M oreover, as shown in Table 2, regardless of the selection method, justices affiliated with the Republican Party receive significantly more business contributions than justices affiliated with the Democratic Party. Republican justices receive over three times as much in business contributions in partisan systems, over five times as much in contributions in nonpartisan systems, and over nine times as much in contributions in retention election systems. Similarly, across all selection methods, a much larger percentage of Republican-affiliated justices' total contributions come from business groups.

Table 2 BUSINESS CONTRIBUTIONS BY JUDICIAL PARTISAN AFFILIATION

	AVERAGE CONTRIBUTIONS FROM BUSINESS		AVERAGE PERCENTAGE FROM BUSINESS	
JUSTICES SUBJECT TO:	Republican	Democratic	Republican	Democratic
Retention Election	$9,017	$736	4.0%	1.0%
Nonpartisan Election	$89,886	$16,050	18.8%	9.5%
Partisan Election	$351,926	$101,341	29.3%	12.0%

To identify pro-business votes, coders determined which litigant the court's decision in a given case made better off compared to immediately before the Court's decision. Cases where no identifiable business appeared, or where both litigants were businesses, were omitted since they did not allow for the identification of a pro-business outcome. Of the 10,104 judicial votes included for analysis, 49% were pro-business votes. Nevertheless, individual justices vary in their propensity to favor business interests; the percentage of pro-business votes effectively ranges from a low of 15 percent to a high of 85 percent.

A s shown in Table 3, judicial decision-making in business cases varies across judicial retention method. Incumbent justices facing partisan elections are the most likely to vote in favor of business, doing so in 59 percent of cases. Justices across all other systems are significantly less likely to vote for business interests. In fact, justices facing partisan elections are more than 10 percentage points more likely to vote for business interests than justices under any other system.

Table 3 VOTES FOR BUSINESS LITIGANT BY RETENTION METHOD

JUSTICES SUBJECT TO:	Percentage of Votes for Business Litigant in Sample Data
Appointment	46.3%
Retention Election	47.9%
Nonpartisan Election	48.8%
Partisan Election	59.4%

Table 4 VOTES FOR BUSINESS LITIGANT BY JUDICIAL PARTISAN AFFILIATION

	Percentage of Votes for Business Litigant in Sample Data	
JUSTICES SUBJECT TO:	Republican	Democratic
Appointment	49.5%	43.4%
Retention Election	51.5%	45.1%
Nonpartisan Election	53.1%	43.1%
Partisan Election	65.2%	50.9%

Moreover, across each judicial retention method, Republican-affiliated justices cast more pro-business votes than Democratic-affiliated justices. Indeed, for justices facing nonpartisan elections, Republican justices are 10 percentage points more likely to vote for the business litigant than Democratic justices in the same system. For justices facing partisan elections, Republican justices are 15 percentage points more likely to vote for business litigants than Democratic justices.

C. EMPIRICAL ANALYSIS

The study employs regression analysis to test the relationship between campaign contributions from business groups and judicial decisions in business cases. The empirical methodology is explained in more detail in the Appendix. The dependent variable in the analysis is whether a justice voted for or against the business litigant. The chief explanatory variable in one set of analyses is the total dollar contributions from business; in the other set of analyses it is the percentage of a justice's contributions that came from business interests.[63]

**All analyses include the following control variables:**

OTHER CONTRIBUTIONS. For analyses incorporating business contributions as a percentage of all contributions, the study controls for the total dollars received by the justice. This measure serves as a control for the different sums being contributed across states and individual justices — 40 percent from business may have a very different effect when it is 40 percent of $10,000 than when it is 40 percent of $250,000. For analyses of total dollar contributions from businesses, the study controls for the total dollars coming from all other contributors. Again this serves as a control for the different sums being contributed across states. It also provides a measure of potential influence from interests and sectors opposed to (or unrelated to) business interests.[64] Similar to the primary contribution variables, the study uses the natural logs of these totals.

JUSTICE'S PARTY AFFILIATION. Because they tend to follow a more conservative judicial ideology, Republican justices should be more inclined to vote for the business litigant. Party affiliation was determined from The American Bench—a directory with biographical information on over 18,000 judges[65] —and reputable online sources. Where no party information was available but the justice was initially appointed to the high court by a governor, the party of the justice was inferred to be the same as that of the appointing governor. The group of justices with inferred party affiliations includes some from elected systems, where justices were appointed to complete the term of a justice who left the bench before the end of a term.

STATE TORT CLIMATE. In states where existing law favors business interests, one should expect justices to vote more often in favor of business interests regardless of contributions. Thus, the study includes a control capturing the legal climate to ensure that the analyses isolate the influence of business contributions from the underlying state law. It uses the Pacific Research Institute's U.S. Tort Liability Index, which evaluates the tort litigation risks and liability costs across states, as its measure of the state law's underlying partiality to business interests.[66]

CITIZEN AND GOVERNMENT IDEOLOGY. Justices' voting might also be influenced by the attitudes of the public and of other governmental officials in the state. Justices may fear negative consequences from displeasing the public or government, or they may think it is appropriate to consider others' preferences in their voting. The study employs well known measures to capture the liberalism of citizens in the state and the liberalism of the state government.[67]

