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Politics, Careerism, and the Voluntary Departures of U.S. District Court Judges

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Abstract

Prior studies hypothesize that judges time their retirements to allow a like-minded president to select their replacements. We propose a modification to this argument and theorize that during the earlier part of a district court judge's career, it is the likelihood of elevation to an appeals court and other career-oriented concerns that affect whether the judge resigns or stays on the bench. It is during the latter stage of a judge's career when the desire to be replaced with a like-minded judge affects the retirement decision. Our analysis reveals that judges who are not yet pension eligible are influenced by being passed over for appeals court nominations as well as financial incentives to leave for private practice. Only judges who have attained pension eligibility appear to consider their ideological compatibility with the president when deciding to call it quits.

Keywords

judicial careers, federal judges, U.S. District Courts, strategic retirements, judicial behavior

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Ironically, one of the more important decisions that a federal judge can make is the decision to leave his or her appointed court. Barring the very rare cases of impeachment, federal judges have life tenure, and thus the length of their career is determined by the voluntary decision to vacate their seats (either by resigning, retiring, or assuming senior status) or, of course, involuntary death. These important legal and political actors have a great deal of control over whether they stay on their court and decide important cases for another year or perhaps decade. The decision to leave the bench is also significant because federal judicial retirements generate vacancies for the president to fill. These vacancies provide the president the opportunity to alter the composition of the judicial branch and thus influence its policy output.

For these reasons, numerous studies examine the retirement of Supreme Court justices (Brenner, 1999; Hagle, 1993; Zorn & Van Winkle, 2000) and appeals court judges (Barrow & Zuk, 1990; Nixon & Haskin, 2000; Spriggs & Wahlbeck, 1995; Vining, 2009). The principal hypothesis tested in this literature is that the decision to leave the bench is influenced by the likely nature of the replacement judge. According to these scholars, a judge is more likely to retire or resign when the president is apt to nominate a replacement with similar policy preferences to those held by the departing judge. The evidence on this question is somewhat inconsistent, with some studies finding evidence of strategic retirements (Spriggs & Wahlbeck, 1995), whereas others present mixed results (Barrow & Zuk, 1990; Nixon & Haskin, 2000; Vining, 2009) or find no support for this hypothesis (Vining, Zorn, & Smelcer, 2006; Yoon, 2006; Zorn & Van Winkle, 2000).

Although we find the claim that the likely nature of a replacement judge might affect whether a judge remains on a court or chooses to leave to be theoretically attractive, we propose that for district court judges such an effect is conditioned by the career stage of the judge. Failure to consider the conditional nature of this relationship may lead to the mixed results discussed above. Moreover, there is a second, largely unacknowledged strategic consideration for judges deciding whether to remain on their court. We argue that district court judges assess the likelihood that they will be elevated to a higher court (see Savchak et al., 2006) when deciding whether to stay on their current court. This strategic consideration is also conditioned by the stage of a judge's career. Specifically, during the earlier part of a judge's career, the likelihood of elevation competes with the financial lure of a private sector legal career in determining whether a judge resigns or stays on the bench. During the latter stage of a judge's career, the desire to be replaced with a like-minded judge affects the decision to retire (or assume senior status). Although there are various ways to define career stage, we rely on an important institutional feature of the federal courts—eligibility to retire at full salary.

After developing our argument about the conditional determinants of the length of judicial careers, we estimate a model of voluntary departures from the U.S. District Courts. The careers of these judges have rarely been studied by political scientists or legal scholars, even though these judges make up the bulk of the federal judiciary.[1] In a pair of studies that do examine district court departures, sentencing guidelines (Boylan, 2004a) and pension eligibility (Yoon, 2006) are found to influence voluntary departures. Our focus is a bit broader, as we seek to assess multiple strategic considerations that might shape judges' careers.

Using data on district court judges appointed between 1946 and 1995, we find evidence that the departures of early-career judges are influenced by career considerations, including the likelihood of elevation. The probability of being replaced by a like-minded judge also affects the decision to leave the bench, but only toward the end of a judge's career. Both our theoretical argument and empirical results thus indicate a more nuanced portrait of the careers of district court judges and lead to interesting implications regarding the generation of vacancies at this level of the federal court system.

The Decision to Leave the Bench

We assume that federal district court judges are concerned with both the legal outputs of the courts and their own careers. The first of these motivations suggests that judges want court decisions to be compatible with their ideological positions. Evidence indicates that this is a reasonable assumption (e.g., Rowland & Carp, 1996). The important implication of a district court judge's desire to see court decisions, and legal policy more generally, reflect her or his preferences is that the decision to retire, resign, or assume senior status should be influenced by the likely ideological nature of the judge who would then fill this vacancy on the district court. From this logic flows the traditional strategic retirement argument that a judge will prefer to retire when there is a president who shares the judge's policy preferences and thus will select a like-minded replacement.

Although models of judicial behavior typically emphasize the role of policy goals, perhaps in competition with legal constraints or motivations (see Baum, 1997), the decision to leave a court should also depend on career considerations. Even for early Supreme Court justices, career ambitions played a role in departure decisions (Vining et al., 2006). District court judges should be particularly sensitive to career concerns because of their position on the lowest rung of the federal judicial hierarchy. We contend that career-oriented considerations will lead district court judges to be concerned with the likelihood of being elevated to an appeals court seat, because appeals court judges

occupy a more consequential, prestigious, and slightly better paid position in the judicial hierarchy than district court judges. If a judge believes that there is a meaningful chance of elevation to an appeals court seat, then there is a greater incentive to remain in waiting as a district court judge. If elevation is perceived as highly improbable, then the lack of this additional incentive to remain a district court judge should lead to a greater likelihood of departure from the bench, all else equal.

We also include financial concerns in our conceptualization of general career motivations. Judges should be sensitive to the extent to which remaining on the bench represents a financial opportunity cost when compared with nonjudicial employment opportunities. We thus argue that district court judges leave or remain on their courts depending, in part, on a combination of the prospect of elevation to a higher court and the financial lure of an alternative legal career.

Do policy and career motivations matter equally throughout the career of a district court judge? We think not. Although policy motivations may remain relatively constant over a judge's tenure, we expect that career-oriented concerns should be most influential early in a judge's tenure and diminish in importance toward the end. The importance of career motivations will be conditioned by career stage because career motivations are by definition forward looking, and the later it is in a judge's career the less future career there is to consider. For example, the older and more senior a district court judge is, the less time there is left to be elevated to an appeals court. Moreover, presidents are much less likely to elevate older, more senior district court judges. Savchak et al. (2006) find that the probability of a district court judge being elevated decreases over time once a judge has reached 49 years of age. Likewise, the probability of elevation decreases with every year once a judge has served for 13 years on a district court (Savchak et al., 2006).

