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Does the United States Supreme Court decision in the *Citizens United v. the Federal Election Commission* case affect the voluntary departure of United States Senators?

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100 word abstract

I am studying the 108-113th Congresses to determine if there is a difference in Senate voluntary departures before and after the *Citizens United v. the Federal Election Commission* decision. Changes in campaign finance laws may affect election outcomes causing more Senators to voluntarily depart from Congress in anticipation of a contentious election. Voluntary departure includes retirement, resignation, and moving to another public office. The study examines the differences before and after the Citizens United ruling based on age, the number of years of service in the Senate, and the last election win margin as well as future possible research.

250 word abstract

The United States Supreme Court decision in the case of *Citizens United v. the Federal Election Commission* raised concerns about how unlimited independent expenditures by organizations would influence campaigns and elections. This concern has been expressed through media and politicians, but research on the subject is conflicting. One argument is that protecting unlimited contributions as free speech gives a disproportionate amount of speech to non-voting entities. The other argument is that speech does not directly influence elections and it is ultimately the voter's decision on which candidate to choose. Laws that affect elections also affect departures. The connection between campaign finance and Senate departures is that a change in the law will affect election outcomes causing more Senators to voluntarily depart from Congress in anticipation of a contentious election. I am studying the 108-113th Congresses to determine if there is a difference in Senate departures before and after the decision. Voluntary departure includes retirement, resignation, and moving to another public office. The differences

in departure will be determined by changes in the rate of departure and the profiles of voluntarily departing Senators. If the court's decision has made elections more competitive then there should be an increase in Senate departures. The study examines the differences before and after the Citizens United ruling based on age, the number of years of service in the Senate, and the last election win margin. I will lastly discuss possible future empirical research on Congressional retirements as well as post-Senate career profiles.

Introduction

Does the United States Supreme Court decision in the *Citizens United v. the Federal Election Commission* case affect the voluntary departure of United States Senators?

The Supreme Court decision in the case of *Citizens United v. the Federal Election Commission* to recognize associations as persons and allow them to contribute unlimited donations as independent expenditures may make for more competitive elections. The result would be an increase in the number of Senators who choose to voluntarily depart from Congress in anticipation of a contentious election. The evidence to support this claim should be an increase in the rate of departure, a decrease in the overall age of the Senate, and a decrease in the average years of service for non-retiring Senators.

The main reason for the study is to examine if Senators have been voluntarily departing at a higher rate, and, if they are, research the reasons why. The historic changes to the campaign finance laws are one explanation. The Citizens United decision changed campaign finance laws that affect fundraising, which is the fundamental aspect of winning elections. The candidate who spends the most money wins the election a majority of the time (Politifact). The changes in the law make it easier for private interests to affect elections, creating more competitive Senate elections. Working from Wolak's case about strategic retirements, if Senators are more likely to

retire with an increase in competitive elections, there should be an increase in Senate departures after January 21, 2010, the date the Citizens United decision was made.

Literature Review

A Bicameral Perspective on Legislative Retirement: The Case of the Senate (2002) by Jeffrey Bernstein and Jennifer Wolak

Jeffrey Bernstein and Jennifer Wolak begin by explaining that most research on Congressional departures focuses on the House. They warn that the literature and theories surrounding House retirements cannot be extended to the Senate. This is because of the institutional differences between the two chambers of Congress. Bernstein and Wolak empirically analyze Congressional retirement from 1962-2000 to identify motivating factors that are unique to Senate departures.

Bernstein and Wolak argue that Congressional departures are essential to understanding Congressional makeup and politics. They point out that "the greatest source of membership change in Congress is not electoral defeat but instead is voluntary departure due to retirement or seeking higher office (Ornstein, Mann, and Malbin 2000)." (375). Moreover, departures affect legislation because "most members of Congress remain stable in their policy preferences during the course of their careers (Asher and Weisberg 1978), [and] membership change becomes a clear path to policy change in Congress" (Bernstein and Wolak 376). Researching departure is important because it causes an unexpected shift in Congressional makeup and Senate politics.

