

# Campaign Fundraising in State Supreme Court Elections\*

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*Objective.* What factors affect the ability of candidates for state supreme courts to raise money? In this article, I test (and expand) existing theories of political fundraising (taken largely from legislative studies) in the context of judicial elections. *Methods.* I examine the determinants of campaign contributions to all candidates running for the state supreme court from 1990–2000 in states that have competitive judicial elections. Most basically, I hypothesize that a candidate's ability to raise money is dependent on characteristics of the candidate, the state electoral and supreme court context, and institutional arrangements. *Results.* The results suggest that candidates who have a greater probability of success than their opponents are better able to raise money. Yet, all is not within the control of the candidates, as the electoral context of the state and the court as well as the institutional arrangements of the election and the court are also relevant. *Conclusions.* Campaign fundraising by state supreme court candidates, much like fundraising by legislative candidates, can be understood in systematic and predictable ways. Candidates have some control over the amount of money that they are able to raise (and thus their electoral viability), although there is little they can do about the electoral and supreme court context. Additionally, institutional arrangements play a large role in raising campaign funds, suggesting that there is not much reformers can do to limit the amount of money involved in elections short of eradicating elections altogether.

Throughout the decade of the 1990s, elections for the state high court bench became increasingly contested, competitive, and controversial (e.g., Hall, 2001; Bonneau, 2004). Moreover, campaigns for the state high court bench are becoming increasingly expensive (e.g., Glaberson, 2000; Phillips, 2002). Over the decade of the 1990s, average spending in these races went from almost \$365,000 to more than \$800,000 (Bonneau, 2004). In fact, with the rancor and cost of some of these races, opponents of judicial elections have claimed that the integrity of the bench is being compromised

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and that the amount of money being raised by candidates creates an appearance of impropriety (e.g., Wohl, 2000; Hampton, 2002).

Scholars of judicial elections recently have investigated such important topics as vote choice, electoral competition, incumbent defeat, campaign spending, and the effects of institutional arrangements on elections to the state high court bench (e.g., Hall, 2001; Bonneau and Hall, 2003; Hall and Bonneau, 2006; Klein and Baum, 2001). Although it is important to understand the processes by which voters select a candidate or the factors that cause a candidate to fail or succeed, this analysis is necessarily incomplete without an understanding of what makes a candidate viable. That is, a candidate must be able to present himself or herself as a viable candidate to the voters in order to have a chance at winning the election. Perhaps the most significant indication of candidate viability is the candidate's ability to raise campaign funds (Bond, Covington, and Fleisher, 1985). Quite simply, candidates must be able to raise money in order to have any legitimate chance at winning the election (e.g., Herrnson, 1992; Biersack, Herrnson, and Wilcox, 1993; Jacobson, 1997). Thus, being able to raise money becomes a necessary (though not sufficient) condition to electoral success.

In this article, I examine the determinants of campaign contributions to all candidates running for the state supreme court from 1990–2000 in all states that have competitive judicial elections. Most basically, I hypothesize that a candidate's ability to raise money is dependent on characteristics of the candidate, the state electoral and supreme court context, and institutional arrangements.

### **The Importance of Raising Money**

As mentioned above, it is important for candidates to be able to raise money in order for their candidacies to be viable. Candidates must be able to spend (and thus need to raise) money in order to be competitive. This may be even more important for nonincumbent candidates, who need to publicize their candidacy and increase their name recognition more so than do incumbents (e.g., Biersack, Herrnson, and Wilcox, 1993; Krasno, Green, and Cowden, 1994). Consequently, campaign fundraising plays a key role in the electoral process, enabling some candidates to be competitive while handicapping others.

The importance of raising funds in congressional and state legislative elections has been well documented (e.g., Jacobson, 1980, 1997; Sorauf, 1988; Herrnson, 1992; Biersack, Herrnson, and Wilcox, 1993; Krasno, Green, and Cowden, 1994; Cassie and Breaux, 1998), but campaign fundraising may be even more important in judicial races than in the legislative context for several reasons. First, judicial elections are low-salience, low-information contests, especially compared to their legislative counterparts (Johnson, Schaefer, and McKnight, 1978; Dubois, 1979, 1984; Champagne

and Thielemann, 1991; Klein and Baum, 2001). To inform voters of their candidacy and qualifications, judicial candidates have to jump a higher hurdle than legislative candidates. Since voters are rarely aware that there is a judicial election, let alone who the candidates are, candidates for the state high court bench need to spend money to increase voter awareness.

