

# The Racial Integration of a Deep South Judiciary

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## Abstract

Scholars of the American South note the struggle to overcome legacies of slavery and Jim Crow. One sign of a region's progress is its advancements in descriptive representation in public life. But the literature knows very little about the integration of southern courts. Here, we examine descriptive representation on trial courts of general jurisdiction in one Deep South state: Alabama. We develop a unique, longitudinal dataset including every judicial selection event for Alabama's circuit courts from the state's admission to the Union to the present (1819-2024). We find that the Alabama trial courts only reached parity with statewide racial demographics as recently as 2023, 28 years *after* the legislature did so. We find the absence of preclearance requirements under the Voting Rights Act, along with remarkable racial polarization among the electorate hindered racial integration, while judicial elections, coupled with majority-minority districts, have been essential to progress.

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## Introduction

The American South's political and social history is in large part defined by race. Prior to the federal passage of civil and voting rights legislation in the 1960s, the South was typified by a political system of one-party authoritarianism. Monied interests and white supremacists protected their status and wealth via mass disfranchisement of the poor and the politics of race (Key 1949; Mickey 2015). But with the dismantlement of Jim Crow in the latter half of the twentieth century, democracy came on the heels of voting rights to southern states—especially Deep South states where voting rights had been most suppressed (Bullock and Gaddie 2009). From the 1970s through the 2000s, minority representation in southern state legislatures, county commissions, boards of education, sheriff's offices, and other public institutions gradually swelled until reaching parity with the proportion of each state that is African American (Bullock and Gaddie 2009; Hood, Kidd, and Morris 2012; Joint Center for Political Studies 1994).

Academic studies of the South have long considered how democracy and descriptive representation came to the region in the face of generations of racial discrimination (Brooks 2004; Mickey 2015), how voters realigned themselves in light of these new politics (Black and Black 2002; Carmines and Stimson 1989; Hood and McKee 2022; Hood, Kidd, and Morris 2012), how racial minorities won positions as policy-makers (Bullock 2010; Bullock and Gaddie 2009; Bullock et al. 2019), and how politicians and public institutions have adapted to racial diversity (Black and Black 2002; Gamble 2007; Maxwell and Shields 2019; Preuhs 2006). Largely absent from these inquiries, however, has been an assessment of the causes or consequences of racial integration of one branch of southern state government—the courts.

State and federal courts are political institutions. Common law courts with the power of judicial review can nullify laws, policies, or actions of government officials, and their interpretation of policy contributes to the broader corpus of American law. To the extent that southern politics research has considered courts at all, it is primarily with respect to *federal* courts and their role in dismantling Jim Crow

policies (Bass 1981; Giles and Walker 1975; Peltason 1971; Vines 1964). State courts receive scant attention in southern politics research.<sup>1</sup>

This omission is important for several reasons. First, absent some issue touching upon federal law, the adequate and independent state grounds doctrine provides that state courts remain the final arbiter on matters related to state law, and state courts use this doctrine strategically to avoid federal precedents that contradict their preferences (Fix and Kassow 2020). What's more, the vast majority of cases in the United States take place in state, not federal courts, primarily due to issues like jurisdiction. When a citizen is called upon to perform public service as a juror, it is almost always in a state court. When someone runs afoul of the law, or when they are the victim of crime, they must appear nearly always before a state judge. When parties seek to end marriages, settle child custody arrangements, resolve estates, enforce contracts, or seek compensation for damages, it is a state court to which they must nearly always turn for relief.

Aside from matters related to case volume or voter familiarity, state courts should be important to scholars of the American South because these political institutions were complicit in maintaining and enforcing the system of racial apartheid and white supremacy prevalent prior to federal intervention. State judges could be powerful actors in parochial local politics and state Democratic parties (Key 1949). State courts were the institutions responsible for enforcing discriminatory Black Codes, which criminalized activities such as vagrancy—a crime enforced primarily against black men to create a form of neo-slavery (Blackmon 2008). Southern courts were also used to legitimize death sentences for African Americans that some scholars have likened to little more than state-sponsored lynchings (Steiker and Steiker 2016).<sup>2</sup> State courts were the institutions used to exonerate white supremacists who acted to enforce white social mores around race, especially those involving sexual taboos (Ross 2004).<sup>3</sup> Put simply, southern state courts were

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<sup>1</sup> Vines (1965), however, provides one excellent exception to this trend.

<sup>2</sup> Indeed, until very recently, state laws in places like Alabama and Florida allowed judges—individuals subject to popular votes for their continuance in office—to over-rule a jury's life-sentence recommendation in capital cases and instead impose a sentence of death (Radelet and Cohen 2019).

<sup>3</sup> Perhaps most infamously, an all-white, all-male jury in Sumner, Mississippi took only 67 minutes to acquit two of the men accused of lynching Emmett Till (Tyson 2017). Till was alleged to have engaged in sexually crude behavior with respect to Carolyn Bryant Donham, a white woman in Money, Mississippi, located in the Delta region of the state—an area with a large African American population and home to some of the worst racial violence associated with Jim Crow (Key 1949).

hardly engaged in a dispassionate, color-blind application of the law prior to federal intervention; they were active participants in a system steeped in white supremacy, violence, and intimidation. Scholars have expended significant resources to understand how Jim Crow lawmakers were succeeded by more representative groups of politicians. Understanding how the color line was broken in state courts, and how African Americans changed local systems of justice is a compelling and necessary research agenda.

In this work, we take an initial step in attempting to address some of these problems. We study the racial integration of one Deep South state judiciary—Alabama. We believe Alabama makes for an ideal case study, largely because it epitomizes many of the features associated with southern politics. For example, during the antebellum period, the state had one of the largest populations of enslaved persons in the United States. So central was slavery to the state’s ruling class that, in response to Abraham Lincoln’s election as president, the state played a dominant role in the road to civil war, hosting secession delegates and eventually serving as the early capital of the Confederate States of America (Thornton 1978). So deep-rooted was the legacy of slavery in Alabama that a pervasive culture of racial animus helped produce one of the South’s most dysfunctional one-party systems, along with a Jim Crow regime that exhibited some of the worst excesses of the era (Acharya, Blackwell, and Sen 2018). Public figures like George Wallace hijacked the state’s politics and whipped supporters into violent frenzies (Carter 2000). During this period, Alabama played host to some of the most infamous moments in civil rights history: Wallace’s “stand in the schoolhouse door,” the bombing of the 16<sup>th</sup> Street Baptist Church, the beatings of voting rights activists on the Edmund Pettis Bridge, the use of police dogs and fire-hoses on civil rights marchers, the fire-bombing of the Freedom Riders’ buses, and the kangaroo court that sentenced the Scottsboro defendants to death (Carter 2000; Flynt 2004).

Not coincidentally, Alabama also witnessed some of the most important achievements of the Civil Rights Movement. In 1955, Rosa Parks refused to give up her seat and helped spark what scholars typically identify as the beginning of the Civil Rights Movement with the Montgomery Bus Boycott. These protests helped to cement local pastor, Martin Luther King, Jr.’s, status as a civil rights leader. Ten years later, civil

rights activists' Selma-to-Montgomery march was instrumental to the passage of the Voting Rights Act of 1965.

Even after federal intervention, Alabama politics have continued to exhibit strong racial divisions (Acharya, Blackwell and Sen 2018; Cotter and Stovall 2013; Hughes 2022; McKee 2019). Today, partisan affiliations amongst state officeholders are almost entirely segregated by race. And in recent years, the Republican-dominated legislature has run roughshod over the vehement protests of its black members as it has passed legislation, for example, to protect Confederate monuments from removal, even as neighboring Deep South states like Mississippi, Louisiana, Georgia, and South Carolina have taken steps to remove some of their more prominent Lost Cause symbols. In short, the politics of Alabama was, and continues to be, the politics of race, which, as Key (1949) has observed, is the politics of the South.<sup>4</sup>

To execute our research design, we gather a unique, one-of-its kind dataset of every judge having served on Alabama's trial courts of general jurisdiction from the state's admission to the Union in 1819 through 2024. We assess the patterns, pace, and causes of racial integration in Alabama's judiciary. We find that the integration of the courts badly lagged other public institutions such as the legislature, which reached parity with the proportion of the state's black population around 1995 at 25 percent. By contrast, black judges only attained a similar level of parity on trial courts in 2023, or 28 years after the state House.