CASE STRENGTH. The final control variable measures the underlying strength of the case. This control variable is important because some cases are so strong (or weak) that justices will vote for (or against) business interests regardless of their ideological predisposition or the influence of campaign contributions. To create a measure of case strength, the study first estimates the model without the case strength variable. The results of this estimation allow a prediction of the most likely number of pro-business votes from the other justices on the court. The difference between this predicted vote and the actual vote provides the measure of case strength. That is, suppose that the model predicts that, based on the justices' ideological predisposition, campaign contributions, the state tort climate, and the citizen and government ideology, four of the six other justices would support the business position. In reality, if five of the other justices supported the business position, this variable would indicate a stronger than average case. In contrast, if only one other justice voted in favor of business instead of the predicted four, the variable would indicate that the case was very weak.
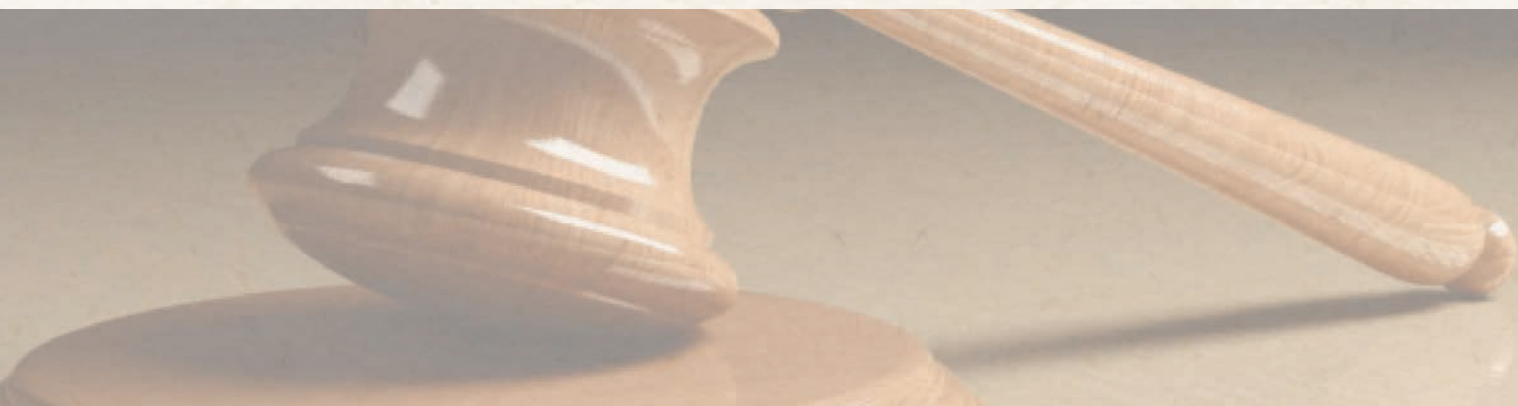
D. RESULTS

I. PRIMARY MODEL

The results from the study's primary model indicate that **there is a statistically significant relationship between campaign contributions from business groups and justices' voting in favor of business interests.** Both the level of business contributions and the percentage of total contributions from business groups have a statistically significant, positive relationship with justices' voting for the business litigant. The full results from the regression models are shown in Appendix Table A1. To illustrate the results in an intuitive way, Figure 4 shows the relationship between the percentage of contributions from business interests and the predicted probability of pro-business votes, with all other variables held constant.

Figure 4
PREDICTED PROBABILITY OF A PRO-BUSINESS VOTE BY PERCENTAGE OF CONTRIBUTIONS FROM BUSINESS
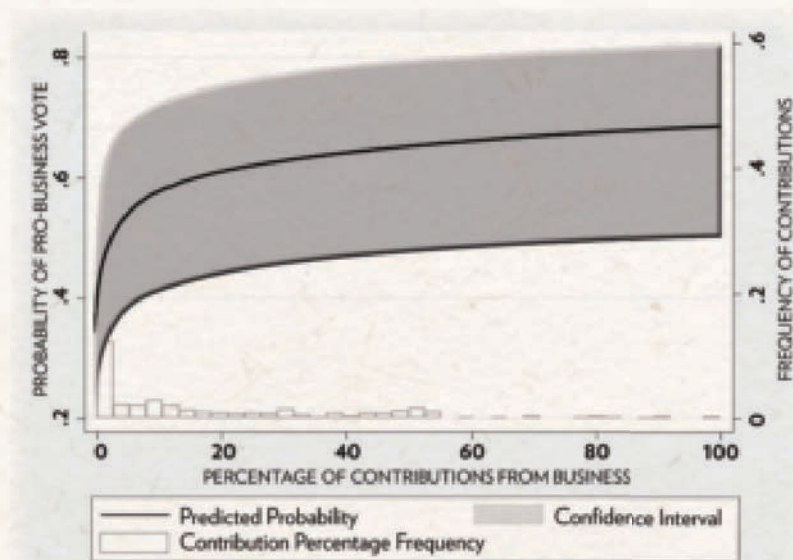
Table 5 translates the results of the model into hypothetical scenarios to help illustrate the size of the effects. For instance, all else equal, while an elected justice who receives a mere 1 percent of contributions from the business sector votes in favor of business about 46.2 percent of the time, on average, an elected justice who receives a quarter of his or her contributions from business votes in favor of business in 62.1 percent of cases. Notably, **a justice who receives half of his or her contributions from business groups would be expected to vote in favor of business interests almost two-thirds of the time.**

