

The Influence of Campaign Contributions on Trial Judges' Decisions

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ABSTRACT:

One of the most controversial aspects of judicial elections concerns campaign contributions to the candidates. There has been considerable debate over the propriety of campaign finance in judicial elections, but there has been minimal empirical analysis of the extent that campaign contributions influence judges' decisions. This study contributes to this scholarly discussion by analyzing the extent that campaign contributions impact the behavior of trial judges in deciding recusal motions, while controlling for other possible influences. This research demonstrates that if the attorney for the non-movant contributed to a judge's campaign, then the judge is more likely to dismiss the recusal motion. This provides preliminary evidence that campaign contributions do impact judges' behavior.

Deciding on the best method to select judges has been a vexing problem for American political leaders. The framers of the U.S. Constitution believed that federal judges should be appointed by the president and serve for a term of good behavior, meaning they can be removed only for reasons of corruption or malfeasance. Moreover, this removal happens through the impeachment process, not through popular elections. This selection method was intended to shield judges from political forces and create a system in which judges answer only to the law.¹ However, opponents of the constitution believed that because judges were not accountable to the people, they would become tyrannical.² State constitutions also established judicial systems in which judges were appointed³ and served for terms of good behavior. By the early nineteenth century the emerging egalitarian political movement, especially in the frontier states, maintained that unaccountable state judges were biased in favor of elite interests. Consequently, newly admitted states established popular elections to select state judges, and many states with appointed judiciaries switched to elected ones. Currently, twenty-one states directly elect appellate judges and thirty-three states directly elect trial court judges,⁴ and there has been considerable debate among legal scholars and political scientists over the relative advantages of judicial elections.

¹ For the framers' defense of this selection system, see Alexander Hamilton, "Federalist #78" in Isaac Kramnick, ed., *James Madison, Alexander Hamilton, and John Jay: The Federalist Papers* (London: The Penguin Group, 1987).

² See Brutus (a.k.a. Robert Yates) in Herbert J. Storing, ed., *The Complete Anti-Federalist, vol. 2* (Chicago, University of Chicago Press, 1981).

³ In Virginia and South Carolina the legislature selects state judges.

⁴ David B. Rottman, Carol R. Flango, Melissa Cantrell, Randall Hansen, and Neil LaFountain, *State Court Organization, 1998* (Washington, DC: U.S. Department of Justice, Conference of State Court Administrators, and The National Center for State Courts, 1998), Table-4, pp. 21-24 and Table 7, pp. 34-49. It bears mentioning that Illinois, New Mexico, and Pennsylvania elect appellate and trial court judges initially. Once elected, judges then face the voters in a retention election.

Campaign finance is one area of judicial elections that is quite controversial. As with any political campaign, monetary expenditures are necessary for success in judicial elections. Some judicial candidates spend their personal funds, but given the high cost of campaigns, this option is reserved only for wealthy candidates. All others must solicit money from contributors. In order to prevent a direct conflict of interest between judges and donors, judicial ethics prohibit judicial candidates from directly soliciting contributions. Candidates can raise money only through separate committees.⁵ Canons of judicial ethics have even sought to prevent judicial candidates from knowing who contributed to their campaign. However, state laws require all candidates for political office, including judges, to disclose publicly the sources and amounts of the money they receive; therefore, judicial candidates are able to discover who contributed to their campaigns⁶ As a result, the potential for a conflict of interest persists despite ethical constraints.

This conflict of interest is exacerbated by the fact that attorneys are primary contributors to judicial elections. Clearly attorneys are extremely knowledgeable and concerned with the judiciary; therefore, one would expect that they would actively participate in judicial campaigns. Nevertheless, there is still a prevalent and persisting fear that attorneys will receive favorable treatment from judges to whom they contributed. Likewise, attorneys who contributed to a losing candidate might suffer an unfair disadvantage if they appear in court before the victor. If campaign finance in any way influences a party's chance of success in court, then justice is not administered fairly. Even if there is no direct evidence that donations impact judicial conduct, the

⁵American Bar Association, *Model Code of Judicial Conduct*, Canon 5(C).

⁶In *Buckley v. Valeo*, 424 U.S. 1 (1976) the U.S. Supreme Court upheld disclosure requirements.

mere appearance of impropriety created by campaign contributions will erode public confidence in the judiciary. There has been considerable debate over the problem of financing judicial elections, and people have proposed a wide array of solutions, but there has been little empirical research on whether campaign contributions actually influence judges' decisions. This paper empirically examines the link between campaign contributions and the behavior of civil trial judges in Hillsborough County (Florida) Court.

Literature Review: The Debate Over Campaign Finance And Judicial Elections

Some judges have argued that there are no serious drawbacks to a system in which attorneys contribute to judicial campaigns. Former Oregon Supreme Court Justice Hans Linde contended that campaign contributions are part of the political process. In fact, he asserted that judges have a First Amendment right to solicit contributions personally without using committees. Other elected officials, such as election commissioners and prosecutors, are required to be impartial and act in the public interest, yet they are permitted to solicit personally for campaign contributions. Therefore, judges should enjoy the same freedom.⁷ Dade County (Florida) Judge Celeste Hardee Muir commented that "Despite speculations to the contrary, the flow of campaign contributions from lawyers to judicial candidates should continue to promote the best qualified candidates for the bench."⁸

However, other judges decried the need to raise money for elections. Former Pennsylvania appellate court judge Edmund Spaeth conceded that it is acceptable for judicial candidates to take money from their friends, most of whom are likely to be

⁷ Hans L. Linde, "The Judge as Political Candidate," *Cleveland State Law Review* 40:1-17 (1992).

⁸ Celeste Hardee Muir, "*Breakstone v. Mackenzie*: A Keystone Case for Judicial Election Reform," *Florida Bar Journal* 64:34-37, 37 (1990).

lawyers. Nevertheless, the judge ultimately concluded that “the fact that candidates for judicial election must raise money works against the ideal of an impartial judiciary.”⁹ In 1988 the Chief Justice of the Texas Supreme Court, John L. Hill, stepped down from his position to advocate against the influence of campaign finance in judicial races. Even if there is no direct quid pro quo, Chief Justice Hill believed that the appearance of impropriety alone caused tremendous damage to the justice system in Texas.¹⁰ If litigants lose faith in the impartiality of the judiciary, then the justice system loses its legitimacy.

Legal scholars have also provided anecdotal evidence highlighting the ethical problems that emerge from campaign contributions in judicial elections. For example, after convicted by a Michigan jury, a defendant filed for a judgment notwithstanding the verdict. Soon after filing the motion, the defendant’s attorney contributed to the judge’s reelection campaign, and the judge subsequently overturned the jury’s verdict and ruled in favor of the defendant.¹¹ Another commentator emphasized that campaign financing allows interest groups with a political agenda to exert too much influence over the judiciary. During a recent Republican primary election for an Illinois Supreme Court seat, anti-abortion groups contributed on behalf of the candidate who supported their position. The anti-abortion candidate ultimately won the primary race.¹² Intense interest group involvement in judicial elections suggests to the public that a judge identified with

⁹ Edmund B. Spaeth, Jr., “Reflections on a Judicial Campaign,” *Judicature* 60:10-20 (1976), quote on page 14.

¹⁰ John L. Hill, Jr., “Time for Challenge: Judicial Reform in Texas,” *Texas Bar Journal* 52:165-170 (1989).

¹¹ Bradley Scigliano, “Attorney Contributions in Political Campaigns: Creating the Appearance of Impropriety,” *Hofstra Law Review* 20:217-243, 229-230 (1991).

¹² David Barnhizer, “On the Make: Campaign Funding and the Corrupting of the American Judiciary,” *Catholic University Law Review* 50:361-427, 388-389 (2001).

a particular group is predisposed to decide cases in favor of that group, regardless of precedent or other legal constraints.