We find that the methods by which courts diversified varied by jurisdiction and era. The first black judges began taking the trial and appellate bench in the late 1970s and early 1980s. Initially, most of these individuals were appointed by Democratic governors during a period when the Alabama Democratic Party remained competitive statewide with a biracial coalition of white and black supporters. Today, black judges primarily come to the bench via popular election. Nevertheless, due to the remarkable and persistent degree of racial polarization in the state, we find that black judges typically only emerge from substate geographies

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<sup>4</sup> Or, in Key's (1949, p. 5) words, "In its grand outlines the politics of the South revolves around the position of the Negro. It is at times interpreted as a politics of cotton, as a politics of free trade, as a politics of agrarian poverty, or as a politics of planter and plutocrat. Although such interpretations have a superficial validity, in the last analysis the major peculiarities of southern politics go back to the Negro. Whatever phase of the southern political process one seeks to understand, sooner or later, the trail of inquiry leads to the Negro."

with substantial black populations. Unlike many legislative seats in the South that were integrated due to court-ordered reapportionment or redistricting, these increases in judicial diversity happened without the assistance of federal courts or oversight from the U.S. Department of Justice. We conclude our analysis with some policy implications related to our findings, including institutional arrangements that might promote greater descriptive representation on southern courts. We then briefly outline what a continued research agenda might look like for race, law, and courts in southern politics.

### **Race and Alabama Politics**

Alabama was an epicenter of chattel slavery between the years following its 1819 admission to the Union and its 1861 secession (Thornton 1978). Political institutions like the Alabama state legislature, however, became more representative following the Civil War and during Reconstruction (see Figure 1). In 1868, for example, 30 percent of the seats in the Alabama House of Representatives were held by African Americans (Bailey 2010). But following Reconstruction, and particularly with the adoption of the state's Jim Crow Constitution of 1901, African Americans were purged from the electorate and public office by white supremacist Democrats. The new order would create punishing cumulative poll taxes, literacy and understanding tests, residency requirements aimed at disfranchising tenant farmers, and restrictions on home-rule, especially on issues like taxation (Key 1949). And when all these legal provisions failed to suppress the state's black citizens, informal, violent methods were implicitly on the table.

From the adoption of the Alabama Constitution of 1901 and well into the 1960s and early 1970s, the state's politicians kept economic progress off the agenda largely through strategic appeals to race (Hughes 2018). During the Civil Rights Era, politicians stoked racist rhetoric following federal court judgments such as *Brown v. Board of Education* (1954).<sup>5</sup> Demagogues like John Patterson and George C. Wallace defeated more moderate candidates such as Albert Brewer and Jim Folsom, who declined to make such overt appeals and instead advocated for better government and a new constitution (Carter 2000). This

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<sup>5</sup> See 347 U.S. 483 (1954).

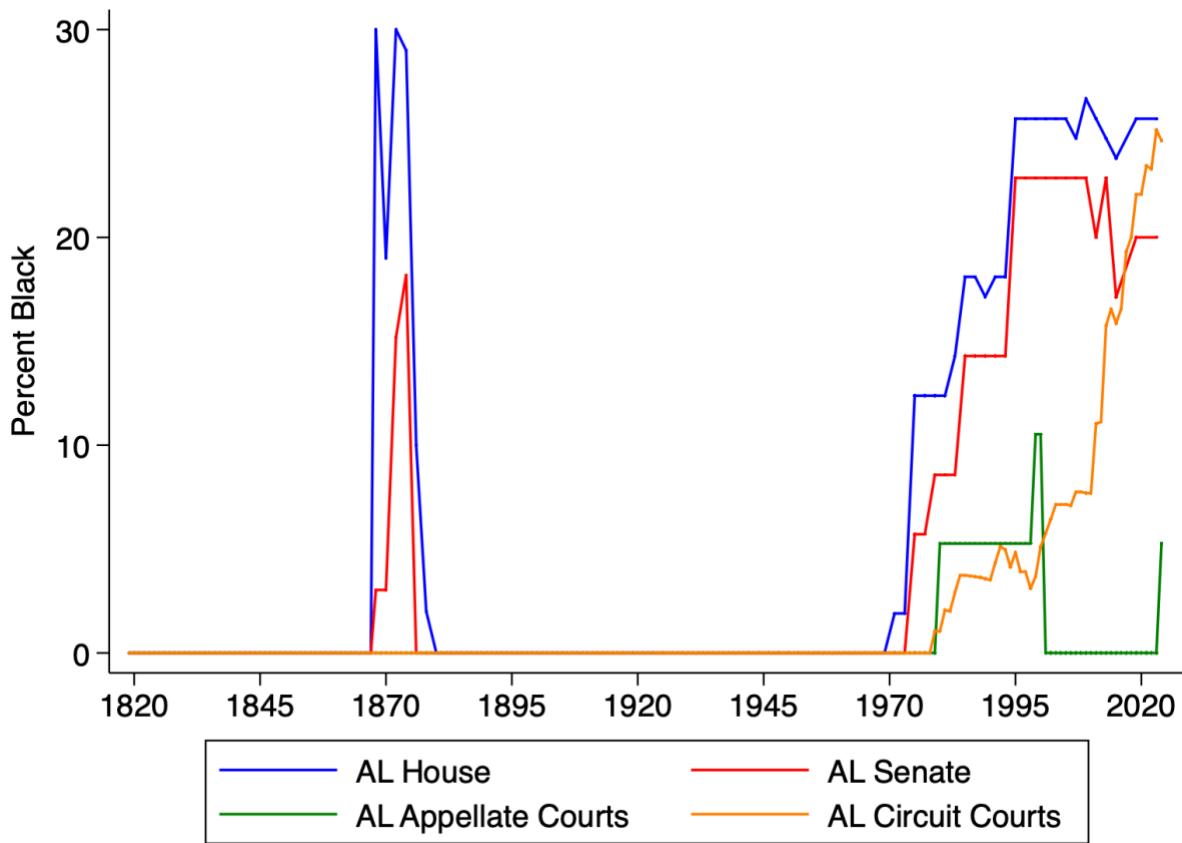


Figure 1: Percent of the Alabama House, Senate, appellate courts, and circuit courts (trial courts of general jurisdiction) that are black between 1819 and 2024; Sources: Data on the Alabama House and Senate are derived from Bailey (2010), Bullock and Gaddie (2009), and from original sources developed by the authors. Data for Alabama's appellate courts are gathered from original data sources developed by the authors. Data for the circuit courts were provided by the Alabama Supreme Court Law Library, in addition to original data sources derived by the authors.

rhetoric also helped to inspire acts of domestic terrorism such as Klan bombings around Birmingham's black neighborhoods and churches (Carter 2000).

Thanks in part to grassroots activists, federal intervention, and changes to rules at the Democratic National Convention, Jim Crow in Deep South states was gradually brought to heel in the 1950s and '60s (Brooks 2005; Mickey 2015; Rosenberg 2008). One of the most important pieces of legislation helping to end Jim Crow was the Voting Rights Act of 1965 (VRA), which had its biggest and most immediate effect upon Deep South states (Bullock and Gaddie 2009). In 1964, only 19 percent of Alabama's eligible black population was registered to vote. By 1967, that figure had increased to 52 percent—a 174 percent increase over just three years (U.S. Commission on Civil Rights 1968). What's more, this increase in minority

Table 1: Turnout and representation in Alabama's legislative contests (1962-2022)

Election Year	VAP Turnout	House Pct. Black	Senate Pct. Black	House Pct. Democrat	Senate Pct. Democrat
1962	17.1	0	0	100	97.1
1966	44.5	0	0	98.1	100
1970	41.9	1.9	0	100	100
1974	24.9	12.4	5.7	96.2	100
1978	29.2	12.4	8.6	92.4	91.4
1982	40.2	14.3	8.6	84.8	85.7
1986	41.9	18.1	14.3	78.1	80.0
1990	40.6	18.1	14.3	70.5	65.7
1994	38.3	25.7	22.9	67.6	62.9
1998	40.2	25.7	22.9	61.0	71.4
2002	40.6	25.7	22.9	60.0	71.4
2006	36.0	24.8	22.9	57.1	60.0
2010	41.5	25.7	20.0	37.5	34.3
2014	31.9	23.8	17.1	31.4	25.7
2018	45.4	25.7	20.0	26.7	22.9
2022	35.9	24.8	20.0	26.7	22.9

Notes: Voting data gathered from the Alabama Secretary of State's website along with the U.S. Census Bureau. Source of data on race in the Alabama legislature is from Bullock and Gaddie (2009) for all dates up to 2006. Data from 2010 to 2022 gathered by the authors.

participation had a near immediate effect upon descriptive representation in state government (Bullock and Gaddie 2009). We present figures relating to race, turnout, and representation in Alabama in Table 1.

Prior to the passage of the VRA, turnout in Alabama's gubernatorial elections was less than 20 percent of the voting age population, and the legislature was dominated by white Democrats.<sup>6</sup> Voter turnout for state constitutional elections steadily grew after voting restrictions were abolished and federal registrars deployed, plateauing at roughly 40 percent. The 1970 elections saw the first return of minority representation to the Alabama legislature since Reconstruction. By the mid-1990s, the proportion of the Alabama House and Senate held by African Americans roughly equaled their share of the population following redistricting efforts. What's more, we see that as African Americans joined the legislature (overwhelmingly as Democrats), Republican representation in the legislature also increased.