To simplify this discussion and, ultimately, our model of departures, we draw a bright line dividing a judge's career into two stages. This bright line is the attainment of pension eligibility, which depends on both the age and seniority of a federal judge. In 1869, Congress enacted a law allowing federal judges to retire at their full salaries if they had a minimum of 10 years of service as a federal judge and were 70 years old or older. Congress subsequently modified the requirements for retirement eligibility and federal judges now can retire or assume senior status if they are at least 65, have served for at least 10 years, and the total of their years on the federal bench plus their age equals 80 or more.[2]

Generally speaking, employees' retirement decisions are affected by pensions (see Samwick, 1998). The financial benefits of leaving the bench while

keeping a full salary should also make it much more attractive for a judge to depart once eligible for the pension and the importance of pension eligibility for the departures of appeals court judges has been clearly established (e.g., Vining, 2009; Yoon, 2005, 2006). More important, pension eligibility is an appealing classifier for career stage because it is a function of both seniority and age. For example, we contend that early-career judges care about the possibility of elevation to an appeals court, whereas late-career judges do not, because there is very little likelihood of a late-career judge being elevated. Using pension eligibility to classify career stage works well for this because only 4.3% of the district court judges elevated during our time frame (1946-1995) had reached pension eligibility.

In summary, we expect that district court judges will consider both policy and career goals when deciding whether to leave their courts. Policy motivations remain constant over a judge's tenure, but career considerations will only play a significant role before a judge reaches pension eligibility. Once pension eligibility has been attained, a judge will solely consider the future policy implications of retiring in a given year and thus allowing the president in office to select a replacement. Below, we propose several specific hypotheses flowing from this general argument. We start with a brief discussion of policy motivations and the decision to retire once pension eligible. We then develop hypotheses regarding the decision to resign from the bench before pension eligibility has been reached.

Policy Motivations and the Pension-Eligible Judge

As noted in the introduction, previous studies of judicial retirements focus on the extent to which a federal judge anticipates whether his or her retirement at time *t* will lead to an ideologically similar judge filling the vacancy he or she has created. Studies reveal that a president's policy preferences or ideology affect the types of district court judges he appoints, as manifested by the appointees' decisions once on the bench (e.g., Rowland, Carp, & Stidham, 1984). A judge is most likely to be replaced with an ideologically similar judge if the sitting judge is ideologically similar to the president in office. Thus, the traditional strategic retirement hypothesis is that a policy-motivated judge, regardless of the level of federal court, will be more likely to leave the bench when he or she is ideologically similar to the president (e.g., Barrow & Zuk, 1990; Spriggs & Wahlbeck, 1995; Zorn & Van Winkle, 2000). We modify this hypothesis by contending that the effect of ideological compatibility between the president and the judge will be conditioned by whether the judge has reached pension eligibility. It will be pension-eligible judges, who are

toward the end of their legal/judicial careers, who will be particularly concerned with the ideological nature of the president.[3] As we discuss below, we do not have a clear prediction regarding the effect of ideological compatibility when a judge is not yet pension eligible and is still motivated in part by career concerns.

Hypothesis 1: Pension-eligible judges will be more likely to leave the court if they are ideologically compatible with the president in office.

Mixed Motivations, Policy Preferences, and the Pre-Pension Judge

We assume that all judges are motivated by the desire to see judicial decisions reflect their policy preferences. However, judges are not single-minded seekers of policy, as they are also motivated by the same sort of personal concerns that influence the behavior of those in other labor markets (e.g., see Posner, 1993). We thus assume that early- to midcareer judges are also motivated by career considerations. As noted by Savchak et al. (2006), nearly half of the judges serving on the federal appeals courts in the latter half of the 20th century had been elevated to that position from the district courts.[4] Presidents often turn to the pool of sitting district court judges when selecting a nominee to fill an appeals court vacancy, and thus one of the benefits of being a district court judge is the possibility of elevation to an appeals court. Because presidents want to appoint appeals court judges who will stay on the bench for many years to come, district court judges who are relatively early in their career (i.e., who have not earned pension eligibility) are the primary targets for elevation. As discussed above, these are judges who will consider career considerations, such as the likelihood of elevation, when deciding whether to remain a district court judge.[5]

If the possibility of being selected to a higher court varies across pre–pension eligible judges and over time for a given judge, then it follows that the decision to stay on the court or leave will be affected by a rough estimate of the probability of elevation. When conditions appear ripe for elevation, a pre–pension eligible judge will be more likely to stay on the court. When the likelihood of elevation appears to be low, then leaving the bench yields fewer judicial career opportunity costs, and departure is more likely. One of the predictors of whether a district court judge gets elevated to an appeals court seat in a given year is the ideological compatibility of the judge and the president in office (Savchak et al., 2006). If the judge and the president are ideologically compatible, then elevation is more likely and foreclosing this possibility by resigning from the bench more costly, in career terms.

In sum, for the district court judge who is not yet pension eligible, an ideologically favorable president increases both the likelihood of a desirable replacement (which on its own should *increase* the probability of resignation) and the likelihood of elevation (which on its own should *decrease* the probability of resignation). The two motivations that we assume drive the decision to leave the court thus lead to conflicting predictions regarding the effect of president–judge compatibility on the likelihood of a pre-pension judge choosing to leave the court. For this reason, although we hypothesize that president–judge compatibility will increase the probability of a pension-eligible judge retiring, we have no equivalent hypothesis for pre-pension judges. The desire for a favorable replacement may be more important than the desire to be elevated, in which case president–judge compatibility will have a positive effect on the likelihood of resigning. Or, the possibility of elevation may trump concerns about replacement, leading president–judge compatibility to have a negative effect. The third possibility is that these two effects perfectly cancel each other out, meaning that president–judge compatibility has no effect for the pre-pension judge. The results of our model estimation should help illuminate the relative importance of these two countervailing influences.

Career Motivations and the Pre-Pension Judge

For early-career judges, who we assume are concerned with their career prospects of being appointed to an appeals court, there is a pair of readily observable indicators of the likelihood of elevation about which we can make clear predictions. For a judge to be elevated to an appeals court there must be a vacancy on that court. The more vacancies there are, the greater the likelihood that the judge will be elevated to this court, all else equal. It is fairly easy for a district court judge to observe the existence of these vacancies and thus reasonable to expect district court judges to consider the number of vacancies on the relevant appeals court when assessing the likelihood of elevation and thus the benefit of staying on the district court. More vacancies mean greater potential career benefits to remaining a district court judge.

Hypothesis 2: The more vacancies there are on the relevant appeals court, the less likely a pre–pension eligible judge is to leave the bench.

