

**Strategic Retirements of Elected and Appointed Justices in State Supreme Courts:
A Hazard Model Approach**

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Abstract

At some point in their careers all state court justices are faced with the decision to leave the bench or attempt retention. The selection method under which they are retained can provide these justices the ability to make strategic decisions regarding retirement. Selection systems that utilize an appointment mechanism allow justices to predict the likelihood of whether they will be replaced by an ideological similar justice, since they know the ideological disposition of the individual/body choosing their successor. Selection systems that employ a competitive electoral mechanism do not allow incumbent justices to predict the ideological nature of their replacements. Instead, justices in electoral systems would be expected to retire when they face a likely electoral defeat or become ideologically distant from the electorate. In this paper we examine whether judicial selection systems influence state justices decisions to engage in strategic behavior when leaving the bench. Utilizing an event history approach, we find that justices in appointive systems are more likely to retire when they are ideologically compatible with the institution that chooses their successor. Furthermore, we find that judges in electoral systems are more likely to retire from the bench when they become ideologically divergent from their constituency. Our findings suggest that justices in all selection systems make strategic, political calculations with respect to retirement.

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Introduction

When examining the landscape of State Courts of Last Resort, certainly one of the most impressive factors concerns the amount of variation by which they select their justices. In the states, justices are chosen for their high courts by methods that include partisan elections, non-partisan elections, gubernatorial appointment, legislative elections, and the Missouri Plan, often referred to by its advocates as the merit system. While it is clear that each of these methods of selection places different pressures on the justices when seeking the bench, these systems also vary in how justices retain their seats on the Court. While justices in some states must stand for re-election, other justices need only receive the confidence of either a governor or legislature in order to serve an additional term. While different justices may have careers of various lengths, their careers are ultimately finite. The decision *whether* to end a career is often coupled with the decision of *how* to end it.

The question of why and how state supreme court justices end their careers can have a plethora of answers. Depending on the method of selection and retention, justices departing the bench can lose a primary or general election, lose a retention election, be impeached, fail to be retained by either the governor or the legislature, be nominated to the federal bench, be forced to retire because of age limits, retire voluntarily, or die. It seems highly unlikely a justice would chose to lose an election, be forced off the bench because he met retirement age, or pass away. These options for leaving the bench require positive action on behalf of another party or are simply not controlled directly by the justices. The choice to retire is the only logical action that

can be carried out unilaterally by the individual justice. However, the reason behind a justice's choice to leave the bench voluntarily does not take place in a vacuum. The decision to leave the bench could be influenced in part by the institutional arrangements that coincide with the method of selection. If justices wish to retire strategically, the rules of the institutions that surround them should influence the reason(s) why they leave the bench.

Strategic retirement at the federal judiciary is a topic that has been examined thoroughly (*see, e.g.*, Barrow and Zuk 1990; Danelski 1965; Hagle 1993; Spriggs and Wahlbeck 1995; Squire 1988; Vining, Zorn, and Smelcer 2006).¹ It is generally hypothesized that, *ceteris paribus*, Article III judges with effective lifetime tenure will retire when an ideologically congruent president can nominate their replacement. The theory behind this behavior is quite obvious, and follows eloquently with the expectations of rational choice theory. Judges prefer to retire under conditions by which their own ideology will remain represented on the bench after they have left. By retiring when an ideologically similar president is in office, the judge has her best opportunity to achieve that goal.

Among the states, the institutional mechanisms of judicial selection and replacement are significantly more varied than at the federal level. States that select their judges by a method of appointment have much in common with the federal court system. These states generally have the initial selection and retention left to either the governor or, in rare instances, the legislature. States that employ the Missouri Plan allow their governors to select the justices (albeit after the work of a nominating commission), while usually providing the public the opportunity to retain them at the polls. Due to the important role of the governor in the Missouri Plan, this method of

¹There also is a plethora of research on career decisions in the U.S. Congress, from which much of the literature on retirements in the judiciary relies (*see, e.g.*, Brace 1985; Frantzich 1978; Groseclose and Krehbiel 1994; Hall and van Houweling 1995; Hibbing 1982; Schlesinger 1966).

selection still allows the option for a justice to retire in such a manner as to ensure her replacement will have the highest likelihood of being ideologically consistent.

However, states that employ popular elections to select their judges bear little resemblance to the federal judiciary or those states that use an appointment method for their initial selection. Strategic behavior can occur under a variety of methods of selection, though the motivation should not always be similar. While it appears that federal justices retire strategically from the bench, the question in our paper is, do justices at the state level behave similarly, and considering the variation with the methods of selection, are the reasons they would retire strategically the same? In this paper we engage in an examination of whether judicial selection systems influence state justices to employ strategic behavior when retiring.

