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Ronald F. Wright

Jeffrey L. Yates

Carissa Byrne Hessick

University of North Carolina School of Law, chessick@email.unc.edu

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Electoral Change and Progressive Prosecutors

Ronald F. Wright,* Jeffrey L. Yates,** and
Carissa Byrne Hessick***

INTRODUCTION

There is more than one way to be a prosecutor and therefore more than one way to campaign for the office. Journalists have noticed this lately, devoting more attention to prosecutor election campaigns that highlight real philosophical differences between the candidates.¹ Advocacy groups have begun to endorse and critique candidates for the position, rather than treating all chief prosecutors as interchangeable.² While incumbent prosecutors traditionally faced few opponents and won their elections at high rates, that world is changing. What was once deemed an apolitical event, or a political event holding interest only for law enforcement agencies and courtroom insiders, has become an occasion for the broader public to make genuine choices.

The wider range of choices for voters in prosecutor elections come from candidates who present a new vision of how to approach the job. Some of the most visible, change-oriented prosecutors use the label “progressive prosecutor” to describe their blueprint for community safety.³ Progressive prosecutors aim to reduce the use of incarceration and to expand the use of restorative justice programs and community partnerships as alternative methods of accountability for crime.⁴ They also devote more attention to racial inequities in law enforcement and judicial

* Needham Y. Gulley Professor of Criminal Law, Wake Forest University. The authors would like to thank Russell Gold, Miriam Krinsky, Kay Levine, Nathan Pinnell, Maybell Romero, and Ric Simmons for their helpful reviews of the manuscript and the symposium presentation. They are also grateful to Arya Koneru and a group of hard-working research assistants at Binghamton University.

** Professor of Political Science, Binghamton University, State University of New York.

*** Anne Shea Ransdell and William Garland "Buck" Ransdell, Jr. Distinguished Professor of Law, University of North Carolina.

¹ See *infra* Part I.B.

² See *infra* Part I.B.

³ Some change-oriented prosecutors use alternative labels to describe themselves, such as “reform” or “modern” prosecutors. See Jeffrey Bellin, *Expanding the Reach of Progressive Prosecution*, 110 J. CRIM. L. & CRIMINOLOGY 707 (2020); Jeffrey Bellin, *Defending Progressive Prosecution: A Review of Charged by Emily Bazelon*, 39 YALE L. & POL’Y REV. 218 (2020).

⁴ See EMILY BAZELON, CHARGED: THE NEW MOVEMENT TO TRANSFORM AMERICAN PROSECUTION AND END MASS INCARCERATION (2019); Rachel E. Barkow, *Can Prosecutors End Mass Incarceration?*, 119 MICH. L. REV. 1365 (2021); Brett Curry & Banks Miller, *American Prosecutors as Principals and Agents*, OXFORD RES. ENCYCLOPEDIA OF POL. (2020) (describing studies that document reduced use of incarceration); Taylor Pendergrass & Somil Trivedi, *Beyond Reform: Four Virtues of a Transformational Prosecutor*, 16 STAN. J. CIV. RTS. & CIV. LIBERTY 435 (2021).

outcomes.⁵ These progressive prosecutor offices often track data—and make some of that data public—to measure the effectiveness and the racial impact of their work.⁶ The reform-oriented prosecutors aim for a relationship of trust with their communities. Residents who trust their prosecutors, police, and other government actors, treat the system as legitimate; such a relationship is a precondition to community safety in the long run.

There are many open questions about the “progressive” prosecutor movement. Does the new approach to prosecution that the election candidates promote actually create change in the complex organizations that these candidates must lead after they win election?⁷ Does the very nature of the job of a prosecutor make it incompatible with authentically progressive visions of criminal justice?⁸ Does the newly-elected prosecutor’s vision persist over time, or is it inevitable that counter-reformation forces will have the last word?⁹ We don’t yet know the answers to these questions.

While it is clear that a debate is happening about new approaches to the prosecutor’s work, it is less clear how deep the changes go. Given the large number of prosecutor offices in the United States, it is possible that much of the change that the media documents is limited to only a few offices;¹⁰ it is also possible that newsworthy stories of recent prosecutor campaign debates are merely the most visible layer of a change that goes deeper. Do the media accounts focus on vivid but exceptional election campaigns, or do news stories over the last decade reflect a

⁵ See Daniel Fryer, *Race, Reform, & Progressive Prosecution*, 110 J. CRIM. L. & CRIMINOLOGY 769 (2020); Bruce A. Green & Rebecca Roiphe, *When Prosecutors Politick: Progressive Law Enforcers Then and Now*, 110 J. CRIM. L. & CRIMINOLOGY 719 (2020); Heather L. Pickerell, Note, *How to Assess Whether Your District Attorney Is a Bona Fide Progressive Prosecutor*, 15 HARV. L. & POL’Y REV. (Forthcoming 2021); Besiki Luka Kutateladze et al., *Race, Ethnicity, and Prosecution in Milwaukee County, Wisconsin*, ADVANCING PROSECUTOR EFFECTIVENESS & FAIRNESS REP. SERIES (MacArthur Found., Chi., Ill.) Sept. 2019.

⁶ See Benjamin Levin, *Imagining the Progressive Prosecutor*, 105 MINN. L. REV. 1415, 1437 (2021); Chad Flanders & Stephen Galoob, *Progressive Prosecution in a Pandemic*, 110 J. CRIM. L. & CRIMINOLOGY 685, 690 (2020); Besiki Luka Kutateladze et al., *Race, Ethnicity, and Prosecution in Clay, Duval, and Nassau Counties, Florida*, ADVANCING PROSECUTOR EFFECTIVENESS & FAIRNESS REP. SERIES (MacArthur Found., Chi., Ill.) Aug. 2019.

⁷ See Angela J. Davis, *Reimagining Prosecution: A Growing Progressive Movement*, 3 UCLA CRIM. J. L. REV. 1, 15–22 (2019).

⁸ See Cynthia Godsoe, *The Place of the Prosecutor in Abolitionist Praxis*, 69 UCLA L. REV. (forthcoming 2022); Maybell Romero, *Rural Spaces, Communities of Color, and the Progressive Prosecutor*, 110 J. CRIM. L. & CRIMINOLOGY 803, 813–18 (2020).

⁹ See Mona Lynch, *Regressive Prosecutors: Law and Order Politics and Practices in Trump’s DOJ*, 1 HASTINGS J. CRIME & PUNISHMENT 195 (2020); Darcy Covert, *Transforming the Progressive Prosecutor Movement*, 2021 #1 WIS. L. REV. 187 (2021) (urging prosecutors to relinquish funding and legal authority to other institutions as a method to create longer-term change); The Crime Report, *Can the Progressive Prosecutor Movement Survive?*, available at <https://thecrimereport.org/2021/03/08/can-the-progressive-prosecutor-movement-survive/> [<https://perma.cc/L726-Y9KG>]; Curry & Miller, *supra* note 4.

¹⁰ See Romero, *supra* note 8, at 803 (progressive prosecutors generally hail from large cities or urban metroplexes).

period of widespread change in U.S. prosecution leadership?

We explore this question by collecting the results from prosecutor elections in 200 high-population districts in the United States between 2012 and 2020.¹¹ Setting aside the difficult issues of measuring how much change a candidate proposes to implement in the prosecutor's office—or how “progressive” those changes might be¹²—we simply ask whether prosecutor election campaigns are becoming less favorable for incumbents over time.

As the question of how best to run a prosecutor's office becomes more contestable, it stands to reason that the election landscape would also change. Prosecutor elections have traditionally been sleepy affairs, where incumbents most often ran unopposed and won re-election more often than incumbents in other public offices.¹³ The progressive prosecutor phenomenon could change the nature of prosecutor elections by increasing the frequency with which incumbent prosecutors face challengers and the rate at which they lose reelection. In particular, a reform-oriented candidate could challenge a long-time incumbent in the primary or the general election. Conversely, a more traditional candidate could challenge the “progressive prosecutor” who won an initial term in the previous election cycle, promising to reverse the changes that the newcomer put in place. In both situations, the candidates present more genuine choices to the voters.

Based on our data, it appears to us that elections in these high-population districts did in fact become less stable over the last decade.¹⁴ We focus in particular on three indicators of election competitiveness: asking whether incumbents win their races less often over time, whether they run unopposed less often, and whether they retire more often before the campaign season ever begins.

Our most striking result relates to the likelihood that an incumbent would run unopposed: it fell by roughly eight percent for each passing year. This steady disappearance of uncontested elections took place across all types of districts, including in larger cities and in smaller ones.¹⁵ It applied most strongly to non-white incumbents, who were most likely to attract opponents in primary elections.¹⁶ The overall incumbent win rate (including both races in which incumbents were opposed and unopposed) also fell by significant amounts during the period 2012–2020, although this trend was weaker than the drop in uncontested elections.¹⁷

¹¹ See *infra* Part II.

¹² See Levin, *supra* note 6; Pendergrass & Trivedi, *supra* note 4; Pickerell, *supra* note 5.

¹³ Ronald F. Wright, *How Prosecutor Elections Fail Us*, 6 OHIO ST. J. CRIM. L. 518, 593 (2009).

¹⁴ See *infra* Part III.C.

¹⁵ Our data set includes prosecutor districts with populations of about 250,000 and higher. See *infra* Part II.

¹⁶ See *infra* Table 3. In at least some cases, the minority incumbents who attracted opposition candidates in the primary election were self-described progressive prosecutors whose campaigns promised to curtail recent changes to local prosecution policies.

¹⁷ See *infra* Table 2. The percentage of incumbents who retired rather than seek re-election did increase during 2012–2020, but the increase was not statistically significant after controlling for other

The election landscape traditionally protected incumbent prosecutors and prompted little public debate about the best practices and priorities for their offices. Today, prosecutor elections involve more candidates, presenting more varied and viable choices.¹⁸ Voters are not just selecting a familiar name on the ballot sheet. For better or for worse, prosecutor elections reveal a growing popular interest in and control over local criminal justice policy.¹⁹

I. PROSECUTOR ELECTIONS AS A FIELD OF STUDY

Political scientists have explored in rich detail the way that elections work for federal and state legislators, for governors, and for presidents. They have documented the advantages of incumbency, the importance of political parties, the influence of campaign contributions, and the circumstances that tend to produce more competitive races.²⁰ Judicial elections have also received serious scholarly attention from political scientists, legal scholars, and economists.²¹

Election campaigns for the office of chief prosecutor, on the other hand, have received only spotty coverage from scholars. They portray an especially uncompetitive election environment, where incumbents normally run unopposed and tend to win those exceptional races when they face a challenger. A few clues about a changing environment have appeared lately, suggesting a more competitive

characteristics of the districts and candidates. *See infra* Part III.C.3.

