

## **Do Special Interest Contributions Influence State Supreme Court Decision-Making?:**

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A study of oil, gas, mining, and logging interests in six states from 1998 to 2014

“An independent judiciary...is one of the crown jewels of our system of government today.” (Rehnquist) This quote by William Rehnquist encapsulates the traditional American attitude toward the role of the judiciary in our democracy. Courts are idealized to be the wise arbiters of our government, cutting through bias and politics in order to keep society and other government branches accountable through their countermajoritarian role as reviewers and interpreters of legislation. This is what traditional separation of powers theory envisions.

The U.S. Supreme Court, whose lifetime appointment process embodies this vision, enjoys one of the deepest reservoirs of public legitimacy and good will of any American institution. Yet, our state judicial systems seem to have developed with a different vision in mind. State supreme court justices are elected by popular vote in 39 states. In fact, in the U.S., voters must regularly reelect 89% of state appellate judges. (Kang 2010, 76) This concept of a popular judiciary does not go back to our founding, but it is peculiarly American. (*Id*)

Judges are policymakers of sorts, and with more than 90% of the U.S.’s judicial business conducted in state courts, state supreme court judges have the final say over many legal questions that have extensive policy implications for individuals and industries across society. (*Id*) Because judges inevitably influence policy outcomes, some think it makes perfect sense that voters elect these judges. Even so, we must be aware that when any official lives or dies by the polls, the controversial and complex world of campaign finance lurks in the background.

State supreme court elections are no exception. While state supreme court races in the early 1990s saw hard-money contribution levels around \$8 million per year, the late 1990s marked a steady influx of contributions. 1998 saw \$23 million in hard-money contributions; 2000 saw a record \$44 million. Since then, state supreme court election years have steadily seen contribution levels in the \$30-\$40 million dollar range. (National Institute for Money in State Politics)

### **Campaign Finance and State Supreme Court Elections:**

As the financing of state supreme court races has burgeoned, research on these races has developed a substantial base in the campaign finance literature. Researchers have applied many of the classic topics in legislative campaign finance research to state supreme court races. Chris Bonneau sums this up:

“(T)hese races are similar to legislative elections in such characteristics as incumbent security (Bonneau n.d.), the factors that determine contestation (Bonneau and Hall 2003), and electoral competition (Hall 2001). But, despite these similarities, judicial races are different from their legislative counter-parts on (certain) dimensions that may limit the applicability of explanations of campaign spending in legislative races to that in judicial races.” (Bonneau 2005, 108)

First among these differences is the fact that state supreme court elections operate among varied institutional arrangements. States differ on whether these elections are partisan or nonpartisan, term limits, and the presence of retention elections. On this topic, research has shown that “partisan judicial elections generally involve higher levels of campaign spending and more contentious judicial campaigns” (Cann & Bonneau 2009, 13, citing Hall 2001, 2007; Bonneau 2007). In addition, Bonneau has shown that challenger quality and the closeness of the race matter for contribution levels in all states, and, unlike legislative races, district size doesn’t effect contributions. (Bonneau 2005, 109)

The second notable difference is the salience of the elections. In general, judicial elections seem to be less salient and ideologically motivating than legislative elections due to the more technical nature of judicial work. It is thought that “in low-information, low-salience elections like judicial elections, campaign spending may be even more important” because simple name-recognition becomes more important because simple name-recognition becomes more important. (Bonneau “The Effects of...” 490) Bonneau found that the effects of campaign spending on election outcomes for state supreme court races follow the same traditional pattern as legislative elections. Increased spending by challengers increases their likelihood of victory, but incumbent spending does not. (*Id* at 497)

Third, and perhaps most importantly, judges and legislators play different political roles. It may be hypothesized that judicial behavior, which is expected to impartially apply the law rather than reward certain constituencies, is not affected by political contributions in the same way that legislative behavior is (especially in the committee stage). (Kroznier 1998, Hall 1990) If empirical studies were to find otherwise, the American public’s faith in and respect for the judiciary as an independent body governed by reason rather than money would be shaken.