Bernstein and Wolak then lay out the theory and relevant institutional factors that lead to different motivations for House and Senate retirements. After a comparison of the two chambers, the researchers identify age, term length and elections, chamber size, and greater individual

influence over legislation as factors that influence legislators' decision to depart from Congress. Age has the clearest correlation with retirement. "Members of Congress often enter the Senate later in their careers; thus Senate tends to have older members who are generally more likely to be considering retirement" (377). The difference in term length and election competitiveness also affects Senate retirements differently. "The opportunities for higher office are few; moreover, those who seek the Presidency or vice-presidency can often do so in the middle of their terms (and, in some states, concurrent with a reelection bid) without jeopardizing their Senate seat. Senators have more individual power than House members; more-over, their longer terms lessen electoral pressures" (377). The six year term also gives Senators more time to fundraise and campaign ahead of their competition, adding to the incumbent advantage. Senators are also more likely to retire if they have been in the minority party during a tense political atmosphere or for consecutive Congresses. Legislators may find that they are unsatisfied with their ability to affect policy while in the minority. The findings conclude that the institution of the Senate protects Congressmen from external pressures, so the "retirement choices of Senators reflect more personal criteria" (388).

Based on their data, Bernstein and Wolak identify the factors that influence Senate departures as older age, minority party status, and a close previous election win margin. They found, as one might expect, that age is a major indicator of retirement. "As a member moves from age 40 to age 70, his or her retirement probability increases dramatically" (386). Whether the Senator is in the majority or minority party has a significant impact on departure considerations. "The model indicates that Senators from the majority party are less likely to retire" (385) with senator on the minority side having a "probability of retirement almost twice as great" (386). The last clear indicator of Senate retirement is the member's previous election

win margin. “As the Senator becomes safer, the retirement probability decreases” (387). These factors differ from the factors motivating House retirements, and we learn two lessons. The institution of the Senate creates different motivations for retirement, and it is important to study the Senate on its own to identify these factors.

Strategic Retirements: The Influence of Public Preferences on Voluntary Departures from Congress (2007) by Jennifer Wolak

Jennifer Wolak's 2007 research on Senate retirements focuses on electoral vulnerability as a factor in Congressional retirements. Her argument starts with a basic political science premise that a politician's main goal is to get reelected. Without reelection, they would lose their job. Politicians are constantly mindful of their election odds, and if the incumbent representative is facing a difficult or losing campaign, Wolak argues that Congressman may choose to depart instead of enter that race.

Wolak then goes on to question another basic political science concept which is the incumbent advantage. This is the idea that the incumbent Congress member has the advantage in the election because they have the privileges of their office to help them run their campaign. The incumbent Congressman is statistically likely to win reelection more than 9 out of 10 times they run for it (Wolak 285). She argues that this appearance of near invincibility may also make politicians less responsive to the needs of an unhappy electorate. She warns that if the voters become too unhappy with a Congressman, the representative may choose to strategically retire rather than go through the process of fundraising and running a tough campaign. In this case, the strength of the incumbent advantage is in question because it proposes that politicians that would lose reelection choose to depart instead.

Wolak then reiterates the position of her 2002 work with Bernstein, which was that the factors motivating House retirements differ from those motivating the Senate. She then analyzes the environments that inspire Congressional retirements and finds which are specific to the House or Senate. She uses partisan preference, economic opinions, and congressional approval as signals of the mood of the electorate and evaluates how they factor into Congressional retirement.

The argument is then made about the value of studying Congressional retirement. She stresses the importance of identifying the factors that influence members of Congress "across Congresses and across time (Lapinski and Adler 2006)" (291). This helps us to "more easily recognize the effects of national trends" (291). This is a helpful way to view voluntary departures because it is evidence that there are factors that influence all members that are primarily influenced by which institution of Congress their service is shaped by.

