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# Leveling the playing field? Institutional change, incumbency advantage and campaign finance in Brazil

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GRADUATE SCHOOL OF ARTS AND SCIENCES

Dissertation

**LEVELING THE PLAYING FIELD?  
INSTITUTIONAL CHANGE, INCUMBENCY ADVANTAGE  
AND CAMPAIGN FINANCE IN BRAZIL**

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**ABSTRACT**

The influence of corporate money in politics is one of the most studied topics in political science in the U.S., although not so much so in recent democracies. Using new and public data from Brazilian elections, this dissertation investigates the process of institutional change that culminated in a 2015 decision by the Brazilian Supreme Court to ban corporate donations as a legal source of financing to politicians and parties. The episode exemplifies the worldwide tendency of “judicialization of politics” and fits the pattern of change identified by the literature as a “critical juncture,” understood as a relatively short period of time in which there is a heightened probability that agents’ choices will affect the outcome of interest. Under exceptional circumstances of political and economic crisis, actors not institutionally in charge of law making set in motion a process of legislative change whose final outcome was not a faithful reflection of their preferences, but was deeply influenced by contingent elements. Public support in a context of severe revelations of corruption schemes explains how the Supreme Court was able to rule against

the immediate interest of politicians and how the latter, having adjusted to find additional sources of money, were unwilling to reinstate corporate donation as a legal means of campaign financing. Having confirmed in Chapter two that incumbency is associated in Brazil with a negative effect on the electoral performance of office holders while the use of corporate money by candidates is legal, the dissertation examines the effects of the Supreme Court decision on municipal elections held after it came into effect. We investigate whether removing this important source of funding for both incumbents and challengers swings the balance in favor of office holders in both majority and proportional elections held in 2016. We find evidence that the ban on corporate donations favored incumbent mayors, suggesting that the historic decision, instead of *levelling the playing field* between incumbents and challengers, in reality helped office holders to win an additional term. It was not immediately visible due to the particular conditions in which the 2016 elections took place, when voters were particularly angry at incumbents due to the widespread news of corruption involving party officials. These findings indicate that, despite its intention to make Brazilian elections more competitive and open, the historic Supreme Court decision might have had the exact opposite effect, helping perpetuate in power politicians already in office.

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# Chapter 1

## Introduction

In September 2015, the majority of justices of the Brazilian Supreme Court (*Supremo Tribunal Federal*, STF) voted for the complete banning of corporate donations as a lawful source of financing to political campaigns. The historical decision was reached after four years since the Brazilian Bar Association (*Ordem dos Advogados do Brasil*, OAB) had filed a petition in court questioning the constitutionality of this type of donations. According to the OAB, the high costs of campaigns in Brazil created a situation in which candidates with scarce material resources had few chances of winning office. Still worse, it worked as a powerful incentive for candidates to come close to corporations in search of funds, raising questions about the future relations between public agents and private firms.

Indeed, in the years that followed the filing of the petition by the OAB, revelations emerging from investigations carried out by public prosecutors made Brazilian citizens once again painfully aware of an intricate web of corruption involving politicians, public agents and executives in public and

private companies. The political significance of the revelations was such that it contributed to the eviction from office of the then President of Brazil, Dilma Rousseff, as well as the Workers' Party after twelve years in power.

It is now six years since the Brazilian Supreme Court ruled against the legality of corporate donations. Since then, three elections have taken place, in 2016 (for mayors and city councils), 2018 (for president, state governors, federal and state deputies) and 2020 (for mayors and city councils). Nevertheless, a number of questions related to that historical ruling still remain that were not yet properly or sufficiently analyzed by political scientists. This work aims at tackling some of these questions.

Firstly, we still lack complete clarity on how the institutional change happened, more precisely, how the end result of complete proscription of corporate donations by the court was achieved, especially in view of its vital importance to so many politicians eager to access resources to fund their campaigns. Politicians, activists, experts and magistrates had for years been aware of the controversial aspects of corporate financing, but institutional change remained elusive nevertheless. In 2015, when the Brazilian Supreme Court put an end to years of frustrated attempts at reforming the electoral legislation and ruled against the best interest of the political establishment, analysts and observers asked themselves how this result could have been finally achieved.

Secondly, the main stated purpose of the historic Supreme Court decision to ban corporate financing in Brazilian Elections was, in the words of the

*rapporteur* of the case, *to level the playing field among candidates*. However, after five years since the ruling was handed down, its practical consequences are still unclear. In Brazil, elections are highly competitive and the electoral system creates strong incentives for candidates to run individualistic campaigns and distinguish themselves from their peers in the eyes of voters. It is hence plausible that instead of making elections more democratic, removing corporate donations actually decreased the chances of challengers by shifting the weight toward candidates that enjoyed other types of advantages identified by the literature, chief among them incumbency (Erikson (1971); Gelman and King (1990); Cox and Katz (1996); Ansolabehere et al. (2000); Lee (2008); and Ferreira and Gyourko (2009)).

Indeed, incumbency advantage is one of the most studied topics in political science in the US. There are methodological problems related to estimating the effects of incumbency, mostly due to confounding factors, but the literature has found ways to tackle them (Levitt 1994, Levitt and Wolfram 1997, Lee 2008, Linden 2004). The literature on incumbency advantage in developing countries, however, is not so well developed (Uppal 2005, Titunik 2009, Boas and Hidalgo 2011, Brambor and Ceneviva 2011, Klasnja and Titunik 2017). One issue in particular has inspired a few studies in developed countries, but remain absent in studies about recent democracies: the relation between incumbency, electoral systems and the attribution of responsibility by voters, i.e., if and how any effect of incumbency relates to whether seats are won according to a majority election - as it is the case of

executive and, in some countries, also legislative positions - or a proportional election - mostly legislative posts.

These are relevant questions to study the effects of the Brazilian Supreme Court that banned corporate donations. In Brazil - as in most other countries -, executive positions are filled according to a majoritarian rule, while legislative posts are filled in open list proportional contests. Incumbents in executive posts face electoral challenges that are distinct from legislative officials, and voters usually attribute responsibility differently in both cases. While holders of executive posts are considered individually responsible for government policies and held accountable for them, responsibility in the case of legislators is diffuse and the average voter finds it harder to identify who to reward or to blame (Dettman, Pepinsky & Pieskalla, 2017).

Hence, the Supreme Court decision raises questions about its possible impact on incumbents running for reelection. Once candidates can no longer rely on money received from corporations - something that in theory could put challengers financially on an equal foot to incumbents-, have the electoral advantages of holding office led to a better electoral performance - as the US literature would make us expect - or has incumbency become a greater hurdle for politicians searching for a second term - as the literature in developing countries suggests? Finally, regardless of whether the STF decision affected the performance of incumbents seeking reelection positively or negatively, was this effect similar or different in the case of incumbents running for executive positions in majority elections (mayors) and incumbents running

for legislative posts in proportional contests (city councils)?

Money was - and still is - one key element in electoral contests in many countries, including Brazil. The influence and role of firms cannot be overestimated in this context. Using new and previously available data, I propose to analyze the institutional change that took place in the country in 2015 and its effects on municipal elections in 2016. By doing so I hope to contribute to the literature on electoral studies in developing countries and help others find ways to improve electoral rules in Brazil.

This thesis is divided in three major chapters. The first chapter draws on the literature on institutional change and critical junctures to explain how and why Brazil moved to an electoral system that did not allow for corporate donations. For this chapter I have conducted interviews with some of the actors directly involved in the process of institutional change, including two justices and a former justice of the Brazilian Supreme Court. The content of these interviews helped me understand that the institutional change process fits into the pattern of what the political science literature describes as “judicialization of politics” (Hirschl 2011) and “critical junctures” (Collier and Munck 2017).

The two subsequent chapters use observational data publicly available to check the effects of incumbency on electoral performance in both majority and proportional elections while corporate donations are permissible and when they no longer are allowed. While the second chapter aims at identifying an overall effect of incumbency on electoral performance when candidates

have free access to corporate donations, i.e., *before* the historic decision of the Supreme Court, the last chapter investigates the persistence and the magnitude of this effect *after* it. Assuming that incumbency exerts some effect on electoral performance, the second chapter investigates how relevant it was to be an incumbent in elections held in 2012, when all contestants had access to corporate donations. In this chapter our main finding confirms the negative effect of incumbency on the electoral performance - the vote share - of incumbent candidates. This effect is particularly noteworthy in the case of mayors, who are responsible for the executive branch in Brazilian cities and are, hence, accountable for a number of public services that draw immediate public attention.

Departing from the baseline established in this chapter, in the following final chapter I investigate whether the effect found of incumbency remained the same in elections held in 2016, when candidates no longer received donations from firms and when, at least in theory, incumbency became a more influential factor in the contest. Our initial findings pointed to an increase in the negative effect of incumbency, suggesting the opposite of our initial expectation, that is, that the ban on corporate donation had actually harmed incumbent candidates further. However, a closer investigation showed that the negative effective of incumbency in 2016 was inversely proportional to the amount of corporate money raised by Brazilian mayors. For them, the more money was raised in 2012, the smaller the negative effect in 2016. Incumbent mayors had raised, on average, more corporate money in 2012 than

challengers. Among them, those who were the top beneficiaries were the least negatively affected in their vote shares in the following elections. We did not find such correlation in the case of city council candidates.

We attribute the overall increase in the negative effect of incumbency to the general dissatisfaction of voters with incumbents in general. Revelations of massive corruption schemes as of 2014, although focused on politicians at the federal level, also influenced the behavior of voters in municipal elections. However, the fact that incumbent mayors with more access to corporate money suffered from a smaller negative effect on their vote shares is, I believe, a clear indication that the ban actually helped candidates in office, contributing thus to their continuation in power and making it harder for newcomers to win elections. Our findings raise doubts about the effectiveness of the Supreme Court decision in *levelling the playing field* among incumbent and challengers, at least as far as the 2016 elections are concerned.

## Chapter 2

# Corporate Donations, Agency and Institutional Change

### 2.1 Background

In 2015, the Brazilian Supreme Court banned corporate donations as a lawful source of financing to political campaigns. Previously existing legislation that allowed companies to donate to candidates and parties was declared unconstitutional. As a consequence of the decision by the Court, municipal elections in 2016 in Brazil took place in a different setting, as candidates could no longer use corporate money to finance their campaigns and had to organize their funding relying solely on their own money (self-funding), public funds transferred by the federal government or contributions by individual citizens.

The rapporteur of the case in the Supreme Court, Justice Luiz Fux, stated that *the rising costs of campaigns is responsible for the fact that the candidate*

*who spends more has a greater chance of being elected.*<sup>1</sup> In prohibiting this type of contribution, the Supreme Court was allegedly *leveling the playing field* among candidates and strengthening the chances of contestants who were not in a position to raise a lot of money.

Although arguments against corporate donations were not new in 2015 among Brazilian politicians, scholars and the media, it is far from clear how the historical and political institutional barriers to reform were surmounted at that point. Why did Brazilian elites move to a campaign financing system that excluded corporate donations? How did such an important change come about? In view of its tremendous importance to the political survival of politicians in Brazil (see below), how can we explain that the Supreme Court ruled against the interest of politicians, and Congress was unable to reinstate corporate donations as a legal source of financing after the decision of the court banning it, despite having the institutional prerogative to do so? We still lack a proper understanding of the reasons behind such a change as well as of the way it took place, leading some aspects of the regime to be modified, while others - like the limits to contributions by individual citizens - remained untouched.

In this chapter, I attempt to provide an answer to these questions using the the theoretical framework of critical junctures, understood as a *relatively short period of time in which there is a substantially heightened probability*

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<sup>1</sup>The full text of the decision is available for consultation at the site of the Brazilian Supreme Court, [www.stf.jus.br](http://www.stf.jus.br).

*that agents' choices will affect the outcomes of interest* (Capoccia and Kelemen, 2007) or, to put it in accordance with a more recent definition by two leading scholars in the field, *(1) a major episode of institutional innovation, (2) occurring in distinct ways, (3) and generating an enduring legacy* (Collier and Munck 2017).

Using a critical juncture framework to analyze political events presents some challenges though. For instance, analysts agree on the importance of hindsight to develop a proper argument based on this type of framework. As pointed out by Boas (2017), the lack of temporal distance may raise serious questions about the endurance of the outcome being analyzed and, ultimately, whether the argument proposed can be sustained. While this is certainly true, Boas himself recognizes that the use of a critical juncture framework in a more tentative setting, when enough time might not yet have elapsed, is far from useless. In cases like these, he advises scholars to rely on criteria - such as whether the change was incremental or happened in a similar way in different countries - that do not require the identification of an enduring legacy in order to make their claim plausible (Boas 2017).

One of the reasons for the fact that the critical junctures approach is useful in our case is that the change in the Brazilian regime happened relatively fast once a specific sequence of events was set in motion by the Brazilian Bar Association (OAB), after it brought the issue to the attention of the Supreme Court (STF) through an injunction (ADIN 4650). My basic argument is that although reforming the rules for campaign financing had been in the minds

of political actors for years, getting it approved in Congress was highly improbable, as many politicians depended heavily on the donations of firms to win office. Discussions about banning corporate donations had dragged in Congress for years and politicians were unable to come to a final conclusion on it in view of the importance of this source of funds for their own political survival.

However, during Dilma's second term, the conjunction of certain elements created the necessary conditions for the reform to take place. As the political system became increasingly dysfunctional due to the suspension of regular patterns of interaction between the Executive and the Legislative in coalitional presidentialism, the role of the STF in domestic politics became increasingly salient. Requests that could not be solved in parliament were directed to the Court, strengthening a tendency of "judicialization of politics" initiated years before. The OAB saw in this a window of opportunity and filed an injunction which gave the STF the chance to once again exert the enlarged role it had recently acquired in Brazilian politics. The decision of the court locked in an outcome which proved difficult to change, despite attempts of politicians to do so while the proceedings were still pending in court and even after the STF came to a final decision.

Crucial to the understanding of the process of change was the undermining of regular patterns of Brazilian democracy during Dilma Rousseff's presidency and the increased role assumed by the Supreme Court (STF). Indeed, analysts have over the years identified some peculiar features of the

so-called Brazilian coalition presidentialism (*presidencialismo de coalizão*) that explain how democracy works in the country: strong legislative powers of the presidency combined with a highly fragmented party system resulting in the need to forge large cross-parties coalitions in Congress for the system to work (Abranches 1988, Ames 2001, Mainwaring 2006). For reasons to be explained below, these regular patterns were subverted in the years of the second Dilma presidency, easing the way for interested parties to bring to the Supreme Court issues of political importance.

Following a worldwide tendency (Hirschl, 2011), magistrates of the Brazilian Supreme Court (STF) armed with specific and broad judicial review procedures were asked to resolve a range of issues of political nature, including electoral outcomes and processes. The judicialization of politics is a manifold phenomenon whose reasons are many, like institutional features, judicial behavior and political determinants (Guarnieri et al 2002, Ferejohn 2002, Taylor 2008). In the Brazilian case, a combination of judicial willingness to engage in public policy-making with a relatively dysfunctional political system in Rousseff's time are behind the change we want to explain.

However, there are other aspects involved in understanding how magistrates were able to rule against the broad interest of politicians. The purpose of constitutional courts is to oversee and constrain the exercise of political power by legislative majorities or government agencies (Vanberg 2001). However, the literature points out that if high courts strongly depend on other bodies to implement their decisions, they also risk a cost when adopting a

position against a law-making majority, as it may lead to loss of trust among the public as a result of the perception that the balance of the constitutional system was upset (Caldeira 1986). In addition, high court decisions are not neutral with regards to public perception and the political landscape at large. There is abundant evidence of the influence of public opinion in courts, even if the exact forms that influence takes is subject to investigation (Giles, Blackstone, and Vining 2008; Norpoth and Segal 1994; Segal and Spaeth 2002).

As the revelations brought about the so-called Car Wash investigations (*Investigação Lava Jato*) unveiled links between politicians, parties and firms, magistrates were aware that their decision counted with general public support and even support from part of the political establishment (members of left wing parties mostly). The magistrates who ruled against the constitutionality of corporate donation believed that they were promoting a positive change in the workings of Brazilian democracy. They were also aware that the public in general did consider corporate donations to be a major source of corruption within the political system and that not all politicians in Congress were prepared to openly fight for this type of funding after the decision was made by the court (section below).

As for Congress' failure to reinstate the annulled legislation, we need to consider the factors accounting for the behavior of "reelection seeking" agents when considering challenging a Supreme Court decision, especially if the decision enjoys public support. The "electoral connection" (Mayhew 1974)

seems thus to have been a crucial factor for the enforcement of Supreme Court decision abolishing corporate donations in the Brazilian case. Faced with the constraints created by losing access to corporate money, these politicians would search for alternative ways to increase revenue, boosting the amount of public money available to fund campaigns as a sort of compensation for their loss.

In applying a critical juncture approach to explain institutional variation (the change in the electoral legislation), three distinct stages of development should be identified, according to Roberts (2014): a) the antecedent conditions (the prevailing regime before change, when the behavior and expectation of actors was conditioned, among other factors, by the lawful use of corporate donations); b) the critical juncture itself (the window of opportunity generated by the collapse of patterns of behavior in Brazilian coalition presidentialism, giving the judiciary enough space to act as an agent of sudden institutional change); and c) the aftermath period, when the legacy of the outcome is established.

This chapter is structured according to these distinct stages. In section 2.2 I present a brief overview of the characteristics of the Brazilian electoral system and discuss the circumstances that led politicians to legalize corporate donations. The following section (section 2.3) is dedicated to several elements of the “critical juncture” moment. After briefly discussing the role of the Workers’ Party (PT) in the crisis that would follow, I comment on the second term of President Dilma Rousseff. My objective is to show how institutional

patterns that used to regulate interactions between the executive and the legislative were disrupted and how, under these exceptional circumstances, an opportunity for change was created that ultimately led to the declaration of unconstitutionality of legislation allowing firms to donate to candidates. In section 2.4 I discuss the sequence of events and what could have happened differently, bearing in mind that although a legacy of institutional change was produced, we probably have not had enough time to consider it to be enduring. In section 2.5 I conclude the chapter.

### **2.1.1 Interviews**

In order to carry out my analysis, I have relied on interviews carried out with actors involved in the process of legislation change. These interviews were made either in view of the direct involvement of the interviewee with the episode of legislation change and/or his technical expertise on the issue at hand. I have managed to interview two magistrates of the Brazilian Supreme Court (Justices Luís Roberto Barroso and Gilmar Mendes), as well as two out of the three lawyers signatories of the injunction that the Brazilian Bar Association (OAB) filed at the STF. One of them was the President of the OAB at the time (Ophir Cavalcante Junior); the other was a senior member of the association (Cláudio Pereira de Souza Neto). Three other interviews were conducted with academics/experts who participated in a public hearing held at the premises of the Supreme Court prior to the beginning of the proceedings of the ADIN 4650 and/or who routinely publish work on Brazilian

electoral system (Conrado Hübner Mendes, Martonio Mont’Alverne Barreto Lima and Bruno Speck). One former member of the STF, who served from 1997 to 2006, was also interviewed (Justice Nelson Jobim).

## **2.2 Antecedents: corporate donations in Brazilian elections**

Brazilian campaigns are among the most expensive in the world. The reasons for this fact are many, involving a combination of electoral rules with the incentives they create to politicians in a highly competitive environment.

After democratization in 1985, Brazilian elections have become increasingly competitive. Brazilian parties, on the other hand, were and remained weak in the subsequent decades, lacking strong organizational capacity or ideological coherence (Samuels 2001, Mainwaring 1997). The only exception was the Workers’ Party which, as will be seen, later resorted to practices similar to those of their opponents in order to reach office and govern. Over the years, the number of parties and candidates competing in legislative elections increased steadily. From 1982 to 1998, the number of parties rose from 2.4 to 8.1, while the number of running candidates per seat jumped from 3.2 to 6.6 (Samuels 2001).

Moreover, the electoral rules put in place by the 1988 Constitution worked as a strong incentive for politicians to run individualistic campaigns (Shugart and Carey 1995, Samuels 2001). The structural weakness of parties and the

fact that majority elections tend to take place in vast territories with large constituencies stimulate candidates to do whatever they can to differentiate themselves from their peers. In the case of proportional elections, a combination of open-list representation with large district magnitudes works as an incentive in the same direction, as candidates to legislative posts have to compete against both their listmates and opposing parties' candidates.

As politicians looked into new sources of finance to run more personalized campaigns, corporate money emerged as an obvious alternative. Firms donated money for politicians out of a number of reasons: ideological preferences, social ties to the recipients or a wish to get closer to those in power, not rarely in expectation of future rewards (government contracts, approval of legislation favorable to their interests, etc.).

From a contextualist point of view, however, legalization of corporate financing in Brazil was presented by politicians not as an answer to the need of further resources to campaign, but as means to increase transparency in managing campaign accounts, after a serious corruption scandal that led to the impeachment of President Fernando Collor de Mello in 1992 related to undisclosed contributions by various sources.<sup>2</sup> Prior to that, the impossibility of firms to legally contribute to political campaigns had been highlighted by politicians as a major flaw in Brazilian legislation and a continuous source

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<sup>2</sup>The scandal involved the campaign treasurer of the President, Paulo César Farias, "PC Farias", who masterminded a pervasive corruption scheme during Collor's tenure in office. The scheme dated back to the presidential campaign days, when PC Farias collected money from firms and individuals to fund the campaign, amassing huge amounts that largely surpassed what was actually spent.

of irregularities in individual campaign accounts. It was argued that making these contributions legal would greatly improve transparency and help bringing to light spurious relations between companies and politicians. It goes without saying that legalization would also offer candidates a legitimate way to raise the money they needed to distinguish themselves from their peers.

The final report of the Inquiry Parliamentary Commission on the so called *PC Farias* case, when addressing the impossibility of firms to donate legally, stated that “these prohibitions have generated a lot of criticism, being considered by some an invitation to malfeasance. This point has been at the center of the discussions about the flaws of current legislation, making one wonder whether the legalization of corporate contributions would greatly contribute to further transparency and public morality of political campaigns”. The report suggested that legislators consider legalizing donations by firms, but only within certain - broad - limits. It also suggested a number of measures to strengthen the oversight of campaign accounts and the criminalization of specific conducts by politicians (*Congresso Nacional*, 1992).

In the years that followed the impeachment of President Fernando Collor de Mello in the aftermath of the *PC Farias* case, the Brazilian Congress did approve legislation changing the rules of campaign financing. Following the report’s conclusions, Congress enabled firms to contribute to campaigns with amounts not exceeding 2% of total revenues earned the year before the elections (Law 9.504/97, *Lei das Eleições* or Electoral Law). Donations could

be made directly to candidates or to parties. In the latter case, parties were allowed to distribute the revenues to fund multiple candidates, in conformity with their statutes and legal provisions (Law 9.096/95, *Lei dos Partidos Políticos* or Law for Political Parties). Fueled by corporate money, the budget of campaigns rose at each subsequent election, meeting the growing needs of candidates (table 1).

Table 2.1: Federal Legislative Elections - Lower House - 2002 to 2014

Year	parties	candidates	seats	total budget	cost of vote*
2002	30	4902	513	R\$ 186,404,318	R\$ 2.37
2006	29	5660	513	R\$ 407,924,435	R\$ 4.83
2010	27	6028	513	R\$ 862,383,357	R\$ 9.65
2014	32	6175	513	R\$ 1,082,277,287	R\$ 12,13

Source: Transparência Brasil, [www.asclaras.org](http://www.asclaras.org)

: \* cost of vote is calculated dividing the total amount spent in the legislative election by the total number of votes cast for the seats under dispute in that election.

