The Louisiana Supreme Court in Question: An Empirical and Statistical Study of the Effects of Campaign Money on the Judicial Function

Vernon Valentine Palmer*
John Levendis†

This empirical and statistical study of the Louisiana Supreme Court demonstrates that the court has been significantly influenced—wittingly or unwittingly—by the campaign contributions from litigants and lawyers appearing before it. In a statistical sense, campaign donors enjoy a favored status among parties before the court. Facing an aggregate of $1.3 million in political donations in the cases under review, the justices did not find reason to disqualify or recuse themselves.

This study controlled for judicial leanings and the differing philosophical orientations of the justices when no money was involved and used this baseline to compare judicial voting when money was added. It also took into account the size and timing of donations, even measuring the effects of political donations that are made while a case is pending before the court. It also measured the additional advantage obtained by the "net contributor" who contributed a larger political donation than the other side. The statistical correlations indicate that the higher the donation, the higher the odds that the contributor's position will prevail. The data indicate that judicial voting favors plaintiffs' or defendants' positions not on the basis of judicial leaning or philosophical orientation but on the basis of the size and timing of a political donation.

These results, the Authors submit, draw into question the voting behavior of Louisiana's highest court.

 Thomas Pickles Professor of Law and Co-Director of the Eason-Weinmann Center of Comparative Law, Tulane University. B.A. 1962, LL.B. 1965, Tulane University; LL.M. 1966, Yale University; D. Phil. 1985, Pembroke College, Oxford University. I wish to express my sincere gratitude to all those who have given so much time and thought to this Article. Particularly, I owe a great debt of gratitude to my research assistants at Tulane who gave so freely of their time to compile the data for this study. They recognized the importance of the subject and pursued their tasks with great devotion and efficiency over the course of the 2006-2007 school term. Another great debt is owed to Professor John Levendis for agreeing to be my coauthor and for bringing his great expertise in statistics to bear on this subject. Our Article greatly benefitted from the advice of outside readers and referees. Any errors that remain are of course our own.

† Assistant Professor of Economics, Loyola University New Orleans. B.B.A. 1997, Loyola University New Orleans; M.A. 2000, M.S. 2003, Ph.D. 2004, University of Iowa. I owe a great debt of gratitude to two anonymous referees and to Aaron Lowen for their recommendations on the empirical portion of the Article and for verifying several key calculations. Thanks also go to Brandon Thibodeaux for introducing me to Professor Vernon Palmer and to this project. Finally, I wish to thank Vernon Palmer for including me in this project and for his superhuman patience and skill in deciphering my statistics-speak.

I. INTRODUCTION

Distrust of the magistrates is the beginning of the dissolution of society.
—Honoré de Balzac[1]

The effect of campaign contributions on judicial decision making has been the subject of widespread interest and debate, but little empirical research.[2] This empirical and statistical study of the Louisiana Supreme Court over a fourteen-year period demonstrates that some of the justices have been significantly influenced—wittingly or unwittingly—by the campaign contributions they have received from litigants and lawyers appearing before these justices. Statistically speaking, campaign donors enjoy a favored status among litigants appearing before the justices. Our study indicates that the very qualities needed in the highest court—independence, impartiality, and adherence to the rule of law—may have been eroded by the corrosive effect of judicial campaign money. We would not be surprised if the justices claim to be unaware of this, and this study is as much for their information as it is for that of the general public. Some justices may sincerely believe that they have not been influenced by the money they take, but sincerity makes no difference if the reality is otherwise. It may only explain why they have not felt it necessary to recuse

1. HONORÉ DE BALZAC, *Splendeurs et Misères des Courtisanes*, *in* LA COMÉDIE HUMAINE 589, 838 (Pierre Dufief & Anne-Simone Dufief eds., Omnibus 1999) (1847) (author's translation).

2. *See generally* RUNNING FOR JUDGE: THE RISING POLITICAL, FINANCIAL, AND LEGAL STAKES OF JUDICIAL ELECTIONS (Matthew J. Streb ed., 2007) [hereinafter RUNNING FOR JUDGE] (compiling studies of the judicial elections process).

themselves in such cases.[3] Furthermore, it may not be realized that the nature and degree of campaign money influence has radically changed in the last ten to fifteen years and needs urgent reconsideration.

Firstly, judicial campaigns now involve millions of dollars.[4] The day of the million-dollar seat on the Louisiana Supreme Court is upon us, as shown by Chief Justice Pascal Calogero's last race in 1998 when he raised almost $1.3 million in campaign donations.[5] Today's judicial contests are no longer the low-visibility, lightly contested races of only a few decades ago.[6] At the national level, "[t]he average cost of winning a judicial election jumped 45 percent between 2002 and 2004, to more than $650,000."[7] Louisiana can now claim the dubious honor of being second in the nation in per capita spending in judicial races.[8] Secondly, this influx of money has shaken public trust and confidence in the judiciary's independence and impartiality.[9] As shown in public opinion polls in Louisiana and other states, the average person feels that when a justice has received campaign money from someone on one side of a lawsuit, he or she will be automatically partial toward the case.[10] This commonsense view follows the old adage that "money talks" and earns its own reward. Of course, as already mentioned, some of our elected Louisiana judges may sincerely believe in their own impartiality and may sincerely deny that judicial campaign money influences their judgment. They may possibly make strenuous efforts to ensure that the money factor is neutralized in their minds.

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3. *See* Adam Liptak & Janet Roberts, *Campaign Cash Mirrors a High Court's Rulings*, N.Y. TIMES, Oct. 1, 2006, at A1 (interviewing Ohio Supreme Court justices who assert that a public perception of favoritism toward campaign contributors is unfounded and that recusal in such cases would do more harm than good).

4. *Id.*

5. LAURA STAFFORD & SAMANTHA SANCHEZ, INST. ON MONEY IN STATE POLITICS, CAMPAIGN CONTRIBUTIONS AND THE LOUISIANA SUPREME COURT 3, 9 (2003), http://www.followthemoney.org/press/LA/20030715.pdf.

6. *See* Zach Patton, *Robe Warriors*, GOVERNING, Mar. 2006, at 34, 36.

7. *Id.* at 36.

8. Louisiana is second only to Illinois in the national rankings. Chris W. Bonneau, *The Dynamics of Campaign Spending in State Supreme Court Elections*, *in* RUNNING FOR JUDGE, *supra* note 2, at 59, 68.

