State Politics & Policy Quarterly (2024), **24**: 1, 77–98
doi:10.1017/spq.2023.32

CAMBRIDGE UNIVERSITY PRESS

ORIGINAL ARTICLE

Recusal as Remedy: Disincentivizing Donors

Benjamin D. Edelstein[1] and Sara C. Benesh[2]

[1]Legal Action Wisconsin, Wisconsin, USA
[2]Department of Political Science, University of Wisconsin Milwaukee, Wisconsin, USA
Corresponding author: Sara C. Benesh; Email: sbenesh@uwm.edu

(Received 13 October 2022; revised 01 July 2023; accepted 01 August 2023; published online 15 January 2024)

Abstract

As judicial elections become increasingly expensive, recusal has emerged as a way to address concerns about the impartiality of judges who receive contributions from lawyers or potential litigants. While it is unclear if strict recusal rules are the best remedy for conflicts of interest created by contributions, they may disincentivize potential donors from investing in judicial campaigns by negating their potential goal of influencing decisions. We consider whether donor behavior in judicial campaigns – especially for those donors most likely to be interested in specifically currying favor with judges – responds to differences in recusal standards. Using data from 219 state supreme court races in 22 states from 2010 to 2020, we find that states with stricter recusal rules attract fewer campaign donations to judicial races, and states with more lax rules attract more overall and, most especially, for attorney donors.

Keywords: campaign finance; judicial elections; recusal; campaign contributions; state courts

Introduction

In a speech to Fordham Law School, former Justice Sandra Day O'Connor expressed her characteristic scorn for electing judges. "No other nation in the world" elects its judges, she said, "because they realize you're not going to get fair and impartial judges that way" (O'Connor 2008). Of most concern to most observers: Money.

Judicial elections have been part of the American legal landscape since the mid-nineteenth century (see Goldschmidt 1994). While this method of selecting judges is popular, the process creates a "fundamental tension between the ideal character of the judicial office and the real world of electoral politics" (*Chisom v. Roemer*. 1991, 501 US 380, at 400) and for courts reliant on legitimacy, money in elections becomes worrisome (Gibson and Caldeira 2012). The concern has only been amplified with judicial elections becoming more contentious and costly every year (Bonica and Woodruff 2012; Bonneau and Hall 2017; Geyh and Thrapp 2017; Gibson et al. 2011; Gibson and Nelson 2017).

Still, most states favor elections, and while some scholars demonstrate that campaigns for such elections can cause trouble for legitimacy, especially via fundraising (Gibson 2008; Gibson et al. 2011; Goodwin-Gill 2006; Peters 2018; Streb 2007), there is evidence that electing judges also enhances legitimacy through accountability (Gibson 2012; Gibson et al. 2011; Woodson 2017) and serves an important information-provision function (Bonneau and Hall 2017). However, mitigating any appearance of bias (or actual bias) that may occur due to fundraising pressures continues to be necessary, and there is ample reason to believe that when judges participate in cases where the litigants are campaign donors, at the very least, an appearance of bias results.[1]

In many cases, state courts have turned to recusal as a remedy. When judges have before them a litigant who has contributed to their campaign, they can limit the appearance of bias that might result through recusal. Indeed, several states counsel recusal when donations reach problematic levels, making recusal rules a way to help ensure impartiality (or at least its appearance).[2]

[1] A 2011 survey found that 94% of North Carolina voters believed that campaign contributions have some influence on judicial decision making. Moreover, 43% of respondents thought that contributions *greatly* influenced decisions (Bonneau 2017). In 2009, a USA/Gallup survey showed that almost 90% of respondents considered the effect of campaign contributions on judges' rulings to be a problem (Biskupic 2009). Justice at Stake reports that 81% of citizens were concerned by the fact that, in some states, almost half of all supreme court cases involve individuals that contributed to the campaign of one of the judges (2002). Even comedians are riffing on the problem of campaign contributions to judges, with John Oliver quipping, "Giving money to judges wouldn't be acceptable in a state fair squash growing competition" (Oliver 2015)! And regardless of whether the research can demonstrate that campaign contributions actually drive judicial decision making (and the findings are decidedly mixed; see, e.g., Gibson and Nelson 2017, Bonneau and Cann 2009, Cann 2007, Champagne 1988, Hazelton, Montgomery, and Nyhan 2016, Ware 1999, Waltenburg and Lopeman 2000, Kang and Shepherd 2011, Cann 2002, Cann, Bonneau, and Boyea 2012), an appearance of bias may well be enough to damage the legitimacy of the state courts (Rottman 2009; Benesh 2006). In addition, these potential conflicts of interest are avidly reported upon and are fodder for judicial campaigns. In the recent Wisconsin Supreme Court race, a widely-televised Protasiewicz ad accused her opponent, Kelly, of ruling in favor of the Wisconsin Institute for Law and Liberty six times while taking money from its board members (Petrovic 2023). The media then reports on and amplifies such ads, especially when they are negative (Hughes 2022; Ridout and Smith 2008).

Judges themselves have joined the chorus. Approximately 60% of New York State judges reported that they believe campaign contributions raise reasonable questions about judges' impartiality (Commission to Promote Public Confidence in Judicial Elections 2006). Sonia Sotomayor, writing in *Woodward v. Alabama* (2013), argued that Alabama's partisan elections have "cast … a cloud of illegitimacy over the criminal justice system" (571 U.S. 1045). In a poll of 2,428 state court judges, 46% said that they thought campaign contributions influenced their decisions in some way (Justice at Stake 2002). And then there's Ohio Supreme Court Justice Paul E. Pfeifer's lament: "I never felt so much like a hooker down by the bus station in any race I've ever been in as I did in a judicial race…[Attorneys] mean to be buying a vote, whether they succeed or not, it's hard to say" (quoted in Grimes 2009, 863). Attorneys seem to agree with Judge Phifer's conclusion: A survey of Texas attorneys revealed that over 79% think judicial campaign contributions significantly affect decision-making (Spanhel 1999).

[2] There is little research on whether recusal actually counters perceptions of bias created by, among other things, campaign contributions. There are some theoretical considerations in the law reviews. Bam (2011) argues that current processes likely harm legitimacy by calling attention to bias, especially given the media's propensity to cover only those cases where recusal is requested and the judge denies it. Marbes (2017) notes that our presumption of judges' impartiality is the real problem and suggests procedural reforms including use of *per se* rules for recusal along with ending self-recusal. Phillips and Poll (2007) argue for auto-strike provisions (like some states use), so that recusal can be done without discussion or debate.

The only attempt to empirically ascertain whether recusals move public opinion is Gibson and Caldeira (2012). Employing an experimental vignette modeled after the dispute in *Caperton*, Gibson and Caldeira find

https://doi.org/10.1017/spq.2023.32 Published online by Cambridge University Press

Recusal and campaign contributions

The US Supreme Court decision in *Caperton v. A.T. Massey Coal Company* (2009, 556 US 868) involved a judge who had received significant campaign contributions from one of the parties involved and refused to recuse himself. The Court held that the judge's failure to recuse himself violated the due process rights of the opposing party, as it created a significant risk of bias. The Court explained, "[t]here is a serious risk of actual bias when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent" (*Caperton*, at 871). The decision clarified that the Due Process Clause requires recusal in instances when litigants demonstrate actual bias and when certain "extreme facts" create an unacceptable "probability of bias" (*Caperton*, at 886–887).

The *Caperton* decision prompted the American Bar Association to renew its call to states to include recusal rules relating to campaign spending in their Judicial Codes.[3] The ABA had already included this logic in the 2007 Model Code, which called for recusal when "[t]he judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has … [within a time period determined by state] made aggregate contributions to the judge's campaign that is greater than [amount to be determined by state]" (Rule 2.11(A)(4)). However, at the time of this writing, only a handful of states have adopted a version of these rules, and two states, Nevada and Wisconsin, expressly rejected such reforms (Corriher and Paiva 2014).

It may be, however, that removing the perception of bias (and thereby, perhaps, enhancing legitimacy) is not the most intriguing effect of these recusal rules. Indeed, many policies have unintended consequences, which are also important to consider. In our case, we suggest that these recusal rules, regardless of whether they boost perceptions of the courts as impartial, may influence donor decisions to contribute (or not) to judicial candidates. When recusal rules, which are designed to negate an appearance of bias, are adopted by states, counsel recusal whenever donations exceed

---

that recusal can moderately improve the public's perception of a court or judge but that "the effect of recusal is far from the complete restoration of the institution's impartiality and legitimacy" (Gibson and Caldeira 2012:18). And, one might expect that criticism of experimental effects – that they are nearly always likely to be the maximum potential effect – is especially operative here where is it unlikely the members of the public know about recusal or very often notice when a recusal has taken place. Not true, potentially, of those engaged enough to contribute to judicial campaigns. See the next section.

