

# Vote Buying in Brazil: From Impunity to Prosecution

Simeon Nichter\*

November 10, 2011

## Abstract

Politicians often buy votes with impunity. Despite formal laws against vote buying, Brazil rarely prosecuted politicians for this common practice. What explains a recent and dramatic shift? In the late 1990s, over one million Brazilians signed a petition against vote buying, leading to the country's first law by popular initiative (Law 9840). Under this law, nearly 700 politicians have been removed from office for vote buying. This study examines how *civil society* and the *judiciary* played an instrumental role in both enacting and implementing Law 9840.

---

\*Simeon Nichter is an Academy Scholar at the Harvard Academy for International and Area Studies, and an Assistant Professor of Political Science at the University of California, San Diego (commencing July 2012). This paper will be presented at a conference entitled "Ruling Politics: The Formal and Informal Foundations of Power in New Democracies," Harvard University, November 21-22, 2011. The author extends particular appreciation to the *Movimento de Combate à Corrupção Eleitoral*, as well as to Marlón Reis and Ameet Morjaria for insightful comments. He also expresses gratitude for support from the Harvard Academy; Center for Global Development; National Science Foundation; and Center on Democracy, Development, and the Rule of Law at Stanford University. Any errors or omissions are the responsibility of the author. Comments and suggestions would be appreciated (snichter@wcfia.harvard.edu).

# 1 Introduction

Clientelism is an informal institution that often lies in tension with formal rules (O’Donnell 1996: 35). This tension is perhaps most obvious with vote buying, a form of clientelism in which politicians exchange benefits for vote choices during campaigns. Because politicians must typically violate formal electoral rules to buy votes, the practice is what Helmke & Levitsky (2006: 15-16) call a “competing” informal institution. Attempts to curb vote buying are frequent across the world, but most yield limited results. One key reason is that reformers often face extraordinary political challenges when trying to modify electoral laws and heighten their enforcement (Hicken 2007: 145).

Given such challenges, Brazil’s recent progress in the fight against vote buying is nothing short of remarkable. Although formal laws in the country had prohibited vote buying for many decades, politicians engaged in the practice with impunity as prosecutions were rare. But in the late 1990s, popular pressure mounted against vote buying. Over one million Brazilians signed a petition against the practice, leading to the country’s first law by popular initiative (Law 9840 of 1999). This new law dramatically increased prosecutions for vote buying. Vote buying is now the top reason that politicians are removed from office in Brazil, with nearly 700 removals from 2000 to 2008.<sup>1</sup> Although vote buying is still prevalent in many regions of Brazil, politicians interviewed suggest that Law 9840 influences behavior by substantially increasing candidates’ risk of punishment.<sup>2</sup>

Why did Law 9840 — unlike prior electoral laws against vote buying — lead to real change? This study argues that the dramatic shift from impunity to prosecution hinged on key actions by both *civil society* and the *judiciary*. As we explore below, both actors helped to enact and implement Law 9840. Before turning to their roles, we first explore the broader context of clientelism in Brazil and present evidence about the impact of Law 9840.

---

<sup>1</sup>“Compra de Voto Ainda é o que Mais Cassa Políticos no Brasil,” *O Globo*, July 25, 2010; *Movimento de Combate à Corrupção Eleitoral*, 2009.

<sup>2</sup>Interviews conducted by author during 18 months of fieldwork. The appendix provides a detailed description of this fieldwork, which included 110 formal interviews (55 community members and 55 elites), 350 informal interviews, and five months of participant observation in a small rural municipality.

## 2 Clientelism in Brazil

Clientelism was traditionally the dominant form of electoral competition and political representation in Brazil (Hagopian 1996: 71-72), and continues to play an influential role in much of the country (Nichter 2010). Scholars have long examined various patterns of clientelism in the country, including dyadic patron-client relationships between landowners and rural peasants during the colonial era, the role of powerful *coroneis* (colonels) who delivered votes to regional politicians during the oligarchic Old Republic (1889-1930), and the continued influence of *cabos eleitorais* (local-level political brokers) during later periods (e.g., Leal 1975; Graham 1990; Hagopian 1996; Desposato 2001). Scholars have also analyzed numerous formal institutions in Brazil such as open-list proportional representation that provide incentives for clientelist behavior by politicians (e.g., Ames 1995, 2001; Mainwaring 1999; Samuels 1999).

This paper focuses on vote buying, a form of clientelism that occurs during electoral campaigns. More specifically, vote buying provides particularistic benefits during campaigns in direct exchange for vote choices.<sup>3</sup> Brazilian politicians often buy votes using food, clothing, building materials, healthcare benefits, money and other goods. In a recent national survey, over 13 percent of respondents admitted voting for candidate in exchange for a benefit.<sup>4</sup> Many studies on clientelism suggest its prevalence is heterogeneous across Brazil, with especially high rates in the poorer North and Northeast regions of the country (e.g., Wagley 1963, Leal 1975, Albuquerque & Werner 1985; Desposato 2001). Recent evidence confirms the existence of regional variation in vote buying, though some surveys also suggest high rates in the wealthier Center-West region.<sup>5</sup> During interviews in small communities in the

---

<sup>3</sup>Turnout buying, a form of clientelism in which politicians induce supporters to show up at the polls, is less common in Brazil due partly to stringent enforcement of compulsory voting (Gans-Morse, Mazucca & Nichter 2010). As one indication that citizens indeed consider voting as obligatory, consider that to avoid consequences for abstention when away from home, over 7.8 million voters traveled to specified locations to justify their absence in the 2008 election (TSE 2010).

<sup>4</sup>Survey conducted by research firm Datafolha in August 2009 included 2,133 respondents across 150 municipalities.

<sup>5</sup>A 2008 survey (N = 1,502) by the *Associação dos Magistrados Brasileiros* found that 30 percent of citizens are aware of politicians who buy votes, with higher rates in the North, Center-West and Northeast

Northeast state of Bahia, citizens often gave examples of vote buying during campaigns, and 87 percent (47 of 54 citizens responding) reported that the practice happens in their municipality.<sup>6</sup> Such regional variation notwithstanding, evidence suggests that politicians engage in vote buying in many areas of Brazil.

### 3 From Impunity to Prosecution

Although vote buying continues across Brazil, the threat of punishment has increased sharply over the past decade. This section explores reasons why politicians could previously buy votes with impunity, and then presents evidence of a dramatic shift to increased prosecution under Law 9840.

#### 3.1 Impunity Before Law 9840

Although formal rules against vote buying have long been on the books, until recently they were rarely enforced. When Getulio Vargas codified the electoral process soon after the Revolution of 1930, vote buying was explicitly prohibited. The first Electoral Code (Law 21076 of 1932) enacted a substantial punishment for this crime — from six months to two years in prison.<sup>7</sup> And the most recent Electoral Code of 1965 imposes an even more severe punishment: up to four years of imprisonment as well as fines. Rather than simply prohibiting the exchange of cash for vote choices, the laws covered a broad range of actions, even promises and refused offers. In particular, the 1965 Electoral Code proclaims that it is punishable by criminal law “to give, offer, promise, solicit or receive, for oneself or for another, money, gifts, or any other benefits, in order to obtain or give a vote, or to obtain

---

(39, 36 and 35 percent, respectively) than in the South and Southeast (25 and 26 percent, respectively). A 2010 survey by AmericasBarometer (N = 2,400) asked a more direct question, and found that 16 percent of respondents in Brazil were offered a material good in exchange for their votes. The highest rates receiving vote buying offers were in the North and Center-West (26 and 24 percent, respectively), compared to 14 percent in the Northeast and South regions, and 10 percent in the Southeast region.

<sup>6</sup>The appendix provides a detailed description of this fieldwork. During interviews, only 14 percent (7 of 51 citizens responding) reported that turnout buying occurs.

<sup>7</sup>Article 107/21 of the 1932 Electoral Code.

or promote abstention, even if the offer is not accepted.”<sup>8</sup>

Despite these strong words, prosecutions were rare. While legislation criminalized vote buying, the crime remained almost entirely unenforced (Câmara dos Deputados 1999; Comissão Brasileira de Justiça e Paz 2000: 13). Legal scholars concur that until recently, politicians rarely faced charges for vote buying and even fewer were successfully prosecuted.<sup>9</sup> One reason that so few politicians were successfully prosecuted involved delays and backlogs in the court system (Câmara dos Deputados 1999). As one of Brazil’s most influential judges explained with regards to vote buying before Law 9840: “the famous slowness of the judiciary ... facilitated impunity.”<sup>10</sup> Many observers consider the country’s judicial system to be highly inefficient, due to various factors such as procedural problems and resources constraints.<sup>11</sup> Furthermore, evidence suggests that inefficiency is particularly acute in the poorer North and Northeast regions (Yeung & Azevedo 2011: 8), where vote buying is most prevalent. This inefficiency contributes to a substantial backlog in cases, which in turn make it difficult to convict a politician before his or her mandate ends. According to the *Conselho Nacional de Justiça* (National Justice Council), across all levels of the judiciary, case backlogs in first-instance courts are the “main bottleneck.”<sup>12</sup> As a result, indicates Francisco Whitaker, a leader of the campaign against vote buying: “the slowness of the criminal process ... made it so that practically no one was convicted, and even less so before the end of the mandate obtained through any criminal practices.”<sup>13</sup>

If convicting politicians for vote buying was difficult, removing them from office was

---

<sup>8</sup>Article 299 of the 1965 Electoral Code.

<sup>9</sup>Interview by author conducted with Judge Marlon Reis, October 20, 2011.

<sup>10</sup>José Augusto Delgado, Ministro do STJ, “Reflexões Doutrinárias e Jurisprudenciais sobre o Artigo 41-A da Lei No. 9.504/97.” This justice serves on the *Superior Tribunal de Justiça* (STJ), Brazil’s highest appellate court for non-constitutional cases.

<sup>11</sup>For example, Federal Deputy Eduardo Paes argued during Law 9840 deliberations that the criminal system for prosecuting vote buying “has demonstrated itself as absolutely inefficient.”

<sup>12</sup>“Justiça em Numeros,” *Conselho Nacional de Justiça*, 2010, pg 14. A first-instance court has primary jurisdiction over a case (i.e., it considers a case first, rather than on appeal). In 2010, the average caseload of each first-instance judge was 5,423 lawsuits in 2010, considerably higher than in many other countries.

