an *unappointed* bureaucrat, decreases the probability of rejection by 0.046, which is twice the size of the estimated treatment effect when the comparison group is a mix of both types of bureaucrats. When the political councilor was appointed by the same party of the mayor whose accounts he or she is judging, the effect size is a substantial -0.093 , which is almost 40% the full sample mean. These latter two estimates were not pre-specified in the analysis plan, but nevertheless suggest that there are very large benefits for mayors whose accounts are assigned to a partisan ally when the alternative is an *unappointed* career civil servant.

Overall, these results indicate that the difference between political councilors and bureaucrat councilors reported in Figure 3 is driven by the unappointed bureaucrats.³² Indeed, when unappointed bureaucrats are removed from the sample, the difference between politicians and bureaucrats is a statistically insignificant 0.002 (standard error: 0.007). Though not pre-specified, this estimate indicates that with respect to their observed behavior, appointed bureaucrats are closer to political councilors than to unappointed bureaucrats. In fact, we find some, albeit weaker, evidence that appointed bureaucrats are biased towards the parties of the governors that appointed them. When we compare rejection rates among municipalities assigned to an appointed bureaucrat with a partisan tie versus assignment to a bureaucrat without a partisan tie (row 2 of Figure 4), we find an imprecisely estimated difference of -0.034 . Surprisingly, even heavily restricting the choice set of the executive does not prevent the selection of politically biased councilors.

An explanation for this result could be that the constraint faced by the executive when choosing bureaucrats may be less restrictive than it first appears or that the composition of the executive's choice set is subject to political manipulation. The formal criteria governing the composition of

32. Because the number of appointed bureaucrats are relatively few, this inference is somewhat more sensitive to the behavior of individual councilors and thus one should be cautious on the external validity of this conclusion. In the appendix, we show the sensitivity of our estimates to dropping individual councilors from the dataset. Comparisons involving appointed bureaucrats are indeed more sensitive to omission or inclusion of particular individuals.

the list of three senior auditors or public prosecutors eligible for appointment by the governor emphasize seniority and "merit", but the actual process often involves an internal election. This internal election process could allow for executive influence over the final composition of the list through partisan and other political ties with the councilors who serve as voters. Or more generally, the career bureaucrats who expend effort on "winning" this internal selection process may be more willing to strike political bargains than those that do not.

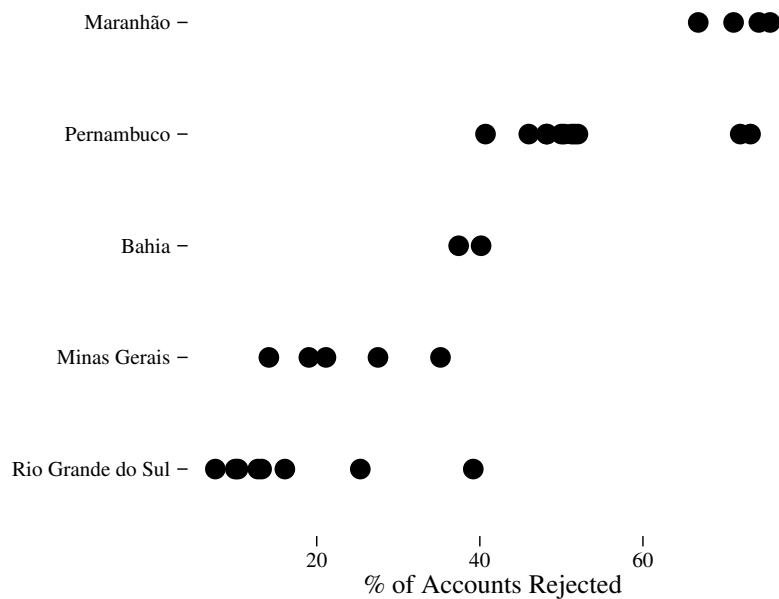


Figure 5: **Rejection Rates of Unappointed Bureaucrats.** Each dot represents the average rejection rate of one unappointed bureaucrat.

However this list is constructed, if there is sufficient variation in the degree of pro-politician bias among the civil servants in the choices available to the governors, then the executive may succeed in choosing a bureaucrat substantially more aligned with his interests than the average civil servant. Some exploratory evidence for this is presented in figure 5, which plots the distribution of account rejection rates by unappointed bureaucrats, with each dot representing one bureaucrat³³. As is evidenced by the figure, in most states there is considerable variation in the willingness of unappointed bureaucrats to punish mayors, as proxied by the average rejection rate. Given that the

33. In Rio de Janeiro, substitutes never adjudicate cases, so no data is available for this state.

auditors who act as substitutes are frequently the same civil servants eligible to be chosen by the governor, this variation indicates that executives often will have the option of choosing relatively lenient bureaucrats even when constrained to choose one among a menu of three options.

