

Women, Campaign Fundraising and Intermediate Appellate Courts

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Introduction

The impact of gender in judicial elections is still an area of exploration by many political science scholars. More recently, the rise of third wave feminism and women's rights advancement efforts helped alter perceptions of women in politics. In particular, women have made notable strides in attaining political representation in the judiciary. Nevertheless, women continue to be numerically underrepresented in the U. S. Supreme Court, State Supreme Courts and the percentages of female district judges remain low. This mirrors trends in women's underrepresentation in general government offices, with women constituting small numbers of representation of state governors, state legislator offices, and state court judges.

While there are many women serving in federal and state governments, gender parity remains low (Schwindt-Bayer 2009). According to the National Women's Law Center just 36% of circuit judges, and 33% of district judges are female as of 2016 (NWLC 2016). Furthermore, as of 2017, women constituted 16% of state governors, 25.1% of the state legislator offices, and just 22% of state court judges.¹

The limited number of women in the judiciary has been attributed to a number of factors including cultural attitudes regarding women in elective office, political socialization, campaign

¹ <http://www.cawp.rutgers.edu/women-state-legislature-2017>

finance laws, lack of political resources, gender discrimination and other such barriers (McGlen, et al 2005). While gender attitudes have reduced over time, other system-specific issues continue to prevent women from attaining parity with men in the judiciary. The inequality between the genders in political representation is not a result of discrimination against women by voters but the byproduct of the existence of systemic bias in money in politics, which continues to play an active role in women's underrepresentation in the judicial system, including intermediate appellate courts (IAC) (Frederick and Streb 2008). If such is the case, then changes in the electoral system may address the gap between male and female candidates. Some studies have found that female candidates win at the same rate as men when they do run for elective office (Burrell 1994; Darcy, et al 1994), and other studies indicate that, in some cases, women perform better than men in terms of vote share (Frederick and Streb 2008). It may therefore be inaccurate to assume that female candidates are disadvantaged because of their sex in judicial elections.

Regardless of whether the lack of representation of women in political office is the product of nefarious societal attitudes toward women, a nefarious power structure that happens to affect women's electoral chances more, or more benign reasons, one piece of the puzzle heretofore unaddressed in the literature is the issue of campaign contributions to male and female judicial candidates, particularly in IAC elections. If the amount of money in state court elections as a whole is increasing at a dramatic rate (Bonneau 2007), and there is a link between campaign fundraising and success in elections (Bonneau 2007; Bonneau and Cann 2011; etc.), then there is the question of whether female candidates for IAC's are at a fundraising disadvantage, which in turn would affect their vote share, and if female candidates are at a disadvantage, is this disadvantage the product of bias against women or something else?

This paper attempts to describe women's underrepresentation in intermediate appellate courts by addressing four central questions:

1. Do female candidates face financial constraints while running for IACs elections?
2. Do female candidates running for IAC office rely on different sources of campaign funding than men?
3. Are there societal or institutional characteristics that favor men than women candidates running for IAC office?
4. Are female candidates less likely to receive higher financial contributions?

Addressing these critical questions will help us understand why women are still underrepresented in political office in the United States. It will also allow scholars in the discipline to consider a highly unexplored institution of government in the United States – the state judiciary.

Using campaign contribution data from 1994 to 2012, we analyze whether gender plays a significant role in the amount of money raised by female candidates for intermediate appellate courts, in both Southern and non-Southern states. After controlling for other factors, we find very interesting relationships between gender and the level of campaign contributions in both Southern and non-Southern intermediate appellate courts races.

Based on the extant literature, we theorize an expectation on how women candidates may fare as they run for intermediate appellate courts. Since female candidates have perception barriers including their position on crime, leadership ability and structural and social limitations to campaign fundraising sources including networks. We theorize that, all else held equal, female candidates are less likely to perform better than men.

Although our data does not allow us to test the reasons why female candidates who raise more money do not win, they do allow us to test the importance of campaign funding in elections,

and whether differences exist in the amount of campaign funds received by women, in both Southern and non-Southern states. Our results are quite interesting: in non-Southern states, we do find that women receive less money than men, even after controlling for other factors, but such negativity is not found in Southern IAC races, where women receive **more** money than their male counterparts. We then discuss the effects of other variables on the likelihood of the dollar amounts given to male and female candidates, and we conclude by exploring the implications of these findings on future research.

Women in Judicial Office in the United States

Gender scholars have explored individual level explanations for women's underrepresentation at the executive, congressional, state and even local level (Sanbonmatsu 2002; Fox and Lawless 2004; Pearson, et al 2005; Pearson and Longman 2005). As a matter of fact, women are challenged more frequently than men during elections (Lawless and Pearson 2008, Milyo and Schisberg 2000, Palmer and Simon 2006). Several studies have demonstrated that women may face systemic disadvantages during elections, including the role of party politics (Cooperman and Oppenheimer 2001, King and Matland 2003, Streb 2008).

