

## Donor Networks in State Supreme Court Elections

Brent D. Boyea  
Department of Political Science  
University of Texas at Arlington  
Arlington, TX 76019  
[boyea@uta.edu](mailto:boyea@uta.edu)

Paul Brace  
Clarence L. Carter Professor  
Department of Political Science  
Rice University  
6100 Main Street  
Houston, TX 77005  
[pbrace@rice.edu](mailto:pbrace@rice.edu)

## Abstract

Identifying the motivation for individual donations to judicial campaigns is critical for understanding how money influences elected judges. Using theories of campaign fundraising, this study examines patterns of fundraising in state supreme court campaigns from 2000 through 2017. We build upon existing theory, including expectations about donor networks, to differentiate how categories of donors are motivated to participate. Further, we contextualize our study by considering how the decision of the US Supreme Court in *Republican Party of Minnesota v. White* from 2002 affected fundraising in judicial campaigns. Four major findings emerge. First, donors tied to the legal profession are more focused on the characteristics of candidates. Second, non-attorney donors place a strong emphasis on open seat contests. Third, among non-attorney donors connected to business interests, fundraising is more idiosyncratic. We find that campaigns performed quite differently by the professional attributes of donors. Lastly, efforts by states to protect judicial independence after *Republican Party of Minnesota v. White* lowered overall giving among most types of donors.

Throughout the contemporary era of judicial elections – called by many the period of “new style” judicial campaigns – fundraising and spending by judicial campaigns has increased by considerable amounts (Bonneau 2017; Bonneau and Hall 2009, Sample et al. 2010). With many scholars in the fields of law and political science commenting on the negative effects of fundraising by judicial candidates (Geyh 2016; O’Connor and McGregor 2011-2012), their concern has been directed to the application of law and whether judges follow campaign dollars when making decisions on the merits. This paper addresses one avenue of this debate – fundraising networks in state supreme court elections. By evaluating contributions from networks of individuals, rather than money raised from corporations, groups, or political parties, this study explores the impact of various campaign and election attributes on the size of individual contributions. The central argument of this paper is campaign fundraising is a complex activity affected by the salience of judicial campaigns and elections, yet that salience is distinctly affected by the state environments in which they occur. Moreover, fundraising in judicial elections has been strongly impacted by state restrictions on campaign speech.

Of the state-level features expected to shape elections and campaign fundraising are canons of judicial ethics that regulate speech within judicial campaigns. In 2002, the United States Supreme Court in *Republican Party of Minnesota v. White* ruled the announce clause, which restricted judicial candidates from discussing their views on controversial legal or political issues, violated the First Amendment’s right to free speech.<sup>1</sup> For Minnesota, the state supreme court’s adoption of the announce clause reflected an effort to limit a candidate’s discussion of issues that might be litigated. Justice Antonin Scalia reasoned that Minnesota, and

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<sup>1</sup> (536 US 765)

other states that used the announce clause, unconstitutionally limited the ability of candidates to communicate subjects of interest to their voters. The result was the removal of the announce clause in states that had adopted it prior to the Court's decision.

Following the US Supreme Court's decision in *Republican Party of Minnesota v. White*, the ABA encouraged states to revise their codes of judicial conduct. While remaining faithful to the ideas of judicial independence and judicial impartiality, the ABA sought to respond to the *White* decision through revised electoral rules designed to restrain the electoral activities of candidates that could lead to the appearance of bias. New reforms in the ABA's Model Code of Judicial Conduct emphasized the different role that judges, elective and appointive, serve compared to those in the legislative or executive branches (Peters 2018). While emphasizing that candidates may discuss their personal views, candidates "should acknowledge the overarching judicial obligation to apply and uphold the law" (American Bar Association 2011, Comments 11 and 13 on Rule 4.1; see Peters 2018, pg. 21). The result, in part, was the creation of the post-*White* statements clause that emphasized that judges or judicial candidates shall not make commitments, pledges, or promises on issues that may come before the court. As such, the post-*White* statements clause reasserted prior ABA commitments towards avoiding bias, while acknowledging that judicial candidates could now discuss their views on public policy and politics.

Since *White*, state courts and judicial disciplinary commissions have enforced existing and modified commit, pledges, and promises clauses, including the new post-*White* statements clause (National Center for State Courts 2018). With prejudicial speech by a candidate, investigations of alleged speech violations are conducted to determine the extent of violations.

State courts and judicial disciplinary commissions then decide whether the accused impropriety was sufficient to merit sanction, including public censure, fines, suspension, or removal from office (National Center for State Courts 2019). While states have sought to reduce burdens on judicial candidates by issuing advisory opinions (Peters 2018) and creating campaign oversight committees (Rottman 2008), events of public reprimand have occurred since *White*, including prominent actions in New York and Florida (National Center for State Courts 2018).

### **The *White* Decision in the Literature**

Research exploring the impact of the *White* decision has uncovered varied evidence that should be both satisfying and disturbing to critics of judicial elections. In their study of attack advertising, Hall and Bonneau (2013) find that liberalized speech codes and attack ads encourage voters to be more active participants in judicial elections. In line with findings from presidential (Finkel and Geer 1998; Geer 2006) and state supreme court elections (Gibson 2012), Hall and Bonneau (2013; see also Hall 2015) find that rather than demobilizing voters, attack ads encourage citizen participation in races for seats on state supreme courts.<sup>2</sup> Whether judicial elections are more competitive after the *White* decision has also received attention. Hall and Bonneau (2008) found state court elections see no difference in contestation when comparing elections before and after the *White* decision. In a recent study, Peters (2018) finds that restrictions on candidate speech had little effect on candidate advertising. Likewise, participation among voters was not affected by the Court's decision, with no substantive

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<sup>2</sup> Hall and Bonneau (2013) and Hall (2015) both evaluate ballot roll-off as their measure of citizen participation in state supreme court elections.

difference in ballot roll-off when comparing the years before and after the *White* decision (Bonneau and Loepp 2014).

In this paper, we rely upon theoretical foundations from the judicial elections literature, as well as established theories from studies of fundraising and electoral participation. While much of what is known about citizen participation originates from studies of voter participation, campaign fundraising has also received significant attention. Continuing with themes from the literature on judicial elections relating to the importance of campaigns, elections, and state environments, we assess the effects of restrictive speech canons, features of campaigns, and state rules that condition the outcomes of judicial elections. Fortunately, states offer much in terms of institutional and contextual variation, which allows for theories to be tested and assumptions about elections in the “new-style” of judicial campaign to be considered. Of primary interest is how different types of contributors are affected by state speech codes when giving money. By looking at patterns of giving for all contributors, attorneys, non-attorneys, and business contributors at the campaign level of analysis, we may better understand the informed nature of those that give to judicial campaigns.