9. ABA STANDING COMM. ON JUDICIAL INDEPENDENCE, REPORT OF THE COMMISSION ON PUBLIC FINANCING OF JUDICIAL CAMPAIGNS 20-23 (2002). This ABA report cites a Baton Rouge survey showing that 56% of those polled believed that judges' decisions are influenced by campaign contributions. *Id.* at 21 (citing Lanny Keller, *Judicial Campaigns Undermine Respect*, BATON ROUGE ADVOCATE, Jan. 13, 2000, at 9). Only 33% of those surveyed believed judges remain impartial after receipt of contributions. *Id.* The same report notes a 1995 survey in Ohio showing that 90% of those surveyed believed that campaign contributions influenced judicial decisions. *Id.* at 22 (citing T.C. Brown, *Majority of Court Rulings Favor Campaign Donors*, PLAIN DEALER (Cleveland), Feb. 15, 2000, at 1-A).

10. *See id.* at 20-23.

Interestingly, however, they almost never actually disqualify themselves. As our study shows, the justices continually decide cases involving their own donors without recusing themselves.[11]

In the end, the debate over money in judicial politics is often presented as an evenly balanced issue between, on the one hand, the public's perception that elected judges are unable to resist the influence of a litigant's money and, on the other hand, the judiciary's assurances that, whatever appearances may indicate, they in fact ignore that influence.[12] Some studies have tracked the rise in contributions made to judicial candidates, but few have attempted to determine whether these increasing contributions actually influence subsequent adjudications involving contributors.[13] This Article demonstrates that the debate is not evenly balanced. Our empirical and nonanecdotal investigation of the Louisiana Supreme Court's actual performance shows that some judicial votes have an unusually high correlation with the money that the justices have received.[14]

II. SUMMARY OF THE FINDINGS

Before turning to our data and our analysis, we give a summary below of some of the principal findings:

(1) In the cases reviewed, at least one donor to a justice's campaign(s) was before the court, but there was no recusal by the justice(s) concerned. More precisely, in the 186 cases within the study, a litigant or his or her lawyer who had donated to one of the justices' campaigns was before the court, and the justice(s) concerned did not disqualify themselves from judging the case.

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11. We do not maintain that this practice violates the law. Louisiana statutes do not require recusal in the case of campaign donations, but leave the issue to the discretion of the individual judge. LA. CODE CIV. PROC. ANN. art. 151(B)(5) (1999).

12. For example, Chief Justice Moyer of the Ohio Supreme Court has stated: "'All the surveys I've seen indicate that generally 75 percent of the people believe that contributions influence decisions.'" Liptak & Roberts, *supra* note 3. When asked, however, whether campaign contributions affect courts' decisions, he said, "'I don't believe they do. I know they don't for me.'" *Id.* Justice Terrence O'Donnell of the same court, though he voted for his contributors 91% of the time, denied there was any connection: "'Any effort to link judicial campaign contributions . . . to case outcomes is misleading and erodes public confidence in the judiciary.'" *Id.*

13. *See, e.g.*, Bonneau, *supra* note 8, at 59-71; *see also* STAFFORD & SANCHEZ, *supra* note 5, at 12 (providing a cursory examination of whether contributors win their cases more frequently).

14. It is worth observing that this Article does not claim that there is a cause and effect relationship between prior donations and judicial votes in favor of donors' positions. It asserts instead that there is evidence of a statistically significant correlation between the two.

(2) In the 186 cases within this data set, more than $1.3 million in campaign contributions in the aggregate was before the court.

(3) The data show that in cases involving a *single* donor, the present members of the court voted for their contributor's position, on average, around 65% of the time, although two justices (Knoll and Johnson) voted for their sole contributor approximately 50% of the time.[15] Certain individual justices voted for positions advocated by their contributors at much higher levels. In single-donor situations, Justices Traylor, Weimer, and Calogero voted in favor of their donors' positions 89%, 81%, and 73% of the time, respectively. In each of these three cases, the probability value is below 0.05 and any chance that the pattern might be the result of chance is so remote as to be negligible. See Table 1.

(4) The study uses the "net contributor" concept in order to study all types of donor situations, including those where both sides to the controversy made donations to the same justice.[16] In cases where the defendant was the net contributor, Justice Kimball ruled for the defendant's position 66% of the time, and Justice Weimer 86% of the time. On the other hand, in cases where the plaintiff was the net contributor, Justice Kimball's vote was for the plaintiff's position 66% of the time, and Justice Weimer's vote was for the plaintiff's position 63% of the time. This is a swing of 32% for Justice Kimball and 49% for Justice Weimer when the net donor changes from being a defendant to a plaintiff. The marked shift favoring the net contributor, irrespective of being plaintiff or defendant, strongly indicates that it is the donation, not the underlying philosophical orientation, that accounts for the voting outcome. This high correlation in favor of the net contributor stands in sharp contrast to the voting patterns of these same justices when no contributor is before them. See Table 3b.

(5) This study presents tables and figures that visually display for the reader the unusual character of some members' voting patterns. The "flatline" voting behavior expected of a fair and impartial judge stands in contrast to the actual positive slope observed for the voting behavior. See Figures 2 and 3.

(6) An isolated analysis of Justices Calogero, Kimball, and Weimer—Figures 3 and 4—indicates, with a high degree of probability, a relationship of campaign donations to their voting.

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15. The data on the court as a whole, while suggestive, were not statistically significant.

16. *See* discussion *infra* note 37.

According to Table 4, the odds that Justice Calogero would vote for the defendant's position increase by 17% with each donation of $1000. The odds that Justice Kimball would take the defendant's position increases by 15% with each donation of $1000. The odds that Justice Weimer would take the defendant's position increase by 89% with each incremental increase of $1000. These findings have a low probability of attribution to chance.

(7) When the timing of contributions is factored in, we find a much stronger association. A donation within a month of the decision is estimated to increase the odds of a vote by Justice Calogero in favor of the donor's position by 21% and in the case of Justice Weimer by 99%. See Table 5 and Figure 4.

(8) When the cases are considered by type and subject matter, it is found that the areas of tort law and constitutional law are the areas that produce the strongest correlation to campaign donations. Tort law cases involved the largest amounts of campaign donations in our data set (about $752,000). The apparent influence of this money is revealed by the unusual voting patterns. Our study finds that in the tort cases, each extra $1000 of net donations increased the odds of a favorable vote by 18%. The possibility that this finding is attributable to chance is less than 1%. When constitutional law questions came before the court, each additional $1000 of net donation increased the odds of a favorable vote by 73%. The possibility that the latter finding is attributable to chance is less than 10%. See Table 6.