Second, unlike elections for governor or Congress, candidates for the state high court bench do not receive much “free” publicity (Thielemann, 1993; Arrington, 1996). A candidate for governor can receive free publicity by announcing a new policy initiative or by criticizing the incumbent. The same is true for candidates seeking a seat in Congress (Jacobson, 1980). Hence, while a congressional candidate can receive free news coverage by proposing mandatory life sentences for convicted drug traffickers, a candidate for the state high court cannot, due to the canons of judicial ethics, which prevent candidates from making comments that indicate that the judge (or candidate) has prejudged a case (or types of cases).<sup>1</sup>

Third, most state supreme court races have to compete with elections for other state and federal offices. Candidates for the state supreme court have to compete for attention with legislative (state and federal) and perhaps even gubernatorial and presidential candidates. This, coupled with the relative obscurity of state high court candidates in the first place, makes publicizing one’s candidacy essential to success—and it makes such publicity expensive.

### **The Determinants of Campaign Fundraising**

From both the congressional and state legislative literature, we know that certain characteristics of the candidates, such as gender and race, either increase (or decrease) the amount of funds a candidate can raise (e.g., Wilhite and Thielemann, 1986; Thompson, Cassie, and Jewell, 1994; Herrick, 1995, 1996; Hogan and Thompson, 1998; Thompson, Moncrief, and Hamm, 1998). In addition to characteristics such as race and gender, incumbents are likely to be advantaged over other candidates (e.g., Jacobson, 1997; Bonneau, 2005a). Indeed, as Table 1 shows, in the period examined here, incumbents always raise more money, on average, than nonincumbents. Besides candidate characteristics, campaign fundraising is likely to also be influenced by the context in which the race takes place as well as the institutional rules of the game.

Regarding the electoral context, state court elections do not take place in a vacuum; rather, they are affected by other political events in the state. For example, one of the biggest issues taking place in the states is tort reform.

<sup>1</sup>After the U.S. Supreme Court decision in *Republican Party of Minn. v. White*, 536 U.S. 765 (2002), the constitutional status of many states’ code of judicial ethics is in question (at least the sections relating to conduct in judicial elections).

TABLE 1

Average Campaign Fundraising by Type of Candidate and Election (1990 Dollars), Contested Elections, 1990–2000

Year	Incumbent	Nonincumbent	Partisan	Nonpartisan
1990	\$265,867	\$126,133	\$196,450	\$135,883
1992	\$248,197	\$159,309	\$210,880	\$165,395
1994	\$424,056	\$230,853	\$387,351	\$158,470
1996	\$286,716	\$170,297	\$260,330	\$159,023
1998	\$411,613	\$231,386	\$378,617	\$201,398
2000	\$318,172	\$227,088	\$256,793	\$257,364
All years	\$314,519	\$205,641	\$298,123	\$183,808

Bonneau (2005b) found that in states where there are more tort cases on the docket, there are higher amounts of campaign spending in the race. Additionally, whether or not there are multiple seats for the bench at stake in the election could affect campaign fundraising, with multiple seats at stake inhibiting the ability of candidates’ to raise funds. What makes these factors unique is that they are electoral factors that are outside the control of the candidates’ themselves. Just as certain contextual factors can increase the likelihood of contestation (Bonneau and Hall, 2003) or electoral competition (Hall, 2001), the context of the race can either assist or hinder the amount of money a candidate can raise, independent of anything else.