[3]Concern for the partiality of candidates is unique to judicial elections. States that utilize elections to staff their judiciaries have promulgated codes of judicial conduct comprising a set of electoral rules "which in the interest of promoting the independence, impartiality, and integrity of the courts, constrain what judicial candidates can say while campaigning, how they may interact with political organizations, and how they may participate in fund-raising" (Peters 2018, 1). These rules, of course, would be shocking and likely unconstitutional if promulgated for other elected offices.

Judicial elections are addressed in Canon 4 of the American Bar Association's Model Code: "A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the integrity and impartiality of the Judiciary" (American Bar Association 2011), which derives historically from the American Bar Association's Model Canons of Judicial Ethics (Peters 2018). Three campaign activities believed to harm judicial independence were targeted in the 2011 Code: candidate speech, political party involvement, and soliciting campaign donations. The federal courts have weighed in on many of these provisions, generally (though not universally) upholding limits on campaign promises, party engagement, and personal solicitation of campaign funds.

https://doi.org/10.1017/spq.2023.32 Published online by Cambridge University Press

some threshold, donors experience a new roadblock to influence. In effect, races in states with recusal rules become less attractive to donors looking to gain influence. As a result, money – the root of most of the criticism of judicial elections – is less prevalent there.

Donor motivations in judicial elections

However, is it reasonable to assume that donors to judicial campaigns are primarily seeking influence? Ansolabehere et al. (2003) suggest that, in Congressional campaigns, individuals are unlikely to be motivated solely by the desire to influence the individual decisions of those to whom they contribute. In other words, it is unlikely that individuals calculate returns on investment and much more likely that individuals are ideologically motivated in their donation decisions. Canes-Wrone and Gibson (2019) and Barber, Butler, and Preece (2016) agree, noting that individual motivations to donate appear to be policy-related or ideological at their core, given their lack of long-term relationships or desire for future access to legislators (Barber, Butler, and Preece 2016). Other scholars make the case that self-interest (material interest) is at least part of the donation calculation (see, e.g., Grier and Munger 1991; Francia et al. 2003; Brown, Powell and Wilcox 1995).

The focus of all of these articles, though, is on Gubernatorial or legislative (often Congressional) races, which draw far more donations and feature candidates who do not have specific professional groups that may be individually interested in the decisions they make. Judges may well be different. First, research shows that donors receive favorable treatment when they go before a judge they support (e.g., Cann 2007; Cann, Bonneau, and Boyea 2012; Waltenburg and Lopeman 2000; Ware 1999)[4], making it reasonable to expect donors to consider factors that aid or impede their ability to "cash in" on their contribution. Second, this should be especially evident among attorneys, and attorneys typically account for a sizeable proportion of contributions to judicial candidates (e.g., Goldberg et al. 2005). As repeat players (e.g., McGuire 1995; Sample and Pozen 2007), attorneys have more opportunities to benefit from the election of their preferred judge (Williams and Distlear 2007, 137). Miller and Curry (2013) link attorney donors to the concept of "investor" donors conceived by Francia et al. (2003: 43), who provide the following description of this class of donors:

> These "investors" typically desire broad policies to benefit their industry, narrow policies to benefit their company, or even narrower policies to benefit themselves. Investors often view a contribution as part of a larger government relations strategy. They give contributions to make it easier for a lobbyist to get the attention of a member of Congress the first time, to thank a member for supporting a specific piece of legislation, or to help maintain an ongoing relationship that affords company or industry lobbyists continued political access.

Furthermore, as legal professionals, attorneys should be especially familiar with the judicial candidates and a state's recusal rules (Miller and Curry 2013: 131).

[4]The research on the extent to which campaign contributions effect legislators tends not to find a similar relationship (Canes-Wrone and Gibson 2019).

https://doi.org/10.1017/spq.2023.32 Published online by Cambridge University Press

Therefore, we expect a relationship between contributions and recusal overall, particularly for attorneys and other groups who bring litigation, including business and labor groups. (After all, the *Caperton* matter did not involve an attorney but the CEO of a large coal company.) Other groups, say, single-issue ideological groups, might be more like contributors to Congressional campaigns, driven not by their own potential successes in court but rather by their interest in the over-time decision-making cumulating into preferred policy. We test for these possible differential influences by testing a model of all donations as well as models of contributions from subgroups most and least likely to be interested in access to specific judges. In the aggregate, we find that recusal rules matter to donation decisions. But they matter most to attorneys and least to single-issue ideological groups. These results hold with controls for other aspects of the race that likely influence donations and other characteristics of the state's rules that are likely related both to recusal rules and donation decisions.

Modeling campaign contributions

Because we do not have the means to test the relationship between recusal rules and donations using inference-friendly techniques, we must settle for an observation-based strategy. We pay particular attention to the specification of our model in terms of other independent effects on campaign contributions and other aspects of the state context that may be related to their decisions to have strict or lax recusal rules.

The current literature on campaign fundraising suggests that a number of factors influence fundraising. Personal characteristics of the candidate, like race and gender, may be influential with some extant research showing that women and minorities are less successful fundraisers (see, e.g., Thompson, Moncrief, and Hamm 1998; Barber, Butler, and Preece 2016; but see Hogan 2007). Incumbency is also likely to matter in donation decisions (Bonneau 2007, Jacobson 1997.)

Researchers have identified a set of electoral characteristics influential on the decision to donate to a particular race as well. According to Bonneau, "the context of the race can either assist or hinder the amount of money a candidate can raise, independent of anything else" (Bonneau 2007: 71). Candidates in partisan elections raise more than candidates in nonpartisan elections (Bonneau 2007). And, when more than one seat is up for election, candidate fundraising decreases (Bonneau 2007).

Also important, though, are potential influences that might explain both our independent variable of interest – recusal – AND the levels of campaign contributions we see in a particular race. To avoid omitted variable bias, we also consider the following characteristics of state judicial elections that suggest a state particularly concerned with the potential ill-effects of judicial campaigns: term length (longer terms are expected promote independence); odd-year elections (designed to decrease attention and partisan influence on judicial elections); nonpartisan election (in attempts to remove party influence); state-wide elections (limiting accountability); professionalism (enhancing the likelihood of quality judges who focus on law); campaign finance regulation (in attempts to limit influence); and whether or not the state employs a Judicial Campaign Conduct Committee (used to safeguard judicial independence). It is quite likely that states who employ these "protections" of their courts would also be likely to promote recusal for campaign contributions (and that these protections will result in fewer campaign contributions). Including them allows

https://doi.org/10.1017/spq.2023.32 Published online by Cambridge University Press

Table 1. Variable descriptions

Variable	Description
Dependent variable	
Total contributions	=log of total campaign fundraising by all candidates in a race (2020 dollars)
Recusal rule	
Contributions Cannot be a Basis for Recusal	=0 if rule explicitly states that campaign contributions cannot of itself form a basis for recusal;
Contributions Not Mentioned	=1 if recusal rules do not mention campaign contributions as a basis for recusal;
Contributions Mentioned	=2 if rule explicitly states that campaign contributions are to be considered as a basis for recusal
Characteristics of race	
Open general	=1 if no incumbent is running in the general election, 0 otherwise
Contested general	=1 if at least two candidates are on the general election ballot; 0 otherwise
Chief justice seat	=1 if race was for the Chief Justice Seat; 0 otherwise
Female candidate	=1 if a female candidate was involved in the general election
Minority candidate	=1 if a minority candidate was involved in the general election
Electoral context	
Competitive race	=1 if race was won by 60% or less of the vote; 0 otherwise
Competitive court	=1 if a supreme court race in the previous election cycle was won by 60% or less of the vote; 0 otherwise
Control of court	=1 if partisan control of the court was at stake; 0 otherwise
Institutional characteristics	
Term length	=6–12, length (in years) of the term of office
Number of seats	=1–5, number of state supreme court seats in the state up for election that year
Tort docket	=proportion of the state supreme court docket involving tort cases, 1995–1998 State Supreme Court database
State characteristics	
Multi-seat election	=1 if multiple seats are affected by the outcome of an election; 0 otherwise
Voting age population	=size of the voting-age population in the relevant subdivision (state or district) (1,000 s)
Attorneys	=number of active lawyers in a state/size of the voting-age population in the state (1,000 s)
State acceptance of elections	
Regulation	=3–17, Witko (2015) index of campaign finance stringency
District election	=1 if election was held in a district; 0 otherwise
Strong JCCC	=1 if committee with authority to publicize exists (Peters 2017); 0 otherwise
Professionalism	=0.25–0.88, Squire's index of state supreme court professionalism
Odd year	=1 if election was held in an odd year; 0 otherwise
Partisan election	=1 if election was a partisan election; 0 otherwise

us to treat the influence of recusal more carefully, making our claim that recusal affects donors more robust. (Table 1 provides all variable descriptions.)