¹⁸ Cf. Michael S. Kang, *Race and Democratic Contestation*, 117 YALE L.J. 734 (2008); Michael S. Kang, *Sore Loser Laws and Democratic Contestation*, 99 GEO. L.J. 1013 (2011) (arguing that reduced advantages for incumbents increase the number of choices for voters, a positive outcome for authentic democracy).

¹⁹ *See generally* RACHEL E. BARKOW, *PRISONERS OF POLITICS: BREAKING THE CYCLE OF MASS INCARCERATION* (2019) (arguing for insulation of criminal justice policy from popular opinion to give weight to expert guidance); John Rappaport, *Some Doubts About "Democratizing" Criminal Justice*, 87 U. CHI. L. REV. 711 (2020); Jocelyn Simonson, *The Place of "the People" in Criminal Procedure*, 119 COLUM. L. REV. 249 (2019) (exploring mechanisms for greater public input into the criminal legal system).

²⁰ *See* Stephen Ansolabehere & James M. Snyder, Jr., *The Incumbency Advantage in U.S. Elections: An Analysis of State and Federal Offices, 1942-2000*, 1 ELECTION L.J. 315 (2002), available at <http://doi.org/10.1089/153312902760137578> [<https://perma.cc/C54X-685C>]; Alexander Fournaies & Andrew B. Hall, *The Financial Incumbency Advantage: Causes and Consequences*, 76 J. OF POL. 711 (2014); David R. Mayhew, *Incumbency Advantage in U.S. Presidential Elections: The Historical Record*, 123 POL. SCI. Q. 201 (2008).

²¹ *See* Brian Frederick & Matthew J. Streb, *Women Running for Judge: The Impact of Sex on Candidate Success in State Intermediate Appellate Court Elections*, 89 SOC. SCI. Q. 937 (2008); Melinda Gann Hall, *State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform*, 95 AM. POL. SCI. REV. 315 (2001); David E. Pozen, *Judicial Elections as Popular Constitutionalism*, 110 COLUM. L. REV. 2047 (2010); Traci V. Reid, *Assessing the Impact of a Candidate's Sex in Judicial Campaigns and Elections in North Carolina*, 25 JUST. SYS. J. 183 (2004); Matthew J. Streb & Brian Frederick, *Conditions for Competition in Low-Information Judicial Elections: The Case of Intermediate Appellate Court Elections*, 62 POL. RES. Q. 523 (2009); Claire S.H. Lim, *Preferences and Incentives of Appointed and Elected Public Officials: Evidence from State Trial Court Judges*, 103 AM. ECON. REV. 1360 (2013).

landscape. That possible change, however, remains so far at the anecdotal level.

A. *The Uncompetitive Past*

The method of selecting prosecutors in the United States is important because the techniques that most legal systems use to promote lawful behavior by prosecutors are weaker in the United States than elsewhere.²² This relatively weak constraint starts with state and federal criminal codes that are both broad and deep: that is, they cover broad ranges of ordinary conduct and give prosecutors a deep set of choices for which code section to select in dealing with many common factual situations.²³

Judges defer to the initial charging decisions of prosecutors: they do not get involved in declinations and only dismiss cases that prosecutors want to pursue if the government fails to establish probable cause, a low level of proof.²⁴ While the opportunities for judges to resist prosecutor choices grow stronger as the criminal case progresses to its end point (a dismissal, a guilty plea, or a conviction or acquittal at trial), judges rarely exercise this power.²⁵ The prosecutor's authority to select charges shapes the sentences available to the judge²⁶ and ultimately the corrections resources that the government uses.²⁷ Prosecutors are central contributors to mass incarceration.²⁸ Even when prosecutors violate legal rules and local customs in their

²² See Daniel Epps, *Checks and Balances in the Criminal Law*, 74 VAND. L. REV. 1 (2021); Ronald F. Wright & Marc L. Miller, *The Worldwide Accountability Deficit for Criminal Prosecutors*, 67 WASH. & LEE L. REV. 1587 (2010). See Xifen Lin & Cheng Chin, *Organizational Governance and Prosecutorial Attitudes: Regulating Chinese Prosecutors Through the Performance Evaluation Mechanism*, 62 INT'L J. OF L., CRIME, & JUST. (2020) (discussing an example of the bureaucratic controls that figure prominently in the control of prosecutors in most legal systems).

²³ See William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505 (2001); Ronald F. Wright & Rodney L. Engen, *The Effects of Depth and Distance in a Criminal Code on Charging, Sentencing, and Prosecutor Power*, 84 N.C. L. REV. 1935 (2006).

²⁴ See Darryl Brown, *Judicial Power to Regulate Plea Bargaining*, 57 WM. & MARY L. REV. 1225, 1228–29 (2016).

²⁵ See Jeffrey Bellin, *The Power of Prosecutors*, 94 N.Y.U. L. REV. 172 (2019).

²⁶ See Darryl K. Brown, *Judicial Power to Regulate Plea Bargaining*, 57 Wm. & Mary L. Rev. 1225, 1233 (2016) (“In jurisdictions with limited judicial discretion due to mandatory sentencing law or narrowly tailored guidelines, prosecutors’ charging choices have tremendous, sometimes determinate, influence over the punishments that attach after a defendant’s guilty plea or trial conviction.”).

²⁷ See W. David Ball, *Tough on Crime (On the State’s Dime): How Violent Crime Does Not Drive California Counties’ Incarceration Rates—And Why it Should*, 28 GA. ST. U. L. REV. 987, 994 (2012) (documenting how local decisions, including decisions made by locally elected district attorneys, drive the state corrections budget).

²⁸ See JOHN F. PFAFF, *LOCKED IN: THE TRUE CAUSES OF MASS INCARCERATION—AND HOW TO ACHIEVE REAL REFORM* (2017); Sam Krumholz, *The Effect of District Attorneys on Local Criminal Justice Outcomes* (May 9, 2020) (unpublished manuscript) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3243162 [<https://perma.cc/HR7B-K7NX>]; Aurelie Ouss, *Misaligned Incentives and the Scale of Incarceration in the United States*, 191 J. PUB.

courtroom behavior, they normally do not face discipline from bar authorities or judges.²⁹

In sum, most legal systems in the United States depend on voters—by default—to prevent prosecutors from abusing their large areas of discretion.³⁰ While prosecutor accountability to judges and other governmental authorities is relatively weak, elections offer another way to convince prosecutors to remain within the bounds of the law and to apply their discretion in ways that are consistent with local values and interests.³¹

This is not to say that prosecutor elections deliver consistently good results. The independence of prosecutors is a competing value, and elections can threaten prosecutor independence from the popular passions of the moment.³² Moreover,

ECON. 1 (2020); Barkow, *supra* note 4.

²⁹ See Danielle Robinson, *Prosecuting Misconduct: New York's Creation of a Watchdog Commission*, 85 BROOK. L. REV. 1055, 1065–66 (2020). There are also forms of accountability within the executive branch. For instance, on rare occasions, statewide officials might remove cases from the control of local prosecutors. See Tyler Yeagain, *Discretion Versus Supersession: Calibrating the Power Balance Between Local Prosecutors and State Officials*, 68 EMORY L.J. 95, 98 (2018). Prosecutors also exercise internal control over the individual line prosecutor, through articulated policies and other methods. See Ellen Podgor, *Department of Justice Guidelines: Balancing "Discretionary Justice,"* 13 CORNELL J. L. & PUB. POL'Y 167, 169 (2004).

³⁰ See Stephanos Bibas, *Prosecutorial Regulation Versus Prosecutorial Accountability*, 157 U. PA. L. REV. 959, 983 (2009); Russell M. Gold, *Promoting Democracy in Prosecution*, 86 WASH. L. REV. 69, 76–77 (2011); David Alan Sklansky, *The Problems With Prosecutors*, 1 ANN. REV. CRIMINOLOGY 451, 459 (2018).

³¹ See CHRISTINA L. BOYD ET AL., *THE POLITICS OF FEDERAL PROSECUTION* (2021); Bruce A. Green & Fred C. Zacharias, *Prosecutorial Neutrality*, 2004 WIS. L. REV. 837, 840 (2004) (prosecutors should make decisions based on articulable principles or sub-principles that command broad societal acceptance); Sanford C. Gordon & Gregory A. Huber, *Citizen Oversight and the Electoral Incentives of Criminal Prosecutors*, 46 AM. J. POL. SCI. 334–35 (2002); Sanford C. Gordon & Gregory A. Huber, *The Effect of Electoral Competitiveness on Incumbent Behavior*, 2 Q. J. OF POL. SCI. 107, 109 (2007); Gregory A. Huber & Sanford C. Gordon, *Accountability and Coercion: Is Justice Blind When It Runs for Office?*, 48 AM. J. POL. SCI. 247 (2004); Andrew F. Daughety & Jennifer F. Reinganum, *Prosecutor Quality, Witness Participation, Crime, and Reform*, AM. ECON. J.: MICROECONOMICS (forthcoming 2021); David Alan Sklansky, *Unpacking the Relationship Between Prosecutors and Democracy in the United States*, PROSECUTORS AND DEMOCRACY: A CROSS-NATIONAL STUDY (Maximo Langer & David Sklansky, eds. 2017). Greater availability of data about prosecutor performance could also strengthen this form of accountability. See Bruce Green & Ellen Yaroshefsky, *Prosecutor Accountability 2.0*, 92 NOTRE DAME L. REV. 51, 66–67 (2016).

