

The Effect of Campaign Contributions on Judicial Decisionmaking

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Abstract

In this paper we address a pressing issue on the contemporary political agenda: Is justice for sale? The implications of such a relationship between campaign contributions and judicial decisions, if it exists, merit a thorough empirical investigation regarding the existence of quid pro quo exchanges between judges and their campaign contributors. We examine decisions by judges on both nonpartisan (Nevada) and partisan (Michigan, Texas) supreme courts in the 2005 term. While we do not find any evidence of a relationship between contributions and the votes of judges in Nevada, it does appear that there is a quid pro quo relationship between contributors and votes in Michigan and Texas. Using an instrumental variables probit model, we are able to control for the endogeneity between contributions and votes and thus can conclude that contributions drive judicial votes, and not the other way around. While we only examine three states and one year here, the results suggest that there may be circumstances where the appearance of impropriety surrounding campaign contributions and judicial decisionmaking may be an empirical reality.

In this paper we address a pressing issue on the contemporary political agenda: Is justice for sale? Citizens have expressed increasing concern about judges who raise money from parties who later argue cases before the very judges to whom they contributed (e.g., Geyh 2003). These concerns have been fueled by skyrocketing expenditures in judicial campaigns and the politicized, issue-oriented campaigning unleashed by the recent U.S. Supreme Court decision in *Republican Party of Minnesota v. White* (2002). Because many states elect their judges, any relationship between campaign contributions and judicial decisionmaking could have ramifications for the many thousands of cases heard by state courts nationwide. The implications of such a relationship between campaign contributions and judicial decisions, if it exists, merit a thorough empirical investigation regarding the existence of quid pro quo exchanges between judges and their campaign contributors.¹

One of the most important features of state judicial politics is the fact that many judges obtain (and retain) their positions through popular elections. That is, judges must periodically subject themselves to a vote of the electorate, just like their legislative counterparts. This facet of judicial politics is, for all intents and purposes, unique to the American states (Schotland 1985). From our perspective, it allows us to examine the effects of elections on judicial behavior.

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¹ We focus exclusively on attorney contributions in this paper, though we recognize that attorneys are not the only contributors to these campaigns. We discuss the reasons for this choice later.

Perhaps the most developed literature in state courts relates to the behavior of judges in elected states compared to their counterparts in appointed states. For example, Hall (1995) shows that when judges are up for reelection, they are significantly less likely to dissent from death sentences than their colleagues who are not up for reelection. Brace, Hall, and Langer (1999) show that a state supreme court's willingness to overturn state abortion statutes (and even the willingness to hear cases regarding such statutes) is dependent on whether court members are elected or appointed. Huber and Gordon (2004) demonstrate that elected trial court judges assign more harsh sentences as reelection time draws closer to avoid appearing "soft" to their constituents. These studies clearly show that judges change their behavior in the presence of an election.

Recently, a new explanation has been offered for the behavior of judges: the presence of a litigant or lawyer who has contributed to the judges' campaign (McCall 2001, 2003; Ware 1999; Waltenburg and Lopeman 2000). Since judges have to periodically run for reelection, they must also raise campaign funds in order to conduct their campaign. Like other candidates, they raise money from parties interested in their reelection. In judicial races, donations from lawyers and law firms make up a disproportionately large share of campaign funds (Champagne 1988, 148-151; McCall 2003). In 2006, attorneys were responsible for 21% of all contributions to candidates—the second highest category of contributor (Sample, Jones, and Weiss 2007). Invariably, these judges will have to decide cases that involve their contributors. Do these contributors have an unfair advantage? Is, in fact, justice for sale? This article investigates the relationship between campaign contributions from attorneys and the decisions made by state supreme court judges.

A Controversial and Timely Topic

While a growing body of research considers campaign spending in judicial elections (Bonneau 2005a, 2005b, 2007; Hall and Bonneau 2006), all of these studies have been based on aggregated funds raised and spent by total judges. Thus, we know a great deal about the effects of campaign spending on elections, but we do not know how campaign fundraising affects the behavior of individual judges in court decisions (but see Cann 2002, 2007).