Compared to the other aforementioned topics, much less research has been done on this third topic, the effects of campaign finance on state supreme court judicial decision-making. The research that has been done tends to assert that state supreme courts are not so impartial after all. Using data from 1995-1998, Shepherd and Kang have shown that campaign contributions from “pro-business”, insurance, doctor and hospital, and labor interests are associated with favorable rulings by judges they contributed to. (Shepherd 2008, Kang 2010) Shepherd has updated and confirmed this finding that “pro-business” contributions correlate with favorable rulings on a dataset from 2010-2012. (Shepherd 2013) In addition to this nationwide research,

“Scholars have found a correlation between the sources of a judge’s funding and the judge’s rulings in arbitration decisions from the Alabama Supreme Court, in tort cases before state supreme courts in Alabama, Kentucky, and Ohio, in cases between two businesses in the Texas Supreme Court, and in cases during the Supreme Court of Georgia’s 2003 term.” (Shepherd 2008, citing (Ware 1999, Waltenburg 2000, McCall 2003, Cann 2007))

Despite this relative shortage of empirical research, it is clear that the public and even the courts perceive campaign contributions to be biasing judicial decision-making. A 2004 nationwide survey found that 71% of respondents believed campaign contributions had at least some impact on judges’ rulings. (Justice at Stake 2004) More notably, a 2001 survey of over 2,400 state judges found that 26% of judges thought campaign contributions had at least some influence on judicial decision-making. (Justice at Stake 2001) This is substantial given judges’ natural reluctance to criticize their own profession’s core tenet of impartiality. This topic has gathered considerable media attention as well. As Cann & Bonneau note, it has been the subject of “two 60 Minutes stories (1987, 1998), a Frontline investigation (1999), and countless law review articles and other reports in the popular media.” (Cann & Bonneau 2009, 4) It is this topic, the influence of campaign contributions on state supreme court decision-making, which this study explores.

### **This Study’s Place in the Literature:**

This study specifically examines the association between a judge’s contributions from oil, gas, mining, and logging corporations (hereafter, OGML) and the likelihood that a judge rules in favor of OGML interests. This is a group that actively contributes at high levels, contributing an average of \$6,766,000 per election year across the six states used in this study. (National Institute for Money in State Politics) This is also a controversial group of contributors. A 2012 article from the Center for American Progress entitled “*Big Business Taking over State Supreme*

*Courts*” highlights oil company contributions in Texas as an exemplar of corruption and bias in state supreme courts. (Corriher 2012, 10) In 2009, the U.S. Supreme Court reviewed a West Virginia supreme court ruling, in which judge Benjamin and others overturned an \$82 million damages ruling against the Massey Energy Company, a coal extracting company whose CEO spent over \$3 million in support of Benjamin’s election. The U.S. Supreme Court invalidated this ruling and forced Benjamin’s recusal from the case due to the "serious, objective risk of actual bias." (*Caperton v. Massey*)

Despite being major, controversial players in the arena of state supreme court campaign finance, OGML interests have yet to be isolated as an interest group of study in the literature. In fact, only Shepherd’s 2008 study focused on a specific set of contributors with a specific set of interests. The rest have tended to study types of cases rather than types of interest groups. Besides its focus on a new and specific interest group, this study attempts to fill two additional voids in the literature. First, most of the data used is from the 1990s. Since then, campaign financing of state supreme court elections has both ballooned and solidified considerably, the U.S. Supreme Court has ruled that state supreme court candidates can announce their legal views, and national political attitudes have changed. While both Shepherd and Cann’s studies use data from the 21<sup>st</sup> century, they are extremely limited in the time span they analyze (two years for Cann, three years for Shepherd). In contrast, this study uses data from a more recent and expansive time span (1998-2014) to better paint a contemporary, 21<sup>st</sup>-century picture of special interest influence on judicial decision-making.

Second, this study employs both two-stage probit regressions and interaction terms in an attempt to disentangle whether contributions are really influencing judicial decision-making (“support follows dollars”), or are instead just used to get existing supporters (re)elected

(“dollars follow support”). This is an essential question given that the true topic of study here is judicial decision-making and not election prospects (a topic Bonneau and others have already delved into). (Bonneau “The Effects of...” 497)<sup>1</sup> Past attempts to answer this question are scarce and cursory. Only Cann’s studies attempt to disentangle this issue by using instrumental variables. In a 2007 study, Cann correlated money from specific contributors with the favorability of rulings when those specific contributors appeared in court. That study’s TSLS model was able to “show that these campaign contributions directly affect judicial decision-making.” (Cann 2007, 281) That study, however, only looked at cases from Georgia’s 2003 term. (Id) In a 2009 study, Cann and Bonneau reached the same conclusion using the presence of a public defender and judge incumbency as their instruments. That study only looked at cases from one year and three states (Nevada, Michigan, and Texas).

