

# Chronicle of an Election Foretold: The 2017 Bolivian Judicial Elections

## ‘Crónica de una Elección Anunciada’: Los Comicios Judiciales en Bolivia del 2017

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### Abstract

On December 3, 2017, Bolivian voters went to the polls to vote for their national judges. Bolivia is the only country in modern world history to use direct elections to select its judges, and the adoption and implementation of these elections has been highly contentious. We report on this election and contend that though formally compliant with the Bolivian Constitution, the MAS supermajority used its powers to limit the ability of the public to make its voice heard in an electorally meaningful way. Voters registered their discontent by spoiling more ballots than in any election in Bolivian history. Relying on original survey data as well as municipal-level election returns, we demonstrate that candidates’ electoral fates in this election were tied more closely to their position on the ballot than their ascriptive characteristics or professional qualifications, and voters’ decisions to cast spoiled votes correlate strongly with their dissatisfaction with the broader MAS political project.<sup>1</sup>

En el día 3 de diciembre del 2017, votantes Bolivianos se fueron a las urnas para votar directamente para sus jueces y magistrados nacionales. Bolivia es el único país en la historia del mundo moderno que utiliza elecciones para seleccionar a sus jueces de jurisdicción nacional, las elecciones de 2017 son la segunda vez que han ocurrido y han generado mucha polémica.

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Informamos sobre esta elección y afirmamos que, aunque cumplió formalmente con la Constitución Plurinacional, el gobierno del MAS limitó sistemáticamente la capacidad del pueblo Boliviano expresar su voluntad electoral. Los votantes registraron su descontento por arruinar más papeletas en toda la historia boliviana. Analizado unos datos originales de una encuesta de opinión pública y los resultados electorales a nivel municipal, demostramos que la posición en la papeleta electoral explica más que las características adscriptivas o calificaciones profesionales en cuanto a la proporción del voto que ganaron los candidatos, mientras el hecho de votar en blanco y nulo fue una expresión de insatisfacción con el proyecto político más amplio del MAS.

Keywords: judicial elections, Bolivia, democracy

Palabras claves: comicios judiciales, Bolivia, democracia

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## I INTRODUCTION

In October 2011, Bolivia assumed its place in the annals of modern world history as Bolivian voters took to the polls to directly elect judges with national jurisdiction. Bolivia's early experience with this institutional innovation offers a prescient example of the promises and challenges of the the 'new' Latin American constitutionalism (Gargarella, 2011, 2016; Nolte and Schilling-Vacaflor, 2016). The adoption of the direct judicial elections coincided with a worldwide move to "democratize" judicial selection procedures, expanding the scope of political actors involved in the selection of judicial authorities to include legal professionals, academics and the broader civil society (Garoupa and Ginsburg, 2009; Rios-Figueroa, 2011; Driscoll and Nelson, 2012, 2015). In the case of Bolivia, confluent forces viewed the direct election of judges as one integral piece of a broader social revolution in which the country was refounded as the plurinational Bolivian state, the sovereignty of ethnic indigenous Bolivians was triumphantly reasserted, and the crisis of representation the national government faced was finally brought to an end (VanCott, 2000; Anria, 2016; Wolff, 2016). Reformers believed the direct election of judges would breathe new life and legitimacy into a long-maligned judiciary, allowing for greater autonomy, independence and institutional capacity.

On December 3, 2017, Bolivians took to the ballot boxes to directly elect national judicial authorities for a second time.<sup>2</sup> As with the inaugural election, and in compliance with the Bolivian Constitution of 2009, the electoral court (the Órgano Electoral Plurnacional, henceforth OEP) faithfully distributed information on the candidates in advance of the election, though campaigns for or against particular candidates were otherwise prohibited. Though some minor irregularities were reported, international observers confirmed that the process had been competently adminis-

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<sup>2</sup>The Bolivian Constitution of 2009 stipulates that judges will serve six year terms with no opportunity for reelection to the same court.

tered without incident, classifying the electoral process as both free and fair. As in 2011, the ruling party praised Bolivian voters for their participation in electing their national judges, claiming the process by which national judges were directly elected was intrinsically more legitimate than that of years past, when the process of selecting judges had been the sole business of the national legislature.

Viewed in the broader landscape of contemporary Bolivian politics, these sanguine facts belied a much more somber scene. Just five days prior to the 2017 judicial elections, the sitting magistrates of the Plurinational Constitutional Tribunal struck down the constitutional prohibition on term limits for elected officials, clearing the way for incumbent President Evo Morales to stand for election in 2019. If elected, this would be his fourth consecutive term in office, and would thereby extend the hegemonic tenure of his Movement to Socialism party (henceforth MAS) well into its second decade in office.<sup>3</sup> Not only did the TCP's ruling strike down the constitution, its decision ran counter to the results of a 2016 constitutional referendum in which an absolute majority of Bolivians voted *against* a constitutional reform to allow presidential reelection.<sup>4</sup> In the wake of this landmark decision, Bolivian voters again took to the ballot box to elect new judicial officials, and a supermajority of voters (65.8%) cast ballots that were either blank or deliberately spoiled (Driscoll & Nelson 2014).

Many have speculated, including the officials of the OEP, that the null vote was a reflection of citizens' dissatisfaction with the TCP's decision and overt objections to President Morales' stated intentions to run again in 2019. Observers also noted that, compared to the judicial elections of 2011, the results of the 2017 elections brought fewer women and indigenous candidates to the benches of the national courts than before. For its part, the ruling party has had little to say of either the outcome or the large proportion of spoiled ballots, but has instead focused on its own future electoral prospects, with President Morales fully ensconced at the helm.

Whereas the judicial elections were originally heralded as a way to expand the representation of indigenous jurists and women, and to imbue the courts with public support and legitimacy, these speculations cast a long shadow on said aspirational objectives. We take these objectives and observations as a point of departure, to assess systematically the results of the 2017 Bolivian

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<sup>3</sup>President Morales was first elected president in 2005, and was reelected to a second term in 2009. In 2013, the Constitutional Tribunal cleared the way for him to stand again, claiming his 2009 election was his first term under the 2009 constitution, making him eligible to stand for a second (third) term.

<sup>4</sup>In the early days of his third administration, President Morales and his MAS copartisans set in motion a plan to change the constitution via referendum, asking voters if they supported removing the prohibition on presidential reelection. On February 21, 2016, 51.3% of Bolivian voters voted against the constitutional change. Undeterred by this result, the President and his supporters have since weighed various other routes to secure reelection (Driscoll 2017).

judicial elections to fill the vacant posts in the Plurinational Constitutional Tribunal. We first evaluate the outcomes of the valid votes cast, identifying procedural and institutional determinants of victorious candidates' success and describe their consequences for the resulting composition of the Constitutional Tribunal. We then turn to a systematic analysis of the null vote, evaluating the hypothesis that the high levels of deliberately spoiled ballots was rooted in dissatisfaction at the prospect of President Morales' reelection campaign. Analyzing both election returns and original survey data on citizens' vote intention in the judicial elections, we argue that the null vote was a reflection of Bolivian voters' lack of support for presidential reelection. Moreover, President Morales' support has eroded amongst indigenous voters, a constituency that has long been central to his electoral success (Anria & Cyr 2017; Driscoll 2017). Though President Morales has since claimed that standing for president again is his destiny, and that, in so doing, he is simply fulfilling the wishes of a majority of Bolivians ("Evo siente" 2017), we argue that these election results suggest that many Bolivian voters are dissatisfied with the political status quo. In spite of the promise to "democratize" the national courts, our research suggests that Bolivia's elections of national judicial authorities has solidified executive control over an already feeble judiciary, and put the courts squarely in the cross-hairs of political conflict that define Bolivia's post-liberal constitutional order (Gargarella 2011; Wolff 2016; Whitehead 2016).