Critics of campaign finance in judicial elections have raised constitutional concerns in addition to ethical problems,. Specifically, criminal defendants have a Sixth Amendment right to a fair trial, and all litigants (civil and criminal) have a Fourteenth Amendment Due Process Clause right to a fair hearing before a judge. If attorneys who contributed to a judge's campaign are unfairly advantaged or attorneys who contributed to an opponent are disadvantaged, then litigants will not enjoy the fair hearing to which they are constitutionally entitled.¹³

Legal scholars have also debated the appropriate remedy for the problems that campaign financing causes in our legal system. One common proposal has advocated that judges be disqualified from cases in which an attorney contributed a substantial amount of money (usually more than \$500) to their campaign. The major argument in favor of recusal is that it will eliminate the appearance of impropriety.¹⁴ Some scholars have contended that recusal should be automatic when an attorney contributed to or was active in a judge's campaign.¹⁵ Whereas, others have advocated that the court disclose contributions to judicial campaigns so that opposing counsel has the option of moving for recusal.¹⁶ One commentator even called for recusal when a legislator votes on a bill that greatly impacts an interest that contributed to his/her campaign.¹⁷

¹³ Mark Grannis, "Safeguarding the Litigant's Constitutional Right to a Fair and Impartial Forum," *Michigan Law Review* 86:382-419 (1987).

¹⁴ Stuart Banner, "Disqualifying Elected Judges From Cases Involving Campaign Contributors," *Stanford Law Review* 40:449-490 (1988); Gerald Uelman, "Disqualification of Judges for Campaign Support or Opposition," *Georgetown Journal of Legal Ethics* 3:419-428 (1990).

¹⁵ Uelman, *supra* note 14.

¹⁶ Scigliano, *supra* note 11.

¹⁷ John Nagle, "The Recusal Alternative to Campaign Finance Legislation," *Harvard Journal on Legislation* 37:69-103.

However, many participants in this debate have argued that the cure of recusal is worse than the disease. In particular, automatic recusal would allow for disingenuous attorneys to forum shop by simply contributing to judges whom they oppose; therefore, those judges would have to step aside when that attorney appears before them.¹⁸ Furthermore, recusal could create administrative problems for local courts. Many attorneys contribute to multiple candidates in multiple races; therefore, a large number of judges would be disqualified from hearing cases.¹⁹ Judges in sparsely populated jurisdictions would ultimately be disqualified in most of the cases on their docket.²⁰ Although not necessarily indicative of a drawback with the recusal remedy, it does bear mentioning that some state courts have ruled that large campaign contributions are not legally sufficient grounds for disqualifying a judge.²¹

Another proposal calls for capping attorney contributions to judicial candidates. This position rests on the premise that the primary problem is not contributions per se, but rather the large contributions that are vital to a particular campaign. The U.S. Supreme Court has already upheld limits on campaign contributions for federal races because Congress has a compelling reason to thwart corruption and the appearance of corruption.²² Consequently, states would have a compelling justification to prevent powerful interests, large law firms, and wealthy attorneys from controlling judicial elections and obtaining an unfair advantage. Unlike the recusal remedy, which attacks

¹⁸ Uelman, *supra* note 14; Grannis, *supra* note 13.

¹⁹ Grannis, *supra* note 13, p. 406-410.

²⁰ James J. Alfani and Terrence J. Brooks, "Ethical Constraints on Judicial Election Campaigns: A Review of Critique of Canon 7," *Kentucky Law Journal* 77:671-722, 720 (1989);

²¹ For example see *Texaco, Inc. v. Pennzoil, Co.*, 729 S.S. 2d. 768 (1987). The Florida Supreme Court ruled that campaign contributions were legally insufficient grounds for recusal in *Breakstone v. MacKenzie*, 656 So.2d. 1332 (1990). See also Susan Lontas, "Judicial Elections Have No Winners," *Stetson Law Review* 20:309-333 (1990).

²² *Buckley v. Valeo*, 424 U.S. 1 (1976)

the problem after the damage has transpired, the contribution remedy prevents the problem from occurring at all. Moreover, contribution caps would prevent attorneys from spending inordinate sums of money on a select few candidates; thus, attorneys would be forced to spread smaller contributions among many candidates. Consequently, instead of a few interests and attorneys gaining considerable influence with certain judges, many attorneys would enjoy only minimal influence with most judges.²³

Despite these arguments, there is not universal agreement on contribution caps. One scholar argued that caps would advantage civil defense firms at the expense of plaintiffs' attorneys. Civil defense firms tend to have more attorneys than plaintiffs' firms have. Therefore, limiting each attorney's contribution would on the whole allow defense firms to contribute more money than plaintiff's firms.²⁴ Additionally, caps advantage wealthy candidates. Because the Supreme Court ruled that governments can regulate contributions but cannot regulate expenditures,²⁵ caps would allow wealthy candidates to spend an unlimited amount of their own money on their campaigns, but non-wealthy candidates would be forced to restrict the funds they could raise and ultimately spend.²⁶

Another proposed solution is public financing or pooling of contributions. In this plan, attorneys donate to a general fund through the local bar association, which then disburses the money to candidates it endorses as qualified. If candidates take that money, then they cannot raise additional funds. Although these plans are voluntary, most candidates would opt for the public funds in order to secure the coveted bar association

²³ See Barnhizer, *supra* note 12, pp. 409-413; Grannis, *supra* note 13, pp. 410-414.

²⁴ Anthony Champagne, "Campaign Contributions in Texas Supreme Court Races," *Crime, Law, and Social Change* 17:91-106, 103 (1992).

²⁵ *Buckley v. Valeo*, 424 U.S. 1 (1976)

²⁶ Champagne, *supra* note 24, p. 103.

endorsement. This plan and variants of it have enjoyed support from bar associations and legal scholars,²⁷ and variants of it have been tried in several jurisdictions. In 1972 Dade County, Florida established a trust fund for pooling contributions, but the practice was completely abandoned in 1978 because too few attorneys and candidates participated. However, the voluntary contribution fund that the Cleveland, Ohio Bar Association manages has been successful.²⁸

Finally, many observers are so dissatisfied with the ethical and constitutional problems of campaign contributions and the sundry remedies proposed, that they have called for abandoning judicial elections altogether. Some have advocated adopting the merit system of selecting judges.²⁹ However, considerable sums of money have raised on both sides of controversial retention elections, such as Rose Bird's campaigns to keep her seat as Chief Justice of the Supreme Court of California during the late 1970s and 1980s.³⁰ Therefore, the merit system may not cure the problems associated with campaign finance. Other thinkers have called for state judges to be appointed and serve for good behavior, similar to federal judges.³¹

Literature Review: Empirical Studies of Campaign Finance And Judicial Elections

Clearly, there has been considerable scholarly debate over the propriety of attorney contributions to judicial candidates and possible solutions to deal with those concerns. Nevertheless, there has not been nearly as much empirical research on the question of the actual impact of campaign contributions. Much of the previously

²⁷ Roy A. Schotland, "Elective Judges' Campaign Financing: Are State Judges Robes the Emperor's Clothes of American Democracy?" *Journal of Law & Politics* 2:57-167 (1985)

²⁸ *Ibid.*, pp. 96-104.

²⁹ Hill *supra* note 10; Lontas, *supra* note 21.

³⁰ Schotland, *supra* note 27, p. 59.

³¹ Ross Cheit and Sandra Golze, "Are Judges Sitting Ducks? The Case for Abolishing Judicial Elections," *California State Bar Journal* 55:414-419 (1980)

discussed literature assumed that judicial candidates spend considerable sums of money on campaigns; that attorneys are the dominant contributors to these campaigns; that these contributions influence the outcome of elections; and that contributions influence judges' behavior on the bench. However, in order to have enough information to make normative judgments on campaign contributions in judicial elections or to offer solutions, these assumptions must be established with systematic evidence. Fortunately, some scholars have started to address the key empirical issues.