³² See DARRYL K. BROWN, *FREE MARKET CRIMINAL JUSTICE: HOW DEMOCRACY AND LAISSEZ FAIRE UNDERMINE THE RULE OF LAW* (2016); Angela J. Davis, *The American Prosecutor: Independence, Power, and the Threat of Tyranny*, 86 IOWA L. REV. 393, 438 (2001); Michael Tonry, *Prosecutors and Politics in Comparative Perspective*, 41 CRIME & JUST. 1, 4 (2012); Janet C. Hoeffel & Stephen I. Singer, *Elections, Power, and Local Control: Reining in Chief Prosecutors and Sheriffs*, 15 U. MD. L.J. RACE RELIGION GENDER & CLASS 319, 321 (2015); Bruce A. Green & Rebecca Roiphe, *A Fiduciary Theory of Prosecution*, 69 AM. U. L. REV. 101, 133–34 (2019); Daniel C. Richman, *Accounting for Prosecutors*, 21 (Columbia L. Sch. Working Paper, Paper No. 14-506, 2016), https://scholarship.law.columbia.edu/faculty_scholarship/1959 [https://perma.cc/6ZEM-5EJF]. For purposes of this article, we take local election of prosecutors as a given in most American systems, and track changes in the performance of those systems. See Ronald F. Wright, *Reinventing American*

elections may fail as an accountability mechanism because voters hold such limited information about prosecutor performance.³³

Given the theoretical possibility of both good and bad results flowing from prosecutor elections, it is crucial to empirically test their operation and results. The empirical scholarship related to prosecutor elections is recent and limited.³⁴

The published studies do offer a consistent portrait of prosecutor elections: they are remarkably non-competitive. The earliest analyses noted that incumbent prosecutors tend to run unopposed in most elections.³⁵ Later, more comprehensive studies confirmed the commonplace nature of unopposed incumbents for the office of chief prosecutor.³⁶ Incumbents also win the overwhelming majority of their elections, even when they do face opposition.³⁷ This lack of competition might be attributable to the limited number of potential challengers to the chief prosecutor and the low salary offered for the job.³⁸

The picture is only a bit different in larger urban districts. There are more than 2,300 chief prosecutors in offices that file felony charges in the United States, and the majority of them represent small populations.³⁹ Within the small group of high-population districts, incumbents faced more competition than in the less-populated ones. During the early 2000s, 71% of incumbents who sought re-election ran unopposed in mid-sized districts (compared to 85% for all districts combined), and only 55% of the incumbents who ran in the largest districts were unopposed.⁴⁰ A more comprehensive study from the period 2014–2016 reached similar

Prosecution Systems, 46 CRIME & JUST. 395, 401–06 (2016).

³³ See ANGELA J. DAVIS, *ARBITRARY JUSTICE: THE POWER OF THE AMERICAN PROSECUTOR* (2007) (elections do not stop abuse because voting public has no access to accountability information); Wright, *supra* note 13, at 591–92.

³⁴ For an overview of this literature, see Carissa Byrne Hessick, *Prosecutors and Voters*, THE OXFORD HANDBOOK OF PROSECUTORS AND PROSECUTION 403 (Ronald Wright, Kay Levine, and Russell Gold, eds. 2021).

³⁵ See Wright, *supra* note 13, at 593.

³⁶ See Carissa Byrne Hessick & Michael Morse, *Picking Prosecutors*, 105 IOWA L. REV. 1537, 1561–62 (2020).

³⁷ See Hessick & Morse, *supra* note 36; Carissa Byrne Hessick, *Local Prosecutor Elections: Results of a National Study*, 32 FED. SENT'G REP. 202 (2020); Ronald F. Wright, *Beyond Prosecutor Elections*, 67 SMU L. REV. 593, 601 (2014); Ronald F. Wright, *Elected Prosecutors and Police Accountability*, POLICING THE BLACK MAN: ARREST, PROSECUTION, AND IMPRISONMENT 234 (Angela Davis ed., 2017).

³⁸ See Hessick & Morse, *supra* note 36, at 1570; Ronald F. Wright, *Public Defender Elections and Public Control of Criminal Justice*, 75 MO. L. REV. 803, 808 (2010). In the unusual situation when an office insider challenges the incumbent, those challengers are comparatively successful. See Bryan C. McCannon & Joylynn Pruitt, *Taking on the Boss: Informative Contests in Prosecutor Elections*, 20 J. OF PUB. ECON. THEORY 657 (2018).

³⁹ See U.S. DEP'T OF JUST., NATIONAL SURVEY OF PROSECUTORS: PROSECUTORS IN STATE COURTS, 2005 (2006).

⁴⁰ See Wright, *supra* note 33 (treating 50,000 to 100,000 votes cast as measure of mid-sized district and more than 100,000 votes cast as measure of largest districts).

conclusions.⁴¹

Although the number of uncontested elections were lower in the largest offices than in the smaller ones, incumbent win rates remained high in high-population districts. In the largest districts, incumbents won 86% of their general election campaigns, compared to a 95% overall win rate for districts of all sizes.⁴²

Not every election that features two or more candidates offers a genuine chance for voters to choose among viable alternatives. Hessick and Morse analyzed “competitive” elections, which they defined as elections when the winner received less than 60% of the vote. They found that 18% of all elections were competitive in this sense, but the number increased to 27% of the mid-sized district elections and 49% of the elections in the largest districts.⁴³ Thus, the districts that we analyze in this study tend to be more competitive than other prosecutor elections, even though the incumbents ultimately win their races at roughly the same rates as they do in smaller districts.

Finally, a number of empirical studies address the impact of prosecutor elections on the operations of the office.⁴⁴ By focusing on differences between prosecutor performance during the months just before an election and the performance of the office during other periods, researchers have discovered several election effects. For instance, elections tend to increase the number of cases that prosecutors take to trial, rather than resolving them through negotiated guilty pleas.⁴⁵ Prosecutor election season also increases case backlogs, as more cases go to trial.⁴⁶

⁴¹ See Hessick & Morse, *supra* note 36, at Table 4 (64% of incumbent general election races were uncontested in districts with more than 1,000,000 population; 79% of incumbents ran unopposed in general election races in districts with 250,000 to 1,000,000 population).

⁴² See Hessick & Morse, *supra* note 36, at Table 4 (83% of incumbents win their primary elections in districts with populations over 1,000,000, compared to 93% incumbent wins overall in primaries). Incumbents in the mid-sized districts (250,000 to 1,000,000 population) won 97% of their general elections and 94% of their primary elections. Similarly, Wright found that 94% of incumbents won their raises in mid-sized jurisdictions and 90% won in the largest districts. See Wright, *supra* note 33, at 595–96.

⁴³ See Hessick & Morse, *supra* note 36, at Table 5.

⁴⁴ There is only scant attention to the effects of different election law features on outcomes in prosecutor elections. See Gregory DeAngelo & Bryan C. McCannon, *Political Competition in Judge and Prosecutor Elections*, 48 EUROPEAN J. L. & ECON. 167, 172 (2019) (opening up political process by not listing political affiliation of candidates means disadvantaged candidates are less likely to exit).

⁴⁵ See Siddhartha Bandyopadhyay & Bryan C. McCannon, *Prosecutorial Retention: Signaling by Trial*, 17 J. OF PUB. ECON. THEORY 219, 221 (2015); Siddhartha Bandyopadhyay & Bryan C. McCannon, *The Effect of the Election of Prosecutors on Criminal Trials*, 161 PUB. CHOICE 141, 142 (2014); Bryan C. McCannon & Mark Wilson, “A Million Dollars in Free Advertising”: *Politics and Sex Offense Prosecution in the Wake of Duke Lacrosse*, 27 SUPREME COURT ECON. REV. 167 (2019) (rape charges and jury trials in rape cases increase during election years, but effect was muted after intense media scrutiny of Duke Lacrosse case).

⁴⁶ See Siddhartha Bandyopadhyay & Bryan C. McCannon, *Queuing Up for Justice: Prosecutor Elections and Case Backlogs* (2017), available at https://papers.ssm.com/sol3/papers.cfm?abstract_id=3097736 [<https://perma.cc/HX54-TWKU>].

Prosecutors dismiss fewer cases during election season,⁴⁷ obtain convictions more often,⁴⁸ and pursue cases based on more questionable legal grounds that result in more appellate reversals down the road.⁴⁹ They tend to seek more severe punishments during election years.⁵⁰ Prosecutors also tend to take more conservative positions on criminal justice reform issues than the voters they represent.⁵¹

B. Potential for a Competitive Election Environment

The changes in public opinion about criminal justice and public safety since 2010 have been astonishing. And that might be an understatement. For two generations before that time, public opinion about criminal law enforcement pointed in a single direction, toward more uniform and severe enforcement of the law against its traditional targets. That sustained public opinion convinced public officials of all types—state and federal; legislative, executive, and judicial; Republican and Democratic—to create a harsh brand of criminal justice.⁵²

Over the last decade, however, that stable consensus splintered. In some locations (although not all), it became possible to depart from the familiar playbook.⁵³ Public safety officials tried new strategies that economized on the use of prison and attended to racial disparities in punishment. This led to experiments in policing and sentencing. It also opened up new possibilities for prosecutors.⁵⁴

Journalists and advocates took note as candidates in prosecutor elections promised something new, something other than higher conviction rates or severe

⁴⁷ See Andrew Dyke, *Electoral Cycles in the Administration of Criminal Justice*, 133 PUB. CHOICE 417, 431 (2007).

⁴⁸ *Id.*; Bryan C. McCannon, *Debundling Accountability: Prosecutor and Public Defender Elections in Florida*, 20 (2018) available at https://papers.ssm.com/sol3/papers.cfm?abstract_id=3204623 [<https://perma.cc/7VLA-FULT>].

⁴⁹ See Bryan C. McCannon, *Prosecutor Elections, Mistakes, and Appeals*, 10 J. OF EMPIRICAL LEGAL STUD. 696, 703–04 (2013).

⁵⁰ See Melissa R. Nadel et al., *Politics in Punishment: The Effect of the State Attorney Election Cycle on Conviction and Sentencing Outcomes in Florida*, 4 AM. J. CRIM. JUST. 845, 855–56 (2017). On the other hand, prosecutors moderate their sentencing requests for crimes that local voters indicate are low priorities for them. See Michael J. Nelson, *Responsive Justice?: Retention Elections, Prosecutors, and Public Opinion*, 2 J. LAW & CTS 117, 140 (2014).

⁵¹ See Michael W. Sances, *Do District Attorneys Represent Their Voters? Evidence From California's Era of Criminal Justice Reform* (Jan. 8, 2021) (unpublished manuscript released for symposium audience).

