

Judicial Recusal Proposal

Background and Literature Review

Elected judges, like other politicians, need to raise money in order to fund their election campaigns. However, judicial campaign contributions lead to potential conflicts of interest when judges try cases that involve their contributors, as parties or representatives. When conflicts of interest arise, judges have the option of recusing themselves and giving the case to another justice. In practice, the law in most states gives judges wide latitude to decide whether or not to recuse, and justices rarely do so when campaign contributors are involved in a case.

Because many campaign donors are lawyers or potential litigants, judicial fundraising means that judges are likely at some point to preside over cases involving donors. While a growing literature has considered the potential effects of these relationships on case outcomes (e.g., Hazelton, Montgomery, and Nyhan 2016), and legal scholars have written on requirements surrounding recusal (e.g., Flamm 2017; Marbes 2017), systematic empirical research has seldom investigated the conditions under which judges opt to remove themselves from cases involving donors or to disclose these financial ties in court records.

Research Question and Theory

Our main research question is: Under which conditions judges choose to recuse themselves from cases in which they have conflict of interest. Specifically we study whether judges choose to recuse themselves from such cases when the conflict of interest is called to their attention. We expect that judges will be more likely to recuse from the case when they are informed by a third party about their conflict of interest.

Setting

We propose an experiment in the Wisconsin circuit courts to determine what would persuade judges to recuse themselves in civil cases when conflicts of interest are present in a case. The Wisconsin circuit courts have original jurisdiction in nearly all civil and criminal matters in the state and currently comprise 249 elected judges. Circuit court judges raise and spend relatively small amounts of money for their election campaign (about \$25,000, on average). The experiment will identify conflicts of interest by matching parties and representatives in new civil cases that come before each Wisconsin circuit court judge with lists of each judge's campaign donors from the last six years. The researchers will set a threshold of \$200 for what constitutes a conflict of interest.

Independent Variables

Once a conflict of interest is identified, the judge will enter the experimental data set and will be randomly selected to treatment or control. The researchers will then follow the case in order to track the judge's behavior, specifically whether they will recuse from the case. We propose to send a private letter to judges in the treatment group. The letter, which would come from a civic group, would point out the existence of a conflict of interest. No one else will be told about the conflict.

Dependent Variables (Outcomes of Interest)

The researchers will track each case that enters the experimental data set in order to record whether the judge recused or otherwise left the case.

Measurement

For measurement of the outcomes we will rely on publicly available records of recusals. For each case for which a conflict of interest is identified included in the study will constitute a single observation. The final data will include binary treatment

indicator of whether the email pointing out the conflict of interest was sent to the judge, as well as an outcome binary indicator of whether a judge recused or otherwise withdrew from the case.

Possible Issues

Given that the study is an experimental study (i.e. treatment will be administered to a randomly chosen subset of cases) the treatment won't be systematically linked to any characteristics of cases and/or judges. This will allow us to interpret the correlation we might observe between sending an email and recusing from the case as causal relationship.

Random assignment will occur via a script in R, and the mailings will follow the assigned treatments. We do not expect any attrition (missing outcomes) since case outcomes and recusals are a matter of public record.

We presume that the letter prompts recusals **only** by calling judges' attention to the fact that a watchdog organization is taking notice of possible conflicts-of-interest. By implication, although not stated explicitly, a judge who does not recuse may have his/her case decision appealed; there is also the risk that conflicts could become a campaign issue in the next election. However, these considerations will not be stated explicitly in the letter or in any follow-up correspondence with judges. To make sure that coding of the outcomes is not affected by the treatment assignment, judges' decisions to recuse will be coded in a manner that is blind to treatment assignment.

Given that the measurement of the outcomes is based on the public records that are mandatory, we do not expect any systematic biases in availability of outcome data. The treatment (receiving email about conflict of interest) is unlikely to affect our ability to collect and code our outcome variable and it is.

References

Nelson, Michael J. 2014. "Responsive Justice?" *Journal of Law and Courts* 2 (1): 117–52.

Hazelton, Morgan L. W., Jacob M. Montgomery, and Brendan Nyhan. 2016. "Does Public Financing Affect Judicial Behavior? Evidence from the North Carolina Supreme Court." *American Politics Research* 44 (4): 587–617.