Finally, the idea that institutional arrangements help shape the behavior of actors in courts is regarded as a fundamental truth (e.g., Brace and Hall, 1995, 1997, 2001). Moreover, institutional differences have been found to affect electoral competition (Hall, 2001; Hall and Bonneau, 2006), the outcomes of elections (Bonneau, 2005a), and the amount of campaign spending in the race (Bonneau, 2005b). Following from this research, we would expect the institutional rules under which the election takes place to also affect the amount of money candidates are able to raise. Unlike legislative races, not all state supreme court elections are district-wide, partisan elections.<sup>2</sup> Although some state supreme court elections are partisan (i.e., they have the political party affiliation of the candidates on the ballot), others are nonpartisan. For example, in Table 1, one can see that candidates in partisan races consistently raise more money, on average, than those in nonpartisan races, with the exception of 2000 (where the amounts are essentially identical).

There are other institutional differences besides method of selection: some state supreme court elections take place statewide, while others occur in districts; some races are held in the same years as other federal and state

<sup>2</sup>Nebraska is the one legislative exception, as races for the Nebraska Legislature are non-partisan. Nebraska also has a unicameral legislature, unlike any other legislature.

offices, while others are held in off-years. These institutional differences should affect the ability of candidates to raise money, just as they affect the amount of money spent in these races and electoral competition. In sum, the amount of money a candidate will be able to raise is contingent on more than just the candidate's characteristics. Both the state and electoral context of the race and the institutional rules of the game also affect campaign fundraising.

## Research Design and Data

I examine all contested state supreme court elections from 1990–2000. To properly specify the models, I collected data on both the characteristics of the elections and of the candidates, including the amount of money raised by each candidate for the state high court bench. My unit of analysis is each candidate who ran for the state high court bench.

## Modeling Campaign Fundraising

The dependent variable in this analysis is the natural log of the total amount of money<sup>3</sup> raised by each candidate (CONTRIBUTIONS).<sup>4</sup> This information was gathered by examining the official campaign reports filed by each candidate with the appropriate office in the state (usually the Secretary of State's Office, but some states have a State Board of Elections that gathers this information).

## *Characteristics of the Candidate*

Incumbents possess advantages over other candidates (e.g., Jacobson, 1997; Bonneau, 2005a). These candidates are better known, are able to take advantage of the perquisites of their office, and possess other advantages simply by being the current officeholder (e.g., Sorauf, 1988; Krasno, Green, and Cowden, 1994; Thielemann and Dixon, 1994; Thompson, Cassie, and Jewell, 1994). Consequently, I expect that incumbents will raise more money than nonincumbents, other things being equal (INCUMBENT).

<sup>3</sup>I use 1990 as my baseline, so all amounts are in 1990 dollars.

<sup>4</sup>There were 34 cases of a candidate who ran for the state high court bench not reporting any campaign contributions. All but a few of these cases were challengers taking on incumbents (none of these candidates were incumbents). Moreover, these candidates tended to be third-party candidates (usually Libertarians and Greens). Since I am interested in explaining the factors that determine how much money a candidate raises, I omit these candidates from the analysis since, by not reporting any campaign contributions, they are not actively raising money, unlike the majority of other candidates. In essence, these races are uncontested.

In addition to incumbency, the quality of the candidate is likely to be important. Candidates with prior judicial experience should perform better in terms of fundraising than candidates without such experience, if the qualifications and merits of the candidates are a relevant factor. In the legislative context, it has been found that candidates with previous electoral experience both perform better electorally (e.g., Jacobson, 1980; Green and Krasno, 1988; Van Dunk, 1997) and are able to raise more money (e.g., Bond, Covington, and Fleisher, 1985; Biersack, Herrnson, and Wilcox, 1993; Krasno, Green, and Cowden, 1994) than candidates with no prior elective experience. Hall and Bonneau (2006) found that state supreme court candidates who previously served (or were currently serving) as lower court judges performed significantly better electorally than their nonexperienced counterparts. I hypothesize that those with prior judicial experience (QUALITY CANDIDATE) will be able to raise more money than candidates without such experience.<sup>5</sup> I obtained information on the candidates' prior judicial experience by reading newspaper reports and profiles of the races and by reading official biographical descriptions of candidates on their websites and other public information sources.