<sup>6</sup> Alabama holds elections for its state offices two years before and after presidential elections. Alabama's legislature consists of an upper and lower chamber. The House has 105 seats, and the Senate has 35 seats. Each of these 140 seats are up for election every four years simultaneously with all statewide executive offices.

As African Americans mobilized into the electorate, whites strategically realigned themselves with the Republican Party (Hood, Kidd, and Morris 2012). By the late 1980s, the Republican Party was able to better compete up and down the ticket, and formerly segregationist Democrats like George C. Wallace were forced to turn to black voters to help shore up their electoral margins (Carter 2000; Cotter and Stovall 2009; Frederick 2007). Survey research finds that by the turn of the century, Alabamians were nearly evenly divided between Democrats and Republicans (Cotter and Stovall 2009). In 2000, Republicans swept the appellate courts, and in 2002 they captured the governorship. By 2010, Republicans captured the state legislature for the first time in 136 years.

Since the GOP recaptured the state legislature, Democratic losses have only worsened as increasing numbers of white Alabamians joined the Republican Party. By 2023, the share of black representation in the House and Senate was nearly the same as it was a quarter-century earlier. But Democratic shares of the House and Senate over that same span have been decimated. Since 1995, House Democrats have watched their caucus shrink by approximately 61 percent. Clearly, the Democrats losing office are conservative whites who have nearly all been replaced by conservative, white Republicans. Today, the partisan realignment is essentially complete. In the current iteration of the Alabama legislature, the Republican Party, with one exception, is entirely white, and all but two legislative Democrats are black.<sup>7</sup>

### **The Alabama Judiciary**

Like its federal counterpart, the Alabama judiciary is multi-tiered (see Figure 2). First, there are a total of 19 appellate court judgeships. There are two intermediate courts of appeal, each consisting of five judges, which are the Alabama Court of Civil Appeals and the Alabama Court of Criminal Appeals. Atop the judicial hierarchy sits the Alabama Supreme Court, which consists of one chief justice and eight associate justices. The Alabama Supreme Court is the court of last resort for all civil and criminal appeals in the state

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<sup>7</sup> The sole black Republican in the legislature is Kenneth Paschal, who represents a suburban state House district (District 73). The only white Democrat in the Alabama House is Neil Rafferty (District 54), a former Marine who represents a highly affluent district in Birmingham. He is also the only openly gay member of the Alabama legislature. The only white Democrat in the Alabama Senate is Bill Beasley (District 28). Beasley's district is majority African American and captures large swaths of the state's eastern Black Belt, including Clio, the hometown of former Governor George C. Wallace.

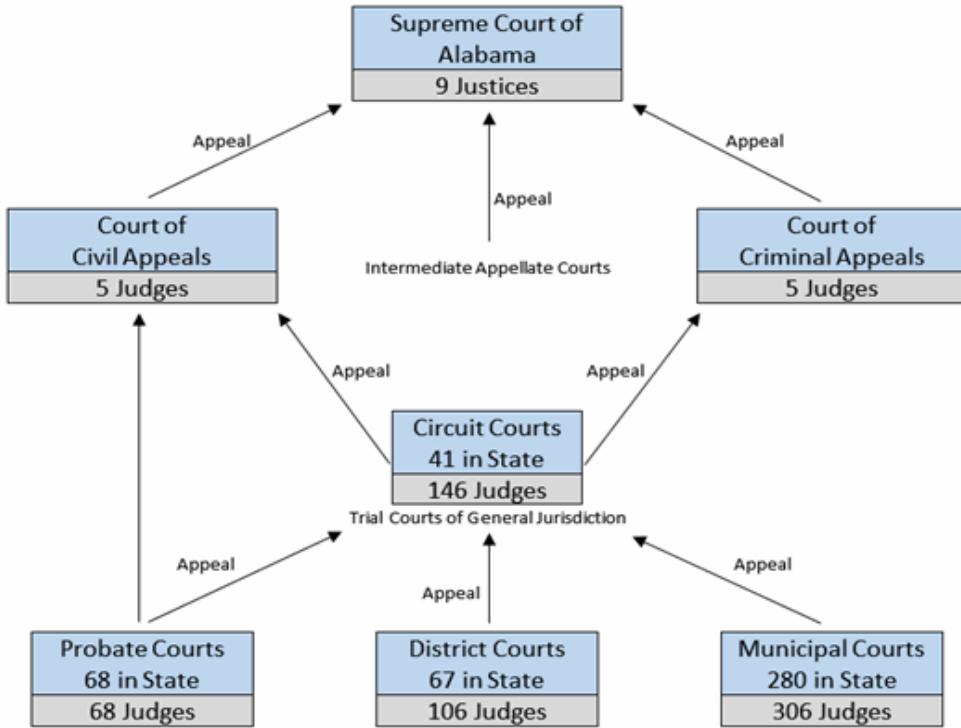


Figure 2: Alabama judicial hierarchy (Source: <https://judicial.alabama.gov/Appellate/JudicialSystemChart>)

and performs administrative duties as well. It has discretionary review for all writs of certiorari from the intermediate courts of appeal and has exclusive jurisdiction over all civil appeals in the amount of at least \$50,000.<sup>8</sup> Every appellate court judgeship is selected on an at-large basis statewide.

Under Alabama's first constitution, judges were appointed "by joint vote of both Houses of the General Assembly."<sup>9</sup> Jacksonian populism and its emphasis on grassroots democracy led to the adoption of a constitutional amendment in 1830 stripping the General Assembly of the power to appoint judges and instead empowered voters to choose them through partisan elections (Streb 2007).<sup>10</sup> Today, Alabama judgeships remain elected offices. As such, there are only two ways one can become a state judge. First an individual can be elected to a judgeship.<sup>11</sup> Alternatively, in the event a vacancy arises (due to death,

<sup>8</sup> There are other matters that go directly to the Supreme Court. In all capital cases in which a judge assigns a penalty of death, appeals are automatically made to the Supreme Court. Appeals from the Public Service Commission also go directly to the Court. The Court is also allowed to issue advisory opinions.

<sup>9</sup> Constitution of Alabama of 1819, Article V, § 12

<sup>10</sup> Constitution of Alabama of 1819, Amendment 1 (1830)

<sup>11</sup> Constitution of Alabama of 2022, Article VI, § 152

resignation, retirement or removal) before a term of office is completed, individuals can be appointed to a judgeship by the governor.<sup>12</sup>

Below the appellate courts are the circuit courts, the trial courts of general jurisdiction.<sup>13</sup> These courts have jurisdiction over civil cases in which the monetary value in dispute is more than \$10,000, along with all felony prosecutions. Most counties have their own circuit court, though less populous areas have circuits that include multiple counties (see Figure 3 for a map of state circuits). No county is divided between multiple circuit courts. Today, individuals seeking circuit court judgeships must be licensed to practice law in the state for at least seven years<sup>14</sup> and must have been a resident in a circuit for at least 12 months (and continue to reside there throughout their judgeship).<sup>15</sup> Any state judge may seek subsequent terms of office until they reach the age of 70.<sup>16</sup> Currently, there are 41 circuit courts in Alabama with 146 authorized judgeships. The average circuit court has three-to-four judgeships. Nine of the state circuit courts consist of only one judgeship. The largest circuits in the state are centered around urban areas.<sup>17</sup>

### **Race and the Alabama Judiciary**

Figure 1 shows that the state judiciary has racially integrated but at a divergent pace from the state legislature. After a nearly 30-year lag, the circuit courts are now nearly as representative as the state house and are considerably more representative than the state senate and appellate courts. What accounts for the

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<sup>12</sup> See the Constitution of Alabama of 2022, Article VI, § 153. The governor's appointing powers arising from vacancies in certain circuits are limited. For example, under constitutional Amendment 83, vacancies arising in Jefferson County are to be filled by a judicial commission, which is composed of Jefferson County residents, two members of the state bar, two who are not members of the state bar (selected by Jefferson County members of the legislature), and one sitting circuit court judge. This commission nominates three individuals to the governor. If the governor fails to nominate someone from the judicial commission's list within 90 days, the chief justice shall fill the vacancy. Since the adoption of the Jefferson County judicial commission, others have been authorized by law to fill selected vacancies in circuit courts. These include Baldwin, Madison, Mobile, Shelby, Talladega, and Tuscaloosa Counties.

<sup>13</sup> Below the circuit courts are inferior courts with limited jurisdiction. These include the district courts, which handle matters such as small money claims and misdemeanors; municipal courts, which largely deal with traffic violations; and probate courts, which handle issues such as estates. We do not consider these inferior courts in this research.