The influence of recusal rules

In addition to all of the above influences on levels of campaign donations, we posit our main hypothesis:

> Recusal rules that mention campaign contributions as a basis for recusal or allow recusal on that basis will decrease election fundraising as compared with states with rules that forbid recusal for campaign donations.

https://doi.org/10.1017/spq.2023.32 Published online by Cambridge University Press

Specifically, we argue that a state's recusal rules will affect the total amount of fundraising in an election. If a state's code of judicial conduct calls for disqualification in cases involving campaign donors, then any expected payoff from a campaign contribution disappears. Therefore, total election fundraising in these states should decrease. On the other hand, if a state's code of judicial conduct expressly says that contributions CANNOT be a basis for recusal, contributors may be more attracted to investing in its judicial campaigns. In these states, individuals and businesses can contribute without worrying about repercussions and gain the access or advantage they presumably seek (or at least maximize that probability). Therefore, total fundraising in states with more relaxed recusal procedures will be greater than in states with more stringent recusal rules.

While recusal may not directly fix any legitimacy problem that electoral contributions might create (see, e.g., Gibson and Caldeira 2012), recusal has the potential to get to the root of the actual problem. Strict recusal rules, while surely designed with legitimacy and due process in mind, may serve to disincentivize electoral investment in the first place. In other words, regardless of Gibson and Caldeira's findings, recusal could decrease the very thing that worries everyone about judicial elections: their cost.[5]

We model donor decisions – the logged total amount of spending on a given state supreme court race – to ascertain whether or not recusal rules influence them. We consider many races over time and across states and a fully specified model to determine whether recusal rules serve to disincentivize donors from investing in judicial elections. Evidence that states that employ the most stringent recusal rules attract fewer campaign contributions would provide evidence that such rules are one way by which states can maintain the benefits of judicial elections while decreasing their legitimacy costs, even indirectly.[6]

Measurement and model

We argue that total contributions, rather than the number of large contributions, is the most relevant dependent variable here for a number of reasons. First, if donors are reacting to recusal rules, we suspect they will respond regardless of how large a donation they had planned on making. Regardless of size, donors will experience a disincentive to donate to judicial elections in states with rigid recusal rules. Second, focusing only on "large" donations would require determining the level at which such donations portend legitimacy problems, which is subjective, at least in part a function of overall spending in the race, and less

[5]Of course, this comes at the expense of information, which, Bonneau argues in much of his work, decreases the very democratic accountability we seek when we elect our judges.

[6]Miller and Curry (2013) also use this strategy of evaluating recusal rules effectiveness. They study campaign donations to Supreme Court candidates in Alabama finding that "the existence of a *per se* recusal statute significantly decreases the likelihood of observing large donations from several categories of donors" (Miller and Curry 2013: 125). Their focus only on one state without considering the variety of recusal rules employed by the states limits their generalizability. Their attention to Alabama in particular further limits generalizability and also, potentially, validity given that AL's rule is statutory and unenforced. (Most recusal rules are adopted by the judiciary.) Additionally, they do not offer a fully-specified model of campaign contributions. Our study builds on their initial intuition.

https://doi.org/10.1017/spq.2023.32 Published online by Cambridge University Press

likely to be noticed by the public. In addition, the overall amount of money in judicial elections is what motivates legislators and judiciaries to make rules requiring recusal in response to public opinion about the effects of increasing amounts of money in judicial elections. Finally, the most frequent contributors to judicial campaigns are attorneys, though they tend not to be among the largest donors. Therefore, a measure that counted only the largest donations could potentially overlook the group most likely to benefit from the election of a particular judge – those who actually appear before them. Examining total campaign fundraising provides a comprehensive view of the donor landscape, ensuring that all forms of participation are acknowledged.

In order to measure the influence of recusal rules on donor behavior, then, we focus on total contributions per race (logged), and analyze multiple states over several elections in contested and uncontested elections.[7] We collected data on judicial fundraising for 219 contested and uncontested partisan and nonpartisan elections to the state's highest appellate court, along with the recusal rules in 22 states for the years 2010–2020.[8] Data on fundraising for state supreme court races was obtained from the National Institute of Money in State Politics. Due to differences in state campaign financial disclosure requirements, contribution data are only available for these 22 states. Fundraising data for each candidate were aggregated by election to capture the total fundraising for each race. The contributions were adjusted to constant dollars (2020) using the Consumer Price Index to make the estimates comparable over time. Thus, the dependent variable in this analysis is the log of the total amount of money raised in each election, in 2020 dollars.[9] Data on candidate, institutional, and electoral characteristics for 2010–2012 came from Brent Boyea's dataverse (Boyea 2016). For elections after 2012, we gathered information from state court websites, state secretary of state websites, and from the *New Politics of Judicial Elections* reports published by Justice at Stake and the Brennan Center for Justice after each election cycle.[10]

[7]We consider both contested and uncontested races because we focus our energy on testing the theoretical implications of recusal rules, and those theoretical implications apply to both contested and uncontested races. In both, litigants may seek to curry favor in order to potentially gain influence in advance of appearing before a given judge. While we know that some litigant types will be more likely to behave with these incentives, we think they will hold regardless of whether or not there is a challenger in a given race. (As an added note, we did run our model only on contested races and it does perform better. However, we think a more complete test of the theory includes uncontested races too, so we continue to do so.)

[8]This includes primary and general election contributions. We exclude retention elections, given the myriad and consequential differences between those contests and partisan and nonpartisan election campaigns, including (as related to our research question) much less overall fundraising, very few "losses," increased regulation (including outright bans on campaigning in some states), and a general lack of available information on the contributions to those retention elections (see Bonneau 2004; Boyea 2017; Hall and Bonneau 2008). (Montana, which converts nonpartisan uncontested elections into retention elections, IS included because it only reverts to retention when the race is uncontested but the race is not designed or treated as retention (see, e.g., Kritzer 2011). Findings do not change if we exclude MT.)

[9]We estimated a model using unadjusted dollars as well. The results were unaffected by the adjustment. In order to be consistent with previous literature (e.g., Engstrom and Ewell 2010; Bonneau 2007; Boyea 2017), we use the adjusted measure. The logged variable reduces the effects of outliers and enhances linearity, making coefficients easier to interpret and enhancing statistical properties.

[10]These reports are available at: https://www.brennancenter.org/issues/strengthen-our-courts/promote-fair-courts/money-judicial-elections.

https://doi.org/10.1017/spq.2023.32 Published online by Cambridge University Press

Table 2. Recusal rules by state

Contributions cannot be a basis for recusal	Contributions not mentioned	Contributions mentioned
Nevada	Alabama	Arkansas
Ohio	Georgia (2010)	Georgia (2012–present)
Wisconsin	Idaho	Michigan
	Illinois	Mississippi
	Kentucky	North Dakota
	Louisiana	New Mexico
	Minnesota	Pennsylvania
	Montana	Washington
	North Carolina	
	Oregon	
	Texas	
	West Virginia	

Recusal rules

To measure each state's recusal rules regarding campaign contributions, we examined the recusal requirements dictated by each state supreme court's code of judicial conduct and coded them for their content. State codes of judicial conduct for the year 2010 were obtained from Peters (2018) via his dataset of 37 state codes of judicial conduct over a 21-year period.[11] We gathered data on state codes of conduct for the years 2011–2020 through state supreme court websites. Using the ABA's Model Code as a reference, we coded state rules into one of three categories that range from statements that contributions may be grounds for recusal if they implicate bias, to those who do not mention campaign contributions at all, to specific requirements that campaign contributions not be considered grounds for recusal. (Table 2 shows our categorization of each state in our study; Table 3 shows median fundraising by category; Appendix B provides the language on which we based our coding.) The relevant portion of the ABA's Model Code says the following:

> (A) judge shall disqualify himself or herself in any proceeding in which the judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances:
>
> (4) The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has within the previous [insert number] year[s] made aggregate* contributions* to the judge's campaign in an amount that [is greater than $[insert amount] for an individual or $[insert amount] for an entity] [is reasonable and appropriate for an individual or an entity]. (American Bar Association 2011).