⁵² See generally FRANKLIN E. ZIMRING, *THE INSIDIOUS MOMENTUM OF AMERICAN MASS INCARCERATION* (2020).

⁵³ See generally Lauren M. Ouziel, *Democracy, Bureaucracy, and Criminal Justice Reform*, 61 B.C. L. REV. 523 (2020).

⁵⁴ See Angela J. Davis, *The Progressive Prosecutor: An Imperative for Criminal Justice Reform*, 87 FORDHAM. L. REV. ONLINE 8, 10–11 (2018); David Alan Sklansky, *The Progressive Prosecutor's Handbook*, 50 U.C. DAVIS L. REV. ONLINE 25 (2017).

treatment of declared high-priority cases.⁵⁵ Moving beyond the coverage of campaigns in a single city, the coverage also noted statewide and national trends in the discourse about prosecution. Reporters connected the candidates in different districts, noting a distinctive philosophy of prosecution that took various labels, such as “progressive” or “smart” or “reform-oriented” prosecution.⁵⁶ Several candidates in far-flung districts received campaign contributions from a single source.⁵⁷

After election, these new chief prosecutors changed the priorities of their offices.⁵⁸ They also started to question the value of traditional statewide professional associations and began to form their own peer groups based more on their policy choices than their location within a single state.⁵⁹ Eventually, these changes in the field attracted attention from legal scholars.⁶⁰

⁵⁵ See Miriam Aroni Krinsky & Carissa Byrne Hessick, Opinion, *Criminal Justice Reform on the Ballot Across America*, L.A. DAILY NEWS (Mar. 25, 2020), <https://www.dailynews.com/2020/03/25/criminal-justice-reform-on-the-ballot-across-america/> [<https://perma.cc/KA4L-PXY7>]; John Pfaff, *The Case Against the Prosecution*, WALL ST. J. (Oct. 20, 2017), <https://www.dailynews.com/2020/03/25/criminal-justice-reform-on-the-ballot-across-america/> [<https://perma.cc/P32K-6GFS>].

⁵⁶ See Kim Bellware, *It's Not Just Police Shooting Scandals: Why Prosecutors Across the Country Are Finally Losing Elections*, HUFFINGTON POST (Mar. 31, 2016), https://www.huffpost.com/entry/prosecutors-losing-elections_n_56f03af3e4b084c67220ffa3 [<https://perma.cc/ZY7Y-XB6E>]; Liane Jackson, *Change Agents: A New Wave of Reform Prosecutors Upends the Status Quo*, ABA J. (June 1, 2019), https://www.huffpost.com/entry/prosecutors-losing-elections_n_56f03af3e4b084c67220ffa3 [<https://perma.cc/CG3Q-JUSL>]; Rachel Weiner & Justin Jouvenal, *Northern Virginia Voters Endorse a New Mandate on Criminal Justice*, WASH. POST (June 12, 2019), https://www.washingtonpost.com/local/legal-issues/northern-virginia-voters-endorse-a-new-mandate-on-criminal-justice/2019/06/12/c98fbffe-8d0b-11e9-b08e-cfd89bd36d4e_story.html [<https://perma.cc/N8E4-LCUC>]; Reflective Democracy Campaign, *TIPPING THE SCALES: CHALLENGERS TAKE ON THE OLD BOYS' CLUB OF ELECTED PROSECUTORS* (2019), <https://wholeads.us/wp-content/uploads/2019/10/Tipping-the-Scales-Prosecutor-Report-10-22.pdf> [<https://perma.cc/J3ZG-RWLL>].

⁵⁷ See Rory Fleming, *Legitimacy Matters: The Case for Public Financing in Prosecutor Elections*, 27 WASH. & LEE J. CIV. RTS. & SOC. JUST. 1, 3–4 (2020) (effects of financing).

⁵⁸ See Josie Duffy Rice, *Kim Foxx Just Released Six Years of Data—Most Prosecutors' Offices Remain Black Boxes*, THE APPEAL (Mar. 7, 2018), <https://wholeads.us/wp-content/uploads/2019/10/Tipping-the-Scales-Prosecutor-Report-10-22.pdf> [<https://perma.cc/Q5VW-EYDE>]; Daniel Nichanian, *Your Guide to 30 Sheriff and Prosecutor Elections That Could Challenge Mass Incarceration*, THE APPEAL (Oct. 19, 2020), <https://wholeads.us/wp-content/uploads/2019/10/Tipping-the-Scales-Prosecutor-Report-10-22.pdf> [<https://perma.cc/8B87-KMU2>]; Paige St. John & Abbie Vansickle, *Prosecutor Elections Now a Front Line in the Justice Wars*, THE MARSHALL PROJECT (May 23, 2018), <https://wholeads.us/wp-content/uploads/2019/10/Tipping-the-Scales-Prosecutor-Report-10-22.pdf> [<https://perma.cc/T9ZM-G24G>]; Paul J. Fleming & Melissa S. Creary, *Public Health and Systemic Racism Are on the Ballot in Prosecutor Elections*, MICHIGAN ADVANCE (July 28, 2020), <https://wholeads.us/wp-content/uploads/2019/10/Tipping-the-Scales-Prosecutor-Report-10-22.pdf> [<https://perma.cc/GS5B-TJTH>].

⁵⁹ See Tyler Yeargain, *Prosecutorial Disassociation*, 47 AM. J. CRIM. L. 85, 114–26 (2020).

⁶⁰ See Jennifer M. Balboni & Randall Grometstein, *Prosecutorial Reform from Within: District Attorney “Disruptors” and Other Change Agents, 2016–2020*, 23 CONTEMP. JUST. REV. 261 (2020) (51 progressive candidates won election since 2016); David Alan Sklansky, *The Changing Political*

All of this recent tumult raises the possibility that the traditional uncompetitive prosecutor elections are becoming less common. The anecdotes point to deeper questions: Does this campaign rhetoric about progressive prosecution amount to a genuine trend, or just a few colorful and aberrational cases?⁶¹ If it is a trend, is it sustainable, or even growing in strength over time?⁶² And does it extend beyond the large cities that attract most journalistic attention?

II. THREE HYPOTHESES AND DATA COLLECTION

A systematic study of the role of progressive prosecutor candidates in recent elections runs into one hurdle right away: there are many plausible and competing ways of measuring the progressivity of the candidates and their campaign platforms. One might define progressive prosecutors comparatively within a state or region, applying the label to one set of policies in Starkville, Mississippi,⁶³ and an entirely different set of policies in Chicago.⁶⁴ Furthermore, many candidates offer mixed signals, offering some proposals that might qualify as progressive and others that might not. Which of these conflicting signals should count most heavily?

Instead of trying to rate prosecutor candidates along a scale of progressive or reform-oriented ideas, we attempt to measure changes in the fortunes of all incumbents in prosecutor elections. When a change-oriented philosophy of prosecution starts to take hold, we would expect it to result in more candidates, more debate, and different election outcomes over time. Such election fluidity captures movement toward a new philosophy of prosecution; it also tracks any efforts by more traditional candidates to recapture an office after a progressive chief prosecutor spends a term or two implementing the new vision.

A. Three Measures of Electoral Change

We focus here on three ways to measure electoral change in prosecutor elections. First, if challengers present more attractive choices to voters, incumbents should win less often. It has long been true that incumbent prosecutors win re-

Landscape for Elected Prosecutors, 14 OHIO ST. J. CRIM. L. 647 (2017); Davis, *supra* note 51.

⁶¹ See Frances Robles, *Lock 'Em Up? Prosecutors Who Say 'Not So Fast' Face a Backlash*, N.Y. TIMES (Mar. 30, 2017), <https://www.nytimes.com/2017/03/30/us/aramis-ayala-prosecutors-death-penalty.html?smid=url-share> [https://perma.cc/5XEZ-LR3L].

⁶² See Cheryl Corley, *Newly Elected DAs Vow to Continue Reforms, End Policies Deemed Unfair*, NPR (Nov. 26, 2020), <https://www.npr.org/2020/11/26/938425725/newly-elected-das-vow-to-continue-reforms-end-policies-deemed-unfair> [https://perma.cc/H4HU-CK77].

⁶³ See generally DISTRICT ATTORNEY'S OFFICE SIXTEENTH CIRCUIT COURT OF MISSISSIPPI, *District Attorney*, <https://www.msda16.org/scott-colom> [https://perma.cc/7XBF-PWVR] (last accessed May. 7, 2021).

⁶⁴ See Danielle Sanders, *Election 2020: The Race for Cook County's State's Attorney*, CHI. DEFENDER (Oct. 25, 2020), <https://chicagodefender.com/cook-county-states-attorney-race-2020/> [https://perma.cc/LTL4-RGYL].

election at high rates; they win less often in high-population districts,⁶⁵ but the win rate for incumbents is still impressive. We ask here whether the incumbent win rate has changed lately, particularly in larger districts. Our hypothesis is that incumbents won less often in recent years.

Second, in more fluid election environments, incumbents will run unopposed less often. A disruption to the normal political marketplace would attract more opponents with new ideas for running the office. The number of unopposed incumbents is traditionally high (although the number is lower in high-population districts).⁶⁶ Thus, we predict that more challengers would appear over time, and fewer incumbents would run unopposed. This effect should hold true either in general or primary elections, depending on the state of competition between the two major political parties in each local district.

Third, a more change-oriented election landscape is likely to convince more incumbent chief prosecutors to retire. Some prosecutors, who might have run for election for one or more extra cycles when facing no opponent or weak competition, could survey the field, anticipate a strong challenge on the way, and decide not to run after all. The absence of the incumbent would likely affect the dynamics in the primary and the general election because elections are more likely to be contested when an incumbent does not run.⁶⁷ Again, we hypothesize that more incumbents have retired rather than face increased competition over the last decade.⁶⁸

B. Data Collection

To test our hypotheses, we collected data about election outcomes, the candidates, and the districts where they ran. We focused on the 200 prosecutor districts that serve the largest populations⁶⁹ because if new approaches to the work of prosecutors are making an impact, such changes would be easiest to detect in urban areas. The pool of available candidates,⁷⁰ the structure of local media outlets,⁷¹ and other environmental features of urban districts make them the most supportive place for campaign challengers.