<sup>13</sup>Interview with Francisco Whitaker cited in “Projetos de Iniciativa Popular: a Cada Dez Anos, um Passo,” *Rede: Revista Institucional do Ministério Público do Estado de Minas Gerais* (Ano VI, Edição 18), August 2010.

even tougher. Convicted politicians would file so many appeals that they managed to finish their mandates (Reis 2006: 17). The proliferation of appeals slows down Brazil's overall judicial process (Yeung and Azevedo 2011: 2), not just vote-buying cases. Unlike many other countries, Brazil presumes that defendants are innocent until proven guilty *and* until all appeals have been exhausted. This unusual right, as well as various others regarding criminal proceedings, are enshrined in the 1988 Constitution. The motivations of this extended presumption of innocence stem partly from the many rights violations of the former military dictatorship, and as a result defendants are guaranteed many reasons to appeal.<sup>14</sup> An unintended consequence is that even the most obviously guilty defendants can remain free for many years by filing frivolous appeals. To illustrate how drawn out criminal cases can become due to appeals, consider a widely publicized case from São Paulo that does not involve clientelism. A prominent journalist was found guilty of murdering a coworker; many witnesses had testified that they saw him kill her, and the journalist even admitted his crime. Yet by filing appeal after appeal, he was able to delay entering prison for 11 years. When the Supreme Court finally sent him to prison earlier this year, a presiding justice even complained: "How is it justified that, for a crime committed in 2000, until now the accused doesn't serve the sentence?"<sup>15</sup> With respect to vote buying, such lengthy appeals delayed removals of those rare politicians who were actually convicted for the crime. This reality, combined with the paucity of prosecutions, meant that many politicians bought votes with impunity. As Federal Deputy Eduardo Paes argued during 1999 deliberations over the popular initiative, of all "criminalized behavior" in Brazil, vote buying was "one of the most practiced with almost no punishment."<sup>16</sup>

---

<sup>14</sup>Personal communication with Judge Marlon Reis, November 5, 2011.

<sup>15</sup>"Supremo Determina Prisão do Jornalista Pimenta Neves," Globo.com, May 24, 2011.

<sup>16</sup>Federal Deputy Eduardo Paes, Câmara dos Deputados, Sessão da Comissão de Constituição e Justiça de Redação, September 8, 1999.

## 3.2 Prosecutions After Law 9840

The masterstroke of the new legislation against vote buying (Law 9840) was to classify the practice as an *electoral infraction*. This step expedited the judicial process and allowed for the immediate removal of guilty politicians. Essentially, the law created an administrative sanction that could be pursued entirely separately from — and more expeditiously than — any criminal charges for vote buying (Reis 2006; Tozzi 2008: 43).<sup>17</sup> While more specifics are discussed below, we first present evidence that Law 9840 actually led to a substantial number of politician removals.

Since Law 9840 was enacted in 1999, nearly 700 politicians in Brazil have been removed from office for vote buying. As shown in Figure 1, these removals span Brazil. The vast majority of vote buying prosecutions involve municipal-level politicians. Whereas 667 mayors, vice-mayors, and city councilmen were removed from office during local elections (in 2000, 2004 and 2008), only 31 state and federal politicians were removed (in 2002 and 2006).<sup>18</sup> One reason for this distribution of figures is simply that local politicians constitute the vast majority of elected politicians in Brazil (currently over 5,500 mayors and 57,500 city councilmen). But beyond this obvious reason, citizens and politicians interviewed in Bahia also suggest that vote buying is more prevalent during municipal elections. Over two-thirds of local politicians removed from office are mayors and vice-mayors (who are removed together); the remainder are city councilman.<sup>19</sup>

Court records from Law 9840 prosecutions reveal a wide range of benefits used to buy votes, including food, clothing, building materials, money and other goods. For illustrative purposes, consider several examples involving healthcare benefits. In the Bahian municipality of Itambe, Eleuzete Lima Santos Rodrigues was found guilty of using medicines to buy

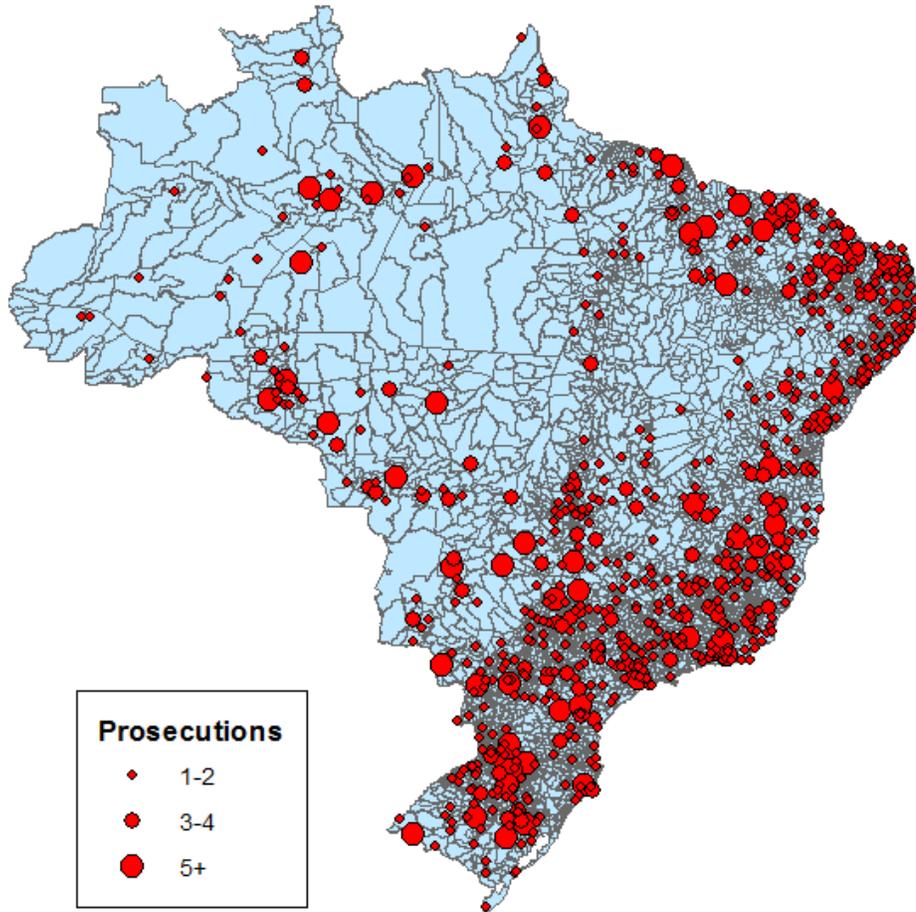
---

<sup>17</sup>Although not the focus of this paper, Law 9840 also prohibits incumbent candidates from using state resources as part of their campaign activities. This part of the law was not a major focus of the popular initiative.

<sup>18</sup>*Movimento de Combate à Corrupção Eleitoral*, 2007 and 2009.

<sup>19</sup>*Movimento de Combate à Corrupção Eleitoral*, 2009. For all positions in which candidates have a running mate, both politicians are removed jointly.

Figure 1: Politician Removals for Vote Buying in Brazil (2000-08)



*Source:* Author's analysis of data collected by *Movimento de Combate à Corrupção Eleitoral* (2009). Map indicates boundaries of municipalities. Dots reflect the location of first-instance electoral courts that issued at least one verdict to remove a politician from office for vote buying in municipal elections from 2000 to 2008. Size of dots represents the number of such removal verdicts issued.

votes during her city council campaign.<sup>20</sup> Authorities seized 124 boxes of medicines from her home, as well as numerous citizens' prescriptions and voter registration records. One witness testified that a municipal health office worker referred her to Rodrigues to obtain help in filling a prescription. Rodrigues agreed to supply the witness with three medicines (including Amoxicillin), but explained that she was running for office and thus wanted "a little support" (*uma forcinha*) in exchange. A similar vote-buying scandal resulted in the removal of the mayor and vice-mayor of Condado in the Northeast state of Paraíba.<sup>21</sup> Electoral authorities raided the mayor's house during the 2004 campaign and discovered sacks of pills that were proven to be distributed in exchange for votes. And in Cabedelo, another Paraíba municipality, a city councilman was removed from office for buying votes using dentures as payoffs. Lúcio José do Nascimento Araújo distributed signed vouchers for dental prostheses, which numerous citizens redeemed in exchange for their votes.<sup>22</sup>

The prevalence of such vote buying removals is increasing. Figures from local elections demonstrate an upward trend: 95 removals of politicians elected in 2000, 215 removals of politicians elected in 2004, and 357 removals of politicians elected in 2008.<sup>23</sup> One newspaper calculated that during the first few months after the 2008 election, a mayor was removed from office for vote buying every 16 hours.<sup>24</sup> And it should emphasized that these data only reflect guilty verdicts; of course, the number of vote buying charges that are filed is far greater. An analysis by the *Tribunal Superior Eleitoral* (Superior Electoral Court, or TSE) found that of 4,000 legal proceedings to remove local politicians during the 2008 elections, approximately 3,000 mentioned vote buying.<sup>25</sup>

As a direct consequence of all these removals, Law 9840 contributes to a "parallel electoral

---

<sup>20</sup>Information from this case provided by the state electoral court of Bahia (TRE-BA). Document Information: Acórdão Numero 3.198/2004 (01.12.2004), Processo 7.227.

<sup>21</sup>*Movimento de Combate à Corrupção Eleitoral*, 2009.

<sup>22</sup>*Movimento de Combate à Corrupção Eleitoral*, 2009.

<sup>23</sup>*Movimento de Combate à Corrupção Eleitoral*, 2009. Note that some politicians elected in 2008 may retain their posts upon appeal.

<sup>24</sup>"Um Prefeito é Cassado a Cada 16 Horas no País," *Globo*, May 5, 2009.

<sup>25</sup>"Um Prefeito é Cassado a Cada 16 Horas no País," *Globo*, May 5, 2009. TSE analysis conducted in December 2008 and based on 21 states, as five did not provide data.

calendar.”<sup>26</sup> When mayors are removed from office for vote buying, municipalities must hold new elections (with some exceptions).<sup>27</sup> During the 18 months following the 2008 election, 153 municipalities held new elections, many due to vote buying removals.<sup>28</sup> This represents five times the number of new elections held during the comparable period after the 2004 municipal election. The Northeast region had the highest number of new elections during this period (59 elections), and in the state of Piauí, the rate reached one new election per 12 municipalities.<sup>29</sup> In some cases, politicians who are found guilty of vote buying receive injunctions to remain in office pending an appeal, but as discussed below these are exceptions to the rule.<sup>30</sup>

The overall point is that whereas vote buying was rarely punished before Law 9840, this new legislation dramatically increased prosecutions and removals for the practice. We now examine factors contributing to the enactment of Law 9840.