The gender of the candidate may also affect the amount of campaign contributions. Women might have more problems raising money than men simply because women may be perceived as less electorally viable (Berch, 1996). The legislative literature is mixed on differences between women and men in terms of campaign fundraising (Burrell, 1985; Wilhite and Thielemann, 1986; Gaddie and Bullock, 1995; Thompson, Moncrief, and Hamm, 1998; but see Herrick, 1995, 1996). The weight of the evidence suggests that there are no differences between male and female candidates. Although I include a variable for the gender of the candidate (FEMALE), I expect that there will be no relationship between gender and money, other things being equal. However, given the importance of this variable to other studies, and the fact that some studies find a relationship while others do not, it is important to include this factor even though no relationship is expected. I obtained information on this variable from newspaper accounts of the race as well as from candidates' biographies.

Another key demographic characteristic that may affect fundraising is the race of the candidate. Minority candidates may be perceived as less electorally viable than their white counterparts. Studies at both the congressional level (Wilhite and Thielemann, 1986) as well as at the state legislative level (Hogan and Thompson, 1998) suggest that minority candidates are handicapped in their ability to raise campaign funds. Consistent with this, I hypothesize that minority candidates (MINORITY) will raise less money than white candidates. I acquired information on this variable from descriptions of the candidates in the media. Additionally, photographs of the

<sup>5</sup>This variable measures all nonincumbents with prior experience. It does not include incumbents.

candidates on their websites or elsewhere on the Internet and the *Directory of Minority Judges in the United States* were used.

Finally, the candidate's past electoral history should affect fundraising. Scholars have found that candidates who win by narrow margins are more likely to be challenged in their next election (Hall and Bonneau, 2006). Bonneau (2005b) found that the closer the margin of victory for the winner, the more money that is spent in the race. That is, the more competitive the race, the more money that is spent. Thus, because these candidates are particularly vulnerable to defeat and the races are likely to be close, I expect that candidates winning with less than 60 percent of the vote in their previous election (PRIOR CLOSE RACE) will raise more money, other things being equal. The 60 percent cutoff is the standard measure used by "most leading students of marginality in congressional elections" (Weber, Tucker, and Brace, 1991:31).

### *State Electoral and Supreme Court Context*

As discussed earlier, the context in which the election takes place is important. One of the biggest issues in state supreme court politics is tort reform. Both sides of the debate (trial lawyers and businesses) are interested in electing (or reelecting) judges who agree with their position on tort reform (or tort nonreform). Consequently, in states where a high percentage of the docket is composed of tort cases (TORT DOCKET), candidates should be able to raise funds more easily (Champagne, 1992). These data are obtained from the State Supreme Court Database compiled by Brace and Hall. Data are not available for the entire 1990–2000 period. I chose 1995 because it is in the middle of the period examined here. There is no reason to expect that the proportion of the docket composed of tort cases was different in 1995 than in any other year in the decade.

It is a well-documented fact that the primary contributors to judicial campaigns are lawyers (e.g., Dubois, 1986; Nicholson and Nicholson, 1994; Eisenstein, 2000). This is not terribly surprising considering that lawyers both know the candidates and may appear before them in the future (or have appeared before them in the past)—either at the supreme court or at a lower court. Lawyers thus have a big incentive to be contributors to candidates for the state supreme court. Consequently, the more lawyers in a state, the more money a candidate should be able to raise. Because larger states provide candidates with a larger pool of potential donors, I standardize the measure by dividing the number of lawyers with the size of the voting-age population in the state to create a per-capita measure of lawyers (LAWYERS).<sup>6</sup> Information for this variable was obtained from the American Bar Association's

<sup>6</sup>In states where judges are elected in districts, I use the size of the voting-age population in the district, as opposed to the state.

list of active lawyers and from the *Statistical Abstract* (for the size of the voting-age population).