⁶⁵ See Hessick & Morse, *supra* note 36, at 1560; Wright, *supra* note 32, at 420.

⁶⁶ See Hessick & Morse, *supra* note 36, at 1560; Wright, *supra* note 32, at 420.

⁶⁷ See Hessick & Morse, *supra* note 36, at 1563 Table 5.

⁶⁸ We defer until later research on the analysis of close results in prosecutor elections. That analysis is complex and requires an engagement with political science scholarship that is beyond the scope of this article.

⁶⁹ We chose districts based on populations as determined in the Hessick & Morse dataset for the 2014–2016 cycle. In a few cases among the last 20 districts on the list, we substituted districts comprised of a large number of low-density counties for districts with less overall population but an urban center. The full list of districts in our dataset is available in the Appendix.

⁷⁰ See Hessick & Morse, *supra* note 36, at 1574–78.

⁷¹ Local media outlets in urban jurisdictions are likely to cover local prosecutor races; rural areas are less likely to have the same local media infrastructure to cover their local elections. *Cf.* Bibas, *supra* note 30, at 988 (“Nationwide and statewide races may drown out county elections in the media.”).

For each primary and general election held in these districts between 2012 and 2020,⁷² we located online records and collected the candidate's name, race, gender, and political party affiliation (if any). The database indicates the incumbency status of the candidate, the year that the incumbent first took office, and the most recent year during the 2012–2020 study period when the incumbent faced an opponent in the type of election (primary or general) at issue. The data includes the number of votes cast for the candidate, the number of candidates in the race, and the total number of votes cast in the election.

For each district during each electoral cycle, we recorded whether state law provides for non-partisan election of prosecutors. We also collected the population for the district at that point in time, along with the racial breakdown of the population.⁷³ As a measure of the partisan lean of the district during the prosecutorial election, we recorded the total votes in the U.S. Presidential election in the district, along with the number of votes cast for the Democratic and Republican presidential candidates.⁷⁴

C. Construction of the Variables

We examine four distinct characteristics of prosecutor election outcomes (that is, four dependent variables) that help inform our principal question—how stable are these elections for incumbents? We then investigate potential explanations for those electoral outcome characteristics (independent variables). Coding and measurement specifics for these variables can be found in the Appendix.

1. Dependent Variables

We first consider the electability of individual candidates for prosecutorial office, both incumbents and challengers. Accordingly, our first dependent variable assesses a dichotomous electoral outcome—did an individual candidate win an electoral race or not? We call this variable “Candidate Wins.”

Our three remaining dependent variables focus on various aspects of the electoral fortunes of incumbent prosecutors. Of course, like all political incumbents, sitting prosecutors enjoy many electoral benefits from their position. These include name recognition and rooted political ties with government elites, among others. These three, dichotomous outcome variables put into operation the three hypotheses

⁷² We did not analyze runoff elections either for primaries or general elections. They constituted a very small number of overall candidate observations (less than twenty-five).

⁷³ We relied on figures from the 2010 U.S. Census for elections in the 2012–2013 cycles. We used 2019 U.S. Census estimates for the 2018–2020 cycles, and we extrapolated figures for the 2014–2017 cycles.

⁷⁴ We used the 2012 general election presidential votes for the prosecutorial elections in 2012–2015, the 2016 presidential votes for the prosecutorial elections in 2016–2019, and the 2020 presidential votes for the prosecutorial elections in 2020.

we described above.⁷⁵

First, similar to our general candidate electability outcome outlined above, we want to understand the degree to which incumbents can retain their positions. Thus, this dependent variable asks a Yes/No question about incumbent candidates: Did the incumbents who ran for office retain their positions? We code the answers as 1 for “Yes” and 0 for “No,” and we label this variable “Incumbent Wins.”

Next, we consider a question that drives the quality and quantity of the choices available to the voters: Did anyone challenge the incumbent prosecutor for their position? This variable is “Unopposed Incumbent.” We coded as 1 any incumbent who ran in the particular race without an opponent, whether a primary or a general election.

Finally, we ask about a third method of testing incumbents: developing a competitive election environment that convinces the incumbent to retire early rather than waiting to learn if serious challengers will arrive in time for the next election cycle. This variable is “Incumbent Retires.” Some incumbents in our study served the public for multiple decades, including one chief prosecutor who served fifty-two years in office.⁷⁶ We code as 1 the winner of a race (primary or general) if the incumbent did not enter the race during that cycle.⁷⁷

Of course, an individual’s reasons for retiring can vary. But if prosecutor election dynamics are changing, those changes should produce extra retirements, above and beyond the number based on the personal considerations that always affect the incumbent’s choice not to stand again for election. These extra prosecutors who give up their seats indicate overall change in prosecutor electoral politics and policy.

2. Explanatory Variables

Beyond describing the electoral outcomes outlined above, we look for insights on what factors may affect such results. For instance, what considerations influence whether a candidate wins or loses a race or whether a new candidate challenges the incumbent? In assembling explanatory models for the outcomes discussed above, our independent or explanatory variables will likely differ from one another in the

⁷⁵ See *supra* Part II.A.

⁷⁶ See Matthew Barakat, *Ebert Retires After 52 Years of High-Profile Prosecutions*, ASSOCIATED PRESS (Dec. 24, 2019), <http://apnews.com/article/f827adbc2518cdd906acf373a33688e4> [<http://perma.cc/US7J-UMTD>]; Justin Jouvenal, *Virginia’s Longest-Running Prosecutor Plans to Retire at End of the Year*, WASH. POST (Feb. 5, 2019), http://washingtonpost.com/local/public-safety/virginias-longest-running-prosecutor-plans-to-resign-at-end-of-year/2019/02/05/824736ea-2988-11e9-b2fc-721718903bfc_story.html [<http://perma.cc/V4A2-MWHE>].

⁷⁷ A jurisdiction that holds both primary and general elections in the same year generates more than one “Incumbent Retires” race. If the incumbent entered the primary election and lost, we do not code the general election or the primary election of the other party as an “Incumbent Retires” race because we believe that the presence of the incumbent in the primary affects the candidate filing decisions in all the races.

explanations for why they matter. We divide these explanations into three broad categories: incumbency-oriented explanations, district- or election-based explanations, and candidate-specific considerations. In our assessment of the drivers of electoral outcomes, political science theories lead us to expect some of our explanatory variables to have stronger theoretical priors than others.⁷⁸

First, we investigate the influence of factors that traditionally favor incumbents. These independent variables include the length of time the incumbent has been in office (“Years of Incumbency”) and the length of time since the incumbent has been challenged (“Years Since Challenged”). These two variables account for factors that generally increase incumbents’ electability as they enjoy the accumulated benefits of office and stature over time.⁷⁹ At some point, however, years in office could possibly become a negative for the incumbent, if voters believe that a long-term incumbent no longer responds to community sentiment or is not willing to consider improvements in office operation.

Next, we turn to characteristics of the local district or the campaign competition. Prosecutor candidates run for office within a specific competition environment. While we limit our study to larger population districts, the districts we cover still differ a great deal in population. Accordingly, we examine the potential effects of large population districts (i.e., those over the median district population) on prosecutor races (“Populous District”). We posit that such districts are likely to have fewer unopposed races, have more candidates in a given race, and produce higher quality opponents for the incumbent. Further, advantages of name recognition and political ties may be diminished in this context—relative to smaller districts.

We also explore the impact of minority group electoral strength in the district. We speculate that incumbent candidates may be more apt to lose or retire in districts in which historically marginalized minority groups may have attained electoral strength.⁸⁰ We specifically consider two larger minority groups—African Americans and Latinx—as being potentially influential (“% District African American” and “% District Latinx”).

Finally, in our “All Candidates” model we consider the number of candidates running. Typically, in contested elections there are two candidates. However, this is not always the case. In elections (primary or general election) in which there are more than two candidates, any given candidate’s chances of winning are reduced. Hence, we include in our model the number of candidates beyond two who enter a given race.

⁷⁸ Accordingly, we employ two-tailed tests of statistical significance for all of our independent (explanatory) variables.

⁷⁹ See Hessick & Morse, *supra* note 36, at 1568 Table 7 (documenting that an incumbent prosecutor’s chances of running unopposed and winning increase significantly after she has been in office for more than five years).

⁸⁰ We postpone for future research the question of whether the achievement of particular levels of minority voting strength changes the outcomes for incumbents and the question of whether the match between a candidate’s race and the racial demographics of the district influences outcomes.

One particularly important variable measures change in the electoral environment over time. We calculate, for each election, the number of years elapsed from the start of the investigation period (2012) to the current election, in a variable called “Years Since 2012.” This variable allows us to test the proposition that prosecutor elections have become less favorable to incumbents over time, all else being equal.

Last, we investigate a set of factors associated with the individual candidates. First and foremost, among these characteristics is whether the candidate is an incumbent (“Candidate Incumbent”). For reasons we have already described, incumbent candidates are expected to have a decided advantage in our “All Candidates” model. Due to historical and current marginalization of groups based on race and gender, we also consider these potential influences on prosecutor election outcomes. Consequently, we include a number of dichotomous indicator variables to address candidates’ racial and gender identities, including “Female Candidate,” “African American Candidate,” “Latinx Candidate,” “Asian Candidate,” with white male candidates being the omitted reference group.

III. DATA ANALYSIS

In this section, we describe our statistical analyses of the election data from 2012–2020. We begin with descriptive statistics related to the candidates and the districts. Second, we analyze the factors that are associated with winning candidates, both incumbents and challengers. Finally, we explain the models we constructed to explore our three hypotheses related to incumbents and a possible decrease in the stability of prosecutor elections.

A. *The Districts and the Pool of Candidates*

We aimed to collect election outcomes for enough high-population prosecutorial districts to cover more than half the population in the United States. Although there are more than 2,300 felony-level prosecutor offices in the country, a large proportion of them are small offices.

The median population for the 200 districts we chose was 701,473; all of the districts held populations above 250,000, and the largest district (Los Angeles County) contained a population above 10,000,000 throughout the study period.⁸¹ The cities in our study represent forty states; five states do not elect chief prosecutors at the local level, and five states had no city large enough to include in the sample of 200 districts.⁸²

⁸¹ Details for all of the results described in this section are available in the Appendix, Descriptive Statistics table.

