Homines Economici: Judicial Decision-making and the Personal Financial Interests of Supreme Court Justices

Thora Giallouri
giallour@usc.edu

Elli Menounou
menounou@usc.edu

Jordan C. Peterson
jordancp@usc.edu

Department of Political Science
University of Southern California

Abstract: Existing scholarship on judicial decision-making has focused on the ways in which federal judges act strategically and according to their ideological or political preferences. Ideology, however, is not the only personal characteristic that might affect judicial behavior in business litigation. In this paper, we develop and test a theory of judicial decision-making based on judges' personal financial interests by examining how United States Supreme Court Justices' personal finances and investments impact their decisions in cases involving business litigants. While federal law demands that judges recuse themselves in cases which present them with any conflict of interest, including cases in whose outcome they have a financial stake, recent findings highlight that judges are selective regarding which cases they sit out. If judges indeed participate in cases that implicate their personal financial interests either directly or by proxy, do these interests affect the way they vote? To answer this question, we marshal evidence from mandatory financial disclosure reports filed by all Supreme Court Justices from 2002-2013 and argue that in cases implicating business interests, judges vote to promote profitability and limit damages for economic sectors and industries in whose financial success they are personally invested, as measured by the allocation of their personal assets and investments. We find that all else equal, Supreme Court Justices are more likely to decide cases in favor of business litigants when they are more substantially personally invested in firms from industries affected by the outcome of the litigation.

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Introduction

During the 2006 term, Chief Justice John Roberts puzzled quite a few Supreme Court spectators and researchers with his decision to initially recuse himself from the consideration of the Credit Suisse (USA) LLC. et al. v. Billing et al.[1] case and then re-join his colleagues in its adjudication, without first divesting himself of stock owned in two of the 16 petitioners' financial investment institutions. It is undeniable that there is a tendency to overlook such indiscretions from our federal judges. Any discussion focusing on judges' personal financial interests in the cases they hear is almost instantly baptized with the derogatory term "conspiracy theory." After all, Gulati and Bainbridge (2002) tell us that judges do not possess the knowledge or expertise to navigate such complicated financial endeavors as trading in the stock market. Yet, news stories often come to surface with reports about criminal investigations, and even charges pressed against lower court members of the federal judiciary for choosing to decide cases in which the judges had a personal financial interest. More than just stories about judges' potential recusals, however, these reports suggest that judges do consider their personal economic wellbeing when deciding cases. In this paper, we develop and test a theory that situates this tendency within existing research on other determinants of judicial behavior separate from judges' policy goals.

If judges are utility-maximizing actors, it would be irrational to assume that pursuing policy according to ideological tendencies is the sole utility they care about. If judges maximize preferences, what grounds are there for excluding the optimization of judges' personal financial wellbeing from the realm of preferences? Posner, a federal judge himself, explained that "judges, like other people, seek to maximize a utility function that includes monetary and nonmonetary elements (the latter including leisure, prestige and power)" (1972). We take for

[1] 551 *U.S.* 264

granted that ideologically conservative judges support business litigants over others, but the majority of cases, including those in the economic area, are decided on a 9-0 or 7-2 basis. Ideology is certainly a strong predictor of pro-business behavior, but what explains variation in judges' decisions within business cases that ideology does not account for? In other words, under what conditions do judges side with business litigants? The general liberal-conservative explanation does not always account for tendencies which do not conform with such revealed preferences; therefore, answering this question is important in helping understand that judges are not just policy-motivated, but also financially-motivated. In addition, if that is the case, then answering this question reveals that it is important to also rethink judicial recusal requirements.

We argue that judges' personal financial interests are a force to be reckoned with even if it appears such interests are only indirectly implicated by the litigation. On the contrary, with regards to the Supreme Court caseload at least, financial interests can be expressed by proxy due to the nature of cases the Court hears, which rarely affect only present litigants, but instead classes of litigants. Similarly, in business cases, decisions of the high court can have an impact not only for the litigant, but spill over in the pertinent industry, or third industries which may in no way be connected to the litigants. To explain attitudes regarding business litigation, we propose, therefore, that judges are also motivated by their personal financial interests, which can severely be affected by litigation that reaches the Supreme Court. The broad significance of the cases that Justices have to decide is made apparent from the amicus curiae briefs submitted in support of one or the other litigant by other industries or businesses belonging in the same industry.