Since states are of varying sizes, it is important to take this factor into account. The bigger the state or district, the more money a candidate is going to have to spend to campaign effectively (Thielemann, 1993; Hogan and Hamm, 1998). Thus, candidates running in Texas are going to have to spend (and thus need to raise) more money than candidates running in Arkansas. At the same time, a larger state also provides a candidate with a larger pool of potential donors. Consequently, while a candidate will have to spend more money in a larger state, he or she will also be able to raise more money. Thus, I expect that the larger the size of the voting-age population in the state (VOTING-AGE POPULATION), the more money a candidate will be able to raise.<sup>7</sup>

It is also important to distinguish between open-seat elections and incumbent-challenger contests. In legislative elections, candidates challenging an incumbent generally raised less money than those running for an open seat (e.g., Sorauf, 1988), in part because the likelihood of winning an open seat is greater than that of defeating an incumbent. In state supreme court elections, Bonneau (2004) found that challengers to incumbents spent less than candidates running for open seats. Thus, if a candidate is running for an open seat (OPEN SEAT), he or she should raise more money than if the candidate is challenging an incumbent.

The competition for funds should also affect the ability of candidates to raise money. Money is a finite resource, and to the extent that the largest contributors to judicial elections are a more specialized group (lawyers) than contributors to legislative races, the more races that are on the ballot in any given year, the less money there is for any individual candidate. In this data set, the number of races in a state in a year ranges from one to five (depending on how many interim elections there are to fill vacancies created by retirement/death/promotion to the federal bench). The more seats that are up for election in a state in a year (NUMBER OF SEATS), the lower the amount of money individual candidates should be able to raise.

### ***Institutional Arrangements***

The most basic institutional difference between state supreme court elections is that in some states the candidate's party affiliation is listed on the ballot, while in others it is omitted. Bonneau (2004) found that partisan races are generally both more competitive and more expensive than their nonpartisan counterparts. Thus, I expect that more money will be raised by candidates running in states that list their partisan affiliation on the ballot

<sup>7</sup>See note 6 for the different measure used in elections in districts.



(PARTISAN) compared to candidates running in states that omit their partisan affiliation on the ballot.

A second major difference among state supreme court elections is that in some states candidates run statewide while in other states they run in districts. Since raising a large amount of money is not as necessary for candidates running in districts to publicize their candidacies (Gierzynski, 1998), other things being equal, I expect that candidates running in districts (DISTRICT) will raise less money than those running statewide (even though they may have an easier time raising money).

A third structural factor is when the election occurs. In most states, state supreme court elections occur the same years as governor, senator, and president. Thus, these low-salience, low-information elections have to compete with “higher ballot” offices. This can constrain the amount of cash that is available for candidates to raise. Additionally, raising money may be more important in off-year elections, since candidates have to spend more resources mobilizing voters to turn out and participate in the election. Both these reasons suggest that candidates will raise more money in elections that occur in odd years (ODD YEAR) than in even-year election cycles.<sup>8</sup>

The amount of campaign finance regulation in the state should affect the amount of money candidates are able to raise. Specifically, limitations placed on both the source and the amount of potential contributions may adversely affect the ability of candidates to procure contributions. Witko (2005) compiles an index of campaign contribution regulations for each state. This is a simple additive index of the campaign contribution limits placed on candidates by states.<sup>9</sup> I expect that the more stringent the regulations on campaign contributions in the state in which a candidate is running (REGULATION), the less money a candidate will be able to raise.

Finally, just as some legislatures are more professional than others, some state supreme courts are more professional than others. Brace and Hall (2001) argue that more professional courts have more staff, lower workload, and higher salaries, among other things. At the state legislative level, candidates for seats in more professional legislatures were able to raise more

<sup>8</sup>Most of the states that elect their judges in odd years elect other statewide offices in even years, but this is not true in Kentucky and Mississippi, which have odd-year elections for governor. For these states, this variable is coded 1 if the state supreme court election occurred in odd years with no gubernatorial election, and 0 if they occurred in odd years with a gubernatorial election. If I do not recode these elections (and code all odd-year elections as 1), there are no changes to the results. Since it makes more theoretical sense to count odd-year races as different than even-year races only in the absence of a gubernatorial race, those are the results I report.

<sup>9</sup>This index ranges from 0 to 7 based on how many of the following provisions states place on candidates: (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 candidate self-financing; and (7) limits on candidate family contributions (Witko, 2005). No state achieves a score of 7, so the range is 0 to 6 in the data here; the mean is 3.21 and the standard deviation is 2.03.

money than candidates for seats in less professional legislatures (e.g., Cassie and Thompson, 1998; Gierzynski, 1998). This is because more professional legislatures have higher salaries and greater institutional resources, thus making these seats more valuable. Further, “professional legislatures are in wealthier states, those generally conceded to have a larger pool of political money” (Thompson and Moncrief, 1998:10). I expect the same to hold true here: the more professional the court a candidate is running for (PROFESIONAL), the more money he or she will be able to raise.

