

Abstract

Title of Dissertation: LEGAL ARGUMENT, ISSUE FRAMING, AND THE DEVELOPMENT OF CAMPAIGN FINANCE LAW ON THE SUPREME COURT

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Supreme Court advocates seek to influence the Supreme Court through the arguments made in briefs filed with the Court. This dissertation examines the extent to which language used in attorneys' briefs is adopted by the Supreme Court, and whether the arguments made by attorneys affect the content and outcome of Court decisions. I focus on the Court's campaign finance jurisprudence, as the focus on a particular area of law allows the tracing of language related to similar issues over time.

In Chapter Two, I demonstrate that the Court's campaign finance decisions can be divided into four eras that are distinguishable by the Court's relative deference or skepticism toward legislative determinations regarding campaign finance regulation. Chapter Three examines instances in which justices have changed their minds on important issues and searches for evidence that arguments in briefs influenced these changes, but finds that there is little evidence that these changes can be directly attributed to arguments found in briefs.

Chapter Four examines legal argument through issue framing, analyzing the issue frames employed in both court opinions and attorney's briefs. I conclude that the four eras of campaign finance law can also be distinguished by differences in issue framing. I further conclude that advocates can affect the way the Court views an issue by adding new frames at the Supreme Court level that were not present in the lower courts, especially in the transitional cases that mark the beginning of a new era.

LEGAL ARGUMENT, ISSUE FRAMING, AND THE DEVELOPMENT OF CAMPAIGN
FINANCE LAW ON THE SUPREME COURT

by

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Chapter 1: Introduction

This dissertation examines how legal language develops over time, both in Supreme Court opinions and in the briefs filed with the Court setting forth legal arguments. My ultimate goal in this study is to determine whether the arguments made by advocates affect the outcomes or the content of Supreme Court opinions. A great deal of literature, which is reviewed extensively below, has dealt with the role of advocacy in the Supreme Court. This study extends the existing literature both in its substantive conclusions and in its methods.

My analysis focuses on the Supreme Court's campaign finance cases. I begin by theorizing that the Court's cases on this subject can be divided into four distinct eras, and provide evidence that the Court's voting patterns differed in these eras. I then analyze cases in which justices have changed their positions on certain issues, and look for evidence that legal arguments made by attorneys in briefs were adopted by the Court and affected the justices' changing positions. In the last substantive chapter, I turn to framing theory to analyze the linguistic similarity between briefs and opinions in particular cases. Framing analysis focuses on the use of related groups of phrases in a document in order to highlight certain aspects of an issue. The use of framing theory further my analysis of the differences between time periods in the Court's use of language. This type of analysis, using differences in language to characterize different time periods, is a new addition to the literature on legal advocacy and legal argument. I also employ framing theory to determine whether advocates are adding new issue frames at the Supreme Court stage, or simply using the same frames established in the lower court, and find evidence that advocates are successful at influencing

the way the Court frames its decisions in certain key cases.

The use of framing analysis, and the coding of documents based on frames they employ, allows me to compare the ways in which different documents characterize various legal issues—the way they *argue*. This is an important contribution to the literature on legal advocacy, because the goal of attorneys is to influence courts through their legal arguments. Accordingly, I can characterize both briefs and opinions by the issue frames they employ, and determine to what extent the language they are using is similar.

Review of the Literature

Every year, thousands of pages of briefs are filed with the Supreme Court. These briefs come from both parties and amici curiae, and some cases attract dozens of amici in addition to the original parties. Parties further attempt to persuade the Court through oral argument. The result is a massive information stream flowing from advocates to the Supreme Court. Advocates present their arguments in the hope that they will persuade the justices to vote “their way” and even that the arguments themselves will be adopted by the court. I am interested in both of these advocacy goals in this project. Can advocates persuade justices to change their minds on an issue? To what extent do advocates shape the language of the law? To what extent do court opinions reflect the language of briefs filed in the case? And do advocates have the opportunity to influence the development of a body of doctrine over time? The influence of a particular argument is hard to trace, unless the justices explicitly cite it, or unless we have access to the justice's materials that note the influence of particular briefs. However, we can detect to what extent language from briefs finds its way into opinions. Regardless of the outcome of a case, the *reasons* given for a decision matter, since they will shape future cases, and thus shape what it is possible for advocates to achieve and for future

courts to do. In the words of one legal academic critiquing political science research which focuses primarily on case outcomes, “[c]ase outcomes rarely tell us anything about the rule in the case, and what matters for law especially in appellate courts, is the rule.” (Friedman 2006, p. 276).

Legal change occurs for a variety of reasons: changes in Supreme Court personnel, who bring different judicial philosophies and political ideologies to their work; the issues that are brought before the court (although the court has discretion as to which cases it *takes*, it's not up to the court what issues are appealed to it); and new issues brought about by a change in the political landscape, such as the passage of major new legislation that is challenged in the courts. Legal change is reflected in *doctrinal* changes and these doctrinal changes are expressed in the decisions written by courts, so the impact of the Court's decisions go far beyond who wins or loses a case. An example comes from the recent *Citizens United* case, which could have been decided for the plaintiff on narrow grounds, but instead ushered in major changes in campaign finance law. Similarly, the Supreme Court's recent decision in *D.C. v. Heller* not only ruled the District of Columbia hand gun ban unconstitutional, but in doing so declared that the Second Amendment is meant to protect an individual right to bear arms, and specifically rejected the “collective right” theory of the Second Amendment. The actual language used in both of these decisions, and not just their result, will influence the way lower courts treat cases addressing these topics. Additionally, there is increasing evidence they will influence the Court's own future decisions. Even if the Court does not mechanically adhere to precedent as in the traditional “legal model” described by political scientists, the precedent created by the Court at one time constrains what it can do at another time. (Kritzer and Richards 2002; Bailey and Maltzmann 2008, 2011).

This project builds on and extends two existing, and related, bodies of literature: that on judicial behavior, and that on advocacy by parties and amici. One of the central questions examined by both these bodies of literature is whether law matters in judicial decision-making. Empirical political scientists addressing this question have often been highly skeptical of the importance of law in judicial decision-making. (Segal and Spaeth 1993 and 2002). On the other hand, the historical institutionalist tradition, found in both the legal academy and some departments of government or political science, generally takes law and the norms and culture of the legal profession more seriously (Gillman and Clayton 1999).

Many quantitative social scientists have argued that legal arguments are nothing more than post-hoc justifications for justices' policy preferences, or in strategic terms that they represent compromises between justices who may disagree somewhat on the outcome of the case, and are shaped to get “swing” justices to join a coalition. (The latter view does not necessarily imply that law does not matter, but political scientists who see judicial decision-making as driven by policy might argue that “compromise” legal positions might reflect this kind of strategic formulation in order to advance justices' policy goals within the constraints of a collegial court, rather than reflecting true legal principle). However, the last couple of decades have seen empirical scholars increasingly taking the law seriously, from Epstein and Kobylka (1992), up through more recent efforts by Richards and Kritzer (2002), Brandon Bartels (2009), Bailey and Maltzmann (2008, 2011), and Wedeking (2010).

With regard to the content of opinions, it should be noted that in one sense, it does not matter whether the Justices are persuaded by arguments, or use arguments as post-hoc rationalizations for their own ideological or policy preferences. Either way, the justices *must* use legal language to justify their decisions, and they are aware that it matters what language

they use, in the sense that lower courts will be bound by the precedent they create. Thus, it is important to understand whether advocates are successful in shaping the language of legal opinions, because by doing so, they are in effect shaping the outcome of the case with regard to legal doctrine, even if they do not influence which party wins or loses a particular case.

In addition to the body of literature on judicial decision-making, a number of scholars have examined how advocacy affects Supreme Court decisions. This work has examined both parties and amici curiae as influences on judicial decision-making, including their influence on both the cert stage and the merits stage of cases. Most of this work has fallen into two categories: it either examines the influence of advocacy on the court's decision as to whether to rule for the respondent or petitioner (Collins 2008), or it examines the influence of advocacy on the content of Court opinions. (Corley 2008). The limitation of the latter type of work, however, is that it is typically examines only a single Court term or a span of a few years. (Corley 2008). In order to comprehend the effects of advocacy on legal doctrine, it is necessary to consider more than single case or a single Court term, and to follow the development of law over time. I propose to examine the changes in a particular legal area over time, and whether, and to what extent, legal advocacy contributed to those changes. This approach does not assume that advocacy is the only, or even the primary, factor in legal change. Changes in court personnel and political environment are also likely to bring about legal change. However, the Supreme Court relies heavily on other actors (case parties and amici) for information, and a change in court personnel alone will not result in legal change unless advocates take advantage of these personnel changes.

In order to understand the role of advocacy in legal change, I will focus on legal change in a particular area, the Supreme Court's campaign finance jurisprudence. To perform

the kind of detailed tracing of legal change I propose, it is necessary to narrow the focus to a particular issue area, since change is not uniform across different areas of the law. On the one hand, this method has the disadvantage of being less generalizable than a broader examination of the Court's jurisprudence; on the other hand, it captures more nuance and detail regarding legal change, because it is not limited to a short time period encompassing only a few Supreme Court terms. Furthermore, focusing on a single area of the law allows the study to focus on particular legal arguments and doctrinal shifts that would be difficult to capture in a broader study.

Campaign finance law makes an especially good subject area for this study for a number of reasons. First, it includes several complex constitutional issues which are the focus of a variety of legal arguments. This is also an area in which judicial ideology is likely to play a role, so it provides an opportunity to determine if legal advocacy plays a role even in an ideologically charged subject area. The court has also decided at least twenty-four campaign finance cases in the modern era, beginning with *United States v. UAW-CIO*, 352 U.S. 567, (1957). This provides a large enough sample of opinions and briefs that gradual development of the law over time may be observed. Finally, the campaign finance cases involve a variety of organized interest groups as parties and amici curiae, and thus, potentially, a wide variety of legal arguments. This is a particularly high-stakes legal area for many interest groups, since the results of these cases in the courts affect their activities in the legislative arena. Campaign finance law is an area of law with important policy implications, as is readily apparent from the growth of money in American electoral politics since the decision in *Buckley v. Valeo*, 424 U.S. 1 (1976). Additionally, campaign finance is worth treating as its own distinct area of legal doctrine. While campaign finance law is a hybrid of

other areas—election law and First Amendment Law most importantly--it cannot be fully understood by examining these other areas of law *outside* the campaign finance context. Thus, the development of this body of law in itself is worth studying, both for its intrinsic importance to policy, and for the extent to which it has attracted a number of competing legal arguments.

In order to trace legal change over time, I will first characterize the evolution of campaign finance law over time according to both the Court's issue votes and its use of language. I will then turn to examining specific campaign finance cases in which Supreme Court justices cast unexpected votes and closely examine whether legal advocacy played a role in the Justices' decisions. I will then use content analysis, assisted by linguistic analysis software, to detect patterns in the Court's adoption of language from briefs filed by both parties and amici addressing the merits of the case. Parts of this analysis rely on issue framing theory, while other parts focus on discrete legal arguments.

The Role of Legal Argument in Judicial Decision-Making in the U.S. Supreme Court

There are at least three primary theories concerning the effects of legal precedent on Supreme Court decision-making, and under each model, judges would approach legal arguments differently. The legal model holds that precedent is the most important factor in judicial decision-making, even to the point of overriding justices' own preferences (Knight and Epstein 1996). In this case, arguments made by litigants, provided they cite relevant precedent, ought to be highly influential. Additionally, arguments grounded firmly in precedent will be more likely to be accepted than those made on policy or other grounds.

The attitudinal model of judicial decision-making holds, in contrast to the legal

model, that justices' decision-making is meant to maximize their own policy preferences (J. Segal and H. Spaeth 2002). Under this model, justices craft their opinions using the arguments that supported their already existing policy preferences; the arguments, in other words, are only post-hoc rationalizations for decisions that are made by other criteria.

Finally, an intermediate position is that held by Epstein and Kobyłka (1992). In trying to understand how legal change occurs, they find that changes in court personnel and political environment, among other factors, influence legal change, but ultimately find that change cannot be accounted for completely apart from law and legal arguments. While not completely agreeing with the most traditional form of the legal model, they do find that the “language of the law . . . arguably channels and constrains judicial choices.” (Epstein and Kobyłka 1992, 12). According to this theory, the arguments made by litigants play an important role in explaining judicial decision-making and legal change.

While strategic models of court decision-making might be grouped separately, they share with the attitudinal model the orientation that sees justices as primarily interested in making what they see as good policy (Epstein and Knight 2000). However, strategic models do not necessarily imply a particular view about justices' adherence to precedent. The same is true of interpretive-historical analyses of the court, which can incorporate various views on the motivations for judicial decision-making, and do not imply a particular view of how the court treats precedent.

If legal change cannot be explained without reference to legal arguments, it is important to understand the relationship between arguments and change, including what types of arguments are successful, and the process by which what counts as an acceptable argument changes over time. The process must be viewed from the point of view of those

considering the arguments and making decisions (judges) and those making the arguments and trying to influence those decisions (litigants).

The following sections outline relevant literature concerning judicial decision-making and legal change, in order to situate this project within the existing research in this area.

Judicial Decision-Making and the Force of Argument

Within political science, the dominant view of U.S. Supreme Court decision-making has been that Supreme Court justices are primarily motivated in their decisions by policy goals (Baum 1997). The most forceful and influential proponents of this view are Segal and Spaeth, in their seminal works *The Supreme Court and the Attitudinal Model* (1993) and *The Supreme Court and the Attitudinal Model Revisited* (2002). Segal and Spaeth (2002) point to the difficulty faced by those who argue for the importance of precedent, and therefore legal argument, in judicial decision-making, when they note that adhering to precedent can often not be distinguished from a judge following his or her own pre-existing preferences. If precedent is “an *influence* on decisions, it must achieve results that would not otherwise have obtained.” (J. Segal and H. Spaeth 2002, 290). While Segal and Spaeth do not deny that precedent sometimes causes justices to make decisions in conflict with their own preferences, they deny that justices prefer precedent over their own views to an extent that is “systematic and substantively meaningful.” (2002, 294). Using a sample of all “landmark cases” (those listed as “major decisions” in the Congressional Quarterly's *Guide to the U.S. Supreme Court*), and a sample of “ordinary” or non-landmark decisions, Segal and Spaeth concluded that *stare decisis* has minimal influence on Supreme Court justices, and that the justices policy preferences prevail in their decisions to cast votes on the merits of cases. Further, in

comparing landmark constitutional cases with landmark statutory cases, they find *less* adherence to precedent in the statutory cases, which is the opposite of what is to be expected, considering that statutory cases are often “lower stakes” than constitutional cases, and the Court knows its judgment in statutory case is subject to override by Congress (2002).

Additionally, Segal and Spaeth (2002) consider whether judicial attitudes drive decision-making only in the most politically salient cases. Noting that, since roughly 1937, civil liberties cases have become more important on the Supreme Court's agenda than economic cases, they investigate whether attitudinal behavior is greater in civil liberties cases from 1937 through the Rehnquist Court. They find that, in landmark cases, precedent has no significantly different effect in economic cases than in civil liberties cases. On the whole, they find that where precedent does have an influence, it is primarily in “low salience” cases, i.e., “ordinary” as compared to “landmark” cases. Furthermore, within the category of “ordinary” cases, precedential behavior is stronger among statutory cases (compared to constitutional cases) and among economic cases (compared to civil liberties cases) (2002). With regard to ordinary cases, these are the findings that are to be expected according to the traditional model in which precedent plays a central role in judicial decision-making. In landmark cases, however, precedent appears to play little, if any role, in any category.

Close analysis of the types of arguments used by Supreme Court justices in their opinions has also provided some support for the attitudinal model. In two articles analyzing the arguments made by Justices William Brennan and William Rehnquist, Gates and Phelps (Gates and Phelps 1996; Phelps and Gates 1991) found that, while the two justices advocated the use of different types of arguments, their tendency to reach results matching their ideological view was greater than their actual reliance on any one mode of argumentation.

As Baum (1997) points out, both of these justices were generally regarded to hold strong ideological positions, so it is not surprising these positions appear to influence their jurisprudence. An analysis which investigated a greater number of justices, and including some who are less ideologically extreme, might yield different results. Nevertheless, Gates and Phelps' studies show the value of closely examining legal arguments when attempting to understand judicial decision-making.

The attitudinal model presents a serious challenge to traditional claims regarding the importance of precedent and legal argument in judicial decision-making. However, a number of scholars have pointed out the shortcoming of the attitudinal model. Knight and Epstein (1996) consider the interaction of precedent and policy preferences, by examining the actual content of attorneys' briefs, judicial opinions, and the court's appeals to precedent during conference. They conclude that, while policy preferences matter, precedent serves as an important constraint on judicial decision-making. While each justice has a preferred outcome in a particular case, they also take the norms of *stare decisis* seriously. Accordingly, instead of merely voting their preferences, they take into account existing precedent and the preferences of other justices, and modify their positions if necessary, with the goal of reaching a court decision that is as close as possible to their favored outcome. (Epstein and Knight, 1996).

Additional evidence that more than policy preferences matter comes from Epstein and Kobylka (1992), who made a detailed study of change in the Supreme Court's rulings on the death penalty and abortion. They examined three primary factors that ought to drive legal change—the court itself, “political environment” (which encompasses both public opinion and institutional actors), and interest group pressure. Abortion and the death penalty made

particularly good objects of study, since they were both areas in which significant change had occurred in a relatively short amount of time. On the whole, Epstein and Kobylka's findings point to the importance of legal argument as a factor in legal change.

Epstein and Kobylka define legal change as “a court created shift in (or reversal of) a particular prevailing legal doctrine.” (1992, 5). The two issue areas chosen underwent this type of change in a relatively short period of time. The change was especially short in the case of the death penalty, where the Supreme Court in *Furman v. Georgia*, 408 U.S. 238 (1972), ruled Georgia's procedures for imposing the death penalty unconstitutional; a mere four years later, the Court upheld the constitutionality of the death penalty in *Gregg v. Georgia*, 428 U.S. 153 (1976) after the rules for its imposition had been revised. With regard to abortion, the court famously up held the right to abortion in *Roe v. Wade*, 410 U.S. 113 (1973). However, sixteen years later in *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989), the court undercut (though it did not explicitly overturn) *Roe* by allowing the states more freedom to regulate abortion.

In tracing legal change in these areas, Epstein and Koblyka (1992) find that factors such as political climate, or the types of groups participating in litigation, or the change in court personnel, offer insufficient explanations for legal change. In the case of the death penalty, for example, while there was some change in court personnel between *Furman* and *Gregg*, two members of the *Furman* majority, Justices Stewart and White switched sides in between cases. A third justice in the *Gregg* majority, John Paul Stevens, has, since *Gregg*, written opinions indicating his opposition to the death penalty, so it seems unlikely he did not have at least some sympathy to the anti-death penalty side at the time *Gregg* was argued. Epstein and Kobylka follow the argumentative strategy of the NAACP Legal Defense Fund,

the organization that spearheaded the anti-death penalty litigation in both these cases, and found it to be lacking. Rather than argue for reversal of the death penalty based on both broad constitutional grounds, and more narrow grounds that might have offered an alternative reason to overturn the defendant's death sentence, the LDF assumed the *Furman* decision meant the Court had accepted the unconstitutionality of the death penalty. In reality, however, the LDF attorneys overlooked the fact that changes in the Georgia death penalty law had removed the due process concerns that led to the *Furman* decision, and failed to adjust their argument to those changed circumstances. The authors also cite skilled amici arguments by Solicitor General Robert Bork (who did recognize the limitations of the Court's anti-death penalty holding in *Furman*) in favor of the death penalty's constitutionality.

Epstein and Kobylka, not surprisingly, argue that legal change cannot be explained merely by change in court personnel. They point out that *Brown v. Board of Education*, 347 U.S. 483 (1954), was decided by justices who were “not appointed by presidents with an overwhelming commitment to the demise of Jim Crow,” (Epstein and Kobylka 1992, 302), and their detailed tracing of the change in the death penalty and abortion help make their case that, while other factors matter, “it is the law and legal arguments as framed by legal actors that most clearly influence the content and direction of legal change.” (Epstein and Kobylka 1992, 8).

More recent work has also provided strong support for the importance of legal arguments in judicial decision-making. Collins (2008) studied the influence of amici curiae briefs on the Supreme Court, and found evidence that the justices consider the arguments in the briefs, even those briefs they disagree with. Collins examined, separately, the influence of conservative and liberal briefs in the Court from 1946-2001. Using a probit model which

included the number of conservative and liberal amicus briefs filed in each case, Collins found that, when the number of briefs in a particular ideological direction increases, it has a statistically significant effect on the probability of a justice (even on whose ideology is opposed to that of the brief) casting a vote in the direction of those amici briefs. For the most part, both liberal and conservative justices responded to the arguments of liberal amicus briefs. Those justices in the extremely liberal ideological range responded less strongly to conservative briefs, but even they responded somewhat to them; the briefs' influence was muted, but not eliminated. With regard to conservative briefs, Collins found similar results for most justices, with the exception of the three ideologically extreme conservative justices: Rehnquist, Scalia, and Thomas. (Collins notes that Spaeth (2005) has referred to Rehnquist as the “poster child” for the attitudinal model.) (Collins 2008, 109). On the whole, Collins' findings show that, with a few exceptions, attempts at legal persuasion made a difference on the Supreme Court. Ideology attenuates the effect of legal argument, but, with the three exceptions noted above, it does not eliminate it.

Decision-Making from the Top Down and Bottom Up

Both Epstein and Kobyłka (1992) and Collins' (2008) work point to the existence of what Collins terms “bottom up”, as opposed to “top down,” decision-making in the Supreme Court. In top-down decision-making, justices seek a conclusion that accords with their policy preferences, seize on the arguments that support it, and ignore or downplay those that do not. In a bottom-up process, however, justices consider all the evidence before them, and may even try to suppress their own policy preferences so as to not be unduly influenced by them. Their goal is to “reach the most legally correct answer.” (Collins 2008, 175). None of

this suggests that justices' attitudes do not matter, or even that they are not the primary influence on decision-making. It does mean, however, that there is evidence that most justices engage in good faith attempts to consider arguments opposed to their own policy preferences, and can sometimes be persuaded by them.

This is not to say, of course, that legal change comes only from the bottom up, as top down change is also possible. First, the certiorari process gives the Court enormous discretion over which cases it hears; thus, not only does the court have great power in setting its own agenda, but it effectively sets the agenda of other courts below it (Perry 1994). Occasionally, the court even decides on its own that particular issue has not been adequately addressed (or addressed at all) by the parties, and that the case needs to be rebriefed or reargued, as occurred with *Citizens United v. FEC*.

Finally, the Supreme Court, as well as other courts, are potentially loci of judicial entrepreneurship, providing judges with the opportunity to promote ideas that interest them (McIntosh and Cates 1997). Accordingly, when looking for new legal arguments that may become influential, we should look not only to briefs, but to legal opinions. Even when a judge holds a position not shared by his colleague, the opinion writing process offers a chance for him to share his idea with other judges and attorneys, through the authorship of concurring and dissenting opinions. While the Supreme Court offers the most potential influence on other courts, and thus the most obvious opportunity for legal entrepreneurship, federal circuit courts and state supreme courts also offer opportunities for enterprising judges to promote new ideas (McIntosh and Cates 1997).

Considering the potential for change to come from both judges and litigants, the process of legal change is properly understood as a complex interaction of “top-down” and

“bottom-up” forces. A Supreme Court decision at time X (let us call it “Case X”), for example, may set the stage for a ruling on a related issue at time Y (“Case Y”), but litigants must determine how the rulings of Case X apply to Case Y, and make the appropriate arguments to convince the court that they should prevail. While the personnel profile of the court certainly sets the stage for which arguments will be acceptable, there is more than one argument or sets of arguments that might be accepted by any particular set of justices. A detailed example of this is provided by Kassop's (1993) analysis of the arguments in *Casey v. Planned Parenthood*, 505 U.S. 833 (1992). The opinion in *Casey* reflects the interaction of arguments with policy preferences. Justices O'Connor, Kennedy, and Souter (and Blackmun and Stevens, who concurred in the result), upheld the state regulations at issue that potentially made obtaining an abortion more difficult. They also adopted the “undue burden” standard for regulation of abortion, rejecting the more stringent “strict scrutiny” approach of *Roe v. Wade*. Nevertheless, they also claimed they were upholding *Roe*. The “undue burden” standard had been articulated by Justice O'Connor in earlier abortion opinions, but not explicitly adopted by a majority of the Court, which had rejected *Roe*'s strict scrutiny standard without replacing it with a new standard. The Third Circuit ruled in *Casey* that the “undue burden” standard was now the correct standard to be applied, since that standard commanded a plurality of Justices and was the narrowest grounds on which a plurality could be found. Already to this point, a combination of top-down and bottom-up factors can be identified. The Court had rejected the central holding of *Roe*, a “top down” change, but the ambiguity concerning the applicable standard left open an opportunity for “bottom up” change. Advocates from both sides recognized this as an opportunity to determine whether *Roe* would be upheld, and what the standard for abortion regulations ought to be. The

appellate court, faced with ambiguity, was forced to do its best to interpret the Court's previous rulings.

As Kassop argues, the oral argument transcript shows that the Justices care about the substance of arguments, and may sometimes even identify arguments the advocates do not. The Attorney General of Pennsylvania, for example, believed that if their state regulations could not be upheld under *Roe*, they could not be upheld at all. Justice Kennedy suggested during argument, however, that a less strict standard of review might still allow the regulations to be upheld. Significantly, in upholding *Roe* (even while weakening it), the Court adopted language from pro-choice interest groups that had served as amici curiae in past cases (a sign that arguments can have an impact across time, as well as in the case at hand) (Kassop 1993).

Additional, and compelling, evidence of the potential for litigants' arguments to influence the language of court decisions is found in Corley's (2008) analysis using anti-plagiarism software. Corley used the software Wcopyfind 2.6 to detect similarities in language between parties' briefs and majority opinions from the 2002, 2003, and 2004 terms. Corley theorizes that adoption of the language used in parties' briefs reflects the influence of that party, in that it gives the party whose language is adopted a chance to influence the substance of the law. While the extent to which justices adopted parties' language varied among justices, some justices appeared to be influenced significantly. Justice O'Connor, for example, had the highest percentage of language "borrowed" from parties, with 11%, while Breyer, Kennedy, Scalia, and Souter, on the low end, borrowed only 7% of the language of their opinions from parties' briefs. These findings have a couple of important implications. First, even borrowing as little as 7% of the language from a party's brief could be significant,

depending on what language is borrowed. Additionally, the extent to which various justices borrow language from parties could indicate the extent to which litigants can actually hope to influence those justices. This is particularly significant given the relatively low extent of borrowing by Justice Kennedy, who is often the court's "swing vote."

Historical Perspectives on Change

As discussed by Pacelle et al. (2011), judicial decision-making ultimately involves a complex mix of individual and structural factors. Attitudes, precedent, issue evolution, and the influence of other institutional actors all play a role in judicial decision-making; however, the Supreme Court's decisions are also influenced by macro-level, institutional changes. Most important for this dissertation is understanding the evolution of the court's role as a protector of rights. In the 20th century, particularly during the Warren Court, the Court's agenda shifted away from a focus on economic issues, and toward a greater focus on civil rights and liberties (Pacelle, Curry, and Marshall 2011; Pacelle 1991) simultaneously, the Court "increasingly became a constitutional tribunal, further exaggerating its influence." (Pacelle, Curry, and Marshall 2011, 202). The increasing focus on politically salient constitutional issues, and the court's increasing power, also saw the potential to increase the importance of judicial ideological preferences, as the Court was increasingly dealing with issues which lent themselves to ideological differences. However, the court's decisions even in the modern era cannot be explained wholly through attitudinal variables, as justices rarely have the luxury of simply voting their policy preferences. They must also contend with the expected reactions of other institutions in a system of separated powers, the need to reach agreement with other justices to form a decision, and the need to maintain the court's

legitimacy (Pacelle, Curry, and Marshall 2011).

As the Warren Court gave way to more conservative courts headed by Burger, Rehnquist, and Roberts, the trend of rights expansion did not reverse or end, but rather took on a new, conservative direction. When the court's conservative turn began, a rights-based constitutionalism was already fairly well established in American law and politics; the conservative courts that followed Chief Justice Warren's tenure have accordingly worked within the rights paradigm, and bent it to their own ends, rather than rejecting it (Keck 2004). The Rehnquist court, for example, was not hesitant to expand First Amendment freedom of expression doctrine to, among other things strike down campaign finance regulations and protect commercial speech—in other words, using the idea of freedom of expression to strike down policies that were generally in conflict with conservative policy goals, although there were notable exceptions to this as well, as with the court's striking down of a statute prohibiting burning of the U.S. Flag. Indeed, the court became ideologically fragmented during the Rehnquist era, leading to a minimalist and pragmatic streak that tempered its ideological direction. (Gillman and Clayton 1999).

The ultimate failure of a more conservative Court to reject rights-based constitutionalism points to the “stickiness” of certain modes of institutional decision-making. As Keck (2004) notes, “particular constellations of legal ideas tend to become temporarily entrenched within constitutional discourse . . . and they shape the preferences of and strategic constraints facing subsequent constitutional interpreters.” (Keck 2004, 12). The justices are not starting, in other words, from a blank slate on which they can impose their preferences. The “constellations of legal ideas” Keck refers to can also influence the behavior of litigants, in addition to justices. Keck (2006), for example documents how the court's own decision

regarding affirmative action in *Regents of the University of California Regents v. Bakke*, 438 U.S. 265 (1978) which struck down racial quotas for medical school admissions but left open the possibility of some race-sensitive admissions policies, shaped later attempts to roll back affirmative action. The *Bakke* decision acted as a catalyst for a right-libertarian campaign, spearheaded in this case by libertarian public interest firm the Center for Individual Rights, on behalf of “victims” of affirmative action. Rather than simply serving as an “external pressure” on the court, the litigation campaign by CIR was itself shaped by the court's previous decisions (Keck 2006). In understanding the strategies and arguments litigants use to advance their causes, it is necessary to be sensitive to the ways in which prior actions by the court shape what issues emerge, and what is possible to accomplish through the Court.

Theory: How Arguments Can Make a Difference

There are at least three ways arguments in briefs might make a difference in a justice’s decision-making, and accordingly in the language of a decision. The most obvious (but least likely) route is for an argument to actually change a justice’s mind, and for the justice to subsequently incorporate that reasoning into his or her decision. The second is for an attorney to make an argument a justice is already inclined to agree with, and for the justice to use that reasoning in writing his decision. This may be done explicitly, by setting out an argument and stating the court agrees with its reasoning, or implicitly, but adopting the language and reasoning found in a brief without explicitly saying they are so doing.

There is also a third, more subtle way that arguments might influence justices, and it is best explained through an example. When Justices decide to take a case, they may already have a rough idea of what they believe the outcome should be, and why they should reach

said outcome. In some cases, justices may be open to changing their mind completely about the outcome, and in others not at all. In other cases, they may not be open to changing their mind about the eventual outcome, but open to various strands of reasoning which would reach that outcome. It is the job of Supreme Court advocates to determine which justice(s) can be persuaded, and which arguments will best appeal to that justice. In other words, advocates must try to identify the “swing justice” (or justices) and use the arguments that will swing them the right way. For example, imagine that there are at least five plausible legal arguments for striking down a particular statute, and the attorney representing the party hoping to have it struck down believes that Justice Anthony Kennedy is the swing justice in this particular case. Based on Kennedy’s prior decisions, the attorney believes Kennedy might plausibly accept arguments 1 and 2, but likely not arguments 3 through 5. Accordingly, the attorney would emphasize arguments 1 and 2 in his brief, and would probably include arguments three through 5, but devote less attention to them. In this scenario, the lawyer’s job might not be viewed as persuading a justice to change his mind, but giving him a reason to do what the lawyer wants. The attorney must identify the “field” of potential arguments, which arguments the swing justice might accept, and focus on the arguments that the swing justice feels the most comfortable accepting.

To take a more concrete example: Suppose that in 2014, Congress passes a law requiring all U.S. Citizens to purchase an annual allotment of broccoli, in order to improve public health. Those who do not purchase their required annual broccoli allotment must pay a “broccoli tax” to the U.S. Treasury, the funds from which are then used to pay for public health education programs. The Solicitor General, in defending the law, believes the four liberal justices will be willing to uphold the law as a straightforward application of the

commerce clause. Based on the result of *NFIB v. Sebelius*, however, the SG also believes that Alito, Roberts, Thomas, and Kennedy will vote to strike the law down. He believes that Justice Roberts is unlikely to uphold the statute on commerce clause grounds, based on his previous decision in *Sebelius*. However, based on *Sebelius*, he believes Roberts might uphold the decision based on the taxing power, and accordingly chooses to emphasize this argument. The SG is likely not changing the mind of anyone on the court, nor does he need to; he simply needs to give the crucial justice an acceptable reason to do what he wants the court to do.

Note that each of these methods of influencing justices can take two forms—that of arguing that legal doctrine should change, and that of arguing about how existing doctrine should apply to new situations.

In seeking to understand how advocates try to influence the Justices, I ultimately turn to framing theory, a particular way of understanding attempts at persuasion. This theory is described in further detail in the following section.