III. THE METHODOLOGY

Before coming to our explication of the data, it is important to understand the parameters of the study. The data used in the analysis of the decisions of the Louisiana Supreme Court were derived from Westlaw's database of Louisiana Supreme Court decisions, coupled with the official campaign contribution forms submitted to the state of Louisiana, by every member of the present court, from 1992 to 2006.[17]

17. When multiple donations were made by the same person or entity during one or more campaigns, the amounts were aggregated in that person's or entity's name and earmarked by the date of the last donation. Donations received in multiple elections or election cycles were aggregated because there was no reason to think that donations over time from the same donor might not have continuing influence on judicial voting when that donor appeared before the court.

As an additional note, the Authors considered the problem of closely related contributors (such as husband and wife) who nevertheless constitute two separate entities for

The study focuses exclusively upon decisions by the seven justices who currently comprise the Louisiana Supreme Court. This analysis was initially based on the methodology of a similar study conducted by the *New York Times* regarding the Ohio Supreme Court.[18] Our study, however, has integrated a more sophisticated statistical analysis of the data to demonstrate more effectively whether there is a significant relationship between campaign contributions and favorable treatment by the court.

Our analysis included every case decided by the court from 1992 to 2006 in which (1) there was a donor to a *current* justice before the court,[19] and (2) there was at least one dissenting opinion. All writ applications, criminal cases, and lawyer disciplinary cases were excluded.[20] These criteria yielded a set of 186 cases falling within eight subject areas: torts/negligence, employment/labor, domestic relations/family law, constitutional law, government, real property, health, and "other."

Our rationale for limiting the study to cases involving one or more dissents was to exclude simple and routine cases and thus hopefully to capture those in which, as shown by the court's own

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purposes of campaign contribution caps. *See* LA. ETHICS ADMIN. PROGRAM, SUMMARY OF THE LOUISIANA CAMPAIGN CONTRIBUTION FINANCE DISCLOSURE ACT 6 (2007). While the aggregation of these amounts might have been considered defensible, the Authors treated such entries separately. However, the Authors did add together contributions from a litigant and the attorney representing that party before the court, so, for example, if Party *X* contributed $1000 to a particular justice and the attorney for Party *X* contributed $2000 to the same justice, the total amount associated with that justice for that case on Party *X*'s side would be $3000.

Finally, all donations received by a justice before or on the date of the court's ruling were counted. Any donations received from a party after a ruling was released were not counted.

18. *See* Liptak & Roberts, *supra* note 3.

19. Donations from amicus curiae parties were not researched.

20. Criminal and disciplinary cases were excluded because the presence of the state in the form of prosecutor (criminal cases) or regulator (lawyer discipline cases) presents a different type of case from civil suits. In the typical civil suit, two strangers to the state, usually represented by independently hired counsel, come before the court and ask for relief. In criminal cases, it is somewhat less usual for the state actor to have contributed to an election campaign, while in the case of the court-as-regulator, the circumstance would involve contributions of the court to itself. Certainly the defense attorney in a criminal or disciplinary case, or the criminal defendant or attorney facing discipline, might have contributed, but the two-contributor analysis we conduct ordinarily would not be possible for these cases.

To explain our point further, in a typical civil suit, all sides to the litigation—both plaintiffs and defendants, plus their lawyers—are potential sources of judicial campaign donations. On the other hand, in criminal cases, it would be unusual for the state prosecutor or his office to have contributed to an election campaign, and not at all typical for criminal offenders (except perhaps in prosecutions involving certain classes of crimes) to have made contributions, while in the case of the court-as-regulator, the circumstance would involve contributions of the court to itself. The latter seems unlikely in the extreme.

internal disagreement, the issues were significant and difficult. The purpose of this limiting feature, therefore, was to test the question of the influence of money in significant cases. Even with this limitation and the exclusion of all criminal and disciplinary cases, the criteria produced a large data set, making possible over 987 observations. This ensured that our study would produce as accurate a picture of the court as possible.

Each case was thoroughly read and analyzed by a researcher. Once the cases and contribution information were gathered, we entered our observations into a standard data table. The data table contains columns in which the cases were numbered, a Westlaw classification number was assigned, and a code was used for each justice's name. The date of the decision, the justice's vote, whether for or against a contributor, amounts of contributions, and so forth were also included in the data table. Taken together, this data provided a comprehensive set to analyze the effects of contributions on judicial decisions.[21]

IV. ANALYSIS AND FINDINGS

A. Introduction

As previously mentioned, a 2006 study by the *New York Times* investigated the role of campaign contributions on the voting behavior of the Ohio Supreme Court.[22] That study found that justices voted in favor of their contributors about 70% of the time.[23] One particular judge was found to vote in favor of his contributors 91% of the time.[24] In our study, we undertake a similar investigation, but with some important methodological improvements that strengthen the findings.

B. The Two-Contributor Problem

First, while statements such as those made in the *New York Times* study are certainly indicative of possible judicial bias, they may sometimes overstate the case. For example, suppose that it were true that both parties in front of Justice *X* were contributors; then it could be said that he or she votes in favor of a contributor 100% of the time.

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21. The statistical methodology used in this study was evaluated by outside referees, and the data table is on file with the Authors. The table will be available without charge on the *Tulane Law Review*'s Web site, http://www.law.tulane.edu/lawreview, for one year from publication.

22. Liptak & Roberts, *supra* note 3.

23. *Id.*

24. *Id.*

However, it could also be said that he or she votes against contributors 100% of the time. Likewise, if in 90% of the cases before Justice *Y*, both parties were contributors, then it could be said that Justice *Y* votes in favor of his contributors at least 90% of the time.

A simple solution to the two-contributor problem is to examine only those instances where a party is the only contributor before the court. In that way, the issue is presented without ambiguity. If a justice votes in favor of the lone contributor's position more than 50% of the time, this provides some evidence that the contribution influenced the decision. In Table 1 and Figure 1 below, we report the percentage of times each justice voted in favor of a lone contributor.