## 4 Enactment of Law 9840

Given that many politicians bought votes with impunity for decades, what led to such a dramatic increase in prosecutions? As discussed below, one factor facilitating this shift was the ability to introduce legislation by popular initiative. Popular initiatives were a relatively new development, permitted for the first time in Brazil by the 1988 Constitution. But recent attempts at popular initiatives (focused on other causes) had failed to muster the required number of signatures, so enactment was by no means assured. And furthermore, there was no guarantee that any new legislation wouldn’t just sit on the books, as did previous laws against vote buying. This paper argues that key actions by civil society and the judiciary

---

<sup>26</sup>“Cassações de Prefeitos Fazem Brasil ter Mais Uma Eleição por Semana,” *UOL*, July 31, 2011.

<sup>27</sup>The primary exception is municipalities with over 200,000 voters, which have second-round elections if no candidate receives at least 50 percent of the vote. In such instances, a new election is not required as the runner-up in the second round replaces the removed politician.

<sup>28</sup>“Cassações de Prefeitos Fazem Brasil ter Mais Uma Eleição por Semana,” *UOL*, July 31, 2011.

<sup>29</sup>“Cassações de Prefeitos Fazem Brasil ter Mais Uma Eleição por Semana,” *UOL*, July 31, 2011. Piauí had 18 new elections in this period.

<sup>30</sup>Personal communication with Judge Marlon Reis, November 5, 2011.

played a central role in both the enactment and implementation of Law 9840. We now introduce the popular initiative process in Brazil, and then explore how a popular initiative — with the help of civil society and the judiciary — led to Law 9840.

## 4.1 Popular Initiatives in Brazil

The possibility of launching a popular initiative provided an important channel by which the public could influence legislation. Such channels were absent during much of Brazil’s political history, and the country embraced popular participation when it developed a new constitution after its 1985 return to democracy. Civil society groups played an important role through the Plenary for Popular Participation (Plenário Pró-Participação Popular) in the constituent assembly, and over 12 million signatures were collected to propose 122 popular amendments to the constitution (Versiani 2010: 239). In order to promote ongoing popular participation, the Constitution established popular initiatives as a way to put forth bills for voting by legislature. According to Article 61 of the 1988 Constitution, popular initiatives require signatures by at least one percent of the national electorate. To show that popular initiatives have a broad regional base of support, the Constitution also requires these signatures include at least 0.3 percent of the voters in five states.

Despite offering an institutionalized channel for popular pressure, the large number of signatures required (over one million registered voters) for a popular initiative presents a massive challenge. Several attempted popular initiatives had failed for this reason in the past, and an amendment had even been proposed to halve the required number of signatures (Reis 2006: 68). At the time, no attempted popular initiative had ever been successfully enacted into law.<sup>31</sup> Even today, 23 years after popular initiatives became possible in Brazil, only four laws have been achieved through this channel.<sup>32</sup> This fact makes it all the more remarkable that Law 9840 became the first legislation achieved through popular initiative (CBJP 2000:

---

<sup>31</sup>A popular initiative focused on housing for the poor did receive the requisite signatures and was put forth in 1991, but did not become law until 13 years later. See: “Ficha Limpa é o Quarto Projeto de Iniciativa Popular a Se Tornar Lei,” *Globo*, May 20, 2010.

<sup>32</sup>“Ficha Limpa é o Quarto Projeto de Iniciativa Popular a Se Tornar Lei,” *Globo*, May 20, 2010.

77; Reis 2006; MCCE 2010).<sup>33</sup> As Senator Lúcio Alcântar exclaimed in Congress: “It’s not easy to drum up a million signatures to present a bill!”<sup>34</sup> We now examine how civil society and the judiciary helped overcome the difficult challenges facing popular initiatives, thereby facilitating the enactment of Law 9840.<sup>35</sup>

## 4.2 Role of Civil Society

Civil society played a crucial role in spearheading the popular initiative against vote buying. Over the course of the 18-month campaign, more than 60 non-governmental organizations joined forces to collect enough signatures to put forward the popular initiative for voting by national congress. Gathering over one million signatures required substantial efforts. A religious non-governmental organization, the *Comissão Brasileira de Justiça e Paz* (Brazilian Commission on Justice and Peace, or CBJP), launched and coordinated these efforts. The CBJP was founded in 1967 as an extension of a Vatican effort to improve social justice and reduce poverty across the world.

As one of its periodic campaigns against problems facing Brazil, the CBJP initiated a working group against vote buying in February 1997 (Câmara dos Deputados 1999; CBJP 2000: 63). One of its primary conclusions was that inefficiency of the judicial system was a central reason that vote buying remained unpunished. The group believed that a popular initiative would be the most effective manner to promote meaningful change (CBJP 2000: 64). The CBJP soon presented its findings about vote buying to the general assembly of its influential sister organization, the *Conferência Nacional dos Bispos do Brasil* (National Conference of Brazilian Bishops, or CNBB).<sup>36</sup> The two organizations jointly conducted fur-

---

<sup>33</sup>Technically, the law was actually put forth as a bill by legislators, because there was insufficient time to validate all signatures to meet the deadline to be in effect by the 2000 election. Nevertheless, it is typically understood to be the first law by popular initiative. For example, see the title of a 1999 Câmara dos Deputados report listed in the bibliography.

<sup>34</sup>Senado Federal Sessão Ordinária, September 23, 1999.

<sup>35</sup>Other factors also contributed to the enactment. For example, the campaign benefited from a highly publicized scandal in which ambulance transport was used to buy votes in São Paulo. A city councilman had been indicted in 1992, and convicted in 1997, but had not yet been imprisoned (CBJP 2000: 69-70). A major television station, *Globo*, called for viewers to express their disgust by signing the vote buying initiative.

<sup>36</sup>As an indicator of the importance of these institutions to the popular initiative, the transcripts of

ther research and held public discussions about vote buying across Brazil over the next year (Câmara dos Deputados 1999). Lessons from these efforts informed the work of a task force that drafted the popular initiative (discussed below).

After drafting the popular initiative, the CBJP and CNBB began to collect signatures in May 1998 (CBJP 2000: 65). They initially recruited help from over 30 other civil society organizations, and over the next year more than 60 organizations lent support (Câmara dos Deputados 1999; CBJP 2000: 7, 66). The organizations engaged in a wide range of activities, including grassroots campaigning, holding collective news conferences, and issuing newsletters. Efforts especially ramped up during the 1998 national election campaign, employing a widely publicized slogan still used today: “a vote doesn’t have a price, it has consequences” (CBJP 2000: 67).

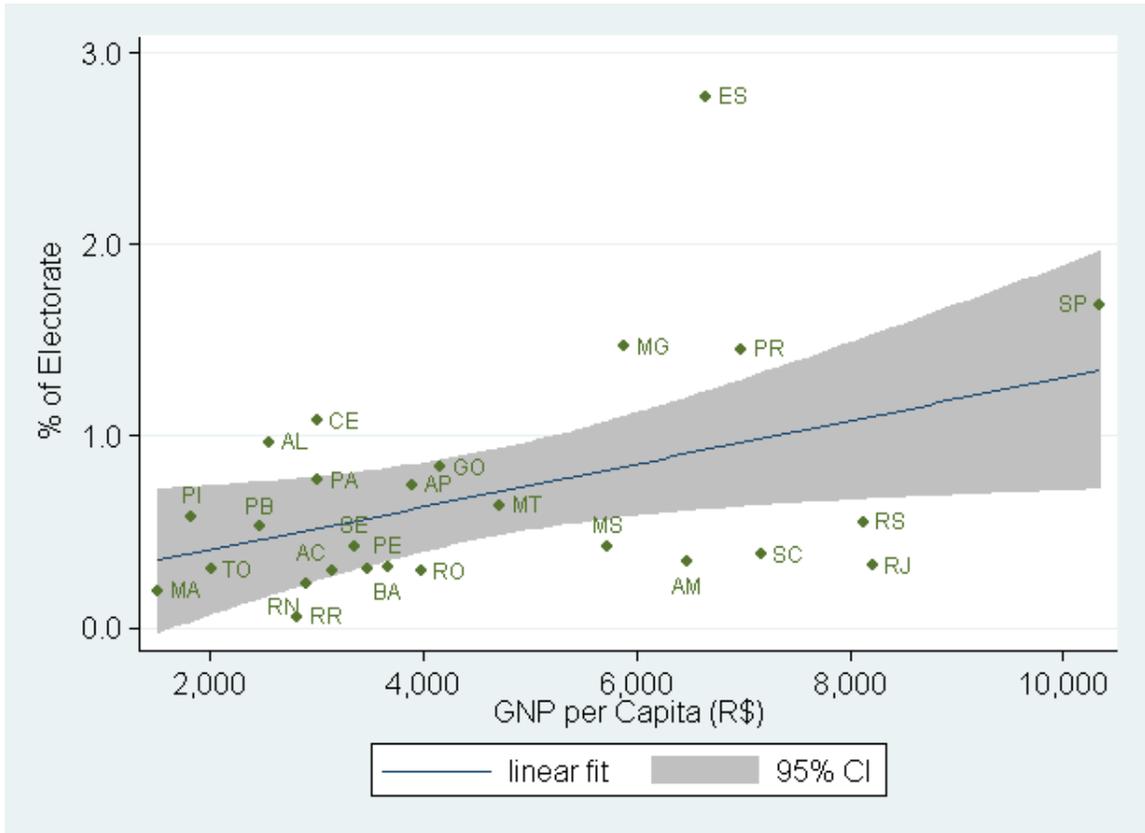
The civil society organizations aimed to submit the popular initiative to legislature by October 1, 1999. This timing would enable the vote buying law to take effect before the 2000 municipal elections (Câmara dos Deputados 1999; CBJP 2000: 67-68). But the collection of signatures was sluggish — only six months before this deadline, they had only obtained half of the required signatures (CBJP 2000: 68). The campaign faced numerous challenges. Many supportive citizens could not sign because they didn’t have their voting documents handy (voter ID numbers had to be included on the forms), and many others expressed disbelief that a popular initiative could have any impact on vote buying (CBJP 2000: 68, 73). By mid-August 1999, the campaign finally managed to gather the required signatures, and representatives from over 30 civil society organizations delivered truckloads of signature pages to the national congress (CBJP 2000: 73-74).