Our measure ranges from 0 to 2, measuring how stringent state recusal regulations are as they pertain to campaign contributions. As mentioned earlier, following *Caperton* in 2009, a handful of states put new recusal rules into place, which vary

[11]Via correspondence with Peters.

https://doi.org/10.1017/spq.2023.32 Published online by Cambridge University Press

Table 3. Median total contributions by recusal rule

Year	Contributions cannot be a basis for recusal	Contributions not mentioned	Contributions mentioned
2010	$1,700,448	$176,070	$709,768
2011–2012	$1,388,094	$409,409	$536,451
2013–2014	$1,151,677	$447,471	$72,787
2015–2016	$1,558,727	$465,853	$467,103
2017–2018	$885,411	$345,292	$326,220
2019–2020	$2,679,926	$1,055,162	$515,540
All years	$1,465,461	$465,449	$347,660

in scope and language used. If a change occurred during our study timeframe, we updated that state/year accordingly.[12]

Some states follow the Model Code and have adopted rules counseling disqualification for contributions, often worded with reference to the *Caperton* decision. These include Arkansas, Georgia (2012–2020), Michigan, Mississippi, North Dakota, New Mexico, Pennsylvania, and Washington.[13] These states, which explicitly mention that large campaign contributions should be a reason a judge should recuse, are coded 2 (see Appendix B for the actual wording of the rules).

States with disqualification rules that make no mention of campaign contributions, neither making recusal necessary nor saying recusal is not necessary, were scored as 1. These states – Alabama, Georgia (2010), Idaho, Illinois, Kentucky, Louisiana, Minnesota, Montana, North Carolina, Oregon, Texas, and West Virginia – have recusal rules that simply provide that a judge ought to disqualify whenever his or her impartiality might be reasonably questioned without detailing why it might be.

Finally, some states adopted rules that explicitly state that contributions CANNOT BE the sole basis for recusal; they are coded 0 on our measure. Ohio, Nevada, and Wisconsin have these rules. We use fundraising in these states as our baseline, given that these rules are the most encouraging to interested donors.

Other influences on contributions and recusal

In order to ascertain whether recusal policies influence donors, we control, as mentioned above, for a variety of other potential influences on their behavior, including race- and candidate-specific characteristics shown in the literature as influential on campaign contributions. We also think carefully about the sorts of states that adopt strict recusal rules and consider omitted variables that might

[12]As shown in Table 2, only Georgia falls into this category.

[13]Other states would be included in this category as well, including Arizona, California, Iowa, Missouri, Oklahoma, Tennessee, and Utah, but they are also retention election states and so are not included. (See note 8.) (There is likely endogeneity between strict recusal for campaign contributions and a state's choice to employ retention elections – both exhibit high levels of concern about the potential negative effects of campaign money.) Alabama's legislature also passed a new recusal law that fits this definition in 2014 but we consider only those recusal rules laid out in State Codes of Judicial Conduct. Judicially-created rules are the real constraints on recusal behavior. Indeed, Alabama's recusal law has never been enforced, the frequent fate of legislatively-adopted conduct rules. (See Corriher and Paiva 2014, for a discussion of Alabama's law.)

https://doi.org/10.1017/spq.2023.32 Published online by Cambridge University Press

influence both that adoption and the levels of fundraising in the state, connoting as they do the comfort level of state legislatures with the election of judges.

We rely on Bonneau (2007) and Boyea (2017) to identify specific influences on judicial elections and on other, general elections research for the rest. In the interest of space, we present Table 1, which provides a description of each of the variables and how they are measured. As shown there, we control for characteristics of the race (including incumbency, contestation, position, minority candidate, and female candidate), the electoral context (competitiveness, potential shift in balance of the court), institutional characteristics (number of seats, tort docket), and state characteristics (multi-seat election, voting-age population, and attorneys per voter) in our model of campaign contributions.[14]

In addition, we control for influences that may be related both to our primary independent variable of interest (recusal) and our dependent variable (total logged spending), thereby considering the potential impact of omitted variable bias, as mentioned above. We call these "State Acceptance of Elections" variables, and they include term length, odd year, partisan election, district election, professionalism, campaign finance regulation, and whether or not the state employs a Judicial Conduct Committee, as detailed above. Their coding information is also in Table 1.

Data and analysis

Appendix A provides summary statistics. As demonstrated in Table 3, median contributions to state supreme court races appear to vary across the categories of

[14]All of these variables derive from the literature and some have had only mixed success in explaining campaign contributions. In addition to Bonneau (2007) and Boyea (2017), see Berch (1996), Brace and Hall (2001), Bonneau (2004, 2005), Bonneau and Cann (2011), Bonneau and Hall (2009, 2017), Frederick and Streb (2008), Hall (2007, 2015), Hall and Bonneau (2008, 2013), Herrick (1995), Hogan (2007), McMahon (2007), Ruckman (1993), Shipan and Shannon (2003), Sorauf (1988), Squire (2008), Wilhite and Thielemann (1986), and Witko (2015). A few coding notes are necessary. First, there are six multi-seat elections in our dataset. For those six, we treat them as open if more than half the seats are available to non-incumbents. This means that PA 2015 and WV 2012 are open seat races, while MI 2010, 2012, 2014, 2018 are not open seat races. In multi-seat elections, if any of the seats is for the Chief Justiceship, we code the election to be for Chief. In six elections in our dataset, judges are chosen in elections with multiple seats and multiple candidates. All six, then, are labeled competitive under this measure. Given a lack of agreement over how best to measure competition in multidistrict legislative races, let alone judicial races that are conducted in a nonpartisan manner (see, e.g., Niemi, Jackman, and Winsky 1991, Cox, Fiva, and Smith 2020, Weber, Tucker, and Brace 1991, Niemi, Jackman, and Winsky 1991) and given the vote distributions in those six races, we are comfortable that treating them as competitive taps the underlying phenomenon. Media coverage of each election determined whether the ideological balance of any given court was at stake in any given election. We include Michigan and Ohio as partisan election states. Although party information is not displayed on the ballot, candidates for the Michigan Supreme Court are nominated at Democratic, Republican, and minor party conventions (see: Michigan Election Law Section 168.392). Moreover, parties are deeply involved in election campaigns. "[I]n terms of campaign style [and] the behavior of judicial candidates … Michigan More closely resembles a partisan state" (Cann, Bonneau, and Boyea 2012: 42). Likewise, candidates for the Ohio Supreme Court are elected through nonpartisan general elections, but they first must participate in partisan primary elections. Moreover, political parties endorse judicial candidates and are very involved in campaigns. Some studies treat these states as "quasi-partisan" (see Nelson, Caufield, and Martin 2013). We estimated a model treating Ohio and Michigan as "quasi-partisan" and the results did not change. Finally, because Louisiana districts 1, 6, and 7 all include portions of both Jefferson and Orleans Parishes, we use the total population of both parishes as our measure for those districts.

https://doi.org/10.1017/spq.2023.32 Published online by Cambridge University Press

recusal rules, especially at the extremes. To wit, states that forbid recusal for contributions have far higher medians, over time, than those who counsel recusal in light of large contributions. This provides initial support for our assertion that recusal rules might affect donor decisions.

To isolate that effect from all the other variables that likely influence donor decisions, we estimate a multivariate model of (logged) campaign contributions. Since the dependent variable is continuous, we use ordinary least-squares regression (OLS) to estimate the model, using robust standard errors clustered by state.[15] Table 4 displays the results for the full model, including all influences on campaign contributions noted to date in the literature.

The model's explanatory power appears to be strong (adjusted $R^2 = 0.694$). In addition, the statistical results are largely consistent with the findings of previous studies. We find evidence for race-specific influences (a race with an open seat, a contested election, or for the Chief Justice's seat are all more expensive), for competitiveness (more competitive races generate more money), and for state acceptance of election characteristics (partisan elections generate more money; more campaign finance regulation results in less money). While not all of the influences we test exert statistically significant effects on spending in state supreme court races, many of the categories of effects have at least some impact. Given that many of the effects for which we test have been deemed unimportant in previous literature as well, including the number of female or minority candidates, previous competitive election, odd-year election, size of the voting-age population, number of seats at stake, and tort docket, we feel comfortable that the model performs well.