Figure 1

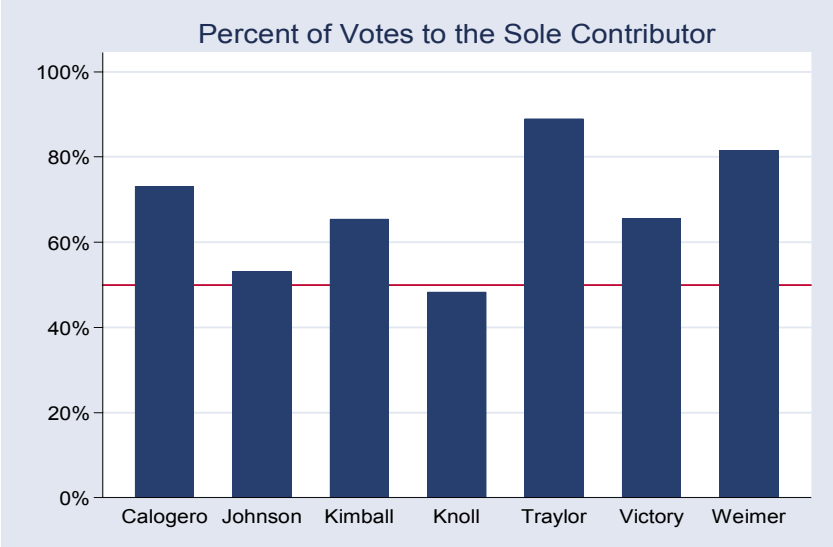

Table 1

Where Justices Vote for a Sole Contributor

Justice	Number of Votes	Number of Votes for the Sole Contributor	Percentage in Favor of Contributor	Probability Value
Calogero	52	38	0.73	<0.01
Johnson	49	26	0.53	0.78
Kimball	104	68	0.65	<0.01
Knoll	29	14	0.48	1.00
Traylor	9	8	0.89	0.04
Victory	55	36	0.65	0.03
Weimer	27	22	0.81	<0.01
Total	325	212	0.65	<0.01

The column entitled "Probability Value" shows the probability that such a result could happen from pure chance, given that the justice is, by presumption, fair and unbiased.[25] The standard threshold for this value ranges from 1% to 10%, with many researchers selecting 5% (0.05) as having statistical significance.[26] Probability values less than 0.05 indicate that the reported percent of votes going to a donor provides sufficient evidence to reject the original hypothesis of a fair judge.[27] Probability values greater than 0.05 indicate that there is not enough evidence to make the claim that contributions are correlated with outcomes.[28] Thus, in Justice Weimer's case, the evidence that he favors his contributors' positions 81% of the time is statistically significant. Indeed, the probability that a judge presumed fair and neutral would exhibit a deviation of this magnitude is merely 1%. This, of course, also assumes an even split between meritorious claims of plaintiffs and defendants.

Perhaps an analogy will help clarify what statisticians mean by the probability value in Table 1. Consider flipping a coin to see whether it is balanced and fair. If it is a fair coin, it lands on heads or tails with equal probability, that is, the probability of landing on heads

25. *See* DAMODAR N. GUJARATI, BASIC ECONOMETRICS 137 (4th ed. 2003).

26. After consulting twenty-two statistics textbooks, the Authors found that all of these texts advocate the 5% standard; 10% and 1% were the most common second bests. *See, e.g.*, GUJARATI, *supra* note 25, at 128, 137-38; WILLIAM MENDENHALL, RICHARD L. SCHEAFFER & DENNIS D. WACKERLY, MATHEMATICAL STATISTICS WITH APPLICATIONS 400-02, 414 (3d ed. 1986); JAMES H. STOCK & MARK W. WATSON, INTRODUCTION TO ECONOMETRICS 63 (2003).

27. *See* GUJARATI, *supra* note 25, at 137. As to the "hypothetical fair judge," see *infra* Figure 2.

28. *See id.* at 137-38.

(or tails) is 50%. We give the coin the presumption of being a fair coin. Suppose we flipped it once, and it landed on heads. This surely would not be enough evidence to support the conclusion that the coin is biased in favor of heads, even though 100% of the flips so far have landed heads. If we flip again, and it lands on heads once more, do we have enough evidence to suspect the coin of being unbalanced? Under the presumption of fairness, the fair coin will tend to fall on heads twice in a row 25% of the time.[29] Statistical standards require far more evidence than this. The probability that the coin would land on heads four times in a row drops to 6.25%.[30] This is a low-probability event, but because we only have four flips to draw upon, we do not yet have enough evidence to challenge the coin.[31] Six flips in a row landing on heads, however, would only happen 1.56% of the time.[32]

How unlikely does an outcome have to be before we are comfortable declaring the coin flawed or biased? In other words, in rejecting the "null hypothesis" that the probability of landing on heads or tails is equal to 0.5, what is our evidentiary standard? The convention in statistical practice is that outcomes that happen less than 5% of the time—though it is not uncommon to find researchers using a threshold of 10%—are considered unlikely enough that the presumption of fairness is rejected.[33] If an outcome is highly unlikely to be the result of chance, we say that the outcome is "statistically significant."[34]

We now can summarize the study's findings with respect to cases involving a single contributor. First, it is clear that Justice Weimer rules in favor of his sole contributor's position 81% of the time, and the probability value for that statistic is extremely low. Likewise, Justice Calogero votes for his sole contributor's position 73% of the time, and the probability value (0.01) is well within the bounds of statistical significance. As for the entire court, the seven justices, on average, vote favorably for their sole contributor's position 65% of the time.[35]

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29. Let p represent the probability of x (landing on heads), and let this equal 0.5. Then $p(x; n, p) = \binom{n}{x} p^x(1-p)^{n-x}$, where n is the number of times a coin is flipped and x is the number of successes observed out of the total number of flips. Where, by hypothesis, $x = n$, the binomial distribution above reduces to $(p)^n$, assuming each flip of the coin is independent of the others. $p(2; 2, .5) = .5^2 = .25$ or 25%.

30. $(.5)^4$.

31. *See* GUJARATI, *supra* note 25, at 136-38.

32. $(.5)^6$.

33. *See supra* note 26 and accompanying text.

34. *See* GUJARATI, *supra* note 25, at 128, 136-38.

35. This descriptive statistic was statistically significant in our data set.

C. Factoring in Philosophical Orientation

As compelling as these findings are, some judges offer the retort that the figures prove nothing other than that a judge has a personal orientation and leanings.[36] A judge could thus admit that he tends to vote in favor of contributors, but only because contributors in general tend to contribute money to judges with views similar to their own. The retort would suggest that there may be a correlation, but not necessarily any causal relation, between the donation and the judge's vote. Below, we will introduce a method that withstands much of this criticism.

Thus far we have ignored the size of the contributions and have not considered cases in which a justice faced donors on both sides of the litigation. In what follows, we undertake a more thorough investigation of the size of donations and their effects on voting behavior. If money matters, more money should matter more. Where there are two contributors to the same justice from different sides of the case, we test whether the greater donation (the net contributor) appears to be favored.[37]

First, let us look at the amounts that the litigants or their lawyers have donated in the cases we have studied. We do not report how much each judge raised in campaign contributions. Our data only reflect the amount of contributions each judge faced in the selected cases brought before him or her. Table 2 summarizes this information.