<sup>14</sup> Constitution of Alabama of 2022, Article VI, § 146 and Alabama Code, Title 12, Chapter 11

<sup>15</sup> Alabama Code, Title 12, Chapter 17

<sup>16</sup> Constitution of Alabama of 2022, Article VI, § 155

<sup>17</sup> For example, the Tenth Judicial Circuit (Jefferson County) has 27 authorized judgeships; the Thirteenth Judicial Circuit (Mobile County) has 11 judgeships; the Fifteenth Judicial Circuit (Montgomery County) has nine; and the Twenty-Third Judicial Circuit (Madison County) has seven. See Alabama Code, Title 12, Chapter 17.

racial integration of Alabama's judiciary? This research question motivates the remainder of the analysis.

In this section, we outline our theoretical expectations, which we assess in greater detail below.

After passage of the VRA, African American voters mobilized in force, and they did so overwhelmingly as Democrats (Bullock and Gaddie 2009).<sup>18</sup> Consequently, southern state Democratic Parties became increasingly black, forcing white politicians (some of whom had only recently supported racially discriminatory policies) to woo this new bloc of voters as they assembled biracial coalitions that could win general elections (Black and Black 2002).

In the initial years following VRA's passage, electoral success for black voters was tepid but gained steam between the 1970s and 1990s. This was especially the case once federal courts ruled that legislative districting was subject to VRA Section 5 preclearance<sup>19</sup> and once Congress rewrote Section 2 to make it easier for plaintiffs to win lawsuits alleging racial discrimination in voting rights cases (Bullock 2010).<sup>20</sup> Gradually, these forces compelled Alabama lawmakers to create legislative districts with sufficient numbers of black voters who could elect representatives of their choice. Consequently, many of the black lawmakers who won election during this period came from areas with large populations of black voters, including the state's metropolitan areas and rural Black Belt.<sup>21</sup>

Alabama does not maintain historical records for voter registration by race, but the first black judge on a circuit or appellate court did not take the bench until 1979.<sup>22</sup> By this point, major discrepancies in voter

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<sup>18</sup> Below, we do not provide a formal hypothesis arguing that the passage of the Voting Rights Act of 1965 is associated with the selection of black judges because *every* black judge on Alabama's appellate courts and its trial courts of general jurisdiction was chosen after the Act's passage. We therefore assume that the Voting Rights Act was responsible for much of the progress seen in integrating the state courts. Furthermore, we do not provide any formal hypotheses for the effects of any of the renewals of Voting Rights Act because, unlike legislative contests, one-person-one-vote has never been extended to judicial elections (see *Well v. Edwards* [409 US 1095, 1973]), and to the best of our knowledge, there have been no major successful Section 2 lawsuits that resulted in significant interventions in Alabama's judiciary. Nevertheless, judicial elections *are* subject to the provisions of the Voting Rights Act such as Section 2 (see *Chisom v. Roemer* [501 US 380, 1991]).

<sup>19</sup> See *Allen v. State Board of Elections* (393 US 544, 1969).

<sup>20</sup> See *Thornburg v. Gingles* (478 US 30, 1986).

<sup>21</sup> The term, Black Belt, refers to a swath of land ranging from eastern Mississippi, through south-central Alabama, and then sweeping in a northeasterly direction from Georgia up toward Virginia. The area is noted for its ideal growing environment, which led to large-scale cash-crop farming and some of the highest per capita rates of slavery in the South. Today, these areas continue to have high concentrations of black residents.

<sup>22</sup> The first black circuit court judge in Alabama was Cain Kennedy, who received an appointment from Governor Fob James in 1979 to the Thirteenth Judicial Circuit Court in Mobile County. Kennedy had already become

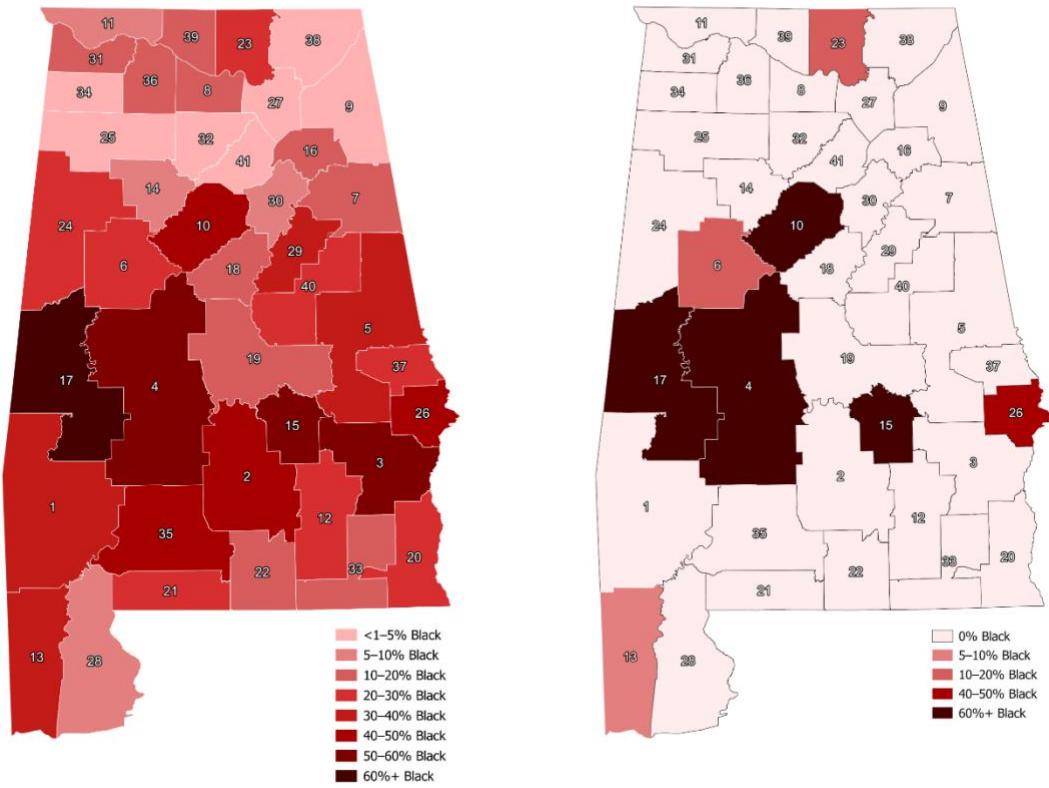


Figure 3: Each map depicts Alabama's circuit courts. In the left pane is the percentage of residents in each circuit who are black as of the 2020 decennial census. In the right pane is the percentage of judges that are black in each circuit as of December 31, 2024.

registration by race had been addressed. We therefore suspect that black circuit judges are more likely to secure judgeships in circuits with larger populations of black residents. Due to racially polarized voting patterns in Alabama, we suspect that black citizens will primarily secure circuit judgeships via elections in regions with large concentrations of black voters (typically something at or near a majority of a jurisdiction). In areas with smaller concentrations of black voters, we primarily expect black judges to emerge via gubernatorial appointments, if at all.<sup>23</sup> As can be seen from Figure 3, black representation on Alabama's

a trailblazer as one of the first African Americans to win election to the state legislature since the end of Reconstruction.

<sup>23</sup> What's more, we would expect most black appointees to occur during eras in which Democratic governors held office.

circuit courts primarily occurs in areas with large black populations such as in the state's rural Black Belt and metropolitan areas such as Jefferson, Madison, and Mobile Counties.<sup>24</sup>

- *Hypothesis 1: As the share of the population for a judicial vacancy becomes increasingly black, the likelihood a black judge is chosen will increase, particularly via election methods.*

We also suspect that partisan forces affect the likelihood of black judges reaching the bench. Between the Alabama Democratic and Republican Parties, we suspect that black candidates for judgeships should have better success when running as Democrats. The Alabama Republican Party primarily experienced growth in the latter half of the 20<sup>th</sup> century due to the influx of racially conservative whites displeased with the national Democratic Party's adoption of civil rights issues into its platforms, followed by the national Republican Party's adoption of policies embraced by Richard Nixon in his southern strategy such as anti-busing (Black and Black 2002; Hood, Kidd, and Morris 2019; Maxwell and Shields 2019). To date, the Alabama Republican Party continues to benefit from the support of white voters with racially conservative attitudes (Acharya, Blackwell, and Sen 2018; Hughes 2022).<sup>25</sup>

- *Hypothesis 2: Democratic judges will be more likely to be black compared to Republican judges.*

There are important temporal effects at play as well. Conservative whites in Alabama began flirting with non-Democratic candidates in 1948 when the national Democratic Party began to support minor civil rights positions in its platform. This pattern continued in 1964 in response to passage of the Civil Rights Act of 1964 and in 1968 when Governor George C. Wallace ran for president. The process by which white voters realigned from the Democratic to the Republican Parties was slow-moving and frequently involved ticket-splitting. For example, conservative whites might vote Republican at the top of their ballots for president but support state or local Democrats farther down-ballot. Arguably, the partisan realignment of

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<sup>24</sup> These counties contain the cities of Birmingham, Huntsville, and Mobile, respectively.