The new legislation offered firms legal benchmarks to donate money to politicians and parties, turning corporate donations into the most significant source of funds for candidates. In 2014, for example, corporate donations accounted for 73% of all the money raised by candidates running for congress (table 2).

Table 2.2: Sources of financing - 2014 Legislative Elections

source	amount (R\$)	%
firms	3,031,864,138.09	72.92
individuals	556,860,093.90	13.39
own resources	377,006,656.10	9.07
public funds	189,346,946.12	4.55
internet donations	1,591,836.42	0.04
unidentified donations	641,549.83	0.02
other	455,223.00	0.01
total	4,157,766,443.98	100,00

Source: Supreme Electoral Court, [www.tse.jus.br](http://www.tse.jus.br)

In view of the huge importance of corporate money to politicians, how is it possible that just a year later this type of contribution would be declared in violation of the Brazilian constitution by the Supreme Court? Why was Congress unable to reinstate the legality of corporate donations, in spite of the attempt of congressmen to do so and the importance of this source of financing for their political survival?

As it will become clear in the following sections, outlawing corporate donations was the outcome of an initiative by the Brazilian Bar Association (OAB/DF) to take to the Brazilian Supreme Court an issue over which Congress had not managed to come to a decision after years of deliberation. This was only possible because of the enlarged role played by the STF in recent years, a role the Supreme Court exerted in parallel to the suspension during Dilma's second term of the regular patterns of collaboration between the President and Congress.

## 2.3 The Critical Juncture

### 2.3.1 The Worker's Party

Perhaps no specific event is more symbolic of the dimensions of the crisis that broke out in 2015-2016 than the trajectory of the Workers' Party (PT), the party of President Dilma Rousseff and her predecessor, Lula. This is so because the election of Luiz Inácio Lula da Silva in 2002, when the PT reached the presidency for the first time after decades of frustrated attempts, represented a milestone in modern Brazilian history. Being the only ideologically coherent, internally democratic and disciplined party in Brazil's political landscape, the PT had a strong basis in grassroots movements and stood for incorruptibility and the rejection of exclusionary political and economic practices.

However, as indicated by Goldfrank and Wampler (2017), to reach power and to govern the PT increasingly resorted to traditional practices and tactics - including corruption and money laundering schemes - that were no different from those employed by its adversaries. Already in 2002, when Lula was elected, private firms contributed handsomely for the party for the first time and the PT candidate was able to raise more money than all the other candidates, including the candidate of the incumbent party. Donations included not only official contributions, but also off-the-books donations of huge amounts.

Failing to reform campaign financing laws prior to 2002, the PT badly

needed funding for the 2002 elections, the year it had the first real chance of winning office due to unpopularity of the incumbent, Fernando Henrique Cardoso. Prior to 2002, private firms had invested large sums in keeping the PT out of office, but this time they decided to support both the candidate of the incumbent party and the challenger as a way to make sure they would have ties to whomever won the election.

Besides resources for campaigns, in the case of PT the practices also involved “parallel finance networks” as well as kickback mechanisms designed to build support in Congress. The party faction that effectively controlled the PT since 1984 and to which Lula and his supporters belonged was responsible for moving the party away from its original grassroots origins and moderating its campaign platforms in order to appeal to larger audiences during elections. It also designed a finance network scheme that directed official and unofficial resources to its members against more leftist members of the party. As evidence for this, Goldfrank and Wampler (2017) remind that the first corruption scandals involving the PT emerged in cities whose mayors belonged to Lula’s faction.

After the scandal that brought President Collor de Mello down, another scheme became public in 2005, this time involving Lula and the PT - the first large scale scandal of the PT and its founder. As investigations showed, illegal contributions in exchange of favors, often much above the legal limits and made to competing candidates, continued to be a normal practice in Brazilian political campaigns. The media called the scheme *mensalão*, a word in

Portuguese meaning “big monthly stipend” and coined to designate clandestine payments made by the Workers’ Party to congressmen in exchange of support for its legislative agenda. The money used for payment came from public funds through fake advertising contracts signed by state-owned companies. The scandal brought down the chief of staff of president Luiz Inácio Lula da Silva, José Dirceu, Lula’s lifelong ally and supporter and another major figure within the party’s cadres, who was forced to resign nevertheless. It also tainted the public image of the President and the Workers’ Party, considered up to that moment to be the only big party not to get involved in systemic corruption. The scandal reinforced the public’s perception of the enduring pernicious effect of corporate money in politics.

Other scandals followed though. The largest one involved senior directors of the state oil company *Petrobras* inflating the costs of building contracts in exchange of bribes. Contractors would channel part of the money received from the state oil company to lobbyists and money launderers, who would in turn distribute it to PT’s coalitional partners. Many contractors involved in this scandal - nicknamed *petrolão* or “big oil” by the press - were key contributors to the campaigns of Lula and Dilma, and had also donated to their rivals, as it is usual in Brazilian politics.

From that moment on, the issue of campaign financing became once again a major topic in Congress, being part of the discussions about various political reform projects that would be analyzed for years inside the house, without any practical result. Right after the *mensalão* scandal, President Lula da

Silva asked his close ally and then Minister of Justice, Márcio Thomas Bastos, to send to Congress an ambitious bill proposing a wide political reform that included the elimination of corporate donations and the establishment of a system of funding using exclusively public funds. However, that bill, as well as a number of subsequent proposals from congressmen in the Lower and Upper Houses, failed to bear fruit. Attempts at reforming financing legislation were rejected in Congress one after the other in 2005, 2009, 2011 and 2015.<sup>3</sup> In 2011 and 2015 the bills even reached the floor, but there was not enough votes to agree on the elimination of corporate donations and on changing other features of the national electoral system.

The obstacles to reform in Congress were manifold. Positions were far apart on a number of key-issues. The PT had received contributions from companies on the way to office and relied on them to win elections and to build support in Congress through kickback schemes, but on the record it joined forces with other left-wing parties to defend campaign financing mostly through public funds; smaller and bigger parties from the center and center-right - like the PSDB, the PMDB and the *Democratas* - considered that the acceptance of mixed regime of public and private contributions from individuals and firms was the only reasonable way to finance increasingly costly campaigns. For the latter, to completely give up private firm's sources

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<sup>3</sup>Besides proposals to reform the financing rules, there were initiatives on different aspects of the electoral system, including the introduction of closed lists for proportional elections, the introduction of the single non-transferable vote, the creation of more stringent overseeing mechanisms for finance accounts, among others.

of contributions would mean the end of any future political career.

The deadlock in Congress was only broken in 2015, when the Supreme Court ruled favorably on a petition from the Brazilian Federal Bar Association that questioned the legality, in face of the Brazilian Constitution, of corporate donations as a source of financing to campaigns. At this point there was little doubt that the ruling Workers' Party had betrayed some of the core principles that had accounted for its strong appeal in the 1990s. How was this possible? In order to fully understand this change, we need to focus on the combination of a very specific and unusual context of uncertainty with the action of interest-driven actors besides congress and the executive, actors - like the Supreme Court and the OAB - whose influence had increased over the years, giving them a renewed role in Brazilian politics.

### **2.3.2 Uncertainty, the Executive and the Legislative**

The Supreme Court decision came about amidst uncertainty generated by a severe political and economic crisis. At the center of this crisis was a momentary dealignment between the executive and the legislative branches in the final years of the presidency of Dilma Rousseff (2014-2016), causing the executive to face greater difficulty to approve bills and ultimately undermining the way the political system had worked for the last two decades. This momentary dealignment ran parallel to an increasing judicialization of relevant political issues - including of course the issue of campaign financing -, leading the judiciary to act as a final arbiter on issues over which politicians

were unable to act.

The Brazilian political system is characterized by a combination of a highly fragmented party system with strong legislative powers given to the President by the Constitution. The strong legislative powers of the president were enshrined in the 1988 Constitution and include a large number of prerogatives. In their seminal study, Shugart and Carey (1992) ranked the 1988 Constitution second – among the 43 examined –, in terms of the vastness and scope of powers granted to the President. The Presidency has, for instance, the exclusive power to issue provisional decrees (“medidas provisórias”) with the force of law for 60 days, extendable for another 60 days. In case they are not approved/rejected by Congress within 45 days, provisional decrees will go to the top of the agenda, preventing legislators from considering other bills. The presidency also has vast agenda powers. It has exclusive initiative over a number of issues, including the budget and administrative matters. Congress must approve or reject the budget proposed by the President and cannot initiate programs or projects not included in it, unless an amendment process is initiated by legislators. Finally, the President is able to partially or totally veto bills approved by Congress and has a wide range of resources at his/her disposal, discretionary control over the budget and the appointment of key positions within the administration.

Moreover, the electoral system is responsible for a highly fragmented party system, as it combines proportional representation with a low threshold and districts of high magnitude. In Brazil, to win a seat, a party or a

coalition must reach a minimum of votes calculated as the total number of votes divided by the number of seats open for contest. There is no national threshold and, in practice, parties and coalitions obtain seats with extremely low percentages of the national vote. The states and the federal district are considered as electoral districts for both chambers.

As a consequence of fragmentation, the number of seats controlled by parties, including the party of the President, is usually small. Because of the way the system works, parties simply do not have enough seats to achieve majority. For this reason, Presidents have to build cross-party coalitions to implement their policies, something usual in Brazilian politics (Abranches 1988). Already during campaigns, presidential candidates try to win the support of several parties. Once the election is over, the newly elected president creates a broad coalition offering those parties who supported him/her resources and cabinet positions.

Whether this type of coalition presidentialism (*presidencialismo de coalizão*) is a structural source of instability and paralysis (Abranches 1988, Mainwaring 2006, Ames 2001) or allows enough room for the executive and the legislative to coordinate and govern (Limongi 1998, Figueiredo 2001, Rennó 2006) is an open question. The fact of the matter is, however, that since the end of military rule no Brazilian President was able to govern without a solid coalition in Congress. Table 3.7 below gives an idea of this phenomenon, as it displays the number of congressmen supporting the government at the beginning and at the end of each term for Fernando Henrique Cardoso, Luiz

Inácio Lula da Silva and Dilma Rousseff, which had the lowest degree of support among the three presidents.<sup>4</sup>

Table 2.3: Number of Coalition members by term, 1995-2016

	Beginning	End
FHC (1994-97)	289	394
FHC (1998-02)	348	327
Lula (2003-06)	219	333
Lula (2007-10)	325	320
Dilma (2011-14)	326	278
Dilma (2015-16)	289	215

The table displays the number of supporters of the presidential coalition in the Lower House at the beginning and at the end of each term. The Lower House is composed of 513 seats.

Source: Centro Brasileiro de Análise e Planejamento, CEBRAP

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<sup>4</sup>Actually from the three presidents Dilma was the only one who suffered a strong loss of support over her presidency and in each term individually.

In 2014 Dilma Rousseff was elected for a second term against the main candidate of the opposition, Aécio Neves, in the closest presidential race in Brazilian history. In 2006, when President Lula was reelected, his margin of victory against the opposition candidate Geraldo Alckmin was 21.66%. The following election (2010), when Dilma was elected for the first time, this difference shrank to 12.1%. In 2014 the margin of victory reached its lowest point, at 3.28%. Almost half of voters did not support her. In a climate of strong political polarization, she was reelected with 51.64% of the votes against 48.36% for her opponent.

Shortly before the reelection of Rousseff Brazil witnessed a number of protests initially motivated by the announcement of increases in the fares of public transportation. Protests rapidly evolved towards more broad demands that included the curbing of political corruption and became widespread throughout the country. Protests were also motivated by the revelations - which would continue to plague the President during her second term in office - brought about by investigations under the so called *Lava Jato* (Car Wash) operation, which disclosed a web of corruption involving payments worth 5 billion dollars to company executives and political parties, including members of the Workers' Party and its coalition allies.

As a way to answer to protesters, President Rousseff announced, once reelected, the set up of a Constitutional Assembly devoted exclusively to political reform. In presenting her proposal the President indicated some of the issues to be addressed by members of Congress, which included discussions

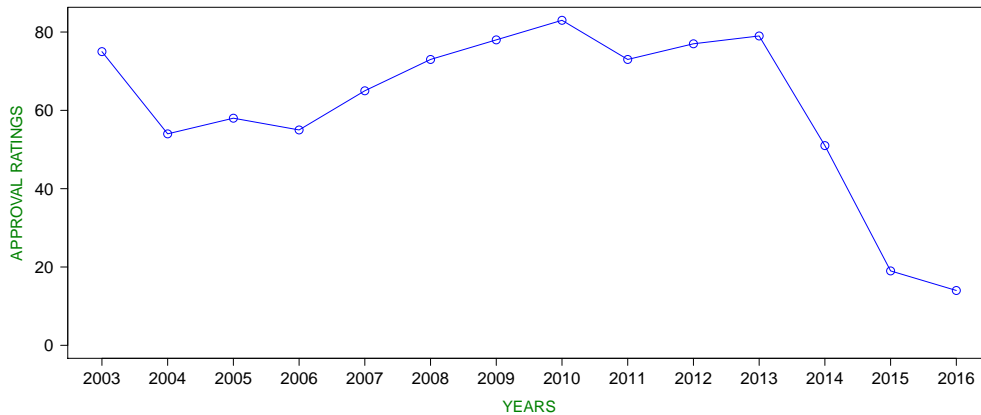
to put an end to private financing of campaigns, perceived then as one of the main causes of corruption by politicians. The proposal was subsequently changed into a national plebiscite, but just as the establishment of a Constitutional Assembly, it was quickly abandoned as the government started to lose political support in Congress.

Parallel to the political crisis, the second term of President Rousseff coincided with a period of steady deterioration the economic situation in the country. The reasons for the crisis are manifold and still divide analysts, but there is little doubt that the delayed effects of the 2008 financial crisis in Brazil and the slowdown of the Chinese economy as of 2012 did play a critical role. In a context characterized by little economic activity, austerity measures were introduced in an attempt to curb a monthly 7% inflation in 2015. The level of unemployment rose to 8.5% in that year and the GDP shrank 3.8%, damaging the popularity of the President even further.

The combination of economic crisis with the revelations from the *Lava Jato* investigations had a devastating effect of the popularity of the President. In 2016, the year Dilma Rousseff left power, only 24% of the population trusted her and merely 10% considered her government good or excellent, according to a survey carried out by the Brazilian Institute of Public Poll and Statistics (CNI-IBOPE, 2016), displayed in graph 2.1.

The parties that belonged to the Government coalition during the second term of President Rousseff represented 289 seats or 56% of the total number of congressmen, a support wide enough to approve any legislation presented

Figure 2.1: Approval ratings of Brazilian Presidents 2003-2016



Source: CNI-IBOPE 2016

by the Executive. That fact notwithstanding, Dilma collected a sequence of significant defeats in Congress during her second term. The defeats included issues of utmost importance to the Executive. Headed by the President of the Lower House, Eduardo Cunha - a powerful enemy and former ally of the President-, politicians raised the limit for compulsory retirement for members of the Judiciary from 70 to 75 years old, thus preventing Dilma from nominating a new justice to the Supreme Court, as she intended to do.

Other defeats included the creation by Congress of a special commission to investigate the Brazilian state oil enterprise, Petrobras, and the reduction of the age of criminal responsibility. This “revolt” of members of the government coalition was initiated by delays by the Executive in the concession

of funds for “pork-barrel”, but was later fueled by the President’s increasing declining approval ratings and her inability to deal with Congress. As rates fell amidst the flow of revelations from the *Lava Jato* investigations, congressmen preferred to distance themselves from an increasingly unpopular President threatened by investigations of corruption, showing little or no interest in supporting bills presented by the Executive. The process culminated in the acceptance of the process of impeachment against Dilma Rousseff in 2015, when many members of her own coalition voted against her.<sup>5</sup>

During Dilma Rousseff’s second term, some regular patterns of interaction between the Executive and the Legislative that had been observed for decades ceased to work. One of these patterns refers to the rate of success of the Executive in approving bills it presented to the Legislative. Dilma’s predecessors have counted upon a strong coalition that enabled them to approve legislation sponsored by the President’s office. Under Dilma the Presidency remained very active when it comes to presenting bills for consideration by Congress, but the rate of success in having these bills approved decreased dramatically (table 2.4).

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<sup>5</sup>Actually the only party from the coalition whose representatives voted unanimously with the Government and the Workers’ Party against the admission of the impeachment was the PC do B (Communist Party of Brazil). The impeachment process was approved in the Lower House with 367 votes, 184 of which from politicians belonging to parties from the Government coalition: PP (38), PSD (29), PR (26), PMDB (59), PROS (4), PDT (6) and PRB (22).

Table 2.4: Proposals approved in Congress by term, 1995-2016

	total	presidency	approved	presidency	success rate
FHC (1995-98)	816	808	743		0.92
FHC (1999-02)	914	936	814		0.87
Lula (2003-06)	810	759	668		0.88
Lula (2007-10)	942	747	635		0.85
Dilma (2011-14)	710	440	317		0.72
Dilma (2015-16)	213	166	103		0.62

The table displays in the first column the total number of laws approved (ordinary and supplementary legislation) by presidential term; the second shows the number of proposed bills by the Executive. The third column shows how many of the proposed bills by the Executive were actually approved by Congress. The last column shows the percentage of success of the Executive in getting approved the bills it presented to Congress.

Source: Pereira, Celina (2017), Presidência da República and Congresso Nacional, official websites.

Along the same lines, under Dilma there was an increase in the exercise of the veto powers of the President. Although the number of vetoes did not change dramatically in absolute terms from its predecessors, there is a sharp increase when one looks at the proportion of the legislation approved by Congress that was subject to presidential veto, especially during the second term. Moreover, at the height of the crisis, during her last term - only one year, four months and 13 days as President -, there was a sharp increase in the absolute number of vetoes (Table 2.5).

Table 2.5: Presidential vetoes by term, 1995-2016

	laws approved	vetoes	ratio
FHC (2000-02)	699	134	17.40
Lula (2003-06)	810	150	18.51
Lula (2007-10)	942	201	21.33
Dilma (2011-14)	710	168	23.66
Dilma (2015-16)	213	80	37.55

The table displays in the first column the total number of laws approved by Congress per term (ordinary laws and supplementary legislation). The second column indicates the amount of laws that were vetoed in its entirety or had some of its dispositions vetoed by the President in each term. The third column displays the ratio of vetoes in relation to the total amount of laws approved by term. Unfortunately, the site of Congress did not display any information prior to the year 2000 and it was not possible to obtain this information from other sources.

Source: Pereira, Celina (2017), Congresso Nacional.

Finally, during Dilma’s second term, the capacity of the President’s office to get Congress to approve provisional measures enacted by the President decreased dramatically (table 2.6).

Table 2.6: Provisional Measures by term, 1995-2016

	presented	rejected or changed	% total
FHC (1995-98)	1253	134	10.69
FHC (1999-02)	796	118	14.80
Lula (2003-06)	236	66	28.03
Lula (2007-10)	175	74	42.22
Dilma (2011-14)	140	76	54.48
Dilma (2015-16)	47	39	83.05

The table displays in the first column the total number of provisional measures edited by each President, by term, from 1995 to 2016. The second column indicates the amount of provisional measures that were either rejected (not voted or vetoed in its entirety) or partially changed by Congress. The third column displays the percentage of provisional measures rejected or changed by Congress in relation to the total amount edited by the President.

Source: Pereira, Celina (2017), Congresso Nacional.

In what concerns campaign financing, there was an unsteady balance between actors who opposed and those who favored corporate donations. In

the years before the landmark decision by the Supreme Court, the Government, the Workers' Party and other left-wing parties attempted to push draft bills on public financing of campaigns on at least three occasions: 2005, 2009 and 2011. These actors enjoyed the support of the Brazilian Bar Association (OAB) and a number of NGOs, which presented their own version of a draft-bill to Congress. None of these bills ever reached the floor, having met with strong opposition by politicians favorable to private financing led by the President of the Lower House, Eduardo Cunha. Cunha and his supporters would in response make their own attempts at approving legislation that favored donations by firms, sponsoring counter-proposals in Congress while the Supreme Court was still analyzing the issue, as will be explained in more detail below.

The second term of President Dilma Rousseff took place during a period of crisis in which relations between the Executive and Legislative became increasingly tense. The effects of the political crisis were exacerbated by the economic problems in the economy. As Dilma's support in Congress vanished, groups in favor and against corporate donations acted at various stages to determine the outcomes of interest and attempted to "lock in" one specific end result favorable to them. The balance between these groups was unstable and each side could prevail by a slim margin, depending on the contingency of how the events unfolded.

### 2.3.3 The Judiciary

The Judiciary is another important actor whose role was crucial to arrive at the elimination of corporate donations. Despite the fact that they only act when called upon, courts do have an important effect on policy, since legal rules are rarely neutral. Over the years, as Brazil completed its transition to market economy and democracy, courts at all levels helped defining alternatives to policy makers, legitimizing or de-legitimizing certain policy choices. This is especially true in the case of the Brazilian Supreme Court (*Supremo Tribunal Federal*, STF), the national constitutional court on which policy actors increasingly relied to address public policy questions and political controversies, in a process analysts have defined as the judicialization of politics.

The reasons for this active role of courts are manifold and may vary from case to case, but the literature highlights clearly that it is generally the product of a dysfunctional political system. The more deadlocked the political system becomes, the more likely courts will exert an expansive judicial power (Guarnieri et al 2002). Greater fragmentation of power among political actors increases the likelihood of courts asserting themselves (Ferejohn 2002). In other words, the study of the involvement of the Judiciary in policy debate cannot be done in isolation, and has to be undertaken parallel to the study of strategies of other relevant political actors (Taylor, 2008).

According to Hirsch (2011), the judicialization of politics is a widespread phenomena of late twentieth, early twenty-first-centuries. Over the last

decades, some of the most pertinent and polemical controversies have been transferred to courts in many countries. This was the case, for instance, of the American presidential election of 2000; the outcome of the Mexican election in 2006; the war in Chechnya; the Pervez Musharaff coup in Pakistan; Germany's place in the EU; as well as restorative justice issues in Latin America, eastern Europe and South Africa (Hirschl 2011). The judicialization of politics is also evident in the increasing oversight of electoral processes by courts. Courts have been asked to decide on questions like party funding; campaign financing; broadcast advertising during election campaigns; and the approval or disqualification of parties and candidates (Miller 2004).

In Brazil, since the end of military rule in 1985, the Supreme Court has played an important role as the final arbiter of controversies crucial to society and the state. For the first two decades after the reinstatement of civilian rule, the Supreme Court displayed a pattern of accommodation in interbranch relations, rarely confronting the other branches of government, in particular with regards to the economic policies implemented by successive Presidents (Kapiszewski, 2012).

While in the first years after democratization the Supreme Court displayed an often accommodating behavior when ruling, in later years the Court took an increasingly active and defying position on issues of political relevance. The importance of a number of issues over which it became politically difficult to achieve super-majority support and the fact that the 1988 Constitution had conferred ample powers to the STF put the court at the

center of public policy debate. This interpretation was confirmed to me by one former magistrate of the court (Justice Nelson Jobim), who chaired the STF in 2004: “After the 1988 Constitution, the role of the Supreme Court changed dramatically and the court stopped holding positions so close to the Executive. One of the reasons for this is that the 1988 Constitution gave a number of actors - parties, the Federal Bar Association (OAB/DF), labor unions and other public agents - the possibility of petitioning directly to the court and questioning the constitutionality of laws and regulations. This was not possible during the military rule. The 1988 Constitution opened thus new possibilities for a number of actors and I believe some of the petitioners used this new possibility less for the purpose of the law than to attract public attention and attain political gains” (Jobim, 2020).