A Theory of Strategic Retirement in State Supreme Courts

The assumption that federal judges engage in strategic behavior was not always a dominant theory in political science. When Murphy (1964) first published his work explaining the possible ways in which members of the United States Supreme Court could behave strategically, it did not become a dominant paradigm within the field. Indeed, while Rohde and Spaeth (1976) published their initial formulation of the attitudinal model that was based in part on strategic behavior, this motivation was dropped in later iterations (*see, e.g.*, Segal and Spaeth 1993, 2002).

Largely emerging in the 1990s, accounts of strategic behavior began to move back into the lexicon of judicial politics scholars. Using data and statistical procedures not readily available prior to this time, many scholars harkened back to the work of Murphy (1964) to examine and explain how strategic interaction was a theoretically motivating factor in judicial behavior. Indeed, we would come to learn that U.S. Supreme Court justices engage in strategic

behavior in many aspects of their jobs, including opinion assignment, coalition formation, and opinion drafting (Maltzman, Spriggs, and Wahlbeck 2000), as well as the decision on the merits (Epstein and Knight 1998; *but see* Segal 1997). Other scholars made similar findings with respect to behavior on the Courts of Appeals (Hettinger, Lindquist, and Martinek 2006; Van Winkle 1997).

Notable works have also been published on strategic interaction among state Supreme Court justices. For instance, Langer (2002) used a separation of powers model to examine the conditions under which State Supreme Court justices would be willing to engage in judicial review and overturn the acts of state legislatures. She finds that justices consider not only the likelihood of reprisal in terms of their retention, but also the likelihood their decisions will be overturned by the legislature in question. Hall (1987, 1992) analogously finds that justices in the ideological minority in states that use popular elections modify their votes on salient issues so as to increase their chances for re-election.

If State Supreme Court justices are forward-looking rational actors as these studies contend, then their strategic calculations should not necessarily be limited to decisions concerning the dispensation of cases. Indeed, it seems likely that the state justices also might behave strategically when making decisions based on their careers as well. The decision concerning when and under what conditions to leave the bench should provide another opportunity for strategic behavior.

The theory underlying the research on strategic retirement in the U.S. Supreme Court is that a justice will be more likely to retire when the president and to a lesser degree the Senate are of the same political party as the justice (Hagle 1993). That is, since the justices wish to maximize their policy preferences in the disposition of cases, they similarly desire that they be

replaced by an ideologically analogous justice. Studies of the retirement of justices in the federal courts have mixed results with regard to their hypothesized strategic nature. Hagle (1993) used an event count model to find that there are possible political (strategic) motivations for justice retirement. Spriggs and Wahlbeck (1995) found that appeals court justices retire when conditions favorably allow for a replacement with a similar ideological perspective. However, employing a competing risks duration model Zorn and Van Winkle (2000) found no evidence that strategic motivation influences retirements on the Supreme Court.

While the evidence at the federal level is mixed, the idea behind strategic judicial retirements has theoretic appeal, even as applied to state courts. In particular, states that utilize gubernatorial appointment or legislative selection are comparable to the federal system, in that the existence of these institutions allow for justices to anticipate the likelihood that an ideologically similar replacement would be selected. Therefore, the mechanisms exist in both gubernatorial appointment and legislative selection systems for state justices might make strategic calculations to retire in a particular way.

Of course, only a few states employ selection systems analogous to the federal system. Yet, states employing non-appointive methods of selection enable a different form of strategic retirement calculation. States that use popular elections preclude the retiring justice from knowing the likelihood an ideological similar justice will replace them. For example, open seat elections for state supreme courts are a function of the candidates themselves, the electoral context, the value of the seat, and the institutional arrangements (Bonneau 2006). This provides the sitting justice with far more uncertainty than a federal jurist considering retirement. However, Hall (2001a) claims that judges in popular election states can retire strategically, although the motivation is different than that for individuals on the federal bench. Borrowing

theory from research on U.S. House Elections (Brace 1984, 1985), Hall claims that justices in states that use elections can retire strategically only by leaving the bench when they are facing a probable electoral defeat. In her study Hall found evidence of strategic retirement in partisan and retention elections, but not in non-partisan elections.