## II BOLIVIAN JUDICIAL ELECTIONS: FROM 2009 TO 2017

We begin by reviewing the motives reformers cited for implementing this historic constitutional reform, and describing some basic procedural features of the Bolivian judicial elections. With the ratification of the constitution in 2009, Bolivia became the first country in the modern world to constitutionalize the direct election of its national judges.<sup>5</sup> As with the adoption of direct judicial elections in revolutionary France (Haynes 1944), in post-independence Central American nations, and across the U.S. states, the decision to directly elect judges in Bolivia reflected a more general mistrust of the political status quo, and a turn towards enhanced mechanisms of direct democracy (Shugerman 2010; Driscoll & Nelson 2013).<sup>6</sup> Putting judicial candidates' fates directly in the

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<sup>5</sup>Scholars have long claimed the direct election of judges to be a "uniquely American" institutional innovation, as a wide majority of subnational judges in the U.S. states are directly elected (Hall & Bonneau 2006; Bonneau & Hall 2009; Shugerman 2012). Nevertheless, the direct election of judges dates back to the French Revolution and colonial period in several Latin American states, but has also been contemplated of late, in countries such as Venezuela, Argentina and Ecuador. Judges are also directly elected to subnational posts in Switzerland and Peru.

<sup>6</sup>Previous to the 2009 constitution, the powers of judicial selection was a vested responsibility of the national legislature, nominations required a 2/3's majority of the bicameral legislature. In practice, the supermajoritarian requirement combined with multipartism to ensure considerable coalition building a horse-trading occurred around judicial nominations, a process informally re-

hands of voters—populist reformers claimed—would ensure the election of jurists more reflective of Bolivian society, who would be incentivized to respond to the voters who had brought them to power, independent of partisan or political influence (Delgado as quoted in Vargas 2010).

In October 2011, Bolivian voters directly elect their national judges to the Plurinational Constitutional Tribunal (henceforth the TCP), the National Court of Justice (henceforth TSJ), the Council of Magistrates (Consejo de Magistratura) and the Agro-environmental Court (Tribunal Agroambiental) (Driscoll & Nelson 2012, 2015). The 2009 Constitution requires that all judicial candidates must be vetted and pre-selected by the Plurinational Legislative Assembly (henceforth ALP) in order to stand for election. The ALP publicly evaluates would-be candidates on their meritocratic credentials and ensures compliance with national gender and indigenous quota laws. The final requirement of the candidate preselection process is a required two-thirds majority approval vote of all candidates by the bicameral ALP. All facets of electoral administration is then delegated to the Electoral Court (Órgano Electoral Plurinacional, or OEP), who is charged with ballot design and all aspects of informational campaigns. All partisanship, electioneering or campaigning for or against particular candidates is explicitly forbidden, so as to allow for an objective and meritocratic consideration of candidates by the Bolivian voting public. Voting in Bolivia is compulsory, voters in judicial elections are tasked with selecting the candidates of their choice, or casting a blank or null ballot (Driscoll & Nelson 2012). The inaugural electoral process was characterized by high uncertainty among voters and an overt boycotting of the process by the political opposition. Nevertheless, 42.1% of Bolivian voters cast valid ballots for judicial candidates of their choosing, directly electing a slate of candidates that would constitute the most diverse national court in the history of the Western hemisphere (Driscoll & Nelson 2014, 2015).<sup>7</sup>

A close comparison of the process and outcome of the first two electoral contests reveals two commonalities between the 2011 and 2017 elections and one major difference. First, and as with the electoral process in 2011, the MAS exerted tight control over the candidate nomination process to ensure that every candidate on the ballot was acceptable to the ruling party. Consequentially, a number of jurists and magistrates who assumed their positions in 2018 have direct ties to the ruling party (“Exfuncionarios del Gobierno” 2018). Second, electoral reforms that restructured both the allocation of magistrate seats as well as the design of the ballots proved consequential for the election of both women and indigenous magistrates in the 2017 contest, leading to a reduction in the proportion of constitutional magistrates of women or minority descent. Third, the sole predictor of electoral success among the 2017 judicial candidates, and one of the strongest predictors in the 2011 contest, was their placement on the ballot, a position that was determined by a random

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ferred to in Bolivia as a “cuoteo” (Pérez-Liñán & Castagnola 2010; Driscoll & Nelson 2013).

<sup>7</sup>A bare plurality of voters (42.9%) cast null ballots, with another 14.9% voting with blank ballots.

process.

#### *A Procedural control of candidate selection*

Procedurally speaking, the electoral process of 2017 was in many ways similar to the judicial elections of 2011.<sup>8</sup> In both 2017 and 2011, the candidate pre-selection process was characterized as lacking in transparency and opposition involvement and was highly regulated by MAS party leaders. Though the MAS party leadership largely dismissed the opposition's recommendation to involve international observers in the candidate vetting process ("Gonzales cree" 2017; "Judiciales: Plantean" 2017), early outlines of the candidate pre-selection process formalized the involvement of civil society, inviting representatives from the national Executive Committee of Bolivian Universities (CEUB) to work in tandem with the ALP to vet and evaluate judicial candidates. Composed of academics and distinguished law professors, the representatives of the CEUB would be responsible for verifying the educational and professional experience of the candidates, as well as designing and grading a written exam that each candidate would be required to complete.<sup>9</sup> This effort to institutionalize impartiality and external review began to fray when the rector of the largest university in the country withdrew his institution's support from the CEUB's review panel, claiming that he could not in good conscience take actions that would make his institution "complicit in political manipulation" ("El MAS continuará" 2017; "UMSA denuncia" 2017).

In both elections, a more fundamental challenge in the candidate pre-selection process was simply the lack of candidates, a problem that was even more acute in light of the statutory requirements for the inclusion of women and indigenous candidates to appear on the ballots ("El registro ampliado" 2011; "Postulantes" 2017). Only two days before the official deadline for candidate registration with the ALP, only 23 (of a required minimum of 96) aspiring candidates had completed the paperwork, prompting the MAS party leaders to extend the deadline by another two weeks ("Asamblea debatirá" 2017). Ultimately, the paucity of female and indigenous candidates prompted the ALP leadership to both change the official electoral calendar, rescheduling the elections from October 22nd to December 3rd and to relax the interpretation of the gender and indigenous quota statutes to accommodate these legal requirements ("ALP sesiona" 2017). Rather than requiring 50% female and at least one indigenous candidate on each of the nine department ballots, (Law 960 of June 23rd, 2017) the ALP interpreted the gender and ethnic quota to apply to the candidate pool as a whole, irrespective of their geographic distribution. The MAS leadership, for their part, claimed that relaxing this requirement would allow the prioritization of meritocratic

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<sup>8</sup>For extended discussions of the 2011 contest, please see Driscoll & Nelson 2012, 2014 & 2015.

<sup>9</sup>In the phase of interviews and candidate selection, however, the academics would have no formalized voting weight in the final selection process (Layme 2017a).

considerations (“Legislativo buscará” 2017).

The candidate preselection process came to an end on August 31. In a session that lasted nearly 30 hours, the ALP approved the slate of judicial candidates on a strict party line vote. As with the candidate selection process in 2011, the decision as to which candidates would ultimately be approved was unilaterally determined by party leaders, with the names circulated to MAS backbenchers in advance of the legislative vote (“Masistas admiten” 2011; “Con “voto corporativo” 2017; Caravajal 2017). The opposition members of the legislature fully abstained from the vote on the nominees, using this marathon session to official kick off the campaign for the null vote in the general judicial elections. With the judicial candidates fully vetted by the ALP and finally approved, the general elections were set to commence.

There are several important takeaways from the candidate pre-selection process of 2017. As was the case in 2011, the opposition decried the process as lacking in transparency and opposition involvement. While some effort was made to institutionalize a role for oversight of the process by academics and experts, the credibility and sincerity of these efforts were also called into question (Layme 2017c; “UMSA denuncia” 2017). Nevertheless, the MAS’s supermajoritarian control of the bicameral ALP means the incumbent party was well within its constitutional rights to conduct the candidate vetting process without the opposition’s input. Second, though opponents criticized the MAS backbenchers for simply voting for the slate of candidates as they were approved by party leaders, the MAS party leaders are correct in their assertion that this is not outside of the norm (Caravajal 2017). Strict party line voting (owing to either discipline and/or cohesion) is the norm in contemporary Bolivian legislative politics, and is common in many countries whose legislators face electoral incentives to satisfy party leaders (Morgenstern 2004; Carey 2007).