### **Campaign Fundraising and Donations from Individuals**

Much remains unclear about how campaign fundraising operates in the “new style” era of judicial elections. While Bonneau’s (2007; 2017) research uncovered important connections between campaign fundraising and a candidate’s incumbency status and lower court experience, the design of elections, and the resources allocated to courts, uncertainty continues about how the *White* decision affected fundraising in judicial races. By utilizing data collected by the National Institute on Money in Politics, we explore these developments using a

multilevel model, with consideration that group characteristics (i.e., states and their environments) should alter the explanatory impact of election-based characteristics. With election data nested within states, statistical dependencies by different levels of data are considered to allow a more sophisticated interpretation of election and state-level predictors of fundraising in state supreme court elections.

To understand campaign fundraising, this study explores total donations received by state supreme court campaigns from individuals. While only ten percent of the American electorate donates to political campaigns (Rosenstone and Hanson 1993), individuals are now the largest source of contributions in both state (La Raja and Schaffner 2015) and federal elections (Jacobson and Carson 2015). Contributors tend to be older, male, white, affluent, and support more ideologically extreme positions (Ensley 2009; Francia et al. 2003; La Raja and Schaffner 2015). Moreover, research shows contributors support better-known incumbent candidates (Bonneau 2007; Krasno, Green, and Cowden 1994) and respond favorably to close elections (Ensley 2009; Francia et al. 2003), leading to heightened fundraising where incumbents seek reelection and where elections are tightly contested.

Empirical work on state supreme court elections, however, has largely focused on the determinants of voter mobilization with participation tied to conditions that increase the salience of elections (Hall 2007; Hall and Bonneau 2008, 2013; Klein and Baum 2001). In studies of campaign spending, election salience and institutional designs encourage greater spending by judicial campaigns (Bonneau 2005; Frederick and Streb 2008). Relevant to many of these studies is the consistent, positive impact of the closeness of elections, campaign spending, and election designs on citizen participation in judicial elections (Hall 2007; Hall and Bonneau 2008,

2013). Given the importance of individual contributors to raising money, theories developed for understanding fundraising and mobilization are jointly used in this study to explain the determinants of total individual contributions to judicial campaigns.

### **Theoretical Expectations and the Post-*White* Environment of Judicial Elections**

With the US Supreme Court's decision in *Republican Party of Minnesota v. White* to invalidate the announce clause, a re-appraisal by the states and the ABA of legitimate campaign speech was conducted to protect the integrity of state courts. Existing limitations, such as those on commitments, pledges, and promises by candidates, were revised and adopted in states to avoid questions about judicial impartiality (Peters 2018). Among state efforts to adjust to the post-*White* environment was the adoption of the ABA's post-*White* statements clause in seven states that utilize partisan or nonpartisan judicial elections. The post-*White* statements clause asserts that judges or judicial candidates shall not "with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance" of the duties of office (see Peters 2018, pg. 38).

To protect the impartiality of judges following *White*, the ABA and several states adopted the new statements clause to remove a candidate's temptation to extend themselves during the election process (Peters 2018). With a focus on the impact of this new judicial canon, this analysis explores whether fundraising by judicial candidates was obstructed by this limit on campaign speech. We expect that where states adopted the post-*White* statements clause, donations to judicial campaigns were smaller than where candidates remained free to discuss their policy objectives with less fear of reprimand. For candidates in states that did not



adopt the new statements clause, contributors have better information through policy pronouncements to evaluate their alignment with a candidate's views.

**Hypothesis 1 (H1):** Adoption of the post-*White* statements clause will reduce total funds received by individuals in state supreme court elections.

According to Francia et al. (2003), donors to election campaigns divide into four categories – investors, ideologues, intimates, and incidentals. Two groups, according to Francia et al., are prominent contributors in elections in the United States – investors that are motivated by material gains and ideologues that are motivated by purposive or ideological goals. As a group of donors expected to feel the legal or professional consequences of judges elected to state courts, attorneys are counted here as investors seeking material benefits and narrow policy outcomes. While contributing attorneys may also be ideologues, intimates (i.e., those familiar with a candidate), or incidentals (i.e., those with no clear reason for giving), contributions by attorneys are expected to be motivated by the material incentives that come from electing supportive and like-minded jurists.<sup>3</sup> Though decisions to contribute depend in part on a candidate's probability of winning, attorneys are likely an informed group of contributors that are less affected by limits on campaign speech. Donors from outside the legal field, however, should give smaller donations due to reduced information about a candidate's preferences. To evaluate the effect of the post-*White* statements clause, donations for all contributors, attorneys, and non-attorneys are evaluated separately.

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<sup>3</sup> Of non-investors, it stands to reason that many attorney contributors are also intimates, or those personally connected to a candidate running for office. While investors are likely the larger group – as they are for most elections (Francia et al. 2003) – it is plausible that many contributors give due to a personal connection.

**Hypothesis 2 (H2):** State adoption of the post-*White* statements clause will have a smaller effect on attorneys and a larger negative effect on non-attorneys.

### **Data and Methodology**

To test these expectations, we use data from the National Institute on Money in Politics' (NIMP) Follow the Money data archive, which collects information about campaign contributions to political campaigns in the United States, including those participating in judicial elections. Campaign finance data from twenty-two states with competitive partisan or nonpartisan judicial elections are explored in this study. Retention elections, however, are not evaluated due to their non-contested nature. With our analysis directed to fundraising from networks of individual donors, the dataset does not include money donated by corporations, interest groups, political parties, or any other non-individual contributor. While donations by non-individuals are fundamentally important for judicial election campaigns, the incentives for giving are likely quite different for those groups than individual donors. As noted in Hypothesis 2, consideration of individual contributions is explored as a unified group and separately for attorneys, non-attorneys, and individual donors connected to business networks. By exploring funds raised from networks of contributors, we may better isolate the challenges experienced by judicial campaigns where trying to encourage donors to give money. We explore campaign fundraising in 247 judicial elections and 507 supreme court campaigns from 2000 to 2017.<sup>4</sup>

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<sup>4</sup> There are 507 total observations in the analysis of all contributors, 481 observations for attorney contributors, 505 observations for non-attorney contributors, and 482 observations for business associated contributors. Missing observations in the models of attorneys, non-attorneys, and business contributors are the result of no contributions from specific donor groups. For example between 2000 and 2017, twenty-five campaigns did not receive donations from (non-attorney) business donors.

A now-extensive body of data exists to explore features of state courts. From Paul Brace and Melinda Gann Hall's State Supreme Court Data Archive to Matthew Hall and Jason Windett's more recent New Data on State Supreme Courts, researchers have an increasingly large pool of data to better understand how state courts operate and the forces weighing on judges when making decisions. With state court elections, studies by Melinda Gann Hall, Chris Bonneau, and Bert Kritzer, among others, demonstrate an improved understanding of judicial election outcomes, voter turnout, and spending during the transition towards the "new style" of judicial politics since the late 1980's. With NIMP's collection of contribution data, scholars have another opportunity to investigate questions about judicial election fundraising and how fundraising correlates with attributes of campaigns, elections, and state environments and laws. This research follows successful efforts from of prior state-level studies, including La Raja and Schaffner's (2015) study of campaign finance laws and Brown's (2013) study of self-financed gubernatorial campaigns, to better understand how fundraising from individual donors connects to essential features of candidates and election campaigns, as well as state rules that regulate speech in judicial campaigns.