Issue Framing and Legal Persuasion

Framing theory is succinctly described by Chong and Druckman (2007b, 104) as follows: “The major premise of framing theory is that an issue can be viewed from a variety of perspectives and be construed as having implications for multiple values or considerations. Framing refers to the process by which people develop a particular conceptualization of an issue or reorient their thinking about an issue.” The possible application of this theory to legal argumentation is readily apparent. Legal issues may have “implications for multiple values or considerations,” and be conceptualized in a variety of different ways. A question of

whether to uphold a particular campaign finance statute, for example a limit on spending for issue advertisements by political parties, might be conceptualized in terms of at least four different values: 1) Freedom of speech on the part of the organization sponsoring the advertisement; 2) Congress's authority to regulate campaigns and elections; 3) prevention of corruption or undue influence (which itself may be characterized in different ways); 4) following of any relevant precedent that exists on a particular issue. It is possible to recognize that all of these considerations are important, but when a judge is trying to decide the constitutionality of a statute, it may matter to her which of these frames are more important than the other. Issue framing is related to, but distinct from, another concept familiar to many political scientists, "agenda setting." Put simply, the difference is this: Agenda setting is the process of determining *what issues are talked about*; issue framing is the process of determining *how communicators talk about those issues* (Scheufele and Tewksbury 2007; Nguyen, et al. 2013). Agenda setting also takes place in the Court, and a significant literature has been devoted to that topic (Pacelle 1991; Perry 1994).

It should also be noted that a *frame* is distinct from an *issue*. An issue can be understood as an "object of discussion" (Nguyen, et al. 2013) in a text, such as a court opinion or legal brief. For example, in the campaign finance cases, campaign contribution limits and campaign spending disclosures are two issues that frequently appear. By using certain words or phrases, advocates or the Court might highlight certain aspects of each of these issues—the freedom of speech concerns related to spending; the privacy and associational freedom concerns associated with disclosures; and concerns about transparency and government accountability. Emphasizing one of these aspects of an issue over another might change the way the issue is viewed. It should be noted, however, that each of these

“frames” mentioned above could also constitute an issue in itself. (Nguyen, et al. 2013).

Freedom of speech, for example, is an issue that itself receives much discussion in the campaign finance cases and many other Supreme Court cases. However, in this study I am interested in the use of various frames to discuss specific issues related to campaign finance law; the issue definitions come primarily from the various methods of campaign finance regulation found in campaign finance statutes. I have defined those issues clearly in the third chapter.

Much of the academic literature on issue framing involves public opinion (Chong and Druckman 2007b) rather than elite decision-making, but the central aspects of the theory are applicable in either setting. First, framing theory assumes that an individual begins with a “frame in thought,” a set of attitudes or values toward a topic that an individual associates with an issue and weighs according to how important the individual views them in defining that issue. In reality, some individuals have thought little about a subject, so may lack any significant pre-existing “frame in thought” on that subject (see, e.g., Zaller’s (1992) discussions of public opinion). In the case of the Supreme Court, however, the justices may have well-formed pre-existing ideas, especially if they have encountered an issue before as a Justice, or in their work prior to ascending to the Court. Nevertheless, even those with strong opinions may be subject to framing effects (Chong and Druckman 2007a, 2007b).

While a frame in thought represents the pre-existing considerations an individual has regarding an issue, a “frame in communication” represents the message a communicator uses to attempt to get target listeners or readers to think about an issue in a particular way.

(Chong and Druckman 2007b; Jacoby 2000). So, one brief in a campaign finance case might

focus on the freedom of speech aspects of the case, while another might focus on the definition of corruption.

Framing can be understood as a process of affecting the *weight* that an individual gives to various considerations. This can be distinguished from belief change, which adds new information to an individual's considerations, and priming, which makes certain considerations temporarily more accessible to an individual. Priming assumes that an individual cannot always "access" all the various concerns about a particular issue at the same time, because one may forget or overlook some aspects of an issue at a given time, and that the target needs to be "reminded" of that consideration. While framing and priming are closely related, framing focuses on affecting the weight an individual gives to various dimensions of an issue, not simply calling that dimension to an individual's attention. (Chong and Druckman 2007a).

Another way of understanding how framing works, related to Chong and Druckman's focus on "weight", is to view framing as involving *selection* and *salience* (Entman 1993). Entman (1993, p. 53) defines salience as "making a piece of information more noticeable, meaningful, or memorable to audiences." When communicators engage in framing, they are selecting some aspects of a subject and increasing their salience in the text with which they communicate with the receiver of that communication (Entman 1993). Attorneys, for example, are communicators, and engage in framing by choosing some aspects of a case to emphasize over others in a brief. An attorney arguing in favor of a campaign finance statute might focus on the need to combat political corruption, seeking to make that frame more salient in the mind of justices deciding a case. The justices themselves are also communicators. When they issue an opinion, they may emphasize one or more particular

aspects of the subject being addressed in the opinion. This communicates to attorneys and parties who may be involved in future cases what aspects of a case are most salient to the Court.

An example of framing similarities in the campaign finance cases is exemplified in the following two paragraphs. According to the criteria I specified in Chapter 4, the clusters of phrases regarding “personal wealth” are found together in some of the documents. These phrases reflect the concern of the Court, and some advocates, that political candidates not be prevented from using their own personal monetary resources as a source of campaign funds. The first paragraph below comes from the petitioner brief in *Arizona Free Enterprise Club’s Freedom PAC v. Bennett*; the second comes from the majority opinion in that case. Phrases which my analysis found to be part of the “personal wealth” frame are in bold type:

In *Davis*, this Court reaffirmed *Buckley*'s holding that the government may not cap a candidate's **expenditure of personal funds** to finance campaigns. The Court specifically noted that a cap on **personal expenditures** imposes a substantial, clear, and direct restraint on the First Amendment right to engage in the discussion of public issues and vigorously advocate for one's own election. The Court also noted that a restriction on a candidate's use of **personal funds** disserves any anti-corruption purpose because it increases the candidate's dependence on outside contributors. (Citations omitted).

(Petitioner Brief, *Arizona Free Enterprise Club’s Freedom PAC v. Bennett*)

We have repeatedly rejected the argument that the government has a compelling state interest in "**leveling the playing field**" that can justify undue burdens on political speech. In *Davis*, we stated that discriminatory contribution limits meant to "level electoral opportunities for candidates of different **personal wealth**" did not serve "a legitimate government objective," let alone a compelling one (internal quotation marks omitted). And in *Buckley*, we held that limits on overall campaign expenditures could not be justified by a purported government "interest in equalizing the **financial resources** of candidates." After all, equalizing campaign resources "might serve not to equalize the opportunities of all candidates, but to handicap a candidate who

lacked substantial name recognition or exposure of his views before the start of the campaign." (Citations omitted).

(Supreme Court Majority Opinion, *Arizona Free Enterprise Club's Freedom PAC v. Bennett*)

There are various concerns present in both of these paragraphs, such as freedom of speech, the rejection of an argument about the legitimacy of "leveling the playing field" in political campaigns, and the possibility of corruption (or lack thereof). But both paragraphs reflect an emphasis on not treating candidates differently simply because they have large amounts of personal funds to spend on a campaign. This type of linguistic similarity does not necessarily involve the direct borrowing of language, although it can—and that is a common practice among lawyers and judges. It does, however, involve the use of certain phrases that emphasize some aspects of an issue over others. Here, the fact of a candidate's personal wealth, and more importantly that personal wealth is not a valid criterion for limiting one's campaign participation, is the emphasis.

As Wedeking (2010) explains, issue framing is related to Riker's (1986) concept of "heresthetics," defined as "the art of political manipulation," or "constructing choice situations in order to manipulate outcomes." (Epstein and Shvetsova 2002). Adding new information or alternatives in a choice situation, agenda setting, and strategic voting are all methods one might use in heresthetical maneuvering, which, according to Riker, provides the potential to turn political defeat into political victory. Some evidence exists that Supreme Court Justices themselves engage in heresthetics in order to affect the outcome of cases in which they believe they may not achieve their favored result. For example, Epstein and

Shvetsova (2002) found evidence that Chief Justice Warren Burger used various strategic maneuvers to avoid unfavored outcomes when he believed the court's status quo did not favor his position on a case, such as raising issues of standing, jurisdiction, or justiciability in an attempt to have the Court pass on deciding a case and return it to lower courts.

Additionally, Black, et al. (2013) found evidence that justices engage in heresthetical maneuvering during oral argument. They found that justices who oppose a potential case outcome will attempt to raise alternative issues in oral argument, in order to add these issues to the case record. If the justice later believes the Court's decision on the merits will not go the way he prefers, the justice who brought up the alternative issue during oral argument will attempt to use that issue to prevent the Court from reaching a decision on the merits. As with Epstein and Shvetsova's study, this often meant deciding cases on grounds of justiciability, standing, or other grounds that involved affirming a case without a decision on the merits or sending the case back to a lower court.

Wedeking (2010) links heresthetics and framing by evaluating the strategic use of frames in communication by litigants who have an incentive to turn the court's attention away from the dominant or prevailing frame, the frame which lower court decisions have already established for a case. Because petitioners before the Court are those who persuaded the Court to accept a case, the Court may already be sympathetic toward their framing of the issues. Accordingly, Wedeking believes respondents have a greater incentive to use alternative frames in their arguments, in hopes of drawing the Court's focus to a new frame that might result in a more favorable decision. He finds evidence that respondents do indeed engage in such framing, and evidence that it can be effective in influencing the Court's framing of an issue.

Finally, it should be emphasized that I do not claim that issue framing by advocates, or legal argument by advocates generally, is the sole source of frames employed by the courts. As later parts of the analysis will show, some frames may come from the court itself, but others may come from influences outside the legal environment. The Supreme Court is not a closed system, and justices may be influenced by outside factors such as public opinion, debates in Congress or other indications of elite opinion, their own views, and even in the outside world. This analysis does not attempt to answer the ultimate causal question of where particular frames originate. Instead, I am analyzing the relationship between the framing in advocates' briefs and the framing in court opinions, as well as changes in framing over time. With regard to the relationship between advocacy and court decisions, my goal in this chapter is to determine the extent to which the framing of opinions reflects the framing of briefs, whether opinions are more similar to briefs or past cases in their use of frames, and whether advocates successfully introduce frames into the conversation that were not present in lower court decisions.

Chapter 4 of this study relies heavily on framing analysis. That chapter analyzes the similarities and differences in the Court's issue framing across time, and the changes in issue frames employed by advocates. Chapter 4 also utilizes framing analysis to determine whether the Court adopts frames used by advocates.

Chapter Outline

Chapter Two provides an overview of the evolution of the Supreme Court's campaign finance jurisprudence, and argues that campaign finance law may be usefully divided into four eras or periods defined, in part, by the Court's deference or skepticism toward campaign finance legislation. This chapter also begins to explore differences in the Court's use of language throughout these four periods.

Chapter Three is a close study of a few occasions in which justices have changed their minds on campaign finance issues, on the theory that these are junctures at which legal arguments made by litigants might have been particularly effective.

Chapter Four turns to the study of framing effects for two purposes. First, it presents evidence that issue framing, and not just case outcomes, varies across the four distinct eras of campaign finance law. It then examines whether litigants successfully use issue framing to persuade the Court to issue decisions that conflict with the status quo in a given period. Finally, I analyze whether advocates succeed in influencing the Court to adopt frames that were not present in the lower court decision in a case, thereby highlighting some new concern that was not present in the case at an earlier stage.

Chapter 2: Campaign Finance Law Through Time and the Discussion of Arguments

This chapter has three primary goals. First, it outlines the development of the Supreme Court's campaign finance cases by dividing them into different periods or eras, and examines empirical evidence that the Court treated campaign finance cases differently in each era. Second, it begins the analysis of the language of the Court's campaign finance opinions by examining the *explicit* discussion of advocates' briefs in Supreme Court campaign finance decisions, and the differences in the Court's opinion language in different periods. Later chapters will examine the language of briefs themselves, and the extent to which the language of briefs and opinions is similar. I assume that the influence of legal arguments is not always expressly acknowledged within court opinions, and language from briefs may find its way into court opinions without being expressly acknowledged (Corley 2008). However, the Court does explicitly discuss many arguments, and this inquiry begins with examining how the court treats them in its opinions.

The third and final goal of this chapter is to set forth some theoretical expectations as to the role of language in Court opinions and in advocates' briefs—how briefs might shape the Court's opinions, and how the Court's opinions will influence briefs in subsequent cases. This chapter thus sets the stage for the subsequent chapters, which will examine advocates' use of language in briefs filed with the Court, and the effects of those briefs on the content of Court opinions.

Campaign Finance Law Through Time

One of the goals of this project is to understand how legal argument affects the change or stability of legal doctrine over time. I would expect the passage of time to matter

for a few reasons, which might roughly be divided into the categories “changes in the court” and “changes in the external world.” First, the passage of time means personnel changes on the court will eventually occur. This will change the composition of the court with regard to ideological views and legal philosophies. Furthermore, apart from the personnel changes, individual justices may change their position on certain issues over time. For example, there is evidence that some justices experience “ideological drift” over time (Epstein, et al. 2007) or change their positions on specific issues (Epstein & Kobylka 1992).

As for changes in the external world, the passage of time will see the presentation of new situations for the Court to deal with, both in the form of new statutes passed by Congress, and new challenges to those statutes. For example, the doctrinal basis of most modern campaign finance law is found in the Court’s 1976 decision in *Buckley v. Valeo*, which adjudicated a challenge to the FECA Amendments passed by Congress in 1974. Since then, the Court has recognized that *Buckley* provided the doctrinal framework for deciding its campaign finance cases, even when the justices disagreed on how to interpret *Buckley* (and notwithstanding some dissents which argued that parts of *Buckley* were altogether wrong). However, the Court’s campaign finance doctrine evolved as it was faced with new situations to which it must apply *Buckley* that were not considered in the original decision—for example, contributions to ballot measure campaigns, state campaign finance statutes (as opposed to the federal ones considered in *Buckley*), and the extent to which First Amendment protections apply to corporations.

Some of the changes in external world that affect the Court will be driven by outside events, while others are driven by the court itself. Each decision by the Court produces actions and reactions by relevant parties and constituencies, such as interest groups or

members of Congress. Accordingly, the political and legal context may change from one case to the next.

I have chosen to group cases into four time periods, based on doctrinal changes. Legal scholar and political scientist Richard L. Hasen has identified distinct trends in the Court's campaign finance doctrine (Hasen 2004, 2008, 2011). While Hasen does not formally identify or name these periods, the time segments into which I divide these cases are heavily influenced by his analysis. This division of the Court's cases into time periods is also influenced by Richards and Kritzer's (2002) concept of regime theory. While Kritzer and Richards' original concept of legal regimes has been criticized on methodological grounds (Lax and Rader 2010), the basic concept is useful in conceptualizing what differentiates distinct periods of legal development in the same area. According to Richards and Kritzer (2002), key precedents form the basis of a legal "regime" that guides the court in deciding cases in a particular area. While justices' policy preferences still play an important role in decision making, regime theory posits that regimes structure the Court's decisions by establishing factors that are relevant in deciding the Court's cases in a particular legal area. After a regime is established, it should influence what legal rules and factual considerations are relevant in subsequent cases regarding the same subject. New regimes may be established over time. Once a new regime is established, the justices will use a different set of factors in deciding cases than they did prior to the establishment of the regime.

While this analysis does not formally adopt regime theory, it is informed by Richards and Kritzer's idea that there are distinct "breakpoints" after which the factors that go into the Court's decision-making should change. These breakpoints may involve formal alteration of precedent, but they may also involve reinterpretation of precedent that does not formally

overturn a prior case.

This analysis divides the Court's campaign finance cases into four periods or eras, which are described below. I selected the cases for analysis in this project by cross-referencing two sources. In order to select the appropriate cases, I first performed a key number search on Westlaw for Key Number Topics relating to campaign finance law (See Appendix 2-1 for list of West Key Number topics). Once the above topic search was conducted, I performed another search in the Supreme Court database (Spaeth) for the campaign finance regulation topic, which generated a separate list of cases. Most of the list was the same as the Westlaw list, but it included a few additional decisions. I then read the syllabus of each decision to verify that each one actually involved challenges to federal or state campaign finance statutes, either on constitutional or other grounds. This method generated a set of twenty-four campaign finance cases (see Appendix 2-2 for a list of cases).

I have divided the court's campaign finance cases into four eras or regimes, and coded each opinion accordingly: 1) Pre-Buckley; 2) the Buckley Era; 3) the New Deference Era 4) the Deregulation Era (I drew the terms "New Deference" and "Deregulation" to characterize these respective periods from Hasen's (2004, 2011) work.) Table 2-1 identifies each of these eras, the number of cases therein, the time periods they cover, and the distinguishing legal characteristics of each.

In selecting what I believe to be the logical breakpoints, there is, of course, always a danger of selection bias. However, my choice of breakpoints is theoretically informed by Hasen's description of the changes in campaign finance law over time. Furthermore, evidence in both this chapter and chapter four supports the claim that these eras can be viewed as distinct both with regard to how the Court votes on campaign finance cases and

with regard to the language the Court uses in discussing the cases.

Table 2-1: Campaign Finance Law Eras and Characteristics

Era	Characteristics
Pre-Buckley 1945-1975 (2 cases)	Concern with corporate and union campaign involvement; no majority recognition of free speech issues involved in campaign finance issues
Buckley 1976-1996 (12 cases)	Recognition of potential for burdening First Amendment liberties; campaign finance laws which do so must be narrowly tailored
New Deference 2000-2006 (5 cases)	Greater willingness to defer to legislative judgments on necessity of campaign finance reform
Deregulation 2006-present (5 cases)	Court more aggressive in striking down laws on First Amendment grounds; less deference to legislative judgments

The pre-Buckley Era only contains two cases, and accordingly it is difficult to characterize. However, the first case from this period, *U.S. v. UAW-CIO*, recognized the government’s interest in regulating corporate and union participation in elections. Although much scholarship on campaign finance reform focuses on changes in the law following the Federal Elections and Campaign Act of 1971, by the 1950’s corporate influence in elections was already a long-standing concern among reformers, and union influence had also become a concern among some proponents of reform. At the time of *UAW-CIO*, federal law prohibited campaign contributions from unions and corporations. In this era, a majority of the Court had not yet recognized the First Amendment concerns present in campaign finance regulations, although Justice Douglas’s dissent in *U.S. v. UAW-CIO* argued that a statute prohibiting corporations and unions from making campaign expenditures and contributions

was unconstitutional on First Amendment grounds. The view that the First Amendment limited campaign finance legislation would, of course, re-emerge as a majority view two decades later in *Buckley*. The second case in this period, *Cort v. Ash*, considered the extent to which corporate shareholders could challenge the political activities of a corporation when they disagreed with those activities. While this case was decided unanimously as a matter of statutory, rather than constitutional interpretation, the question of shareholder rights is one that would arise again in future cases.

The Buckley era begins with the recognition by the majority in *Buckley v. Valeo* that some forms of campaign finance legislation burden First Amendment rights. In this era, the Court effectively placed the burden on government to demonstrate that campaign finance laws were narrowly tailored to prevent corruption or appearance of corruption, and would only uphold them if this were so (Hasen 2004).

The New Deference Era began in 2000 with *Nixon v. Shrink Missouri Government PAC*. In this era, the Court relaxed the scrutiny it applied to campaign finance laws, and reduced the burden on government to prove that a law is narrowly tailored to combat corruption or its appearance. In spite of these changes, however, the court never explicitly overruled *Buckley*, providing a sterling example of how significant changes in doctrine can result without the Court ever overruling a landmark case. The culmination of this era was the *McConnell v. FEC* decision, which upheld several provisions of the Bipartisan Campaign Finance Reform Act (BCRA, commonly referred to as McCain-Feingold). Hasen (2004, 2008) argues that in this period, while the Court still used the language of anti-corruption in justifying the upholding of campaign finance statutes, it came close to adopting an “equality” or “participatory self-government” rationale. Such a rationale stems from the view that

government may legitimately seek to equalize the ability of individuals and groups to participate in the political process, by passing laws which minimize the advantage of monetary or other resources possessed by some and not by others.

The Deregulation Era represents a reversal of the short-lived New Deference Era, and a muscular reassertion of skepticism toward campaign finance laws. While *Citizens United v. FEC* is the most prominent and most salient case in this period, this era really begins with the 2006 *Randall v. Sorrell* decision. In *Randall*, the Court struck down three provisions of a Vermont campaign finance law, most notably deciding, for the first time ever, that a campaign contribution limit was unconstitutionally low. This was also the first campaign finance case decided after the departure of Justices Rehnquist and O'Connor from the Court, and their replacement by Alito and Roberts.

In order to determine how various issues related to campaign finance law fared in each era, I compiled a dataset of all campaign-finance issues voted on in each of the twenty-four cases in this study. I read each case to determine the number of distinct legal issues decided in each one. It was necessary to categorize the issues, and while the Supreme Court database contains the campaign finance cases, it does not distinguish the various issues that are found in each case, such as the differing treatment of spending and contribution limits.¹

Accordingly, I devised my own coding scheme by reading the entire set of cases and

¹ I also examined the Policy Agendas Project (www.policyagendas.org) to determine if it contained a coding scheme relevant to the issues in these cases. However, it contained only codes that might be generally relevant to campaign finance (Voting Rights, Participation, and Related Issues; Freedom of Speech) and did not have codes for specific issues found within the general area of campaign finance. Similarly, the Policy Frames Codebook developed by Boydston, et al. contains a unified coding scheme that may be used to analyze content involving multiple issues. Their scheme contains a set of generalizable content framing codes that could be applied to a wide range of issues, while more issue-specific frames can be nested within those more general frames. This is a promising approach, but not the most appropriate one for this particular study, as the more general frames do not capture the highly issue-specific framing that I expect to appear in this study of a single subject area. See Boydston, et al. (2013) and Boydston and Gross (2014).

determining the subject matter of each statute, or part of a statute, that the Court dealt with in its cases. While this requires relying on my own judgment, the cases are quite clear as to what aspects of campaign finance statutes are being considered. Based on the statutory provision addressed in the case, I developed seven broad issue-area categories: Contribution Limits, Spending Limits, Shareholder Rights, Disclosure and Recordkeeping, Public Finance, Solicitation, and Authority of the FEC. I also added an eighth issue category, Jurisdiction, for cases that considered the threshold issue of whether the Court had jurisdiction to hear a case. This arose in some matters where, for example, there was a question as to whether parties were actually harmed by a statute, meaning there was no real case or controversy to hear.

In the twenty-four cases decided, Court addressed sixty-one separate issues. For each issue (n=61), I provided one of the above subject matter codes, and “pro-reform” or “anti-reform” code based on the Court’s decision on that issue. Those issue votes coded “pro-reform” were results that upheld campaign finance laws without significantly weakening them, or otherwise ruled in favor of those litigants seeking to defend campaign finance laws. Those cases coded “anti-reform” were those that struck down campaign finance laws, significantly weakened their scope or application while upholding them, or otherwise found in favor of parties seeking to weaken or overturn the laws, or against those seeking to enforce them. Some cases contain multiple issues; *Buckley v. Valeo*, for example, contains seventeen separate issues. It is possible, and not uncommon, for the decision in a single case to decide some issues in a pro-reform direction and others in an anti-reform direction.

Based on Hasen’s characterization of the cases, and my own reading of the relevant cases, I made the following predictions regarding issue votes in each era. The pre-Buckley era only contains two cases, and begins with *United States v. UAW-CIO*, in which unions

challenged campaign and spending contributions. Because this era was prior to *Buckley*'s enshrinement of First Amendment concerns as a part of campaign finance jurisprudence, I predicted this era would be more deferential toward campaign finance legislation, and have more “pro” votes. In turn, I predicted that the *Buckley* era courts would be more skeptical toward campaign finance laws and cast more “anti” votes.

The next era chronologically, “New Deference” was characterized by doctrine that showed greater deference towards legislative judgments, so I expected it to be characterized by more “pro” votes. Finally, I expected the most recent era, “Deregulation” to be characterized by a return to skepticism and a greater willingness to strike down or limit the application of campaign finance laws (as was seen in *Citizens United*, for example). I conducted a descriptive analysis of each era by issue outcomes, as shown in Table 2.2.

**Table 2-2: Issue Votes by Era (Raw Number and Column Percent),
According to Author’s Dataset**

Position	Pre-Buckley	Buckley	New Deference	Deregulation	Total
Pro-Reform	2 66.67	18 54.55	11 78.57	1 9.09	32 52.46
Anti-Reform	1 33.33	15 45.45	2 14.29	10 90.91	28 45.90
Neither	0 0.00	0 0.00	1 7.14	0 0.00	1 1.64
Total	3 100.00	33 100.00	14 100.00	11 100.00	61 100.00

Because of the relatively small amount of data, it is difficult to perform a meaningful statistical test on these calculations. However, the descriptive results suggest differences between the four eras that merit further investigation. The results were as I expected for the

Pre-Buckley era, although as previously noted that era contains only two cases and only three separate issue votes. Contrary to my expectations, the *Buckley* era proved to be slightly more deferential than skeptical, but by a narrow margin; out of thirty-three votes cast in this era, eighteen were favorable towards campaign finance laws and fifteen were unfavorable. On the whole, this indicates an era in which the Court was serious about striking down or limiting campaign finance laws where they ran afoul of its interpretation of the First Amendment, but also willing to uphold them in many circumstances.

The New Deference Era shows a marked change from the Buckley era, with eleven of thirteen votes being favorable toward campaign finance laws. So, while the Buckley era was somewhat more deferential than I expected, the difference between the two eras (54.55% positive votes in Buckley, 78.57% positive votes in New Deference) confirmed my general expectation that the New Deference era was marked by a greater judicial restraint. As further expected, this pattern reversed sharply in the deregulation era, with a 10 to 1 margin of negative to positive votes on issues.

In order to check my results against another source, I also performed analysis of issue votes in the Court's campaign finance cases using the Supreme Court Database (Spaeth). As with the previous analysis, I grouped the cases by era and direction of vote. Whereas my coding used the "pro-reform" or "anti-reform" designation, the SCDB codes votes as a "liberal" or "conservative" direction. The SCDB generally codes pro-reform votes as "liberal" and anti-reform votes as "conservative." Table 2-3, below, was created using the Supreme Court Database's set of case-centered data, organized by issue/legal provision, including split votes. Accordingly, it displays the number of issues voted on in each period of campaign finance law, and how many of those votes were in a liberal or conservative

direction. As with my dataset, the SCDB recognizes multiple issues in each case. A case may contain some issues which are decided in a liberal direction, and others in a conservative direction. However, my coding sometimes differed from the SCDB as to what counts as an “issue” and as to the direction of an outcome. Some issue outcomes that I coded “pro-reform” (which equates to liberal in the SCDB) were coded conservative in the SCDB, and vice versa. Nevertheless, the SCDB results were substantially similar to my own, except for the Pre-Buckley era.

Table 2-3: Direction of Votes in Campaign Finance Cases by Era, According to Supreme Court Database

Era	Conservative Votes	Liberal Votes	Total Votes by Era
Pre-Buckley (2 cases)	2	0	2
Buckley (13 cases)	16	17	33
New Deference (5 cases)	5	76	81
Deregulation (5 cases)	6	2	8
Total Votes by Direction	29	95	124

As with my analysis, in the Buckley era, the Court was almost evenly split between liberal and conservative decisions, with a slight liberal tilt. Again, the number of issues decided in a liberal direction increases dramatically in the New Deference Era. It should be noted, however, that nearly all of the issues decided in a liberal direction in the New Deference Era (72 out of 76) were decided in the *FEC v. McConnell Case*, the central case in that era. While I treated each overall issue outcome in a case as a unit of analysis (for example, *McConnell v. FEC*’s decision on contribution limits), the SCDB apparently treated each vote on each petitioner’s claim as a unit of analysis, thereby resulting in a number of votes in *McConnell v. FEC* that overstates the number of issues decided if one considers

votes alone. The case was highly complex, involving many different issues and many different plaintiffs who challenged the constitutionality of the new Bipartisan Campaign Finance Reform Act.

The one major difference between the overall results of my dataset and the SCDB was in the treatment of the Pre-Buckley era. As noted earlier, the small number of cases in this era make it difficult to characterize; the SCDB apparently considered the outcome of both cases conservative, while I considered the outcome of *UAW-CIO* to be pro-reform. However, at the time that decision was made, the association of campaign finance reform with “liberalism” in general was perhaps less strong than it is now, so the SCDB’s coding perhaps reflects this.

Finally, it is important to note that the number of issues decided in one direction or another is not a proxy for the importance or influence of a case. For example, *Citizens United v. FEC* only involved two issues, but the small number of issues involved in the case belies the importance of the case in setting the future course of campaign finance jurisprudence.

Doctrinal Change and Legal Argument

The four eras of campaign finance law described above are important to understanding the role of legal argument for two reasons. First, periods of doctrinal change are a time when legal advocacy may have a greater opportunity to make a difference than usual. Obviously, advocates cannot predict doctrinal change ahead of time. But they are aware of circumstances that could lead the Court to depart from previous rulings, such as personnel change or cases that present new situations. Good advocates will take advantage

of these changed circumstances, and use them as a chance to present arguments that may not have worked in the past (note that these may be altogether new arguments, or repeating/refining arguments that have been made unsuccessfully in the past). Accordingly, in order to see where arguments can make a difference in the doctrine announced by the Court, we should pay special attention to the first case that signals the beginning of doctrinal change.

Second, once the Court begins to change its doctrine, it will affect the arguments made by attorneys. Once the Court changes doctrine, attorneys realize they now have the chance to successfully make arguments that would not have previously been accepted. Additionally, attorneys representing clients on the losing side of doctrinal change realize they are now going to have to alter their argumentative strategies. Accordingly, we should expect arguments to change in two ways after doctrinal change begins. Those advocates who are on the “winning side” of the change will take advantage of the change to further press their advantage and gain additional victories, and argue accordingly. Those on the losing side will abandon or de-emphasize previously successful arguments when the Court signals it will no longer accept them, and focus on other arguments the advocates believe to be consistent with the Court’s new doctrine, but still consistent with the advocates’ goals.

Subsequent chapters will analyze whether legal argument appears to play a role in doctrinal “breakpoints”. The next section of this chapter presents an overview of the Court’s treatment of legal arguments for and against campaign finance laws.

How the Court Treats Legal Argument

Having examined historical trends in the way the Court votes on campaign finance

issues, the analysis now turns to an overview of the Court's treatment of arguments for and against various federal and state campaign finance statutes. This section examines the Court's *explicit* treatment of arguments made by advocates in their briefs.

The data in this section are each of the twenty-four campaign finance decisions, with any separate opinions treated as a separate document. Each opinion is coded by type: majority, plurality, concurring, or dissenting. In the case of opinions that concur in part and dissent in part, I have separated them into the concurring and dissenting portions and treated each portion as separate documents. Finally, whenever an opinion has different sections that are joined by different coalitions of justices, I have treated each section as a separate document. This is because different coalitions of justices will agree to different content. For example, an opinion written by Justice Roberts might see Justices Alito, Scalia, Kennedy, and Thomas joining one part, and Justices Ginsburg, Breyer, Sotomayor and Kagan joining another part. It is likely that the two parts of this opinion would reach very different outcomes, whether viewed in terms of liberal versus conservative direction, or pro- or anti-reform direction. The difference in outcome and content in these opinions is likely a reflection of the differing judicial ideologies, legal philosophies, and policy preferences of the justices in each coalition.

Within each separate opinion, I have assigned certain codes to any mention of a brief filed by a party or amicus. The portion of an opinion that discusses the brief, which I will call the "brief-discussion" is the unit of analysis in this portion of the chapter. This includes detailed and substantive discussion of a legal argument from a brief, as well as short mentions of an argument or fact cited in a brief. In some cases, the "brief-discussion" is a single sentence; in others it may go on for several paragraphs. Using QDA Miner Qualitative

Data Analysis Software, I have coded each such segment in the opinions with certain criteria. Any segment of an opinion that does not mention a party or amicus brief is not coded.

In order to determine when a “brief-discussion” begins and ends, I relied on the Court’s own explicit discussion of arguments from briefs. Each brief-discussion begins at the beginning of the paragraph that explicitly mentions a particular argument from a brief, and ends with the last paragraph explicitly discussing that subject. In many cases, explicit discussions of a brief last for only a single paragraph. The following is an example of a brief discussion from *Buckley v. Valeo* in which the Court disagrees with a party’s argument:

Appellants contend that the contribution limitations must be invalidated because bribery laws and narrowly drawn disclosure requirements constitute a less restrictive means of dealing with “proven and suspected quid pro quo arrangements.” But laws making criminal the giving and taking of bribes deal with only the most blatant and specific attempts of those with money to influence governmental action. And while disclosure requirements serve the many salutary purposes discussed elsewhere in this opinion, Congress was surely entitled to conclude that disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed.

(*Buckley v. Valeo*, 28-29).

First, each brief-discussion is coded with the Court’s stance on that portion of the brief. The codes (referred to hereinafter as “treatment codes”) are as follows (with most segments fitting into the first two categories):²

² With regard to coding, intercoder reliability checks will be necessary before preparing all or parts of this study for publication. In this case, reliability checks are necessary for both the length and the treatment of brief discussions.