Third, these two previous facts combine to inform our evaluation of the candidates who were ultimately selected by Bolivian voters in the December 2017 elections. Though wholly constitutional, and well within standard practice of contemporary Bolivian politics, the unilateral nomination of the judicial candidates by leaders of the ruling party suggests that all of these candidates were in a very critical sense the same from a partisan perspective. Though not all of the candidates had explicit ties to the current administration (c.f. “15 Tribunos” 2017), they were all, unanimously, and by a supermajority vote with no opposition support, selected by the ruling party alone.

### *B Electoral reforms and ballot design*

In the months leading up to the judicial elections, the MAS-controlled APL approved changes to the electoral laws that governed the pre-selection and election of the national judicial candidates. These reforms constitute a second explanatory factor for the outcome of the elections, and yielded fundamentally different outcomes in terms of descriptive representation of indigenous magistrates

elected to the court.<sup>10</sup>

[Table 1 about here.]

Table 1 summarizes the electoral rules and seat allocation to the Constitutional Tribunal in both 2017 and 2011. Several differences are readily apparent. One of the most significant changes was the expansion of the number of seats on the Tribunal from 7 to 9. Though candidates were selected via a single nationwide district in 2011, the 2017 contest allocated a single seat to each of the nation's nine subnational departments. This new geographic allocation required the APL to vet a total of 36 candidates, giving voters in each department a choice among four candidates. As before, candidates with the plurality of valid votes won the contest, and the runner-up was named an alternate judge who would be called to serve in the case of premature vacancy. A final important change concerned the application of the gender and ethnicity quota: the first revision to the electoral law (Law 929) required that each slate of departmental candidates be 50% female with at least one indigenous candidate per department. The subsequent transitory law (Law 960) relaxed this stipulation, reinterpreting the gender quota to require a 50% inclusion of female candidates overall with some unspecified level of inclusion of candidates of indigenous descent.

[Table 2 about here.]

Table 2 reports the outcome of the Plurinacional Constitutional Tribunal electoral contest in both 2011 and 2017, as reported by the official vote total of the OEP (December 18th, 2017). We report the proportion of the vote each candidate received both as a function of the total valid (not including null or blank ballots) and as a proportion of the total ballots cast (including null and blank ballots). The effect of the reallocation of seats from the nationwide district to the departments is clearly seen in the vote shares of the candidates across the two contests: the average vote share across the winning candidates in 2017 was 36.43%, a figure that is substantially higher than the vote share of candidates who were elected via nationwide district in 2011.<sup>11</sup> Whereas the very low vote shares are an oft-cited criticism of the sitting constitutional magistrates, especially in the wake of their controversial decision regarding reelection of elected officials, this simple reformation may stave off future criticism.

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<sup>10</sup>Law 929 of 27 of April made the most dramatic changes to the electoral code, which was further revised by Transitory Law 960 of 23 of June, 2017. The additional changes adopted in Law 960 were in response to the challenges in meeting the requirements with respect to gender and ethnicity set forth in previous electoral statutes.

<sup>11</sup>Titular magistrate Hurtado Zamorano stands out as an outlier in this respect, earning nearly 50% of the vote in the department of Beni. However one of the other candidates was ruled ineligible to stand for election by the OEP, which resulted in a three way race in this department.

A pronounced change between the 2011 and 2017 election was the decline in the representation of jurists from indigenous backgrounds: magistrates who self-identified as indigenous earned 42% (3/7) of the Tribunal’s seats in 2011, a proportion that declined to 1 in 9 in the 2017 election. There are two primary reasons for this decline. First, though the number of self-identified indigenous candidates remained constant across the two elections (7 self-identified indigenous candidates in either case), the extent to which those candidates openly advertised their indigenous identity varied between elections. In the 2011 contest, five of the seven indigenous candidates openly advertised their identity by their dress on the ballot—donning hats, scarves and jackets that would readily signal to the average Bolivian voter that the candidate identified with an indigenous community (Driscoll & Nelson 2015). In 2017, this was the case for only one of the candidates, and even then the signal took the form of an understated indigenous print on an otherwise conservative professional vest (Layme 2017d). As such, there were fewer candidates who would have appeared to be the logical choice for voters seeking to elect magistrates on the basis of that criteria.

Second, and more importantly, the redesign of the electoral law that allocated seats on the bench on the basis of department, meant that most indigenous voters did not have an indigenous candidate on their departmental ballots. The original text of Law 929 required the inclusion of indigenous candidates on every departmental ballot, a stipulation that was relaxed in subsequent statutes to accommodate the fact that the ALP lacked applications of indigenous candidates that also fulfilled traditional meritocratic requirements.<sup>12</sup> Of the nine departments, only three departmental ballots (Beni, Cochabamba and Potosí) included candidates who self-identified as indigenous, each of which contained more than one candidate of indigenous descent, meaning that the fragmentation of the indigenous vote across multiple candidates was a viable possibility.<sup>13</sup> The indigenous populations in these departments jointly constitutes about 41.3% of Bolivia’s indigenous population,<sup>14</sup>

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<sup>12</sup>Instead, the text governing the inclusion of indigenous candidates in Law 960, adopted into law on June 23, 2017, required the “inclusion of indigenous candidates,” though lacked any additional stipulations as to where those candidates must appear.

<sup>13</sup>We cannot know the extent to which the presence of multiple indigenous candidates split the effect of a large concentration of indigenous voters with the data we have. Lacking information on individuals’ vote, we are confined to make inferences based on aggregate data, a process with is plagued with the possibilities of incorrect ecological inference. Nevertheless, the outcomes are compelling. In Cochabamba, for example, self-identified indigenous candidate Jesús Victor Gonzales Milan (4) came in second place, while the self-identified indigenous and female candidate Maria Lourdes Bustamante Ramirez (2) came in last. We cannot know if candidates’ indigenous identification was a reason for voters to vote for particular candidates, but had the indigenous voters coordinated on a common candidate, electoral victory may have been within reach.

<sup>14</sup>Based on the 2001 population census (INE 2002), we recorded the proportion of the departmental population whose first language was an indigenous language other than Spanish, metrics that ought to provide a rough, though conservative estimate. The indigenous population constitutes approximately 7%, 50% and 66% of the departments of Beni, Cochabamba and Potosí,

meaning that a wide majority (58.7%) of indigenous Bolivians did not have the opportunity to elect an self-identified indigenous judge.

### *C Ballot Placement*

A third factor that proved decisive in explaining the outcome of both the 2011 and 2017 judicial elections is candidates' placement on the ballots. In their analysis of the 2011 Bolivia judicial elections outcomes, Driscoll & Nelson (2015) show that beyond voters and candidates' indigenous identities, candidates rank on ballot played a critical role in explaining candidates' relative vote-share. The effect of ballot placement in the 2011 contest was especially strong due to the very high number of candidates and a single nationwide ballot: a total of 28 judicial candidates were sorted via lottery into a single ranked column on the ballot. We evaluate in the next section the extent to which ballot placement, as opposed to other demographic or partisan characteristics, were consequential predictor of candidates' vote share in the 2017 contest.

## III UNDERSTANDING CANDIDATE SUCCESS IN THE 2017 ELECTIONS

Any candidate for political office brings with her a portfolio of characteristics, such as her formal qualifications, ideological proclivities, and unique life experiences. In any electoral contest where voters select among candidates, voters may weigh these considerations, though the importance to which voters ascribe any particular characteristic varies substantially across voters. For example, some voters might carefully scrutinize candidates' experience and professional qualifications, others may value a candidate's partisanship as an informative heuristic. Still other voters may select the candidates that share key identity traits, such as ethnicity or a candidate's gender.

