Do Prosecutor Elections Impact Prosecutor Decision Making? An Analysis of Florida Prosecutors

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ABSTRACT AND ARTICLE INFORMATION

In the United States, the vast majority of chief prosecutors are elected, and existing literature demonstrates that electoral pressure impacts the decisions that candidates make (e.g., Brace & Hall, 1997; Cox & McCubbins, 1993; Mayhew, 1974). Prosecutorial discretion puts prosecutors in a unique position to shape outcomes in our criminal justice system. This paper explores how electoral pressure impacts prosecutorial decision-making. This analysis utilizes a novel dataset of chief prosecutor elections in Florida from 2008–2016 to test the impact of electoral pressure on three dependent variables: the proportion of cases not prosecuted, the proportion of cases convicted by jury trial, and the proportion of cases disposed by plea agreements. The models demonstrate no relationship between electoral pressure and case declination decisions. The results hold across several operationalizations of electoral pressure. However, individual prosecutor characteristics, such as sex and ideology, shape the decision to prosecute. Electoral pressure also has no effect on plea bargaining. However, during the time span of the data, jury trials decrease during election years.

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In Alachua County, Florida, prosecutors dropped almost 50% of sexual battery cases from 2015-2018 (Minta, 2019). Similarly, in Quitman County, Mississippi, a prosecutor routinely failed to pursue convictions. A county clerk reported that in one year, 90 out of 95 identified defendants had not gone to grand jury (Bach, 2010b, p. 240). In the United States, the vast majority of chief prosecutors are elected (Alaska, New Jersey, and Connecticut are the exceptions). Prosecutors who face opposition (i.e., a challenger or interest group participation in an election) during a reelection campaign are subject to attacks targeting their conviction rate and often face accusations of being "soft on crime." In 2023, District Attorney George Gascón of Los Angeles County, California, faced significant criticism during his reelection bid for office. In a Democratic debate for the office, Maria Ramirez, a deputy district attorney challenging Gascón, vocally criticized Gascón's progressive policies. Ramirez argued that citizen safety concerns were in part due to Gascón's failure to prosecute cases. These types of attacks are not rare in prosecutor elections, but we know little about how prosecutors are impacted by electoral pressure.

Existing literature establishes a connection between electoral pressure and incumbent behavior (e.g., Brace & Hall, 1997; Cox & McCubbins, 1993; Mayhew, 1974). Put simply, reelection seekers make decisions that will appeal to the public so that they can achieve their goal of reelection. Most chief prosecutors who aspire to retain office will face reelection pressures in their careers. The purpose of this paper is to evaluate the impact of electoral pressure on prosecutor decision-making.

This is an important line of inquiry given the role and powers of the American prosecutor. Local prosecutor offices handle approximately 95% of all criminal cases prosecuted each year (Simmons, 2004). Prosecutors have unique power over criminal case outcomes. Prosecutors decide to file and dismiss charges. In jurisdictions that use grand juries, the grand jury routinely sides with the prosecutor (Bergman & Berman, 2018). Prosecutors also have significant discretion over the manner of disposition of charges (e.g., jury trial, plea bargain, diversionary court). While judges also have power over how cases are resolved, judges generally defer to prosecutors when making disposition decisions. This is the case because prosecutors know more about any individual case (Wright, 2010). There is little variation in prosecutorial discretion across states. However, in some states, a prosecutor can decide whether a juvenile is transferred to adult court. In other states, a hearing determines where a juvenile will be tried. Aside from variations like this, there are no other significant formal constraints on prosecutorial discretion (e.g., Barkow, 2009; Mosteller, 2011; Pfaff, 2014). Prosecutor power has grown over time, and prosecutors tend to make decisions in a vacuum without input from other legal or community actors (Wright, 2017). As a result, many of the outcomes associated with the criminal justice system are an artifact of prosecutorial decision-making (Adams & Cutshall, 1987; Mcdonald, 1979).

To examine how electoral pressure impacts the decisions that prosecutors make, I employ an original dataset of prosecutor elections in Florida from 2008–2016. I examine prosecutor behavior in three separate contexts: the decision to prosecute, cases disposed by plea agreement, and cases disposed by trial. The results from the empirical tests suggest that the decision to prosecute is not impacted by the threat of an upcoming election. However, other prosecutor characteristics, such as sex and ideology, shape the decisions that prosecutors make. Specifically, Republican prosecutors tend to prosecute more cases than their Democratic counterparts, and male prosecutors tend to prosecute fewer cases as compared to their female counterparts. Electoral pressure also has no effect on plea bargaining. However, during the time span of the data, jury trials decrease during election years.

The Study of Prosecution

There is a body of research on prosecutorial decision-making that spans the disciplines of economics, criminology, and political science. One of the first models applied to the study of prosecution was Posner's (1972) model of administrative agencies that suggests that prosecutors' offices select cases that have the highest likelihood of conviction. Posner acknowledges that the office budget is fixed. Since prosecutors do not have additional money (i.e., money beyond the fixed budget) to prosecute cases, they select cases that they are most likely to win. Relatedly, Forst and Brosi (1977) produce a game-theoretic model of prosecutorial behavior that shows that prosecutors pursue cases based on the strength of evidence in the case, the type of crime, and the history of the defendant. They argue that by prioritizing these factors, prosecutors are likely to pursue cases with the highest likelihood of conviction and those that will reduce future crime. Posner (1972) and Forst and Brosi (1977) demonstrate that prosecutors are selective when deciding which cases they take to trial.

Social and legal considerations come into play when prosecutors decide which cases to take to trial. In addition to case-specific factors, Myers and Hagan (1979) show that victim-specific factors, such as employment, race, and sex, influence the decision to prosecute. Victim credibility and witness credibility

and cooperation are determinants of prosecution after grand jury indictment (Albonetti, 1986). Taken together, prosecutors want to pursue cases that face a high likelihood conviction, and case-specific and victim-specific factors shape prosecutor perceptions of whether a case is a good candidate for prosecution. This is observed through Frederick and Stemen's (2012) finding that whether a prosecutor pursues a case is largely determined by two questions: "Can I prove the case?" and "Should I prove the case?"