We find that first, there is a positive relationship between votes in favor of business and the presence of Justices' financial assets in the same industry as that business, and second, a

positive relation between votes in favor of business and amicus curiae briefs submitted in favor of a litigant which belongs in the same industry as the Justices' assets.

Judicial Preferences and Business Litigation

What accounts for the pro-business attitudes of Supreme Court Justices? Most existing research has focused on ideological variation among Justices. For example, scholars and the media alike have suggested that the addition of two conservative Justices, Chief Justice Roberts and Justice Alito, to the Supreme Court has resulted in a more business-friendly Court (Adler 2009: 943-944, Epstein et al. 2013: 1431-1433). The argument that conservative Justices are more likely to side with business has been demonstrated empirically for certain core issue areas affecting businesses such as economic regulation; however, this is not the case for all policy areas where business is involved in litigation (Epstein et al. 2013). Alternatively, there is some empirical evidence suggesting what has been interpreted as pro-business behavior by the Roberts Court is in reality pro-government behavior. In other words, Justices on the early Roberts Court did not support businesses due to their broad pro-business preferences, because business interests frequently aligned with the government's interests in cases involving the Republican administration under President Bush and justices tended to side with the solicitor general during that time period (Adler 2009, Srinivasan and Joondeph 2009).

What is missing from these existing accounts, and what can help us better understand pro-business judicial behavior, is an explanation that considers how judges' personal financial interests affect their decisions in litigation involving business. Some existing scholarship has examined the association between public officials' investment choices and their policy decisions in institutional environments other than the judiciary; for instance, some research indicates that

legislators' policy choices on roll call votes is based on variation in their personal asset allocation (Peterson and Grose 2015; Griffin and Anewalt-Remsburg 2013), and that federal bureaucrats make adjudicatory decisions in a manner that reflects their personal financial exposure to firms in industries subject to administrative regulation (Peterson 2016). To our knowledge, however, no scholar has analyzed the relationship between federal judges' personal assets and investments on the one hand, and their decisions in litigation involving businesses on the other. In this paper, we intend to contribute to the growing scholarship on how public officials' policy choices are associated with or induced by their private investment decisions.

Research on judicial behavior has shown that justices are interested in promoting their preferences, while constrained by their institutional environment (Epstein and Knight 1998, Martin and Quinn 2002). While this motivation has been mostly understood as the maximization of the justices' policy preferences, studies have also attempted to move away from policy goals and toward more generalized interests as a way to explain judicial behavior (Epstein and Knight 2013). Judges, after all, "want…what everyone else wants" (Posner 1993), and their goal is to "maximize a utility function that includes monetary and nonmonetary elements" (Posner 1972: 415). Here, we offer an explanation for judges' expressed preferences in business litigation that suggests judicial decision-making involves not only the maximization of judges' policy preferences, but also potential changes in the value of judges' personal investment portfolio.

If judges are not motivated simply by policy considerations, but also by their personal financial interests, then we should expect them to also take into account their personal economic well-being when deciding cases. Focusing mostly on the relationship between courts and Congress, as it relates to judicial salaries, scholars have shown that judges try to maximize the carrots and avoid the sticks by showcasing behavior that does not go against the preferences of

those who pay the bills (Baum 1997). Likewise, research has suggested that judges have an incentive to uphold past legislatures' laws instead of pursuing policies that are more preferable either to them or to current legislators, because they are being rewarded financially by means of their salary (Anderson et al. 1989). Additionally, existing scholarship indicates that Congress signals its approval or disapproval of the Supreme Court's decisions through increases or decreases in the Court's budget (Toma 1991). Finally, judicial retirements appear driven more by judges' economic self-interest than by the long-term fulfillment of judges' policy goals, since judges decide to retire after they fulfill the minimum requirements for retirement, not when they can guarantee that like-minded individuals on the bench replace them and continue to cast votes for preferred policies, as much other research has suggested (Yoon 2006). No existing work, however, has posited a direct link between judges' personal financial interests and their adjudicatory decisions in litigation involving businesses.