- Agree
- Disagree
- None (court mentions an argument or piece of information from a brief, but takes no position on it)
- Unnecessary to Evaluate (court finds it unnecessary to evaluate the argument or information, usually because it is moot)
- Support (court cites a brief in support of an argument it is already making; these instances overwhelmingly involve citations of facts from briefs)
- Lack of Ripeness/Relevance (the issue raised by the brief is either irrelevant or not ripe, and therefore should not be decided by the Court)

An initial question that must be dealt with is the extent to which the Court discusses arguments it agrees with versus those it disagrees with. This will be important when conducting textual analysis, as the mere presence of words or phrases in an opinion may be misleading without the context which reveals the position it is taking on an argument. Additionally, there is a solid reason to think justices might devote a good deal of attention to arguments they disagree with. There is already evidence that, during oral argument, justices ask more questions of the party they eventually rule against (Johnson, et al. 2009). This may be in part because they are trying to persuade their colleagues, rather than trying to elicit more information from the parties. Even at the stage of writing opinions, however, the Court may have good reasons to address arguments it disagrees with in detail. While they can no longer persuade their colleagues about the outcome of that case, they might persuade their colleagues to change their mind in future cases, or persuade future Court members to reach a different result. Accordingly, it is important to understand whether the Court's opinions devote significant attention to arguments it disagrees with, since its discussion of specific arguments from briefs might consist partially of demonstrating why certain arguments are

wrong.

There are other good reasons to expect the Court to extensively discuss arguments it disagrees with. First, judges know that the lawyers who argued the cases, as well as other interested attorneys, legal scholars, and journalists, will be reading the opinions they write. Accordingly, they need to explain the reasons for their decisions in a way that is credible and defensible to their audiences (Baum 2006). In order to do so, they need to show why the arguments they ultimately rejected were not persuasive. Additionally, explaining which arguments the Court rejects could help bolster the precedential strength of an opinion, another possible goal of justices (Hansford and Spriggs 2006), in that it closes off future lines of argument, or at least makes those lines less likely to be raised again (at least until a change in court personnel or a change in circumstances). This also serves the purposes of both lower courts and advocates. For lower courts, it helps in applying the decision to subsequent cases, in that they know which arguments have already been rejected on a certain topic. With regard to advocates, it helps guide their future arguments, in that they know which arguments are likely to be rejected, and they can now modify future arguments (both in lower courts and the Supreme Court) accordingly.

Accordingly, the Court's negative versus positive treatment of arguments it discusses warrants analysis. I expected that the Court, in its majority and plurality opinions, would discuss arguments it disagrees with more than those it agrees with. The extent to which arguments were discussed in a negative or positive manner was measured in two different ways. First, QDA Miner calculates the number of words in a document associated with each treatment code. I predict that in the majority and plurality opinions, a greater number of words in the opinion will be contained in a negative brief-discussion than in a positive brief-

discussion. In other words, the Court will devote more words to discussing arguments it disagrees with than those it agrees with.

The second measure of treatment is a count of the number of brief-discussions concerning arguments the court agrees with, and the number of brief discussions concerning arguments it disagrees with. Consistent with my prediction regarding the word count measure, I predict that the majority and plurality opinions will disagree with a greater number of brief-discussions than they agree with.

As for examples of agreement and disagreement, the following paragraph from *Buckley v. Valeo* concerning a petitioner argument exemplifies the Court's discussion of an argument it disagrees with:

Appellants contend that the contribution limitations must be invalidated because bribery laws and narrowly drawn disclosure requirements constitute a less restrictive means of dealing with "proven and suspected quid pro quo arrangements." But laws making criminal the giving and taking of bribes deal with only the most blatant and specific attempts of those with money to influence governmental action. And while disclosure requirements serve the many salutary purposes discussed elsewhere in this opinion, Congress was surely entitled to conclude that disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed.

(*Buckley v. Valeo*, 424 U.S. 1, 27-28).

An example of positive treatment, on the other hand, is found in the following paragraph from *Buckley*:

The constitutional deficiencies described in *Thomas v. Collins* can be avoided only by reading § 608(e)(1) as limited to communications that include explicit words of advocacy of

election or defeat of a candidate, much as the definition of “clearly identified” in § 608(e)(2) requires that an explicit and unambiguous reference to the candidate appear as part of the communication. This is the reading of the provision suggested by the non-governmental appellees in arguing that “(f)unds spent to propagate one's views on issues without expressly calling for a candidate's election or defeat are thus not covered.” We agree that in order to preserve the provision against invalidation on vagueness grounds, § 608(e)(1) must be construed to apply only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office.

(*Buckley v. Valeo*, 424 U.S. 1, 43-44).

Table 2-4 shows the result of the measurements of the percentage of words in each decision (including footnotes) devoted to each type of argument.

Table 2-4

Number of Words in Opinions Discussing Arguments, by Opinion Type

(Displays Word Counts and Column Percentages)

Treatment of Argument	Majority	Plurality	Concurring	Dissenting
Agree	12283 13.2%	7988 39.2%	81 1.2%	1362 13.2%
Disagree	77987 83.5%	10177 49.9%	4611 68.6%	6325 61.4%
No Position	2246 2.4%	1106 5.4%	477 7.1%	0 0%
Lack of Ripeness/Relevance	242 0.3%	0 0%	1252 18.6%	0 0%
Unnecessary to Evaluate	542 0.6%	1106 5.4%	303 4.5%	0 0%
Support	76 0.1%	0 0%	0 0%	2613 25.4%

The “TOTAL” row in the above table provides the total percentage of words in each type of opinion dedicated to discussing arguments from briefs. Plurality and majority opinions, at 28.6% and 48.2%, respectively, devoted the greatest percentage of words to explicitly discussing arguments.

The above results support my expectation that the Court will dedicate a greater portion of its opinion discussing arguments it disagrees with than those it agrees with, although the lack of words in some cells prevented me from using a chi-square to test statistical significance. In majority opinions, 23.5% of words were spent discussing arguments the Court rejected, as opposed to only 4% spent discussing those arguments the Court agreed with. The difference is not as pronounced in plurality opinions, but still present; plurality opinions spent 24.1% of their words discussing arguments they disagreed with, as opposed to 18.9% discussing arguments they agreed with.

It is not clear if there is a particular reason that plurality opinions spent a greater percentage of words discussing arguments from briefs they agreed with than the majority opinions did. Of the twenty four full cases in the dataset, only five of them had plurality, as opposed to majority, opinions, so this may simply be an artifact of one or two plurality opinions that devoted a particularly large number of words to discussing arguments it agreed with. (Because of the way I have divided opinions here, the five plurality opinions are divided into six separate documents, since one case had a plurality opinion with two parts in which each part was joined by a different coalition of justices). It may be that the authors of those particular plurality opinions found certain arguments especially important or persuasive, and accordingly thought it worthwhile to discuss them in depth. It is also

possible that, because a plurality opinion has less precedential force than a majority opinion, the plurality authors feel a greater need to address the parties' arguments in detail.

A simple code count (of the "Agree" and "Disagree" codes only), as shown in Table 2-5, also reveals a greater emphasis on arguments the Court disagrees with than those it agrees with. The opinions contain 218 separate discussions coded "disagree", and 30 coded "agree." Additionally, the "disagree" code is present in 41.2% of opinions (of all types), and agree only in 19.3%. A more detailed analysis of the code counts, seen in Table 2-6, provides a closer look at the types of arguments discussed by various opinions.

Table 2-5: Code Counts for "Agree" and "Disagree"

Code	Count	% Codes	Cases	% Cases
Agree	30	3.1%	22	19.3%
Disagree	218	22.4%	47	41.2%

Table 2-6

Code Counts-argument treatment by opinion type

Court's Position on Argument	Majority	Plurality	Concurring	Dissenting
Agree	20	2	1	6
Disagree	179	18	7	13
No Position	12	1	2	0
Lack of Ripeness/Relevance	2	0	1	0
Unnecessary to Evaluate	3	1	1	0
Support	1	0	0	16

Table 2-6 shows the prevalence of different categories of argument treatment by opinion type. The counts represent coding occurrences at the argument-discussion level. So, for example, majority opinions in this dataset discuss 21 separate arguments with which they agree, and 180 separate arguments with which they disagree. Concurring and dissenting opinions also discussed more arguments with which they disagreed.

Finally, the extent to which the Court discusses arguments it rejects also sheds some light on past work concerning the language of Supreme Court opinions, and how that research may be expanded. Corley (2008) used plagiarism detection software to detect the extent to which court opinions “borrowed” from briefs, and found that a good deal of such borrowing occurred. However, the results from this investigation show that, at least in this dataset, a significant portion of the opinion is dedicated to discussing arguments that are rejected. Accordingly, much of the “borrowing” of language could come from discussing arguments that are rejected, rather than representing influence of briefs on the language of the opinions.

Another interesting result to emerge from the table is the distribution of argument discussions in the “support” category. These were discussions in which the opinion did not so much analyze an argument, as cite something from a brief to support a point the opinion is making. In some cases a legal argument is cited, but these codes more often refer to instances when the Court has cited facts from a brief to support its own point. The results show the use of briefs for support is greater in dissenting opinions than in other types, although the correlation here is not statistically significant. While the prevalence of brief citations for “support” in dissenting opinions could be random, there is a good reason for it to occur; the authors of dissenting opinions may believe that the majority ignored certain key

facts in its opinion, and thus feels it necessary to bring these to attention in criticizing the majority.

Amicus Arguments v. Party Arguments

Another important aspect of opinions’ treatment of legal argument is the extent to which they discuss party v. amicus arguments. I would expect less discussion of amicus arguments than party arguments in majority and plurality opinions, because the Court may feel obligated to respond to party arguments to some extent, but likely feels little such obligation toward amici, whose views they are free to ignore if they wish.³ Accordingly, I expect that in majority and plurality opinions, a greater number of argument-discussions will be devoted to discussing party arguments than amicus arguments (and a greater number of party arguments than amicus arguments will be discussed).

**Table 2-7
Discussion of Party v. Amicus Arguments**

Party	Majority	Plurality	Concurring	Dissenting
Appellant	127	14	5	19
Appellee	79	7	8	5
Amicus for Appellant	6	1	0	3
Amicus for Appellee	7	1	0	7
Amicus Unclear	2	0	0	1
Unclear	2	0	0	0
Intervenor	0	3	1	2

³ With the possible exception of the Solicitor General’s Office, whose views as amicus are often seriously considered. Having the SG present as an amicus in a case also increases the chances that the side the SG favors will win.

My expectation concerning amicus v. party arguments is supported by the descriptive statistics shown in Table 2-7. This table shows the number of times arguments for parties (divided into appellant and appellee) and arguments by amici are discussed in the various types of opinions.

Ideology, Judicial Values, and Changing Minds

It is impossible to address a topic as ideologically-charged as campaign finance without addressing the role that Justices' policy preferences play in their decision-making. Indeed, part of this project's goal is to identify the interaction of judicial values with legal arguments. Liberal judicial ideology is generally associated with rulings favorable toward campaign finance reform legislation, and the opposite is true for conservative judicial ideology. The Supreme Court Database, for example, codes decisions upholding campaign finance laws as "liberal," and those limiting them or striking them down as "conservative." And, as the example of *Randall v. Sorrell* demonstrates, a personnel change that shifts the Court's ideological center can affect the direction of its campaign finance jurisprudence. The issues surrounding campaign finance are quite complex, however, and do not easily track onto contemporary "liberal" or "conservative" ideologies in all instances; additionally, some campaign finance cases, as with other complex constitutional cases, present conflicting priorities within the same set of ideological beliefs. Still others present matters that may be decided on grounds of statutory interpretation that do not involve constitutional principles, and are thus less ideologically divisive.

An example of the latter category is Justice Brennan's opinion (for a unanimous court) in *Cort v. Ash*, which ruled that shareholders did not have a private right of action under FECA against corporations for making political contributions against the shareholders' wishes. This might be described as a "conservative" result, and indeed is coded so in the Supreme Court Database, because it closes off a particular avenue of enforcing campaign finance laws. As mentioned above, however, this case was decided as a matter of fairly straightforward statutory interpretation, in a manner that commanded the Court's unanimous agreement. This "conservative" decision might seem out of character for a Justice who is often regarded as a solid Warren Court liberal, but is actually quite understandable when one considers the grounds for the decision. By the same token, the typically conservative Justice Rehnquist was often more deferential toward campaign finance laws than his ideological orientation might suggest, especially with regard to state laws. This stems from two aspects of Rehnquist's legal philosophy. First, he was a strong defender of states' rights, and was willing to defend the prerogative of states to regulate their own political process. Second, with regard to regulation of corporate spending, he recognized that corporations were the creations of state law, and believed that states accordingly had a large degree of leeway in regulating corporate political activity. These views could legitimately be interpreted as matters of judicial philosophy, or as matters of conflicting policy goals (i.e., a conservative view of states' rights conflicts with and ultimately overcomes conservative skepticism of regulating the political process). At any rate, Rehnquist's and Brennan's views illustrate the limitations of simply describing campaign finance decisions as "liberal" or "conservative."

It is also possible that the association of particular views on campaign finance laws with liberal or conservative ideology has hardened as the Court has become more polarized

(Graber 2013). As Graber notes, the Supreme Court has become more ideologically polarized, in a manner reflecting polarization among American political elites more generally, and also reflecting the phenomenon of “conflict extension.” As the Court becomes more ideologically polarized, advocates also face a potentially troublesome situation. With the Court’s views “hardened” along ideological lines, opportunities for persuasion become fewer and further between. Justice Sandra Day O’Connor, for example, changed her position on the constitutionality of spending limits three times over her career (Hasen 2011), and one can find other examples of “inconsistent” votes on the part of Justices. While these changes may represent indecisiveness on the part of a frequent swing justice such as O’Connor, they may also represent a willingness of justices to consider alternative points of view and to change their minds when presented with a persuasive argument. The polarization of the Court, then, may mean that the job of Supreme Court attorneys becomes significantly more difficult, as the Justices’ minds may already be made up, to even a greater extent than before.

The Language of Campaign Finance Law: Variation Through Time

Finally, this chapter begins to examine the language of court opinions, and its variation over time. The current analysis focuses on features of the majority and plurality opinions in the campaign finance case dataset, and how the language varies in the four different periods identified earlier.

In order to conduct this analysis, the set of opinions was filtered to include only majority and plurality opinions. Using Wordstat 6.0 content analysis software, a list of phrases between two and five words found in these opinions was generated. The software searches for phrases that recur in the documents, and can be directed to search for phrases of

a particular length and for phrases that appear a minimum number of times or in a minimum number of cases. In this case, I directed the software to detect phrases of at least two words, and no more than five words, which appear at least ten times in the relevant documents. (No minimum number of documents was set, so a phrase would be detected if, for example, it appears ten times in a single document, or appears a few times in several documents for a total of ten times).

The analysis detects the frequency of each phrase, and the number and percentage of cases in which it appears. In addition to calculating the frequency of phrases, the program uses *tf.idf* weighting to provide more insight as to the importance of the phrases in the documents. The *tf.idf* method assigns a weight to each phrase equal to the product of its term frequency and inverse document frequency, thereby providing a measure of a phrase's importance to a document or set of documents (Evans, et al. 2007). The term frequency is simply a measure of the number of times a term occurs in a corpus of documents. The inverse document frequency is a measure of the extent to which a term commonly occurs in the corpus of documents. By using inverse document frequency, very common words such as "the" are given less weight than they otherwise would be if a pure measure of term frequency were used.

In order to narrow down the phrases generated by the analysis, I filtered the results to include only words and phrases relating to the First Amendment, in one set ("Speech", "Association," "First Amendment"), and those relating to corruption in another set ("Corruption," "Quid Pro Quo"). The protection of First Amendment Freedoms, and the role of campaign finance laws in combating corruption, are two of the most commonly discussed topics in the campaign finance cases. The extent to which the usage of phrases related to

these topics varies in different periods provides some insight into the changes in the court's views on these issues.

Table 2-8 shows the results for phrases involving the First Amendment. Here, "political speech" is by far the most frequently appearing phrase. It appears in the "Deregulation" era more than any other. This reflects the extent to which the deregulation era has seen a re-emphasis on the importance of protecting what the court views as the fundamental First Amendment freedom of speech in the political arena. Other phrases characteristic of the Deregulation era also reflect this emphasis, such as "Violate the First Amendment," "Campaign Speech", and "Protect Speech."

The New Deference era is characterized only by a greater number of occurrences of "Associational Burden," and "Speech and Association," both of which are too vague to draw any real conclusions from. Otherwise, none of the phrases involving speech seem to be particularly associated with the New Deference era, which reflects that period's shift of emphasis away from protecting speech and towards prevention of corruption. This difference is also borne out in Table 2-9. "Appearance of Corruption," "Threat of Corruption," and "Apparent Corruption" are particularly characteristic of the New Deference Era, demonstrating this era's broad view of what constitutes "corruption" in politics that is properly regulable by the state. The phrases "quid pro quo", on the other hand, is characteristic of the Deregulation Era, indicating the Roberts' Court's view that this is the only type of corruption the government should be regulating. The table of corruption-related phrases also reveals that various phrases related to corruption tend to be more characteristic of the New Deference period or the Deregulation period, although these phrases also appeared in Buckley-Era cases. This could indicate that more wrangling over the meaning of

the word “corruption” has occurred during the New Deference and Deregulation eras, whereas the meaning of the term was more settled in the Buckley era.

Table 2-8: Phrases Related to First Amendment

Phrase	Frequency	No. Cases	% of cases	<i>tf*idf</i>	Pre-Buckley	Buckley	New Deference	Deregulation
Political Speech	120	16	44.40%	42.3	0	22	7	91
Violate the First Amendment	38	17	47.20%	12.4	0	17	5	16
Campaign Speech	31	6	16.70%	24.1	0	3	1	27
Political Association	26	10	27.80%	14.5	0	13	10	3
Free speech	23	11	30.60%	11.8	1	12	2	8
Protect speech	23	8	22.20%	15	0	9	2	12
Freedom of speech	22	10	27.80%	12.2	1	15	1	5
Unincorporated association	16	7	19.40%	11.4	0	15	0	1
Corporate speech	16	5	13.90%	13.7	0	8	3	5
Speech and association	13	7	19.40%	9.2	0	5	8	0
Freedom of association	12	5	13.90%	10.3	0	12	0	0
Engage in political speech	11	7	19.40%	7.8	0	5	0	6
Fundamental First Amendment	10	7	19.40%	7.1	0	7	0	3
Associational freedom	10	6	16.70%	7.8	0	8	2	0
Speech of privately financed candidate	10	1	2.8%	15.6	0	0	0	10
Associational burden	10	1	2.8%	15.6	0	0	10	0

Table 2-9: Phrases Related to Corruption

Phrase	Frequency	No. Cases	% of cases	<i>tf*idf</i>	Pre-Buckley	Buckley	New Deference	Deregulation
Appearance of Corruption	64	14	38.90%	26.3	0	19	29	16
Quid Pro Quo	49	12	33.3%	23.4	0	13	17	19
Corruption and the Appearance	22	10	27.80%	12.2	0	5	9	8
Corruption or the Appearance	22	10	27.80%	10.6	0	6	6	7
Apparent Corruption	19	9	25.00%	11.4	0	7	10	2
Corrupt Practices Act	18	9	25.00%	10.8	7	6	5	0
Interest in Preventing Corruption	13	10	27.80%	7.2	0	4	3	6
Anticorruption Interest	12	4	11.10%	11.5	0	0	2	10
Threat of Corruption	10	5	13.90%	8.6	0	2	6	2

Conclusions

The above results demonstrate that changes in the Court’s jurisprudence are reflected in language usage, and not merely in votes. Even the frequency with which certain words and phrases appear, and their likelihood of appearing, can represent a shift in emphasis in the Court’s doctrine. In addition, we know that when the Court is discussing arguments from briefs, it tends to give more attention to arguments it rejects. We also know that the Court spends far more time explicitly addressing party arguments than amicus arguments. These insights lead us to the questions posed in the subsequent chapters regarding the influence of

briefs on the Court's language, advocates' attempts to alter their language to persuade the Court, and how legal argumentation affects a process of decision making in which the key decision-makers, the Justices, often have already formed strong opinions on the matters brought before them.

Chapter 4 will provide a closer examination of the variance in the Court's use of language in different eras, and analyze evidence that the language in briefs influences opinion language. First, however, the next chapter will take a close look at instances in which justices have changed their minds on certain campaign finance issues. This provides the possibility of directly observing the influence of arguments made in briefs.

Chapter 3: Argument as an Explanation for Change and Variation?

The goal of this chapter is to determine whether evidence exists that legal argument can persuade justices to do something unexpected—changing their mind on an issue they have previously ruled on, or voting against their typical ideological tendency. This chapter is meant to address one obvious criticism of the view that legal arguments affect the court’s doctrinal pronouncements—the claim that justices’ doctrinal pronouncements are merely post-hoc justifications for decisions based on policy preferences. However, if we observe a justice changing her mind on an issue, or voting contrary to her ideology, there is a *potential* that legal argument was a factor in her decision. The first step in this process is to identify such unexpected votes on the part of justices. The second step is to determine whether there is evidence in the decision—either explicit or implicit—that a particular argument was influential in the justice’s decision.

If we see justices voting in ways different from what their ideology or past vote history would lead us to expect, arguments could be making a difference. Direct evidence of this is exceedingly hard to come by, and would normally only be found in documents such as internal memos circulated among the justices that detail the process of reaching decisions. Even then, justices’ actual thought processes might not be evident in these memos. However, one other place to look for such evidence is opinions themselves, which may adopt language from briefs written by parties or amici. While this is not direct evidence that a particular argument made the difference, it does suggest that the justice found the language of that argument to be a useful means of expressing his or her thoughts on the issue. This would

then tell us, at the least, whether we should look for further evidence of that argument's influence on the justice.

I begin by analyzing the votes of each justice in each of the twenty four campaign finance cases decided in the modern era. Each justice's series of votes will be analyzed to determine whether that justice has changed his or her mind on an issue at any point, and also to determine how often that justice has voted against ideological type. I then examine the cases in which a justice has changed his mind to determine if there has been any detectable influence from briefs. First, I will examine the part of the opinion that explains the decision to determine whether the opinion explicitly adopts or agrees with an argument from a party or amicus brief. Then I will look for "uncredited" influence by searching the briefs filed in each case for linguistic similarities to the relevant portion of the opinion.

Data

As with the other chapters, the twenty-four cases analyzed in this section are drawn from a search of the Campaign Finance cases in the Supreme Court Database, cross-referenced against a Westlaw search. In order to conduct the analysis herein, I then constructed a dataset which codes the votes made by justices in these cases. For my own purposes, I coded the data differently than the Supreme Court Database. I am interested in whether justices change their minds on particular policy issues based on legal arguments, so the dataset is organized according to votes on policy issues. I compiled a list of policy issues by reading the decisions. Each observation represents a single justice's vote on a particular policy issue in a case, and cases may have multiple policy issues. (A full codebook is provided in Appendix 3-1, and includes coding for some variables that were not used in this

analysis).

Each observation (n=530) is coded for the following categories:

1) Justice

Justice's last name

2) Style of Case

An abbreviated version of the style (title) of the case; for example, *Citizens United v. FEC*.

3) Era (as defined in Chapter 2)

Pre-Buckley, Buckley, New Deference, or Deregulation

4) Vote Direction: Liberal or Conservative

Each observation is coded as liberal, conservative, or neither. Like the Supreme Court database, I assumed that a vote that upholds or strengthens campaign finance laws is a "liberal" vote, and those that overturn or weaken them are "conservative." This is based on current political understandings that strengthening campaign finance laws is *generally* a goal pursued by liberals, and weakening them is *generally* a goal pursued by conservatives, but there are obvious and well-known exceptions (such as Sen. McCain's support for campaign finance reform). These characterizations do not necessarily assume that either goal is *inherently* liberal or conservative, but are merely drawn from conventional political understandings. Because I did not always agree with the SCDB's interpretation of which votes were liberal or conservative, I coded each vote myself in this regard. For example, the SCDB might code a vote as liberal if it upholds a campaign finance statute against a

challenge to its constitutionality, even though the result of the case weakens the statute by limiting its applicability. In this case, I would code the decision as conservative because of its overall effect on the status quo is to move policy in a conservative direction.

Because I used my own coding scheme rather than a pre-existing one, the possibility of confirmation bias and the question of replicability are obvious concerns. As for confirmation bias, I devised the coding scheme before I formed expectations about individual votes. Additionally, my criteria for coding an individual justice's votes as "liberal" or "conservative" are the same as my criteria for coding case outcomes as "pro-reform" or "anti-reform" in Chapter 2; the pro-reform criteria are the same as the criteria for a liberal vote, and the anti-reform criteria are the same as the criteria for a conservative vote. Here, I simply employed the terms "liberal" and "conservative" to reflect the terminology other scholars have used in discussing the direction of justices' votes. (See, e.g. Segal et al. 1993 and 2002). As discussed previously in Chapter 2, my own coding of overall case outcomes was substantially similar to the SCDB's coding, reflecting a significant degree of consistency with an independent source. I expect the same to be true of my coding of individual justice's votes, since they are based on the same criteria. Any future revision of this document for publication would include additional checks of all individual justices' votes in my analysis against the SCDB coding, however, and would include intercoder reliability checks based on my coding rules as well.

5) Issue area: Each vote was coded for the policy issue area it concerns. I compiled the following list of policy issue areas that occur in the campaign finance cases by reading the decisions.

1=Contribution Limits

2=Spending Limits

3=Jurisdiction

4=Authority of FEC

5=Disclosure and Recordkeeping

6=Shareholder Rights

7=Public Financing

8=Solicitation

Descriptive Analysis

The next step in this analysis is to determine whether justices have cast inconsistent votes. For purposes of this analysis, an “inconsistent” vote is one that is cast in the opposite ideological direction from other votes by that justice in the same issue area. For example, if a justice cast a total of ten votes on the “spending” issue, three of which were conservative and seven of which were liberal, we would observe an inconsistency in their voting on this issue. If their voting history on an issue does not always fall along ideological lines, there is a possibility that legal argument has made a difference in their decision.

In this examination of the data, three issue areas have been dropped because they are unlikely to illuminate much about justices’ voting histories. Issues involving jurisdiction, standing, mootness, etc.—which I have grouped under the general category “jurisdiction”—have been dropped because these issues are highly fact-specific, and often not comparable with one another in any meaningful way. Additionally, observations concerning the authority of the FEC have been dropped. The vast majority of these observations occurred in *Buckley*

v. Valeo, in which the Court concluded that the FEC, as constituted, was unconstitutional because it gave powers normally reserved to the executive to the legislative branch. The only other case involving issues of the FEC’s authority concerns a question of statutory construction, not constitutional interpretation, and is hardly comparable to the questions dealt with in *Buckley*. Finally, the “shareholder rights” issue has been dropped from the dataset, because the Court only directly address it in one case, *Cort v. Ash*.⁴ In that case, the Court unanimously held that FECA did not create a private right of action in corporate shareholders against officers and directors as a means of enforcing FECA.

Once these observations are removed from the dataset, 407 observations remain. Five issue categories, which might be viewed as the core policy issues in campaign finance cases, remain: Campaign Contributions, Campaign Spending, Disclosures and Recordkeeping, Public Financing, and Solicitation. Table 3-1 provides an overview of the number of votes cast on each issue in each era.

Table 3-1: Votes on Issue by Era

Era	Pre-Buckley	Buckley	New Deference	Deregulation	Total
Issue Area					
Contribution Limits	8	44	27	9	88
Spending Limits	8	102	36	36	182
Disclosure/Record-keeping	0	49	27	18	94
Public Financing	0	16	0	9	25
Solicitation	0	9	9	0	18
Total	16	220	99	72	407

⁴ The “shareholder rights” issue is addressed briefly in other cases, such as *First National Bank of Boston v. Bellotti* and *Citizens United v. FEC*, but was usually addressed as an argument in favor of limits on corporate campaign activity, and not a separate issue.

Spending limits are by far the most frequently voted-upon issue, and have been prominent in every era. Contribution limits and disclosure/record keeping have also been the subject of many votes, with public financing and solicitation being less prominent.

An examination of each justice's voting record provides a first clue as to where inconsistencies, and thus evidence of changed minds, may be found. I have reported tables for selected justices below. (Remaining results are available from the author). An examination of these voting records immediately reveals some interesting insights into the justices' voting behavior. A few justices only voted on one or two cases, so it is difficult to draw many conclusions from their tables. As for the justices who voted in several cases, however, the most ideologically consistent are Byron White and Clarence Thomas. White cast 96% of his votes in a liberal direction (see Table 3-2), and Thomas cast 95% of his votes in a conservative direction (Table 3-3). Thomas proves to be even more conservative than Justice Scalia, who cast 83% of his votes in a conservative direction (Table 3-4). The difference in these two conservative icons' voting records comes largely from their differences on the disclosure issue, where Scalia has generally been supportive of disclosure and recordkeeping provisions, but Thomas has maintained his stance that they are unconstitutional.

Table 3-2: Justice White Votes by Issue and Direction

Decision Direction	Issue					Total
	Contribution	Spending	Disclosure	Public Finance	Solicitation	
Conservative	0 0%	1 90.09%	0 0%	0 0%	0 0%	1 4%
Liberal	5 100%	10 90.91%	6 100%	2 100%	1 100%	24 96%
Total	5 100%	11 100%	6 100%	2 100%	1 100%	25 100%

Table 3-3: Justice Thomas Votes by Issue and Direction

Decision Direction	Issue					Total
	Contribution	Spending	Disclosure	Public Finance	Solicitation	
Conservative	4 100%	9 100%	4 80%	1 100%	1 100%	19 95%
Liberal	0 0%	0 0%	1 20%	0 100%	0 0%	1 5%
Total	4 100%	9 100%	5 100%	1 100%	1 100%	20 100%

Table 3-4: Justice Scalia Votes by Issue and Direction

Decision Direction	Issue					Total
	Contribution	Spending	Disclosure	Public Finance	Solicitation	
Conservative	4 100%	11 91.67%	2 40%	1 100%	1 100%	19 82.61%
Liberal	0 0%	1 8.33%	3 60%	0 100%	0 0%	4 17.39%
Total	4 100%	12 100%	5 100%	1 100%	1 100%	23 100%

One result that may seem surprising is that Justice Rehnquist, generally considered very conservative—Jeffrey Segal once referred to him as the “poster child for the attitudinal model” (Segal 2005)—has actually cast more liberal votes (58%) than conservative ones (36%) on campaign finance issues (Table 3-5). These votes may be explained in part by two

factors. First, Justice Rehnquist was very supportive of states' rights, and often inclined to rule in favor of state regulations. Additionally, he regarded claims of constitutional rights by corporations to be suspect, due to their nature as creations of state statute.

Table 3-5: Justice Rehnquist Votes by Issue and Direction

Decision Direction	Issue					Total
	Contribution	Spending	Disclosure	Public Finance	Solicitation	
Conservative	2 25%	8 53.33%	2 22.22%	1 50%	0 0%	13 36.11%
Liberal	4 50%	7 46.67%	7 22.78%	1 50%	2 100%	21 58.33%
Neither	2 25%	0 0%	0 0%	0 0%	0 0%	2 5.56%
Total	8 100%	15 100%	9 100%	2 100%	2 100%	36 100%

Justices Kennedy and O'Connor are often regarded as swing votes. In campaign finance, however, O'Connor appears to have been much more of a potential swing vote than Kennedy. Kennedy cast 76% of his votes in a conservative direction (Table 3-6), and of his five liberal votes, three of them were cast on disclosure and record-keeping issues, in which many of his typically conservative colleagues joined him in casting liberal votes. O'Connor, however, cast more liberal votes (58%) than conservative (42%) (Table 3-7).

Table 3-6: Justice Kennedy Votes by Issue and Direction

Decision Direction	Issue					Total
	Contribution	Spending	Disclosure	Public Finance	Solicitation	
Conservative	3 75%	10 100%	2 40%	1 100%	0 0%	16 76.19%
Liberal	1 25%	0 0%	3 60%	0 0%	1 100%	5 23.81%
Total	4 100%	10 100%	5 100%	1 100%	1 100%	21 100%

Table 3-7: Justice O’Connor Votes by Issue and Direction

Decision Direction	Issue					Total
	Contribution	Spending	Disclosure	Public Finance	Solicitation	
Conservative	2 50%	5 55.56%	1 25%	0 0%	0 0%	8 42.11%
Liberal	2 50%	4 44.44%	3 75%	0 0%	2 100%	11 57.89%
Total	4 100%	9 100%	4 100%	0 0%	2 100%	19 100%

These descriptive results already provide some evidence that justices do not always follow clear ideological patterns in the campaign finance cases. The next step of the analysis examines instances where justices have actually changed their position on an issue, and whether there is any detectable influence from party or amici briefs that influences the changes.

Changing Minds

The simple crosstabs of justice’s votes show that justices do not always vote along simple ideological lines, and that they sometimes vote in opposite directions on the same issue area. There are at least two possible reasons for the latter phenomenon. First, issues that arise within the same general area may nonetheless be distinguishable from one another. For example, in the “spending” issue area, it may matter, at least to some justices, whether the spending is carried out by individuals or by entities such as business corporations, unions, and non-profit corporations. Other instances of apparently contradictory votes by the same justice, however, may genuinely be cases in which a justice has changed his or her mind on an issue. Such instances are especially important to examine, as this is where evidence of persuasive influence from advocates may be found.

