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The Business of Politics: Assessing the Impact of Corporate Power and Campaign Contributions
on Judicial Decision-Making

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Abstract

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The Supreme Court's landmark ruling in *Citizens United v. Federal Elections Commission* sparked a large debate about the growing influence of corporate spending in politics. While campaign contributions have increased significantly since *Citizens United*, I question how effective this spending is at influencing judicial decision-making. I predict that as corporations become more powerful politically they will naturally cause justices to rule favorably towards business group interests, making campaign contributions unnecessary. In this thesis, I explore the effects of corporate political power and campaign spending on judicial decision-making in State Supreme Courts. I introduce a new method by which to measure corporate political power, using the Bureau of Economic Analysis' Industry Specialization Index as a proxy for corporate political strength. After conducting a comparative analysis of cases from before and after *Citizens United*, my results demonstrate that, in the aggregate, justices are unresponsive to levels of corporate power and campaign spending, and that the *Citizens United* decision has not made justices more likely to favor business group interests.

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Introduction

President Woodrow Wilson once commented, “The masters of the government in the United States are the combined capitalists and manufacturers of the United States.” Since the early stages of industrialization, researchers and politicians have concerned themselves over the inherent presence and influence of big business in politics. Although it is widely understood in the literature that businesses often assert their political influence through campaign donations, doubt remains about how effective these contributions are at impacting policy outcomes. While most attention has focused on the impact of corporate political activity in Presidential and Congressional races, very little research has been conducted on its effect in judicial elections. In this thesis, I explore the effects of corporate political power and campaign spending on judicial decision-making, and add to the conversation about the impartiality of judges who, I predict, are influenced by outside political influences.

Literature Review

The issues surrounding corporate power abuses were brought to the spotlight in 1998 when Harmon Mining Company president Hugh Caperton filed a lawsuit against A.T. Massey Coal and Company. When the case was awaiting trial on appeal, A.T. Massey’s CEO Don Blankenship became extremely involved in the West Virginia State Supreme Court election. Blankenship set up a non-profit corporation through which he donated over \$3 million to candidate Brent Benjamin. This amounted to more than the total of all other Benjamin supporters combined, allowing the lawyer to defeat incumbent Justice Warren McGraw. In 2007 when the suit came before the State Supreme Court, Justice Benjamin refused to recuse himself and cast a decisive vote in favor of A.T. Massey. When *Caperton v. A.T. Massey Coal and Company* was heard by the US Supreme Court in 2009, the Court found for *Caperton* and remanded the case

back to the West Virginia Supreme Court. Writing for the majority, Justice Kennedy explained that “there 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 v. A.T. Massey Coal and Company*).

While *Caperton* represents one instance of a judge’s misconduct attributed to outside political influences, there has been a longstanding debate in the legal community about the merits of judicial selection methods. Former Supreme Court Justice Sandra Day O’Connor has been especially vocal on the topic, consistently advocating for abolishing judicial elections. She argues that judges who are influenced in their rulings by interest group spending ruin the integrity and legitimacy of the judiciary. She explains, “judicial elections powered by money and special interests create the impression, rightly or wrongly, that judges are accountable to money and special interests, not the law” (Rankin 2013). She even founded the O’Connor Judicial Selection Initiative at the University of Denver, to make elected judges more than “politicians in robes,” as she calls them (Schwartz 2009). Supporters of Justice O’Connor’s position predict that judges are more likely to rule in favor of positions that are supported by their key campaign contributors.

Additionally, research has been conducted to study the effects of campaign activities on judicial impartiality. Gibson (2008) specifically analyzed whether attack advertisements, campaign contributions and policy procurements by candidates in judicial elections compromised the legitimacy of State Supreme Courts. He found that campaign spending and attack ads do indeed lead to a decline in judicial legitimacy, while policy procurements, or

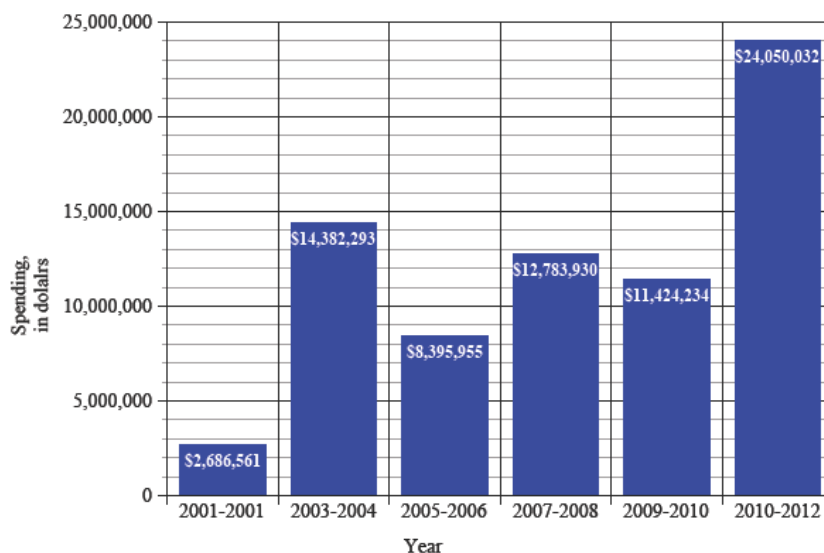
campaign promises to vote a certain way on key issues, have no influence on the legitimacy of the courts.

One of the earliest cases involving judicial elections heard by the Supreme Court came in 2002 with *Republican Party of Minnesota v. White*. The Court ruled that Minnesota's law forbidding judicial candidates from publically announcing their views on disputed legal issues was unconstitutional (*Republican Party of Minnesota v. White*). The supposed impact of *White* has been widely debated in the literature. While some have argued that allowing judges to announce their views has eroded the credibility of the judicial system (Chandonnet 2004, Wilderman 2003), other studies have concluded that the case in fact caused no discernable changes to judicial elections (Bonneau et. al 2011). Despite this ambiguity, the *White* decision clearly led to the development of longer, more contentious, and more expensive judicial campaigns (Caufield 2005).

As campaigns became reliant on interest group spending, politicians began to concern themselves over the sources and regulation of campaign financing. In 2002, the same year as the *White* decision, Congress passed the Bipartisan Campaign Reform Act (more commonly referred to as the McCain-Feingold Act), which placed widespread limitations on the financing of political campaigns (*Bipartisan Campaign Reform Act*). However, this legislation was largely overturned by the Supreme Court in 2010, in the landmark case *Citizens United v. Federal Election Commission*. The Court ruled that the First Amendment prohibits the government from restricting political independent expenditures from corporations, nonprofits and labor unions. Although it is still illegal for these groups to contribute directly to political campaigns, the decision allows them to indirectly make unlimited contributions through Political Action Committees (PACs).

Since the *Citizens United* decision in 2010, campaign spending, including independent expenditures, electioneering communications, and communication costs, have increased dramatically. Overall, the total amount of campaign spending in judicial elections increased from roughly \$37 million in 2008, to over \$88 million in 2012 (Hasen 2012). This marks a 234% increase from 2008, and a 628% increase from 2004. A majority of the money spent in 2012 (\$80 million of the \$88 million total) came from independent expenditures, the primary mode of campaign contributions impacted by the *Citizens United* decision. Additionally, a report generated by the Brennan Center for Justice, The National Institute for Money in State Politics, and Justice at Stake indicates that non-candidate spending more than doubled in the election cycle after *Citizens United*, as demonstrated by Figure 1. This amounted to roughly 42% of total spending in that cycle (Bannon et. al 2013).

Figure 1: Non-Candidate Spending, 2001-2012



Source: The New Politics of Judicial Elections

Although the amount of money contributed in judicial elections has been consistently rising over the past two decades (Lo et. al 2011), never before has there been such an exponential leap in

political spending over such a short period of time. This drastic increase since 2010 is most likely a consequence of the *Citizens United* ruling.

The *Citizens United* decision has been especially beneficial to businesses, which can now donate extremely large sums of money to campaigns without publically supporting a candidate. However, when considering the implications of this monumental ruling, researchers have questioned how effective campaign contributions actually are at influencing public officials' policy decisions. While some evidence exists establishing a correlation between campaign contributions and judicial decisions (Champagne 1988, McCall 2003), other studies have had contrary results (Cann 2002). Overall, there is no clear conclusion in the literature on whether campaign contributions do in fact influence judicial decision-making.

