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The Effectiveness of Campaign Contribution Limits in Judicial Elections

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THE EFFECTIVENESS OF CAMPAIGN CONTRIBUTION LIMITS

IN JUDICIAL ELECTIONS

By

Cami Jones

A thesis submitted in partial fulfillment
of the requirements for the degree

of

MASTER OF SCIENCE

in

Political Science

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ABSTRACT

The Effectiveness of Campaign Contribution Limits

In Judicial Elections

by

Cami Jones, Master of Science

Utah State University, 2012

Major Professor: Dr. Damon Cann
Department: Political Science

State judicial elections are becoming increasingly more expensive in terms of overall spending. The growing visibilities of these elections are expectantly followed with the support of special interest groups as well as individual contributions. This article focuses on judicial campaign contribution limits and there effectiveness in accomplishing their original goals. My research will address a variety of state judicial elections as well as Supreme Court cases involving the effectiveness of judicial campaign contributions have in accomplishing there purpose of reducing overall spending and preventing corruption. My hypothesis states that judicial campaign contributions are not effective in limiting the overall spending in a judicial election or in preventing corruption of individuals.

(48 pages)

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Cami Jones

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Introduction

Why do Courts matter?

The United States has one of the most complex judicial systems in comparison to other developed nations. The judiciary ranges from various levels of federal courts down to state courts. The U.S. Supreme Court is the most nationally recognized court and considered the most powerful by average citizens. However, it is often at the state level rather than the federal level, which decisions are made that affect people's day-to-day lives (Cann & Yates, 2008:1).

State courts are structured differently than federal court system in the United States. There are no two state court systems that are exactly alike (Champagne, 2001). A major distinguishing factor between state and federal courts and from one state's court system to another that judges are appointed for life (including all federal judges) while other judges are either elected or appointed for a limited number of years (Shepherd 2009:1757).

Judicial elections have received an increasing amount of attention over the past decade. Elections mean money will be spent. Money raises concerns, and contribution limits have been enacted to counter those concerns of the increasing amount of money spent in elections. But do contribution limits work? My hypotheses address two questions: first, do contribution limits decrease the amount of fundraising in judicial elections? Second, do contribution limits stop *quid pro quo* exchanges? Both of these questions help identify the effectiveness of campaign contribution limits in judicial elections.

Background of Judges, Contributions, Influences

In the United States each state has an individual court system. Although there are similarities across the states they all run independently according to their own state constitution. The main purpose of state courts is to hear criminal and civil cases (State Courts, 2005) but state courts are also given the power of judicial review and have the responsibility to interpret the state constitution and statutes. The federal Supreme Court sets precedent regarding federal law that must be followed by trial and appellate courts within each state (Supreme Court, 2012).

Each state has different regulations and selection processes for judges. Shepherd (2009:624) states “recent trends in judicial elections—elections becoming more contested, competitive, and expensive—may have upset the delicate balance between judicial independence and accountability.” State courts are incredibly important for a number of reasons. “More than 90 percent of the United States’ judicial business is handled by state courts” (Shepherd, 2009:625). Decisions made by state courts directly affect individuals across the country. Cann and Yates reference various scholars that conclude the majority of judicial policy-decisions across the nation take place in state courts (Cann & Yates, 2008). These scholars describe the significance of state courts, noting that they handle a substantially larger number (nearly 3 times the amount) of cases than federal courts (Baum, 1990:24, Glick, 1993:38).

While it is true that state courts process a whole host of routine matters, they also handle some of the most volatile and salient issues of the day, such as gay civil unions, the

death penalty, and equality rights in public school financing (Carp, Stidham and Manning, 2004). Furthermore, in certain instances, state courts have extended citizens' civil liberty rights (under state constitutional provisions) beyond those afforded by the Supreme Court under the U.S. Constitution (Latzer, 1991) (Cann & Yates, 2008:3).

Judges responsible for making such crucial decisions should be selected carefully. Hall addressed the idea of selecting judges and contends that voters select the best judges because elected judges are independent from the legislature and executive branch (Hall, 1984). Unlike legislators, who represent specific constituents, state judges pledge to follow a strict code under the American Bar Association (ABA) intended to restrict any type of bias or impartiality toward an outside person or group (ABA, 2007).

Citizens are limited in their ability to influence judges because of the ABA restrictions. One action that individuals may undertake is to submit *amicus curiae* briefs, providing special information to the court. This individual may not be the plaintiff or defendant in the case and is only permitted to point out legal considerations that the Court may not have otherwise considered (Amicus, 2012). For individuals who are not a party to a case, *amicus curiae* briefs are the only legal means by which they can gain the attention of the court. These briefs may raise issues, not already addressed by the parties of the case but that may be helpful to the court (Supreme Court Rules, 2011).

While the methods of formal influence on courts are limited, interested individuals and groups may indirectly influence courts by influencing the composition of courts. One way this occurs is through electioneering in states that select their judges in contestable elections. Elections, and particularly campaign finance, open the door for potential undue influence on judges.

Because of possible corrupting influences, ethical standards are set by the American Bar Association for each judge to follow. Among these standards is a particularly important dictum that states, “A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned” (Goldberg, 2007). This rule in particular distances judges from any type of outside influence or bias or any form.

While there is very little room for outside groups and organizations to influence judges, there may be ways to circumvent these limitations through campaign contribution and electioneering. Campaign contributions have become a necessity in today’s election process. Candidates typically fund their entire campaign using contributions from individual donors and political parties (Skaggs, Silva, Casey & Hall, 2011).

Bonneau (2005) makes note of similarities between judicial and legislative campaign contributions. Both candidates use contributions to “gain support, challenge incumbents, and launch effective campaigns” (Bonneau, 2005). In studying legislative campaign contributions, Erickson and Palfrey find that there is a comparable relationship between campaign contributions and the votes of congressional representatives (Erikson & Palfrey, 1998). This finding makes it natural to wonder if a similar relationship exists between the rulings of judges and the campaign contribution they receive.