The conclusions that she made further confirmed that House and Senate retirements are influenced by different electoral pressures. Senators are more insulated by their six year terms. The important factors influencing Senate strategic departures are mainly public opinion of the national party, and then, to a lesser extent, minority-majority status and committee influence. Finally, she argues that the incumbent advantage may not be as strong as it appears. Incumbents may have the advantage due to factors outside of themselves. "The overwhelming success of incumbents at the ballot box suggests electoral invincibility. But the explanations for incumbent success tend to point to factors beyond incumbents themselves, such as the resources of the office (Fiorina 1977; Levitt and Wolfram 1997; Mayhew 1974a) the ability to deter strong challengers (Jaobson and Kernell 1983), and the heuristic utility of incumbency to voters (Krehbiel and Wright 1983; Nelson 1978)" (303). She continues by saying that legislators can

add to the impression of near-invincibility by calculating their electoral odds. "Incumbents may in reality be much more easily defeated than previously thought - we simply do not see losing incumbent campaigns very often because incumbents avoid entering them" (303).

Background

Senate Departures

It is important to statistically analyze Senate departures because "the greatest source of membership change in Congress is not electoral defeat but instead is voluntary departure due to retirement or seeking higher office (Ornstein, Mann, and Malbin 2000)" (Bernstein and Wolak 375). It is crucial to understand the factors that influence these departures, and how an increase or decrease in departures will affect the Senate body. Research on Senate departures is also valuable because there is little research that focuses on Senate specific departures, retirements, and resignations.

As Bernstein and Wolak reiterate, most study on congressional departures is focused on the House of Representatives, and as such do not consider the institutional differences between the two chambers. Wolak argues that these differences matter, and that the factors that play into House departures cannot be carried over to the Senate.

Senators are a part of a different institutional environment. Being in the smaller chamber of Congress with 100 members, Senators have more individual power than their House colleagues. Their votes hold more weight, and they can hold influential positions on several different committees. They can also hold more time on the floor to influence legislation that is outside of their committee involvement. Senators have longer terms, six years as compared to two in the House, which shields them from negative public opinions. This institutional difference

also translates into difference in the competitiveness of elections and, therefore, voluntary departures.

Senators depart for a number of reasons, so one explanation is not enough. Many Senators are older than House representatives and may retire simply out of old age. Members of the Senate tend to be older, as well as join older. Members of the Senate also remain in Congress longer because there are fewer opportunities for higher office than in the House. Another situation in which a Senator might retire is that their ideology breaks with their party platform and have a chance of being replaced in the primary or general election. Senators commonly retire when facing the probability of losing their reelection. Senators can also choose to retire in light of a more lucrative private sector job. All of these factors can explain the motivations of Senate departure in the aggregate, but individual Senators may make their decision based on only one or a few of these factors.

Campaign Finance

Campaign finance refers to the rules and practices involved with private funding for political campaigns. The campaign finance laws regulate who can donate, donation limits, how campaign offices are able to spend, and disclosure of donations.

The earliest of the modern campaign finance laws is the Federal Election Campaign Act of 1972. The bill placed limits on how much could be donated, regulated campaign spending, and increased the disclosure of contributions. The bill also created the Federal Election Commission, which is an independent agency responsible for regulating federal campaign finance legislation. Their duties include tracking and disclosing campaign finance information, enforcing regulations, investigating and prosecuting violations, overseeing the presidential campaign fund, and explaining the law to the parties which it regulates.

The Bipartisan Campaign Reform Act of 2002 was the modern reform of campaign finance law. The legislation was aimed at addressing two issues. First, the increased role of soft money in campaign financing. The second was the regulation of election broadcast communications. The law prohibited broadcast communications paid for by organizations that name a federal candidate from being released within 30 days of a primary and within 60 days of a general election. The intention was that organizations with many resources could not influence public opinion so close to the election. The Act revised the legal limit on expenditures, and prohibited unregulated contributions to national parties. The BCRA also required political advertisements for federal office to identify the candidate and state that they approve the communication's message.

The *Citizens United v. Federal Election Commission* decision would remove the limits on independent expenditures.