In addition to prioritizing cases prosecutors think they can win, prosecutors also consider their individual career goals when using their discretion, and the charges they pursue can be used to achieve their individual goals (Wright, 2012). Rasmusen and colleagues (2009) bring this to bear in their political model of prosecutor decision making. In this model, a prosecutor who faces electoral pressure is incentivized to increase his conviction rate, as conviction rates are a frequently cited signal of competency in prosecutor election campaigns. Prosecutors can use their performance across various measures (e.g., conviction rate, sentence lengths, plea bargains) as a signal to the electorate (Bandyopadhyay & McCannon, 2015).

Prosecutors have the authority to decline to prosecute cases when they feel there is not enough evidence to prosecute (e.g., Wright, 2020) or to serve as a check on police (see Natapoff, 2024). However, other factors also impact case declination decisions. Wright (2020) argues that the case declination policy that prosecutors adopt is in part impacted by a prosecutor's duties to their constituencies. Prosecutors have a duty to statewide voters because the legislature created the criminal code. However, prosecutors also have a duty to their local constituents. Since prosecutor offices do not have enough funding to prosecute every case, they will choose to prosecute cases that will increase public safety within their immediate communities, and they will choose to decline cases that do not align with community safety goals. Put simply, case declination policies are impacted by the characteristics of a prosecutor's local community. The idea that prosecutors respond to their local communities has been tested empirically. In a study of drug cases in Colorado, prosecutors in liberal regions were more likely to dismiss drug-related charges than their counterparts working in more conservative areas of the state (Nelson, 2014). Thus, there is evidence to suggest that prosecutors look to their local constituencies when deciding which cases to pursue and which cases to decline to prosecute. Since local constituencies are responsible for electing the chief prosecutor, prosecutors must maintain popular public support in their county or district. Thus, we should observe prosecutors responding to their electoral environment (McCannon & Williams, 2022).

Prosecutors are rational actors who behave in accordance with their own self-interest (e.g., Heller, 1997). When prosecutors want to retain their office, any prosecutor who faces a challenger will also face some level of electoral pressure. Bandyopadhyay and McCannon (2014) show that the number of cases disposed of by jury trial increases in the year before a prosecutor faces reelection. Since trials are more likely to reach the public through media coverage and observations in the courtroom, trials are one way in which prosecutors can show that they prioritize the safety of the community and curry favor in the eyes of the electorate.

A study of legal actors in California finds that prosecutors and defense attorneys are less likely to agree to plea negotiations in cases that receive media attention (Utz, 1978). This finding was corroborated by a subsequent analysis of prosecutors and defense attorneys in Illinois in which one prosecutor stated that he is "afraid of being considered soft on criminals" (Jones, 1978, p. 202). Prosecutors are motivated by self-interest and are not solely focused on fairness and justice (Alschuler, 1968). This concern for self-interest underscores why electoral pressure is likely to shape prosecutor decision-making. When a prosecutor running for reelection faces a threat of defeat, they will take steps to increase their likelihood of reelection. Some scholars suggest that the desire to pursue career goals or reelection creates a problematic incentive structure for prosecutors (Bresler, 1994; Medwed, 2004). That is, elections make prosecutors beholden to the people, and as a result, prosecutorial decision making is impacted by individual goals instead of the desire to fulfill the duties of the office by simply seeking justice.

While these studies vary in their area of focus, there is a consistent theme. Prosecutors are self-interested actors who make decisions that align with their own goals, and prosecutors consider case-specific and defendant-specific factors when deciding which cases to pursue. While the existing literature acknowledges the influence of elections on prosecutor behavior, most analyses focus on the decision to take a case to trial. The present paper moves our knowledge forward in this area of research by presenting an empirical analysis of the impact of electoral pressure on case declinations and case disposition when elections are operationalized in three ways.

Prosecutors and Elections

Prosecutors are incentivized to make as many convictions as possible, which affects the cases they choose to pursue and the cases to which they allocate resources. This analysis treats prosecutors as rational actors who make decisions in accordance with their

goals (e.g., Heller, 1997; Koppl & Sacks, 2013). Thus, prosecutors seeking reelection should make decisions that align with their goal of reelection.

Conviction rates and trial success are routinely used to show a prosecutor's ability. For example, in 2019, Florida's ninth judicial circuit, Deb Barra announced her candidacy for the state's attorney position and cited her trial experience and convictions as evidence of her qualifications for the position (Powers, 2019a). When faced with electoral pressure, prosecutors want to highlight their work in the courtroom by publicizing their conviction rates.

Much of a prosecutor's day-to-day business goes unnoticed, but trials present a rare opportunity for prosecutors to put their work directly in front of the public eye. However, prosecutors face resource constraints (see Wright, 2020). Given that each community has its own public safety concerns and priorities, prosecutors are likely to adopt case declination policies with community concerns in mind (Wright, 2020). Thus, prosecutors cannot take all cases to trial even if they want to. Instead, prosecutors will choose to take cases to trial that have a high likelihood of achieving a conviction.

When prosecutors face an upcoming election, they face greater public scrutiny than they do in other periods of office. During the period immediately before an election, I expect prosecutors to focus specifically on cases that appeal to their local constituents and public safety within their community, and they will allocate more resources to ensuring these cases lead to a conviction. In doing so, the number of cases that go unprosecuted will increase because more resources are being allocated to cases going to trial during the electoral period. Prosecutors face greater resource constraints around election time because they tend to take more cases to trial at this time (see Bandyopadhyay & McCannon, 2014). This is the case because prosecutors feel greater pressure to appeal to the immediate needs of their constituents, and they need to do so in a way that is easy for the public to see. In a study of North Carolina prosecutors, Bandyopadhyay and McCannon (2017) show that when incumbent prosecutors face contested elections, they handle fewer cases in the lead up to the election. Since prosecutors will prioritize the cases that appeal to the constituents of their districts, unprosecuted cases may go unnoticed or be blamed on law enforcement (Richman, 2006). In many states, the public may not even have access to information about cases not prosecuted, as data availability for state-level criminal justice statistics are severely lacking (Bach, 2010a). Therefore, prosecutors face limited concerns about backlash as a result of cases not prosecuted, and when such announcements will serve their own interests, prosecutors may even issue public statements regarding their case declination policies (Roth, 2020).