For convenience, Table 2 displays all the variables in this analysis and their exact measurement.

### **Estimation Technique**

Since the dependent variable is continuous, ordinary least squares regression (OLS) is appropriate.<sup>10</sup> I use Huber/White/Sandwich robust standard errors, set to recognize the panel structure of the data. Since the observations within each state are unlikely to be independent, failure to do this can overstate the significance of state-level variables (Primo, Jacobsmeier, and Milyo, forthcoming).

### **Results**

Table 3 displays the results for the model of campaign fundraising.

As expected, incumbents are able to raise more funds than nonincumbents. Just as in the legislative literature, one source of the incumbency advantage in state supreme court elections is that incumbents can better generate financial support for their reelection bids. Additionally, the quality of the candidate also affects campaign fundraising (although not as much as incumbency). Candidates with prior judicial experience fare better than those candidates without such experience. This helps explain why quality candidates perform better electorally (Hall and Bonneau, 2006): they are more easily able to raise money compared to candidates without prior judicial experience. When it comes to raising money, the quality of the candidate (nonincumbents as well as incumbents) is important.

<sup>10</sup>I also estimated the model using tobit, since the data are left-censored. However, it is not possible to use robust standard errors in a tobit model. This is a significant drawback, since the standard errors will be incorrect if I do not cluster them by state (Hall, 2001; Hall and Bonneau, 2006). However, I ran a tobit model and compared the results with an OLS model without robust standard errors (since comparing the results of tobit with an OLS model with robust standard errors will not be useful since the standard errors will be much different). When I do this, the results are identical. Thus, I am confident that the use of OLS is not biasing my results, and I use it here due to the ease of interpretation.

TABLE 2  
Variable Descriptions for a Model of Campaign Fundraising in State Supreme Court Elections

Variable	Variable Description
<i>Dependent Variable</i>	
Contributions	= log of total campaign fundraising by a candidate (1990 dollars)
<i>Characteristics of the Candidate</i>	
Incumbent	= 1 if the candidate is an incumbent; 0 otherwise
Quality candidate	= 1 if a nonincumbent candidate has prior judicial experience; 0 otherwise
Female	= 1 if the candidate is female; 0 otherwise
Minority	= 1 if the candidate is a racial minority; 0 otherwise
Prior close race	= 1 if the candidate won his/her prior race with less 60% of the vote; 0 otherwise
<i>State Electoral and Supreme Court Context</i>	
Tort docket	= proportion of the docket involving tort cases (1995)
Lawyers	= number of active lawyers in a state/size of the voting-age population in the state or district (1,000s)
Voting-age population	= size of the voting-age population in the state or district (1,000s)
Open seat	= 1 if the race was for an open seat; 0 otherwise
Number of seats	= number of state supreme court seats up for election in the state in that year
<i>Institutional Arrangements</i>	
Partisan	= 1 if the election was a partisan election; 0 otherwise
District	= 1 if the election was held in a district; 0 otherwise
Odd year	= 1 if the election is held in an odd year; 0 otherwise
Regulation	= Witko (2005) index of state contribution limits (Table 1, Column 5)
Professional	= Brace and Hall (2001) index of state supreme court professionalism

TABLE 3  
 Campaign Fundraising by Candidates, Contested Elections, 1990–2000

Variable	Coefficient	Robust Std. Error	<i>t</i>	<i>P</i> >   <i>t</i>
Incumbent	1.077	0.260	4.14	0.001
Quality candidate	0.786	0.255	3.08	0.003
Female	0.012	0.126	0.10	0.462
Minority	0.185	0.179	1.04	0.157
Prior close race	0.175	0.214	0.82	0.211
Tort docket	0.042	0.006	7.27	0.000
Lawyers	−0.028	0.025	−1.15	0.131
Voting-age population	−0.000	0.000	−1.16	0.129
Open seat	0.323	0.369	0.87	0.196
Number of seats	−0.190	0.094	−2.03	0.028
Partisan	−0.397	0.217	−1.83	0.041
District	0.816	0.722	1.13	0.136
Odd year	1.383	0.366	3.78	0.001
Regulation	0.037	0.084	0.44	0.332
Professional	1.077	0.241	4.47	0.000
Constant	10.350	0.698	14.83	0.000