Table 5 CHANGES IN PREDICTED PROBABILITY OF A PRO-BUSINESS VOTE FOR SELECT INCREASE IN BUSINESS CONTRIBUTIONS

Change in Percentage Contribution from Business	Predicted Probability of a Pro-Business Vote
1%	46.2
10%	57.9
25%	62.1
50%	65.4
100%	68.5

2. COMPARISON ACROSS RETENTION METHODS

The study also analyzes the relationship between campaign contributions from business groups and judicial voting across different retention methods. It would not be surprising for contributions' relationship with voting to differ across methods; campaign contributions vary significantly across methods. Justices in partisan elections receive more than four times the average amount contributed to justices in nonpartisan elections and more than 40 times the amount contributed to justices in retention elections. The full results of this analysis are shown in Appendix Table A2. **In general, the results reveal a positive relationship between business contributions and justices' voting for business interests in partisan and nonpartisan systems, but no relationship in retention election systems.**

Specifically, the results show a statistically significant positive relationship between the percentage of total contributions from business groups and justices' voting in both partisan and nonpartisan systems. The larger coefficient in the partisan estimations indicates that the relationship between the percentage of contributions from business groups and justices' voting is larger in magnitude in partisan systems than nonpartisan systems.

However, the estimations using the simple level of contributions suggest that each dollar spent by business groups has a larger impact in nonpartisan elections (likely because each dollar spent is a larger percentage of the total in nonpartisan systems than in partisan systems). In fact, the simple level of contributions is only marginally significant (p=.164) in the partisan election estimations.

Importantly, both the level of contributions and the percentage of contributions from business groups have no statistically significant relationship with justices' voting in retention election systems. Estimations produce statistically insignificant coefficients when there is no systematic relationship between two variables; here, they suggest no systematic relationship between business contributions and justices' voting in retention election systems. However, the statistically insignificant results could also be explained by a small number of observations in the sample; because businesses contribute relatively infrequently in retention elections, we have fewer observations for justices in these systems. Nevertheless, the small coefficients suggest that, even with more data, it is unlikely that one would find a large statistically significant relationship between business contributions and judicial decision-making in retention election systems. Moreover, previous empirical studies using large national datasets find no statistically significant relationship between campaign contributions and decisions in retention election systems.

3. COMPARISON AMONG REPUBLICAN- AND DEMOCRATIC-AFFILIATED JUSTICES

The study next analyzes whether business contributions' relationship with voting differs between justices affiliated with the Republican and Democratic parties. As reported in Table 2, Republican justices receive over three times as much in business contributions in partisan systems, over five times as much in contributions in nonpartisan systems, and over nine times as much in contributions in retention election systems. The full results from our estimation are shown in Appendix Table A3. **In general, the results reveal a stronger relationship between business contributions and justices' voting among Democratic justices than among Republican justices.**

Specifically, the level of business contributions has a statistically significant positive relationship with justices' voting for business interests for both Republican- and Democratic-affiliated justices. The larger coefficient in the estimations for Democratic justices do, however, indicate a relationship between contributions and voting that is larger in magnitude compared to Republican justices. Similarly, in the estimations measuring the relationship between the percent of total contributions from business groups and justices' voting, the coefficient on the contribution variable is larger in magnitude for Democratic-affiliated justices. Again, this result indicates a stronger relationship between contributions and voting among Democratic justices. In addition, the percentage of contributions is only marginally significant (p=.138) in the estimations of Republican justices.

The stronger relationship between contributions and voting among Democratic justices could be explained by the already-high baseline of voting for business interests by Republican justices. Because Republican justices typically already favor business interests more than Democratic justices, additional business contributions may have a smaller effect on Republican justices' voting. This study's results indicating a stronger relationship between business contributions and voting among Democratic justices is consistent with previous empirical studies.[68]

4. COMPARISON BETWEEN 2010-2012 AND 1995-1998

The final analyses compare the relationship between business contributions and justices' voting for business interests in two time periods: 2010-2012 and 1995-1998. **As judicial elections have become increasingly politicized and expensive, it should not be surprising for the relationship between money and judicial decisions to have grown stronger.** The full results from this estimation are shown in Appendix Table A4. In general, the results reveal a stronger relationship between business contributions and justices' voting in the period from 2010-2012 compared to 1995-1998.

Specifically, in both the 2010-2012 data and the 1995-1998 data, both the level and the percent of business contributions have a statistically significant positive relationship with justices' voting for business interests.[69] Indeed, previous empirical studies have found such a statistically significant relationship using 1995-1998 data. However, the larger coefficients for both the level and the percent of business contributions in the 2010-2012 data indicate a stronger relationship between money and votes in the latter period.

IV. CONCLUSION

Campaign spending in state supreme court elections has surged in the past decade, with powerful interest groups responsible for an ever-increasing amount of the spending in these judicial races. Moreover, judicial campaigning has changed dramatically in the wake of recent cases such as *Citizens United v. FEC* and *Republican Party of Minnesota v. White*. The growing importance of money in judicial elections gives interest groups the opportunity to shape the judiciary. Although any interest group that is able to marshal sufficiently large campaign contributions might exert influence over the judiciary, under current circumstances, business groups are likely to be unique in their ability to do so because of a focused agenda and considerable resources at their disposal.