Table 2

How Much Have the Justices Received from the Litigants? (186 cases)

Justice	Contributions from Defendants	Contributions from Plaintiffs	Total	Years in Sample	Money per Year
Calogero	$142,050	$192,587	$334,637	13.6	$24,596
Johnson	$57,823	$58,945	$116,768	11.1	$10,490
Kimball	$208,000	$267,750	$475,750	13.6	$35,041
Knoll	$43,000	$72,500	$115,500	9.3	$12,407
Traylor	$11,000	$7,500	$18,500	9.3	$1,987
Victory	$162,542	$90,803	$253,345	11.6	$21,871
Weimer	$20,500	$26,000	$46,500	4.4	$10,668
Total	$644,915	$716,086	$1,361,001		

36. *See, e.g.*, Liptak & Roberts, *supra* note 3.

37. This expression, "net contribution," includes the benefit received from a single donor (e.g., plaintiff $1000 versus defendant $0) as well as the differential benefit from two donors when one donation is larger (e.g., plaintiff $1000 versus defendant $500).

From 1992 to 2006, in the 186 cases covered by this study, the justices faced a total of over $1.3 million, split about evenly between plaintiffs and defendants. By far, the greatest amounts were received by Justice Kimball—over $475,000. Justice Kimball's cases involved, on average, $35,000 per year in donations, far more than the next highest member of the court, Justice Calogero, at $24,500 per year.

In the approximately 987 judicial votes we have analyzed, the justices voted for the defendant's position about 54% of the time. Of course, individual justices have their philosophical leanings, some being defendant-oriented, others plaintiff-oriented. Attempting to take their orientation into account, we examined whether they tended to rule in favor of plaintiff or defendant contributors more than they did when the plaintiff or defendant was not a contributor. A judge might vote 60% of the time for the defendant when the defendant is not a net contributor, and 65% of the time when the defendant is a net contributor. Is the difference between 0.60 and 0.65 so negligible that it could be the result of pure chance? The answer to this question depends upon how many cases are entered into evidence.[38] The question is one of statistical significance, or the "weight of the evidence," as indicated by the probability values.

Table 3 below summarizes each justice's overall proclivity to rule in favor of a defendant or plaintiff versus that same proclivity when the defendant or plaintiff is a net contributor. If there is a significant difference between these two numbers, it is statistical evidence that the justice, consciously or unconsciously, has been influenced by the contribution. Again, we note that probability values below 0.05 indicate that it is unlikely that the difference in voting behavior toward donors is the result of pure chance.[39]

Overall, we see below in Table 3a that Justice Johnson could be characterized as a plaintiff's judge, and Justices Traylor, Knoll, and Victory as defendants' judges. The others show no strong leanings. Does this picture change when money enters the mix? Very clearly, the picture changes.

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38. *See* GUJARATI, *supra* note 25, at 138.

39. *See supra* note 26 and accompanying text.

Table 3

How Each Justice Votes

Table 3a: Overall*

Justice	Votes for the Defendant	Number of Cases	Proportion for the Defendant	Proportion for the Plaintiff	Probability Value**
Calogero	77	176	0.44	0.56	0.11
Johnson	59	162	0.36	0.64	<0.01
Kimball	88	176	0.50	0.50	1.
Knoll	72	134	0.54	0.46	0.44
Traylor	93	136	0.68	0.32	<0.01
Victory	115	156	0.74	0.26	<0.01
Weimer	23	43	0.53	0.47	.76

Table 3b: How Each Justice Votes, in Three Different Situations+

Justice		Plaintiff Is the Net Contributor		When No Money Is Involved		Defendant Is the Net Contributor		Proba-bility Value
		#	Pct	#	Pct	#	Pct	
Calogero	Votes for Plaintiff	32	0.73	58	0.54	7	0.30	<0.01
	Votes for Defendant	12	0.27	49	0.46	16	0.70	
	Cases	44	1.00	107	1.00	23	1.00	
Johnson	Votes for Plaintiff	16	0.62	69	0.66	17	0.55	0.46
	Votes for Defendant	10	0.38	35	0.34	14	0.45	
	Cases	26	1.00	104	1.00	31	1.00	
Kimball	Votes for Plaintiff	48	0.66	16	0.46	22	0.34	<0.01
	Votes for Defendant	25	0.34	19	0.54	43	0.66	
	Cases	73	1.00	35	1.00	65	1.00	
Knoll	Votes for Plaintiff	11	0.52	46	0.45	5	0.45	0.91
	Votes for Defendant	10	0.48	56	0.55	6	0.55	
	Cases	21	1.00	102	1.00	11	1.00	
Traylor	Votes for Plaintiff	1	1.00	41	0.32	1	0.13	0.21
	Votes for Defendant	0	0.00	86	0.68	7	0.88	
	Cases	1	1.00	127	1.00	8	1.00	
Victory	Votes for Plaintiff	6	0.27	25	0.28	10	0.22	0.79
	Votes for Defendant	16	0.73	64	0.72	35	0.78	
	Cases	22	1.00	89	1.00	45	1.00	
Weimer	Votes for Plaintiff	12	0.63	6	0.60	2	0.14	0.02
	Votes for Defendant	7	0.37	4	0.40	12	0.86	
	Cases	19	1.00	10	1.00	14	1.00	

* Note to Table 3a: Probability values use two-sided exact binomial tests with a null hypothesis of 0.50.

+ Note to Table 3b: Probability values use Fisher's exact tests and a null hypothesis of independence.

The data in Table 3 permit us to conclude that the effect of being the higher net contributor has a significant effect on the votes cast by Justices Calogero, Weimer, and Kimball. In cases where the defendant happened to be the net contributor (i.e., the defendant's contribution was *larger* than the plaintiff's or the plaintiff made no donation at all), Justice Calogero ruled in favor of the defendant's position 70% of the time. Justice Weimer ruled for the defendant's position 86% of the time, and Justice Kimball did so 66% of the time. On the other hand, in cases where the plaintiff was the net contributor (i.e., where the plaintiff made a larger donation than the defendant), the voting pattern shifted markedly. Justice Calogero favored the plaintiff's position 73% of the time. Justice Weimer ruled in favor of the plaintiff's position 63% of the time, and Justice Kimball did the same 66% of the time. This high correlation in favor of the net contributor indicates that the higher the donation, the more favorable the treatment. It is unlikely that this has anything to do with philosophical orientation, because the judicial voting pattern of each justice shifts from being plaintiff-oriented to defendant-oriented, depending upon which side has made the larger donation. Furthermore, this stands in evident contrast to the voting patterns of these same justices when no contributor is before them. The comparison between their no-contributor voting and net-contributor voting in favor of defendants shows a significant variation in voting behavior—a 24% differential for Justice Calogero, a 12% differential for Justice Kimball, and a 46% differential for Justice Weimer. The comparison between their defendant net-contributor and plaintiff net-contributor voting records shows more extreme variation: a 43% swing by Justice Calogero, a 32% swing by Justice Kimball, and a 49% swing by Justice Weimer.