Although the civil society organizations gathered signatures against vote buying in all states, collection was uneven across Brazil. The organizations collected relatively more signatures in wealthier regions of the country. Nearly 77 percent of signatories live in the

---

the congressional deliberations over the popular initiative mentioned the CBJP 25 times (by name) and the better-known CNBB 101 times (by acronym). Calculated by author using transcripts in: Câmara dos Deputados (1999).

Figure 2: Signatures Against Vote Buying vs. State Income per Capita (1998)



Note: Author's analysis of data from *Movimento de Combate à Corrupção Eleitoral*, TSE and IPEA. Vertical axis represents number of signatories of Law 9840 petition divided by number of registered voters in 1998. Horizontal axis is 1998 GNP per capita in 2000 constant reais (when US\$1=R\$1.80). Each labeled point represents a state; excludes the federal district of Brasilia.

wealthier South and Southeast regions, which account for under 60 percent of voters.<sup>37</sup> By contrast, less than 17 percent of signatures were collected in the poorer North and Northeast regions, where 33 percent of voters reside. Combined with survey evidence reported above, these figures suggest that relatively more signatures were collected in areas with an overall lower prevalence of vote buying. Additional insight is provided by Figure 2, which suggests a positive association between state income levels and signatures collected (as a share of voters). Although this figure is suggestive, it does not control for other variables and the relationship is driven in large part by few states.<sup>38</sup> Nearly 69 percent of signatures were

<sup>37</sup>Calculations about signatories conducted by author based on data in Câmara dos Deputados (1999).

<sup>38</sup>The association remains significant when controlling for several socioeconomic variables, but degrees of freedom become an issue given the small number of states. A book manuscript in progress by the author

collected in four states with higher income levels: São Paulo, Minas Gerais, Paraná, and Espírito Santo. And furthermore, signatures against vote buying were particularly concentrated in just two of these states, São Paulo and Minas Gerais (with 55 percent of signatures, but only 33 percent of voters).

The reasons for this concentration of signatures are not fully understood. One possibility might be different attitudes toward vote buying (or at least toward signing petitions against vote buying) in poorer regions. But another reason, to be explored through further research, is that the greater institutional capacity of participating NGOs in certain states contributed to the concentration of signatures in those areas.<sup>39</sup>

To sum up, civil society played an integral role in spearheading the popular initiative against vote buying. The efforts of 60 civil society organizations, led by two closely associated religious organizations (CBJP and CNBB), facilitated the collection of over one million signatures. Indicative of this fundamental role is Law 9840's nickname — *Lei dos Bispos* — which translates to “Bishops’ Law.” This nickname was used during congressional deliberations about the popular initiative and remains in use today.<sup>40</sup>

### 4.3 Role of the Judiciary

The judiciary also collaborated with civil society organizations to help enact new legislation against vote buying. As this section examines, prominent members of the judiciary played a key role in crafting and supporting the popular initiative.

Before examining the role of the judiciary, it is important to underscore why its participation has been particularly important for the enactment as well as implementation of Law 9840. Unlike in many other countries, electoral governance in Brazil — including activities such as registering voters, applying rules, certifying results, and processing lawsuits — is highly centralized in the judicial branch of government (Marchetti 2008: 882-3). Its

---

includes an econometric analysis of micro-level data from another popular initiative in Brazil.

<sup>39</sup>Interview by author conducted with Judge Marlon Reis, October 20, 2011.

<sup>40</sup>For example, see comments by Senator Antonio Carlos Valadare in the Federal Senate on September 23, 1999, as well as a more recent use by Barros (2008: 86).

integration with the judiciary is so substantial that the electoral management body is even called the “Electoral Judiciary” (*Justiça Eleitoral*). As one indication of this integration, consider the leadership of the top electoral court (TSE) within the *Justiça Eleitoral*. The leadership of the TSE is composed of seven justices — of these, three are also justices on Brazil’s constitutional court (*Supremo Tribunal Federal*, or STF), and two others are also justices on Brazil’s highest appellate court for non-constitutional cases (*Superior Tribunal de Justiça*, or STJ). Other branches of government have a relatively minor role in electoral governance. For example, the executive appoints the two remaining justices, but from a narrow list provided by the constitutional court. In addition, Brazil is only one of four countries in Latin America in which the legislature plays no role in choosing leaders of the electoral management body (Marchetti 2008: 878).<sup>41</sup>

This integration has enabled the TSE to rule on electoral matters with a substantial level of authority. When issuing electoral rules, the TSE occasionally reinterprets the constitution, yet no TSE decision has ever been overturned by the country’s constitutional court (Marchetti 2008: 886). In addition, most observers view the TSE to be relatively well insulated from political influence. Various metrics, including the appointment and tenure of justices, also suggest the overall independence of electoral governance in Brazil (Hartlyn, McCoy & Mustillo 2008; Rosas 2010). Lower-level judges in the overall legal system, who also form the corps of first-instance electoral judges, are selected by rigorous competitive examination.

The role of the judiciary in electoral governance made this branch of government a valuable ally for civil society in the fight against vote buying. Civil society groups recruited the active participation of influential members of the judiciary in the popular initiative. In early 1998, when the CBJP formed a task force to draft the initiative, it brought in current and former leaders of the judiciary from across the country. A recent Attorney General of Brazil led the task force, and other members included a regional public prosecutor from Ceará and

---

<sup>41</sup>The cited study analyzed data from IDEA for 18 Latin American countries.

a former electoral judge from São Paulo (Câmara do Deputados 1999; CBJP 2000). These and other members' substantial judicial experience enabled them to find a way to circumvent the legal quagmire that had long faced vote buying prosecutions. Cognizant of the many convoluted obstacles facing criminal proceedings, the task force opted to establish a civil law against vote buying.<sup>42</sup> The sanctions imposed through Law 9840 — removal from office and fines — would not substitute for criminal charges. Instead, these penalties would be levied through a parallel, expedited process. In short, while vote buying continued to be crime, it also became a punishable electoral infraction. Building on this idea, the current and former members of the judiciary carefully drafted the popular initiative.

Early involvement of the judiciary not only yielded a clever workaround to a Byzantine criminal process, but also improved the technical accuracy of the popular initiative. In turn, this technical accuracy helped prevent the initiative from becoming bogged down by procedural issues upon reaching the legislature. The initiative quickly received approval of the constitutional committees of both chambers of Congress. For example, it was unanimously approved after just two hours of debate by the constitutional committee of the Chamber of Deputies (CBJP 2000: 75). The early involvement of senior members of the judiciary helped propel the project towards approval by both houses in just 35 days, one of the fastest deliberations in the history of Congress (Câmara dos Deputados 1999). As a point of comparison, a more recent popular initiative took approximately eight months to be approved by both houses, a pace that was “considered rapid.”<sup>43</sup> Of course, there were also other reasons for this quick turnaround, including the extent of popular pressure for the initiative, as well as an impending deadline for the law to take effect by the 2000 elections.

In addition to offering valuable expertise, the judiciary also provided direct public support on behalf of the campaign against vote buying. Particularly valuable to the effort was public

---

<sup>42</sup>There was already some precedent for this action. Article 222 of the 1965 Electoral Code includes vote buying in a list of prohibited activities (ranging from fraud to coercion) punishable by annulling the vote count. But the article was never once used to annul the vote count of a politician accused of vote buying. From personal communication with Judge Marlon Reis, November 5, 2011. See also Pinto (2008: 220).

<sup>43</sup>“Ficha Limpa é o Quarto Projeto de Iniciativa Popular a Se Tornar Lei,” *Globo*, May 20, 2010.

words of support provided by the TSE President (i.e., the head of the electoral governance body, who is also a justice in Brazil’s constitutional court). This support was prompted by a request from the CBJP and the Brazilian Order of Attorneys (*Ordem dos Advogados do Brasil*, or OAB), and helped to generate signatures and give additional legitimacy for the campaign (CBJP 2000: 67). For example, civil society organizations publicized the TSE President’s support during the first and second rounds of the 1998 presidential election. Other members of the judiciary also supported the campaign, though most not publicly. As Judge Marlon Reis, who later became a leader of the *Movimento de Combate à Corrupção Eleitoral* (Movement Against Electoral Corruption, or MCCE) explained: “I was rooting for the law to pass, because as an electoral judge who lived in a very small city in the interior of Maranhão, I witnessed these practices of clientelism and vote buying, and I imagined this could be an excellent idea to improve our democracy.”<sup>44</sup>

Overall, the efforts by the judiciary contributed to the campaign against vote buying, which was spearheaded by civil society organizations. Legislation emerging from the popular initiative was signed by President Fernando Henrique Cardoso, culminating in Law 9840’s formal enactment on September 28, 1999. But this enactment was only part of the battle. We now turn to factors contributing to the implementation of the law, which has already prosecuted nearly 700 politicians.

## 5 Implementation of Law 9840

The enactment of Law 9840 provided a valuable new tool to prosecute politicians for vote buying. Instead of relying only on criminal charges that involve many years of court proceedings, judges could now immediately remove politicians from office for committing an electoral infraction.<sup>45</sup> But various rules previously written into parchment had little impact

---

<sup>44</sup>“10 Anos: Lei 9840,” TSE Documentary, October 6, 2009; “Brasil Eleitor,” TSE Educational Video, October 4, 2009.

<sup>45</sup>As discussed above, the earlier criminal law continues to be in effect, in parallel with Law 9840 (Coneglian 2009: 233).

on vote buying. So the risk of continued impunity was high, despite the law’s enactment. As this section explores, both civil society and the judiciary continue to play a central role in the implementation of Law 9840.