Using a new dataset from the 2010-2012 period, this study's empirical analyses confirm a statistically significant, positive relationship between campaign contributions from business groups and justices' voting in favor of business interests. The more campaign contributions from business interests the justices receive, the more likely they are to vote for business litigants when they appear before them in court. Notably, the analysis reveals that a justice who receives half of his or her contributions from business groups would be expected to vote in favor of business interests almost two-thirds of the time.

Moreover, the empirical relationship between business contributions and justices' voting for business interests exists only in partisan and nonpartisan systems. There is no statistically significant relationship between money and voting in retention election systems.

We also find a stronger relationship between business contributions and justices' voting among justices affiliated with the Democratic Party than among those affiliated with the Republican Party. Because many Republican justices are more ideologically predisposed to favor business interests, additional business contributions may not have as large of an influence on Republicans as they do on Democratic justices.

Finally, we find a stronger relationship between business contributions and justices' voting in the period from 2010-2012 compared to 1995-1998. Although several previous empirical studies have confirmed a relationship between money and voting in the 1995-1998 period, it is not surprising that the relationship would strengthen with the ever-increasing importance of money in judicial elections.

There is no sign that the politicization of state supreme courts elections is lessening. Until reforms are enacted, powerful interest groups' influence on judicial outcomes will only intensify.

APPENDIX: EMPIRICAL METHODOLOGY

I n all empirical analyses, we use logistic regression, or logit, which is designed for models where the variable to be explained (here a judge's vote) can take only two values (here either pro-business or anti-business).   More specifically, we estimate a multilevel-logit model. Because judges cast decisions in multiple cases, an individual judge's decisions across cases are not likely to be independent of each other; that is, there is likely to be a relationship between what a judge does in one case and what that same judge does in another case, even after we have controlled for observable judge-specific characteristics. Similarly, because the judges on any given court share not only the court in common, but also the state, its laws, and other environmental influences, it would be surprising if the decisions of judges on the same court were entirely independent of each other. Here, we accommodate the dependence across decisions by the same justice and across decisions by different justices from the same state by estimating a multilevel model with a random intercept across justices and across states.[70]

The following tables present the full results of all estimations. In each results table, the top number in each cell is the regression coefficient, which indicates the magnitude and direction of the relationship with justices' votes of each variable. A negative coefficient indicates that a variable reduces the probability that a justice will vote for the business litigant. In contrast, a positive coefficient indicates that a variable increases the probability that a justice will vote for the business litigant.

In addition, the table reports the p-value for each coefficient. In each cell, it is the bottom number, in parentheses. The p-value indicates the probability that one could find a relationship as strong as the one observed simply by chance if no real relationship existed. Coefficients with p-values equal to or less than .10 are considered statistically significant at the 10 percent level, meaning that there less than a 10 percent chance that the reported relationship would occur by chance in the sample data. P-values equal to or less than .05 indicate statistical significance at the more-certain 5 percent level, and p-values equal to or less than .01 indicate statistical significance at the most-certain 1 percent level. Empiricists typically require p-values of at less than .10 to conclude that one variable affects another in the direction indicated by the coefficient.

Table A1 THE RELATIONSHIP BETWEEN BUSINESS CONTRIBUTIONS AND JUDICIAL VOTING

	Business Contributions (10k)	Percentage of Business Contributions
Measure of Business Contributions	0.269 (0.000)	0.206 (0.002)
Non Business Contributions ($10K), logged	-0.218 (0.000)	-0.116 (0.011)
Nonpartisan Election	0.005 (0.988)	-0.214 (0.533)
Partisan Election	0.824 (0.024)	0.875 (0.020)
Democrat	-0.524 (0.067)	-0.655 (0.026)
Republican	0.272 (0.315)	0.248 (0.378)
State Tort Climate	-0.672 (0.002)	-0.807 (0.000)
State Citizen Ideology	0.009 (0.317)	0.004 (0.673)
State Elite Ideology	-0.015 (0.120)	-0.011 (0.295)
Business was Petitioner	-0.455 (0.000)	-0.461 (0.000)
Case Strength	0.072 (0.000)	0.072 (0.000)
Intercept	0.602 (0.278)	0.440 (0.447)
VARIANCE TERM		
State Level	0.000	0.000
Justice Level	0.922	0.970
N	7,112	7,112
Chi²	1942.83	1937.11