D. Distinguishing Philosophical Leanings from Contributor Influence

In this Part, we undertake to factor in the justices' philosophical orientations and to see whether those orientations are altered through campaign contributions. It will be recalled that earlier (see Table 3 above) we merely tested whether there is a statistically relevant difference in the percentage of times that justices cast votes for contributors and noncontributors. This was certainly the logical first step. However, as may be supposed, a $100 donation has a far different impact than a $1000 donation. Our investigation improves on

previous studies of this kind in that it takes into account the size of donations.[40]

To explore this issue further, we will use a statistical method called "logit-regression" or "logistic-regression." Logit-regression attempts to fit an S-shaped function, technically a logistic function, to a scatter of data.[41] We use two types of data: whether a justice voted for a defendant and the net contribution of the defendant. That is, we presume that equal donations from both parties equalize the playing field (this is not to say that the defendant stands a 50-50 chance of winning—justices may have their tendencies, as discussed in Table 3 above). The output of a logistic-regression is an S-shaped function that estimates the probability that a justice will vote one way or another, given the donations data.[42] That is, we attempt to calculate the probability that a justice will vote for the defendant as a function of the defendant's net contribution.

Consider a hypothetical judge who hears 100 cases, receives many varied donations, and never takes these donations into account.

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40. In Louisiana, the legislature has statutorily structured its campaign contribution regime through the enactment of the Campaign Finance Disclosure Act (CFDA). LA. REV. STAT. ANN. §§ 18:1481-1532 (2004). The CFDA not only sets the standards and guidelines by which public office candidates must disclose who has contributed to their campaigns and how much, *id.* § 18:1491.4, .5, .7, but also sets the limits that contributions cannot exceed. *Id.* § 18:1505.2(H)-(K). The Louisiana Ethics Administration Program has provided a succinct summary of the CFDA, which, among other things, clarifies the campaign contribution limits that the CFDA provides. *See* LA. ETHICS ADMIN. PROGRAM, *supra* note 17, at 6. As candidates for a major office, the justices are subject to the following contribution limits per election: an individual may give up to $5000; a family member, $5000; legal entities, $5000; political committees, $5000; big political committees, $10,000; and Democratic or Republican parties or committees have no limit on their contributions. *Id.* Political committees are

> two or more persons, other than a husband and wife, and any corporation organized for the primary purpose of supporting or opposing one or more candidates, political parties, propositions or recall efforts, which has financial activity in excess of $500 within a calendar year in the name of the committee. It also includes any corporation or group that accepts payments for personal services related to an election or campaign in excess of $500 during a calendar year unless it has been permitted or licensed to provide that type of service and has been regularly doing so in the area at least 90 days prior to the services being rendered.

Id. at 2. Big political committees are political committees "with over 250 members who contributed over $50 to the PAC during the preceding calendar year and [have] been certified as meeting that membership requirement." *Id.* at 6 n.5. For further information about the statutory scheme governing campaign contributions, including information on past regulatory regimes, see La. Bd. of Ethics, Ethics Administration Program, http://www.ethics.state.la.us/ (last visited Feb. 20, 2008).

41. *See* DAVID W. HOSMER & STANLEY LEMESHOW, APPLIED LOGISTIC REGRESSION 5-6 (2d ed. 2000).

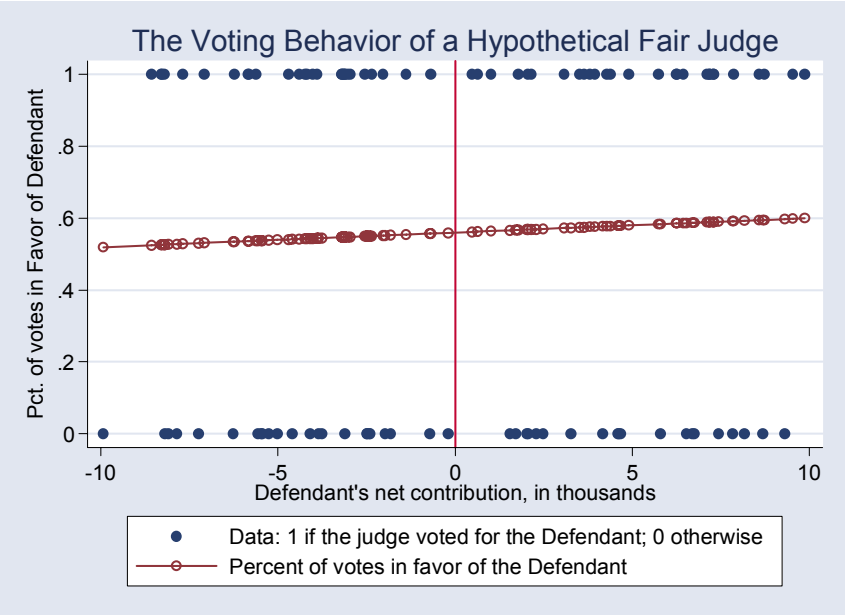
42. *See id.*

Presume, for the sake of argument, that this judge cannot be labeled a "defendant's judge" or a "plaintiff's judge," so that he or she votes roughly 50% of the time for the defendant. Moreover, suppose that he or she has received donations of up to $1000. Net donations are calculated so that if a defendant donated $1000 and the plaintiff $100, the defendant's net donation is $900 and the plaintiff's is -$900. Finally, think of a decision for the defendant as a "1," and a decision for the plaintiff as a "0."[43] The data will then consist of 100 data points, each representing a decision (measured on some vertical axis) and a donation (measured on a horizontal axis). If we were to graph this data, as we did in Figure 2, we would see a scatterplot with a seemingly random scatter of points along 1 and along 0, much like the one below. In theory, this line should be stretched flat and perfectly horizontal at a height at 50%. We had a computer generate votes at random with a 50% chance of the vote coming out in favor of the defendant and with no correlation to donations. As we have created data with no relationship between the hypothetical judge's voting behavior and the donations, there are roughly an equal number of points at the top of the graph and at the bottom. The S-shaped curve, a logistic curve, from the logit-regression is stretched out so that it is almost indistinguishable from a straight line. The slightly positive slope is the result of random error; thus, the slight positive relationship shown above is not statistically significant.[44] Because the scatter of points in Figure 2 was generated by a computer at random, it is the result of pure chance that the curve has a small positive slope and a height at 55%, rather than 50%, when net donations are zero.