This study expands and improves upon Cann & Bonneau’s methods to determine whether contributions from a specific group of corporate interests influence judicial decision-making. First, this study uses data from six states (three partisan, three non-partisan) across sixteen years (1998-2014). Second, this study looks at the favorability of rulings not only toward specific contributors who later appear in court, but also toward parties who didn’t specifically contribute, but whose general interests match those of corporations that did. Thus, this study uniquely explores the hypothesis that contributions from certain members of an industry influence judicial decision-making regarding the industry as a whole, not just regarding specific contributors. That is, judges’ decision-making in a case involving Company A (a non-contributor) may be influenced by how the precedent set by the case affects the interests of Company B (a contributor). Third, in addition to incumbency, this study uses both interaction terms and a new

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<sup>1</sup> See also, Champagne 2003; Phillips 2003; Geyh 2003; Hanssen 2004

instrumental variable of election competitiveness to improve upon the methods aimed at discerning between the “support follows dollars” and the “dollars follows support” accounts.

### **Research Question and Hypotheses:**

Thus, my research question is: What are the effects of campaign contributions by OGML groups on the judicial decision-making of state supreme court judges in cases affecting the interests of these groups? My hypotheses are: 1) Judges who receive OGML contributions rule more favorably toward those interests; 2) This difference is greater in partisan election states, where more money and explicit partisan polarization turn OGML cases into ones divided along party lines; 3) An increase in contributions is associated with an increase in favorability; 4) Holding all else constant, partisan state judges and Republican judges rule more favorably toward OGML interests than their counterparts; 5) In contrast to Cann and Bonneau’s conclusions, the use of instrumental variables and interaction terms will refine the regressions in a way that supports the hypothesis that campaign contributions by these groups do not influence judicial decision-making. Instead, the associations mentioned in hypotheses 1 & 2 are more accurately explained by the fact that contributions simply help (re)elect existing supporters.

### **Data and Research Design:**

Contributions data was provided by the Money in State Politics national database, an open database that contains contributions by industry interest for every elected state supreme court judge. In order to get data on judges’ rulings relevant to OGML interests, a simple Westlaw search was used. The search that was used was; advanced: DA(aft 12-31-1997 & bef 01-01-2015) & SY,DI(oil, gas, mine, mining, mineral, timber, log, logging, petroleum). This returned cases that were decided from 1998 to 2014 and included the terms oil, gas, mine, mining,

mineral, timber, log, logging, or petroleum in the case's Westlaw synopsis or digest. This method was chosen instead of a Westlaw key search on relevant key codes because the key search method tended to have a high type-2 error. That is, it failed to return many relevant cases. The search that was chosen, while having little to no type-2 error, had a high type-1 error. It returned many cases that were not relevant. Thus, from the list of 776 cases returned by the search, irrelevant cases were then manually removed to leave only the relevant ones to be used. Cases were deemed irrelevant to the study if they did not involve OGML interests, if both sides were OGML companies, or if both sides were individuals. Thus, cases that were used were cases between an OGML company and either individuals or a non-OGML company. Smaller contracting companies, groups of individual investors, lessors of mineral rights, and injured or terminated OGML workers were all common adversaries to OGML companies in cases that were included.

Once a given case was deemed relevant, the decisions of each judge were manually coded as a 1 if it was favorable to OGML interests or a 0 if it was not. The favorability of a decision was judged in reference to the lower court decision, whose appeal brought the case to the supreme court. For example, if the lower court entered judgment against an oil company for damages in the amount of \$8 million and a supreme court judge decided to lower the amount to \$7.5 million, that would be coded as a 1.

All relevant cases were coded for all states except for West Virginia. West Virginia had too many cases for it to be feasible to code every one. Consequently, a random sample of 150 cases was selected from the original search, and all relevant cases within that 150 case sample were coded. This resulted in 48 cases being coded for West Virginia. In total, from all six of the studied states, the individual decisions of each judge were coded for 258 relevant cases.