## 5.1 Role of Civil Society

Civil society contributes substantially to the implementation of the new legislation against vote buying. Once the popular initiative became law, the CBJP and other civil society organizations wasted little time celebrating their considerable accomplishment. Far from it, they soon issued a report expressing strong concern that the law would fail to have an impact without the diligence of civil society (CBJP 2000). Particularly crucial tasks were gathering evidence against politicians and vigilant monitoring of local electoral courts to ensure that they prosecuted violators in accordance with the new law. To this end, the CBJP issued a detailed guidebook urging communities to form “9840 Committees.” By the 2002 national election, 130 committees against vote buying operated across 17 states, with approximately 1,600 people participating.<sup>46</sup> As shown in Figure 2, as of 2011 there are 311 committees, which operate in every Brazilian state.<sup>47</sup>

To provide additional insight about the role of civil society in implementing Law 9840, consider a report issued by a committee in Natal just after the 2000 election.<sup>48</sup> Members of an NGO entitled the *Movimento Humanidade Nova* (New Humanity Movement) learned about the new law and decided to form a 9840 Committee about three months before the election. Given the religious origins of Law 9840, they first sought the blessing of the nearest Archbishop, who offered support of the local church. The founders held a planning meeting and were joined by members of the Archdiocese, the *Ordem dos Advogados do Brasil* (Brazilian Order of Attorneys, or OAB), the *Ministério Público* (District Attorney’s office), unions

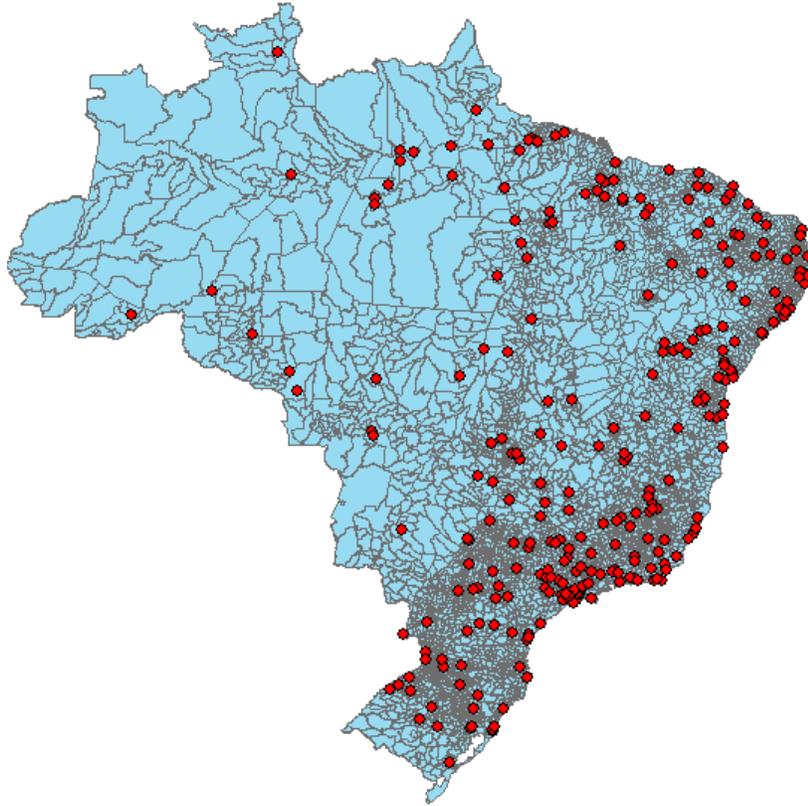
---

<sup>46</sup>Combate á Corrupção Eleitoral: Uma Experiência de Mobilização Social, Presentation by *Movimento de Combate á Corrupção Eleitoral*, 2007.

<sup>47</sup>*Movimento de Combate á Corrupção Eleitoral*, 2011.

<sup>48</sup>Comitê 9840 Relatório, Comissão Executiva, Natal (RN), October 2000. Natal is the capital of Rio Grande do Norte, a state in the Northeast region.

Figure 3: Committees Against Vote Buying in Brazil (2011)



*Source:* Author's analysis of data collected by the *Movimento de Combate à Corrupção Eleitoral (2011)*. Map indicates boundaries of municipalities. Each dot represents the presence of 9840 Committee in 2011.

and the press. Over the next few months, the 9840 Committee conducted panel presentations, public discussions and press interviews. They formed a vote buying hotline at the OAB offices, which received over 200 calls — many which gave specific details about where politicians were buying votes. Half of the calls flooded the hotline on Election Day. The committee indicated that it could only investigate a small fraction of the calls, due in part to insufficient assistance from the police and the District Attorney's office. While the activities of each 9840 Committee are likely quite different, this example provides insight about how civil society helps to implement the vote buying law. As a local newspaper (*Jornal Diário de Natal*) suggested, this particular 9840 Committee is “a promising seed in the area of true citizenship ... organized society can apply pressure so that laws are obeyed.”

In recent years, many 9840 Committees have expanded their activities to cover more than just vote buying. For example, in the municipality of Imperatriz (in Maranhão state), the 9840 Committee has partnered with two government organizations (*Controladoria Geral da União* and *Tribunal de Contas da União*) to provide training to voters on monitoring public expenditures. This committee also gathered about 30,000 signatures for a recent popular initiative against corruption (*Ficha Limpa*) – approximately 20 percent of the municipality’s population.<sup>49</sup> As the head of the 9840 Committee explained, “Practically all of the most important entities like the National Conference of Brazilian Bishops, the Brazilian Order of Attorneys, and the principal local NGOs participate in the committee. We have, traditionally, a high level of insertion into society.” In one interesting development, a 9840 Committee in Paraíba was formed in 2005 not by civil society, but instead by 22 public entities. The committee is used to combat vote buying as well as to coordinate activities in the broader fight against corruption.<sup>50</sup>

Just as the 9840 Committees’ range of activities is expanding, so too are their geographic reach. As mentioned above, the number of committees has mushroomed to 311 over the past decade. Particularly intriguing is the geographic distribution of these committees. Recall that analyses above suggest that 9840 signatures were disproportionately collected in wealthier regions. In sharp contrast, there are relatively more 9840 Committees in *poorer* regions. Nearly 45 percent of committees are in the poorer North and Northeast regions, where 33 percent of voters reside.<sup>51</sup> Additional insight is provided by Figure 3, which suggests a negative association between state income levels and 9840 Committees (per million voters). Relative to the size of the electorate, committees are more prevalent in poorer states, in particular those in the North and Northeast regions of the country. Although this figure is suggestive, it does not control for other variables.<sup>52</sup> As with the concentration of

---

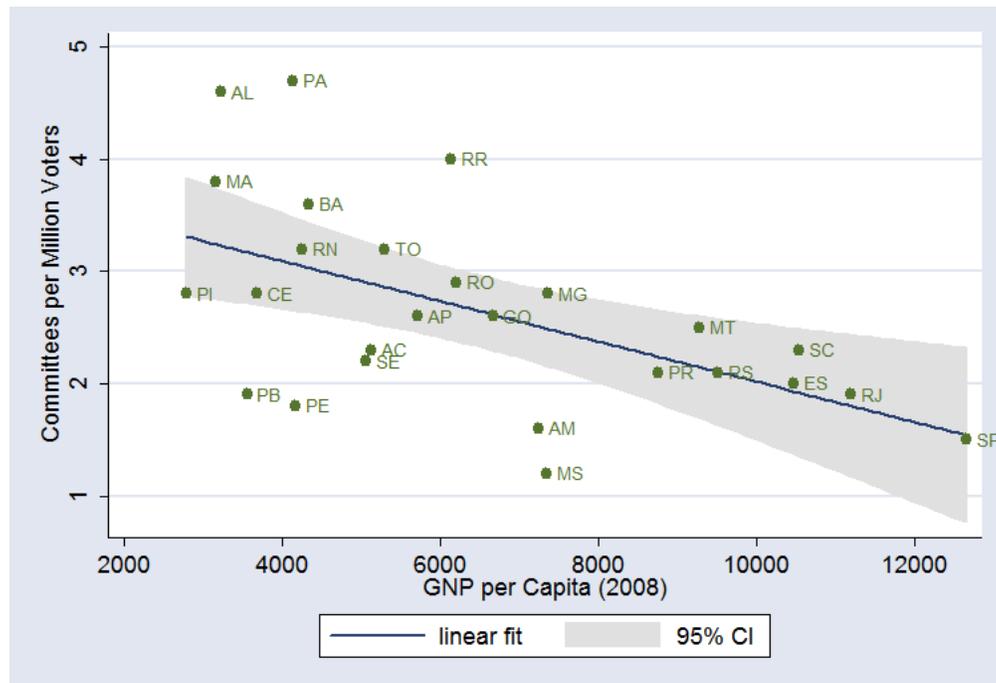
<sup>49</sup>“Eleitores Podem Montar Comitês para Fiscalizar e Denunciar Irregularidades,” *Estadão*, April 30, 2010.

<sup>50</sup>“Eleitores Podem Montar Comitês para Fiscalizar e Denunciar Irregularidades,” *Estadão*, April 30, 2010.

<sup>51</sup>Approximately 49 percent of committees are in the wealthier South and Southeast regions, which account for 60 percent of voters. The remainder are in the Center-West region.

<sup>52</sup>The association remains significant when controlling for several socioeconomic variables, but degrees of freedom become an issue given the small number of states.

Figure 4: Committees Against Vote Buying vs. State Income per Capita (2008)



Note: Data from *Movimento de Combate à Corrupção Eleitoral*, TSE and IPEA. Vertical axis represents number of 9840 Committees divided by registered voters in 2008. Horizontal axis is 2008 GNP per capita in 2000 constant reais (when US\$1=R\$1.80). Excludes the federal district of Brasilia.

signatures, the reasons for the geographical distribution of 9840 Committees are not yet fully understood. One plausible explanation involves the higher prevalence of vote buying in the poorer North and Northeast regions of the country, as suggested by survey evidence above. Further research will explore such hypotheses.

For a book manuscript in progress, I am currently conducting econometric analyses of vote buying prosecutions in Brazil.<sup>53</sup> Preliminary findings point to the role of civil society. For example, specifications suggest that removals of politicians for vote buying are significantly more likely in locations with a diocese or archdioceses (not shown).<sup>54</sup> On the other hand, prosecutions in locations with a diocese or archdioceses are *not* more likely to be overturned upon appeal in higher courts. In other words, “Bishops’ Law” (Law 9840) appears to be

<sup>53</sup> “The Politics of Vote Buying: Brazil in Comparative Perspective,” Book Manuscript in Progress.

<sup>54</sup> In addition, removals of politicians for vote buying are significantly more likely in localities that currently have a 9840 Committee. However, given endogeneity concerns, I am obtaining data on when each 9840 Committee was formed. Diocese and archdiocese locations are for the most part constant during the period analyzed.

enforced more rigorously in localities where bishops are seated, and these removals are no more likely to be overturned than those elsewhere. Both findings are robust to the inclusion of various socioeconomic controls and state fixed effects.