This issue is of concern to three groups. First, judges themselves have expressed concern over the influence of campaign contributions. In December of 2000, the Chief Justices of fifteen states, as well as others interested in the politics of judicial elections, gathered in Chicago at a special summit to discuss issues plaguing the conduct of judicial elections. This meeting, which culminated in a Call to Action, was primarily designed to address the “growing concerns about the million dollar war chests, attack advertising and even outright distortion of an opponent’s record that seems to have become more widespread ...” (Glaberson 2000, 1).² This summit came on the heels of two *60 Minutes* stories (1987, 1998), a *Frontline* investigation (1999), and countless law review articles and other reports in the popular media. In 2001, Justice at Stake conducted a survey of over 2,400 state judges. They found that 26% of judges thought that campaign contributions had at least some influence on the decisions of judges. This might seem like a low figure, but given that judges pride themselves on being above such political factors, the fact that over ¼ of state judges think decisions are being affected is quite

² The papers presented at this summit, as well as the Call to Action, were subsequently published in the June 2001 *Loyola of Los Angeles Law Review*.

astonishing.³ Additionally, 56% of state judges believe that judges should recuse themselves from cases involving contributors.

Second, businesses and interest groups think justice might be for sale. The Justice at Stake campaign released a report on the 2006 judicial elections (as they have for every election since 2000). The report linked the increased campaign fundraising and expenditures to the compromising of the fair and impartial administration of justice. The report further documented the rising amounts of campaign spending and the pervasive nature of television advertising (Sample, Jones, and Weiss 2007). Further, a 2007 Zogby survey of business leaders indicates that 79% of them believe campaign contributions have at least some influence on the decisions of judges. Perhaps this explains why donors from the business community are the single largest group of donors to state supreme court races (Sample, Jones, and Weiss 2007). Moreover, 93% *strongly* agree that judges should recuse themselves from cases that involve campaign contributors. Clearly, business leaders are not comfortable with the status quo.

Third, in addition to concern by judges and interest groups, the electorate has also expressed concern over judicial elections. A 2004 nationwide survey by Justice at Stake showed that 71% of respondents believed that campaign contributions had at least some impact on judges' votes. More recently, a 2008 Justice at Stake survey of Minnesotans revealed that 59% of them believe that campaign contributors have at least some influence on judicial decisions; a similar survey of voters in Wisconsin yielded a figure of 76%. A clear majority of people feel that something is amiss in the current system of electing judges. The consequences of this are severe. As Gibson (2008, 69) argues, "When groups with direct connections to the decision maker give contributions,

³ Presumably, they exempted themselves from this figure.

legitimacy suffers substantially.” Thus, here we investigate the crucial question of whether the people are correct that judges are influenced by campaign contributions or whether their feelings are not based in empirical reality.

Contributions, Rationality, and Influence

In this article, we look at the contributions of attorneys to state supreme court justices. Attorneys are one of the largest groups of contributors, accounting for 21% of the contributions to candidates in 2005-2006. This was second only to the contributions made by businesses (Sample, Jones, and Weiss 2007). Moreover, anecdotes abound about the importance of quality counsel in legal arguments (e.g., Johnson, Wahlbeck, and Spriggs 2006); thus, if attorneys are able to gain an advantage by contributing to the campaigns of judges, this could be quite beneficial to their clients.⁴ Besides being timely, this article makes several theoretical contributions to the literature on both judicial politics and elections.

First, this study allows us to assess the degree to which contributors to judicial elections are rational. An extensive literature indicates that contributors to campaigns behave rationally, targeting candidates who are likely winners and who support their ideology or preferred position in an issue area (e.g., Wright 1996; Snyder 1990, 1992). Lawyers contribute to judicial campaigns presumably in the hope that they will achieve an advantage in cases that come before that judge. If no such advantage exists, then much of the reason for contributing does not exist. Lawyers may be paying the cost, and achieving no benefit.

⁴ While it is true that simply contributing to a judge is not an indication of the quality of the attorney, we would argue that this is a way for an attorney to gain an advantage and thereby help their client. The point is simply that the attorney matters for the likelihood of victory.

Naturally, there are other possible reasons for lawyers to contribute beyond the hope of gaining an advantage through *quid pro quo* exchanges. For example, some lawyers may contribute to campaigns because they feel pressure to do so by the judges. Rather than expecting favorable outcomes from the judge, lawyers contribute because it is the cost of “doing business.” Additionally, some attorneys may contribute because of personal or professional relationships they have with certain judges. Of course, testing theories like these in a rigorous way requires data on perceived pressure felt by lawyers or knowledge of personal relationships between certain lawyers and judges; information that is not just attainable in a reliable or systematic fashion. Here, like the studies of legislative contributions before us, we limit our study to testing the rational-contributor hypothesis.