Campaign finance laws, which control contribution limits, vary from state to state (Witko, 2005). Such limits were put in place with the stated purpose of two goals: First, to indirectly reduce overall campaign spending and second, to limit corruption within the courtroom. The goal of campaign finance laws sets the foundation to my research question and hypothesis; *campaign contribution limits do not effectively reduce the*

overall spending in a campaign or prevent corruption in the courtroom. We move next to a comprehensive discussion of the rationale behind contribution limits and their effectiveness in judicial elections.

Literature Review

“During the 1990s, thinking about comprehensive campaign finance reform shifted toward equalizing political power” (Gross, Goidel & Shields, 2002:9). Incumbents particularly have enjoyed a considerable fundraising advantage (Bonneau, 2005). Within the past decade, judicial elections have taken campaign fundraising to a new level. Judicial candidates have nearly doubled the amount of money collected and spent in judicial elections in the past four years (Cann & Yates, 2008:17, Skaggs et al., 2011:5). Baum and Hojnacki (1992) describe an increase in funding and media coverage as a way to better inform voters in a judicial election. Hall and Bonneau (2008) propose in their study that increases in funding and campaign advertisements will increase voter participation in judicial elections.

Bonneau and Cann (2009) review a wide range of literature investigating whether *quid pro quo* exchanges do in fact exist between contributors and judges. They looked at both partisan and nonpartisan judicial elections and conclude that in some states for example of Michigan and Texas a relationship was found. In other states (Wisconsin) there was no relationship between contributors and judicial decisions.

But campaign spending may have more effects than just possible *quid pro quo exchange* influences. Gross, Goidel and Shields (2002) state, campaign contribution limits were enacted to achieve a greater degree of electoral competition. Bonneau and

Cann (2009) and have found that, the increases in campaign spending have made challengers more competitive with incumbents. They maintain that contributions limits diminish competitiveness. However, additional opposing arguments hold that unseemly campaigns and large expenditures have potential disastrous effects on the legitimacy of state high courts (Cann & Yates, 2008). Many believe this is due to “the appearance of *quid pro quo* exchanges between individuals who support a particular judges campaign” (Cann, Bonneau, & Boyea, 2010). At least two things remain unclear in the literature on campaign contributions. First, do contributions really level the playing field and reduce overall levels of campaign spending? I hypothesize that they do not because candidates may still raise as much as they like they just need to raise it from a more people. Second, it remains unclear whether contribution limits really resolve the problem of *quid pro quo* exchanges between donors and judges. We move next to a discussion of the general campaign finance system and then devise a test that will answer these two questions.

Current state of Campaign Finance: *Who contributes and how much?*

A. Campaign Finance Laws

Campaign finance laws were put into place to help regulate money spent in a campaign and to prevent corruption in the courtroom (Primo, Jacobsmeier & Milyo, 2004). Different than legislative elections, judges (according to the ABA regulations) are to remain impartial and unbiased in all instances. By permitting the acceptance of campaign contributions in judicial elections it opens the door to create favoritism or partiality towards a specific individual or group.

In 2001, *Republican Party of Minnesota v. White* evaluated the constitutionality of the Announce Clause (*Minnesota v. White, 2001*). Under the Announce Clause,

judicial candidates were not permitted to announce their views on disputed political or legal issues (Hasen, 2007:17). Although the original Announce Clause was dropped from the ABA codes by 1990, various versions of the clause, such as the Commit or Appear to Commit Clause were established in its place (Hasen, 2007:17). The Court stated in *White* that the Announce Clause violated the First Amendment Right to free speech because it restricted judicial candidates' rights to state their opinion on matters of importance to voters (*Minnesota v. White, 2001*). The Commit or Appear to Commit Clause restricted candidates from portraying any type of commitments with respect to how they would rule in a particular case (Hasen, 2007:17). A number of states have altered their judicial conduct codes in light of the Supreme Court's decision in *White*. It is because of the removal of the Announce Clause that judicial candidates may state their positions on issues. This ability to announce positions may make it easier for judges to win favor with specific parties and win their support in the form of both votes and campaign contributions. The repeal of the Announce Clause also makes judicial elections more similar to legislative elections, making it easily anticipated that campaign contributions to judges may have comparable influence to that observed in legislative elections (Erikson & Palfrey, 1998).

There are many different strategies and approaches that have been taken to address this issue of corruption and determine the appropriate level of contributions in elections. State campaign finance laws vary from state to state depending on their specific needs (Primo, Jacobsmeier & Milyo, 2004:4). Christopher Witko identifies and categorizes variables that define campaign finance laws and their stringency in each state (Witko, 2005). After reviewing his work, it is clear there is great diversity among states

in their campaign finance regulations. This variation allows for further research to determine the reasoning and effectiveness of these restrictions.

B. Amount Spent per State/Who Contributes

Judicial campaign spending has increased dramatically over the last twenty years. Cann, Bonneau, and Boyea (2010) note an 80% increase in spending in contestable judicial elections between 1990 and 2008. Candidates rely heavily on interest groups and individual contributors to obtain the funds necessary to run for political office. This spending is often concentrated in a few states, though; Skaggs et al., (2011:5) show that nine of the twenty-two states (Cann & Yates, 2008:7) that hold contestable judicial elections account for 90% of the money raised by candidates in state high court elections.

The dramatic uptick in campaign spending led former Solicitor General Ted Olson, to declare "there is a financial arms race in judicial elections" (Biskupic, 2009). Spending in 2009-2010 state Supreme Court elections reached nearly \$38.4 million (Skaggs et al., 2011:5). According to the Brennan Center for Justice, "nationally, nine states accounted for \$24.6 million of the \$27.02 million raised by state high court candidates (Skaggs et al., 2011:5).

The Brennan Center for Justice shows the division between spending and fundraising per candidate in partisan and non-partisan elections.

Figure 1: About Here

The diagram shows that in partisan elections candidates collect nearly three times the dollar amount that a non-partisan election candidate receives. The graph also shows partisan races collected almost six times the dollar amount judicial retention elections

collected (although my focus is on partisan and non-partisan it is very interesting to see the comparison of all judicial elections). This figure shows that partisan elections play a substantial role in fundraising efforts, specifically involving political parties whom support candidates.