Justice Jobim also alluded to the increasing loss of power by party leaderships in Congress and how this process made it more difficult to reach consensus on new legislation, almost as if each legislator held not the party’s position, but his or her own individual stance on certain issues. This became a strong incentive to look to the Supreme Court in search for a decision on sensitive topics: “in 2005 there was a serious dispute between the Workers’ Party (PT) and the Social Democratic Party (PSDB) for the chairmanship of Congress, but none of the candidates from these parties won enough votes to be elected. The election was won by one of the so-called ‘backbenchers’, Mr. Severino Cavalcanti, who inaugurated a new way of doing politics in the House. Severino established a direct link with individual congressmen,

ignoring the party leaderships altogether. When some intricate negotiation was needed to approve new legislation, this was done directly between the Chair and the congressman himself. After Severino left, this way of doing things was preserved by the following chairmen. The lack of institutional mechanisms to deal with different positions and the weakening of party leaderships worked as a stimulus to petition to the Supreme Court for a decision.” (Jobim, 2020).

My interviewee also attributed the more assertive role played by the Supreme Court on issues of political relevance to the Justices themselves. In Brazil, nominations to the STF are made by the President according to certain constitutional rules. Traditionally, the nominees are lawyers, magistrates or attorneys of highly recognized expertise, but according to Jobim President Lula started to subvert this norm and favor candidates linked to him and his party, but not necessarily widely recognized as experts by their peers (Dias Toffoli, one of the current magistrates of the court, had been lawyer of the Workers’ Party and of Lula himself in previous presidential campaigns. He was not a “recognized expert” in any legal branch and had failed twice the public entrance exams for magistrate). As a consequence, many of the Justices appointed as of 2003 felt - according to my interviewee - the need to build a strong reputation as jurists while in the Court, something that before 2003 was seen as a precondition to be nominated. They did so either by showing their independence and vigorously rejecting petitions from the Executive or by assuming new, unorthodox legal positions to show

their originality as experts. According to Jobim, this “personal” need of the Justices also contributed to the more active role of the STF (Jobim, 2020).

In any case, what I am suggesting is not that the magistrates from the Supreme Court voluntarily decided to replace Congress as the institution responsible for law making. The actual process was much more intricate and subtle, involving the confluence of a number of simultaneous elements. In my reading of it and on the basis of the interviews carried out, certain questions of direct political relevance were directed to the STF in view of the more salient role the court had acquired over the years and because action by parliament on them looked distant. This happened at a time when a tendency of enlargement of the role played by the Judiciary, backed by a progressive view of the organ shared by some magistrates, was visible worldwide.

During the Presidency of Dilma Rousseff, the political crisis originated by the government’s loss of support in Congress and the inherent difficulty in finding politically viable solutions to some key and sensitive issues created a situation in which political actors increasingly looked to the Supreme Court for decisions. The judicialization of politics, although visible since the 90s, became particularly clear in those years. The Supreme Court ruled on a number of issues over which Congress was unable to legislate. This progressive judicialization of politics was not the consequence of conservative magistrates ruling to soften aspects of progressive legislation introduced by the other branches of government, but was rather a manifestation of a more general tendency of modern democracies, where the Judiciary assumes

a proactive role in view of the incapacity of other branches of Government to solve crucial political issues (Hirschl 2011).<sup>6</sup> In many instances, the Supreme Court took a stance that was far more progressive than the position many congressmen would have supported.

Among the political issues that were in the public eye and were referred to the Supreme Court were the recognition of same sex marriage (for which there was no specific legislation); the unconstitutionality of the establishment of an “electoral threshold” for parties; the prohibition of citizens condemned in second instance by a panel of magistrates to run for public office (*Lei da Ficha Limpa* or Clean Record Act); the permission of abortion in case of an anencephalic fetus; the establishment of criteria for the creation of Indian reservations; and the ban on corporate donations as a means to finance political campaigns.

It is not surprising, in view of recent activity by the Supreme Court, that the Federal Bar Association (OAB) - one of Brazilian civil society representatives that had been active in the defense of public financing of campaigns - decided to bring the issue of corporate donations to its attention.

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<sup>6</sup>Actually most magistrates in the Supreme Court had been appointed by Dilma Rouseff or by her predecessor, Luiz Inácio Lula da Silva. Only three out of eleven magistrates had been appointed by previous, right-wing oriented governments: Justice Marco Aurelio Mello, appointed by President Fernando Collor de Mello (1990/92); Celso de Mello, appointed during the Presidency of José Sarney (1985/90) and Gilmar Mendes, appointed by Fernando Henrique Cardoso (1995/2003)

### **2.3.4 The OAB and the ruling by the Supreme Court**

The 1988 Constitution established several legal instruments for constitutional review at the Supreme Court. For our purposes, the most relevant is the so called *Ação Direta de Inconstitucionalidade*, ADIN (Direct Injunction of Unconstitutionality), which is a legal instrument allowing select political actors to challenge the constitutionality of a federal or state law directly at the Supreme Court. The list of actors empowered to bring ADINs to the Supreme Court include the President, the leadership of the Senate, the leadership of the Chamber of Deputies, state governors, the prosecutor-general, the Federal Bar Association (*Ordem dos Advogados do Brasil*, OAB), political parties with congressional representation and national unions. ADINs allow the entitled actors listed to challenge federal laws that have been passed by the executive branch, by Congress and by other courts. Their decisions (effects) are binding and cannot be appealed.

Throughout the transition to democracy and after, the OAB played a prominent role in Brazilian history. After a brief period in which the association lent support to the military regime, the OAB engaged in public opposition and became a powerful voice in structuring the military's exit from power and the transition that followed. Since the 1970s, the association became civil society's spokesperson for a number of issues, including the rule of law, human rights and citizenship. Under civilian rule, the OAB fought corruption during the Collor Presidency, pushing for thorough investigations of the President's campaign finance director. During the Cardoso era, the

association opposed “neoliberal” reforms and during Lula’s time it publicly condemned both politicians involvement in corruption scandals and what it considered to be breaches of individual rights due to alleged excesses of public investigators.

The OAB was one of the actors entitled by the Constitution to file an ADIN at the Supreme Court. In view with of its experience with this legal mechanism over the years - according to Taylor (2008), the OAB was responsible for filing 5% of all ADINs from 1988 to 2002; its rate of success was higher than that of other actors entitled -, it comes as no surprise that the association decided to take the issue of corporate financing to the court. During the Lula and Dilmás years, the association had on many occasions publicly voiced its position against the financing of political campaigns through private corporations’ money. Even if there was no assurance about the exact content of a prospective decision by the STF, such a decision would be a legislative innovation and would put an end to discussions about financing legislation in Parliament.

The ADIN petition that challenged the constitutionality of campaign donations was filed at the Supreme Court in September 2011, the same year a member of the Workers’ Party presented the party’s own proposal of political reform - which banned corporate donations - to a special commission of political reform in Congress and which dragged on for years without being put to a vote. The petition challenged certain provisions of law 9.504/97 (*Lei Eleitoral* or Electoral Law) and law 9.096/95 (*Lei dos Partidos Políticos* or

Law of the Political Parties). The petition had three separate requests: (1) the declaration of unconstitutionality with immediate effect of the corporate donations as a means to finance campaigns; (2) the declaration of unconstitutionality after 24 months of the existing caps on donations by individuals and self financing by candidates (10% of the gross income from the year previous to the election); (3) the request for Congress to enact within 24 months legislation that fixed the mentioned caps at lower levels.

The fact that the Executive did not have enough support to approve the reform and that Congress was unlikely to approve changes in the finance regime that went against interest of many of its members - regardless of how much these changes were desired by the Brazilian society - were key considerations for the OAB confirmed by practically all interviewees. One of the authors of the original petition, a Brazilian lawyer, when asked about the reasons that led the OAB/DF to file at that precise moment the bill questioning the constitutionality of corporate donations to politicians and parties, said that “that was the only way, as Congress would never have approved the reform we wanted”.

Another key consideration was the role of the Supreme Court as arbiter of political disputes. This same interviewee stated that he and his colleagues were convinced of the legitimacy of the court to rule on the issue of corporate donations and rejected adamantly that any decision would be a case of the STF extrapolating its constitutional role: “This is a criticism - judicial activism - that is often voiced by political scientists. However, we were con-

vinced that by any angle you looked into the question, it was legitimate that the Supreme Court examined the issue of corporate financing (Souza Neto, 2019)”.

Taking the words of the signatory of the ADIN into the broader context outlined above, it seems reasonable that the reform was the product of a number of separate contingent factors coming together in 2011: (1) the incapacity of the Executive - aggravated by the “bad blood” between the President and the Legislative - to gather support to approve a reform that went against the interests of many politicians; (2) the enlarged role played by the STF in the last few years, which made the court more receptive to accept injunctions on the constitutionality of issues of broader political impact, like financial regulations of elections; (3) the political salience of the campaign financing issue, which resonated with the interests and positions of societal actors like the OAB and ultimately led it to file the injunction at the STF. Was it possible that the OAB or another legally entitled actor could have brought the same issue to the court at a different point in time? It certainly was, but during the Presidencies of FHC and Lula, when the Congress was operational, the Court exerted a much more restrained role as far as its willingness to get involved in political issues went.

One of the Supreme Court justices interviewed for this paper confirmed this new *ethos* of the Court. Fully aware of the criticisms of excessive judicial intervention in questions belonging to the Executive and the Legislative, he stated that the Supreme Court should not act pro-actively in legislat-

ing except in two exceptional circumstances related to (a) the protection of democracy and (b) the protection of fundamental individual rights enshrined in the Constitution. When commenting specifically on the injunction on corporate donations, this magistrate argued that the issue was primarily related to the protection of democracy, of whether the current financing model of campaigns could be considered compatible with the idea of democracy enshrined in the Brazilian constitution. The current system allowed firms to contribute to competing candidates regardless of their positions. He argued that this situation was dangerous to democracy, as it allowed firms - which, unlike citizens, are not holders of political rights like suffrage - to develop ties with politicians in anticipation of favors, as the abundant evidence of corruption involving firms and candidates had already showed. By enabling this kind of relation, the financial rules had become a threat to democracy itself, as some actors exerted disproportionate influence on Government due to the fact that they had contributed lavishly to the campaigns of winning candidates (Barroso 2019).

In his own vote for the ADIN 4650, this same magistrate offered additional comments on the prevailing position about the role of the court: “it is a *representation* role, it is the role of interpreting and attempting to make a reality of certain wishes of society which are paralyzed within the majority rule. The majority rule, which takes place in Congress, often faces deadlocks, faces hurdles in achieving consensus; this is not only in Brazil, it is all over the world. (...) It (*the role of the court*) is to make history go forward when

it has come to a halt”<sup>7</sup>.

Another interviewee, one of the signatories of the original petition who was President of the OAB at the time, when asked about the reasons that prompted the association to file the injunction at that precise moment, initially rejected that the composition of the Supreme Court had been a preponderant factor in the decision. He insisted that the injunction was filed as soon as the OAB became convinced of the soundness of the legal arguments it would bring to the judges about the unconstitutionality of corporate donations in view of the text of the 1988 Constitution.

This same interviewee recognized, however, that he and the other signatories were fully aware of the enlarged role the STF had been playing in the last few years and shared the opinion that this was something very positive, as it represented a progressive tendency of the court. According to him, the OAB welcomed what he defined as a “new vision” of the STF, where magistrates were more committed not only to defend the prerogatives of the State, but also the rights of citizens, meaning by that recent decisions of the court with a clear impact on individual rights, like the recognition of same sex marriage, the constitutionality of quotas for blacks in public universities

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<sup>7</sup>*Mas existe uma outra competência que Cortes Constitucionais desempenham - e que, no caso brasileiro, se tornou importante em muitas situações - que, ao lado da função contramajoritária, é uma função representativa, é a função de interpretar e procurar concretizar determinados anseios da sociedade que estão paralisados no processo político majoritário. Porque o processo político majoritário, que é o que se desenrola no Congresso, muitas vezes, encontra impasses, encontra dificuldades de produção de consenso; não é só no Brasil, é no mundo inteiro.(...)É para fazer andar a história, quando ela tenha parado.* The full content of the vote can be found in the website of Justice Barroso, [www.luisrobertobarroso.com.br/votos-e-decisoes](http://www.luisrobertobarroso.com.br/votos-e-decisoes)

and in the public service and the defense of right to vote in an electoral system not distorted by the undue influence of corporate money. Commenting on the positive response of the Court to the injunction he filed, he added that the such a response would most probably not have been issued years earlier (Cavalcante, 2019), a point that was also expressed by another interviewee, who explained this by contrasting the more progressive composition of the Court in the 2000s with the conservative composition immediately after democratization (Lima 2020).

The other interviewee mentioned above who also drafted the injunction confirmed that the stalemate in Congress was key to the initiative by the Bar Association and that a positive ruling was expected, although it was uncertain whether the court would accept all requests by the authors: “This was an issue - *banning corporate donations*- which Congress was not ready to address. That was one of the points considered. We believed that a positive ruling by the Supreme Court was feasible as the congressional channels were obstructed (...) There was some margin of doubt whether the Supreme Court would agree with the requests in its entirety. In the end, we believe that the decision still allowed too much room for self-financing, thus favoring rich candidates (Souza Neto, 2019)”.<sup>8</sup>

My reading of these interviews is that the change of legislation concerning the financing of elections was not the result of a cumulative process of years of

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<sup>8</sup>The final ruling did not accept the request of the petitioners to declare unconstitutional the caps on self-financing and donations by individuals

negotiation among relevant stakeholders. It was a turning point in relatively exceptional circumstances, as cases of critical junctures should be. This change became possible due to the initiative of a professional union whose members trusted that members of the STF shared their opinion about the need to reform financial electoral rules and believed that magistrates would accept the legal arguments to back such changes. The representatives of the OAB knew that there would be municipal elections in the short term, in 2012, and that a favorable decision could be soon put to test. They also knew - *even if they could not say it as bluntly as I interpret their words* - that any attempt to go to court and lock in a favorable result had to be tried at that moment, in 2011, when the chances were higher that the STF would accept their arguments than before. They also knew that the regular legislative path was blocked and there was no expectation that it would unblock soon.

In a session that started in 2013 and ended in 2015, the Brazilian Supreme Court ruled unconstitutional corporate financing of campaigns by 8 votes in favor and 3 against it. From the 8 justices that ruled in favor of the banning, 4 were appointed by President Lula (Dias Toffoli, Ricardo Lewandowski, Cármem Lúcia and Joaquim Barbosa); 2 by President Dilma (Rosa Weber and Luis Roberto Barroso); 1 by President Fernando Henrique Cardoso (Luiz Fux) and 1 by President Fernando Collor de Mello (Marco Aurelio Mello). From those 3 that voted against, 1 had been appointed by Dilma, 1 by Fernando Henrique Cardoso and 1 by José Sarney. The court also rejected any change in the existing rules for contributions by individuals and by candi-

dates to their own campaigns.

The progressive view that magistrates had of their own role at the Supreme Court was an important element to understand how they were able to rule against the interest of politicians. From the content of their votes and the interviews carried out, it is clear to me that the majority of magistrates was convinced not only of the soundness of judicial argumentation against the constitutionality of corporate donations, but also of the positive effects of that decision for the future of the Brazilian democracy.

Moreover, we know that courts - especially high courts - do not take decisions completely isolated from public opinion, even if Brazilian magistrates often keep sustaining that their positions are taken exclusively on the basis of legal arguments. A vast literature explores an empirical association between public opinion and judicial decisions and political scientists still discuss to what extent and when exactly courts' output responds to the public's preference (Giles, Blackstone, and Vining 2008; Norpoth and Segal 1994; Segal and Spaeth 2002). At the same time, citizens routinely evaluates justices and this evaluation is sensitive to what happens in the political and social landscape. Magistrates do take into consideration the degree of public support when ruling, even if their decisions are not limited to merely reflect what the public wants. A judicial opposition to Congress can, for instance, lead to resentment and loss of trust among the general public if it is perceived as causing unbalance in the constitutional system (Caldeira, 1986). When they go against Congress, magistrates have to be specially aware of the factors

pro and against their ruling.

In the specific case of this decision, the vast majority of Brazilians - conscious of the revelations brought about by prosecutors in the *Car Wash* investigations - was openly against the possibility of firms funding politicians and parties. In an opinion poll carried out a few months before the final ruling by the court and widely reported by the media, 74% of participants declared themselves against the corporate financing of politicians and parties and 79% stated their belief that corporate donations was a powerful stimulus to corruption among politicians.<sup>9</sup>

Thus, in addition to the reasons already indicated, the degree of public support was another relevant factor in fully grasping why and how the majority of justices in the Brazilian Supreme Court took such a firm stance against a means of financing that was vital to most politicians. Magistrates not only were convinced that this was the right decision to take, but they had a strong support from NGOs, activists, left-wing politicians<sup>10</sup> in favor of public financing of campaigns and, most importantly, from the public in general.

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<sup>9</sup>*Maioria é contra a doação de empresas a campanhas políticas, diz DATAFOLHA* (Majority is against the corporate financing of political campaigns, says DATAFOLHA). Article published in the newspaper *Folha de São Paulo* in 07/06/2015. The news and the results of the opinion poll were widely reported by other newspapers and chanel TVs.

<sup>10</sup>As described in the following section, not all politicians in Congress were prepared to openly declare themselves in favor corporate donations at this time. While left-wing politicians traditionally favored the public funding of campaigns, it is probable that others were afraid of publicly challenging the court's decision, preferring to stay neutral or express themselves contrary to corporate financing even if they had benefitted from it in the past.

## 2.4 The Legacy

One of the main features of a critical juncture is the establishment of an enduring legacy, as one of the possible outcomes of a political process becomes locked in in the course of events. In the case of the Supreme Court ruling, the impossibility of politicians to finance their campaigns through corporate donations became the norm as soon as the ruling was published, being applicable for the first time in the 2016 elections for mayors and city councils. The new norm has remained unchanged in the aftermath, having been observed also in the general Brazilian elections of 2018.

Yet one of the key questions concerns the counterfactual of what could have gone differently. After all, there were attempts to prevail by each of the actors involved and more than one alternative for change were available. As it is expected in a critical juncture situation, the final result of the process was not predetermined from the start, as contingent elements strongly influenced the unfolding of events.<sup>11</sup> A careful examination of the sequence of events indicates how much could have happened differently.

The opportunity for a different course of events to unfold happened while the petition by the Federal Bar Association was still being examined by the Supreme Court. Although the case stayed in court for 2 years, proceedings

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<sup>11</sup>Actually, two of the signatories of the petition from the Brazilian Bar Association expressed that at a certain point the “end result” was on the brink of being exactly the opposite, that is, the complete legalization of corporate donations, as it will be seen in the following paragraphs on the maneuvers played by the President of the Assembly and his supporters. Confronted with the decision of the Court, they expected Congress to succeed in undoing the ruling and approving new legislation in favor of corporate donations.

were interrupted twice. The first time the interruption was when Justice Teori Zavaski asked to examine the files more thoroughly. Justice Zavaski returned the case for trial after a few months and while the final ruling was still undecided.

The second time the procedures were interrupted was when Justice Gilmar Mendes too requested time to examine the case more closely. At that point in time - April 2015 - the ruling was already defined and the majority of the justices had already declared themselves for the unconstitutionality of corporate donations. Nevertheless, the suspension - which this time lasted much longer - gave the opponents of the decision an opportunity to act. Justice Mendes did not express his views at that point, but he was known for favoring the possibility of corporate donations.

Justice Mendes was harshly criticized by NGOs and politicians for suspending the procedures in the Supreme Court, as the unconstitutionality of corporate donations had already been agreed to by the majority of the court. Protests took place in a number of occasions under the slogan *Devolve Gilmar* (“Give it back, Gilmar”), urging the magistrate to return the files of the case and allow it to conclude. Justice Mendes ignored the pleas and kept the judgment suspended for 1 year and 5 months, extrapolating the deadlines imposed by the court regulations, which limit the suspension time in situations like this to a maximum of two months. In an interview given by the time he finally referred the case back to judgment, Justice Mendes stated that the reason for suspending the judgment was to “allow the debate

on campaign financing to mature, including in view of the revelations of the *Car Wash* investigations” (Mendes, G. 2015).

When I interviewed him in the preparation for this paper, Justice Mendes confirmed that in his opinion the Court was heading towards a bad decision if it ruled positively towards the OAB-DF. Less concerned with legal reasoning than with the the political context and the electoral rules according to which campaigns are carried out, he firstly alluded to the fact that the way parties managed public funds for legislative elections often gave some candidates - incumbents in good terms with the party leadership - a substantial advantage towards their peers. Corporate donations offered challengers and newcomers a real and *legal* means to stand up to officeholders in the electoral arena. The Court was, thus, on the way to strip aspirant politicians of this important resource (Mendes, G. 2020).

In this same interview Justice Mendes stated his belief that banning corporate donations would - contrary to what he considered to be the naive expectations of the other magistrates - actually stimulate unlawful donations and corruption: “imagine the common situation where a businessmen wants to donate to one or even to multiple candidates. Using his company this businessman is able to donate in a lawful and transparent way. The moment this possibility no longer exist, the only possibility for this gentleman to donate legally is to do so as an individual. But he might not feel comfortable to do this because he is a public person and might not want the general public to be aware to whose campaign he is contributing to. Once you forbid the use

of corporations, contributors like this hypothetical businessman might start considering that it is in their best interest to make off the books donations, since donating as private citizens could harm their public image. I believe this can have detrimental effects to our electoral process. When I suspended the procedures of the action of unconstitutionality against corporate donations I expected that the revelations of the *Car Wash* investigations would make politicians and my colleagues aware of this risk.” (Mendes, G. 2020).

In any case, the fact of the matter is, however, that while proceedings in court were suspended in 2015, politicians in favor of corporate financing gathered around the then President of the Assembly, Eduardo Cunha, and created a united coalition in an attempt to legalize it unequivocally.<sup>12</sup> Cunha and his group worked simultaneously in two different fronts: on the one hand, they sponsored a draft bill changing a number of aspects of the electoral law and legalizing corporate donations to politicians and parties. The bill, if approved, would have the status of a federal law. Its potential validity was uncertain in view of the pending decision by the Supreme Court. On the other hand, the group led by Cunha sponsored an amendment proposal to the Brazilian Constitution. Although much harder to pass due to the stricter procedure applicable, which required 3/5 of the total votes in the Lower House (308 votes) and in the Upper House (49 votes), the constitutional

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<sup>12</sup>One of the Supreme Court justices interviewed expressed the opinion that in suspending the proceedings of the case, Justice Mendes was deliberately giving the opponents of the ruling in Congress a clear cue to act and approve legislation running against the decision already taken by the majority of the magistrates (Barroso, 2019).

amendment, if approved, would overrun any decision by the Supreme Court in the opposite sense concerning the current constitutional text.

Cunha - a corrupt politician and a true expert in legislative procedures - used all available tactics and procedures to make both the bill and the constitutional amendment advance fast while the final decision by the Supreme Court was pending. Had he prevailed - he almost did - the legislative reform would have taken a different form.