A second major contribution to the literature answers the question of whether judges’ decisions are actually influenced by campaign contributors, other things being equal. Obviously, there are many factors that determine a judge’s vote: the facts of the case and ideology, to name two. But, do campaign contributions influence judges, after these (and other relevant) variables are controlled? To date, we simply do not know (but see Cann 2002, 2007). As we have seen above, we know that the public *thinks* judges are influenced by campaign contributions (see also Jackson and Riddlesperger 1991; National Center for State Courts 1999; Geyh 2003). Still, whether a relationship exists between campaign contributions and judicial decision making is an empirical question rather than a matter of opinion.

Campaign Contributions and Judicial Decisions

Previous studies of the relationship between campaign contributions and judicial decision making can be grouped into three major categories. The first group of research shows only that campaign contributors often appear in court before judges to whom they contributed (Hansen 1991; Dubois 1986). While the very appearance of impropriety may itself be problematic, the fact that judges rule on cases argued by attorneys who contributed to their campaign does not in itself prove that contributions are even correlated with judicial outcomes.

A second group of studies endeavors to establish a correlation between campaign contributions and judges' decisions by considering situations where judges appear to have (or even admit to have) supported lawyers who contributed to their campaigns. Many of these studies focus on Texas. For example, Banner (1988) describes a case from the Texas Court of Appeals, 4th District, where several appellants faced an attorney who had contributed to the campaigns of two of the three judges on the panel. The result was a 3-0 decision in favor of the appellants. Banner contends that this outcome is evidence that the judges' votes were "bought" even though the decision was unanimous. Champagne (1988, 149) discusses the action of the Texas Commission on Judicial Conduct against two Texas Supreme Court justices which involved money or gifts from attorneys who had cases pending in court. Schotland (1985) details additional incidents of alleged misconduct from several other states. While studying these incidents is not unprofitable, even taken as a whole they do not constitute generalizable evidence for a correlation between campaign contributions and judges' decisions. Appearances are not necessarily equivalent to reality.

A third group of studies pursues a larger scale research design in an attempt to draw more generalizable conclusions. Ware (1999) considers arbitration decisions from the Alabama Supreme Court and finds a correlation between the sources of a judge's funding and that judge's votes. Across two articles, McCall (2001, 2003) considers the relationship between campaign contributions to Texas high court judges and decisions made by those judges. In both studies, McCall finds a correlation between campaign contributions and the decisions of judges. Similarly, Waltenburg and Lopeman (2000) examine a subset of tort litigation from Kentucky, Ohio, and Alabama, and similarly find a correlation between campaign money and decisions.

In contrast, Cann (2002) examines the 1998 term of the Wisconsin Supreme Court and finds no correlation between attorney contributions and judicial decisions. He argues that the nonpartisan, non-politicized judicial elections of Wisconsin, coupled with partial public funding for judicial candidates and strong campaign finance laws, precludes the possible influence of money on the decisions of their state supreme court. Interestingly, Cann (2007) finds a relationship between attorney contributions and judicial decisions in Georgia, even though elections in that state are similarly nonpartisan and non-politicized. Cann attributes the differences to the longer terms of office in Wisconsin (which gives Wisconsin judges a greater degree of independence) and to the differing political cultures in each state (Cann 2007). Minimally, the differing results cry out for more systematic analysis.

Two fundamental problems apply in varying degrees to these studies. First, they are limited to specific types of cases (e.g. cases with two business litigants, tort cases, and non-unanimous cases) rather than looking at all types of cases heard by the respective

courts. While it is fully possible that campaign contributions only influence decisions in certain types of cases, it is important to examine all cases to determine the nature of the relationship across all types of cases. In this paper, we use data for all cases with full opinions.⁵

Moreover, and perhaps most significantly, the studies that find a correlation between money and votes openly admit that showing a correlation between money and votes does not necessarily demonstrate causality. Such a correlation may indeed exist because contributions from attorneys on one side of a case may lead a judge to vote favor of those attorneys (a *quid pro quo* exchange). However, it is equally plausible that the correlation exists because attorneys anticipate how judicial candidates would decide cases if elected and then contribute to candidate who would likely rule in favor of the side the attorney is most likely to be on. If the preferred candidate is elected and the attorneys appear in court, it is likely the contributing attorneys will win their case. Even if that is true, the judge's decision was not caused by the campaign contribution; rather, it was the judge's propensity to vote in a particular way that led to the contribution in the first place. This problem is analogous to the dilemma in studies examining the relationship between campaign contributions to congressional candidates and their roll-call voting behavior once elected (Wright 1996, 136-149). Simply put, none of the studies that find a correlation between contributions and decisions (based on logit or probit) are able to demonstrate causality (but see Cann 2007). Here, we are able to answer this question through use of an instrumental variables probit model.