In fact, an additional theory exists about the impact of business group interests on judicial decision-making. Some scholars have indicated that the strength of corporate political power in a state or jurisdiction can be so influential that the business community can naturally control policy outcomes. Smith (1999) explains, "the structural power thesis purports to explain why certain issues never reach the policy agenda and also to account for public official's decisions on the issues that are actively considered." As corporations become more politically powerful, the possibility exists that judges rule more favorably towards business-group interests, or strategically accepted pro-business cases in response to their jurisdiction's level of corporate political strength. I predict that in some states businesses may be so politically influential that they will naturally impact policy decisions, making campaign contributions unnecessary.

In light of this concern over the strength of corporate influence in politics, as well as Justice O'Connor's arguments over the merits of judicial selection systems, I find it necessary to pose the following questions as the basis for my research: *How effective are corporate campaign*

contributions at impacting judicial decision-making? Should businesses continue to contribute to judicial campaigns, or does the strength of corporate political power naturally cause justices to rule in favor of business group interests? In this thesis, I explore the impact of corporate political power and spending on judicial decision-making in order to determine whether increased levels of corporate power leads to favorable State Supreme Court decisions for businesses. This topic is particularly relevant to Justice O'Connor's concerns about the integrity of the judicial system and also adds to the discussion about the growing control of businesses in lawmaking and politics more generally.

Measuring Corporate Political Power

Most of the literature involving concerning corporate political power can be found in business journals, as researchers analyze the most effective way to measure a firm's political influence. Various proxies have been developed to determine which firm-level factors are correlated with a company's ability to effectively lobby for favorable policy outcomes. This overview identifies commonly used measures of corporate political activity (CPA), and serves as a basis for my own measurement choices in this study.

The literature identifies two different types of corporate political activity – proactive and reactive. Proactive political activity, or “buffering,” includes actions on the part of firms intended to shape public policy. Such actions could include informing government officials about the impact of potential legislation, trying to reduce government regulation over an industry through lobbying, or making campaign contributions. On the other hand, reactive behavior is more precautionary, and includes activities such as tracking legislation to develop effective compliance strategies (Hillman et. al, 2004). My research is predominantly focused on proactive

corporate activity, since I am interested in studying how corporate activity and campaign contributions impacts how justices vote.

Researchers have developed several ways to operationalize firm-level corporate political activity, the most prominent of which is by measuring the size of a firm. Whether measured by sales (Bhuyan 2000, Hansen & Mitchell 2000), assets (Meznar & Nigh 1995), market share (Schuler 1996), or numbers of employees (Bhuyan 2000), scholars have argued that larger firms are more politically active and that the size of a firm is a valid proxy of corporate political activity. The research consistently contends that firm size is a legitimate proxy for a company's political resources and serves as a strong indicator of a firm's ability to become politically engaged. While Cook and Fox (2000) show small and medium-sized businesses to be the most politically active, their results also suggest that smaller companies are more likely to join other firms to participate in CPA, giving them the financial resources of a larger company. Larger firms are more likely to act independently, according to their results.

Another prominent firm-level measure of corporate political activity is the company's dependence on government. This measure is explained by the resource dependency theory. As Hillman et. al (2004) explain, "firms that receive a significant portion of their revenues or face elevated levels of regulatory scrutiny have high motivation to manage that dependency through CPA" (Hillman 2004, 840) Studies have used variables such as a company's sales to the federal government, a firm's percentage of exports, or the cost burden imposed from regulation (Hansen & Mitchell 2000, Hart 2001, Schuler 1999) to argue that firms that rely on the government for a significant portion of their revenue will be more politically active.

Studies have also focused on formalized corporate structures, such as the amount of government affairs personnel, or whether an office is located in Washington, DC to

operationalize CPA. These studies have had mixed results, as some researchers (Martin 1995) have found a correlation between DC offices and CPA, while others (Schuler 1996, Caldeira et. al 2000) have found little to no association. The literature also includes research on whether the political influence of top managers can affect a firm's level of CPA, also resulting in mixed findings (Hillman et. al 2000).

Scholars have also combined these measurement strategies to create original variables measuring corporate power. For instance, Salamon and Siegfried (1977) aimed to create an empirical measure of political influence to add to an academic field they felt was overcrowded with case studies and success stories. They used a combination of the above variables to create a new measure of corporate power by calculating a firm's Tax Avoidance Rate. By including a company's income tax rate, firm size, industry size, geographical concentration, and profit rates, they created a new measure to serve as a proxy for corporate political influence.

Lastly, there have been a number of studies that have focused on CPA using industry-level data. Schuler (1996) finds that firms with the largest share of industry sales are more likely to be politically active than firms with a smaller stake in the market. Some scholars have also analyzed how the level of industry competition has affected a firm's CPA. Results have indicated that intra-industry competition can cause increased levels of CPA among firms, finding evidence of contribution matching among competitors and a crowding effect on the lobbying of certain issues (Hersch and McDougall 2000, Baumgartner and Leech 2001).

Overall, the literature does not identify a widely accepted procedure to operationalize corporate political power. Measurement strategies often differ based on the specific topic or industry concentration of the study. This has proven problematic when comparing the results of studies of corporate political activity.

A Brief History of Judicial Elections

Judicial elections initially became popular in response to the extensive power state legislatures had over the selection and removal of judges. The first judicial elections appeared in Georgia in 1812 for lower court judges, followed by 1836 elections in Mississippi for Supreme Court justices. The adoption of elections was often accompanied by other procedures to encourage judicial independence as well, such as longer terms and limitations on state legislatures' ability to remove judges (Hanssen 2004). States soon saw that elected became bound to their political parties. Objection to judicial elections spurred the development of the country's first Bar Associations, which functioned as strong advocates against partisan elections. As a result, states began using nonpartisan election systems during the latter half of the nineteenth century to insulate judges from ordinary party pressures (Canes-Wrone & Clark 2009). Over time, various judicial selection methods were developed, as detailed later in this section.

In sum, judicial elections were adopted as an attempt to increase the institutional independence of the judicial system. While reformers successfully separated the judiciary from the constraints of state legislatures, there were several unanticipated consequences that resulted from adopting judicial elections systems. First, when states switched from partisan to nonpartisan elections they were required to remove party cues from ballots. This made voters more uninformed. As a result, voter roll-off for judicial contests (voters fail to select a candidate for that race) increased (Hall 1984).

Additionally, over time judges had incentive run campaigns and behave more like politicians in order to get elected. Historically, judicial election's received very little attention by the media and was widely disregarded by voters, most of whom were uninformed about the

merits of each candidate. In “old-style elections”, “if the candidate had an attractive name, a popular political party affiliation, or a good ballot placement and perhaps a newspaper or bar association endorsement, the candidate had a good chance to be elected” (Champagne 2001, 1393). This model changed in the late 1970s however as judicial elections become more competitive. Across the country, competing segments of the bar began to pour money into judicial campaigns. District Attorneys in Los Angeles were encouraging opposition to judges they felt were not tough on crime, while trial lawyers in Texas were financing State Supreme Court candidates with consistent civil defense voting records. This “new style” of judicial campaigns has made hot-button issues such as criminal justice or the death penalty increasingly important (Canes-Wrone et. al 2014). Iyanger (2002) explains that by claiming that they are “tougher” on crime or promising to uphold “family values,” judicial candidates can use advertisements to set the political agenda in their favor while still informing voters about their policy positions. Constitutional amendments outlawing judicial elections have been proposed in states such as Alaska, Colorado and Florida, among others, but the majority of them have been unsuccessful (Champagne 2001). Most legal scholars recognize that despite these efforts judicial election systems will continue to be used across the country (Hasen 2012).

Judicial Selection Methods

In order to fully understand the impact that corporate power and campaign contributions may have on judicial decision-making, it is necessary to first analyze the variety of judicial selection methods across the country. My research is focused on decision-making in state courts, since all federal judges are appointed by the President of the United States and do not campaign for their seats. I will therefore limit this overview to State selection processes. There are four

models for judicial selection: judicial elections, merit selection, democratic appointment, and hybrid selection. Even among these models there can be slight variations.