The study of the relationship between a candidate's sex, finances and success in judicial elections is highly unexplored but critical for a few reasons. To begin, virtually no study focuses on the role of campaign contributions, gender and success in judicial elections. Second, examining the success of female candidates in Intermediate Appellate Courts (IACs) is important for a few reasons. In addition, IAC elections are low-information, low-visibility elections, meaning voters are simply not as exposed to these court elections since they generally garner less coverage and are likely less expensive than other judicial elections (Hall and Bonneau 2006). IAC elections are also beneficial to study as they provide an opportunity for comparison with other court elections,

promote accountability in the role of diversity in the judiciary as well as the success rates of incumbents and challengers (Dubois 1980, Bonneau and Hall 2003). Further, lower level state courts are low-information environments thus judicial candidates may be evaluated different than candidates running for other office which may aid or hurt female candidates. (Frederick Streb 2008). Moreover, voters possess stereotypes about female candidates running for judicial election, mainly relying on heuristics which may benefit or harm them in judicial elections. For example, violence and criminal justice cases may be associated as better handled by male judges versus female judges (Huddy and Terkilsen 1993; Lawless 2004). Lastly, the judiciary is entirely different from other political offices. There is a greater expectation of professionalism and legal knowledge among candidates for state courts, as the popular expectation is that judges are to apply the law or precedent to those cases coming before their bodies, regardless of personal preferences (Scheb and Lyons 2001). Moreover, a judge's sex has a large effect on his or her decision making which in turn has important implications in society and how we view diversity throughout the judiciary (Boyd 2016).

Numerous studies have sought to explain why women do (not) get elected to intermediate appellate courts, including whether gender bias in state judicial commission evaluations negatively affect female candidates' election chances (Gill, et al 2011), whether gender stereotyping inhibits the ability of women to run successful election campaigns (Reid 2004; Frederick and Streb 2008; Streb and Frederick 2009) and even gender bias in the courtroom dynamics which may discourage attempts by women to run for judicial office (Riger, et al 1995). What scholars have not examined as closely, however, is an important aspect of election to judicial office: campaign fundraising. This lack of scholarship is problematic, as judicial elections are increasingly high stakes, and research indicates that the ability of judicial

candidates to raise money significantly affects their (re) election chances (Bonneau 2007a; Bonneau and Cann 2011; etc.). If there is gender bias in contributions to judicial campaigns, this bias may hinder the ability of women to win judicial office in state elections.

Intermediate Appellate Court (IAC) Elections

The intermediate appellate courts, like their name suggests, serve as an intermediate step between the trial courts and the courts of last resort in a state. Forty-one out of the fifty states have at least one intermediate appellate court. Their jurisdiction varies from state to state, but in most cases they serve to relieve the workload of the state's highest court (CAWP 2017).²

In the U.S. Constitution, state appellate judges attain their position through different ways including through gubernatorial appointments, legislative appointment, elections, nomination by commission (Champagne 1986, Esterling and Andersen 1999, Hurwitz and Lanier 2008, Warrick 1993). Some studies have explored whether or not the means of selection have any significant influence on the rate which women attain judicial commissions. Iffill (2000) argues that appointive and merit systems tend to favor certain candidates by reinforcing the dominance of elites in the judiciary, decreasing opportunities for political minorities including women.

While women have made strides in the legal profession, they are still considered political minorities because of how much they lag behind their white male counterparts in absolute and relative terms (Hurwitz and Lanier 2003). According to (Bonneau and Rice 2009), from 1985-1999, female and other minority judges on state appellate courts doubled from about 13 percent to about 27 percent. While the presence of women has become more representative over time, most appellate judges in the United States are mainly white males (Bonneau and Rice 2009).

² Of the states included in our analysis, only the Ohio Supreme Court must hear all appeals by right. The other states in the analysis have discretionary jurisdiction over at least some of their docket. All intermediate appellate courts analyzed here have appeals by right.

Table 1
Type of Initial Selection System in
State Appellate Courts (1985, 1999, 2005)
Number and
Percentage of Courts

Selection System	1985*	1999*	2005
Judicial Election	40 44.9%	39 44.1%	39 41.9%
Nomination by Commission	38 42.7%	43 44.1%	43 46.2%
Gubernatorial Appointment	5 5.6%	5 5.4%	5 5.4%
Legislative Election	5 5.6%	4 4.3%	4 4.3%
Other	1 1.1%	2 2.2%	2 2.2%
TOTAL	89 100.0%	93 100.0%	93 100.0%

* Source: Hurwitz and Lanier (2001)

Source: Hurwitz and Lanier (2001; 2008)

Alexander and Anderson (1993) have emphasized that gender stereotypes influence voter and how female candidates are evaluated. This body of research highlights that voter perceptions on female candidates and their ideologies, such as being more liberal and less tough on crime, cast women running for judicial office in a more negative light than their male counterparts. For example, voters who support the death penalty and harsher crime sentences may be more skeptical of the idea of voting for a liberal, activist judge, which women are perceived to be due to gender stereotypes (Koch 2000). In addition, female candidates may face skepticism about running for judicial office due to the (perceived) implications campaigns have for their families, even though

male candidates are not subject to the same judgement (Williams 2009). However, other studies posit that gender stereotyping may be in a more positive manner, helping female candidates in their quest for judicial office. Although male candidates are considered more assertive, stronger, and possessive of a higher level of confidence compared to women candidates, women candidates are perceived as empathetic and compassionate (Burrell 1994; Huddy and Terilsen 1993; King and Matland 2003; Lawless 2004; Leeper 1991) and more trustworthy and capable of making impartial decisions (Reid 2004; Frederick and Streb 2008).

Gaps in Research and Theory

The extant research heretofore has been promising, if contradictory, with regard to the impact of gender bias on female representation in government. However, a glaring omission remains: the impact of gender differences in campaign fundraising in state judicial elections, particularly intermediate appellate court elections. Few studies have examined whether women receive the same amounts of donations as men and whether women derive their campaign funds from different sources than men. If candidate spending (at least among challengers) increases their odds of a successful election (Bonneau 2007a; Bonneau and Cann 2011), and the amount of money filtering into intermediate appellate courts elections is increasing, then it is important to examine gender bias in the activities occurring prior to the final vote. In addition, if there is substantial gender bias in campaign funding, this bias may explain why women are underrepresented on state courts: they cannot afford to “pay to play” the election “game”. Even if there are no significant differences in the electoral success of women versus men candidates, significant differences in campaign fundraising may reduce the number of female candidates running in the first place, which in turn will make judicial diversity harder.