Theory: Judges' Personal Finances Influence their Choices in Business Litigation

In this paper, we develop a theory for judges' preferences in business litigation that posits a different manner in which judges optimize their interests. Namely, we theorize that because judges are rational economic actors seeking to maximize the value of their personal investments, judges' pro-business behavior is conditional on the extent to which their personal financial interests are implicated in a given case. More specifically, judges are more likely to support business litigants when the judges are personally financially exposed to the success or failure of firms in economic sectors whose interests are at stake in business litigation before them or pending before them.

When judges have a direct financial interest in a case, they are required to recuse themselves (Bloom 1985). In spite of recusal requirements acting as an institutional constraint on judicial discretion, judges are ultimately the ones deciding whether to recuse themselves, and they typically face only negligible opposition if they elect not to recuse in borderline situations. Although there are some instances in which there is an obvious or direct conflict of interest in a case and judges cannot avoid recusal, many cases are not as clear cut, and judges can participate in the adjudication of a case when the need for them to recuse themselves is not as strong as their incentive to participate in the decision-making (Hume 2014). A judge, for example, is expected to recuse herself when she has invested in a company that is a party in a case she is called to decide. Nevertheless, a judge's financial interests can be affected by the outcome of a case even when a company she owns stock in is not directly involved as a litigant, but the general industry is, since the impact of the case might be – and usually is – felt by a particular industry as a whole (White 1970). Furthermore, an issue under adjudication can have a wider effect that covers more than the single industry directly involved in a case. Consequently, there can be instances in which judges face scant pressure to recuse themselves, but still make decisions which have the potential to profoundly affect the financial circumstances of firms in which the judges have a personal financial interest.

If judges seek to maximize their financial goals, then we expect that desire affects their decision-making in business litigation. Our theory suggests that, all else equal, judges are more likely to decide in favor of business litigants when the judges' personal financial exposure to the success or failure of firms affected by the outcome of the litigation is more extensive. More specifically, then, we argue that judges rule in favor of business litigants when the resulting decision will favorably affect the judges' personal financial interests. Though judges are

expected to recuse themselves in cases where they have a direct financial stake in the outcome, in our subsequent empirical examination of all Supreme Court cases involving one business litigant and regarding core economic issues from 2002 through 2013, no Justice during that time period recused themselves due to their personal investments in firms operating in the same economic sectors as litigants before the Court. This represents more than just an impressionistic window into our data; instead, the dearth of recusals satisfies a necessary condition for our theory because every Supreme Court justice in our sample encountered myriad opportunities in which their adjudicatory choices might have substantially affected the legal or regulatory environment in which firms they are heavily invested in conduct their affairs. In other words, chances abound for judges to feather their proverbial nests by enhancing the business climate for firms on whose success judges' personal financial well-being most depends.

Our theory suggests that judges are more likely to side with the business litigant in a given case when they are more heavily invested in firms from the same economic sector as the business involved in litigation. Exact details of the legal means by which judges indirectly advance the economic interests of firms inevitably vary across cases because courts decide an expansive range of questions involving many different types of businesses, and judges are by necessity policy generalists. These differences, however, do nothing to obscure that in cases involving one business litigant, the economic interests of the litigant firm involved are readily identifiable, and are in all likelihood mostly or entirely coextensive with the economic interests of the industry in which the firm operates. If judges indeed see themselves as better off when their assets and investments are worth more, we expect that they will support litigant firms who operate in the same industry as those in which they are most heavily invested. This motivates our *litigant industry hypothesis:*

> **<u>Litigant Industry Hypothesis</u>**: The **greater** a Supreme Court justice's total personal financial investments in firms from the industry in which a business litigant operates, the **more likely** that justice will vote in favor of the business litigant.