⁵ The volume of decisions that do not involve full opinions is too large for the scope of this study. Further, the amount of information available regarding these cases is small (because there is no full opinion) and varies across cases and states, making it nearly impossible to address these cases. Finally, the cases of the greatest importance have full opinions, so we are certainly looking at the place where influence, if present, would be the most important.

Data and Hypotheses

In this article we analyze the relationship between attorney campaign contributions and voting outcomes in state courts of last resort. Data are drawn from the 2005 terms of state supreme courts in Nevada, Michigan, and Texas.⁶ These states have the advantage of being diverse on a number of critical dimensions, including region, the size of court, length of the term of office, and the method of selecting and retaining judges (partisan vs. nonpartisan). Further, the relationship between campaign contributions and votes has not yet been studied in depth in Nevada and Michigan (though Texas has been the focus of much study). This selection of states provides an optimal mix of fresh data on which to test hypotheses developed from studying other states while also allowing us to compare the results of our methodology with existing studies.

The dependent variable of interest is whether an individual judge made a liberal decision in a particular case (*Liberal Vote*).⁷ Our primary independent variable of interest is the difference between campaign contributions from attorneys and law firms representing the liberal party in a case and campaign contributions from attorneys and law firms representing the conservative party (*Campaign Contribution Differential*). The larger this difference, the more likely a judge will render a liberal decision. If this variable is not statistically significant even in a basic probit model, we have no evidence

⁶ Note that campaign finance data were not available for all judges on these courts serving in the 2005 term. As such, the analysis only includes 5 of the 7 judges on the Nevada Supreme Court (all judges elected in 2002 or later).

⁷ Cases were coded using the criteria specified in the Spaeth U.S. Supreme Court database. A few cases, particularly relating to divorce or child custody, were coded as non-ideological and were consequentially omitted from the analysis.

of a relationship between attorney campaign contributions and judicial decisionmaking. If this variable is statistically significant in a standard probit model, it implies a correlation between the variables, but due to the problem of endogeneity outlined above, we cannot conclude that the contributions were actually responsible for the way in which the votes were cast. However, an instrumental variables probit model will allow us to resolve the endogeneity problem (should it arise) if we can identify suitable instruments.

In order to properly specify our model, we include three additional independent variables that should affect the likelihood of a liberal vote by a judge. First, it has been shown that the state has higher success rates in state supreme courts than other parties (Cann 2002). Thus, we include two variables to take into account the position of the state. If the state represents the liberal position (*State Liberal*), then the justice should be more likely to vote liberally, other things being equal. However, if the state represents the conservative position (*State Conservative*), then the justice should be more likely to vote conservatively.⁸

Second, the ideology of judges (*Ideology*) has been shown to be an important indicator of the way state supreme justices vote (Comparato and McClurg 2007; Benesh and Martinek 2002). Accordingly, we include a variable for the party-adjusted ideology (PAJID) score in the analysis of Michigan and Texas supreme court cases (Brace, Langer, and Hall 2000). In Nevada, the five available judges have nearly identical PAJID scores, so in that instance we use party identification (*Party ID*) of the judge instead, as it has been demonstrated to be a valid measure of ideology on state courts

⁸ See footnote 7 for how we code liberal and conservative.

(Pinello 1999). We expect that, other things being equal, liberal (Democratic) judges are more likely to make liberal decisions.