Having established that the extant literature has a significant hole in it, we turn to our overarching theory of whether female candidates for IAC's are at a fundraising disadvantage compared to male candidates, and why. We posit that there are two competing theories regarding campaign donations and gender. One theory is that the stereotyping of judging as a "man's" job, combined with the fact that during the time period analyzed in this study women were more likely than men to be challengers than incumbents, means that women will receive fewer and smaller campaign donations than men. We predict this theory will be most visible in the South, for two reasons. One reason is because the South is a bastion of conservatism: if women are perceived as more liberal, such stereotyping is not likely to play well among Southern voters. Conversely, the non-Southern states included in the analysis are overall less conservative, if not more liberal, than Southern states, which (assuming gender stereotyping occurs) should benefit female IAC candidates. Contrasting with this overarching view is another factor for Southern states: the liberalism of women voters and (presumably) donors. Women in the South – regardless of race – trend more ideologically liberal than Southern men (Ondercin 2013), and this liberalism may make them more willing to support a female candidate who is perceived as liberal – and in turn be more likely to donate to a woman's campaign. A competing theory is that the stereotyping of women as more trustworthy and impartial than men will boost donations to female candidates, and given the greater likelihood that women will be challengers this stereotype will assist women in achieving the fundraising necessary to successfully compete in state intermediate appellate court elections.

Data and Methods

The data for this study comes from the state judicial elections database compiled by Adam Bonica.³ Our analysis begins in 2006 – the first cycle for which campaign contribution data are available for intermediate appellate court elections – and ends in 2012, the last cycle for which comprehensive data are available. We proceeded to divide the data into separate sets for Southern and non-Southern states, after dropping those cases which were “yes-no” retention elections. Our initial reason for parceling the data in this manner is because of the paradoxical nature of judicial elections and gender in the American South: the South is the most ideologically and socially conservative area of the United States, yet it also has the highest presence of women on its state courts of last resort (SCLR’s) (Curriden and Kaady 2010). However, Southern intermediate appeals courts (IAC’s) do not follow the same trend: the percentage of female judges on Southern intermediate appeals courts (IAC’s) was below the percentage of female judges for Southern SCLR’s. For example, in 2018 half of the justices on the North Carolina Supreme Court were female, but only 30% of its Court of Appeals judges are female.^{4 5} In contrast, the average percentage of female judges on non-Southern IAC’s is much higher: for example, in 2018 five of the seven judges on the Washington Court of Appeals were women.⁶ Consequently, it is necessary to contrast the apparent electoral success of female IAC candidates in non-Southern states with the apparent lack of electoral success of female IAC candidates in Southern states to determine whether a lack of campaign contributions may explain these differences.

³ Bonica, Adam. 2016. Database on Ideology, Money in Politics, and Elections: Public version 2.0 [Computer file]. Stanford, CA: Stanford University Libraries. <https://data.stanford.edu/dime> (hereafter referred to as Bonica Database)

⁴ <https://www.nccourts.gov/courts/supreme-court>

⁵ <https://www.nccourts.gov/courts/court-of-appeals>

⁶ https://www.courts.wa.gov/appellate_trial_courts/bios/?fa=atc_bios.home&folderID=div2

In addition to parceling the data, we made several other changes to the initial dataset. We dropped all candidates who ran for judicial positions other than those for intermediate appeals courts. We also set a donation threshold of ten contributions for candidates: candidates who received fewer than ten donations in an election cycle, regardless of the size of the donations, were excluded from the analysis. We did include candidates running unopposed, and we did include candidates who only competed in the primary elections because, in states such as Illinois and Arkansas, the primary election is the only election for judicial office, due to a lack of opposing candidates in the general election. After also culling incomplete records, the total number of valid donations for IAC elections in Southern states was 31,079 to 146 candidates, of whom 45 (30.6%) were female. The total number of valid donations for IAC elections in non-Southern states was 44,489 to 200 candidates, of whom 78 (39%) were female.

Southern states analyzed	AL, AR, GA, KY, LA, MS, NC
Non-Southern states analyzed	IL, MI, MN, NM, OH, OR, PA, WA, WI

Dependent Variable

Our dependent variable is the donation amount given to a candidate in a given election cycle.^{7 8} In non-Southern states, the median contribution by donors for the years included was \$125, while the median contribution by donors in Southern states was \$250. Because we are examining continuous values for our variables, we use a simple linear regression model with robust standard errors to avoid problems of heteroscedasticity – at least for non-Southern states.

⁷ Although most IAC elections correspond to the federal election cycle, some states hold their IAC elections in off years (i.e. 1993 instead of 1994). Consequently, “cycle” should be interpreted as including a two-year period (e.g. 1994 includes both 1993 and 1994 IAC elections)

⁸ Some donations are listed as \$0, while other values are negative. These amounts were dropped from the data set

The residuals for campaign contributions for Southern states are not normally distributed, necessitating a log-linear transformation of our dependent variable, which does address the normality problem but makes interpreting the results less straightforward for Southern states. Consequently, although the table reports the actual coefficients, the discussion of the results uses the percent changes between donation amounts and the outcome variables.