What about the Missouri Plan, which uses aspects of both appointment and electoral systems? Should we expect justices in that selection system to behave more similarly to justices in appointive systems (where the ideology of the governor is a critical motivating factor); or, instead would they be most influenced by the likelihood of a defeat in their retention elections? We expect that justices facing retention elections in Missouri Plan systems are more likely to behave like justices in appointment systems rather in electoral systems. While these justices must account to the public in retention elections, they are likely aware of the institutions within which they work. That is, despite the media attention surrounding the retention elections in Iowa in 2010 in which several justices failed to retain their seats on the bench, the reality is that sitting justices run an extremely low risk of electoral defeat in retention elections (Hall 2001b; *see also* Curry and Hurwitz 2010, who found that justices in retention elections have the longest tenure rates compared to those in appointive or electoral systems).²

Consequently, we do not anticipate that retention elections are a significant motivator in terms of justices' retirement decisions. Since justices in states utilizing the Missouri Plan realize that the probability of defeat in retention elections is extremely low, forward-looking jurists should be unmoved by having to run in retention elections. Instead, based on these institutional arrangements they should be more similar to justices in states with gubernatorial appointment, such that that they are unlikely to retire when a member of the opposite political party occupies

² *But see* Dudley (1997), who did not find any significant differences in turnover across the various methods of selection. His analysis, however, did not contain control variables, nor did it examine the potential influences on a justice's decision to retire.

the governorship. That is, the likelihood of retirement should increase for justices in the Missouri Plan when the governor is of the same party as the justice. Thus, we categorize the Missouri Plan as an appointive system.

Our hypotheses are therefore dependent upon whether a justice serves in an appointive system on the one hand, or in an electoral system on the other. If a justice serves in an appointive system, whether gubernatorial appointment, legislative selection, or Missouri Plan with a retention election, the only pragmatic way to retire strategically is to leave when the replacing institution is of a similar ideology:

H1: Justices in states with appointive systems (gubernatorial appointment, legislative selection, or Missouri Plan) are more likely to retire when the respective appointive body is ideologically similar.

On the other hand, if the justice's retention is dependent upon a partisan, non-partisan, or hybrid electoral system (but not a retention election), strategic retirement should come when a justice perceives an electoral threat, which can come in one of two ways:

H2a: Justices in states with electoral systems (partisan, non-partisan, or hybrid elections) are more likely to retire when the probability of electoral defeat increases.

H2b: Justices in states with electoral systems (partisan, non-partisan, or hybrid elections) are more likely to retire when their ideological distance from the electorate increases.

In the following sections, we describe how we plan to test these hypotheses.

Data and Methods

We have collected data on the length of tenure for every individual state Supreme Court justice who served in one of eighteen states from 1980-2005. We categorized each state as employing one of the following selection and retention systems: 1) appointment, whether gubernatorial or legislative; 2) Missouri Plan; 3) partisan election; 4) non-partisan election; or 5) hybrid election. We selected sixteen of these states because they incorporate classic features of appointive systems, the Missouri Plan, partisan elections, and non-partisan elections, all without significant modification. We selected four states from each of these systems so that all of the categories would be equally represented. We then included two additional states, Michigan and Ohio, because they are hybrid electoral systems, with traits of both partisan and non-partisan elections, and traits fully unique to themselves (Easter 2011). In Michigan, the party organizations themselves nominate the candidates in political party conventions; however, the candidates appear on the general election ballot without a party identification. In Ohio, the candidates are initially selected in partisan primaries, but the general elections are non-partisan contests (Hurwitz 2010). Table 1 displays the states we analyze and their respective methods of selection, as well as the number of justices and departures for each state for the time period examined.

[Table 1 here]

We analyze two different statistical models, with each testing our respective hypotheses. Consequently, our causal variables are different with each model, since each grouping of judicial selection systems allows for justices to retire strategically in different ways. In systems that utilize appointments, we use two different measures of ideological agreement between the nominating body (governor or legislature) and the justice. First, using the PAJID (Brace,

Langer, and Hall 2003) and Berry et al. (1998) ideology scores for justices and the government, respectively, we calculate an ideological agreement score by taking the absolute value of the difference between the score of the justice and that of the government. Second, we utilize the partisan identification of the justice and the party identification of the party in power of the institution in charge of the nomination to create a dichotomous measure of partisan agreement. For states with popular election we develop a coding scheme to measure a close electoral victory. For states that do not use blanket electoral systems, elections in which the incumbent received less than 55% were coded as a close election, a coding scheme that comports with the categorizations used in general electoral studies. In electoral systems utilizing blanket elections for justices, a close election was determined by taking the average expected distribution of the vote and adding three, again a convention in general election studies. For example, if five candidates were running we would expect an even distribution of 20% vote share. Therefore, individuals who won receiving 23% or less of the vote are coded as a close election. We also employ a similar ideological distance measure as that used in the appointments model, which is the absolute value of the justice's PAJID score, and the Berry ideology score for the electorate.

While we are keenly interested in how selection systems condition retirements, we acknowledge that individuals may retire for reasons unrelated to the risks levied upon them because of the institution system in which they serve. We therefore include other measures intended to control for conditions that may cause individuals to retire. First, there are personal characteristics of the justice that may cause them to retire. We include an age variable, as individuals are more likely to retire as they get older. Additionally, while there are inconsistent findings concerning gender and minority status with respect to their likelihood of serving on a

Court of Last Resort, a few analyses have considered their effect on the tenure length of justices (see Curry and Hurwitz 2010), and thus we include such variables here.