In order to identify changes in a justice's position, I first used crosstabs of a justice's votes to identify each instance in which a justice has voted inconsistently within a particular issue area. I then read the decisions the justices wrote or joined in that issue area to determine whether the inconsistent votes simply represent legal distinctions—such as the difference between individual and corporate spending—or actual changes in doctrinal position by justices. The vast majority of apparently inconsistent votes represent legal distinctions, rather than changes in position. However, at least three justices have changed their positions notably over time—Stevens, Marshall, and O'Connor.

Justice Stevens and the Money/Speech Equivalence

In *First National Bank of Boston v. Bellotti*, the first campaign finance case in which Justice Stevens participated, the Court considered the constitutionality of a Massachusetts law prohibiting business corporations from making expenditures or contributions to influence the outcome of ballot measures, unless those ballot measures materially affected the property, business, or assets of the corporation. Justice Stevens joined Justice Powell's majority opinion, which stated that the issue in question was not whether corporations have First Amendment rights, but whether the type of speech in question was the type of speech the First Amendment sought to protect. Powell found the speech the appellant wished to engage in "at the heart of the First Amendment's protection" and struck down the Massachusetts statute. Notably, Justice Rehnquist filed a dissenting opinion arguing in part that because corporations are creations of the state, states should have wide leeway in regulating them.

While Stevens joined Powell's decision in *Bellotti*, he also joined Justice Rehnquist's dissenting opinion in *FEC v. Massachusetts Citizens for Life*, in which the Court upheld an as-applied challenge by a non-profit corporation to a FECA provision prohibiting direct

expenditure of corporate funds in connection with election to public office. Rehnquist's opinion, concurring on one point but dissenting from the ultimate conclusion, stated that the Court should not attempt to carve out exemptions to the FECA provision for certain groups, and instead should defer to Congress's judgment as to which groups should be included if the statute passes constitutional muster. Rehnquist distinguished this from *Bellotti* (and Stevens later mentioned the same distinction in his *Austin* concurrence) on the grounds that it involved candidate elections, and not ballot measures. The shift from *Bellotti* to *MCFL* is not, in itself, a true change of position, because of the ballot measure/election distinction, but is an early suggestion that Stevens was becoming more deferential toward regulation of corporate spending and contributions. Stevens' position continued to evolve in *Austin*, where he agreed with the majority that a state prohibition on using corporate treasury funds in connection with a candidate election was constitutional. In a brief concurrence, however, Stevens stated the following:

In my opinion the distinction between individual expenditures and individual contributions that the Court identified in *Buckley v. Valeo*, *should have little, if any, weight in reviewing corporate participation in candidate elections. In that context, I believe the danger of either the fact, or the appearance, of quid pro quo relationships provides an adequate justification for state regulation of both expenditures and contributions. Moreover, as we recognized in First National Bank of Boston v. Bellotti, there is a vast difference between lobbying and debating public issues on the one hand, and political campaigns for election to public office on the other.*

Accordingly, I join the Court's opinion and judgment.

(Italics in original; citations and footnotes omitted).

Although Stevens continued to maintain a distinction between discussion of public issues and campaign spending (and thus justified his position in *Bellotti*), his position ultimately shifted between *Bellotti* and *Nixon*. In *Bellotti*, Stevens agrees that a statute which limits a corporation's ability to spend money to influence a ballot measure strikes at "the heart" of First Amendment interests. By contrast, in a concurring opinion in *Nixon v. Shrink Missouri Government PAC*, Stevens argued (in a case upholding Missouri contribution limits) that money and speech were NOT identical and NOT entitled to the same level of protection:

Money is property; it is not speech.

Speech has the power to inspire volunteers to perform a multitude of tasks on a campaign trail, on a battleground, or even on a football field. Money, meanwhile, has the power to pay hired laborers to perform the same tasks. It does not follow, however, that the First Amendment provides the same measure of protection to the use of money to accomplish such goals as it provides to the use of ideas to achieve the same results.

(Citations and footnotes omitted).

Stevens' concurring opinion in *Nixon* is where his shift becomes definitive—from agreeing that a restriction on corporate spending on a ballot initiative "goes to the heart of free speech" to the view that spending money, even when that money is spent to disseminate political ideas, is use of property, not speech. While Stevens may not have recognized this change as such, it represents a significant change in the way he views the use of money for political speech.

There are two ways we might find evidence that a particular brief, or set of briefs, influenced Stevens change of heart, or at least the language used to express it. One is to find some reference to briefs in his opinion. In this case, he does not reference any briefs, either

by parties or amici. Accordingly, we turn to the next method—computer assisted analysis of similarities between Stevens’ opinion and briefs.

In order to determine whether any such similarities exist, I used QDA Miner Qualitative Data analysis software. QDA Miner contains a “Query by Example” function that allows the user to choose a phrase, sentence, paragraph, or entire document, and instruct the software to find linguistically similar sentences, paragraphs, or documents.

In this case, I conducted a separate query by example for each paragraph of Stevens’s dissent, with one exception. The first paragraph of the dissent begins with some non-substantive language to the effect that Justice Stevens is responding to Justice Thomas’s call to “begin anew” with campaign finance jurisprudence; he then suggests a new beginning in the final sentence of the paragraph, also quoted above, “Money is not speech, money is property.” Because this was the only substantive portion of the paragraph that actually explained a legal position, I separated this sentence and chose to search for similar sentences, in addition to running a search on the entire paragraph.

QDA allows the user to select a similarity level between 0.001 and 0.1. For each search, I chose a similarity level of .01, with a maximum of 200 results. This was a low enough level to cast a wide net, but high enough to filter out some obviously unrelated sentences or paragraphs. (In deciding on the threshold, I did experiment with various levels of similarity to determine which had more or less “noise” in the form of clearly unrelated sentences or paragraphs, but did not examine the results in detail to determine whether any particular level of similarity tended to obtain positive results. The similarity level I selected still generated many “false positives” that had to be examined to determine if they actually concerned the same subject matter as the document with which those sentences and

paragraphs were to be compared). I also enabled the software’s “fuzzy string matching” feature, which provides that when searching, it will treat different forms of the same root word as being the same word—so that it would recognize “decide” and “deciding”, for example, as the same. The software then generated a list of potential “hits” from the entire dataset of briefs and opinions, and displayed the similarity level for each. It was necessary to then read each paragraph or sentence to determine if it was, in fact, similar in language and subject matter. The vast majority of potential hits were eliminated because the similarities were non-substantive or coincidental.

Once a list of “hits” was generated, they were read carefully to determine if there was, in fact, any substantive similarity between the relevant portions of the briefs and relevant portions of the opinions. In this case, I read each paragraph or sentence to determine whether it fit the following criteria: Did it make the argument made by Stevens in his pithy sentence—that money is not speech, but property? Some of the hits may contain similar language, but make an argument quite different from that made in the opinion—for example, someone using the phrase “money is not speech” could be arguing against that proposition. For this reason, simply searching for language similarities is not sufficient for this particular research question; each paragraph must be read and evaluated separately.⁵

Once non-substantive and coincidental similarities were eliminated, seventeen hits were left that warranted further examination. Of these, two documents were found in the dataset which contained a similarity to the substantive sentence from paragraph 1 of Stevens’ *Nixon* concurrence. The first document is an amicus brief from *Austin v. Michigan State Chamber of Commerce*, a decision ten years older than *Nixon*. In *Austin*, an amicus brief

⁵ However, this coding obviously relies on human judgment, and would need to be replicated by another coder, with intercoder reliability checks, if this portion of the dissertation were prepared for publication.

filed by the Center for Public Interest Law argued against the equation of money and speech, stating “The expenditure of money is not speech. The act of spending money as one chooses is itself therefore afforded no particular constitutional protection.” This is the only known appearance of this argument in a brief prior to Justice Stevens’ concurring opinion in *Nixon*. In one sense, it is not a new argument; it has been made at least since Judge J. Skelly Wright’s law review article written in response to *Buckley* (Wright 1976). But it appears the argument was not thought of seriously by advocates prior to *Austin*, probably because *Buckley* and subsequent decisions made clear, at least in Supreme Court doctrine, the money-speech connection. The decision in *Austin* maintained this connection, as it analyzed the statute at issue in a First Amendment frame work, finding that it burdened freedom of speech rights, but that the burden was justified because the law was narrowly tailored to serve a compelling state interest (the prevention of corruption through spending by corporations in support of or opposition to candidates). Justice Stevens filed a concurring opinion in *Austin* as well, but it did not address the money-speech equivalency issue. Accordingly, we have no direct evidence of an influence of this single brief upon Justice Stevens’ concurrence, several years later, in *Nixon*. We do, however, see that it is possible for an idea raised in one case to still surface years later in another.

The second instance of a brief making the argument that money is not equivalent to speech is found in a case decided after *Nixon*. In *Randall v. Sorrell*, decided six years after *Nixon*, an amicus brief filed by a group known as ReclaimDemocracy.Org made an extended argument in support of a Vermont campaign finance statute, based on the idea that money should not be equated to speech. Three of the hits came from portions of that brief. Their brief did not cite Justice Steven’ *Austin* concurrence, however, so there is no evidence his

adoption of that argument influenced their brief.

While Justice Stevens' evolution on the question of money and speech is evident in his writing, it is unclear what role, if any, was played by legal advocates.

Justice Marshall and the Contribution/Expenditure Distinction

In *Buckley v. Valeo*, Justice Thurgood Marshall joined the Court's per curiam majority opinion which, among other things, held that a distinction exists between financial contributions to candidates for federal offices, and independent expenditures made on behalf of such candidates. The *Buckley* court gave two reasons for this distinction. First, it claimed, independent expenditures had less potential to corrupt candidates and officeholders than contributions. Second, limits on independent expenditures place a greater burden on political speech than do limits on contributions.

Although Marshall joined this opinion—meaning he signed on to its reasoning—he eventually rejected the contribution/expenditure distinction in his dissent in a later case, *FEC v. National Conservative Political Action Committee* (1985). Marshall did not explicitly refer to any arguments made by parties or amici in this dissent. Furthermore, using the same methods described above for the Stevens concurrence, there was no indication that the text of Marshall's dissent, or its overall position on the issue, took its cues from any of the party of amicus briefs in that case. One amicus brief, filed by a group known as U.S. Term Limits, did argue that ALL campaign finance regulation, whether of contributions or expenditures, is unconstitutional. However, Marshall reached the opposite conclusion, stating that, while there was no principled distinction between the two categories, he would have upheld the limitations on expenditures at issue in the *NCPAC* case.

If anything, it appears that Marshall's conviction that the contribution/expenditure distinction should be abandoned dates back to his own concurring opinion in *Buckley*. Although he did not explicitly draw this conclusion in that opinion, he did state his disagreement with the per curiam opinion as to the rationale for upholding some campaign finance restrictions. The per curiam opinion made the primary rationale for upholding campaign finance regulation the possibility of "quid pro quo" corruption, and described the interest of equalizing political participation as merely an "ancillary" interest. Marshall's *Buckley* concurrence, however, stated that he regarded the most important rationale for campaign finance regulation to be the "interest in promoting the reality and appearance of equal access to the political arena," and he cited that interest again in describing his change of position on the contribution/expenditure distinction.

Notably, in *Buckley*, Justice Blackmun, who concurred in parts of the per curiam opinion and dissented from others, stated that he did not believe the Court had made or could make a principled distinction between contributions and expenditures. The possibility that this distinction would not hold water, then, has been around since *Buckley*, although the search found no evidence that party or amici briefs picked up on Justice Blackmun's questioning of this distinction. There is also no way of knowing, of course, whether Justice Blackmun influenced his colleague Marshall on this point. It appears, however, that Marshall's change of opinion was driven at least in part by his own principles as to the rationale for campaign finance restrictions.

Justice O'Connor and Independent Expenditures

Justice O'Connor has changed her mind twice on an issue that recurs in multiple campaign finance cases before the Court: the ability of the federal government to regulate independent election-related expenditures by corporations. Unfortunately, in the three decisions in which O'Connor took a position on these issues, she only wrote an opinion in one of them. In *Massachusetts Citizens for Life v. FEC*, she joined most of the opinion of the Court written by Justice Brennan, though she declined to join one section which was joined by only three other justices.

In the portions of the opinion that O'Connor joins, the Court concludes that independent, campaign-related expenditures by Massachusetts Citizens for Life, a non-profit, non-stock corporation, are governed by the FECA provisions on corporate expenditures, which prohibit campaign related spending from corporate treasuries. The Court then holds that the relevant FECA provisions are unconstitutional as applied to Massachusetts Citizens for Life. MCFL, the Court reasoned, was formed for the express purpose of engaging in political advocacy, had no shareholders, was not formed by a corporation or union, and had a policy of not accepting donations from corporations or unions. Accordingly, the compelling interests that allowed regulation of for-profit corporations and unions did not apply to corporations such as MCFL. The plurality section of the opinion, which O'Connor did not join, explains that disclosure requirements of the pertinent FECA section burden MCFL's First Amendment liberties. O'Connor wrote a concurrence arguing that the First Amendment burden comes not from the disclosure requirements, but from the special organizational requirements imposed on groups such as MCFL by FECA. Nevertheless, she agreed with the majority of the Court's opinion and concurred in the judgment.

A few years later, however, O'Connor apparently changed her position on this issue, when she joined Justice Kennedy's dissent in *Austin v. Michigan State Chamber of Commerce*. The majority opinion in *Austin* held that corporations, *including non-profits*, could be prohibited from endorsing or opposing candidates with funds from their own treasuries (although they can use separate, segregated funds for these activities). Justice Kennedy's dissent, however, argues that the prohibition of campaign spending by non-profit corporations—not just those that meet the *MCFL* criteria—is unconstitutional on its face, not just as applied to certain types of corporations. Since Justice O'Connor joined Kennedy's dissent, we can assume that she agrees with his reasoning. Accordingly, I searched for similarities between Kennedy's dissent and the *Austin* briefs for clues as to what might have changed Justice O'Connor's mind.

In order to search for similarities in the Kennedy dissent and the briefs in *Austin*, I used the same paragraph-level search query as described above. While the search turned up 656 paragraphs in various documents that met the minimum search criterion, a review of the potential hits showed that there were no substantive similarities of the type that would indicate that Kennedy's dissenting opinion borrowed language from a party or amicus brief. In fact, the greatest similarity between a paragraph in Kennedy's dissent and a paragraph in a brief (5.9% of words) involved a paragraph in the State of Michigan's brief, taking a position quite different from that taken by Kennedy's dissent. Indeed, all the paragraph similarities in the list of potential hits appear to be incidental—they may involve language that is commonly used in discussing this general topic, such as a description of a party's argument or a summary of past relevant decisions—such that there is no indication that any briefs were important to the substance of Kennedy's dissent.

Thirteen years after *Austin*, Judge O'Connor again changed her mind on this issue. In *McConnell v. FEC*, she co-authored an opinion with Justice Stevens, in which she held that corporations and unions *can* be required to pay for issue advertisements from separately segregated funds, rather than from corporate treasuries. While this situation is somewhat different from that in *Austin*, which involved direct mention of candidates in advertisements, the Court has generally been *more* restrictive of direct mention of candidates than of issue advertisements. Justice O'Connor's decision to uphold restrictions on issue advertisements, however, in spite of having previously expressed an opposition to regulation of direct candidate endorsement or opposition, reflect an overall change in her thinking regarding corporate campaign spending.

As with Justice O'Connor's previous change in position, however, a comparison of the opinion and briefs at the paragraph level reveals little evidence that arguments from the briefs influenced Justice O'Connor. The greatest similarity between paragraphs (7.8%) comes from a footnote in the appellant brief summarizing the purpose of campaign finance disclosure provisions. A few other potential "hits" are from briefs with paragraphs explaining the rationale and purpose of the prohibition on electioneering communications (independent expenditures) that were at issue in *McConnell*, but the actual similarities in language usage are minimal (less than 5% of the same words in each paragraph that is similar to a paragraph from the opinion). The greatest similarities (between 3% and 5%) were seen in paragraphs in amicus briefs explaining the history and justification of restrictions on spending from corporate treasuries. These briefs were filed by the League of Women Voters and several small groups which banded together under the umbrella "Community Organizations Dedicated to Defending the Civil Rights of Racial Minorities."

In fact, the joint opinion by Stevens' and O'Connor relies heavily and explicitly on two documents: the trial court opinion and a Senate report on campaign corruption. With regard to issue advertising, the trial Court made specific findings that were cited in Stevens' and O'Connor's opinions. The trial court heard extensive evidence cited by Stevens and O'Connor that there had been an increase in issue advertising as a means to circumvent limits on corporate spending. After *MCFL*, non-profit corporations could use donations from for-profit corporations and wealthy donors to run issue ads which did not run afoul on the prohibitions of direct spending on campaign-related advertising by for-profit corporations. They also cited several portions of a 1998 Senate Committee on Governmental Affairs investigation into the campaign finance practices during the 1996 election. The reliance on facts from these two documents show a willingness on Justice O'Connor's part to adjust her thinking on legal matters based on changing facts—the growth in issue ads, for example, was a development that occurred between *Austin* and *McConnell*. This is an important finding in itself, worth further investigation. There is no indication, however, that any of the party briefs or amicus briefs were particularly influential on O'Connor.

Conclusion

This chapter first reviewed voting patterns by justices to determine whether there were inconsistencies in the direction of their votes on the important issue categories in campaign finance cases. The subsequent section then examined three cases in which justices changed their minds on important issues, and searched for instances where the language used by justices when taking new positions was drawn from briefs filed by parties or amici. There was little evidence found in these cases that the justices drew language from briefs filed in

the cases, and hence little evidence that arguments made in briefs led the justices to take a position they might otherwise not have expected to take.

It may well be that the influence of legal arguments on justices' thinking operates in a nuanced manner that is difficult to detect using the tests found in this chapter. An argument might influence a justices' thinking without the justice explicitly acknowledging it, or explicitly adopting the language used in that argument. However, there might be other indications of influence in language usage. It is entirely possible for two documents to discuss the same topic without using *exactly* the same words. By identifying clusters of words or phrases that frequently refer to a particular topic, it might be possible to determine when two documents are discussing a common concept even if using slightly different language—for example, “quid pro quo,” “undue influence,” and “public perception” are all phrases that the courts have used in discussing the problem of corruption that campaign finance laws often seek to address.

The following chapter builds on this possibility by examining the use of issue framing by advocates and the Court, and its effect on case outcomes and opinion content.

Chapter 4

Framing Over time and the Effect of Issue Framing

As discussed in Chapter 2, I theorized that the development of campaign finance law in the Supreme Court can be divided into four eras or periods: Pre-Buckley, the Buckley Era, New Deference, and Deregulation. The first half of this chapter tests the theorized characteristics of these eras, while the second half tests the effects of issue framing across the four eras.

The analysis in Chapter 2 has already shown that the four eras can be distinguished by the Court's favorability toward campaign finance reform (measured by justice's votes on issues). I further theorize that the eras can be distinguished by Court's use of issue framing to define the key issues present in each era, and my analysis provides evidence to support that hypothesis. This is one of the most important contributions of this study, in that it offers independent, empirical support for an understanding of the development of campaign finance law that was based on a more traditional legal analysis.

After demonstrating the distinctions between eras in terms of framing, this turns to comparing documents' use of frames to test the similarity between briefs and opinions. My goal is to determine whether the frames used in Court opinions are more similar to the Court's past cases, or more similar to the briefs filed with the Court. If the Court's use of language is being influenced primarily by its own precedents, I would expect a Court opinion to be more similar to the Court's past decisions than to the briefs filed in the case. If the arguments used in briefs are having an influence, I would expect the analyzed case to be more similar to those briefs than to past cases.

Finally, I analyze whether briefs are adding something new to a particular case by analyzing the frames used in the lower court decisions that each Supreme Court case in the study was appealed from. To some extent, Supreme Court briefs can be expected to employ similar frames to those used in the lower court decision, as they have to explain why the lower court decision was correct or incorrect. However, at the Supreme Court stage, advocates also have a chance to make arguments that *reframe* the issues in a manner different from the framing used by the lower court. This gives advocates, especially those not happy with the lower court decision, a chance to highlight aspects of the case that are not the focus of the lower court opinion. If advocates adopt a frame that is not found in the lower court decision, and succeed in having the Supreme Court adopt that frame, they have potentially changed the way that Court treats a particular subject—thus not only helping to secure a victory in their own case, but influencing the direction of legal doctrine and future cases.

In previous work on framing effects in the courts, Wedeking (2010) succinctly defines frames and framing: “Frames are defined as a small collection of related words that emphasize some aspect of an issue at the expense of others. Framing is the selection of one particular frame over another, and framing effects occur when a frame shapes the thoughts and behavior of others.” (Wedeking 2010, 617). The theoretical basis for framing theory is the idea that the way a communicator characterizes an issue can affect how the intended audience understands that issue. The same issue may be characterized in multiple ways—for example, the constitutionality of a campaign finance statute might be characterized as a matter of protecting freedom of speech, preventing corruption, maintaining public trust in government, or leveling the playing field between wealthy donors and less wealthy people

and individuals. Emphasizing one or more of those frames will, necessarily, de-emphasize others, and may affect the way an audience view an issue (Scheufele and Tewksbury 2007).

The study of framing effects offers a particularly promising method for understanding the effect of legal argument on Supreme Court opinions. Wedeking (2010) examined the effect of issue framing on Supreme Court opinions over the 1979 – 1989 terms and found that under certain conditions, framing effects can give litigants a greater chance of achieving their preferred outcome in the Supreme Court. His larger-scale study was consistent with findings by Epstein and Kobylka’s (1992) study of legal change in Supreme Court cases on abortion and the death penalty, which also suggested that strategic issue framing helped litigants achieve significant policy changes in those areas.

Detecting and Analyzing Frames

In addition to the differences in votes, the different eras should reflect different issue frames—different uses of word groupings which identify what a document is “about.” There is no single, accepted way to identify issue frames. They may be identified through interpretive methods or using automated text classification software. (Chong and Druckman 2007b). In this case, text classification software, combined with human judgment, was used.

As the first step in identifying frames, I used Wordstat content analysis software to identify short phrases in the majority and plurality opinions in the document dataset. These are the “target” documents, in that the study ultimately looks for similarities between these documents and briefs. By using the majority and plurality documents, some words and phrases that may be more emphasized in briefs will inevitably be left out—e.g. some briefs

will make arguments that are simply ignored, and thus the particular word groupings that are in those briefs may not appear in the opinions. Nevertheless, the use of the opinions as the basis for the analysis makes sense as the most efficient way to identify frames. Because the analysis is looking for similarities, the frames from briefs not adopted by opinions will serve as “noise” that complicate the analysis. In short, the analysis is looking for which arguments worked, not those that didn’t. The other obvious objection to this method is that it biases the analysis by pre-selecting those issue frames which “made it” into the Court’s opinions. However, the coding of documents by issue frames will allow us to see which documents DID NOT employ frames that ultimately came to prevail in the Court’s opinion, as those documents will simply have fewer (or no) uses of those frames.

I used Wordstat to find 2-3 word phrases that appear at least 3 times in the majority and plurality opinions. I chose to use short phrases instead of single words due to the fact that phrases provide more information than mere groups of words. For example, the word “expenditure” may be used in a number of ways, but the phrase “expenditure limitation” provides more information about the topic being discussed than the word expenditure alone. It also allows for making distinctions between different uses of the same word, such as “expenditure limitation” and “large expenditure.” Using phrases, rather than words, was previously employed by Sim, et al. (2014) in their study of framing effects in Supreme Court amicus briefs.

I did not set a minimum number of cases (documents) for each phrase to appear in, because it is possible that a phrase could appear in only one document and still be an important part of the frame for that particular document. I also used an exclusion dictionary to eliminate words and phrases that are so common as to provide no insight into particular

frames used by the parties and the Court. The exclusion dictionary is preprogrammed with Wordstat and includes, for example, common words such as articles and prepositions. I also reviewed the list of phrases generated by Wordstat (over 3,000) and added some phrases to the exclusion list, if the phrases were irrelevant or so common that they tell little about the content of the legal arguments or legal doctrine. For example, the phrase “district court” appears in almost every document, since some reference is normally made to lower court decisions. My rule for eliminating phrases was to eliminate any phrase that is unlikely to be unique to a particular legal argument or frame because it is so common as to be likely to appear without reference to particular subject matter (e.g. “district court”), and any phrase obviously deals only with the subject matter in a very general way (e.g. “campaign finance,” “candidate”). In a case of ambiguity as to whether a phrase should be included, I erred on the side of including the word. Excluded words were added to the exclusion dictionary, whereas included words were placed in a categorization dictionary. (The Exclusion Dictionary is included as Appendix 4-1).

Finally, the categorization software utilizes “lemmatization,” meaning it recognizes different forms of the same root word and analyzes them as the same item. For example, it would treat “contribute” and “contributes” as the same word.

Once I excluded phrases according to the criteria above the remaining phrases were used to create a categorization dictionary containing over 1500 phrases. Wordstat then “applies” this dictionary to any documents chosen, whether briefs or opinions, by finding their occurrences in those documents. Once Wordstat has found the occurrences of phrases in documents, it can also be set to find clusters of phrases that occur together. I applied my

categorization dictionary to the entire dataset of documents, comprising 450 opinions and briefs, to find occurrences of the phrases in the dictionary.

I then used Wordstat to find clusters of phrases in those documents in which phrases on the list appear in the same paragraph. I only used clusters that contain at least three phrases, and eliminated single word clusters. Wordstat also generates Jaccard's coefficients for the phrases, in order to measure the degree to which phrases in the same cluster are connected. This process resulted in 142 clusters of phrases in which the lowest Jaccard's coefficient was at least 0.2.⁶ After eliminating clusters of fewer than three words, 51 clusters remained. Each cluster constitutes a "frame." A list of frames is included in Appendix 4-2, with each frame listed by a name. The phrases in each cluster are also included under the name of the frame. I gave each frame a name based on either the most frequent phrase in the cluster, or from a word or phrase that indicates the common thematic thread tying together the words in that cluster. Examples of frames include: "Public Debate," "Political Communication," "Real and Apparent Corruption," and "Corruption and Speech."

In order to determine whether a particular frame is employed by a document, Wordstat retrieves paragraphs which contain phrases from each cluster. I specified that each paragraph must contain at least three phrases from a particular cluster in order to be considered to be using that frame. Using only one or two phrases from a particular frame in a paragraph could be coincidental, and might not truly reflect an emphasis on a particular frame. However, the use of three such related phrases is more likely to reflect an intention to

⁶ Each cluster may have multiple Jaccard's coefficients. For example, if a cluster contains of three phrases (Phrase A, B, and C), and A and B are the closest together, the program will generate a Jaccard's coefficient for the similarity between Phrase A and Phrase B. It will then treat phrase A and B together as a "subcluster" and generate a second coefficient for the similarity between Phrase C and the subcluster.

use a particular frame. Each paragraph in a document that employs a particular frame is then coded with that frame. Some paragraphs will not have a code, as they do not contain at least three of the phrases in a particular cluster. A few paragraphs employ more than one frame, and are coded with each frame they use if this is the case.

After the documents were coded according to the presence of frames, Wordstat calculated, separately, which frames occurred in the opinions and briefs. Forty-one separate frames appeared in the opinions, while forty-six separate frames appeared in the briefs. Because the briefs may raise lines of argument that are ignored by opinions, it is unsurprising that the briefs contain more frames than the opinions.

In addition to generating the list of frames present in the documents, Wordstat calculates, for each frame in each era, what percentage of the total framing usages in each era are associated with a particular frame. For example, a percentage calculation of 28.6% for the frame “Corruption and Speech” in the pre-Buckley era means that 28.6% of the framing occurrences in that era were occurrences of that particular frame. This calculation provides an overview of which frames were most prevalent in each era. Because many of the frames have very small percentages, I prepared tables showing only those frames which compose at least 5% of the frame occurrences for a given era. The results are shown in Tables 4-1 and 4-

2

**Table 4-1: Frames by Era in Majority and Plurality Opinions
(Code Counts and Column Percentages)
(Only contains frame codes that accounted for 5% of the coded segments
in at least one era)**

Frame	Pre-Buckley	Buckley	New Deference	Deregulation
Corruption and Speech	2 28.6%	60 39.2%	55 41.0%	46 38.3%
Corporations	1 14.3%	13 8.5%	5 3.7%	9 7.5%
Unions and Corporations	3 42.9%	10 6.5%	3 2.2%	0 0.0%
Public Finance	0 0.0%	4 2.6%	0 0.0%	30 25.0%
Coordinated Expenditure	0 0.0%	3 2.0%	9 6.7%	0 0.0%
Limits on Association	0 0.0%	2 1.3%	7 5.2%	0 0.0%
Congressional Intent	1 14.3%	1 0.7%	0 0.0%	0 0.0%
Electioneering Communication	0 0.0%	0 0.0%	20 14.9%	9 7.5%

The above table, which shows the results for frames in majority and plurality opinions only, provides some insight into the using of framing by the court’s opinions.

Unsurprisingly, the frame “corruption and speech” is the most prevalent in each era. It is not the only frame related to free speech, nor the only one related to corruption, but this particular frame contains phrases indicating the court’s attempts to balance concerns about corruption in electoral politics with concerns about freedom of speech. The “unions and corporations frame” (indicating concern with influence in the political process from both unions and corporations) was clearly more important to the pre-Buckley era than to others. Note that this does not mean that this type of concern only appears in that particular era, but only that a particular way of framing it is particularly associated with that era. The concern

over corporate influence, and to a lesser extent over union influence, has been a perennial topic of concern to campaign finance reformers, and the Court’s opinions throughout the various eras reflect that. For example, the “corporations” frame appears in all four of the eras. “Electioneering communications” was most prominent in the Deregulation and New Deference eras, which perhaps reflect the fact that those eras contain cases which dealt in great depth with the problem of independent expenditures related to campaigns and elections.

The results of Table 4-2, below, show some interesting differences and similarities between the use of framing by the opinions and the briefs.

**Table 4-2: Frames by Era in Party and Amicus Briefs
(Code Counts and Column Percentages)**

(Only contains frame codes that accounted for 5% of the coded segments in at least one era)

Frame	Pre-Buckley	Buckley	New Deference	Deregulation
Corruption and Speech	12 25.5%	603 54.6%	847 56.2%	826 42.8%
Corporations	7 14.9%	91 8.3%	113 7.5%	216 11.2%
Unions and Corporations	10 21.3%	82 7.4%	11 0.7%	9 0.5%
Public Finance	0 0.0%	39 3.5%	6 0.4%	348 18.0%
Congressional Intent	11 23.4%	8 0.7%	0 0.0%	0 0.0%
Electioneering Communication	0 0.0%	1 0.1%	213 14.1%	215 11.1%
Public Debate	3 6.4%	15 1.4%	17 1.1%	19 1.0%
Equal Protection	3 6.4%	9 0.8%	3 0.2%	2 0.1%

Like the opinions, the briefs contain only eight frames that compose at least 5% of the framing occurrences in at least one era. As with the opinions, the most prominent frame among the briefs, regardless of era, was “Corruption and Speech.” Aside from “Corruption and Speech”, the frames “Corporations,” “Unions and Corporations,” “Public Finance,” “Congressional Intent,” and “Electioneering Communication” appear in the table of most prominent frames for both brief and opinions. The fact that six out of the eight frames appear in both tables indicates a fairly significant overlap in the use of framing by the briefs and opinions, but not a perfect one. Note that “Limits on Association” and “Coordinated Expenditure” appear only in the opinions table, which could indicate that the Court, more than the authors of briefs, found that these frames provided useful for discussing the subject matter of these opinions. On the other hand, the frames “Public Debate” and “Equal Protection” appear only in the briefs table, indicating that the Court did not follow the briefs in using these particular frames.

The difference in frame usage among the four eras is reflected visually in Figures 4-1 and 4-2, which show 2-D correspondence plots of the relationships between various frames and the extent to which frames are associated with particular eras. Wordstat prepared these plots based on the calculations of framing code occurrences, plus the proximity of framing codes to one another. Figure 4-1 shows the correspondence of frames in the opinions, and Figure 4-2 shows the correspondence of frames in the briefs. Essentially, the closer together two framing codes are on the correspondence plot, the more likely they are to appear together. Frames that appear close to one another are likely to appear in the same document, while those that are further apart are less likely to appear in the same document. In addition to plotting the correspondence of individual codes, the plots are divided into four quadrants,

each corresponding to an era, in order to display the extent to which frames are associated with certain eras. Those frames near the center of the graphs are more likely to appear in multiple areas, while those nearer the edges are more likely to appear in only in that era.