Most important for our analysis, though, is the effect of recusal rules on donor incentives. As shown in Table 4, when contributions are mentioned as potential reasons for recusal, fewer campaign dollars flow into the races as compared with the baseline (the recusal rules that explicitly state that contributions alone *cannot* be a basis for disqualification). Even a recusal rule that says nothing about campaign contributions results in fewer campaign dollars than elections in states that ensure recusal will not result from campaign contributions. This suggests that both the presence of a rule that contributions matter and, even more strongly, the presence of a rule that contributions *cannot,* influence donor decisions.[16]

In states with rules that do not mention contributions as a basis for recusal, the total contributions decrease by 75% ($p < 0.01$) over states for which contributions cannot be the basis for recusal. State supreme court races in states with rules mentioning campaign contributions as a basis for recusal see a 68% decrease in total

[15]We employ OLS rather than a hierarchical model for several reasons. First, most of the literature to which we aim to contribution employs OLS regression (see, e.g., Bonneau 2007, Boyea 2017). Second, OLS is simple and powerful and facilitates interpretation. Finally, in order to address the non-independence of observations within states that counsels most in favor of a multilevel model, we employ robust standard errors clustered by state, a reasonable means to address the statistical problem (See, e.g., Boyea 2017; Gill and Eugenis 2019; Frederick and Streb 2008; Frederick and Streb 2011).

[16]We ran additional models to evaluate the robustness of our findings with respect to recusal, focusing in each on a different subset of contributors. See below for those results. We also ran models focusing only on contested elections. Models of contributions to contested elections strengthen our results, but as noted in note 7, we think including all available elections is more consistent with our theory. (Not shown.) And, excluding Pennsylvania, which is an outlier in terms of spending over our years, does not change any results. In all cases, state rules that specify recusal on the basis of campaign contributions depress donations.

https://doi.org/10.1017/spq.2023.32 Published online by Cambridge University Press

Table 4. Total campaign contributions in state supreme court elections 2010–2020[a]

Variable	Coefficient
Recusal rule (baseline: contributions cannot be a basis for recusal)	
Contributions not mentioned	−1.380 (0.428)[b]
Contributions mentioned	−1.138 (0.482)[c]
Characteristics of the race	
Open general	0.834 (0.204)[d]
Contested general	1.308 (0.280)[d]
Chief justice seat	0.651 (0.203)[b]
Female candidate	0.091 (0.124)
Minority candidate	−0.050 (0.208)
Electoral context:	
Competitive race	0.756 (0.213)[b]
Competitive court	0.097 (0.166)
Control of court	0.423 (0.274)
Institutional characteristics	
Term length	0.196 (0.128)
Number of seats	−0.027 (0.104)
Tort docket	−1.014 (3.110)
State characteristics:	
Multi-seat election	0.035 (0.403)
Voting age population	0.000 (0.000)
Attorneys	−0.083 (0.169)
State acceptance of elections	
Regulation	−0.091 (0.039)[c]
District election	0.443 (0.403)
Strong JCCC	−0.063 (0.387)
Professionalism	1.836 (1.711)
Odd year	−0.331 (0.321)
Partisan election	1.112 (0.304)[b]
Intercept	10.592 (1.523)[d]
R^2	0.694
Num. obs.	219

Note: Statistics reported are ordinary least-squares regression with robust standard errors clustered on state.
[a]Dependent variable: log of total contributions (2020 dollars).
[b]$p < 0.001$.
[c]$p < 0.01$.
[d]$p < 0.05$.

campaign contributions ($p < 0.05$). Further analysis shows that much of the work of the recusal effect is a distinction between states that FORBID recusals and all others – entering the variable as a single dummy that notes whether recusal is forbidden for campaign contributions or not, results in a statistically significant ($p < 0.01$) and positive value, increasing fundraising by 276% (not shown). It appears to be the case that recusal rules are signals to potential investors of their potential influence.

To further test our theory, we estimate two additional models, isolating the types of donors that, according to our theory, should be most and least likely to be influenced by recusal rules (e.g., those most and least likely interested in garnering favor) to ascertain whether they, in fact, are more or less influenced by a given state's recusal rule. We start with the group most likely to fit our donor profile of specific

https://doi.org/10.1017/spq.2023.32 Published online by Cambridge University Press

Table 5. Donor-specific models of campaign contributions in state supreme court elections 2010–2020

	Attorneys/lobbyists[a]	Ideology/single issue[b]
Variable	coefficient	coefficient
Recusal rule (baseline: contributions cannot be a basis for recusal)		
Contributions not mentioned	−1.536 (0.466)[c]	−0.955 (0.680)
Contributions mentioned	−1.404 (0.666)[d]	−1.284 (0.810)
Characteristics of the race		
Open general	1.104 (0.256)[e]	0.272 (0.355)
Contested general	0.602 (0.338)[f]	0.455 (0.604)
Chief justice seat	0.719 (0.356)[f]	0.641 (0.385)
Female candidate	−0.213 (0.212)	0.198 (0.325)
Minority candidate	0.018 (0.189)	0.075 (0.259)
Electoral context:		
Competitive race	0.597 (0.300)[f]	0.477 (0.392)
Competitive court	−0.178 (0.152)	0.097 (0.267)
Control of court	0.457 (0.286)	0.188 (0.455)
Institutional characteristics		
Term length	0.313 (0.139)[d]	−0.169 (0.246)
Number of seats	−0.068 (0.137)	−0.028 (0.207)
Tort docket	−0.532 (3.625)	3.379 (6.709)
State characteristics:		
Multi-seat election	0.567 (0.401)	0.900 (0.964)
Voting age population	0.000 (0.000)[d]	0.000 (0.000)
Attorneys	0.145 (0.206)	−0.358 (0.350)
State acceptance of elections		
Regulation	−0.134 (0.049)[d]	−0.171 (0.063)[d]
District election	0.282 (0.519)	−0.028 (0.792)
Strong JCCC	0.203 (0.365)	0.245 (0.696)
Professionalism	1.479 (2.119)	3.887 (3.241)
Odd year	−1.004 (0.409)[d]	1.581 (1.012)
Partisan election	0.523 (0.690)	0.533 (0.915)
Intercept	8.846 (1.797)[e]	9.017 (2.505)[c]
R^2	0.575	0.420
Num. obs.	209	132

Note: Statistics reported are ordinary least-squares regression with robust standard errors clustered on state.
[a]Dependent variable: log of contributions from attorney/lobbyist donors (2020 dollars).
[b]Dependent variable: log of contributions from ideology/single issue donors (2020 dollars).
[c]$p < 0.01$.
[d]$p < 0.05$.
[e]$p < 0.001$.
[f]$p < 0.10$.

influence: attorneys.[17] As shown in Table 5, recusal rules have an even stronger effect on the donation decisions of attorneys than they do in the aggregate, even while some of the acceptance of elections variables exert stronger influences than the full set of donors.

[17]Due to categorization by our data source, we cannot differentiate between practicing attorneys and lobbyists, so our results are likely a bit conservative.

https://doi.org/10.1017/spq.2023.32 Published online by Cambridge University Press

Attorney contributions decrease by over 78% ($p < 0.01$) in states with rules that do not mention contributions as a basis for recusal over states that forbid contributions to be the basis for recusal. Elections in states that mention contributions see fundraising decrease by more than 75% ($p < 0.01$). This suggests that attorneys – a group particularly well-positioned to benefit from the election of their preferred judicial candidate – are especially sensitive to recusal rules when donating to a state supreme court election campaign.

But, as expected, ideological groups are not at all influenced by recusal rules. In fact, few of the influences found in the literature matter to those groups, focused as they likely are on long-term ideological goals.[18]

Discussion

Judicial elections are *not* just like every other election, though many of the same forces apply to the choices voters make over candidates (Hall 2001). Only for judicial elections are there rules governing behavior during elections that range from prohibitions on making statements that may appear to commit a judicial candidate to a particular position to regulations about how campaign contributions can legally be solicited to requirements about recusal in cases involving donors. We worry about the legitimacy of courts, and the potential effect elections have on that legitimacy, in ways we decidedly do not concern ourselves with when it comes to other elections. That concern has led to regulations around campaigning and judicial speech that the Supreme Court has upheld as necessary to the compelling state interest of maintaining confidence in the judiciary.