A second indicator of the likelihood of elevation that a district court judge can easily observe is the number of vacancies on the relevant appeals court that have arisen during the judge's tenure and have subsequently been filled by someone else. As a judge sees presidents passing her or him over time

after time, it must become fairly clear that the prospects for elevation are dimming. Savchak et al.'s (2006) analysis of the elevation of district court judges supports this claim, as they find that the probability of a judge being elevated decreases with each relevant vacancy for which the judge in question is passed over. Accordingly, the career-oriented incentive to remain a district court judge will diminish as appeals court vacancies are filled by others, and thus prospects of elevation decrease. Put somewhat differently, missed elevation opportunities provide information to a judge about the future of his or her judicial career, and this information ought to shape his or her decision to remain a judge.

Hypothesis 3: As the number of relevant vacancies filled by other people increases, a pre–pension eligible judge will become more likely to leave the bench.

In addition to caring about the prospects of becoming an appeals court judge, district court judges, like all other workers, will be concerned about the financial implications of staying with their job. One of the main reasons that district court judges terminate their service is to pursue a lucrative job in the private sector (Van Tassel, 1993). Some judges previously worked for years in private legal practice, whereas others worked in public service or governmental positions. Presumably, the former earned more money than the latter. Judges who, comparatively speaking, earned less money prior to their judgeship may see a greater incentive to leave the bench in order to pursue a career in private practice.

Hypothesis 4: The more years working in private practice before the start of the judgeship, the less likely a pre–pension eligible judge is to leave the bench.

Finally, workers are generally sensitive to their salaries. In the legal realm, for example, it has been shown that salary affects turnover rates among U.S. attorneys (Boylan, 2004b). The financial rewards of working as a district court judge changes over time as a function of legislatively mandated increases in nominal salary and inflation-caused decreases in real, adjusted salary. Assuming that part of the career concerns of early-career judges involves sensitivity to their earnings, then the desirability of remaining a judge should be influenced by the salary associated with the position.

Hypothesis 5: The salary paid to district court judges will exert a negative effect on the probability of a pre-pension judge leaving the bench.

Data and Methods

We analyze the careers of 1,303 U.S. District Court judges who were appointed between 1946 and 1995.[6] Our data are structured so that the unit of analysis is the judge-year, meaning that for each judge there is an observation for each year that they served on a district court. There are a total of 15,406 judge-years in our data set.[7] The observed dependent variable in our analysis is whether a judge chooses to leave his or her court in the year under analysis (we include resignations, retirements, and moves to senior status as being voluntary departures).[8] Virtually all judges now assume senior status instead of formally retiring (see Yoon, 2005). For our purposes, the assumption of senior status is equivalent to formally retiring because either action creates a vacancy and effectively eliminates the possibility of being elevated to an appeals court seat. Put differently, our dependent variable is the timing of a judge's decision to leave his or her seat on a district court.[9]

Given the nature of our data, we employ a form of survival analysis (see Box-Steffensmeier & Jones, 2004) to assess the effect of our independent variables on the probability of a judge retiring or resigning in a given year. Of course, not all district court judges leave the bench voluntarily. Some district court careers come to an end because of death, whereas others end because the judge is elevated to an appeals court position. The careers of three judges in our data end as a result of impeachment and removal. Thus, there is more than one possible event that can end someone's career as a district court judge. In survival analysis terms, a judge's career is subject to *competing risks* (Box-Steffensmeier & Jones, 2004).

The typical way to treat competing risks data is to estimate a model in which the outcome of interest is the dependent variable, and all other outcomes are only used to determine where the data should be censored. Often researchers are interested in all the different outcomes or forms of risk and therefore estimate separate models for each (e.g., Zorn & Van Winkle, 2000). In this project, we are only interested in voluntary departures so we simply estimate a single model and treat all other outcomes (e.g., elevations and deaths) as censoring points.[10] This means, for example, that for a judge who is appointed in 1970 and then actively serves until death in 1990 there are 20 observations—one for each year the judge served. For each of these observations, the dependent variable equals zero. If the judge had instead retired in 1990, the dependent variable would equal one for the 20th observation and zero for the previous 19.

The typical approach to competing risks assumes that the risks are independent of one another, once the effects of the included independent variables have been accounted for. This could be problematic in our situation

(and in all individual-level studies of judicial retirements). We expect the probability of elevation to affect the probability of retirement. We include in our model independent variables intended to capture the likelihood of a judge being elevated, and this should account for much of the interdependence between retirement and elevation. Appendix A provides an additional discussion of the competing risks feature of our data and discusses robustness checks. The results indicate that our analysis does not suffer from dependent competing risks.

As discussed in the previous section, we contend that a judge's decision calculus regarding the possibility of leaving the bench will vary based on whether the judge has become pension eligible. We therefore estimate a regime-switching survival model in which a judge in year *y* is in one of two regimes: pre-pension or post-pension. A judge is in the former regime until he or she meets the eligibility requirements. He or she is then in the latter regime.[11] Note that the term *regime* is used here in an econometric sense to denote the status of an observation (specifically, whether a judge has reached pension eligibility in year *y*) and is not used in a political sense to denote a ruling regime of some sort.

Most of the independent variables included in the model are then conditioned by whether the judge-year under analysis is in the pre-pension or post-pension regime. This means, for example, that *president–judge compatibility* is included twice in the model, once for all judge-years in which the judge is not yet pension eligible and once for all judge-years in which the judge is pension eligible.[12] The estimate for the former variable reveals the effect of *president–judge compatibility* when a judge is not pension eligible, whereas the estimate for the latter reveals the effect of *president–judge compatibility* when a judge is pension eligible. To allow the baseline probability of leaving the bench to vary based on the regime, two constant terms are estimated—one for each regime.[13]

Of the various survival models that have been developed, we choose a discrete time approach and use the logit model to estimate the effect of our independent variables on the probability of a judge voluntarily leaving the bench in a given year.[14] With any discrete time survival model, one key consideration is capturing and controlling for duration dependence, which in our case is the effect of *seniority* (i.e., the number of years a judge has served through year *y*) on the probability of a judge leaving the bench in year *y*. Beck, Katz, and Tucker (1998) suggest including flexible spline functions of duration in a discrete time model. After experimenting with many possible forms of duration dependence, including various spline specifications, we settle on simply including *seniority* (the number of years the judge has served

on his or her district court) and *seniority*^{2} for the pre-pension regime and just *seniority* for the post-pension regime.[15] The quadratic specification for duration is very similar to that advocated by Beck et al., except that it is potentially less flexible (though still quite flexible). The advantage to using the quadratic formulation (and ultimately a linear specification in the post-pension regime) is that it is much more parsimonious and easily interpreted than the spline approach. On a final methods-related note, we estimate robust standard errors that allow for clustering on the judges.