⁸² There are no local elections of prosecutors in Rhode Island, Connecticut, New Jersey, Delaware, and Alaska. There was no city large enough for inclusion in our database in Mississippi, Montana, North Dakota, South Dakota, or Wyoming.

Overall, the districts covered a population over 183,000,000, about 55% of the national population, even though they covered less than 10% of the total prosecutorial districts in the country.⁸³ The median district contained 74% white residents. As for the partisan lean of the districts, the median vote for Democratic presidential candidates was 53%; the most Democratic district was 90%, and the least was 10%.

A total of 1,403 candidates ran for chief prosecutor in the 200 districts during this period, treating a single individual who ran in multiple years—or in the primary and the general election in a single year—as multiple distinct “candidates.” With only two exceptions among the states, we collected outcomes for elections in either two or three cycles in every district.⁸⁴

The candidates were 73% male and 27% female. Their race was 12% African American, 78% White (not Hispanic), 6% Latino/a, 2% Asian, and 2% unknown.⁸⁵ As for political party affiliation, 51% were Democrats, 41% Republican, 4% Independent, 1% Libertarian, 1% Other Party, and 2% party unknown. The candidates were incumbents 46% of the time.⁸⁶

The elections were spaced evenly throughout the nine-year study period with most elections taking place in even-numbered years.⁸⁷ There were approximately the same number of primary elections and general elections.⁸⁸ The great majority of the

⁸³ We calculated this percentage of the population based on races in the 2017–2020 cycles.

⁸⁴ Most prosecutors are elected on a four-year cycle. Thus, many districts held elections in 2012, 2016, and 2020, which allowed us to collect results for three cycles. We observed more than three cycles in states such as New Hampshire that operate on a two-year cycle. Districts on four-year cycles that held their first elections in later years only allowed us to observe two cycles. Some states—such as Alabama, Tennessee, Louisiana, and Kentucky—elect their prosecutors on six-year or eight-year cycles. We observed only one electoral cycle for districts in Alabama (because the first elections in our study period occurred in 2016) and in Tennessee (where District Attorneys in Tennessee serve terms of eight years).

⁸⁵ Where possible, researchers relied on news accounts that mentioned the race of the candidate. In a few cases, we attributed race based on photos in news stories, but never relied on a single photo. We also drew on the database assembled by the Reflective Democracy Campaign, which produced a report for 2014 available at <https://wholeads.us/research/justice-for-all-report-elected-prosecutors/> [<https://perma.cc/L4WR-SUVN>] and a report for 2019 available at <https://wholeads.us/research/tipping-the-scales-elected-prosecutors/> [<https://perma.cc/NM4D-4RHC>]. A test of inter-coder reliability on this variable produced a matching code for over 98% of the candidates in the database.

⁸⁶ Incumbents were 41% of the candidates in primary elections (299 of 721) and 51% of the candidates in general elections (351 of 682).

⁸⁷ There were 234 elections in 2012, 31 in 2013, 216 in 2014, 53 in 2015, 245 in 2016, 35 in 2017, 218 in 2018, 76 in 2019, and 295 in 2020.

⁸⁸ There were 476 general elections and general election runoffs; there were 491 primary elections and primary runoffs. We treat the primary elections of each political party as separate elections. Some states do not report results from primary elections where the candidate is unopposed; a smaller number of states do not report general election results if a candidate runs unopposed. We included entries for candidates in those unopposed elections in our database, although vote totals were not available for inclusion.

aces were partisan elections with the party affiliations of the candidates indicated on the ballots.⁸⁹

B. *Winning Candidates*

Before exploring our three hypotheses about electoral change, we analyzed the factors that are associated with winning candidates across all types of elections and districts.⁹⁰ After controlling for the race and gender of the candidates (among other considerations), incumbents were approximately 17% more likely to win than other candidates in general elections. We found a similar, but somewhat smaller, effect in primary elections. This analysis included races in which incumbents faced opposition and those in which they were unopposed by a challenger.⁹¹ This finding is consistent with past scholarship.⁹²

Candidates in the most populous districts were approximately 9% less likely to win because fewer unopposed races occurred in larger districts (both for primary and general elections). Unsurprisingly, candidates who ran against a larger number of competitors (either in primary or general elections) were far less likely to win. A candidate facing just one opponent had approximately a 28% higher probability of winning than a candidate facing two opponents.

Interestingly, African-American candidates had about a nine percentage point increase in the probability of winning in general elections over other candidates, after controlling for other effects, such as district size, gender, and incumbency.⁹³ The same is true for female candidates, who had about a six percentage point increase in winning probability over male candidates in general elections while controlling for other election features—a finding that is consistent with the research on judicial elections.⁹⁴ Asian candidates were associated with a fifteen point drop in winning probability relative to other candidates in general elections. Each of these

⁸⁹ Eight hundred and sixty-four elections were partisan, while one hundred and three were non-partisan. Even in the states designated by law as non-partisan, such as California and Colorado, news reports often identified the party affiliations of candidates.

⁹⁰ We used logistic regression because the dependent variable, a winning candidate, is dichotomous (binary).

⁹¹ Ideally, we would have included a control variable for unopposed races for both Table 1 and Table 2 (incumbents) analyses. However, since unopposed candidates do not lose, the proposed variable (partially) perfectly predicts election outcomes, and the regression models will not estimate this possibility. An auxiliary regression analysis of our model for Table 1 which includes only races where candidates faced one or more challengers indicates that the incumbent advantage is robust to this alternative approach. The coefficient for incumbents was highly significant and positive (as predicted), albeit somewhat smaller than in all of the races included in the analysis presented in Table 1.

⁹² The advantage of incumbents holds up both for judicial elections and for prosecutor elections. See Fourmaies & Hall, *supra* note 20; Hessick & Morse, *supra* note 36; Wright, *supra* note 32.

⁹³ The p value for the African-American candidates' coefficient was .061, hence only indicating statistical significance in a two-tailed test at the .10 level.

⁹⁴ See Frederick & Streb, *supra* note 21.

demographic features disappeared in primary elections, suggesting a possible interaction with political affiliation.

TABLE 1: LIKELIHOOD OF CANDIDATE WINNING

Candidate Wins	General Election	Primary Election
Candidate Incumbent	2.614*** (.303)	1.862*** (.178)
Populous District	-.557*** (.204)	-.253** (.099)
Additional Candidates	-.793*** (.181)	-.729*** (.113)
African American Candidate	.692* (.37)	-.101 (.259)
Latinx Candidate	1.004 (.893)	-.13 (.242)
Asian Candidate	-.951** (.438)	-.002 (.569)
Female Candidate	.395** (.181)	-.014 (.189)
Constant	-.091 (.122)	.764*** (.165)
Observations	663	690
χ^2	204.32***	310.52***

Standard errors are in parentheses

*** $p < .01$, ** $p < .05$, * $p < .1$

C. Measures of Electoral Change

Recall that our three descriptive measures of change in the electoral environment are the percentage of incumbents who win re-election when they seek it, the percentage of incumbents who run unopposed in primary or general elections, and the percentage of incumbents who retire rather than face an uncertain and competitive election cycle.⁹⁵ We attempt here to explain variations in those three measures among different types of districts, different candidates, and—most important for our purposes—over time.

⁹⁵ To clarify, in the three multivariate regression models we offer in this section, these measures become dichotomous. The dependent variable (incumbent wins for Table 2, incumbent unopposed for Table 3, and incumbent retires for Table 4) are coded as 1 for Yes and 0 for No.

1. Incumbent Win Rates

One of the clear features of elections in the United States is the tendency of incumbent candidates to win when they try to return to office for additional terms. This is true for legislative candidates at the federal and state level.⁹⁶ It holds true for chief executives⁹⁷ and for judges,⁹⁸ and it is emphatically true of chief prosecutors.⁹⁹

Consistent with this long history, incumbent prosecutors did tally more wins in our sample than challengers did, both in general and primary elections. The overall victory rate for incumbent candidates was 91%.¹⁰⁰ As we saw in Table 1, incumbents in our sample of 200 districts were more likely to win than challengers, even after controlling for district population, extra candidates in a race, and candidate demographics.

But the win rates for incumbents changed during the nine-year period of our study. During the early period, 2012–2015, incumbents won 95% of their races, both in general and primary elections.¹⁰¹ During the later period of 2017–2020, however, the incumbent win rate dropped to 87% in the general elections and 89% in the primaries.¹⁰² While this drop in the incumbent win rate is not enormous, it is worth examining in more detail.

Further analysis allows us to control for various characteristics of the districts and the candidates to isolate the potential changes over time. In our logistic regression for general elections, summarized in the middle column of Table 2, there is a significant association between incumbent wins and the amount of time elapsed in our study period, as measured by the years elapsed since 2012 for each election. As depicted in the first panel of Figure 1, the probability of an incumbent winning declines about twelve points from the beginning of the period examined (2012) to the ending year (2020).¹⁰³

⁹⁶ See Ansolabehere & Snyder, *supra* note 20.

⁹⁷ See Mayhew, *supra* note 20.

⁹⁸ See Fourinaies & Hall, *supra* note 20.

⁹⁹ See Hessick & Morse, *supra* note 36.

¹⁰⁰ There was little difference between incumbent win rates in general and primary elections: 272 wins to 27 losses in primaries, 322 wins to 29 losses in generals.

¹⁰¹ Incumbents won 144 general elections and lost 8 during these earliest 4 years; they won 112 primaries and lost 6.

¹⁰² Incumbents won 119 general elections and lost 18 during these latest 4 years; they won 100 primaries and lost 12.