The dependent variable for this study is individual judges' rulings (1 or 0), of which there are 1862 observations. The independent variables are:

- **log\_contributions:** The natural logarithm of total dollar contributions from OGML interests by judge and election. Takes nominal value of 0.1 if contributions are zero dollars.
- **state:** The state in which the case was heard
- **partisan:** Whether that state held partisan or non-partisan elections at the time when the judge was elected for the term in which the ruling was made
- **party:** the partisan ideology of the judge (Republican or Democrat). For non-partisan states, ideology scores served as proxies for partisan affiliation. Some of these scores are from Langer, who collected them from sources such as the *American Bench* and local newspapers. Some are from Bonica & Woodruff, who used sources of campaign funding as indicators of partisan ideology. (Langer; Bonica & Woodruff)
- **election\_cycle:** Whether or not the ruling occurred during or within the two years before a judge's (re)election year
- **MOV:** The margins of victory of the judge's elections, as a measure of election competitiveness. Margin of victory data was collected from online archives kept by the Offices of the Secretary of State for the states that were studied. ("Election Results")
- **incumbency:** whether the judge was an incumbent or a first-term judge when the ruling was made

With these variables, the following statistical tests were run. A t-test was run to test the difference in means of contributions between judges who received contributions from OGML interests and those who didn't. Many different probit regressions were run to examine the association between contributions and rulings. A two-stage probit regression was run, with margin of victory and incumbency as instruments, to further refine the study's inquiry into how contributions may affect judicial decision-making.

## Results:

The data show that judges who received campaign contributions from OGML interests ruled in favor of those interests 66.85% of the time. Judges who did not receive contributions from OGML interests ruled in favor of those interests 50.80% of the time. This difference in

means is significant at the .01% level, with a p-value of 0.000. When looking separately at partisan states and non-partisan states, partisan-state judges who received OGML contributions ruled in favor of those interests 16.54% more than those who did not receive contributions. In non-partisan states, judges with contributions ruled favorably 9.21% more than those with no contributions. These differences in means are significant at the 1% level, with p-values of 0.000 and 0.006 respectively. Thus, judges who received OGML contributions ruled more favorably toward OGML interests than those who didn't, and this difference is larger in partisan states. The exact relationship between contributions and favorable rulings was explored through probit regressions, whose results are shown in Table 1.

Each column in Table 1 shows the results of a different probit regression. Let's start with column 1, entitled "All Data," which regresses all observed rulings on all observed independent variables. Here, status as a "Republican" judge is associated with a 2.8% increase in the likelihood of ruling favorably toward OGML interests. However, this coefficient is statistically insignificant, with a p-value of 0.607. Therefore, the data do not support the claim that a conservative judge is more likely to decide in favor of OGML interests than a liberal judge from the same state who received the same amount of OGML contributions.

Because the regression controls for state, the coefficient for "Partisan" captures the change in the likelihood of a favorable ruling when a state changes its election method from non-partisan to partisan, or vice versa. The only studied state where this occurred is Arkansas, which transitioned from partisan to non-partisan judicial elections in 2001. Interestingly, the regression shows that this transition was associated with a 14.5% increase in the likelihood of a favorable OGML ruling. This coefficient is statistically insignificant though, with a p-value of 0.288.

Furthermore, the regression shows that supreme court judges in Texas (the omitted reference state) decide most favorably toward OGML interests (deciding in favor of OGML interests 75.4% of the time). Compared to Texas, status as a West Virginia judge is associated with a 9.89% lower likelihood of ruling favorably toward OGML interests. This is significant at the 10% level, with a p-value of 0.097. Status as a Kentucky judge is associated with a 39.69% lower likelihood of ruling favorably toward OGML interests. This is significant at the 5% level, with a p-value of 0.012.

Compared to Texas, it cannot be said with statistical significance that being an Alabama, Arkansas, or Mississippi judge is associated with a lower likelihood of a favorable OGML ruling. While the coefficients for Alabama and Arkansas are probably insignificant because these judges are only slightly less likely to rule favorably than those in Texas (2.4% less likely in Alabama; 3.1% in Arkansas), the same cannot be said for Mississippi, whose marginal effect shows a 20.98% lower likelihood of a favorable OGML ruling. Rather, the coefficient for Mississippi is probably insignificant due to the lack of margin of victory data for some of the earlier elections that kept much of the Mississippi data from being included in the regression.

The coefficients for margin of victory and incumbency are also, expectedly, statistically insignificant. This shows that these variables are not significantly associated with a lower or higher likelihood of favorable OGML rulings. This finding will be useful in this study's subsequent discussion of its two-stage probit test using instrumental variables.