Second, institutional characteristics may affect the likelihood of a justice to retire. We control for Missouri Plan systems, as justices in these systems have statistically longer tenures than justices in all other selection systems (Curry and Hurwitz 2010). States also have various term lengths. Justices in states with longer term lengths may retire later than those with shorter terms, since they have to undergo their retention process less often. Judicial salary may also have an influence, and thus we control for that as well. We use the raw salary of the justice. These data come from the Annual Survey of Judicial Salaries (1980-2005) authorized by the National Center for State Courts. Furthermore, justices may be more likely to retire as their work load increases. We use the raw total of disposed cases by the state Supreme Court. These data were also obtained from the Court Statistics Project, also run by the National Center for State Courts (NCSC 2011). Lastly, in some states that utilize elections, candidates do not run statewide, but instead run for district seats on the State Courts of Last Resort. Acknowledging that incumbents in these districts may be less likely to lose an election given the smaller geographic area and close ties to a community, we include a dichotomous variable for district representation in the model.

Our research design is based on an event history analysis. Employing event history models to examine temporally-ordered data has a rich history in political science (*see* Box-Steffensmeier and Jones 2004), including research on judicial politics. For instance, Shipan and Shannon (2003) used a hazard model to examine the duration of Supreme Court nominations and confirmation, while Langer et al (2003) applied hazard models to analyze how associate justices

on state supreme courts select their chief justice. From a methodological perspective our paper is analogous to these studies.

Intuitively, studies of this kind are akin to a medical experiment where a selection of patients has been given a variety of drugs, and the interest would be in learning how long patients generally survive on each of these drugs and what their risk of death is. In this circumstance, the drugs represent the variables we expect to determine the tenure rate of the individual justice, while the patients' lives and deaths are depicted by the justices' tenure length and time until retirement. Of course, we are not concerned with the patients' deaths; instead, our interest lies in how long the justices served until their exit from the bench, and what helps to predict that retirement.

The appropriate statistical method to analyze data of this sort is an event history model, also known as a hazard model (Collett 2003). There are a number of hazard models from which to choose, based on the assumptions of the model and the data utilized. The model we opted to employ for the appointment systems is a Cox proportional hazard model (hereafter, "Cox models"). We utilize this semi-parametric technique for two reasons. First, we make no assumptions about the form of the duration dependency. Parametric models assume specific distributions when modeling the hazard function. Our only assumption is that the hazard rate will be different in predictable fashion, not that the hazard rate will have a specific distributional form. Second, unlike the elections models which have two predominant ways by which justices leave the bench (retirement or electoral loss), only an extremely small minority of justices leave the bench in appointment systems by another means than retirement.³ Thus, the Cox proportional

³ Out of the 93 justices in our sample, only 9 leave by other means. One justice lost a retention election, six justices were nominated to the federal bench, and two justices passed away. These justices are considered right censored for this analysis.

hazard model is most appropriate for our research (Box-Steffensmeier and Jones 2004; Cox 1972).

In order to identify a Cox hazard model, the analyst must first assess the proportionality of hazard rates across different values of the independent variables. “The Cox Model assumes that the hazard function of any two individuals with different values on one or more covariates differ only by a factor or proportionality” (Box-Steffensmeier and Zorn 2001, 974). If this assumption does not hold true, the estimates of all the covariates in the model could be biased, not just the offending variables. Following the lead of Box-Steffensmeier and Zorn, we examine the assumption of proportionality by testing the scaled Schoenfeld residuals, and found no evidence of non-proportionality.

The model we estimate for justices in judicial elections states follows the same event history motivation but differs with respect to choice of statistical method used. Justices in electoral states leave the bench in primarily in one of two ways, retirement or losing an election. This demands a modeling choice that estimates hazards for each type of event allowing the coefficients of the variables to differ across each type of event. While a stratified Cox Model will estimate different baseline hazards for each type of event, it does not allow the coefficients to vary for each event type. Box-Steffensmeier and Jones (2004, 173) recommend using a particular specification of a multinomial logit (MNL) model for this type of competing risk: “As a method to account for complications posed by competing risks, the MNL model is an attractive choice for much the same reasons the binary logic model is chosen in the context of single-way transitions models. It may be estimated by maximum likelihood and the parameters are interpretable as logit coefficients.” The MNL is estimated as a series of linked logit functions, which allows the coefficients for each event to be compared directly with each other. The

baseline category is that of a non-event, in this context an individual serving for another year. Temporal dependence is handled in this model including the log of the duration as a control variable.