The involvement of a business litigant from an industry in whose success or failure a judge has a personal financial stake is not the only way in which the judge's personal financial interests are implicated in business litigation. With perhaps surprising regularity, firms from economic sectors other than that in which the business litigant itself operates file amicus curiae briefs with the Supreme Court in support of the litigant firm. In such instances, affirmative participation in the process of dispute resolution by these outside-industry amici firms submitting briefs on behalf of the litigant firm persuasively suggests that it is not only the industry of the litigant firm that anticipates the potential costs of an anti-business holding with apprehension. Judges, then, are accordingly expected to make decisions in business litigation not just based on the extent to which they are personally exposed to the relative economic standing of the litigant firm's industry, but also based on the level at which they are personally invested in firms from industries that have filed amicus briefs on behalf of the litigant firm. This expectation accounts for the possibility that the financial ramifications potentially attending judicially-constructed economic policy are not just profound in their magnitude, but broad in their applicability. We present the expected observable consequences of this self-regarding inter-industry cooperation by amici firms in our *amici industry hypothesis:*

> **<u>Amici Industry Hypothesis</u>**: The **greater** a Supreme Court justice's total personal financial investments in firms from industries whose members have submitted amicus curiae briefs on behalf of the business litigant in a given case, the **more likely** that justice will vote in favor of the business litigant.

Our theory suggests that judges are rational economic actors who consider their personal investments when making adjudicatory decisions. We maintain that judges evaluate cases

involving business litigants and core economic policy issues, among other well-known considerations, with regard to the potential costs imposed on firms from industries whose economic interests are implicated in those cases, and based on the judges' own personal financial exposure to those firms' relative economic success. In addition, we detailed how inherent flexibility in the rules governing judicial recusal enables judges to engage in the resolution of economic disputes even when their decisions might result in substantial consequences for firms in which they personally are heavily invested. The explanation we offer does not operate to the exclusion of existing theories of judicial behavior that generally emphasize the political and ideological determinants of judicial decision-making; rather, we intend to broaden the current understanding of judicial decision-making in those cases involving one business litigant and regarding core economic issues particularly, by supplying an additional dimension on which judges' adjudicatory decisions might vary. Namely, we contend that in addition to partisan or ideological motivations, judges systematically favor business litigants when the pro-business outcome in a case most significantly affects those judges' personal financial well-being.

Data and Empirical Model

In order to test our theory of the influence of judges' personal financial interests on their decision-making, we estimate a logistic regression model. To construct the dependent variable and main independent variables, we created an independent dataset that contains information about the resolution of cases involving business litigants before the United States Supreme Court from 2002-2013 (over 150 cases), as well as information about Supreme Court Justices' individual investments.

To create this original dataset, we first recorded whether the Supreme Court's overall holding in a given case was *pro-business* or not, and whether each individual Justice's vote was pro-business or not, based on information accessible in the Supreme Court Database (Spaeth et al. 2016); then, we classified the *industry* of the business litigant before the Court in each case examined.[2] We also used LexisNexis' Lexis Advance platform to examine all the amicus curiae briefs filed in any case involving a business, recorded the number of amicus briefs submitted by corporations and other businesses, and classified the *industry* of the business or businesses who filed amicus briefs in each case.

We next collected the financial disclosure forms for all Supreme Court Justices from 2002-2013, which were made available for download by the educational foundation Judicial Watch on its website.[3] The financial disclosure forms for all Justices over this twelve-year period included hundreds of pages detailing their assets and investments, and we transcribed and coded each Justice's assets for each year (including the type of investment, its valuation, and the industry of those businesses the Justice had an equity interest in for individual stocks and sector-specific mutual funds), and then created aggregate measures of each Justice's personal investments for each year. These aggregate measures span the period 2002-2013 and include measures of the total value of each Justice's investments, the total amount owned in equities by each Justice, and the total amount owned in equities separated out by industry.[4] We

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[2] The industries coded were aerospace, agricultural, construction, energy, finance, food/grocery, manufacturing, medical/pharmaceutical, media, real estate, retail, technology, telecommunications, and transportation.