### ***Dependent Variables***

The dependent variable for each model (funds raised from all contributors, attorney contributors, non-attorney contributors, and business contributors) is the total amount raised from individual donors per capita by state supreme court campaign. The per capita amount is explored to better allow comparison where state populations differ. Contributions are adjusted to constant dollars (2017) using the Consumer Price Index to make estimates comparable over

time. Use of constant dollars is a conventional procedure where multiple years are explored (see Engstrom and Ewell 2010).

To understand patterns of fundraising both overall and by donor networks, four dependent variables are used – one for total contributions by individual contributors (*total contributions*), a second for total contributions by donors connected to the field of law (*total attorney contributions*), a third for non-attorney donors (*total non-attorney contributions*), and a fourth for non-attorney business donors (*total business contributions*).

### ***Key Independent Variables***

The models of campaign fundraising account for several known factors that affect the performance of judicial elections and participation by citizens. Of the variables associated with candidate attributes, we include measures of incumbency status (*incumbent*), lower court experience (*quality candidate*), gender (*female candidate*), and whether a candidate accepted public funds (*public funds*). *Incumbent* is coded 1 if a candidate serves as a state supreme court justice and 0 if a challenger or open seat candidate. *Quality candidate* is coded 1 if a candidate has served as a lower court judge and 0 if a candidate has no judicial experience.<sup>5</sup> *Female candidate* is coded 1 if a candidate is a woman and 0 if a man. The *public funds* measure is coded 1 where a campaign accepted public financing from a state; whereas, campaigns that accepted only private monies are coded 0. Election variables include a race's open seat status (*open seat*) and a state's history of competitive elections (*competitive court*). *Open seat* is coded 1 if a race includes no incumbent and 0 if a race features an incumbent. *Competitive*

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<sup>5</sup> Chris Bonneau provided information about lower court experience for candidates and electoral competition in elections from 2000-2008. The authors collected these data from 2009-2017.

*court* is coded 1 where a state's most recent contest was decided by 55 percent or less of the vote and 0 where the winning candidate won by more than 55 percent.

Of the state level predictors, we consider partisan election designs (*partisan election*), district-based elections (*district election*), duration of term (*term length*), the number of high court justices (*court size*), state supreme court professionalization (*professionalization*), and five categories of contribution limits (*contribution limit*). *Partisan election* is coded 1 where states use partisan ballots to select their judges and 0 where states use nonpartisan ballots. *District election* is coded 1 where judges are elected by the voters at the district level, rather than by at-large constituencies. *Term length* is equal to a court's term of office. Court size is equal to the maximum number of justices. *Professionalization* is a variable created by Squire (2008) that measures a state supreme court's salary, staff, and docket discretion.<sup>6</sup> We use five categorical variables to control for state contribution limits.<sup>7</sup> *Contribution limit #1*, the base category, is assigned to states with limits between the minimum and the 25<sup>th</sup> percentile. *Contribution limit #2* is assigned to states with limits between the 26<sup>th</sup> and 50<sup>th</sup> percentiles. *Contribution limit #3* is assigned to states with limits between the 51<sup>st</sup> and 75<sup>th</sup> percentiles. *Contribution limit #4* is assigned to states with limits between the 76<sup>th</sup> percentile and the maximum limited contribution. *Contribution limit #5* is assigned to states with no limit on contributions.

Three explanatory variables identify how judicial election laws impact a campaign's ability to communicate with donors. *Post-White clause* is coded 1 where states adopted the

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<sup>6</sup> We use Squire's "discretionary score" measure, which indicates the balance between a court's mandatory and discretionary cases.

<sup>7</sup> Contribution limits were adjusted to constant dollars (2017) prior to separation into groups.

new post-*White* statements clause and 0 where not adopted.<sup>8</sup> *Announce clause* is coded 1 where states applied the announce clause prior to *Republican Party of Minnesota v. White* and 0 where not applied or invalidated. *Solicitation limit* is coded 1 where states prohibit candidates from soliciting donors for contributions and 0 where restrictions are not applied.

Table 1 presents a detailed description of the variables used in the analysis of campaign fundraising.

[Insert Table 1 here]

### ***Methodology***

Election and state-level variables are used in this multilevel analysis to predict total campaign fundraising from individuals, including separate models for attorney, non-attorney, and business donations. Multilevel models allow the estimation of a model that contains estimates of two or more levels of analysis. This analysis breaks into multiple areas of observation, including those at the election and state-levels. With information about individual and group characteristics nested within the state-level data, dependence between different levels is addressed for each tier of data. As such, we use a two-level model with judicial campaigns nested within each state. An alternative approach is to use ordinary least squares (OLS) analysis; however, OLS is inappropriate for estimating models with multiple levels due to the assumption that coefficients are independent from other explanatory variables. Multilevel models address dependence between different groups and allow intercepts and coefficients to vary across elections.

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<sup>8</sup> Scott Peters shared data for judicial election restrictions between 2000 and 2010. The authors collected data between 2011 and 2017.

## Results

### *Descriptive Evidence*

To understand ongoing trends in state supreme court elections, Table 2 displays the central tendencies for total funds raised per capita from individual donors by state. Table 2 also includes the amounts raised from attorneys, non-attorneys, business donors, and the number of elections and campaigns between 2000 and 2017. Throughout the states, contested state supreme court campaigns raised an average of \$0.051 per capita. There were, however, pronounced differences by state and type of contributor. Following the expectations of this paper, states varied considerably in terms of the average amount raised per state citizen. Among all contributors, the average sum per capita ranged from just \$0.007 in Minnesota (less than one cent per state citizen) to \$0.195 in West Virginia (almost twenty cents per state citizen).

[Insert Table 2 here]

Among different networks of contributors, states saw few of their judicial campaigns rely exclusively on attorneys - a category of contributors easily connected to state courts.<sup>9</sup> That said, the financial connection between attorneys and campaigns is considerable in several states. In New Mexico, Georgia, and Mississippi, attorneys gave greater amounts per capita than non-attorneys. In several other states, including Texas, Illinois, Kentucky, and Arkansas, attorneys came close matching contributors from other professional fields. This activity by attorneys suggests a heightened awareness within the legal community about those running for

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<sup>9</sup> According to NIMP's Follow the Money data, attorneys were the most active group of contributors in state supreme court elections, giving 30.4 percent of the total contributions.

state courts. In total, the average sum raised from attorneys was \$0.021 per capita. States again varied with attorneys least generous in North Dakota (\$0.001 per capita) and Minnesota (\$0.003 per capita).