There is mixed evidence on the relative amount of money spent in judicial campaigns. Judicial positions are low profile and localized; consequently, they do not require significant resources. An exploratory study of campaign spending by candidates for California trial judgeships between 1976 and 1982 found that campaign costs were relatively low, especially when compared to other California state government positions.³² A study of North Carolina elections from 1988 through 1994 showed that campaign finances were minimal in judicial races compared to legislative and gubernatorial races.³³ However, other studies have shown that spending on judicial campaigns increased considerably through the 1980s in the states of Texas,³⁴ Illinois,³⁵ and Washington.³⁶

Other research has explored the sources of campaign contributions in judicial elections. Most studies have demonstrated that lawyers constitute a large percentage of contributors, but the results are surprisingly not uniform. A study of a sample of

³² Philip L. Dubois, "Penny for Your Thoughts? Campaign Spending in California Trial; Court Elections, 1976-1982," *Western Political Quarterly* 39:265-284 (1986).

³³ Theodore S. Arrington, "When Money Doesn't Matter: Campaign Spending for Minor Statewide Judicial and Executive Offices in North Carolina," *Justice System Journal* 18:257-266 (1996).

³⁴ Champagne, *supra* note 24.

³⁵ Marlene Arnold Nicholson and Norman Nicholson, "Funding Judicial Campaigns in Illinois," *Judicature* 77:294-299 (1994)

³⁶ Shelia Kaplan and Zoe Davidson, "The Buying of the Bench," *The Nation* 116:11 (January 26, 1998).

contributors to candidates for the 1988 election for the Chief Justice of the Texas Supreme Court found that 66.1 percent of the contributors were attorneys,³⁷ A thorough analysis of judicial elections in Illinois revealed that lawyers were the plurality of contributors, but self contributions were significant as well.³⁸ In California and Pennsylvania most, but not all, judicial candidates took a significant amount of campaign contributions from attorneys.³⁹ A study of California Superior Court races in 1980 found that lawyers constituted a plurality of contributors for primary elections, but business interests contributed almost as much as lawyers.⁴⁰

Another area for empirical inquiry examined whether there are any patterns associated with attorney contributions. In Texas Supreme Court races during the 1980s plaintiffs' attorneys tended to donate to Democratic candidates and civil defense attorneys tended to donate to Republican candidates. Additionally, corporate interests, such as oil companies, banks, the insurance industry, and physicians were likely to contribute to Republican candidates. In short, campaign financing of Texas Supreme Court elections was a forum for interest group battles over tort policy.⁴¹ Another study showed that PACs contributed significant funds to Texas Supreme Court races between 1988 and 1992. These PACs were not legal in nature, but they clearly represented

³⁷ Donald W. Jackson and James W. Riddlesperger, Jr., "Money and Politics in Judicial Elections: The 1988 Election of the Chief Justice of the Texas Supreme Court," *Judicature* 74:184-189, 185 (1991)

³⁸ Nicholson and Nicholson, *supra* note 35, pp. 297-298. The authors do note, however, that in 1980 and 1982 circuit court races outside Cook county., the majority of contributors were non-lawyers. See footnote number 9 on page 297.

³⁹ American Bar Association, "Appendix Three," Report and recommendations of the Task Force on Lawyers' Political Contributions," July 1998; Schotland, *supra* note 27, pp. 116-118.

⁴⁰ Philip L. Dubois, "Financing Trial Court Elections: Who Contributes to California Judicial Campaigns?" *Judicature* 70:8-16, 12-16 (1986)

⁴¹ Jackson and Riddlesperger, Jr., *supra* note 37 ; Champagne, *supra* note 24.

industries with business before the Texas Supreme Court, such as agriculture, finance, insurance, chemical, tobacco, medical, and oil.⁴²

Empirical analysis has also focused on the relationship between campaign contributions and judicial election outcomes. A recent analysis of campaign expenditures during the 1998 judicial elections in Florida judges suggested that money played a strong role in the outcome. Winners spent considerably more than losers, which implies that the contributions fueling these expenditures were significant in determining election outcomes.⁴³ Other studies demonstrated that the average amount of money raised by winning candidates outpaced the average amount of funds raised by losing candidates in California, Pennsylvania, Maryland, Florida, and Texas.⁴⁴ Conversely, some studies discovered that campaign contributions do not exert as great an impact on the outcome of judicial elections as others have claimed. An analysis of trial court races during the 1980 election examined how several voting cues impacted the percentage of the vote that successful candidates won. It specifically compared results among the Northeast, South, and West. This research found that campaign funds were statistically correlated with percentage of vote won in the South and Northeast, but not in the West. More importantly, this research demonstrated that name recognition and incumbency influenced the outcome of judicial elections more than money did.⁴⁵ Additionally, a study of trial and appellate court elections in North Carolina found that the amount of

⁴²Anthony Champagne and Kyle Cheek, "PAC's and Judicial Politics in Texas," *Judicature* 80:26-27 (1996).

⁴³ Steven C. Tauber and Robert A. Young. *Report: Judicial Selection: The Importance of Independence and Accountability* (Tallahassee, FL: Office of State Courts Administration, Supreme Court of Florida 2002).

⁴⁴ Schotland, *supra* note 27, pp. 134-140. Champagne, *supra* note 24, pp.92-93 uncovered similar results for Texas Supreme Court races in the 1980s. Specifically, he noted that the mean number of contributions for winning candidates outpaced by several hundred thousand dollars the mean for all candidates.

⁴⁵ Mary L. Volcansek, Money or Name? A Sectional Analysis of Judicial Elections," *Justice System Journal* 8:46-58 (1983).

money spent exerted no discernable impact on the results of judicial races; political party was far more salient.⁴⁶ Of course, North Carolina elects its judges on partisan ballots, so perhaps campaign contributions would be more important in non-partisan races.

Despite the research discussed thus far, there has been no thorough empirical analysis of a direct connection between campaign contributions and how judges behave on the bench or the decisions they make. At best, previous researchers have shown that attorneys or other vested interests are major contributors, and those contributions impact the results of elections. One might then presume that judges would feel obligated towards those who helped their victory. Nicholson and Nicholson concluded that "...it [is] fair to assume that some contributors believe they are getting something for their money, even if it is something less than the most blatant judicial partiality."⁴⁷ There has also been scant anecdotal evidence of contributions indirectly affecting the outcome of cases. One account of Philadelphia's municipal court revealed that defense attorneys who worked for or contributed to judges' campaigns won 71 percent of the time compared to the average defense success rate of 35 percent.⁴⁸ However, in many of those cases juries, not judges, decided verdicts. Furthermore, this study did not introduce control variables. Therefore, these figures do not necessarily demonstrate systematically that campaign contributions influenced judges' behavior. To date there has been no thorough or systematic attempt to uncover a relationship between judicial decisions and campaign contributions. This study fills this gap in the literature by testing

⁴⁶ Arrington, *supra* note 33, at

⁴⁷ Nicholson and Nicholson, *supra* note 35, p. 299.

⁴⁸ Harry P. Stumpf and John H. Culver, *The Politics of State Courts* (New York: Longman 1992), pp. 44-45.

systematically the extent that campaign contributions have impacted the outcome of recusal motions in civil cases for the Hillsborough County Court from 1997 through 2002.

Methodology

At the outset it is important to recognize that testing for a causal connection between campaign contributions and judicial decisions is methodologically difficult. The only way to show conclusively that judges base decisions on campaign contributions would be to read the judges' minds, which is obviously impossible. Therefore, at best this research can test indirectly for the relationship between campaign contributions and judicial decisions. This section explores the key methodological issues involved in this study.