MNL models employed in an event history context must meet the same conditions as in other contexts, namely that they do not violate the assumption of independence of irrelevant alternatives. In the event history context this is also known as the assumption of independent risks. By using a MNL model we assume that the baseline hazard for each type of k events is independent. This signifies that we assume the baseline hazard rate for retirements is different from that of losing an election. We test for this assumption using the Hausman test and found no evidence of dependent risks (Long 1997).

When dealing with hazard models, issues of left truncation and right censoring become apparent. Left truncation occurs when an individual in the dataset joined the risk pool prior to the first observation. In this study it means a justice was selected for a judicial position at some point before we begin our analysis in 1980. These individuals do not enter at $t=0$, because we know when their tenure first began as a Supreme Court justice. Thus, a justice may have been unobserved for 8 years of prior tenure, but when she enters the risk pool at the beginning of the analysis we code the data as if she began her tenure at $t=9$, thus solving any left truncation issues. Right censoring occurs when a justice continues to serve after the end of the observation period in 2005. In event history analysis, this circumstance is not problematic, because we are interested in the occurrence and non-occurrence of an event, in these cases retirements or lost elections, during the period of analysis. That is, individuals who are coded as left truncated in the data contribute information to the model at the point they become observed, while right

censored data contribute information to the model until they are no longer observed (Box-Steffensmeier and Jones 2004).

Finally, when estimating the Cox model appointment systems, it is appropriate to cluster the standard errors based upon the state, which allows for variation between and among the states. The MNL approach allows for the use for a simple robust sandwich estimator to solve for possible deviations in the standard errors.

Results

Before determining some systematic causes of judicial retirements, it is helpful to know the conditions under which justices retire. Table 2 displays the descriptive conditions under which individual justices in both appointive and electoral systems left the bench. Justices in appointment systems (a category which includes gubernatorial appointments, legislative elections, and the Missouri Plan) apparently were more likely to retire under a condition in which their successor could be chosen by a like-minded political entity. This lends credence to Hypothesis H1 that appointed justices are likely to behave strategically in their retirement. However, justices in electoral systems (partisan elections, non-partisan elections, and hybrid elections), do not appear to retire strategically, as many more justices retire after a large electoral victory, not a close victory as anticipated. Furthermore, justices who faced a previous close election were more likely to depart the bench by losing the following election.

[Table 2 here]

Retirements in Appointive Systems

We now present the statistical model for appointive systems to examine whether or not these descriptive results are systematic in nature. The findings of the full hazard model for appointments are contained in Table 3. Our hypothesis (H1) that justices of the same ideology as

the appointing authority are more likely to retire than otherwise is supported by the analysis, as the Ideological Agreement variable obtains statistical significance and is correctly signed. This signifies that individual justices across all appointive systems are more likely to retire when there is a high likelihood that their replacement shares their policy preferences. Justices selected and retained by these various forms of appointment are likely to engage in strategic behavior when it comes to retirement.⁴

[Table 3 here]

A number of the control variables also proved influential. In particular, Age is a dominant variable in the model. As a justice's age increases, she is more likely to retire, an intuitive and obvious finding, as age is a critical factor for any individual's decision to cease working. Thus, it is clear that this variable needs to be included to ensure the model is not under-specified. Even so, when Age is included in the model, our key variable of interest, Ideological Agreement, remains significant, demonstrating its importance to this issue of retirement in appointive selection systems.

Two personal variables, Gender and Minority, significantly affect retirement in appointive systems, but in opposite directions. Women are more likely to stay in office longer until their retirement, while minority justices retire relatively more quickly from the bench. Finally, Salary is the one institutional control variable that is statistically significant in the model. As salary increases, individuals are more likely to leave the bench. This variable is possibly absorbing some variation that would otherwise be attributed to age, as salary generally increases over time with age. Simply put, there is no sound theoretical reason to assume that higher

⁴ The use of the Ideological Difference variable provided an insignificant finding. We believe this is because the Berry et al. (1998) scores measure the entire government's ideological standing, not a specific institution, be it governor or legislature, which this analysis calls for. Thus, we only include the Ideological Agreement Variable in the model while we drop the Ideological Difference variable, since the latter does not measure what we are seeking to operationalize, as the former sufficiently captures the variance in which we are interested.

salaries cause individuals to retire from the bench. Interestingly, term length and workload have no influence on retirements in appointive systems.

Retirements in Appointive Systems

In the MNL models for justices in states employing electoral selection methods, as illustrated in Table 4 we also find evidence of strategic behavior. For the retirement category, ideological distance from the electorate is a strong predictor of retirement, even when controlling for other factors. Indeed, an ideological distance increase by a factor of 1 unit increases an individual's likelihood of retiring over losing an election by 95%.