Descriptive Statistics and Hypotheses

Before conducting empirical analysis of our variables of interest, it is helpful to first observe whether there are descriptive differences between male (coded “0”) and female (coded “1”) candidates, in terms of the amounts of money contributed to their campaigns. Tables 1a and 1b present the mean dollar amounts contributed to male and female candidates, across all possible donation sources, for the years analyzed. The difference between Southern and non-Southern states is quite interesting: on average, outside of the South female candidates receive higher donation amounts than male candidates, while in Southern states female candidates receive lower donation amounts than their male counterparts. What makes the finding for the Southern states especially interesting is with regard to the discrepancy in the population of donations to candidates: in both Southern and non-Southern states, men receive more donations than women, but in non-Southern states the statistics suggest that women receive significantly larger donation amounts, while in the South the higher donation rates to male candidates indicate that women receive fewer donations and smaller dollar amounts. Combined with having fewer female candidates for IAC office in the South, these summary statistics raise significant possibilities, in terms of likelihood of female success in elections. If larger campaign contributions increase the likelihood of electoral success (Bonneau 2007a; Bonneau and Cann

2011), then the dearth of large donations to female candidates may explain why women are underrepresented on Southern IAC's.

Table 1a: Mean Campaign Contributions by Candidate Gender – Southern States

Gender of Candidate	Average Donation
Male	\$580.93
Female	\$505.65

Table 1b: Mean Campaign Contributions by Candidate Gender – Non-Southern States

Gender of Candidate	Average Donation
Male	\$504.99
Female	\$546.83

Hypothesis 1a: Female intermediate appellate court candidates in the South raise less money for their campaigns than men.

Hypothesis 1b: Female intermediate appellate court candidates outside of the South raise more money for their campaigns than men.

Although the initial statistics illustrate discrepancies in contributed dollar amounts to male and female intermediate appellate court campaigns, there are several alternative explanations for these differences, other than gender. One possible explanation for the discrepancies in campaign contributions between males and females is incumbency. Since incumbents are considered a “safer” bet for reelection, individuals and corporations may be more

willing to contribute to these campaigns than for challengers. Tables 2 and 3 present contributions to male and female candidates, broken down by incumbency status (coded “1” if the candidate was an incumbent), in Southern and non-Southern races. In Southern states, male and female challengers received more campaign contributions and (on average) higher donation amounts than incumbents, likely due to there being more challengers than incumbents.

Regardless of incumbency status, female candidates received fewer donations and (on average) lower donation amounts than male candidates, suggesting that incumbency is not a sufficient explanation for differences in campaign contributions to men and women, for Southern states.

In non-Southern states, female incumbents receive lower average and median donations than their male counterparts (despite receiving more donations than male incumbents), but female non-incumbents present an interesting contrast to both their male counterparts and their female counterparts in Southern states: female IAC challengers receive significantly higher average donations than either of these types of candidates. This result indicates that, in non-Southern states, gender may not be as significant a predictor in contribution differences as we predict.

Table 2a: Contributions to Male Candidates Based on Incumbency Status – Southern States

Incumbency Status	Average Contribution Amount	Contribution Frequency
Incumbent	\$545.15	8,872 (43.2%)
Challenger	\$608.13	11,671 (56.8%)
Total		20,543 (100%)

N Candidates = 99

Table 2b: Contributions to Female Candidates Based on Incumbency Status – Southern States

Incumbency Status	Average Contribution Amount	Contribution Frequency
Incumbent	\$384.87	2,737 (26%)
Challenger	\$548.04	7,799 (74%)
Total		10,536 (100%)

N Candidates = 45

Table 3a: Contributions to Male Candidates Based on Incumbency Status – Non-Southern States

Incumbency Status	Average Contribution Amount	Median Contribution Amount	Contribution Frequency
Incumbent	\$546.11	\$200	6,192 (25.3%)
Challenger	\$491.08	\$150	18,317 (74.7%)
Total			24,509 (100%)

Table 3b: Contributions to Female Candidates Based on Incumbency Status – Non-Southern States

Incumbency Status	Average Contribution Amount	Median Contribution Amount	Contribution Frequency
Incumbent	\$362.44	\$100	7,613 (37.9%)
Challenger	\$659.43	\$125	12,467 (62.1%)
Total			20,080 (100%)

Two other possible explanations as to fundraising differences between male and female IAC candidates are whether the candidates were appointed to their IAC position prior to their first election and whether the candidate in question has prior experience. With regard to female representation on the state high court benches, the question of appointment is particularly important, since governors often use appointments to achieve greater diversity on these courts (Curriden and Kaady 2010). Gill, et al (2011) find that race and gender do not significantly affect how candidates are evaluated when the sitting judge in question was appointed for their initial term, rather than elected, with the theory being that appointed judges are viewed by the public as more qualified for office than candidates running for an open seat. We posit that this same theory is applicable to campaign contributions, as contributors may believe that judicial appointees are more qualified and thus more likely to win an election, making a campaign contribution a worthwhile investment. Furthermore, newly appointed candidates should be more likely to solicit

contributions, since these candidates are likely to have less experience and lower name recognition than non-appointees (Streb and Frederick 2009). However, the issue of inexperience and a lack of name recognition also work against this theory: since these judges may not have the time to acquire the name recognition that make electoral success more likely (Streb and Frederick 2009)⁹, these candidates may struggle to obtain higher numbers of contributions. We created a dummy variable for whether a candidate is running for office for the first time after being appointed to their position on the IAC (1 = appointee).