> Hypothesis 1: During election years, the proportion of cases not prosecuted is higher as compared to non-election years.
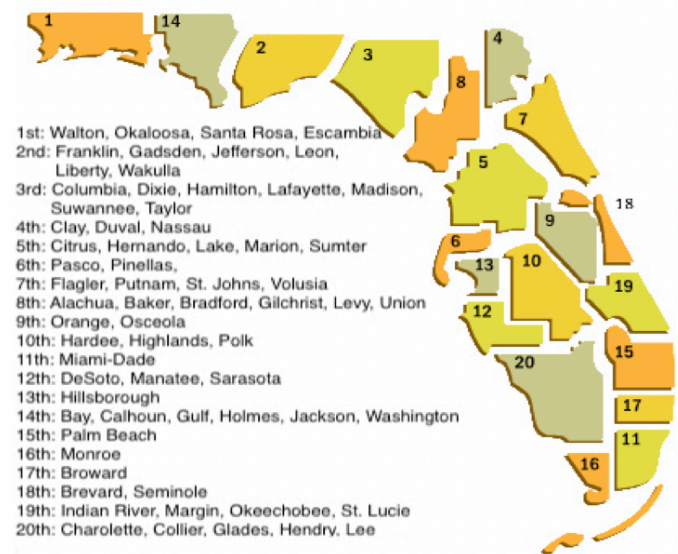
In sum, prosecutors facing election pursue cases that they are confident that they can win and cases that will help them curry favor with constituents. Therefore, prosecutors facing electoral pressure will prioritize cases that appeal to their constituents and decline cases that will not result in electoral favor. While prosecutors likely make decisions with community interests in mind throughout their tenure, prosecutors face more pressure to appeal to their constituents when an election nears. As a result, we should observe prosecutors declining to prosecute more cases around election time to preserve more resources for the cases that appeal to their constituents.

Methods

The unit of analysis is judicial circuit-year. Due to the data availability of the dependent variable (discussed in detail below), the sample consists of Florida's 20 judicial circuits from 2009–2013. There are 20 circuit courts (i.e., general jurisdiction trial courts) representing the state's 67 counties. Circuits serve counties based on caseload and geography instead of population. As a result, each judicial circuit
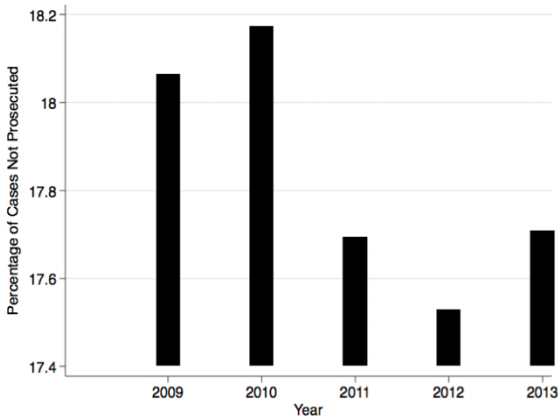
Figure 1

Florida Judicial Circuits

1st: Walton, Okaloosa, Santa Rosa, Escambia
2nd: Franklin, Gadsden, Jefferson, Leon, Liberty, Wakulla
3rd: Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, Taylor
4th: Clay, Duval, Nassau
5th: Citrus, Hernando, Lake, Marion, Sumter
6th: Pasco, Pinellas,
7th: Flagler, Putnam, St. Johns, Volusia
8th: Alachua, Baker, Bradford, Gilchrist, Levy, Union
9th: Orange, Osceola
10th: Hardee, Highlands, Polk
11th: Miami-Dade
12th: DeSoto, Manatee, Sarasota
13th: Hillsborough
14th: Bay, Calhoun, Gulf, Holmes, Jackson, Washington
15th: Palm Beach
16th: Monroe
17th: Broward
18th: Brevard, Seminole
19th: Indian River, Margin, Okeechobee, St. Lucie
20th: Charolette, Collier, Glades, Hendry, Lee

Source: https://www.flcourts.org/Florida-Courts/Trial-Courts-Circuit

Figure 2

Average Percentage of Cases Not Prosecuted

represents a unique number of counties. Figure 1 shows Florida's 20 judicial circuits and the counties each serves. Each judicial district has one chief prosecutor. In Florida, chief prosecutors are called state attorneys, and assistant district attorneys are called assistant state attorneys. Assistant state attorneys are subordinates of the state attorney.

Florida is the focus of this analysis due to data availability on case declinations. I do not propose original data collection on cases not prosecuted because most states do not make this data available to the public. Data on cases not prosecuted for this project were collected by the Measures for Justice organization using criminal justice administrative case management systems. While a single-state study may raise questions about the generalizability of the findings, Florida has several characteristics that make it a reasonable state for this empirical test.

First, the variation in urban and rural counties makes Florida a good candidate for this study. According to the Florida Census, during the time of this study, there were at least 30 rural counties in Florida in any year. Thus, the analysis will capture the impact of elections on prosecutorial decision making in both rural and urban areas. This will allow for generalizability to similar states with urban and rural areas (e.g., New York and Texas) and primarily rural states (e.g., West Virginia). Second, the state has 20 judicial circuits serving its counties, which is determined by geography and caseloads. This allows for meaningful variation in resource allocation by the state, which would not be the case if I were to use a less populated state. Third, Florida State Attorneys are elected every four years, which is the average term length for elected prosecutors in the United States. The sample includes five years. Therefore, each judicial circuit will experience at least one election period in this analysis. Finally, scholars suggest that factors

such as race and ethnicity may influence the cases that prosecutors choose to pursue (Frederick & Stemen, 2012). Florida is a state with diverse racial demographics, which makes it comparable to states like California, Maryland, and New Jersey. The United States Census Bureau reports that 22% of Florida residents were Hispanic or Latino and 15% were African American in 2017. The representation of races in this sample improves the test's generalizability, as the test is not limited to a state with primarily one race (e.g., Maine and Vermont). These characteristics make Florida a reasonable state of focus for this analysis.