Looking further into whom these contributors are, the Brennan Center has divided contributors into ten subgroups with the amount contributed per sector for the 2009-2010 judicial election.

Table 1: About Here

These data illustrate why concern abounds regarding corruption in judicial elections. As you can see from the table, when contributors are broken down into sectors, lawyers and lobbyists led with \$8.5 million in donations, followed by businesses with \$6.2 million. Political parties rank third largest in donations at \$3.4 million. There have been large contributions to judicial candidates from both ends of the political spectrum. These individuals have clear interests in influencing the outcomes of court cases. If the three largest groups of contributors are those facing judges most frequently, it is easily perceived that there is influence (Abrahamson, 2001).

It is also important to recognize that although this table identifies the top spenders in the 2009-10 judicial elections, it fails to account for independent expenditures. Independent expenditures by special interest groups and state parties were substantially larger in the 2009-10 judicial elections than in the previous four years. “Such independent activities accounted for \$11.5 million, or 29.8 percent of all money spent to elect high court justices. In 2005-06, outside groups represented about 18 percent of the total spending” (Skaggs et al., 2011:5).

The significance of this data is that within the last decade the amount of money and the sources of that money have changed dramatically. “Campaign fundraising more than doubled, from \$83.3 million in 1990–1999 to \$206.9 million in 2000–2009” (Sample, Skaggs, Blitzer, Casey, 2009). If this pattern continues to progress at the same rate, the judicial system may face negative consequences in the form of corruption and diminishing legitimacy. Campaign spending is reaching incredibly high levels; therefore campaign finance laws are not fulfilling their purpose and need to be reevaluated.

Table 2: About Here

Given the amount of money involved, the question being asked whether campaign contributions limits really achieve the purposes they were intended to achieve.

Legal Structure/ Federal Standards

Supreme Court Cases addressing campaign contribution limits and their effectiveness

The purpose of campaign contribution limits is clarified by looking at the court cases that structure the campaign finance system. Over the years, the Supreme Court gradually moved toward a system based on campaign contribution limits. The Supreme Court cases evaluated in the paper focus directly on the effects and interpretations of campaign finance laws, contribution limits and independent expenditures.

a. Buckley v. Valeo (1976)

After the Watergate scandal, Congress made an attempt to limit further corruption in political campaigns by restricting financial contributions to a candidate (*Buckley v. Valeo*, 1976). The opinion in this case, “limited the amount of money an individual could

contribute to a single campaign and it required reporting of contributions above a certain threshold amount” (*Buckley v. Valeo*, 1976). The Federal Election Commission (FEC) was created to enforce this statute, and they continue to be a factor in cases addressing similar issues.

Two major factors were addressed in the *Buckley* decision. The first was that placing restrictions on individual contributions to candidates did not violate the First Amendment right it was, they argued, necessary to achieve the compelling government interest in limiting corruption. Secondly, the court concluded that limiting overall candidate expenditures (or independent group expenditures) is a restriction of the First Amendment right of free speech (*Buckley v. Valeo*, 1976). It is important to distinguish between contribution limits and candidate spending limits in this case. The court essentially allowed candidates to raise and spend as much as they wanted, but contribution limits require them to raise funds in relatively small increments.

The Court ruled in *Buckley* that campaign spending is equivalent to free speech under the First Amendment. Therefore, campaign contributions and independent expenditures could not be restricted altogether but could be limited in some aspects. *Buckley v. Valeo* led campaign finance jurisprudence down a long and complicated road of campaign finance law cases. Nelson (2001:1) comments on the structure that *Buckley v. Valeo* set, in the realm of campaign finance laws and how they are inefficient and are simply “laws designed to curb special interest influence are merely hurdles over which the adroit player of the system can jump.”

The original intent on limitations according to this case was to prevent corruption in the political system. Since the *Buckley* case in 1976, a number of cases have appeared in the U.S. Supreme Court addressing similar issues of money being equal to free speech. The Court's decision not to limit overall spending in an election is highly unlikely to be revoked in future case, though there may be restrictions on certain types of spending or contributions. This decision not only set precedent on campaign contribution limitations and independent expenditures but it also clarified why the court instated these laws originally: the Court's goal was to reduce the likelihood of corruption. Later, my analysis determines whether or not that goal is being met or if it has adapted to limiting the amount of money spent over time due the first goal of preventing corruption.

b. Massey v. Caperton (2009)

In a more recent case, involving campaign finance laws, *A.T. Massey Coal Co., Inc. v. Caperton* proves to be a critical case in terms of free speech and independent expenditures. This decision has forced states to reconsider their campaign finance laws and judicial recusal rules (*Massey v. Caperton, 2009*).

A state trial court in West Virginia, found Massey liable for \$50 million dollars in damages for tortuous interference, fraudulent misrepresentation, and fraudulent concealment. Mr. Caperton pointed out that Massey's C.E.O. made \$3 million in independent expenditures supporting Justice Benjamin's campaign. Justice Benjamin was the deciding vote on a 3-2 ruling in favor of Massey that overturned the \$50 million judgment. The U.S. Supreme Court called Justice Benjamin's participation a "constitutionally unacceptable appearance of impropriety" (*Massey v. Caperton, 2009*). The court's decision has potentially tremendous effects on future judicial contests. The

Supreme Court held that Justice Benjamin should have recused himself from participating in the case involving Massey.

Justice Anthony M. Kennedy who was joined by Justice John Paul Stevens, David H. Souter, Ruth Bader Ginsburg, and Stephen G. Breyer wrote the majority opinion. The Court held that Justice Benjamin actual bias need not be proved to require recusal, only “a risk of actual bias” and therefore should have recused himself from the case (*Massey v. Caperton*, 2009). The Court specifically mentioned the large amount of independent expenditures that were spent on Justice Benjamin’s campaign and further discussed that such a large amount of money calls for recusal of a judge from participating in a case (*Massey v. Caperton*, 2009).