First, twenty-two states elect the judges who sit on their highest court. Seven of these states elect judges in partisan elections, or races where two candidates are listed on the ballot with their party affiliation, similar to a typical United States Congressional election. Winners serve for a period of time and must then run for reelection, most often in another partisan race. In three states however (Illinois, New Mexico and Pennsylvania), judges are reelected in retention elections in which voters do not have a choice of candidate, but rather simply vote on whether the incumbent judge should continue to remain on the bench for another term of service. Candidates in retention elections almost always get reelected (Bonneau 2012).

The remaining fifteen states elect their high court judges through nonpartisan elections. In these races the candidates' party affiliations are not listed on the ballots. Therefore, voters are unaware of candidates' party affiliations unless some other forms of communication relay that information. However, many of these nonpartisan elections tend to become partisan-esque, since modern means of campaign communication through television or internet advertisements has made it much easier to inform voters (Bonneau 2012).

Thirteen states select their high-court judges using a merit selection system. Under this method, judges are selected by the governor from a list generated by a nominating committee consisting of a mix of attorneys and non-attorneys. This commission generally gives governors a short list (usually three) of judges to choose from. After a period of time, often one to three years, these judges must be reelected using a retention election in order to keep their seat on the bench (Bonneau 2012).

A democratic appointment system used in five states allows for judges to be appointed with the consent of democratically elected bodies. Three of these states allow for gubernatorial appointment, with the advice and consent of the state legislature, while the other two states' appointments come directly from the states' General Assemblies. Various retention election or reappointment processes are used, varying by state (Bonneau 2012).

Lastly, in a hybrid selection process employed by ten states, elements from the merit selection and democratic appointment process are combined. Under this method, the Governor appoints judges after nomination from a commission. They then must be confirmed by a democratic body, such as the state legislature. This is fairly similar to the model used in federal courts, although only three states allow for life tenure – a principle element of the federal selection system (Bonneau 2012).

Researchers have debated over how each selection system impacts judicial decision-making. Interestingly, evidence has shown that judges in nonpartisan electoral systems demonstrate more pressure than judges in partisan election systems to cater to public opinion (Caldarone, Canes-Wrone & Clark 2009, Canes-Wrone, Clark and Park 2012). Additionally, Choi, Guliati and Poster (2010) found no discernable difference across selection systems in judges' independence levels – measured by their willingness to vote against his or her political party. Overall, the literature does not provide strong evidence about which selection system causes the most political pressure on judges. As Canes-Wrone, Clark and Kelly (2014) explain, “Some of this disagreements presumably derives from the aggregation presumably derives from the aggregation of different types of systems, and some due to wide variation across studies with respect to the time period, level of court, issues, and conception of responsiveness” (Canes-Wrone 2014, 25).

With this research I will study the impact of corporate power and campaign spending on judicial decision-making, hoping to determine whether these factors exacerbate a bias towards business groups' interests. In order to study the impact of corporate power on judicial decisions from campaign contributions it is necessary that I do a comparative analysis across all states, including those that do not elect their State Supreme Court Justices. I will therefore incorporate all four selection methods in my analysis: retention, partisan and nonpartisan elections, as well as non-electoral systems.

Campaign Contributions in Judicial Elections

With regard to judicial elections, it is clear that the situation that arose in *Caperton* was rather rare. Business groups seldom finance a candidate in order to ensure a favorable decision on a case that they are involved in. Instead, corporate lobbyists consistently donate to judges who generally have pro-business voting records (Allen & Cook 2012). In the event that a corporation is involved in a legal suit, they would hope to have a judge with similar beliefs on the bench. However, they could also benefit from precedent set by rulings in other cases. Unlike legislative or executive elections, business groups do not contribute to campaigns to “buy access” to a justices, like they might for congressmen or governors. Allen and Cook (2012) support this notion when they write, “Since it is either unethical or illegal for a judge to discuss an ongoing case with an external party, a contributor to a judicial election cannot expect to engage a successful judicial candidate on some issue as could be expected with a legislator. The very nature of the judicial system would not condone a donor to gain access to a judge through his contributions.” PACs and other outside spending groups will campaign for a candidate in order to get the person they feel would best represent their interests elected to the bench.

Additionally, Brown (2012) argues that although more campaign contributions could increase the likelihood of success in an election, it is necessary to consider that a spurious relationship may exist as well. The candidate's viability as an elected official relative to his or her opponent may separately correlate with the level of campaign contributions and the election result. The argument that stronger candidates will raise more money regardless of their stance on particular issues discredits the belief that "money buys votes." This theory can be extended to judicial elections, since stronger judicial candidates will raise more money, but contributions may not necessarily impact their decision-making.

In theory, a judge who feels that he has a conflict of interest in a particular case (i.e. if one of the parties involved is a campaign contributor), should recuse himself from the trial proceedings. However, judges are rarely required to abstain from hearing a case. Thomas Susman (2011) explains that a reliance on a judge's decision to recuse, even if the amount of money involved is not "significant and disproportionate," will likely be inadequate to combat the influence of campaign contributions. Therefore an inherent conflict of interest exists. He explains, "Reciprocity, an inherent trait of human nature, makes judges susceptible to being influenced unduly, and unconsciously, by campaign supporters, even those who give seemingly insignificant sums. At the same time, the natural tendency toward denial weakens judges' ability to perceive and confront those conflicts of interest" (Susman 2011, 4). This underscores the importance of outside influences in the judiciary, as judges are evidently unlikely to recuse themselves with the presence of campaign contributions.

The increasingly policy-making nature of state courts has made involvement in judicial elections particularly attractive to interest groups (Hale, McNeal & Pierceson 2007). Hale and colleagues explain that "as courts have become more aggressive at making policy, they have

increasingly been seen by policy actors as forums for change through traditional lobby and electoral efforts” (Hale, McNeal & Pierceson 2007, 2). For example, in the 1980s, the federal courts were not favorable lobbying forums for gay rights groups, particularly after the Supreme Court upheld the constitutionality of laws prohibiting sodomy in *Bowers v. Hardwick* (1986). After *Bowers*, gay rights groups began lobbying state court justices instead. They were widely successful. By the time the Supreme Court overturned *Bowers* in 2003 with its decision in *Lawrence v. Texas*, high courts in conservative states such as Georgia had already ruled against the statute that *Bowers* had upheld (Hale, McNeal & Pierceson 2007).

Studies have shown that, similar to legislative incumbents, judges vote strategically in the presence of electoral competition (Brace and Hall 1990; Hall 1991). Hall finds that “in order to appease their constituencies, justices who have views contrary to those of the voters and the court majority, and who face competitive electoral conditions will vote with the court majority instead of casting unpopular dissents on politically volatile issues” (Hall 1991, 428). Additionally, she concludes that justices who are nearing the end of their term are more likely to join the majority instead of casting a dissenting vote. This brings to light the potentially biased nature of the judicial system, since judges are likely casting different votes on key issues depending on whether and when they are up for re-election. While proponents of judicial elections argue that judges should be responsive to their constituents’ views, I question whether this leads to biased decision-making in what is meant to be an impartial system. It is for this reason that I chose to conduct my analysis across each judicial selection method, in order to determine whether the strength of corporate power is more influential in states that elect their Supreme Court justices.

In this new era of corporate spending since *Citizens United*, campaign contributions have become incredibly important to the success of judicial campaigns. The very nature of judicial elections is so reliant on fundraising and electioneering communications that it has made the *Citizens United* decision even more impactful. Moreover, the fact that the judicial system has developed into a policy-making body, and that justices have little incentive to recuse themselves from cases in which they have a conflict of interest, causes for more concern about the impartiality of the judiciary more generally. However, as the amount of money contributed continues to rise, I question how impactful these donations are on judicial decision-making after the election, and predict that corporate political power in and of itself can effectively influence justices' voting decisions. These factors call for a further investigation of judicial campaign financing and the potential power corporate interests now have over the judicial system.

Theory

The literature on judicial decision-making, corporate political power and judicial selection establishes a series of clear premises. These observations give rise to the following theoretical expectations.

Premise 1: State Supreme Court justices will recognize, and be responsive to, levels of corporate power in their respective states. This notion serves as the basis for this project, since my theory revolves around the fact that justices will respond to levels of corporate political influences, despite the fact that they are not directly impacted by the level of corporate power. My theory rests on the idea that the political power of businesses in a state will span all branches of government, thus encouraging justices to support corporate policy preferences in their rulings.

Justices may also like to see the key industries in their states succeed simply for the economic betterment of the state.