Some scholars have investigated the issue of campaign finance in judicial elections by surveying judges for their attitudes.⁴⁹ Given the difficulty in ascertaining judges' motives, survey research provides an acceptable, albeit indirect, access to the minds of judges. For this specific project, however, survey research is problematic because it relies on judges' candor on the impact of campaign contributions. Questions concerning judges' impartiality and the integrity of their profession are extremely sensitive, and when surveys cover sensitive issues, respondents' veracity is highly questionable.⁵⁰ Therefore, survey research might overlook evidence that campaign contributions influence judicial decisions. As an alternative to the survey research approach, this study examined the connection between campaign contributions and

⁴⁹ Jackson and Riddlesperger, *supra* note 37; Schotland *supra* note 27; Volcansek, *supra* note 45.

⁵⁰ Bernard Hennessy, *Public Opinion, 5th edition* (Monterey, CA: Brooks/Cole Publishing Company, 1985), pp. 93-94. Hennessy wrote, "There appears to be a hard core of liars on even socially neutral questions – a group that is joined by many others as the questions become increasingly ego related."

judges' actual decisions. Despite one commentator's assertion that it is not possible to research the direct impact of campaign contributions on judicial decisions,⁵¹ a carefully designed study with appropriate conclusions drawn from it can yield important insight into the relationship between campaign contributions and judicial decisions.

Another methodological design issue concerns whether to focus on appellate courts or trial courts. Some research on campaign contributions and judicial decision making has exclusively focused on appellate courts,⁵² some studies examined trial courts,⁵³ some research focused on both trial and appellate courts,⁵⁴ and one study did not distinguish between the two types of courts.⁵⁵ Using appellate courts offers major advantages. Although appellate judges are bound by precedent and the text of statutes and constitutions, they have considerable discretion on how to decide cases. A long line of research shows that federal⁵⁶ and state⁵⁷ appellate judges choose among different

⁵¹ Stuart Banner, *supra* note 14, p. 463 wrote, "No research has been conducted on whether these contributions actually influence the outcome of cases. There are too many other variables impacting the outcome of cases, including most notably the jury, which judges do not directly control. Such a study would be impossible to conduct, because it would necessitate making assumptions about the way particular cases would have been decided but for the contributions from the parties involved."

⁵² See Champagne, *supra* note 24; Champagne and Cheek, *supra* note 42; Jackson and Riddlesperger, *supra* note 37

⁵³ Dubois, *supra* note 32; Dubois, *supra* note 40.

⁵⁴ Arrington, *supra* note 33; Nicholson and Nicholson, *supra* note 35; Schotland, *supra* note 27; Tauber and Young, *supra* note 43

⁵⁵ Volcansek *supra* note 45;

⁵⁶ See for example, Tracy E. George and Lee Epstein, "On the Nature of Supreme Court Decision Making," *American Political Science Review* 83:323-337 (1992); Jeffrey A. Segal, "Predicting Supreme Court Cases Probabilistically: The Search and Seizure Cases, 1962-1981" *American Political Science Review* 78:891-900 (1984); Jeffrey A. Segal, "Supreme Court Justices as Human Decision-Makers: An Individual Level Analysis of Search and Seizure Cases," *Journal of Politics* 48:557-565 (1986); Jeffrey A. Segal and Albert D. Cover, "Ideological Values and the Votes of U.S. Supreme Court Justices," *American Political Science Review* 83:557-565 (1989); Jeffrey A. Segal, Lee Epstein, Charles Cameron, and Harold J. Spaeth, "Ideological Values and the Votes of U.S. Supreme Court Justices Revisited," *Journal of Politics* 57:812-823 (1995); Jeffrey A. Segal and Harold Spaeth, *The Supreme Court and the Attitudinal Model* (New York: Cambridge University Press, 1993); Donald Songer and Susan Haide, "Integrating Alternative Approaches to the Study of Judicial Voting: Obscenity Cases in the U.S. Courts of Appeals," *American Journal of Political Science* 36:963-982 (1992); and S. Sidney Ulmer, "Social Background as an Indicator to the Votes of Supreme Court Justices in Criminal Cases: 1947-1956 Terms," *Midwest Journal of Political Science* 17:622-630 (1973).

policy preferences to formulate legal policy on significant, and often controversial, issues.

However, because state appeals courts make legal policy in controversial issues, such as product liability law, abortion, and the rights of the accused, it may be more difficult to recognize the influence of campaign contributions. There might be correlations between attorney contributions and favorable decisions at the appellate level, but those correlations are likely to be the result of policy congruence more than the influence of money. For example, if an attorney (or any contributor for that matter) opposes abortion rights, then he or she would most likely contribute to state appellate court candidates who share that view or who advocate a judicial restraint philosophy that would result in decisions limiting abortion rights. If those candidates win judgeships and subsequently rule against abortion rights, then there would be a statistical relationship between the contributions and judicial decisions, but that relationship would be spurious. It is more likely that preexisting views against abortion rights caused both the contribution to the judge and the anti-abortion decisions. The contributions had no discernable influence on those decisions. Accordingly, my study examined trial court decisions, which are not as policy oriented. One could more reasonably attribute a

⁵⁷ See for example, Paul Brace, Laura Langer, and Melinda Gann Hall, "Measuring Preferences of State Supreme Court Judges," *Journal of Politics* 52:387-413 (2000); Craig F. Emmert and Carol Ann Traut, "The California Supreme Court and the Death Penalty," *American Politics Quarterly* 22:41-61 (1994); Malcolm M. Feeley, "Another Look at the Party Variable in Judicial Decision Making: An Analysis of the Michigan Supreme Court," *Polity* 4:91-104 (1971); Gregory N. Flemming, David Hollan, and Susan Cluck-Mezey, "An Integrated Model of Privacy Decision Making in State Supreme Courts," *American Politics Quarterly* 26:35-58 (1998); Gerard S. Gryski and Eleanor C. Main, "Social Backgrounds as Predictors of Votes on State Courts of Last Resorts," *Western Political Quarterly* 39:528-537 (1986); Gerard Gryski, Eleanor Main, and William Dixon, "Models of State High Court Decision Making in Sex Discrimination Cases," *Journal of Politics* 48:143-155 (1986); Melinda Gann Hall and Paul Brace, "The Vicissitudes of Death by Decree: Forces Influencing Capital Punishment Decision Making in State Supreme Courts," *Social Science Quarterly* 75:136-150 (1994); Steven C. Tauber "Capital Punishment Decision Making on the Supreme Court of Florida." *Politics and Policy* 30:680-706; Carol Ann Traut and Craig F. Emmert, "Expanding the Integrated Model of Judicial Decision Making: The California Juices and Capital Punishment," *Journal of Politics* 60:1166-1180 (1998).

correlation between trial court decisions and attorney contributions to the influence of the donation itself.

The next important research design issue concerns what kinds of trial judge decisions to examine. One strategy is to test the correlation between attorney contributions and trial verdicts. Are attorneys who contribute to judges more likely to get favorable verdicts? Likewise, are attorneys who contribute to judges' opponents less likely to obtain favorable verdicts? However, too often juries, not judges, decide verdicts. Although judges influence the outcome of cases by controlling the procedures of the trial and instructing the jury on legal matters, juries ultimately decide facts of the case and reach verdicts. Consequently, an attorney contribution to a judge would have little direct effect on trial verdict. However, judges' rulings on procedural motions are useful for testing the influence of campaign contributions. Judges have total control over the outcome their procedural motions; juries play no role. Although bound by precedent and statutes, judges enjoy enough discretion when deciding procedural issues to leave open the possibility that their decisions are motivated in part by campaign contributions. Ultimately, this research tested Ross Cheit and Sandra Golze's assertion that, "Contributions may not affect the outcome of cases, but they might result in favorable procedural rulings."⁵⁸

Specifically, this research analyzed recusal motions, in which judges were asked to remove themselves from cases because of a conflict of interest with one of the parties or their attorneys, or judges had exhibited prejudice against one of the parties or their attorneys. Federal and state laws generally require that judges recuse themselves in cases where they have a close familial, personal, or professional association with one of the

⁵⁸ Cheit and Golze, *supra* note 31, p. 416.

parties or attorneys, or if the judge would benefit financially from a decision. Moreover, federal and state laws require judges to be disqualified if they have shown any prejudice or bias towards one of the parties of the case or their attorneys. If an attorney petitions a judge to disqualify herself because of prejudice or bias, then the judge cannot decide the case on the truth of the allegations. Instead judges must rule in a way that avoids the appearance of impropriety. Nevertheless, if the judge deems that the motion is “legally insufficient,” then he can dismiss the motion for recusal or disqualification. The “legally insufficient” standard is quite vague, thus giving judges considerable discretion in deciding recusal motions.⁵⁹ This discretion leaves open the possibility that campaign contributions may impact outcome of the motion.