Criminal cases in Florida generally begin with an arrest or notice to appear (Ayo & Iken, n.d.). After an arrest, the defendant is taken to booking. These steps occur on the first day of a criminal case in Florida. If a defendant is not bailed out, a judge has 24 hours from the time of arrest to review the amount set for bail. This step is referred to as the first appearance and occurs within 72 hours of arrest. The next step is the arraignment. At the arraignment, the defendant gives his plea (i.e., guilty, not guilty, no contest). This occurs between 30 to 60 days of arrest. Formal charges can be filed any time between day 1 and 90 of a criminal case. A prosecutor can file formal charges for any offense at this stage. The prosecutor is not limited to those listed on the original arrest warrant. If a prosecutor fails to file charges, the case is considered declined (Ayo & Iken, n.d.).

Figure 3

Histogram of the Proportion of Cases Not Prosecuted
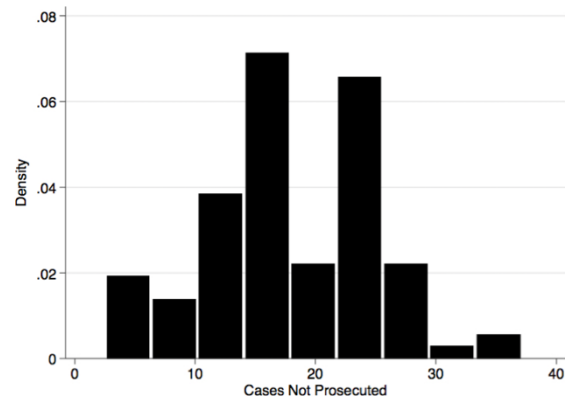
The dependent variable in this analysis is the proportion of cases not prosecuted in each judicial circuit from Measures for Justice (n.d.). Cases not prosecuted are cases referred to the prosecutor's office by law enforcement or by a complainant that were declined by the prosecutor. One important

Table 1: Expected Direction of the Covariates

Variable	Expected Direction
Election Year	+
Contested Election	+
Election Period	+
Hot Seat	+
Crime Rate	+
Resources	-
Black Population	-
Hispanic Population	-
State Attorney Ideology	-
State Attorney Sex	-
Counts Filed	+

characteristic of the data worth noting is that they do not show which types of cases or specific characteristics of cases that were declined. For example, I cannot identify whether cases were declined when there was enough evidence to prosecute, declined because there was not enough evidence, or declined due to police-overreach. Additionally, due to the structure of the data and the unit of analysis, I cannot identify which law enforcement offices were involved in any of the cases. While they have distinctly separate offices and roles in the criminal justice system, law enforcement and prosecutor offices are sometimes thought to have an intra-branch relationship (see Natapoff, 2024), and a case level analysis would control for this relationship in a way that the present analysis cannot. Figure 2 shows the average percentage of cases not prosecuted across all years of the data and shows meaningful variation across the years, and Figure 3 shows the distribution of cases not prosecuted.

State attorneys in Florida are selected by partisan elections and serve a four-year term. To run for election or to challenge an incumbent, an individual must live in the district and have criminal law experience (i.e., assistant prosecutor, criminal defense attorney). To evaluate the effect of elections on prosecutorial decision making, I collected original data on prosecutorial elections in Florida from 2009–2013. I use OLS regression. I opt for OLS instead of a time-series cross-sectional regression because it is a short time series, and there are only a small number of groups. Serial correlation and cross-sectional dependence generally are not a problem in micro panels. Results from diagnostic tests (Breusch-Pagan Lagrange multiplier and Hausman) reveal that the OLS estimator is sufficient for the data.

Existing political science literature on elections has established a clear relationship between electoral pressure and incumbent behavior (e.g., Hogan, 2008; Mayhew, 1974; Miller & Stokes, 1963). Since voters have finite resources to expend on information gathering and prosecutor elections are generally low-information and low-turnout races, prosecutor behavior that changes in response to electoral pressure should happen prior to an election. This is the case because this is when voters are paying the most attention to prosecutor behavior. While challengers and critics could certainly point to any decision throughout a prosecutor's tenure, prosecutors are more likely to engage in signaling behavior when they are under the most scrutiny from voters (i.e., as voters prepare to go to the ballot box).

To test the hypothesis, I assess the effect of elections in three different ways. First, in model 1, I use election year. This variable takes on a value of one any time a prosecutor ran for reelection or could have ran for reelection (i.e., a prosecutor's term was up, but he faced no challenger). In other words, this means that when a prosecutor's term is up, the variable takes on a value of one. This specification is important, as the Florida Secretary of State's office only reports election returns from contested elections. To identify when a state attorney's term was up but the prosecutor did not face a challenger (i.e., there was no election), I used each circuit's state attorney's website and historic election results. The second way that elections are captured is through contestation. The contested election variable takes on a value of one every time a prosecutor faces a contested election. To identify contested elections, I used Florida's Secretary of State's election data archive. The final way that elections are evaluated is with an election period variable. Election period is a dichotomous variable that includes the election year and the year before the election. The electoral period variable includes the time during the run-up to the campaign and during the campaign when we would expect prosecutors to adjust their behavior due to the election.