<sup>25</sup> A recent survey of Alabama voters found that, among those affiliating with the Republican Party, only 15.3 percent were black, and among those affiliating with the Democratic Party, only 17.0 percent were white (Hughes 2022).

whites in Alabama did not reach completion until 2010 when Democrats lost the state legislature (Hughes 2018).

To our knowledge, there is no local source of longitudinal public opinion data sufficient to test hypotheses related to individual-level partisanship or racial attitudes and support for black candidates for the judiciary. Thus, we rely upon aggregate-level data to help us draw inferences about partisanship, ideology, and the likelihood black individuals will be chosen for judicial service. Specifically, we suspect that geographies in Alabama that vote more Democratic at the presidential level will be *more* likely to select a black judge given the support Democratic candidates for president have expressed for civil rights—at least since the nomination of John F. Kennedy in 1960.

- *Hypothesis 3: As an Alabama geography votes more Democratic at the presidential level, the more likely it will be to select a black judge.*

Likewise, we suspect that Alabama geographies that vote more Democratic at the sub-presidential level will be *less* likely to select a black candidate to fill a judicial vacancy. The logic here is that prior to 2010, conservative, white Alabamians continued to vote Democratic at the state and local level even after they ceased voting for Democrats at the presidential or congressional levels. Conservative whites continued running and winning statewide and local offices as Democrats well into the 2000s. But since 2010, there have been few conservative white Democrats left in the party, and Alabama Democrats today more homogenously support the positions of the national party. Thus, we suspect that the ticket-splitting effect of conservative Democrats should largely only be observed prior to 2010.

- *Hypothesis 4: As an Alabama geography votes more Democratic at the state/local level, the less likely it will be to select a black judge for years prior to 2010.*

In addition to the partisan, racial, and behavioral effects identified above, we also suspect that institutional factors should influence the likelihood a black judge is chosen for service. Recall that there are only two methods by which judges attain their positions in Alabama. First, if a vacancy occurs at the end of a sitting judge's term of office, an election is held. But if a vacancy arises during a judge's term of office, the governor is responsible for appointing a replacement. Consequently, we suspect these two methods are

also associated with the likelihood an African American reaches the bench, and as before, we believe these methods exhibit temporal heterogeneity.<sup>26</sup>

Prior to the collapse of the state Democratic Party in 2010, we anticipate that African Americans are more likely to receive their initial judgeship via appointment. First, Democratic governors during the era of biracial coalitions were incentivized to shore up political support with their new base of black voters, and appointments are one method by which executives can signal support to coalition members (Goldman 1997). Furthermore, it was initially difficult for black candidates to win Democratic primary elections when there remained a large faction of conservative whites in the party, making it less likely for black candidates to win judgeships via popular election during this era. Today, amidst Republican dominance in state politics, it is less likely black judges attain the bench via appointment as Republican governors have few incentives to appoint individuals who might not belong to their party or who don't help to shore up support with their own base of voters. What's more, black judges are more likely than whites to complete their terms of office such that their replacement is chosen by voters (who are more likely to replace them with another minority candidate) and not the governor.<sup>27</sup> In Table 2, we depict the method by which circuit judges were initially chosen over the two eras we discussed above. Prior to 2010, 78 percent of all black circuit judges achieved their initial term via gubernatorial appointment. Since 2010, 79 percent of all black circuit judges did so via election.

- *Hypothesis 5: Prior to 2010, African Americans will be more likely to ascend the bench via gubernatorial appointment, and after 2010, they will be more likely to do so via election.*

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<sup>26</sup> While we do not state or test hypotheses with respect to Alabama's appellate courts, we note that our observations could be extended to them. These institutions are selected on a statewide basis, so due to racially polarized voting and the fact that black voters are only about one-fourth of the electorate, it is difficult for a black candidate to win. Nevertheless, to the extent that we might expect black judges to be competitive for appellate court positions, it would be more likely during an era when Democrats were competitive. There have only ever been four black appellate court judges in Alabama history. Each of these individuals was initially appointed by the governor. The first three were appointed by Democrats, while the most recent was appointed by a Republican. These individuals are Oscar Adams (appointed to the Alabama Supreme Court in 1980), Ralph Cook (appointed to the Alabama Supreme Court in 1993), John England (appointed to the Alabama Supreme Court in 1999), and Bill Lewis (appointed to the Alabama Court of Civil Appeals in 2024). Both Adams and Cook won statewide elections during the era of biracial Democratic politics in the 1980s and 1990s. In 2000, however, both Cook and England were defeated by white Republicans. Lewis, a Republican, has yet to stand for election as of this writing.

<sup>27</sup> Between 1970 and 2024, 56.6 percent of white circuit judges left office during their term compared to only 39.3 percent of black circuit judges who completed their term of office before departing ( $t = 2.03$  [ $p = 0.04$ ]).

Table 2: Alabama circuit court judges, race, and method of initial selection

	1970-2009			2010-2024		
	Appointed	Elected	Total	Appointed	Elected	Total
Black	14	4	18	8	30	38
White	187	150	337	56	60	116
Total	201	154	355	64	90	154
	$\chi^2 = 2.78 (p = 0.095); \gamma = -0.43$			$\chi^2 = 8.73 (p = 0.003); \gamma = 0.56$		

Another institutional factor that might increase the probability of African Americans earning positions on circuit courts stems from the state's partial usage of judicial nomination commissions.<sup>28</sup> Judicial nomination commissions limit the scope of the governor's authority to fill vacancies via appointment. Specifically, these commissions forward three qualified individuals, amongst whom the governor must select one for a circuit court vacancy. These commissions are typically used in more urban circuits and are composed of individuals selected by legislative representatives and sitting circuit judges from the relevant jurisdictions. We therefore suspect that these commissions are more likely to shortlist a racially diverse group of nominees compared to those the governor might consider were they not constrained to choose from amongst the commission's nominees. Consequently, we hypothesize the following:

- *Hypothesis 6: African Americans will be more likely to ascend the bench for vacancies occurring in circuit courts utilizing judicial nomination commissions compared to circuits that do not.*

## Data and Methods

In what follows, we test our hypotheses quantitatively on an original dataset consisting of every vacancy occurring on Alabama's circuit courts between 1970 and 2024.<sup>29</sup> To assemble this dataset, we relied primarily upon data made available by the Alabama Supreme Court Law Library, which produced a dataset consisting of every circuit judge to have served from the state's admission to the Union in 1819 through 2018. The Alabama Supreme Court Law Library provided us with information related to the names of these judges; the circuits in which they served and between which dates; judges' political party, race, sex, and

<sup>28</sup> See note 12.

<sup>29</sup> We identify a total of 513 selection events spanning these years.

method of selection (i.e., legislative, gubernatorial, or electoral). We supplemented these data with our own data of every circuit judge chosen since 2018.<sup>30</sup> The dependent variable is measured dichotomously such that it is coded “1” if the individual attaining a judgeship is black, “0” otherwise. Throughout the 54 years under analysis, 11 percent of all circuit judges were black (56 individuals). As we noted in Table 2, significantly greater numbers of black judges have won judgeships in recent years compared to earlier periods.

To test our first hypothesis, we gather data for each selection event on the percent of the adult population of a given circuit that is black as of the most recent decennial census. The average circuit is approximately one-quarter black, but there is substantial variance throughout the circuits. The least-black jurisdiction in our data is the Thirty-Second Circuit, representing Cullman County in the 1990s (0.8% black), while the circuit with the highest percentage of black residents was the Seventeenth Circuit, representing Greene, Marengo, and Sumter Counties in the 1970s (65.5% black).

To test our second hypothesis, we coded a judge’s partisanship dichotomously such that a Democrat receives a code of “1,” and all others receive a code of “0.” If a judge lacked partisan data, we utilize election results and local newspaper coverage to supplement the dataset.<sup>31</sup> Approximately 60 percent of all circuit judges in our data are coded as Democrats, though in more recent years, far more identify as Republicans. Sixty-seven percent of all circuit vacancies since 2010 have resulted in the selection of Republican judges.

Next, to test Hypotheses 3 and 4, we gather data on circuit-level voting. First, we measure the percentage of a circuit that voted for the Democratic candidate for president in the most recent quadrennial election. The average circuit in our sample saw 40 percent of votes cast for the Democratic presidential candidate. Additionally, we measure the percentage of a circuit that voted for the Democratic candidate for

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<sup>30</sup> We relied upon information provided by the Alabama Secretary of State’s office, in addition to contemporaneous media coverage of these judicial selection events. We focus on selection events since 1970 to allow for sufficient time since passage of the Voting Rights Act of 1965 for the state’s large black electorate to be absorbed into the body of voters statewide. Note that Alabama judges serve six-year terms of office. In coding our data, we only include the initial selection event and not subsequent, say, reelection efforts to the same judgeship.