[3] Forms can be downloaded from Judicial Watch's searchable database, accessible at http://www.judicialwatch.org/judicial-financial-disclosure/.

[4] Our data also contain numerous additional aggregate measures of each Justice's reported wealth during each year included in this study, such as the total amount owned in real estate holdings, the total amount owned in mutual funds, and the total amount owned in bonds. While most of these measures were not directly employed in the analysis presented here, we are hopeful that they will prove fruitful in further

subsequently used this information – which details the circumstances and outcomes in cases before the Supreme Court and the personal finances of Supreme Court Justices – to construct the dependent variable and primary independent variables employed in the statistical model that tests our theory and expectations regarding the association between judges' personal investments and finances on the one hand, and their decision-making in cases involving businesses on the other.

The unit of analysis is the Justice-Case, and the dependent variable is whether the Justice cast a *Pro-Business Vote* or not in a given case (coded 1 for a vote in favor of the business litigant in a case, and 0 otherwise).[5] This dependent variable and the coding approach described have been used in other scholarship related to decision-making by Supreme Court Justices in litigation involving businesses (see Epstein, Landes, and Posner 2013). The independent variables of interest are intended to evaluate our expectations regarding the influence of Supreme Court Justices' personal investments and finances on their decision-making in litigation involving businesses.

The first independent variable of interest is the natural logarithm of the dollar value of a Justice's *Personal Financial Investment* in equities from firms operating in the industry of the business litigant in a case.[6] We expect that Justices will be more likely to vote for the business litigant the more stocks or sector-specific mutual funds in the litigant's industry they own, based

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developing future projects related to our research agenda concerning how public officials' personal investments influence their policy choices.

[5] In order to maximize the degree to which the empirical test we designed conceptually matches with our theoretical expectations, we have excluded cases in which both parties were businesses. In these cases, because both litigants are businesses, even the noblest attempts to code the dependent variable as presently designed introduce considerable subjectivity as to which party should be considered the "true" business litigant, and indeed, in a number of such instances Justices were personally invested either in the industry of the petitioner and the respondent, or in the industries of their respective amici.

[6] We employ log-transformed measures of all independent variables that reflect the aggregate dollar values of investments. In so doing, we avoid overstating the effects of dramatically large investments by re-scaling the variables in order to account for the possibility that there are diminishing returns for increasingly large values of investments or total worth (see Grose and Oppenheimer 2007).

on the idea that Supreme Court holdings benefiting the interests of one firm in an industry should confer radiating benefits on other companies in the industry as well. The next independent variable of interest is the natural logarithm of a Justice's personal *Investments in Industries Filing Amicus Briefs* on behalf of business litigants. Unlike a measure of Justices' financial interests in litigant industries alone, this measure encompasses Justices' financial exposure to investments in firms from other industries which have affirmatively demonstrated their interest in the resolution of the case, and, by filing an amicus brief favoring the business side, have signaled that their industry has something to gain or lose depending on the outcome of litigation. We expect that Justices with greater aggregate personal financial exposure to equities or investments in all industries of the business litigant's amici will be more likely to vote in favor of the business litigant.

The other independent variables are intended to account for other financial and political factors that might influence judges' decision-making in cases involving businesses. First, we control for the possibility that judges' votes in business cases might be driven by their financial stake in firms from those industries whose members have filed amicus curiae briefs *against* the business litigant in a given case. By including an independent variable that reflects the natural logarithm of the dollar value of the Justice's *Investments in Industries Filing Amicus Briefs Against the Business Litigant*, we take account of the Justice's personal financial exposure to the success or failure of firms in economic sectors whose members have demonstrated an interest in the business litigant itself losing at the Supreme Court. We expect that Justices with greater aggregate personal financial exposure to equities or investments in all industries of amici filing briefs against the business litigant will be more likely to vote against the business litigant. We include two additional aggregate measures of the Justices' finances that may impact their votes

in business litigation: *Total Equities Wealth*, which represents the natural logarithm of the dollar amount of each Justice's wealth held in stocks and mutual funds; and *Total Wealth*, which represents the natural logarithm of the dollar value of the Justice's overall wealth. We expect that Justices with more equity investments will be more likely to support business litigants because a pro-business judiciary could be considered better for equities markets at large. Likewise, we expect that Justices who are wealthier overall will be more likely to support business litigants because of a general pro-business bias among wealthier individuals, and also as a proxy for pro-business preferences.