Turning finally to OGML contributions, this regression shows that higher contributions are associated with an increase in decisions favorable to OGML interests. This coefficient is significant at the 1% level, with a p-value of .006. Specifically, a one-unit increase in the natural

logarithm from the mean of OGML contributions is associated with a 1.9% increase in the likelihood of a favorable OGML ruling.

However, in assessing this marginal effect of OGML contributions on the likelihood of a favorable ruling, this regression has a potential problem because it includes observations from judges who did not receive any contributions from OGML interests. In the data, `log_contributions` takes the nominal value of 0.1 for these observations because it is impossible to take the natural log of zero. There are 565 of these observations. This creates a bimodal distribution of `log_contributions` that is not particularly apt to address the question of a marginal effect of contributions on ruling favorability. (See Figure 1) The idea of a true marginal effect is that, once a judge does receive OGML contributions, a marginal increase in contributions correlates with a marginal increase in the likelihood of a favorable ruling. Including data from judges who did not receive contributions doesn't fit with this concept. Thus, all observations where OGML contributions are zero were dropped, and regressions were rerun using data only from judges who received OMGL contributions. This better addresses the question of a marginal effect. Columns 2 through 6 in Table 1 show the results of these new regressions.

This new set of regressions shatters the previously expounded correlation between contributions and favorable OGML rulings. Column 2 shows these results using all states, while columns 3 and 4 isolate their regressions to partisan and non-partisan states respectively. As column 2 shows, a one-unit increase in `log_contributions` from the mean is associated with a 0.4% *decrease* in the likelihood of a favorable ruling. However, this relationship is nowhere near significant, with a p-value of .700. This indicates that once one has received any contributions from OGML interests, a marginal increase in contributions is not associated with a marginal increase in ruling favorability. Hence, it cannot be said that a judge who received \$50,000 in

OGML contributions is more likely to rule in favor of OGML companies than a judge who received \$10,000. This finding holds when partisan and non-partisan states are regressed separately as well. (Columns 3-4) This is a key finding of the study.

Column 2 also indicates that, among judges who receive OGML contributions, being an ideologically “Republican” judge is associated with a 7.17% increase in the likelihood of a favorable ruling. However, this effect is again statistically insignificant, with a p-value of 0.18. This stays true to the result found in column 1, which used all data collected on all judges observed.

Let’s now turn to column 5, entitled “With Interaction Term.” This regression interacts `log_contributions` with `election_cycle` to test the hypothesis that the correlation between contributions and favorable rulings is heightened during the years right before a judge’s reelection, when she theoretically is more pressured to cater to OGML interests as they decide to whom and how much they will contribute in upcoming elections. The regression does not support this hypothesis. The coefficient on the interaction term is statistically insignificant, with a p-value of 0.871. The coefficient for `election_cycle` by itself is also statistically insignificant, with a p-value of 0.767. Thus, in general, decisions made during these “election cycle” periods are not correlated with more favorable rulings in the first place. This suggests that pressure to receive OGML contributions isn’t affecting judicial decision-making in the years leading up to reelection. Though, the usefulness of this interaction term is debatable, as will be discussed later.

The last column, column 6, shows the two-stage probit regression with margin of victory and incumbency as instrumental variables. This regression is aimed at addressing the “dollars follow support” versus “support follows dollars” question of causal direction. It addresses this

issue using instrumental variables that correlate with the independent variable but not the dependent variable. Using these instruments, the regression can better isolate and test for one direction of causality, in this case the “support follows dollars” theory.

In this study, margin of victory and incumbency were chosen as instruments due to their theoretical and actual correlation with log\_contributions (the instrumented independent variable) and their lack of correlation with rulings (the dependent variable). In theory, margin of victory and incumbency should have no bearing on a judge’s propensity to rule in favor of OGML interests. Nevertheless, these variables should theoretically correlate with how much OGML contributions a judge receives. It is widely understood that less competitive races tend to see lower contribution levels, and that incumbency is highly correlated with contribution levels.