43. Note that the zero and one are just labels; they convey no further information. It does not matter which party is designated as a zero, as long as it is done consistently.

44. This serves to show that even with random generation, a perfectly fair judge will have some slope due to random error. The probability value for this Monte Carlo simulation was 0.660.

Figure 2



As previously noted, the common retort of judges whose votes have a high correlation to campaign contributions is that this does not prove anything except that people more in tune with how judges vote tend to support their campaigns.[45] We do, however, control for this by first taking into account whether justices tend to vote for defendants or plaintiffs. The judge's voting record when there is no money involved determines the vertical position of the S-shaped curve. A judge who is not influenced by contributions and tends to vote for the plaintiff in cases where no money is involved should continue to vote in favor of plaintiffs when there is money involved. Deviations from this, however, result in the addition of curvature to the S-curve in favor of the donor. The logistic-regression methodology that we employ below shows the *additional* influence that money has over and above the litigant's and judge's similarities of view.

The logistic-regression methodology we use has several advantages. It allows us to measure differences from a judge's usual voting behavior, and it permits us to measure whether the effects of one person's donation are greater than another person's donation.

45. *See, e.g.*, Liptak & Roberts, *supra* note 3.

Thus, we can measure precisely the change in voting behavior for any net contribution, however small.

Table 4

Logistic Regressions, Donations Not Time-Adjusted

Justice	Odds Ratio	Probability Value
Calogero	1.17	0.03
Johnson	1.22	0.11
Kimball	1.15	0.01
Knoll	1.08	0.43
Traylor	6.28	0.27
Victory	1.03	0.70
Weimer	1.89	0.06

Table 4 shows the odds ratios for the individual justices. Recall that even if there is no relationship between voting behavior and donations, random error will account for some slight deviations from the justice's baseline proclivity to vote for a defendant. There are three Justices whose probability values raise eyebrows: Calogero, Kimball, and Weimer. Their probability values indicate behavior that is statistically unlikely to be the result of pure chance. A hypothetically fair-minded judge would exhibit their voting record less than 5% of the time.[46]

46. We have no comment on Justice Traylor's very high odds ratio in Table 4 because in his case the sample is small and the probability value is relatively high.

Figure 3

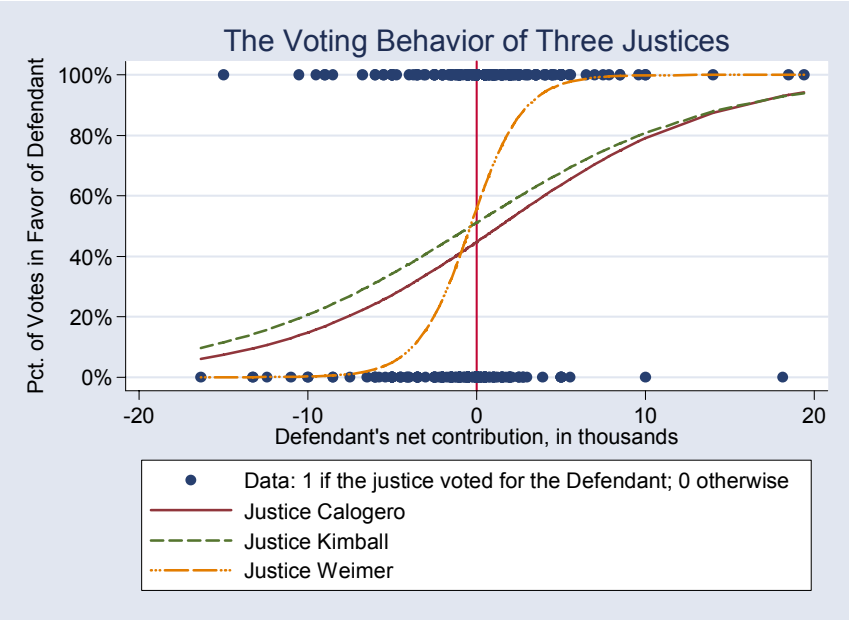


Figure 3 shows how the voting behavior of Justices Calogero, Kimball, and Weimer varies with the size of donations. Again, this behavior is unlikely to be the result of pure chance.

The column in Table 4 entitled "Odds Ratio" requires explanation. When a coin is fair, the probability of flipping heads is 0.50, and the probability of flipping tails is also 0.50. The odds of flipping heads is defined as the probability of heads divided by the probability of tails.[47] In this case, the coin is fair, and the odds are one-to-one. The odds ratio is simply the ratio of two different odds.[48] In Table 4, we report the ratio of the odds of a defendant receiving a favorable vote without any net donations compared to the odds of a defendant receiving a favorable vote with a net donation of $1000. An odds ratio of 2 means that the odds of a defendant succeeding are two times higher after making a $1000 donation than they would have been had he or she not done so. This is one of the benefits of the logit-regression procedure: it allows us to extrapolate how the odds of a

47. *See* HOSMER & LEMESHOW, *supra* note 41, at 49-51.

48. *See id.* That is, the odds ratio is $\frac{(.5)/(1-.5)}{(.5)/(1-.5)}$. *See id.* The Authors are aware that the odds ratio does not always approximate the relative risk and present this data with that caveat. *See id.* at 189-90.

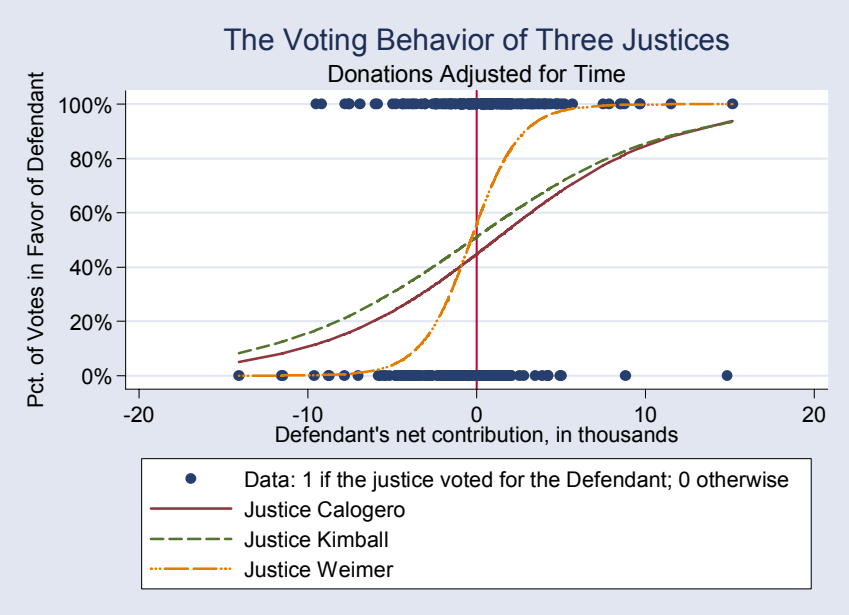
vote for the defendant's position change with each additional dollar of net contribution.