In order to control for the political determinants of judicial behavior, we include two other variables that may explain the Justices' votes: the Justice's *Ideology* as measured with Judicial Common Space scores (see Epstein et al. 2007), where lower values reflect liberal ideology and higher values reflect conservative ideology; and a binary variable that indicates the *Party of the Appointing President* for each Justice (coded 0 for Democratic Presidents, and 1 for Republican Presidents). We expect that more conservative Justices and Republican Justices will be more likely to vote for business litigants. Last, to account for the possibility that there are otherwise unobserved temporal effects that lead certain classes of litigants to experience success or failure in a given Supreme Court term, our statistical model includes year fixed effects.

Results: Justices Support Litigant Firms when Personal Financial Interests Implicated

We present the results of the logistic regression model that estimates the likelihood of Supreme Court Justices voting in favor of business litigants in cases involving core economic issues in Table 1. The results of the model confirm our expectations as articulated in both the Litigant Industry Hypothesis and the Brief Industry Hypothesis regarding the tendency of judges

to support business litigants when the judges' personal finances and investments in industries potentially affected by the outcome of the litigation. In keeping with the Litigant Industry Hypothesis, the findings in Table 1 indicate that all else equal, Justices are more likely to support business litigants in cases involving core economic issues when the Justices own larger amounts of equities in firms from the industry of the litigant firm. Likewise, in support of the Brief Industry Hypothesis, the results suggest that all else equal, a Justice is more likely to support the business litigant in such cases the greater the amount of the Justice's personal investments in firms from the industry or industries whose members submitted amicus curiae briefs on behalf of the litigant firm.

[TABLE 1 ABOUT HERE]

The only statistically significant financial variables were those that supported our hypotheses by measuring whether Justices might enhance the value of their own assets by supporting the litigant firm. On the other hand, Justices demonstrated no systematic tendency to vote against litigant firms if they were more heavily invested in firms from industries whose members filed amicus briefs against the litigant firm, suggesting there may be some limitations – whether pragmatic or ethical – to judges' strategic calculations about how to make adjudicatory decisions that further their personal financial interests as well. Neither was there any association between the Justices' total wealth or aggregate exposure to equities markets and their decisions on the cases we analyzed. Alternatively, and as anticipated, Justices' ideology bore heavily on their decisions in these cases, as conservative Justices were significantly more likely than their liberal counterparts to support business litigants.

Figure 1 displays the expected difference in Justices' likelihood of supporting business litigants given different levels of personal financial investment in a given case. The figure

indicates that all else equal, with all other independent variables held constant at their mean values, the probability of a Justice voting in favor of the business litigant increases from 56.7 percent, if a Justice had zero personal investments whatsoever in both the industry of the litigant firm and the industries of any of the firm's amici, to 70.1 percent, if a Justice had $150,000 worth of personal investments in both the industry of the litigant firm and the industries of the firm's amici. Crucially, neither distribution of personal assets presented in the Figure is an outlier in the data: indeed, zero is the modal amount of personal financial exposure across Justices for both *Personal Financial Investment* and *Investments in Industries Filing Amicus Briefs for the Business Litigant*, and $150,000 represents a value only one standard deviation higher than the mean personal investment of both types for Justices in our sample. Furthermore, our results could be underestimating the effect of personal assets on pro-business voting behavior, due to underinclusiveness of investments (Hume 2014).