<sup>31</sup> Most individuals appear only once in our dataset (at the time of their initial ascent to the bench), which ignores subsequent party switching. A scant few individuals appear in the dataset multiple times if they left a circuit and later returned to the bench.

governor in the most recent quadrennial election. Here, Democratic candidates performed better, averaging 53 percent support from the voters in circuits. Recall that we also expect the effect of split-ticketing to largely play out before 2010. Consequently, to test our hypotheses in the regressions below, we show the results across all years of analysis, results for selection events before 2010, and for those since then.

In order to test Hypothesis 5, we also code data related to the method by which circuit judges originally assumed their positions. According to the hypothesis, black judges should be more likely to earn their positions via gubernatorial appointment prior to 2010 (when most governors were Democratic and the party still controlled at least one branch of government) and more likely to initially take the bench via election after 2010 (when Republicans controlled every branch of government). We therefore measure a dichotomous variable that takes the value of “1” if a circuit judge initially assumed office via election and “0” if they did so via gubernatorial appointment. In our sample, 48 percent of all circuit judges were initially elected.

To test Hypothesis 6, we also measured a dichotomous variable for whether a vacancy took place in a circuit making use of a judicial nomination commission, “1” if yes, “0” otherwise. Because more urban circuits tend to use these assisted appointment methods, and because more urban circuits have higher numbers of judgeships, approximately 47 percent of all vacancies occurred in circuits making use of nomination commissions. Even still, 43 percent of all judges initially chosen from these nominating commission circuits were initially chosen via popular election.

Finally, in the analyses below, we include additional control variables that we suspect might affect the likelihood a black judge ascends the bench. These include judge-specific factors such as whether an individual chosen for a judgeship is female, which we code dichotomously. We also include socioeconomic indicators such as the percentage of residents aged 25 and above in an affected jurisdiction that hold a bachelor’s degree at the time of a selection event, along with the median household income of the affected region. We also include a measure of urbanity at the time of a selection event, which we measure as the circuit population per square mile. And finally, we include a measure for the total number of authorized judgeships on a given court at the time of a selection. We include descriptive statistics for each of our

Table 3: Descriptive statistics of Alabama Circuit Court selection events (1970-2024)

Variable	Mean	Std. Dev.	Range
Black	0.11	0.31	0, 1
Democrat	0.60	0.49	0, 1
Elected	0.48	0.50	0, 1
Female	0.15	0.36	0, 1
Circuit Pct. Black	24.94	13.78	0.76, 65.46
Circuit Pct. Bach.	7.03	3.66	0.82, 19.14
Circuit Med. Income	3.89	0.83	2.46, 6.84
Pct. Dem. (POTUS)	40.01	13.25	4.50, 73.30
Pct. Dem (Governor)	52.81	17.87	12.7, 95.3
Population per Sq. Mile	23.36	20.04	1.58, 60.32
Commission	0.47	0.50	0, 1
Circuit Seats	8.78	8.96	1, 27

variables in Table 3. Given that the dependent variable is dichotomous, we use logistic regression techniques to assess the effect independent variables have on the likelihood a circuit judge who is chosen is black. Furthermore, we cluster standard errors at the level of each circuit.

## Results

Our first set of regression results appears in Table 4. Note that we see excellent model fit as we are able correctly to predict more than 90 percent of all observations across each model. We begin our analysis with respect to Hypothesis 1. Across two of the three models in Table 4, we see strong evidence that circuit racial demographics are associated with the likelihood a circuit vacancy is filled by an African American candidate. What's more, we see that in years prior to 2010 black judges were more likely to ascend the bench via gubernatorial appointment than election. Nevertheless, because Hypothesis 1 stated an interactive effect (that circuits with larger black populations would be more likely to produce black judges, particularly via election), we set these results aside for now and save a more thorough analysis for below, where we directly estimate the interaction effect.

Next, we find significant evidence in favor of Hypothesis 2 across each of the three models in Table 4. Democratic judges are significantly more likely to be black compared to Republicans. What's more, we see that the coefficient for partisanship is stronger in recent years when the political parties have become more sorted on the basis of race. Between 1970 and 2009, Democratic judges had a predicted chance of being black eight percent of the time compared to 46 percent of the time since 2010 (a 475 percent increase).

Table 4: Likelihood black judges are chosen for Alabama Circuit Courts (1970-2024)

Variable	1970-2024	1970-2009	2010-2024
Democrat	3.01* (0.54)	2.78* (0.93)	3.67* (0.83)
Elected	-0.54 (0.47)	-1.21* (0.43)	0.32 (1.12)
Female	0.53 (0.34)	-0.22 (0.33)	1.16 (0.88)
Circuit Pct. Black	0.07* (0.02)	0.10* (0.02)	0.07 (0.07)
Circuit Pct. Bach.	0.03 (0.13)	0.24 (0.14)	-0.49* (0.24)
Circuit Med. Income	0.67 (0.34)	0.24 (0.36)	2.36* (0.79)
Pct. Dem. (POTUS)	0.07* (0.03)	0.09* (0.03)	0.13 (0.13)
Pct. Dem (Governor)	-0.04* (0.02)	-0.03* (0.01)	-0.09 (0.09)
Population per Sq. Mile	-0.06* (0.03)	-0.11* (0.04)	0.01 (0.04)
Commission	2.05* (0.89)	2.51* (1.12)	1.52 (1.30)
Circuit Seats	0.09 (0.06)	0.19* (0.08)	-0.03 (0.10)
Constant	-10.50* (2.18)	-12.95* (2.68)	-14.77 (5.54)
N	500	347	153
Wald $\chi^2$	1308.67	540.41	150.64
% Correctly Predicted	90.84	91.09	90.26

Notes: The dependent variable is whether a selected circuit judge is black ("1" if yes, "0" else). Table entries are logistic regression coefficients. (robust standard errors clustered on circuit in parentheses). Asterisks (\*) denote statistical significance (0.05, two-tailed).

Next, we turn to logistic regression results stemming from our political controls, which tested Hypotheses 3 and 4. Note that in the full sample of results that the percentage of the circuit voting Democratic for president is *positive* and statistically significant, while the control for the percentage of the circuit voting Democratic for governor is *negative* and statistically significant. These divergent results are precisely what we had hypothesized above. Prior to 2010, the Alabama Democratic Party included more conservative, white voters, and during this period, white Democrats frequently split their tickets, supporting the Republican nominee for president and the Democratic nominee for governor. To help to better illustrate these effects, we depict them graphically in Figure 4.

In interpreting Figure 4, first, suppose we have a hypothetical circuit that, in its most recent election cast just 10 percent of its vote for the Democratic presidential candidate. That circuit has a projected 0.3 percent chance of selecting a black judge, all things being equal. If a circuit casts 10 percent of its vote for the Democratic candidate for governor, however, it is projected to select a black judge 13.9 percent of the time. At the other end of the spectrum, suppose we have a hypothetical circuit that cast 90 percent of its