Note: p-values in parentheses

Table A2 THE RELATIONSHIP BETWEEN BUSINESS CONTRIBUTIONS AND JUDICIAL VOTING:
COMPARISON OF JUDICIAL RETENTION METHOD

	Business Contributions (10k)			Percentage of Business Contributions		
	Partisan	Non-Partisan	Retention	Partisan	Non-Partisan	Retention
Business Contributions	0.225 (0.164)	0.416 (0.000)	0.091 (0.761)	0.267 (0.069)	0.203 (0.010)	0.080 (0.810)
Total Contributions ($10K), logged	-0.207 (0.147)	-0.290 (0.000)	-0.244 (0.285)	-0.170 (0.069)	-0.082 (0.145)	-0.230 (0.298)
Republican	na*	-0.505 (0.109)	na*	na*	0.329 (0.296)	na*
Democrat	-0.849 (0.022)	0.368 (0.210)	-0.641 (0.426)	-0.849 (0.014)	-0.667 (0.046)	-0.648 (0.422)
State Tort Climate	-1.160 (0.011)	-0.385 (0.197)	-1.425 (0.337)	-1.186 (0.009)	-0.652 (0.038)	-1.415 (0.340)
State Citizen Ideology	-0.015 (0.411)	0.017 (0.149)	0.125 (0.365)	-0.009 (0.616)	0.009 (0.443)	0.126 (0.350)
State Elite Ideology	0.015 (0.629)	-0.021 (0.062)	na**	0.012 (0.696)	-0.016 (0.190)	na**
Business was Petitioner	-0.339 (0.072)	-0.538 (0.000)	-0.106 (0.766)	-0.346 (0.067)	-0.539 (0.000)	-0.110 (0.759)
Case Strength	0.067 (0.000)	0.073 (0.000)	0.084 (0.000)	0.067 (0.000)	0.073 (0.000)	0.084 (0.000)
Intercept	1.579 (0.094)	0.731 (0.216)	-8.410 (0.344)	1.081 (0.266)	0.182 (0.777)	-8.692 (0.330)
VARIANCE TERM						
State level	0.000	0.000	0.000	0.000	0.000	0.000
Justice level	0.644	0.943	1.081	0.637	1.040	1.081
N	1,974	4,431	707	1,974	4,431	707
Chi2	556.38	1206.52	153.43	556.56	1201.64	153.42

Note: p-values in parentheses.

*The party affiliation of many justices is unknown in states with non-partisan elections. In these states, the coefficients gauge the probability of a pro-business vote of Democrats and Republicans relative to justices with unknown party affiliation. In partisan and retention election systems, where judicial partisanship is known, the coefficients measure the effect of being a Democrat relative to a Republican.

**In retention states, state elite ideology was nearly perfectly collinear with state citizen ideology, so was omitted from the model.

Table A3 THE RELATIONSHIP BETWEEN BUSINESS CONTRIBUTIONS AND JUDICIAL VOTING:
COMPARISON OF POLITICAL AFFILIATION

	Business Contributions (10k)		Percentage of Business Contributions	
	Republicans	Democrats	Republicans	Democrats
Measure of Business Contributions	0.295 (0.004)	0.326 (0.002)	0.166 (0.138)	0.260 (0.008)
Non Business Contributions ($10K), logged	-0.252 (0.009)	-0.234 (0.004)	-0.096 (0.224)	-0.138 (0.031)
Retention Election	-0.561 (0.262)	0.801 (0.094)	-0.606 (0.266)	0.633 (0.189)
Nonpartisan Election	0.040 (0.928)	-0.003 (0.994)	-0.291 (0.520)	-0.273 (0.457)
Partisan Election	0.923 (0.072)	0.615 (0.191)	0.918 (0.091)	0.720 (0.134)
State Tort Climate	-0.813 (0.003)	-0.478 (0.244)	-0.924 (0.002)	-0.648 (0.128)
State Citizen Ideology	0.021 (0.083)	-0.004 (0.753)	0.015 (0.234)	-0.001 (0.906)
State Elite Ideology	-0.027 (0.049)	0.006 (0.561)	-0.022 (0.137)	0.005 (0.623)
Business was Petitioner	-0.657 (0.000)	-0.386 (0.005)	-0.666 (0.000)	-0.382 (0.005)
Case Strength	0.078 (0.000)	0.072 (0.000)	0.078 (0.000)	0.072 (0.000)
Intercept	0.958 (0.315)	-0.246 (0.772)	0.866 (0.406)	-0.799 (0.358)
VARIANCE TERM				
State Level	0.000	0.000	0.000	0.000
Justice Level	1.021	0.787	1.059	0.824
N	4,618	3,675	4,618	3,675
Chi2	1159.26	1016.33	1142.25	1013.09

Note: p-values in parentheses.

Table A4 THE RELATIONSHIP BETWEEN BUSINESS CONTRIBUTIONS AND JUDICIAL VOTING:
COMPARISON BETWEEN **2010-2012** AND **1995-1998**

	Business Contributions (10k)		Percentage of Business Contributions	
	2010-2012	1995-1998	2010-2012	1995-1998
Measure of Business Contributions	0.233 (0.000)	0.097 (0.000)	0.131 (0.024)	0.115 (0.000)
Total Contributions ($10K), logged	-0.177 (0.001)	-0.061 (0.000)	-0.060 (0.113)	-0.028 (0.402)
Retention Election	0.145 (0.630)	0.009 (0.937)	0.044 (0.886)	0.015 (0.903)
Nonpartisan Election	0.057 (0.804)	0.019 (0.907)	-0.144 (0.537)	-0.218 (0.422)
Partisan Election	0.000 (1.000)	0.191 (0.358)	-0.027 (0.927)	-0.002 (0.996)
Democrat	-0.388 (0.081)	-0.084 (0.004)	-0.473 (0.035)	-0.067 (0.021)
Republican	0.303 (0.160)	*na (0.158)	0.310	*na
Case Strength	0.075 (0.000)	0.030 (0.000)	0.075 (0.000)	0.029 (0.000)
Intercept	-3.495 (0.000)	-1.562 (0.000)	-3.698 (0.000)	-1.566 (0.000)
VARIANCE TERM				
State Level	0.000	0.312	0.000	0.316
Justice Level	0.894	0.069	0.921	0.000
N	10,105	31,245	10,105	26,571
Chi2	2614.41	369.66	2614.62	312.46

Note: p-values in parentheses.