Independent Variables

We measure the congruence of the judge's policy preferences with those of the president (*president–judge compatibility*) as the percentage of liberal decisions made by the judge if a Democratic president is in office in the year under analysis and the proportion of conservative decisions if a Republican president is in office in year y.[16] We expect the effect of this variable to be positive for judges in the post-pension eligible regime, meaning that judges toward the end of their careers are more likely to retire when their expressed preferences are compatible with those of the president. We have no equivalent expectation regarding the estimate of *president–judge compatibility* for judges in the pre-pension regime, given the conflicting effects we argue this variable might have for judges at this career stage. Nonetheless, this variable will still be included for judges in this regime.[17]

To test our hypothesis regarding the effect of relevant appeals court vacancies, we summed the number of vacancies in year y on the relevant appeals court for the given judge (i.e., the appeals court for the judge's district). To account for the substantial variation in the size of the circuits, we then divide the number of vacancies by the number of district court judges in the circuit. We expect *appeals court vacancies* to have a negative effect on the probability of resignation in the pre-pension regime. We do not expect this variable to have any effect on a judge's decision to leave the bench during the post-pension regime.

Missed elevation opportunities is simply measured as the number of vacancies within the judge's circuit that have opened and been filled by someone else between the judge's first year on the bench and year y. This variable should have a positive coefficient in the pre-pension regime. We do not anticipate that it will have any effect in the post-pension regime.

We have no way of directly measuring a judge's prior earnings, but it is fairly straightforward to measure *prior work in private practice* as the number of years the judge worked in private practice before becoming a district

court judge.[18] We expect this variable to have a negative effect on the probability of voluntary departure during the pre-pension regime. We do not expect this variable to have an effect during the latter regime. *Judicial salary* is measured in the 10,000s of inflation-adjusted dollars. We expect salary to have a negative effect for pre-pension judges and no effect for pension-eligible judges.

In our model, we also control for age effects by including a variable noting the age at which the judge was appointed to the district court (*age at appointment*).[19] We do not include a simple measure of the age of the judge because age is quite collinear with both seniority and intracareer regime.[20] Prior work suggests that any model of judicial retirement needs to control for changes in district court caseload, because workload might affect the desirability of remaining a judge (e.g., Spriggs & Wahlbeck, 1995). We measure *caseload* as the number of pending district court cases per district court judgeship in the judge's state. Both *age at appointment* and *caseload* are included as regime-invariant controls, meaning that they are constrained to have the same coefficients in both regimes. Supplementary analyses reveal that this is an appropriate constraint.

Results

Of the 1,303 district court judges in our data set, 753 had left the bench in some manner by the end of 1995. Of these 753 departures, 45 were resignations from the bench before pension eligibility, and 443 were retirements with a pension or assumptions of senior status.[21] The average length of time until voluntary departure is 15.7 years, and the minimum and maximum lengths of tenure on a district court are 2 years and 34 years, respectively.[22] Table 1 provides descriptive statistics for our independent variables and a summary of our expectations regarding the effect of these variables on the probability of a judge choosing to leave the bench.

The results of our discrete time, regime-switching logit model are presented in Table 2. A Wald test shows that the model as a whole is statistically significant and proves a better fit to the data than a constant-only model. More importantly, our model also yields parameter estimates that indicate the effect of independent variables on the likelihood of a judge choosing to leave the bench. Positive coefficients indicate that as the independent variable increases, the judge in year y is more likely to choose to leave the court. Negative estimates signify decreases in the probability of departure. The first column of estimates indicates the effects of the independent variables when a judge has not yet reached pension eligibility. The second column contains

Table 1. Summary of Hypotheses and Descriptive Statistics

Independent Variable	Hypothesized Effect: Pre-Pension	Hypothesized Effect: Post-Pension	Mean	Standard Deviation	Range
President–judge compatibility	?	+	51.1	22.5	0-100
Appeals court vacancies	–	0	0.036	0.038	0-0.250
Missed elevation opportunities	+	0	5.84	6.24	0-42
Prior work in private practice	–	0	17.5	9.33	0-45
Judicial salary	–	0	14.4	1.62	9.6-18.8
Seniority	Control	Control	7.96	5.38	1-34
Age at appointment	Control	Control	50.0	6.38	33-66
Caseload	Control	Control	3.83	1.56	0.470-22.6

Note. N = 15,406. The hypothesized effect columns indicate the expected effect of the independent variables before and after pension eligibility, with "+" indicating a positive relationship between the variable and the probability of a judge leaving the court, "–" indicating a negative relationship, "0" indicating no relationship, "?" indicating an unknown relationship, and "control" indicating that the variable is simply a control in our model.

the effects of the independent variables once a judge is pension eligible. *Age at appointment* and *caseload* are constrained to have the same effect under both regimes.

The coefficient estimate for *president–judge compatibility* in the post-pension regime is positive and statistically significant, as we expected. This result reveals that a pension-eligible judge is more likely to retire or assume senior status when the president in office is compatible with the judge's policy preferences, as reflected by his or her decision record. Liberal judges are more likely to retire if there is a Democratic president, whereas conservative judges are more likely to retire under a Republican president. This result comports, thus far, with the traditional strategic retirement hypothesis forwarded by previous studies, as this subset of judges (those who are pension eligible in year y) appear to consider the likelihood of the president selecting a like-minded replacement for the judge.

The estimate for *president–judge compatibility* in the pre-pension regime is negative but not statistically significant. We therefore cannot reject the null

Table 2. Regime-Switching Logit Model of the Probability of a District Court Judge Choosing to Leave the Bench in a Given Year

Independent Variable	Pre-Pension Regime	Post-Pension Regime
Regime-varying effects		
President–judge compatibility	–0.004 (0.006)	0.011* (.004)
Appeals court vacancies	–1.94 (4.74)	–5.53 (1.85)
Missed elevation opportunities	0.066* (0.035)	–0.001 (0.011)
Prior work in private practice	–0.064* (0.019)	–0.010 (0.007)
Judicial salary	–0.208* (0.089)	0.026 (0.042)
Seniority	0.356† (0.120)	–0.170† (0.023)
Seniority^2	–0.023† (0.007)	—
Regime-specific constant	0.782 (1.47)	6.31† (1.34)
Regime-invariant controls		
Age at appointment	–0.091† (0.015)	
Caseload	0.103† (0.040)	
Number of judges	1,303	
Total time at risk (years)	15,406	
Wald test (χ^2, 17 degrees of freedom)	1,454*	

Note. Entries are coefficient estimates (and robust standard errors, clustered on judges). *$p \leq .05$ (one-tailed test, for directional hypotheses). †$p \leq .05$ (two-tailed test, for control variables and constants).

hypothesis that for a judge who has not reached pension eligibility the degree to which the president shares the judge's ideological position does not influence the decision to resign. In short, the evidence suggests that the traditional strategic retirement hypothesis is only partly accurate—only judges who are at the latter stage of their career retire based on the nature of the likely replacement judge. This result suggests that for pre-pension judges the desire to be replaced by a like-minded judge is offset by the desire to remain a district court judge with the hope to be "promoted" to an appeals court.[23]

Figure 1 presents the predicted probabilities of a judge leaving a court while *president–judge compatibility* varies from its minimum value to its maximum. Two sets of probabilities are plotted: one for pre-pension judges (scaled on the left *y*-axis) and one for judges who are eligible for their pensions (scaled on the right *y*-axis). All other independent variables are held constant at their means. This figure further reveals the positive effect that *president–judge compatibility* has on a pension-eligible judge's decision to retire or assume senior status. In contrast, this variable has, if anything, a negative effect on the likelihood of pre-pension judge leaving the bench.