Taken together, the evidence about 9840 Committees suggests that civil society plays a key role in implementing the new legislation against vote buying. As Judge Marlon Reis explains, with Law 9840 “there wasn’t only the introduction of a new electoral rule. More than this, the decisive factor for applying the law was social mobilization behind it.”<sup>55</sup> This social mobilization coordinates the participation of citizens, who are often credited with increasing the number of vote buying prosecutions. This sentiment is clearly expressed by Paulo Brêda, president of an OAB commission on vote buying: “The population started to make more accusations. With more accusations, there are more legal proceedings, more judgments, and more removals.”<sup>56</sup> Having emphasized the central role of civil society, we now explore the role of the judiciary in implementing Law 9840.

## 5.2 Role of the Judiciary

The judiciary also plays a decisive role in implementing Law 9840. Even if civil society pressures electoral courts to hear vote buying cases, the outcome of these cases lies in the hands of the courts. When drafting any law, it is difficult to stipulate every possible contingency, so judicial interpretation is crucial. If electoral courts had wanted to water down the effects of Law 9840, they could have narrowly interpreted the law to restrict instances in which politicians could be removed for vote buying. But as this section explores, courts have done precisely the opposite.

The new legislation was viewed as an excellent tool that the judiciary — through its electoral governance body (*Justiça Eleitoral*) — could use to help achieve its mandate of holding free and fair elections. As one judge explains: “Until the advent of Law 9840 ... the *Justiça Eleitoral* was responsible for a mission that it couldn’t achieve” (Reis 2006:

---

<sup>55</sup>Personal communication with Judge Marlon Reis, November 5, 2011.

<sup>56</sup>“Cassações de Prefeitos Fazem Brasil ter Mais Uma Eleição por Semana,” *UOL*, July 31, 2011.

49). To make use of this new tool, the electoral courts interpreted Law 9840 to make sure that vote buying was rigorously punished. Indeed, the TSE recently issued a press release emphasizing that after the enactment of the vote buying law, it “started to significantly modify its jurisprudence about the subject” in order to “guarantee the effectiveness of Law 9840.”<sup>57</sup> In turn, the rigorous application of Law 9840 has contributed to increased removals of politicians for vote buying.

Soon after the enactment of Law 9840, the judiciary removed a major obstacle to its implementation: challenges to its constitutionality. Lawyers representing removed politicians argued that the law was unconstitutional for several reasons, most prominently by claiming that the removal of politicians creates a new criterion by which politicians are ineligible for office (Reis 2006: 45-47). Brazil only permits such criteria to be introduced by constitutional amendments, yet Law 9840 was merely an ordinary law. This argument is far from specious; to this day, a vigorous debate continues among legal scholars about Law 9840’s constitutionality (e.g., Coneglian 2009: 236; Pinto 2008: 219-220 Telles 2009: 93). But the TSE short-circuited the impact of such debates, issuing a clear directive on this matter from the start. The highest electoral court has ruled that Law 9840 is constitutional, because it only creates an administrative penalty for an electoral infraction, rather than introducing a new ineligibility criterion (Reis 2006: 51; Saneverino 2008: 205). The technicalities of jurisprudence aside, the key takeaway is that the TSE has ruled to uphold the vote-buying law where it quite plausibly could have chosen to do the reverse.

Beyond the fundamental issue of constitutionality, the judiciary has also interpreted various aspects of Law 9840 in a manner that facilitates the removal of politicians for vote buying. For example, the TSE interprets the law as prohibiting vote buying regardless of whether it has an effect on the election outcome. In fact, TSE jurisprudence indicates that any vote buying at all is sufficient to remove a politician from office (Medina 2004: 113;

---

<sup>57</sup> “Atuação da Justiça Eleitoral Fortaleceu Jurisprudência nos Casos de Compra de Votos,” Tribunal Superior Eleitoral, September 28, 2009. This press release was issued along with a documentary and educational video in recognition of the tenth anniversary of Law 9840.

Reis 2006: 63). As TSE Justice José Delgado explains, “If the purchase of one vote is proven, this is already a reason for removal.”<sup>58</sup> This interpretation stems from the landmark “Caixa d’Água” case in Jussiape (Bahia), in which a mayoral candidate gave a water tank to a voter. Upon winning the election, he took back the tank because he suspected that the citizen didn’t vote for him. The case led the TSE to “change its jurisprudence” and remove the mayor, even though there was evidence of only one vote buying incident, which had no impact on the election.<sup>59</sup> Its reasoning is partially based on a “tip of the iceberg” principle, in that one purchased vote is likely indicative of numerous infractions (Reis 2006: 63). The dissemination of this TSE jurisprudence was vital to increasing the number of vote buying prosecutions. As Francisco Whitaker, a leader of the 9840 movement, explained, “At first, many complaints were disregarded by the courts, because it wasn’t understood that buying one vote was enough to remove a politician.”<sup>60</sup> Through its influence on lower-level judgments, the TSE interpretation increased vote buying removals.

The implementation of Law 9840 has also been strengthened by jurisprudence regarding vote buying through intermediaries. In many cases, politicians do not themselves deliver particularistic benefits to voters during elections, but instead have campaign workers perform this task (Reis 2006: 64-67). In order for the law to have a real impact on vote buying, indirect vote buying also needed to be prohibited. Although the submitted draft of the popular initiative included a clause specifically prohibiting indirect vote buying, legislators argued vehemently to remove it.<sup>61</sup> For instance, some legislators thought it would be possible for competitors to implant moles into their campaigns who might frame them for vote buying (CBJP 2000: 22). As a result, Law 9840 includes no mention of indirect vote buying. This omission initially restricted the scope of activities covered by the law (Costa 2009: 212).

---

<sup>58</sup> “Políticos na Guilhotina,” *Istoé*, February 2, 2008.

<sup>59</sup> “Atuação da Justiça Eleitoral Fortaleceu Jurisprudência nos Casos de Compra de Votos.” Tribunal Superior Eleitoral, September 28, 2009. For further discussion of this case, see Reis (2006: 63) and “10 Anos: Lei 9840,” TSE Documentary, October 6, 2009.

<sup>60</sup> “Um Prefeito é Cassado a Cada 16 Horas no País,” *Globo*, May 5, 2009.

<sup>61</sup> See, for example, speeches by Federal Deputies Zenaldo Coutinho and Bispo Rodrigues in the Câmara dos Deputados, Sessão da Comissão de Constituição e Justiça de Redação, September 8, 1999.

When the law was first implemented, the TSE interpreted this law as requiring the politician to be directly involved in vote buying (Reis 2006: 57). But TSE jurisprudence eventually evolved to include indirect vote buying (Reis 2006: 57; Costa 2009: 212). According to current TSE rulings, a politician can be removed for any vote buying practiced by her campaign, as long as she was aware of the activity and did not stop it (Costa 2009: 213; Sanseverino 2008: 209). For instance, in early 2010 the TSE upheld the removal of the mayor of Cunha Porã, a municipality in the southern state of Santa Catarina. Although the mayor did not personally buy votes during his campaign, his operatives distributed vouchers for use in a supermarket in which he had an ownership stake.<sup>62</sup> Overall, the judiciary strengthened the implementation of Law 9840 by prohibiting vote buying through intermediaries.

Another way in which the judiciary has increased removals for vote buying is by allowing a relatively broad range of evidence to be deemed sufficient for proving guilt. Politicians do not need to be caught red-handed by authorities. For example, as long as the recipient of a vote-buying offer consents, she is permitted to submit videotapes or audiotapes of such transactions as evidence (MCCE 2006: 32). But only a minority of cases involves such evidence. Eyewitness testimony is the most common form of evidence in vote buying cases, and is often sufficient for prosecution (Cureau 2010; MCCE 2006: 32). A common chain of events is that a losing candidate files a complaint, including depositions from one or two citizens who claim that the elected politician bought their votes (Cureau 2010). Eyewitness testimony is considered more convincing by electoral courts if there are multiple witnesses with no personal connection to other politicians (Cureau 2010). Although TSE jurisprudence indicates that a *single* witness alone is not enough to remove a politician, in one case a witness's account accompanied with handwriting analysis proved sufficient (Cureau 2010).<sup>63</sup> Circumstantial evidence alone can also be used to oust politicians from office for

---

<sup>62</sup>This elected mayor (Euri Ernani Jung) was removed from office, and the municipality held a new election. The removed mayor's wife, Lucia Vacarin, won the election and became mayor. See Cureau 2010; TSE Agravo Regimental no Recurso Especial Eleitoral No 35.692 (42132-54.2009.6.00.0000)/SC; and <http://www.cunhapora.sc.gov.br>.

<sup>63</sup>The voter had received a voucher for use in a supermarket, and the signature on the voucher matched that of the candidate.

vote buying. For example, such evidence was used in a case in Campos dos Goytacases (RJ), where authorities found large sums of cash in small denominations and a list of names with voter identification numbers in a campaign office (Cureau 2010). In short, rather than just prosecuting politicians who are caught in the act by authorities, the judiciary considers a wide range of evidence. In turn, this flexibility with regards to evidence increases the number of politicians removed for vote buying.<sup>64</sup>

As with evidentiary requirements, the judiciary also fosters the implementation of Law 9840 by permitting the immediate removal of politicians from office. This issue continues to be contentious among both courts and legal scholars, but TSE jurisprudence has evolved to rule definitively that Law 9840 penalties should be executed immediately (Reis 2006: 81-84). In other words, politicians should be removed from office immediately after lower-level courts issue guilty verdicts for vote buying. The effect of this decision is that electoral courts remove sanctioned politicians from office quickly. This rapidity poses a sharp contrast to the many delays faced by criminal charges against vote buying. Because the law removes politicians from office through an administrative sanction, the quagmire of procedures and appeals through the criminal courts is circumvented. The rationale is that elections are time sensitive; for this reason, Article 257 of the Electoral Code indicates that rulings during campaigns take effect immediately (Reis 2006: 81). It is interesting to note that the popular initiative aimed to remove politicians even more quickly, but legislators successfully extended the process in order to provide more time for court investigations and defense preparations (CBJP 2000: 29). Despite their modifications, Law 9840 cases remain remarkably fast. The overall process for a 9840 prosecution takes approximately three weeks, with specified times permitted for each stage of the process (Tozzi 2008: 41-42). For example, candidates charged with vote buying have only five days to develop their defense, and first-instance judges have only 24 hours to issue their verdicts.