Premise 2: Increased levels of contributions in judicial elections will make elected justices in State Supreme Courts more likely to rule in favor of donors' interests. This premise relies on the idea that judges will be pressured into supporting positions taken by their key donors in order to receive contributions necessary to win a reelection campaign. This notion has been supported by various articles in the literature that suggest that a correlation exists between campaign contributions and judicial decision-making (Champagne 1988, Waltenberg and Lopeman 2000, Ware 1999). Unfortunately, the authors of each of these articles identified causality concerns with their results. As Waltenberg and Lopeman explain (2000, 255), it is unclear whether “decisions follow dollars or dollars follow decisions.” However, Cann (2007) used a two-stage probit least squares estimator to diminish this causality issue and concludes that contributions from attorneys directly impact judges' decisions.

While Cann focused his analysis on campaign spending from attorneys and law firms, I have chosen to concentrate my research on spending from business groups. As the literature supports, corporations contribute the most amount of money in judicial elections compared to other interest groups (Shepherd 2013). I would therefore like to concentrate my research on the impact that business group donations have had on judicial decision-making.

Considering these two premises, I have developed the following theory to serve as the basis of my research project. *Elevated levels of corporate strength and campaign contributions will cause State Supreme Court justices to be more supportive of business group interests.*

Hypothesis

I offer the following hypothesis about the impact that corporate power and business group campaign contributions in state judicial elections have on judicial decision-making: *If the levels of corporate political power and corporate spending in a state are high, then State Supreme Court justices will be more likely to rule in favor of business group interests.* This hypothesis is extremely relevant to the academic discussion about the role of business in politics, the apparent capability of the Supreme Court to act as a policy-making institution, as well as questions regarding the impartiality of the contemporary judiciary.

Secondary to this main hypothesis, I am interested in exploring what impact the Supreme Court's ruling in *Citizens United* has had on judicial-decision making in response to levels of corporate power. The Supreme Court's monumental decision in this case made businesses even more politically powerful by permitting limitless campaign contributions through Political Action Committees. I predict that justices today are much more likely to rule in favor of business group interests in response to corporate power measures, than they were before the Court's ruling in 2010. Therefore, I will test my hypothesis using cases from before and after the *Citizens United* ruling in order to conduct a comparative analysis to determine whether corporate political activity has become more influential in the wake of this critical Supreme Court decision.

Data

I used two datasets compiled for previous studies in order to conduct my research. First, I used the data from Dr. Joanna Shepherd's paper titled "Justice at Risk: An Empirical Analysis of Campaign Contributions and Judicial Decisions" (Shepherd 2013). The data contains information of over 30,000 state Supreme Court justices' decisions in business-related cases

from 2010 to 2012. I also used a dataset compiled by Dr. Paul Brace and Dr. Melinda Hall for the State Supreme Court Data Project. This data includes 21,000 decisions reached by over 400 state Supreme Court justices between 1995 and 1998. It was necessary that I use both datasets in order to include cases from before and after the Supreme Court's *Citizens United* decision. Both datasets include judge-level data, so the unit of analysis for my research is individual State Supreme Court justice votes. I selected this unit of analysis, rather than State Supreme Court decisions, in order to include data on campaign contributions to each justice.

The first independent variable for my research was the level of campaign contributions to each justice. I measured this as the percentage of a justice's contributions that come from businesses. This was a valid measure of this variable, rather than simply measuring the total amount of money contributed to a candidate, because it demonstrates how significant corporate spending is to a candidate's campaign. It also allowed for a consistent unit of analysis to compare the importance of corporate campaign contributions for each justice. The data for this variable is included in the Shepherd dataset.

The second independent variable for my research was the level of corporate political power in each state. The literature has identified a multitude of ways to measure corporate political activity, as explained above. After considering all measurement possibilities, I concluded that these options do not sufficiently measure the strength of business political influence in a particular state. While research has been done correlating some of these measures to increased corporate power, I felt that a measure that analyzes the economic influence of corporations in each state would better operationalize corporate political power.

My primary concern with most other measures of corporate power is they do not account for the strength of different industries in each state. As Salamon and Siegfried explain, "...there

is a marked tendency to treat the entire corporate sector as a uniform entity, and thus to ignore the potential variations in corporate political influence flowing from variations in the structure of particular industries” (Salamon & Siegfried 1977, 1027). Not all industries have the same policy interests, and the strength of certain industries can differ dramatically across states. For example, I predict that a justice in Michigan would be more likely than a justice in New York to vote favorably for a large car company, considering the automobile industry is so crucial to the strength of the economy of the state. My theory would predict that the auto industry’s importance to the state would cause it to hold more political clout than other industries, and thus encourage justices to vote for car companies or rule favorably towards the auto industry’s policy interests. Meanwhile, my theory predicts that a justice in New York would be more likely to support an investment firm than an auto company, considering how important the financial services industry is to the economy of the state.

Additionally, the nature of this research called for a state-level measure of corporate power. In order to have a consistent measure of corporate political influence for all judicial decisions in the same state, it was necessary that the measure calculate how businesses influence the politics of the state overall. This required that I think about corporate power in a different way than is traditionally proposed in the literature. Most measures of corporate political activity are firm-level variables, since researchers are interested in determining how individual companies can improve their political influence. Additionally, unlike most studies my research uses corporate power as the independent variable, not the dependent variable. In order to measure corporate power so that it may be useful as a means of understanding how it impacts judicial decision-making, I needed a state-level variable that will function with my research design’s unit of analysis.

In order to account for these differences in industry influence as a state-level variable, I chose to use the Bureau of Economic Analysis' (BEA) Industry Specialization Index as a proxy to measure corporate political power for this study. This index assigns scores to industries in each state based on its importance as a portion of the state's gross domestic product. Scores were produced for every industry from 1997-2012. The scores are calculated as follows:

The "Industry Specialization Index" (ISI) is a measure of the degree to which states are more or less specialized in an industry. The more specialized a state is in an industry, the higher the ISI will be. The ISI is computed as the share that an industry is of a state divided by the share that the industry is of the nation, and the resulting quotient multiplied by 100. If an industry is a greater share of a state than it is of the nation, its ISI will be greater than 100; if an industry is a smaller share of the state than it is of the nation, its ISI will be less than 100. (U.S. Bureau of Economic Analysis)

This is a valid measure of corporate political power because it measures the economic influence of specific industries in each state. I recognize that the use of this variable relies on the notion that industries that are more important economically in a state, based on its contribution to the state's GDP, will be more powerful politically as well. This is a logical and reasonable premise to base my theory, considering that the economy and job creation is consistently ranked by voters as being the most important policy issues (Abdullah, 2012). This is especially significant to justices who rely on voters' approval to be reelected. Justices would therefore have incentive to rule favorably for the state's largest economic contributors and job creators. Additionally, politicians are more likely to cater to the policy interests of their states' largest industries in order to strengthen the economy and benefit their constituents, thus increasing the level of political power of that industry.

For cases heard after the *Citizens United* decision in 2010, I used the ISI scores of seven broad industries provided by the Bureau of Economic Analysis from 2010-2012 in order to

generate my own corporate power variable. I used WestLaw Key Issue numbers for each case to link each judicial decision with the appropriate industry. WestLaw's Key Number System is the most comprehensive and widely used indexing system for federal and state case law materials. It breaks down the American legal system into over 400 major topics, including matters as wide-ranging as adultery, agriculture, banking, public contracts and treason. Each major topic is then broken down into more specific subtopics, totaling more than 80,000 search codes. Using Key Issue numbers provided in the Shepherd dataset, I was able to attribute each case with the appropriate industry score from the ISI data.

I created this variable for cases that included one business litigant only. Cases without a business litigant, as well as cases with two business litigants, were omitted. I identified the Key Issue numbers that were most likely associated with business cases, although not every judicial decision in the dataset was included. Table 1 includes a complete listing of Key Issue and industry score pairings. In total, Key Issue-ISI pairings were created for 7,416 justice decisions.