Figure 4-1: Correspondence Plot of Frames in Majority and Plurality Opinions

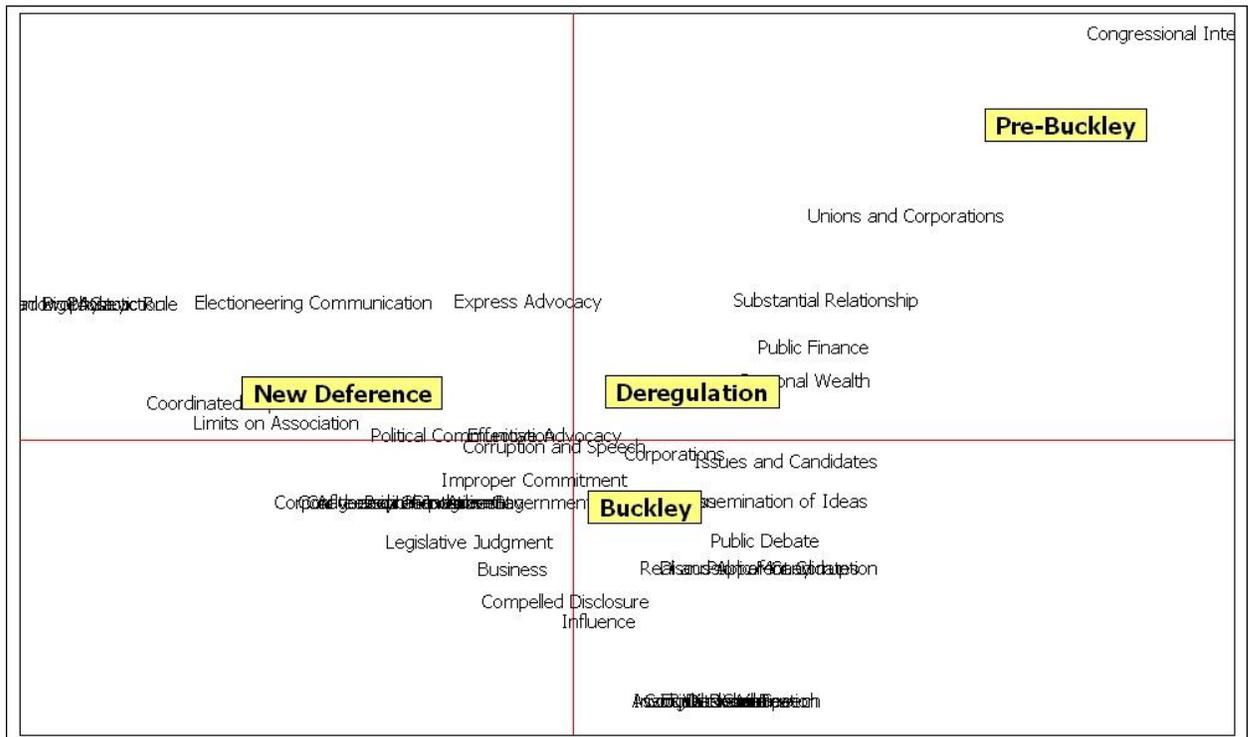
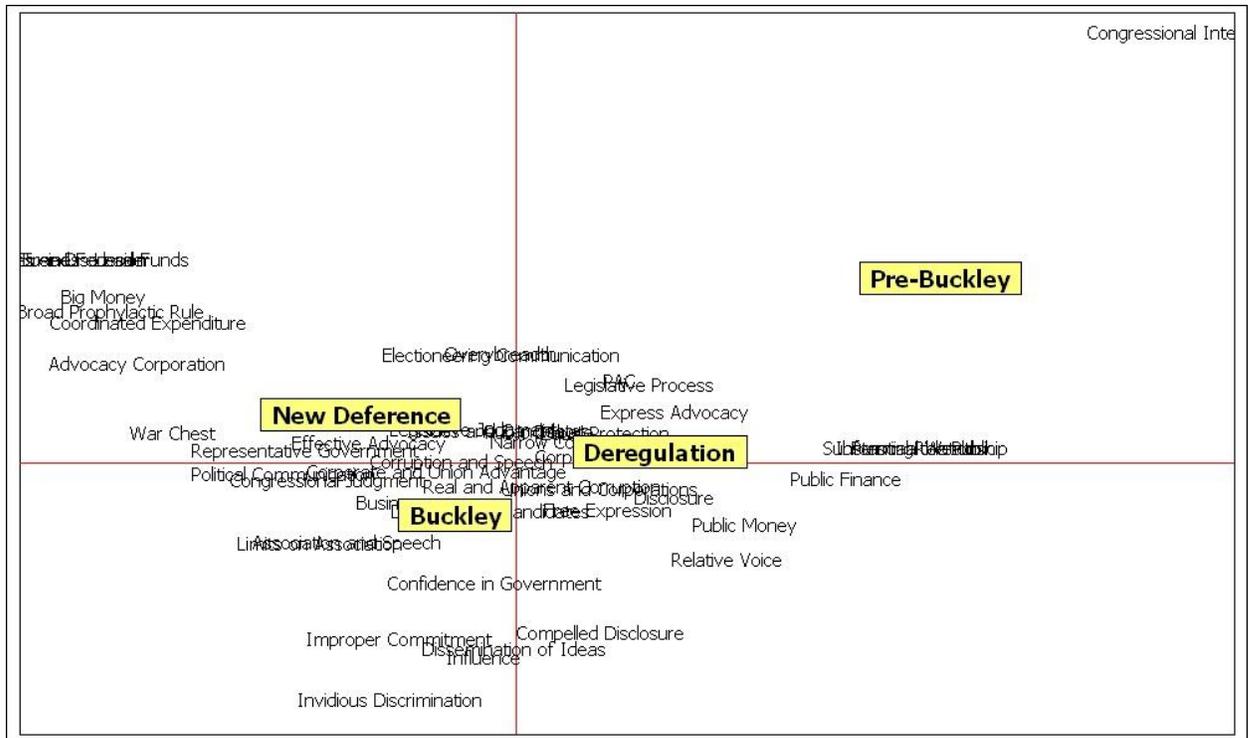


Figure 4-2: Correspondence Plot of Frames in Briefs



These figures show the extent to which three of the eras (New Deference, Deregulation, and Buckley) share certain frames, in that they are all clustered toward the center of the graph. Nevertheless, the graphs also show that these three eras appear in distinct quadrants, indicating their difference in the use of various frames. The pre-Buckley era is an outlier in both graphs, which is unsurprising considering that some of the legal issues and concerns present in later eras had not fully developed in that era. The distribution of the eras is also quite similar on both graphs, although the Buckley era is closer to the Deregulation era on the opinions graph, and closer to the New Deference era on the briefs graph.

Combined with the voting results by era discussed in Chapter 2, the distribution of frames among eras further supports the hypothesis that the four eras of campaign finance jurisprudence are distinguishable in their treatment of this complicated subject matter. Not only are the eras distinguishable in terms of voting results, but also in terms of language. As the two-dimensional correspondence plots above vividly illustrate, each era tends to focus more on certain frames than others. On the other hand, the distribution of frames also provides a reminder that certain core concerns persist through all four eras—most notably, the Court’s attempt to balance concerns over corruption with free speech values.

The findings concerning the similarities and differences in framing across eras are important for two reasons. First, the similarities demonstrate that both courts and advocates are consistent in recognizing that certain concerns recur in multiple cases. The courts continue to see some aspects of the issues, such as free speech, as important throughout time, even if the different courts disagree on the meaning of free speech. Accordingly, this offers some support for the idea that legal precedent has an important role to play in terms of defining how an issue is discussed—in other words, how it is framed. Once *Buckley v. Valeo* established the importance of the free speech in analyzing campaign finance laws, that aspect of the subject has never been abandoned. In that respect, the persistence of frames confirms the importance of legal precedent as providing not just a guide to case outcomes, but a common language with which to communicate about an issue over time. The persistence of some frames in briefs, as well as opinions, indicates that advocates employ this common language as well.

The second major contribution here relates to the differences in framing across eras. As described in Chapter 2, I theorized that the different eras would be distinguishable based

on my reading of a series of articles by legal scholar (and political scientist) Rick Hasen that employed a fairly traditional model of legal analysis, in that they focused on the content of doctrine, changes in that doctrine, and its relative coherence or lack thereof. My framing analysis provides empirical support for an analysis conducted by more traditional, interpretive methods. On the one hand, the framing analysis does not provide the kind of detailed doctrinal understanding found in the Hasen articles and other, similar articles typically found in law reviews. Instead, this study provides verifiable empirical evidence concerning change and stability in language usage over time.

Testing the Effect of Briefs Using Frames

The previous chapters have focused on legal argument, and framing is related to, but not exactly the same as, legal argument. Note that framing reflects, to some extent, the subject matter of a document as well as particular legal arguments. It is possible, however, that two opposing arguments may actually employ the same frame. For example, two litigants on opposite sides may both frame their arguments in terms of the “Corruption and Speech” frame, but offer differing takes on how the Court should rule. When one party employs a different frame than its adversary, however (or when the Court uses a different frame than a prior decision on similar issues), what occurs is not merely the making of a different argument but a change in subject matter. (Wedeking 2010; Riker 1986).

Once the briefs and opinions have been coded according to their use of frames, it is possible to test some hypotheses regarding framing effects. Like Wedeking (2010), I am interested in whether framing effects have the potential to turn the tide for litigants who are

faced with a situation in which they are unlikely to prevail, by changing the terms of the debate. My theory of framing effects differs from Wedeking (2010), however, which tests the ability of respondents to overcome their inherent disadvantage in the Supreme Court by using framing effects. (Respondents are generally at a disadvantage in the Court, since the Court's taking a case often means that it agrees with a petitioner's view).

My general theory of framing effects, however, depends on the relationship of different frames to different eras, rather than the status of litigants as respondents or petitioners. As was shown in Chapter 2, each era can be characterized, generally speaking, as pro- or anti-reform. A litigant who takes a position opposite the general trend of that era will need to do something out of the ordinary to convince the Court to side with them. This is where the use of framing effects is potentially important. If litigants can use their choice of language to frame the issues in a certain way, they have a better chance of success. I will test this by determining whether a brief or a past opinion is the closest, in terms of framing, to a given opinion.

In general, I would expect opinions from the same era to be very similar to each other in terms of framing (and the figures above support that). If an advocate's use of frames can affect the Court's view of how a case should be framed, however, I would expect one or more briefs, and not a previous opinion, to be more similar to the instant case, with regard to its use of framing. Accordingly, my first hypothesis with regard to framing effects is as follows:

If a decision follows the general trend of that era (in terms of being for or against reform), the most proximate document will be a prior opinion. On the other hand, if a

decision is contrary to the general trend for that era, a brief will be the most proximate document.

The similarity of documents' use of frames is calculated using QDA Miner Software, a companion program to Wordstat. QDA computes the occurrences of each frame in each document, and generates a cosine to signify the similarity in coding frequencies between documents. The user selects one or more "target documents", and selects which other documents from the dataset will be tested against the target document(s). QDA then uses a "vector space model" to quantify the similarity of each of the selected documents to the target document. This type of model represents text as a vector of terms. "Terms" can be defined in various ways, and most vector space models used to analyze text define words or phrases as terms. Because I have already coded paragraphs with framing codes, here I used the framing codes themselves as terms. This serves the purposes of my analysis, as I seek to analyze the similarity in terms of framing, and not only specific phrases. This distinction is important because a particular frame might include, say twelve different phrases. It is unlikely that any single paragraph uses all twelve of those phrases, even if they are often linked in various combinations. However, one paragraph might employ three of the phrases, while another employs one of the same phrases, plus two others from that frame. Note that Appendix 4-2 contains a list of the frames, and all the phrases in each frame.

In calculating a vector for each term, QDA treats each term as a dimension in a multi-dimensional vector space. If a term, in this case a framing code, is found in a document, that term is assigned a value in the vector for the dimension corresponding to that term. The greater the number of times a term appears in a document, the higher its assigned vector value will be. (Singal 2001).

To assign a numeric value to measure the similarity between documents, QDA measures cosines of the angles between vectors. The angles between vectors measure the divergence between vectors—a larger angle equals greater dissimilarity. The cosine of an angle, however, measures the *similarity* between vectors. The cosine of an angle—keep in mind these are vectors in imaginary space—is the ratio of the length of the adjacent side of an angle to the length of the hypotenuse. A cosine will be between 0 and 1, with 0 indicating complete dissimilarity, and 1 indicating identical vectors. (Singal 2001).

So, in order to use the vector space model to determine the similarity of documents' use of frames, QDA Miner calculates a cosine coefficient between 0 and 1 to measure the similarity between a given set of documents and a designated target document. In terms of interpreting similarity, *the more similar two cases are in terms of their distribution of codes, the higher the coefficient is.*

Using this method for each majority or plurality opinion, I tested the similarity of all briefs filed in that case, and all prior opinions (whether majority, concurring, or dissenting). I ran a separate test for each majority and plurality opinion, in which I treated each of these opinions as a target document, testing each opinion's proximity, or similarity, to all prior opinions, and to the briefs filed in the case. Some cases had more than one opinion; if a majority or plurality opinion was broken up into parts with different coalitions, I treated each separate part as a different opinion, and accordingly a different target document. (For example, Part I of opinion authored by Justice A and joined by Justices B, C, D, and E; Part II of opinion authored by Justice B and joined by justices D, E, F, G and H). The reasons for this were twofold—first, the different parts of an opinion may reach separate conclusions, and therefore draw from different precedents and briefs. Second, the various parts have

different authors and/or coalitions joining them, so each separate part of an opinion may reflect different framing.

A representative proximity plot and co-occurrence table, those for *Buckley v. Valeo*, are shown below in Figure 4-3 and Table 4-3.

Figure 4-3: Buckley Majority Proximity Plot

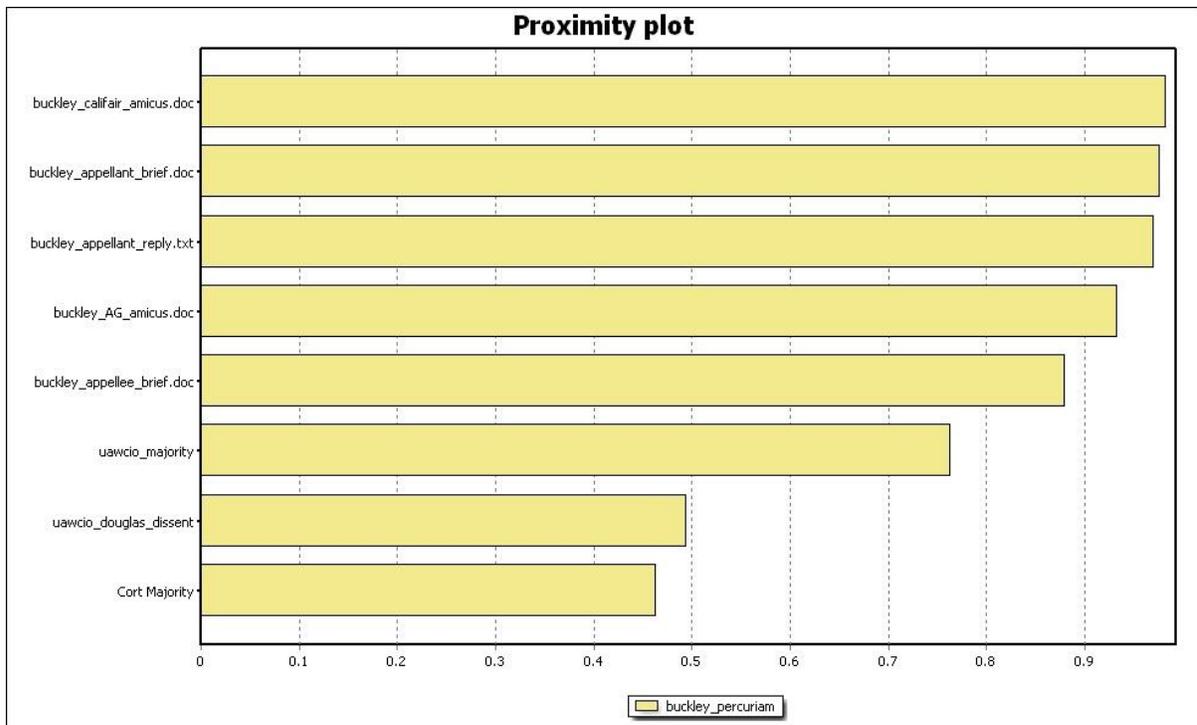


Table 4-3: Buckley Majority Co-occurrence Table

(Similarity to Buckley Majority Opinion)

DOCUMENT	POSITION	SIDE (IF BRIEF)	Cosine
California Fair Political Practices Commission, et al.	Pro-Reform	Winning	0.983
Appellant Brief	Anti-Reform	Losing	0.977
Appellant Reply	Anti-Reform	Losing	0.970
U.S. Attorney General Amicus	Pro-Reform	Winning	0.933
Appellee Brief	Pro-Reform	Winning	0.880
U.S. v. UAW-CIO Majority	Pro-Reform	N/A	0.764
U.S. v. UAW-CIO Dissent	Anti-Reform	N/A	0.495
Cort v. Ash Majority	Anti-Reform	N/A	0.463

Interestingly, the most similar document in *Buckley* was an amicus brief from the California Fair Political Practices Commission, and a few other state elections commissions, arguing for the upholding of the Federal Election and Campaign Act Amendments of 1974. However, two briefs from the appellant, who is coded as being on the “losing” side were the next most proximate, and were more proximate than the appellee’s brief. In part, this reflects the complexity of *Buckley*, which upheld key parts of FECA but struck down the spending limits contained therein on First Amendment grounds; in other words, it may have been a victory on the whole for reformers, but not a complete one. Accordingly, it is unsurprising to

see briefs from both sides very similar to the opinion. Also note that the briefs, on the whole, were more proximate to the opinion than the two previous opinions in this area, indicating the transitional nature of *Buckley* into a new era where freedom of speech concerns become central to campaign finance cases. Additionally, two amicus briefs were not included in this table, as they had no coding similarities with the majority opinion.

In order to demonstrate, in practical terms, what the similarity results mean, I have included a table showing framing codes included in the *Buckley* majority and the briefs filed in that case, as well as the framing codes from a previous case, *United States v. UAW-CIO*. In order to make the table easier to read, I omitted the two least similar documents, and omitted frames that appear only once in the majority opinion and do not appear in any briefs. These results are in Table 4-4, below. Beneath the name of each document, I have included its cosine coefficient showing its similarity to the *Buckley* majority.

Table 4-4: Framing Codes in *Buckley* Documents

Frame	Buckley Majority	Fair Political Practices Amicus (.983)	Pet. Brief (.977)	Pet. Reply (.970)	Att. Gen. Amicus (.933)	Resp. Brief (0.88)	U.S v. UAW-CIO Majority (.764)
Corruption and Speech	25	8	11	4	6	20	2
Invidious Discrimination	4	1			4	21	
Public Finance	4					3	
Representative Government	4						
Disclosure	2			1		1	
Public Money	2						
Influence	2						
Public Debate	2						
Unions and Corporations	1					1	3
War Chest	1					1	
Discussion of Candidates	1		1				

The above table helps to illustrate how the cosine coefficients measure the similarity between documents. As you can see, the most similar document, the “Fair Political Practices Amicus Brief” emphasized the “Corruption and Speech” Frame, as did the majority opinion, and also included the “Invidious Discrimination” Frame, which was also found in the majority opinion. The next most similar brief, the petitioner’s brief, also emphasized the “Corruption and Speech” frame, but did not include the Invidious Discrimination frame, therefore making it slightly less similar. Notice that the respondent brief, while emphasizing Corruption and Speech, also put a heavy emphasis on Invidious Discrimination, which was less emphasized in the Buckley opinion; this made its overall similarity to the opinion lower than some of the other documents. The cosine coefficient, then, signifies not just the *presence* of codes the frequency with which each code appears. If a brief employs a particular frame numerous times, but the opinion only mentions it once, this is a distinct difference in emphasis, which is accounted for in the cosine coefficient.

I also coded each opinion as to whether it was, on the whole, pro- or anti-reform. In doing so I used the coding scheme developed in Chapter 2 when characterizing issue votes—an opinion which upholds a campaign finance reform law (without weakening it significantly) or otherwise takes a deferential view toward campaign finance legislation is coded as “pro-reform.” An opinion that overturns a campaign finance statute or that takes a more restrictive view of the statute (such as limiting its application or refusing to apply it to a particular party) is coded as “anti-reform.” Even with the opinion split up into separate documents as described above, there were still several opinions or opinion segments that dealt with multiple issues. In coding opinions as to whether they supported or opposed campaign finance reform, if an opinion had multiple issues, I coded it according to how the

majority of issues in that opinion (or portion of opinion) were resolved. While this coding was done after the application of framing data to the documents, my coding with regard to the pro- or anti-reform nature of each opinion did not change from the coding done in Chapter 2, which was performed before seeing the framing data. Essentially, I took the issue vote coding in Chapter 2 and applied that coding to the opinion as a whole, based on the result of the majority of the issues dealt with in an opinion.

Before testing my hypothesis, I calculated some descriptive statistics concerning the proximity of briefs and opinions. Table 4-5 displays the extent to which briefs or opinions tended to be the most similar document to a target opinion.

Table 4-5: Most Similar Document to Majority and Plurality Opinions

Closest Document	Freq.	Percent	Cum.
No Difference	5	16.13	16.13
Opinion	6	19.35	35.48
Brief	20	64.52	100.00
Total	31	100.00	

The results show that in 20 of the 31 opinions, or 64.52 percent, a brief and not a prior opinion was the most proximate document. Additionally, in five out of the 31 opinions, there was a tie as to whether a brief or opinion was the most similar document (the “no difference” column). While this does not, in itself, provide influence of briefs, it suggests, at

least, that some advocates are doing an excellent job of framing their arguments in terms that the Court accepts.

I also coded each opinion as to whether the most proximate brief was on the “winning” or “losing” side of the case, and calculated the frequency of winning versus losing briefs as most proximate. The results are displayed in Table 4-6.

Table 4-6: Side of Most Similar Brief in Each Case

“Side” of Closest Brief	Frequency	Percent	Cum. Percent
Losing Side	12	37.5	37.5
Winning Side	16	50	87.5
Tie	4	12.5	100
Total	32	100	

The most similar brief is only on the winning side in half of the cases; in 37.5% of the cases the losing brief is most proximate, and in the remainder of cases winning and losing briefs tied for most proximate. This is actually consistent with my findings in an earlier chapter that when courts discuss arguments made by litigants, they devote a great deal of that discussion to the arguments they *disagree* with. It also indicates that, in terms of framing, being the most similar to an opinion doesn’t necessarily mean you’re the winner. The Court may discuss the issues on your terms, but still disagree with your argument—or it may be that both sides are discussing things on the same terms, so you cannot change the Court’s mind in your favor by framing the issues in a different way.⁷

⁷ After obtaining these results, I tested whether unanimity of a decision affected whether the Court’s opinion showed more similarity to the winning or losing side of a case. Because a non-unanimous case signifies division on the Court, it could be that authors of non-unanimous opinions feel a greater obligation to discuss and explicitly refute the losing side’s argument, meaning the most proximate brief or briefs in non-unanimous

Finally, I tested the hypothesis mentioned above: If an opinion follows the general trend of its era, with regard to being pro- or anti- campaign finance reform, a prior opinion will be the most similar document; if it defies the trend of its era, a brief will be the closest document. To test this, I coded each opinion for whether it follows the general trend of its era, and for whether an opinion or brief was the most similar document. The results are in Table 4-7.

Table 4-7: Most Similar Document Type for Each Opinion

Closest Document Type	Follows Era Trend	Defies Era Trend	Total
Tie	3 15%	2 18.18%	5 16.13
Opinion	4 20%	2 18.18%	6 19.35
Brief	13 65%	7 63.64%	20 64.52
Total	20 100%	11 100%	31 100%

The crosstab results shown in Table 4-7 do not support the hypothesis regarding proximity. Regardless of whether an opinion follows or defies the trend that characterizes its era, a brief is most likely to be the most similar document. Furthermore, I could not perform a statistical test on the crosstab due to the small number of cases in some cells. Nevertheless, the results in this table provide some important information regarding the extent to which an opinion is more likely to be most similar, in terms of framing, to a brief or a previous opinion. These results indicate that a brief is likely to be the most similar document to the

cases would be from the losing side. However, an analysis of the non-unanimous cases showed little difference as to whether winning or losing side briefs were more proximate.

target opinion, regardless of whether that opinion follows or defies its era in being deferential or skeptical toward campaign finance reform. This suggests that attorneys, even if they are not influencing the Court, are using the same type of language the Court uses in framing issues.

Framing Effects and Transitional Cases

As a further test of framing effects, I examined similarities between briefs and opinions for transitional cases, which I define as the first case in each era beginning with *Buckley*. (I do not count the first pre-*Buckley* case as a transition for this analysis, because there is no prior era to transition from.) This is another place in which influence of framing effects might be detected. If the issue framing used by advocates is pushing the Court in a new direction, we would expect to see briefs being more similar than opinions in transitional cases.

The proximity plot and co-occurrence table for *Buckley*, shown above, show that amicus and party briefs were substantially more similar than the previous opinions, in terms of framing, to the *Buckley* majority opinion. Table 4-8, on the following page, shows the co-occurrence results for *Shrink Missouri Government PAC v. Nixon*, the first case in the New Deference era (a few documents with cosines below .481 have been left out in order to make the table more readable):

Table 4-8: Nixon Majority Documents Framing Similarity

Document	Cosine
United States Amicus Brief	0.989
Common Cause Amicus Brief	0.982
Petitioner Brief	0.977
Former ACLU Leaders Amicus	0.977
Brief of Respondent Bray	0.976
House and Senate Members Amicus	0.976
State Attorneys General Amicus	0.976
Right to Life Amicus	0.976
Respondent Shrink Missouri	0.975
Petitioner Reply	0.972
Sen. Mitch McConnell Amicus	0.972
James Madison Center Amicus	0.971
ACLU Amicus	0.970
Kennedy Dissent	0.968
DSCC Concurrence	0.968
Public Citizen Amicus	0.968
Shrink Missouri Supplemental Brief	0.968
FEC v. Colorado Thomas Dissent Part 1	0.968
FEC v. Colorado Stevens Dissent	0.968
Buckley v. Valeo Burger Dissent	0.968
Buckley v. Valeo White Dissent	0.968
MCFL v. FEC Plurality Part III	0.968
Brown v. Socialist Workers O'Connor Dissent	0.968
Political Scientists Amicus	0.968
First Amendment Project Amicus	0.967
Secretaries of State Amicus	0.967
Pacific Legal Foundation Institute	0.965
U.S. Term Limits Amicus	0.961
Buckley v. Valeo Majority Opinion	0.961
Guns Owners of America Amicus	0.960
California Medical Association v. FEC Plurality	0.950
Citizens Against Rent Control v. Berkeley White Dissent	0.948
Breyer Concurrence	0.941
FEC v. Colorado Plurality	0.934
FEC v. NCPAC Majority Part 2	0.920
Colorado Republicans v. FEC Thomas Dissent Part 2	0.917
Citizens Against Rent Control v. Berkeley Blackmun Concurrence	0.914
Citizens Against Rent Control Majority Opinion	0.914
California Med Assn. v. FEC Blackmun Concurrence	0.896
Austin v. FEC Scalia Dissent	0.842
California Med. Assn. v. FEC Majority	0.821
Citizens Against Rent Control Marshall Concurrence	0.821
Buckley v. Valeo Burger Concurrence	0.821
Austin v. FEC Majority	0.805
Austin v. FEC Kennedy Dissent	0.790
National Right to Work v. FEC Majority	0.766
FNB v. Bellotti White Dissent	0.761
U.S. v. UAW-CIO Majority	0.746
Austin v. FEC Brennan Concur	0.705
Brown v. Socialist Workers Majority	0.671
FNB v. Bellotti Majority	0.661
MCFL v. FEC Majority Parts IIIB and C	0.647
FEC v. DSCC Majority	0.550
Colorado Republicans v. FEC Kennedy Dissent	0.535
Brown v. Socialist Workers Blackmun Concurrence	0.481
U.S. v. UAW-CIO Douglas Dissent	0.481
FNB v. Bellotti Rehnquist Dissent	0.481

In this case, the most similar documents are amicus and party briefs, possibly indicating, again, some influence from framing effects in briefs in this transitional case. The United States' amicus brief is the most similar document, which could reflect the influence the Solicitor General has before the Court when it chooses to take part as an amicus.

Finally, the results for the plurality opinion in *Randall v. Sorrell*, the first case in the Deregulation era, are shown in the table on the following page. This opinion was split into two parts due to different coalitions of justices joining each part. I have displayed only the results for Part 1, as the results for Part 2 of the opinion were very similar.

Table 4-9: Framing Similarity in Randall v. Sorrell Plurality Part I Documents

Document	Cosine
Souter Dissent Part I	0.988
Plurality Part II b1 and 2	0.988
Stevens Dissent	0.988
Kennedy Concurrence	0.988
Sorrell VRSC Petitioner Reply	0.988
The Rest of Us Amicus	0.988
Secretaries of State Amicus	0.988
Reclaim Democracy Amicus	0.988
AFL-CIO Amicus	0.988
Beaumont v. FEC Thomas Dissent	0.988
DNC Amicus	0.986
Sorrell Respondent Brief	0.986
Reed Amicus	0.986
Petitioner Brief	0.985
Connecticut Amicus	0.985
RNC Amicus	0.985
Bradley Amicus	0.984
McCain Amicus	0.983
FEC v. McConnell Thomas Dissent Part One	0.983
Sorrell VRSC Petitioner Brief	0.981
California Med. Assn. v. FEC Plurality Opinion	0.980
Equal Justice Amicus	0.980
Petitioner Reply	0.978
Dorsen Amicus	0.978
McConnell Amicus	0.976
Thomas Concurrence	0.975
Rehnquist Dissent	0.973
VPIRG Respondent Brief	0.973
Buckley Majority Opinion	0.969
FEC v. McConnell Kennedy Dissent	0.968
FEC v. McConnell Majority Parts I and II	0.915
California Med Assn. v. FEC Blackmun Concurrence	0.887
National Center for State Courts Amicus	0.887
Austin v. Michigan Chamber Scalia Dissent	0.863
McConnell v. FEC Majority Parts III and IV	0.839
Behrens Amicus	0.839
Austin v. Michigan Chamber Majority Opinion	0.826
Austin v. FEC Kennedy Dissent	0.813
FNB v. Bellotti White Dissent	0.778
FEC v. NRWC Majority Opinion	0.754
McConnell v. FEC Scalia Dissent	0.730
Austin v. Michigan Chamber Brennan Concurrence	0.721
FNB v. Bellotti Majority Opinion	0.680
McConnell v. FEC Thomas Dissent Part Two	0.600
WRTL v. FEC (WRTL I) Majority Opinion	0.486
McConnell v. FEC Majority Parts III and IV	0.486
FNB v. Bellotti Rehnquist Dissent	0.486
McConnell v. FEC Stevens Dissent	0.486
McConnell v. FEC Majority Part V	0.486
Austin v. Michigan Chamber Stevens Concur	0.486

In this case, there is a tie for the most similar document (Cosine .988) among several other opinions from this very case, a dissenting opinion from Justice Thomas in a former case, and the amicus brief of the AFL-CIO. Looking further down the table, it is clear that several other briefs and prior opinions are also very close to the target document, as reflected by cosines very close to the .988 of the “leading” documents. This leaves the results for this case somewhat inconclusive; while several briefs are very close to the opinion, the same is true of dissenting opinions from former cases. As with the inconclusive results shown in Table 4-7 above, however, the inconclusive results here also point to some interesting findings. The proximity of Justice Thomas’s dissenting opinion in *FEC v. Beaumont* is worth noting, in that Thomas (who is typically very conservative on campaign finance, as with most other issues) dissented from a pro-reform ruling in that case. Considering that *Randall v. Sorrell* signaled a turn towards a greater willingness to strike down campaign finance reform laws, the potential influence of Justice Thomas’s views could be important. However, several briefs are tied with Thomas’s dissent, indicating, at least, that several litigants were successful in framing issues in ways the Court found agreeable.

Do Advocates Add New Frames at the Supreme Court?

The final part of this analysis attempt to discern whether party or amicus briefs are adding something novel, in terms of framing, which was not present in the lower court opinion that was appealed to the Supreme Court. Lower courts use issue framing as well, and it is possible that attorneys simply borrow the language from the lower court in characterizing a case, thereby employing the same frames. However, it is also possible that attorneys are adding new frames at the Supreme Court stage, especially if they did not like

the lower court outcome and are seeking to recharacterize the issues, and thus bring about a different result. In order to conduct this analysis, it was necessary to add lower court opinions for each Supreme Court campaign finance case to my dataset. For each Supreme Court decision, I found the lower court decision that was appealed to the Supreme Court. In most cases, this was a United States Circuit Court decision. A few cases were appealed directly from a United States District Court, or from a state Supreme Court.

As stated above, the reason for adding the lower court opinions to the analysis at this point is that attorney, and the Supreme Court, may be influenced in the language they use by the lower court decision. The lower court has already analyzed the decision, and to some extent defined one particular way of framing the issues. Neither advocates nor the Supreme Court are bound to frame the issues in the same way as the lower court. However, the Supreme Court is deciding, in part, whether to affirm or reverse the lower court's decision. Accordingly, both the Court and attorneys will likely consider the lower court's framing of the issues. However, the Supreme Court stage offers litigants and amici a chance to *reframe* the case in a way that differs from the lower court's framing. If a party appeals the lower court's opinion, they may believe they have a greater chance of success if they reframe the issues before the Supreme Court.