The appeals process for Law 9840 cases is also much shorter than the many years it would

---

<sup>64</sup>Some legal scholars, such as Medina (2004: 115), have expressed concern that by allowing eyewitness testimony, the TSE does not require incontrovertible proof of vote buying.

take with criminal cases. For example, second-instance courts — for removals of mayors, this means the Regional Electoral Courts located in each state capital — have only three days to rule whether an appeal has enough merit to warrant a hearing (Cureau 2010; Tozzi 2008: 49). There are some provisions to ensure a candidate’s due process during the appeal process. If the election has not yet been held, the candidate can continue to advertise and have his or her name on ballot until the appeal is heard (Tozzi 2008: 50-51). On the other hand, elected politicians are removed from office during the appeal, except for rare instances in which appellate courts issue injunctions to prevent what they consider irreparable harm (Tozzi 2008: 49-50; Cureau 2010).<sup>65</sup> The key point is that the judiciary has increased the effectiveness of Law 9840 by opting to move quickly in removing politicians for vote buying. However, it deserves mention that not everyone is convinced that the immediate removal of politicians is ideal (e.g., Medina 2004: 115). As Coneglian (2009: 238) suggests: “Despite the jurisprudence of the TSE, many authors and judges are against the immediate application of the sentence.” As a result, some electoral courts even impede immediate execution until appeals are finished (Coneglian 2009: 238).

Yet another way in which the judiciary increased prosecutions against vote buying is by directly broadening the scope of prohibited activities. During the deliberation of the popular initiative, legislators added a specific line to permit the distribution of “campaign gifts,” such as t-shirts emblazoned with partisan advertising, without fear of prosecution (CBJP 2000: 19-21). But some observers believed that politicians could still buy votes with such particularistic benefits (Reis 2006: 29). For example, Senator Heloisa Helena expressed concern that politicians could simply print slogans on various items used for vote buying, such as sandals, and call them “campaign gifts.”<sup>66</sup> The TSE put a definitive end to such ambiguity when it passed legislation in 2006 (Law 11300) broadening the scope of banned

---

<sup>65</sup>As Judge Marlon Reis indicates with respect to Law 9840 rulings, “the *Supremo Tribunal Federal* [Supreme Federal Court, or STF] rarely permits suspended executions of judgments that involve removals for vote buying. But if it were a criminal proceeding, just the mere filing of an appeal would suffice for the conviction to be suspended. And the STF takes a long time to judge.” (Personal communication, November 5, 2011.)

<sup>66</sup>Senado Federal Sessão Ordinária, September 23, 1999.

items (Mero 2008: 79; Sanseverino 2008: 207; Tozzi 2008: 47). This list includes “campaign gifts” such as t-shirts, key chains, hats, pens, and food boxes. By expanding the range of benefits encompassed by Law 9840, the TSE sharpened the claws with which it can snag vote-buying politicians.

Beyond this broad array of favorable jurisprudence, the TSE continues to conduct various public campaigns against vote buying. For example, the electoral body issues many public service announcements played on both radio stations and television channels. One TSE television advertisement shows political operatives carrying away voter in a box after buying his vote, with the following voice over: “Don’t transform your opinion into merchandise. Don’t sell yourself. Vote buying is a crime.”<sup>67</sup> Another advertisement features a pregnant woman patting her stomach, asking viewers not to sell their votes, so that they can improve their city for both present and future generations.<sup>68</sup> Furthermore, in honor of the ten-year anniversary of Law 9840, the TSE issued an educational video, a documentary, and held a widely publicized conference.<sup>69</sup> Such efforts of the TSE, in addition to actions of civil society, appear to have had an impact: 72 percent of respondents in a 2008 survey reported that they are familiar with the vote buying law.<sup>70</sup>

In sum, the judiciary continues to play a central role in implementing Law 9840 effectively. Jurisprudence continues to evolve in a favorable direction for prosecuting politicians under the law. The active role of the judiciary has not only helped to implement the law as initially designed, but has also expanded its reach to cover additional modalities such as vote buying through intermediaries and “campaign gifts.” As an additional boost to the fight against vote buying, the TSE widely advertises the rules against vote buying.

---

<sup>67</sup>TSE Campaign Video, Released August 1, 2010.

<sup>68</sup>TSE Campaign Video, Released September 14, 2009.

<sup>69</sup>“10 Anos: Lei 9840,” TSE Documentary, October 6, 2009; “Brasil Eleitor,” TSE Educational Video, October 4, 2009.

<sup>70</sup>Study by TSE in collaboration with the *Associação dos Magistrados Brasileiros*, 2008.

## 6 Conclusion

Whereas Brazilian politicians previously bought votes with impunity, Law 9840 increased the risk of prosecution associated with this common practice. By classifying vote buying as an electoral infraction, its designers circumvented many complexities that stymie criminal prosecution. Under Law 9840, nearly 700 politicians have been removed from office for vote buying. This study has explored the central role of civil society and the judiciary in this shift from impunity to prosecution. On the one hand, civil society spearheaded the effort to collect over one million signatures, and also promoted effective implementation of the law through 9840 Committees. As Francisco Whitaker, a leader of the campaign against vote buying, explains: “it was an enormous victory for Brazilian democracy because it was a law that came from the bottom up.”<sup>71</sup> On the other hand, members of the judiciary designed and publicly endorsed the popular initiative against vote buying, and later developed favorable jurisprudence that facilitated prosecutions. As TSE Justice José Delgado emphasizes with respect to Law 9840: “With every election, jurisprudence is being established that cleans up and increases the rigor of legal proceedings. The judiciary is adapting to what society wants from it.”<sup>72</sup>

While this paper focuses on how civil society and the judiciary helped to enact and implement Law 9840, my ongoing work on vote buying explores several related questions. First, what socioeconomic and political characteristics are associated with an increased probability of prosecutions, removed politicians, or overturned verdicts? As mentioned above, preliminary regressions suggest that removals are significantly more likely in localities with a diocese or archdiocese (i.e., where a bishop is seated). Another important question is whether partisanship affects the implementation of Law 9840. For example, are 9840 Committees more likely to file complaints against conservative politicians, even if other politicians are buying votes just as frequently? And do political factors play a role in court decisions to prosecute

---

<sup>71</sup>TSE Documentary, October 6, 2009

<sup>72</sup>“Políticos na Guilhotina,” *Istoé*, February 2, 2008.

or remove politicians? Even though lower-level judges are chosen by highly competitive exams in Brazil, a handful of legislators deliberating the popular initiative expressed concern about the independence and fairness of some judges.<sup>73</sup> In addition, what is the effect of Law 9840 on the prevalence of vote buying in Brazil? Even if the legislation has increased prosecutions, to what extent are politicians actually deterred from buying votes as a result? Further investigation into such questions will yield additional insights about Law 9840 and vote buying in Brazil.

A broader theme emerging from this analysis of Law 9840 is the potential role of civil society in promoting the effective implementation of rule changes. Such rule changes often create challenges for those who must implement them. For example, implementers may face capacity constraints due to insufficient resources, which make it difficult to make necessary changes. And perhaps even more challenging is the intense pressure they can face from those who are negatively affected by the rule change. Civil society can help implementers cope with such challenges. With respect to resource constraints, civil society can perform tasks such as collecting information about those who transgress the rules. Moreover, civil society can serve as a vocal counterweight that helps implementers resist political pressure from those opposing new rules. Key questions, however, are under what conditions civil society performs such tasks, and to what extent its efforts involve ideological or partisan bias.

By increasing the sanctioning capacity of formal electoral rules, Law 9840 has increased the risk of punishment associated with vote buying. This legislation strengthened a formal institution (electoral rules) at the expense of a competing informal institution (vote buying). But as explored in my book manuscript in progress, another simultaneous change — the advent of electronic voting — also undermined politicians’ ability to buy votes.<sup>74</sup> In 2000, Brazil became the first country in the world to have fully electronic voting. Just as Law 9840 increased the sanctioning capacity of electoral rules, electronic voting decreased the

---

<sup>73</sup>For example, see comments by Federal Deputies Zenaldo Coutinho, Waldir Pires and Luiz Antonio Fleury in the Câmara dos Deputados, Sessão da Comissão de Constituição e Justiça de Redação, September 8, 1999.

<sup>74</sup>“The Politics of Vote Buying: Brazil in Comparative Perspective,” Book Manuscript in Progress.

sanctioning capacity of vote buying.<sup>75</sup> The introduction of this new technology made it much more difficult for politicians to monitor vote choices when buying votes. In effect, both changes — Law 9840 and electronic voting — have decreased the attractiveness of vote buying.

Yet such changes have by no means extinguished clientelism in Brazil. As survey evidence presented above suggests, some vote buying continues despite the increased risk of punishment and decreased ability to monitor vote choices. But another form of particularism, which I call “relational” clientelism, is now relatively more attractive to many politicians (Nichter 2010). Whereas vote buying and other forms of “electoral” clientelism distribute rewards exclusively during campaigns, many politicians in Brazil prefer a dramatically different form of machine politics.<sup>76</sup> They engage in relational clientelism, which distributes ongoing rewards that extend beyond campaigns. As vote buying during campaigns becomes more difficult, it becomes relatively more attractive to develop long-term relationships that provide clients with ongoing benefits and services.

When compared to vote buying, relational clientelism is relatively more resilient to the challenges of Law 9840 and electronic voting. Law 9840 only prohibits the distribution of benefits during electoral campaigns, so the new legislation does not substantially affect ongoing benefits of relational clientelism. And strategies of relational clientelism often rely on sanctioning mechanisms that do not rely on monitoring vote choices. One such example is “declared support,” a form of relational clientelism observed in some areas of Brazil (Nichter 2009). Even with ballot secrecy, elected politicians can provide ongoing benefits to citizens who publicly declared support for them during a previous campaign (e.g., by attending rallies or placing banners on their homes). Declared support distributes clientelist benefits after

---

<sup>75</sup>Such enforceability is crucial because it is a defining characteristic of both formal and informal institutions (Helmke & Levitsky 2006: 5).

<sup>76</sup>Nichter (2010) argues that a fundamental but often overlooked distinction lies between “electoral clientelism” (e.g., vote buying and turnout buying) and “relational clientelism.” Electoral clientelism delivers all payoffs to citizens before voting, and involves the threat of opportunistic defection by citizens. By contrast, relational clientelism continues to deliver benefits to citizens after voting, and involves the threat of opportunistic defection by both citizens and politicians.

the election and requires monitoring declarations of support rather than vote choices. Law 9840 and electronic voting have increased the relative attractiveness of declared support, as well as other forms of relational clientelism.