Table 1: WestLaw Key Issue Numbers - Industry Specialization Index Pairings

Industry	WestLaw Key Industry Numbers
Natural Resources and Mining	176 - Fish 260 - Mines and Minerals 245 - Logs and Logging
Trade	29T - Antitrust and Trade Regulation 219 - Interest 231H - Labor and Employment 265 - Monopolies 294 - Payment 343 - Sales
Transportation and Utilities	172 - Ferries 200 - Highways 300 - Pilots
Financial Activities	51 - Bankruptcy 52 - Banks and Banking 56 - Bills and Notes 58 - Bonds 83H - Commodity Futures Trading Regulation 349B - Securities Regulation
Professional and Business Services	83 - Commerce 101 - Corporations and Business Organizations 289 - Partnership 413 - Worker's Compensation 382T - Trademarks 392T - Unemployment Compensation
Education and Health Services	141E - Education
Private Goods-Producing Industries	251 - Manufactures

Unfortunately, WestLaw Key Issue numbers are not included in the Brace and Hall dataset of pre-*Citizens United* justice decisions. However, the data does include Private Business Codes for each judicial decision involving a business litigant, indicating the type of business involved in the case. Using these indicators, I was able to link justice decisions with the associated industry scores. Again, I created this variable for cases involving business litigants only, omitting cases that had two business litigants and cases that didn't involve businesses. I also limited the creation of this variable to cases that occurred from 1997-1998, since Industry Specialization scores were not available for earlier years. A complete list of private business codes and industry scores pairings is displayed in Table 2. In total, Private Business Code-ISI pairings were created for 8,995 justice decisions.

Table 2: Private Business Code - Industry Specialization Index Pairings

Industry	Private Business Code
Natural Resources and Mining	2101-2103, 2155, 2166 – Agriculture (commercial farm, single farm family, etc.) 2501-2503, 2555, 2566 – Mining (coal, metal, oil, gas, etc.)
Trade	2701-2710, 2755, 2766 – Trade (textile, food, drug, auto etc.)
Transportation and Utilities	2801-2805, 2855, 2866 – Transportation (airline, boat, shipping etc.)
Financial Activities	2301-2306, 2355, 2366 – Financial Institution (bank, credit union, investment company etc.)
Private Services-Providing Industries	2601, 2604-2615, 2655, 2666 – Service (entertainment, real estate firms, consulting, information processing etc.)

Overall, my measures accurately operationalized corporate political power during periods preceding and following the *Citizens United* decision. Although I would have preferred to use the same procedure to produce my corporate power variable in both datasets, my methods provided reliable means of pairing State Supreme Court cases to the critical industry involved in each case, allowing me to assign an industry power score for the appropriate state and year. This created a valid measure of corporate power by providing a measure for the strength of the specific industry that justices' could be influenced by in each court case.

The dependent variable for this study is a State Supreme Court justices' support for business group interests. I measured this variable by determining whether a State Supreme Court justice voted in favor of a business litigant in each case. This proved to be the most straightforward and effective way to determine how supportive a justice was to corporate political interests. My theory predicts that this variable will vary in accordance with the strength of corporate power in each state. This is a binary variable, with *1* representing a justice's vote in favor of a business litigant, while *0* signifies a vote against the business. The data for this variable are included in the Shepherd dataset.

The main variables that I controlled for were Supreme Court Justices' ideology, as well as the ideology of each state's population. These variables could undoubtedly impact how a court rules on a case involving a business group. For example, a conservative justice will likely be

more amenable to the interests of a corporation or business than a more liberal judge. Especially in electoral systems, judges may feel pressure to support a ruling more in-line with the public's ideology, in fear of the negative consequences that could occur from displeasing the public or government officials in the state. Controlling for ideology was the first step in determining whether a correlation exists between my independent and dependent variables. I measure these variables using ideology scores as of 2008 generated by Berry et al. (Berry et. al 2008), for my post-*Citizens United* analysis. For judicial decisions occurring before *Citizens United*, I use Berry et. al's ideology scores from 1998.

I also controlled for the strength of each case in the data. It was a necessary control variable to include in my analysis in order to account for differences in the merits of legal arguments presented by the petitioner and respondent that could influence how a justice votes in a case. While some justices may have predisposed policy stances on particular issues, the strength of the arguments presented in trial proceedings, as well as the particular details of each case could undoubtedly affect how a justice votes. I measured this variable using case strength scores included in the Shepherd dataset, with higher scores indicating a stronger case for the business litigant.

Analysis

My analysis proceeds in five parts. First, I examine the distribution of my dependent and independent variables for cases occurring after the *Citizens United* decision. Second, I examine the correlation between my key variables, in order to provide a better sense of how corporate power and business campaign contributions may influence the likelihood of a justice supporting a business litigant. It also demonstrates whether a relationship exists between my independent

variables. Next, I conduct a logistic regression model on my post-*Citizens United* data. Then, I examine the distribution of my dependent and independent variables for cases occurring before the *Citizens United* decision, and examine their correlation coefficients. Finally, I employ a second logistic regression model on my pre-*Citizens United* data in order to compare my findings to my previous results.

Variables' Summary Statistics

I begin my analysis by examining the distribution of my variables across all judicial selection methods. My results are displayed in Table 3.

Table 3: Variable Summary Statistics Across Judicial Selection Methods

Variable	Partisan	Nonpartisan	Retention	No Election
Justice Support for Business Litigant				
N	453	1,205	1,194	729
Mean	.52	.18	.53	.42
Min	0	0	0	0
Max	1	1	1	1
Corporate Power				
N	479	1,267	1,279	782
Mean	103.68	88.15	94.13	98.12
Standard Deviation	57.35	22.54	83.92	21.79
Min	56.7	45.17	33.72	24.26
Max	403.68	164.12	1,019.1	153.9
Percent Business Contributions				
N	479	1,267	188	782
Mean	22.59	18.63	4.26	0
Standard Deviation	24.53	19.91	13.06	0
Min	0	0	0	0
Max	91.23	100	48.02	0
Citizen Ideology				
N	479	1,267	1,279	782
Mean	60.31	58.99	51.89	78.85
Standard Deviation	15.19	12.46	14.03	14.51
Min	39.95	35.62	25.24	45.86
Max	78.38	81.34	88.22	91.84
Government Ideology				
N	479	1,267	1,279	782
Mean	60.47	65.26	55.44	80.94
Standard Deviation	27.7	23.77	24.94	25.23
Min	14.91	9.95	7.86	10.20
Max	87.87	95.31	88.22	97.30
Case Strength				
N	453	1,267	185	728
Mean	-7.13	.17	5.83	-4.31
Standard Deviation	41.37	44.82	43.47	44.93
Min	-81.81	-63.05	-52.66	-57.40
Max	53.42	67.59	59.31	63.83

Considering how much more competitive partisan and nonpartisan elections are than retention elections, it is unsurprising that the percent of judicial contributions from businesses are significantly higher in states that implement partisan and nonpartisan elections to select their justices than retention and non-electoral selection systems. The mean values of 22.89 and 18.63 for partisan and nonpartisan electoral systems respectively far outweigh the mean value score of 4.26 in retention elections. It was also expected that justices who are not elected would receive no campaign contributions. However, it is interesting that businesses make up less than a quarter of total contributions to justices in partisan and nonpartisan systems, as I initially predicted that corporate contributions would be the primary source of judicial fundraising. It is also unsurprising that while all other variables in retention elections have over 1,000 observations, the percent of business contributions variable has only 188. Justices in retention election systems almost always get reelected, so there is very little incentive for businesses to contribute to judicial campaigns.