The data support this theory. As seen in column 1, MOV and incumbency do not have a statistically significant correlation with rulings. However, these variables do correlate with contributions. Status as an incumbent is associated with a 0.657 unit decrease in the natural log of OGML contributions, with a p-value of 0.000. This is likely because name recognition and the non-salience of state supreme court elections make contributions to supreme court incumbents less important than for challengers or those running for an open seat.<sup>2</sup> Turning to election competitiveness, a one percent increase in margin of victory is associated with a 0.024 decrease in the natural log of OGML contributions, with a p-value of 0.000. Thus, margin of victory and incumbency are good candidates as instruments in this study.

Column 6 shows the results of this two-stage probit regression. Here, we see that the use of instrumental variables confirms the results of the previous regressions. The coefficients for

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<sup>2</sup> The fact that incumbency is associated with a decrease in OGML contributions rather than an increase suggests, in itself, that OGML companies may be using their money to most effectively influence the election prospects of supporters rather than to gain clout with existing incumbents on the bench.

party ideology, election type, and log-contributions are all statistically insignificant. This confirms the hypothesis that an increase in OGML contributions does not correlate with an increase in ruling favorability.

On a final note, a separate two-stage regression was run using all of the data, including observations where OGML contributions were zero, in order to see whether even the base correlation found in column 1 would remain once instrumental variables were used. It did not. Also, in addition to the election cycle interaction term and the two-stage regression, this study attempted to address the “dollars follow support v. support follows dollars” problem by comparing percent changes in ruling favorability with percent changes in contributions between individual judges’ first and second term; but the number of observed judges who had multiple terms within 1998-2014 was too small for such a regression to be useful in any way.

**Table 1: Probit Regressions**

	(1)	(2)	(3)	(4)	(5)	(6)
Variables	All Data	Non-Zero Contributions	Only Partisan	Only Non-Partisan	With Interaction Term	MOV & Incumbency as Instruments
Republican	0.0792	0.205	0.350	0.0522	0.204	0.260
	(0.154) [0.028]	(0.152) [0.0717]	(0.216) [0.1185]	(0.215) [0.0197]	(0.152) [0.0714]	(0.192) [0.2603]
Partisan	-0.408	0.138			0.0766	-0.0209
	(0.383) [-0.145]	(0.698) [0.0484]			(0.704) [0.0268]	(0.707) [-0.0209]
AL	-0.0725	-0.139	-0.128		-0.133	-0.162
	(0.117) [-0.0237]	(0.103) [-0.0479]	(0.104) [-0.0435]		(0.104) [-0.0456]	(0.117) [-0.16158]
WV	-0.286*	-0.261	-0.155		-0.256	-0.331*
	(0.172) [-0.0989]	(0.164) [-0.0929]	(0.194) [-0.0529]		(0.166) [-0.0903]	(0.178) [-0.3311]
KY	-1.063**	-0.660		base	-0.718	-1.028
	(0.421) [-0.3969]	(0.715) [-0.2484]			(0.722) [-0.2707]	(0.759) [-1.028]