All states require some type of judicial background in order to run for a judicial office (i.e. a law license), but those candidates who have served in an official judicial role (deputy attorney general, lower court judge, etc.) should be viewed more favorably by the public, since these individuals have served in public office and are more likely to have greater visibility to the public than those candidates with little public experience (i.e. a private attorney). We posit that this same theory of electability applies to campaign donations: donors are more likely to contribute to judicial candidates with prior experience in public judicial office than those candidates without such experience. We created a variable to categorize experience on a 1-5 scale. A score of 1 indicates that the candidate has no prior judicial experience (or information about their experience is unavailable), a score of 2 indicates that the candidate was a private attorney prior to running for office, a score of 3 indicates that the candidate was a district attorney or prosecutor prior to running for office, a score of 4 indicates that the candidate was a

⁹ There is also the possibility that a newly appointed judge may suffer in terms of campaign contributions if they are appointed by an unpopular governor, since that justice may be viewed by the public as a reflection of the policy preferences of the governor (Dimino 2003). However, we lack data on the public support for the appointing governor, so this variable is not included in the analysis.

judicial officer prior to running for office,¹⁰ and a score of 5 indicates that the candidate was at least a lower court judge prior to running for office.¹¹ We posit that the higher the experience score, the more donations a candidate receives – and the higher the donated amounts.

Tables 4 and 5 present the number and amount of campaign contributions to candidates based on the candidates' gender, controlling for whether the candidates were appointed prior to the election, for Southern and non-Southern states. For Southern states, appointees receive fewer and smaller donations on average than their unappointed counterparts (although the N for appointees is small), but female appointees receive fewer and smaller donations than their male counterparts. This finding supports our theory that there is gender bias in campaign contributions to IAC judges. However, despite receiving fewer donations, the difference in mean contribution amounts between male and female appointees is only \$13.52, and the median contribution is the same for male and female candidates: \$200. These results – coupled with the small number of appointees in the years analyzed – suggest that gubernatorial and legislative appointments to the bench have at best a marginal effect on gender differences in campaign contributions.

Non-Southern states paint a somewhat different picture. There are more gubernatorial and legislative appointees during the years analyzed, regardless of gender, and the fundraising discrepancies are remarkable: male appointees receive marginally higher average and median donations, but female non-appointees receive marginally higher average donations than men (although the median donations for all female candidates are less than those for male candidates). In non-Southern states, then, there is the possibility that appointments to IAC benches may not equate to electoral success for women in IAC races.

¹⁰ “Judicial officer” is defined broadly and includes, but is not limited to, deputy attorney generals, magistrate judges, and administrative court judges

¹¹ Incumbent IAC judges are given a score of 5

Table 4a: Campaign Contributions to Judicial Candidates, Male Appointees – Southern States

Was Candidate Appointed?	Average Contribution Amount	Contribution Frequency
No	\$605.42	17,824 (86.8%)
Yes	\$420.34	2,719 (13.2%)
Total		20,543 (100%)

N appointees: 10

Table 4b: Campaign Contributions to Judicial Candidates, Female Appointees – Southern States

Was Candidate Appointed?	Average Contribution Amount	Contribution Frequency
No	\$512.44	9,860 (93.6%)
Yes	\$406.82	674 (6.4%)
Total		10,534 (100%)

N appointees: 4

Table 5a: Campaign Contributions to Judicial Candidates, Male Appointees – Non-Southern States

Was Candidate Appointed?	Average Contribution Amount	Median Contribution Amount	Contribution Frequency
No	\$479.06	\$150	21,454 (87.8%)
Yes	\$699.87	\$200	2,979 (12.2%)
Total			24,433 (100%)

N appointees: 17

Table 5b: Campaign Contributions to Judicial Candidates, Female Appointees – Non-Southern States

Was Candidate Appointed?	Average Contribution Amount	Median Contribution Amount	Contribution Frequency
No	\$530.42	\$100	17,539 (87.3%)
Yes	\$660.08	\$100	2,541 (12.7%)
Total			20,080 (100%)

N appointees: 12

Tables 6 and 7 presents the number and amount of campaign contributions based on the candidates' gender, controlling for the level of experience the candidate had prior to the election. For Southern states, although female candidates received fewer and smaller contributions than their male counterparts in the experience categories most represented – private attorneys and

judges – female candidates who served as judicial officers prior to the election received higher average and median campaign contributions than their male counterparts. Given that most of the candidates for IAC judgeships had prior experience as a judge, under empirical scrutiny this finding may not have a significant effect on contribution differences, but this finding still suggests that experience may mitigate gendered differences in campaign contributions. IAC candidates in non-Southern states exhibit similar characteristics: although there is a pronounced divide in the frequency of donations and average and median contribution amounts, female candidates who worked as attorneys in the private sector receive higher median contribution amounts than their male counterparts in any region, suggesting that different types of prior experience may mitigate gendered differences in fundraising.

Table 6a: Campaign Contributions to Judicial Candidates Based on Experience, Male – Southern States

Candidate Experience	Average Contribution Amount	Median Contribution Amount	Contribution Frequency
None/NA	\$358.37	\$200	545 (2.7%)
Private Attorney	\$598.81	\$200	5,689 (27.7%)
DA/Prosecutor	\$494.29	\$250	134 (.65%)
Judicial Officer	\$320.17	\$100	991 (7.5%)
Judge	\$602.86	\$250	13,183 (64.2%)
Total			20,542 (100%)

N candidates = 99

Table 6b: Campaign Contributions to Judicial Candidates Based on Experience, Female – Southern States

