



**10 Questions and Answers About**  
***Justice at Risk: An Empirical Analysis of Campaign Contributions and Judicial Decisions***

**1. What are *Justice at Risk*'s key findings?**

- There is a significant relationship between business group contributions to state supreme court justices and the voting of those justices in cases involving business matters.
- The more campaign contributions from business interests justices receive, the more likely they are to vote for business litigants appearing before them in court.
- A justice who receives half of his or her contributions from business groups would be expected to vote in favor of business interests almost two-thirds of the time.
- The empirical relationship between business contributions and justices' voting for business interests exists only in partisan and nonpartisan systems; there is no statistically significant relationship between money and voting in retention election systems.
- There is a stronger relationship between business contributions and justices' voting among justices affiliated with the Democratic Party than among justices affiliated with the Republican Party.

Business cases were identified by a key search in WestLaw. Once all business cases were identified within a given state and year, 25 cases were randomly selected for the sample. If there were 25 or fewer cases in a given state and year, all available cases were coded. Contributions from the following sectors were included: agriculture, communications, construction, defense, energy, finance, real estate and insurance, health care, transportation and a general business category.

**2. Does *Justice at Risk* establish how campaign contributions are influencing judicial decisions?**

There are at least two ways in which campaign financing might be associated with judicial decisions in favor of campaign contributors' interests. The first way is a selection bias among the set of judges who win election. Judges who are already ideologically or otherwise predisposed to vote in favor of business interests are likely to draw campaign financing from business groups and, by virtue of those resources, are more likely to be elected. Campaign finance support from business groups would then be correlated with pro-business decisions on the bench, at least in part, because business groups directed the necessary campaign financing to judges they anticipated were ideologically likely to vote in their favor in the first place. A second way in which campaign financing may influence judicial decisions is less subtle: Judges

who are not ideologically or otherwise predisposed to vote in favor of business interests might, whether intentionally – or, as one former judge put it, subliminally – cast votes in cases either to obtain financial support from those business interests for their future campaigns, or at least to reduce incentives for opposition or attacks funded by business interests. The empirical literature has established that both of these two causal pathways play an important role in the relationship between campaign contributions and judicial decision-making.

Most importantly, regardless of the pathway, the data demonstrate that interest group money *is* affecting judicial outcomes. Whether the campaign contributions determine which judges are on the bench or they influence how the judges on the bench decide cases – or both – the rising tide of campaign contributions from interest groups is placing fair and impartial justice at risk.

### **3. Why did *Justice at Risk* examine campaign contributions by business interests and business cases?**

Interest groups have come to dominate campaign finance in judicial elections. During the period from 2000-2009, business groups and lawyers/lobbyists (often used by scholars in this field as a proxy for plaintiffs' attorneys) contributed roughly equal amounts to judicial campaigns, but business groups were responsible for over 90 percent of the television advertising paid for by interest groups. For this reason, *Justice at Risk* examines contributions by business interests and business cases. Nevertheless, we might expect that any group that gains a similar predominance in the funding of judicial elections might have an effect on the behavior of judges, and the ability of *any* group to influence judicial decisions by means of campaign contributions should be of concern to supporters of fair and impartial courts.

### **4. Aren't judges from states with pro-business laws, such as strong tort reform measures, merely following the law if they vote in favor of business interests in the cases before them?**

In states where existing law favors business interests, one should expect judges to vote more often in favor of business interests regardless of contributions. Thus, *Justice at Risk* includes a control capturing the legal climate to ensure that the analyses isolate the influence of business contributions from the underlying state law. It uses the Pacific Research Institute's U.S. Tort Liability Index, which evaluates the tort litigation risks and liability costs across states, as its measure of the state law's underlying partiality to business interests. Other control variables include contributions received from nonbusiness sources, justices' judicial ideology, party affiliation, the state's citizen and government ideology, and case strength.

### **5. How does *Justice at Risk* account for the strength of the legal argument presented by the business interests in each case?**

The study's model includes data about each individual justice on the court, and uses the collective behavior of the court as a proxy for strength of case. To create a measure of case strength, the study first estimates the model based only on the justices' ideological predispositions, campaign contributions, the state tort climate, and the citizen and government ideology, without the case strength variable. This allows researchers to predict the most likely

number of pro-business votes from the other justices on the court, again in the absence of case strength considerations. The difference between this predicted vote and the actual vote provides the measure of case strength in a given opinion. Thus, the model might predict that, based on factors other than case strength, four of the six other justices would support the business position. If the opinion includes five of the other justices supporting the business position, this variable would indicate a stronger than average case. In contrast, if only one other justice voted in favor of business instead of the predicted four, the variable would indicate that the case was very weak.

**6. Does *Justice at Risk* examine any possible relationship between independent expenditures and judicial decisionmaking?**

Because of the limited resources available to conduct research and the methodological challenges presented by independent expenditures, they are not included in *Justice at Risk*. The American Constitution Society encourages researchers to take advantage of the data made available through this project to conduct additional research on a variety of topics, including independent expenditures in judicial campaigns.

**7. Who are the researchers who conducted the empirical research upon which *Justice at Risk* is based?**

Joanna Shepherd, the author of *Justice at Risk*, is a tenured Associate Professor of Law at Emory University School of Law. Her work on topics including judicial elections has been published in top national law reviews and peer-reviewed economics journals. She also is a consultant with the Chicago-based Global Economics group, which provides independent economic analysis of complex, legal regulatory and public policy issues.

Dr. Greg Rabidoux, JD, Ph.D., directed the research phase of this project, Drs. David Klein and Michele Claibourn, of the University of Virginia assisted in the methodological design and analysis, and a team of legal research fellows assisted in the collection and coding of the data.

**8. What data did *Justice at Risk*'s researchers examine, and how did they analyze it?**

The researchers examined over 2,345 business-related supreme court published opinions from all 50 states in the years 2010-2012, and merged this data with over 175,000 contribution records that detail every reported contribution to a sitting state supreme court justice. Using widely accepted measures, they collected data on factors such as individual justice characteristics, ideology, and data about state processes, in order to exclude factors other than contributions as significant influences on judicial behavior.

**9. Is the data on which *Justice at Risk* is based publicly available?**

Any empirical study benefits from transparency. The data analyzed in *Justice at Risk* is available for your review and use at [http://www.followthemoney.org/Research/special\\_topics.phtml](http://www.followthemoney.org/Research/special_topics.phtml), a site hosted by the National Institute for Money in State Politics, a nonpartisan, nonprofit organization that encourages transparency and promotes the independent investigation of state-level elections and public policy in all 50 states. You can view the full report and learn more about ACS's work on state courts by visiting [www.acslaw.org/state-courts/JusticeatRisk](http://www.acslaw.org/state-courts/JusticeatRisk).

**10. Why should everyone care about state courts and how the judges who serve on them are selected?**

More than 90 percent of the United States' judicial business is handled by state courts, and 89 percent of all state court judges face the voters in some type of election. State courts decide cases on issues that touch everyone's life, ranging from health and safety to criminal law and civil rights. Fair and impartial courts are an indispensable element of our democratic system of government.

To learn more about state courts and how the judges who serve on them are selected, please visit the American Constitution Society's state courts resource page at <http://www.acslaw.org/state-courts>.