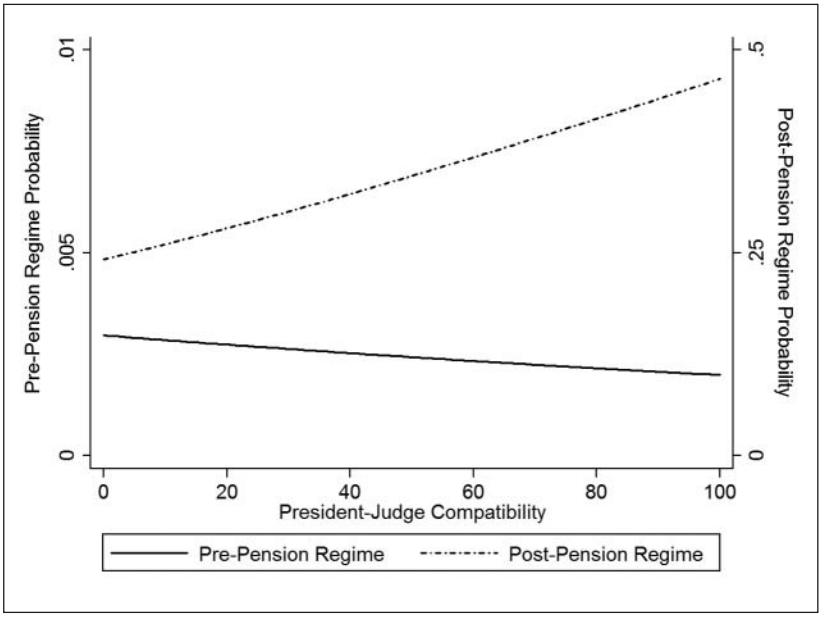

Figure 1. Effect of president–judge compatibility on probability of the judge leaving a district court in year *y*

Note. The solid line plots the probability of voluntary departure for a judge who is not yet eligible for a pension (or senior status) leaving a district court. The dashed line plots the analogous probability for a judge who is eligible to retire with a pension. *President–judge compatibility* ranges from its minimum value (perfect incompatibility) to its maximum (perfect compatibility). Other independent variables are held at their means.

The estimate for *appeals court vacancies* is negative, as we hypothesize, for the pre-pension regime. However, this estimate is not statistically significant, and thus we cannot reject the null. As revealed by the positive and significant estimate for *missed elevation opportunities*, the more appeals court vacancies that open and are then filled by other appointees the more likely it is a pre-pension judge will choose to leave the district court. Each time a pre-pension judge is passed over in this manner, his or her assessment of the likelihood of being elevated in the future drops, making the prospect of staying on the bench less attractive.[24] Once a judge has reached pension eligibility, it is highly unlikely that he or she will be elevated to an appeals court anyway, and thus *missed elevation opportunities* no longer signal a reduced value to remaining a district court judge. The statistically insignificant estimate for this variable for post-pension judges supports this claim.

Financial incentives to leave the bench also affect the tenure of a district court judge. *Prior work in private practice*, which we assume led to significant prior earnings, decreases the probability of a pre-pension judge resigning. Judges who did not work much in private practice before their appointment are more likely to leave before they reach the point of being eligible to retire with full salary. Presumably, these judges are leaving to increase their salaries in the private sector. Once a judge reaches pension eligibility, however, *prior work in private practice* plays no role in determining how much longer they stay on the bench. *Judicial salary* exhibits the same pattern of effects. Pre-pension judges are sensitive to how much money they are making and are more likely to resign if salaries lag, whereas post-pension judges are not. In summary, it appears that pre-pension judges are sensitive to career considerations, broadly defined, whereas their post-pension counterparts care about the nature of the judges who might replace them when they retire.

To illustrate the results for missed elevation opportunities, prior earnings, and judicial salaries, Figure 2 presents predicted probabilities of a pre-pension judge resigning while these three variables are each varied from their minimum to maximum observed values. For each of these plots, all other independent variables are held at their means.

The results for our control variables are also worth a brief discussion. For judges who are not yet pension eligible, the results for the quadratic specification of *seniority* reveal that *seniority* exerts a nonlinear effect on the probability of resigning. Initially, *seniority* increases the likelihood of resignation, but after several years, this effect reverses and *seniority* then begins to decrease the likelihood of resignation.[25] For judges who are pension eligible, *seniority* interestingly has a negative effect on the probability of retirement. This could simply be the result of duration dependence—long-serving judges tend to continue serving.

Age at appointment exerts a negative effect on the likelihood of choosing to leave the court. Older appointees are less prone to retire or resign in a given year. One possible explanation for this result is that nonjudicial career options begin to dry up as a judge gets older. Whereas a younger judge may be able to retire from the bench and then make a lucrative transition to working for a law firm, an older judge may have fewer alternative employment options. If this is the case, then the opportunity costs (in terms of potential nonjudicial jobs) of remaining a federal judge decrease with the judge's age.

Finally, it also appears that the caseload confronting federal district court judges influences the decision to leave the bench. This result is true for judges regardless of whether they have yet reached pension eligibility. As *caseload* increases, the likelihood of a judge leaving the bench increases. Presumably, greater caseloads decrease the enjoyment of being judge, require the judge to