*N* = 380

*F* (15, 20) = 103.53

Prob > *F* = 0.000

*R*<sup>2</sup> = 0.334

Root MSE = 1.441

NOTE: Dependent variable: log of total amount of money raised (1990 dollars). All tests are one-tailed tests of significance.

Besides incumbency and quality, none of the other measures of candidate characteristics achieves significance. Neither females nor racial minorities are disadvantaged in terms of campaign fundraising. Unlike legislative races, female and nonwhite state supreme court candidates are able to raise similar amounts of money as their male and white counterparts. Whatever disadvantages females and minorities suffer in other races simply do not occur in state supreme court elections. This suggests that in terms of being able to raise money, contributors support candidates with experience (incumbents as well as nonincumbents) and do not focus on irrelevant characteristics, like gender and race—qualifications are what is important.

Regarding the state electoral and supreme court context, there is some evidence to suggest that major issues affect campaign fundraising. Other things being equal, the higher the percentage of the state high court’s docket that is occupied by tort cases, the more money a candidate will be able to raise. This suggests that these races are more likely to be high spending and that seats on state supreme courts that decide a lot of tort cases are more valuable to both candidates and contributors.

The number of lawyers per capita is not statistically significant. This is likely because, for the purposes of raising money, there are a significant number of lawyers in all states. Also, contrary to expectations and the legislative literature, open-seat races do not involve more spending than incumbent-challenger races. This may be due to the fact that there are only a small number of seats available in any given election, and thus all the races are competitive. However, the number of seats at stake in the election is significant, as hypothesized. The more seats that are up for election, the less money an individual candidate is able to raise. Money is a finite resource, and the more competition there is for it, the less any one candidate will receive.

In terms of institutional arrangements, the evidence is mixed. Although there is a difference between partisan and nonpartisan elections, the relationship is in the opposite direction than hypothesized—there is less money raised in partisan elections. This may be because in nonpartisan elections, voters have less information. Since one of the best predictors of how someone will vote is party identification, removing that label from the ballot in nonpartisan elections means that candidates cannot rely on receiving a certain percentage of the vote simply because of their political party. Thus, they need to spend (and consequently need to raise) more money, other things being equal, than their counterparts in partisan states. An implication of this is that the reform made by two states that have recently changed their method of selection from partisan elections to nonpartisan elections (Arkansas and North Carolina), at least in part to better insulate judges from the politicization of judicial elections, will not reduce the amount of money raised by candidates. To the contrary, candidates will raise more money.

Contrary to expectations, there is no difference between statewide elections and district-based elections. Despite the larger electoral constituency in statewide elections, candidates for the state high court bench raise the same amounts of money. However, when state supreme court races occur in odd years, candidates raise more campaign funds, as hypothesized. Again, just as with the number of seats, money is a finite resource, and when state supreme court candidates do not have to compete with candidates for other statewide offices (both state and federal), they are better able to raise money. Also, the stringency of campaign contribution regulations is not significant. Other things being equal, the total amount of money raised by candidates is not contingent on the “toughness” of the campaign finance regulations in the state. This suggests that simply increasing the stringency of regulations will not lead to spending less money in these races.

Finally, just like at the state legislative level (Cassie and Thompson, 1998; Gierzynski, 1998), candidates running to retain their seats on more professional courts are better able to raise campaign funds than their counterparts on less professional courts. Seats on professional courts are more desirable to candidates, and this is reflected in the amount of money generated in campaigns for these seats.