The draft bill proceeded fast in a number of house commissions and reached the floor in September 2015, being approved by the Lower House. To become effective, it needed though to be sanctioned by President Dilma Rousseff, who was against it.

At this point in time - September 2015 -, Justice Gilmar Mendes had finally referred the suspended case back to the Supreme Court, which then issued its final decision (8 votes in favor, 3 against), stating clearly that donations by firms to political campaigns violated the Brazilian Constitution. Using the decision issued a few days before by the Supreme Court to support her decision, President Rousseff exercised her veto power and struck down the specific provisions of the draft law that allowed firms to donate to parties. The Brazilian Congress could still overturn the veto of the President, but Cunha and his supporters were unable to get enough votes to do it.

But that was still not the end of it. Although the draft bill had been definitely rejected, there was still the constitutional amendment to be analyzed. Cunha had decided to put the proposal to vote in May 2015, before

the Supreme Court resumed its trial. Initially, Cunha and his supporters managed to gather 264 votes in favor of making corporate donations constitutional, falling short of the 308 votes necessary to approve the constitutional change. The issue was not settled though, as Cunha played with the internal regulations of the Lower House and managed to put the issue to vote once again the following day. The difference was that while the original text of the amendment enabled firms to donate directly to candidates, the slightly modified version he put to vote the following day required that donations be directed to parties, which would be in charge of distributing the amounts to candidates in accordance with their regulations and priorities.

This time the maneuver worked out and the proposal to amend the constitution was approved by 330 votes, 22 votes more than the necessary. Worried with the impending legalization of corporate donations, more than 60 Congressmen rushed to the Supreme Court and filed an injunction to invalidate the proceedings in Congress, but the Court failed to find any reason to do it. The amendment had still to be approved in the Upper House, where both sides were fighting fiercely. After hours of intense debate, the constitutional amendment was rejected in the Upper House by just 5 votes, with 36 votes against and 31 votes in favor of it. With the rejection of the constitutional amendment and the issuance of the final ruling by the Supreme Court, the possibility of firms donating money to candidates or to parties was definitely rejected in Brazil. Despite the attempts by Congress and an almost turning of the events, the ruling of the Supreme Court was not overthrown and the

new financial regime was fixed for the upcoming elections.

The sequence events described above points to the more immediate elements as to how Congress was unable to reinstate corporate donations, despite coming close to doing it. From a more theoretical point of view, overriding a Supreme Court decision is a relatively rare event and the exact situations in which overrides take place are not always clear (Hettinger and Zorn, 2000). Despite the obvious dependence of many politicians on corporate donations, reinstating them would have meant for reelection seeking actors to go against voter's best judgment. A few months before the ruling by the STF, an opinion poll carried out in the Lower House in which 88% of federal deputies participated, 40.3% stated to be in favor of corporate donations, practically the same percentage of those who said to be against it, which was 40.1%. The latter also said that they were in favor of mechanisms to effectively enforce the prohibition to parties and politicians (*Doação de empresas para campanhas divide deputados*, 2015).<sup>13</sup> If politicians needed funds for campaigns, it seemed easier at this point to accommodate to the new situation created by the court's ruling and search for alternative ways to raise funds, as I indicate in the conclusion.

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<sup>13</sup>*Doação de empresas para campanhas divide deputados* (Corporate donations to campaigns divides politicians in the Lower House), Globo News. Retrieved from <http://g1.globo.com>

## 2.5 Conclusion

During the Presidency of Dilma Rousseff Brazil experienced a phase of political uncertainty in which long delayed campaign finance reform was finally implemented by a decision of the Supreme Court after a successful injunction filed by the Brazilian Bar Association (OAB/DF). In the argument presented, institutional change happened somewhat abruptly, in a process classified as an example of what the literature defines as a “critical juncture”. Change was the product of the interaction of structural and contingent factors within a specific historical context.

Under unusual exceptional circumstances (the more active role of the Supreme Court; the resistance of Congress to reach a definite decision on the issue of campaign financing; the difficulty of the Executive to approve legislation on it), actors not institutionally in charge of law making came to the foreground of the political process. These actors set in motion a process of change and managed to lock in an end result more favorable to them.

The final outcome of the change process (the ban on corporate donations), although influenced by the preferences of some key actors, was not a mere reflection of them. The Supreme Court could have either accepted or rejected in full the petition of the Bar. It granted it only in part and in a split vote. The original petition also asked for the establishment of a cap on donations by individuals, a request that, had it been granted, would have constituted a different result among the set of possible results that defines a critical

juncture while the final outcome has not yet been fixed. The enlarged role of the Court and the sense of mission of its judges, combined with the public support for the decision help understand why the STF did not shy from ruling against the interest of politicians.

After the decision by the Court, Congress ran to approve legislation that reinstated corporate donations, but the new provision was subsequently vetoed by the President (case of the bill sponsored by Cunha's supporters) or not approved in the Upper House (case of the constitutional amendment). Had Congress prevailed - it almost did, as we have shown - the end result would have been different. This is to say, briefly, that during the phase of critical juncture there was a certain degree of indeterminacy and which only came to an end sometime after the Court reached its final decision.

One question to which it is worth coming back at this point refers to the legacy of this critical juncture episode, to the issue of whether we can state, with some degree of confidence, that the unusual circumstances leading to the banning of corporate donations in Brazil have disappeared, leaving a situation of relative stability as to the financial rules that will discipline campaign financing in the upcoming years. On the one hand, the Supreme Court decision proved to be final so far. In the years after the Supreme Court released its final ruling, no effort was made by any relevant actor to reinstate corporate donations in any meaningful way. One way of seeing this is that politicians might not have found it in their best interest to publicly sponsor legislation on such a sensitive issue and go against the ruling of the Court,

especially after the frustrated attempts described earlier.

On the other hand, however, actors seem to have accommodated to the new situation and found innovative ways to afford expensive campaigns, even if they could not rely on money received from corporations. After all, although it outlawed one important source of funds for politicians, the Supreme Court ruling did not touch on the structural characteristics of the electoral system that created the need for such funds in the first place. Besides, a number of politicians have defended for years that the system migrate to public funding. Indeed, in 2017 the Brazilian Congress approved the creation of a new special fund (the so called Electoral Fund or *Fundo Eleitoral*) whose sole aim was to pay for the expenses incurred by parties in subsequent campaigns (Law 13.487/2017). The sources of the money that constitute the fund are public, provided by the National Treasury.<sup>14</sup> In 2018, the union budget assigned 1.7 billion *reais* to the Electoral Fund - less than the total cost of 4 billion *reais* of the nationwide legislative elections in 2014, but far more than the usual amount of public funds allocated for elections. In 2020, the amount assigned was 2 billion *reais*, signaling thus that politicians will increasingly rely on public money to respond to their campaigning needs and that the window to reinstate corporate donations might have definitely closed.

Marked by public disagreements and heated discussions as it was, the banning of corporate donations to finance political campaigns represented

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<sup>14</sup>The details of how the funds are to be divided and managed by parties were fixed by the Supreme Electoral Court in 2018 through a specific resolution on the issue.

an important change in Brazilian electoral rules. The consequences of this change are still not fully understood, being open to scrutiny by researchers and scholars. It remains to be studied, for instance, whether the banning of corporate donations became a strong stimulus to donors to donate unlawfully, as Justice Mendes warned. Be that as it may, in the following chapters I will attempt to investigate some of the possible effects of this change on the performance of incumbent politicians vis-a-vis their challengers.

## Chapter 3

# Campaigning with Big Money: the 2008/2012 cycle

### 3.1 Background

Incumbency advantage is one of the most studied topics in political science, at least in the US. There is a vast literature about the sources and consequences of incumbency effects. The study of incumbency is based on a few assumptions, like the desire of incumbents to maximize their probability of reelection, or the fact that incumbents enjoy a large advantage when running for the U.S. House of Representatives.

In contrast to the abundant evidence in US elections, the amount of studies that have examined electoral advantages of incumbents in developing countries is still relatively small. Contrary to what one could expect, some

of these studies pointed out that incumbency, instead of being a source of advantage, is often associated with a negative effect on electoral performance, at least as far as the candidate's vote share is considered the outcome of interest.<sup>1</sup>

Estimating the effect of incumbency status on electoral performance is not an easy task. Any positive effect could easily be the result of biased estimates, as unobserved attributes may be correlated with both being an incumbent and achieving electoral success (Horiuchi and Leigh, 2009). A direct application of OLS would, thus, not be the best way to find an estimate that is close enough to the real effect.

In order to solve this methodological problem, much of the literature has explored a variety of quasi-natural experiments. This is the case, for instance, of Levitt (1994) and Levitt and Wolfram (1997), who used information from pairs of candidates that face each other repeatedly to assess the effects of incumbency. Other authors like Lee (2008), Linden (2004) and Uppal (2008) use regression discontinuity designs to tackle the same questions. Finally, recent studies (Magalhães 2014), while still using a regression discontinuity design, have pointed out the need to have a measurement of incumbency advantage that is comparable across countries, which led him to focus on the effect of incumbency for an *individual* politician on the *unconditional* probability of rerunning and winning.

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<sup>1</sup>This is the case, for example, of Klasnja and Titiunik (2017), Dix (1984) and Molina (2001), who analyze Latin American cases. For a study with similar findings in India, see Uppal (2008).

However, even if the literature has found ways to minimize the influence of confounding factors on incumbency effects, the question of whether and how such effects interact with electoral rules remains largely unexplored. In majority elections the potential effect of incumbency should be relatively straightforward to observe, as elected candidates occupy executive positions in government and can more easily be identified by voters as responsible for public administration. They also have more direct access to resources that can be used to build a personal reputation through constituency service. In the case of proportional elections the situation is slightly more complex. Elected politicians face greater difficulties in building a personal reputation since claiming credit can be difficult when there are multiple incumbents. It is not very clear the extent to which voters in proportional systems with open lists, where the amount of candidates running for a single post can be large (as is the case in Brazil), are able to overcome information challenges to link political outcomes to particular incumbents (Dettman, Pepinsky & Pieskalla, 2017).

In this chapter I propose to investigate incumbency effects with evidence from Brazilian municipal elections held in 2008 and 2012. Given the literature gap on the relation between incumbency status and electoral systems, I use different methodologies to evaluate what kind of insights the data offers with regards to the effects of incumbency in majority *versus* proportional elections. My analysis will be performed on a sample conditional on rerunning for the same post, firstly using a difference-in-difference approach and

secondly a regression discontinuity design. An additional investigation, using a regression discontinuity design without conditioning and employing an alternative outcome variable (the probability of rerunning *and* winning), is to be found in the appendix, as explained below.

The chapter is structured as follows. In section 3.2, I will present a brief description of previous literature on incumbency advantage in the U.S. and in Brazil. In the following section I address the gaps in the literature that this paper intends to fill and present my basic hypotheses. In section 3.4 my basic models are presented and in section 3.5 I discuss the data. In section 3.6 the results are discussed. In section 3.7, I conclude.

## **3.2 Literature Review**

### **3.2.1 Studies on the United States and other countries**

Approximately 90% of U.S. Congressmen rerun with success for the same post in each election (Levitt, 1994). There is a general consensus that incumbents enjoy an advantage when seeking reelection in the U.S., even if analysts disagree about the size of this advantage and what exactly constitutes it. Among the studies that have identified a clear incumbency advantage are Erikson (1971); Gelman and King (1990); Cox and Katz (1996); Ansolabehere et al. (2000); Lee (2008); and Ferreira and Gyourko (2009), among others.

Most of these studies focus on the vote share as the outcome of inter-

est and condition their analysis one way or another on rerunning. They often employ a variety of quasi-natural experimental techniques to deal with methodological challenges related to self-selection. Erikson (1971) compares the vote share of a politician running for the second time for the same post with the politician's vote share in the first election, after taken into account a number of confounding factors. Ansolabehere et al. (2000) use redistricting to contrast incumbent's vote share in new parts of a district with the vote share in old parts of the same district. They found that a large portion of the incumbency advantage owes to the personal vote.

In order to account for individual fixed effects and control for the quality of the challenger when estimating the incumbency effect on the vote share, Levitt and Wolfram (1997) focus on winners and runners-up that face each other repeatedly. They acknowledge the selection bias in their sample, as runners-up and winners rerun at different rates. However, through a difference-in-difference analysis, they are able to tackle the problem of individual characteristics of rerunners that often make this kind of investigation difficult.

Lee (2008) uses a regression discontinuity design to uncover the effects of partisan incumbency on U.S. House elections. Lee defines incumbency advantage at the party level and by doing so avoids the selection problem. He defines as counterfactual for the average outcome of an incumbent the average outcome of runner-ups from the same party.

Gelman and King (1990) take the vote share of a party in an open-seat

race as the valid counterfactual for the races where the party has the incumbent candidate. For the authors, incumbency advantage is defined as the difference in these quantities, that is, between the vote share of a party in those districts where it has the incumbent and the vote share of the party when the race takes place in districts with open-seats.

These techniques have been successfully applied in other countries. Linden (2004) employed the same theoretical model as Lee (2008) to investigate Indian parliamentary national elections. He found that in the period 1980-1989 incumbents were 7 to 10% more likely to be elected to Parliament than challengers. The advantage turned into disadvantage a few years later, as the author identified a negative effect of 14% related to incumbency after 1991.

Uppal (2008) used the same regression discontinuity design employed by Lee (2008) to investigate the effects of incumbency in Indian legislative state elections. Uppal confirmed the negative bias towards incumbents, measured both as vote shares and as the probability of reelection. Incumbents in India were less likely to win compared to challengers and the negative effect of incumbency increased after 1991. Uppal also found that incumbents had greater disadvantage at the state level than at the national level and that the variation in incumbency effects across Indian states was related to the state's ability to provide public goods. He considers this to be an indication that in poorer states the local elites might have hijacked the policy making process.

However, one aspect that has been so far neglected by the literature is the

relation between incumbency status and electoral systems. If incumbency is indeed a source of advantage (or disadvantage, as it seems to be the case in developing countries), does it matter whether seats are won in accordance to a majority or a proportional principle?<sup>2</sup> Are incumbents in executive posts subject to an incumbency effect that is somehow different from the one of their counterparts in the legislative branch?

The question here involves two complementary issues. One question relates to how many officials are collectively responsible for the adoption of a certain policy in the eyes of voters. If the adoption/implementation of a policy can be clearly attributed to one official (President, Governor or Mayor, for instance), the identification of responsibility by voters is straightforward. The situation is different when the attribution of responsibility is diffuse. This is the case, for instance, when a number of city councilors approves new legislation for the city. Here voters will have much greater difficulty in knowing who they hold responsible for a piece of legislation. The smaller the number of officials in charge of the approval of certain policy, the easier it is for voters to identify the official(s) responsible.

The other issue relates to whether posts are filled according to a majority or a proportional principle. Elections for executive positions (President, Governor or Mayor) are essentially majoritarian. Elections for legislative po-

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<sup>2</sup>For instance, the existing literature beyond the U.S. case has consistently identified an incumbency advantage in majority elections. See, for instance, Kendall and Rekkas 2012 for a study on Canada; Horiuchi and Leigh 2009 for Australia; Eggers and Stirling 2013 for the U.K.; and Freier 2011 for Germany.

sitions can be either majoritarian (for instance, in the case of single member districts, as in the US) or proportional (as it is the case in Brazil), depending on the size of the district.

Holders of executive posts can be easily identified by voters as responsible for government policies. Their position makes them susceptible to being more explicitly rewarded or punished by the voter. For this reason, regardless of whether incumbency is considered to be an advantage or a disadvantage, I believe its effect should be bigger in posts filled by majority elections.

The situation is somewhat more complex in the case of positions filled according to proportional representation, where multiple representatives are elected from the same district on the basis of proportions of votes received by the parties they belong to. Any comparison with majority elections becomes challenging due to the fact that there is, to my knowledge, no previous study that investigates results from majority and proportional elections for the same country in the same period. In any case, in situations where there are multiple incumbents it might be more difficult for the average voter to identify who to reward or to blame. Ordinary legislators might find it difficult to claim enough credit to gain reelection as voters cannot ascribe outcomes to individual representatives. Moreover, the average voter tends to pay more attention to the activities developed by the executive branch - which is in charge of managing daily public services - than to legislators.

In the studies where proportional voting was previously analyzed, the record found was mixed: some have found evidence of incumbency advantage

(Dahlgaard 2013 for Danish local councilors), while others did not identify any advantage (Golden and Picci 2015 for Italian legislators) or found a negative effect (Ariga 2010 in Japan). In the example of proportional elections I propose to investigate in this paper (city council elections in Brazil), incumbents are not seen as independent political actors the way mayors are and their responsibility is strictly limited in the eye of citizens (see below for a more detailed discussion). For this reason, I believe that even if incumbency is a valuable cue for voters in the case of proportional elections, its effects should be considerably smaller in comparison to majority elections.

Briefly, as I propose to use different methodologies to investigate incumbency according to whether the incumbent running for office faces a majority or a proportional election, my main hypothesis is that the effect should not be the same - at least in Brazil-, considering the nature of the positions in dispute. Any effect should be bigger in elections for mayor than in city council elections (section 3).

### **3.2.2 Studies about Brazil**

In contrast to the extensive literature on the subject in the U.S., the literature on incumbency in Brazil is not so well developed. Only relatively recently, when the Brazilian Superior Electoral Court (*Tribunal Superior Eleitoral, TSE*) started to systematically release information on municipal, state and national elections did data became available to scholars on Brazil to start looking for empirical evidence on some of the questions that had occupied

their counterparts in the U.S. for decades.

Brazilian scholars have been particularly attracted to factors that are correlated with the decision of incumbents to run for reelection, like their strategic behavior while in office. This is the case, for instance, of Leoni, Pereira and Renno (2004), and Meneguim, Bugarin and Carvalho (2005). Other scholars have focused on factors correlated with good electoral performance, like having a certain profession or belonging to a major party (Cervi, Costa, Codato and Perissinoto, 2013). One particular factor highlighted by the Brazilian literature is the correlation between financial resources and the probability of being elected for Congress (Lemos, Marcelino e Pederiva, 2010; Cervi, Costa, Codato and Perissinoto, 2013).

Specifically with respect to incumbency advantage, some studies over the last few years have made significant contributions. Using public available data, Boas and Hidalgo (2011) identified a significant *positive* effect of incumbency on the ability of politicians to control the media, while others have identified a *negative* effect on electoral performance for parties (Titunuk 2009; Klasnja and Titunuk, 2017) and candidates (Brambor and Ceneviva, 2011).

Titunuk (2009) gave a significant contribution to the study of incumbency in Brazilian elections by repeating the regression discontinuity design previously applied by Lee (2008) to the U.S. context. Titunuk focuses on *parties*, not on personal incumbency, and uses data publicly available from the 2000 and 2004 municipal elections to find a strong adverse effect of incumbency on both the probability of reelection and vote share in the subsequent election.

In a later work (Titunik and Klasnja, 2017), the author investigates further the negative effect of incumbency (for which she also finds evidence in other Latin American countries) and theorizes the reasons behind it (term limits and weak parties, both of which affect the incentives of individual politicians and generate party losses).

Brambor and Ceneviva (2011) employed the same methodology as Levitt and Wolfram (1997) to assess incumbency advantage in Brazilian municipal elections. As in the original article, the authors restrict their sample to winners and runners-up who rerun and remove any specific characteristics related to candidates and place through a difference-in-difference design. Their findings support the view that incumbency may have a negative effect on the vote shares of candidates in developing countries.

Finally, Magalhães (2014) has questioned previous work indicating that using methods developed for the U.S. may result in sample selection bias when applied to countries like Brazil. Specifically, Magalhães states that in countries where rerunning is not widespread, focusing on the vote share of candidates might not be appropriate. He proposes to investigate the effects of incumbency for individual politicians on the unconditional probability of rerunning and winning.

### 3.3 Hypotheses

In 2008 and 2012 voters chose mayors and aldermen for 5568 municipalities in Brazil. In most Brazilian cities - those with less than 200,000 voters - mayors were elected according to a simple majority principle: the candidate who received more votes gained office. In cities with more than 200,000 voters there was a runoff between the two candidates who had received more votes, in case none of them achieved the benchmark of 50 per cent plus one of valid votes. This process ensures that the future mayor has the support of at least half of voters. The city council was elected using an open list proportional representation system. Seats are allocated using a version of the D'Hondt method where only parties (or coalitions) that receive at least  $V/n$  votes may win seats in the legislature (where  $V$  is the total number of votes cast and  $n$  is the total number of seats to be filled).

Examining the overall results of 2008 and 2012, we see that the electoral landscape remained unchanged in a number of aspects (Tables 3.1 and 3.2): characteristics like the average educational level, age, sex and professional profile of elected candidates remained largely unaffected. Among the winner mayor candidates, around 47% had a college degree, while 27% had finished high school. Women candidates won in 2012 more seats for mayor and increased their share as head of the municipal executive from 9 to 12%, but their participation in municipal councils remained stable (12-13%). At least 40% of the mayoral seats were assigned to candidates belonging to the 3

biggest parties (there are currently 35 in Brazil), while in city council elections this percentage stayed above 32%.

Table 3.1: Descriptive Statistics Mayors 2008-2012 (N=5,568)

	2008	2012
Female	0.09	0.12
University	0.44	0.49
Middle School	0.27	0.27
Primary School	0.07	0.06
Farmer	0.07	0.07
Salesman	0.09	0.06
Lawyer	0.05	0.04
Age 35-44	0.29	0.26
Age 45-59	0.52	0.51
PMDB	0.21	0.18
PSDB	0.14	0.12
PT	0.10	0.11

Source: Superior Electoral Tribunal (TSE)

Overall, the 2012 election represented the consolidation at the municipal level of the influence of the Workers' Party (*Partido dos Trabalhadores, PT*), the party of Luiz Inácio Lula da Silva (2003-2010), the president during whose term in office economic growth was restored and broad social policies successfully implemented, before a number of corruption scandals and a strong political and economic crisis led to the impeachment of his successor and former co-worker, Dilma Rousseff (2011-2016). Although the Party of the Democratic Movement of Brazil (*Partido do Movimento Democrático Brasileiro, PMDB*), the largest party in Brazil, won a bigger share of mayor positions in that election, the PT achieved more victories in big cities (cities with more than 200,000 voters) and was able to achieve a solid number of

Table 3.2: Descriptive Statistics Aldermen 2008-2012 (N=51,434)

	2008	2012
Female	0.12	0.13
University	0.17	0.18
Middle School	0.37	0.36
Primary School	0.21	0.14
Farmer	0.11	0.11
Salesman	0.09	0.07
Lawyer	0.01	0.02
Age 35-44	0.33	0.34
Age 45-59	0.38	0.38
PMDB	0.16	0.14
PSDB	0.11	0.09
PT	0.08	0.09

Source: Superior Electoral Tribunal (TSE)

mayor positions in smaller municipalities. The number of municipalities under the control of the PT increased to 11%. It decreased respectively to 18% and 12% for the PMDB and the PSDB, the other two biggest parties. In municipal councils, the PT increased the number of seats under its control from 8 to 9%, while the number of seats belonging to members of the PMDB and PSDB decreased from 16 and 11% to 14 and 9%, respectively.

Given prior work on incumbency in Brazil, we know that incumbent parties are disadvantaged when their politicians run for reelection (Titunik 2009; Klasnja and Titunik 2017; Brambor and Ceneviva 2011). Once the focus of analysis becomes personal incumbency, the studies have clearly shown that incumbents in Brazil have no advantage over challengers. Actually, the studies concluded that incumbents perform, on average, worse than

runners-up/challengers.<sup>3</sup> We don't know, however, how incumbents running in majority elections fare compared to incumbents standing for proportional elections.