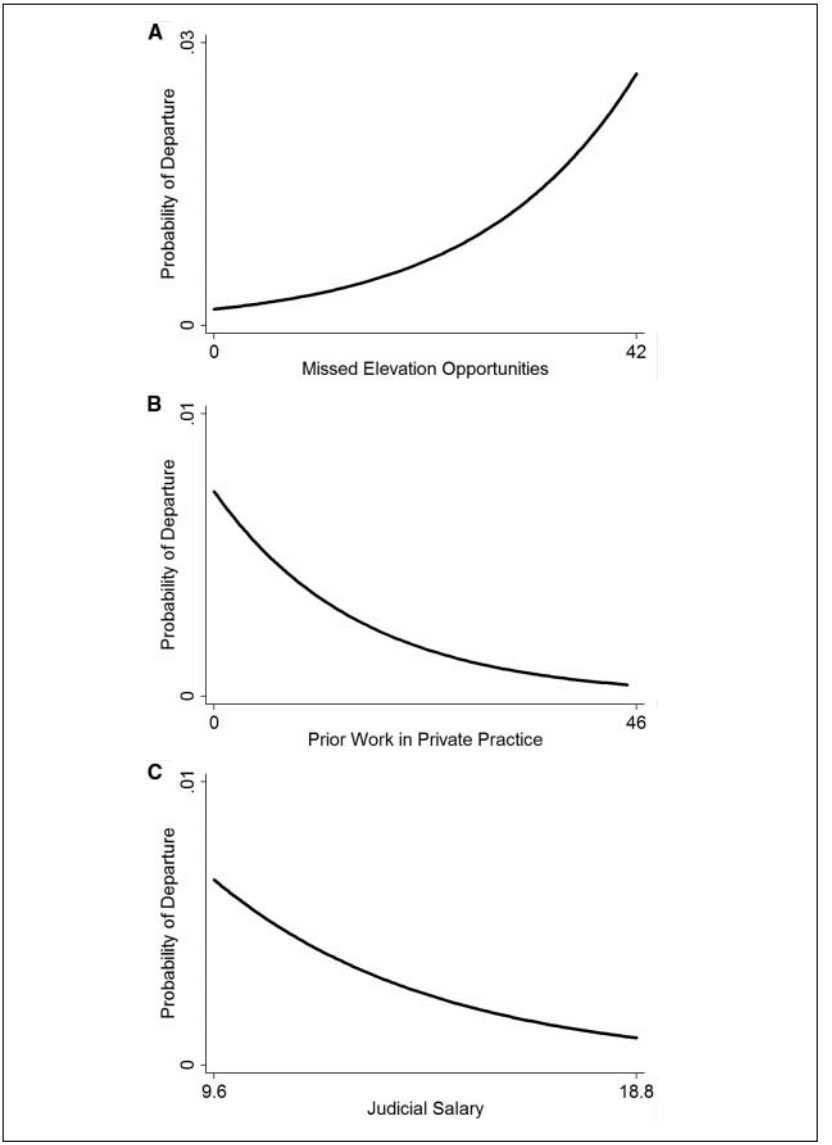

Figure 2. Predicted probabilities of a judge leaving a district court in year *y*, pre-pension regime: (A) effect of missed elevation opportunities; (B) effect of prior work in private practice; (C) effect of judicial salary

Note. The probabilities in all three figures are for judges who have not yet reached pension eligibility. The independent variable in question ranges from its minimum to maximum observed values, whereas other independent variables are held constant at their means.

work harder for the same salary, and make the option of leaving the bench more attractive. These results imply that the recent, dramatic increases in caseload have significant implications for the rate at which judges are leaving the bench. Similar results have been found with studies examining the careers of Supreme Court justices (Vining et al., 2006) and appeals court judges (Spriggs & Wahlbeck, 1995).

Conclusion and Implications

Our study contributes to the study of judicial careers and the creation of judicial vacancies by accounting for potentially competing strategic considerations that may affect a judge's decision to leave the bench. We have argued that prior to pension eligibility, judges are likely to be influenced by both the possibility of being considered for an appeals court seat and financial considerations. Once eligible to retire at full salary, judges will place more weight on the type of judge who would likely replace them if they retired. The empirical analysis we present, which is to our knowledge only the second individual-level analysis focusing specifically on the careers of federal district court judges (see Boylan, 2004a), lends support to almost all of the specific hypotheses drawn from this general argument. As we expected, judges who are not yet at the retirement stage of their career are influenced by the number of times they have failed to be selected to fill an appeals court vacancy and financial incentives to leave for private practice.

We also find support for our hypothesis that judges who have attained pension eligibility will be more likely to retire when they are ideologically compatible with the president in office. Past scholarship conveys mixed evidence regarding the role that political factors play in departures from the federal courts (e.g., Hagle, 1993; Spriggs & Wahlbeck, 1995; Squire, 1988; Zorn & Van Winkle, 2000). Our study reveals that judges appear to behave strategically and leave their court when the president is likely to select an ideologically similar judge to replace them. But this effect is conditional on the career stage of the judge. Pension-eligible judges exhibit this form of strategic behavior, whereas their more junior counterparts do not. If anything, this latter type of judge may actually be more likely to remain on the bench when ideologically compatible with the president because of the greater likelihood of being selected to fill an appeals court vacancy. In short, we present a more nuanced view of the contours of judicial careers, one that perhaps fits theoretical work suggesting that all judicial behavior is not driven strictly by policy preferences (e.g., Baum, 1997, 2006; Posner, 1993; Stras, 2006). Policy preferences influence retirements, but do so conditionally and not at the exclusion of career-oriented concerns.

One implication of our result regarding the conditional nature of the effect of president–judge compatibility on the likelihood of departure is that the resignations of judges not yet eligible for a pension provide the president the best opportunity to shift the ideological nature of the district courts. This set of judges is more likely to be ideologically heterogeneous than the judges retiring after attaining eligibility who are likely to be ideologically similar to the president and thus do not provide opportunities to significantly alter the ideological composition of the courts.

We conclude by noting that although the opportunity for elevation to a higher court is no doubt most applicable to studies of district court careers, our argument may also extend to the careers of appeals court judges. Epstein, Knight, and Martin (2003) document the rise of a norm indicating that Supreme Court appointees ought to have judicial experience, and this experience is typically earned on a U.S. Court of Appeals. Thus appeals court judges, particularly those on the D.C. Court of Appeals, may also consider the prospects for moving up the judicial hierarchy before deciding to call it quits.

Appendix A

Assessing the Independence of Competing Risks

Competing risks are typically dealt with in the following manner. The researcher estimates a series of survival models—one for each type of event that can cause subjects to exit the data. In each model, subjects who experience events other than the one being explained are treated as being censored at the time point in which they experience the competing event (see Box-Steffensmeier & Jones, 2004). This approach has been used to model the careers of Supreme Court justices (Zorn & Van Winkle, 2000), English judges (Salzberger & Fenn, 1999), and lawyers (Kay, 1997). It is this conventional approach that we employ. The only difference between what we do and that of the above-cited work is that we only present the model for one of the risks—the risk of retirement/resignation. We are not concerned here with explaining elevation (see Savchak et al., 2006) or death.