Given the earlier discussion, it bears mentioning that none of the recusal motions comprising this study concerned campaign contributions themselves. In 1989 the Florida Supreme Court ruled that an attorney contributing to the reelection of a judge or close associate of the judge is not a legally sufficient reason to remove a trial judge.⁶⁰ Therefore, all motions included in this study involve a conflict of interest or prejudice that was not in any way related to campaign issues.

The final design issue concerns whether to use a multi-jurisdictional, comparative design, or to focus on a single jurisdiction. Multi jurisdictional studies are advantageous because they are generalizable to elected trial court judges throughout the United States.

⁵⁹ For federal courts the following statutes apply to recusal 28 U.S. C. § 144 and 28 U.S.C. § 455. For more on federal law governing recusal see The Federal Judiciary Center, *Recusal: An Analysis of Case Law Under 28 U.S.C. §§ 455 & 144* (Washington: DC: Federal Judicial Center, 2002), pp. 1-51; Richard E. Flamm, *Judicial Disqualification: Recusal and Disqualification of Judges* (Boston: Little Brown & Company, 1966). For more on the procedures for recusal in Florida consult *Florida Statutes*, Title V, Chapter, 38, Sections 1-10. See also Flamm, pp. 786-789.

⁶⁰ *Breakstone v. MacKenzie*, 656 So.2d. 1332 (1990). Although this case concerned a contribution to a trial judge’s wife, the holding is relevant for direct contributions as well. For more on these cases see Lontas, *supra* note 17.

However, since recusal motions are so difficult to obtain, this study will focused on the connection between campaign contributions and recusal motions within a single jurisdiction. More specifically, this study examined the 445 disqualification motions filed in Hillsborough County (Florida) Circuit Court for civil cases between the years of 1997 and 2002.⁶¹ This research compared attorney contributions to judges' recusal decisions, while considering the possible influence of other relevant variables. The Clerk of the Hillsborough County Court, Richard Ake, supplied copies of the motions.⁶² Hillsborough County is part of a major metropolitan area (Tampa Bay), and it is diverse racially, economically, and politically; therefore, it is fairly representative of American metropolitan trial courts. Although the results obtained in this study cannot automatically be generalized to trial court behavior throughout the United States, or even the state of Florida, the fact that Hillsborough County is fairly typical reinforces the ultimate conclusions.

Variables And Measurement

Table-1 lists the dependent and independent variables and the way in which they are measured.

The dependent variable for this study was the outcome of the recusal motion, which is coded as a 0 if the motion was denied and a 1 if it was granted. This variable was dichotomous, which means that it can exhibit one of only two possible outcomes – grant or deny the motion. The signed recusal motions provided the information for this variable.

⁶¹I would like to thank *Citizens for Better Courts*, Catherine Real, Esq. and Dan Botkins for gathering the recusal motions.

⁶² One could argue that is necessary to include contributions from the parties of the case in this analysis. However, in this analysis there were no contributions from the parties in the case; therefore, the study examined only attorney contributions.

The most significant independent variables in this study concerned campaign contributions to the trial court judge hearing the motion or that judge's campaign opponent. To capture the full range of links between contributions and the trial judges' decisions on recusal motions, I hypothesized that four variables were statistically related to the recusal motion outcomes. One variable recorded whether the movant (i.e., the attorney motioning for recusal) contributed to the trial judge in the most recent election.⁶³ I expected that if the attorney for the movant contributed to the trial judge, then there is a greater chance the motion will be granted. A second variable registered whether the non-movant (i.e., the side that did not make the motion) contributed to the sitting judge in the most recent election. I hypothesized that if the attorney for non-movant donated to the trial judge's campaign, then the judge is less likely to grant the motion. A third variable measured whether the attorney for the movant contributed to the trial judge's opponent (if there was one) in the most recent election. I hypothesized that if the attorney for the movant contributed to the trial judge's opponent, then the judge is less likely to grant the recusal motion. Finally, a fourth variable captured whether the attorney for the non-movant contributed to the judge's opponent, and I hypothesized that if the attorney for the non-movant donated to the judge's opponent, then the judge is more likely to grant the motion. It is important to note that many judges in this database never ran in an election. They were appointed to fill vacancies and were never subsequently challenged. In those instances, the score for all four variables was 0, since the judge never needed to

⁶³ The dummy variable measuring whether the attorney contributed to the campaign is more appropriate than a variable measuring the amount of money contributed. Including such a variable suggests that judges consciously examine each specific contribution, discover the amount, and then use that information to base their recusal motion decisions. This study has not hypothesized such a relationship between campaign contribution and judicial decision making. Instead, it focused more on the broad impact of campaign contributions. Using the dummy variables that capture whether the attorney contributed reflects the general link between contributions and recusal motion decisions that this study endeavors to examine.

raise money. Nevertheless, I still checked for contributions to all judges regardless of their electoral history.

The attorney and presiding judges' names came from the recusal motion themselves. Because contributions from an attorney's firm is equivalent to a contribution from the attorney, it was necessary to research the attorneys' firms. The Martindale-Hubbell database, which I accessed through LEXIS/NEXIS⁶⁴ provided employment data on attorneys' employment. I corroborated the Martindale-Hubbell information with the date that the motion was filed. I accessed the campaign contribution data for attorneys and law firms through the State of Florida Division of Elections website,⁶⁵ which lists contributions to each judicial candidate.

To establish a causal connection between the contribution variables and the outcome of the recusal motions it is necessary to control for other factors that may influence judges' decision. Therefore, I included six control variables, which should theoretically influence judges' recusal decisions independently of campaign contributions.

First, it is important to control concerns the judge's experience. In particular, I suspected that experienced judges are more likely to understand the importance of even avoiding the appearance of impropriety, thus they more likely to grant a recusal. There are two variables that capture the impact of experience – age and duration of legal practice. Survey research demonstrates that older and more experienced judges are more likely than younger and less experienced judges to disqualify themselves when their

⁶⁴ I accessed LEXIS/NEXIS through University of South Florida portal, <http://my.usf.edu>.

⁶⁵ I accessed the Division of Election information on-line at <http://election.dos.state.fl.us/campfin/cfindb.shtml>.

impartiality is challenged.⁶⁶ The age variable was measured by subtracting the year of the judges' birth from the year of the case, and the duration of legal practice variable was measured by subtracting the year the judge started practicing law from the year of the case. I hypothesized that both variables are positively related to the dependent variable – older and more experienced judges should be more likely than younger and less experienced judges to grant recusal motions. I gleaned information on judges' date of birth and year admitted to the bar from the Martindale-Hubbell biographies available through LEXIS/NEXIS.