In the case of mayor incumbent candidates, who are elected according to a majority principle, the negative effect of incumbency, if confirmed, should be bigger than in the case of city council incumbents. The explanation here is related to the capacity of voters to hold incumbent mayor politicians accountable for unsatisfactory performance of municipal services. There is strong evidence that citizens are capable of holding government accountable at least as far as the general state of the economy is concerned (Page and Shapiro 1992). However, voters in American local communities are often confused about to whom they should attribute responsibility for the performance of certain public services (Arcenaux 2006; Lions and Lowery 1989; Rudolph 2006; Sances 2017).

In Brazil, I believe the hurdles identified in the literature, as far as the capacity of voters to attribute responsibility for public services is concerned, are less of a problem. Mayor offices are generally identified clearly with the provision of a number of public goods like garbage collection, health services, education and transport. Especially in small cities, which are the vast ma-

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<sup>3</sup>In a forthcoming paper, Boas, Hidalgo & Toral note that Brazilian mayors are also subject to unexpected and perverse accountability effects. They find that citizens to whom school education is important - parents with children in municipal schools - do reward mayors for the quality of the education provided, while other citizens perceive trade-offs between municipal schooling and other types of services, leading to an overall decrease in electoral support for the incumbent. See Boas, Hidalgo & Toral, 2020.

majority of municipalities in Brazil, mayors are seen in the public eye as responsible for services considered essential to city dwellers. Most voters have little knowledge/interest in the complexities involved in identifying the agencies responsible for providing specific services, taking the “local government” as the general cue to attribute responsibilities. A study of 2004 confirmed this perception, as it found evidence that a good performance by the incumbent mayor, even if it was not the unique factor responsible for electoral results, exerted a positive effect on reelection chances (Mendes e Rocha, 2004). It is reasonable to assume that, in the Brazilian context, voters are generally able to hold mayors accountable for the performance of public municipal services, using this to support their general appraisal of incumbents. An increase in the negative effect of incumbency for Brazilian mayors should be at least partly explained by the fact that voters can easily attribute to them any dissatisfaction (real or imaginary) related to the provision of these services.

In the case of aldermen, this identification is much weaker. As the role of the city council is to legislate and to provide a check on executive power, it is natural that the work of their members attracts much less the public attention. Moreover, the issues on which city councils are allowed to legislate are limited to those of local relevance. In practice, city council members are subordinate to mayors, often declining from truly monitoring the head to executive and aligning with him in order to achieve greater visibility and name recognition from voters (Joffre Neto, 2001). In the limited sphere of local politics, city council members are not seen as independent actors the

way congressmen are at the federal level.<sup>4</sup> For these reasons, there should be less identification of them with any daily problem related to the local government. Incumbent city councilors should be less affected by the incumbency effect when running for reelection.

## 3.4 Methodology

### 3.4.1 Difference-in-difference analysis

As a way to avoid the problem of characteristics that account for candidate quality (either observable or unobservable) and could bias the estimate I am trying to calculate, I will initially focus on candidates who face each other in two subsequent elections. Analysis will be carried out on the basis of candidate pairs within municipalities. Each pair is composed of candidates who run for a certain post with the following specifications:

(a) At  $t=0$  (2008 election), one candidate runs as non-incumbent, wins and becomes an incumbent; the other candidate runs as non-incumbent and is not elected;

(b) At  $t=1$  (2012 election), the candidate who was elected returns to the electoral arena to run as incumbent for the same post; the candidate who was not elected also returns to the contest and faces the same adversary (now

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<sup>4</sup>Joffre Neto points out - page 69 -, on the basis of an experiment involving members from municipal councils from 112 Brazilian cities, that almost half of them consider their role not to be independent of the mayor. They also believe their job is to assist the mayor and having good relations to him.

incumbent) again;

My sample would have to be restricted to open seats in  $t=0$  in order to allow for an adequate evaluation of the effects of incumbency. Focusing on pairs of candidates who face each other repeatedly makes it easier to isolate the variation in electoral returns generated by incumbency alone. It is important to stress that focusing on repeated pairs of candidates allows us to avoid the need to achieve balance of pre-treatment covariates that remain unchanged among treatment (elected) and control (not elected) groups, as these characteristics will cancel out in the end. This is the case, for instance, for color, sex and level of instruction.

The basic model could be stated as follows:

$$V_{ik}^t = \alpha_k + \beta * I_{ik}^t + \theta_{it} + \eta_{ik}^t$$

Where  $V_{ik}^t$  represents the voteshare of candidate  $k$  in municipality  $i$  in election held at time  $t$ ;  $\alpha_k$  stands for the set of fixed attributes of the candidate;  $I_{ik}^t$  indicates whether the candidate is an incumbent or not;  $\theta_{it}$  stands for the characteristics of the municipality; and  $\eta$  is the error term. We are interested in the value of the estimate  $\beta$ , which represent the effect of incumbency on electoral results.

When we take the difference of the vote share of two candidates that faced each other in election  $t$  we find that the difference in candidate qualities ( $\alpha_1$  and  $\alpha_2$ ) are kept.

$$\Delta V_{ik}^t = V_{i1}^t - V_{i2}^t = (\alpha_1 - \alpha_2) + \beta * (I_{i1}^t - I_{i2}^t) + \nu_{it}$$

Repeating this procedure across time periods (as I intend to do for elections held in 2008 and 2012) we obtain

$$\Delta_i = \Delta V_i^1 - \Delta V_i^2 = \beta * [(I_{i1}^1 - I_{i2}^1) - (I_{i1}^2 - I_{i2}^2)] + (\nu_i^1 - \nu_i^2)$$

where all measures of candidate quality (observable and unobservable) are also absent, giving us some confidence that the bias in estimating  $\beta$  is reduced.

### 3.4.2 Regression discontinuity design

In a regression discontinuity design, units display a certain score. Units whose score is above a certain threshold receive the treatment; units below the threshold belong to the control group. This approach takes advantage of the fact that political actors cannot control precisely electoral outcomes. Under appropriate assumptions, a comparison of units above and below the threshold can be used to disclose the causal effect of the treatment on some outcome of interest.

The idea behind the RD design is to take advantage of available data and focus on elections where the performance of winner and loser candidates is very close. By comparing candidates who barely win to candidates who barely lose, the design allows us to isolate the local causal effect of incumbency around the cutoff point.

In this paper, the unit of observation is the individual politician. In order to identify those cases where the performance of winner and losers was very

close I have adopted the procedure employed by Boas and Hidalgo (2011) and used the margin of victory in the 2008 election as the score variable. In the case of mayoral elections, the margin of victory was calculated subtracting the vote share of the runner up from the vote share for the winner (and vice-versa). In the case of elections for local councils, the margin of victory was calculated subtracting the vote share of the candidate from the vote share of the “last winner” from the same coalition (the candidate elected with the smallest quantity of votes within the coalition) if the candidate lost, and from the vote share of the “first loser” from the same coalition (losing candidate with largest quantity of votes within the coalition) if the candidate was elected.

I have used the *rdrobust* package to perform bandwidth selection and to construct local-polynomial point estimators as well as robust confidence intervals for average treatment effects at the cutoff. I have used polynomials of order 1 (local linear regression), 2 and 3 to find different bandwidths. For each bandwidth I have regressed the margin of victory in election  $t=1$  against the margin of victory in time  $t=0$ , a dummy variable for treatment and a number of controls for the different sources of money received.

## **The issue of unconditional probability**

In both the difference-in-difference and the regression discontinuity approaches I have used candidates' vote share as my outcome variable. Using the vote share has been widely adopted in the studies on incumbency advantage in

the US and in other countries, as described in the literature review section. However, there has recently been some criticism of it, mainly due to the fact while it may be appropriate to use the vote share in countries where rerunning rates are high - like the US -, it might not be adequate in other places - like Brazil - where rerunning is not so widespread (Magalhães, 2015).

Magalhães (2015) proposes a different outcome variable which he believes allows one to compare incumbent advantage across countries with different rerunning rates. He uses the unconditional probability of rerunning and winning, which is a categorical variable assuming the value 1 if the candidate runs a second time and wins and zero otherwise, to investigate incumbency advantage for mayor candidates in the 2000 elections in Brazil.

Although I agree with Magalhães that adopting the unconditional probability as outcome variable can give valuable insights in single member district elections (as it is the case for mayors in Brazil), I believe this procedure should not be used for proportional city council elections. City council elections in Brazil are very particular for a number of reasons. City councilors are not regarded as independent political actors as mayors. Besides, the rerunning rates are very uneven among incumbents and challengers for the city council (Appendix A). Most candidates try to be elected once and, if they fail, simply go on with their lives. Even among elected candidates the rerunning rate is not particular high, as I describe below. For these reasons, I have opted for not including an analysis using the unconditional probability here, but have put it in the Appendix A below for comparison.

## 3.5 Data

To study the effects of incumbency in Brazil, we constructed a dataset with information publicly available from the Superior Electoral Tribunal (TSE). The data related to elections in 2008 and 2012 was downloaded in multiple files, which had to be merged to form a unique dataset.

The data provides information on the election of candidates for mayor and aldermen. In most Brazilian cities - those with less than 200,000 voters - the results for mayor are determined according to a simple majority: the candidate with more votes wins the election. In municipalities with more than 200,000 inhabitants, to be elected mayor a candidate must gain 50 per cent plus one of the valid votes in the first round. If no candidate reaches this amount of votes, a second round takes place in which the two candidates who received the most votes in the first round are picked against each other. This process guarantees that the elected mayor is supported by at least 50 per cent of voters.

In 2008, the average vote share of mayor candidates was 38% (median 43%). Winning candidates were elected with vote shares starting at a mere 21% and averaging 57% (Among all losing candidates in 2008 the average vote share was 26%).

Elections to the House of Representatives, the Legislative Assemblies and the local councils take place according to a proportional voting principle: the voter enters the desired candidate or party code into an electronic ballot box.

Parties always have the same code; the codes for candidates are informed during the electoral campaign. More than 90 percent of votes go directly to candidates; only the few remaining are cast for parties. Candidates are presented in open lists selected by parties or coalitions of parties. Coalition partners lose their identity and compete in a single “basket” of votes.

Candidates for local councils received in 2008 an average 5% of vote shares. The average vote share of winning candidates stayed around 9% while losing candidates received, on average, less than 1% of vote shares.

In our dataset each observation is a candidate. For each candidate we have inserted basic information (name, electoral identification number and tax identification number), as well as personal characteristics like year of birth, education level, occupation, etc. Candidates are also identified by their municipality and their state. As we are dealing with two subsequent elections, we had to insert for each candidate/observation the following information for years 2008 and 2012: electoral performance (elected or not), quantity of votes received, party identification, name of the coalition, parties that formed the coalition in that election, etc. For each candidate/observation we have calculated the respective vote share in the election (amount of total votes received by the candidate divided by the total amount of votes in the municipality for that specific position). In the case of mayoral races in those municipalities where there was a second round (there were 30 cities in this situation in 2008 and 50 in 2012) we had to use a slightly different procedure and focus on the runoff in order to calculate vote margins and

vote shares. In any case, when calculating the outcome variable (vote share in 2012) we focused on the first round, so as to have a similar procedure for all candidates.<sup>5</sup>

The donations received had to be aggregated by candidate and separated according to their origin, for instance, whether they came from a corporation, from the party, from individuals or were funds from the candidate himself/herself. This data was merged back in the original file with the vote shares and electoral performance.

Tables 3.3 and 3.4 below present descriptive statistics for mayor candidates and candidates for municipal assemblies in our full sample. Contributions are measured as the natural log of the amount received in Brazilian *Reais*. Looking at both tables one immediately realizes the main difficulty in comparing treatment and control groups through an OLS model to assess the effect of incumbency, that is, the fact that the groups are not balanced in all background characteristics. These background characteristics - if not balanced - could easily bias our estimate, as they could influence both the independent variable (incumbency) and our outcome variable (vote shares). A variable like college education, for instance, which is unbalanced when we consider city council candidates, is likely to influence both the capacity of a candidate to become incumbent and to win vote shares, thus biasing our estimate upwards. More importantly, key variables related to the amount

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<sup>5</sup>Actually the number of cases in which we had to focus on the runoff very small, since there were only a handful of cases when the same two candidates facing each other in the 2008 runoff also ran again in 2012.

of money at the disposal of candidates, like corporate donations and candidates' own resources spent in the campaign are not balanced, as shown in both tables.

Table 3.3: Descriptive Statistics 2008 Mayor Candidates (N=3,678)

	mean treated	mean control	p-value
Female	0.10	0.11	0.147
Primary Education	0.06	0.07	0.022
Middle School	0.26	0.25	0.295
College	0.46	0.46	0.76
Lawyer	0.04	0.06	0.005
Salesman	0.11	0.11	0.945
Businessman	0.12	0.12	0.85
PMDB	0.19	0.14	0.000
PSDB	0.13	0.10	0.003
PT	0.12	0.12	0.64
Sao Paulo	0.10	0.13	0.014
Minas Gerais	0.14	0.17	0.034
Corporate donations	5.25	4.17	0.000
Own resources	6.86	6.27	0.000

Table 3.4: Descriptive Statistics 2008 Alderman Candidates (N=16,061)

	mean treated	mean control	p-value
Female	0.10	0.16	0.000
Primary Education	0.14	0.16	0.000
Middle School	0.33	0.32	0.190
College	0.20	0.16	0.000
Lawyer	0.02	0.01	0.006
Salesman	0.10	0.10	0.833
Businessman	0.03	0.02	0.002
PMDB	0.15	0.03	0.000
PSDB	0.10	0.03	0.000
PT	0.09	0.12	0.000
Sao Paulo	0.12	0.31	0.000
Minas Gerais	0.15	0.14	0.205
Rio de Janeiro	0.02	0.07	0.000
Corporate donations	1.23	0.72	0.000
Own resources	5.67	3.13	0.000

In the difference in difference analysis, in order to account for the unbalanced variables related to financial resources, we have matched candidates using the propensity score (the probability that the candidate will be assigned to treatment, i.e., that he or she will be elected in 2008) and the different sources of money received as predictors. The matching algorithm used was the single nearest-neighbor, where an individual from the comparison group is chosen as a matching partner for a treated individual that is closest in terms of propensity score.

Figures 3.1 and 3.2 and tables 3.5 and 3.6 display the bias reduction in our sample for the difference in difference analysis after matching on the propensity score. We can safely proceed with inference as observations are

now balanced.

Figure 3.1: Bias Reduction after matching mayor candidates 2008 Election

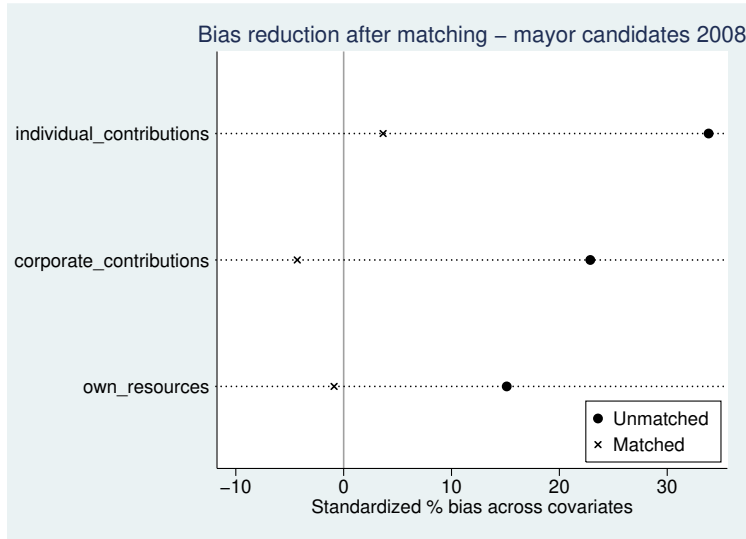


Figure 3.2: Bias Reduction after matching aldermen candidates 2008 Election

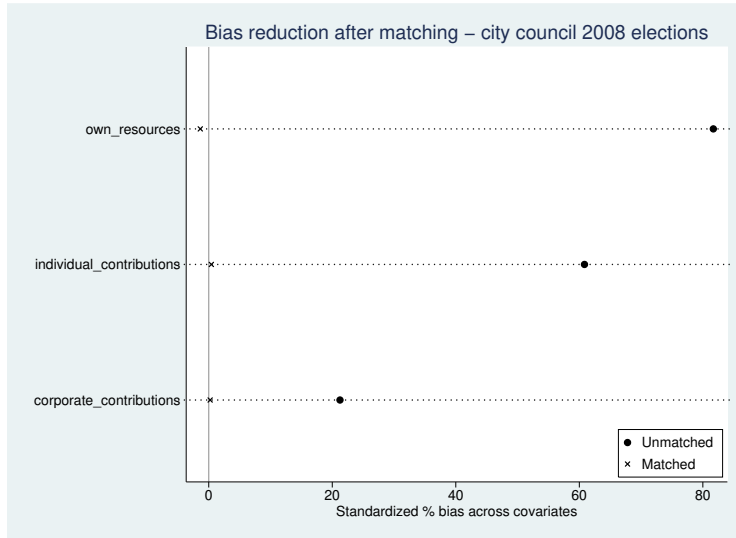


Table 3.5: 2008 Mayor Candidate Sample Descriptive Statistics before and after matching (N=3,678)

	unmatched/matched	treated	control	p-value
Corporate Donations	U	5.25	4.17	0.000
	M	5.25	5.45	0.178
Individual contributions	U	8.20	6.93	0.000
	M	8.20	8.06	0.212
Own resources	U	6.86	6.26	0.000
	M	6.86	6.90	0.774

Moreover, in the difference-in-difference analysis the methodological issue created by the unbalance in unchanging background characteristics and/or characteristics related to the intrinsic quality of candidates (education, intelligence, communication skills etc) is overcome as they cancel out, as described

Table 3.6: 2008 City Council Candidate Sample Descriptive Statistics before and after matching (N=16,061)

	unmatched/matched	treated	control	p-value
Corporate Donations	U	1.23	0.72	0.000
	M	1.23	1.22	0.868
Individual contributions	U	4.47	2.40	0.000
	M	4.47	4.45	0.741
Own resources	U	5.66	3.13	0.000
	M	5.66	5.71	0.230

in section 3.4.1.

In the regression discontinuity approach there was no need to follow a similar procedure because, if our assumptions are correct (and they are, as explained below), any problem related to unbalance in background characteristics is eliminated because the variables are continuous around the point where treatment and outcome discontinuity occur.

## 3.6 Results

### 3.6.1 Mayoral Candidates

To perform the diff-in-diff analysis for mayoral candidates we had to isolate those candidates who ran in two subsequent elections (2008 and 2012) and identify, for each municipality, the winning candidate as well as the respective runner-up at time  $t=0$ . Out of a total of 5568 Brazilian municipalities we have isolated 822 observations, that is, 411 pairs of winners and runners-up of the 2008 elections who faced each other again in 2012.

The treatment group in our sample won the 2008 election with an average vote share of 0.49 and achieved in the subsequent election an average vote share of 0.45; the control group (mayoral candidates not elected in 2008) started with an average vote share of 0.31, which increased to 0.38 in 2012. The difference in vote shares between the two groups, which was initially 0.18 in 2008, decreased to 0.07 in 2012. The effect attributed to incumbency was responsible for an average decrease in the difference in vote shares between treatment and control groups of 11% from the first election. The effect of -0.11 (95% CI[-0.13,-0.09]) was statistically significant ( $p \leq 0.000$ ). This finding (table 3.7) adds confidence to the hypothesis that in majority elections in developing countries incumbents suffer from a negative effect of holding office.

The estimate indicates that incumbency had a powerful effect on the decrease of vote shares of incumbents once we compare our sample to the full sample of candidates for mayoral positions in 2008/2012. In 2008, the average winning vote share for 15,305 candidates was 0.57 and the average winning vote margin was 0.31. In 2012, among the 15,527 candidates the average winning vote share was 0.57 and average winning vote margin decreased to 0.23. However, in our sample incumbent mayors got elected in 2008 with an average vote share of 0.49 (0.45 for reelection in 2012) and won by an average vote margin of 0.18 (0.06 in 2012). The negative effect of incumbency was, thus, equivalent to a 22% decrease in vote shares for incumbent mayors in our sample.

In order to check the effect of incumbency I have focused on close elections

Table 3.7: Effect of Incumbency - Mayoral Elections 2012 (N=822)

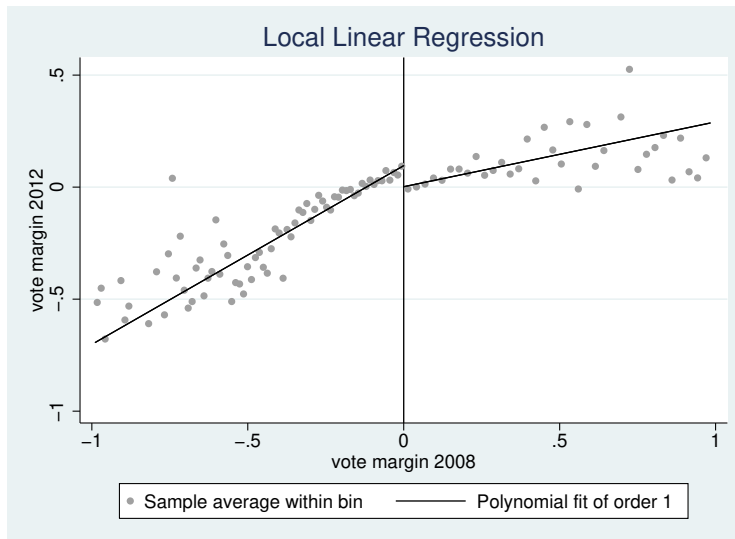
	vshare winner	vshare runner-up	diff	test diff=0
2008	0.49	0.31	0.18	0.000
2012	0.45	0.39	0.06	0.000
effect	-	-	-0.11	0.000

in the sample and carried out a regression discontinuity design as described in the previous section.

Figure 3.3 displays the estimated vote margin of mayoral candidates in 2012 against the vote margin in 2008. The horizontal axis represents the vote share of candidate in time  $t=0$  (2008 election) against its strongest opponent. The vertical axis represents the same information for time=1 (2012 election). We plot the data through vote margin in both years merely for convenience, as the “jump” along the vertical line allows to visualize clearly that the margins of victory became smaller due to the effect we are attempting to measure.

In our figure, each dot represent mean values for winning and losing in bins of the vote margin. Each bin represents an equal number of candidates. The vertical line is the “border” that separates winners from losers. To the left (right) of the vertical line, candidates lose (win). The lines to the left and right of the vertical line are a local linear regression on each side of the cutoff point. The graph displays a small discontinuous point at the x-axis, which suggests that incumbency has an effect on electoral outcome measured as difference in vote shares in close elections.

Figure 3.3: Effect of incumbency in vote margin in 2012 election - mayor candidates



We have initially used a local linear regression to calculate the bandwidth (vote margin  $\leq 0.097$ ). Our sample had 1,659 observations and the point estimate was -0.10 (95% CI[-0.13,-0.06]). The estimate from the RD design is close to what was found through a diff-in-diff analysis and is statistically significant at 95% (p-value=0.000). For the purpose of comparison, we have also used larger bandwidths equal to 0.154 and 0.185, which are applicable when we use polynomials of second and third order. The statistically significant coefficients were -0.09 and -0.10. The coefficients from the RD (table 3.8) are very close to the diff-in-diff, although slightly smaller.