Methods and Results

One of the key institutional differences among states that elect judges is whether they do so in a partisan or nonpartisan election. Regarding judicial elections specifically, partisan elections generally involve higher levels of campaign spending and more contentious campaigns (i.e., Hall 2001, 2007; Bonneau 2007). Because of this, judges in partisan elections may be more susceptible to influence from their campaign contributors. In our sample, we have one nonpartisan state (Nevada) and one traditional partisan state (Texas). The question becomes how we treat Michigan, which has nonpartisan general elections but nominates candidates in partisan conventions. Most scholars of judicial elections treat Michigan (and Ohio, which is similar) as nonpartisan because when voters go into the voting booth, they are not provided with the candidates' party affiliation (e.g., Hall and Bonneau 2006, 2008; Bonneau and Hall 2009). However, here we are dealing with contributors, not voters. As we argue above, lawyers are very active and informed participants in this process. Consequently, we treat Michigan as a partisan state since it is reasonable to assume that the attorneys who are contributing to the candidates are aware of which candidates were nominated by which political party.

Nonpartisan State: Nevada

The Supreme Court of Nevada consists of seven justices who serve staggered six-year terms. While Nevada has long held to traditional forms of judicial campaigning, in

recent years, Nevada Supreme Court races have become increasingly costly and signs of “new-style” judicial campaigns (such as negative campaigning and television advertising) are beginning to appear. Moreover, according to the National Institute for Money in State Politics, attorneys contribute more to Nevada judicial candidates than any other industry (e.g. casinos, real estate, home builders, etc.). About 35% of the cases decided by the Supreme Court of Nevada involved at least one attorney who contributed to the campaign of at least one of the judges deciding the case, establishing the possibility of *quid pro quo* exchanges between attorneys and judges.

Table 1 contains basic probit results for the probability of a judge making a liberal decision in cases with full opinions from a nonpartisan state, Nevada.⁹

(Table 1 About Here)

The decisions of these justices in 2005 prove remarkably difficult to predict. The critical result for our purposes is that there appears to be no general relationship between campaign contributions and judicial decisionmaking in Nevada as the coefficient on the attorney contribution differential is not statistically significant. The lack of significance also implies that there is no endogeneity problem; therefore, more sophisticated analysis is not required. The data simply do not support the notion that there is any association between campaign contributions and the decisions reached by the judges of the Supreme Court of Nevada. Somewhat surprisingly, the party identification and state as party variables are not predictive of court outcomes; this is a matter of concern, as these

⁹ Note that because the Supreme Court of Nevada does not have discretion over its docket, many cases are heard by 3-judge panels rather than all seven judges. We include these cases here, but our number of observations is significantly reduced because of this. Additionally, campaign finance data for Nevada judicial elections prior to 2002 were not available, so we only have campaign finance data available for five of the seven judges. Thus, while we have identified 60 cases with full opinions that can be coded as liberal or conservative, our sample size is limited to approximately 160 votes.

variables have been demonstrated to predict state court outcomes in a number of other settings.

What might explain these weak results in Nevada? We think the culprit may be the fact that Nevada decides some cases in 3-judge panels instead of en banc. This may diminish the likelihood of vote buying: if a contributor does not even know which judges will hear a case, then it is impossible for him to contribute money to a judge in order to receive a specified benefit from the contribution. Of course, contributors could hedge their bets and donate money to all judges on the court (or all candidates running for the court). There is little evidence in the data here to indicate this is occurring. Consequently, we suspect the institutional structure of the Nevada Supreme Court leads to the ideology of the judges have a diminished effect.

Partisan States: Michigan and Texas

Like the Supreme Court of Nevada, the Supreme Court of Michigan consists of seven justices who serve staggered terms; however, the term length is eight years. The Texas Supreme Court consists of nine justices who serve staggered six-year terms. Michigan and Texas seem more likely states in which to observe *quid pro quo* campaign contribution influences—judicial elections in these states are more politicized, candidates are nominated by parties in conventions or primaries (though party labels do not appear on the ballot in Michigan), and a large percentage of cases involved at least one attorney who contributed to the campaign of at least one of the judges. Furthermore, both courts have control of their own dockets, allowing judges to potentially hear the cases in which they are most interested. While the reasons a judge has for hearing a case are surely

varied, a plausible one is that judges may prefer to select a case involving a campaign contributor so they can rule in his or her favor.

Table 2 contains the basic probit results for the probability of a judge making a liberal decision in cases with full opinions from Michigan and Texas.¹⁰

(Table 2 About Here)

In contrast to the model of outcomes in nonpartisan states, the model predicts supreme court outcomes in partisan states relatively well. When the state argues for a conservative outcome, the likelihood of a liberal decision decreases. Ideology matters as well, with liberal judges more likely to render liberal decisions. The key finding, though, is on the campaign contribution differential: this coefficient shows a positive relationship between money and votes. The larger the gap between liberal and conservative contributions, the higher the likelihood of a liberal vote. However, a simple probit model cannot resolve the problem of endogeneity endemic to these types of studies; more evidence is necessary to show that, in McCall's (2003) language, "decisions follow dollars" rather than that "dollars follow decisions."