Additionally, I considered the extent judges were educated in state or out of state. It is reasonable to expect that judges who were educated in the state of Florida are more likely to possess a strong attachment to their local judicial system, which encompasses recusing themselves in order to avoid the appearance of impropriety and casting doubt on that judicial system. Consequently, judges who were educated in Florida schools should be more likely than judges who were not educated in Florida to grant recusal motions.⁶⁷ Therefore, I hypothesized that judges educated in Florida are less likely to grant recusal motions, regardless of campaign contributions. Although there is no empirical research supporting this hypothesis, this presupposition is important enough to include as a control variable in this model. This variable was coded with a 0 if the judge did not attend either school in Florida, a 1 if the judge attended either undergraduate or law school in the state

⁶⁶ Jona Goldschmidt and Jeffrey M. Shaman, "Judicial Disqualification: What Do Judges Think," *Judicature* 80:68-72, 71 (1996); Jeffrey M. Shaman and Jona Goldschmidt, *Judicial Disqualification: An Empirical Study of Judicial Practices and Attitudes* (Chicago: American Judicature Society, 1995), pp. 43-45.

⁶⁷ Gryski and Main, *supra* note 57 found that judges who attended law school out of state were more likely than judges who attended law school in-state to uphold gender discrimination claims. They attribute this result to the fact that judges who attended school out of state would be exposed to a broader array of viewpoints and would thus be more receptive to gender discrimination claims. However, this "cosmopolitanizing" effect might not be relevant to granting recusal motions, which could reflect more of an attachment to the local court system.

of Florida, and a 2 if both of the judges schools were in Florida. This variable should be negatively related to the dependent variable. The Martindale-Hubbell biographies accessed through LEXIS/NEXIS provided the information on the judges' undergraduate and law school educations.

Finally, ideological attitudes may influence how judges approach recusal motions. Granting recusal motions requires judges to consider the possibility that they are biased, despite their confidence in their neutrality. Generally speaking, those with a liberal ideology are more likely than those with a conservative ideology to question the certainty of their actions. Granting a recusal motion displays a willingness to admit one's bias; whereas, denying recusal motions reflects the opposite attitude. Therefore, although somewhat speculative, I hypothesized that conservative judges are less likely than liberal judges to grant recusal motions, independent of campaign contributions and the other control variables introduced thus far. The difficulty comes in measuring trial judges' ideology; however, research on judicial politics in general, and state court judges in particular, has uncovered variables, which successfully measured judicial ideology. I employed three of those variables in this study.

One of these variables is political party. Research on state courts has demonstrated that Republican judges are more likely than Democratic judges to reach conservative decisions.⁶⁸ Therefore, I hypothesized that Republican judges are not likely to recognize their own biases; therefore they should be less likely to grant recusal motions compared to Independent or Democratic judges. Although judges in Florida run in non-partisan elections, they still are able to register for political parties, and the

⁶⁸Feely, *supra* note 57 ; Gryski and Main, *supra* note 57; See also Stuart Nagel, "Political party Affiliation and Judges' Decision Making," *American Political Science Review* 55:843-850 (1961); S. Sidney Ulmer, "The Political party Variable in the Michigan Supreme Court," *Journal of Public Law* 11:352-62 (1962).

partisan registration for Hillsborough County judges was obtained from the Citizens for Better Court Website.⁶⁹ I coded the political party variable with a 0 for Democrat, Independent, or other party judges and 1 for Republican judges.

Race and gender are important ideological variables as well. Research has shown that racial/ethnic minority judges and female judges tend to make more liberal decisions on the bench.⁷⁰ Consequently, I hypothesized that women and minority judges are more likely to grant recusal motions, regardless of campaign contributions. I coded the gender variable with a 0 if the deciding judge was a female and a 1 if he was a male. Therefore, I suspected that this variable would have a negative association with the dependent variable. I operationalized race in terms of the judge's minority status. If the trial judge was white, then I coded the variable as a 0, and if the judge was a racial minority (African American or Latino),⁷¹ then I coded the variable as a 1. I hypothesized a positive relationship between minority status and granting the recusal motion. The judges' gender is self evident, but it was not as easy to determine the judges' race or ethnicity. First, I examined pictures to determine if judges were African-American, and I looked at judges' surnames to determine if they were Latino. Additionally, I scanned newspaper articles⁷² and background information, such as organizational memberships, for any further indicators that a judge was African American or Latino.

{ Table-1 About Here }

Results

⁶⁹ <http://www.bettercourts.org/>

⁷⁰ Gyski, Main, and Dixon, *supra* note 57 found that female state supreme court justices were more likely to than male state supreme court justices to side with plaintiffs in gender discrimination cases. Tauber *supra* note 57 found that women and minority justices on the Florida Supreme Court were more likely than white, males to overturn capital punishment sentences – a liberal ruling.

⁷¹ There were no Asian Americans or American Indian judges in this dataset.

⁷² I used the *St. Petersburg Times* for this research.

There were a total of 451 valid recusal motions in civil court between the years 1997 and 2002,⁷³ and 425 or 93.4 percent of those motions were granted. Therefore, when considering the full set of recusal motions, the outcome of the dependent variable was largely preordained, which posed both statistical and substantive problems. One difficulty concerned the large number of recusal motions based on a conflict of interest, which almost automatically results in recusal and greatly limits judges' discretion. Judges are legally constrained to grant a recusal motion if they have a close person, familial, or professional relationship with one of the attorneys or parties. In fact, 99.3 percent of the conflict of interest motions were granted, and 57.3 percent were granted *sua sponte*. Including the conflict of interest motions in this analysis did not properly capture judge's behavior in recusal and disqualification cases. Since the variation in the dependent variable is extremely low, it is unlikely that any of the independent variables would have registered a detectable influence when analyzing the full dataset. Moreover, since the outcome of the conflict of interest motions were largely predetermined by law, and the judge has little discretion, it is unlikely that campaign contributions would have any influence on judges' decisions on recusal motions claiming a conflict of interest.

Since the conflict of interest motions potentially biased the results, I eliminated them from the analysis and considered only the 68⁷⁴ disqualification cases charging judges with prejudice toward an attorney or party to the case. Judges do not rule on the factual basis of recusal motions alleging bias or prejudice, and they are legally required to recuse themselves to avoid the "appearance of impropriety." However, judges are still

⁷³ Of the 455 total cases, 4 had missing data for the dependent variable. Therefore, the valid number of cases that is included in the statistical analysis is 451.

⁷⁴ There were actually 71 cases, but 3 of them had missing data for the dependent variable and were accordingly dropped from the analysis.

allowed to deny the motion if they believe it to be “legally insufficient. On the other hand, since determining legal sufficiency is subject to judges’ discretion, they have more control over their decisions on recusal motions based on bias or prejudice.⁷⁵ In fact, only 66.2 percent (N=45) of the 68 prejudice cases were decided in favor of granting the recusal motion. Clearly, there is more variation with the prejudice/bias motions than there is in the full dataset. However, because this data set contains far fewer cases than the full one, it may be more difficult to achieve statistical significance.

To first test the extent that campaign contributions influenced recusal motions, I conducted a Crosstab and Pearson’s Chi-Square test on each of the contribution independent variables and the recusal motion decisions. The results are reported on Tables 2 through 5. Table-2 displays the results for the relationship between the variables registering whether the movant’s attorney contributed to the trial judge and the recusal decision. In 55.6 percent of cases where the movant contributed to the trial judge the motion was granted, but the motion was granted in 67.8 percent of the cases where the movant did not contribute to the judge. This was an extremely strange result because it indicated that contributing attorneys experienced less success in recusal motions. However, the Chi-Square was statistically insignificant; therefore, ultimately these result was inconclusive.

{ Table-2 About Here }

Table-3 reports the results for the relationship between the variables capturing whether the non-movant contributed to the trial judge and the recusal motion outcome.