To check the basic assumption behind the regression discontinuity design I have tested the balance of covariates of candidates in the sample through

Table 3.8: Effect of Incumbency Mayoral Elections 2012 - RD estimates

vote margin	$\leq 0.097$	$\leq 0.154$	$\leq 0.185$
point estimate $\tau$	-0.10	-0.09	-0.10
p-value	(0.000)	(0.000)	(0.000)
N	1,659	2,340	2,386

The DV for the regression discontinuity is the vote margin in 2012, scaled from -1 to 1, which is regressed against the vote margin in 2008 (scaled the same way), a dummy variable for treatment and an interaction term. We use a local linear regression, a polynomial of order 2 and of order 3, respectively.

a t-test comparing elected and nonelected candidates. If our assumptions are correct, bare winners and losers in close elections should be similar on background characteristics.

Tables 4.9, 4.10 and 4.11 display the balance of 14 covariates for each discontinuity sample. Balance is present for most covariates in all three samples, although it gets slightly worse as the sample grows bigger.

Table 3.9: Balance Statistics for vote margin  $\leq 0.097$  (N=1,659)

variable	mean treated	mean control	p-value
Female	0.10	0.12	0.29
Married	0.76	0.76	0.98
Primary Education	0.06	0.06	0.95
Middle School	0.27	0.26	0.77
College	0.45	0.43	0.54
Lawyer	0.04	0.06	0.12
Salesman	0.11	0.12	0.51
Businessman	0.11	0.12	0.52
Party: PSDB	0.14	0.11	0.09
Party: PT	0.12	0.10	0.23
Party: PMDB	0.20	0.18	0.23
SP	0.09	0.10	0.52
MG	0.14	0.15	0.92
RJ	0.03	0.04	0.62

Table 3.10: Balance Statistics for vote margin  $\leq 0.154$  (N=2,286)

variable	mean treated	mean control	p-value
Female	0.11	0.12	0.35
Married	0.76	0.75	0.79
Primary Education	0.05	0.06	0.23
Middle School	0.26	0.26	0.97
College	0.46	0.45	0.64
Lawyer	0.04	0.06	0.08
Salesman	0.10	0.11	0.46
Businessman	0.12	0.12	0.84
Party: PSDB	0.13	0.11	0.10
Party: PT	0.12	0.11	0.47
Party: PMDB	0.21	0.17	0.04
SP	0.09	0.09	0.86
MG	0.14	0.17	0.06
RJ	0.01	0.01	0.29

Table 3.11: Balance Statistics for vote margin  $\leq 0.185$  (N=2,586)

variable	mean treated	mean control	p-value
Female	0.11	0.12	0.35
Married	0.76	0.75	0.79
Primary Education	0.05	0.07	0.06
Middle School	0.27	0.26	0.51
College	0.46	0.45	0.65
Lawyer	0.05	0.06	0.16
Salesman	0.10	0.12	0.30
Businessman	0.12	0.12	0.81
Party: PSDB	0.13	0.11	0.07
Party: PT	0.12	0.11	0.40
Party: PMDB	0.21	0.17	0.03
SP	0.09	0.10	0.51
MG	0.14	0.17	0.08
RJ	0.01	0.01	0.52

For mayors, there is a general negative effect which is associated with incumbency. Compared to their opponents, those who managed to be re-elected perform worse in vote shares the second time they run. This is true even when we use smaller bandwidths. The general effect of anti-incumbency vote was clearly visible in both situations examined.

### 3.6.2 Alderman Candidates

Legislative elections in Brazil take place according to a proportional principle and open lists. Depending on the number of inhabitants, each municipal house is assigned a specific number of seats. In order to know how many seats a party (a coalition) wins it is necessary to divide the number of votes

received by the party (coalition) by a number called “the electoral quotient” (*quociente eleitoral*). The electoral quotient is found dividing the number of valid votes in the election by the corresponding number of seats in the municipal council.

Because of the way the electoral system works, it often happens that candidates who receive a large amount of votes do not win a seat. For instance, in a municipality where the Municipal House of Representatives is allowed to have up to 17 seats and where there were 60,000 valid votes in the last election, the electoral quotient would be equivalent to 3,529. In order to win one seat, a party (coalition) would have to reach this minimum threshold of votes. If it does not, a candidate from this party will not win a seat even if he/she received a large number of votes (say, 3,500 votes). If a party receives an amount of votes larger than the minimum, it wins the corresponding number of seats, even if individually some of its candidates have scored below the threshold. A candidate from a party that wins a number of seats will be in a position to gain office even if his/her voting was smaller than the voting of candidates from parties that did not achieve the minimum threshold.

Due to this characteristic of Brazilian proportional elections, it is common that parties (coalitions) look for public, well-known figures as candidates, as they can improve the total amount of votes received by the party and, thus, increase the number of seats won. A public figure that gets a substantial support from voters (even if he or she has little political experience) helps

elect other candidates from the same party. In 2014, in the national elections for Congress (which are also proportional), a candidate from São Paulo, Francisco Everardo Oliveira Silva, best known as “Tiririca”, an actor and famous clown in the state, won more than 1 million votes and helped electing five other candidates, two of which would probably not have reached office otherwise.

To investigate the effect of incumbency on electoral outcomes in the case of aldermen candidates I have initially repeated the diff-in-diff analysis carried out for mayor candidates. I have isolated 620 pairs of candidates (1,240 observations) that repeatedly face each other.

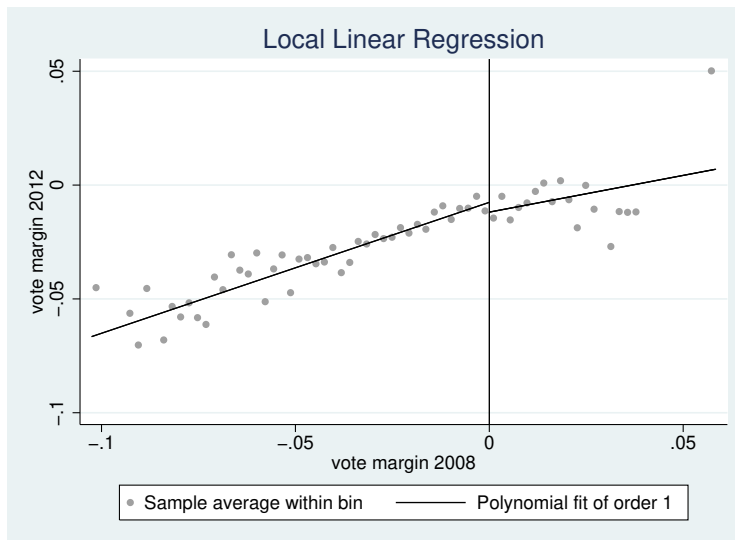
Comparing treatment and control groups we find a negative effect of incumbency equivalent to 0.006 of the difference in vote shares between treatment and control groups from 2008 to 2012 (table 3.12). The confidence interval for this effect is [-0.009, -0.003]. The effect is statistically significant ( $p \leq 0.000$ ). In our sample, winning candidates in 2008 (treatment group) scored an average vote share of 6.1% and were reelected in 2012 with an average 6.8%. However, the average vote share received by winning candidates in 2008 and 2012 (more than 350,000 candidates each year) remained around 9%. The pool of losing candidates received in these years an average vote share of slightly less than 1%. Our effect, although smaller than what we have found for incumbent mayor candidates, is not negligible, corresponding to a decrease in 10% of the average vote share received by winning candidates in 2008 for the city council from our sample.

Table 3.12: Effect of Incumbency - City Council Elections 2012 (N=1,240)

	vshare winner	vshare runner-up	diff	test diff=0
2008	0.061	0.029	0.034	0.000
2012	0.068	0.043	0.028	0.000
effect	-	-	-0.006	0.000

To complement the analysis, we have carried out a regression discontinuity design as explained in the methodology section. Figure 3.4 displays the discontinuity around the cutoff using all observations (N=16,061). The y axis displays the margin of victory when time t=1 (2012 election); the x axis displays the margin of victory when time t=0 (2008 election). We find no “jump” or clear discontinuity at the cutoff point.

Figure 3.4: Effect of incumbency in vote margin in 2012 election - aldermen candidates



The local effects were not statistically significant, regardless of the bandwidth used (table 3.13). They are, however, of the same signal (negative) and similar magnitude of the estimate found in the difference-in-difference analysis, giving us some confidence in the result achieved before. For each of the bandwidths used, treatment and control groups were reasonably balanced with regards to pretreatment variables (Tables 3.14, 3.15, 3.16).

Table 3.13: Effect of Incumbency Aldermen Elections 2012 - RD estimates

vote margin	$\leq 0.010$	$\leq 0.014$	$\leq 0.017$
point estimate $\tau$	-0.02	-0.004	-0.010
p-value	(0.330)	(0.640)	(0.192)
N	895	1,209	1,457

The DV for the regression discontinuity is the vote margin in 2012, scaled from -1 to 1, which is regressed against the vote margin in 2008 (scaled the same way), a dummy variable for treatment and an interaction term. We use a local linear regression, a polynomial of order 2 and of order 3, respectively.

Table 3.14: Balance Statistics for vote margin  $\leq 0.010$  (N=895)

variable	mean treated	mean control	p-value
Female	0.093	0.093	0.984
Primary Education	0.10	0.09	0.81
Middle School	0.29	0.37	0.27
College	0.31	0.20	0.14
Lawyer	0.03	0.02	0.65
Salesman	0.12	0.09	0.56
Businessman	0.05	0.07	0.43
Sao Paulo	0.19	0.34	0.01
Minas Gerais	0.18	0.18	0.97
Rio de Janeiro	0.10	0.07	0.45
Party: PSDB	0.08	0.07	0.73
Party: PT	0.09	0	0.03
Party: PMDB	0.15	0	0.005

It makes sense that aldermen do not suffer from the anti-incumbency vote as harshly as mayor candidates, even when they are being reelected by smaller vote shares in comparison to their strongest opponents. In Brazilian municipalities, mayors are clearly identified with the provision of public services like water, garbage collection or schooling. When voters are unhappy with the provision of services where they live, they tend to hold the city mayor accountable for many of their problems. In the case of aldermen, this identification is much weaker. The mere fact that someone is already known as alderman is probably a big help in the reelection campaign.

Table 3.15: Balance Statistics for vote margin  $\leq 0.014$  (N=1,209)

variable	mean treated	mean control	p-value
Female	0.09	0.12	0.36
Primary Education	0.10	0.08	0.60
Middle School	0.30	0.31	0.79
College	0.30	0.26	0.47
Lawyer	0.03	0.02	0.71
Salesman	0.11	0.08	0.50
Businessman	0.05	0.08	0.28
Sao Paulo	0.19	0.43	0.000
Minas Gerais	0.19	0.15	0.38
Rio de Janeiro	0.09	0.03	0.10
Party: PSDB	0.08	0.06	0.44
Party: PT	0.1	0.01	0.01
Party: PMDB	0.15	0	0.000

### 3.7 Conclusion

In this chapter I have used different two different approaches - difference-in-difference and regression discontinuity - to check incumbency effects in Brazilian elections for municipal executive and legislative posts. The point of departure for this investigation were the robust findings in the literature in the U.S. that incumbency represents a clear electoral advantage, and the relatively few studies on other countries, where the findings indicated that incumbency was a source of disadvantage, at least in recent democracies.

In performing the analysis above, we have focused on a question so far largely ignored by the literature: whether any potential incumbency effect has similar magnitudes in majority and proportional elections. To carry out this investigation, we have used data from two subsequent municipal

Table 3.16: Balance Statistics for vote margin  $\leq 0.017$  (N=1,457)

variable	mean treated	mean control	p-value
Female	0.09	0.10	0.59
Primary Education	0.11	0.14	0.28
Middle School	0.31	0.30	0.80
College	0.29	0.27	0.64
Lawyer	0.03	0.03	0.77
Salesman	0.11	0.12	0.63
Businessman	0.05	0.08	0.10
Sao Paulo	0.19	0.41	0.000
Minas Gerais	0.18	0.15	0.30
Rio de Janeiro	0.09	0.07	0.53
Party: PSDB	0.09	0.04	0.06
Party: PT	0.09	0.03	0.01
Party: PMDB	0.15	0	0.000

elections, in 2008 and 2012. Our outcome variable has been the vote share of candidates in 2012.

The picture that emerges from the results found is that in Brazil the effects of incumbency are negative regardless of whether the incumbent was elected in a majority or in a proportional elections, although in the case of candidates elected in proportional elections (city councilors), the magnitude was smaller. This is so not only because they receive much smaller vote shares than mayor candidates, but also because, unlike mayors, in Brazilian municipalities city councilors are not seen as independent politicians responsible for the provision of public goods. Due to the nature of their post, it is not easy for city councilors to claim credit for the successful implementation of municipal policies. At the same time, differently from mayors, they are

not held accountable for the performance of municipal services and other relevant issues regarding the daily life in Brazilian cities.

Our findings were in line with previous work on mayoral elections in Brazil, notably Titiunik (2009), Brambor and Ceneviva (2011) and Klasnja and Titiunik (2017). Most affected by anti-incumbency vote are the Brazilian mayors, who undergo a sharp decrease in their vote shares when they run for office a second time.

The fact that the negative effect of incumbency is bigger in the case of mayoral candidates makes sense in view of the fact that mayor offices are responsible for the provision of a number of municipal services and that voters in Brazilian cities are aware of this fact. In Brazilian cities mayors are known by voters to be in charge of the adequate provision of a number of public goods. This is not the case of aldermen, whose main activity is to legislate and who attract much less attention from voters.

These findings shed some additional light on the common perception that incumbency is not as valuable an advantage in young democracies - much the opposite! - as in advanced industrial democracies. However, a number of questions remain open and should be explored in future work, especially in proportional elections. We still lack a better understanding of how the effects of incumbency are mediated by the way party leaders rank the position of incumbents and challengers on their party lists. Another question relates to whether a similar effect would have been found in proportional elections where incumbents - differently from what is the case in Brazilian cities -

played a more prominent role, for instance in State Assemblies or National Congress.

## Chapter 4

# Campaigning under austerity: the 2012/2016 Cycle

### 4.1 Background

In the previous chapter I have used a difference-in-difference and a regression discontinuity approach to estimate the effect of incumbency in Brazil, measured as the electoral performance of incumbent candidates in vote shares. One key aspect of the 2008 and 2012 elections is that they took place in a context where candidates could finance their campaign either through public or private funds, including donations from corporations. That situation changed dramatically as of 2016, when the Supreme Court decision of a year before that banned corporate donations as a lawful source of funds for Brazilian candidates came into force.

The main stated purpose of the historic Supreme Court decision to ban corporate financing in Brazilian Elections was, in the words of the *rapporteur* of the case, *to level the playing field among candidates*. Yet political playing fields are notoriously difficult to level. By removing one campaigning advantage -corporate fundraising-, one naturally shifts the weight toward other advantages that might accrue to particular candidates, such as charisma, experience, or clientelistic networks. One of the most significant advantages that has been identified in the literature is related to incumbency. There are quite a few studies on incumbency advantage in American Politics which account for the general consensus that incumbents enjoy a large advantage in elections to the US House of Representatives. How large that advantage actually is remains, however, a matter of controversy.<sup>1</sup>

In a context like the Brazilian, where the electoral system is much different from the US, it is particularly unclear whether removing corporate donations would actually help challengers. Not only the quantity of parties in Brazil is huge (35 parties, each of them entitled to present candidates for executive and legislative positions), but also each municipality works in practice as an independent electoral district. This often creates confusion to the voter, as the amount of candidates for each post can be very large, especially for legislative positions. Candidates - either incumbents or challengers - badly

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<sup>1</sup>Among the most significant studies we may cite Erikson (1971;1972), Cover (1977), Ferejohn (1977), Mayhew (1974), Ansolabehere, Brady, and Fiorina (1992), Ansolabehere, Snyder, and Stewart (2000), Cox and Katz (1996;2002), Gelman and King (1990), Levitt (1994), and Levitt and Wolfram (1997).

need resources to win extremely competitive elections. Moreover, according to Brazilian electoral rules candidates compete in open lists, which makes it even more important for candidates to find ways to run individualistic campaigns and distinguish themselves in the eyes of voters. It is hence plausible that instead of making elections more democratic, removing corporate donations would actually favor candidates that are incumbents, rich or had a strong recall from previous elections, as these factors are expected to give them an advantage towards undecided voters in an extremely competitive environment.<sup>2</sup>

Another difficulty is that any causal inference related to the consequences of the ban has to be taken very cautiously. Between 2008-2012 and 2012-2016 many changes took place in Brazil. Any increase/decrease on incumbency effects after the ban became effective might have been influenced by these contextual changes. For instance, any increase in the negative effect towards incumbents might have been influenced by revelations of massive corruption schemes involving the political establishment brought about by investigations initiated in 2014 (Car Wash or *Lava Jato* investigations).

In order to investigate the effect of incumbency on electoral outcomes in a context in which corporate donations are forbidden I propose to repeat the procedure used in the previous chapter. Comparison would be made for

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<sup>2</sup>*Novas regras eleitorais favorecem candidatos apadrinhados*, published in the newspaper *O Estado de São Paulo* on September 30, 2016. The article argues that in banning corporate donations, instead of making elections more democratic, the reforms actually favored candidates that were incumbents, rich or had a strong recall.

the 2012 ( $t=0$ ) and 2016 ( $t=1$ ) elections. The second election is when the ban became applicable due to the Supreme Court decision (according to the Brazilian Constitution, any law/ruling that changes electoral procedures is only applicable the year after the law was passed or the ruling was stated. The Supreme Court decision is from 2015 and was thus applicable for the first time to the municipal elections of 2016).

The chapter is structured as follows. In section 4.2, I present some information on campaign financing in Brazilian elections. In section 4.3 the data is briefly presented and a few aspects of the methodology are discussed insofar as they depart from the analysis undertaken before. In section 4.4 I present my results and in section 4.5 I carry out some further investigation to suggest a possible interpretation for these results. In section 4.6 I conclude.

## 4.2 Campaign Financing in Brazil

Brazilian campaigns are very competitive and often involve large amounts of money. The amount of money that finances electoral campaigns has increased steadily over the years up to 2016, the year corporate donations became no longer allowed (Table 4.1).<sup>3</sup> In 2012, the total amount raised in national campaigns for mayor and aldermen reached 4.8 billion *reais* (roughly 2.4 billion US dollars at the time), of which 4.3 amounted to donations by

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<sup>3</sup>Source: NGO *Transparência Brasil*. Retrieved from <http://www.asclaras.org.br>.

corporations and individuals combined.<sup>4</sup>

Table 4.1: Funds for campaign financing in Brazilian elections

<b>Year</b>	<b>Amount in Brazilian <i>reais</i></b>	<b>% corporate donations</b>
2002	792,546,932.10	86%
2004	1,393,222,416.25	72%
2006	1,729,042,577.22	90%
2008	2,512,406,149.39	75%
2010	3,666,605,189.55	96%
2012	4,627,211,322.08	97%
2014	4,815,705,789.22	81%
2016	2,556,242,876.54	-

Elections are particularly competitive due to some specific characteristics of the electoral system in Brazil. Elections to legislative positions are carried out on the basis of open-list representations and candidates compete against candidates from their own party as well as from opposing party organizations. Aldermen, state representatives and congressmen are chosen in districts extending from their own municipality (in the case of aldermen) to the whole federal state (in the case of state representatives and congressmen) and are used to face a big number of competitors. Even in the case of candidates for executive positions like mayors, state governors and president, it is common to have a fair amount of candidates. In 2012, there were on average 3 candidates for each mayoral seat in dispute. In the case of aldermen, this

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<sup>4</sup>Previously to 2016, Brazilian electoral regulations were more liberal as to potential sources of financing. Corporations could legally donate up to 2% of their total revenue prior to taxes, earned the year before the election. Other sources of financing included personal donations (limited to 10% of the total revenue prior to taxes, earned the year before the election), public funds and candidate's own resources.

figure amounted to 7.8 candidates per seat.

Moreover, in Brazil the amount of parties is particularly huge (currently 35) and voters face difficulty when trying to distinguish candidates from so many parties from each other. With the exception of the Workers' Party (*Partido dos Trabalhadores, PT*), Brazilian parties usually have no more than 6-7% of the electorate as sympathizers (Samuels 2006). There is public funding for campaigns, but these funds are allocated only to parties, not candidates. Public money is usually only a small part of what is actually spent in campaigns. All this works as a strong incentive for candidates to campaign individually in an attempt to distinguish themselves from their opponents. In running their campaigns, candidates have a strong incentive to raise as much money as possible, as this gives them important means to stand out among their peers.

There is a relatively well developed literature in Brazil on the influence of campaign financing - notably through corporate donations - on the performance of candidates. Focusing mostly on elections to the federal house of representatives and the senate in different years, these studies have identified a positive association between the amount of money raised/spent by candidates, the vote shares they receive and whether they were elected or not.<sup>5</sup> One study (Cervi (2010)) focused on elections for mayor in state capitals in 2008 and reached similar conclusions. This is also the case of Heiler (2011),

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<sup>5</sup>This is the case, for instance, of Samuels (2001a, 2002); Pereira e Renno (2007); Peixoto (2009); Figueiredo Filho (2009); Marcelino (2010); Lemos, Marcelino and Pederiva (2010); Figueiredo Filho *et al.* (2011); and Mancuso and Speck (2012).

who focused on municipalities in the Brazilian state of *Santa Catarina*, with similar conclusions.

The literature in Brazil has also found some evidence of the so called “Jacobson Effect”, that is, the finding that campaign spending is more effective for challengers than for incumbents, suggesting hence that limits on campaign financing/spending tend to favor those already in office (Figueiredo Filho (2009), Peixoto (2010)).

The literature has so far focused relatively little on municipal elections and has practically overlooked the issue of interaction between incumbency and corporate financing. In this study I propose to fill this gap.

Assuming that incumbency offers candidates potential advantages like easier name recognition, what should be expected once corporate donations can no longer be legally used to finance campaigns? In a country like Brazil, where spending is a crucial element for winning a seat, removing a critical resource like corporate donations should increase the weight of other possible advantages - like incumbency - enjoyed by particular candidates. If spending by challengers has a greater impact on the outcome than by incumbents, limiting the amount of money at the disposal of candidates would help incumbents. My main hypothesis is thus that the negative effect faced by incumbents should decrease (see previous chapter), all other things being equal.

## 4.3 Data

To investigate the effect of incumbency on electoral outcomes I have used a dataset with information publicly available from the Superior Electoral Tribunal (TSE), in the same format as described in the previous paper. The data related to elections in 2012 ( $t=0$ ) and 2016 ( $t=1$ ) was downloaded in multiple files, which had to be merged to form a unique dataset. Our dataset contains 22,141 observations from the 26 Brazilian states. For each candidate we inserted basic personal information like name, tax identification number, educational level, occupation, etc. The donations received had to be aggregated by candidate and separated according to their origin, for instance, whether they came from a corporation, from the party, from individuals or were funds from the candidate himself/herself. Elections for mayoral posts are decided according to a majority principle, while the city council is elected using an open list proportional representation system (see previous chapter for a detailed discussion).

In 2012, the average vote share of mayor candidates was 25% (median 28%). Winning candidates were elected with vote shares starting at a mere 20% and averaging 37% (The average losing candidate in 2012 had 17% of vote shares).