Cann (2007) advocates the use of an instrumental variables probit technique as a means to handle this endogeneity problem. Studies of the relationship between campaign contributions and congressional roll-call voting have typically relied on the more familiar two-stage least squares (2SLS) technique, which are appropriate for estimating an equation with a continuous dependent variable and one or more endogenous regressors.

¹⁰ Campaign finance data is available for all 7 of the judges serving in the 2005 term of the Michigan Supreme Court. We have identified 45 cases with full opinions that can be coded as liberal or conservative from the 2005 term, giving us a sample size of approximately 288 votes. During the 2005 term in Texas, several of the justices left service; one without hearing any cases and the other hearing only a handful. Neither the retiring justices nor their appointed replacements are considered in the analysis. Additionally, Justice Medina had been appointed to the court in the previous term to fill a vacancy and was excluded from the analysis because he had not yet faced an election. This leaves us with a sample of 6 justices ruling in 57 cases. Note that not all 57 cases were heard by all 6 of the justices in our sample.

Maddala (1983) discusses the application of instrumental variables techniques to the dichotomous dependent variable case, deriving an instrumental variables probit model. This technique calls for the use of one or more instrumental variables (i.e. a variable that is excluded from the structural equation to be estimated that is uncorrelated with the error term). In the instance at hand, this means finding variables that are related to the endogenous regressor (campaign contributions) but not causally related to the dependent variable (judicial decisions). Following Cann (2007), as one instrument we use the presence of a public defender as an attorney. These attorneys generally contribute less money than others, but the likelihood of success in a state supreme court is likely unrelated to having a public defender as counsel.¹¹ Secondly, we use an indicator of incumbency status in the previous election as an instrumental variable. Incumbency status in the previous election has little to do with how a judge will decide a case in the future, but incumbents raise substantially more money than non-incumbents, making it potentially a good predictor of the attorney contribution differential (Bonneau 2005a).

Table 3 presents the results of the instrumental variables probit model for the judges in Michigan and Texas. (Table A1 contains the first-stage results for the interested reader).

(Table 3 About Here)

Our results show that even after statistically addressing the endogeneity problem, attorney contributions have a significant positive effect on judicial decisions. While the

¹¹ Some, including Brace and Boyea (2008), discuss the possibility that public defenders do not represent their clients as effectively as other attorneys. If this is the case, the public defender variable is not a valid instrument (i.e. uncorrelated with the error term). As a robustness check, we re-ran the model using only incumbency as an instrument. The results were substantively similar, with the contribution differential being the only significant variable in the model. Even without the public defender instrument, a Wald test of exogeneity still rejects the null hypothesis that campaign contributions are not endogenous.

coefficient may seem small, the substantive magnitude of the effect is quite strong. Figure 1 shows the effect of campaign contributions on the predicted probability of a liberal decision for a judge with an ideology score of 47 (the mean in our sample) in a case where the state was not a party to the case on either the liberal or conservative sides (the modal category).¹² Where no contributions are made by either side (or the contributions are of equal size), the probability of a liberal decision is approximately 0.43. However, a campaign contribution differential of even just \$2,000 shifts the predicted probability to a virtually certain win for the side offering the contribution. Perhaps even more surprising than our finding that these judges appear to favor campaign contributors is the finding that these judges appear to offer such favoritism for such small sums of money.

(Figure 1 About Here)

Does this mean that if one attorney does not contribute to a justice, the other attorney simply needs to contribute the paltry sum of \$2,000 to secure a judge's vote? We think not. However, in an environment where numerous attorneys and law firms are making contributions, judges notice those who are contributing relatively large sums of money. Our results show that when liberal attorneys contribute more money to a judge, the likelihood of a liberal decision increases; the same is true for conservative contributions. Further, the contribution advantage does not have to be that high for the likelihood of victory to increase significantly.

As expected, the ideology of the judges is statistically significant, with more liberal judges being more likely to vote in a liberal direction. While the direct effect of

¹² The values at which these variables are held constant are approximately the mean or modal values for each variable.

the “state as party” variables are not statistically significant, there is a potentially significant indirect effect; Table A1 shows that when the state is the conservative party to the case, the contribution differential is lower, which in turn leads to a lower probability of a liberal decision.