⁷⁵ For example, Goldschmidt and Shaman, *supra* note 66, p. 70 wrote, “Personal bias or prejudice has to do with a state of mind. Therefore, the presence of bias or prejudice tends to be a subjective matter that is relatively difficult to determine. It is well settled that certain kinds of bias, such as racial prejudice, have no place in the law and are clearly disqualifying. However, other kinds of bias are often a matter of degree and difficult to measure.

About 75.0 percent of the recusal motions were denied in cases where attorneys for the non-movant contributed to the trial judge's campaign, but only 31.3 percent of the motions were denied in cases where attorneys for the non-movant did not contribute to the trial judge. In other words, when the non-movants' attorneys contributed to judges, the judges were less likely to grant recusal motions, which suggests that campaign contributions influenced judicial decision making. The Chi-Square of 3.219 was statistically significant at the 0.1 level,⁷⁶ but the Cramer's V of 0.218 demonstrated that the strength of this relationship was weak to moderate.

{ Table-3 About Here }

Table-4 reports the results for the relationship between the variables registering whether the movant contributed to the trial judge's opponent's campaign and the motion result. In this relationship, 66.7 percent of the motions were granted in cases where the movants' attorneys donated to the opponent's campaign, and 66.1 percent of the motions were granted in cases where the movants' attorneys did not contribute to opponents' campaign. In other words, whether the movant contributed to judges' opponents exerted virtually no affect on the judges' behavior in recusal motions.

{ Table-4 About Here }

Finally, Table-5 reports the results for the Crosstab of the relationship between the variables registering whether the non-movant contributed to the trial judge's opponent's campaign. Exactly 50.0 percent of the motions were granted when attorneys for non-movants contributed to judges' opponents, and 67.2 percent of the motions were

⁷⁶ In this study I conducted one-tailed tests, which allowed me to use the $p < 0.1$ threshold for statistical significance. Although most research uses a two two-tailed test, this research was exploratory and I have proposed theoretical directions for the hypothesized relationships. Therefore, I am able to use one-tailed tests. See Frederick J. Gravetter and Larry B. Wallenau, *Essentials of Statistics for the Behavioral Sciences* (Pacific Grove, CA: Brooks/Cole Publishing Company, 1999) p. 231.

granted in cases where attorneys for non-movants did not contribute to judges' opponent. My hypothesis expected that in cases where the non-movant contributed to the opponent, judges would be more likely to grant the recusal motion, but this Crosstab showed the opposite to be true. Nevertheless, the Chi-Square for this relationship was not statistically significant, so the results were inconclusive.

{Table-5 About Here}

The Crosstab analyses suggested that the link between campaign contributions and judicial decisions was most apparent in cases where attorneys for the non-movant contributed to the judge. However, in order to ensure that the mathematical relationship between this campaign contribution variable and the recusal decision is not spurious, it is necessary to introduce the control variables. More specifically, I must isolate each independent variable's impact on the dependent variable while controlling for the other independent variables. Multiple regression is the most suitable technique for conducting this analysis because it reports results for each independent variable, while holding the other independent variables constant. However, because the dependent variable is dichotomous, Ordinary Least Squares (OLS), which is commonly employed in multiple regression, is not appropriate. OLS presumes the existence of dependent variable outcomes below 0 and above 1, and it does not perceive the 0 and 1 measurement as representing bounded probability.⁷⁷ Logistic regression expresses the influence of the independent variables in terms of their isolated impact on the probability of a particular outcome occurring – in this case granting the recusal motion. Specifically, logistic

⁷⁷ See John H. Aldrich and Forest D. Nelson, *Linear Probability Models, Logit, and Probit Models* (Beverly Hills, CA: Sage Publications, 1984); Albert DeMaris, *Logit Modeling: Practical Applications* (Newbury Park, CA: Sage Publications, 1992); Robert L. Kaufman, "Comparing Effects in Dichotomous Logistic Regression: A Variety of Standardized Coefficients," *Social Science Quarterly* 77:90-109 (1996); David G. Kleinbaum, *Logistic Regression: A Self Learning Text* (New York: Springer-Verlag, 1994).

regression modifies the regression function logarithmically to account for the unique characteristics of a dichotomous dependent variable. Each independent variable coefficient is calculated initially as the log of the odds that a unit change on a single independent variable, with all other variables held constant, influences the probability of a 1 on the dependent variable. Algebraic manipulation allows the coefficient to be expressed as odds-ratios, which shows how much a unit change in each independent variable directly affects the odds of a 1 on the dependent variable.⁷⁸ With the model analyzed here, a 1 on the dependent variable correspond to granting the recusal motion; therefore, each independent variable's odds-ratio represented its impact on the chance of the judge granting a recusal motion.⁷⁹

The results of the logistic regression are reported on Table-6. The model as a whole did a good job explaining the variance in the recusal motion results. The Reduction of Error⁸⁰ was 50.6, which means knowledge of the independent variable reduced the error in predictions by 50.6 percent compared to a null prediction. Additionally, the Cox & Snell R-Squared was .298 and Nagelkerke R-Squared was .410. These statistics established that this model explained a significant amount of the variation in recusal motion outcomes, and it was useful to understand Hillsborough County judges' decisions on recusal motions alleging prejudice or bias.

{ Table-6 About Here }

⁷⁸ Specifically, this entails taking the anti-log of the log-odds ratio ($e^{\log\text{-odds}}$). For more on this calculation, consult DeMaris *supra* note 79; Kaufman *supra* note 79; See also Melissa Hardy, *Regression With Dummy Variables* (Newbury Park, CA: Sage Publications, 1993).

⁷⁹ DeMaris *supra* note 79; Kaufman, *supra* note 79; Kleinbaum, *supra* note 79; See also S. James Press and Sandra Wilson, "Choosing Between Logistic Regression and Discriminant Analysis," *Journal of the American Statistical Association* 73:699-705 (1978).

⁸⁰ The formula for the ROE is: $100 * (\% \text{ classified correctly} - \% \text{ in modal category}) / (100\% - \% \text{ in modal category})$. Consequently, this model classifies correctly 80.0 percent of the cases. Therefore, the ROE is $(83.3-66.2) / (100-66.2)$, which is 15.6/33.8, or 50.6.

The logistic regression model confirmed that non-movants' campaign contributions to judges impact the outcome of recusal motions. Specifically, judges were 0.064 times as likely to grant a recusal motion cases in which the non-movants' attorneys contributed to the judges' campaign compared to cases in which the non-movants' attorneys did not contribute to the judges campaign. When controlling for other factors, non-movants contributing campaign donations caused Hillsborough County judges' to deny recusal motions.

It bears noting that the variable measuring the movant's contribution to the judge was statistically significant as well, but it was in the negative direction. In other words, if the movants' attorneys contributed to the judge's campaign, then the judge was 0.091 times as likely to grant the motion compared to cases where the movants' attorneys did not contribute to the judges' campaign. In other words, contributions to trial judges from the movants' attorneys actually diminished their chance of success in recusal motions. Perhaps this result stemmed from judges going out of their way to avoid ruling in favor of their contributors, although there is no substantive or qualitative evidence to support that view. Nevertheless, because I hypothesized this variable to exert the opposite effect and conducted a one-tailed test, this relationship should be considered statistically insignificant.⁸¹ In other words, I ultimately concluded that there is no relationship between the movant's contributions and the judges' recusal decisions. The other contribution variables were statistically insignificant.

Two control variables were statistically significant as well. With all else held constant, judges who were educated in one Florida school (either law or undergraduate) were 7.271 times more likely to grant a recusal motion than judges who were not

⁸¹ See Gravetter and Wallenau *supra* note 76.

educated in Florida at all. Similarly, judges whose undergraduate and law school training were both in Florida were 7.271 times more likely to grant the recusal motion than judges who law or undergraduate education was in a Florida school. Additionally, Republican judges were 0.011 times as likely to grant recusal motions compared to Democratic or Independent judges. In other words, with all else held constant, Republican judges were far less likely than Independent or Democratic judges to grant recusal motions. It bears mentioning that the gender variable appeared to be statistically significant at the 0.05 level ($p=0.049$), with male judges 2.958 times more likely than female judges to grant recusal motions. However, I hypothesized that female judges would be more likely than males to grant recusal motions, and this is a one-tailed test. Accordingly, gender was statistically insignificant. None of the other control variables were statistically significant at the 0.1 level; therefore, they did not exert an independent influence on the likelihood of granting the recusal motion.