Candidate Experience	Average Contribution Amount	Median Contribution Amount	Contribution Frequency
None/NA	n/a	n/a	0 (0%)
Private Attorney	\$469.83	\$200	3,072 (29.2%)
DA/Prosecutor	\$3,343.21	\$250	65 (.61%)
Judicial Officer	\$984.33	\$239	489 (4.6%)
Judge	\$460.14	\$250	6,908 (65.6%)

Total			10,534 (100%)
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N candidates = 45

**Table 7a: Campaign Contributions to Judicial Candidates Based on Experience, Male –
Non-Southern States**

Candidate Experience	Average Contribution Amount	Median Contribution Amount	Contribution Frequency
None/NA	\$397.37	\$100	1,028 (4.2%)
Private Attorney	\$433.54	\$150	3,890 (15.9%)
DA/Prosecutor	\$357.58	\$100	1,687 (6.9%)
Judicial Officer	\$697.49	\$100	967 (4%)
Judge	\$533.18	\$175	16,861 (69%)
Total			24,433 (100%)

**Table 7b: Campaign Contributions to Judicial Candidates Based on Experience, Female –
Non-Southern States**

Candidate Experience	Average Contribution Amount	Median Contribution Amount	Contribution Frequency
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None/NA	\$487.28	\$100	665 (3.3%)
Private Attorney	\$1180.77	\$250	3,236 (16.1%)
DA/Prosecutor	\$443.32	\$100	534 (2.7%)
Judicial Officer	\$530.11	\$100	1,487 (7.4%)
Judge	\$410.39	\$100	14,158 (70.5%)
Total			20,080 (100%)

What can we conclude from the descriptive results? One conclusion is that there are demonstrable differences between male and female candidates for state intermediate appellate court judgeships, with men raising higher dollar amounts and more contributions than women, regardless of region. This advantage appears to hold up regardless of incumbency status, the partisan nature of election races, and whether the candidate was appointed. However, the gendered divide is more pronounced in Southern states than in non-Southern states – indicating that the disadvantage in campaign contributions faced by women is endemic to intermediate appellate court races in the South, rather than to IAC races in general.

Control Variables

In addition to the explanatory variables above, we include several control variables, to account for other reasons why contributions to male and female intermediate appellate court candidates differ. One control variable is the donations from non-individuals, such as law firms and PACs. As discussed in the literature review, because female candidates for judicial office often receive donations from individuals with less money to contribute, the ability to attract donations from corporations, PACs, and other non-individuals may help level the financial playing field in a judicial race. Tables 8a and 8b present donations to candidates by non-

individuals (corporations, law firms, etc.) in Southern and non-Southern IAC races. In Southern states, non-individuals not only contribute more frequently to male candidates but also contribute more money: non-individuals contributed an average of \$966.75 to male candidates, compared to an average of \$825.06 to female candidates.¹² Although the results are similar in non-Southern states, with men receiving larger and more frequent contributions,¹³ the differences in both frequency of contributions and mean dollar amount are smaller, suggesting that – in IAC elections outside of the South – non-individuals are almost as willing to contribute to female campaigns as they are to men’s – suggesting that corporate giving may mitigate the overall fundraising advantages enjoyed by men.

Table 8a: Corporate Contributions to Judicial Campaigns – Southern States

Recipient Gender	Average Contribution	Frequency
Male	\$966.75	4,606 (68.1%)
Female	\$825.06	2,159 (31.9%)
Total		6,765 (100%)

Table 8b: Corporate Contributions to Judicial Campaigns – Non-Southern States

Recipient Gender	Average Contribution	Frequency
Male	\$1,121.21	3,582 (54.1%)
Female	\$1,089.68	3,034 (45.9%)

¹² The median contribution, however, was identical for both male and female candidates: \$500

¹³ The median contribution amount to male candidates is also higher: \$398.97, compared to \$300 for female candidates

Total		6,616 (100%)
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An additional explanation for discrepancies in campaign contributions is partisanship. Given that IAC races are traditionally low-information affairs which cause voters to rely on cognitive cues to formulate a vote (Frederick and Streb 2008; Huddy and Terkildsen 1993), the partisan identification of a candidate should signal voters – and, by extension, donors – as to the policy positions of a candidate. For this time period, two Southern states – Alabama and Louisiana – have partisan judicial elections, as do three non-Southern states – Illinois, New Mexico, and Pennsylvania. Because Alabama and Louisiana’s electorates are overwhelmingly Republican, female Republican IAC candidates should raise more money than any Democratic candidate. While the partisanship in the three non-Southern states is not as overwhelming, we theorize that female Democratic candidates will raise more money than female Republican candidates because the Democratic Party is more equitable in its distribution of campaign funds and emphasizes diversity in the bench more than the Republican Party (Reid 2004). We created two dummy variables for party identification: whether the candidate was a Republican (1 = yes) and whether the candidate was a Democrat (1 = yes).¹⁴

One important question we ask is whether men are more likely to give to other men than to women, and vice-versa for women, as men are posited to contribute more in election campaigns – meaning that differences in campaign contributions may be the result of men being more willing to give to female candidates. Tables 9a and 9b present a cross-tabulation on which individuals donate to which candidates for Southern and non-Southern states. In Southern states,

¹⁴ Candidates who were not affiliated with either party were categorized as 0, along with candidates in non-partisan judicial races

both male (coded 0) and female (coded 1) donors give to male candidates more often than female candidates. In non-Southern states, the story is different: although male candidates receive more donations than female candidates, and men are more likely to contribute to male candidates, women are more likely to contribute to female candidates. This result suggests that, in contrast to Southern states, female candidates who can raise more money with female donors can close the gap on fundraising. Furthermore, the contribution frequency gap between male and female candidates in non-Southern states is smaller than in Southern states, suggesting that gender may not play as much of a role in campaign fundraising in non-Southern states.