I have focused on transitional cases in this analysis, because that is where I expect to find the most influence from briefs. Each transitional case—the first case in an era—is when the Court is receptive to thinking about campaign finance law in a new way. The lower courts, however, are likely continuing to use issue frames associated with previous cases, as they have to follow precedent. Accordingly, I would expect Supreme Court opinions to be

most likely to adopt new frames from briefs in transitional cases. This leads to the following hypothesis:

H1) In transitional cases, the Court will adopt new frames in its opinion that were not present in the lower Court opinions.

This also leads to a corollary hypotheses. We know from past research that having amicus briefs on a party's side can increase that party's chances of winning (Collins 2008). We would also expect the frames adopted by the Court, if they come from briefs, to come from briefs on the winning side—since that is the side whose arguments the Court found most convincing. Accordingly, I hypothesize that:

H2) New frames adopted by the Supreme Court will be found in party or amicus briefs on the winning side.

In order to test these hypotheses, I applied the previously created framing codes to the lower court decisions in each transitional case, and created a table for each case displaying which documents contained each frame. For each lower court decision, I applied framing codes in the same method as with other documents. Using the same framing codes already generated, I used Wordstat to find paragraphs in each lower court opinion that contained at least three phrases from a given frame. If a paragraph contained at least three phrases from a particular frame, I applied that framing code to the paragraph.

The tables below show the results. The left-hand column displays each frame that is present in at least one of the documents in that case. The columns show the number of times each frame is used in a particular document. Comparing the “SCOTUS Majority” (or in one case “SCOTUS Plurality”) column with the “Lower Court Majority” Column determines

whether a frame is new at the Supreme Court level; if a frame is “new,” it was not adopted by the majority lower court opinion. I have also provided columns for frames from party and amici briefs filed by each party. Finally, I have marked each column which refers to the winning side in a case—whether the column represents the actual parties or supporting amici—with a “(W)” in the column title.

In the previous analysis of transitional cases, I started with *Buckley*, because there was no relevant Supreme Court case prior to the *Pre-Buckley* era. Here, however, I begin with the *U.S. v. UAW-CIO* case, since there is a relevant lower court opinion.

Table 4-10: Frames in *United States v. UAW-CIO* Documents

Frames	Supreme Court Majority	Supreme Court Dissent	Lower Court Majority (US District)	Petitioner Brief (W)	Respondent Brief	Petitioner Reply (W)
Unions and Corporations	3	1	2	8	1	1
Corruption and Speech	2	0	0	3	2	0
Corporations	0	0	0	0	6	0
Influence	0	0	0	1	0	0
Congressional Intent	0	0	0	1	1	0

In *UAW-CIO*, the Court adopted one new frame, “corruption and speech”, while also employing the “Unions and Corporations” frame used in the lower court. The “Corruption and Speech” came from the winning side, the petitioner, though there were no amici supporting that side of the case. Finally, it appears that *both* parties employed the “Corruption and Speech” frame in their briefs; both also used other new frames that were not adopted by the Court’s majority opinion.

The results of Table 4-11 also support Hypothesis 1. The Court adopted a total of 18 new frames that were not present in the lower court opinion. However, the most frequently used frame, corruption and speech, was present in the lower court opinion. Unexpectedly, the winning party (respondent), only raised one new frame, which was used by the Court—providing some support for the second hypothesis, but only weak support. However, most of the new frames appear to not match with frames raised by the advocates at all, indicating that those frames came from the Court itself or from sources outside the Court. This is a reminder that frames may come from sources other than the Court or advocates, as the Justices are aware of the larger political and legal context surrounding the cases they decide. Additionally, as the results in subsequent tables below show, the rest of this analysis provides stronger support for my hypothesis.

Table 4-11: Frames in *Buckley v. Valeo* Documents

Frames	S. Ct. Maj.	S. Ct. Conc.	S. Ct. Diss.	Circuit Maj.	Circuit Conc.	Circuit Diss.	Pet. Brief	Resp. Brief (W)	Pet. Reply	Amicus Pet.	Amicus Resp. (W)
Corruption and Speech	25	1	12	20	1	8	11	26	4	3	8
Public Finance	4	0	0	3	0	0	0	3	0	1	0
Invidious Discrimination	4	0	1	3	0	0	0	25	0	2	1
Congressional Intent	0	0	0	1	0	0	0	0	0	0	0
Public Debate	2	0	0	1	0	0	0	0	0	0	0
Disclosure	2	0	0	1	0	0	0	1	1	0	0
Unions and Corporations	1	0	0	1	0	0	0	1	0	0	0
Influence	2	0	0	0	0	0	0	0	0	0	0
Discussion of Candidates	1	1	0	0	0	0	1	0	0	0	0
Limits on Association	1	0	1	0	0	0	0	0	0	0	0
Congressional Power	1	0	0	0	0	0	0	0	0	0	0
War Chest	1	0	0	0	0	0	0	1	0	0	0
Issues and Candidates	1	0	0	0	0	0	0	0	0	0	0
Compelled Disclosure	1	0	0	0	0	0	0	0	0	0	0
Dissemination of Ideas	1	0	0	0	0	0	0	0	0	0	0
Political Communication	1	0	0	0	0	0	0	0	0	0	0
Personal Wealth	1	0	0	0	0	0	0	0	0	0	0
Effective Advocacy	1	0	0	0	0	0	0	0	0	0	0
Improper Commitment	1	0	0	0	0	0	0	0	0	0	0
Association and Speech	1	0	0	0	0	0	0	0	0	0	0
Real and Apparent Corruption	1	0	0	0	0	0	0	0	0	0	0
Public Money	2	0	1	0	0	0	0	0	0	0	0
Representative Government	4	0	0	0	0	0	0	0	0	0	0
Free Expression	1	0	0	0	0	0	0	0	0	0	0
Relative Voice	1	0	0	0	0	0	0	0	0	0	0
Equal Protection	0	0	0	0	0	0	0	0	0	1	0

Table 4-12: Frames in *Nixon v. Shrink Missouri Government PAC* Documents

Frames	S. Ct. Maj.	S. Ct. Conc.	S. Ct. Diss.	Circ. Maj.	Circ. Diss.	Pet. Brief (W)	Pet. Reply (W)	Resp. Brief	Amicus Pet. (W)	Amicus Resp.
Corruption and Speech	9	3	16	6	3	38	24	38	146	125
Representative Government	2	0	1	0	1	3	1	1	14	0
Limits on Association	2	0	0	0	0	0	0	1	2	4
Political Communication	1	0	2	0	0	1	0	0	11	2
Effective Advocacy	1	0	1	1	0	1	0	1	8	1
Congressional Judgment	1	0	0	0	0	0	1	1	4	0
Broad Prophylactic Rule	1	0	0	0	0	0	0	0	1	0
Free Expression	0	1	0	0	0	0	0	0	2	4
Association and Speech	0	0	1	0	0	0	0	0	2	1
War Chest	0	0	1	0	0	0	0	1	0	0
Public Finance	0	0	0	0	0	0	0	0	1	1
Corporations	0	0	0	0	0	0	0	0	1	0
Public Debate	0	0	0	0	0	0	0	1	0	5
Invidious Discrimination	0	0	0	0	0	0	0	0	0	2
Public Money	0	0	0	0	0	0	0	0	0	1
Unions and Corporations	0	0	0	0	0	0	0	0	0	1
Free Discussion	0	0	0	0	0	0	0	0	0	1
Discussion of Candidates	0	0	0	0	0	0	0	0	0	1
Improper Commitment	0	0	0	0	0	0	1	0	0	0
Real and Apparent Corruption	0	0	0	0	0	0	1	0	0	0

In *Nixon v. Shrink Missouri Government PAC*, the “Corruption and Speech” was still the most common frame, but the Court also adopted five new frames: Representative Government, Limits on Association, Political Communication, Congressional Judgment, and Broad Prophylactic Rule. This supports the first hypothesis. Additionally, all of the new frames were employed by either the petitioner or amici supporting petitioner, the winning side in this case. This result provides some support for hypothesis two. It should also be noted that in some cases the respondent also employed the new frames used by the petitioners or their amici. This is likely because the respondents, as the term suggests, are responding to arguments made by the petitioner. While they may (and often do) raise arguments of their own, they likely feel compelled to address some of petitioner’s arguments, resulting in similarities in framing.

Table 4-13 again offers support for the first hypothesis; the plurality opinion (there was no majority opinion in this case) adopts two new frames, Political Communication and Dissemination of Ideas. Additionally, both these frames were raised by the winning side (petitioner). These frames were employed by petitioners, but not their supporting amici.

Table 4-13: Frames in *Randall v. Sorrell* Documents

Frames	S. Ct. Plur.	S. Ct. Conc.	S. Ct. Diss.	Circ. Maj.	Circ. Diss.	Pet. Brief (W)	Pet. Reply (W)	Resp. Brief	Amicus Pet. (W)	Amicus Resp.
Corruption and Speech	12	5	6	53	18	38	17	39	34	110
Political Communication	2	2	0	0	0	2	0	0	0	1
Effective Advocacy	1	0	0	2	1	5	0	0	1	
Dissemination of Ideas	1	0	0	0	0	2	0	0	0	1
Free Expression	0	0	0		0	1	1	0	3	3
Representative Government	0	0	0	1	0	0	0	0	1	1
Coordinated Expenditure	0	0	0	0	0	0	0	1	1	0
Discussion of Candidates	0	0	0	0	0	1	0	0	1	0
Invidious Discrimination	0	0	0	0	0	0	0	0	1	0
Real and Apparent Corruption	0	0	0	0	0	0	0	0	1	0
Public Finance	0	0	1	5	1	5	1	5	0	8
Congressional Judgment	0	0	0	1	0	0	0	0	0	3
Corporations	0	0	0	1	0	0	0	1	0	2
Confidence in Government	0	0	0	0	0	0	0	1	0	2
Public Debate	0	0	0	0	1	0	0	0	0	1
Compelled Disclosure	0	0	0	0	0	1	0	0	0	0
Issues and Candidates	0	0	0	0	0	0	1	0	0	0
Broad Prophylactic Rule	0	0	0	0	1	0	0	0	0	0
Association and Speech	0	0	0	0	1	0	0	0	0	0

For further support of the hypothesis that the Court adopts new frames in transitional cases, see tables 4-14 and 4-15 below. Table 4-14 consolidates all non-transitional cases into one table, showing whether a frame was also present in a lower court case. Of the 35 frames used in non-transitional cases, 10 of them were “new”—not used in lower court majority opinions. So new frames do appear in non-transitional cases, but they constitute less than one third of the frames present. Table 4-15, by contrast, shows all transitional cases in one table, indicating whether a frame came from a lower court majority opinion or not. (I have left out briefs from this table, and consolidated all types of lower court opinions into one column). Of the 26 different frames used in transitional cases, seventeen of them—over half are new frames. This points to a much greater use of new frames in transitional cases than in non-transitional cases.

On the whole, these results confirm the presence of new frames in transitional cases, offering support from each case for the first hypothesis. This supports the notion, discussed earlier in the study, that the four eras are distinct in terms of how the Court treats campaign finance legislation and in how the Court frames the issues. When the Court’s overall view of campaign finance changes, the way it talks about the issue changes. Therefore, the Court is receptive to new ideas in times of doctrinal change, and these ideas are expressed in terms of issue framing. In times of change, the Court is especially likely to use new frames in a particular case that do not come from the lower court decision in a given case. While many of these new frames come from the court itself, as in the case of *Buckley v. Valeo*, many also come from party or amicus briefs. This indicates, then, that advocates do have an opportunity to influence the Court through framing effects.

Table 4-14: Frames in Non-Transitional Cases

Frame	SCOTUS Majority	SCOTUS Plurality	Lower Court
Political Communication	3	2	0
Dissemination of Ideas	2	0	0
Public Debate	3	0	5
Discussion of Candidates	2	0	0
Equal Protection	1	0	2
Improper Commitment	7	1	3
Real and Apparent Corruption	2	0	0
Corruption and Speech	94	17	123
Big Money	4	0	0
Public Finance	30	0	20
Personal Wealth	4	0	1
Coordinated Expenditure	9	3	5
Association and Speech	1	1	2
Limits on Association	5	0	1
Disclosure	1	0	1
Compelled Disclosure	3	0	2
Advocacy Corporation	2	0	2
Corporations	24	2	20
Electioneering Communication	25	4	16
Unions and Corporations	11	0	23
Corporate and Union Advantage	1	0	1
Legislative Judgment	4	0	1
PAC	2	0	0
Confidence in Government	2	0	1
Representative Government	3	1	4
Public Money	1	0	3
Free Expression	5	0	0
Issues and Candidates	2	2	2
Narrow Construction	2	0	0
Influence	2	0	2
Express Advocacy	3	2	4
Congressional Intent	2	0	0
Substantial Relationship	1	0	0
Business	3	0	2
Congressional Judgment	2	0	4

Table 4-14: Frames in Transitional Cases

Frames	SCOTUS Majority	SCOTUS Plurality	Lower Court
Political Communication	2	2	0
Dissemination of Ideas	1	1	0
Public Debate	2	0	1
Discussion of Candidates	1	0	0
Improper Commitment	1	0	0
Real and Apparent Corruption	1	0	0
Corruption and Speech	36	12	79
Broad Prophylactic Rule	1	0	0
War Chest	1	0	0
Public Finance	4	0	8
Personal Wealth	1	0	0
Effective Advocacy	2	1	3
Association and Speech	1	0	0
Limits on Association	3	0	0
Disclosure	2	0	1
Compelled Disclosure	1	0	0
Invidious Discrimination	4	0	3
Unions and Corporations	4	0	3
Representative Government	6	0	1
Congressional Power	1	0	0
Public Money	2	0	0
Free Expression	1	0	0
Relative Voice	1	0	0
Issues and Candidates	1	0	0
Influence	2	0	0
Congressional Judgment	1	0	1

Conclusions

Initially, this chapter shows that the four eras of campaign finance law are distinguishable not only in terms of votes, but in terms of issue framing. With regard to the success of issue framing on the part of litigants, however, the evidence is less conclusive. Campaign finance cases that went against the grain in their respective era were not more likely to show similarities to briefs than those that followed the trend of their era. Additionally, two out of three transitional cases show greater similarities in issue framing with briefs than opinions. This could indicate a greater role of framing effects from briefs at the beginning of those two eras. The transitional case from the deregulation era, however, showed as much similarity to a prior dissenting opinion as to various briefs. This inconclusive result leaves open the question of whether the Court was influenced by issue framing in the briefs, or reached back to a prior opinion for definition of the issues—or whether both played a role.⁸

However, the most significant result from the chapter was the finding that the Court is likely to adopt frames in transitional cases that *do not* come from the lower Court decision. This indicates that advocates, to some extent, are succeeding in reframing cases in the

⁸ I examined one other characteristic of transitional cases—the discord on the Court. In this case, I examined the *last* case in each era (except for Deregulation) to determine whether there were concurring or dissenting opinions. The presence of concurring or dissenting opinions in the final case in an era could indicate that the Court is beginning to lose a consensus that has defined that era with regard to the treatment of campaign finance cases. This would also provide some indication that the Court itself is moving, rather than being moved by advocates. The results were inconclusive, however. In the first three eras, the final case in each era had not concurring or dissenting opinions. On the other hand, concurring and dissenting opinions were more likely to appear in the most important cases in each era, possibly showing that discord manifests itself when the stakes are particularly high. Again, these results are inconclusive, but might merit further research.

transitional periods. This finding also lends support to the separation of campaign finance law into four different eras, as we can observe the change that is occurring at the beginning of each era.

Chapter 5: Conclusion

This dissertation has attempted to explain the role of legal argument and issue framing in the development of the Supreme Court's campaign finance jurisprudence. The general goal of the study has been to understand the role legal argument plays in the Court's decision-making, but the study focused on campaign finance law in order to gain certain advantages of conducting a small scale study. While large scale studies may generate more generalizable conclusions, a study of a specific issue area allows tracing the use of specific arguments and issue frames across time, and in general allows one to make a closer examination of opinion content.

The most important results in this dissertation are found in Chapter 4. In Chapter 2, I had theorized that the campaign finance cases could be divided into four distinct eras which could be characterized by how deferential or skeptical the Court was toward campaign finance legislation. Not only did I expect the eras to be distinct in terms of votes, but in terms of language used, which would be reflected in the way the court and attorneys frame the issues. The use of frames in both the briefs and opinions provided support for my expectation that the four eras are distinct, while also showing that certain frames persist over time.

Most notably, the "corruption and speech" frame was persistently important after *Buckley v. Valeo*, indicating how legal precedent affects framing. Because this was established early on as an important legal concern, courts continually returned to the problem of balancing freedom of speech concerns with legitimate state interest in combating

corruption. Additionally, advocates continually addressed these concerns in their briefs, because it was clear that this frame was important in the Court's understanding of the issues. On the other hand, certain frames are more important in some eras than others, indicating that the Court and advocates emphasized certain aspects of the cases more than others in particular eras. For example, the "unions and corporations" frames, involving concerns about the influence of both unions and corporations, became less prevalent over time, while the "corporations" frame, reflecting concern only about corporate influence, became more prevalent over time. The "Limits on Association" frame, concerning the limitations on freedom of political association, was primarily found in the New Deference period, when the Court was more willing to uphold campaign finance legislation.

The findings regarding stability and change of framing across eras make for an especially interesting result, in that they offer empirical support for expectations derived from my reading of traditional doctrinal analysis. These results should be of great interest to those who believe that the language of court decisions matters, but also seek to understand that language through empirical, rather than interpretive, analysis. It also indicates that traditional legal analysis and empirical methods of analyzing language may reinforce one another.

Chapter 4 also contained the important finding that advocates can add frames at the Supreme Court stage that were not present in the case in lower court decisions in the same case. This is especially noteworthy in that it suggests that advocates can be successful in increasing the salience of certain aspects of issues. On the one hand, this analysis does not definitively answer the causal question of where new frames ultimately come from. It is always possible that a justice emphasizes a new frame because of something in the broader political

or legal environment. Furthermore, definitively tracing this kind of causation may be impossible without access to some documentation of a justice's thought process, such as memos circulated in the court or their own private papers, and even then these sources are not guaranteed to be reliable. However, this analysis does show that new frames raised by advocates are sometimes reflected in Court opinions. Accordingly, even if justices are motivated by other sources—their own understanding of precedent, ideology or policy goals, concern for other political actors—it may well be worthwhile for lawyers to attempt to influence the Court through framing effects. Even if the predominant frames in a particular era tend to favor one side or the other in a case, the new frames that are introduced by advocates may make their way into opinions. This reflects Riker's (1986) theory of heresthetics and Wedeking's (2010) findings that parties before the Supreme Court may affect their chances of a favorable outcome through their choice of framing. While parties to a case primarily want to win, they also want to win future cases in lower courts or the Supreme Court on the same subject. In order to do so, establishing favorable legal doctrine is important. By strategically employing issue framing, advocates can bring new concerns to the Court's attention, and are not limited to the issue frames established in lower courts. These frames may subsequently become important in future cases before the Supreme Court or in lower courts.

The analysis in Chapter 2 also contained important findings about the court's use of language and treatment of argument. This chapter did not rely on framing analysis, but examined more explicit treatment of arguments made by advocates. I concluded that the Court devotes more attention in its opinions to arguments it ultimately rejects than those which it agrees with. An analysis of whose arguments the Court addresses in opinions also

showed that opinions devote much more attention to party arguments than amici arguments. This was expected, as the Court likely feels somewhat compelled to deal with the arguments made by actual parties to the case.

Chapter Three examined cases in which justices changed their minds on an issue, and looked for linguistic similarities between the opinions explaining those changed positions and briefs which might have persuaded the justices. However, there was little evidence of similarity between the briefs and the justices' stated reasoning in these instances. As discussed in Chapter 3, these negative findings could indicate that the justices did not change their minds because of arguments made by attorneys, and this is an interesting finding. It could be that justices change their minds for a number of other reasons, such as simply reconsidering the issues, influence of their colleagues, or influence from the external political environment. Additionally, the negative findings could reflect the limitations in my methodology in this chapter. It may well be that the justices' changing positions were influenced by arguments in briefs, but not reflected in the use of particular language from those influential briefs. The type of analysis done in this chapter might be worth more investigation with other methods of content analysis that can detect similarity of meaning in different words, rather than simply looking for repetition of the same language.

Nevertheless, the results of Chapters two and four taken together provide strong evidence that the court's use of language, as well as the Court's vote results, are a defining characteristic of cases in particular time periods. As discussed earlier, this supports work by other authors on regime theory, which argues that various legal regimes establish doctrinal concerns that help shape case outcomes along with other factors such as judicial policy preferences.

The finding that new frames used by advocates can appear in the Court's opinions merits further research. Given this finding, the next obvious step to further this research is to determine what factors cause a justice to incorporate certain frames into their opinion. If they are drawing new frames from briefs, are better or more experienced advocates more likely to have their new frames adopted? The more powerful and well-funded interest groups might also have an advantage here, although that advantage might manifest itself primarily in the ability to hire better attorneys. Or justices might be drawing new frames from groups whose ideological views they share. This would not necessarily indicate that justices' decisions are purely the product of political ideology, but would indicate that ideologically motivated groups might have a chance to influence doctrine by appealing to justices likely to agree with their framing of an issue.

The results also suggest certain limitations of the study, although those limitations might be overcome with further research. As previously mentioned, this type of analysis cannot address the ultimate causal question of the source of a frame, but can determine the extent to which frames used in briefs are reflected in opinions.

However, this limitation suggests a possibility for further research, which is to test the longevity of new frames. Some frames clearly are prominent in all eras; others may only be important to one or two. But, since individual frames can be traced across different cases, it should be possible to determine whether a new frame employed by an advocate and adopted by the Court appears in subsequent cases, thus having a long-term impact. Some political scientists and other scholars interested in the flow of policy ideas over time have begun to trace this phenomenon in legislation through the technique of "text reuse," showing that specific policies contained in legislation (or proposed legislation) may resurface in later

legislation (Wilkerson et al., 2014; Smith et al. 2014). Similarly, frames that persist over time may also evolve. A change in emphasis from one frame to another might not reflect a change in emphasis so much as a change in the language used to emphasize a particular concern. This phenomenon could be further examined through content analysis using dynamic topic models (Blei 2006).

On the whole this dissertation makes an important contribution to our understanding of the Supreme Court in that it suggests the use of language by both the Court and advocates can be understood in terms of framing. The Court's use of frames exemplifies both the stability of some doctrinal concerns over time, and the presence of other doctrinal distinctions across time that reflect changes in the Court's view of the same issue over time. The finding that new frames raised by advocates at the Supreme Court stage sometimes make their way into opinions is also empirical evidence of the potential for advocates to have an effect on the language of Court decisions, although the further research suggested above will be necessary to fully develop this finding. While advancing our understanding of the Court, this project also suggests other potentially rewarding research directions.

APPENDICES

Appendix 2-1: West Keyword Topics

92 CONSTITUTIONAL LAW

92XVII Political Rights and Discrimination

92k1469 k. Campaign finance, contributions, and expenditures.

92k1469 k. Campaign finance, contributions, and expenditures.

92 CONSTITUTIONAL LAW

92XVIII Freedom of Speech, Expression, and Press

92XVIII(F) Politics and Elections

92 1697 Contributions

92k1698 k. In general.

92 CONSTITUTIONAL LAW

92XVIII Freedom of Speech, Expression, and Press

92XVIII(F) Politics and Elections

92 1697 Contributions

92k1700 k. Corporate contributions.

92 CONSTITUTIONAL LAW

92XVIII Freedom of Speech, Expression, and Press

92XVIII(F) Politics and Elections

92 1702 Expenditures

92k1704 k. Limitations on amounts.

92 CONSTITUTIONAL LAW

92XVIII Freedom of Speech, Expression, and Press

92XVIII(F) Politics and Elections

92 1702 Expenditures

92k1707 k. Corporate expenditures.

CONSTITUTIONAL LAW

92XVIII Freedom of Speech, Expression, and Press

92XVIII(F) Politics and Elections

92 1702 Expenditures

92k1708 k. Political parties, organizations, or committees; coordinated expenditures.

Appendix 2-2: List of Campaign Finance Cases

United States v. UAW-CIO

352 U.S. 567, 77 S.Ct. 529 (1957).

Cort v. Ash

422 U.S. 66, 95 S.Ct. 2080 (1975)

Buckley v. Valeo

424 U.S. 1, 96 S.Ct. 612 (1976)

First National Bank of Boston v. Bellotti

435 U.S. 765, 98 S.Ct. 1407 (1978).

California Medical Association v. Federal Election Commission

453 U.S. 182, 101 S.Ct. 2712 (1981).

Federal Election Commission v. Democratic Senatorial Campaign Committee

454 U.S. 27, 102 S.Ct. 38 (1981).

Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley

454 U.S. 290, 102 S.Ct. 434 (1981).

BREAD Political Action Committee v. Federal Election Commission

455 U.S. 577, 102 S.Ct. 1235 (1982).

Brown v. Socialist Workers '74 Campaign Committee (Ohio)

459 U.S. 87, 103 S.Ct. 416 (1982).

Federal Election Commission v. National Right to Work Committee

459 U.S. 197, 103 S.Ct. 552 (1982).

Federal Election Com'n v. National Conservative Political Action Committee

470 U.S. 480, 105 S.Ct. 1459 (1985).

Federal Election Commission v. Massachusetts Citizens For Life, Inc.

479 U.S. 238, 107 S.Ct. 616 (1986).

Austin v. Michigan Chamber of Commerce

494 U.S. 652, 110 S.Ct. 1391 (1990).

Colorado Republican Federal Campaign Committee v. Federal Election Commission

518 U.S. 604, 116 S.Ct. 2309 (1996).

Nixon v. Shrink Missouri Government PAC

528 U.S.377, 120 S.Ct. 897 (2000).

Federal Election Commission v. Colorado Republican Federal Campaign Committee
533 U.S. 431, 121 S.Ct. 2351 (2001).

McConnell v. Federal Election Commission
540 U.S. 93, 124 S.Ct. 619 (2003).

Federal Election Commission v. Beaumont
539 U.S. 146, 123 S.Ct. 2200 (2003).

Randall v. Sorrell
548 U.S. 230, 126 S.Ct. 2479 (2006).

Wisconsin v. Right to Life, Inc., v. Federal Election Commission
546 U.S. 410, 126 S.Ct. 1016 (2006).

Federal Election Commission v. Wisconsin Right To Life, Inc.
551 U.S. 449, 127 S.Ct. 2652 (2007).

Davis v. Federal Election Commission
554 U.S. 724, 128 S.Ct. 2759 (2008).

Citizens United v. Federal Election Commission
130 S.Ct. 876 (2010).

Arizona Free Enterprise Club's Freedom Club PAC, et al., v. Bennett.
131 S.Ct. 2806 (2011).

Appendix 2-3: Issue Codes from Chapter 2

Contribution Limits
Spending Limits
Shareholder Rights
Jurisdiction
Disclosure and Recordkeeping
Public Financing
Authority of FEC
Solicitation

Appendix 3-1: Codebook for Chapter Three Analysis

- 1) Justice
String variable with Justice's last name
- 2) Date
Date decision issued. Format is YYYYMMDD
- 3) Style of Case
- 4) U.S. Cite
- 5) Era (see divisions from Chapter 2)
0=Pre-Buckley
1=Buckley
2=New Deference
3=Deregulation
- 6) libcon: Vote Direction as liberal or conservative
0=Conservative
1=Liberal
5=Neither
- 7) proanti: Vote direction as pro-campaign finance or anti-campaign finance
0=Anti
1=Pro
5=neither
- 8) Issue area
1= Contribution Limits
2=Spending Limits
3=Jurisdiction (including standing, mootness, ripeness)

4=Authority of FEC
5=Disclosure and Recordkeeping
6=Shareholder Rights
7=Public Financing
8=Solicitation

9) Ideology: Martin-Quinn score for justice during term of that vote
10) Whether justice is in majority, concurrence, or dissent on that issue
1=Majority
2=Plurality
3=Concur
4=Dissent

11) Whether justice writes opinion on that issue or joins another's opinion
0=Joins
1=Writes

12) State or Federal law
0=State
1=Fed

13) Issue Identifier
Unique identifier for each issue consisting of name of one of the parties to the case followed by a number.

Appendix 4-1: Exclusion Dictionary

AÂ
ABILITY_TO_ATTRACT
ABLE
ABOUT
ABOVE
ACCEPT_CONGRESS
ACCEPT_FIRST_AMENDMENT
ACCEPT_OR_RECEIVE
ACCEPT_PUBLIC
ACCEPT_THE_NOTION
ACCEPTANCE_HAVE_PUBLIC
ACCESS_CASE
ACCESS_REGULATION
ACCORDING
ACCORDINGLY
ACHIEVE_THAT_INTEREST
ACROSS
ACT_APPLY
ACT_BE_PASS
ACT_BE_UNCONSTITUTIONAL
ACT_CONTRARY
ACT_DEFINE
ACT_EXEMPT
ACT_HAVE_CONGRESS
ACT_HAVE_CONTRIBUTE
ACT_HAVE_JULY
ACT_HAVE_JUNE
ACT_IMPOSE
ACT_OR_PRACTICE
ACT_PLACE
ACT_PROHIBIT
ACT_PROVIDE
ACT_SET
ACT_THROUGH_PREARRANGE
ACTION_BE_FILE
ACTION_BRING
ACTION_FOR_DAMAGE
ACTION_FOR_DECLARATORY
ACTION_FOR_RELIEF
ACTIVELY_THROUGH_VOLUNTEER
ACTIVITY_CONDUCT
ACTIVITY_DESIGN
ACTUAL_POLITICAL
ACTUALLY
AD_AIR
AD_BE_INTEND
AD_COVER
AD_SUPPORT
ADAMS_PLAINTIFF
ADD_FECA
ADDITIONAL_EXPENDITURE
ADDITIONAL_NOTIFICATION
ADDITIONAL_STATE_FUND
ADDRESS_THE_CONSTITUTIONALIT
Y
ADDRESS_THE_FACIAL
ADDRESS_THE_ISSUE
ADDRESS_THE_QUESTION
ADJUST_FOR_INFLATION
ADMINISTER_AND_ENFORCE
ADMINISTRATION_AND_ENFORCE
MENT
ADMINISTRATIVE_EXPENSE
ADMINISTRATIVE_PERSONNEL
ADMINISTRATIVE_SUPPORT
ADVANCE_BY_APPELLANT
ADVERTISE_CAMPAIGN
ADVICE_AND_CONSENT
ADVISOR_OPINION
AFFECT_FEDERAL
AFFILIATE_COMMITTEE
AFFIRM_THE_DISTRICT
AFFIRM_THE_JUDGMENT
AFTER
AFTERWARDS
AG
AGAIN
AGAINST
AGE_POPULATION
AGENCY_AGREEMENT
AGENCY_ARRANGEMENT
AGENCY_CHARGE
AGENT_ACT
AIN'T
ALABAMA_EX_REL
ALL
ALLEGE_INJURY
ALLEGE_VIOLATION

ALLOCATION_REGIME
ALLOW
ALLOWS
ALMOST
ALONE
ALONG
ALREADY
ALSO
ALTERATION_IN_ORIGINAL
ALTHOUGH
ALWAYS
AM
AMEND_COMPLAINT
AMEND_FECA
AMENDMENT_AFFORD
AMENDMENT_CHALLENGE
AMENDMENT_CLAIM
AMENDMENT_GROUND
AMENDMENT_INTEREST
AMENDMENT_PRINCIPLE
AMENDMENT_PROTECT_POLITICAL
AMENDMENT_PROVIDE
AMENDMENT_TO_FECA
AMERICAN_CIVIL_LIBERTY
AMERICAN_CONSERVATIVE_UNION
AMERICAN_FEDERATION
AMERICAN_PARTY
AMERICAN_POLITICAL
AMERICAN_PRESS
AMICI_CURIAE
AMICUS_CURIAE
AMONG
AMONGST
AMOUNT_EQUAL
AMOUNT_EXCEED
AMOUNT_HAVE_EXPENDITURE
AMOUNT_HAVE_MONEY
AMOUNT_HAVE_SOFT
AMOUNT_HAVE_TIME
AMOUNT_IN_EXCESS
AMOUNT_THAT_CANDIDATE
AMPLIFY_SUPPORT
AN
AND
ANNOUNCE_THE_JUDGMENT
ANNUAL_BUDGET

ANNUAL_LIMIT
ANNUAL_MESSAGE
ANOTHER
ANTAGONISTIC_SOURCE
ANY
ANYBODY
ANYHOW
ANYONE
ANYTHING
ANYWAY
ANYWAYS
ANYWHERE
APART
APP
APPEAL_AGREE
APPEAL_BE_REVERSE
APPEAL_CONCLUDE
APPEAL_DIRECTLY
APPEAL_HOLD
APPEAL_PEND
APPEAL_REJECT
APPEAL_REVERSE
APPEAL_SITTING_EN
APPEAL_UPHOLD
APPEAR
APPEARANCE_THEREOF
APPELLANT_ARGUE
APPELLANT_ASSESS
APPELLANT_CHALLENGE
APPELLANT_CONTEND
APPELLANT_FEC
APPELLANT_SUGGEST
APPELLATE_COURT
APPELLEE_COMMISSION
APPELLEES_ARGUE
APPLY_CHALLENGE
APPLY_TO_HILLARY
APPLY_TO_INDIVIDUAL
APPLY_TO_MCFL
APPLY_TO_NCRL
APPLY_WITH_EQUAL
APPOINT_A_TREASURE
APPOINT_AMBASSADOR
APPOINTMENT_CLAUSE
APPRECIATE
APPROPRIATE