[FIGURE 1 ABOUT HERE]

The results from our empirical test imply significant normative considerations regarding the legal and political construction of judicial neutrality. Our central finding – that Supreme Court Justices systematically vote in favor of business litigants when they have greater personal investments in firms that might experience negative economic consequences if the business litigant lost – supplements the current understanding of judicial decision-making by directly relating judges' expressed preferences in business litigation to the judges' personal financial interests. This finding also suggests that the current legal regime governing judicial conflicts of interest and judicial recusal leaves much to be desired if such rules are sincerely intended to prevent judges – whose fulfillment of their institutional responsibilities encompasses both dispute resolution and policymaking functions – from ruling on cases whose outcome directly

affects their net worth. Additionally, the results offer support for the notion that judges are highly calculating strategic actors who consider cases at bar from a multidimensional perspective; in addition to seeking the realization of their preferred policy agenda, our findings indicate that judges decide cases in a way that maximizes the value of their assets based not just on whether they are personally invested in firms from the industry of the litigant firm, but on whether they are personally invested in firms from any industry that filed an amicus curiae brief on behalf of the litigant firm. This suggests that Supreme Court Justices pay keen attention to the economic ramifications of their own decisions, and that Justices tend to construe such consequences as they pertain to the Justices' personal investment portfolio at least as regularly as they consider the effects on the marketplace more broadly.

In this paper, our analysis has been limited to cases involving one business litigant and regarding core economic issues such as administrative regulation and labor-management relations. This approach to case selection permitted us to theorize with relative clarity about the nature of the personal economic stakes for the judges involved. First, limiting our sample to cases involving only one business litigant allowed us to claim with greater confidence that support for a certain litigant in each case legitimately represented a pro-business vote by a Justice. Second, limiting the substantive scope of our sample to Supreme Court cases related to core economic issues meant that we could claim with assurance that the Court's decision in a given case would substantially affect the economic wellbeing of the litigant firm, and as such, that there would conceivably exist radiating consequences for firms in the litigant's industry and firms in the industries of the amici alike. This paper, then, represents a first step toward better understanding the extent to which judges consider their personal financial interests when deciding cases.

Future endeavors in this research agenda should take into account how judges make choices in cases where both firms are businesses, perhaps even from the same industry, and whether judges' business litigation decisions that enhance the value of their personal investments are limited only to those cases involving core economic issues. Since the legal issues involved in the cases we examine typically constitute ideologically salient concerns such as the regulatory environment of business, it may be that judges are even more likely to make decisions that further their personal economic wellbeing in cases with business litigants that do *not* involve core economic issues, because in such cases they would be relatively unconstrained by their ideological preferences on state interference in the marketplace. In this regard, this substantive limitation on which cases we consider makes our empirical approach a more difficult test case for our theory that judges consider their personal finances and investments when making decisions on business litigation.

Conclusion

The United States Supreme Court, especially during its Roberts era, has been described as a friend of business litigants, mostly due to the addition of two conservative Justices in the Court. Our results, however, indicate that ideology is not the only factor that explains pro-business behavior at the Justice level. Our research offers evidence of financially-motivated judicial decision-making in cases where business is up against a non-business party, by showing that Supreme Court Justices are more likely to cast a pro-business vote when they have personal investments in the industries that might be negatively affected by an anti-business outcome. In other words, Supreme Court Justices appear to indeed want what everyone else wants, as Posner (1993) suggested.

These results add to our understanding of judicial behavior, by demonstrating that Supreme Court Justices are not acting solely based on their policy preferences. On the contrary, other interests, in this case personal financial considerations, directly affect their voting behavior. While judges act strategically, within an institutional framework, to advance their preferences, our focus should move away from the assumption that these motivations are related solely to policy outcomes, since evidence suggests that other interests also play a role in judicial decision-making.

Finally, our results talk to the recusal requirements currently in place. The fact that judges are called to recuse themselves when they have a direct, personal financial interest in a case appears to not take into account any indirect relationships between the judges' assets and the business interests in the outcome. More often than not, a decision at the Supreme Court level does not affect only the single business litigant before it, but the whole industry that business belongs in. In other instances, these effects are felt by more than one industry in the business world. As a result, judges with indirect financial interests in the outcome of litigation can still participate in the adjudication of a case that might affect them personally. While this is not a violation of the current recusal requirements, it does influence the image of impartiality courts base their legitimacy on.