[Table 4 here]

As with MLE models generally, predicted probabilities aid in the substantive interpretation of the estimation, and MNL models are no exception. Accordingly, Figure 1 displays the predicted probability of retirement or losing an election across the range of ideological distance values. Though the probability of leaving by either method is close when the ideological distance is small, the probability of leaving by a retirement sharply increases, while the probability of leaving from an electoral defeat remains flat. These results support Hypothesis H2b.

[Figure 1 here]

Though close elections are not a statistically significant predictor for retirement, this variable does obtain significance in the model estimated for those who lose elections. Therefore, justices who have endured a previous close election are 369% more likely to lose their following election than retire. Figure 2 shows the probability of leaving the bench either by retirement or losing an election given a previous close election. While the probability remains consistent for retirements, the probability of losing an election sharply increases.

[Figure 2 here]

While no other variables obtain statistical significance in the electoral defeat category, three of the control variables are statistically significant in the retirement category. First, age once again is a significant factor in retirements from the bench. Moreover, as the total workload of the court increases, the likelihood of a justice departing the bench also increases, which differentiates the electoral from the appointive model. Finally, having district-based elections is negatively related to an individual retiring from the bench. It is likely that elections via districts engender a closer tie between the elected official and the constituency than in statewide elections, as apparently the justices feel they have a safe seat, reducing the likelihood of their voluntary retirement.

Discussion

The debate concerning the most appropriate method of selection for choosing state supreme court justices is increasing in volatility at many levels. Some states, including South Carolina (Boniti 2011), Nevada (German 2009), Tennessee (Locker 2009), Michigan (Gilber 2010) and Wisconsin (Raftery 2011), among others, are currently considering possible changes to their selection mechanisms. Advocates for moving away from electoral systems claim that systems that use an appointment mechanism, particularly the Missouri Plan which they term “merit selection,” will shield the justices from politics. For instance, the American Judicature Society (AJS) claims, “Not only does merit selection ensure that only the most qualified candidates become justices, but it also limits the influence of any one political party or public official. In doing so, it frees justices from overt political influence and promotes a fair and impartial judiciary” (AJS 2011).

Nevertheless, our findings confirm some of the claims made by Bonneau and Hall (2009). Consequently, we also call into question the assertions of judicial advocates. We find that justices in appointive systems, including the Missouri Plan, are more likely to retire when the body charged with selecting their replacement is ideologically compatible. Substantively, this means that justices consider their own ideological proclivities as well as those of potential successors as sufficiently important factors when deciding whether to retire. This is a keenly strategic, political action on the part of the retiring justice. And, it is not a decision that is free from overt political influence. The institutional nature of these appointment systems that are designed in theory to shield justices from political influences allows them to make strategic, political decisions surrounding retirement. In particular, retiring justices in appointive systems strategically seek to ensure that their ideological preferences remain on the bench long after they have chosen to leave it.

Justices in electoral systems also engage in strategic behavior when choosing to depart the bench. Not wishing to lose an election, strategic justices instead choose to retire from the bench on their own terms. Of the two variables we believe a justice would use as indicators of a possible electoral defeat (ideological distance from the electorate and previous close election), one obtained statistical significance, indicating that justices do consider their electoral chances when deciding when to retire.

The claim that judges are apolitical diviners of the law finds little support in empirical reality, and ours is another in this line of study that in many ways began with Pritchett (1948). Judges are political actors within political systems. Changing their method of selection and retention does not change this reality; instead, it merely changes the way by which political calculus will be channeled within the judicial system. Ultimately, we find that justices in state

courts of last resort, irrespective of the method of selection, are likely to be forward-looking, strategic actors when choosing to depart the bench. Leaving the bench at a specific time to ensure an ideological replacement, and retiring rather than risk electoral defeat, are strategic decisions made by equally political justices.

**Table 1. Methods of Selection in the States,
1980-2005**

States	Method of Selection	Number of Justices	Number of Retirements
Electoral Systems:			
Alabama	Partisan Election	31	15
Louisiana	Partisan Election	18	9
Texas	Partisan Election	43	22
West Virginia	Partisan Election	19	10
Kentucky	Non-partisan Election	20	7
Oregon	Non-partisan Election	24	15
Washington	Non-partisan Election	28	15
Wisconsin	Non-partisan Election	18	9
Michigan	Hybrid Election	20	10
Ohio	Hybrid Election	23	10
Appointive Systems:			
Iowa	Missouri Plan	20	12
Kansas	Missouri Plan	18	10
Oklahoma	Missouri Plan	18	9
Nebraska	Missouri Plan	19	10
Maine	Gubernatorial Appointment	22	11
New Jersey	Gubernatorial Appointment	19	12
South Carolina	Legislative Election	14	8
Virginia	Legislative Election	17	12
	Totals	401	206