Type	% Accounts Rejected	# of Councilors	# of Accounts
Never Appointed	45	27	5066
Eventually Appointed	37	8	2560

Table 4: **Comparing Eventually Appointed and Never Appointed Bureaucrats.** This table shows the rejection rates of career auditors who were either eventually or never appointed by the governor to the Audit Court.

Further evidence that governors do succeed in choosing civil servants who are less likely to punish politicians can be found in Table 4. This table classifies unappointed bureaucrats into two categories: those who would eventually be appointed by the governor to a fill a position on the accountability court and those who would never be appointed (as of 2010). As the table demonstrates, civil servants chosen by the governor have rejection rates (before appointment) that are meaningfully lower than those bureaucrats never selected to be formally on the court. This roughly 8 percentage point difference is consistent with the hypothesis that governors strategically choose the most pro-politician choice available to them, which then produces the small difference between appointed bureaucrat councilors and politician councilors.

6 Conclusion

Despite the general consensus that institutions of “horizontal” accountability matter for reigning in government malfeasance, there is relatively scant evidence on question of how these institutions can be designed to best fulfill their promise. In this paper, we study how selection procedures affects the propensity of auditors to punish government officials. Our empirical analysis suggests that constraining those who appoint the auditors matters for subsequent behavior, as auditors appointed by relatively lax procedures and who tend to be politicians, are relatively less likely to punish subnational officials than career civil servants. Yet even career civil servants appear to ex-

hibit some bias towards politicians when they are appointed by the political branches. This finding calls for more research on the relationship between elected officials and the bureaucratic staff of accountability agencies, particularly on how civil servants— despite strong tenure protections and meritocratic promotion criteria—behave as political actors and respond to political incentives.

These results also have implications for the increasing reliance on unelected bodies such as auditing institutions and judicial courts to "correct" failures of the electoral process to select honest and competent public officials. Brazil is a case in point. The passage of the so called 'Clean Slate' law in 2010 created a new rule that bans politicians from holding elected office for 8 years after their accounts are rejected by a state or federal audit court. In 2014, for instance, the Public Prosecutor's office sued to prevent almost 500 candidates from running for office, with the majority of challenges attributed to a rejection of accounts.³⁴ This law—even if inconsistently enforced—has dramatic consequences for the importance of these auditing institutions as their power over the careers of politicians has sharply increased. Yet our results indicate that the decision of these courts is partly a function of the partisan identity of the politician facing judgement. Given that a politicians' career is now on the line, losing the "lottery" of case assignment can have enormous consequences for an elected official. From a normative perspective, it is troubling that factors apart from the merit of the case such as party can have such serious consequences.

But perhaps of greater concern are the implications for voter welfare. While a fuller theoretical analysis is needed, the growing power of the accountability courts will plausibly lead politicians to increase their efforts towards obtaining favorable judgments from them. If the interests of the courts are well aligned with the interests of the voters, such a change may incentivize better performance from politicians. If on the other hand, the goals of the court do not perfectly align with those of the voters, then politicians may sacrifice some effort to comply with court demands that otherwise would be spent pleasing the electorate. Such a shift could have troubling implications even if the court's decision-making was free of political considerations. For example, accountabil-

34. Press Release by the Federal Prosecutor's Office. Accessed on September 15, 2014:
http://noticias.pgr.mpf.mp.br/noticias/noticias-do-site/copy_of_eleitoral/eleicoes-2014-mpf-impugna-mais-de-4-mil-candidatos-sendo-500-pela-lei-da-ficha-limpa

ity agencies may be more interested in formal compliance with the letter of the law, rather than policy innovations tailored to the needs of the electorate. Strengthening accountability courts could have the unintended consequence of increasing the conservatism and sluggishness of local governments, as fear of inadvertently breaking the law could paralyze policy-making and innovation.

Even more troubling, however, is if partisan decision-making by court councilors incentivizes local officials to follow the priorities of their governor or legislative majority rather than their local constituency. In such a scenario, increasing the power of agencies of horizontal accountability may end up *undermining* electoral accountability and political responsiveness.

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