At the same time, one of the most robust empirical findings in the study of political behavior is that many voters are ignorant to even the most basic facets of politics (Grönlund & Milner 2006; Gallego 2010). To overcome the shortcomings of incomplete information, voters rely on heuristics or informational shortcuts to simplify the political calculus of vote choice, such as partisanship, incumbency or candidates' ascriptive identities. Accordingly, the Bolivian judicial elections, with its tightly controlled informational environment, is an especially useful venue for understand how voters' decisions are made in the absence of information. We draw on previous research documenting candidate success in low-informational environments with special regard for the research on judicial elections (Baum 1987; Hall 2001; Hall & Bonneau 2006; Bonneau & Hall 2009; Rock & Baum 2010). Empirically, we analyze candidates' municipal-level vote share, which we explain as a function of candidates' ethnicity, gender, professional and political credentials, as well as the inferred identities and political affiliation of the voters in the municipalities. Though anyone might

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respectively.

intrinsically value descriptive representation, the desire for descriptive representation will likely be a deciding factor among populations which have been historically underrepresented on the bench. Thus, in order to understand candidates' success, we need to assess characteristics of both the slate of candidates and the electorate; to this end, in addition to analyzing the direct effects of candidate characteristics, we are also interested in the conditional effect that these characteristics have on voters that more or less 'reflect' the candidate in terms of demography or partisan affiliation.

A stated motivation for the adoption of the judicial elections was the need to diversify the judiciary to better reflect the plurinational character of Bolivian people, a priority that was reflected in the gender and ethnicity quotas that stipulated the inclusion of a diverse set of candidates in each electoral contest. In the context of the United States judicial elections, voters cite gender as an important factor in their decisionmaking calculus, and research has shown that support for black candidates declines heavily as the geographic concentration of a district becomes increasingly white (Hojnacki and Baum 1992; Lovrich, Sheldon & Wassman 1988). Given the stated priority of diversity promotion in the Bolivian case, along with previous research that suggests that candidates' ascriptive characteristics prove important determinants of candidates' success in other contexts, we anticipate that indigenous candidates may have benefited from their minority status in the 2017 Bolivian elections, but especially in municipalities with high concentration of indigenous voters.

Although the 2009 Bolivian Constitution formally prohibits all partisanship and political campaigning in the judicial elections (Article 181, section 9), in both 2011 and 2017 the news media publicized the connections of multiple candidates to the incumbent government, highlighting their past experiences as party organizers, legislative aides, legal advisors or low-level bureaucrats (*30 candidatos* 2011; "15 Tribunos" 2017). Indeed, the simple publicity and name recognition this type of coverage provided may be enough to increase the vote share of these known government affiliates, though particularly in districts where the MAS has been previously electorally successful (Baum 1987; Kam & Zechmeister 2012). Notably, in their study of the U.S. states, Rock & Baum (2010) demonstrate that the level of partisan voting increases linearly with voters' information about candidates, even in formally nonpartisan elections (Baum 1987).

Finally, existing research demonstrates that a candidate's formal qualifications affect their election outcomes; more educated and professionally experienced candidates out perform the competition on election day (Carson, Engstrom, & Roberts 2007; Stone et al. 2004). As judges are tasked with interpreting law, judging is distinguished from the work performed by executives or legislators for the legal knowledge, professional training and technical expertise required. While critics of judicial elections contend that voters lack requisite information regarding candidates' qualifications (Geyh 2003), the most comprehensive empirical analysis of judicial elections to date, Bonneau and Hall (2009; Hall & Bonneau 2006) find that state supreme courts incumbents' vote share is

inversely related to the professional qualifications of the challenger, suggesting voters do weigh the professional experience of judicial candidates when races are salient and information abundant.

We conduct an analysis similar to Driscoll & Nelson (2015), combining information on candidates' vote share in each municipality with aggregated information on municipalities' socio-demographic composition. To evaluate the effect of candidates' political and sociodemographic attributes, we coded a variety of candidate-level indicators from the information contained in the curriculum vitae of the candidates that were made available on the website of the ALP following the candidate selection process. We recorded candidates' gender (*Female*) and *Auto-identify Indigenous* with dichotomous variables. Additionally, we measured candidate qualifications in two ways. First, we aggregated information on candidates' educational achievements, including their undergraduate and graduate credentials and any specialized licenses, into a count variable that assesses each candidates' *Education*. Second, candidates were coded for either their previous experience as a national or departmental *Judge*. Finally, we classified candidates for their previous experience as a *Government Affiliate* if they had formally held a position in the executive branch, the ALP, or the Constitutional Assembly at any time since 2005. All of this information was taken from the curriculum vitae of the candidates that were published by the OEP, and would have been readily available to voters through the state-sponsored voter information campaign.

Beyond the correlation of candidates' attributes with their resulting vote share, we assess in the extent to which the possible demographics of the *voters* translated into the electoral success of some candidates over others. Accordingly, we combine our data on candidates' characteristics and municipal-level vote share with aggregate demographic information on the districts in which votes were cast. To measure the likely concentration of indigenous voters, we relied on a measure of *Proportion Indigenous*, which is the proportion of citizens above the age of four whose first language was something other than Spanish (i.e. Quechua, Aymara, Guaraní or other native) as reported by the national census of 2001.<sup>15</sup> The second district-level indicator we include, as a measure of district-level support for the government, is the *MAS party vote share* from the 2014 presidential elections. If it were the case that candidates' affiliation with the government was an electoral boon, we expect this to be especially so in districts with high concentrations of previous MAS voters.

[Table 3 about here.]

Table 3 reports the estimates of a hierarchical linear model of candidates' municipal level

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<sup>15</sup>Though dated, this is the best municipal level measure of the self-identified indigenous population available, as the 2012 census did not include respondents' ethnicity or language. This measure is continuous on the interval from zero to one, with a mean of just below .5; the data are bimodal at either end, meaning there are many districts with high concentration of indigenous peoples, and many districts with very low concentration thereof.

vote share as a function of candidates' demographic, political and professional characteristics, as well as some of the political and demographic information on the voters in the districts where these candidates' competed. Though not reported here, we include random intercepts for each candidate (N=36), to account for repeated observation of candidates across municipalities in the same department. The outcome variable, *Candidate Vote Share*, is roughly normally distributed between 0 and .8, with a mean of approximately .25 and a median slightly below that; the unit of analysis is the candidate–municipality.

[Figure 1 about here.]

Scanning down the list of coefficients, we find little systematic evidence that candidates' ascriptive, professional or political characteristics is systematically related to their electoral success. None of the baseline coefficients for our demographic (*Gender* and *Auto-ID Indigenous*) or professional indicators (*Government Affiliate*, *Educational Credentials* or *Judge*) are statistically significant, meaning we cannot reject the null hypothesis of no statistical association between the candidate characteristic and their vote share. Nor do the interaction terms, which pair candidates' characteristics to district composition, achieve statistical significance across the full range of the district-level variables, a fact confirmed by Figure 1. The lack of an association for both the professional credentials, as well as for the government affiliate may not come as any surprise: as was the case in 2011, this was an extremely low-information electoral environment, and it is likely that many voters simply did not have access to this information such that they might differentiate among candidates in this way (Driscoll & Nelson 2014).<sup>16</sup> By that same token, however, Driscoll & Nelson (2015) also report that indigenous voters appeared decisive in the election of indigenous candidates in the 2011 contest. In 2017, this same dynamic did not—and for the most part could not—hold.

A final take-away point from our hierarchical regression model concerns the effect of *Ballot Placement*. Driscoll & Nelson (2015) show that, beyond indigenous voters' likely votes for indigenous candidates, the single strongest predictor of candidates' vote share in the 2011 judicial elections was ballot placement: candidates close to the top of the ballot increased their vote share between 2 and 4 percent *across all districts*, when compared to those listed at the bottom of the ballot. In light of the fact that the ballot ordering was established via lottery, Driscoll & Nelson (2015) conclude that a random process, along with candidates' and voters' indigenous identification, was an important determinant of candidates' election in the 2011 elections.