Attorneys, like the total contributor amounts, gave the largest totals in West Virginia (\$0.089 per capita) and Montana (\$0.056 per capita). Similarly, variation is observed among non-attorneys. Overall giving from non-attorneys was \$0.031 per capita – slightly greater than the mean value for attorney donations. Non-attorneys gave the smallest sums in Minnesota (\$0.005) and Texas (\$0.006). As with total contributions and donations by attorneys, non-attorney fundraising was most pronounced in West Virginia (\$0.111 per capita) and Montana (\$0.104 per capita). With donations from individuals tied to business and corporate affiliations, the average sum raised across the states was \$0.016 per capita. The more specific patterns for business donations align with the broader trends for non-attorney donations. Business contributions ranged from \$0.003 per capita in Minnesota to \$0.059 per capita in West Virginia.

Last among the summary description, the number of contested elections and campaigns active in those elections were quite different by state. Overall, North Dakota had the fewest contested elections between 2000 and 2017 – just two. Among those elections, there were just four campaigns. Other states with relatively fewer contests include New Mexico with four contested elections and seven campaigns, Georgia with five contested elections and eight campaigns, and Illinois with five contested elections and ten campaigns. States with frequently contested elections and campaigns include Texas with thirty elections and fifty-nine campaigns and Ohio with twenty elections and forty campaigns.



## ***Regression Results***

[Insert Table 3 here]

[Insert Figure 1 here]

Table 3 shows the results for the multilevel models used to explain total per capita contributions from individuals. Model 1 introduces the null model with the constant representing the mean for all contributions. With this null model, the grand mean of total contributions per capita is .054 and the interclass correlation (ICC) is .332, the latter suggesting that 33 percent of variance in contributions per capita is at the state level. Figure 1 presents a caterpillar plot for the standard error deviations by each state from the grand mean. Each value is the ranking of the state effect (or random intercept) from lowest to highest. Minnesota is the state with the lowest contributions per capita, followed by Texas and Washington State. Of the judicial election states with higher contributions per capita, West Virginia was most extreme followed by Montana. Fundraising by judicial campaigns in Nevada were least extreme, falling within .0014 of the grand mean.

Model 2 of Table 3 introduces campaign and election attributes, including measures of incumbency, lower court experience, candidate gender, competitive state environments, acceptance of public funds, competitive state environments, and open seat status. In terms of the performance of the variables, total contributions per capita were higher among incumbent candidates, candidates with lower court experience, where public funds were not used, and among open seat contests. Candidate gender and a history of competitive judicial elections had no meaningful effect on funds raised.

Model 3 represents the full model with candidate, election, and state-level predictors. Among the state-level variables are partisan election, district elections, term length, court size, state supreme court professionalization, contribution limits, announce clause, post-White clause, and solicitation clause. With inclusion of state and candidate/election level variables, variation between the states now accounts for 21 percent of the overall variance, or a 12 percent reduction in between-group variance from the null model. Model 3 is also the preferred model according to the Bayesian information criterion (BIC), which has the lowest value of the three models. The results for the estimates for candidate and election-level are largely unchanged, though lower court experience is now marginally important. Structural and legal characteristics, including district election designs, term length, professionalization, larger limits on contributions, and judicial canons intended to protect judicial independence correlate with increased fundraising per capita.

Focusing on the substantive impact of the predictors from Model 3, contributors react very favorably to officeholding status, increasing total contributions per capita by \$0.035 where candidates are incumbents. Candidates with lower court experience receive a boost with contributions per capita exceeding those without court experience by \$0.012. As should be expected, acceptance of public campaign funds has a dramatic effect decreasing funds per capita by \$0.061 per capita. Transitional elections that do not feature an incumbent reduce total contributions by \$0.019. Of the state-level predictors, district constituencies led to \$0.048 fewer dollars per capita. With an additional two years of office, total contributions per capita increased by \$0.046. A one-unit increase in professionalization decreased total contributions by \$0.121. Campaign finance laws, however, had a meaningful negative effect. Where states

did not limit individual contributions, total funds per capita were \$0.056 less than the most restrictive states. Where states adopted the post-*White* statements clause, total individual donations per capita decreased by \$0.023.

[Insert Table 4 here]

[Insert Figure 2 here]

Table 4 presents the findings for attorney contributions per capita. Beginning with the null model (Model 4), the grand mean of the dependent variable is .023 and 20 percent of the variance in fundraising from attorneys per capita is at the state level. The caterpillar plot in Figure 2 indicates that state patterns of attorney giving follow the general patterns for all contributors. Attorneys in Texas gave the smallest total per capita, followed closely by Minnesota and Washington State. West Virginia, Montana, and then Mississippi had the most generous attorneys. New Mexico, with a deviation of .0005 came closest to the national trend. Model 5 adds the basic features of campaigns and elections. Of the variables tested, attorney contributions per capita increased where candidates were an incumbent or had lower court experience, and where campaigns forgo public funds. Unlike total contributions per capita, attorney contributions were not affected by open seat contests.

With inclusion of state-level variables in Model 6, the residual interclass correlation is now just 4 percent – a 16 percent reduction in between-group variance from the null model of attorney donations. Additionally, the full model receives the lowest BIC value among the three attorney donation models. The addition of state level covariates to the campaign and election variables improved the predictive power of the model of attorney contributions. Of the variables added to Model 6, term length, state supreme court professionalization, unlimited

contributions, and the post-White clause were correlated with attorney donations.

Additionally, district elections are associated with attorney contributions, though the relationship is just outside of conventional significance ( $p=.055$ ).

Six variables have a substantive impact on attorney donations. Among those variables, attorney donations per capita increased by \$0.020 where candidates were an incumbent. Though just marginally important, lower court experience was tied to an additional \$0.008 per capita in attorney contributions. Attorney contributions per capita increased by \$0.029 where campaigns that did not accept public funds. Among district-based elections, attorney contributions per capita were \$0.014 less than candidates elected in at-large districts. Two additional term years increased attorney donations per capita by \$0.021. A one-unit increase in professionalization decreased attorney contributions per capita by \$0.054. Attorney donations per capita were also lower in states with unlimited contributions, with \$0.020 larger donations than among the most restrictive states. Attorney contributions per citizen also decreased by \$0.011 where states endorsed the post-*White* statements clause.

[Insert Table 5 here]

[Insert Figure 3 here]

Table 5 presents the findings for per capita donations by non-attorneys with the null findings presented in Model 7. The grand mean of the dependent variable (non-attorney contributions) is .033 with 29 percent of the variance in non-attorney contributions at the state level. Figure 3 presents state deviations from the grand mean with Minnesota and West Virginia again the most extreme states. Idaho, with a deviation of just -0.0008, is the state positioned closest to the grand mean. Model 8 presents the predictors of election and campaign

attributes. Of the predictors, two variables – incumbent status and acceptance of public campaign funds – have a discernible influence, though open seat contests are marginally important.