Candidates for local councils were elected in 2012 with an average 3% of vote shares. The average vote share of candidates stayed around 1.7% while losing candidates received, on average, less than 1% of vote shares. Tables

4.2 and 4.3 present the distribution of candidates' pretreatment covariates that do not change over time.

Table 4.2: Descriptive Statistics 2012 Mayor Candidates (N=3,841)

	mean treated	mean control	p-value
Female	0.11	0.11	0.897
Black	0.16	0.03	0.001
Primary Education	0.06	0.06	0.816
Middle School	0.26	0.25	0.343
Lawyer	0.06	0.07	0.067
Salesman	0.07	0.07	0.847
PMDB	0.19	0.13	0.000
PSDB	0.13	0.09	0.002
Sao Paulo	0.10	0.13	0.014
Minas Gerais	0.16	0.16	0.543

Table 4.3: Descriptive Statistics 2012 Aldermen Candidates (N=18,300)

	mean treated	mean control	p-value
Female	0.11	0.22	0.000
Black	0.05	0.12	0.000
Primary Education	0.13	0.14	0.039
Middle School	0.36	0.36	0.902
Lawyer	0.02	0.01	0.173
Salesman	0.09	0.08	0.739
PMDB	0.13	0.01	0.000
PSDB	0.08	0.02	0.000
Sao Paulo	0.12	0.37	0.000
Minas Gerais	0.14	0.13	0.349

For the diff-in-diff analysis, I have matched candidates using the propensity score (the probability that the unit will be assigned to treatment, in our case that the candidate will be elected in 2012) and the different sources of funds received as predictors. We used as matching algorithm the single nearest-neighbor, where an individual from the comparison group is chosen as a matching partner for a treated individual that is closest in terms of the propensity score.

One of the advantages of using the diff-in-diff analysis, as explained in the previous chapter, is that individual characteristics of candidates that could bias our estimate are canceled out in the end. However, in the current investigation, the fact that individual candidates have at  $t=0$  access to different amounts of corporate money makes our analysis more complex and potentially biased. Using the propensity score enables us to circumvent this problem and compare incumbents and challengers who had access to similar

amounts. By doing this, we are able to assess what kind of advantage can or cannot be attributed to incumbency alone once candidates are in a similar position as regards to financial resources at their disposal (Figures 4.1 and 4.2 display the bias reduction after we carry out the matching).

Figure 4.1: Bias Reduction after matching mayor candidates 2012 Election

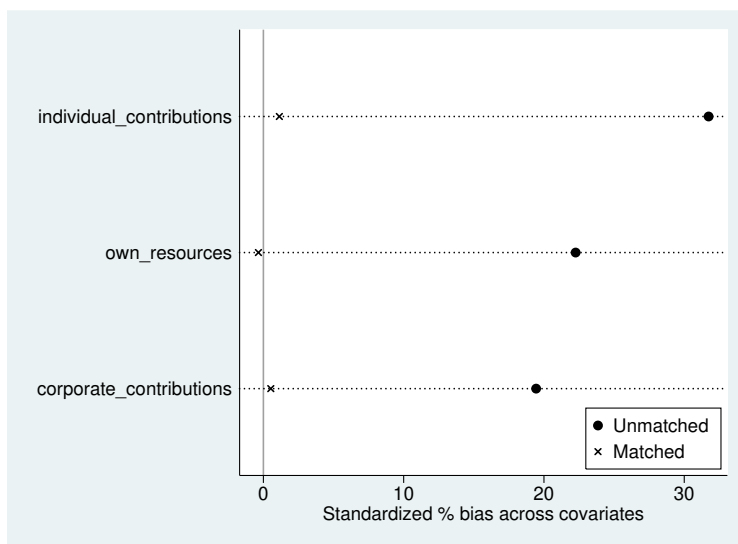
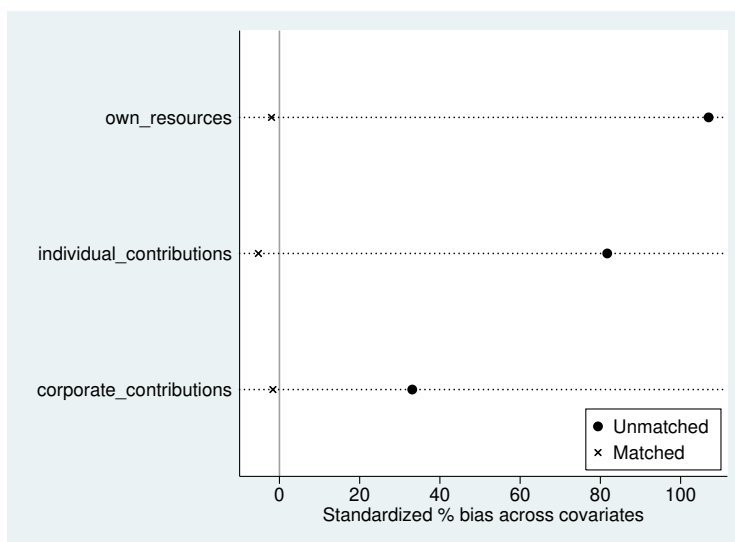


Figure 4.2: Bias Reduction after matching aldermen candidates 2012 Election



As corporate donations are equal to zero at time  $t=1$  (2016 election), it is important that the amount of corporate donations raised is balanced across treatment and control groups at time  $t=0$  (2012 election). By ensuring this we will be able to compare candidates that, on average, were similarly affected by the loss of corporate donations due to the Supreme Court decision and whose main difference is treatment status (being elected at  $t=0$ ). As indicated in tables 4.4 and 4.5, our matching procedure ensures that our treatment and control groups are fairly equivalent in covariate distribution.<sup>6</sup>

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<sup>6</sup>Sex and professional activities are dummy variables; level of education is categorized from 1 to 7. Corporate donations are measured as the natural log of the amount received in Brazilian *reais*.

Table 4.4: 2012 Mayor Candidate Sample Descriptive Statistics before and after matching (N=3,841)

	unmatched/matched	treated	control	p-value
Corporate Donations	U	6.31	5.33	0.000
	M	6.31	6.28	0.863
Individual contributions	U	9.11	7.90	0.000
	M	9.11	9.07	0.678
Own resources	U	8.47	7.53	0.000
	M	8.47	8.49	0.904

Table 4.5: 2012 Aldermen Candidate Sample Descriptive Statistics before and after matching (N=18,300)

	unmatched/matched	treated	control	p-value
Corporate Donations	U	1.53	0.64	0.000
	M	1.53	1.57	0.365
Individual contributions	U	5.04	2.01	0.000
	M	5.04	5.23	0.000
Own resources	U	6.95	3.06	0.000
	M	6.95	7.03	0.067

## 4.4 Results

### 4.4.1 Diff-in-diff Analysis

Table 4.6 presents our results for mayor candidates. It displays the average vote share for treatment and control groups, as well as difference in average vote shares in 2012 and 2016 and the p-value for testing the statistical significance of that difference. As show in table 4.6, the evaluation carried out for the sample of mayor candidates (executive post/majority election) found an overall effect of incumbency equivalent to a decrease in 15 per cent in the

difference in vote shares between treatment and control groups from 2012 to 2016 (95% CI[-0.17,-0.14], *Average Treatment Effect on the Treated, ATT*).

Table 4.6: Effect of Incumbency - Mayoral Elections 2016 (N=3,841)

	treatment	control	diff	test diff=0
2012	0.55	0.34	0.21	0.000
2016	0.47	0.41	0.06	0.000
effect	-	-	-0.15	0.000

In 2012, when the average winning vote share and average winning vote margin for all mayoral candidates were 0.57 and 0.23, respectively, in our sample winners averaged 0.55 in vote shares and 0.21 in winning vote margin. In 2016, while the average winning vote share and average winning vote margin for all candidates were 0.57 and 0.25, in our sample these estimates were 0.47 and 0.06.

Contrary to our initial expectations, rerunning mayors continued to face a negative effect related to their incumbent status and this effect had an increase of almost four percentage points in the period, from 0.11 to 0.15.<sup>7</sup> There is no overlap with the confidence interval we found for the baseline period, which was [-0.13,-0.09], indicating that the magnitude of the coefficient did change from 2012 to 2016. It is possible that this effect is partly due to the fact that incumbent mayors could no longer access corporate money to fund their campaigns.<sup>8</sup> However, as it will be discussed below in section 5,

<sup>7</sup>We use 0.11 as our baseline since it depicts the average treatment effect of incumbency found in the previous paper, when we carried out exactly the same analysis comparing the performance of incumbents and challengers that faced each other in 2008 and 2012.

<sup>8</sup>In the 2008, 77% of the total funds for campaign of incumbent mayors and challengers

between 2008-2012 and 2012-2016 many changes took place in Brazil and it is reasonable to expect that some of them contributed to the identified decrease in vote shares.

Turning to city council candidates (table 4.7), who were not examined previously in the literature, we find that the effect of incumbency was also negative and equivalent to a decrease of 1.1 per cent in the difference in vote shares from 2012 to 2016 (95% CI [-0.012,-0.009], *ATT*). In 2012, the average vote share for winners in our sample was 0.09 and the average winning vote margin was 0.06. In 2016, winning candidates for city councils averaged 0.09 of vote shares in our sample, while the average winning vote margin was 0.05.

Table 4.7: Effect of Incumbency - City Council Elections 2016 (N=18,300)

	treatment	control	diff	test diff=0
2012	0.089	0.022	0.066	0.000
2016	0.087	0.032	0.055	0.000
effect	-	-	-0.011	0.000

It must be stressed, however, that in the case of aldermen candidates, although matching was successful with regards to corporate donations and individual contributions, perfect balance was not achieved for the own resources spent by candidates. I do not believe that this invalidates the analysis though. The mean difference between unmatched and matched samples is equivalent to 3.97, which correspond roughly to 53 Reais (around 14 dollars). The difference corresponds to a small amount that should not significantly come from corporate donations. In 2012 that amount was close to 95%, according to the NGO *Transparência Brasil*.

change the average fate of individual candidates.

When we look at legislative candidates, we realize that the negative effect of incumbency almost doubled, from 0.6 percent in 2012 to 1.1 percent in 2016.<sup>9</sup> Incumbent aldermen also suffer from a negative effect and this effect increased from 2012 to 2016. Also here the indication of change is persuasive, as there is no overlapping with the confidence interval of the baseline period  $([-0.009,-0.003])$ .<sup>10</sup> These results are somewhat unexpected in view of the nature of municipal politics in Brazil and reinforce the findings of negative effect towards incumbents in general in the 2016 election. In Brazil voters tend to attribute to the Municipal Executive the problems (and eventually the merits) of public administration in the city. This identification is much weaker in the case of members of the Legislative branch, whose daily work does not draw much attention from the average voter. The impossibility of using corporate money to fund campaigns is one possible explanation to this loss of vote shares by incumbent aldermen.<sup>11</sup> However, as already mentioned above, elections in 2016 took place in the context of a strong political crisis where politicians from bigger and smaller parties were caught in scandals involving public money, making it probably harder for incumbents looking

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<sup>9</sup>The magnitude of the coefficient - much smaller for aldermen - is partly explained by the fact that candidates for mayor receive much bigger vote shares, as they are elected according to a majority rule.

<sup>10</sup>The corresponding analysis for the baseline period was also carried out in the previous paper, when we compared the performance of incumbents and challengers facing each other in 2008 and 2012.

<sup>11</sup>According to the NGO *Transparência Brasil*, in 2008 70% of the budget of incumbents and challengers for aldermen positions came from corporations. In 2012, that amount peaked at more than 90%.

for reelection to get votes. The effects of the scandals at the federal level might have impacted municipal elections as well and created a general “anti-incumbency” sentiment among voters.

In any case, the diff-in-diff analysis indicates that incumbents continued to face a negative effect when running for reelection in 2016 and this effect increased significantly at a time when neither they nor their opponents could access corporate donations.

## 4.4.2 RD Analysis

### Mayor candidates

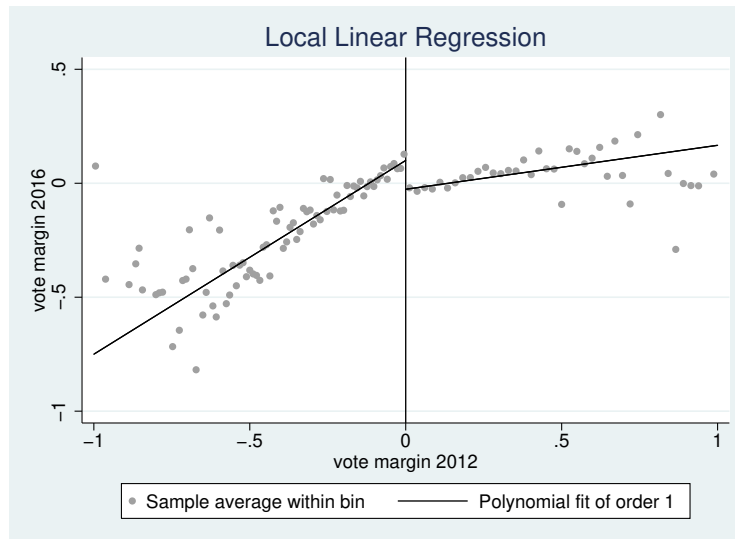
As a way to complement the analysis using repeated pairs of candidates, I also checked the effect of incumbency in the 2012/2016 elections through a regression discontinuity design, as described earlier. Figure 4.3 displays the discontinuity point around the cutoff using all observations for mayor in our sample.<sup>12</sup> We see a clear “jump” at the discontinuity point, which suggests a negative effect of incumbency for mayor candidates in the regression discontinuity estimates.

Using a local linear regression and bandwidth=0.098, a negative statistically significant estimate was found which was close to the one from the diff-in-diff analysis, although slightly smaller (-0.15 *versus* -0.13). The confidence interval here was 95% CI [-0.17,-0.09]. The estimate remained statistically

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<sup>12</sup>The y axis displays the margin of victory when time t=1 (2016 election); the x axis displays the margin of victory when time t=0 (2012 election).

Figure 4.3: Effect of incumbency in vote margin in 2016 election - mayor candidates



significant and practically unaltered when we resorted to local polynomials of order 2 and 3 and larger bandwidths equal to 0.166 and 0.218 (Table 4.8).

The assumptions for inference in the case of mayor candidates are met. Table 4.9 presents the distribution of covariates for our smallest bandwidth. Balance is present in most cases, indicating that the assumptions are met. Balance is also present when the larger bandwidths are used (tables 4.10 and 4.11). There is however an overlap with the confidence interval in the baseline period (95% CI [-0.13, -0.06]), indicating that we must be careful when interpreting the results as a clear indication of change over the previous period in the case of close mayor elections.

Table 4.8: Effect of Incumbency Mayoral Elections 2016 - RD estimates

vote margin	$\leq 0.098$	$\leq 0.166$	$\leq 0.218$
point estimate $\tau$	-0.13	-0.13	-0.14
p-value	(0.000)	(0.000)	(0.000)
N	1,702	2,406	2,776

The DV for the regression discontinuity is the vote margin in 2016, scaled from -1 to 1, which is regressed against the vote margin in 2012 (scaled the same way), a dummy variable for treatment and an interaction term. We use a local linear regression, a polynomial of order 2 and of order 3, respectively.

Table 4.9: Balance Statistics for vote margin  $\leq 0.098$  (N=1,702)

variable	mean treated	mean control	p-value
Female	0.12	0.12	0.70
Married	0.77	0.71	0.002
Primary Education	0.063	0.069	0.62
Middle School	0.27	0.26	0.53
College	0.50	0.47	0.28
Lawyer	0.06	0.06	0.98
Salesman	0.07	0.08	0.40
Businessman	0.18	0.15	0.14
Party: PSDB	0.10	0.11	0.43
Party: PT	0.10	0.10	0.63
Party: PMDB	0.21	0.18	0.21
SP	0.07	0.11	0.008
MG	0.14	0.16	0.11
RJ	0.014	0.010	0.42

Table 4.10: Balance Statistics for vote margin  $\leq 0.166$  (N=2,406)

variable	mean treated	mean control	p-value
Female	0.11	0.12	0.87
Married	0.77	0.72	0.007
Primary Education	0.061	0.065	0.70
Middle School	0.27	0.25	0.33
College	0.50	0.48	0.40
Lawyer	0.06	0.07	0.52
Salesman	0.07	0.08	0.45
Businessman	0.16	0.15	0.40
Party: PSDB	0.11	0.10	0.45
Party: PT	0.11	0.10	0.49
Party: PMDB	0.19	0.17	0.21
SP	0.07	0.10	0.001
MG	0.14	0.17	0.10
RJ	0.014	0.018	0.42

In 2016, the group of rerunning mayors as a whole continued to face a negative incumbency effect. They performed, on average, worse in vote shares than runners-up from the previous election. When we focus on close elections, this conclusion is somewhat confirmed, although we cannot be 100% sure due to the partial overlap of confidence intervals. For the reasons explained in the previous chapter, I have included in Appendix A the analysis where the outcome variable is the unconditional probability of rerunning and winning.

Table 4.11: Balance Statistics for vote margin  $\leq 0.218$  (N=2,776)

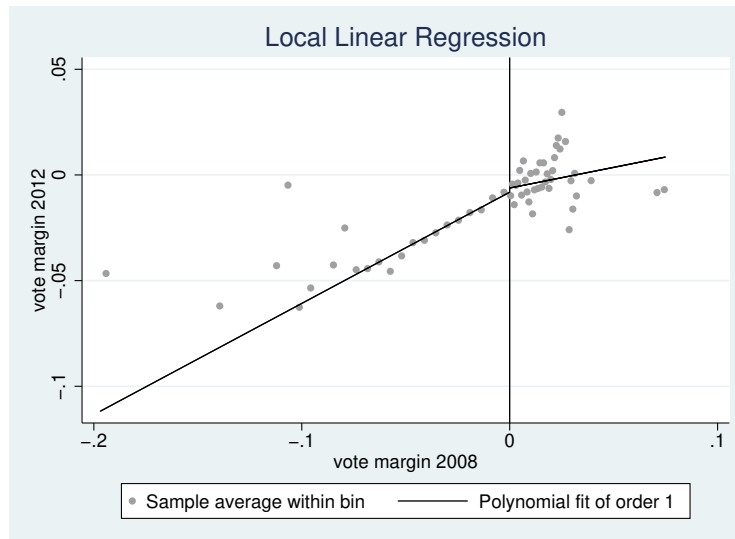
variable	mean treated	mean control	p-value
Female	0.11	0.12	0.87
Married	0.77	0.72	0.007
Primary Education	0.06	0.06	0.97
Middle School	0.27	0.25	0.44
College	0.50	0.48	0.27
Lawyer	0.06	0.07	0.56
Salesman	0.07	0.08	0.43
Businessman	0.17	0.16	0.51
Party: PSDB	0.11	0.10	0.45
Party: PT	0.11	0.10	0.49
Party: PMDB	0.19	0.17	0.21
SP	0.08	0.11	0.002
MG	0.15	0.17	0.19
RJ	0.014	0.018	0.45

### City Council candidates

Figure 4.4 displays the discontinuity around the cutoff using all observations of city council candidates from our dataset (N=18,300). The graph shows no visible discontinuity, suggesting that there is no distinguishable effect of incumbency on the vote shares earned by winners in comparison to losers.

No statistically significant effect of incumbency was found in close elections where the difference in vote shares between winners and losers was equal to 0.8% (bandwidth equal to 0.008). No statistically significant effect was found either when larger bandwidths and polynomials of order 2 and 3 were used to carry out the regression discontinuity. Table 4.12 displays the distribution of covariates in our sample. Balance is present in most cases.

Figure 4.4: Effect of incumbency in vote margin in 2016 election - aldermen candidates



As it was the case with our baseline period (2008-2012), when we focus on close disputes, there is no statistically significant effect of incumbency for city council elections. There is, nevertheless, for the larger group of city council candidates in our sample a visible negative effect which increased since 2012 from 0.6% to 1.1%. The reasons for this increase will be explored below.

## 4.5 Interpreting the Results

As stated in the introduction, when ruling in 2015 to change the norms that regulated campaign financing in Brazil, the Supreme Court aimed at *leveling the playing field among candidates*. In forbidding corporate donations to

Table 4.12: Balance Statistics for vote margin  $\leq 0.008$  (N=660)

variable	mean treated	mean control	p-value
Female	0.10	0.06	0.59
Married	0.63	0.75	0.33
Primary Education	0.10	0.06	0.59
Middle School	0.36	0.37	0.89
College	0.33	0.31	0.84
Lawyer	0.04	0.06	0.71
Salesman	0.08	0.06	0.74
Businessman	0.06	0.18	0.06
Party: PSDB	0.09	0.06	0.65
Party: PT	0.11	0.06	0.52
Party: PMDB	0.10	0.00	0.16
SP	0.24	0.68	0.000
MG	0.14	0.12	0.81
RJ	0.07	0.18	0.07

candidates, the Supreme Court eliminated a valuable source of funding for incumbents trying to get reelected and challengers trying to get elected for the first time in 2016.

Incumbent mayors running for reelection in 2016 performed, on average, worse in vote shares than challengers/runners-up beaten by them in 2012 and who they faced once again in 2016. The negative effect increased in comparison to the performance of mayors rerunning in 2012 against challengers/runners-up from 2008. The confidence in the increase in negative effect compared to the previous period was strengthened once we used a regression discontinuity design to focus on close elections (even if we could not be totally sure due to the partial overlapping of confidence intervals).

The situation is similar in the case of aldermen candidates, for whom cor-

porate donations were also an important source of money, even though city council campaigns require raising considerably smaller amounts of funds.<sup>13</sup> Also for incumbent aldermen the performance in vote shares against challengers/runners-up from previous election was worse in 2016 than in 2012. The aldermen who decided to rerun and won reelection in 2016 did so by smaller margins. In one specific case - close elections against challengers previously faced from the same coalition -, no effect of incumbency was found. From the analysis undertaken, our main conclusion is that incumbency proved to be curse for Brazilian mayors and aldermen and this curse got worse precisely at the moment when firms were disallowed to fund political campaigns.

Contrary to our expectations, when they lost access to corporate money incumbents performed actually *worse* than challengers. These findings seem to disconfirm our main hypothesis that banning corporate donations would actually help incumbents. Losing corporate money did not favor incumbents, did not increase the weight of the so-called benefits of the office in Brazilian municipal electoral contests.

Elected candidates for mayor in 2012 received, on average, R\$ 177,441 Brazilian *reais* in corporate donations, while in the case of unsuccessful candidates that amount was R\$ 104,923 Brazilian *reais*. Once this source of advantage could no longer be used by candidates in 2016, one should expect the weight of office to shift the electoral contest in favor of previously elected

<sup>13</sup>While the average mayor candidate in 2012 raised 183,000 Brazilian reais, the average city council candidate raised merely 3,900 Brazilian reais.

candidates. However, the opposite took place. Why is it so? How does the the impossibility to raise money from corporations relate - if it is the case that it does relate - to the increase in the traditional curse of Brazilian incumbents already noted by the literature?

One possible explanation to the fact that incumbency became an even bigger curse in 2016 than in was in 2012 is, perhaps, that the change was due to factors not directly related to the role of corporate donations as a source of funding of individual campaigns. Looking at money from corporations might not be enough to understand what happened. Perhaps there were other factors influencing that election that made life more difficult for incumbents running for reelection in 2016.