ARE
AREN'T
ARGUMENT_MAKE
ARIZONA_LAW
ARIZONA_MATCH_FUND
ARIZONANS_FOR_OFFICIAL
AROUND
ART
ARTICLE_HAVE_INCORPORATION
ARTICLE_III_STAND
AS
ASIDE
ASK
ASKING
ASSERT_INTEREST
ASSESS_OR_EARNING
ASSIST_THE_COLORADO
ASSOCIATE_BE_SUBJECT
ASSOCIATE_PRESS
ASSOCIATED
ASSOCIATION_FROM_EFFECTIVELY
ASSOCIATION_TO_PRESENT
AT
ATTEMPT_TO_EXPLAIN
ATTORNEY_GENERAL
AUG
AUTHORITY_TO_APPOINT
AUTHORIZE_CAMPAIGN_COMMITTEE
E
AUTHORIZE_COMMITTEE
AUTHORIZE_OR_AFFILIATE
AUTHORIZE_POLITICAL_COMMITTEE
E
AUTOMOBILE_WORKER
AVAILABLE
AVOID_CONSTITUTIONAL
AVOID_PROBLEM
AVOID_TRIGGER_MATCH
AVOID_VAGUENESS_CONCERN
AWAY
AWFULLY
B
BACK
BALLOT_MEASURE
BALLOT_QUESTION
BAN_THE_POLITICAL
BANK_HAVE_BOSTON
BASIC_HOLD
BCRA_AMEND_FECA
BCRA_BLACKOUT_PERIOD
BCRA_PROVISION
BCRA_TITLE
BCRA_UNCONSTITUTIONAL
BE
BECAME
BECAUSE
BECOME
BECOMES
BECOMING
BEEN
BEFORE
BEFOREHAND
BEHIND
BEING
BELIEVE
BELOW
BESIDE
BESIDES
BEST
BETTER
BETWEEN
BEYOND
BILL_INTRODUCE
BILL_YELLOWTAIL
BIPARTISAN_CAMPAIGN_REFORM
BLACKOUT_PERIOD
BNA_USLW
BOARD_HAVE_DIRECTOR
BOTH
BRACKET_OMITTED
BRANCH_HAVE_GOVERNMENT
BREATHE_SPACE
BRIBERY_LAW
BRIEF
BRING_CIVIL_ACTION
BRING_NO_LATE
BRING_SUIT
BRING_THIS_ACTION
BROAD_DEFINITION
BROADCAST_MESSAGE
BROADCAST_STATION
BROADCAST_TIME

BROADLY_TO_INCLUDE
 BUCKLEY_AND_BELLOTTI
 BUCKLEY_COURT
 BUSINESS_OR_ASSESS
 BUT
 BY
 C
 CABLE_SYSTEM
 CALENDAR_YEAR
 CALIFORNIA_BANKER_ASS
 CALIFORNIA_DEMOCRATIC_PARTY
 CALIFORNIA_MEDIC
 CALIFORNIA_MEDIC_ASS
 CALIFORNIA_MEDIC_ASSOCIATION
 CALIFORNIA_SUPREME_COURT
 CALL_FOR_BROADCASTER
 CALL_INTO_QUESTION
 CALL_ISSUE
 CALL_ISSUE_AD
 CALL_ISSUE_ADVOCACY
 CAME
 CAMPAIGN_ACT_AMENDMENT
 CAMPAIGN_BY_ASSIST
 CAMPAIGN_COMMITTEE
 CAMPAIGN_EXPENSE_REPORT
 CAMPAIGN_FINANCE
 CAMPAIGN_FINANCE_ACT
 CAMPAIGN_FINANCE_LAW
 CAMPAIGN_FINANCE_LEGISLATION
 CAMPAIGN_FINANCE_REFORM
 CAMPAIGN_FINANCE_REGULATION
 CAMPAIGN_FINANCE_STATUTE
 CAMPAIGN_FOR_FEDERAL
 CAMPAIGN_FOR_GOVERNOR
 CAMPAIGN_FOR_NOMINATION
 CAMPAIGN_FOR_PRESIDENT
 CAMPAIGN_FUND_ACT
 CAMPAIGN_HAVE_CANDIDATE
 CAMPAIGN_LITERATURE
 CAMPAIGN_MATERIAL
 CAMPAIGN_NECESSARILY_REDUCE
 CAMPAIGN_REFORM_ACT
 CAMPAIGN_WORKER
 CAN
 CANDIDATE_AND_INDEPENDENT
 CANDIDATE_AND_OFFICEHOLDER
 CANDIDATE_AND_PARTY
 CANDIDATE_AND_POLITICAL
 CANDIDATE_AS_CONTRIBUTION
 CANDIDATE_BE_INTEGRAL
 CANDIDATE_BE_LIMIT
 CANDIDATE_BE_RUNNING
 CANDIDATE_CAN_SPEND
 CANDIDATE_ELECTION
 CANDIDATE_FOR_CONGRESS
 CANDIDATE_FOR_ELECTION
 CANDIDATE_FOR_ELECTIVE
 CANDIDATE_FOR_FEDERAL
 CANDIDATE_FOR_GOVERNOR
 CANDIDATE_FOR_OFFICE
 CANDIDATE_FOR_POLITICAL
 CANDIDATE_FOR_PRESIDENT
 CANDIDATE_FOR_STATE
 CANDIDATE_FOR_STATEWIDE
 CANDIDATE_HAVE_MAJOR
 CANDIDATE_IMPOSE
 CANDIDATE_IN_AMOUNT
 CANDIDATE_MAKE
 CANDIDATE_MUST_FILE
 CANDIDATE_OR_CAMPAIGN
 CANDIDATE_OR_CANDIDATE
 CANDIDATE_OR_COMMITTEE
 CANDIDATE_OR_INDEPENDENT
 CANDIDATE_OR_PARTY
 CANDIDATE_OR_POLITICAL
 CANDIDATE_PER_ELECTION
 CANDIDATE_RECEIVE
 CANDIDATE_REQUEST
 CANDIDATE_RUNNING
 CANDIDATE_SEEK
 CANDIDATE_SHALL_FILE
 CANDIDATE_WITH_RESPECT
 CANDIDATE_WOULD_RECEIVE
 CANNOT
 CANT
 CAN'T
 CAPABLE_HAVE_REPETITIOUS
 CAPITAL_STOCK
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MEMBER_INFORMANT
MEMBER_MAKE
MERE_FACT
MERELY
METHOD_HAVE_APPOINTMENT
MIAMI_HERALD_PUBLISH
MICHIGAN_CAMPAIGN_FINANCE
MICHIGAN_CHAMBER
MIGHT
MILK_PRODUCER
MILLIONAIRE_PROVISION
MIND_PERSON
MINE
MISSOURI_GOVERNMENT_PAC
MISSOURI_LIMIT

MODE_HAVE_COMMUNICATION	ND
MONEY_A_PERSON	NEAR
MONEY_ACCOUNT	NEARLY
MONEY_BY_NATIONAL	NECESSARY
MONEY_DONATION	NEED
MONEY_TO_PAY	NEEDS
MONEY_TO_SUPPORT	NEIGHBORHOOD_GROUP
MONITOR_PATRIOT	NEITHER
MONTH_LATE	NEVER
MONTH_PERIOD	NEVERTHELESS
MORE	NEW
MOREOVER	NEWSPAPER_AD
MORTON_SALT	NEXT
MOST	NINE
MOSTLY	NINTH_CIRCUIT
MOTION_FOR_SUMMARY	NO
MR	NOBODY
MUCH	NOERR_MOTOR
MULTICANDIDATE_POLITICAL_CO	NOMINATE_A_CANDIDATE
MMITTEE	NOMINATE_CONVENTION
MUST	NOMINATION_AND_ELECTION
MY	NOMINATION_FOR_ELECTION
MYSELF	NOMINATION_OR_ELECTION
N	NON
NAME	NONE
NAMELY	NONETHELESS_SUBSTANTIAL_EXT
NARROW_EXCEPTION	ENT
NATIONAL_AND_STATE	NONFEDERAL_FUND
NATIONAL_BANK	NOONE
NATIONAL_COMMITTEE	NOR
NATIONAL_CONSERVATIVE_POLITI	NORMALLY
CAL	NORTH_CAROLINA
NATIONAL_ELECTION	NORTHERN_DISTRICT
NATIONAL_GOVERNMENT	NOT
NATIONAL_LEVEL	NOTE_FOLLOW
NATIONAL_OR_REGIONAL	NOTE_PROBABLE_JURISDICTION
NATIONAL_OR_STATE	NOTHING
NATIONAL_PARTY	NOV
NATIONAL_PARTY_COMMITTEE	NOVEL
NATIONAL_PARTY_OFFICER	NOVELTY_AND_PLAUSIBILITY
NATIONAL_REPUBLICAN_SENATOR	NOW
IAL	NOWHERE
NATIONAL_RIFLE_ASSOCIATION	NUMBER_HAVE_CANDIDATE
NATIONAL_SENATORIAL	NUMBER_HAVE_PEOPLE
NATIONAL_UNION	NUMBER_HAVE_PERSON
NCPAC_AND_FCM	NUMBER_YEAR

O
 OBLIGATE_TO_MAKE
 OBTAIN_BY_REASON
 OBVIOUSLY
 OCCASION_TO_ADDRESS
 OCT
 OE
 OEÂ
 OETHE
 OF
 OFF
 OFFER_EVIDENCE
 OFFER_NEED_SHOW
 OFFICE_HAVE_PRESIDENT
 OFFICE_HAVE_REPRESENTATIVE
 OFFICE_HAVE_SENATOR
 OFFICE_SEEK
 OFFICER_OR_AGENT
 OFFICER_OR_DIRECTOR
 OFFICIAL_CAPACITY
 OFFICIAL_ENGLISH
 OFFICIAL_OR_PRIVATE
 OFTEN
 OH
 OHIO_CAMPAIGN_EXPENSE
 OHIO_LAW
 OHIO_STATUTE
 OHIO_STATUTE_REQUIRE
 OHIO_SWP
 OK
 OKAY
 OLD
 ON
 ONCE
 ONE
 ONES
 ONLY
 ONTO
 ØO_ÐP
 ÔOEQÂÂO_ÒF
 OP
 OPINION_CONCURRING
 OPINION_HAVE_BREYER
 OPINION_HAVE_KENNEDY
 OPINION_HAVE_KOLLAR
 OPINION_HAVE_ROBERTS
 OPINION_HAVE_SCALIA
 OPINION_IN_MCCONNELL
 OPINION_IN_WRTL
 OPINION_SUGGEST
 OPINION_WITH_RESPECT
 OPPONENT_TO_RAISE
 OPPORTUNITY_MEAN_MAKE
 OPPOSE_BALLOT_MEASURE
 OPPOSE_SUMMARY_AFFIRMANCE
 OPPOSITION_PERSONA_FUND
 OR
 ORAL_ARGUMENT
 ORAL_ARUM
 ORDER_TO_AVOID
 ORDER_TO_PROTECT
 ORGANIZATION_HOLD_SIMILAR
 ORGANIZATION_IN_CONNECTION
 ORGANIZATION_OR_GROUP
 ORGANIZATION_SEEK
 ORGANIZATION_THUS_INVOLVE
 ORGANIZATION_TO_MAKE
 OTHER
 OTHERS
 OTHERWISE
 OUGHT
 OUR
 OURS
 OURSELVES
 OUT
 OUTSIDE
 OUTSTAND_DEBT
 OVER
 OVERALL
 OVERBREADTH_CHALLENGE
 OVERWHELM_EVIDENCE
 OWN
 P
 PAC_ET_AL
 PACIFIC_GAS
 PAGE_ADVERTISEMENT
 PARALLEL_PROVISION
 PART_AND_CONCURRING
 PART_AND_DISSENT
 PART_AND_DISSENT_IN_PART
 PART_HAVE_MCCONNELL
 PART_IN_DEMOCRATIC

PARTICULAR
PARTICULARLY
PARTY_AND_CANDIDATE
PARTY_AND_INDEPENDENT
PARTY_BE_FREE
PARTY_CANDIDATE
PARTY_CANDIDATE_EXCEED
PARTY_CHALLENGER
PARTY_COMMITTEE
PARTY_CONVENTION
PARTY_DEFEND
PARTY_ENTITLEMENT
PARTY_FILE
PARTY_HAVE_CONN
PARTY_HAVE_Texas
PARTY_NOMINATE
PARTY_OFFICER
PARTY_ORGANIZATION
PARTY_PRIMARY
PARTY_RECEIVE
PARTY_ROLE
PARTY_SERVE
PARTY_SPEND
PARTY_TEST
PARTY_TO_CANDIDATE
PARTY_TO_MAKE
PARTY_WHICH_BUSINESS
PARTY_WHICH_EXCEED
PARTY_WITH_RESPECT
PAST_OR_PRESENT
PAUL_PLAINTIFF
PAUL_SIMON
PAY_THE_ADMINISTRATIVE
PEOPLE_CONTRIBUTE
PEOPLE_HAVE_ARIZONA
PER
PERHAPS
PERIOD_HAVE_TIME
PERIOD_PRECEDE_FEDERAL
PERIODICAL_PUBLICATION
PERMIT_PARTY
PERMITTING_UNLIMITED
PERPETUAL_LIFE
PERSON_AFFILIATE
PERSON_AND_GROUP
PERSON_FREE

PERSON_MAKE
PERSON_OR_ENTITY
PERSON_SHALL_MAKE
PERSON_SHARE
PERSON_WHO_MAKE
PERSONA_FUND_REDUCE
PERSONA_INCOME_TAX
PERSONA_INTEREST
PERSONA_SERVICE
PERTINENT_PART
PETITION_DRIVE
PETITION_FOR_CERTIORARI
PHILIP_MORRIS_COMPANY
PHILIPPINE_ISLAND
PICTURE_CORP
PLACE_HAVE_BUSINESS
PLACE_IN_COOPERATION
PLACE_NO_LIMIT
PLACE_ON_INDIVIDUAL
PLACED
PLAINTIFF_ALLEGE
PLAINTIFF_ARGUE
PLAINTIFF_ASSESS
PLAINTIFF_CHALLENGE
PLAINTIFF_CLAIM
PLAINTIFF_CLASS
PLAINTIFF_CONTEND
PLAINTIFF_MAINTAIN
PLANNED_ON_RUNNING
PLEASE
PLURALITY_OPINION
PLUS
POLICY_WITH_RESPECT
POLITICAL_ACTION
POLITICAL_ACTIVITY
POLITICAL_CAMPAIGN
POLITICAL_CANDIDATE
POLITICAL_COMMITTEE_ESTABLIS
H
POLITICAL_CONVENTION
POLITICAL_DEBATE_INVOLVE
POLITICAL_GOAL
POLITICAL_MATTER
POLITICAL_OFFICE
POLITICAL_PARTY
POLITICAL_PARTY_COMMITTEE

POLITICAL_PHILOSOPHY
POPULAR_VOTE
POSSIBLE
POST
POTENTIAL_OFFICE_HOLDER
POWER_CONFERRED
POWER_GRANT
POWER_HAVE_APPOINTMENT
POWERREFERRED
POWER_TO_APPOINT
POWER_TO_REMOVE
POWER_WITH_RESPECT
PP
PR_NEWSWIRE
PRECEDE_ELECTION
PRELIMINARY_INJUNCTION
PRESENT_CASE
PRESENT_CONSTITUTE
PRESENT_LAW
PRESENT_PURPOSE
PRESENT_VIEW
PRESIDENT_AND_VICE
PRESIDENT_PRO_TEMPORE
PRESIDENT_THEODORE_ROOSEVELT
T
PRESIDENTIAL_AND_VICE
PRESIDENTIAL_CAMPAIGN
PRESIDENTIAL_CANDIDATE
PRESIDENTIAL_ELECTION
PRESIDENTIAL_ELECTION_CAMPAIGN
PRESIDENTIAL_NOMINATE_CONVENTION
PRESIDENTIAL_PRIMARY
PRESSURE_AND_ATTENDANT
PRESUMABLY
PREVENT_CANDIDATE
PREVENT_INDIVIDUAL
PREVIOUSLY_DISCUSS
PREVIOUSLY_UPHOLD
PRIMARILY_BENEFIT
PRIMARY_AND_GENERAL
PRIMARY_CAMPAIGN
PRIMARY_DEFINITION
PRIMARY_ELECTION
PRIMARY_JURISDICTION

PRINCIPAL_OPINION
PRINCIPAL_PLACE
PRINCIPLE_HAVE_SEPARATION
PRINCIPLE_THAT_DEBATE
PRIOR_CASE
PRIOR_DECISION
PRIOR_TO_BCRA
PRIVATE_AND_GOVERNMENT
PRIVATE_SUIT
PRIVATELY_FINANCE
PROBABLY
PROCEDURE_HAVE_CORPORATE
PROCEDURE_SET
PROCEEDING_CONSISTENT
PROCEEDING_FOR_INJUNCTION
PROHIBIT_A_STATE
PROHIBIT_CORPORATE_CONTRIBUTION
PROHIBIT_FEDERAL
PROHIBIT_NATIONAL_PARTY
PROHIBITION_ON_NATIONAL
PROOF_CAN_IMPOSE
PROOF_HAVE_INJURY
PROPERTY_OR_TRANSACTION
PROPOSAL_AND_GOVERNMENTAL
PROPOSE_AMENDMENT
PROPOSE_CONSTITUTIONAL_AMENDMENT
PROPOSE_EXPENDITURE
PROPOSE_RULE
PROTECT_THE_POLITICAL
PROVE_COUNTERPRODUCTIVE
PROVIDE_LITTLE_ASSISTANCE
PROVIDE_SUFFICIENT
PROVIDES
PROVISION_AS_APPLY
PROVISION_AT_ISSUE
PROVISION_BE_JUSTIFY
PROVISION_CHALLENGE
PROVISION_HAVE_BCRA
PROVISION_HAVE_FECA
PROVISION_HAVE_LAW
PROVISION_HAVE_SUBTITLE
PROVISION_HAVE_TITLE
PROVISION_IMPOSE
PROVISION_LIMIT

PROVISION_PLACE
PROVISION_RELATE
PROVISION_RESTRICT
PROVISION_UNCONSTITUTIONAL
PUBLIC_AND_PRIVATE
PUBLIC_AWARENESS
PUBLIC_CITIZEN
PUBLIC_INSPECTION
PUBLIC_LAW
PUBLIC_MINISTER
PUBLIC_OFFICE
PUBLIC_UTIL
PUBLICLY_HOLD
PURCHASE_HAVE_RADIIUM
PURPORT_TO_RESOLE
PURPOSE_ACTIVITY
PURPOSE_HAVE_MAKE
PURPOSE_HAVE_PROMOTE
PUT
Q
QUALIFY_CAMPAIGN_EXPENSE
QUALIFY_CANDIDATE
QUANTUM_HAVE_EMPIRICAL
QUE
QUESTION_ARISE
QUESTION_CONCERN
QUESTION_HAVE_CONSTITUTIONA
LITY
QUESTION_MAY_ARISE
QUESTION_PRESENT
QUESTION_SUBMITTED
QUITE
QUO_FROM_CURRENT
QUOT
QUOTATION_MARK_OMITTED
QUOTE_AUTOMOBILE_WORKER
QUOTE_DECLARATION
QUOTE_MCCONNELL
QUOTE_MCFL
QUOTE_NEW_YORK
QV
R
RADIUM_PROGRAM
RADIUM_TIME
RAISE_CONSTITUTIONAL
RAISE_IN_COMPLIANCE

RAISE_THE_MONEY
RAISIN_ACTIVITY
RATHER
RD
RE
REACH_THE_CONSTITUTIONAL
REACH_THE_QUESTION
READ_AS_FOLLOW
REALLY
REASON_DISCUSS
REASON_HAVE_LIBERAL
REASON_STATE
REASONABLE_TIME
REASONABLY
REC
RECEIVE_IN_CONTRIBUTION
RECEIVE_PUBLIC
RECENT_CASE
RECENT_ELECTION
RECIPIENT_HAVE_CAMPAIGN
RECOGNIZE_IN_AUSTIN
RECOGNIZE_IN_BUCKLEY
RECONSIDER_AUSTIN
RECORD_DEMONSTRATE
RECORD_EVIDENCE
RECORD_HAVE_REQUEST
RECORD_SHOW
RECORDKEEPING_REQUIREMENT
RED_LION
RED_LION_BROADCAST
REDUCE_THE_CANDIDATE
REFER_APPARENT
REFERENDUM_ISSUE
REFERENDUM_PROPOSAL
REFLECT_POLITICAL
REGARDING
REGARDLESS
REGARDS
REGULAR_BUSINESS
REGULAR_NEWSLETTER
REGULATION_HAVE_EXPRESS
REGULATION_HAVE_GENUINE
REGULATION_IMPOSE
REGULATION_IN_ORDER
REGULATION_REQUIRE
REGULATORY_AGENCY

REJECT_A_SIMILAR
REJECT_APPELLANT
REJECT_THE_PARTY
RELATE_SPEECH
RELATE_TO_CONTRIBUTION
RELATIVELY
RELEVANT_CORRELATION
RELEVANT_FEATURE
RELEVANT_PROVISION
RELEVANT_STATE
REMAIN_FREE
REMAIN_SUBJECT
REMAND_FOR_PROCEEDING
REMAND_THE_CASE
REND_CONTROL
RENDER_ADVISOR_OPINION
REORGANIZATION_ACT
REPORT_FOR_CONGRESS
REPORT_REQUIRE
REPORT_REQUIREMENT
REPUBLICAN_CANDIDATE
REPUBLICAN_FEDERAL_CAMPAIGN
REPUBLICAN_NATIONAL_COMMITTEE
REPUBLICAN_PARTY
REPUBLICAN_SENATORIAL_COMMITTEE
REQUIRE_BROADCAST_LICENSEE
REQUIRE_BY_TITLE
REQUIRE_CANDIDATE
REQUIRE_CORPORATION
REQUIRE_DIFFERENT_FORM
REQUIRE_PARTICULARLY_CAREFUL
REQUIRE_POLITICAL_COMMITTEE
REQUIRE_TO_FILE
REQUIREMENT_CALL
REQUIREMENT_HAVE_ARTICLE
REQUIREMENT_IMPOSE
REQUIREMENT_THAT_POLITICAL
RESIDE_COMMISSIONER
RESOLE_FUTURE
RESPECT_TO_BCRA
RESPECT_TO_PART
RESPECT_TO_PRESIDENTIAL
RESPECTIVELY

RESPONDENT_CLEAN_ELECTION
RESPONDENT_SHRINK_MISSOURI
RESPONSIBILITY_FOR_ADMINISTER
RESTRICTION_ON_NATIONAL
RESTRICTION_UPHOLD
RESULT_IN_POLITICAL
REV
REVERS_THE_JUDGMENT
REVIEWABLE_BY_APPEAL
RIGHT
ROUGH_INDEX
ROUGHLY_ONE_DOLLAR
RULE_AND_REGULATION
RULE_OR_REGULATION
RUN_AD
RUN_AN_AD
RUNNING_FOR_OFFICE
S
SAID
SAME
SAN_FRANCISCO_COUNTY
SATELLITE_COMMUNICATION
SATISFY_HEIGHTEN_JUDICIAL
SAW
SAY
SAYING
SAYS
SCHOOL_DIST
SCOPE_HAVE_FEDERAL
SEARCH_RESULT
SECOND
SECONDLY
SECRETARY_HAVE_STATE
SECTION_PROVIDE
SECURE_INJUNCTIVE
SECURITY_FOR_FREE
SEE
SEEING
SEEK_DECLARATORY
SEEK_INJUNCTIVE
SEEK_NOMINATION
SEEK_TO_AVOID
SEEK_TO_OBTAIN
SEEK_TO_PROTECT
SEEM
SEEMED

SEEMING
SEEMS
SEEN
SEGREGATE_FUND
SEGREGATE_FUND_ESTABLISH
SELECT_CANDIDATE
SELF
SELVES
SEN
SENATE_AND_HOUSE
SENATE_CAMPAIGN
SENATE_CANDIDATE
SENATE_COMMITTEE
SENATE_REPORT
SENATOR_AND_REPRESENTATIVE
SENATOR_BUCKLEY
SENATOR_CLINTON
SENATOR_FEINGOLD
SENATOR_METCALF
SENATOR_OR_REPRESENTATIVE
SENATOR_TAFT
SENATORIAL_CAMPAIGN
SENATORIAL_CAMPAIGN_COMMITTEE
SENATORIAL_CANDIDATE
SENATORIAL_ELECTION
SENSIBLE
SENT
SEPARATE_ACCOUNT
SEPARATION_HAVE_POWER
SEPT
SERIOUS
SERIOUSLY
SERVE_A_COMPEL
SERVE_ANY_SUBSTANTIAL
SERVE_THE_IMPORTANT
SERVICE_PROVIDE
SEVEN
SEVER_RESTRICTION
SEVERAL
SHALL
SHAREHOLDER_OR_MEMBER
SHE
SHOULD
SHOULDN'T
SHRINK_MISSOURI

SHRINK_MISSOURI_GOVERNMENT
SIERRA_CLUB
SINCE
SINGLE_CANDIDATE
SINGLE_ELECTION
SITTING_EN_BANC
SIX
SK
SO
SOCIAL_WELFARE
SOCIALIST_LABOR_PARTY
SOCIALIST_WORKER_PARTY
SOCIETY_IN_ORDER
SOLE_DISCRETIONARY_POWER
SOLELY_CONCERN
SOLICITATION_TO_TAX
SOME
SOMEBODY
SOMEHOW
SOMEONE
SOMETHING
SOMETIME
SOMETIMES
SOMEWHAT
SOMEWHERE
SOON
SORAUF_EXPERT_REPORT
SORRY
SOURCE_AND_AMOUNT
SOUTHERN_DISTRICT
SOUTHERN_PACIFIC_TERMINAL
SPACE_TO_SURVIVE
SPECIAL_COMMITTEE
SPECIAL_EDITION
SPECIAL_PROVISION
SPECIFIC_EVIDENCE
SPECIFICALLY_REJECT
SPECIFIED
SPECIFY
SPECIFYING
SPEECH_CASE
SPEECH_HAVE_PRIVATELY
SPENDING_AUTHORITY
ST
STAND_REQUIREMENT
STAND_TO_BRING

STAND_TO_CHALLENGE
STAND_TO_RAISE
STAND_TO_SUE
STAT
STATE_AN_OFFENSE
STATE_AND_FEDERAL
STATE_AND_LOCAL
STATE_AND_NATIONAL
STATE_AUDITOR
STATE_BALLOT
STATE_CANDIDATE
STATE_COMMITTEE
STATE_CONTEND
STATE_DEMOCRATIC
STATE_DISTRICT_COURT
STATE_ELECTION
STATE_ENTITLE
STATE_EX_REL
STATE_FUND
STATE_HAVE_AMERICA
STATE_HOUSE
STATE_LEGISLATIVE
STATE_OFFICE
STATE_OFFICIAL
STATE_OR_LOCAL
STATE_PARTY
STATE_PARTY_COMMITTEE
STATE_POLITICAL_PARTY
STATE_REGULATION
STATE_REPRESENTATIVE
STATE_REPUBLICAN_PARTY
STATE_REQUIREMENT
STATE_RESPONDENT
STATE_SENATE
STATE_SENATOR
STATE_STATUTE
STATE_THAT_IMPOSE
STATE_TO_ADVANCE
STATE_TREASURE
STATEMENT_HAVE_ORGANIZATIO
N
STATEWIDE_OFFICE
STATISTIC_HAVE_INCOME
STATISTICAL_ABSTRACT
STATUTE_AT_ISSUE
STATUTE_INVOLVE

STATUTE_MAKE
STATUTE_PROHIBIT
STATUTE_PROVIDE
STATUTE_REQUIRE
STATUTE_REQUIRE_DISCLOSURE
STATUTORY_CITATION
STATUTORY_LIMIT
STATUTORY_PROHIBITION
STATUTORY_REMEDY
STATUTORY_SCHEME
STATUTORY_TERM
STILL
SUB
SUBJECT_TO_CRIMINAL
SUBJECT_TO_FECA
SUBJECT_TO_STRICT
SUBORDINATE_COMMITTEE
SUBSECTION_WITH_RESPECT
SUBSEQUENT_CASE
SUBSTANTIAL_AMOUNT
SUBSTANTIAL_NAME_RECOGNITIO
N
SUBSTANTIALLY_GREAT
SUBSTANTIVE_LEGISLATIVE
SUBSTANTIVE_PROVISION
SUCH
SUFFICIENTLY_IMPORTANT
SUGGEST_THAT_CONGRESS
SUIT_BE_FILE
SUIT_FOR_DAMAGE
SUM_HAVE_SOFT
SUMMARY_JUDGMENT
SUP
SUPP
SUPPLEMENT_IV
SUPPORT_A_SPECIFIC
SUPPORT_MEMBER
SUPPORT_THE_REGULATION
SUPREME_COURT
SUPREME_JUDICIAL_COURT
SURE
SWP_CANDIDATE
SWP_MEMBER
SWP_OFFICE
T
TAKE

TAKEN
TARGET_COMMUNICATION
TAX_RETURN
TAXATION_HAVE_INDIVIDUAL
TELEVISION_AD
TELEVISION_BROADCAST
TELL
TEMPORARY_DISQUALIFICATION
TEMPORARY_RESTRAIN_ORDER
TENDS
TEST_FOR_DETERMINE
TEST_THE_LIMIT
TH
THAN
THANK
THANKS
THANX
THAT
THATS
THAT'S
THE
THEIR
THEIRS
THEM
THEMSELVES
THEN
THENCE
THERE
THEREAFTER
THEREBY
THEREFORE
THEREIN
THERES
THERE'S
THEREUPON
THESE
THEY
THEY'D
THEY'LL
THEY'RE
THEY'VE
THINK
THIRD
THIS
THOROUGH
THOROUGHLY

THOSE
THOUGH
THOUSAND_DOLLAR
THREE
THROUGH
THROUGHOUT
THRU
THUS
TIE_TO_PUBLIC
TILLMAN_ACT
TIME_THE_INITIAL
TIMOTHY_WIRTH
TO
TODAY_HOLD
TOGETHER
TOO
TOOK
TOTAL_CAMPAIGN
TOTAL_COST
TOWARD
TOWARDS
TOWNSHIP_HAVE_WILLINGBORO
TR
TRADITIONAL_BUSINESS
TRANSACTION_HAVE_INDIVIDUAL
TRANSFER_HAVE_FUND
TRANSFER_HAVE_LEVIN
TRAVEL_EXPENSE
TREASURY_FUND
TRIED
TRIES
TRIGGER_MATCH_FUND
TRIGGER_THE_DISCLOSURE
TRULY
TRY
TRYING
T'S
TURNER_BROADCAST_SYSTEM
TWICE
TWO
TYPE_CORPORATION
TYPE_HAVE_DIRECT
U
UN
UNCONSTITUTIONAL_AS_APPLY
UNDER

UNFORTUNATELY
UNION_WITHOUT_GREAT
UNITE_AUTOMOBILE_WORKER
UNITE_STATE
UNITE_STATE_CODE
UNITE_STATE_COURT
UNITE_STATE_DISTRICT
UNITE_STATE_SENATE
UNITE_STATE_SENATOR
UNLESS
UNLIKE_EXPENDITURE
UNLIKELY
UNRIPE_FOR_RESOLUTION
UNTIL
UNTO
UNTOWARD_CONSEQUENCE
UP
UPHOLD_BCRA
UPHOLD_FECA
UPHOLD_IN_BUCKLEY
UPON
URGENT_APPLICATION_PRECISELY
US
USE
USED
USEFUL
USES
USING
USUALLY
UUCP
V
VALUE
VARIOUS
VAST_MAJORITY
VERMONT_CAMPAIGN
VERY
VEST_THE_APPOINTMENT
VEST_THE_COMMISSION
VIA
VICE_PRESIDENT
VICE_PRESIDENTIAL
VICE_PRESIDENTIAL_CANDIDATE
VICE_PRESIDENTIAL_ELECTOR
VICTORY_PLAN
VIOLATE_THE_ACT
VIOLATE_THE_FEDERAL

VIOLATE_THE_LAW
VIOLATION_HAVE_OCCURRED
VIRGINIA_CITIZEN_CONSUME
VIRGINIA_STATE_BD
VIRTUALLY_IDENTICAL
VISIT_JUNE
VIZ
VOICE_HEAR
VOLUNTEER_EXPENSE
VOLUNTEER_THEIR_SERVICE
VOTE_AGAINST_SENATOR
VOTE_AGE_POPULATION
VOTE_FOR_PRESIDENT
VOTE_MEMBER
VOTE_RECEIVE
VOTE_RECORD
VOTE_RIGHT_CASE
VOTER_IDENTIFICATION
VOTER_REGISTRATION
VOTER_REGISTRATION_ACTIVITY
VS
W
WANT
WANTS
WAR_CHEST_FUNNEL
WAR_LABOR_DISPUTE
WAS
WASN'T
WAY
WE
WEB_SITE
WE'D
WEEKLY_FEED
WELCOME
WELL
WE'LL
WELLSTONE_AMENDMENT
WENT
WERE
WE'RE
WERENT
WE'VE
WHAT
WHATEVER
WHAT'S
WHEN

WHENCE
WHENEVER
WHERE
WHEREAFTER
WHEREAS
WHEREBY
WHEREIN
WHERE'S
WHEREUPON
WHEREVER
WHETHER
WHICH
WHILE
WHITHER
WHO
WHOEVER
WHOLE
WHOM
WHO'S
WHOSE
WHY
WIDE_POSSIBLE_DISSEMINATION
WILL
WILLING
WISE_CONDUCT
WISH
WITH
WITHIN
WITHOUT
WMFC_DDM
WONDER
WON'T
WORK_COMMITTEE
WOULD
WOULDN'T
WRTL_SEEK
XY
YALE_UNIVERSITY
YEAR_AGO
YEAR_GENERAL_ELECTION
YEAR_PRECEDE
YEARLY_CONTRIBUTION
YES
YET
YORK_TIME
YOU

YOU'D
YOU'LL
YOUR
YOU'RE
YOURS
YOURSELF
YOURSELVES
YOU'VE
Z
ZERO

Appendix 4-2: List of Campaign Finance Frames, with Phrases in each Frame

Cluster names are in bold, while phrases in the cluster are listed below the title in regular type.