*Judicial partisanship is identified for all cases in 1995-1998 data, coefficient for Democrat represents the difference between Democrats and Republicans.

ENDNOTES

1   Joanna Shepherd is an Associate Professor of Law, Emory University School of Law. Dr. Greg Rabidoux, J.D., Ph.D., directed the research phase of this project, Drs. David Klein and Michele Claibourn of the University of Virginia assisted in the methodological design and analysis, and the legal research fellows below assisted in the collection and coding of the data: Nicholas Harper, Joseph Syverson, Kristen Reek, Brittany Smith, McKillop Erlandson, Jaclyn O'Connor, Nicole Sinder, Kathy Chambers, Dayne Poshusta, and Dave Bartholomew.

2   GREENBERG QUINLAN ROSNER RESEARCH INC., JUSTICE AT STAKE FREQUENCY QUESTIONNAIRE 7 (2001), available at http://justiceatstake.org/files/JASNationalSurveyResults.pdf; GREENBERG QUINLAN ROSNER RESEARCH INC., JUSTICE AT STAKE—STATE JUDGES FREQUENCY QUESTIONNAIRE 5 (2002), *available at* http://www.justiceatstake.org/files/JASJudgesSurveyResults.pdf.

3   *Id.*

4   ADAM SKAGGS ET AL., THE NEW POLITICS OF JUDICIAL ELECTIONS: 2009-2010 1 (Charles Hall ed., 2011), *available at* http://brennan.3cdn.net/23b60118bc49d599bd_35m6yyon3.pdf.

5   *Id.*

6   JAMES SAMPLE, LAUREN JONES & RACHEL WEISS, THE NEW POLITICS OF JUDICIAL ELECTIONS: 2006, at 7 (Jesse Rutledge ed., 2006), *available at* http://www.justiceatstake.org/media/cms/NewPoliticsofJudicialElections2006_D2A2449B77CDA.pdf.

7   *See* Shirley S. Abrahamson, Chief Justice, Wis. Supreme Court, *The Ballot and the Bench, Address at the Justice William J. Brennan, Jr. Lecture on State Courts and Social Justice* (Mar. 15, 2000), in 76 N.Y.U. L. REV. 973, 976 (2001); Roy A. Schotland, *Elective Judges' Campaign Financing: Are State Judges' Robes the Emperor's Clothes of American Democracy?*, 2 J.L. & POL. 57, 77 (1985).

8   Roy A. Schotland, *New Challenges to States' Judicial Selection*, 95 GEO. L.J. 1077, 1105 app. 2 (2007).

9   Eighty-seven percent of state appellate court judges must be retained through either partisan elections, nonpartisan elections, or retention elections. COURT STATISTICS PROJECT, NAT'L CTR. FOR STATE COURTS, STATE COURT CASELOAD STATISTICS, 2006: SUPPLEMENT TO EXAMINING THE WORK OF STATE COURTS, 2006 96-97 fig. G (2007). In contrast, we earlier explained that 89 percent of all state judges (appellate and trial) face the voters at some point, either in the initial election or when seeking retention. See *supra* note 8 and accompanying text.

10   Justice at Stake. "Your State National Map," http://www.justiceatstake.org/state/index.cfm (last visited Jun. 10, 2013); *see also* Schotland, *supra* note 8, at 1084.

11   *Id.*

12   *Id; see also* National Center for State Courts, Selection of Appellate Court Judges, http://cdm16501.contentdm.oclc.org/cdm/printview/collection/appellate/id/160/type/singleitem (last visited Jun. 10, 2013). Illinois and New Mexico hold partisan elections to appoint judges initially to the bench, but they use unopposed retention elections to determine whether incumbent judges keep their positions beyond the initial term of appointment.

13   DAVID B. ROTTMAN ET AL., U.S. DEP'T OF JUSTICE, STATE COURT ORGANIZATION 1998, 21–25 tbl. 4 (Bureau of Justice Statistics, Bulletin No. NCJ 178932, 2000), *available at* http://bjs.gov/content/pub/pdf/sco98.pdf.

14   *Id.*

15   Peter D. Webster, *Selection and Retention of Judges: Is There One "Best" Method?*, 23 FLA. ST. U. L. REV. 1, 19 (1995).

16   Melinda Gann Hall, *Judging the Election Returns: Competition as Accountability in State Supreme Court Elections*, in RUNNING FOR JUDGE: THE POLITICAL, FINANCIAL, AND LEGAL STAKES OF JUDICIAL ELECTIONS 165, 177 (Matthew Streb ed., 2007).

17   *Id.*

18   Melinda Gann Hall, *State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform*, 92 AM. POL. SCI. REV. 315 (2001); Melinda Gann Hall & Chris W. Bonneau, *Does Quality Matter? Challengers in State Supreme Court Elections*, 50 AM. J. POL. SCI. REV. 20 (2006).

19   JAMES SAMPLE ET AL., THE NEW POLITICS OF JUDICIAL ELECTIONS, 2000-2009: DECADE OF CHANGE 5 (Charles Hall ed., 2010), *available at* http://www.brennancenter.org/content/resource/the_new_politics_of_judicial_elections.