In order to check the plausibility of this explanation I have carried out some further analysis in the sample of candidates that face each other in two subsequent elections to investigate possible heterogeneous treatment effects, i.e., whether treatment (being elected at  $t=0$ ) affects differently subgroups within our sample at  $t=1$ . I am interested in checking how groups of elected candidates raising different amounts of money from corporations at  $t=0$  are affected by losing corporate money at  $t=1$ . The idea is to investigate effects conditional on the amount of money received from firms. If the more money is lost, the smaller the negative incumbency effect, then the increase in the negative effect of incumbency from 2012-16 was probably due to other factors that made incumbents unpopular.

To carry out this further investigation, I have regressed my outcome vari-

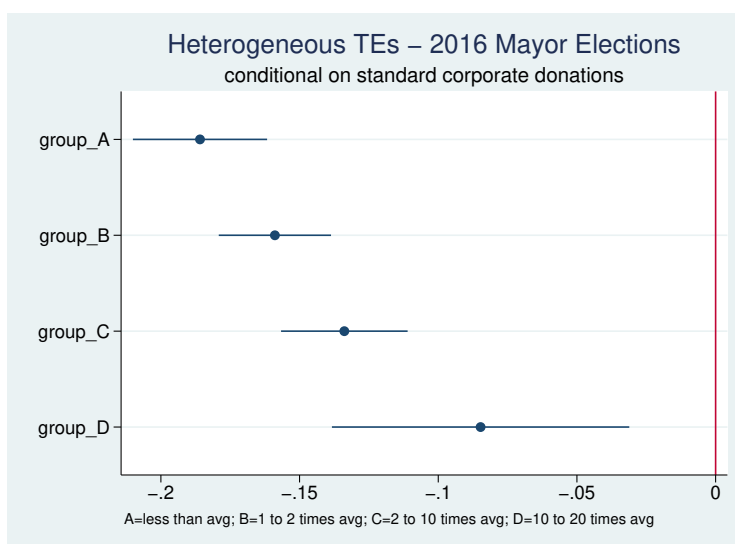
able (variation in vote shares at  $t=1$ ) against treatment and a new variable corresponding to the standardized amount of money received by each candidate from corporations. This variable was standardized by municipality. Initially we calculated the average firm contribution by candidate (total amount of money contributed by firms in that city to a specific post divided by the amount of candidates running for it). The variable I am interested in is subsequently calculated dividing the amount of money actually raised by a candidate by the municipal average (actually we use the log so as to account for skewed data). This variable gives us a picture of how much corporate money candidates received in relation to the average contribution in their municipality (less than the average, the average, twice the average, etc.).

Using this variable, our sample was divided in groups according to whether the candidate received less than the average contribution in his/her city, between one and two times the average, between two and ten times the average, and between ten and twenty times the average. For each of these four groups we have performed the regression as indicated above. The results for mayor candidates are indicated in table 4.13 and figure 4.5:

Table 4.13: Heterogeneous Treatment Effects for Mayor candidates (N=3,841)

	treatment effect	confidence interval	p-value
group A ( $\leq$ average)	-0.18	-0.21,-0.16	0.000
group B ( $1 < \text{average} \leq 2$ )	-0.15	-0.18,-0.14	0.000
group C ( $2 < \text{average} \leq 10$ )	-0.13	-0.15,-0.11	0.000
group D ( $10 < \text{average} \leq 20$ )	-0.08	-0.13,-0.03	0.002

Figure 4.5: Heterogeneous Effects of Incumbency Mayor candidates 2016 election



The results for mayor candidates did confirm our suspicion that the more money was lost, the smaller the negative incumbency effect. The group of candidates receiving the largest amounts of corporate donations (group D) was the least affected by the decrease in vote shares conditioned on the amount of money received. In other words, candidates who received bigger donations did suffer from an anti-incumbency effect as found earlier, but this effect was smaller than the average negative effect endured by incumbent mayors overall.

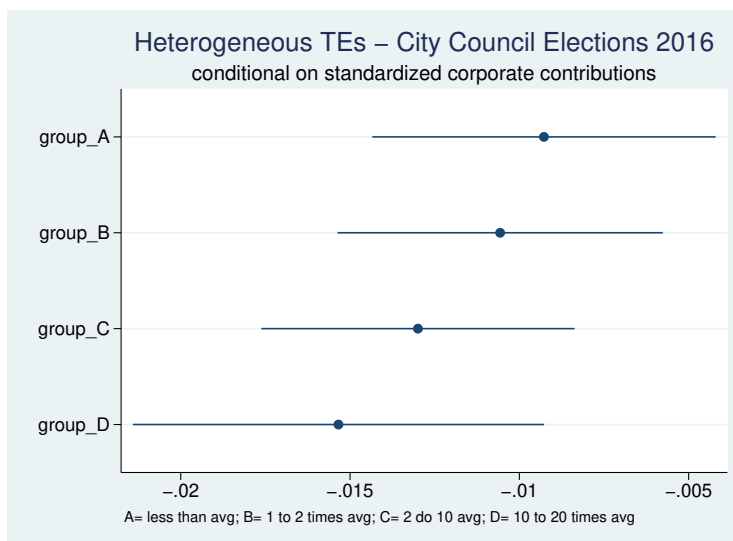
The situation described is somewhat different when we look at city council candidates. In 2012, while elected city council candidates received an average R\$ 3,698 Brazilian *reais* from corporations, in the case of losing candidates

that amount was merely R\$ 118 *reais*. Repeating the procedure indicated above with city council candidates, we find the following results when we investigate the effects of incumbency on groups conditional on the amount of corporate donations received (table 4.14 and figure 4.6).

Table 4.14: Heterogeneous Treatment Effects for City Council candidates (N=18,300)

	treatment effect	confidence interval	p-value
group A ( $\leq$ average)	-0.009	-0.014,-0.004	0.000
group B ( $1 < \text{average} \leq 2$ )	-0.010	-0.015,-0.005	0.000
group C ( $2 < \text{average} \leq 10$ )	-0.013	-0.017,-0.008	0.000
group D ( $10 < \text{average} \leq 20$ )	-0.015	-0.021,-0.009	0.000

Figure 4.6: Heterogeneous Treatment Effects for City Council candidates



In the case of city council candidates, our investigation showed that the more the money lost by a candidate, the bigger was the size of the negative

effect suffered. This suggests that the performance of these incumbents was more affected by the money lost due to the Supreme Court decision than what was the case with mayor candidates. However, we have to take this conclusion with some skepticism due to the overlapping of confidence intervals shown in figure 4.6.

In 2016 only 48% of the mayors who tried reelection managed to win office a second time. In 2012 this rate was 54%, and in previous elections since 2000 it had always stayed close to 60% (Superior Electoral Tribunal, 2016). However, our findings indicate that it is difficult to attribute any difficulty of incumbents to get reelected due to a worse performance in vote shares to the the Supreme Court decision. In the case of mayors, this is due to the fact that those in office actually benefited from the decision. In the case of city council candidates, our findings were less conclusive, but give no grounds to rule out that their were also affected by a general anti-incumbency feeling by voters. In any case, looking at the historical context offers additional insight as to the attitude of rejection towards incumbents in 2016 and might give additional clues as to the increased negative effect of incumbency.

From 2000 to 2011, the Brazilian economy grew, on average, 4% a year, as the country benefited from a long cycle of expansion in the global economy stimulated by the growth of the real estate sector in the US and a strong “boom” in commodities consumption in China. In this period, there was a substantial increase in the income of Brazilian families, a steady decrease in unemployment rates and the expansion of domestic credit, especially for

poorer families (BNDES, 2012). Combined with distributive policies carried out by the successive governments of the Worker's Party, these factors help explain the positive assessment of the Federal Government at the end of 2011: according to a public survey conducted by the Brazilian Institute of Public Opinion and Statistics (IBOPE), 56% of respondents considered the performance of President Dilma Rouseff excellent.

This situation changed dramatically after 2011, as the economic team of President Rouseff carried out a number of policies that led to inflation and economic stagnation and did not allow the country to recover from the global financial crisis. More importantly, a huge political scandal became public as of 2014 disclosing the involvement of high-level business people and top politicians in Government and Congress in a money laundering scheme related to the Brazilian state oil company, *Petrobras*. The scandal (known as *Lava Jato* or Car Wash investigations) led to massive street demonstrations against the Government and politicians in general, and was one key element in the process that led to the subsequent impeachment of President Rouseff.

Although it is difficult to estimate how much the discredit of politicians at the federal level influences the mood of voters at the municipal level, it is a fact of the matter that Brazilians in 2016 displayed a very low level of confidence towards politicians in general. The public trust in politicians index, published by the World Economic Forum, indicates, for instance, that the trust in politicians in Brazil decreased steadily from 2011 (when it peaked

at 2.07) to its lowest point in 2016 (when it scored 1,33).<sup>14</sup>

Another element that helps understand the difficulty of incumbents in Brazilian cities to get reelected in 2016 is related to the financial crisis that affected municipalities during the second term of Dilma Rousseff. When approving the Budget for 2015-2016, Dilma made severe cuts to the original proposal approved by Congress. These cuts were justified in order to achieve fiscal balance, amounting to 11.3 billion *reais*. The impact of the cuts was particularly hard on Brazilian municipalities, as only 10% of them collects enough taxes to fund its own expenses. In most cases, Brazilian municipalities heavily depend on cash transfers from the federal government to deliver services. Combined with the general economic crisis, the decreasing transfer of resources from the Union disrupted the functioning of regular municipal services like health, and might have added to the general anti-incumbency sentiment to explain the poorer electoral performance incumbents, particularly mayors, in comparison to their record of four years before.<sup>15</sup>

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<sup>14</sup>According to the methodology adopted by the World Economic Forum, trust in politicians range from 1=extremely low to 7=extremely high. See <https://tcdata360.worldbank.org/indicators> for further details

<sup>15</sup>The impact of the national economic crisis on cash transfers from the federal government to municipalities was amply reported by the media. See, for instance, the piece of news *60% das cidades terão rombo nas contas*, published by the newspaper Folha de São Paulo on may 28, 2016, which reports that at least 60% of municipalities were in deficit due to the decrease in cash transfer from the Union.

## 4.6 Conclusion

In this final chapter we have used two complementary approaches (difference-in-difference and regression discontinuity) to investigate whether and how a judicial ban on corporate donations declared by the Brazilian Supreme Court (STF) in 2015 would affect the electoral performance of mayor and city council incumbents. The starting point for this investigation was the assumption that limiting the sources of campaign funds would tip the balance of the following electoral contest in favor of incumbents.

Using public available data released by the Superior Electoral Tribunal (TSE) we initially found, contrary to our initial expectations, that the 2016 municipal elections were harder for incumbent mayors and aldermen. On the one hand, this result could be interpreted as an indication that the Supreme Court's decision brought an improvement to the electoral perspectives of challengers in increasingly competitive contests. However, a closer examination shows that the picture is slightly more complicated.

Our heterogeneous treatment effects investigation indicated that incumbent mayors actually benefited from the ban on corporate donations, pointing thus in the direction of our main hypothesis stated in 4.1, that is, that the ban on corporate donations would tip the balance of elections in favor of candidates in office. However, as incumbent mayors in 2016 endured an increased negative effect on their electoral performance, this can only be due to the out-of-the ordinary circumstances in which the 2016 elections took

place, under the influence of the revelations of massive financial scandals at the federal level, and the financial crisis of Brazilian municipalities in 2015-2016, which disrupted the regular provision of public services, justifying thus a general mistrust nurtured by voters towards politicians, especially incumbent mayors.

Hence, the heterogeneous treatment effect analysis confirmed our suspicion that the increased negative effect of incumbency was probably due, in the case of incumbent mayors, to other factors that would justify an anti-incumbency attitude by voters. The many changes in the political and economical landscape in Brazil between 2012 and 2016 explain the increased negative effect of incumbency, but, as far as the ban is concerned, its effect was to actually help incumbents, even if this benefit was overwhelmed by the influence of other factors.

In the case of city councillor candidates, there was an increase in the negative effect of incumbency and they might have been affected by the loss of corporate donations, but our findings on this were less conclusive. We cannot rule out, in view of the increased negative effect to which they were subject, that they were also affected by the general anti-incumbency sentiment of voters.

## Chapter 5

### Conclusion: the way forward

In this work we have explained the process of institutional change that led in 2015 the Brazilian Supreme Court (*Supremo Tribunal Federal*, STF) to ban corporate donations as a lawful source of financing to political campaigns. The process of change was the outcome of relatively exceptional circumstances combining the increasing judicialization of politics with the temporary suspension of long identified patterns of interaction between the Executive and the Congress in Brazil.

The historical Supreme Court decision, whatever its effects to level the playing field among candidates might have been, did not scratch the structural characteristics of the Brazilian electoral system that turned corporate donations into such an essential element for the success of contestants, in particular a system that combines large districts with open-list representation. This fact notwithstanding, the Court's decision has not been challenged since

it became public. It enjoys support from the public, who saw in it a positive measure to curb the corruption that for years plagued Brazilian politics, details of which were revealed by the *Car Wash* investigations.

Deprived of corporate funding, politicians had to adapt and turned to public money as a means to compensate for their loss. The Court's decision created thus the necessary conditions for a new - and so far stable - regime of campaign financing funded mostly through public funds.<sup>1</sup>

Among the findings of this research, perhaps the most significant is that the Court's decision did favor incumbent candidates, especially incumbent mayors. Contrary to the expectations of its proponents, more than helping challengers, the ban seems to have helped those mayors already in office.

The second important finding was that the negative effect on incumbents identified was visible both in the case of executive positions (city mayors) and legislative offices (city council officials) and that it had increased significantly from 2012 to 2016. For reasons explained in the last chapter, it is difficult to categorically attribute the identified increased negative effect to the decision of the Supreme Court. The specific historic context in 2016 suggests a number of reasons for which voters should be particularly unhappy with incumbent politicians.

Be that as it may, this study was the first attempt in the literature to

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<sup>1</sup>According to the Superior Electoral Tribunal, TSE, in the general elections held in 2018 in Brazil, 80% of the resources spent by candidates came from public funds. In addition, in 2019, the TSE established caps on the amount of money individuals could donate to candidates, as well as on the amount of their own money candidates could invest to fund themselves. This turned the system even more dependent on public funding.

understand a regime change in electoral rules while at the same time investigating its possible effects in parallel majority and proportional elections. One limitation of our study is that we only investigated the effects on incumbency in the contest held immediately after the Supreme Court decision. As that election took place under rather rare circumstances, it would be important to extend the research to later elections as well. This would allow us to have a clearer understanding of the reasons behind the negative effect of incumbency and its relation to the loss of corporate money.

Another limitation is that our investigation remained restricted to legal donations, donations that the candidates, in fulfillment of legal requirements, had to declare to the Supreme Electoral Court, which subsequently compiled it and made it public. Bearing in mind Justice Mendes' warning, it is entirely plausible that banning corporate donations produced the undesired effect of actually stimulating unreported, off the books contributions by sponsors deprived of the legal means to support their candidates, as well as increased (legal) donations by individuals connected with firms that used to donate. Checking whether this was actually the case, however difficult it might be to find evidence of off the books donations, is something important which remains to be done.

Finally, as we moved to a financing regime funded mostly by public resources, it would be important to understand better how these funds are being managed and who benefits the most from them. Has the new, public regime increased the strength of party leadership (historically weak in a

country like Brazil) and their favorites at the expense of younger politicians? If this is the case, what are the consequences of this new dynamics to parties and to the democratic system as a whole? These are relevant questions that should be addressed in future research by scholars on Brazil.

# Appendix A

## Conditional *versus*

## Unconditional Probabilities

The analysis according to the methodology described above was carried out considering candidates who repeatedly face each other in two subsequent elections. By conditioning on rerunning we are able to compare the same two candidates across elections and can thus offset any possible effect on performance due to individual characteristics. This is especially relevant in the diff-in-diff analysis. In the RD analysis, candidates should by construction share the same background characteristics. That being the case, our confidence would be strengthened that any effect found is not due to individual traits of particular candidates.

The side-effect of conditioning on rerunning is, however, that we are intentionally making one group stronger than the other. This sample restriction

implies a selection bias, not only because winners and runner-ups/challengers do not always rerun at the same rates, but also because the choice of whether to rerun might depend on whether one is elected or not at time  $t=0$ . Usually, the runner-ups/challengers who decide to run again are those who believe they will do well in the future election. It is reasonable to assume that they are stronger than average challengers at  $t=0$ . For incumbents, it is considered a fact that they seek reelection - although in Brazil this is true of mayors, but not so much of city council members. This is due to the widespread assumption that holding office gives financial, strategic or informational advantages.

In 2012, 74% of the mayors legally entitled to run for a second term decided to do so. They represented 2,736 candidates out of a total universe of 5,668 mayoral positions in dispute. Out of these, 55% (1,505) succeeded in being reelected. In the case of aldermen (for which there is no limit to the number of reelections), 24% attempted a second mandate and 84% of them (21,550 candidates) were successful.

As a way to deal with these methodological questions, it has been suggested that a more adequate measure of incumbency advantage is the *individual* and *unconditional* incumbency effect on the probability of rerunning and winning. The literature also points out that estimating unconditional incumbency effects facilitates comparisons between countries and political systems (Magalhães 2015).

In this alternative measure, the whole universe of winners and challengers at time  $t=0$  is considered. The outcome variable, instead of the variation in

vote shares, takes the value 1 if the politician reruns and wins the election at  $t=1$  and takes the value 0 if the politician does not run or loses at the second election. Once the unconditional estimate is defined, we proceed with a RD analysis to check whether there is a statistically significant difference in the means across treatment and control groups.

$$E[Y_{1i} - Y_{0i}] = (E[Y_{1i}|R_{1i} = 1] - E[Y_{0i}|R_{0i} = 1]) * E[R_{1i} = 1] + E[Y_{0i}|R_{0i} = 1] * E[R_{1i} - R_{0i}]$$

In this equation we define the average treatment of incumbency advantage as the term  $E[Y_{1i} - Y_{0i}]$ , which represents the probability of running and being elected. The indicator variable  $Y_i$  takes value 1 if the politician runs and is elected, and 0 otherwise. In this equation, taken from Magalhaes 2014, we see how the unconditional incumbency advantage relates to the conditional incumbency advantage, the term  $E[Y_{1i}|R_{1i} = 1]$ . The indicator variable  $R_i$  takes value 1 if the politician runs and 0 otherwise.

Table A.1 presents the effect of incumbency on the unconditional probability of rerunning and winning election for mayoral positions at time  $t=1$ . We restrict the sample to elections where the difference in vote share is equal or less than 2% and use a local-averages method to calculate the effect.

Table A.1: Effect of Incumbency - Unconditional Probability RD estimates - Mayoral Elections 2012

rerun winner 2008	rerun challenger 2008	Diff	Test Diff=0	N
0.21	0.32	-0.10	0.000	816

For this RD analysis we have used a window of 2% difference in vote shares between winners and challengers. The DV is the unconditional probability of running a second time and being reelected. In this DV, we code 1 for incumbents and challengers who rerun in 2012 and win and zero for the others. The estimation was made through mean differences.

Around 22% of bare winners in 2008 win reelection in 2012. In the case of bare losers, 32% of those who rerun win in the following election. The effect of incumbency is defined as the difference between these two averages, which accounts for a statistically significant negative effect of -0.10 (95% CI[-0.16,-0.045]).

Surprisingly, when we use a regression discontinuity design to calculate the effects of incumbency as the unconditional probability of rerunning and winning among city council candidates, we find a statistically significant *positive* effect of +0.21 [CI 95% +0.19,+0.24]. Again, as with mayor candidates, we restrict our sample to close elections (margin of victory/defeat not exceeding 2%). Winners are candidates with the lowest vote share among those elected from a certain coalition; losers are candidates who got the highest vote shares among those not elected from the same coalition. This last result suggests that incumbent aldermen have a better chance than challengers to win a reelection. Calculating the odds, we find that they are 20% higher in the case of winners in 2008 that they will rerun and win the second election (table A.2).

Identifying incumbency vote effects on the vote share can be problematic,

Table A.2: Effect of Incumbency - Unconditional Probability  
- City Council Elections 2012

winner 2008	runner-up 2008	Diff	Test Diff=0	N
0.14	0.35	0.210	0.000	4,345

For this RD analysis we have used a window of 2% difference in vote shares between winners and runners-up. The DV is the unconditional probability of running a second time and winning. We code 1 for candidates who rerun and win, and 0 otherwise. The estimation was made through mean differences.

however, as it implies that we must condition on rerunning, and this is likely to bias the results. Once we focus on the probability of rerunning and winning as our outcome variable, the results found indicated a clear average negative effect for incumbent mayors.

In the case of aldermen our results suggest that incumbency is an advantage, but we should not rely excessively on this estimate, as non-rerunners are heavily concentrated on the side of losers from the first election and are coded as 0 in this analysis. In our restricted sample where the margin of victory/defeat did not exceed 2%, out of 3,154 candidates for the city council who were not elected in 2008, only 528 took the chance of running again in 2012. Among the 2,227 winners in 2008, 1,454 ran again in 2012. The rate of rerunning candidates is thus much higher among winners than among losers at  $t=0$ . Compared to losers in 2008, the odds are three times higher for winners in that election that they will run again in 2012. One possible explanation for this is that some losing candidates decided to run for a higher office - in our sample, 109 candidates for aldermen ran for mayor in 2012 and 57 ran for the state legislative council in the subsequent election for that body, held in 2010. Most probably, however, is that not being professional

politicians, these losing candidates gave their life a different direction after the election. Not being professional politicians, non-rerunners have strong incentives to resume their previous activities after they lose an election and most probably opt for not "giving it a try" in the subsequent election. For this reason, I believe using the unconditional probability is not advisable in the case of proportional city council elections and have decided to include this section as an appendix.

We have used the unconditional probability of rerunning and winning at the 2016 election as outcome variable to carry out a second RD analysis. Our sample was enlarged to include not only the candidates who ran in both elections, but also those who ran in 2012 but did not do so in 2016. Using this outcome variable, we code 1 for those candidates who rerun and win and zero for all the others. We restrict our sample to those elections where candidates win/lose by a 2% margin (1,000 observations) and use a local-averages method to calculate the effect.

Table A.3: Effect of Incumbency - Unconditional Probability RD estimates - Mayoral Elections 2016

rerun winner 2012	rerun challenger 2012	Diff	Test Diff=0	N
0.16	0.29	-0.13	0.000	1004

For this RD analysis we have used a window of 2% difference in vote shares between winners and runners-up. The estimation was made through mean differences.

Among all candidates in 2012, 18% stood for reelection (incumbents and

non-incumbents). Among more than 5,200 mayors, almost 40% ran for reelection (many of the incumbent mayors could not legally run again, for they were already in their second mandate) and 21% got reelected (around 54% of those who tried reelection). Among candidates not elected in 2012, 67% decided not to run again in 2016. Only 33% ran in 2016, of which 16% won the election (47% of those not elected in 2012 who ran again in 2016).

In our restricted sample, 16% of rerunning incumbents managed to win reelection. Among challengers, that rate was 29%. The effect we are interested in is the difference between these two values. Consistent with our previous results, we find that incumbent mayors in 2016 were subject to a statistically significant negative effect equivalent to -0.13 (95% CI[-0.18, -0.08]), once this effect is measured as the unconditional probability of rerunning and winning.

As explained in the previous paper, the analysis using the unconditional probability of rerunning and being reelected as outcome variable was not carried out for city council candidates, since its assumptions do not hold in the case of proportional elections.

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