I include several control variables in the model. I control for each judicial circuit's crime rate. Crime rate is measured per 1,000 of the population. Crime rate data are taken from Florida's Uniform Crime Reporting Data of the Florida Department of Law Enforcement (2018). I expect higher crime rates to correspond with a higher proportion of cases not prosecuted. Since there will be more crimes that could potentially be prosecuted, there will be more crimes that prosecutors decline to pursue, as prosecutors have a finite amount of time to dedicate to cases. As a result,

Table 2: Descriptive Statistics for Models 1-3

Variables	Mean	Std. Dev.	Minimum	Max	Median
Proportion of Cases Not Prosecuted	17.83	7.2	2.53	37.16	17.23
Election Year	0.2	0.4	0	1	0
Contested Election	0.11	0.31	0	1	0
Election Period	0.6	0.49	0	1	0
Hot Seat	0.07	0.26	0	1	0
Crime Rate (per 1,000)	37.35	7.4	23.45	56.95	35.66
Resources (per 100,000)	2.06	0.81	1.43	1.85	1.85
Black Population (%)	13.88	6.07	5.7	10.93	10.93
Hispanic Population (%)	14.83	9.15	3.95	12.6	12.6
State's Attorney Ideology	0.62	0.48	0	1	1
State's Attorney Sex	0.93	0.26	0	1	1
Counts Filed (per 1,000)	24.53	69.14	12.34	22.9	22.9
N=95					

there will be higher levels of cases not prosecuted in areas with the highest crime rates because prosecutors will focus on the cases most likely to help them achieve their goals.

I include a variable that measures whether candidates participated in a race that is considered a hot seat. A hot seat is a race in which the prosecutor won the race by 60% or less of the vote. This is an established threshold in existing congressional elections (e.g., Jewell, 1982; Weber et al., 1991) and state high court (e.g., Hall & Bonneau, 2006) literature. It is important to control for race competitiveness, as prosecutor races are generally low turnout and less competitive elections (e.g., Wright, 2014). Given that prosecutor races occur every four years in Florida, using election results from four-years prior may not provide the most accurate estimate for current competitiveness. Candidates know whether the race they are participating in is competitive in the present. For example, candidates are aware of the qualifications and history of their competition. They also have information on fundraising and campaign tactics. Therefore, incumbents and candidates participating in prosecutor elections know whether they are likely to win or if they face a real challenge. Thus, the hot seat measure is constructed using election results data from the current election. If a candidate won by 60% of the vote or less, the race is coded as a 1. If a candidate won by 60% or more, the race is coded as a 0.

I also control for the proportion of the population that is Black and Hispanic. I include these controls as members of the Black and Hispanic populations are disproportionately represented in the criminal justice system (see Yates & Fording, 2005). I

expect larger Black and Hispanic populations to decrease the levels of cases not prosecuted given their overrepresentation in the criminal justice system. The data on race are taken from county demographic information from Florida Health Charts (2018).

A measure of the state attorney's office resources is also included in the model. Prosecutors' ability and the decision to prosecute is also influenced by their office budget (e.g., Rasmusen et al., 2009). Prosecutor's offices have a finite number of resources, and prosecutors determine how their office's resources are allocated. Given the pressure to prosecute, prosecutors allocate more resources to the cases that they think they can win. Prosecutor's offices with fewer resources will prosecute fewer cases as they have fewer resources to allocate to all cases, especially those that are deemed less likely to help prosecutors achieve their goals. This variable measures the amount of funding provided to each office in each year. The expected direction of this variable is negative, as I expect more money available should reduce the number of cases that prosecutors decline to prosecute. Resource data for each state attorney's office is taken from Transparency Florida (2018) and is measured in millions of dollars per 100,000 of the population.

In addition, I account for each judicial circuit's caseload. The counts filed variable measures the total number of counts filed per 1,000 of the population in each judicial circuit for each year. Counts filed represent defendants with an indictment or an information. The data are taken from Florida's Trial Court Statistics reported by the Florida Office of the State Courts Administrator (2018). The expected direction of the counts filed variable is positive. I expect higher caseloads to result in more case

Table 3: OLS Regression Results

	Model 1	Model 2	Model 3
Election Year	-2.03 (3.2)		
Contested Election		0.48 (1.52)	
Election Period			-0.24 (1.2)
Hot Seat	3.67 (3.52)	1 (2.05)	1.59 (1.75)
Crime Rate	0.15 (0.1)	0.16 (0.1)	0.15 (0.1)
Resources	-0.16 (1.11)	-0.17 (0.11)	-0.16 (0.11)
Black Population	-0.12 (0.12)	-0.13 (0.12)	-0.13 (0.12)
Hispanic Population	-0.13 (0.07)	-0.13 (0.07)	-0.13 (0.07)
State's Attorney Ideology	-4.67* (1.74)	-4.62* (1.71)	-4.61* (1.72)
State's Attorney Sex	12.14 ** (2.6)	12.12** (2.63)	12.06** (2.58)
Counts Filed	-0.01** (0.001)	-0.01** (0.001)	-0.01** (0.001)
Constant	29.89 (6.8)	29.87 (6.99)	30.15 (6.94)
Observations	95	95	95
R-squared	0.5346	0.5320	0.5318

Note: **$p < 0.01$, *$p < 0.05$, Robust Standard Errors in Parenthesis
DV: Proportion of Cases Not Prosecuted

declinations, as prosecutors will simply have less time to dedicate to pursing each recommended case.

Finally, using the data I collected on prosecutorial elections, I control for two characteristics of the prosecutor. First, I control for state attorney ideology. This variable takes on a value of one if the prosecutor is a Republican and a value of zero if the prosecutor is a Democrat. The expected direction of this variable is negative, as more conservative ideologies typically correspond with more punitiveness (e.g., Yates & Fording, 2005). I also control for the sex of the prosecutor. Gilligan (1982) finds that, when faced with a moral dilemma, men focus on individual rights and standards of justice whereas women focus on care and relationships. Building on this research, Applegate and colleagues (2002) show that women, as compared to men, have different attitudes toward crime and are more likely to favor rehabilitation for offenders. Research on the effect of gender on judicial behavior suggests that female judges behave similarly to male judges (see Haire & Moyer, 2015; Songer et al., 1994). While

findings in the literature on judicial decision-making suggest that female judges and male judges generally behave the same, there are reported differences, as cited above, in the way that males and females approach criminal justice issues. The expected direction of the gender variable in this analysis is negative. The variable takes on a value of one if the prosecutor is a male and a value of zero if the prosecutor is a female. I expect men to have a lower proportion of cases not prosecuted since they tend to focus on standards of justice and are less likely to favor rehabilitation for offenders. I anticipate that males will be eager to pursue convictions for as many cases as possible. Conversely, I expect women to take into consideration the contextual factors of each case and prioritize convictions for a smaller proportion of cases. Table 1 includes each variable and its expected direction. Table 2 reports the descriptive statistics for the models.