Conclusion

In this article, we test the rational contributor theory of campaign contributions using data from three state courts of last resort. While the scope of our sample urges caution, we find that campaign contributions appear to affect the outcome of cases in states where judges are elected in a partisan contests (Michigan and Texas) but not where they are elected on a nonpartisan ballot (Nevada).

It seems wise to note at this point a number of limitations to this study, besides the fact that we are only studying three states in a single term. Perhaps more vexing than the limitations on the temporal and spatial parameters of our data collection is the seemingly contradictory findings of the results. Taken together with the current state of the literature (Cann 2002, 2007), one might be tempted to simply conclude that campaign contributions influence judicial decisionmaking in Michigan, Texas, and Georgia, but do not matter in Nevada or Wisconsin. This growing mound of incongruent findings requires explanation; while we find ourselves unable to provide a definitive answer at this point, we do have some thoughts.

We believe that the true relationship between campaign contributions and judicial decisionmaking, whatever it may be, is far more nuanced than a simple claim that campaign contributions either matter or they do not. The evidence gathered by scholars

to date simply does not support the notion that every judge offers every decision “for sale.” However, it is difficult to explain some of the results (particularly Cann 2007 and our results for Michigan and Texas) unless one concedes that campaign contributions might affect at least some judges in at least some cases. It becomes researchers, then, to identify the conditions under which judicial decisions might be affected by campaign contributions.

One logical set of conditions that merits exploration is state-level characteristics, particularly when it comes to institutional variation across state court systems. States vary in important ways in terms of selection methods, term lengths, and court procedures; these types of factors are known to affect various aspects of state judicial systems (e.g. Brace and Boyea 2007; Brace, Hall, and Langer, 1999; Huber and Gordon 2004), and it follows that they may also condition the effects of attorney campaign contributions. In this paper, we took one step to identifying the influence of one of these important institutional variations: partisan vs. nonpartisan elections.

An additional set of conditions worth considering is case-level heterogeneity. There may well be certain types of cases where influence is more likely. Future studies might consider issue type (i.e. civil vs. criminal trials) or, if it were possible to measure it, the degree to which an individual judge cares about the outcome in a particular type of case.

Whatever the conditions of influence may be, to move the state of knowledge forward, scholars must continue to work to identify the circumstances under which campaign contributions might influence votes. Not only will this advance the state of scholarly knowledge, but it may also assist practitioners in identifying institutional

structures that best protect the integrity of state court systems. To be sure, this article does not end this conversation. However, by examining the affects of contributions on judicial decisionmaking in three states and by controlling for the endogeneity of contributions, we significantly advance it.

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Table 1: Probit Model of Campaign Contributions and Votes in the Supreme Court of Nevada (Nonpartisan)

Variable	Coefficient	Std. Error	z	P > z
Campaign Contribution Differential	0.00003	0.00008	0.31	0.380
State Liberal	0.636	0.594	1.07	0.142
State Conservative	-0.100	0.218	-0.46	0.324
Party ID	-0.046	0.208	-0.22	0.413
Constant	-0.358	0.195	-1.84	0.066

All statistical tests are one-tailed tests of significance except the constant, for which we have no *a priori* theoretical expectation.

N = 163
 Wald χ^2 = 1.81
 Prob > χ^2 = 0.771
 PRE = 0.018

Table 2: Probit Model of Campaign Contributions and Votes in the Supreme Courts of Michigan and Texas (Partisan)

Variable	Coefficient	Std. Error	z	P > z
Campaign Contribution Differential	0.00012	0.00007	1.83	0.034
State Liberal	0.345	0.284	1.21	0.112
State Conservative	-0.441	0.154	-2.87	0.002
Ideology	0.036	0.007	5.16	0.001
Constant	-2.047	0.331	-6.18	0.001

All statistical tests are one-tailed tests of significance except the constant, for which we have no *a priori* theoretical expectation.

N = 607
Wald χ^2 = 35.39
Prob > χ^2 = 0.001
PRE = 0.052

Table 3: Instrumental Variables Probit Model of Campaign Contributions and Votes in the Supreme Courts of Michigan and Texas (Partisan)

Variable	Coefficient	Std. Error	z	P > z
Campaign Contribution Differential	0.0010	0.0001	13.72	0.001
State Liberal	0.139	0.246	0.57	0.286
State Conservative	-0.007	0.153	-0.05	0.963
Ideology	0.017	0.008	2.19	0.015
Constant	-0.991	0.415	-2.39	0.017

All statistical tests are one-tailed tests of significance except the constant, for which we have no *a priori* theoretical expectation.