Chief Justice John G. Roberts writes a dissenting opinion joined with Justice Antonin G. Scalia, Clarence Thomas, and Samuel A. Alito, arguing that judges need only to recuse themselves by merely showing a “probability of bias.” The Court’s vague standard opens the door for numerous problems. The Court has seen a variety of cases questioning the vagueness of campaign finance laws limiting contributions, adopted in *Buckley v. Valeo* (*Buckley v. Valeo*, 1976).

c. Citizens United v. FEC (2010)

The group Citizens United fought against the *Federal Election Commission* in the United States District Court for the District of Columbia, to prevent the Bipartisan Campaign Reform Act’s (BCRA) limitations on electioneering communications from being applied to the film, *Hillary: The Movie* (*Citizens United v FEC*, 2010).

The BCRA sets restrictions on corporations and labor unions from funding contributions out of their general treasuries (BCRA Section 203, 2002). The BCRA also requires the disclosure of donors and disclaimers from each, stating the authorizations of the candidate in which it intends to support.

The Court ruled in favor of *Citizens United*, claiming that *Hillary: The Movie* was considered expression and intended to inform voters about Senator Clinton. The information in the movie was considered constitutional under the First Amendment and therefore the Court could not the BCRA sections banning independent expenditures from unions and corporations (BCRA, 2002). The Court stated that the disclosure of donors, “might be unconstitutional burden on the freedom to associate in support of a particular cause,” however this was not the case in *Citizens United v. FEC* (*Citizens United v FEC*, 2010).

The Court’s decision in this case has become critical as judicial election costs have increased in recent years. Justice Anthony M. Kennedy wrote the majority opinion joined by Chief Justice John G. Roberts and Justice Antonin G. Scalia, Samuel A. Alito, and Clarence Thomas. The majority concluded that political speech is indispensable to a democracy, and that speech rights are no less valid because the speech comes from a corporation (*Citizens United v FEC*, 2010). “The majority also held that the BCRA’s disclosure requirements as applied to *Hillary: The Movie* were constitutional, reasoning that disclosure is justified by a ‘governmental interest’ in providing the ‘electorate with information’ about election-related spending resources” (*Citizens United v FEC*, 2010).

Justice Stevens's dissenting opinion argued that corporations are not members of society and that there are compelling governmental interests to curb corporations' ability to spend money during local and national elections. Justice Stevens's argument supports the newly adapted goal of campaign contribution limits intended to reduce overall spending by limiting the amount large corporations could donate (*Citizens United v FEC*, 2010).

Citizens United opened the door for corporations to have a tremendous impact on judicial elections (as well as national elections) by allowing campaign contributions by corporations and labor unions under the First Amendment. These newly defined rights gave corporations and labor unions the opportunity to both influence and possibly corrupt the state courts. All of these cases help emphasize the importance of my research and support my hypothesis that campaign contributions are not effective in accomplishing their original goals.

From *Buckley* through to *Masse* and *Citizens United*, contributions and expenditures have become part of the First Amendment right of free speech. This equation of money with free speech makes it exceptionally difficult to limit the overall amount of money spent in a judicial election. I propose to develop hypotheses to determine whether contributions limits reduce the amount of money being spent in judicial elections. Additionally, I will explore whether contribution limits reduce corruption.

Testing Hypothesis

Hypothesis 1: Do Contribution limits decrease the amount of fundraising?

Donald Gross and Robert Goidel discuss a variety of campaign contribution limits enacted throughout the 1990s. They detail specific limitations in each state. They find that 42 states limit contributions from labor unions and ban corporate contributions to gubernatorial campaigns altogether (Gross & Goidel, 2003). These scholars would agree that limiting the cost of campaigns is the motivation behind contributions limits (Gross & Goidel, 2003).

All of the cases we previously considered different motivations behind campaign contributions limits. As stated in *Buckley v. Valeo*, campaign finance laws were created to help prevent individual corruption and bias in the courtroom. Over time, corruption came to be defined differently in cases such as *Citizens United v. FEC*. By allowing corporation or organizations to fund candidates and label it as “informative to voters” opened the doors and changed campaign finance laws and contribution limits by classifying them under the First Amendment rights to free speech. Spending can no longer be limited through campaign contribution limits. We begin our hypothesis tests with a look at the notion that contribution limits may reduce overall levels of spending in judicial elections.

Illustrated in Figure 2 below is a map, identifying all 50 states and the restrictiveness according to Witko’s measurement. Witko based his measurement on campaign finance restrictions on state statutes. Although this study focuses on only contested judicial elections it is interesting to see the overall comparison of campaign contribution restrictiveness across the states.

Figure 2: About Here

Many scholars have tested whether contributions have effects on judicial elections (Cann, Bonneau & Boyea, 2010, Bonneau, 2005, Williams & Distlear, 2007). However, my first hypothesis test focuses on whether or not contribution limits actually limit the amount of over all spending in an election. I focus exclusively on contested elections. My research breaks down the amount of fundraising dollars in the 2009-10 judicial races and compares the average amount of contributions raised per candidate in a state to the level of campaign contribution restrictiveness in the state according to Christopher Witko's campaign contribution limit stringency measurement scale (Witko, 2005).

Witko measures his overall stringency score based on factors from various categories including disclosure requirements, public financing and expenditure limits, and contribution limits. His index is comprised of 22 individual items, eight items from the disclosure requirements, seven items from public financing and expenditures and an additional seven items from campaign contribution limits. Each state is given a score based off the amount of items that fall under the state statue. A point is awarded for each item found in the state statue. The total number from each category is added together to equal the overall stringency score. The highest score a state could receive is 22. Arizona had the highest overall score reaching 20, meaning they are extremely strict in campaign finance regulations. On the other hand Georgia and Mississippi tie for the least stringent state at a score of three (Witko, 2005).