In 2008, Citizens United wanted to run "Hillary: The Movie." Because the ad was paid for by a private organization and in violation of the banned time period, the Federal Election Commission was responsible for shutting down the broadcast and prosecuting the violation. A lower court found that the Hilary Clinton movie violated the campaign finance laws and ruled in favor of the Federal Election Commission. On January 21, 2010, in a 5-4 decision, the Court reversed the decision of the lower court, ruling in favor of Citizens United, and striking down provisions of the BCRA that prohibited corporations, including nonprofits, associations, and unions from making independent expenditures and electioneering communications on the grounds that they were unconstitutional. Precedent had been established in the case of *Buckley v. Valeo* that spending money is equivalent to disseminating speech. The Court recognized corporations as persons under the law, and, as persons, limiting their political donations is a

violation of the First Amendment because it infringed on the right to freedom of expression. Limiting a corporation's ability to spend money is unconstitutional because the First Amendment also protects associations of individuals and holds that speech cannot be prohibited based on the identity of the speaker. This means that organizations were free to spend on independent expenditures without limit. Associations are also now free to endorse or whether to vote for or against a specific candidate. The time limit for broadcast communications was also eliminated.

Incumbent Congressmen win election 93 percent of the time that they run for reelection (Wolak 285). Coupled with the fact that the candidate who spends the most money wins the election a majority of the time, it is predictable that the changes to campaign finance laws will increase the competition of the election process for incumbents. If senators are more likely to depart when facing more difficult opposition, as Wolak's 2007 research states, it is essential to understand how campaign finance influences Senate membership from the perspective of voluntary departures.

Research

The focus of this research is to find out if there are differences in the voluntary departures of Senators before and after the *Citizens United v FEC decision* was rendered. In recent years, the Senate has experienced a record number of departing Senators. My first hypothesis is that the changes in campaign finance laws have increased the competitiveness of elections. My second hypothesis is, because of the increased competition in elections, there should be an increase in voluntary departures. The evidence to support these claims should be found in an increased rate of retirement, a decrease in the average age of non-retiring Senators, and a decrease in the average years of service for non-retiring Senators. The decrease in the average age and average years of service of non-retiring members would be the result of

increased departures. If departure is resulting from retirement these should be the results because the oldest, most experienced members would be leaving at an increase rate, which would lower the averages for non-retiring members.

My research proposal came from two ideas. The first is that there is a popular conception that the Citizens United decision skews representative democracy by allowing for non-voting associations to contribute disproportionately to election communications. If this claim is true, the changes to campaign finance laws would affect the competitiveness of elections as well as their outcomes. The second idea that inspired the research was the record number of Senate voluntary departures between 2008 and the present. I wanted to uncover why there was such a sudden increase in departures. The goal is to discover if there was in fact a difference in departure before and after the decision, as well as, identify how that information

Research Design and Methods

The research design is a statistical analysis of Senate departures before and after the *Citizens United v. Federal Election Commission* decision. An important difference in my research from most literature on Senate departures is that I focus on all departures - retirements, resignations, and moving to another public office. This study is aimed at learning more about the motivations and behavior of departing senators, and not only to focus on why they retire. The goal is to identify differences in the number of departures, the average age of non-departing Senators, the number of years in service in the Senate for non-departing Senators, and election win margin. The pre-Citizens United v. FEC decision time period will start January 3, 2003 and end on January 21, 2010. The post-Citizens United v. FEC decision time period will start January 22, 2010 and be projected to January 3, 2015.