Model 9 combines the campaign, election and state-level variables to explain non-attorney contributions per capita. Variation between the states accounts for 6.5 percent of the overall variance, a 22.8 reduction in between-group variance from the null model. According to the likelihood ratio test and BIC, the full model is again the preferred approach. Incumbent status, acceptance of public funds, open seat contests, district election, term length, professionalization, contribution limits, and the post-White canon are statistically connected to non-attorney contributions. In terms of the marginal effects, nine variables register a substantively important impact on non-attorney donations. Non-attorney donations per capita increase by \$0.013 where an incumbent seeks reelection. Where campaigns accept public money, non-attorney donation per capita decrease by \$0.035. Open seat contests, fully significant in Model 9, are tied with a \$0.012 increase in non-attorney donations per capita. Among state-level predictors of non-attorney donations, district elections have a considerable impact on non-attorneys, decreasing the per citizen amount by \$0.037. Two additional years of term length, however, encourage non-attorney donations increasing the per capita amount by \$0.030. A one-unit increase in professionalization decreases per person giving among non-attorneys by \$0.091. With campaign finance laws, unlimited contributions are associated with smaller non-attorney contributions by an amount of \$0.035. Moderate limits, those between the 51<sup>st</sup> and 75<sup>th</sup> percentiles of allowed contributions, were marginally important leading to a decrease of \$0.013 in per capita donations compared to the most restrictive states. Non-

attorneys were also affected by the post-*White* clause, giving \$0.011 less per capita where endorsed.

[Insert Table 6 here]

[Insert Figure 4 here]

Table 6 and Figure 4 present the results for the subset of non-attorney individual contributors connected to business and corporate interests. The findings, including those in Figure 4, resemble those for non-attorneys with state deviations from the grand mean again most extreme in Minnesota and West Virginia. Here, however, North Dakota is the state positioned closest to the grand mean. Model 10 reports the null model. The grand mean is .016 and 19.6 percent of the variance in business contributions per capita is attached to the state level. Figure 4 presents each state's placement with respect to the grand mean. Minnesota's smaller per capita giving is again situated towards the left of the plot, while West Virginia likewise tracks as the state with the highest level of per capita giving. North Dakota, however, is the state with the smallest deviation. The addition of campaign and election variables in Model 11 have only a minor effect on reducing residual variance. Among the campaign and election variables, public opinion deterred business-minded individuals.

Model 12 presents the full model results for individuals connected to business. Like the models of total, attorney, and non-attorney contributions per capita, the addition of state variables strongly improves the performance of the model. The residual interclass correlation is 3.9 percent – a reduction of 15.7 percent in between-group variance. Further, variables connected district designs, term length, professionalization, and contribution limits join the public fund variable to explain business-associated contributions. Where candidates accept

public funds, business-associated donations per capita decrease by \$0.021. Where campaigns occur in district, rather than at-large elections, giving is \$0.019 less per capita. A two-year increase in term length swells per capita giving by \$0.016. With professionalization, business donors give \$0.038 less per capita with a one-unit increase. Two ordinal measures of contribution limits register a substantive effect. Business donations, like the alternative models, are smaller in unlimited contribution states rather than where states apply the strongest limits – here by \$0.015 per capita. With limits that range from 26<sup>th</sup> through 50<sup>th</sup> percentiles, giving is also smaller by a per capita value of \$0.037.

### **Conclusion**

Fundraising by state supreme court campaigns presents an interesting area of political behavior. Studies of state supreme court elections have observed the conditions that encourage citizen involvement in these once staid elections, noting that specific features of elections motivate citizens to participate. Similarly, state environments and institutions used to structure state courts and their elections have been found to both encourage and suppress activity. For most of these studies, however, the focus has been on voters and whether they participate fully in elections. Efforts have been made in recent years to broaden the scholarship on judicial elections, including studies that look at individual judge votes (Bonneau and Cann 2015), decisions by individual contributors to donate to judicial campaigns (Boyea 2017), and the financial capacity of judicial campaigns (Bonneau 2007, 2017). It is with the latter – campaign fundraising – that this study seeks to make an impact. Throughout, we have focused on the determinants of state supreme court fundraising by looking at the total sum per capita of individual donations. This study asks if similar incentives for participation also affect

campaign fundraising. While this study evaluates fundraising at the campaign level of analysis, the answer is affirmative that many of the same determinants affect participation and campaign fundraising.

Why do networks of individual donors give money to judicial campaigns? The results show that several factors are at work. The results for each network model, including all contributors and contributors divided among attorneys, non-attorneys, and business donors, show that part of the answer is attached to the characteristics of candidates and elections. Campaigns raise larger sums among all contributors where a candidate is better known. Incumbents, for example, bring in much larger sums than non-incumbents, which partially explains their superior electoral performance. Candidates with lower court experience likewise see an advantage in donations, with less experienced challengers lagging in total donations. At the election-level, open seat and closely contested elections encourage donors to give.

As suggested in previous studies, the structures of state government differently situate campaigns among state citizens. For campaigns raising money from individuals, the status and resources of state supreme court have a significant effect on the ability to raise larger sums. Campaigns raise more money where supreme courts have added authority over their docket and have the potential to define a state's public policy. Counterintuitively, where individuals are permitted to give larger or unlimited sums, judicial campaigns benefit. In turn, where contributions are strictly limited, campaigns raise smaller sums.

There is significant evidence throughout this study that variables from both the election and state levels affect the performance of judicial campaigns in raising money. The multilevel analysis makes several advances from the existing research. First, by disentangling the effects



of campaigns and elections and state environments, one can better understand the degree to which the idiosyncratic features of states impact the overall findings. Second, by examining different levels of judicial elections using separate models, the results demonstrate that an inclusive model best explains the impact of the post-*White* statements clause on the fundraising performance of judicial campaigns.

An essential finding of this study of donor networks is the extent that post-*White* statements clauses affected fundraising in state supreme court elections. While fundraising was negatively impacted by revisions to judicial canons throughout the states, the impact was not even among all sectors of contributors. Fundraising from attorneys and most non-attorneys was diminished where states re-asserted stricter limits on campaign speech.

As judicial campaigns continue to adjust to the post-*White* environment and where states apply restrictive speech canons, candidates must balance their right to speak on the campaign trail with redesigned state attempts to avoid judicial bias. For candidates in states with the post-*White* statements clause, an obstacle with fundraising is how to disseminate information, while avoiding improper policy pronouncements. According to the findings of this study, this result is sufficiently strong that candidates in states with the post-*White* statements clause raise smaller sums than where the new canon was not implemented. With individuals now the largest source of campaign donations, the post-*White* statements clause reflects an important limitation on a candidate's ability to campaign successfully.