Those rules, though, likely have some unintended consequences, and those are what we explore here. While recusal rules are borne of a desire to protect the legitimacy and perceived impartiality of judges and courts, they have, as we have shown, also affected donors' decisions. If Bonneau and Hall (2009) are correct and judicial campaigns serve as important information provisions to voters, then the very thing that judges do in promulgating these recusal requirements may make the environment surrounding judicial elections even more information-poor than it already is, especially in nonpartisan elections.

The increasing role that money plays in elections has been a considerable source of controversy and debate and ought to continue to be so. Critics argue that elected officials are beholden to the interests of campaign contributors. This is especially salient when it comes to judicial elections, the one branch of government idealized for being above politics. And, in the last few decades, judicial elections have become increasingly partisan and expensive. The possibility that the public might view campaign contributions as driving decisions is of valid concern. Of concern, too, though, is that voters in judicial elections have enough information to make an informed choice. These recusal rules produce a conundrum: While they likely help to protect the legitimacy of the judiciary (especially indirectly, through fewer donations), they do so by dissuading donors from participating, which may translate to a less information-rich environment. That may be desirable as that disincentive stems

[18]We also ran a separate model for business interests, finding that they are influenced by recusal rules, but to a lesser degree than attorneys. In addition, labor interests are also strongly influenced by state recusal rules. (Not shown.)

https://doi.org/10.1017/spq.2023.32 Published online by Cambridge University Press

from the understanding that dollars *cannot* affect judicial outcomes when judges recuse from cases in which donors are interested/participants, which will be good for legitimacy. But it may also harm democratic accountability, which is why Americans elect their judges in the first place.

Data availability statement. Replication materials are available on SPPQ Dataverse at https://doi.org/10.15139/S3/L1TSBH (Edelstein and Benesh 2023).

Funding statement. The authors received no financial support for the research, authorship, and/or publication of this article.

Competing interest. The authors declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

References

American Bar Association. 2011. "Model Code of Judicial Conduct." https://www.americanbar.org/ (2 May 2018).

Ansolabehere, Stephen, John M. de Figueiredo, and James M. Snyder, Jr. 2003. "Why Is There so Little Money in U.S. Politics?" *Journal of Economic Perspectives* 17 (1): 105–130.

Bam, Dimitry. 2011. "Making Appearances Matter: Recusal and the Appearance of Bias." *Brigham Young University Law Review* 2011 (4): 943–1004.

Barber, Michael, Daniel M. Butler, and Jessica Preece. 2016. "Gender Inequalities in Campaign Finance." *Quarterly Journal of Political Science* 11 (2): 219–48.

Benesh, Sara. C. 2006. "Understanding Public Confidence in American Courts." *Journal of Politics* 68 (3): 697–707.

Berch, Neil. 1996. "The 'Year of the Woman' in Context: A Test of Six Explanations." *American Politics Quarterly* 24 (2): 169–93.

Biskupic, Joan. 2009. "Supreme Court Case with The Feel of a Best Seller." USA Today. February 16. https://abcnews.go.com/Politics/story?id=6899842 (2 May 2018).

Bonica, Adam and Woodruff, Michael J. 2012. *"State Supreme Court Ideology and 'New Style' Judicial Campaigns." SSRN Electronic Journal.* doi: 10.2139/ssrn.2169664.

Bonneau, Chris. 2004. "Patterns of Campaign Spending and Electoral Competition in State Supreme Court Elections." *Justice System Journal* 25 (1): 21–38.

Bonneau, Chris. 2005. "What Price Justice(s)? Understanding Campaign Spending in State Supreme Court Elections." *State Politics & Policy Quarterly* 5 (2): 107–25.

Bonneau, Chris. 2007. "Campaign Fundraising in State Supreme Court Elections." *Social Science Quarterly* 88 (1): 68–85.

Bonneau, Chris. 2017. "Fundraising and Spending in State Supreme Court Elections." In *Judicial Elections in the 21st Century*, eds. Chris W. Bonneau and Melinda Gann Hall. New York: Routledge.

Bonneau, Chris, and Damon Cann. 2009. "The Effect of Campaign Contributions on Judicial Decision-making." Available at SSRN: https://ssrn.com/abstract=1337668 or http://doi.org/10.2139/ssrn.1337668.

Bonneau, Chris, and Melinda Hall. 2009. *In Defense of Judicial Elections*. New York: Routledge.

Bonneau, Chris, and Melinda Hall, Eds. 2017. *Judicial Elections in the 21st Century*. New York: Routledge.

Bonneau, Chris W., and Damon M. Cann. 2011. "Campaign Spending, Diminishing Marginal Returns, and Campaign Finance Restrictions in Judicial Elections." *Journal of Politics* 73 (4): 1267–1280.

Boyea, Brent. 2016. "Replication Data for: Individual Contributions to State Supreme Court Campaigns: Context and the Impact of Institutional Design." UNC Dataverse, V1. https://doi.org/10.15139/S3/1MEHMA.

Boyea, Brent D. 2017. "Individual Contributions to State Supreme Court Campaigns: Context and the Impact of Institutional Design." *State Politics & Policy Quarterly* 17 (3): 227–50.

Brace, Paul, and Melinda Gann Hall. 2001. "'Haves' versus 'Have Nots' in State Supreme Courts: Allocating Docket Space and Wins in Power Asymmetric Cases." *Law & Society Review* 35 (2): 393–417.

https://doi.org/10.1017/spq.2023.32 Published online by Cambridge University Press

Brown, Clifford W., Lynda W. Powell, and Clyde Wilcox. 1995. *Serious Money: Fundraising and Contributing in Presidential Nomination Campaigns*. New York: Cambridge University Press.
Canes-Wrone, Brandice and Nathan Gibson. 2019. "Does Money Buy Congressional Love? Individual Donors and Legislative Voting." *Congress & The Presidency* 46 (1): 1–27.
Cann, Damon M. 2002. "Campaign Contributions and Judicial Behavior." *American Review of Politics* 23 (Fall): 261–74.
Cann, Damon M. 2007. "Justice for Sale? Campaign Contributions and Judicial Decisionmaking." *State Politics & Policy Quarterly* 7 (3): 281–97.
Cann, Damon M., Chris Bonneau, and Brent Boyea. 2012. "Campaign Contributions and Judicial Decisions in Partisan and Nonpartisan Elections." In *New Directions in Judicial Politics*, eds. Kevin T. McGuire. New York: Routledge.
Champagne, Anthony. 1988. "Judicial Reform in Texas." *Judicature* 72 (3): 146–53.
Commission to Promote Public Confidence in Judicial Elections. 2006. Final Report to the Chief Judge of the State of New York. February 6, 2006. Appendix G: New York State Judges: Mail Survey Results (May 2004) Available online at https://moderncourts.org/wp-content/uploads/2013/10/FerrickJudicialElection.pdf.
Corriher, Billy, and Jake Paiva. 2014. "State Judicial Ethics Rules Fail to Address Flood of Campaign Cash from Lawyers to Litigants." Center for American Progress (7 May).
Cox, G., Fiva J., and Smith, D. 2020. "Measuring the Competitiveness of Elections." *Political Analysis* 28 (2): 168–85.
Edelstein, Benjamin, and Sara Benesh (2023), "Replication Data for: Recusal as Remedy: Disincentivizing Donors." UNC Dataverse, V1, UNF:6:Wzobmff6GuiBtOly0BIhFQ==[fileUNF]. https://doi.org/10.15139/S3/L1TSBH.
Engstrom, Erik J., and William Ewell. 2010. "The Impact of Unified Party Government on Campaign Contributions." *Legislative Studies Quarterly* 35 (4): 543–569.
Francia, Peter L., John C. Green, Paul S. Herrnson, Lynda W. Powell, and Clyde Wilcox. 2003 *The Financiers of Congressional Elections: Investors, Ideologues, and Intimates*. New York City: Columbia University Press.
Frederick, Brian and Matthew J. Streb. 2008. "Women running for judge: The impact of sex on candidate success in state intermediate appellate court elections." *Social Science Quarterly* 89 (4): 937–954.
Frederick, Brian, and Matthew J. Streb. 2011. "The Cost of Going for the Gavel: Individual Candidate Spending in Intermediate Appellate Court Elections." *Justice System Journal* 32 (1): 25–43.
Geyh, Charles G., and Katherine Thrapp. 2017. "The Changing Landscape of Judicial Elections." In *Judicial Elections in the 21st Century*, eds. Chris W. Bonneau and Melinda Gann Hall. New York: Routledge.
Gibson, James L. 2008. "Challenges to the Impartiality of State Supreme Courts: Legitimacy Theory and 'New-Style' Judicial Campaigns. *American Political Science Review* 102 (1): 59–75.
Gibson, James L. 2012. *Electing Judges: The Surprising Effects of Campaigning on Judicial Legitimacy*. Chicago: The University of Chicago Press.
Gibson, James L., and Gregory A. Caldeira. 2012. "Campaign Support, Conflicts of Interest, and Judicial Impartiality: Can Recusals Rescue the Legitimacy of Courts?" *Journal of Politics* 74 (1): 18–34.
Gibson, James L., Jeffrey A. Gottfried, Michael X. Delli Carpini, and Kathleen Hall Jamieson. 2011. "The Effects of Judicial Campaign Activity on the Legitimacy of Courts: A Survey-based Experiment." *Political Research Quarterly* 64 (3): 545–58.
Gibson, James L., and Michael J. Nelson. 2017. "Judicial Elections: Judges and their New-Style Constituencies" In *The Oxford Handbook of U.S. Judicial Behavior*, eds. Lee Epstein and Stefanie Linquist. Oxford: Oxford University Press
Gill, Rebecca D., and Kate Eugenis. 2019. "Do Voters Prefer Women Judges? Deconstructing The Competitive Advantage in State Supreme Court Elections." *State Politics & Policy Quarterly* 19 (4): 399–427.
Goldberg, Deborah, Sarah Samis, Edwin Bender, and Rachel Weiss. 2005. *The New Politics of Judicial Elections 2004: How Special Interest Pressure on Our Courts Has Reached a "Tipping Point" – and How to Keep Our Courts Fair and Impartial*. Washington, DC: Justice at Stake Campaign.
Goldschmidt, Jona. 1994. "Merit Selection: Current Status, Procedures, and Issues." *University of Miami Law Review* 49 (1): 1–125.
Goodwin-Gill, G.S. 2006. *Free and Fair Elections*. Geneva: Inter-Parliamentary Union.
Grier, Kevin B. and Michael C. Munger. 1991. "Committee Assignments, Constituent Preferences, and Campaign Contributions." *Economic Inquiry* 29 (1): 24–43.