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<sup>16</sup>Indeed, public opinion polls in the 9 departmental capitals in advance of the election suggested that 80% of respondents reported little knowledge of the candidates, with just as many suggesting they did not know for whom they would vote (“8 en cada 10” 2017). However, we note that studies of judicial elections in the United States have found a positive relationship between prior judicial experience and candidate success (Bonneau & Hall 2009; Hall & Bonneau 2006).

The ballot redesign implemented in advance of the 2017 elections greatly reduced the number of candidates voters had to consider. This new ballot may have been motivated to remedy the overwhelming influence of ballot order, though this fact was not cited as a primary motivation for the ballot design change. As we can see from Table 3, the redesigned ballot may have reduced, but did not completely eliminate, this effect. Though the OEP did not assign or publicize candidates' numbers in the 2017 election campaign, the candidates' placement was still determined by lottery ("OEP Sortea" 2017). Substantively, candidates who were listed in the bottom right quadrant of the ballot (position 4), earned on average 12% fewer votes than those positioned at the top-left position on the ballot (position 1), an enormous difference in light of the fact that the candidates won with only a plurality of the vote. As such, and as in 2011, beyond the influence the MAS was able to exert in the candidate selection process, the data generating process that distinguishes victorious candidates from those who did not win a seat was essentially random.

What can we make of an election where ballot ordering matters more than either candidate or constituency characteristics? It is important to consider these election results in concert with the process by which voters had the opportunity to cast their ballot, as well as in the context of the broader landscape of contemporary Bolivian politics. Recall that, unlike many other electoral contests worldwide, candidates were prescreened before they could appear on the ballot. The MAS's super-majoritarian control of the bicameral legislature, combined with a highly disciplined legislative delegation that approved of the nominees, enabled the MAS party leaders to select judicial candidates unilaterally, without consulting members of the opposition. As such, all candidates were minimally acceptable to the government party, irrespective of which candidates were chosen via popular election.

While this selection process clearly benefited the incumbent government, it carried with it other tangible political costs. Members of the traditional opposition vociferously campaigned in favor of the null vote, citing their exclusion and the procedural advantages of the MAS as evidence of a fundamentally undemocratic and illegitimate electoral process ("Declaración Conjunta" 2017a, 2017b). What is more, a broad majority of Bolivian voters—far beyond the 35-40% of the Bolivian electorate that routinely votes for opposition parties— cast their ballots as either blank or deliberately spoiled. In our next section we turn to the question of interpreting the blank and null ballots, to evaluate the extent to which voters blank and null voting was rooted in dissatisfaction with the current political regime. Yet as the ongoing discussion makes clear, the procedural realities that favored the MAS, combined with the overwhelming lack of information about the candidates ("8 en cada 10" 2017), implied that even those voters who cast a valid vote for a particular candidate were not—and in fact could not have been—heavily invested in the outcome.

#### IV VALID VOTES, NULL VOTES AND VOTES TO CHANGE THE STATUS QUO

[Figure 2 about here.]

That candidate success was not tied to candidate or constituency characteristics does not imply that voters made their decisions randomly. One of the most important outcomes of this election was the unprecedented number of deliberately spoiled ballots cast in this election: an absolute majority 50.9% with of Bolivian voters cast null ballots in the 2017 race for Plurinational Constitutional Tribunal, a figure that rises to 65.8% when combined ballots that were cast as blank. To help understand the historic nature of vote spoilage in this election, Figure 2 displays the distribution of valid, blank, and spoiled votes in recent Bolivian elections, including the 2009 adoption of the Bolivian constitution, the 2014 presidential election, and the 2011 judicial elections. Though the 2011 judicial elections also witnessed a very large number of blank and null ballots, the 2017 contest exceeded this level still. Moreover, the amount of vote spoilage is anomalous to judicial elections: neither the constitutional referenda nor the presidential elections witnessed such a massive amount of vote spoilage.

Why is this so? The political opposition campaigned explicitly for the null vote, and it is widely believed that the decision by the sitting justices of the TCP that cleared the way for President Morales to stand again for reelection in 2019 had a polarizing effect on public opinion (“OEA admite” 2017).<sup>17</sup> To evaluate the possibility that Bolivian voters’ perspectives on presidential reelection swayed their voting behavior in the judicial elections, we draw on analyses of two different sources of information. The first is an original public opinion survey fielded in the three weeks prior to the judicial elections, that queried voters support for government, ideology and vote intention.<sup>18</sup> Next, we consider data on the proportion of valid, blank and null votes cast at the municipal level, which we again pair with district-level characteristics. As such, we have information on a subset of Bolivians’ stated vote intention in advance of the TCP ruling and the judicial elections, as well as aggregate data on observed election returns.

The outcome variable from our individual level analysis is a multichotomous variable that

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<sup>17</sup>A nationally representative survey conducted by the news outlet *Página Siete* found that 75% of respondents were opposed to the proposition of presidential reelection without term limits, and 60% were opposed to the notion that it would be legal for the TCP to authorize President Morales to stand for reelection in 2019 (Layme 2017b). In our own data, roughly 60% of our respondents were against the proposition of presidential reelection, though our question referenced the decision of the TCP, which may have had some contamination effect.

<sup>18</sup>The survey consisted of face-to-face interviews based on a probability sample with random selection of households and respondents, with quotas for gender and age. The survey was conducted in the four largest urban areas of the country (cities of La Paz, El Alto, Cochabamba and Santa Cruz), in the three weeks prior to the judicial elections.<sup>19</sup> Fieldwork concluded on November 27th, such that all interviews were completed in advance of the ruling by the TCP.

queried respondents' vote intentions if the judicial elections were to be held in the same week as the interview. Respondents were given a choice of voting for a specific candidate, casting a blank ballot, a null ballot or abstaining altogether, with two additional categories for "Don't know" and "No response." The distribution of this variable is shown in Table 4. The results of our survey suggest that in the weeks prior to the election most respondents were either undecided or openly hostile: 31% of our sample reported their intention to cast a null ballot, while nearly as many (29%) suggested they had not yet decided how they planned to vote. Still, only roughly one-in-five respondents reported that they would cast a valid ballot for a candidate if the elections had been held at that time. In light of the fact that the political opposition was openly campaigning for the null vote, and other public opinion polls suggested that many had little knowledge of the judicial candidates ("8 en cada 10" 2017), we first evaluate the correlates of our respondents' stated vote intentions in a multivariate model.

[Table 4 about here.]

Table 5 displays the results of a multinomial logit regression on respondents' stated vote intention in the weeks leading up to the judicial elections. In light of the large proportion of declared "undecided" voters, we recoded the outcome variable such that the "Don't know" response is the baseline category, and evaluate a number of possible explanations for respondents' vote intention.<sup>20</sup> We include as explanatory covariates a dichotomous indicator of *MAS partisanship*, as well as respondents' opposition to President Morales' intention to stand for reelection in 2019 (*Oppose 2019 Candidacy*, a 7-point scale).<sup>21</sup> Whereas indigenous voters have constituted the backbone of the MAS's hegemonic electoral success since 2005, we include a measure of *Self-ID Indigenous* for all respondents who claim affiliation with one of the native tribes of Bolivia. To evaluate respondents' self-reported vote intention as a function of information or knowledge of the process, we include a 5-point scale of *News Frequency*, as well as an index of *Judicial Knowledge* and *Education* (a 10-point scale).<sup>22</sup> Finally, we control for *Income* (a 16-point scale) and gender (*Female*).

[Table 5 about here.]

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<sup>20</sup>We exclude from our analyses all respondents who planned to abstain, as well as non-respondents.

<sup>21</sup>The original word of the question asked the extent to which respondents supported President Morales' plans to stand for reelection, for the purposes of the analysis here we have inverted this 8-point scale such that higher values represent stronger opposition.

<sup>22</sup>To gauge respondents' knowledge of the judiciary and courts to which they would be electing judges, we included three separate questions about the courts and the judicial elections, respondents were scored a '1' for each question they answered correctly. We created a standardized scale of respondents' knowledge based on the number of questions they answered correctly.