Table 4: Descriptive Statistics for Models 4-9

Variables	Mean	Std. Dev.	Minimum	Max	Median
Convicted by Jury Trial	4.27	5.51	0	57.09	3.5
Cases Disposed by Plea Agreement	48.75	12.11	5.24	78.45	49.93
Election Year	0.33	0.47	0	1	0
Contested Election	0.14	0.35	0	1	0
Election Period	0.56	0.5	0	1	1
Hot Seat	0.01	0.29	0	1	0
Crime Rate (per 1,000)	36.75	8.78	19.12	61.62	35.81
Resources (per 100,000)	2.14	0.85	1.41	5.96	1.9
State's Attorney Ideology	0.6	0.49	0	1	1
State's Attorney Sex	0.87	0.33	0	1	1
Counts Filed (per 1,000)	23.81	77.28	111.39	46.34	22.11

N=180

Results

The results from models 1, 2, and 3 (see Table 3) show that regardless of how elections are operationalized, elections have no impact on prosecutorial decision making in this context. In each model, elections do not affect the proportion of cases not prosecuted. (As a robustness check, I estimated two additional models. First, I estimated a model that includes the election year variable and contested election variable. I also estimated a model that includes the contested election variable and election period variable. The results did not change (see Table 7). However, several other variables consistently have an effect: prosecutor ideology, prosecutor sex, and counts filed. The results suggest that prosecutor-specific factors and circuit-level characteristics explain prosecutorial decision making better than electoral pressure in this context.

The finding that prosecutor ideology impacts the proportion of cases not prosecuted is compatible with existing evidence that shows that conservatives are generally more punitive (see Yates & Fording, 2005). The coefficient for the variable is negative, which suggests that being a Republican decreases the proportion of cases not prosecuted. The sex variable has a positive coefficient, suggesting that being male increases the proportion of cases not prosecuted. This finding is somewhat surprising given that males tend to have more punitive attitudes toward crime and punishment (see, for example, Applegate et al., 2002). This finding could suggest that, while males have more punitive attitudes toward crime, they tend to prioritize only the cases that they think they can win, and women try to dedicate time and resources to as many cases as possible.

Finally, the results show that higher levels of counts filed correspond with fewer cases not prosecuted. I suggested that more counts filed would lead to a greater proportion of cases not prosecuted, as prosecutors would simply not have the time and resources to dedicate to a high volume of cases. The fact that the coefficient is in the negative direction suggests that an increase in counts filed may actually encourage prosecutors to pursue more cases. This could be because prosecutors fear that their reputation will suffer if only a small fraction of cases are being prosecuted under the conditions of a high caseload. In other words, high levels of cases being filed might put greater pressure on prosecutors to achieve convictions. Alternatively, since caseload is one factor that determines resource distribution to district attorney offices in Florida, circuits that receive higher caseloads have more money. This may allow prosecutors to take on more cases.

The argument above explains why cases not prosecuted should be impacted by elections. If elections have an effect on prosecutorial behavior, the results from Table 3 could be an artifact of the choice of the dependent variable (i.e., cases not prosecuted) or data limitations (e.g., limited information about case specific factors). To see whether my results are dependent variable driven, I examine two additional dependent variables that also capture prosecutorial discretion.

Additional Tests

To assess whether the results presented from models 1, 2, and 3 are an artifact of the particular dependent variable, I collected additional data on the proportion of cases convicted by jury trial and the proportion of cases disposed by plea agreement from 2008–2016 in Florida's 20 judicial circuits, as reported

Table 5: OLS Regression Results

	Model 4	Model 5	Model 6
Election Year	-1.52*		
	(0.61)		
Contested Election		-0.5	
		(0.55)	
Election Period			-0.66
			(0.74)
Hot Seat	3.46	2.42	2.38
	(2.58)	(2.59)	(2.65)
Resources	-0.09*	-0.08*	-0.08*
	(0.03)	(0.03)	(0.03)
Crime Rate	-0.02	-0.03	-0.03
	(0.05)	(0.05)	(0.05)
State's Attorney Ideology	-1.06	-0.94	-0.98
	(0.91)	(0.94)	(0.93)
State's Attorney Sex	-0.96	-0.78	-0.81
	(0.86)	(0.84)	(0.85)
Counts Filed	-0.001*	-0.002*	-0.002*
	(0.001)	(0.001)	(0.001)
Constant	11.99	11.73	12.13
	(3.79)	(3.79)	(4.05)
Observations	180	180	180
R-squared	0.0541	0.0523	0.0541

Note: **$p < 0.01$, *$p < 0.05$, Robust Standard Errors in Parenthesis
DV: Proportion of Cases Convicted at Jury Trial

by the Florida Office of the State Courts Administrator. Specifically, the dependent variables are the proportion of cases that were disposed by jury trial and the proportion of cases disposed by plea agreement out of all the counts filed in each circuit year. I use these variables as two additional dependent variables to further evaluate the impact of elections on prosecutorial behavior. As discussed in detail above, other scholars have examined these variables in studies of prosecutorial behavior (e.g., Bandyopadhyay & McCannon, 2014; Boylan, 2004; McCannon, 2018; Rasmusen et al., 2009).

If prosecutorial decision making is impacted by elections, we should observe the election year variable having some significant impact on either, if not both, of the dependent variables. This is the case because conviction rates are a frequently used statistic that prosecutors cite when campaigning to highlight their achievements. As a result, the expectation should be that convictions by jury trial increase during election years. The idea is that taking more cases to trial will increase the likelihood of reelection, as jury trials connect prosecutors to the community and give them an opportunity to show their tough stance on crime. This is consistent with existing literature that

shows that electoral pressure increases jury trial convictions (e.g., Bandyopadhyay & McCannon, 2014; McCannon, 2018).

> Hypothesis 2: During election years, the proportion of cases convicted by jury trial is higher as compared to non-election years.