POLITICAL COMMUNICATION

ABILITY_TO_ENGAGE
CANDIDATE_AND_ISSUE
COMMUNICATE_THE_UNDERLYING
CONTRIBUTION_PROVIDE
CONTRIBUTION_SERVE
DIRECT_RESTRAIN
EXPENDITURE_FOR_POLITICAL
EXPRESSION_HAVE_SUPPORT
FREEDOM_TO_DISCUSS
FREE_COMMUNICATION
GENERAL_EXPRESSION
MARGINAL_RESTRICTION
POLITICAL_COMMUNICATION

DISSEMINATION OF IDEAS

AUDIENCE_REACH
DISSEMINATION_OF_IDEA
EXPENDITURE_OF_MONEY
NUMBER_OF_ISSUE
PERSON_OR_GROUP
SPEND_ON_POLITICAL

PUBLIC DEBATE

ABRIDGE_THE_FREEDOM
AMENDMENT_GUARANTEE
AMENDMENT_PROTECT
CONSTITUTIONAL_GUARANTEE
DEBATE_ON_PUBLIC
DISCUSSION_OF_PUBLIC
FREE_SOCIETY
FUNDAMENTAL_FIRST_AMENDMENT
MATTER_OF_PUBLIC
PROFOUND_NATIONAL_COMMITMENT
PUBLIC_AFFAIR
PUBLIC_DEBATE
PUBLIC_ISSUE
QUALIFICATION_OF_CANDIDATE
REPRESENTATIVE_DEMOCRACY

SYSTEM_HAVE_GOVERNMENT

INFORMING THE PUBLIC

CANDIDATE_FOR_PUBLIC
INFORM_THE_PUBLIC
POLITICAL_ISSUE
PUBLIC_OFFICIAL
PUBLIC_OPINION
PUBLIC_POLICY
SUPPORT_OR_OPPOSE

DISCUSSION OF CANDIDATES

AMENDMENT_ANALYSIS
DISCUSSION_OF_CANDIDATE
DISCUSSION_OF_GOVERNMENTAL
PRACTICALLY_UNIVERSAL_AGREEMENT
PROTECT_THE_FREE

FREE DISCUSSION

FREE_DISCUSSION
GOVERNMENTAL_AFFAIR
POLITICAL_GROUP

PRESS CLAUSE

MEDIUM_CORPORATION
NEWS_STORY
PRESS_CLAUSE

EQUAL PROTECTION

EQUAL_PROTECTION
EQUAL_PROTECTION_CLAUSE
FOURTEENTH_AMENDMENT
PROCESS_CLAUSE
VIOLATE_THE_EQUAL

IMPROPER COMMITMENT

ABSENCE_OF_PREARRANGEMENT
ALLEVIATE_THE_DANGER
IMPROPER_COMMITMENT
INDEPENDENT_ADVOCACY
INDEPENDENT_EXPENDITURE_MAKE
MONEY_SPEND
POLITICAL_MESSAGE

REAL AND APPARENT CORRUPTION

APPARENT_CORRUPTION

DANGER_OF_REAL
ELECT_REPRESENTATIVE
GENERAL_PUBLIC_INTEREST
LARGE_CAMPAIGN_CONTRIBUTION
PROBLEM_OF_CORRUPTION

CORRUPTION AND SPEECH

ACTUAL_AND_APPARENT
ACTUAL_CORRUPTION
ACTUAL_OR_APPARENT
AMENDMENT_ACTIVITY
AMENDMENT_FREEDOM
ANTICORRUPTION_INTEREST
APPEARANCE_OF_CORRUPTION
CAMPAIGN_CONTRIBUTION
CANDIDATE_CONTRIBUTION
COMMON_SENSE
COMPEL_GOVERNMENT
COMPEL_GOVERNMENTAL_INTEREST
COMPEL_INTEREST
COMPEL_STATE_INTEREST
CONSTITUTIONALLY_PROTECT
CONSTITUTIONAL_SCRUTINY
CONTRIBUTION_AND_EXPENDITURE
CONTRIBUTION_LIMIT
CONTRIBUTION_LIMITATION
CONTRIBUTION_TO_CANDIDATE
CONTRIBUTION_TO_POLITICAL
COORDINATE_PARTY_EXPENDITURE
CORE_FIRST_AMENDMENT
CORE_POLITICAL_SPEECH
CORRUPT_INFLUENCE
CREATE_THE_APPEARANCE
DEMOCRATIC_PROCESS
DIRECT_CONTRIBUTION
ELECTION_PROCESS
ELECTORAL_PROCESS
ELECTORAL_SYSTEM
ELECT_OFFICIAL
ENGAGE_IN_INDEPENDENT
EXACT_SCRUTINY
EXPENDITURE_LIMITATION
FEDERAL_LIMIT
FINANCIAL_SUPPORT
FREEDOM_OF_SPEECH
FREE_SPEECH

GOVERNMENTAL_INTEREST
GOVERNMENT_INTEREST
INDEPENDENT_EXPENDITURE
INDIVIDUAL_CONTRIBUTION
INDIVIDUAL_CONTRIBUTION_LIMIT
INSUFFICIENT_TO_JUSTIFY
INTEREST_IN_PREVENT
LARGE_CONTRIBUTION
LARGE_CONTRIBUTOR
LEGITIMATE_AND_COMPEL

LEVEL_OF_SCRUTINY
LIMITATION_ON_CONTRIBUTION
LIMIT_CONTRIBUTION
LIMIT_EXPENDITURE
LIMIT_ON_CONTRIBUTION
LIMIT_ON_INDIVIDUAL
LIMIT_THE_AMOUNT
LONG_RECOGNIZE
LOW_LIMIT
MAKE_CONTRIBUTION
NARROWLY_DRAW
NARROWLY_TAILOR
PERCEPTION_OF_CORRUPTION
POLITICAL_COMMITTEE
POLITICAL_CONTRIBUTION
POLITICAL_CORRUPTION
POLITICAL_DEBATE
POLITICAL_EXPRESSION
POLITICAL_PROCESS
POLITICAL_SPEECH
POLITICAL_SYSTEM
POTENTIAL_FOR_CORRUPTION
PREVENT_CIRCUMVENTION
PREVENT_CORRUPTION
PREVENT_EVASION
PROTECT_SPEECH
PROTECT_THE_INTEGRITY
PUBLIC_INTEREST
PUBLIC_PERCEPTION
QUID_PRO_QUO
RESTRICTION_ON_POLITICAL
RESTRICTION_ON_SPEECH
RISK_OF_CORRUPTION
SPEECH_AND_ASSOCIATION
SPEECH_RESTRICTION

STANDARD_OF_REVIEW
STATE_INTEREST
STATE_LEGISLATURE
STRICT_SCRUTINY
SUFFICIENT_TO_JUSTIFY
THREAT_OF_CORRUPTION
TOTAL_CONTRIBUTION
UNDUE_INFLUENCE

BROAD PROPHYLACTIC RULE
BROAD_PROPHYLACTIC_RULE
COURT_HAVE_CONSISTENTLY
EXPENDITURE_AND_CONTRIBUTION
INDEPENDENT_SPENDING
RESTRICTION_ON_CONTRIBUTION

BIG MONEY
BIG_MONEY
HARD_MONEY
LARGE_DONOR
MONEY_CONTRIBUTION
SOFT_MONEY
SUM_HAVE_MONEY
WEALTHY_CONTRIBUTOR
WEALTHY_INDIVIDUAL

WAR CHEST
CONTRIBUTION_IN_EXCESS
FUND_RAISE
LARGE_AMOUNT
LARGE_SUM
RAISE_MONEY
RAISING_MONEY
SMALL_CONTRIBUTION
WAR_CHEST

PUBLIC FINANCE
ADDITIONAL_FUND
AMENDMENT_BURDEN
BURDEN_IMPOSE
BURDEN_ON_SPEECH
BURDEN_SPEECH
CAMPAIGN_ACTIVITY
CAMPAIGN_EXPENDITURE
CAMPAIGN_EXPENSE
CAMPAIGN_FUND

CAMPAIGN_SPENDING
CHILL_EFFECT
COMBAT_CORRUPTION
COMPETITIVE_RACE
EFFECTIVE_CAMPAIGN
FUND_OPPONENT
INDEPENDENT_EXPENDITURE_GROUP
INDEPENDENT_GROUP
MATCH_FUND
MATCH_FUND_PROVISION
PARTICIPATION_IN_PUBLIC
PRIVATELY_FUND_CANDIDATE
PRIVATE_CONTRIBUTION
PRIVATE_FUND
PROVIDE_PUBLIC
PUBLICLY_FINANCE
PUBLICLY_FINANCE_CANDIDATE
PUBLICLY_FUND_CANDIDATE
PUBLIC_FINANCE
PUBLIC_FINANCE_SCHEME
PUBLIC_FINANCE_SYSTEM
PUBLIC_FUND
PUBLIC_FUND_SYSTEM
RAISE_AND_SPEND
RAISE_OR_SPEND
SPENDING_LIMIT
SPEND_UNLIMITED
SUBSTANTIALLY_BURDEN
SUBSTANTIAL_BURDEN

PERSONAL WEALTH

CAMPAIGN_SPEECH
CANDIDATE_SPEN
CONTRIBUTION_AND_COORDINATE
EXPENDITURE_OF_PERSONAL
FINANCIAL_RESOURCE
LEVEL_THE_PLAY
OPPOSE_CANDIDATE
PERSONAL_EXPENDITURE
PERSONAL_FUND
PERSONAL_WEALTH
REGULATORY_SCHEME
REJECT_THE_ARGUMENT

COORDINATED EXPENDITURE

COORDINATE_EXPENDITURE

COORDINATE_SPENDING
INDIVIDUAL_CANDIDATE
LIMIT_ON_COORDINATE
LIMIT_ON_PARTY
MAKE_COORDINATE_EXPENDITURE
PARTY_CONTRIBUTION
PARTY_COORDINATE_EXPENDITURE
PARTY_EXPENDITURE
PARTY_EXPENDITURE_PROVISION
PARTY_OFFICIAL
PARTY_SPENDING
POLITICAL_ACTOR
REQUEST_OR_SUGGESTION
TREAT_AS_CONTRIBUTION

EFFECTIVE ADVOCACY

ADVERSE_EFFECT
AMASS_THE_RESOURCE
CONTRIBUTION_RESTRICTION
DIFFERENCE_IN_KIND
DIRECT_POLITICAL
EFFECTIVE_ADVOCACY
ENGAGE_IN_EFFECTIVE
FREEDOM_OF_EXPRESSION
IMPACT_ON_POLITICAL
POLITICAL_DIALOGUE
RAISE_FUND
TOTAL_AMOUNT

ASSOCIATION AND SPEECH

AMENDMENT_PROTECTION
AMPLIFY_THE_VOICE
CONSTITUTIONAL_PROTECTION
ENGAGE_IN_POLITICAL_SPEECH
ENTITLE_TO_FULL
FREEDOM_OF_ASSOCIATION
GROUP_ASSOCIATION
POINT_OF_VIEW
POLITICAL_ADVOCACY
POOL_THEIR_RESOURCE
LIMITS ON ASSOCIATION
APPLY_TO_CONTRIBUTION
ASSOCIATIONAL_FREEDOM
AVOID_UNNECESSARY_ABRIDGMENT
CLOSELY_DRAW
CLOSE_SCRUTINY

FREEDOM_OF_POLITICAL
FREEDOM_TO_ASSOCIATE
GOVERNMENTAL_ACTION
HEIGHTEN_SCRUTINY
LIMIT_ON_POLITICAL
PARTICIPATE_IN_POLITICAL
POLITICAL_ASSOCIATION
SIGNIFICANT_INTERFERENCE

DISCLOSURE

AFFECT_ELECTION
CAMPAIGN_RELATE
DISCLOSURE_AND_REPORT
DISCLOSURE_LAW
DISCLOSURE_PROVISION
DISCLOSURE_REQUIREMENT
IMPORTANT_GOVERNMENTAL_INTEREST
INFORMATIONAL_INTEREST
LIGHT_OF_PUBLICITY
PUBLIC_DISCLOSURE
REPORT_AND_DISCLOSURE
REQUIRE_DISCLOSURE

COMPELLED DISCLOSURE

CHILL_SPEECH
COMPELLED_DISCLOSURE
HEAVY_BURDEN
MINORITY_PARTY
PRIVATE_PARTY
REASONABLE_PROBABILITY

INVIDIOUS DISCRIMINATION

BALLOT_ACCESS
INDEPENDENT_CANDIDATE
INVIDIOUSLY_DISCRIMINATE
MAJOR_PARTY
MINOR_PARTY

ADVOCACY CORPORATION

ADVOCACY_CORPORATION
CONNECTION_WITH_FEDERAL
EXPENDITURE_BY_CORPORATION
NONPROFIT_ADVOCACY_CORPORATION
PROHIBITION_ON_INDEPENDENT
PROHIBIT_CONTRIBUTION

CORPORATIONS

ADVOCACY_GROUP
ADVOCACY_ORGANIZATION
AGGREGATION_OF_WEALTH
BAN_ON_CORPORATE
BAN_ON_INDEPENDENT
BUSINESS_CORPORATION
CORPORATE_CONTRIBUTION
CORPORATE_EXPENDITURE
CORPORATE_FORM
CORPORATE_FUND
CORPORATE_INDEPENDENT_EXPENDITURE
CORPORATE_SPEECH
CORPORATE_SPENDING
CORPORATE_TREASURY
CORPORATE_TREASURY_FUND
CORPORATE_WEALTH
CORROSIVE_AND_DISTORT
DANGER_OF_CORRUPTION
DE_MINIMIS
ECONOMIC_MARKETPLACE
EFFECT_OF_IMMENSE
ELECTION_EXPENDITURE
IMMENSE_AGGREGATION
INDIVIDUAL_DONOR
INDIVIDUAL_MEMBER
INFLUENCE_ELECTION
LABOR_UNION
NONPROFIT_CORPORATION
NONPROFIT_ORGANIZATION
PERMIT_CORPORATION
POLITICAL_ARENA
POLITICAL_EXPENDITURE
POLITICAL_IDEA
POLITICAL_MARKETPLACE
POLITICAL_ORGANIZATION
POLITICAL_VIEW
POPULAR_SUPPORT
PROFIT_CORPORATION
PROHIBITION_ON_CORPORATE
PUBLIC_SUPPORT
REGULATE_CORPORATE
REGULATION_OF_CORPORATE
RESOURCE_AMASS
RESTRICTION_ON_CORPORATE
RESTRICTION_ON_INDEPENDENT

STATE_LAW
UNFAIR_ADVANTAGE

ELECTIONEERING COMMUNICATION

BROADCAST_ADVERTISEMENT
CAMPAIGN_AD
CONSTITUTIONALLY_APPLY
CONSTITUTIONAL_CHALLENGE
CORPORATE_AND_UNION
CORPORATION_AND_UNION
DEFINITION_OF_ELECTIONEER
DESIGN_TO_INFLUENCE
ELECTIONEER_COMMUNICATION
ELECTIONEER_PURPOSE
EXPRESS_ADVOCACY
FORM_HAVE_COMMUNICATION
GENERAL_TREASURY
GENERAL_TREASURY_FUND
GENUINE_ISSUE_AD
INFLUENCE_FEDERAL_ELECTION
INTEND_TO_INFLUENCE
INTEREST_GROUP
ISSUE_AD
ISSUE_ADVERTISE
ISSUE_ADVOCACY
PROHIBIT_CORPORATION
RELEVANT_ELECTORATE
SHAM_ISSUE
WORD_OF_EXPRESS

BUSINESS INTEREST

BUSINESS_INTEREST
CONTRIBUTE_TO_CANDIDATE
PROHIBITION_OF_CORPORATE

UNIONS AND CORPORATIONS

CONTRIBUTION_OR_EXPENDITURE
CORPORATION_AND_LABOR
CORPORATION_OR_LABOR
CORPORATION_WITHOUT_CAPITAL
DIRECTLY_TO_CANDIDATE
EXPENDITURE_IN_CONNECTION
GENERAL_FUND
GENERAL_PUBLIC
LABOR_ORGANIZATION
MAKE_A_CONTRIBUTION

MEMBERSHIP_ORGANIZATION
NONSTOCK_CORPORATION
POLITICAL_FUND
POLITICAL_PURPOSE
PUBLIC_AT_LARGE
SEPARATE_SEGREGATE_FUND
SOLICITATION_OF_CONTRIBUTION
SOLICIT_CONTRIBUTION
TRADE_ASSOCIATION
UNINCORPORATED_ASSOCIATION
UNION_AND_CORPORATION
UNION_FUND
UNION_MEMBER
VOLUNTARY_CONTRIBUTION

CORPORATE AND UNION ADVANTAGE

CORPORATION_OR_UNION
DISSENT_SHAREHOLDER
INTEREST_IN_PROTECT
POLITICAL_WAR_CHEST
RESTRICT_CORPORATE
SPECIAL_ADVANTAGE
SUPPORT_OF_CANDIDATE
SUPPORT_POLITICAL

LEGISLATIVE JUDGMENT

BURDEN_FIRST_AMENDMENT
CAREFUL_REGULATION
CORPORATE_STRUCTURE
CORPORATE_STRUCTURE_REQUIRE
DIRECT_CORPORATE_CONTRIBUTION
DISTORT_THE_POLITICAL
LEGISLATIVE_JUDGMENT
SPECIAL_CHARACTERISTIC

PAC

COMPLETE_BAN
CONSTITUTIONALLY_SUFFICIENT
FACIAL_OVERBREADTH
FUND_ELECTIONEER_COMMUNICATION
PAC_MONEY
PAC_OPTION
POLITICAL_INFLUENCE
REGULATE_CAMPAIGN

BUSINESS LEADER

BUSINESS_LEADER

GAIN_ACCESS
LARGE_DONATION
RAISIN_AND_SPENDING

LEGISLATIVE PROCESS

LEGISLATIVE_EFFORT
LEGISLATIVE_PROCESS
REAL_OR_APPARENT

CONFIDENCE IN GOVERNMENT

ALERT_RESPONSIBILITY
CONFIDENCE_IN_GOVERNMENT
CONSTITUTIONAL_POWER
IMPORTANT_INTEREST
INDIVIDUAL_CITIZEN
PRESERVE_THE_INTEGRITY

REPRESENTATIVE GOVERNMENT

APPEARANCE_OF_IMPROPER
CONSTITUTIONALLY_SUFFICIENT_JUSTIFICATION
CONTRIBUTION_CEILING
DANGER_OF_ACTUAL
FINANCIAL_CONTRIBUTION
INFLUENCE_OF_LARGE
INTEREST_SERVE
LARGE_INDIVIDUAL_FINANCIAL
MONEY_TO_INFLUENCE
OPPORTUNITY_FOR_ABUSE
PARTISAN_POLITICAL
PREVENTION_OF_CORRUPTION
PRIMARY_PURPOSE
REALITY_OR_APPEARANCE
REPRESENTATIVE_GOVERNMENT
SECURE_A_POLITICAL
SYSTEM_OF_REPRESENTATIVE

CONGRESSIONAL POWER

AUTHORITY_TO_REGULATE
CONGRESSIONAL_POWER
POWER_OF_CONGRESS
POWER_TO_REGULATE

PUBLIC MONEY

CONGRESSIONAL_EFFORT
DELETERIOUS_INFLUENCE
IMPROPER_INFLUENCE

LARGE_PRIVATE_CONTRIBUTION
PUBLIC_DISCUSSION
PUBLIC_FINANCE_PROVISION
PUBLIC_MONEY
SIGNIFICANT_GOVERNMENTAL_INTEREST

DIRECT RESTRICTION

DIRECT_RESTRICTION
IMPOSE_A_SUBSTANTIAL
PRACTICAL_EFFECT

PARTIES AND FEDERAL FUNDS

FEDERAL_FUND
FEDERAL_MONEY
JOINT_FUNDRAISE
NATIONAL_POLITICAL_PARTY
NONFEDERAL_MONEY

OVERBREADTH

APPLY_EQUALLY
FACIALLY_UNCONSTITUTIONAL
INFLUENCE_THE_VOTER
INTEREST_THAT_JUSTIFY
REGULATION_OF_CAMPAIGN
SUBSTANTIALLY_OVERBROAD

CAMPAIGN COST

CAMPAIGN_COST
LEGITIMATE_INTEREST
OUTCOME_OF_ELECTION

FREE EXPRESSION

ENGAGE_IN_PUBLIC
ENHANCE_THE_RELATIVE
EQUALIZE_THE_RELATIVE
EXPENDITURE_CEILING
FINANCIAL_ABILITY
FREE_EXPRESSION
INDIVIDUAL_AND_GROUP
INFLUENCE_THE_OUTCOME
INFORMATION_FROM_DIVERS
INTEREST_IN_EQUALIZE
ORDER_TO_PREVENT
POLITICAL_AND_SOCIAL
PROTECT_EXPRESSION
RESTRICT_THE_SPEECH

UNFETTER_INTERCHANGE
WHOLLY_FOREIGN

RELATIVE VOICES

ORDER_TO_ENHANCE
PERMIT_CONGRESS
RELATIVE_VOICE

ISSUES AND CANDIDATES

ADVOCACY_OF_ELECTION
AMENDMENT_REQUIRE
CANDIDATE_CAMPAIGN
DEFEAT_OF_CANDIDATE
DISCUSSION_OF_ISSUE
DISTINCTION_BETWEEN_DISCUSSION
EXPRESS_TERM_ADVOCATE
EXPRESS_WORD
FORM_OF_SPEECH
INTIMATELY_TIE
ISSUE_AND_CANDIDATE
STATUTORY_LANGUAGE

NARROW CONSTRUCTION

ADVOCATE_THE_ELECTION
COMMUNICATION_THAT_EXPRESS
CONSTITUTIONAL_PROBLEM
DEFINITION_OF_EXPENDITURE
ELECTION_OF_CANDIDATE
ISSUE_DISCUSSION
NARROWLY_CONSTRUE
NARROW_CONSTRUCTION
PROHIBITION_AGAINST_CORPORATE

INFLUENCE

ATTEMPT_TO_INFLUENCE
MAKE_EXPENDITURE
PURPOSE_OF_INFLUENCE
RECEIVE_CONTRIBUTION

EXPRESS ADVOCACY

APPEAL_TO_VOTE
EXHORTATION_TO_VOTE
EXPRESS_ADVOCATE
OPPOSE_A_CANDIDATE
PUBLIC_COMMUNICATION
REASONABLE_INTERPRETATION

SPECIFIC_CANDIDATE
SUPPORT_A_CANDIDATE
UNCONSTITUTIONALLY_VAGUE
URGE_THE_PUBLIC

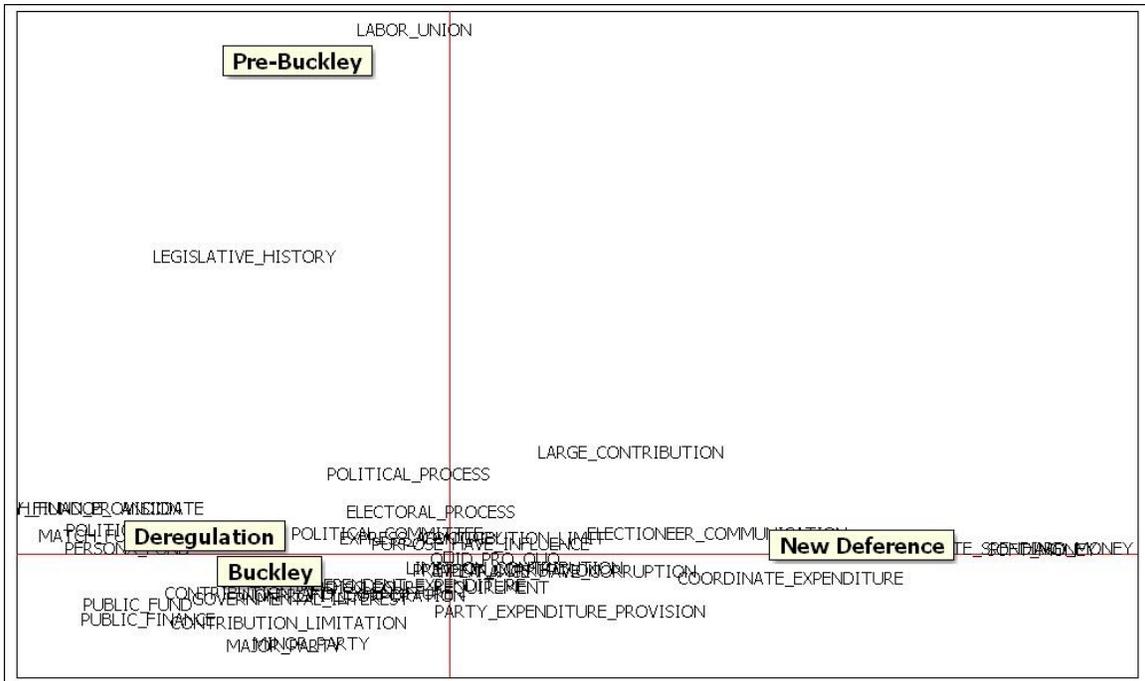
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CONGRESSIONAL_INTENT
CONGRESS_INTEND
CONSTITUTIONAL_QUESTION
CRIMINAL_SANCTION
LEGISLATIVE_HISTORY
LEGISLATIVE_INTENT
PLAIN_LANGUAGE
STATUTORY_CONSTRUCTION
STATUTORY_INTERPRETATION

SUBSTANTIAL RELATIONSHIP
CEILING_ON_CAMPAIGN
DISCLAIMER_AND_DISCLOSURE
RELATE_ACTIVITY
SUBSTANTIAL_RELATION

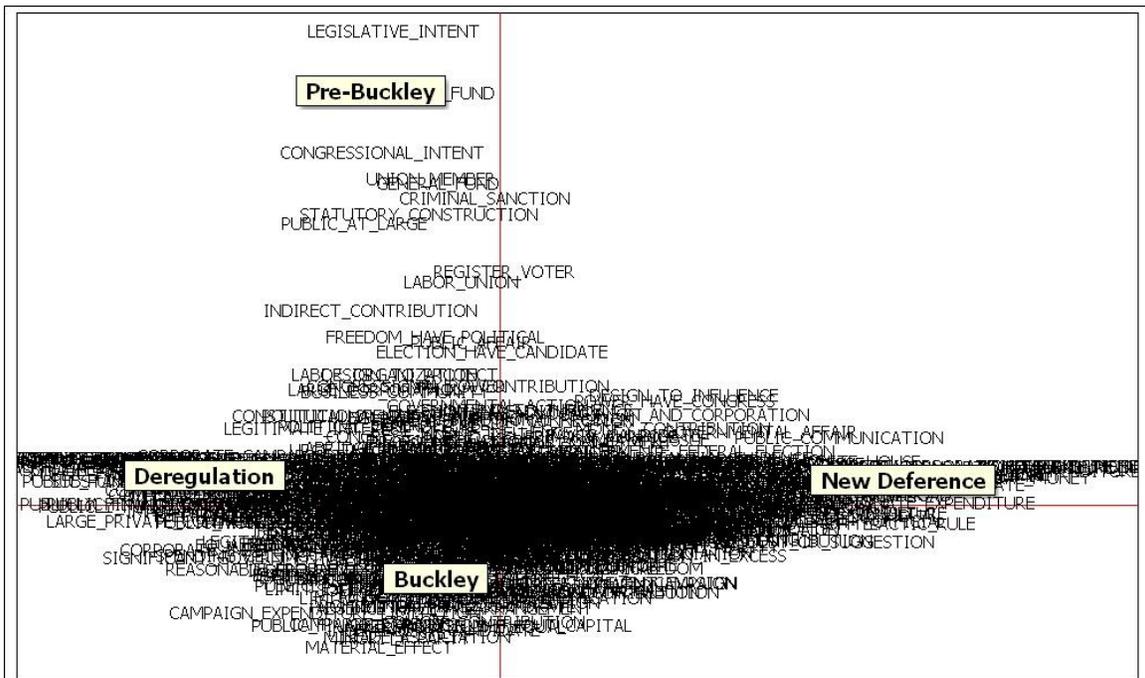
BUSINESS
ACCEPT_CONTRIBUTION
BUSINESS_ACTIVITY
BUSINESS_COMMUNITY
CONSTITUTIONALLY_BE_APPLY
DIRECT_EXPENDITURE
ENGAGE_IN_BUSINESS
EXPRESS_PURPOSE
POLITICAL_FUNDRAISE
POLITICAL_SUPPORT
PROMOTE_POLITICAL_IDEA
SERVE_AS_CONDUIT

CONGRESSIONAL JUDGMENT
CONGRESSIONAL_JUDGMENT
EVIL_FEAR
GUESS_A_LEGISLATIVE
LEGISLATIVE_DETERMINATION
POTENTIAL_CORRUPTION
PROPHYLACTIC_MEASURE
PROPHYLACTIC_RULE
SOLICITATION_RESTRICTION

Appendix 4-3: Correspondence plot, majority and plurality opinions only, raw phrases:



Appendix 4-4: Correspondence plot, briefs only, using raw phrases



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- Arizona Free Enterprise Club's Freedom Club PAC, et al., v. Bennett*, 131 S.Ct. 2806 (2011)
- Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 110 S.Ct. 1391 (1990)
- BREAD Political Action Committee v. Federal Election Commission*, 455 U.S. 577, 102 S.Ct. 1235 (1982)
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- Brown v. Socialist Workers '74 Campaign Committee (Ohio)*, 459 U.S. 87, 103 S.Ct. 416 (1982)
- Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612 (1976)
- California Medical Association v. Federal Election Commission*, 453 U.S. 182, 101 S.Ct. 2712 (1981)
- Casey v. Planned Parenthood*, 505 U.S. 833 (1992).
- Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley*, 454 U.S. 290, 102 S.Ct. 434 (1981)
- Citizens United v. Federal Election Commission*, 130 S.Ct. 876 (2010).
- Colorado Republican Federal Campaign Committee v. Federal Election Commission*, 518 U.S. 604, 116 S.Ct. 2309 (1996)
- Cort v. Ash*, 422 U.S. 66, 95 S.Ct. 2080 (1975)
- Davis v. Federal Election Commission*, 554 U.S. 724, 128 S.Ct. 2759 (2008)
- Federal Election Commission v. Beaumont*, 539 U.S. 146, 123 S.Ct. 2200 (2003)
- Federal Election Commission v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431, 121 S.Ct. 2351 (2001).
- Federal Election Commission v. Democratic Senatorial Campaign Committee*, 454 U.S. 27, 102 S.Ct. 38 (1981)
- Federal Election Commission v. Massachusetts Citizens For Life, Inc.*, 479 U.S. 238, 107 S.Ct. 616 (1986)
- Federal Election Com'n v. National Conservative Political Action Committee*, 470 U.S. 480,

105 S.Ct. 1459 (1985)

Federal Election Commission v. National Right to Work Committee, 459 U.S. 197, 103 S.Ct. 552 (1982)

Federal Election Commission v. Wisconsin Right To Life, Inc., 551 U.S. 449, 127 S.Ct. 2652 (2007)

First National Bank of Boston v. Bellotti, 435 U.S. 765, 98 S.Ct. 1407 (1978)

Furman v. Georgia, 408 U.S. 238 (1972)

Gregg v. Georgia, 428 U.S. 153 (1976) *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989),

McConnell v. Federal Election Commission, 540 U.S. 93, 124 S.Ct. 619 (2003)

Nixon v. Shrink Missouri Government PAC, 528 U.S.377, 120 S.Ct. 897 (2000)

Randall v. Sorrell, 548 U.S. 230, 126 S.Ct. 2479 (2006)

Roe v. Wade, 410 U.S. 113 (1973)

United States v. UAW-CIO, 352 U.S. 567, 77 S.Ct. 529 (1957)

Webster v. Reproductive Health Services, 492 U.S. 490 (1989)

Wisconsin v. Right to Life, Inc., v. Federal Election Commission, 546 U.S. 410, 126 S.Ct. 1016 (2006)

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