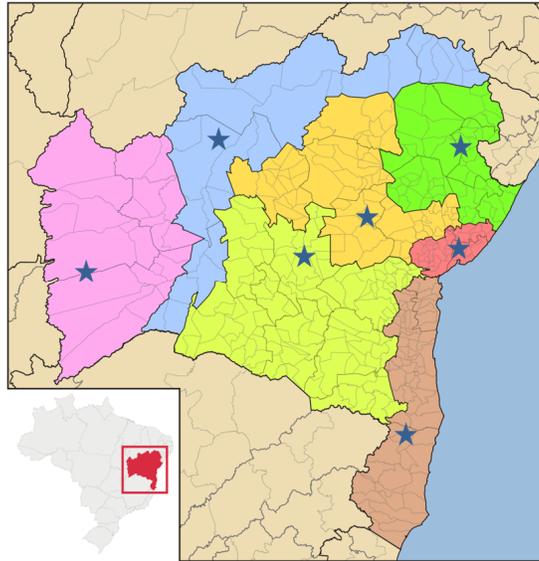
### **Appendix: Description of Fieldwork in Brazil**

Qualitative evidence for this study was collected during 18 months of fieldwork in Brazil. Prior to and after the October 2008 municipal elections, I conducted a total of 110 formal interviews on clientelism in the state of Bahia. These formal interviews included 55 interviews of community members and 55 interviews of elites. Each of these interviews was conducted in Portuguese, and lasted an average of 70 minutes. Each interview was taped and transcribed, totaling over 4,500 pages of typed transcripts. In addition, I conducted informal interviews of another 350 citizens and elites, as well as three focus groups of citizens.

This research focuses on small municipalities, as defined by those with 100,000 citizens or fewer. While much academic research on clientelism focuses on large metropolitan areas, there are relatively few studies on smaller communities. This lack of research is particularly unfortunate in Brazil, given that so much of its population lives in small municipalities. In Brazil, 49 percent of the population lives in municipalities with 100,000 citizens or fewer. In addition, 96 percent of Brazilian municipalities are this size (IBGE 2000). Interviews were conducted in Bahia, the most populous state in the Northeast region of Brazil with nearly 15 million citizens (IBGE 2009). The Northeast is the poorest region of Brazil and one of the most unequal regions in the world. Approximately 41 percent of Bahia's population lives in households below the poverty level, and the state has amongst the lowest social indicators in Brazil (World Bank 2004). The Gini coefficient of income inequality in Bahia is 0.61 (World Bank 2004).

In order to identify potential themes, develop interview questions, and field test my citizen and elite interview protocols, I began qualitative research in a municipality of 10,000 citizens in central Bahia, where I lived for approximately five months. During this time,

Figure 5: Map of Research Sites in Bahia (Northeast Brazil)



I selected a stratified random sample of six additional municipalities to conduct further interviews. Overall, the municipalities spanned each of Bahia’s seven “mesoregions,” which are defined by Brazil’s national census bureau (IBGE) as areas that share common geographic characteristics. Figure 5 shows the geographical distribution of interview locations across the state of Bahia. The population sizes of the seven municipalities selected were approximately: 10,000; 15,000; 30,000; 45,000; 60,000; 80,000, and nearly 100,000.

Within each selected municipality, individuals for community member interviews were selected randomly using stratified sampling. Inclusion / exclusion criteria for individuals included the following: (1) at least sixteen years of age (the voting age in Brazil), (2) had lived in the municipality since the previous mayoral election in 2004, and (3) not a member of the same household as any other interviewee. The sample was stratified to ensure balanced

representation across gender, age, and urban/rural mix.

With respect to elites, a range of perspectives were obtained by interviewing ten mayors and former mayors, 28 city councilmen (vereadores), three vice-mayors, six party heads, five heads of social services, and several other elites. These interviews were balanced to include a combination of elites both allied and opposed to the current administration. Given that mayors likely face different incentives if ineligible for reelection, the random sample of municipalities was stratified to include several municipalities with second-term mayors.

Informed consent was obtained from all community members and elites before initiating each interview. The citizen and elite interview protocols consisted of both open-ended and closed-ended questions. An iterative research design was employed; pertinent themes emerging during thematic analysis were investigated during ongoing interviews. While the original, core questions in the interview protocols were asked of all respondents, probes about emerging themes were included in later interviews.

## References

- Albuquerque, Cleidi and Dennis Werner. 1985. "Political Patronage in Santa Catarina, Brazil." *Current Anthropology* 26(1): 117–120.
- Ames, Barry. 1995. "Electoral Strategy Under Open-List Proportional Representation." *American Journal Political Science* 39(2): 406–433.
- Ames, Barry. 2001. *The Deadlock of Democracy in Brazil: Interests, Identities, and Institutions in Comparative Politics*. Ann Arbor: University of Michigan Press.
- Barros, Francisco Dirceu. 2008. *Prática Das Ações Eleitorais*. Rio de Janeiro: Elsevier.
- Câmara dos Deputados. 1999. *Combatendo a Corrupção Eleitoral: Tramitação do Primeiro*

- Projeto de Lei de Iniciativa Popular Aprovado pelo Congresso Nacional*. Brasília: Biblioteca Digital da Câmara dos Deputados.
- Comissão Brasileira da Justiça e Paz (CBJP). 2000. *Vamos Acabar com a Corrupção Eleitoral*. São Paulo: Editora Paulinas.
- Coneglian, Olivar. 2009. *Lei das Eleições Comentada*. Curitiba: Juruá Editora.
- Cureau, Sandra. 2010. “A Captação Ilícita de Sufrágio.” Presentation at Congresso Nacional da Escola Judiciária Eleitoral, Brasília.
- da Costa, Adriano Soares. 2009. *Instituições de Direito Eleitoral*. Rio de Janeiro: Editora Lumen Juris.
- Desposato, Scott. 2001. “Institutional Theories, Societal Realities, and Party Politics in Brazil.” Doctoral Dissertation, Department of Political Science, University of California, Los Angeles.
- Gans-Morse, Jordan, Sebastian Mazzuca and Simeon Nichter. 2010. “Varieties of Clientelism: Machine Politics During Elections.” Working Paper Number 119, Center on Democracy, Development and the Rule of Law, Stanford University.
- Graham, Richard. 1990. *Politics and Patronage in Nineteenth-Century Brazil*. Palo Alto: Stanford University Press.
- Hagopian, Frances. 1996. *Traditional Politics and Regime Change in Brazil*. New York: Cambridge University Press.
- Hartlyn, Jonathan, Jennifer McCoy and Thomas Mustillo. 2008. “Electoral Governance Matters: Explaining the Quality of Elections in Contemporary Latin America.” *Comparative Political Studies* 41(1): 73–98.
- Helmke, Gretchen and Steven Levitsky. 2006. *Informal Institutions and Democracy: Lessons from Latin America*. Baltimore: Johns Hopkins University Press.

- Hicken, Allen D. 2007. Institutional Incentives: Do Candidate-Centered Electoral Rules Encourage Vote Buying? In *Elections for Sale: The Causes and Consequences of Vote Buying*, ed. Frederic C. Schaffer. Boulder, CO: Lynne Rienner Publishers.
- IBGE. 2009. "Instituto Brasileiro de Geografia e Estatística." (<http://www.ibge.gov.br>).
- Leal, Victor Nunes. 1975. *Coronelismo, Enxada e Voto*. Sao Paulo: Alfa e Omega.
- Mainwaring, Scott. 1999. *Rethinking Party Systems in the Third Wave of Democratization: The Case of Brazil*. Stanford: Stanford University Press.
- Marchetti, Vitor. 2008. "Governança Eleitoral: O Modelo Brasileiro de Justiça Eleitoral." *Dados* 51(4): 865–893.
- Medina, Ademir Ismerim. 2004. *Comentários a Lei Eleitoral*. São Paulo: Editora Quartier Latin do Brasil.
- Méro, Carlos Henrique Tavares. 2008. *Direito Eleitoral: Para Partidos Políticos e Candidatos*. Maceió: Edições Catavento.
- Movimento de Combate à Corrupção Eleitoral (MCCE)*. 2011. (<http://www.mcce.org.br>).
- Nichter, Simeon. 2008. "Vote Buying or Turnout Buying? Machine Politics and the Secret Ballot." *American Political Science Review* 102(1): 19–31.
- Nichter, Simeon. 2009. "Declared Choice: Citizen Strategies and Dual Commitment Problems in Clientelism." Paper Presented at American Political Science Association Annual Conference in Toronto, Canada.
- Nichter, Simeon. 2010. "Politics and Poverty: Electoral Clientelism in Latin America." Doctoral Dissertation, Department of Political Science, University of California, Berkeley.
- O'Donnell, Guillermo. 1996. "Poverty and Inequality in Latin America: Some Political Reflections." Working Paper, Number 225. University of Notre Dame.

- Pinto, Djalma. 2008. *Direito Eleitoral: Improbidade Administrativa e Responsabilidade Fiscal — Noções Gerais*. São Paulo: Editora Atlas.
- Reis, Márton Reis. 2006. *Uso Eleitoral da Máquina Administrativa e Captação Ilícita de Sufrágio*. Rio de Janeiro: Fundação Getúlio Vargas.
- Rosas, Guillermo. 2010. “Trust in Elections and the Institutional Design of Electoral Authorities: Evidence from Latin America.” *Electoral Studies* 29(1): 74–90.
- Samuels, David. 1999. “Incentives to Cultivate a Party Vote in Candidate-Centric Electoral Systems.” *Comparative Political Studies* 32(4): 487–518.
- Sanseverino, Francisco de Assis Vieira. 2008. *Direito Eleitoral*. Porto Alegre: Editora Verbo Jurídico.
- Telles, Olivia Raposo da Silva. 2009. *Direito Eleitoral Comparado — Brasil, Estados Unidos, França*. São Paulo: Editora Saraiva.
- Tozzi, Leonel. 2008. *Ações, Impugnações e Procedimentos Recursais no Direito Eleitoral*. Porto Alegre: Editora Verbo Jurídico.
- Tribunal Superior Eleitoral (TSE)*. 2010. (<http://www.tse.gov.br>).
- Versiani, Maria Helena. 2010. “A Republic in Constituent Assembly Process (1985-1988).” *Revista Brasileira de História* 30(60): 227–247.
- Yeung, Luciana and Paulo Azevedo. 2011. “Measuring Efficiency of Brazilian Courts with Data Envelopment Analysis (DEA).” *IMA Journal of Management Mathematics* 22(4): 1–14.