An alternative argument to the logic supporting hypothesis two may be that plea agreements are the easiest way for prosecutors to resolve a case supported by strong evidence (see Reinganum, 1998). In fact, 90% of all criminal cases are settled by plea bargain (Brosi, 1979; Heumann, 1978). Plea bargaining has been studied extensively in the literature (see Gordon & Huber, 2009). Notably, Landes (1971) introduces a model in which the decision to go to trial is determined by the likelihood of conviction by trial, a prosecutor's and defendant's resources, attitudes toward risk, and the type of crime. Plea bargaining may be an attractive disposition method for all parties in a case because it reduces risk (Grossman & Katz, 1983). Prosecutors facing electoral pressure may be incentivized to reduce risk and seek convictions as quickly and efficiently as possible. Therefore, prosecutors may pursue more plea

Table 6: OLS Regression Results

	Model 7	Model 8	Model 9
Election Year	-2.28 (3.79)		
Contested Election		2.02 (1.64)	
Election Period			0.06 (1.53)
Hot Seat	2.55 (4.64)	-1.14 (3.13)	0.38 (2.99)
Resources	0.1 (0.07)	0.1 (0.07)	0.11 (0.07)
Crime Rate	0.11 (0.07)	0.1 (0.12)	0.1 (0.12)
State's Attorney Ideology	8.55** (1.91)	8.43** (1.89)	8.64** (1.9)
State's Attorney Sex	-2.92 (2.64)	-2.66 (2.73)	-2.65 (2.72)
Counts Filed	-0.01** (0.001)	-0.01** (0.001)	-0.01** (0.001)
Constant	55.52 (8.09)	55 (8.17)	55.05 (8.33)
Observations	180	180	180
R-squared	0.3672	0.3706	0.3657

Note: **$p < 0.01$, *$p < 0.05$, Robust Standard Errors in Parenthesis
DV: Proportion of Cases Disposed by Plea Agreement

agreements during election years to boost their reputation in the eyes of the electorate.

> Hypothesis 3: During election years, the proportion of cases disposed of by plea agreement is higher as compared to non-election years.

Hypotheses two and three may be seen as competing hypotheses. I present both to offer some theoretical explanation for why we might expect jury trials or plea agreement levels to change as a result of elections, but it is important to acknowledge that McCannon (2018) shows that plea bargain rates decrease for prosecutors in the lead up to an election.

Table 4 includes the descriptive statistics for the variables used to test these hypotheses. The expected direction of the variables in models 4–9 are the same as in the original test (see Table 1). Data on race by county were not available for all years in the additional tests. As a result, the proportion of Black and Hispanic populations are not included in models 4–9 in Tables 5 and 6.

The results for models 4–9 (see Tables 5 and 6) provide further evidence that the relationship

between elections and prosecutorial decision-making is not clear. In these models, the contested election and election period variables are not significant in all models. The election year variable is not significant in the model evaluating the proportion of plea bargains. However, election year is significant in the negative direction when the dependent variable is the proportion of cases taken to trial. This result suggests that jury trials actually decrease in election years, which is not consistent with extant findings suggesting that jury trials increase in the lead up to an election (see, e.g., Bandyopadhyay & McCannon, 2014; McCannon, 2018). The results suggest that the relationship between prosecutorial decision-making and electoral pressure is complex and highly context specific, and more research needs to be done to better understand the conditions under which jury trials increase. In models 4–6, more resources and more counts filed also decrease the proportion of cases that go to trial.

In models 7–9 (see Table 6), counts filed and state attorney ideology are the only predictors of the proportion of cases disposed by plea agreement. Higher levels of counts filed correspond with lower levels of cases ending in a plea agreement. The results show that Democratic prosecutors are associated with higher levels of cases disposed of by plea agreement.

Table 7: Robustness Checks

Contested Election	1.44	0.93
	(1.57)	(1.95)
Election Year	-3.65	
	(3.57)	
Election Period		-0.59
		(1.52)
Hot Seat	3.71	0.99
	(3.56)	(2.06)
Resources	-0.17	-0.17
	(0.11)	(0.11)
Crime Rate	0.17	0.16
	(0.11)	(0.11)
State Attorney's Ideology	-4.73*	-4.63*
	(1.75)	(1.73)
State Attorney's Gender	12.34**	12.15**
	(2.71)	(2.61)
Counts Filed	-0.01**	-0.01**
	(0.001)	(0.001)
Black Population	-0.12	-0.13
	(0.12)	(0.12)
Hispanic Population	-0.14	-0.13
	(0.07)	(0.07)
Constant	29.35	30.02
	(7.08)	(7.06)
Observations	95	95
R-squared	0.5378	0.5331

Note: **$p < 0.01$, *$p < 0.05$, Robust Standard Errors in Parenthesis
DV: Proportion of Cases By Plea Agreement

These results, taken with those presented in Table 3, suggest that the impact of electoral pressure on prosecutors may be more nuanced than it is for other public officials.

Discussion

Do elections impact prosecutorial decision making? This paper takes the conventional wisdom that elections affect public officials' behavior and applies it to prosecutors. I argue that elections impact a prosecutor's decision to prosecute, as elections incentivize prosecutors to make decisions that will help them achieve their goal of reelection. Prosecutors facing election pursue cases that they are confident that they can win and cases that will help them curry favor with constituents. The results presented in the paper suggest that prosecutors in the sample were not impacted by the threat of an upcoming election. The results hold for three operationalization of elections and three measures of prosecutor decision-making. For the timespan of the data, elections had no meaningful impact on Florida's prosecutors' decisions to decline cases or to use plea bargains. However, one model showed that jury trials decrease during election years during the time span of the data. The results suggest that the relationship between prosecutor decision making and electoral pressure is highly context dependent and suggests that the nature of prosecutor elections may explain why elections impact prosecutors differently than other elected officials. A case-level analysis of Florida may be the next best step to further unpack the results presented here. A national study of prosecutor decision making should also be pursued as more data become available.