We find some support for the hypothesis that citizens' support for the MAS and their opposition to President Morales' intention to stand for reelection fueled their intention to cast blank or deliberately spoiled ballots. *MAS supporters* were 17% less likely to report their intention to deliberately spoil their ballots in advance of the election, though they were no more or less likely to state their intention of voting for a candidate relative to reporting general uncertainty. The coefficients for *Opposition to 2019 Candidacy*, by contrast, are positive across all three outcome categories and statistically significant in the case of respondents' self-reported blank and null vote intentions. Relative to those respondents who reported uncertainty in their intended vote choice, for every unit increase in the *Opposition to 2019 Candidacy*, the likelihood that respondents planned to cast either a blank or null ballot increased by a factor of 1.16. Moving across the range of opposition, this effect corresponds to a 13% increase in the probability of self-reporting one's intention to deliberately invalidate her vote. Somewhat strikingly, this same pattern appears in the case of self-identified *Indigenous* respondents: though indigenous identity has long been a focal point around which the MAS has rallied a base of support (Zuazo 2009, 2010), the results of this analysis suggest that *Indigenous* respondents were actually 9% more likely to have planned to invalidate their ballot than non-indigenous respondents. This is consistent with accounts of the 2016 constitutional referendum (Driscoll 2017), that showed that the 'No' vote share in the constitutional referendum increased in municipalities with high concentrations of indigenous Bolivians.

There is mixed evidence with respect to the effect of various indicators related to access to information. The coefficient for *Judicial Knowledge* is positive and statistically significant predictor of casting a blank ballot, and respondents' with higher levels of *Education* were more likely to report plans to deliberately invalidate their ballots. These latter correlations are consistent with the work of Driscoll & Nelson (2014), who showed that null voting was more prevalent among higher educated Bolivians in the 2011 judicial election. However, taken with the lack of statistically significant relations between the other self-reported outcomes and across the other explanatory variables, we have only limited evidence to suggest that voters' decisions to cast a valid, blank or null ballot stemmed from informational considerations.

Before we turn to the aggregate analysis of the election returns, it is important to acknowledge some of the strengths and limitations of our individual level analysis. Most importantly, our survey was not a nationally representative sample and therefore cannot be generalized to the broader Bolivian population without caveat. The survey was also conducted in advance of both the decision of the TCP and the election itself, so it is likely that our results would be different had we queried respondents about vote after the decision about Morales' reelection prospects. Nevertheless, this provides a critical window into a subset of Bolivian voters, that allows us to evaluate the correlates of individuals' self-reported valid, as opposed to null vote participation in the 2017 judicial elections. Our multivariate analysis allows us to test multiple hypotheses simultaneously, and control

for possibly confounding correlations. All told, our analysis suggest that Bolivian voters’ decisions to cast a null or blank vote was rooted in part in their opposition to the prospect of presidential re-election, while even the presidents’ supporters were unwilling to definitively report their plan to cast a valid vote.

Turning now to the analysis of aggregate returns in the judicial elections, and following the landmark decision by the TCP, Table 6 shows three regressions of municipal level vote share of valid, blank and spoiled ballots, as reported on the website of the OEP (12/18/17). We include two predictors of previous support for President Morales and the MAS: the municipal level vote share for the MAS in the 2014 presidential elections, as well as the proportion of the municipal vote share that voted in favor of “No” in the 2016 constitutional referendum on perpetual reelection. To capture traditional bases of support for and opposition to the MAS, we include the *% Indigenous* as an indicator of the concentration of indigenous peoples, a dichotomous indicator for the presence of a *Mine*,<sup>23</sup> and an indicator for the eastern departments of the opposition-controlled *Media Luna*. Beyond these predictors, we include a variety of municipal-level indicators that might indicate the extent to which voters had access to information about the election (*% Urban*, *% Primary Education*, *% Homes with Television* and *% Homes with Internet*). Finally, *% Homes with Indoor Plumbing* is a proxy for the average socio-economic status in a given municipality.

[Table 6 about here.]

The results of the three linear regressions shown in Table 6 largely confirm the results of our pre-election survey, though they are distinct in several important ways. Most importantly, opposition to the prospect of President Morales’ candidacy, as given by the proportion of “No” vote in the 2016 Constitutional Referendum, is a statistically significant predictor of the distribution of the valid, blank and null vote in the 2017 judicial elections. Municipalities with higher concentrations of “No” votes in 2016 reported lower proportions of valid votes in 2017 and higher proportions of blank and deliberately nullified ballots. Additionally, whereas MAS supporters were less likely to report an intention to spoil their ballots in our survey, the concentration of pro-MAS/Morales vote in the 2014 election correlated positively with the proportion of blank votes in the 2017 judicial election. These trends comport with the results of the survey data we analyzed above.

Also mirroring the results of the survey data, we find evidence that a constituency that has been a long-time stalwart supporters of Morales and the MAS—indigenous voters—did not appear to support the party or president in ways they have in the past. The analysis demonstrates that

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<sup>23</sup>Miners have long been a pillar of the MAS political machine, though intra-party conflicts over the protected status of the miners status erupted in 2016 (Achtenberg 2016). We located the municipalities that are home to a major *Mine* using the 2013 Minerals Yearbook published by the U.S. Geological Survey.

municipalities with higher concentrations of indigenous voters also had smaller proportions of valid votes and higher proportions of blank ballots. Recall, as well, the results of the individual-level analysis: respondents' indigenous identity was a statistically significant predictor of their willingness to self-report a null vote. Taken together, these results suggest that indigenous voters' previous and repeated support for the MAS and President Morales did not necessarily translate in to a valid vote in the 2017 judicial elections. Instead, it appears these voters may have spoiled their ballots rather than support a candidate at the polls.<sup>24</sup> We discuss the implications of the eroding MAS base in the conclusion.

Though we found some mixed effect of the possible influence of information at the individual level, the results are more stark in the aggregate analysis. Both the *% Television* and the *% Internet* were negatively correlated with the proportion of valid ballots cast and positive predictors of either blank or null ballots. In the case of internet access, it seems that increased access to information helped to inform voters, was negatively correlated with the proportion of blank ballots in a municipality, though strongly positively correlated with the proportion of null votes. Moreover, increased access to information via the television was associated with an increase in the proportion of null votes and a decrease in the proportion of valid votes. Though both Television and the Internet would have been critical sources of access the state-run media campaign about the judicial candidates, we have little evidence to suggest that this translated in to higher proportions of valid votes.

## V A DIFFERENT CHRONICLE ABOUT POWER//UNA CRÓNICA DISTINTA SOBRE EL PODER

The ratification of the 2009 Bolivian Constitution signified a reconstitution of the Plurinational Bolivian state, one that would be more equitable, more inclusive, more formally incorporative of the long maligned indigenous majority, more overtly economically progressive than in the past (Van Cott 2000; Gargarella 2011; Wolff 2016). In their reimagination of the Bolivian political system, the constitutional assembly members envisioned a national court system that would reap tangible benefits from the direct election of magistrates. The electoral connection, prominent constitutionalists contended, would imbue the courts with the requisite legitimacy needed to ensure institutional effectiveness, and grant “the people” meaningful investment in a national court system that had long been foreign to the vast majority of Bolivians. With this enhanced legitimacy, the courts would become more powerful, less corrupt, more independent, more efficacious than the national courts of generations past.

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<sup>24</sup>Though Driscoll (2017) shows that the pro-MAS support declined considerably between the 2014 and 2016 elections in mining municipalities, our analysis here suggests that mining communities reported a slightly smaller proportion of the null vote when controlling for other demographic and political explanations, relative to other communities.