¹⁰³ Our analyses in Tables 1 and 2 include both races in which there were two or more candidates and unopposed races. See *supra* note 93; see also *infra* Table 1. See *infra* Table 2. Certainly, a large portion of the win probability for incumbents is attributable to instances in which they are unopposed. An auxiliary regression analysis of incumbent fortunes similar to that in Table 2 that only included races with two or more candidates, involved a significant drop in our number of observations. Accordingly, while the coefficients for “Years Since 2012” were negative (as predicted), they were not statistically significant at conventional levels in our auxiliary regression analysis. However, a cross tabulation analysis of incumbent races with a challenger showed that the win rates for incumbents did decline during the nine-year period of our study. During the early period, 2012–2015, incumbents won

The history of challenges to incumbents, measured by the number of years in the study period since the incumbent faced a general election challenge, also showed a statistically significant, albeit modest, association with incumbent wins. Longer stretches of time since the most recent challenged elections for the incumbent in past cycles were associated with more incumbent wins in the current cycle. For example, an incumbent whose “Years Since Challenged” we calculated at two had a 95% likelihood of winning. Whereas an incumbent we calculated at four years since the last challenge enjoyed a 99% likelihood of winning, all else equal.¹⁰⁴

TABLE 2: LIKELIHOOD OF INCUMBENT WINNING

Incumbent Wins	General Election	Primary Election
Years Since 2012	-.233*** (.074)	-.193** (.088)
Populous District	-.309 (.594)	-1.14*** (.339)
Years Since Challenged	.709*** (.22)	.433** (.17)
White Candidate	.37 (.376)	.172 (.456)
Female Candidate	-.249 (.458)	.393 (.543)
Years of Incumbency	-.015 (.026)	-.033 (.032)
Constant	2.612*** (.613)	2.878*** (.638)
Observations	348	294
χ^2	88.65***	52.02***

Standard errors are in parentheses

*** $p < .01$, ** $p < .05$, * $p < .1$

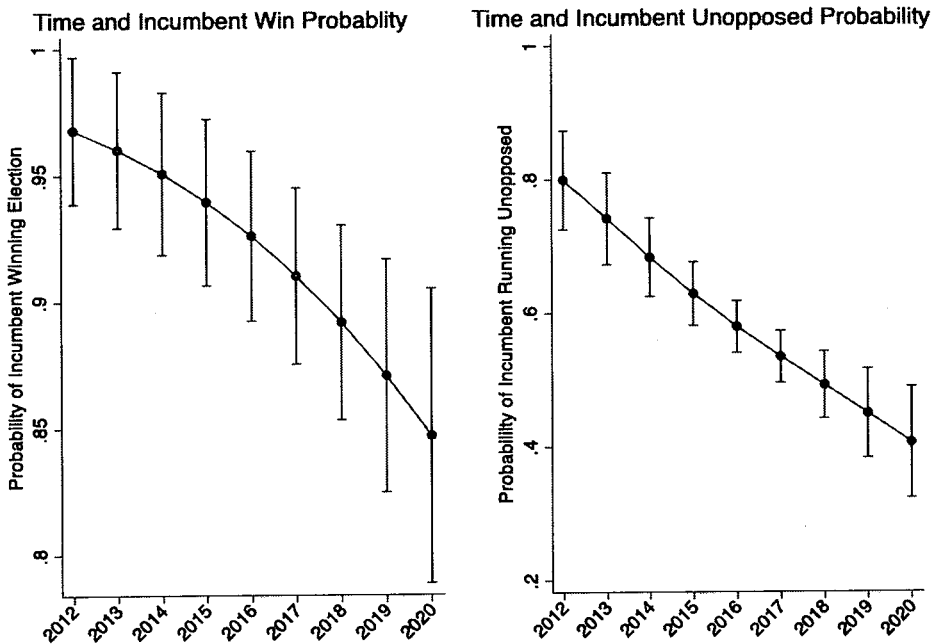
81% of their general elections and 76% of their primary elections. During the later period of 2017–2020, however, the incumbent win rate dropped to 72% in the general elections and 68% in the primaries.

¹⁰⁴ Since terms are typically four years, a bit of clarification of this interpretation is warranted. Our variable “Years Since Challenged” represents the current election year minus the year that the incumbent most recently drew a challenger. For incumbent candidates who show no earlier challengers in our data set for a given election (either general or primary), we assigned a value of the current election year minus 2011 (the year before our data begins). Consequently, if incumbent candidates have faced no challenges (either for one election or multiple elections) this coding approach can yield values that are not in multiples of four. Hence, as indicated in the appendix, the variable ranges from zero to nine. As a robustness check, we analyzed the subset of data from 2016–2020, years constituting the most recent full electoral cycle. Our findings for “Years Since Challenge” remained significant for all of our models, both in general and primary elections. See *infra* Table 2.

Although we expected incumbents to win less often in the largest districts, the size of the district did not make a significant difference. Neither the race nor the gender of the incumbent made a difference, after controlling for other district and election factors.

In primary elections, the same two factors that mattered in general elections remained influential. For example, the probability of an incumbent winning in a primary election declines about eleven points from the beginning of the period examined (2012) to the ending year (2020). The effect for “Years Since Challenged” was also somewhat smaller in the primary election setting. In addition, incumbents in high-population districts were more likely to lose in primary elections (by about nine points); this is likely because incumbents attract a larger number of primary election opponents in the largest districts.

FIGURE 1: CHANGES IN PROBABILITY OVER TIME FOR INCUMBENT WINNING AND INCUMBENT RUNNING UNOPPOSED



In sum, both for general and primary elections, more recent campaigns produced fewer incumbent wins, even after controlling for other factors. It is not a dramatic increase, but incumbents face greater threats today than they did in 2012.

2. Unopposed Incumbents

In the pool overall, incumbents ran unopposed in 222 of 299 primaries (74%), and in 229 of 351 of their general elections (65%). Once again, an initial look suggests a change over time. The elections in the years 2012–2015 left incumbents unopposed in 79% of the primaries and in 72% of their general elections. In the latest four years, 2017–2020, the percentage of incumbents who ran unopposed dropped to 70% in the primaries and 55% in the general elections.

A multivariate analysis, as summarized in Table 3, gives us a closer look. We first address the general election results. As time goes by (measured by the years elapsed since 2012 for each election), incumbents were less likely to run unopposed. As depicted in the second panel of Figure 1, the probability of an incumbent being unopposed in the general election dropped approximately forty points from 2012 to 2020. Finally, we find that incumbents in the most populous districts were also about seven percentage points less likely to run unopposed in the general election.

The recent history of election challengers (measured by the number of years in our study period since the incumbent faced an opponent) also showed a significant association with incumbents running unopposed in the current election. For instance, an incumbent who had not been challenged in two years is associated with a 61% probability of not being challenged, whereas an incumbent who had not been challenged in four years enjoyed a 91% likelihood of not being challenged, all else equal.¹⁰⁵

These two results also hold true for primary elections, although the effects are somewhat smaller. Put another way, a long history of uncontested elections in a district predicts an uncontested election in the current year.

¹⁰⁵ As noted in our discussion of incumbents winning model, our variable “Years Since Challenged” represents the election year minus the year that the incumbent most recently drew a challenger. *See supra* note 104. For incumbent candidates who show no earlier challengers in our data set for a given election (either general or primary) the value provided represents the year of the election minus 2011. Consequently, if incumbent candidates have had no challenges (either for one election or multiple elections), this coding approach can yield values that are not in multiples of four.

TABLE 3: LIKELIHOOD OF INCUMBENT RUNNING UNOPPOSED

Unopposed Incumbent	General Election	Primary Election
Years Since 2012	-.538*** (.076)	-.265*** (.07)
Populous District	-.883* (.466)	-.388 (.484)
Years Since Challenged	1.295*** (.292)	.889*** (.236)
White Candidate	.546 (.55)	.987*** (.36)
Female Candidate	-.268 (.3)	-.189 (.411)
Years of Incumbency	-.028 (.025)	-.074*** (.023)
Constant	.241 (.788)	.686 (.618)
Observations	348	294
χ^2	106.57***	73.21***

Standard errors are in parentheses

*** $p < .01$, ** $p < .05$, * $p < .1$

One demographic feature of the incumbents played an interesting role in primary elections. White incumbents were associated with about an eleven percentage point increase in the probability of running unopposed when compared to incumbents of other races. Longer years of incumbency also predicted an increase in opponents (that is, a decrease in unopposed elections) in the primaries. While incumbency in general is helpful for candidates, too much incumbency turned in the opposite direction and is associated with more competitive primaries. Perhaps the advantages of incumbency diminish over time and ultimately become counterproductive at some point.

3. Retiring Incumbents

A third indicator of change in elections would be incumbents who retire rather than seek re-election. While there are many individual reasons why an incumbent might retire, one might imagine that increased competition in the upcoming election would convince extra incumbents to act on those individual reasons and bow out of the race before it begins. The increased competition would therefore have an effect before the incumbent loses an election and before the incumbent faces challengers.

We classified each election, whether primary or general, as a retirement race when the incumbent did not appear among the candidates for that cycle in either the primary or general election. Both primaries and general elections would play out

differently if potential candidates knew from the start that the incumbent would not ask for re-election. Based on this definition, 25% of general elections took place with a retired incumbent; 27% of the primaries happened without the incumbent casting a shadow over the race.¹⁰⁶

An initial look at the data shows a small difference over time in the percentage of retirement races with movement in the direction our theory would predict. On the general election side, the proportion of retirement races moved from 24% in 2012–2015 to 29% in 2017–2020. As for the primaries, they increased from 29% in 2012–2015 to 33% in 2017–2020.

These initial results, however, do not stand up after controlling for variables other than time elapsed. The logistic regression shows that “Years Since 2012” does not help explain the likelihood that a race will not involve an incumbent candidate. There is no significant association. In fact, in the general election model only two independent variables—the number of years elapsed since the incumbent last faced a challenge and the indicator for populous districts—were statistically significant. The impact of the former was substantial. For example, an incumbent who had not been challenged in two years is associated with an 87% likelihood of retiring before election, whereas an incumbent who had not been challenged in four years had a mere 12% probability of retiring, all else equal. A similarly strong effect was found in primary elections. Further, general election contests in populous districts were associated (counterintuitively) with an approximately nine percentage point drop in incumbent retirements before elections as opposed to non-populous districts.

¹⁰⁶ The two percentages are different because some jurisdictions did not report results for general elections if the winner of the only primary election ran unopposed in the general election. The data contains a total of 476 general elections and 491 primary elections.