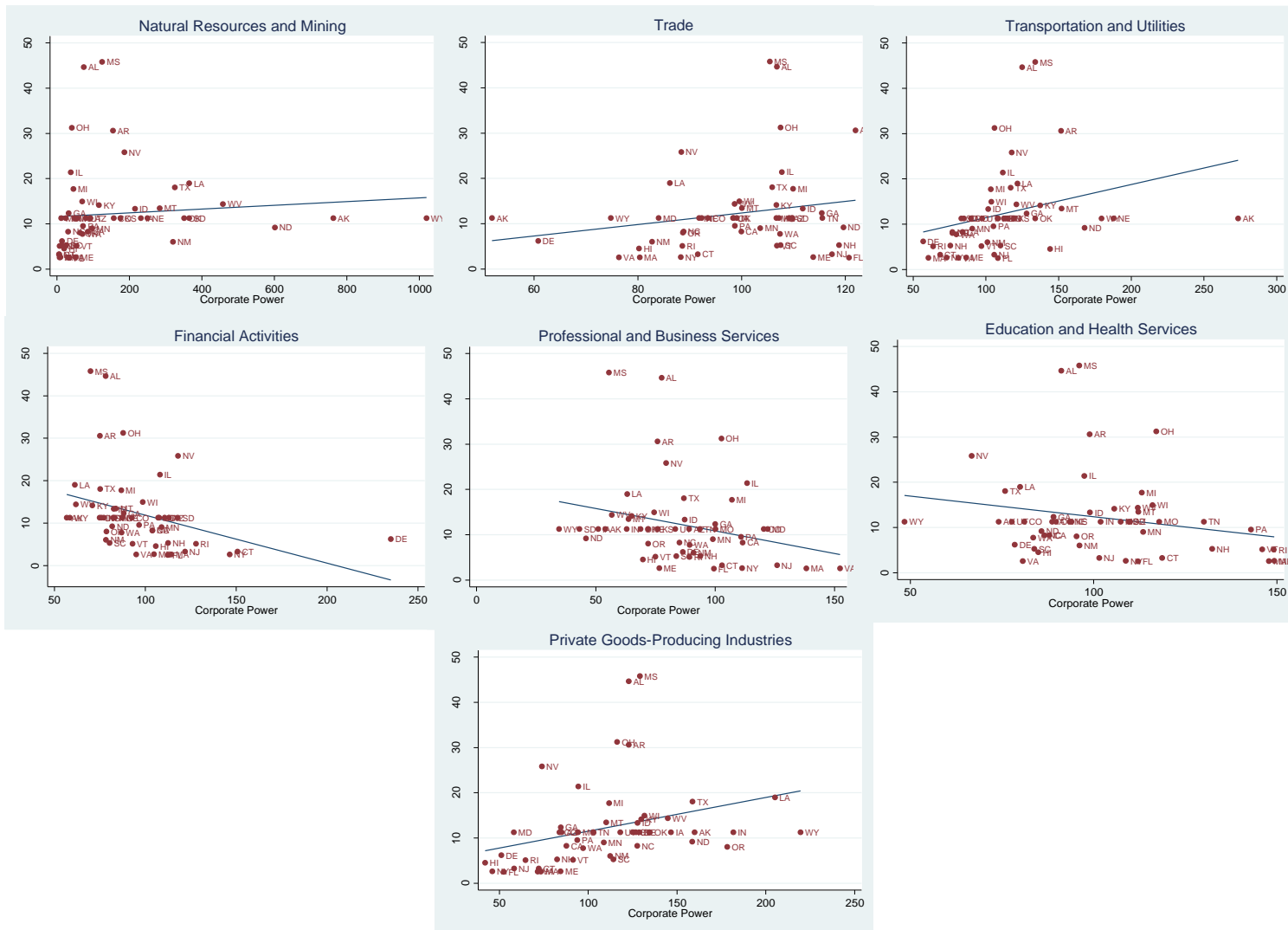
In order to initially evaluate the relationship between corporate power and business contributions to the likelihood of a justice supporting a business litigant, I calculated the correlation coefficients for my dependent and independent variables. The results demonstrate that there is very little statistical correlation between these variables. My data are displayed in Table 4.

Table 4: Correlations between Dependent and Independent Variables

	Justice Support Bus Litigant	Corporate Power	Percent Business Contribution
Justice Support Bus Litigant	-	-	-
Corporate Power	-.0091	-	-
Percent Business Contribution	.061	-.061	-

I then sought to explore how spending patterns varied based on industry across states. By taking the average percentage of contributions that justices received from businesses, I was able to determine how contributions levels differed based on the strength of corporate power in each state. My results are graphed in Figure 2.

Figure 2: Comparative Analysis of Industry-Based Contributions



In the Natural Resources and Mining industry, there is a very slight increase in business contributions across states as corporate power increases. Although the range of the corporate power measure (0-1,000) is much larger than other industries, when I re-conducted my analysis after dropping larger outliers the results were similar. It is especially interesting to discover

which states act as outliers in this graph. For instance, Wyoming has a Natural Resources and Mining corporate power score of 1,019.1, which is reflective of the fact that it is the number one coal-producing state in the country and that coal mining accounts for 16.1% of the state's GDP (National Mining Association). Arkansas and North Dakota have significantly larger corporate power values as well, which is unsurprising considering how important mining is to the economy of those states.

The Trade industry graph also demonstrates a slight increase in business contributions as the corporate power measure increases. The range of corporate power scores was lower for this industry (0-120), indicating that the marginal increase cannot be attributed to a distribution of wide ranging corporate power measures. Looking back at how cases were assigned, a wide variety of WestLaw Key Issue Numbers were grouped with the Trade industry, which could possibly explain why there is not a strong correlation between the corporate power and business contribution variables.

On the other hand, a strong positive correlation is demonstrated in the Transportation and Utilities graph. Although values are concentrated in the 0-200 corporate power range, the results were very similar when omitting Arkansas as an outlier. This demonstrates that contributions to justices are significantly higher in states with strong Transportation and Utilities industries, indicating that this industry is particularly active in using campaign spending as a means of judicial lobbying.

I was surprised to find a significant negative correlation between these two variables in the Financial Activities industry. Financial services companies are some of the most politically active firms in the country, consistently contributing extremely large amounts of money to Presidential, Congressional and Judicial candidates, often from both parties. Financial services is

the most highly regulated industry in the United States, and these companies have serious incentives to remain politically active in order to lobby for less stringent regulations. The fact that the average level of campaign contributions to justices decreases as the level of financial service influence increases was unexpected. I predicted that the opposite effect would have occurred, especially in states with high corporate power scores such as New York and Connecticut. Additionally, Delaware's financial activities corporate power score of 235.17 serves as a clear outlier in the data. This was predicted, considering the state's business-friendly tax code and Court of Chancery has attracted more than 63% of the Fortune 500 and 50% of all publically traded companies to incorporate in Delaware (State of Delaware). After omitting Delaware from my analysis, the slope of the best-fit line was less steep but remained significantly negative.

The Professional and Business Services industry also demonstrates a decrease in business group spending as the corporate power measures increases, although it is not as significant as the Financial Activities industry's results. The corporate power score scale (0-150) is similar to the trade industry in that it is much smaller than most other industries. Most values are concentrated in the 80-130 range as well, which could help explain why the line of best fit is steeply sloped.

The Education and Health services industry demonstrated a weak negative correlation between these two variables. Only one WestLaw Key Issue number was used to attribute cases to this industry however, and it makes up a small percentage of judicial decisions used in the dataset. The values are fairly widely distributed across all levels of corporate power compared to other industries, and is similar to the Professional and Business Services industry in that its range of corporate power scores is relatively small (0-150) compared to other industries in the study.

Lastly, the Private Goods-Producing Industry results demonstrate a significant positive relationship between the level of corporate power and average percent of business contributions. The data is evenly distributed across an average range of corporate power scores as well. However, similar to the Education and Health services industry, only one WestLaw Key Issue number was included when attributing cases to this industry, and it makes up a small portion of all cases in the study.

Across all industries, businesses in Alabama and Mississippi make up a higher percentage of justice campaign contributions than any other states, and their conservative policy preferences almost always group them together in terms of corporate power measures. In addition to Mississippi and Alabama, the states with the highest average level of business contributions are Ohio, Arkansas, Nevada, Illinois, Louisiana, Texas, Michigan, West Virginia and Kentucky – all of which use partisan or nonpartisan elections to elect their State Supreme Court justices. This supports Bonneau's (2007) argument that nonpartisan elections are just as competitive as partisan elections, since levels of campaign spending in nonpartisan systems were equal to, and often greater than, partisan systems.

Hypothesis Testing

In order to test my hypothesis, I conducted a logistic regression analysis for each judicial selection method. A logistic regression model was appropriate for this study because my dependent variable is binary while my independent variables are continuous. In order to determine whether the relationship between corporate power and corporate spending has an effect on how justices vote, I created an interaction term for my analysis by multiplying my two independent variables together. This new variable was included in my logistic regressions, along with my independent and control variables. The model can therefore be summarized as follows:

$$\ln \left(\frac{JBus}{1-JBus} \right) = b_0 + b_1CP + b_2BC + b_3(CP \times BC) + b_4CI + b_5GI + b_6CS$$

Where *JBus* is a Justice's Support for a business litigant, *CP* is corporate power, *BC* is the percent of a justices' contributions that come from businesses, *CP x BC* is the interaction term created to account for a potential interactive relationship between my independent variables, *CI* is citizens ideology, *GI* is the government's ideology, and *CS* is the strength of the cases. The results of my logistic regression models are displayed in Table 5.