The focus of my research specifically looks at the campaign contribution limits, so I focus on Witko's sub-score for contribution limit stringency. Witko bases his campaign contribution limit score off the following seven items (Witko, 2005):

1. Contribution limits on individuals
2. Prohibition of direct corporate contributions
3. Prohibition of direct labor union contributions
4. Limits on Corporate contributions (Direct or PACs)
5. Limits on Labor Union Contributions (Direct or PACs)
6. Limits on Candidates Self Financing
7. Limits on Candidate Family Contributions

For each one of these items that appeared in a statute the state received a point. The higher the number, the more stringent the state campaign finance system. The lower the number, the less restrictive the state is with campaign finance laws. Witko's measurement scale is sufficient for my research and satisfies the necessary requirements to test my hypothesis. Although his data was collected in 2002, state campaign finance statutes (collected by the Federal Election Commission), change only rarely and still provide a solid basis to test the hypothesis on 2010 campaign contribution date. Differentiating from Witko's focus, I look only at the stringency of contribution limits and the level of money spent per election in 2009-10 judicial elections.

Table 3 arrays a collection of information from 2010 contested judicial elections. It includes an arrangement of Witko's restrictiveness scale and the average amount of money raised per candidate (including the number of candidates in each election) in the 2010 election. The data helps formulate a relationship between the effectiveness of restrictions on overall campaign contributions and level of restrictiveness and the amount of money collected per candidate in each state. The division of restrictiveness was cut between Witko's scale at the midpoint between three and four. This division makes it easier to illustrate the different level of restrictiveness of campaign contribution limits

and the average dollar amounts spent per candidate, per election, and recognize the correlation between them.

Table 3: About Here

To ensure that the arbitrary choice of dividing the scale between 3/4 does not influence results various divisions were made to view different outcomes. No matter where we draw the dividing line between restrictiveness, the average for 2010 judicial election spending shows the more restrictive a states campaign contribution laws are, the more fundraising is done (with the exception of the 4/5 split, the difference actually suggests restrictive states spend slightly less, though the difference is not statistically significant). The table shows that campaign contribution limits are not doing their intended job of limiting the amount of funding collected in contested elections. This result could vary when including all state judicial elections, however this study focuses on contested judicial elections and the amount of restrictiveness and fundraising.

Evaluate whether contributions reduce corruption

Hypothesis 2: Do Contribution limits stop quid pro quo exchanges?

Edward Keynes states that judges “are men, and they are influenced by the communities, the societies and the classes in which they live, and the question now is, not whether they shall be influenced at all, . . . but from what quarter that influence shall come” (Boston, White & Potter, 1853:773). Along the lines of Keynes, I contend that contribution limits alone are not enough to limit corruption in judicial elections.

Several scholars have explored whether *quid pro quo* exchange relationships exist between contributors and judges on state supreme courts. Cann (2002) Williams and Ditslear (2007) find no systematic evidence supporting a *quid pro quo exchange* relationship between campaign contributors and the Wisconsin Supreme Court's justices. In contrast, researchers have proven in a select number of states, such as Michigan, that relationships between contributions and judges decisions do exist (Skaggs et al., 2011:11-12). Michigan Campaign Finance Network's June 2011 Report states, "the gross failure of campaign disclosure in the Michigan Supreme Court campaigns creates a toxic cloud that shadows the court's presumed impartiality" (Skaggs et al., 2011:12). A number of other scholars have found that while some states show a *quid pro quo exchange* relationship, others do not.

According to the second hypothesis, if contribution limits are effective at reducing corruption, we should observe corruption in all of the non-restrictive states, but no corruption in the highly restrictive states. After reviewing various scholarship, I conclude that contribution limits are not successfully fulfilling their intended goals to prevent corruption.

Table 4 illustrates the relationship between the existence of *quid pro quo* exchanges in a state and the level of restrictiveness in that state. If contribution limits are really effective in reducing or preventing *quid pro quo* exchanges, we should only see evidence-supporting corruption in states with few or no campaign contribution limits.

Table 4: About Here

On its face, the table may appear to not support my hypothesis because Nevada and Wisconsin are a “6” on the scale and there is no evidence of exchanges there. Nevada and Wisconsin are unusual cases given the culture of state restrictiveness. Nevada has a high level of restrictions due to the state's gaming industry. Wisconsin on the other hand was the founding state during the progressive movement and culturally remains a “Clean Politics” state. Both of these states at first glance do not support my hypothesis with a “6” Witko score and no evidence of *quid pro quo* exchanges. However, the evidence of this study supports my hypothesis, that contribution limits do not completely prevent *quid pro quo* exchanges.

The evidence provides mixed results in terms of *quid pro quo* exchange relationships in judicial elections. *Quid pro quo* exchanges have been demonstrated in some instances and not in others. My hypothesis clearly defines corruption, as *quid pro quo* exchanges *never* being found in any judicial election. The table shows that corruption is not being eliminated by campaign contribution limits as originally intended because of the literature previously mentioned. We still see corruption in more restrictive states proving that campaign contribution limits are not accomplishing their anticipated purpose.

The second argument that could be made against my hypothesis is that, if there is a high Witko score one could assume it to be less likely to see corruption in judicial elections; but this is not the case. After review, my analysis shows that restrictions among states, according to Witko's scale and other literature, vary. Because a number of states do not have literature identifying relationships this study is limited to review the states that have been researched by scholars. Referring to the Table 4, it shows a variety of

relationships. Georgia shows a mixed relationship. Wisconsin does not show a relationship with restrictiveness (William & Ditslear, 2007), however Michigan has high restrictions and shows a relationship with corruption (Skaggs, et al., 2011:9). Texas has a mixture of evidence showing that based off individual justices there is empirical evidence of a *quid pro quo* exchange relationship between decisions and campaign dollars (McCall, 2003).

A few other states, including Michigan, Georgia, Ohio, Kentucky, Alabama and Nevada attempted to curb the influence of money and politics on judicial decisions by including nonpartisan elections in their system of judicial selection. Despite these reforms, we see a relationship between the campaign contributions by attorneys to an individual judge and the vote of that individual judge over time (Williams & Ditslear, 2007). This evidence proves that a relationship of any kind demonstrates that the goals of *never* having a relationship are not effective.

Conclusion

The evidence in this thesis supports my original hypotheses, that campaign contribution limits do not effectively reduce overall spending or prevent *quid pro quo* exchange relationships in the courtroom. Although the data helps confirm my hypothesis, it does not provide an alternative solution for campaign contribution limits.