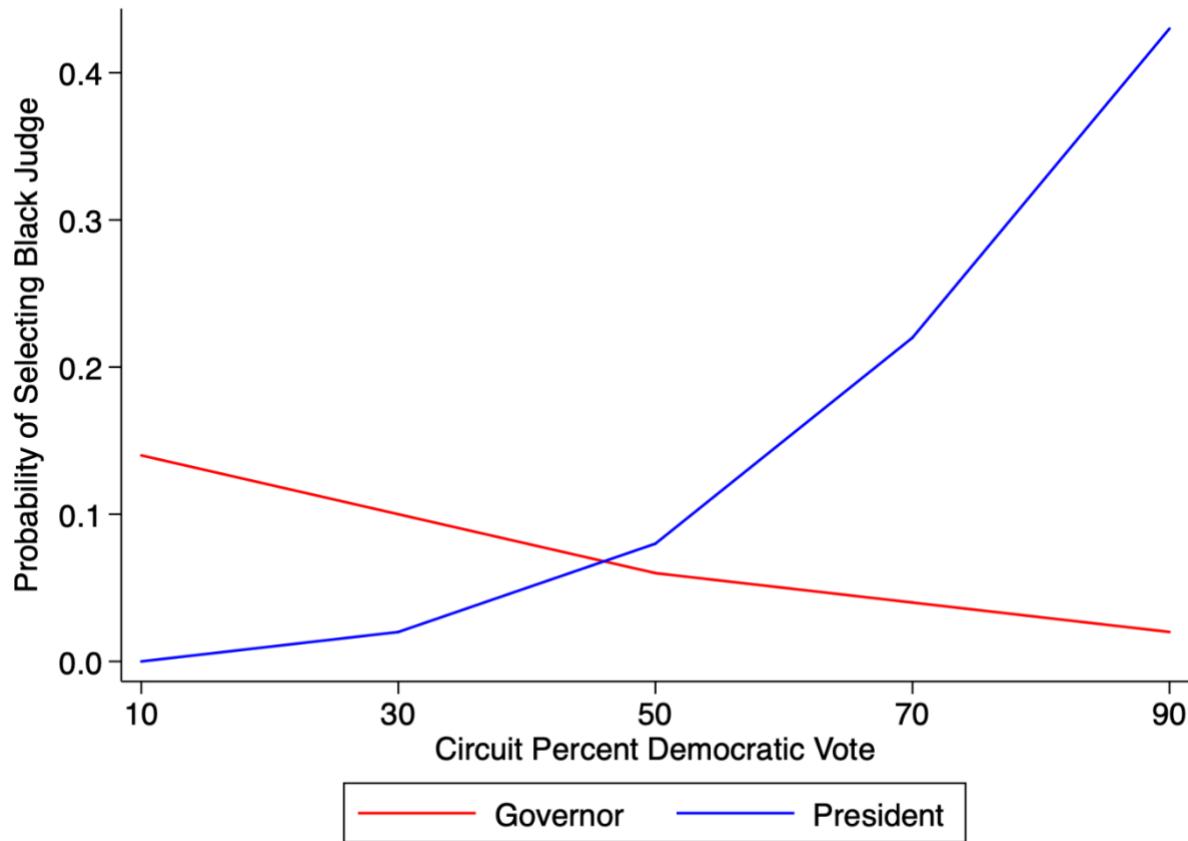


Figure 4: Predicted probability a circuit selects a black judge given the percent of that circuit that voted Democratic in the most recent presidential and gubernatorial election.

vote for the Democratic candidate for president. That circuit is projected to choose a black judge 42.5 percent of the time. Compare this figure to a circuit that casts 90 percent of its vote for the Democratic candidate for governor. Such a circuit is projected to choose a black judge only 2.4 percent of the time. Thus, we can clearly see the divide between conservative and liberal Democratic voters in the years prior to 2010—an excellent illustration of the racial polarization in the state Democratic Party that helped stymie black representation on circuit courts.

We also find evidence from the regressions in Table 4 for Hypothesis 5. Recall that Hypothesis 5 formalized the trend in Table 2, which showed black judges largely attaining their positions via gubernatorial appointment prior to 2010 and via election afterward. Examining the results in Table 4, we see that, at least for the period between 1970 and 2009, results are consistent with the hypothesis. During

this era in Alabama politics where there is frequently a Democratic governor with a large base of black voters, black circuit judges are more likely to assume positions on the circuit courts via appointments. During this era, we estimate that governors had a 6.9 percent chance of selecting a black candidate for a judgeship, while voters only had a 2.7 percent chance. Nevertheless, because we suspect circuit demographics are also in play, we revisit these results below.

We find qualified support for Hypothesis 6 from the results in Table 4. Here, we see that vacancies occurring in circuit courts utilizing assisted appointment methods, particularly prior to 2010, are associated with a significantly higher likelihood of selecting a black candidate. Prior to 2010, our results suggest that vacancies occurring in circuits without nominating commissions were associated with a 5.7 percent chance of selecting a black judge, compared to a 16.2 percent chance for vacancies in circuits using assisted appointments. Interestingly, we see no such effect since 2010, which is somewhat inconsistent with our expectations, which was that commissions might constrain conservative Republican governors. Even still, we note that in the regression results presented in Table 5 below, no significant effect is found for this variable.

In the discussion above, we noted that our results from Table 4 were incomplete to fully test Hypothesis 1 because we did not include an interaction term in the logistic regression models. In Table 5, we do just this by interacting the percentage of a circuit's population that is black with the method by which a circuit judge was initially chosen—appointment or election. Across each of the three models in Table 5, we find strong support for the hypothesis. As circuits become increasingly black, they become more likely to select black judges, especially via election. This is an important observation because some critics of judicial elections have argued that appointive systems better promote judicial diversity (e.g., Henry et al. 1985). What we find is that judicial elections in Alabama have been essential in achieving racial diversity on trial courts, though it requires a critical mass of black voters.

To better understand the significant interaction effect observed in Table 5, we present these results graphically in Figure 5. The results demonstrate that when the underlying population of a circuit is overwhelmingly white, the likelihood voters select a black judge is virtually nonexistent. What's more, it

Table 5: Race and selection method for Alabama Circuit Courts (1970-2024)

Variable	1970-2024	1970-2009	2010-2024
Democrat	3.03* (0.57)	2.82* (0.92)	3.64* (0.91)
Female	0.47 (0.38)	-0.28 (0.29)	1.32 (0.90)
Elected	-6.34* (1.07)	-6.53* (1.16)	-6.02* (1.78)
Circuit Pct. Black	0.03 (0.02)	0.06* (0.02)	0.00 (0.09)
Pct. Black × Elected	0.15* (0.03)	0.13* (0.03)	0.16* (0.03)
Circuit Pct. Bach.	-0.04 (0.14)	0.21 (0.15)	-0.70* (0.29)
Circuit Med. Income	0.76* (0.35)	0.32 (0.36)	2.91* (0.99)
Pct. Dem. (POTUS)	0.06 (0.03)	0.07* (0.03)	0.14 (0.16)
Pct. Dem (Governor)	-0.04* (0.02)	-0.03* (0.01)	-0.09 (0.09)
Population per Sq. Mile	-0.03 (0.03)	-0.09* (0.03)	0.05 (0.04)
Commission	1.77 (0.99)	2.13 (1.22)	1.01 (1.02)
Circuit Seats	0.07 (0.06)	0.17* (0.06)	-0.04 (0.08)
Constant	-8.63* (0.23)	-11.47* (2.31)	-13.88* (5.71)
N	500	347	153
Wald $\chi^2$	3514.30	553.05	988.96
% Correctly Predicted	91.23	91.64	90.91

Notes: The dependent variable is whether a selected circuit judge is black ("1" if yes, "0" else). Table entries are logistic regression coefficients. (robust standard errors clustered on circuit in parentheses). Asterisks (\*) denote statistical significance (0.05, two-tailed).

remains virtually nonexistent even when roughly one-fifth of a circuit's population is black. Again, this is due to the incredible prevalence of racial polarization in the state. The only real opportunity for a black judge to ascend the bench in these circumstances is via gubernatorial appointment. Even still, the odds are not favorable. In a hypothetical circuit that is 10 percent black, there is only an 8.5 percent chance the governor selects a black judge. These odds improve as the black population increases, reaching their estimated peak at 22.7 percent in a hypothetical circuit that is 70 percent black.

What we see is clearly driving the odds of a black circuit judge being chosen is when a circuit is majority-black, the popular election of a black judge, though not guaranteed, is dramatically increased. According to results from Table 5, all things being equal, a circuit must be at least 59 percent black before the probability of selecting a black judge via election is better than even. Note that this rate is higher compared to the generally accepted standard in Alabama that a congressional district need only be *close* to majority black to produce a black U.S. House member.<sup>32</sup> Furthermore, we can see from the results in Figure

<sup>32</sup> See, e.g., *Milligan v. Allen*, 2:21-cv-01530-AMM, (N.D. Ala.). URL: <https://shorturl.at/hdbzv>. It is interesting that we find a 59 percent black threshold at the circuit level because it is reminiscent of an older standard