Table 5: Post-Citizens United Logistic Regression Analysis

<i>DV: Justice Support for Business Litigant</i>	Partisan	Nonpartisan	Retention	No Election
Corporate Power				
Coefficient	-.0022	-.0025	-.0061	.0035
Standard Error	.0036	.0069	.0119	.0085
Z-Statistic	-.61	-.036	-.51	.41
Probability Value	.543	.715	.608	.682
Percent Bus Contributions				
Coefficient	-.0034	.0032	-.1176	0
Standard Error	.0168	.0244	.2325	-
Z-Statistic	-.21	.13	-.51	-
Probability Value	0.837	.89	.613	-
Interaction				
Coefficient	.00008	.0003	.0008	0
Standard Error	.00008	.0003	.0023	-
Z-Statistic	.59	1.28	.37	-
Probability Value	.557	.89	.709	-
Citizen Ideology				
Coefficient	.0026	.0086	-.0783	.0214
Standard Error	.0252	.0113	.232	.021
Z-Statistic	.11	.76	-.52	1.04
Probability Value	.916	.45	.604	.298
Government Ideology				
Coefficient	-.033	-.0134	.0031	-.0017
Standard Error	.0123	.0053	.023	.0119
Z-Statistic	-2.67	-2.53	.13	-.14
Probability Value	.008	.011	.89	.886
Case Strength				
Coefficient	.0593	.0706	.0622	.0711
Standard Error	.0048	.0036	.0082	.0047
Z-Statistic	12.45	19.53	7.46	15.22
Probability Value	0	0	0	0
Constant				
Coefficient	2.512	-.1295	5.889	-2.2892
Standard Error	1.25	.8854	9.239	1.5102
Z-Statistic	2.01	-.15	.64	-1.52
Probability Value	.044	.884	.524	.13
Log Likelihood	128.4062	-271.0819	-54.6147	-141.1358
Pseudo R-Squared	.5905	.6749	.5726	.7151
N	453	1,204	185	728

Overall, the results indicate that the relationships between my corporate power and percent of business contribution variables were not statistically significant at the 95% confidence interval, across all selection systems. I therefore fail to reject the null-hypothesis in all four models.

First, the Partisan Election results suggest that there is an extremely small negative relationship between my independent variables, corporate power and the percent of justices' contributions from businesses, and the probability that justices will support a business litigant. With large p-values for both variables (.54 and .84 respectively), this relationship is not statistically significant at a 95% confidence interval. Interestingly enough, the interaction term generated a very small positive coefficient, indicating that together these two variables may have a positive correlation with a justice's support for businesses. However, this relationship is not statistically significant at a 95% percent confidence interval either. This model has a pseudo-R² value of .59, indicating that a relatively small percentage of the data can be explained by the model.

The results from the Nonpartisan Election systems also demonstrate a slight negative relationship between the corporate power measure and the dependent variable. The results differ from the partisan results, since the percent business contributions variable and the interaction terms both have small, positive coefficients. However, all three variables have very high p-scores (.75, .89 and .89 respectively), thus indicating that the correlations are not statistically significant at a 95% confidence interval. With a pseudo-R² value of .67, the overall fit of this model is fairly low.

The Retention Election model generated similar results to the Partisan Election test. The corporate power and percent business contribution variables had slightly negative coefficients,

while the interaction term was positive. All three coefficients are very small though, and their large p-values (.60, .61 and .70 respectively) indicate that the correlations are not significant at a 95% percent confidence interval. The pseudo- R^2 value of .57 ultimately supports that the data is poorly fit by the model.

Lastly, the corporate power variable had a slightly positive relation with the independent variable in states that do not use elections to select their State Supreme Court justices. However, with a p-value of .68, this relationship is not statistically significant at a 95% confidence interval. As expected, data was missing for the percent of business contributions variable causing missing results for the interaction term as well. Although the No Election states produced data that is best fit by the model (pseudo- $R^2 = .71$) compared to other selection systems, the results are not statistically significant.

According to the results of these logistic regression models, there is no statistically significant relationship between corporate power, businesses campaign contributions, and the likelihood of a justice supporting business group interests, in any judicial selection system. This contradicts my hypothesis that justices are more likely to support business group interests in the presence of increased levels of corporate power and campaign contributions from businesses. These results suggest that State Supreme Court justices are not responsive to outside political pressures, as my theory predicted.

Pre-Citizens United Analysis

Next, in order to determine whether the Supreme Court's decision in *Citizens United* impacted how justices responded to levels of corporate power, I reran my logistic regression analysis using judicial decisions from before 2010 in order to compare my results. Unfortunately,

the Brace and Hall dataset does not include campaign contribution data for each justice, or a variable to measure the strength of each case. In order to control for citizen and government ideology, I included Berry et. al's ideology scores from 1998 in my analysis. The summary statistics for these variables are displayed in Table 6.

Table 6: Variable Summary Statistics for cases heard before *Citizens United*

Variable	Partisan	Nonpartisan	Retention	No Election
Justice Support for Business Litigant				
N	1,438	1,711	1,361	1,078
Mean	1.3567	1.4786	1.4548	1.5158
Standard Deviation	.4792	.4997	.4981	.4999
Min	0	0	0	0
Max	1	1	1	1
Corporate Power				
N	1,438	1,711	1,361	1,078
Mean	95.0008	110.7129	104.5335	106.9933
Standard Deviation	36.6237	45.2323	67.5202	23.4677
Min	46.11	48.1	56.34	11.18
Max	331.06	480.41	957.61	216.03
Citizen Ideology				
N	1,438	1,711	1,361	1,078
Mean	44.7547	45.3852	40.5713	65.2027
Standard Deviation	8.6809	8.7937	12.0459	14.5098
Min	35.1343	28.0125	21.4206	37.6852
Max	71.6539	58.4694	86.4742	86.4742
Government Ideology				
N	1,438	1,711	1,361	1,078
Mean	36.0516	45.1315	39.5148	58.0854
Standard Deviation	11.455	25.3293	26.4803	22.9984
Min	22.8624	7.5	2.5	23.4286
Max	57.3708	83.4694	97.9167	92.9

According to these results, there is very little differentiation in the summary statistics across selection methods. One value that stands out is the Retention Election standard deviation of 67.52, which is significantly larger than the standard deviation measures of other selection systems. This indicates that the data for retention election systems are more widely distributed than other selection systems. Additionally, the mean Citizen Ideology for non-electoral systems

is much larger than the other selection systems, implying that more liberal states don't use elections to select their State Supreme Court justices.

The correlation coefficient between my dependent and independent variables was -.029. This suggests that there is a very small, negative relationship between corporate power and the likelihood that a justice will support a business litigant.

In order to analyze my pre-*Citizens United* data, I conducted a logistic regression analysis for each of judicial selection method. A logistic regression model was again appropriate for this study because my dependent variable is binary while my independent variable is continuous. Since the Brace and Hall data does not include campaign contribution information for each justice, I was forced to leave my second independent variable, percent of contributions from business, out of this model. It was therefore unnecessary for me to create an interaction term. Therefore, the model can be summarized as follows:

$$\ln \left(\frac{JBus}{1-JBus} \right) = b_0 + b_1CP + b_2CI + b_3GI$$

Where *JBus* is a Justice's Support for a business litigant, *CP* is corporate power, *CI* is citizens ideology, and *GI* is the government's ideology. The results of my logistic regression analysis are displayed in Table 7.

Table 7: Pre-Citizens United Logistic Regression Analysis

<i>DV: Justice Support for Business Litigant</i>	Partisan	Nonpartisan	Retention	No Election
Corporate Power				
Coefficient	.0009	.0104	-.0019	-.0031
Standard Error	.0019	.0015	.0009	-.0492
Z-Statistic	.5	6.93	-2.11	-1.12
Probability Value	.620	0.000	.035	.264
Citizen Ideology				
Coefficient	-.0416	-.0374	-.0099	-.0492
Standard Error	.0074	.0059	.0059	.0028
Z-Statistic	-5.64	-6.26	-1.69	-7.20
Probability Value	0.000	0.000	.090	0.000
Government Ideology				
Coefficient	-.0513	.0096	.0038	.0244
Standard Error	.0059	.0022	.0027	.0042
Z-Statistic	-9.14	4.46	1.43	5.77
Probability Value	0.000	0.000	.152	0.000
Constant				
Coefficient	4.3619	.2445	.6417	2.0544
Standard Error	.4623	.3458	.2226	.3738
Z-Statistic	9.44	.71	2.88	5.50
Probability Value	0.000	0.480	.004	0.000
Pseudo R-Squared				
Pseudo R-Squared	.0890	.0807	.0043	.0403
N				
N	1,438	1,711	1,361	1,078

The Partisan Election results find that there is a slightly positive correlation between corporate power and a justice's support for a business litigant. However, with a p-value of .62, this relationship is not statistically significant at the 95% confidence interval. Additionally, the pseudo R-squared value of .089 indicates that the data is explained by the model a very small percent of the time.