The central issue with this typical approach to competing risks is that it assumes that the risks associated with the different events are conditionally independent. In our case, this means that we assume that the risk of retirement is independent of the risk of death and/or the risk of elevation, once the included independent variables are accounted for. If this independence assumption holds, then you can simply estimate a separate model for each

(continued)

Appendix A (continued)

risk and treat occurrences of the other events as censoring points (Gordon, 2002). If the competing risks are not conditionally independent, however, then a more complicated model is called for (Eisenberg & Farber, 1997; Gordon, 2002).[26]

The key question then becomes, are the risks we model conditionally independent? We tackle this question in two ways. First, we perform two robustness checks. For one of these checks, we estimate our model while completely excluding all the judges who were ultimately elevated. These should be the judges with particularly high risks of elevation. If the exclusion of these judges leads to different results, then that would imply that these competing risks are not independent. In fact, this model estimation yields inferences that are the same as those associated with the model presented in Table 2.[27] Our second robustness check involves estimating our model while completely excluding judges who ultimately die on the bench. The results again remain remarkably stable, and the inferences remain the same as when the judges who ultimately die are left in the data. These robustness checks indicate that any existing dependence has no substantive effect on our inferences.[28]

To further test the assumption of conditional independence, we estimate individual models of all three of the major risks in our data (retirement/resignation, death, and elevation) and then calculate the correlation of the residuals across these three models. The correlation coefficients are miniscule and are not statistically distinguishable from zero.[29] This result again points to the conclusion that these competing risks are conditionally independent.

Appendix B

Has the Retirement Calculus Changed Over Time?

Theoretically, we do not expect the retirement behavior of judges to fundamentally change over our time span or beyond. Our goal is to provide a general model that is broadly applicable across the modern era. However, several studies suggest that there have been important changes to the process and politics of federal judicial appointments during our time span (Hartley & Holmes, 1997; Martinek, Kemper, & Van Winkle, 2002; Scherer, 2005; see also Savchak et al., 2006), and this raises the possibility that the determinants of retirements have likewise changed (see Vining, 2009; Ward, 2003). Below, we consider three possible temporal problems with our data and model.

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Appendix B (continued)

Have changes to the nature of judicial appointments caused changes to retirements? We test a potential structural break in our model suggested by Goldman (1997) and Scherer (2005)—the start of the Reagan administration in 1981. To assess whether our results differ before and after 1981, we generated a dummy variable equaling one if the observation occurred in or after 1981 and then interacted this dummy variable with all of our independent variables. We then estimated our model with both the original independent variables and the new interaction terms (this is a type of Chow test). The estimates for the interaction terms reveal whether the effects of the independent variables change from 1981 on. A Wald test reveals that we cannot reject the null hypothesis that all of the interaction terms have coefficients of zero ($p > .05$). Individually, none of the estimates for the 17 interaction terms are statistically significant. This strongly suggests that our results hold constant over the entire time period we analyze.

Do sentencing reforms make judges more likely to retire? Boylan (2004a) argues that district court judges were quicker to assume senior status after the sentencing guidelines created by Congress in the 1980s were declared constitutional by the Supreme Court in 1989. To see whether the imposition of these guidelines is an important omitted variable in our model, we followed Boylan's approach and generated a dummy variable equaling one for observations occurring from 1989 forward. When we include this dummy variable in our model, we find no evidence that judges are more likely to retire in a given year once the sentencing reforms were approved by the Court. The estimates for the relevant dummy variable are statistically insignificant for both the pre and post-pension regimes.

Does our model suffer from informative censoring? Because of data limitations involving our measure of president–judge compatibility, the time frame of our analysis ends in 1995. Although survival analysis is designed to handle right censoring, it is impossible for us to say with certainty whether the judges whose careers are right censored in 1995 would ultimately behave the same way as the judges whose careers are not censored. We can, however, conduct diagnostic tests to assess whether the right censoring is "informative," meaning that the censored judges are somehow different in their retirement behavior from those who are not censored (see Allison, 1995). First, we reestimated our model while excluding all of the judges who are ultimately right censored because they are still on the bench by the end of 1995. The inferences drawn from this auxiliary estimation are very similar to those obtained when the censored judges are included. The only difference is that when right-censored

(continued)

Appendix B (continued)

judges are excluded, the estimate for *judicial salary* in the post-pension regime is statistically significant (and, surprisingly, positive). All other inferences remain the same.

Second, we reestimated our model while including dummy variables indicating the decade in which the judge was appointed (a type of sensitivity analysis for informative censoring suggested by Allison, 1995). The inferences we draw from the results reported in Table 2 remain exactly the same when we include these dummy variables, which further suggests that censoring is not a problem for our model. To provide an additional test of the possibility of cohort effects, we also conducted a Chow test in which we interacted all of the independent variables in our model with a dummy variable noting whether the judge was appointed in 1981 or later and then estimated our model with the original variables as well as these interactions. This analysis reveals that the constant for the post-pension regime and the coefficient for *judicial salary* in the post-pension regime are different for judges in the later cohort than for judges in the earlier cohort. The other 15 coefficient estimates are effectively the same for both cohorts. Taken together, these tests and sensitivity analyses suggest that informative censoring is not a significant problem for our model and data.

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Notes

1. Barrow and Zuk (1990), Van Tassel (1993), and Yoon (2003, 2005) examine facets of the careers of both appeals court and district court judges.
2. See Ward (2004) for a discussion of changes to the retirement eligibility of federal judges.
3. The Senate's power of advice and consent could play a role in both the nature of the appointee who might replace a departing judge and the probability of a judge being elevated. We tested the possibility that a district court judge's ideological compatibility with the Senate might affect the likelihood of retiring or resigning. The results suggest that this variable does not influence this decision. We also tested the possibility that the ideological distance between the judge and the relevant home state senators might matter here and find no evidence of such an effect. Finally, we considered the possibility that Senate effects might be limited to the latter part of the time period under analysis. We tested whether judge–Senate compatibility "turns on" from 1981 forward and found that it does not.
4. We only consider the possibility of district court judges being elevated to the appeals courts. Since 1923, no district court judge has directly moved to a seat on the U.S. Supreme Court.
5. If a judge is elevated to an appeals court seat it is very likely that a like-minded judge will then fill the district court vacancy. In this sense, an elevation and a resignation could yield the same outcome at the district court level. However, what is important here is that our prediction regarding the behavior of the district court judge varies depending on whether the judge thinks that there is some chance of elevation. A judge in the early phase of his or her tenure will stay on the court when there is an ideologically favorable president in the hopes of elevation (which then also leads to a like-minded replacement), whereas a judge at the end of his or her career is more likely to retire or assume senior status to allow for a like-minded replacement.
6. We are limited to this time frame because of the availability of data regarding district court decisions. Although the data we analyze could be more contemporary, the careers we examine do span a very substantial length of time, and we include a large number of judges.
7. The mean year under analysis in our judge-years is 1980, and the median is 1982.
8. Data on judicial careers come from the Federal Judicial Center's *History of the Federal Judiciary*.
9. In our data, there are judges who retired with a pension before they were formally eligible for the pension. Most likely, these judges were granted exceptions to the standard policy because of health problems. These judges present a problem, because they in fact were able to retire with a pension before we can code them

as such. There are two ways we can handle this issue. We can, ex post, code these judges as being eligible on the year that they retired, or we can treat these health exception retirements as a different phenomenon and censor these observations at the year in which the judges retired (i.e., treat them just as we treat judges who died, were elevated, or were impeached and removed). We believe the latter approach is the more conservative, and thus it is the one we take.