So why do legislatures support campaign contribution limits if they are not effective (Geyh, 2003)? The idea of symbolic politics presented by Lyons (1999:286-289), discusses the importance of the appearance of policies. Drawing from Mayhew, Lyons addresses two forms of symbolic politics; first, “statements of sentiment” and

second, “decisions which legally establish real policy objectives, and which potentially could have effects, but which have been designed *not* to achieve their objectives” (Lyons, 1999:287). Campaign contribution limits satisfy more of these points. Referring back to *Buckley*, campaign contribution limits were put in place to make a statement about corruption in government. Shortly after, laws were instated to help regulate the amount of money spent by individuals per campaign to reduce the overall amount spent in elections. Although both of these actions were valid in their attempts to eliminate corruption and overall spending neither were successful. The symbolism behind these actions however is what makes the difference and satisfies the public’s needs for legislative action. The mere idea of limiting the amount an individual can donate to a specific candidate helps eliminate the *idea* of corruption. Legislative figures need to appear to be concerned with the amount of money and corruption in elections by applying restriction that do not necessarily work however serve as a symbol of action to their constituents.

Applying this idea to judicial elections, surveys show that people want the ability to elect their judges (Geyh, 2003). Allowing citizens to vote in a judicial election satisfies the people’s desire to be involved and have a voice in judicial selection. Because people want to elect their judges, contribution limits and other regulations are put in place to help prevent the appearance of corruption and/or impartiality toward one particular group or individual (Geyh, 2003).

If campaign contribution limits are not effective at reducing spending or avoiding corruption, then what could be done to correct the system? The following subsections will discuss four possible solutions to restore the original intent of campaign contribution limits and make a recommendation.

a. Public Funding

The first possible resolution to campaign contribution limits would be to remove them and publicly fund judicial elections (Skaggs et al., 2011). There are various types of public funding systems. (Daniel, 2000). The first option is full public funding, sometimes called a “Clean Money” or “Clean Elections” approach (Geyh, 2003:4). This would allow candidates to voluntarily receive a grant of public funding in exchange for a promise to refuse any outside contributions or spend more than the allotted amount on his/her campaign. There are stipulations the candidates would be required to raise some private funding to qualify for state aid. Because of this requirement it would eliminate anyone from receiving public aid (Daniel, 2000). On the other hand, candidates receiving “lump-sum grants sufficient to run a campaign” opens many opportunities for individuals who may not be capable of raising funds otherwise. (Geyh, 2003:3)

The second public funding option is partial public funding. Partial public funding would allow for candidates to receive a set amount of funding from the state to help run a campaign in exchange for a voluntary cap on overall spending (Daniel, 2000). Partial public funding has the potential to match any private donation as long as it is within the previously agreed upon amount (Geyh, 2003:3). Geyh (2003:3) mentions the availability to match funds would allow for a larger spectrum of candidates that would not otherwise have the means to raise such large amounts to consider candidacy. It is important to note that providing even just partial public funding in judicial elections would help eliminate the heavy dependence on private contributions, therefore helping to decrease the level of corruption of judicial candidates.

Finally, the last option subsidizes contributors rather than candidates directly. A credit, refund and voucher system would provide some type of government reimbursement for contributors who donate to candidates, parties etc (Daniel, 2000). By offering tax refunds and other type of government reimbursements it does not directly help individual candidates but does provide government assistance to campaigns (Daniel, 2000).

Public funding helps reduce the total amount of money spent in an election and eliminate the idea of corruption and *quid pro quo* exchange relationships in the courtroom by donors. The problem with publicly funding elections is convincing people that it is worth the cost. Many people complain about what they see wasteful spending, particularly when it is targeted at certain groups or organizations. However, state judges fill an incredibly important role and should be separated from any type of outside pressure that may lead to impartiality in the courtroom.

b. Eliminate Judicial Elections

A second option is to eliminate campaign contribution limits by eliminating the option of electing judges altogether and only appointing judges. This option satisfies the goal of reducing the overall amount spent in elections but fails to do away with corruption. The appointment process for judges may reduce the threat of corruption at a state level but does not eliminate it. By allowing only the governor to appoint judges it opens the door for the person in office to have complete power over the judicial system with only minimal accountability to citizens. With the exception of the U.S. Supreme Court (where judges are granted life tenure), state judges have a higher chance of being selected on the basis of political factors or cronyism rather than because of their

qualifications. This possible solution would need to be carefully monitored to avoid further corruption due to the politics of appointing of judges.

c. Merit Selection

The third option is a combination of both appointing judges and elective selection. This alternative offers an interesting compromise to individuals on both sides of the issue.

Merit selection would help eliminate the need for fundraising in an election. Selection would be made based of qualification and experience. The state courts would base off the U.S. Supreme Court method of merit selection. The governor would appoint a judge based off their resume followed by a legislative vote for final approval. The main difference between the U.S. Supreme Court and state court merit selection is state judges are not granted life tenure.

State court judges face a retention vote from citizens. Appointing judges and allowing them to face a yes/no vote satisfies both the people's need to have a voice in judicial elections and have the qualified candidates selected by the governor. Without public funding this selection process has potential to cause serious problems with corruption once candidates face a yes/no citizen vote. Corporations have the ability to wait until selections from the governor are made and donate to that specific candidate in deriving from the goal of reducing overall spending in judicial campaigns. Although the amount of outside money collected in elections may not eliminate altogether it has a greater likelihood to be reduced under this system. Merit selection is a complex idea that would require a combination of public funding elections in order to effectively tackle the problems money poses in regular contestable elections.

d. No Limitations with Full Disclosure

The last alternative is to eliminate campaign contribution limits and spending limits altogether but strictly enforces disclosure regulations. Opening everything up in this way could have adverse effects on the judiciary. According to Geyh, (2003) people feel that judicial elections are corrupt and contributions are heavily involved with this, mostly because of the lax disclosure laws that vary from state to state (Witko, 2005). Deregulating campaign finance laws and bringing more money into politics may help inform citizens and make elections competitive, but could reinforce people's beliefs that money influences judges' decisions (Geyh, 2003).