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Table 1: Variable Descriptions for Campaign Fundraising in State Supreme Court Elections

Variable		Variable Description
<i>Dependent Variables</i>		
Contributions Per Capita	=	.0000001 to .693, total funds per capita raised from individual contributors, 2017 dollars
Attorney Contributions Per Capita	=	.000003 to .513, total funds per capita raised from attorney contributors, 2017 dollars
Non-Attorney Contributions Per Capita	=	.0000001 to .500, total funds per capita raised from non-attorney contributors, 2017 dollars
Business Contributions Per Capita	=	.000002 to 0.327, total funds per capita raised from business contributors, 2017 dollars
<i>Candidate/Election Variables</i>		
Incumbent	=	1 if candidate is an incumbent; 0 otherwise
Quality Candidate	=	1 if non-incumbent candidate has lower court experience; 0 otherwise
Female	=	1 if candidate is a woman; 0 otherwise
Public Funds	=	1 if candidate accepted public campaign funds; 0 otherwise
Open seat	=	1 if seat is open; 0 otherwise
Competitive Court	=	1 if previous election cycle featured a race won by 55 percent or less of the vote; 0 otherwise
<i>State Variables</i>		
Partisan Election	=	1 if election was a partisan election; 0 otherwise
District Election	=	1 if election decided by a district-based constituency; 0 otherwise
Term Length	=	6 to 12, number of years allowed with term of office
Court Size	=	5 to 9, number of state supreme court seats
Professionalization	=	.267 to 1.007, Squire's index of state supreme court professionalization
Contribution Limit	=	1 to 5, ordinal measure of state individual contribution limit
Announce Clause	=	1 if state adopted Announce clause; 0 otherwise
Post-White Clause	=	1 if state adopted post-White statements clause; 0 otherwise
Solicitation Limit	=	1 if state restricted candidate solicitation of campaign funds; 0 otherwise

Table 2: Contributions Per Capita in Contested State Supreme Court Elections (2017 Dollars), 2000-2017

State	Contributions Per Capita	Attorney Contributions Per Capita	Non-Attorney Contributions Per Capita	Business Contributions Per Capita	Elections (N)	Campaigns (N)
Alabama	\$0.048	\$0.012	\$0.037	\$0.010	17	33
Arkansas	\$0.067	\$0.032	\$0.035	\$0.018	11	17
Georgia	\$0.037	\$0.028	\$0.009	\$0.005	5	8
Idaho	\$0.040	\$0.007	\$0.032	\$0.009	6	9
Illinois	\$0.026	\$0.012	\$0.014	\$0.005	5	10
Kentucky	\$0.041	\$0.019	\$0.022	\$0.010	11	21
Louisiana	\$0.056	\$0.019	\$0.038	\$0.013	7	17
Michigan	\$0.042	\$0.016	\$0.025	\$0.015	14	42
Minnesota	\$0.007	\$0.003	\$0.005	\$0.003	15	25
Mississippi	\$0.080	\$0.047	\$0.035	\$0.020	19	39
Montana	\$0.154	\$0.056	\$0.104	\$0.051	11	23
Nevada	\$0.056	\$0.021	\$0.039	\$0.011	9	18
New Mexico	\$0.036	\$0.023	\$0.013	\$0.007	4	7
North Carolina	\$0.023	\$0.010	\$0.013	\$0.006	18	41
North Dakota	\$0.019	\$0.001	\$0.019	\$0.019	2	4
Ohio	\$0.048	\$0.016	\$0.032	\$0.024	20	40
Oregon	\$0.042	\$0.016	\$0.025	\$0.019	6	9
Pennsylvania	\$0.058	\$0.023	\$0.035	\$0.019	6	19
Texas	\$0.011	\$0.005	\$0.006	\$0.006	30	59
Washington	\$0.020	\$0.007	\$0.012	\$0.004	16	27
West Virginia	\$0.195	\$0.089	\$0.111	\$0.059	6	18
Wisconsin	\$0.078	\$0.019	\$0.060	\$0.025	9	21
ALL STATES	\$0.051	\$0.021	\$0.031	\$0.016	247	507

Table 3: Multilevel Models Predicting Campaign Fundraising for All Individual Contributions, Contested Elections, 2000-2017

	Model 1		Model 2		Model 3		Expectation
	$\beta$	SE	$\beta$	SE	$\beta$	SE	
Intercept	.054	.009**	.032	.011**	-.070	.056	
Candidate/Election Variables							
Incumbent			.035	.007**	.035	.007**	$\beta > 0$
Quality candidate			.013	.006*	.012	.006	$\beta > 0$
Female candidate			.002	.005	.003	.005	N.E.
Public funds			-.054	.013**	-.061	.013**	$\beta < 0$
Open seat			.015	.007*	.019	.007**	$\beta > 0$
Competitive court			.002	.006	.003	.005	$\beta > 0$
State Variables							
Partisan election					.009	.013	$\beta > 0$
District election					-.048	.015**	$\beta > 0$
Term length					.023	.004**	$\beta > 0$
Court size					.003	.005	$\beta > 0$
Professionalization					-.121	.036**	$\beta > 0$
Contribution limit							
(2) 26 <sup>th</sup> – 50 <sup>th</sup> percentiles					-.019	.012	$\beta > 0$
(3) 51 <sup>st</sup> – 75 <sup>th</sup> percentiles					-.015	.012	$\beta > 0$
(4) 76 <sup>th</sup> – max percentiles					-.022	.015	$\beta > 0$
(5) No limit					-.056	.016**	$\beta > 0$
Judicial Canons							
Post-White clause					-.023	.006**	$\beta < 0$
Announce clause					.003	.011	$\beta < 0$
Solicitation limit					.006	.015	$\beta < 0$
<b>Variance Components</b>							
Between-group variance		.041		.044		.019	
Within-group variance		.058		.056		.055	
ICC		.332		.380		.210	
R <sup>2</sup>		-		0.008		0.318	
-2 log likelihood		693.903		712.825		729.942	
BIC		-1369.122		-1369.595		-1329.086	

Notes: Dependent variable natural log of total funds raised by judicial campaign from individual contributors, 2017 dollars; N = 507; Groups = 22; SE = standard error; ICC = intraclass correlation; BIC = Bayesian information criterion; N.E. = no expectation; \*  $p < .05$ , \*\*  $p < .01$ , two-tailed test of significance.