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Table 1: Personal Investments and Supreme Court Decision-making	
Dependent Variable: *Pro-Business Vote (1 for business; 0 against business)*	
Independent Variables	Coefficient (Standard error)
Personal Financial Investment	0.020 (0.011)*
Investments in Industries Filing Amicus Briefs for Business Litigant	0.029 (0.015)*
Investments in Industries Filing Amicus Briefs against Business Litigant	0.009 (0.025)
Justice's Total Equities Wealth	-0.007 (0.016)
Justice's Total Wealth	-0.000 (0.057)
Ideology	0.740 (0.214)**
Appointing President's Party	0.231 (0.196)
Constant	14.095 (443.306)
Pseudo-R^2	0.070
N	1056

**$p \leq 0.01$; *$p \leq 0.05$ (one-tailed tests for all independent variables).

The model also includes year fixed effects, which have been omitted from the table in the interest of space.

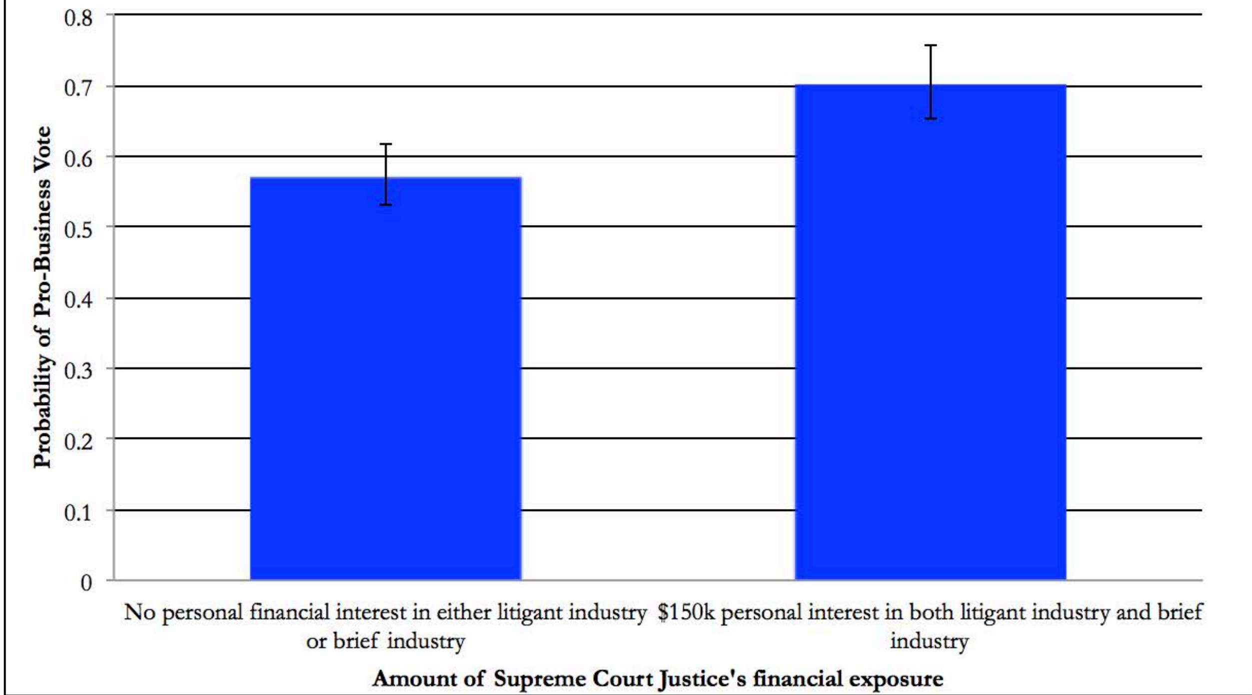
Figure 1: Supreme Court Justices' Personal Finances and Decision-Making on Cases involving Businesses
Probability of Pro-Business Vote
0.8
0.7
0.6
0.5
0.4
0.3
0.2
0.1
0
No personal financial interest in either litigant industry or brief industry
$150k personal interest in both litigant industry and brief industry
Amount of Supreme Court Justice's financial exposure