**TABLE 4: LIKELIHOOD OF INCUMBENT RETIRING
BEFORE ELECTION**

Incumbent Retires	General Election	Primary Election
Years Since 2012	.036 (.041)	.063 (.049)
Populous District	-.534* (.305)	-.318 (.301)
Years Since Challenged	-1.021*** (.23)	-1.086*** (.313)
% District African American	.002 (.01)	.002 (.01)
% District Latinx	.006 (.009)	-.005 (.005)
Constant	-.48* (.29)	-.172 (.339)
Observations	674	705
χ^2	24.06***	29.37***

*Standard errors are in
parentheses*

*** $p < .01$, ** $p < .05$, * $p < .1$

In sum, two of the three indicators of election change proved significant during the nine years that we studied. Incumbents lost more often over time, and they ran against challengers more often over time during this period. While more retirements happened in the last four years of the study period, that change was not statistically significant after controlling for other features of the districts and the candidates.

CONCLUSION

Our objective in this article is primarily descriptive. Data from the last nine years indicate that prosecutor elections are changing over time in the largest districts in the country. This growing competitiveness shows up most clearly in a greater number of multi-candidate elections, reducing the number of incumbents who run unopposed. It also appears in the lower chances of victory for incumbents who run for re-election.

We cannot authoritatively demonstrate that the new campaign rhetoric and office policies associated with the “progressive prosecutor” movement are responsible for this change in the competitive election environment. But it is reasonable, we believe, to draw a connection between the two phenomena. An approach to prosecution that promises to disrupt the traditional work of the prosecutor’s office would naturally lead to changes in election campaigns, as well. More systematic study of this inferred connection must wait for another day.

While our empirical work here offers descriptive insights, we also treat the trend toward elections that favor incumbents less heavily as a normative good. These

increasingly intense election campaigns force candidates to articulate their priorities and policy plans, looking for ways to distinguish themselves. The candidates therefore create more choices for the voters. The choice among distinctive candidates can reveal new possibilities to voters who previously—and wrongly—equated severity of sentences with greater public safety.¹⁰⁷ The campaign debates also create meaningful ways to evaluate the work of incumbents who took office based on these specific plans. This wide-ranging debate might lead voters in some districts to embrace “progressive” or “reform-oriented” chief prosecutors, while voters in other districts might reject the newer proposals. In either case, contested elections reveal to voters the range of questions that prosecutors address. Voters in prosecutor elections now know what is at stake, more today than they did a decade ago.

¹⁰⁷ See Barkow, *supra* note 4.

APPENDIX

Descriptive Statistics

Variable	Obs	Mean	Std. Dev.	Min	Max
Incumbent Wins	1 376	.432	.495	0	1
Unopposed Incumbent	1 376	.448	.497	0	1
Incumbent Retires	1 376	.325	.468	0	1
Candidate Wins	1 376	.702	.458	0	1
Years of Incumbency	1 376	4.836	7.535	0	47
Years Since 2012	1 376	4.262	2.817	0	8
Additional Candidates	1 376	.29	.912	0	6
Years Since Challenged	1 376	1.307	2.374	0	9
Candidate Incumbent	1 376	.47	.499	0	1
Populous District	1 376	.252	.434	0	1
African American Candidate	1 376	.119	.324	0	1
Latinx Candidate	1 376	.06	.238	0	1
Asian Candidate	1 376	.023	.151	0	1
White candidate	1 376	.797	.402	0	1
Female Candidate	1 376	.267	.443	0	1
% District African American	1 376	14.974	13.061	.542	64.400
% District Latinx	1 376	18.841	17.349	1.094	92.029

The total observations indicated in this table (1,376) are less than our total number of candidates (1,403) because the table excludes those candidates whose race is unknown.

Description of Variable Coding

Variable	Variable Coding Description
Incumbent Wins	1 if incumbent candidate wins the race; 0 otherwise
Unopposed Incumbent	1 if incumbent candidate is unopposed in the race; 0 otherwise
Incumbent Retires	1 if there is no incumbent in the race (retired beforehand); 0 otherwise
Candidate Wins	1 if the candidate wins the race; 0 otherwise
Years of Incumbency	Number of years the incumbent has been in office
Years Since 2012	Number of years that has passed since 2012
Additional Candidates	Number of candidates beyond 2 in the race
Years Since Challenged	Number of years since the incumbent has been challenged in the type of race examined
Candidate Incumbent	1 if the candidate is an incumbent; 0 otherwise
Populous District	1 if the population of the district of the race is above the median population of districts examined; 0 otherwise
African American Candidate	1 if the candidate is African American; 0 otherwise— <u>Source</u> : Justice for All data website: http://wholeads.us/justice/ [https://perma.cc/P2VX-UGY2] and district and candidate specific websites
Latinx Candidate	1 if the candidate is African American; 0 otherwise— <u>Source</u> : Justice for All data website: http://wholeads.us/justice/ [https://perma.cc/P2VX-UGY2] and district and candidate specific websites
Asian Candidate	1 if the candidate is African American; 0 otherwise— <u>Source</u> : Justice for All data website: http://wholeads.us/justice/ [https://perma.cc/P2VX-UGY2] and district and candidate specific websites
White candidate	1 if the candidate is African American; 0 otherwise— <u>Source</u> : Justice for All data website: http://wholeads.us/justice/ [https://perma.cc/P2VX-UGY2] and district and candidate specific websites
Female Candidate	1 if the candidate is Female; 0 otherwise— <u>Source</u> : district and candidate specific websites
% District African American	Percentage of the district population that is African American— <u>Source</u> : U.S. Census Bureau website: https://www.census.gov/topics/population/race/data.html [https://perma.cc/3CYA-KXP8]
% District Latinx	Percentage of the district population that is Latinx— <u>Source</u> : U.S. Census Bureau website: https://www.census.gov/topics/population/race/data.html [https://perma.cc/3CYA-KXP8]

Prosecutor Districts Included in Data Set

STATE	DISTRICT	STATE	DISTRICT	STATE	DISTRICT
Alabama	10	Indiana	19	Ohio	Summit
Alabama	13	Indiana	31	Ohio	Montgomery
Alabama	23	Indiana	38	Ohio	Lucas
Arizona	Maricopa	Iowa	Polk	Ohio	Stark
Arizona	Pima	Kansas	Johnson	Ohio	Butler
Arizona	Pinal	Kansas	Sedgwick	Ohio	Lorain
Arkansas	Little Rock 6	Kentucky	30	Oklahoma	Oklahoma City
California	Los Angeles	Kentucky	22	Oklahoma	Tulsa
California	San Diego	Louisiana	19	Oregon	Multnomah
California	Orange	Louisiana	24	Oregon	Washington
California	Riverside	Louisiana	Orleans	Oregon	Clackamas
California	San Bernardino	Maine	2	Oregon	Lane
California	Santa Clara	Maryland	Montgomery	Oregon	Marion
California	Alameda	Maryland	Prince George's	Pennsylvania	Philadelphia
California	Sacramento	Maryland	Baltimore County	Pennsylvania	Allegheny
California	Contra Costa	Maryland	Baltimore City	Pennsylvania	Montgomery
California	Fresno	Maryland	Anne Arundel	Pennsylvania	Bucks
California	Kern	Maryland	Howard	Pennsylvania	Delaware
California	Ventura	Massachusetts	Middlesex	Pennsylvania	Lancaster
California	San Francisco	Massachusetts	Worcester	Pennsylvania	Chester
California	San Mateo	Massachusetts	Essex	Pennsylvania	York
California	San Joaquin	Massachusetts	Suffolk	Pennsylvania	Berks
California	Stanislaus	Massachusetts	Norfolk	Pennsylvania	Westmoreland
California	Sonoma	Massachusetts	Bristol	Pennsylvania	Lehigh
California	Tulare	Massachusetts	Plymouth	Pennsylvania	Luzerne
California	Santa Barbara	Massachusetts	Hampden	Pennsylvania	Northampton
California	Monterey	Michigan	Wayne	South Carolina	13
California	Solano	Michigan	Oakland	South Carolina	9
California	Placer	Michigan	Macomb	South Carolina	5
California	Merced	Michigan	Kent	Tennessee	30

Colorado	18	Michigan	Genesee	Tennessee	20
Colorado	4	Michigan	Washtenaw	Tennessee	6
Colorado	2	Minnesota	Hennepin	Tennessee	11
Colorado	1	Minnesota	Ramsey	Texas	Harris
Colorado	17	Minnesota	Dakota	Texas	Dallas
Colorado	8	Minnesota	Anoka	Texas	Tarrant
Colorado	20	Missouri	St. Louis County	Texas	Bexar
Colorado	19	Missouri	Jackson	Texas	Travis 53
Florida	Miami 11	Missouri	St. Charles	Texas	El Paso 34
Florida	17	Missouri	St. Louis City	Texas	Collin
Florida	9	Nebraska	Douglas	Texas	Hidalgo
Florida	6	Nevada	Clark	Texas	Denton
Florida	15	Nevada	Washoe	Texas	Fort Bend 268
Florida	13	New Hampshire	Hillsborough	Texas	Montgomery 9
Florida	20	New Mexico	2	Texas	Williamson 26
Florida	4	New York	Kings	Texas	Cameron
Florida	5	New York	Queens	Texas	Bell 105
Florida	18	New York	New York	Texas	Brazoria
Florida	7	New York	Suffolk	Texas	Nueces 27
Florida	12	New York	Bronx	Texas	Galveston
Florida	10	New York	Nassau	Utah	Salt Lake
Florida	1	New York	Westchester	Utah	Utah
Florida	19	New York	Erie	Utah	Davis
Georgia	Atlanta	New York	Monroe	Virginia	Fairfax
Georgia	Gwinnett	New York	Richmond	Virginia	Va. Beach City
Georgia	Stone Mountain	New York	Onondaga	Virginia	Prince William
Georgia	Cobb	New York	Orange	Virginia	Chesterfield
Georgia	Augusta	New York	Rockland	Virginia	Loudoun
Hawaii	Honolulu	New York	Albany	Virginia	Henrico
Idaho	Ada (Boise)	North Carolina	Charlotte	Washington	King
Illinois	Cook	North Carolina	Raleigh	Washington	Pierce
Illinois	DuPage	North Carolina	Greensboro	Washington	Snohomish

Illinois	Lake	North Carolina	Winston-Salem	Washington	Spokane
Illinois	Will	North Carolina	Durham	Washington	Clark
Illinois	Kane	Ohio	Cuyahoga	Wisconsin	Milwaukee
Illinois	McHenry	Ohio	Franklin	Wisconsin	Dane
		Ohio	Hamilton	Wisconsin	Waukesha