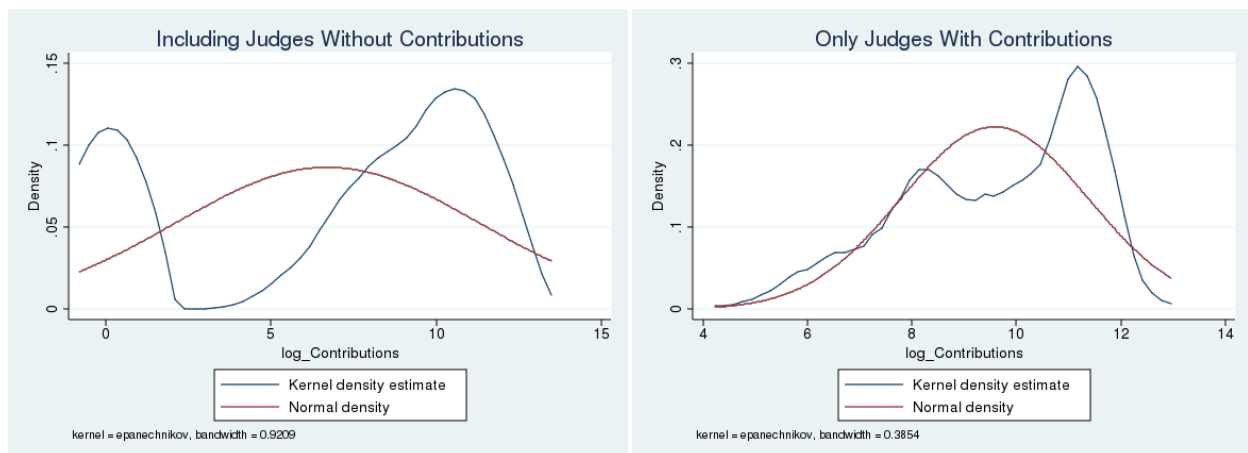
AR	-0.0945 (0.388) [-0.0311]	0.171 (0.699) [0.0538]	0.288 (0.708) [0.0857]	0.714*** (0.243) [0.2737]	0.104 (0.710) [0.0331]	-0.0185 (0.718) [-0.01846]
MS	-0.575 (0.429) [-0.2098]	-0.223 (0.709) [-0.0788]		0.472*** (0.164) [0.1858]	-0.282 (0.716) [-0.1000]	-0.496 (0.749) [-0.4959]
Election Cycle					0.173 (0.586) [0.0285]	
Log_ contributions	0.0534*** (0.0194) [0.019]	-0.0119 (0.0310) [-0.004]	-0.0195 (0.0394) [-0.007]	-0.0184 (0.0537) [-.007]	-0.0128 (0.0322) [-0.005]	-0.0800 (0.0717) [-0.080]
Interaction Term (Elec. Cycle)					-0.00949 (0.0583)	
MOV	0.0028 (0.0015)					
Incumbency	-0.0202 (0.0899)					
Constant	0.359 (0.481)	0.452 (0.759)	0.527 (0.362)	-0.0473 (0.408)	0.504 (0.760)	1.291 (1.005)
Observations	1,176	1,282	904	378	1,282	1,076

Standard errors are in parentheses. Marginal Effects are in brackets (taken at the mean for continuous variables).

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1. The coefficient for Republican is relative to Democrat, the omitted party ideology.

The coefficient for Partisan is relative to Non-Partisan, the omitted election type. Coefficients for individual states are relative to Texas, the omitted state (except in column 5, where it is Kentucky). The coefficient for Election\_Cycle is relative to rulings during years not in judges' individual "election cycles."

**Figure 1:**





### Analysis:

In sum, the results of this study suggest that, while judges who receive OGML contributions definitely decide more favorably toward OGML companies than those who don't, it seems that increased contributions do not have a marginal effect on a judge's favorability toward OGML companies. In other words, judges with high OGML contributions do not decide more favorably toward OGML interests than judges who receive low contributions. This, in itself, is strong evidence for the "dollars follow support" hypothesis of explaining an interest group's purpose when contributing to a state supreme court candidate. If increasing contributions doesn't increase ruling favorability, then the hypothesis that "support follows dollars" seems patently false.

A supporter of that hypothesis might respond that this study's findings don't rule out the possibility that judges are rewarding OGML companies for helping them get (re)elected regardless of how large their contributions were. However, for judges to be motivated to manifestly support a special interest that they truly feel neutral or negatively about, it most assuredly would take more than a small, minimally helpful campaign contribution from that interest. Thus, if this *quid pro quo* hypothesis is true, increased contributions should definitely correlate with increased favorability. But, for OGML interests, this is not the case. This leaves only one plausible hypothesis: that special interests contribute to those whom they know or believe to support their interests in hopes of getting those supporters elected.

Given this, it is interesting that the partisan ideology of judges did not have a statistically significant association with ruling favorability. However, after realizing that a judge's partisan ideology is highly correlated with the amount of contributions she receives from OGML

interests<sup>3</sup>, it is easy to see why holding contributions constant could make the coefficient for party statistically insignificant. Thus, the OLS regression is basically saying that party doesn't matter among judges who received the same levels of OGML contributions. This, at best, suggests that support of OGML companies is not necessarily tied to partisan ideology, but is rather an issue that generates disagreement even among judges with the same partisan ideology.

This study's more advanced statistical techniques provide more evidence to confirm this "dollars follow support" conclusion. The use of instrumental variables led to the same results as the ordinary probit model. Even when the two-stage regression was run using all the data from judges with and without OGML contributions, the statistically significant correlation between contributions and rulings originally found in column 1 disappeared. Also, interacting contributions with whether rulings took place during a judge's "election cycle" confirmed the "dollars follow support" hypothesis as well. However, this interaction term may be theoretically faulty as a test of contributions' influence on decision-making. It is not the most certain assumption that judges would cater more heavily toward OGML interests during their "election cycle" even if contributions did actually influence decision-making on the margin. Unlike the public, interest groups have long-memories. Their research on and interest in how judges rule on cases relevant to their interests are probably not exclusive to rulings during the judge's "election cycle." Thus, catering to OGML interests in the years immediately before one's reelection is probably not going to trick an interest group into believing that that will be the judge's natural behavior if reelected.