In reality, this reform has fallen short, as there is little evidence to suggest that the legitimation via the electoral connection corresponded to more judicial independence either in theory or in practice. In the United States, the introduction of judicial elections was associated with increased empowered judiciaries who were willing to check other branches of government who stepped out of constitutional boundaries (Shugerman 2010, 2012; Nelson 2014; Crabtree & Nelson 2018). In Bolivia, though the inaugural contest did result in the most diverse national judiciary in the country's history, the government's heavy-handed role proved to have a polarizing impact on the Bolivian public's evaluation of their national courts (Driscoll & Nelson 2015). Bolivian national judges and magistrates who have endeavored to rule against the government, have been met with impeachment and penal trials that, though within the bounds of the constitution, are nevertheless grounded in political motives and dubious legal foundations.<sup>25</sup> With this perilous reality in mind, it is perhaps no surprise that many magistrates and judges have appeared to be pliant servants of the incumbent government, clearing the way for the reelection of President Morales in both 2013 and 2017. We have argued and described the ways in which the second judicial elections unfolded in many ways similar to the 2011 contest. They were characterized by a closed and MAS-dominated candidate preselection process, and the strongest predictor in the 2017 elections was candidates placement on the ballot. Unfortunately, in a stark departure from the results of the 2011 elections, electoral reforms resulted in a noted decline in the descriptive representativeness of the Bolivian national courts. While the 2011 elections resulted in a dramatic increase in the representation of indigenous jurists and women, said advances have since reversed.

This is not to condemn the process as a fatal flaw unto itself, but rather to illuminate one example of challenges and contradictions endemic to one high-profile experiment in 'new' Latin American constitutionalism (Uprimny 2011; Gargarella 2011, 2016). To be clear, there is nothing intrinsically wrong with the direct election of national judges, nor is any of this the fault of the Bolivian voters who faithfully took to the polls to participate in any way they deemed appropriate. The highly centralized candidate selection process, and the MAS leadership's willingness to overtly politicize the courts, by contrast, lead us to believe that the situation would be largely the same, even if the procedures to select high court judges were different.

On a grander scale, the ascendancy of the null vote, the deliberate spoilage of ballots by 50.8% of Bolivian voters, represents the third time in the recent past where Bolivian voters have formally rebuked a MAS-sponsored project at the ballot box. The first judicial elections witnessed an absolute majority of blank and spoiled ballots (Driscoll & Nelson 2014), while the second judicial

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<sup>25</sup>Titular magistrates Cusi, Velásquez and Chánez were suspended for their decision to suspend the 2014 Notary Law, that sought to transfer notary fees from the judicial branch to the Ministry of Justice (Azcuí 2017; "Hay 84 procesos" 2017). Many other national judges elected in 2011 have been suspended or investigated for fraud, corruption or administrative malfeasance.

elections expanded that margin to more than 65%. These returns, interpreted in tandem with the outcome of the constitutional referendum of 2016 (Driscoll 2017), are evidence that despite the total control of the Bolivian state institutions, the MAS electoral hegemony is not impermeable. Indeed, these are three separate instances where a majority of Bolivian voters, including some constituencies that have been traditional supporters of the MAS, have set a clear signal about their dissatisfaction with the political status quo.

We must be guarded in our interpretation of both the “No” vote in 2016 and the null votes, so as to not construe them as a definitive foreshadowing of something to come. To do so would overstate the strength and coherency of the political opposition, and would grossly underestimate the political potential of President Morales and the MAS. Indeed, several facts weigh heavily in President Morales’ favor for future electoral contests. First, despite of the absolute majority of Bolivian voters voting against Presidential reelection in 2016 and cast null votes in the judicial election, the Bolivian opposition remains fragmented and organizationally feeble. Though united in their opposition to President Morales, they are divided on many other fronts, which has kept them from articulating a coherent policy alternative that resonates with a majority of Bolivian voters. What is more, 35-40% of the Bolivian electorate has voted for opposition parties in the recent political past,<sup>26</sup> yet this voting bloc has consistently split their votes across numerous candidates, whose organizations are often personalist machines, rather than vibrant political movements or grass-roots parties. Among the opposition leaders, there are few focal candidates as viable opponents to President Morales, though some rely on geographically concentrated bases of political support, while those with national reputations carry legitimately detrimental political baggage that President Morales and the MAS have readily exploited for electoral gain.

To this lack of a coherent alternative and lack of coordination among leaders of the opposition, the electoral rules that govern presidential election advantage President Morales. Though he has won recent national elections with more than 60% of the vote,<sup>27</sup> the Bolivian Constitution only requires that a candidate win 40% with a 10-point margin, or an absolute majority to avoid a second-round runoff election. This implies that not only must the opposition coordinate on a common candidate, but opposition leaders must resist all temptations to enter the race, which would siphon votes away from a focal alternative and split the opposition vote. Whether the myriad of opposition leaders—each with their own ambitions and reasons to self-promote—can credibly commit to stave off entering in the first round, remains the uphill battle on which their collective future depends.

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<sup>26</sup>Non-MAS candidates jointly earned 46.4% of the vote in 2005, 35.8% in 2009, and 38.7% of the vote in 2014.

<sup>27</sup>President Morales was elected with 53.7% of the vote in 2005, 64.2% of the vote in 2009 and 61.3% in 2014.

Ten years from now, the overwhelming proportion of blank and spoiled ballots in the 2017 judicial elections, along with the “No” vote in the constitutional referendum will either be cited as the beginning of a new page of Bolivian democracy, or a fleeting blip of voters’ discontent in an otherwise hegemonic rule of President Morales and the MAS. Whether this opening and political opportunity becomes a critical juncture, as opposed to a forgotten page in the annals of history in Bolivian democracy, remains to be seen.

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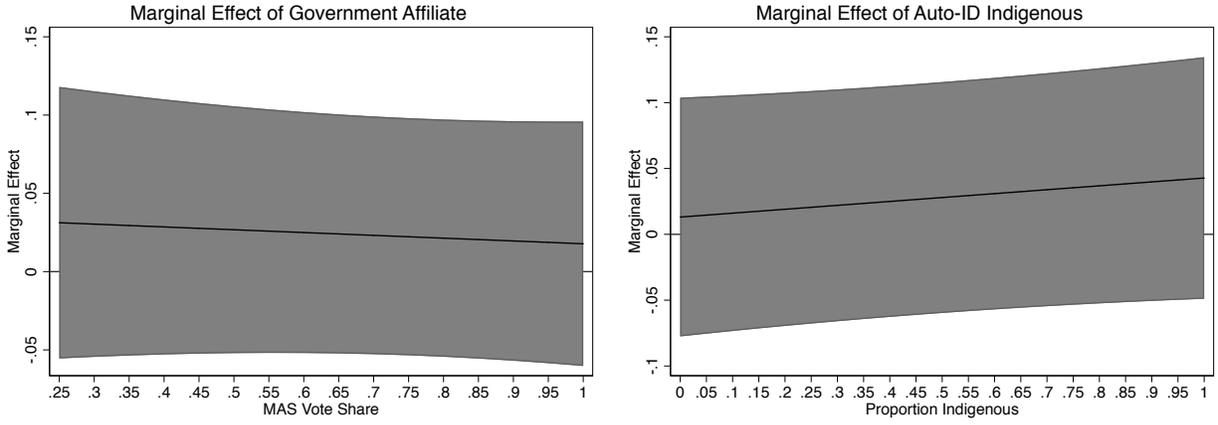
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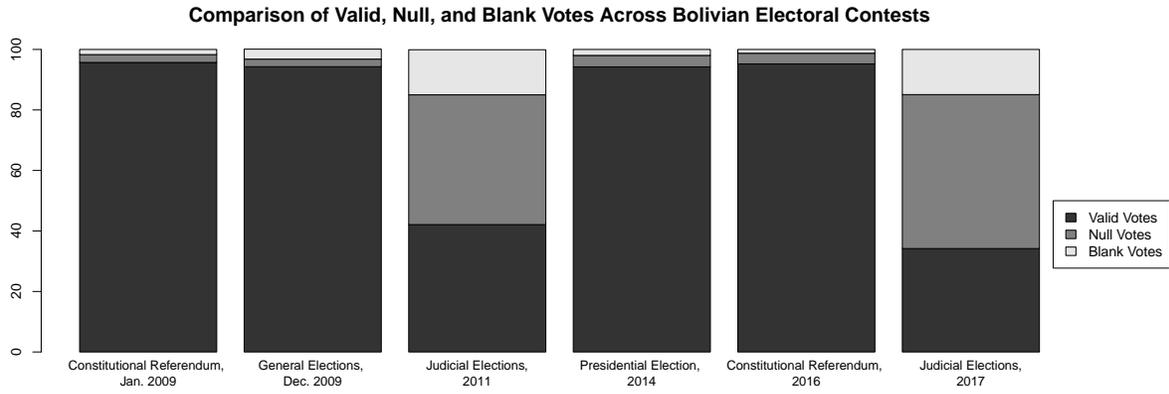
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**Figure 1:** The marginal effects of Government Affiliate (left-hand panel) and Auto-ID Indigenous (right-hand panel). Neither effect attains statistical significance for any value of the associated constituency characteristic. Outcome variable is municipal-level vote share per candidate taken from the website of the OEP (12/18/17), *MAS party vote share* from the 2014 presidential elections (Atlas 2017), *Proportion indigenous* taken from the 2001 population census (INE 2002).