Table 4: Multilevel Models Predicting Campaign Fundraising for Attorney Contributions, Contested Elections, 2000-2017

	Model 4		Model 5		Model 6		Expectation
	$\beta$	SE	$\beta$	SE	$\beta$	SE	
Intercept	.023	.004**	.008	.006	-.031	.028	
Candidate/Election Variables							
Incumbent			.020	.004**	.020	.004**	$\beta > 0$
Quality candidate			.009	.004*	.008	.004	$\beta > 0$
Female candidate			-.001	.003	-.001	.003	N.E.
Public funds			-.023	.008**	-.029	.008**	$\beta < 0$
Open seat			.006	.004	.006	.004	$\beta > 0$
Competitive court			.003	.003	.003	.003	$\beta > 0$
State Variables							
Partisan election					.001	.007	$\beta > 0$
District election					.014	.007	$\beta > 0$
Term length					.011	.002**	$\beta > 0$
Court size					.0007	.002	$\beta > 0$
Professionalization					-.054	.018**	$\beta > 0$
Contribution limit							
(2) 26 <sup>th</sup> – 50 <sup>th</sup> percentiles					-.005	.006	$\beta > 0$
(3) 51 <sup>st</sup> – 75 <sup>th</sup> percentiles					-.005	.006	$\beta > 0$
(4) 76 <sup>th</sup> – max percentiles					-.009	.007	$\beta > 0$
(5) No limit					-.020	.008*	$\beta > 0$
Judicial Canons							
Post- <i>White</i> clause					-.011	.004**	N.E.
Announce clause					.007	.007	N.E.
Solicitation limit					.002	.008	$\beta < 0$
<b>Variance Components</b>							
Between-group variance		.017		.019		.007	
Within-group variance		.035		.034		.034	
ICC		.200		.238		.043	
R <sup>2</sup>		-		.014		.217	
-2 log likelihood		903.751		916.955		931.493	
BIC		-1788.975		-1778.329		-1733.295	

Notes: Dependent variable natural log of total funds raised by judicial campaign from attorney contributors, 2017 dollars; N = 481; Groups = 22; SE = standard error; ICC = intraclass correlation; BIC = Bayesian information criterion; N.E. = no expectation; \*  $p < .05$ , \*\*  $p < .01$ , two-tailed test of significance.



Table 5: Multilevel Models Predicting Campaign Fundraising for Non-Attorney Contributions, Contested Elections, 2000-2017

	Model 7		Model 8		Model 9		Expectation
	$\beta$	SE	$\beta$	SE	$\beta$	SE	
Intercept	.033	.005**	.025	.007**	-.041	.033	
Candidate/Election Variables							
Incumbent			.012	.005*	.013	.005**	$\beta > 0$
Quality candidate			.003	.004	.002	.004	$\beta > 0$
Female candidate			.003	.003	.003	.003	N.E.
Public funds			-.031	.009**	-.035	.009**	$\beta < 0$
Open seat			.008	.005	.012	.004*	$\beta > 0$
Competitive court			-.0007	.004	.0005	.004	$\beta > 0$
State Variables							
Partisan election					.007	.008	$\beta > 0$
District election					-.037	.009**	$\beta > 0$
Term length					.015	.002**	$\beta > 0$
Court size					.003	.003	$\beta > 0$
Professionalization					-.091	.021**	$\beta > 0$
Contribution limit							
(2) 26 <sup>th</sup> – 50 <sup>th</sup> percentiles					-.017	.007*	$\beta > 0$
(3) 51 <sup>st</sup> – 75 <sup>th</sup> percentiles					-.013	.008	$\beta > 0$
(4) 76 <sup>th</sup> – max percentiles					-.012	.009	$\beta > 0$
(5) No limit					-.035	.010**	$\beta > 0$
Judicial Canons							
Post-White clause					-.011	.004*	$\beta < 0$
Announce clause					-.005	.008	$\beta < 0$
Solicitation limit					.007	.009	$\beta < 0$
<b>Variance Components</b>							
Between-group variance		.025		.026		.010	
Within-group variance		.039		.038		.038	
ICC		.293		.323		.065	
R <sup>2</sup>		-		-0.001		.275	
-2 log likelihood		887.071		896.335		912.044	
BIC		-1755.469		-1736.650		-1693.373	

Notes: Dependent variable natural log of total funds raised by judicial campaign from non-attorney contributors, 2017 dollars; N = 505; Groups = 22; SE = standard error; ICC = intraclass correlation; BIC = Bayesian information criterion; N.E. = no expectation; \*  $p < .05$ , \*\*  $p < .01$ , two-tailed test of significance.

Table 6: Multilevel Models Predicting Campaign Fundraising for Business Contributions, Contested Elections, 2000-2017

	Model 10		Model 11		Model 12		Expectation
	$\beta$	SE	$\beta$	SE	$\beta$	SE	
Intercept	.016	.003**	.015	.004**	-.028	.020	
Candidate/Election Variables							
Incumbent			.002	.003	.002	.003	$\beta > 0$
Quality candidate			-.003	.003	-.004	.003	$\beta > 0$
Female candidate			.002	.002	.002	.002	N.E.
Public funds			-.016	.005**	-.021	.006	$\beta < 0$
Open seat			.003	.003	.005	.003	$\beta > 0$
Competitive court			.001	.002	.001	.002	$\beta > 0$
State Variables							
Partisan election					-.0005	.005	$\beta > 0$
District election					-.018	.005	$\beta > 0$
Term length					.008	.001	$\beta > 0$
Court size					.002	.001	$\beta > 0$
Professionalization					-.037	.013	$\beta > 0$
Contribution limit							
(2) 26 <sup>th</sup> – 50 <sup>th</sup> percentiles					-.010	.004	$\beta > 0$
(3) 51 <sup>st</sup> – 75 <sup>th</sup> percentiles					-.008	.005	$\beta > 0$
(4) 76 <sup>th</sup> – max percentiles					-.005	.005	$\beta > 0$
(5) No limit					-.015	.006	$\beta > 0$
Judicial Canons							
Post-White clause					-.004	.003	$\beta < 0$
Announce clause					-.003	.005	$\beta < 0$
Solicitation limit					.003	.006	$\beta < 0$
<b>Variance Components</b>							
Between-group variance		.013		.013		.005	
Within-group variance		.026		.026		.026	
ICC		.195		.210		.038	
R <sup>2</sup>		-		0.011		0.189	
-2 log likelihood		1055.163		1061.376		1075.091	
BIC		-2091.794		-2067.152		-2020.446	

Notes: Dependent variable natural log of total funds raised by judicial campaign from non-attorney contributors, 2017 dollars; N = 482; Groups = 22; SE = standard error; ICC = intraclass correlation; BIC = Bayesian information criterion; N.E. = no expectation; \*  $p < .01$ , \*\*  $p < .05$ , \*\*\*  $p < .01$ , two-tailed test of significance.