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<sup>3</sup> In this study, "Republican" judges received an average of \$42,978.80 more in OGML contributions than "Democrat" Judges. This difference in means is significant at the .01% level, with a p-value of 0.0000.

Finally, holding contributions, state, and political party constant, there is little evidence to support the statement that transitioning from partisan to non-partisan elections is associated with changes in ruling favorability. The only phenomena like this in the data comes from Arkansas' 2001 switch from partisan to non-partisan elections, where the switch was associated with a large increase in rulings in favor of OGML interests. Since this finding represents only one state, it isn't appropriate to generalize this result to any state that makes such a switch. Moreover, once the regressions were limited to judges who received contributions, even the correlation associated with Arkansas's switch vanished. What can be said, though, is that partisan states rule more favorably than non-partisan states. Judges in partisan states rule in favor of OGML interests an average of 13.73% more than judges in non-partisan states. This difference in means is significant at the .01% level, with a p-value of 0.000.

### **Suggestions for Future Research:**

There is much more to be added to the body of knowledge surrounding special interest influence on state supreme courts. In general, there is much more data out there to be mined from Westlaw. This study adds only six states worth of data on one group of interests. Future studies should pick out other groups of interests to study. Do contributions from hospital and medical groups act in the same manner as contributions from OGML interests, or do they influence judicial decision-making on the margin? What about contributions from Christian conservative groups?

When studying these questions, the choice must also be made whether to study the influence of specific contributors on decision-making regarding those same contributors or more broadly on decision-making regarding all parties who share the same corporate or ideological

interests as those contributors. This study chose the latter, partly out of convenience and partly because other studies tend only to focus on the former. However, choosing the former may present better opportunities to disentangle and discern between the “support follows dollars” or “dollars follow support” hypotheses. This is because, as this study suggests (at least for OGML interests), there may be no base linear correlation between contributions from a certain industry and rulings regarding that industry as a whole in the first place. This is an interesting finding. Nevertheless, associating contributions from specific contributors with rulings regarding those contributors may better present a significant base correlation that can then be challenged and refined through use of more advanced techniques. Bringing more evidence to the table regarding this “support follows dollars” or “dollars follow support” debate should be a continued focus of future research.

**Conclusion:**

In conclusion, this study didn’t need to use the more advanced statistical techniques of interaction terms and two-stage regressions to answer its question of interest, though these techniques confirm the answer arrived at through simpler methods. By taking a close look at a specific subset of corporate interests, this study helps paint a clearer picture of special interest influence on state supreme court decision-making. It finds evidence to suggest that corporate interests’ contributions don’t influence judicial decision-making in state supreme courts, but rather aid in getting perceived supporters (re)elected. Even if this study’s findings cannot be extended to characterize corporate interest contributions at large, this study unequivocally suggests that OGML contributions are not influencing judicial decision-making in state supreme courts.

This finding runs in stark opposition to both the existing literature on the topic and public perception. It speaks in defense of the integrity of the court. While it is obvious that these campaign contributions will help candidates win elections, it is at least comforting to see evidence that these contributions are not biasing decision-making on the bench. This is not to say that such bias never occurs. It is unlikely that the U.S. Supreme Court in *Caperton v. Massey*, “two 60 Minutes stories, a Frontline investigation, and countless law review articles and other reports in the popular media” are completely wrong when they suggest such bias does occur. (Cann & Bonneau 2009, 4) However, this study offers strong empirical evidence against the notion that explicit or implicit pressure to reward OGML contributors is regularly and systematically trumping other factors like legal precedent, the facts of the case, or societal welfare. In other words, such cases are the exception not the rule. So to return to the title question, do special interest contributions influence state supreme court decision-making? This study answers “No, at least not for oil, gas, mining, and logging interests.” With these interests, state supreme courts seem for the most part to exhibit the traditional separation-of-powers vision of the judiciary as an arbiter serving a countermajoritarian role by reviewing and interpreting legislation with impartiality.

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