**Figure 2:** Distribution of vote types in recent Bolivian elections (Atlas 2017).

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**Table 1:** Candidate Selection and Seat Allocation to the Plurinational Constitutional Tribunal, 2017 and 2011

Court	District	Candidacies	Seats	Votes	Seat Allocation	Gender/Ethnicity Quota
Plurinational Constitutional Tribunal 2017	Department level district	4 candidates per district, total of 36	9 magistrates & 9 alternates	Voters select one candidate from a 2x2 arrangement on departmental ballot, candidate placement determined by lottery	Top candidate with the highest number of valid votes per department named as magistrates, the second place winner selected as alternates	50% female of total preselected candidates, with some indigenous candidates
Plurinational Constitutional Tribunal 2011	Nationwide district	28 candidates	7 magistrates & 7 alternates	Voters select one candidate from full candidate list, order determined by lottery	Top 7 candidates with the highest number of valid votes named as magistrates, the following 7 selected as alternates	50% female candidates with at least 1 indigenous candidate per list

2017 election laws as described in Bolivia LEY No. 929 del 27 de Abril de 2017 and Bolivia LEY No. 960 del 23 de Junio de 2017, translations by the author. Election laws from 2011 as described in Driscoll & Nelson (2012).

**Table 2:** Results of the 2017 and 2011 elections of judicial authorities, Constitutional Magistrates

Titular Magistrate	% Valid Votes	% Total Votes	Indigenous	Gender	Known Gov't. Affiliate
<b>2017</b>					
Gonzalo Miguel Hurtado Zamorano	48.56	15.59	N	M	
Rene Yvan Espada Navia	39.34	17.23	N	M	
Karem Lorena Gallardo Sejas	38.34	15.15	N	F	
Georgina Amusquivar Moller	38.09	14.23	N	F	
Carlos Alberto Calderón Medrano	35.84	9.89	N	M	
Orlando Ceballos Acuña	34.19	11.87	N	M	Y
Petrolino Flores Condori	34.01	12.73	Y	M	Y
Julia Elizabeth Cornejo Gallardo	32.38	9.89	N	F	Y
Brigida Celia Vargas Barañado	27.19	9.57	N	F	Y
<b>2011</b>					
Gualberto Cusi Mamani	15.70	6.61	Y	M	Y
Efren Choque Capuma	10.57	4.45	Y	M	Y
Lígia Mónica Velásquez Castaños	7.26	3.06	N	F	Y
Mirtha Camacho Quiroga	5.95	2.50	N	F	
Ruddy José Flores Monterrey	5.77	2.43	N	M	Y
Neldy Virginia Andrade Martínez	5.25	2.21	N	F	
Soraida Rosaria Chanez Chire	5.08	2.14	Y	F	

Original compilation of the authors taken from election returns available on the OEP website (12/18/17). Outcomes of the 2011 judicial elections taken from Driscoll & Nelson (2012).

**Table 3:** Hierarchical Linear Model of Candidates' Municipal Level Vote Share

	<i>Dependent variable:</i> Candidate Vote Share
<b>Descriptive Representation</b>	
Auto-ID Indigenous Candidate	0.013 (0.046)
Proportion Indigenous	-0.009 (0.013)
Auto-ID Indigenous × Proportion Indigenous	0.030 (0.026)
Female Candidate	-0.028 (0.032)
<b>Political Representation</b>	
Government Affiliate	0.036 (0.050)
Government Vote Share (2014)	0.004 (0.025)
Government Affiliate × Government Voteshare	-0.018 (0.042)
<b>Qualifications</b>	
Candidate's Educational Credentials	0.000 (0.008)
Candidate Has Prior Judicial Experience	0.010 (0.038)
<b>Controls</b>	
Ballot Placement	-0.030** (0.014)
Constant	0.322*** (0.067)
Observations	1,303
Log Likelihood	1484.151
Akaike Inf. Crit.	-2942.302
Bayesian Inf. Crit.	-2875.060

*Note: This model includes random intercepts for each candidate.*      \*p<0.1; \*\*p<0.05; \*\*\*p<0.01

**Table 4:** Stated Vote Intention in 2017 Judicial Elections, Pre-election Survey

	<b>N</b>	<b>% Total</b>
Vote for a candidate	167	20.88
Cast a blank ballot	107	13.38
Cast a null ballot	247	30.88
Abstain	32	4.00
Don't know	229	28.62
No Response	18	2.24

**Table 5:** Multinomial logistic regression of self-reported vote intention in the 2017 Bolivian judicial elections. The baseline category in the model is “undecided.”

	(1) Valid Vote Intention	(2) Blank Vote Intention	(3) Null Vote Intention
<b>Political Explanations</b>			
Opposition to 2019 Candidacy	0.05 (0.05)	0.15* (0.06)	0.15** (0.05)
MAS supporter	0.20 (0.27)	-0.25 (0.35)	-0.82** (0.29)
Auto-ID Indigenous	0.13 (0.23)	0.28 (0.27)	0.52* (0.22)
<b>Informational Explanations</b>			
News Frequency	0.23 (0.12)	0.02 (0.13)	0.01 (0.10)
Judicial Knowledge	0.46 (0.41)	1.07* (0.46)	0.42 (0.37)
Education	-0.08 (0.06)	0.02 (0.07)	0.17** (0.05)
<b>Controls</b>			
Income	0.09* (0.04)	0.03 (0.05)	0.02 (0.04)
Female	-0.73** (0.23)	-0.22 (0.26)	-0.39 (0.21)
Constant	-0.45 (0.74)	-0.81 (0.81)	-0.22 (0.65)
Log Likelihood	-851.91		
N	678		

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

**Table 6:** Linear Regression Results for the Distribution of Valid, Blank and Spoiled Ballots in the 2017 Constitutional Tribunal Election.

	(1) Valid Vote share	(2) Blank Vote share	(3) Null Vote share
<b>Political Explanations</b>			
“No” vote share, 2016	-0.63*** (0.07)	0.13** (0.04)	0.49*** (0.05)
MAS vote share, 2014	-0.03 (0.07)	0.13** (0.04)	-0.10 (0.05)
% Indigenous	-0.06** (0.02)	0.05*** (0.01)	0.01 (0.02)
Mine	0.02 (0.02)	0.00 (0.01)	-0.02* (0.01)
Media Luna	-0.00 (0.01)	0.03*** (0.01)	-0.03* (0.01)
<b>Informational Explanations</b>			
% Education	0.08 (0.06)	-0.03 (0.04)	-0.04 (0.05)
% Homes Television	-0.07* (0.03)	-0.01 (0.02)	0.08** (0.03)
% Homes Internet	0.19 (0.18)	-0.47*** (0.11)	0.29* (0.14)
<b>Controls</b>			
% Urban	0.01 (0.02)	-0.02 (0.01)	0.00 (0.02)
% Indoor plumbing	-0.14*** (0.02)	0.02 (0.01)	0.12*** (0.02)
Constant	0.78*** (0.07)	0.05 (0.05)	0.17** (0.06)
AIC	-796.79	-1081.69	-948.34
N	314.00	314.00	314.00

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