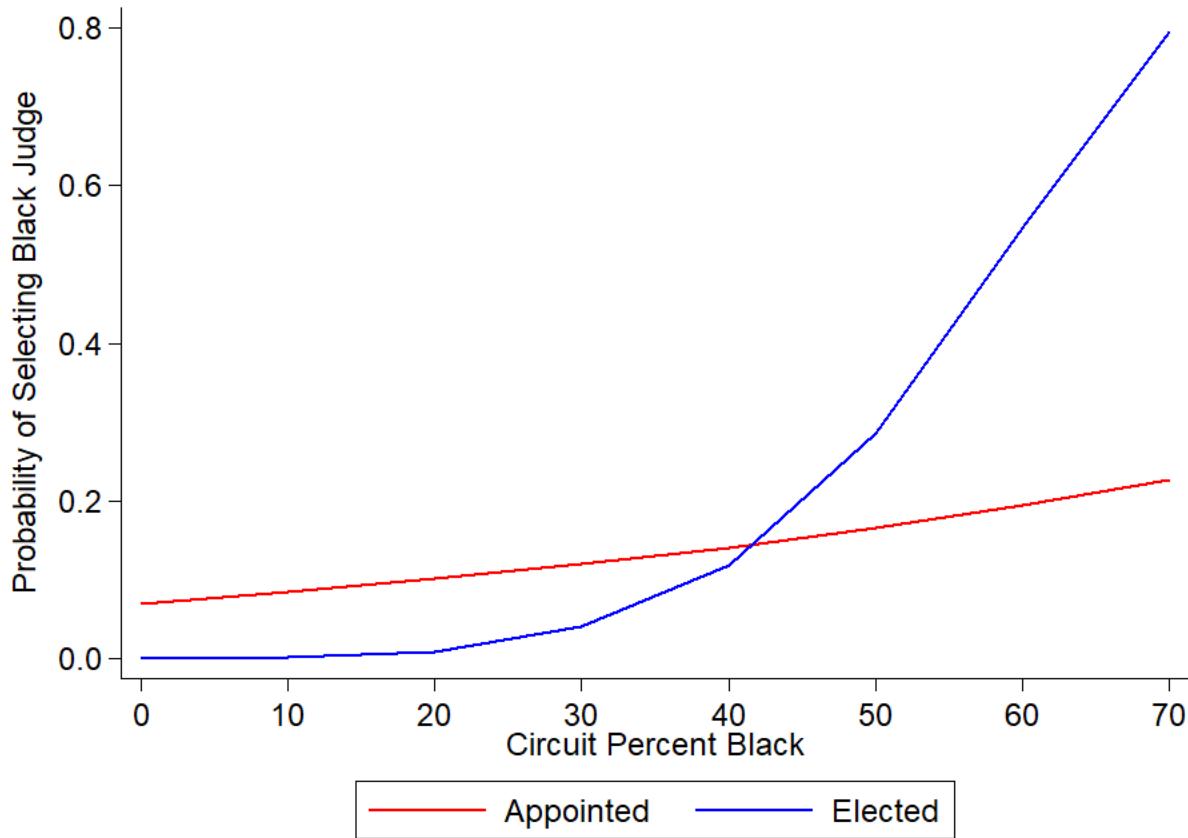


Figure 5: Probability circuit judge is black across circuit racial demographics and method of initial selection (1970-2024). Results derived from the first column of Table 5.

5 that the odds of selecting a black judge via election increase exponentially as the population of a circuit becomes even more heavily African American. In a hypothetical circuit that is 70 percent black, there is a 79.4 percent chance voters select a black candidate for judge, all things being equal. It seems clear that, in a state like Alabama that is dominated by white, conservative, Republicans at the state-level, achieving a diverse bench depends upon the use of substate geographic districts whereby judges are chosen via popular election. Were the Alabama Supreme Court, which is elected on a statewide basis, to adopt substate

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developed in Mississippi litigation, where legislative districts needed to be 65 percent black to potentially elect a black representative (Parker 1990).

geographic districts such as those used on the Louisiana Supreme Court, there is little doubt the institution would cease to be all-white.<sup>33</sup>

We conclude this section by considering our control variables. Socioeconomic indicators get mixed results from regression models. For example, in Table 4, we find in the pooled model that circuit education and income are statistically unassociated with the likelihood a chosen circuit judge is black. Nevertheless, each of these variables are statistically significant in the sample containing more recent observations. The income result is in keeping with our expectations—the Democratic Party of yesteryear was associated with poorer voters but in more recent years has been making in-roads into wealthier, suburban communities. That we find that higher income areas are associated with a greater likelihood of choosing a black judge, but only since 2010, makes intuitive sense. Nevertheless, we also find that, since 2010, more educated areas are less likely to produce the selection of a black circuit judge. Typically, results stemming from income and education—because these variables are so collinear with one another—have similarly signed effects. Our counter-intuitive finding for education could simply be a Type I Error, but additional work will need to be done here to further disentangle these causal relationships.

## Discussion

The American justice system has long been a source of disappointment for African Americans, as is evidenced by a legitimacy gap between white and black citizens (Gibson and Nelson 2018). Descriptive representation for African Americans on courts not only has important policy implications but also helps to bridge that gap in legitimacy (Haire and Moyer 2015; Kastellec 2013; Scherer and Curry 2010). Southern states, with their large black populations, have exhibited the most turmoil amidst efforts to democratize the region and achieve representation for racial minorities. Scholars have expended significant effort to understand the patterns, causes, and payoffs for descriptive representation of African Americans in the

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<sup>33</sup> Of course, civil rights litigants are aware of this fact and have pursued lawsuits under Section 2 of the Voting Rights Act and precedents of the U.S. Supreme Court, most relevantly, *Thornburg v. Gingles* (478 U.S. 30, 1986), seeking an order that Alabama adopt substate geographic districts for the state's appellate courts. As of this writing, none of these legal efforts have won success in federal courts. Most recently, in 2020, a federal district court in Montgomery ruled that the at-large methods of electing appellate court judges does not violate U.S. law (Chandler 2020).

American South. But these analyses have generally ignored an entire branch of southern government—courts. And while the judicial politics literature has considered patterns of racial diversity on state courts, these studies generally examine appellate institutions with few judges (e.g., Hurwitz and Lanier 2003), or—to the extent that lower courts have been studied—typically rely upon cross-sectional data that offers little insight into historical trends (e.g., Reddick, Nelson, and Caufield 2009).

In this research, we have attempted to address some of these shortcomings in the literature by examining the patterns of racial diversification in a Deep South judiciary over the span of its statehood (1819-2024). In total, we identify what we believe is the universe of every black judge to have ever held office in a state appellate court or trial court of general jurisdiction. To our knowledge this is the most expansive dataset yet assembled that examines longitudinal trends in descriptive representation for lower state courts.

Our findings indicate that, while the Alabama trial courts today have a level of black office-holding that is roughly proportional to state-level demographics, this descriptive representation is a *very* recent phenomenon. The Alabama legislature attained parity with the proportion of the population that is black in the mid-1990s, but such an achievement did not reach the state's trial courts until 2023. It seems plausible that one factor delaying racial diversity in Alabama's lower courts stems from the fact that judicial elections are not subject to the one-person-one-vote requirement, meaning that lawmakers have not had to engage in periodic redistricting, which offered no opportunity for federal authorities to engage in VRA Section 5 preclearance that might require more opportunity districts at the circuit level. Section 2 litigation has also been tepid for judicial elections compared to legislative ones. The upshot is that most black circuit judges come from a select few large, urban circuits—albeit circuits with large numbers of judges. Another factor we suspect is at play is that the majority of circuit judges attain their positions originally via gubernatorial appointment. Black judges themselves are aware of this issue and are more likely to delay their departures until the end of their term (thus allowing voters—largely black voters—to replace them) compared to white judges.

Thus, one of our central findings is that the popular election of judges has been critical to achieving descriptive representation on Alabama's trial courts. But our results suggest that a judicial district must contain a critical mass of black voters. According to our models, a black candidate is only more likely to attain a circuit seat compared to a white candidate when the underlying district population is at least 59 percent black, all things being equal. This is due to the state's remarkable and persistent pattern of racial polarization. Even during eras of Alabama politics where whites split their tickets between Republicans at the national level and Democrats at the state/local level, we find evidence that local black candidates for judgeships are disfavored.

At the appellate level, descriptive representation for African Americans has been more difficult due to the fact each of the state's 19 appellate judges are selected on a statewide basis. Only four black judges have ever served on one of Alabama's appellate courts. Each of these individuals originally took their positions via gubernatorial appointment. The most recent, a Republican appointee, has yet to stand for reelection, though should he win, he would be the first African American to win a statewide election in Alabama since 1994. Our results clearly suggest that, should Alabama adopt substate geographic districts for its appellate courts, as has their neighbor in Louisiana, a district with a critical mass of black voters would almost certainly produce a more racially diverse body of appellate court judges than what has been the case in recent years.

This work reflects one of the first attempts by scholars to marry the southern politics and judicial politics literatures. It also provides for numerous opportunities to extend this research. For example, we have demonstrated the conditions under which black representation can be achieved in southern state courts that historically exhibited hostility to racial minorities. We have also emphasized the role institutions—particularly electoral institutions—have played in securing descriptive representation for African Americans. Nevertheless, the Alabama judiciary involves but one set of institutional selection methods. For example, Alabama has used partisan judicial elections since the 1830s. An excellent avenue for future research might consider longitudinal trends in other southern states with divergent methods of judicial selection to see whether patterns or paces of racial diversification are consistent with those found in this

study. Put simply, scholars of state courts have virtually no idea who the judges on trial courts of general jurisdiction are in other states going back more than a few years, let alone data on their race, background, method of initial selection, and so on. This research agenda will require tremendous effort and resources but is critical to the field's broader understanding of racial integration in the South.

Our results suggest at least one additional, fruitful line of inquiry. Now that we have identified a cohort of black judges heretofore unknown to the political science literature, how did they change things? How did the output of their courts change due to racial diversity? And how did the assessments of voters change in response to judicial diversity? Again, these are questions that political scientists have largely assessed using cross-sectional research designs. There has been clear symbolic progress in that Birmingham, Montgomery, and the rural Black Belt—epicenters of backlash to civil rights—now have many black circuit judges. What we don't know is how the annual output of southern courts changed in response to diversity, or collegiality, or legitimacy. To a certain extent, much of this information is probably lost forever as we do not have longitudinal public opinion data on state court legitimacy. We suspect that qualitative methods, particularly interviews with elites and community stakeholders, will be necessary to begin establishing the record for how state judicial institutions changed in the South in response to racial diversity. There is still significant work to be done in this emerging subfield.

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