Figure 1

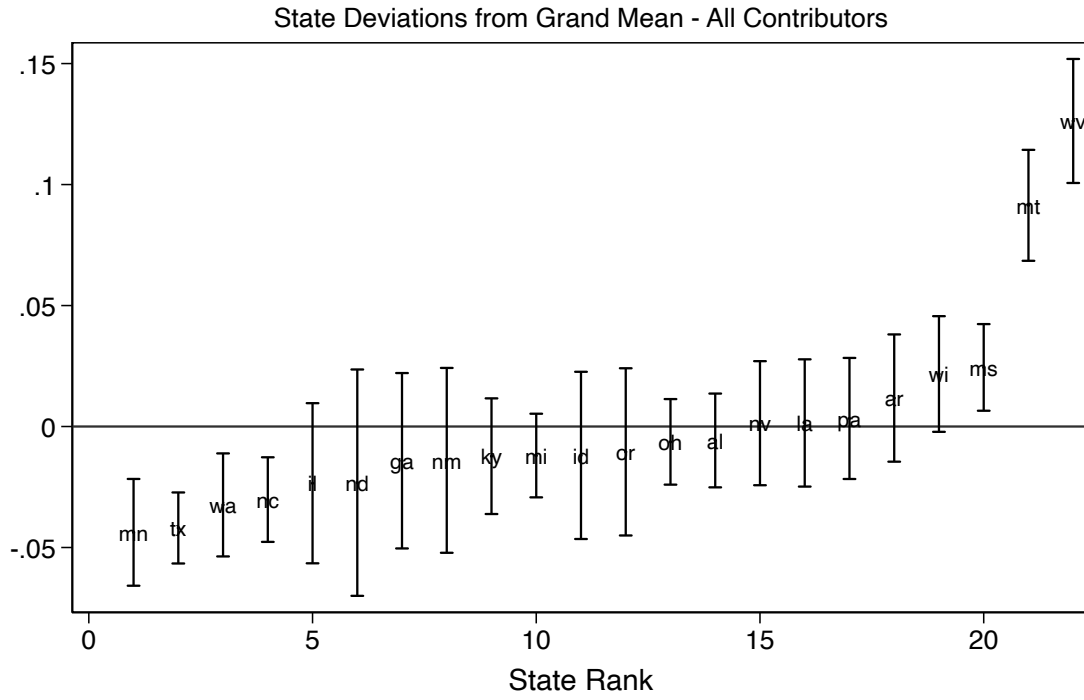


Figure 2

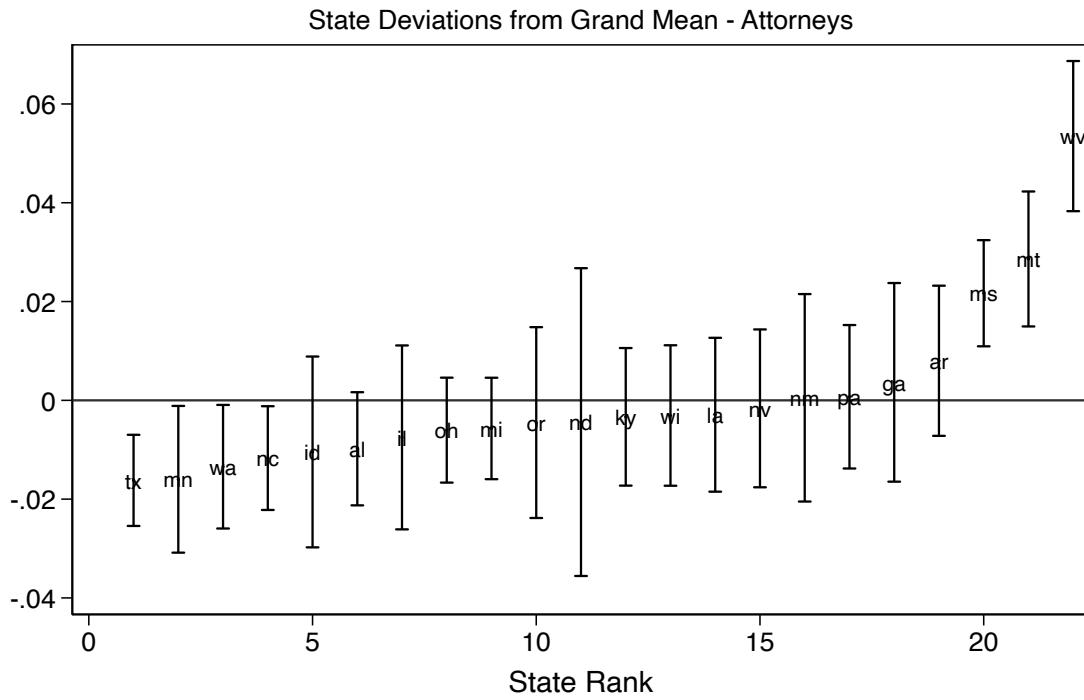


Figure 3

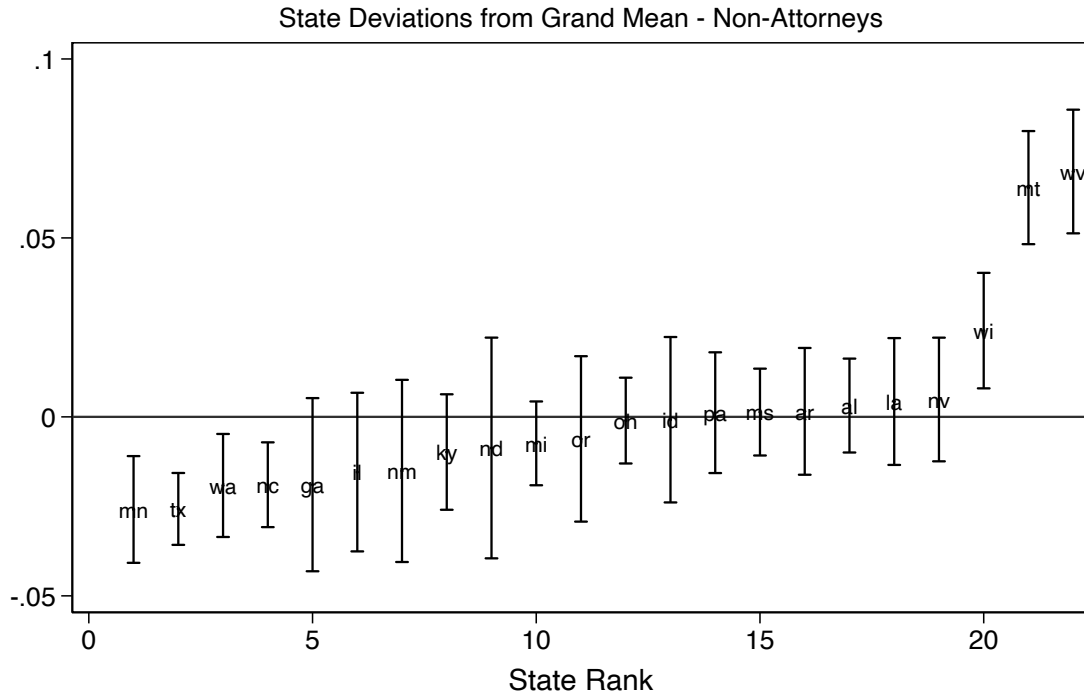


Figure 4