20   SKAGGS ET AL., *supra* note 4, at 11.

21   *Id.* at 5.

22   *Id.* at 8.

23   *Id.* at 14. The same pattern held in the 2010 election cycle, with more than $9 million spent in partisan supreme court elections compared to $3 million in nonpartisan ones.

24   Replicated from SAMPLE ET AL., *supra* note 19, at 25.

25   This group has been found to contribute significant amounts to Democratic candidates and the groups' contributions are associated with judges voting for "liberal" outcomes. Michael Kang & Joanna M. Shepherd, *The Partisan Foundations of Judicial Campaign Finance*, 86 S. CAL. L. REV. (forthcoming 2014).

26   *Id.*

27   *Id.* at 25.

28   SAMPLE ET AL., *supra* note 6, at 7.

29   *Id.,* at 8.

30   *Id.* at 13.

31   *See generally* Chris W. Bonneau, *What Price Justice(s)? Understanding Campaign Spending in State Supreme Court Elections*, 5 ST. POL. & POL'Y Q. 107 (2005); Donald W. Jackson & James W. Riddlesperger, *Money and Politics in Judicial Elections: The 1988 Election of the Chief Justice of the Texas Supreme Court*, 74 JUDICATURE 184 (1991); Chris W. Bonneau & Melinda Gann Hall, *Mobilizing Interest: Money, Quality, and Ballot Rolloff in State Supreme Court Elections*, Presented at the Annual Meeting of the Midwest Political Science Association (Apr. 20, 2006).

32   Adam Liptak. *Tilting the Scales?: The Ohio Experience; Campaign Cash Mirrors a High Court's Ruling*, N.Y. TIMES, Oct. 1, 2006.

33   *See, e.g.,* Eugene W. Hickok, Jr., *Judicial Selection: The Political Roots of Advice and Consent*, in JUDICIAL SELECTION: MERIT, IDEOLOGY, AND POLITICS 3, 4–5 (Nat'l Legal Ctr. for the Pub. Interest ed., 1990); Mark A. Behrens & Cary Silverman, *The Case for Adopting Appointive Judicial Selection Systems for State Court Judges*, 11 CORNELL J.L. & PUB. POL'Y 273, 277–82 (2002); Steven P. Croley, *The Majoritarian Difficulty: Elective Judiciaries and the Rule of Law*, 62 U. CHI. L. REV. 689, 694 (1995); Robert P. Davidow, *Judicial Selection: The Search for Quality and Representativeness*, 31 CASE W. RES. L. REV. 409, 420–22 (1981); Ben F. Overton, *Trial Judges and Political Elections: A Time for Re-Examination*, 2 U. FLA. J.L. & PUB. POL'Y 9, 15–17 (1988–89); Michael H. Shapiro, *Introduction: Judicial Selection and the Design of Clumsy Institutions*, 61 S. CAL. L. REV. 1555, 1559–63 (1988).

34   N.Y. State Bd. of Elections v. López Torres, 552 U.S. 196, 208 (2008).

35   *Id.* at 209 (Stevens & Souter, JJ., concurring).

36   *Id.* (quoting Justice Thurgood Marshall).

37   *See, e.g.,* GREENBERG QUINLAN ROSNER RESEARCH INC., JUSTICE AT STAKE FREQUENCY QUESTIONNAIRE 7 (2001), *supra* note 2.

38   *Id.;* GREENBERG QUINLAN ROSNER RESEARCH INC., JUSTICE AT STAKE—STATE JUDGES FREQUENCY QUESTIONNAIRE 5 (2002), *supra* note 2.

39   *Id.*

40   *Id.*

41   Philip Hager, *Kaus Urges Reelection of Embattled Court Justice*s, L.A. TIMES, Sept. 28, 1986, at 3 (discussing the influence of elections on judges).

42   Melinda Gann Hall, *Constituent Influence in State Supreme Courts: Conceptual Notes and a Case Study*, 49 J. POL. 1117, 1119 (1987).

43   Joanna M. *Shepherd, Money, Politics, and Impartial Justice*, 58 DUKE L.J. 623, 670-72 tbls. 7-8 (2009).

44   Michael Kang & Joanna M. Shepherd, *The Partisan Price of Justice: An Empirical Analysis of Campaign Contributions and Judicial Decisions*, 86 N.Y.U. L. REV. 69 (2011).

45   Kang & Shepherd, *supra* note 25.

46   Stephen J. Ware, *Money, Politics, and Judicial Decisions: A Case Study of Arbitration Law in Alabama*, 25 J.L. & POL. 645, 660 (1999) (examining arbitration decisions in the Alabama Supreme Court); Eric N. Waltenburg & Charles S. Lopeman, *2000 Tort Decisions and Campaign Dollars*, 28 SE. POL. REV. 241, 248, 256 (2000) (examining tort cases before state supreme courts in Alabama, Kentucky, and Ohio); see Madhavi McCall, *The Politics of Judicial Elections: The Influence of Campaign Contributions on the Voting Patterns of Texas Supreme Court Justices*, 1994-1997, 31 POL. & POL'Y 314, 330 (2003) (showing that when two litigants contribute to justices' campaigns, Texas Supreme Court decisions tend to favor the litigant that contributed more money); Damon M. Cann, Justice for Sale? Campaign Contributions and Judicial Decision Making 16 (Aug. 10, 2006) (unpublished manuscript, *available at* http://ssrn.com/abstract=991364) (examining cases during the Supreme Court of Georgia's 2003 term).