Table 2. Departure Conditions⁵
Appointment Systems

Electoral Systems

	Retirements		Retirements	Electoral Loss
Different Parties	34	Large Win	89	11
Same Parties	50	Close Win	33	16
	84		122	27

Table 3. Cox Proportional Hazards Model for Appointment Systems

Variable	Estimate (s.e)
Term Length	- .019 (.027)
Gender	- .802 (.250)*
Minority	.508 (.210)*
Age	.007 (.002)*
Salary	8.24 (.3.78)*
Workload	-.000 (.001)
Ideological Agreement	.022 (.013)*

Log Likelihood = -293.501

LR Chi2 = 984.67

Prob>Chi1 = 0.00

⁵ Appointment systems include states that employ gubernatorial appointments, legislative selection, and the Missouri Plan, while electoral systems include states that utilize partisan elections, non-partisan elections, and hybrid elections (Michigan and Ohio). *See* Table 1 for details.

Table 4. Multinomial Logit Duration Model for Electoral Systems

Variable	Retirements	Electoral Defeats	Odds of R over E	Odds of E over R
Close Election	.337 (.265)	1.55 (.517)*		4.69
Ideological Dist.	.034 (.015)*	-.062 (.044)	1.05	
Age	.110 (.022)*	.019 (.037)	1.11	
Workload	.001 (.000)*	.001 (.000)	1.00	
Salary	-7.64 (4.67)	4.13 (8.99)		
Term Length	-.092 (.062)	-.077 (.136)		
District	-.777 (.343)*	-.341 (.916)	.460	
Gender	.088 (.459)	-.233 (.646)		
Minority	.037 (.538)	.751 (.550)		
Log(Duration)	.410 (.163)	.175 (.296)		
Constant	-9.55 (1.24)*	-6.45 (2.31)		