https://doi.org/10.1017/spq.2023.32 Published online by Cambridge University Press

Grimes, Jason D. 2009. "Aligning Judicial Elections with Our Constitutional Values: The Separation of Powers, Judicial Free Speech, and Due Process." *Cleveland State Law Review* 57 (4): 863–91.

Hall, Melinda G., and Chris W. Bonneau. 2008. "Mobilizing Interest: The Effects of Money on Citizen Participation in State Supreme Court Elections." *American Journal of Political Science* 52 (3): 457–70.

Hall, Melinda Gann. 2001. "State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform." *American Political Science Review* 95 (2): 315–30.

Hall, Melinda Gann. 2007. "Voting in State Supreme Court Elections: Competition and Context as Democratic Incentives." *Journal of Politics* 69 (4): 1147–59.

Hall, Melinda Gann. 2015. *Attacking Judges: How Campaign Advertising Influences State Supreme Court Elections*. Stanford: Stanford University Press.

Hall, Melinda Gann, and Chris W. Bonneau. 2013. "Attack Advertising, the White Decision, and Voter Participation in State Supreme Court Elections." *Political Research Quarterly* 66 (1): 115–26.

Hazelton, Morgan L. W., Jacob M. Montgomery, and Brendan Nyhan. 2016. "Does Public Financing Affect Judicial Behavior? Evidence from the North Carolina Supreme Court." *American Politics Research* 44 (4): 587–617.

Herrick, Rebekah. 1995. "A Reappraisal of the Quality of Women Candidates." *Women and Politics* 15 (4): 25–38.

Hogan, Robert E. 2007. "The Effects of Candidate Gender on Campaign Spending in State Legislative Elections." *Social Science Quarterly* 88 (5): 1092–105.

Hughes, David A. 2022. "Local Media Coverage of Candidates for State Supreme Courts." *Justice System Journal* 43 (3): 238–59.

Jacobson, Gary C. 1997. *The Politics of Congressional Elections*, 4th edition. New York: Longman.

Justice at Stake. 2002. "National Surveys of American Voters and State Judges." http://justiceatstake.org/media/cms/PollingsummaryFINAL_9EDA3EB3BEA78.pdf (October 20, 2017).

Kang, Michael S., and Joanna M. Shepherd. 2011. "The Partisan Price of Justice: An Empirical Analysis of Campaign Contributions and Judicial Decisions." *New York University Law Review* 86 (1): 69–130.

Kritzer, Herbert. 2011. "Competitiveness in State Supreme Court Elections, 1946–2009." *Empirical Legal Studies* 8 (2): 237–59.

Marbes, Melinda A. 2017. "Reforming Recusal Rules: Reassessing the Presumption of Judicial Impartiality in Light of the Realities of Judging and Changing the Substance of Disqualification Standards to Eliminate Cognitive Errors." *St. Mary's Journal on Legal Malpractice & Ethics* 7 (2): 238–303.

McGuire, Kevin. 1995. "Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigations Success." *Journal of Politics* 57 (1): 187–96.

McMahon, Kevin J. 2007. "Presidents, Political Regimes, and Contentious Supreme Court Nominations: A Historical Institutional Model." *Law & Social Inquiry* 32 (4): 919–54.

Miller, Banks, and Brett Curry. 2013. "The Effect of Per Se Recusal Rules on Donor Behavior in Judicial Elections." *Justice System Journal* 34 (2): 125–49.

Nelson, Michael J., Rachel Paine Caufield, and Andrew D. Martin. 2013. "OH, MI: On Empirical Examinations of Judicial Elections." *State Politics & Policy Quarterly* 13 (4): 495–511.

Nevada Commission on Judicial Discipline. 2002. "Standing Committee on Judicial Ethics and Election Practices, Opinion JE02-001." Issued MArch 14, 2002. Available online at https://judicial.nv.gov/uploadedFiles/judicialnvgov/content/Standing/Opinions/JE02-001.pdf.

Niemi, Richard G., Simon Jackman, and Laura R. Winsky. 1991. "Candidacies and Competitiveness in Multimember Districts." *Legislative Studies Quarterly* 16 (1): 91–109.

O'Connor, Sandra Day. 2008. "Enhancing Judicial Independence, Accountability and Selection for the State Court Judiciary: A Program for Reform." Presented at Fordham Law School, New York, NY, April 8, 2008.

Oliver, John. 2015. "Elected Judges." Last Week Tonight with John Oliver. New York: HBO. https://www.youtube.com/watch?v=poL7l-Uk3I8. (Visited August 12, 2022

Peters, C. Scott. 2017. "Regulating Judicial Elections: Assessing State Codes of Judicial Conduct." Harvard Datavers, V2. Available online at https://doi.org/10.7910/DVN/KJTMRI (Visited July 1, 2023).

Peters, C. Scott. 2018. *Regulating Judicial Elections: Assessing State Codes of Judicial Conduct*. New York: Routledge.

https://doi.org/10.1017/spq.2023.32 Published online by Cambridge University Press