I created a Microsoft Excel spread sheet to identify the differences in the variables of age, number of years of service, and the last election win margin. The timeframe covered in the research is the 108th -113th Congress starting January 3rd, 2003 - January 3, 2015. The data categories were: Senator, Party, Voluntary Departure from Congress, Year of Voluntary Departure, Senate Years of Service, Numbers of Years in the Senate, and Last Reelection Margin. The materials used were a computer, Microsoft Excel to enter data, and the internet where I found the data. All of the information entered is public domain, and the statistics can be found reported through multiple online sources. The information on voluntary departure from Congress and the year of departure can be found at the website: <http://www.rollcall.com/politics/casualtylist.html>. Subtract the Senator's retirement year from their year of birth to find their age at the time of departure. The years of service in the Senate and their birth year came from <http://bioguide.congress.gov/biosearch/biosearch.asp>. The data on each Senator's last reelection win margin came from the CNN Election Result Center at <http://www.cnn.com/election/2012/results/main>. Calculate the win margin by subtracting the runner-up's percentage of the vote from the winning Senator's percentage. I then isolated the data on the rate of departure, the average ages, and the average number of years of service. The data was then separated on the criteria of retiring and non-retiring. Then it was further separated into pre- and post-decision time periods. I chose this research model so the research can be extended to past and future Congresses including the House of Representatives.

The large data sample helped identify differences between the Congresses, the retiring Senators, and the non-retiring Senators. Like the modern research on Senate departures by Bernstein and Wolak, I was also looking at the aggregate to find trends that affect all Senators.

The average Senate years of service for non-departing Senators: 108 Congress - 13.7, 109 Congress - 14.3, 110 Congress - 14.6, 111 Congress - 14, 112 Congress - 12.3, 113 Congress - 10.9. Post-Citizens United the average number of years of service in the Senate dropped from 2.3 terms to 1.9 terms. The average age for non-departing Senators: 108 Congress - 62.3, 109 Congress - 63.2, 110 Congress - 64.5, 111 Congress - 64.6, 112 Congress - 63.5, 113 Congress - 62.9. Contrary to my hypothesis, there was not a significant difference in the average age of non-departing Senators. The number of years of service in Senate had decreased, the rate of departure had increased, and the average age of non-retiring Senators showed no significant difference.

Creating a profile for individual Senators helped to identify differences across Congress and created a profile of each Congress's departing Senators. The findings differed from what I expected. I thought the average age of the Senate would drop because the oldest members would be departing, which it did not. This may suggest that the oldest Senators are not necessarily those who are retiring and that there are Senators retiring for reasons other than age. I also found what Wolak found in her study of strategic retirements, which was that close election margin was a good predictor of departure. However, an odd finding was that some Senators were neither the oldest and they won their previous election by a significant margin. This may imply that some Senators' motivations for departure are not age or strategic retirement. The drop in average years of service suggests that Senators are serving less time in office and careerism, as Wolak and Bernstein put it, may be on a decline. The last significant finding that stood out was that the retirement rose slightly but the number of resignations greatly increased, suggesting that there are factors causing more Senators are cut short their service to the public.

Time was the largest limitation to the study for two reasons. The change to campaign finance laws was rendered recently, so it is hard to tell if it is responsible for the increase in

competitiveness of elections and voluntary departures, although there is supporting evidence and theory to suggest. Also, the study was carried out over an eight week period so the opportunities to expand my research were limited. Future research on the subject would include more information about fundraising and independent expenditures to make a stronger case about the connection between Citizens United and the increased competitiveness of elections. If I could gather that data, I would have been able to analyze if there is a correlation between Citizens United and voluntary departures. I would have also researched the post-departure career status of Senators to give more insight into the motives of retiring and resigning Senators, respectively.

The rate of departure has increased after the 2010 decision, which suggest that elections have gotten more competitive since that time period. The research supports a correlation between increased election competition and increased Senate departures. There is clearly something causing the increase of competition and departures, but it remains to be clear if it is the change in campaign finance laws or some other factor. With an increase in Senators departing from Congress, we will likely see the average number of years of service for non-retiring Senators decline, a trend that was found in my data. If this trend continues, it could mean less terms, which means less career politicians. These factors could mean that the incumbent advantage may have also been weakened in recent years. The increase in departures is partly due to the 2008 presidential party change and the appointments that followed, but there are also Senators that are cutting short their service to the public in order to work elsewhere. If the trends from my research continue, it can be expected that more Senators will be departing, especially through resignation, and more incumbents will be beat out than in the pre-Citizens United period.

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