To explain the surprising findings presented above, it may be important to consider factors specific to Florida. It could be the case that prosecutors in Florida work in a unique environment in which they fear constraints on their discretion if they fail to act consistently with the preferences of the government. In 2017, a state Supreme Court decision in Florida limited prosecutorial discretion by ruling that a prosecutor is not allowed to implement a moratorium on the death penalty (*Ayala v. Scott*, 2017). Aramis Ayala won the 2016 prosecutor election for Florida's ninth judicial circuit. Shortly after her election, she announced that she would not seek the death penalty in murder cases in the Ninth Circuit. She was met with fierce criticism from Republican Governor Rick Scott, which ultimately led to the state supreme court ruling. Ayala later announced that she would not be seeking reelection in 2020 (Powers, 2019). This example suggests that prosecutors in Florida may be beholden to the politicians and courts, regardless of elections. This may encourage Florida prosecutors to limit their responses to electoral pressure, as they fear future constraints on their behavior by the government. However, it is important to acknowledge that the decision in *Ayala v. Scott* (2017) was decided after the period of the data covered in this sample.

An additional explanation for why we might struggle to observe a relationship between prosecutorial decision making and elections is that, in most cases, there is no relationship. It could be the case that the limited visibility of prosecutorial elections and lack of voter knowledge make prosecutorial elections an ineffective accountability measure for prosecutorial decision-making. As a result, prosecutors feel no added pressure due to elections and are not incentivized to adjust their behavior. This explanation may be supported by existing literature that argues that elections do not reduce a prosecutor's independence (e.g., A. J. Davis, 2007; K. C. Davis, 1969; Gans, 2013). A. J. Davis (2007) argues that elections reinforced a prosecutor's power, as he or she was no longer bound to the governor or the court. Davis notes that the majority of prosecutorial decision-making is not public, and as a result, electoral pressure is not effectively holding prosecutors accountable. This line

of reasoning could explain the results here. If prosecutors fail to feel electorally vulnerable even under the conditions of an upcoming election, they may be incentivized to communicate with the public in a way that appeals to their constituents but not to alter their actual behavior. While I anticipate prosecutor behavior to change in the lead up to an election, it is also important to consider the possibility that prosecutors change the way they handle cases in response to close elections. A case level analysis evaluating the difference in case handling at the beginning stages of case processing before an election versus later stages of case processing that occur after an election would be one way to evaluate this relationship.

Another aspect to consider is the nature of the chief prosecutor's work environment. The chief prosecutor is only one individual in the local (county or judicial circuit) prosecutor's office. The chief prosecutor has assistant prosecutors (often referred to as assistant district attorneys) who work under them. In addition to assistant prosecutors, a prosecutor's office also employs additional staff, such as investigators, to help aid in prosecution. Outside of the prosecutor's office, a chief prosecutor must also rely on the work of local law enforcement to achieve convictions. By focusing solely on the chief prosecutor (which is the typical strategy in the literature on elections and prosecutor decision-making), I do not consider the impact that additional actors may have on our ability to observe the relationship of interest.

Scholars who implement the principal-agent framework refer to this issue as a "team production problem" (e.g., Alchain & Demsetz, 1972; Gorden & Huber, 2009; Holmstrom, 1982). The principal, in this case, the chief prosecutor, can only achieve his or her goals with the help of his or her agents. Here, the agents would be law enforcement, investigators, and assistant district attorneys. For the chief prosecutor to achieve his or her goals, those who work for or with him or her (i.e., the agents) must avoid free-riding and have similar goals as the chief prosecutor. It is reasonable to assume that assistant district attorneys have goals for career advancement, as many assistant district attorneys spend only a small portion of their career in the district attorney's office. Many assistant district attorneys start their careers at the district attorney's office and move to private practice or become judges (see Carp et al., 2007). The goal of career advancement should align their behavior with that of the chief prosecutor, as appearing tough on crime and having a strong record of convictions can be helpful tools for career advancement. However, investigators and law enforcement may have different career goals than prosecutors, which may make it more

challenging to observe chief prosecutors altering their behavior due to elections. Of course, this is only one possible explanation for why the relationship between elections and prosecutors may be harder to capture than the effect of electoral pressure on other public officials' behavior.

Alternatively, it could be the case that prosecutors act consistently throughout their term in office. In other words, prosecutors may fear that, regardless of the proximity of the election, any decision that could be considered soft on crime could hurt the incumbent. As a result, prosecutors make decisions that align with their goal of reelection consistently throughout all years in office. However, Bandyopadhyay and McCannon's (2014) finding that jury trials increase in the year before an election disputes this line of thinking. Finally, it could also be the case that electoral rules discourage quality challengers from participating in these races. In most districts, to challenge an incumbent, an individual must live in the district and have criminal law experience (i.e., assistant prosecutor, criminal defense attorney). Recent scholarship demonstrates that, at least in the largest districts, prosecutor elections have become more competitive over time (see Wright et al., 2021), and scholars have identified the characteristics that lead to contestation. Findings suggest that when an incumbent runs, prosecutor elections are more likely to be uncontested (Hessick & Morse, 2020; Hessick et al., 2023), and other factors, such as campaign contributions, population, and political party affiliation, also impact contestation (Heise, 2024). It could be that prosecutors who faced a contested election in my data did not face a legitimate threat to their seat, so they are not incentivized to adjust their behavior due to electoral pressure. Wright (2014) notes that elections are not always a meaningful threat to a prosecutor's rule because prosecutor elections are low turnout and down ballot elections with few challengers. However, scholars have shown that the characteristics of challengers (i.e., whether they are a chief prosecutor's subordinate) can provide meaningful information to the electorate (McCannon, 2021; McCannon & Pruitt, 2017) and that electoral rules can impact incumbent and challenger behavior (see DeAngelo & McCannon, 2019). While I account for hot seats in this analysis, more research should be done to measure and account for the quality of the challenger in prosecutor races. To measure a challenger's quality one might want to evaluate work experience, trial record, and campaign resources.

These are just a few potential explanations for why elections did not alter prosecutorial behavior in this paper. While the results presented here hold across three different measures of prosecutor behavior, this analysis should be replicated in different settings.

Future work should also be done to test some of the alternative explanations just discussed for the results presented in this paper.

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