In Nonpartisan Election systems, there is a small, statistically significant positive relationship between my independent and dependent variables. However, the pseudo R-squared value for the test is .08, indicating that the data is very poorly fit by the model. The retention election results also demonstrate that there is a small, statistically significant negative correlation

between the variables. However a very small pseudo R-squared value (.0043), again indicates that the data is poorly fit by the model. I can therefore reject the null hypothesis for these two selection systems, but must recognize that the data is explained by the model an extremely small percent of the time.

Lastly, the non-electoral system results demonstrate that there is a slight, negative relationship between corporate power and the likelihood of a justice supporting a business litigant. However, this relationship is not statistically significant at a 95% confidence interval, and the data is poorly fit by the model.

Overall, although a statistically significant relationship exists in nonpartisan and retention election systems, the data is extremely poorly fit in all four models. This lends me to conclude that the relationship between corporate power and the likelihood of a justice supporting business group interests is fairly weak in cases occurring before the Supreme Court's *Citizens United* decision.

Comparing these results to my previous logistic regression analysis, it seems that the Supreme Court's *Citizens United* ruling did very little to strengthen corporate political influence over state judiciaries. This contradicts my prediction that businesses have become more powerful since 2010. Unfortunately I was unable to include campaign spending information in my pre-*Citizens United* analysis due to constraints in data availability. However, considering business campaign contributions had no statistically significant relationship with the dependent variable in cases considered since *Citizens United*, I predict that the pre-*Citizens United* tests would generate similar results.

Discussion

The results of this analysis lend themselves to several conclusions. First, the data indicates that the method by which State Supreme Court justices are selected is not significant in determining how responsive justices will be to outside political pressures. With findings that are not statistically significant across all selection methods, it can be concluded that justices in electoral systems are in fact not more likely to favor business group interests than justices in retention or non-electoral systems. This contradicts common arguments in the literature that judicial decision-making is impacted by campaign contributions, as well as Justice O'Connor's arguments that judicial elections causes judges to be accountable to special interests.

Additionally, the results demonstrate that the Supreme Court's landmark decision in *Citizens United vs. Federal Elections Commission* has had very little impact on the business community's political influence over State Supreme Court justices. While I predicted that businesses would have become more influential since the ruling, the results conclude that no relationship between corporate power and the likelihood of a justice supporting business group interests existed to begin with. This contradicts the common assertion that *Citizens United* has given newfound influence to businesses. However this research was concentrated on state judicial systems. The possibility exists that the *Citizens United* decision could have been more impactful in other statewide or federal elections.

Although my hypothesis was rejected in this research, my results leave me optimistic about the merits and impartiality of the judiciary more generally. This study concludes that State Supreme Court justices are not responsive to outside pressures caused by corporate political power and business campaign expenditures. This suggests that justices are acting impartially in

the presence of these influences, and that they are not favoring the largest and most powerful industries in their states. In short, the judicial system is performing how it should. However, one must consider that this study was limited to judicial decision-making in State Supreme Courts, where justices are already more likely to act impartially considering the high-profile nature of their positions and the importance of the cases that they hear. State Supreme Court Justices have more experience and tenure than lower court judges, so they may be less likely to be swayed by political influences. However, corporate power could potentially have a more significant impact on judges in lower courts who face greater electoral competition, thus making their position on the bench less secure. Perhaps lower court judges are therefore more responsive to corporate political influences. This could serve as an interesting additional research topic which would add to the conversation about the impartiality of the judiciary across all levels of the judicial system.

Considering that justices who received large amounts of business campaign contributions were no more likely to rule in favor of business litigants than justices who received relatively little donations from businesses, the results conclude that campaign contributions do not effectively impact judicial decision-making in State Supreme Courts. Firms should therefore limit their donations to judicial campaigns, since it seems that their contributions are doing very little to sway justices towards supporting business group interests in the aggregate. However, these results do not indicate that corporate power and campaign contributions can never impact how a justice rules on a case. Instances may still exist, such as in *Caperton*, when a justice's decision is directly impacted by a large donor or powerful interest group. This cannot be avoided. However, it is reassuring to know that this is not occurring systematically.

It is important to note that the results of this study are limited to corporate influence over judicial decision-making in State Supreme Courts, and that the findings should not be

generalized to politics more generally. Although corporate power and campaign contributions ineffectively influence how State Supreme Court justices vote, a relationship may still exist between these political pressures and policy outcomes and decision-making by other political actors, such as state legislators, US Senators and Congressmen, or the President of the United States.

On April 2, 2014, the US Supreme Court ruled in favor of the appellants in *McCutcheon v. Federal Elections Commission*, overturning limits on aggregate federal campaign contributions. Although limits still remain on how much an individual can contribute to a single politician's campaign (\$2600), this decision allows individuals to donate to as many campaigns as they would like. Prior to this ruling, a federal campaign finance rule limited individuals from donating more than \$48,600 to federal campaigns every two years. Additionally, individuals may now contribute an unlimited amount to national parties and federal candidate committees. Since this ruling came out so recently, it is difficult to determine what sort of effects it will have on political campaigns moving forward. I predict that this ruling will be especially beneficial for the Democratic National Committee and the Republican National Committee, since voters can now contribute extremely large sums of money to their party with campaign finance restrictions. In terms of State races, I expect that states will rethink their aggregate limits on contributions. Evidence of this has already been seen. For instance, on the day of the ruling the Massachusetts Offices of Campaign and Political Finance announced that it would no longer enforce the state's \$12,500 aggregate limit on contributions to state candidates (Wilson 2014). Twelve other states currently have aggregate contribution limits and will likely evaluate whether to amend their laws. In the future, this could increase the level of corporate campaign contributions to State Political Parties, allowing parties to contribute to judicial candidates.

Potential for Future Research

In this research I used the Bureau of Economic Affairs Industry Specialization Index Scores as a proxy to measure corporate political power. This Index measures how important a particular industry is based on its percentage of the state's GDP. My theory rests on the assumption that firms in an industry that make up a larger percentage of a state's GDP will be more politically powerful. This study is, to my knowledge, the first time these scores, or any other variation of industry strength scores, have been used to measure corporate political influence. I took a different approach than most other researchers by using corporate power as my independent variable, and by using a research design that demanded a state-level measure instead of using a firm-level variable. The possibility exists that this measure is not an appropriate proxy to measure corporate power. Other potential proxies for future research may include using employment data to argue that industries that employ the most people will be the most politically powerful. Future researchers could also contend that the industries in which politicians began their careers are the most politically powerful, although such a measure may be more appropriate for a study on State Legislatures rather than State Courts. While I recognize that my findings may urge others to question my data and choice of variables, I am confident that the Industry Specialization Scores served as a legitimate proxy for corporate political power.

Additionally, my post-*Citizens United* analysis was limited due to constraints in data availability, and therefore did not include campaign spending or case strength variables. I was also required to use different pairing systems to match each judicial decision with the appropriate corporate power score based on industry. Ideally, I would have had similar data collection techniques, and run identical logistic regressions on decisions made before and after the *Citizens*

United ruling. Retesting this study using identical empirical methods would provide an even better analysis of this study as well as test the validity of my results.

Conclusion

The results of this research conclude that businesses have very limited means of influencing how justices in State Supreme Courts rule in cases involving business litigants. While I predicted that businesses could reach a level of political power in a state would impact how justices vote making judicial campaign contributions unnecessary, my analysis suggests that this is not the case. Not only are justices seemingly unresponsive to levels of corporate power, but businesses' campaign contributions are ineffective in securing favorable judicial decisions as well. While these findings may be discouraging to leaders in the business community, it leaves me optimistic about the impartiality of the state judicial system, as well as diminishes concerns in the literature about the merits of judicial elections.

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