My recommendation to correct this problem of campaign contribution limits is to follow the route of public financing. As previously stated, every possible alternative to campaign contribution limits has pros and cons. There is no one fundamental system that can mend the problems created by elections and campaigns. Full public funding, however, helps eliminate the dependency on outside contributions minimizes corruption, and still allows citizens to hold judges accountable.

As mentioned previously, judicial elections vary from state to state and not all judicial systems use elections to select their judges. Full public funding judicial elections is the best overall solution to fix the problems of corruption and reducing the overall amount spent in elections by reducing dependency on corporations and other private funding sources. Removing outside money from judicial elections allows for citizens to be involved with candidates and helps citizens pay closer attention to where their money is going. Candidates would need to meet strict qualifications to qualify for public funding.

These qualifying requirements help preserve the integrity of the ballot by ensuring that the candidates who are on the ballot have some public support. In short, they prevent every single candidate who wants to run for office from receiving public money (Daniel, 2000:3).

All states do not see the need for publicly funding candidates to run for a judicial seat. I would recommend a requirement across all states would help eliminate the need for contributions and donations in judicial elections. The problem raised by imposing such a strict qualification for judicial elections is that the federal government does not have the power to impose this requirement. Each state court functions independently of the Federal court based off individual state constitutions and rights, which regulate state court systems action. Logistics of this proposition would demand serious attention and analysis to convince citizens that publicly funding elections is the best alternative to electing their judges.

Judicial elections are becoming of more importance and receiving recognizably more attention as contribution dollars continue to increase. Fixing the problems of contribution limits is not easy and although there are a number of alternative options, all have flaws. Future research could address, whether contribution limits matter at all, or if judges develop a natural sense of bias over time without and favoritism towards contributors?

In sum, my research suggests that campaign contribution limits are not effectively reducing spending or preventing corruption in the courtroom. The results of this study suggest potential solutions to this problem by publicly funding judicial elections, and would help remove any type of outside influence on judicial candidates. There are a number of unanticipated problems yet to be addressed. Given that judicial elections have

seen increasingly high contributions in the past decade (specifically with contested elections) actions need to be taken to fix the problem that campaign contribution limits are no longer accomplishing. Judicial elections are some of the most vital elections that effect day-to-day lives of citizens. By publicly funding judicial elections across the United States it would allow citizens in general to feel a connection between the judicial systems and help them see the impacts from their decisions. People want a voice in elections. Publicly funding judicial elections satisfies the needs of the people as well as accomplishes the goals originally intended by campaign contribution limits.

Figure 1: Candidate Fundraising by Type of Election, 2009-10

(Skagg et al., 2011)

Candidate* Fundraising by Type of Election, 2009-10

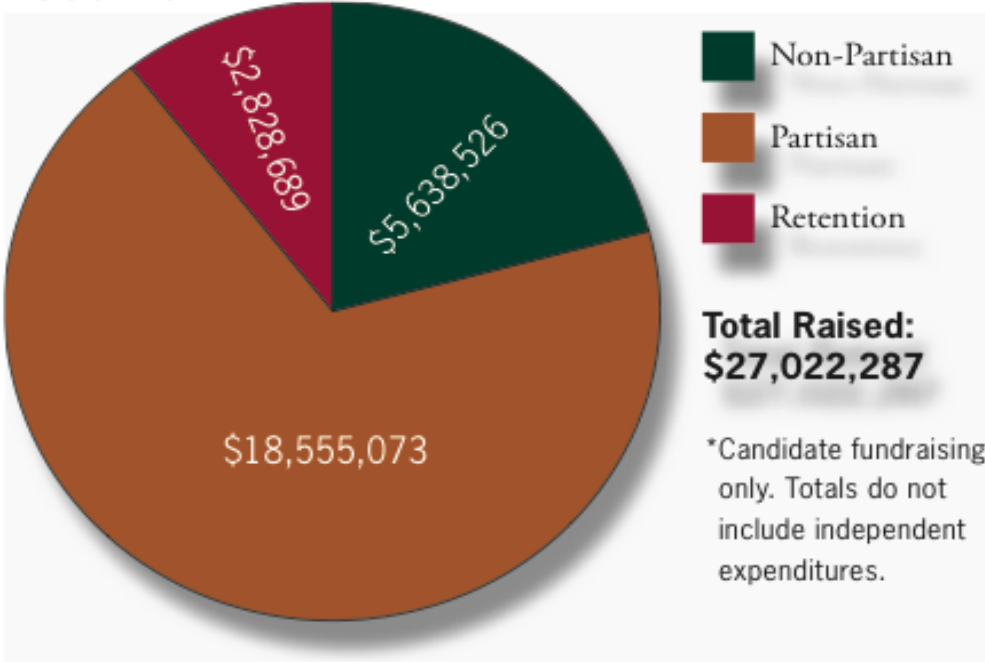
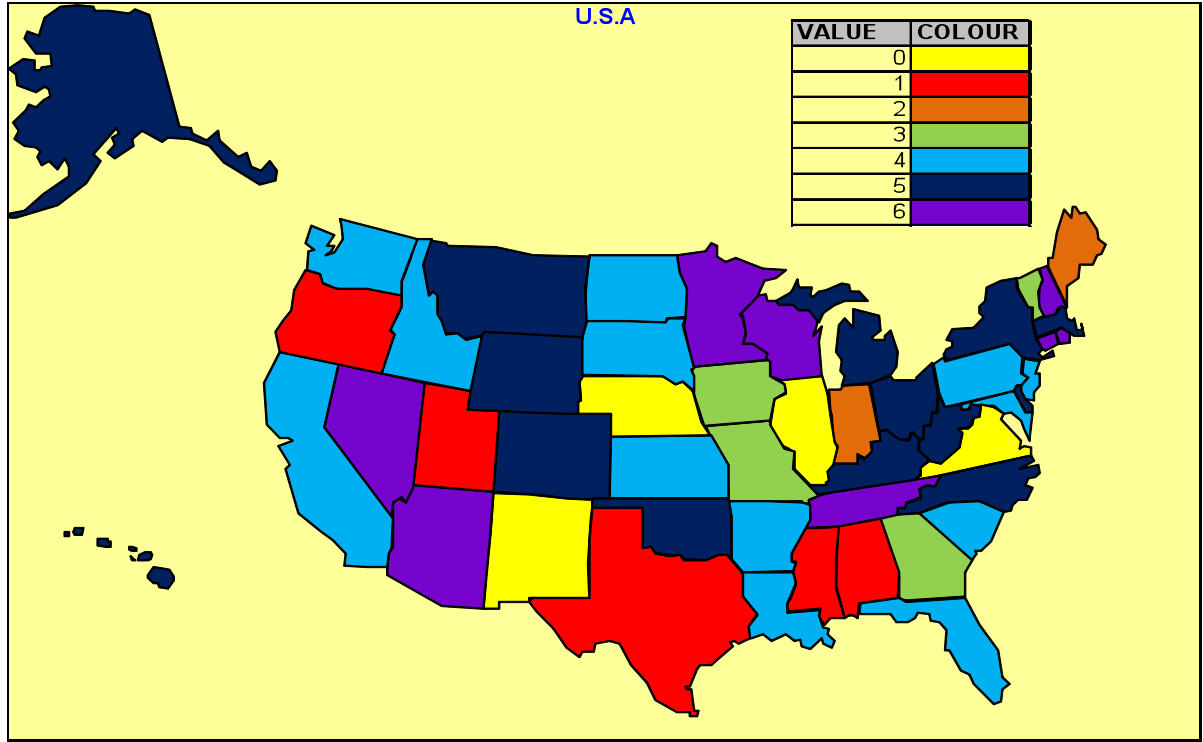