47   Republican Party of Minn. v. White, 536 U.S. 765, 788 (2002).

48   *E.g.,* Republican Party of Minn. v. White, 416 F.3d 738, 754, 765–66 (8th Cir. 2005) (striking down limits on judges' partisan conduct and personal solicitation of campaign contributions); Weaver v. Bonner, 309 F.3d 1312, 1322 (11th Cir. 2002) (striking down a solicitation clause, which failed strict scrutiny).

49   Caperton v. Massey, 556 U.S. 868, 886 (2009).

50   Citizens United v. Fed. Election Comm'n 558 U.S. 310 (2010).

51   *Id.* at 968 (Stevens, J., dissenting).

52   See Anthony Champagne, *Tort Reform and Judicial Selection*, 38 LOY. L.A. L. REV. 1483, 1487 (2005).

53   Kang & Shepherd, *supra* note 44, at 85.

54   *See generally* Elizabeth Garrett & Daniel A. Smith, *Veiled Political Actors and Campaign Disclosure Laws in Direct Democracy*, 4 ELECTION L.J. 295 (2005) (describing how business groups avoid disclosure requirements under campaign finance law).

55   RACHEL WEISS, FRINGE TACTICS: SPECIAL INTEREST GROUPS TARGET JUDICIAL RACES, THE INSTITUTE ON MONEY IN STATE POLITICS 13 (2005), *available at*, http://www.followthemoney.org/press/Reports/200508251.pdf.

56   *Id.* at 14.

57   *Id.* at 18.

58   In 2000-2003, 21 of the 24 pro-business judges that the Chamber supported were elected. Anthony Champagne, *supra* note 52, at 1503. In 2004, 15 of the 16 pro-business judges that the Chamber supported were elected. Press Release, U.S. Chamber of Commerce, Chamber Highlights Successful Pro-Business Election Effort—Business GOTV Behind Mid-Term Election Victories (Nov. 6, 2002) (available *at* http://www.uschamber.com/press/releases/2002/november/chamber-highlights-successful-pro-business-election-effort).

59   *See, e.g.*, Kang & Shepherd, *supra* note 44.

60   Business cases were identified by a key search in WestLaw. Once all business cases were identified within a given state and year, 25 cases were randomly selected for the sample. If there were 25 or fewer cases in a given state and year, all available cases were coded.

61   The National Institute on Money in State Policy, Mission & History, http://www.followthemoney.org/Institute/index.phtml (last visited May 15, 2013).

62   We coded justices with no recorded contributions as receiving zero contributions if they lived in a state where a judicial colleague received contributions (under the assumption that the contribution records within a state were complete) or in a state where they were not subject to re-election (and, thus, could not receive campaign contributions). If they lived in states with no other reported contributions, they were excluded from the analysis, as we were not certain if these were true zeros or a result of incomplete records. The results do not change in any important way with the inclusion or exclusion of these justices.

63   Because of the non-linearity observed in bivariate analyses, this study follows the practice, common in studies involving the effects of money, of transforming each contribution measure by taking its natural logarithm. This transformation better captures decreasing marginal effects, because the logs of numbers increase more slowly than the underlying numbers (for instance, the natural logs of 10, 20, 100 are 2.3, 3.0, and 4.6).

64   Self-financing and funds from party committees are included in these totals. While the totals include at least some contributions from interests often opposed to businesses, the available data do not permit an estimate of their share of the totals.

65   MARIE T. FINN ET AL., THE AMERICAN BENCH (2013).

66   LAWRENCE J. MCQUILLAN & HOVANNES ABRAMYAN, U.S. TORT LIABILITY INDEX: 2010 REPORT, PACIFIC RESEARCH INSTITUTE (2010).

67   William D. Berry, Evan J. Ringquist, Richard C. Fording & Russell L. Hanson, *Measuring Citizen and Government Ideology in the American States, 1960-93*, 42 AM. J. OF POL. SCI. 327 (1998).

68   Kang & Shepherd, *supra* note 25.

69   The 2010-2012 results here do not match the results presented in Appendix Table A1 because, in order to compare across the two time periods, the study had to define business contributions more narrowly (including only finance, real estate, general business, and health sectors) and exclude a small number of control variables that were not available for the earlier time period.

70   There was no evidence that the effect of money varied randomly across states or justices.

To learn more about this report – particularly the data that it draws from – visit the special reports and collaborations page of the National Institute for Money in State Politics (www.followthemoney.org/Research/special_topics.phtml). We strongly encourage interested parties to review the data, study the issue further, and contribute to and expand the important conversation about fair courts. NIMSP is the only nonpartisan, nonprofit organization revealing the influence of campaign money on state-level elections and public policy in all 50 states. The organization encourages transparency and promotes "independent investigation of state-level campaign contributions by journalists, academic researchers, public-interest groups, government agencies, policymakers, students and the public at large."

The report is also available for viewing on the American Constitution Society website at www.acslaw.org/state-courts/justice-at-risk.