Table 9a: Campaign Contributions by Gender, Southern States

Candidate Gender			
Contributor Gender	Male	Female	Total
Male	11,577 (68.94%)	5,216 (31.06%)	16,793 (100%)
Female	3,864 (56.40%)	2,987 (43.60%)	6,851 (100%)
Unknown	445 (74.66%)	151 (25.34%)	596 (100%)
Total	15,886 (65.54%)	8,354 (34.46%)	24,240 (100%)

Table 9b: Campaign Contributions by Gender, Non-Southern States

Candidate Gender			
Contributor Gender	Male	Female	Total
Male	15,664 (59.7%)	10,582 (40.3%)	26,246 (100%)
Female	4,675 (43.1%)	6,178 (56.9%)	10,853 (100%)

Unknown	503 (71.1%)	205 (29%)	708 (100%)
Total	20,842 (55.13%)	16,965 (44.87%)	37,807 (100%)

Another important factor is the level of restrictiveness regarding campaign contribution limits. Although the purpose of stricter campaign contribution limits (e.g. the amount of money a PAC can contribute to a candidate during an election cycle) is to “level the playing field” and make elections more competitive, the paradox is stricter restrictions on campaign donations make an incumbent’s likelihood of victory more assured: because donors perceive an incumbent as a “safer” bet, donors are more likely to spend their state-limited resources on the incumbent, rather than a challenger (Bonneau and Cann 2011). Our theory is that higher levels of campaign finance restrictions will decrease the likelihood of female IAC candidates receiving higher dollar amounts: although women are proportionally less likely to be challengers in non-Southern states, and equally as likely to be challengers in Southern states, in terms of raw numbers women are more often challengers in IAC campaigns. Our measure of state-level campaign finance restrictions takes Witko’s (2005) campaign finance restriction scale and recodes it into a smaller scale. Due to differences in variance, non-Southern states’ restrictions on campaign finance are coded on a 1-3 scale: a score of “1” indicates that a state has minimal restrictions on campaign contributions to candidates (e.g. few, if any, restrictions on PAC contributions to an individual candidate), while a score of “3” indicates that a state has significant limits on individual and corporate contributions to IAC candidates (e.g. unions may donate no more than \$500 per candidate per election). Southern states’ restrictions on campaign finance follow the same categorizations above, but on a 1-4 scale.

Data Analysis

Table 10a: The Effect of Gender on Campaign Contributions in Non-Southern States, Log-Linear Model¹⁵

N	34,192
F-stat	510.00
Prob>F	0.000
R²	0.1197

Variable	Coefficient (Robust S.E.)	P> t
Candidate's Gender	-.1206252 (.0122305)	0.000***
Incumbency Status	-.1238298 (.0174988)	0.000***
Was Candidate Appointed?	.046667 (.0242787)	0.055*
Experience of Candidate	-.0108873 (.0050281)	0.030**
Opponent's Gender	.0128353 (.0085865)	0.135
Was Candidate Democrat?	.6278947 (.0263946)	0.000***
Was Candidate Republican?	.5840393 (.0311899)	0.000***
Contribution Limit	-.1946923 (.0205053)	0.000***
Gender of Contributor	-.1993697 (.0106995)	0.000***

*=prob ≤ .10 ** = prob ≤ .05 ***p ≤ .01

¹⁵ Contributor type (individual or corporation) and competitiveness of race omitted due to collinearity

Table 10b: The Effect of Gender on Campaign Contributions in Southern States, Log-Linear Model¹⁶

N	21,328
F-Stat	188.91
Prob>F	0.0000
R²	0.0825

Variable	Coefficient (Robust S.E.)	P> t
Candidate's Gender	.1586942 (.0188713)	0.000***
Incumbency Status	.0690165 (.0236876)	0.004***
Was Candidate Appointed?	.1315103 (.0288827)	0.000***
Experience of Candidate	-.0547635 (.0074603)	0.000***
Opponent's Gender	-.0558897 (.0129282)	0.000***
Was Candidate Democrat?	.7077618 (.0380103)	0.000***
Was Candidate Republican?	.5476586 (.031904)	0.000***
Contribution Limit	-.1263668 (.0153479)	0.000***
Gender of Contributor	-.2640247 (.0160892)	0.000***

*=prob ≤ .10 ** = prob ≤ .05 ***p ≤ .01

¹⁶ Contributor type (individual or corporation) and competitiveness of race omitted due to collinearity

Tables 10a and 10b present the linear regression results of our model. Because our dependent variable was heavily skewed for Southern states, we used a log-linear transformation of the amount donated to intermediate appellate court elections during the time period. The significance of the f-statistics in both of our models indicate that our model is a good fit for the data, although the variance explained by our model is somewhat small.

For Southern states, the empirical findings run contrary to our primary hypotheses. Although we reject the null of no difference in campaign contributions to male and female IAC candidates, the relationship between donation amounts and candidate gender is the opposite of what we predicted: donations to female candidates are 17.20% higher than those for male candidates. If higher donations increase the likelihood of victory in a contested judicial election, then this finding ties in to Streb and Frederick's (2009) finding that women do better in state intermediate appellate court elections, in terms of both vote share and victory. In other words, women are more successful in winning IAC seats in Southern states because they are able to raise more money. This conclusion is supported by contrasting campaign fundraising and gender in non-Southern states: in state IAC elections outside of the South, donations to female candidates are 11.36% lower than those for male candidates.