Figure 2: Map of the U.S. According to Witko’s Contribution Restrictiveness Index



<u>STATE</u>	<u>VALUE</u>
ALABAMA	1
ALASKA	5
ARIZONA	6
ARKANSAS	4
CALIFORNIA	4
COLORADO	5
CONNECTICUT	6
DELAWARE	5
FLORIDA	4
GEORGIA	3
HAWAII	5
IDAHO	4
ILLINOIS	0
INDIANA	2
IOWA	3
KANSAS	4

KENTUCKY	5
LOUISIANA	4
MAINE	2
MARYLAND	4
MASSACHUSETTS	5
MICHIGAN	5
MINNESOTA	6
MISSISSIPPI	1
MISSOURI	3
MONTANA	5
NEBRASKA	0
NEVADA	6
NEW HAMPSHIRE	6
NEW JERSEY	4
NEW MEXICO	0
NEW YORK	5
NORTH CAROLINA	5

NORTH DAKOTA	4
OHIO	5
OKLAHOMA	5
OREGON	1
PENNSYLVANIA	4
RHODE ISLAND	6
SOUTH CAROLINA	4
SOUTH DAKOTA	4
TENNESSEE	6
TEXAS	1
UTAH	1
VERMONT	3
VIRGINIA	0
WASHINGTON	4
WEST VIRGINIA	5
WISCONSIN	6
WYOMING	5

Table 1: Contributions to Candidates by Sector, 2009-10

Sector	Total Donations
Lawyers/Lobbyists	\$8,561,050
Business	\$6,214,596
Political Parties	\$3,438,699
Unknown	\$2,864,698
Organized Labor	\$261,430
Candidate Contributions	\$1,878,836
Other*	\$1,122,736
Ideology/Single Issue	\$382,912
Un-itemized Contributions	\$250,330
Total	\$27,022,287

*Other includes: retired persons, civil servants, local or municipal elected officials, tribal governments, clergy, nonprofits, and military persons. (Skagg et al., 2011)

Table 2: Candidates Fundraising 2009-10*

Pennsylvania**	\$5,424,210
Alabama	\$3,164,615
Texas	\$2,951,719
Ohio	\$2,865,847
Michigan	\$2,342,827
Arkansas	\$1,965,962
Wisconsin**	\$1,624,343
Washington	\$751,180
Georgia	\$588,251
West Virginia	\$306,447
North Carolina	\$163,718
Montana	\$160,174
Minnesota	\$152,803
Oregon	\$100,536
Kentucky	\$3,350
Total	\$22,565,982

*Except as indicated, figures refer to 2010 elections, **2009 elections (Skagg et al., 2011)

Table 3: Average amount raised Per Candidate/ Witko's score

Partisan (P) or Non-Partisan (NP) Judicial Election	State	Number of Candidates running for Office	Average \$\$ amount raised Per Candidate	≥ 4 Restrictive	≤ 3 Non-Restrictive
NP	MN	4	\$33856.75	6	
NP	OH *	4	\$700713.25	5	
NP	MI *	5	\$468982.6	5	
P	NC *	2	\$207805.5	5	
P	WV	2	153223.5	5	
NP	MT	2	\$60717	5	
P	AR *	2	\$459594.5	4	
NP	WA *	2	\$298445	4	
NP	GA	3	\$196083.33		3
NP	OR	3	\$33793.33		1
P	AL *	6	\$530834		1
P	TX *	9	\$292492.55		1
* = \$200,000 or > average raised per candidate			Total Fund-Raising (3/4 split)	\$297,917.26	\$263,300.80
			2/3 split	\$286,602.38	\$285,706.63
			4/5 split	\$270,883.10	\$301,873.78

(National Institute of Money in Politics, 2012)

Table 4: Relationship between Witko's score and *quid pro quo* exchanges

State	Study Found Relationship <i>States with relax Contribution limits =Relationship</i>	Witko Score
Wisconsin	No (Cann 2002, Williams & Ditslear, 2007)	6
Nevada	No (Bonneau & Cann, 2009)	6
Michigan	Yes (Bonneau & Cann 2009)	5
Ohio	Yes (Waltenburg & Lopeman, 2007)	5
Kentucky	Yes (Waltenburg & Lopeman, 2007)	5
Georgia	Yes (Cann, 2007)	3
Texas	No (Bonneau & Cann, 2009)	1
Alabama	Yes (Waltenburg & Lopeman, 2007)	1

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