The empirical results taken as a whole suggest something interesting about judicial races compared to legislative elections.<sup>11</sup> Note that both PRIOR CLOSE RACE and VOTING-AGE POPULATION are statistically insignificant. Neither the fact that the candidate won his or her prior race by a close margin nor the size of the electoral constituency affects campaign fundraising. These results, in combination with the insignificance of DISTRICT and OPEN SEATS and the significance of NUMBER OF SEATS and ODD YEAR, suggest that fundraising in judicial races does not appear to be related to the needs of the campaign, unlike legislative races. That is, in races where candidates have the highest need to raise more money (statewide races, large states, open-seat races, a prior close race, a large number of seats up for election, and when they are at the same time as other statewide races), candidates are disadvantaged (or, in some cases, simply not advantaged) in terms of fundraising despite the fact that it is in these races where candidates most need to be able to raise money. Thus, these candidates face a “money supply” problem: there is not enough available money to meet their needs. This suggests that candidates may be able to spend more efficaciously, but they are simply not able to raise sufficient funds for them to do so. This is something that needs to be explored further in future research, but the evidence here suggests that candidates in judicial races have a limited supply of funding sources, and this could have important effects on these races.

## **Conclusion**

Much like candidates for other political offices, candidates for the state high court bench need to raise money in order to have a realistic chance at winning the election. This article systematically examined the determinants of campaign fundraising in state supreme court elections. Using all contested elections from 1990–2000, I found that the amount of money raised by candidates depends on characteristics of the candidate, the state electoral and supreme court context, and institutional arrangements.

More generally, this article tested existing theories of campaign fundraising in a new and different context. State supreme courts vary on such important aspects as the type of election, electoral constituency, professionalism, and composition of the docket (to name a few). This allows us to extend our knowledge of campaign finance (developed largely in the legislative literature) to elections for other elected offices. Although there were some similarities to the legislative findings (such as the incumbency advantage, quality of the candidate, and the relevance of professionalism), the results presented here offer some important qualifications to the legislative findings. First, neither females nor racial minorities are disadvantaged in terms of raising money compared with their male and white counterparts.

<sup>11</sup>I am indebted to an anonymous reviewer for suggesting this interpretation.

There appears to be no adverse financial consequences accruing to candidates on the basis of their gender or race. This is good news for those who wish to continue diversifying the bench, and it also suggests that contributors in these elections are focusing their attention on relevant factors (such as experience) as opposed to irrelevant factors (such as race and gender).

Second, there are no differences in fundraising between candidates running for open seats and those challenging incumbents. Once factors such as the quality of the candidate are taken into account, challengers to incumbents can raise just as much money as those running for open seats. The conventional wisdom is that candidates are better off waiting for an open seat in order to run for elected office (Jacobson, 1997). The results here suggest that candidates (particularly those with prior judicial experience) might not be better off waiting for an open seat to declare their candidacy for the state high court bench. Although incumbents do raise more money than nonincumbents, quality candidates also are advantaged in fundraising.

Institutionally, the results suggest that some reforms might decrease the amount of money in these elections and others would have no effect. For example, moving from statewide elections to district-based elections would have no effect on the amount of campaign fundraising. Likewise, increasing the stringency of campaign contribution regulations would have no effect on the amount of money candidates are able to raise. However, as discussed above, moving from partisan to nonpartisan elections would actually *increase* the amount of money raised by candidates. The same is true for moving state supreme court elections to off-years. Additionally, the more professional the court, the more money that is raised, suggesting that states that want to limit campaign fundraising may want to reduce the desirability of the state supreme court seat, perhaps by taking away some of the docket control these courts have or by reducing staff.

Finally, taken together, the results suggest that, unlike legislative races, candidates in judicial races are not able to raise as much money as they need to effectively campaign. In races where candidates most need to be able to raise money (due to either electoral or structural factors), they are not able to do so. This is an interesting finding that needs to be explored further.

In sum, campaign fundraising by state supreme court candidates can be understood in systematic and predictable ways. Candidates have some control over the amount of money that they are able to raise (and thus their electoral viability), although there is little they can do about the electoral and supreme court context. Additionally, institutional arrangements play a large role in the raising of campaign funds, suggesting that there is not much reformers can do to limit the amounts of money involved in elections short of eradicating elections altogether. The results here further confirm the importance of studying politics in the states, where much important variation exists, to test existing theories of political behavior.

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