Returning to Table 4, we see that the odds of Justice Kimball's favorable vote for a defendant's position increase by 15% after a donation of $1000. The odds of Justice Weimer voting for a defendant's position increase by 89% after a donation of $1000. The odds of Justice Calogero voting for a defendant increase by 17% after a donation of $1000.

E. The Timing of Donations

Surely $1000 contributed on the day of the ruling has more of an impact than $1000 donated a year before.[49] On at least ninety occasions, parties made donations to a Justice within the twelve months leading up to the court's ruling. In at least thirty instances, they made donations within a month of the court's release of the ruling, and in some instances within a few days of the ruling.

Figure 4



49. The date of decision is used as the reference date in this analysis.

Table 5

Logistic Regressions, Donations Time-Adjusted

Justice	Odds Ratio	Probability Value
Calogero	1.21	0.02
Johnson	1.25	0.12
Kimball	1.19	0.01
Knoll	1.08	0.49
Traylor	9.3	0.26
Victory	1.03	0.71
Weimer	1.99	0.07

In order to investigate more closely the effect of the timing of the donations, we adjusted each contribution by an annual interest rate of 5%. Thus, $1000 contributed a year ago is adjusted to be $950. After this adjustment, logistic regressions were run on each of the justices, and the results are reported in Table 5. This second round of regressions indicates that recent donations have greater statistical significance than earlier donations. In the case of Justice Calogero, there is a correlation between his voting behavior and contributions. The odds of Justice Calogero voting for a defendant's position after a $1000 contribution are 21% higher than if the defendant had not donated $1000. There is only a 2% chance that such voting behavior is the outcome of pure chance.

F. The Type of Case Before the Court

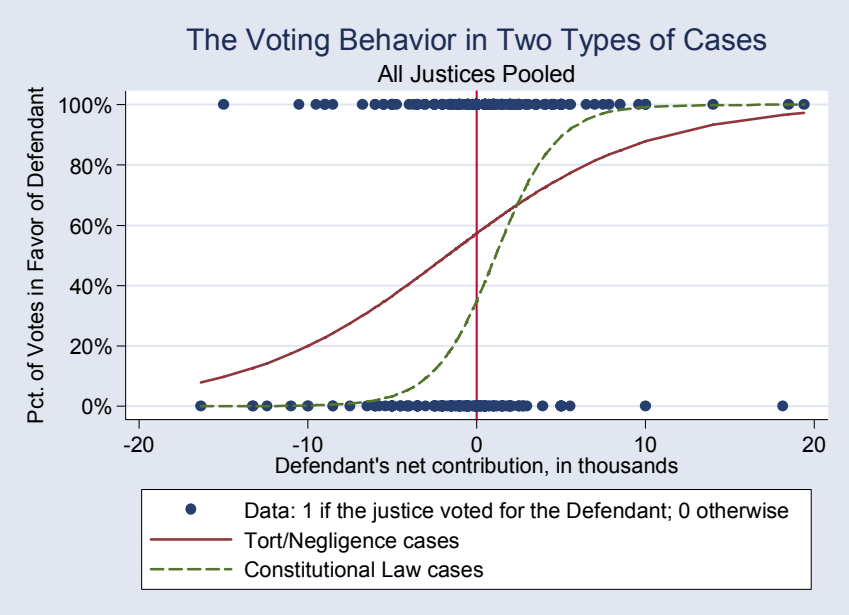
The cases fall into eight subject-matter categories. To investigate whether money matters more in some types of cases and less in others, we calculated a logistic-regression coefficient for each type. The results are reported below in Table 6 and Figure 5.

Table 6

Logistic Regressions by Case Type
All Justice Pooled

Case Type	Donations per Case Type	Odds Ratio	Probability Value
Torts/Negligence	$752,127	1.18	<0.01
Employment/Labor	$119,300	1.09	0.30
Domestic Relations/Family Law	$42,375	1.43	0.27
Constitutional Law	$57,869	1.73	0.06
Government	$196,817	1.08	0.32
Real Property	$3,000	0.35	0.35
Health	$79,160	1.12	0.28
Other	$110,353	1.09	0.55

Figure 5



Looking at the probability values, we notice statistically significant results for tort/negligence cases using the 5% threshold. Each additional $1000 of net donation in a tort case increases the odds of a donor receiving a favorable vote by 18%. In constitutional cases, the odds are increased 73% by each $1000 of net donation.

V. CONCLUSION

This study has examined the votes of the Louisiana Supreme Court over a fourteen-year period, using a large database of empirical information that was subjected to modern statistical analysis. The court's voting behavior was examined from many different angles, including votes involving no contributors, votes involving one contributor, and votes involving two contributors, one of whom was the net contributor. The timing and size of the donations were taken into account and analyzed. Controls were introduced to take into account a justice's general philosophical leanings towards plaintiffs and defendants. The study compared overall voting patterns to patterns where contributors were involved. Probability values were calculated and assigned to show the degree of confidence in these results. The statistics on individual justices were kept distinct so that precise responsibility could be attributed and overgeneralizations avoided.

This study controlled for judicial leanings and the philosophical orientations of the justices and also took into account the size of donations and the additional influence achieved by being a net contributor. In the case of Justices Calogero, Kimball and Weimer, the very high correlation of votes in favor of the net contributor statistically indicates that the higher the donation, the higher the odds in favor of the contributor. The pattern favors the plaintiff or defendant, apparently not on the basis of judicial leaning or orientation, but on the basis of the contributor's presence and the size and timing of his or her donation. Our study indicates, with a high degree of statistical probability, that their judicial voting bears a strong correlation to the campaign contributions they have received. This correlation carries over into two critical types of cases: tort and constitutional law.

The results of the investigation are clearer than we would have imagined. We began this study with no preconceptions as to what we would find, and we emerge from it with results that draw into question the voting behavior of our highest court.