Discussion

Using a statistical analysis of 68 recusal motions filed in Hillsborough County Court for civil cases between 1997 through 2002 this paper assessed the effects of campaign contributions on judicial decision making at the local trial court level, while controlling for other possible influences. I specifically tested the extent that attorney campaign contributions were statistically associated with judges' decision on recusal motions. Undoubtedly, judges were less likely to grant recusal motions when the non-movant contributed to their campaign. This result should contribute to the debate over the propriety of electing judges. Nevertheless, it is equally as important to note that the variable measuring whether the movant's attorney donated money to the trial judge,

which I hypothesized would have a positive relationship with the recusal motion decision, did not increase the chances of the judge granting the recusal motion. In sum, campaign finance was an important, albeit it not dominating, factor in judges' decisions, and at the very least this finding suggests an appearance of impropriety.

Despite this significant result, there are major caveats and qualifications that need to be established. First and foremost, uncovering a link between campaign contributions and trial court judges' behavior on recusal motions in no way implies that judges purposely craft their decisions to satisfy campaign contributors. This conclusion merely points to a trend; it does not claim to reveal judges' motivation. Much of the literature on the psychology of judicial decision-making indicates that subconscious desires drives judges' decisions.⁸² Judges may be operating under the illusion that they are neutral if they deny recusal motions, despite the fact that the non-movant's attorney donated money to their campaigns. The question of judges' motives in recusal motions is a topic for continued empirical research on the affect of campaign contributions.

It is also important to note that in this model, the campaign contribution variable was not the strongest influence on the outcome of recusal motions. Political party exerted a stronger influence on the outcome of the recusal motions. Finally, it is important to recognize that these results may be idiosyncratic to Hillsborough County and the years the study was conducted; therefore, this study should be replicated in other jurisdictions throughout the nation. Nevertheless, this research offers some initial, albeit

⁸² See generally, Chris Guthrie, Jeffrey Rachlinski, and Andrew Wistrich, "Inside the Judicial Mind," *Cornell Law Review* 86:777-830 (2001); John Leubsdorf, "Theories of Judging and Judge Disqualification," *New York University Law Review* 62:237-292 (1987); Donald C. Nugent, "Judicial Bias," *Cleveland State Law Review* 42:1-59 (1994); and Jeffrey Rachlinski, "Behavioral Economics and Psychology: Heuristics and Biases in the Courts: Ignorance or Adaptation?" *Oregon Law Review* 79:61-102 (2000).

primitive, empirical evidence for those legal scholars participating in the debates over judicial elections in general and campaign finance in judicial elections in particular.

Table -1: Variables and Measurement

<u>Variables</u>	<u>Measurement</u>
DEPENDENT	
Recusal Decision	0=deny 1=grant
INDEPENDENT – CONTRIBUTION	
Movant Contributes to Judge	0=no 1=yes
Non-Movant Contributes to Judge	0=no 1=yes
Movant Contributes to Opponent	0=no 1=yes
Non-Movant Contributes to Opponent	0=no 1=yes
INDEPENDENT – CONTROL AND BACKGROUND VARIABLES ON JUDGES	
Age	judges' at time of motion
Legal Experience	number of years judge has practiced law
Republican Judge	0=Democrat, Independent, or Other 1=Republican
Gender	0=female 1=male
Minority Status	0=non-minority/White 1=African American or Latino
Florida Education	0=undergraduate and law school out-of-state 1= undergraduate or law school in-state 2= undergraduate and law school in-state

Table-2: Crosstab of Movants' Contributions to Judges and Recusal Motion Outcomes

MOTION RESULT	<u>MOVANT CONTRIBUTION TO JUDGE</u>		TOTAL
	NO	YES	
DENY			
count	19	4	23
(col. percent)	(32.2%)	(44.4%)	(33.8%)
GRANT			
count	40	5	45
(col. percent)	(67.8%)	(55.6%)	(66.2%)
TOTAL			
count	59	9	68
(col. percent)	(100%)	(100%)	(100%)

STATISTICS

Chi-Square = 0.523

Significance = 0.470

Cramers' V = 0.088

Table-3: Crosstab of Non-Movants' Contributions to Judges and Recusal Motion Outcomes

MOTION RESULT	<u>NON-MOVANT CONTRIBUTION TO JUDGE</u>		TOTAL
	NO	YES	
DENY			
count	20	3	23
(col. percent)	(31.3%)	(75.0%)	(33.8%)

GRANT			
count	44	1	45
(col. percent)	(68.8%)	(25.0%)	(66.2%)

TOTAL			
count	64	4	68
(col. percent)	(100%)	(100%)	(100%)

STATISTICS

Chi-Square = 3.219

Significance = 0.073

Cramers' V = 0.218

Table-4: Crosstab of Movants' Contributions to Judges' Opponents and Recusal Motion Outcomes

MOTION RESULT	MOVANT CONTRIBUTION TO OPPONENT		TOTAL
	NO	YES	
DENY			
count	21	2	23
(col. percent)	(33.9%)	(33.3%)	(33.8%)
GRANT			
count	41	4	45
(col. percent)	(66.1%)	(66.7%)	(66.2%)
TOTAL			
count	62	6	68
(col. percent)	(100%)	(100%)	(100%)

STATISTICS

Chi-Square = 0.001

Significance = 0.979

Cramers' V = 0.003

Table-5: Crosstab of Non-Movants' Contributions to Judges' Opponents and Recusal Motion Outcomes

MOTION RESULT	<u>NON-MOVANT CONTRIBUTION TO OPPONENT</u>		
	NO	YES	TOTAL
DENY			
count	21	2	23
(col. percent)	(32.8%)	(50.0%)	(33.8%)

GRANT			
count	43	2	45
(col. percent)	(67.2%)	(50.0%)	(66.2%)

TOTAL			
count	64	4	68
(col. percent)	(100%)	(100%)	(100%)

STATISTICS

Chi-Square = 0.497

Significance = 0.481

Cramers' V = 0.085

Table-6: Logistic Regression Recusal Motion Outcomes

<u>Independent Variable</u>	<u>Slope</u>	<u>Odds-Ratio</u>	<u>Statistical Significance</u>
CONTRIBUTION VARIABLES			
Movant Contribution to Judge	-2.398	0.091	0.057ns ¹
Non-Movant Contribution to Judge	-2.752	0.064	0.070*
Movant Contribution to Opponent	-0.562	0.570	0.659ns
Non-Movant Contribution to Opponent	-0.472	0.624	0.728ns
CONTROL VARIABLES			
Age	-0.034	0.967	0.822ns
Legal Experience	0.145	1.156	0.309ns
Republican Judge	-4.505	0.011	0.004***
Gender	2.958	19.256	0.049 ns ¹
Minority Status	3.177	23.978	0.149ns
Florida Education	1.984	7.271	0.030**
CONSTANT	2.383	0.092	0.609ns

*p<0.1; **p<0.05; ***p<0.01; ****p<0.001; ns=not significant

MODEL STATISTICS: Cox & Snell R-Square = 0.298 Nagelkerke R-Square = 0.410
 Percent Classified Correctly = 83.3% Reduction of Error = 46.2%

¹Although p<0.1, the directions of these variables were in the opposite direction from what I hypothesized. Therefore, in a one-tailed test, these variables are not considered statistically significant.