N = 607

Wald χ^2 = 377.23

Prob > χ^2 = 0.001

PRE = 0.010

Wald test of Exogeneity ($\text{arctanh}(\rho)=0$) $\chi^2 = 12.00, p < .001$

Figure 1: Attorney Contributions and the Probability of a Liberal Decision in Michigan and Texas Supreme Courts

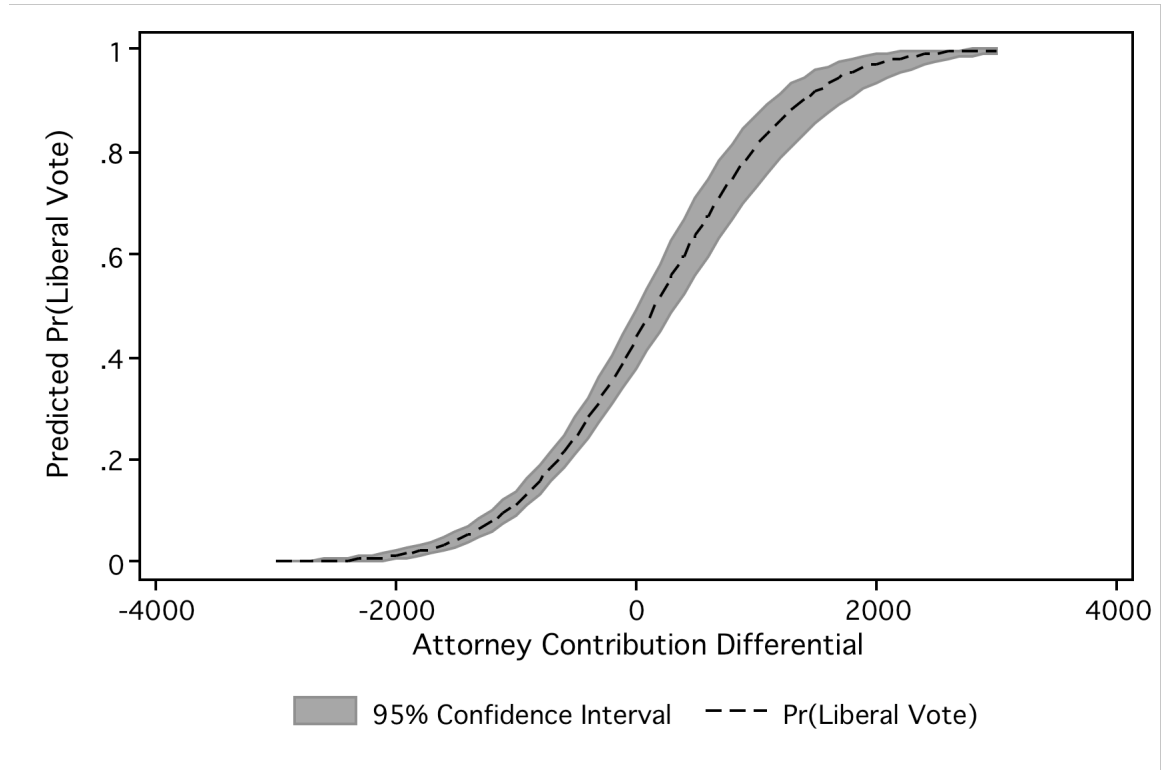


Table A1: First Stage Results from Instrumental Variables Probit Model of Campaign Contributions and Votes in the Michigan and Texas Supreme Courts

Variable	Coefficient	Std. Error	z	P > z
Ideology	-0.433	5.286	-0.08	0.935
State Liberal	-23.030	208.445	-0.06	0.950
State Conservative	-246.604	111.503	-2.21	0.027
Public Defender	129.498	109.736	1.18	0.238
Unopposed	28.281	63.646	0.44	0.657
Incumbent Elected	141.9955	61.904	2.29	0.022
Incumbent Appointed	-51.232	64.440	-0.80	0.427
Constant	-0.991	0.415	-2.39	0.017

All statistical tests are two-tailed.