Petrovic, Phoebe. 2023. "In Wisconsin Supreme Court race, ad spending for Kelly ekes past Protasiewicz after she led in ads 23-to-1." Wisconsin Watch. Available online at https://wisconsinwatch.org/2023/03/wisconsin-supreme-court-race-kelly-protasiewicz-ads/ (Visited December 19, 2023).
Phillips, Thomas R., and Karlene Dunn Poll. 2007. "Free Speech for Judges and Fair Appeals for Litigants: Judicial Recusal in a Post-White World." *Drake Law Review* 55 (3): 691–721.
Ridout, Travis N., and Glen R. Smith. 2008. "Free Advertising: How the Media Amplify Campaign Messages." *Political Research Quarterly* 61 (4): 598–608.
Rottman, David. 2009. "Judicial Elections in 2008." *The Book of the States 2009*. Lexington, KY: The Council of State Governments.
Ruckman, P. S. 1993. "The Supreme Court, Critical Nominations, and the Senate Confirmation Process." *Journal of Politics* 55 (3): 793–805.
Sample, James, and David E. Pozen. 2007. "Making Judicial Recusal More Rigorous." *Judges' Journal (Winter 2007)* 117: 17–24.
Shipan, Charles, and Megan Shannon. 2003. "Delaying Justice(s): A Duration Analysis of Supreme Court Confirmations." *American Journal of Political Science* 47 (4): 654–68.
Sorauf, Frank J. 1988. *Money in American Elections*. Glenview, IL: Scott, Foresman.
Spanhel, Cynthia L. 1999. *The Courts and the Legal Profession in Texas – The Individual's Perspective*. Austin, TX: Department of Research and Analysis, State Bar of Texas.
Squire, Pervill. 2008. "Measuring the Professionalization of U.S. State Courts of Last Resort." *State Politics & Policy Quarterly* 8: 112–38.
Streb, Matthew J. 2007. *Running for Judge: The Rising Political, Financial, and Legal Stakes of Judicial Elections*. New York: New York University Press.
Thompson, Joel A., Gary F. Moncrief, and Keith E. Hamm. 1998. "Gender, Candidate Attributes, and Campaign Contributions." In *Campaign Finance in State Legislative Elections* eds. Joel A. Thompson and Gary F. Moncrief. Washington, DC: CQ Press.
Waltenburg, Eric, and Charles Lopeman. 2000. "Tort Decisions and Campaign Dollars." *Politics and Policy* 28 (2): 241–63.
Ware, Stephen J. 1999. "Money, Politics, and Judicial Decisions: A Case Study of Arbitration Law in Alabama. *Journal of Law and Politics* 25 (4): 645–86.
Weber, Ronald E., Harvey J. Tucker, and Paul Brace. 1991. "Vanishing Marginals in State Legislative Elections." *Legislative Studies Quarterly* 16 (1): 29–47.
Wilhite, Allen, and John Thielemann. 1986. "Women, Blacks, and PAC Discrimination." *Social Science Quarterly* 67 (2): 283–98.
Williams, Margaret S., and Corey A. Distlear. 2007. "Bidding for Justice: The Influence of Attorneys' Contributions on State Supreme Courts." *Justice System Journal* 28 (2): 135–56.
Witko, Christopher 2015. "State Campaign Finance Regulatory Stringency Index, 1992–2012." https://doi.org/10.7910/DVN/NLDUOY.
Woodson, Benjamin. 2017. "The Two Opposing Effects of Judicial Elections on Legitimacy Perceptions." *State Politics & Policy Quarterly* 17 (1): 24–46.

Cases Cited

Caperton v. A. T. Massey Coal Co. 556 U.S. 868. (2009).
Chisom v. Roemer, 501 U.S. 380 (1991).
City of Las Vegas Downtown Redevelopment Agency v. Eighth Judicial District Court, 5 P.3d 1059 (Nev. 2000).
Woodward v. Alabama, 571 U.S. 1045 (2013).

https://doi.org/10.1017/spq.2023.32 Published online by Cambridge University Press

Appendix A. Summary Statistics

Statistic	N	Mean	SD	Min	Max
Dependent Variables:*					
Log of Total Contributions	219	12.668	1.864	6.215	16.655
Log of Attorney Contributions	209	11.429	1.760	4.681	15.580
Log of Ideology/Single Issue Contributions	132	8.399	1.814	3.912	13.440
Independent Variables:**					
Recusal Rule***	219	1.205	0.634	0	2
Open Seat	219	0.247	0.432	0	1
Contested General Election	219	0.662	0.474	0	1
Chief Justice Seat	219	0.055	0.228	0	1
Female Candidate	219	0.566	0.49	0	1
Minority Candidate	219	0.201	0.402	0	1
Competitive Race	219	0.498	0.501	0	1
Competitive Court	219	0.621	0.486	0	1
Control of Court	219	0.169	0.376	0	1
Term Length	219	7.297	1.659	6	12
Number of Seats	219	2.671	1.126	1	5
Tort Docket	219	0.240	0.074	0.085	0.390
Multi-Seat Election	219	0.032	0.176	0	1
Voting Age Population	219	5,440,191.868	5,234,452.622	336,677.000	21,253,960.000
Attorneys	219	4.112	0.833	2.668	6.361
Regulation	219	10.484	4.436	3	17
District	219	0.146	0.354	0	1
Strong JCCC	219	0.521	0.501	0	1
Professionalism	219	0.592	0.119	0.253	0.878
Odd Year	219	0.046	0.209	0	1
Partisan Election	219	0.406	0.492	0	1

*Dependent variables are in 2020 dollars.
**From total fundraising model.
***Statistics presented based on numeric representation of variable

Appendix B: Coding Recusal Rules

Excerpts taken from RULES or COMMENTS or CASELAW

State	Recusal Rule/Comment Excerpt	Code
Georgia	"Judges shall disqualify themselves in any proceedings with respect to which the judge has received or benefitted from an aggregate amount of campaign contributions or support so as to create a reasonable question as to the judge's impartiality."	2
Mississippi	"Campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may, by virtue of their size or source, raise questions about a judge's impartiality and be cause for disqualification…A party may file am option to recuse a judge based on the fact that an opposing party or counsel of record for that party is a major donor…a donor who or which has, in the judge's most recent election campaign, made a contribution…of more than $1000."	2
Arkansas	"The fact that a lawyer in a proceeding, or a litigant, contributed to the judge's campaign…does not of itself disqualify the judge. However, the size of contributions…may raise questions as to the judge's impartiality…"	2

(*Continued*)

https://doi.org/10.1017/spq.2023.32 Published online by Cambridge University Press

(*Continued*)

State	Recusal Rule/Comment Excerpt	Code
Michigan	"Disqualification is warranted for reasons that include…"a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton*…"	2
North Dakota	"The fact that a lawyer in a proceeding, or a litigant, contributed to the judge's campaign…does not itself disqualify the judge. However, the size of the contributions, the degree of involvement in the campaign, the timing of the campaign and proceeding, the issues involved in the proceeding… may raise questions as to the judge's impartiality…"	2
New Mexico	"A judges' impartiality might reasonably be questioned…as a result of campaign contributions…Excessive contributions to a judge's campaign by a party or a party's attorney may also undermine the public's confidence in a fair and impartial judiciary…may result when attorneys or parties appearing before a judge generate large amount of money for a campaign…"	2
Pennsylvania	"The judge knows or learns that a party, a party's lawyer, or the law firm of a party's lawyer has made a direct or indirect contribution to the judge's campaign in an amount that would raise a reasonable concern about the fairness or impartiality of the judge's consideration of a case involving the party, the party's lawyer, or the law firm of the party's lawyer."	2
Tennessee	"The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has made contributions or given such support to the judge's campaign that the judge's impartiality might reasonably be questioned."	2
Washington	"A judge may disqualify…if the judge learns by means of a timely motion by a party that an adverse party has provided financial support for any of the judge's judicial election campaigns within the last six years in an amount that causes the judge to conclude…impartiality might reasonably be questioned."	2
Alabama Georgia (2010) Idaho Illinois Kentucky Louisiana Minnesota Montana North Carolina Oregon Texas West Virginia	No mention of campaign contributions – mere discussion of impartiality being reasonably questioned.	1
Nevada	The state supreme court, in *City of Las Vegas Downtown Redevelopment Agency v. Eighth Judicial District Court* (2000), held that a rule requiring recusal for campaign contributions would "'severely and intolerably' obstruct the conduct of judicial business" (5 P.3d 1059, at 1062). The Nevada Commission of Judicial Discipline concurs: "A judge is not required to and, indeed, should not recuse himself or herself from presiding in a matter because an attorney involved in the proceeding has contributed to the judge's campaign…" (2002).	0
Ohio	"A judge's knowledge that a lawyer, law firm, or litigant in a proceeding contributed to the judge's election campaign…or publicly supported the judge in the campaign, does not, in and of itself, disqualify the judge."	0
Wisconsin	"A judge shall not be required to recuse…based solely on any endorsement or that judge's campaign committee's receipt of a lawful campaign contribution."	0

https://doi.org/10.1017/spq.2023.32 Published online by Cambridge University Press

Author Biographies. Benjamin D. Edelstein is a Staff Attorney at Legal Action of Wisconsin. His research interests include state-level democracy and policymaking, race/ethnic politics, and institutional legitimacy.

Sara C. Benesh is Associate Professor and Chair of the Department of Political Science at the University of Wisconsin, Milwaukee. Her research focuses on judicial behavior and institutional legitimacy.

Cite this article: Edelstein, Benjamin D., and Sara C. Benesh. 2024. Recusal as Remedy: Disincentivizing Donors. *State Politics & Policy Quarterly* **24** (1): 77–98, doi:10.1017/spq.2023.32