Log Likelihood = -440.816
 Chi2 = 116.35
 Prob>Chi2 = 0.00

Figure 1. Predicted Probability of Competing Risks by Ideological Distance

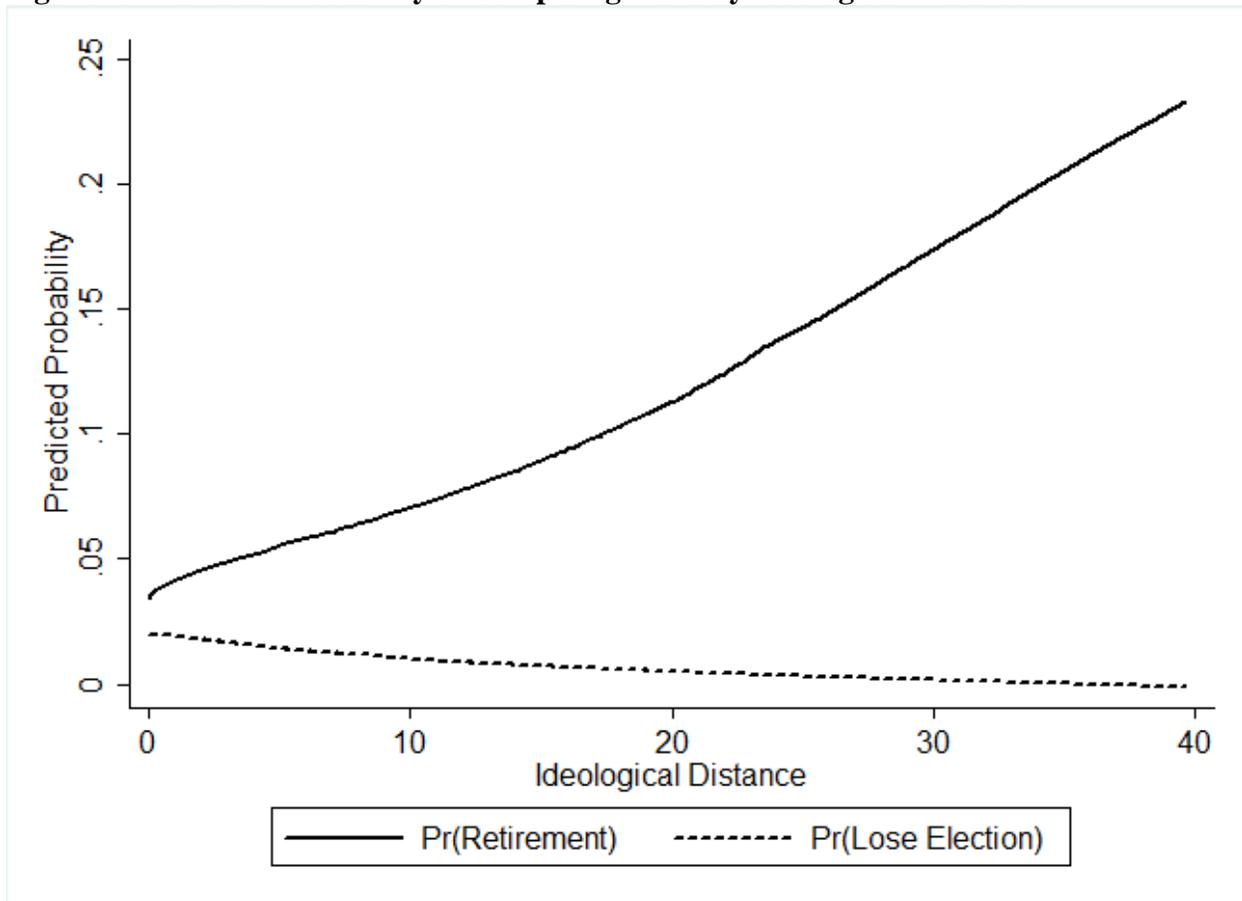
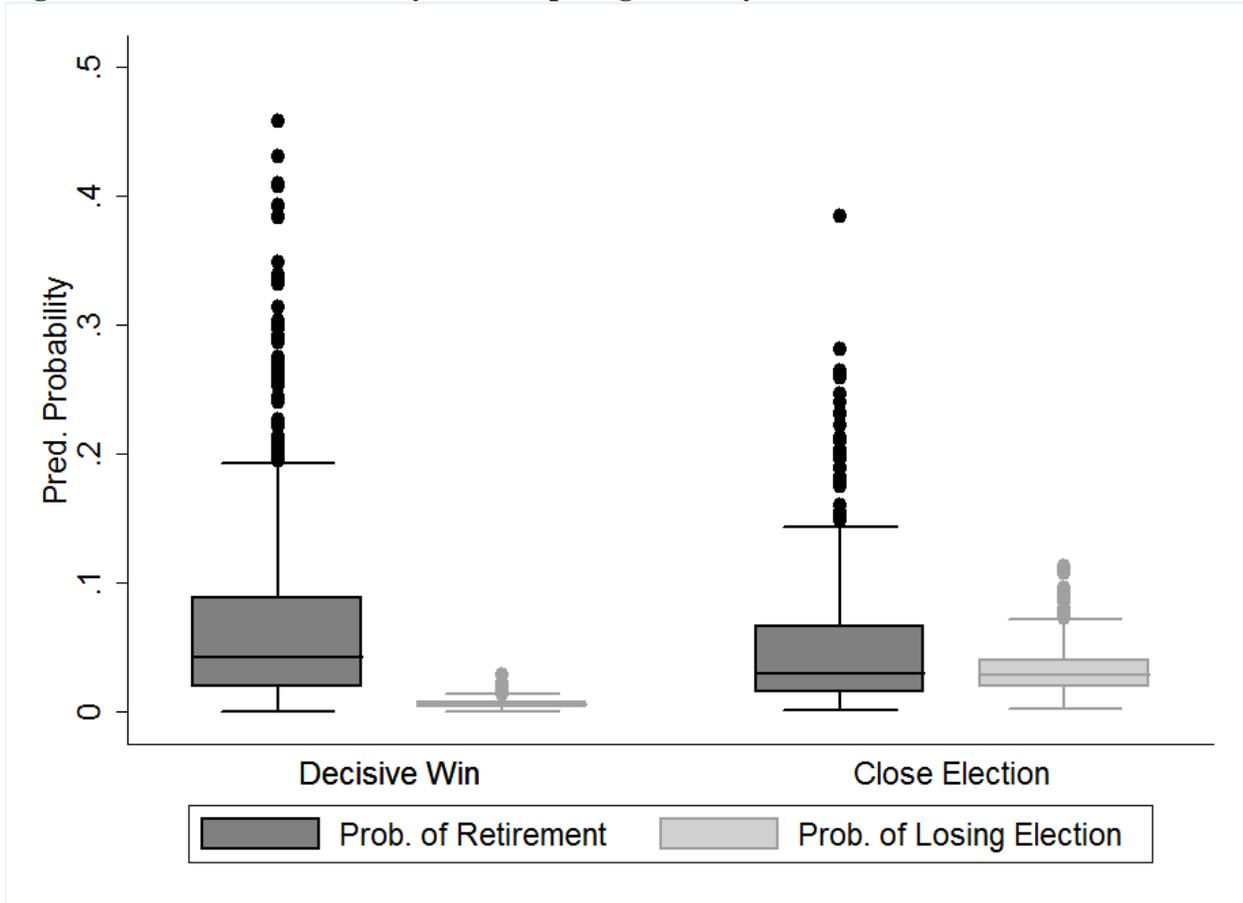


Figure 2. Predicted Probability for Competing Risks by Previous Election Return



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