What is unanswered by our results is **why** women in Southern states receive higher contributions than men, but women in non-Southern states receive lower contributions. One possibility is that gendered stereotyping has a different effect in the South. Voters in the South may be more likely to perceive female judicial candidates as trustworthy (Frederick and Streb 2008), and – coupled with the contemporary electorate's mood to “shake up” the political establishment and the allegedly higher empathy female candidates are supposed to have (Huddy and Terkildsen 1993; Sanbonmatsu 2002) – are consequently more likely to view female

candidates for IAC office as a better bet for office, resulting in more donations. In contrast, donors in non-Southern states may be relying on more negative stereotypes of women – such as the perception that “toughness” of judging makes it a “man’s job” (Huddy and Terkildsen 1993; Frederick and Streb 2008) – and are more likely to view female campaigns for IAC office as not worth the expenditure of a contribution.

In terms of partisanship, for the few states that hold partisan IAC elections membership in a political party boosts donations significantly, regardless of region. The effect is most pronounced for Democratic candidates: donations to Democratic candidates were 102% higher than for non-Democrats in the South, regardless of gender, and donations to Democratic candidates outside of the South were 87% higher than for non-Democrats. These results should benefit female candidates, as there are more Democratic than Republican female candidates in both regions. Such a finding would also bolster Reid’s (2004) finding that the Democratic Party tends to be more equitable with campaign funding than the Republican Party, leading to greater diversity among Democratic candidates for public office.

There are several other variables of note, with regard to differences in the amount of money fundraised in state IAC elections. As predicted, higher campaign contribution limits – regardless of region or gender – significantly depress the amount of money donated to a judicial campaign. What is unanswered is whether this lowered donation amount is uniform for males and females. Women should be more susceptible to this negative relationship because women during this time period are more likely to be challengers than incumbents, and the relationship between incumbency status and donation amounts is significant in both Southern and non-Southern states. However, incumbency as an explanation of the negative relationship between higher contribution limits and donations may only be true in non-Southern states, where

challengers receive significantly lower donations than incumbents: in Southern states, challengers receive significantly **higher** donations than incumbents. Another possible explanation of donation amounts – the professional experience of the candidate – was significant in both regions, but the relationship was negative: greater professional experience **reduces** the amount of money donated to a campaign.

Discussion and Conclusion

The goal of this paper was to expand the extant literature by providing greater insight into how gender affects donations to state intermediate appellate court elections. We can conclude that gender does affect the donation amounts received by candidates, and the donations vary by region of the country in which a candidate runs. In Southern states, female candidates for IAC offices receive higher donations than male candidates, while in non-Southern states female candidates for IAC offices receive lower donations than male candidates. This result holds even after controlling for other, gender-neutral explanatory factors, supporting the theory that donors view male and female candidates differently based on gender.

What is particularly interesting about the results of our study is how contrary they are to the descriptive statistics. Women are winning IAC races outside of the South, yet they receive smaller donations than their male counterparts. Women are not winning IAC races in the South, yet they receive larger donations than their male counterparts. Some of this discrepancy may be due to the fact that men receive more donations overall than women in the South, while the reverse is true in non-Southern states. Some of this discrepancy may also be due to the fact that women – including those running on conservative or Republican platforms – are perceived as more liberal than men (McDermott 1997; Songer and Crews-Meyer 2000; Rock and Baum 2010; Boyd 2016), which is more beneficial in the Democrat-leaning states outside of the South.

However, these conclusions are speculative: until we synthesize these findings with studies of male and female vote shares and likelihood of victory, we will still lack a complete picture as to the link between gender and judicial elections in the state.

There is the additional issue of how the other explanatory variables interact with the gender of the candidate. The variables in this study are examined in conjunction with one another's individual effects, but there is evidence that gender may have a measurable effect on the relationship between the independent variables and the donation amount to political campaigns. For example, while we can conclude that the Democratic candidates receive higher donation amounts than Republican candidates, we cannot conclude whether Democratic male candidates receive higher (lower) donations than Democratic female candidates, just as we cannot conclude whether Republican male candidates receive higher (lower) donation amounts than Republican female candidates. Future research needs to explore these links further, in order to conclude whether the effects of these explanatory variables are uniform for men and women, or if gender alters the effects of these variables on the amounts donated to state IAC candidates.

There is also a need to update the data to reflect changes in judicial elections in America. The DIME Database is the most comprehensive data set available regarding specific donations to state judicial elections. However, the data provide a complete record of donations only through 2012, and there have been several developments in case law and election law in the states which may have an effect on our findings. The most obvious developments are the erosion of campaign finance restrictions in elections, via the US Supreme Court's decisions in *Citizens United v. FEC*¹⁷ and *McCutcheon v. FEC*.¹⁸ These decisions have resulted in a marked increase in

¹⁷ 558 U.S. 310 (2010)

¹⁸ 572 U.S. 185 (2014)

spending in state court elections: for instance, the 2015-16 state courts of last resort election cycle saw a 40 percent increase over 2013-14 in spending by outside interest groups.¹⁹ If this trend holds for state intermediate appellate court elections, then we should see more money going to candidates, and we can observe whether the findings in this study still hold in more recent times. In addition to the case law developments, North Carolina has moved to a partisan judicial election system, which will likely increase the amount of money funneled into judicial elections in the state. These changes may alter the relationships described above and may provide a greater illustration of the effect of gender and donations in state intermediate appellate court elections.

¹⁹ Alice Bannon. “Who Pays for Judicial Races? The Politics of Judicial Elections, 2015-16”. Brennan Center for Justice <https://www.brennancenter.org/publication/politics-judicial-elections>

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