10. Our data also include a number of judges who were still serving at the end of 1995 and thus for whom our data is also right censored. The inclusion of right-censored cases does not necessarily pose a problem for survival analysis (Box-Steffensmeier & Jones, 2004), but Appendix B provides diagnostic tests to further pursue the censoring issue.
11. During the time period under analysis, these requirements have changed a bit. Prior to 1954, a judge must have served 10 years and reached an age of 70. From 1954 to 1983, judges were eligible at either age 65 (with 15 years of service) or at age 70 (with 10 years of service). From 1984 on, a judge was eligible if they were 65 years old, had served 10 years, and their age plus years of service equaled 80.
12. Put differently, we are including *president–judge distance* × *pre-pension* and *president–judge distance* × *post-pension* in our model and report the estimate for the former variable in the pre-pension regime column of Table 2 and the latter in the post-pension regime column.
13. In regime-switching models, the regimes are often probabilistically defined. In our model, the regimes are fully determined, not probabilistic (see Moraski & Shipan, 1999, for a similar type of regime-switching model).
14. There are numerous survival models that we could employ. For our purposes, the discrete time model is attractive because it is not sensitive to the many "ties" in the data (unlike the Cox model), and it does not require us to make fairly rigid assumptions about duration dependence (unlike parametric models). By using independent variables to capture duration dependence, we are able to experiment with various specifications and properly account for this problem. This more inductive approach is acceptable because we are not testing formal hypotheses about the effect of *seniority* on voluntary departures.
15. If we include $seniority^2$ in the post-pension regime its estimate is statistically insignificant, which means that the effect of *seniority* during this regime is fairly linear. We thus choose to exclude $seniority^2$ from the model presented in Table 2.
16. Data on the direction and number of a judge's published decisions were provided to us by Robert Carp, C. K. Rowland, and Ken Manning. These data are derived from the decisions published in the Federal Supplement, the primary outlet for published federal district court decisions. The data include all cases published in the Supplement, excluding cases lacking an ideological dimension. For more on the district court data, see Rowland and Carp (1996).

When constructing our measure of *president–judge compatibility*, we make the simplifying assumption that, for example, all Democratic presidents have similar preferences to each other. Although this ignores some variation in the ideological positions of presidents from the same party, it both simplifies the measurement and also mitigates the issue of needing to place presidents and judges on the same ideological metric.

17. We use decision data when constructing the measure of president–judge compatibility because they allow for a finer grained measure of compatibility, as compared with a binary indicator of partisan compatibility. However, if we include partisan compatibility instead of the decision-based measure we get the same result—during the post-pension regime judges are more likely to retire when there is a president of the same party in office. There is no effect in the pre-pension regime. If we include both the partisan compatibility and decision-based measure in the model, we find that the results for decision-based measure remain the same, whereas the estimate for the partisan compatibility measure drops out of significance in the post-pension regime. To test whether judges might make more extreme decisions as they become more senior, we regressed a folded version of the decision-based measure of ideology (one in which 0 is perfectly moderate and .5 is perfectly extreme, either liberal or conservative) on seniority and found the opposite to be true. It appears that judges become slightly more moderate over time, although the effect is quite small (e.g., it takes 30 years to moderate by 10 percentage points).
18. We include all years of private practice work occurring before the judge was appointed to the federal bench, regardless of whether they are consecutive. These data were collected from the *History of the Federal Judiciary*.
19. It has been argued that judges who disagree with the rulings of higher courts are more likely to retire (Barrow & Zuk, 1990). To test this proposition, we measured circuit court–district court judge distance for Democratic appointees as the proportion of Republican appointees on the relevant circuit court of appeals. For a Republican judge, it is the proportion of Democratic appointees. This estimate for this variable is not statistically significant, and this variable is not included in the model presented here.
20. In fact, if you regress the age of the judge in year *y* on the judge's seniority in year *y* while including the regime-specific constants the R^2 is .99. For this reason, we cannot include age as a separate independent variable in the model.
21. A total of 134 judges were elevated to an appeals court seat, 89 died, 3 were impeached and removed, and 39 judges retired early (presumably because of a health exception to the pension eligibility requirements). The rest of the judges in our analysis were still serving as of the end of 1995.

22. The average length of time served by a judge who left the bench prior to pension eligibility is 7.9 years (with a minimum of 2 years and a maximum of 16 years).
23. To assess whether the year of the presidency might condition the effect of *president–judge compatibility*, we generated two new interaction terms: *president–judge compatibility* × *first year of the presidency* and *president–judge compatibility* × *fourth year of the presidency*. The estimates for these two interaction terms are insignificant in both regimes, indicating that there is no such conditioning effect. If we simply include dummy variables for the year of the presidency without interacting these dummies, the results further confirm that the year of a presidency is not a significant predictor of retirement.
24. Additional analyses reveal that this effect is not limited to missed opportunities occurring when the president in office is of the same party as the president who appointed the judge in question. Even missed elevation opportunities that occur when, for example, a Democratic president passes over a Republican-appointed judge cause that judge to become more likely to retire.
25. Specifically, a pre-pension judge is most likely to resign in his or her seventh year of service as a judge. From that point on, increases in seniority decrease the likelihood of resignation.
26. Eisenberg and Farber's (1997) model includes two competing risks: settlement and trial. With three (or four, if impeachments are included) competing risks, it is more difficult to employ their approach of specifying the residuals as a multivariate normal distribution. Gordon (2002) introduces a frailty-based approach to dealing with dependence, but there is not an analytically derivable survivor function, and thus estimation is again problematic, particularly when there are more than two possible events (Box-Steffensmeier & Jones, 2004).
27. The same coefficients are statistically significant and the direction of these estimates remains the same as in the model presented in Table 2.
28. We also directly tested the possibility that anticipating death might make a judge more likely to retire by generating a variable that equals one if the judge is within 2 years of the year that they died and including this variable in our model. The estimate for this variable is positive and on the cusp of conventional statistical significance ($p = .055$), suggesting that judges who are near to death may be more likely to retire. However, the inferences to be made about all of the other independent variables are the same as when this variable is not included.
29. The largest correlation coefficient (in terms of magnitude) is –.01 (for the residuals of the death and retirement models), with $p = .25$.

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